

MECHANISMS FOR THE COMPENSATION OF WAR DAMAGES: TOWARD A FAIR SOLUTION FOR UKRAINE

Iryna Izarova¹

Taras Shevchenko National University of Kyiv, Ukraine
Email: irina.izarova@knu.ua

Yuliia Hartman²

East European Law Research Center, Ukraine
Email: Yuliiahartman1@gmail.com

Silviu Nate³

Lucian Blaga University of Sibiu, Romania
Email: silviu.nate@ulbsibiu.ro

Received: 15 March 2024; accepted: 18 May 2024

DOI: <https://doi.org/10.13165/j.icj.2024.06.003>

Abstract. Russia's audacious, unprecedented, illegal invasion of Ukraine, which began in a hybrid form in February 2014 before escalating into a full-scale invasion on February 24, 2022, has brought with it a significant amount of destruction, multibillion-dollar losses, and damage beyond measure – both to the whole state and to each individual Ukrainian resident. As a result of Russian aggression, thousands of civilians have been killed, dozens of cities have been damaged by shelling and airstrikes, and countless enterprises, medical institutions, educational institutions, cultural heritage monuments, kilometres of road, and residential buildings have been destroyed. The war continues, meaning that the damage caused to Ukraine by Russia is steadily increasing with each new day. Since the beginning of the full-scale war, one of the most important tasks has been to find ways and means for post-war reconstruction in Ukraine, as well as for the payment of compensation to the victims of the war. These compensation mechanisms should be implemented alongside those that come at the expense of the funds of the Russian Federation, which, accordingly, necessitates the lawful capture of these funds from an array of possible sources (sovereign assets of the Russian Federation, the assets of Russian oligarchs, etc.). After the Russian invasion of Ukraine, civilized countries froze the assets of the external foreign exchange reserve of the central bank of the Russian Federation, along with the private assets of Russian oligarchs. After freezing assets, the next step on the path towards transferring to Ukraine the assets and funds of the Russian Federation (both sovereign assets and those of private persons), which are located in many countries around the world, should be their confiscation, since freezing alone is not an effective measure. An important task is to help states take this step and develop appropriate confiscation mechanisms in their national legislation. This article is devoted to the study of this issue, as well as to the comparative analysis of that which has already been achieved in this field.

Keywords: war in Ukraine, frozen assets, war damages compensation, invasion of Ukraine, confiscation.

Introduction

Russia's audacious, unprecedented, illegal invasion of Ukraine, which began in a hybrid form in February 2014 before escalating into a full-scale invasion on February 24, 2022, has brought with it a significant amount of destruction, multibillion-dollar losses, and damage beyond measure – both to the whole state and to each individual Ukrainian resident. As a result of Russian aggression, thousands of civilians have been killed, dozens

¹ Dr. Sc. (Law), prof. Taras Shevchenko National University of Kyiv, researcher at the Lucian Blaga University of Sibiu, Romania. ORCID ID: <https://orcid.org/0000-0002-1909-7020>

² Master of Law, East European Law Research Center. ORCID ID: <https://orcid.org/0000-0002-5637-8358>

³ BA (Political Science), MA (National Security), MA (International Relations and Global Security), PhD (Military Sciences and Intelligence), associate professor of security studies, the Faculty of Social Sciences and Humanities, Lucian Blaga University of Sibiu, Romania, director of the Global Studies Center (GSC). ORCID ID: <https://orcid.org/0000-0002-4711-1061>

of cities have been damaged due to shelling and airstrikes, and countless enterprises, medical institutions, educational institutions, cultural heritage monuments, kilometres of road, and residential buildings have been destroyed.

The concept of hybrid warfare lacks a universally agreed definition in international law, leading to a plurality of interpretations. When discussing hybrid warfare in Ukraine, we refer to the combination of combat and information operations conducted by Russia since 2014, which aligns with the definition proposed by Arsalan Bilal (2021) in the *NATO Review*. According to Bilal, hybrid warfare entails the interplay between or fusion of conventional and unconventional instruments of power and tools of subversion. Bilal highlights two characteristics of hybrid warfare: the line between wartime and peacetime is rendered obscure, and hybrid attacks are generally marked by considerable vagueness. Russia invaded Crimea in 2014 and achieved its objectives by conflating deniable special forces, local armed actors, economic clout, disinformation, and the exploitation of socio-political polarization in Ukraine (Bilal, 2021). James K. Wither (2020) notes in his research that the term *hybrid warfare* attempts to capture the complexity of 21st-century warfare, which involves a multiplicity of actors and blurs the traditional distinctions between types of armed conflict, and even between war and peace. Although *hybrid warfare* is a Western term, not Russian, various hostile Russian activities – from the covert use of special forces to election manipulation and economic coercion – have been labelled hybrid, causing growing alarm in Western security establishments. Definitions of hybrid warfare emphasize the blending of conventional and irregular approaches across the full spectrum of conflict. Russia's actions in Ukraine in 2014 brought the concept of hybrid warfare to prominence. Western commentators found *hybrid* to be the most appropriate term to describe the variety of methods employed by Russia during its annexation of Crimea and its support for rebel militant groups in eastern Ukraine. Russian techniques included the traditional combination of conventional and irregular combat operations, along with the sponsorship of political protests, economic coercion, cyber operations, and, in particular, an intense disinformation campaign (Wither, 2020). Similar definitions are provided in the Cambridge Dictionary and by the Institute for the Study of War (Mason, 2020).

As of September 1, 2023, data from the Kyiv School of Economics revealed that the documented direct damage inflicted upon Ukraine's infrastructure by Russia's full-scale invasion had surged to a total of \$151.2 billion (KSE Institute, 2023a). In turn, the amount of indirect damage caused to the assets of enterprises, industry, the agro-industrial complex and land resources, the energy sector, and infrastructure facilities (transport infrastructure, road facilities, railway infrastructure, as well as the aviation industry and the port industry) was \$265.6 billion. This also included the cost of demining (around \$41 billion, which is 15.4% of the total estimate of indirect damage) (KSE Institute, 2023b), because the total area of mined territories in Ukraine as a result of Russian aggression, as of March 2023, was over 174,000 km² – twice the area of Austria (Ukrinform, 2023a).

It is important to outline what exactly Ukraine considers to be subject to compensation, since this will also affect fluctuations in the overall assessment of damages and the amount sufficient for reconstruction to be completed. According to the information provided in the reports of the Kyiv School of Economics – which are developed jointly with Ukraine's Ministry of Communities, Territories and Infrastructure Development, the Ministry of Economy, the Ministry of Health, under the coordination of the Ministry of Reintegration of the temporarily occupied territories of Ukraine, and in cooperation with other relevant ministries and the National Bank – direct and indirect losses to the Ukrainian economy are subject to mandatory assessment and further compensation. Direct losses, as per the World Bank methodology, refer to the harm or destruction, either complete or partial, inflicted upon Ukraine's physical infrastructure by the war. On the other hand, indirect losses, also in accordance with the World Bank methodology, encompass alterations in economic flows resulting from the war. These include income decline across different economic sectors, additional expenses tied to the conflict, and prospective losses that the economy will endure due to the ongoing war (KSE Institute, 2023b).

The war continues, which means that the damage caused to Ukraine by Russia is steadily increasing with each new day.

Since the beginning of the full-scale war, one of the most important tasks has been to find ways and means for post-war reconstruction in Ukraine, as well as for the payment of compensation to the victims of the war. These compensation mechanisms should be implemented alongside those that come at the expense of the funds of the

Russian Federation, which, accordingly, necessitates the lawful capture of these funds from an array of possible sources (sovereign assets of the Russian Federation, the assets of Russian oligarchs, etc.). Obviously, voluntary reparations from Russia should not be expected at the moment. At the same time, the discovery and application of effective mechanisms for such forms of compensation may encourage representatives of the Russian Federation to change their intentions, including the cessation of active hostilities in Ukraine.

The issues of finding funds to compensate for the damage caused and the individual decisions of some countries regarding this mainly emerge due to the absence of a unified international mechanism sanctioned by a specific international organization, such as the United Nations (UN). However, certain progressive shifts have been observed within the European space, which are discussed in greater detail in this article. Additionally, alongside the issues of the compensation mechanism, there are ongoing discussions regarding Russia's immunity as a state and a subject of international public law, and the possibility of using its assets without direct consent. The issue of Russia's immunity was analyzed by the authors in another study, in which, based on international experience and the positions of international and national courts, it was concluded that Russia does not have immunity in cases related to compensation for war damages (Izarova *et al.*, 2023).

After the Russian invasion of Ukraine, civilized countries froze the assets of the external foreign exchange reserve of the central bank of the Russian Federation, amounting to around \$300 billion (Trib & Tolentino, 2023). The exact amount frozen is unknown, as the latest asset data comes from December 2021 (Hilgenstock, 2022). As part of the tenth package of sanctions, the European Union (EU) obliged all banks to indicate the exact amount of frozen Russian assets (Nardelli, 2023).

Along with the state assets of the Russian Federation, the private assets of accomplices of the war have also been frozen. This occurred after the adoption of international sanctions against citizens or legal entities that support the Kremlin and participate in the war in Ukraine (Khutor, 2023a). The joint G7, EU, and Australian task force on Russian Elites, Proxies, and Oligarchs (REPO) has identified Russian assets worth around \$280 billion, according to a statement by G7 finance ministers and central bank leaders on October 12, 2023 (Radio Liberty, 2023b).

The lack of clear and systematic data on the total amount of frozen assets leads to the conclusion that it is necessary to audit these assets and create a special register containing open data on the main information about them (Khutor, 2023b). Taking these measures is critical, as they will allow assets to be monitored by stakeholders and will ensure their preservation.

After freezing assets, the next step on the path towards transferring to Ukraine the assets and funds of the Russian Federation (both sovereign assets and those of private persons), which are located in many countries around the world, should be their confiscation, since freezing alone is not an effective measure.

An important task is to help states take this step and develop appropriate confiscation mechanisms in their national legislation. In September 2023, Prime Minister Denys Shmyhal said that Ukraine had made progress in negotiations with the United States (US), Canada, and the EU on the confiscation of Russian assets, and although none of Ukraine's partners had doubts about the assets of Russian oligarchs, there was a difficult discussion about the sovereign assets of the Russian Federation (Ukrinform, 2023b). It is already possible to discuss certain achievements in this direction and the transfer of the first assets to Ukraine, which will be outlined below.

It is necessary to analyze each case in more detail – in particular, to dwell on the experience of several countries that have introduced mechanisms for confiscating the assets of the Russian Federation or are in the process of doing so. The practice of arbitration regarding compensation for damage caused by the actions of the Russian Federation as part of its occupation are studied separately in this paper, and include decisions in the following cases: *PJSC Ukrnafta v. The Russian Federation* (2019); *Stabil LLC et al. v. The Russian Federation* (2019); *Everest Estate LLC et al. v. The Russian Federation* (2018); *Oschadbank v. The Russian Federation* (2018); *PJSC DTEK Krymenergo v. The Russian Federation* (2023); and others. The study of these cases will allow conclusions to be drawn about the most effective ways to compensate for the damage caused by the war in Ukraine and restore justice for its victims.

Considering the above, it is necessary to emphasize the purpose of this research, which is primarily to identify the main trends in and approaches to the problem of confiscating Russian assets for the purpose of further compensating for the damage caused by Russia's war against Ukraine, using the confiscation of funds in certain countries – such as Canada, the USA, the United Kingdom, Belgium, Estonia, and Switzerland – as an example. These countries were chosen due to their positive experience in implementing special mechanisms for confiscation and compensation, and are studied alongside the concept proposed by the Council of Europe and its current implementation.

To achieve this goal, the following tasks were outlined. First of all, the legal regulation of confiscation issues in the selected countries and the background of the existing mechanisms for confiscating Russian assets were examined. As part of this, draft laws that are either in development, under consideration, or have already been adopted by parliament and are awaiting signature were investigated. The next task was to conduct a comparative analysis of the studied mechanisms and determine their prospects. An important part of this work involved searching for and analyzing precedents for these mechanisms in practice and their results for Ukraine. Additionally, attention was paid to historical factors and precedents that could serve as examples for the present. This also involved an attempt to propose and explore existing alternative compensation methods that do not require the creation of special procedures, such as resorting to international arbitration, and their success rates. In carrying out these tasks, an appropriate research methodology was utilized. The main methods applied in this research included the empirical method of description, which was implemented through the description of the key points of the legal acts studied. The comparative analysis method was applied through the comparison of the proposed documents, and the historical comparison method allowed parallels to be drawn between past and present. These methods enabled existing practices to be correlated and their positive and negative aspects to be highlighted, as well as providing an understanding of the trends in their further development. In the conclusions of this paper, the generalization method is used to briefly summarize the current situation and identify promising directions for future research.

1. Mechanisms for the confiscation of Russian assets abroad: First experiences

1.1. Canada's experience

Canada was the first to start down the path of asset confiscation, during which the possibility of using confiscated Russian assets, sanctioned due to the war, to support Ukraine was legally defined for the first time. Canada froze \$16 billion of Russian sovereign assets and \$400 million of private assets, which are relatively insignificant amounts compared to those frozen in other Western countries, but the signal this sent to other countries and the importance of this precedent cannot be overestimated (CBC News, 2022; Khutor, 2023a).

The relevant amendments to the Special Economic Measures Act (SEMA) were approved by the Senate of Canada on June 23, 2022 (Budget Implementation Act, 2022, Art. 436). According to these amendments, both property belonging to a foreign state and property belonging to private individuals are subject to confiscation. Property encompasses various forms, including real or personal, immovable or movable, tangible or intangible, and corporeal or incorporeal; it encompasses money, funds, currency, digital assets, and virtual currency.

The objective of this legislation was to empower the Canadian government to implement economic measures against specific individuals under certain conditions (SEMA, 2023). These circumstances arise when an international organization comprising states or an association of states, of which Canada is a member, issues a call for such actions. This response is prompted by instances involving a grave breach of international peace and security, the occurrence of gross and systematic human rights violations in a foreign state, or the commission of acts of significant corruption involving a national of a foreign state.

Although SEMA does not clearly define what exactly is meant by an “association of states,” it is quite possible to assume that it concerns the G7 or another coalition of states formed within the framework of a multilateral international treaty concluded to provide compensation to war victims (Horodysky & Sherengovsky, 2022). In particular, this could potentially be a unification of states within the framework of the International Compensation Mechanism proposed by the Ministry of Justice of Ukraine, which will be considered below.

Other grounds – serious violations of international peace and security, and gross and systematic violations of human rights committed in a foreign country – are subject to confiscation only at the discretion of the Government of Canada. However, it is likely that due to the unprecedented nature of these situations, the Canadian government may seek appropriate advice from international partners.

The grounds proposed by the Canadian special mechanism for the confiscation of the property of the Russian Federation and its citizens were created to provide Canada with the widest possible discretion in the matter of confiscation on legal grounds. Therefore, Canada is expected to be active in this direction, despite the relatively small amount of property of the Russian Federation and Russians under its jurisdiction, which will serve as a powerful example for other international partners of Ukraine.

Under the proposed process, if the governor in council determines that certain circumstances have occurred, they can issue an order to seize or restrain any property in Canada owned, held, or controlled by a foreign state, a person in that foreign state, or a non-resident national of that foreign state. Upon application by the responsible minister, a judge of the Canadian Superior Court can order the forfeiture of such property to the Canadian government if it aligns with the specified circumstances. The minister, in consultation with the minister of finance and the minister of foreign affairs, may disburse amounts from the Proceeds Account, derived from forfeited property, for purposes such as reconstructing a foreign state affected by a breach of peace, restoring international peace and security, or compensating victims of gross and systematic human rights violations or acts of significant corruption (Budget Implementation Act, 2022, Art. 436).

The amendments to SEMA are universal and may apply not only to Ukraine, but also to other countries. However, we can confidently conclude that all three example purposes are applicable to the situation in Ukraine. The second purpose – restoring international peace and security – suggests that on its basis, funds can also be transferred to other states, or to Canada itself, which has directed its funds and weapons towards helping Ukraine. However, no official statements or explanations on this matter have been provided by the Canadian government, and therefore this thesis continues to remain at the level of an assumption.

In mid-December 2022, Canada issued its inaugural seizure order, targeting the forfeiture of \$26 million from Granite Capital Holdings Ltd. (Global Affairs Canada, 2022), a company owned by Roman Abramovich – a Russian oligarch subject to sanctions under the Special Economic Measures (Russia) Regulations (2023). This marked the first utilization of Canada's new powers to pursue asset seizures against sanctioned individuals. If the assets are forfeited, the resulting proceeds could be allocated to Ukraine's reconstruction and to providing compensation for victims of the unlawful and unjustifiable invasion by the Putin regime. Ottawa has additionally declared its intent to seize a Russian-registered Antonov AN-124 aeroplane in Toronto, representing the second asset seizure order under the SEMA targeting Russian assets. This aircraft is alleged to be held or controlled, directly or indirectly, by Volga-Dnepr Airlines or the Volga-Dnepr Group, both designated persons under the Special Economic Measures (Russia) Regulations (Chase, 2023).

To date, no Russian assets have been forfeited by order of a Canadian court, and these procedures continue.

1.2. US experience

The US can confidently be called another Western pioneer country in the confiscation of Russian assets. In the US, \$38 billion of the assets of the central bank of the Russian Federation have been frozen (Institute of Legislative Ideas, n.d.). There is no official information on the amount of private assets blocked, so the figure announced by the media – \$1 billion – may be much higher (Khutor, 2023a).

Unlike Canada, the US has not yet adopted a separate special confiscation mechanism at the legislative level, but it already has one successful precedent for the confiscation and transfer of assets of a Russian oligarch to Ukraine (Cohen, 2023),⁴ and is also in the process of recovering the assets of another representative.

⁴ This concerns the case of oligarch K. Malafeev, who attempted to circumvent the sanctions imposed on him, according to which \$5.4 million were recovered for Ukraine.

The US possesses comprehensive legislation concerning asset forfeiture, with particular significance attributed to the International Emergency Economic Powers Act (IEEPA). According to the IEEPA, the US president can utilize the authorities granted by the IEEPA to address any extraordinary threat originating outside the US, significantly impacting the national security, foreign policy, or economy of the US. This can occur if the president declares a national emergency pertaining to such a threat. Any use of these authorities to address a new threat necessitates a new declaration of national emergency specifically related to that threat (IEEPA, 2024).

After the events of 2014 in Ukraine, such a national emergency was declared by President Barack Obama's Executive Order No. 13660 of March 6, 2014 (Blocking Property of Certain Persons Contributing to the Situation in Ukraine). It stated that "the actions and policies of persons, including persons who have asserted governmental authority in the Crimean region without the authorization of the Government of Ukraine that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States". The national emergency regime introduced by Executive Order No. 13660 in relation to the Russian-Ukrainian war has been constantly extended by decrees and continues to this day (Analytical Center "Institute of Legislative Idea", 2023).

Executive Order No. 13660 (2014) outlines specific criteria for freezing the assets of individuals and entities. According to Section 1(a), assets within or entering the US, or under the jurisdiction of the US, may be blocked if the person or entity is found to be involved in actions undermining democratic processes in Ukraine, threatening Ukraine's peace or security, or misappropriating state assets. This order also applies to those asserting authority over parts of Ukraine without authorization, holding leadership positions in entities engaged in prohibited activities, providing support to such activities, or acting on behalf of blocked entities. Prohibitions include making or receiving contributions, funds, goods, or services involving the blocked individuals or entities.

The executive order only defines the criteria on the basis of which sanction lists with specific persons are to be formed. Such an obligation shall be imposed on the Office of Foreign Assets Control (OFAC), and oligarch K. Malofeev was included in this sanction list on December 19, 2014.

The violation of any provisions arising out of or established under and in accordance with the IEEPA is criminalized in the US – that is, the violation of the prohibitions established by Executive Order No. 13660 by persons included in the sanction list formed by the OFAC must be criminalized by the state. Malofeev's criminal indictment is that he, after the OFAC included him in the list of sanctioned persons, committed actions that violated the established restrictions and, in collusion with others, tried to dispose of blocked assets (Analytical Center "Institute of Legislative Idea", 2023).

The legal charges against Malofeev triggered the civil forfeiture process outlined in Section 18 U.S.C. 981(a)(1)(C) (Civil Forfeiture, 2024). This provision allows for the forfeiture of any property, whether real or personal, that is connected to proceeds traceable to specified unlawful activities. A judicial officer in any district where a forfeiture action may be filed can issue a seizure warrant, executable in the district where the property is located or transmitted to a foreign state's central authority as per international agreements. Properties taken under this procedure are non-repleviable and are considered to be in the custody of the attorney general, the secretary of the Treasury, or the Postal Service, subject to court orders. These entities are authorized to retain the forfeited property or transfer it to a foreign country under specific conditions, provided the secretary of state agrees, an international agreement authorizes this, and the recipient country is certified under the Foreign Assistance Act of 1961, if applicable.

In case of civil forfeiture, the state acts as a plaintiff, the property as a defendant (the so-called property defendant), and any person who declares their interest in the property as an applicant. The procedure allows the court to gather all those who have an interest in the property in one case, and resolve all issues that arise regarding the property that is the subject of the claim (Khutor, 2023c).

According to the above procedure, the Federal Court of Manhattan allowed the prosecutor's office to confiscate Malofeev's funds totalling \$5.4 million (Kovalenko, 2023). Malofeev did not appeal the decision on

confiscation. The US attorney general, in turn, said that the funds would be transferred to help Ukraine, which was later confirmed by Secretary of State Anthony Blinken.

The transfer of confiscated assets to Ukraine was enabled through an amendment to the Consolidated Appropriations Act (2023, §1708(a)), explicitly granting the attorney general the authority to transfer proceeds from covered forfeited property to the secretary of state. This is intended for use in providing assistance to Ukraine to address the repercussions of Russian aggression. Such transfers are categorized as foreign assistance under the Foreign Assistance Act (1961), encompassing the administrative authorities and reporting requirements stipulated in the Act. The term “covered forfeited property” refers to assets owned, possessed, or controlled by individuals subject to sanctions and designated by the secretary of the Treasury or the secretary of state. This includes property implicated in violations of sanctions established through Executive Order No. 14024 of April 15, 2021, expanded by Executive Order No. 14066 of March 8, 2022, and referenced in additional measures outlined in Executive Order No. 14039 of August 20, 2021, and Executive Order No. 14068 of March 11, 2022 (Asset Seizure for Ukraine Reconstruction Act, 2022). However, this amendment is limited in time and will be valid only until May 1, 2025.

The legal mechanism described above can be applied only in case of the detection of a criminal offense of a sanctioned person – first of all, attempts to circumvent the sanctions imposed on them. This approach testifies to the extreme importance of criminalizing violations and evasion of sanctions restrictions and prohibitions, as well as its effectiveness.

However, it is unlikely that civil confiscation – according to its prototype, which exists in the US – can be called a universal structure with the help of which it will be possible to recover all of the property of the Russian Federation. This is primarily due to its cumbersome nature and the need to carefully identify cases of violation of the sanction regime, although it is perhaps the only effective mechanism that is already working. However, the very fact of the first successful case regarding the recovery of assets of a citizen of the Russian Federation having been achieved by one of the main geopolitical players – the US – clearly strengthens the position of those who advocate for the need to confiscate Russian assets and direct them towards the reconstruction of Ukraine.

The civil forfeiture applied in Malofeev’s case is an alternative to the traditional mechanism of confiscation in criminal proceedings. An important advantage of civil forfeiture is that it does not require a sentence that would find a person guilty of committing a crime. Property originating from criminal activity may thus be confiscated before the end of criminal proceedings for the relevant crime, as happened in the case of Malofeev. A guilty verdict has not yet been passed against Malofeev, and the criminal case is still ongoing (Analytical Center “Institute of Legislative Idea”, 2023).

However, the US does not plan to stop there. On October 23, 2023, it became known that a lawsuit had been filed in the Federal Court of the State of New York on behalf of the US in civil forfeiture in connection with the violation of the sanctions regime for the seizure of the Amadea yacht, the value of which has been reported as between \$300 million and \$500 million, and the beneficial owner of which is considered to be sanctioned Russian oligarch S. Kerimov (*United States of America v. The m/y Amadea, a motor yacht bearing international maritime organization no. 1012531*, 2023). If a federal court authorizes the confiscation of the Amadea, the proceeds from its sale at auction are also planned to be transferred to Ukraine (Radio Liberty, 2023c).

In addition to the existing civil forfeiture procedure, the US is also developing a special mechanism for confiscating all assets of the Russian Federation and its citizens and transferring them to Ukraine.

On April 20th, 2024, the US Senate voted to pass the 21st Century Peace through Strength Act (2024). One of the most crucial components of this Act is the section entitled “Rebuilding Economic Prosperity and Opportunity for Ukrainians Act” or the “REPO for Ukrainians Act”. This section aims to provide additional assistance to Ukraine using assets confiscated from the Central Bank of the Russian Federation and other sovereign assets of Russia, as outlined in the UN General Assembly Resolution adopted on November 14, 2022. The resolution acknowledged the necessity to establish, in collaboration with Ukraine, an international mechanism for compensating damage, loss, or injury resulting from the internationally wrongful acts committed by the Russian Federation within or against Ukraine. It recommended that Member States, in partnership with Ukraine, create

an international register of damage. This register would function as a documented record, containing evidence, claims, and information regarding damage, loss, or injury suffered by all relevant natural and legal entities, including the State of Ukraine, due to the internationally wrongful acts of the Russian Federation within or against Ukraine. The primary goal is to facilitate and coordinate the collection of evidence (Furtherance of remedy and reparation for aggression against Ukraine, 2022).

This bill provides a detailed vision of the confiscation mechanism and the procedure for its functioning. The proposal emphasizes the need for the US to collaborate with international allies and partners in a coordinated, multilateral effort, including G7 countries, the EU, Australia and other nations housing Russian sovereign assets, for the confiscation and repurposing of such assets. The bill specifies that any Russian sovereign asset blocked or immobilized by the Department of the Treasury cannot be released or mobilized until the US president certifies to the relevant congressional committees that hostilities between Russia and Ukraine have ceased. Additionally, full compensation must be provided to Ukraine for harm resulting from the invasion. Alternatively, Russia must engage in a legitimate international mechanism agreed upon to fulfil its obligation to compensate Ukraine for any amount owed.

It is important that the president may confiscate any Russian sovereign assets subject to the jurisdiction of the US. The president shall deposit any confiscated capital into the special Ukraine Support Fund established by the president, and liquidate or sell any other confiscated property and deposit the funds resulting from such liquidation or sale into the Ukraine Support Fund. At the same time, the method of confiscation still remains unspecified – the president shall confiscate Russian sovereign assets “through instructions or licenses or in any other manner the President determines appropriate” (21st Century Peace through Strength Act, 2024). The procedures – other than civil or criminal forfeiture, which have no basis for application in the circumstances described – that the US president may find appropriate remains an open question that awaits a special decision.

The Ukraine Support Fund is designated for the secretary of state, in consultation with the administrator of the US Agency for International Development. The purpose of this fund is to compensate Ukraine for damages resulting from the Russian Federation’s unlawful invasion starting on February 24, 2022. This includes providing funds to the Government of Ukraine or any designated entity for the determination of compensation and assistance, reconstruction efforts, humanitarian aid, and other initiatives supporting Ukraine’s recovery and the welfare of its people (21st Century Peace through Strength Act, 2024). At the same time, no funds can be transferred or utilized from the Ukraine Support Fund without the US president certifying to the relevant congressional committees the existence of a plan, ensuring transparency and accountability for all fund transfers to and from any designated account. Additionally, the president must transmit this plan in writing to the appropriate congressional committees. This underscores the transparency and accountability in the utilization of confiscated assets for their intended purposes. Funds from the Ukraine Support Fund may also be transferred to an international fund known as the Ukraine Compensation Fund as part of an international compensation mechanism once such a fund is established.

The clearly defined starting point from which the damage which will actually be subject to compensation at the expense of confiscated Russian property began allows us to conclude that the developers of this law did not take into account the damage that was caused to Ukraine from the beginning of the first phase of the invasion, which began in February 2014. Due to Russia’s occupation of the eastern regions of Ukraine for more than 9 years, it is difficult to accurately assess and determine the total amount of damage caused, but it is quite clear that damage exists and must be compensated for in full. Ensuring an effective mechanism for such compensation is an important and urgent task (in this context, the authors’ attention is drawn to arbitral awards that have recently been adopted in cases of compensation for such damage, and which will be separately examined in part 4 of this article).

The confiscation procedure proposed by this law is inevitable – i.e., the confiscated Russian assets and other property cannot be the subject of litigation. The only exception is situations in which, according to the plaintiff’s belief, the action is alleged to deny rights under the US Constitution.

The bill also allows the transfer of funds deposited with the Ukraine Support Fund to the Common Ukraine Fund, which will be established within the framework of an international multilateral agreement. The Common

Ukraine Fund will be used to pay compensation to Ukraine for damage which will be determined and supported by relevant evidence in the International Register of Damages, created in cooperation with international partners. This vector of the compensation mechanism will also be considered in detail within the framework of our study.

The provision in the law ensuring its duration and enforcement is of the utmost importance. This provision stipulates that the powers outlined in the law, granted to the president and other competent authorities, may not be terminated sooner than 5 years after it takes effect. Alternatively, and this factor is significantly more important and relevant to Ukraine, the termination of these powers is contingent upon meeting the following conditions.

The described powers shall cease no earlier than 120 days after the president determines and certifies to the appropriate congressional committees that the Russian Federation has reached an agreement regarding the withdrawal of Russian forces and the cessation of military hostilities, an agreement accepted by the free and independent Government of Ukraine, and full compensation has been provided to Ukraine for damages resulting from the Russian Federation's invasion of Ukraine. Alternatively, if the Russian Federation participates in a genuine international mechanism that, by agreement, fulfils its obligations to compensate Ukraine for all determined amounts owed, or if the Russian Federation's obligation to compensate Ukraine for damages caused by its aggression has been resolved through an agreement between the Russian Federation and the Government of Ukraine.

However, all of these cases share one common goal – ending the war on terms satisfactory to Ukraine, and Russia providing full compensation for the damage it has caused.

In general, in the authors' opinion, the adoption of the REPO for Ukrainians Act lays a solid foundation for an effective mechanism for the payment of compensation to Ukraine. However, given the difficult and lengthy process of following this path, the rapid implementation of these mechanisms is unlikely.

Currently, one such bill is still under consideration in the US Congress. However, after the adoption of the REPO Act, it is foreseeable that there will no longer be a need to consider this bill. Understanding why this is the case prompts a brief analysis.

On April 27, 2022, the House of Representatives approved the Asset Seizure for Ukraine Reconstruction Act, which is currently still under consideration by the Senate (GovTrack.us, n.d.). This legislation mandates that the US president must employ constitutional measures to seize and confiscate assets within US jurisdiction belonging to foreign individuals whose wealth is, in part, linked to corruption or political support for Russian President Vladimir Putin, and against whom the US president has imposed sanctions.

Additionally, the president, through instructions, licenses, or other regulations adhering to due process, is directed to confiscate any property or accounts under US jurisdiction that are valued over \$2 million and owned by Russian energy companies or foreign individuals meeting the specified conditions. The liquidated funds are to be utilized for the benefit of the people of Ukraine, encompassing post-conflict reconstruction, humanitarian aid, US government assistance to Ukrainian security forces, support for refugees and resettlement, and the provision of technology items and services ensuring the free flow of information to the Ukrainian people (Asset Seizure for Ukraine Reconstruction Act, 2022).

However, this list of areas to where confiscated funds can be directed is not exhaustive. The draft law also provides for the possibility of directing such funds for humanitarian and developmental assistance for the Russian people, including democracy and human rights programming and monitoring (Asset Seizure for Ukraine Reconstruction Act, 2022).

In the authors' opinion, this is a very controversial direction that rightly promotes discussion and the polarization of opinion in society. Indeed, without the establishment of a legitimate democratic government in Russia, one can hardly count on the normalization of relations, since it is a territory bordering Ukraine. At the same time, full compensation for losses from the war is an unconditional basis for the further establishment and maintenance

of such relations. It is thus worth considering the need to implement such compensation as a priority for which the use of such funds should be envisaged.

The Asset Seizure for Ukraine Reconstruction Act does not provide an answer to the question of how exactly Russian property that falls under certain criteria will be subject to recovery, nor what legal mechanism should be applied. Instead, it obliges the US president to form a special working group, which shall be headed by the secretary of state, to determine the constitutional mechanisms through which the president can take steps to seize and confiscate assets (Asset Seizure for Ukraine Reconstruction Act, 2022).

By adopting a more comprehensive law under the short title of REPO, the US has taken a significant step towards addressing the issue of confiscating Russian assets worldwide, particularly in Europe. This demonstrates that a legal method of confiscation can be identified and adapted to the relevant jurisdiction; it only requires the political will of the legislator.

1.3. The experience of the EU, Switzerland and the UK

Belgium was one of the first European countries to announce the creation of a special fund for the transfer of funds received from Russian assets (European Pravda, 2023). Although this does not relate to the Russian assets themselves, but rather the tax received from profits from them, this was the first real case of redirecting such funds towards Ukraine on the European continent.

The Euroclear international depository is under the jurisdiction of Belgium, and represents the accumulation, according to the Belgian government, of approximately \$125 billion of frozen funds of the Central Bank of Russia (Reteurs, 2023). The depository's system of work is arranged in such a way that it not only holds this money, but also reinvests cash balances and receives profits from them. In 2022, Euroclear reported €821 million in revenues from frozen Russian funds (Euroclear, 2023a), and in the first half of 2023, these revenues reached €1.74 billion (Euroclear, 2023b). However, Belgian legislation does not allow the state to receive this profit and redistribute it to selected areas of use. Despite this, such income is equated to any other income derived from any other activity carried out in the territory and under the jurisdiction of Belgium, and is therefore subject to taxation. The corporate tax rate that is levied on this type of income is 25% (PwC, 2023). The expected amount that the Belgian government hopes to keep until the end of 2024 is €1.7 billion, which is roughly estimated to be a quarter of the total profits made from blocked Russian sovereign assets (European Pravda, 2023).

Funds withheld from corporate tax are directed to the state budget of Belgium, and therefore their only administrator is the state, which independently decides on how to use them without any third-party approval. However, in practice, such a step is a consistent consequence of many months of negotiations between the G7 countries on the use of profits from frozen Russian money (Khutor, 2023d).

Following reports from Belgium regarding the creation of a special fund within its own state budget, the funds from which will be directed to Ukraine, the US also announced support for taxing profits generated from hundreds of billions of dollars in Russian state assets frozen in G7 countries and using the funds to support Ukraine (Tamma, 2023). Although the procedure used by Belgium concerns the transfer of a relatively small amount to Ukraine compared to the billions of dollars in blocked Russian money, it actually allows additional funds received from profits from Russian assets to be sent to Ukraine without waiting for the establishment of international legal nuances and the approval of third countries. However, it is clear that this mechanism is only auxiliary, and is not able to cover the need for a special confiscation mechanism which would allow Ukraine to receive all assets belonging to Russia – including, above all, those of a sovereign nature.

Estonia plans to take a leading position in introducing the possibility of confiscating frozen assets of the aggressor state in its own legislation. In mid-October 2023, the Estonian government approved and submitted to parliament a draft law amending the International Sanctions Act, which provides for rules for the use of the assets of sanctioned persons that were blocked in Estonia to compensate Ukraine for the damage caused by the war (Government Communication Unit of the Republic of Estonia, 2023). The proposed act aims to enhance the overall coherence of the Estonian legal framework, providing clarity and efficacy in the competence and powers of authorities for the implementation and oversight of sanctions. Nonetheless, a key constant is that the activation

of this mechanism still necessitates an international agreement with Ukraine or the establishment of an international compensation mechanism. This approach is considered absolutely justified since the process under study is at least bilateral, and therefore requires the interaction of the parties with each other and its expression in a more concrete form.

Estonia's initiative, under development since December 2023, is expected to impact approximately \$37 million EU-sanctioned financial assets owned by Russian businesses in Estonia. The proposal involves utilizing Ukraine's International Register of Damages as the foundation for expropriating sanctioned assets. Drafting the initiative in compliance with EU law proved challenging due to Estonia's robust safeguards for private ownership (Tammik, 2023).

The mechanism proposed by Estonia stipulates that the Ministry of Foreign Affairs of Estonia may decide to use the financial resources or other property of the subject of international sanctions as advance compensation for damage caused to a foreign state in connection with the violation of the prohibition on the use of armed force established by paragraph 4 of Article 2 of the UN Charter, or in connection with the illegal use of armed force in the course of hostilities. The prerequisites for such use are damage caused by the commission of unlawful acts, a claim for compensation filed by the injured foreign state against the foreign state that caused the damage, partial or complete failure to comply with this requirement within a reasonable time, and the corresponding request of the injured foreign state, international organization, or recognized international compensation mechanism with a demand for the transfer of such property.

Especially important for Ukraine is the list of entities whose property can be confiscated and transferred as compensation. Confiscation measures may be applied:

- 1) in respect of an entity or legal entity established in the aggressor country, which is under the control of this country or more than 50% of which belongs to this country, and which financially or materially supported the commission of an illegal act;
- 2) in respect of an individual or legal entity whose involvement in the commission of an unlawful act or in providing assistance to it has been established and sufficiently proven.

In order to recover funds or other property, the Ministry of Foreign Affairs must apply for the appropriate authorization from the administrative court. The administrative court is obliged to verify the existence of the above prerequisites and determine: whether the unlawful act caused damage which is proven and subject to compensation in accordance with international law, and the injured foreign state has presented a corresponding claim to the foreign state that caused the damage which has not been fulfilled within a reasonable time; whether the connection of the person whose funds will be confiscated with the commission of the illegal act, which became the basis for the application of international sanctions, has been duly proved, or their financial, material or other involvement in it has been demonstrated; and whether there are exceptional circumstances due to which the interests of a person prevail over the need to confiscate property. It should be noted that, in fact, all of the above circumstances in relation to Ukraine and Russia are generally recognized facts and do not require additional proof, so difficulties in establishing these interstate ties are not expected. Moreover, they will most likely be absent when the assets of Russian oligarchs are confiscated.

On the basis of a permit issued by an administrative court, the Ministry of Foreign Affairs becomes the temporary administrator of confiscated funds until they are transferred to the affected state, international organization, or within the framework of an international compensation mechanism. The remainder of the property is subject to sale at an open auction, and the funds received as a result of this are also subject to transfer to the entities specified in the draft Law, with the exception of the funds that were spent by the Estonian state on the maintenance of the property sold (Rahvusvahelise sanktsiooni seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus 332 SE, 2023).

The mechanism developed by Estonia is universal and can be applied to any offending state that falls under the conditions defined by law. It is also fairly transparent and understandable, so it can serve as an example for implementation in the legal regulation of other European states. A somewhat similar procedure for the confiscation of assets operates in Ukraine, and is promising for further research and development. On May 15,

2024, the draft of this law was approved by the Estonian parliament, and it currently awaits the signature of the president. Thus, Estonia became the first EU country whose parliament adopted an internal procedure for the confiscation of the assets of the Russian Federation, marking a huge step and a breakthrough in the European legal space. The authors hope that this serves as an example for other EU Member States.

Confiscating Russian assets abroad does not imply their automatic transfer to Ukraine. According to Article 25 of the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005), the state manages confiscated property in line with its domestic laws, unless otherwise agreed upon by the parties. Even after agreeing on the return of funds, the party making the request may retain some of the property and decide on its usage by the other party.

Another country that is looking for ways to confiscate Russian sovereign assets is the **United Kingdom**. On February 23, 2023, the Seizure of Russian State Assets and Support for Ukraine Bill was introduced in the British parliament. The bill mandates the secretary of state to present proposals for seizing Russian state assets to aid Ukraine. The key aspect involves establishing an authorized body (the trustee) for managing Russian state assets, including those of the Central Bank. The trustee is responsible for securing, detaining, and realizing the value of the assets for the benefit of the trust. Certificates are issued for seized Russian Central Bank assets and other Russian state assets held in the UK, enabling the trustee to act. The trustee utilizes the seized assets to fund repairs to Ukrainian civilian structures, support the Ukrainian government's response to Russian military actions, establish legal mechanisms for compensation, and address any outstanding international court orders, among other purposes supporting Ukraine (Seizure of Russian State Assets and Support for Ukraine Bill, 2023).

However, the scheme proposed by the draft law is too descriptive and does not contain specific legal details – in particular, it does not address how exactly the authorized body (the trustee) will collect assets, nor whether only the issuance of the relevant certificate by the minister will be considered a sufficient basis. The draft indicates the need for the secretary of state to make proposals on these issues, which will subsequently be considered in parliament. Currently, the draft law itself is at the second stage of reading in the Lower House of the British parliament, and it still has a long way to go before its final approval and entry into force. The British prime minister has also repeatedly announced that he is working on the creation of an independent fund to collect sanctioned Russian assets (UNN, 2023), but the specific legal details of its activities are still unknown.

Given the significant amount of assets of citizens of the aggressor country held in **Switzerland** and the resultant public outcry, active discussions about the fate of these funds are also taking place in the country. Swiss Foreign Minister Ignazio Cassis said at the World Economic Forum in Davos that the aggressor should compensate for the damage caused, but Switzerland does not have a law on the seizure of frozen funds for such purposes. However, in February 2023, the Swiss government abandoned the idea of confiscating Russian assets, as it allegedly violates the constitution and undermines law and order (Khutor, 2023a).

However, history provides an example of a case in which such a categorical position of Switzerland was overcome by a coalition of international partners. After the end of the Second World War, when the question arose of the payment of reparations by Germany and the disposal of its assets, most of which were in Switzerland, under pressure from an alliance of countries – where the main geopolitical players, the US, Great Britain and France, acted on behalf of 15 more countries (Albania, Australia, Belgium, Canada, Czechoslovakia, Denmark, Egypt, Greece, India, Luxembourg, New Zealand, Norway, the Netherlands, South Africa, Yugoslavia) – the Washington Agreement was concluded on May 25, 1946. According to this agreement, Switzerland paid 250 million Swiss francs, which it had attained after acquiring gold from Germany, to the Allies. Subsequently, the Allies relinquished any claims, including those of their respective central banks, against the Swiss government or the Swiss National Bank concerning the gold obtained by Switzerland from Germany during the War. Additionally, Switzerland committed to liquidating German assets in Switzerland owned by individuals in Germany, with 50% of the proceeds transferred to the Allies and the remaining 50% retained by Switzerland. A joint commission and an appeal process oversaw the liquidation, managed by the Swiss Compensation Office. Originally, the Allies sought the uncompensated liquidation of German assets, but the settled agreement reflects a 50–50 split, underscoring the political nature of the Washington Agreement that is akin to today's process of seizing Russian assets (von Castelmur, 1999). Therefore, we can conclude that over time, Switzerland's position may change its vector, subject to the persistent and systematic diplomatic work of its international partners.

2. The International Register of Damages and the International Compensation Fund as elements of the mechanism for the compensation for damage caused to Ukraine by the war at the expense of the assets of the Russian Federation

The Council of Europe, after Russia's withdrawal from it, has repeatedly supported Ukraine's international legal initiatives, and in May 2023, within the framework of this organization, an agreement on the creation of a register of damages for Ukraine was concluded. The 4th Summit of Heads of State and Government of the Council of Europe occurred in Reykjavík on May 16–17, 2023. There, the leaders resolved to create a register of damage resulting from the Russian Federation's aggression against Ukraine. They also committed to enhancing the Council of Europe's role in human rights, democracy, and the rule of law. This involved adopting declarations on the situation of Ukrainian children, democratic principles, reaffirming the European Convention on Human Rights, and devising tools to address evolving challenges in technology and the environment. This agreement was also called the Reykjavik Declaration (Council of Europe, 2023).

This declaration materialized in Resolution CM/Res(2023)3, Establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Russian Federation's Aggression against Ukraine (2023) on May 16, 2023. The legal foundation for this resolution draws from the 2001 Articles on Responsibility of States for Internationally Wrongful Acts, the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, and the 2011 Guidelines of the Committee of Ministers on Eradicating impunity for serious human rights violations. Recent documents, including decisions from the Committee of Ministers and UN General Assembly Resolution A/RES/ES-11/5, influenced this initiative. The Parliamentary Assembly of the Council of Europe (hereinafter – PACE) also endorsed the establishment of an international compensation mechanism and an initial international register of damage through Resolution 2482 (2023) (Legal and Human Rights Aspects of the Russian Federation's Aggression against Ukraine, 2023).

Thus, on April 19, 2023, the Committee of Ministers authorized the creation of an Enlarged Partial Agreement within the Council of Europe, establishing a Register of Damage Caused by the Russian Federation's Aggression against Ukraine (2023, hereinafter – the Register). Subsequently, through the Committee of Ministers' Resolution on May 16, the Enlarged Partial Agreement on the Register, governed by the attached Statute, was established. This Register serves as a documented record of evidence and contains information on damage, loss, or injury caused within Ukraine's internationally recognized borders, including its territorial waters, by the Russian Federation's internationally wrongful acts since February 24, 2022. It should be noted that the proposed mechanism, which will be discussed later and of which this Register is a part, is based on proposals and concepts developed by the Ministry of Justice of Ukraine (Ministry of Justice of Ukraine, 2023).

This decision was the extremely important first step in the building of an internationally recognized compensation mechanism, which launched the process of work on the creation of this Register and the even more exhausting and difficult work of the Enlarged Partial Agreement, which is to be concluded between more than 40 countries.⁵ However, some details of the functioning of the Register are known. These details are defined in Statute of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, which became an annex to the above-mentioned Resolution. The Register is responsible for receiving and managing information regarding claims of damage and supporting evidence. It categorizes, classifies, and organizes these claims, evaluates their eligibility for inclusion in the Register, and records eligible claims for future examination. Importantly, the Register does not possess any adjudication functions related to these claims, including determining responsibility or allocating payments or compensation (Establishing the Enlarged Partial Agreement on the Register of Damage, 2023).

The purpose of this Register is only to accumulate data on damage caused. At the same time, in order for this recorded damage to be compensated, it is necessary to move to a new stage of compensation mechanism, which

⁵ As of 18 December 2023, this list includes the following countries: Albania, Austria, Belgium, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Republic of Moldova, Monaco, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, the Slovak Republic, Slovenia, Spain, Sweden, Ukraine, and the United Kingdom, as well as representatives of the EU, Canada, Japan, and US. This list is expected to grow.

currently needs to be developed. For example, this could take the form of a special compensation commission formed on the basis of the Council of Europe. The closest analogue to the Commission for the Consideration of Claims to the International Armed Conflict and Occupation of Ukraine is Iraq's invasion of Kuwait in 1990, where reparations were paid on the basis of aggression. This was the subject of a series of UN Security Council resolutions that ultimately authorized the creation of the United Nations Claims Commission (UNCC) and received guidance from the UN secretary-general on how exactly it would act. The UN Security Council thus established Iraq's responsibility for any direct damages. The UNCC was not established as an arbitral tribunal, but as a political body with a fact-finding role of assessing and verifying whether each claim alleged damage directly related to Iraq's unlawful invasion and occupation of Kuwait and to award monetary compensation, if applicable. In cases where claims were disputed, the commission also performed the quasi-judicial function of resolving them (Moffett, 2022). The formation of such a body would be a logical continuation of the set of actions initiated by the creation of the Register.

A brief description, without specific details and names, of the planned scheme of the compensation mechanism is enshrined in the Registry Charter, which provides us with a glimpse of what Ukraine should expect. The Register, along with its digital platform containing claim and evidence data, aims to constitute the initial element of an upcoming international compensation mechanism. This mechanism, to be established through a separate international instrument in collaboration with Ukraine, may involve a claims commission and a compensation fund. The Register, led by its executive director and supported by its secretariat, will actively contribute to and facilitate the establishment of this compensation mechanism. Necessary preparations will be undertaken to transition the Register into the proposed mechanism (Establishing the Enlarged Partial Agreement on the Register of Damage, 2023).

The repeated calls of the PACE for the use of the assets of Russian citizens subject to targeted sanctions for their responsibility in the war of aggression launched against Ukraine by the Russian Federation, once they are confiscated definitively, to compensate Ukraine and its citizens for any damage caused by the Russian Federation's war of aggression (Resolution 2436 (2022) Parliamentary Assembly of Council of Europe) give a clear understanding of the sources from which the compensation fund would be drawn (The Russian Federation's Aggression Against Ukraine: Ensuring Accountability, 2022).

Another step taken by the PACE which should significantly advance Ukraine's access to confiscated Russian assets was Resolution 2539 passed on April 16, 2024, which suggests "the confiscation of Russian state assets and their utilization" to aid in Ukraine's reconstruction. This approach is aimed at "bolstering Ukraine, ensuring Russia's accountability, and deterring future aggressions." The resolution emphasizes that the frozen Russian state financial assets across various nations, amounting to approximately \$300 billion, should be directed towards Ukraine's reconstruction. It also highlights that the documented damages to Ukraine's infrastructure and economy due to Russian aggression amounted to \$416 billion as of June 2023.

Furthermore, PACE proposed the establishment of "an international compensation mechanism" under the Council of Europe's oversight to address damages suffered by affected individuals and entities, including Ukraine itself. It also recommended the creation of an "international trust fund" to hold all Russian state assets from Council of Europe Member and non-Member States, along with an "impartial and effective international claims commission" to handle claims from Ukraine and those impacted by Russian aggression. PACE urged nations holding Russian state assets to cooperate actively in swiftly transferring these assets to the international compensation mechanism.

Lastly, PACE reaffirmed the Council of Europe's solidarity with Ukraine and its people, including the exclusion of Russia from membership. It mentioned the establishment of the Register by the Council of Europe to document losses incurred by Ukraine, marking an initial step towards holding Russia accountable for its actions (Support for the reconstruction of Ukraine, 2024).

In order for losses to be entered into the Register, they must simultaneously meet the following three main criteria:

- they must have been inflicted on or after February 24, 2022. This wording allows us to remain cautiously optimistic about the possibility of compensating for the damage caused by Russia even before the full-scale invasion, starting from February 2014, since as of February 24, 2022, such damage had already been caused;
- the damage must have been caused in the territory of Ukraine within its internationally recognised borders, extending to its territorial waters;
- the damage must have been caused by the Russian Federation's internationally wrongful acts in or against Ukraine.

The Register will be instituted as a platform for intergovernmental collaboration, operating within the institutional framework of the Council of Europe. Its primary location will be in the Hague, the Netherlands, with an additional satellite office in Ukraine. This satellite office aims to engage with the Government of Ukraine, enhance outreach, connect with potential claimants, and inform the public in Ukraine regarding the Register's existence and purpose and the procedure for submitting damage claims (Establishing the Enlarged Partial Agreement on the Register of Damage, 2023).

The PACE appreciates the creation of the Register and remains committed to its endeavours to establish an international compensation mechanism and a dedicated tribunal for the crime of aggression. This pursuit aligns with previous resolutions, including Resolution 2482 (2023) entitled "Legal and Human Rights Aspects of the Russian Federation's Aggression Against Ukraine" (2023). In addition, PACE has called on the countries participating in the creation of the Register to clarify the provisions in the rules of the Register, according to which it will also apply to acts committed by private military formations and paramilitary formations fighting on the side of the Russian Federation, in particular the Wagner PMC and Ramzan Kadyrov's army (Political Consequences of the Russian Federation's War of Aggression Against Ukraine, 2023). This is a completely reasonable decision, since it is aimed at collecting money from Russia to compensate for absolutely all damages, regardless of which of its subjects committed them, and will not allow these entities to avoid responsibility for this because the Register ensures the recording and preservation of all proven cases of damage that meet the criteria established by the Resolution of the Committee of Ministers of the Council of Europe.

3. The recovery of funds through the International Court of Arbitration

The occupation actions of the Russian Federation, which date back to the annexation of the Crimean Peninsula in February 2014, made it impossible to carry out investment activities in the occupied territories. Companies that have suffered the greatest losses and whose investments remained in the territories temporarily not controlled by the Ukrainian government have begun the practice of filing applications with the International Court of Arbitration with claims against the Russian Federation for the compensation of expropriated property. Decisively, the first application on such a subject was filed with the International Court of Arbitration back in 2015 by Ukrnafta, and concerned the ownership of 16 petrol stations in the Crimea region (*PJSC Ukrnafta v. The Russian Federation*, 2019). The subject of all subsequent applications was also property located on the annexed Crimean Peninsula. As of April 2024, 5 cases have been resolved in favour of investor applicants (*Everest Estate LLC et al. v. The Russian Federation*, 2018; *Oschadbank v. The Russian Federation*, 2018; *PJSC Ukrnafta v. The Russian Federation*, 2019; *Stabil LLC et al. v. The Russian Federation*, 2019; *PJSC DTEK Krymenergo v. The Russian Federation*, 2023), and 5 more cases are awaiting a final decision (*JSC CB PrivatBank v. The Russian Federation*, 2015; *Lugzor LLC et al. v. The Russian Federation*, 2015; *Aeroporto Belbek LLC and Mr. Igor Valerievich Kolomoisky v. The Russian Federation*, 2015; *NJSC Naftogaz of Ukraine (Ukraine) et al. v. The Russian Federation*, 2016; *NPC Ukrenergo v. The Russian Federation*, 2019).

This method of compensation for losses incurred by investors is somewhat promising in its implementation, since the New York Convention provides for the enforcement of arbitral awards (UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958).

The practice of the International Court of Arbitration in this category of cases is developing in a positive direction for Ukrainian investors, since the court takes their side, as evidenced by the 5 satisfied applications out of the 10 that have been part of the court's proceedings thus far. Despite the lengthy (e.g., the final decision in the Ukrnafta case was made in 2019; the average duration of proceedings is 3–4 years but some have been ongoing for more than 8 years) (*PJSC Ukrnafta v. The Russian Federation*, 2019) and expensive (in the case of Stabil

LLC and other applicants, the court ordered the Russian Federation to reimburse the costs of arbitration in the amount of €687,085.01) (*Stabil LLC et al. v. The Russian Federation*, 2019) procedure for consideration by the arbitration court, Ukrainian companies hope to receive compensation for losses in this way. The above proves that compensation for damage by applying to the International Court of Arbitration does not meet the criteria of accessibility of such an appeal for everyone whose rights have been violated, and therefore this mechanism cannot be directed and used to compensate for damage to a wide range of persons due to its cost and duration.

Within the framework of this section, using the example of several cases, the concept according to which the appeals of Ukrainian investors were satisfied and the obligation to compensate for the damage caused by the expropriation of their property that was imposed on the Russian Federation can be examined in more detail. It should be noted right away that not all procedural documents, including decisions, in cases that have been and continue to be considered by the International Arbitration Court are publicly available, so this section focuses on those decisions that were available for access, as well as press releases on the progress of the case published in official sources.

Firstly, it is necessary to uncover the legal and factual basis for investors to apply to arbitration. If the factual basis was the illegitimate annexation of the Crimean peninsula and, accordingly, the inability to dispose of proper investments in this regard, then the legal basis for the application, according to the information posted on the website of the Permanent Court of Arbitration (<https://pca-cpa.org>), in all cases is that there was a violation of the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments (1998), dated 27 November 1998 (hereinafter – the Treaty or BIT). Having analyzed some of these decisions, the texts of which are available, it is possible to arrive at the generalized conclusion that the claimants seek compensation for a series of measures taken by the Russian Federation “that disrupted and eventually destroyed their Crimean operations,” culminating in the dispossession and nationalization of their network of different properties (petrol stations, real estate, bank branches and all their funds and assets, objects of infrastructure, electricity/power stations, etc.) and associated assets in Crimea. The claimants submit that, by its conduct, the respondent has violated Articles 2, 3, and 5 of the BIT (*Stabil LLC et al. v. The Russian Federation*, 2019).

In accordance with Article 2 of the Treaty, each contracting party is obligated to ensure, in compliance with its domestic laws, comprehensive and unconditional legal protection for the investments made by investors from the other contracting party. Furthermore, the courts concurred with Ukrainian investors that establishing jurisdiction did not necessitate a determination on the sovereignty of Crimea or the validity of its incorporation into Russia. The key criterion for territorial jurisdiction was Russia’s “settled, long-term control” over Crimea, making it accountable for the international relations of the region. Regarding the definitions of “investment” and “investor” under the BIT, the crucial factors were that the investments were within the territory controlled by Russia during the infringement and that the investors were legally eligible, as per Ukrainian laws, to make investments in Crimea (Antonovych, 2023).

In view of the above, there is a violation of Article 5 of the BIT, which provides for the prohibition of expropriation. This implies that investments made by investors of either contracting party on the territory of the other contracting party are protected from expropriation, nationalization, or any measures deemed equivalent in their consequences to expropriation.

The Tribunal determined that the Russian Federation unlawfully expropriated the Claimants’ investments, violating Article 5 of the Treaty. This expropriation resulted from the physical seizure of the Claimants’ property by Paramilitary Forces on April 22, 2014, and legislative acts by the Crimean State Council and the Sevastopol Government that nationalized the investments in Crimea and Sevastopol. Importantly, the Tribunal asserts that Russia’s expropriation fails to meet any of the four cumulative requirements outlined in Article 5 of the Treaty, which demand non-discriminatory measures and prompt, adequate, and effective compensation (*Stabil LLC et al. v. The Russian Federation*, 2019).

The same article provides for the obligation to pay compensation in the event that expropriation has taken place. Taking into account the operative part of the decision in the case of *Stabil LLC et al. v. Russian Federation*, it can be seen that the arbitral tribunal used the concept of calculating the amount to be compensated defined in

Part 2 of Art. 5 of BIT. Compensation must align with the market value of the expropriated investments, determined immediately before the expropriation date or when officially acknowledged. Prompt payment is required, factoring in interest from the expropriation date to the payment date at the interest rate for 3 months' deposits in US Dollars at the London Interbank Offered Rate (LIBOR) plus 1%. Additionally, the compensation should be readily realizable and freely transferable (*Stabil LLC et al. v. The Russian Federation*, 2019). Moreover, the funds spent on arbitration and the legal assistance and representation of the applicants are subject to reimbursement, which is quite fair and justifies their expectations and efforts.

The initial definitive award in a "Crimea case" was rendered on May 2, 2018. In the case of *Everest Estate LLC et al. v. The Russian Federation*, investors were granted \$150 million for the expropriation of multiple hotels and real estate properties (Soldatenko, 2018). In November 2018, the arbitral tribunal ordered Russia to reimburse \$680 million in the case of *Oschadbank v. The Russian Federation* (2018) (instead of the \$1.111 billion claimed by the applicant). In April 2019, the tribunal issued two final judgments at once – in the cases of *PJSC Ukrnafta v. The Russian Federation* (2019) and *Stabil LLC et al. v. The Russian Federation* (2019). According to the decisions in these cases, the applicants were awarded compensation in the amount of \$44.5 million and \$34.5 million, respectively.

During the full-scale invasion, the Permanent Court of Arbitration managed to make two final decisions at once. The first was issued in April 2023 in the case of *Naftogaz v. the Russian Federation*, and became a record figure for the amount to be recovered in favour of a Ukrainian company: \$5 billion (Radio Liberty, 2023a). The most recent among the declared rulings in the "Crimean cases" occurred in November 2023, involving the case of *DTEK v. the Russian Federation*. In this decision, the International Arbitral Tribunal based in the Hague directed Russia to compensate DTEK in the amount of \$267 million for the confiscation of company assets in the unlawfully occupied Crimea. Originating from a lawsuit initiated in 2017, the case pertains to the seizure of the DTEK Krymenergo business, a company engaged in energy distribution and supply (DTEK, 2023).

The authors are certain that this will not be the last award received from an arbitration procedure by Ukrainian investors. However, this decision itself is only a legal basis for the recovery of compensation, and must be implemented by enforcing it. To do this, Ukrainian applicant companies in whose favour compensation has been awarded must apply to a court in the jurisdiction of one or more of the 162 signatory states to the 1958 New York Convention with a claim for the enforcement of the arbitral award. That is, one of the most important stages of obtaining compensation at the expense of the assets of the Russian Federation – the execution of the decision to recover compensation – is subject to implementation on internationally recognized terms under these circumstances. It should be noted that as of the time of preparing this study (April 2024), public sources have not yet reported on the completion of the enforcement procedure for even one of the final decisions of the Permanent Court of Arbitration in the so-called Crimean cases.

Conclusions

The tragedies of the war in Ukraine have prompted the entire civilized world to consolidate and look for ways to counter the aggressor, ways to make them bear full responsibility for the damage that they have caused. One of the most important components of a comprehensive mechanism for bringing Russia to justice is the confiscation of its assets, their use for the reconstruction of Ukraine, and the payment of fair compensation to the victims of the war. Such a procedure is complicated and requires the coordination of actions and the political will of international partners, since, as has been substantiated in this study, the mechanism of compensation at the expense of the assets of the Russian Federation should become the subject of international agreements.

The analyzed experience of world leaders has shown that the international community is trying to develop an effective and enforceable procedure for the transfer of confiscated funds from the Russian Federation to the specific needs of Ukraine, which would serve as a solid legal basis for the legitimacy of such decisions. The leading positions in this direction are occupied by Canada, the US, Great Britain, Estonia, and Belgium.

One of the most significant sources of potential is the newly created Register and the Compensation Fund, designed to provide compensation in accordance with the deaths, injuries, destruction, damage, and other losses recorded in the Register. The quality of replenishment of the compensation fund directly depends on a clear

understanding of the number and location of blocked Russian assets around the world, which can be helped by conducting audits and creating a special register containing open data on basic information about such assets.

The fundamental issue is that absolutely all damages caused by Russia during the entire duration of its invasion, starting from its first phase in February 2014, should be subject to compensation within the framework of the developed international mechanisms. Otherwise, the reimbursement will be incomplete, and will not meet the expectations of Ukrainian society. This peremptory aspect must be taken into account by both international partners and authorized persons on the part of Ukraine when continuing work on the creation of an international compensation mechanism.

We should not forget about such pre-existing means of obtaining the foreign assets of the Russian Federation and its citizens as international arbitration, the confiscation of the assets of a terrorist state within the Council of Europe, as well as general confiscation procedures in accordance with the legislation of the countries in which the assets of the Russian Federation – both sovereign and private – are located, in connection with the observed violations of sanction regimes following the example of the US.

Undoubtedly, this damage must be compensated for, and it is evident to whom this invoice should be issued. The main challenge that we face is finding the most effective way for Ukraine and the world to do this.

References

- Aeroporto Belbek LLC and Mr. Igor Valerievich Kolomoisky v. The Russian Federation, Case 2015-07, PCA, 13 January 2015. <https://pca-cpa.org/en/cases/123/>
- Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments. (1998, November 27). <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2233/download>
- Analytical Center “Institute of Legislative Idea”. (2023, February 6). *The First Confiscation of Assets in the United States in Favor of Ukraine: A Signal for the World*. Ukrainska Pravda. <https://www.pravda.com.ua/columns/2023/02/6/7388124/>
- Antonovych, M. (2023, February 17). 2022 in Review: Investment Arbitration Amidst War in Ukraine. *Kluwer Arbitration Blog*. <https://arbitrationblog.kluwerarbitration.com/2023/02/17/2022-in-review-investment-arbitration-amidst-war-in-ukraine/>
- Asset Seizure for Ukraine Reconstruction Act, H.R. 6930, US Congr. 117th, 2d Sess. (2022, April 27). <https://www.govtrack.us/congress/bills/117/hr6930/text>
- Bilal, A. (2021, November 30). Hybrid Warfare – New Threats, Complexity, and ‘Trust’ as the Antidote. *NATO Review*. <https://www.nato.int/docu/review/articles/2021/11/30/hybrid-warfare-new-threats-complexity-and-trust-as-the-antidote/index.html>
- Budget Implementation Act, No. 1, S.C. 2022, c. 10, Div. 31: Economic Sanctions (2022, June 23). https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2022_10/page-29.html#h-165
- Von Castelmur, L. (1999, December 12). *The Washington Agreement of 1946 and Relations between Switzerland and the Allies after the Second World War*. Pratique de l’Histoire et Dévoilements Négationnistes. <https://phdn.org/archives/www.ess.uwe.ac.uk/genocide/appropriation15.htm>
- CBC News. (2022, June 11). *Questions Linger Over What Will Happen to Russian Assets Frozen, Blocked by Canada*. <https://www.cbc.ca/news/politics/frozen-assets-russia-canada-ukraine-1.6485846>
- Chase, S. (2023, June 20). Canada Urged to Set Up Trust Fund to Distribute Seized Russian Assets to Ukraine. *The Globe and Mail*. <https://www.theglobeandmail.com/politics/article-canada-urged-to-set-up-trust-fund-to-distribute-seized-russian-assets/>
- Civil Forfeiture, 18 U.S.C. § 981 (2024). <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section981&num=0&edition=prelim>
- Cohen, L. (2023, February 2). *Russian Oligarch Ordered to Forfeit \$5.4 mln to U.S., Ukraine May Get Funds*. Reuters. <https://www.reuters.com/world/europe/russian-oligarch-ordered-forfeit-54-mln-us-ukraine-may-get-funds-2023-02-02/>
- Consolidated Appropriations Act, H.R. 2617, 117th Congr. (2023). <https://www.congress.gov/bill/117th-congress/house-bill/2617>
- Council of Europe. (2023, June). *Reykjavik Declaration: United Around our Values*. CoE. <https://edoc.coe.int/en/the-council-of-europe-in-brief/11619-united-around-our-values-reykjavik-declaration.html>
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005, May 16). <https://rm.coe.int/168008371f>
- DTEK. (2023, November 2). *DTEK wins Hague Case Against Russia Over Seized Crimean Assets*. <https://dtek.com/en/media-center/news/dtek-vigrav-sud-proti-rosii-po-krimskikh-aktivak/>

- Establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine, Committee of Ministers Resolution CM/Res(2023)3 (2023, May 16). <https://rm.coe.int/0900001680ab2595>
- Euroclear. (2023a, January). *Euroclear FY 2022 Results: Investor Update*. <https://www.euroclear.com/investorrelations/en/financial-results.html>
- Euroclear. (2023b, July 20). *Euroclear Continues to Deliver Profitable Growth*. <https://www.euroclear.com/newsandinsights/en/press/2023/2023-mr-09-euroclear-continues-to-deliver-profitable-growth.html>
- European Pravda. (2023, October 11). *Belgium to Send 1.7 Billion Euros from Frozen Russian Assets to Ukraine's Support*. <https://www.eurointegration.com.ua/eng/news/2023/10/11/7171170/>
- Everest Estate LLC et al. v. The Russian Federation, Case 2015-36, PCA, 2 May 2018. [https://pca-cpa.org/en/cases/133/Executive Order No. 13660, 79 FR 13493, March 6, 2014. <https://ofac.treasury.gov/media/5946/download?inline>](https://pca-cpa.org/en/cases/133/Executive%20Order%20No.%2013660,%2079%20FR%2013493,%20March%206,%202014)
- Executive Order No. 14024, 86 FR 20249, April 15, 2021. <https://www.federalregister.gov/d/2021-08098>
- Executive Order No. 14066, 87 FR 13625, March 8, 2022. <https://www.federalregister.gov/d/2022-05232>
- Executive Order No. 14039, 86 FR 47205, August 20, 2021. <https://www.federalregister.gov/d/2021-18306>
- Executive Order No. 14068, 87 FR 14381, March 11, 2022. <https://www.federalregister.gov/d/2022-05554>
- Foreign Assistance Act, 22 U.S.C. 2151 et seq. (1961).
- Furtherance of remedy and reparation for aggression against Ukraine, UNGA Resolution ES-11/5 (2022, November 14). https://rd4u.coe.int/documents/358068/372244/A_RES_ES-11_5.pdf/079afc90-b392-a0ab-43ad-41409c7e8aa4?t=1708702069853
- Global Affairs Canada. (2022, December 19). *Canada Starts First Process to Seize and Pursue the Forfeiture of Assets of Sanctioned Russian Oligarch*. Government of Canada. <https://www.canada.ca/en/global-affairs/news/2022/12/canada-starts-first-process-to-seize-and-pursue-the-forfeiture-of-assets-of-sanctioned-russian-oligarch.html>
- Government Communication Unit of the Republic of Estonia. (2023, October 12). *The Government Will Send a Regulation on the Use of Frozen Russian Assets to the Riigikogu*. Government of the Republic of Estonia. <https://www.valitsus.ee/en/news/government-will-send-regulation-use-frozen-russian-assets-riigikogu>
- GovTrack.us. (n.d.). *Details for H.R. 6930 (117th) Asset Seizure for Ukraine Reconstruction Act*. Retrieved November 5, 2023, from <https://www.govtrack.us/congress/bills/117/hr6930/details>
- Hilgenstock, B. (2022). *How Russia Avoided a Financial Crisis and What to Do Next: An Analysis of International Financial Sanctions Against the Russian Federation*. KSE. <https://kse.ua/wp-content/uploads/2022/12/How-Russia-Avoided-a-Financial-Crisis-and-What-to-Do-Next.pdf>
- Horodysky, I., & Sherengovsky D. (2022, July 4). *Canadian Precedent: How Confiscated Russian Assets Will Be Transferred to Ukraine*. European Pravda. <https://www.eurointegration.com.ua/articles/2022/07/4/7142502/>
- Institute of Legislative Ideas. (n.d.). *Confiscation Tracker: Freeze and Seize*. Retrieved November 5, 2023, from <https://confiscation.com.ua/#secondframe>
- International Emergency Economic Powers Act, 50 U.S.C. Ch. 35. (2024). <https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter35&edition=prelim>
- Izarova I., Hartman Y., & Nate S. (2023). *War damages compensation: a case study on Ukraine* [version 1; peer review: 2 approved]. *F1000Research*, 12:1250. <https://doi.org/10.12688/f1000research.136162.1>
- JSC CB PrivatBank v. The Russian Federation, Case 2015-21, PCA, 13 April 2015. <https://pca-cpa.org/en/cases/130/>
- Khutor, T. (2023a, March 2). *Confiscation of Russian Assets: What Ukraine and the World Have (Not) Managed to Do During the Year of War*. Ekonomichna Pravda. <https://www.epravda.com.ua/publications/2023/03/2/697613/>
- Khutor, T. (2023b, July 12). *The Abramovich Precedent: How to Direct Russian Oligarchs' Money to Rebuild Ukraine*. Ekonomichna Pravda. <https://www.epravda.com.ua/columns/2023/07/12/702143/>
- Khutor, T. (2023d, October 14). *The Door to Russian Assets Is Opened: The Story of the First 1.7 Billion Dollars*. Ukrainska Pravda. <https://www.pravda.com.ua/columns/2023/10/14/7424094/>
- Khutor, T. (2023c, October 27). *The Second One Has Left, or How the United States is Seizing the Assets of Russian Oligarchs in Favor of Ukraine. The Case of Kerimov's Yacht*. Ekonomichna Pravda. <https://www.epravda.com.ua/publications/2023/10/27/705951/>
- Kovalenko, O. (2023, March 28). *Q&A: Prosecutor Discusses How US Punishes Russian Sanctions Violators*. Voice of America (VOA). <https://www.voanews.com/a/prosecutor-discusses-how-us-punishes-russian-sanctions-violators-7026526.html>
- KSE Institute. (2023a, October 3). *The Total Amount of Damage Caused to the Infrastructure of Ukraine Due to the War Reaches \$151.2 Billion – Estimate as of September 1, 2023*. <https://kse.ua/ua/about-the-school/news/zagalna-suma-pryamih-zbitkiv-zavdana-infrastrukturi-ukrayini-cherez-viynu-syagaye-151-2-mlrd-otsinka-stanom-na-1-veresnya-2023-roku/>
- KSE Institute. (2023b, July). *Report on Damages and Losses to Infrastructure from the Destruction Caused by Russia's Military Aggression Against Ukraine as of June 2023*. KSE. https://kse.ua/wp-content/uploads/2023/09/June_Damages_UKR_-Report.pdf

Legal and Human Rights Aspects of the Russian Federation's Aggression Against Ukraine, PACE Resolution 2482 (2023, January 26). <https://pace.coe.int/en/files/31620/html>

Lugzor LLC et al. v. The Russian Federation, Case 2015-29, PCA, 26 May 2015. <https://pca-cpa.org/en/cases/124/>

Mason, C. (2020, September). *Russian Hybrid Warfare: Military Learning and the Future of War Series*. Institute for the Study of War. <https://www.understandingwar.org/report/russian-hybrid-warfare>

Moffett, L. (2022, November). *Reparation Options for the War in Ukraine*. Reparations, Responsibility & Victimhood in Transitional Societies. <https://reparations.qub.ac.uk/reparations-options-for-the-war-in-ukraine>

Ministry of Justice of Ukraine. (2023, September 8). *Iryna Mudra: Confiscation of Russian Assets in Favor of Ukraine is an Alternative to Reparations*. <https://minjust.gov.ua/news/ministry/irina-mudra-konfiskatsiya-rosiyskih-aktiviv-na-korist-ukraini-alternativa-reparatsiyam>

Nardelli, A. (2023, February 15). EU Sanctions Aim to Make Banks Divulge Frozen Russian Assets. *Bloomberg*. <https://www.bloomberg.com/news/articles/2023-02-14/eu-sanctions-seek-to-make-banks-divulge-frozen-russian-assets>

NJSC Naftogaz of Ukraine (Ukraine) et al. v. The Russian Federation, Case 2017-16, PCA, 17 October 2016. <https://pca-cpa.org/en/cases/151/>

NPC Ukrenergo v. The Russian Federation, Case 2020-17, PCA, 27 August 2019. <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1007/ukrenergo-v-russia>

Oschadbank v. The Russian Federation, Case 2016-14, PCA, 26 November 2018. <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/724/oschadbank-v-russia>

PJSC DTEK Krymenergo v. The Russian Federation, Case 2018-41, PCA, 2 November 2023. <https://jsumundi.com/en/document/other/en-pjsc-dtek-krymenergo-v-russian-federation-petition-to-confirm-foreign-arbitration-award-tuesday-7th-november-2023>

PJSC Ukrnafta v. The Russian Federation, Case 2015-34, PCA, 12 April 2019. <https://pca-cpa.org/en/cases/121/>

Political Consequences of the Russian Federation's War of Aggression Against Ukraine, PACE Resolution 2506 (2023, June 22). <https://pace.coe.int/en/files/32994/html>

PwC. (2023, July 27). *Belgium: Corporate – Taxes on Corporate Income*. <https://taxsummaries.pwc.com/belgium/corporate/taxes-on-corporate-income>

Radio Liberty. (2023a, April 13). *The Hague Arbitration Court Ordered the Russian Federation to Pay Naftogaz \$5 Billion in Compensation for Losses in Crimea*. <https://www.radiosvoboda.org/a/news-naftogaz-rosiya-haaha-kompensatsiya/32362004.html>

Radio Liberty. (2023b, October 12). *The G7 Reports on the Freezing of Russian Assets Worth about \$280 Billion*. <https://www.radiosvoboda.org/a/news-g7-zamorozheni-rosiiski-aktyvy/32635050.html>

Radio Liberty. (2023c, October 24). *U.S. Tries to Seize Russian Billionaire Kerimov's Yacht for Violating Sanctions*. <https://www.radiosvoboda.org/a/news-usa-kerimov-yakhta/32651173.html>

Rahvusvahelise sanktsiooni seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus, Eesti Vabariigi seaduseelnõu (2023, October 17). <https://www.riigikogu.ee/ru/devatelmost/zakonoproekty/eelnou/d2665559-f09b-43ec-9c69-5fdb5fd1cdae/rahvusvahelise-sanktsiooni-seaduse-muutmise-ja-sellega-seonduvalt-teiste-seaduste-muutmise-seadus>

Reuters. (2023, October 13). *EU Hopes to Advance Talks on Using Russian Assets for Ukraine*. <https://www.reuters.com/world/europe/eu-hopes-advance-talks-using-russian-assets-ukraine-2023-10-13/>

Seizure of Russian State Assets and Support for Ukraine Bill, UK Parliamentary Bill 245 2022-23 (2023, November 2). <https://bills.parliament.uk/bills/3415>

Soldatenko, M. (2018, November 5). Ongoing Territorial Challenges in Crimea Cases: Putting Everest v Russia in Context. *Kluwer Arbitration Blog*. <https://arbitrationblog.kluwerarbitration.com/2018/11/05/territorial-challenges-expected-in-crimea-cases-putting-everest-v-russia-in-context/>

Special Economic Measures Act, S.C. 1992, c. 17 (2023, June 22). <https://laws.justice.gc.ca/eng/acts/S-14.5/>

Special Economic Measures (Russia) Regulations, Canada Regulations SOR/2014-58 (2023, December 8). <https://laws.justice.gc.ca/eng/regulations/sor-2014-58/index.html>

Support for the reconstruction of Ukraine, PACE Resolution 2539 (2024, April 16). <https://pace.coe.int/pdf/554d18646addece1ab933b0126c4234cac390a43af716a74e3a57a1c99742ddc/res.%202539.pdf>

Stabil LLC et al. v. The Russian Federation, Case 2015-35, PCA, 12 April 2019. <https://www.ogel.org/legal-and-regulatory-detail.asp?key=31078>

Tamma, P. (2023, October 11). *Yellen Supports Using Proceeds from Frozen Russian Assets for Ukraine*. PoliticoPro. <https://subscriber.politicopro.com/article/2023/10/yellen-supports-using-proceeds-from-frozen-russian-assets-for-ukraine-00120902>

Tammik, O. (2023, September 8). Estonia to Lead Way in EU on Russian Asset Seizures, Envoy Says. *Bloomberg*. <https://www.bloomberg.com/news/articles/2023-09-08/estonia-to-lead-way-in-eu-on-russian-asset-seizures-envoy-says?leadSource=uverify%20wall>

The Russian Federation's Aggression Against Ukraine: Ensuring Accountability for Serious Violations of International Humanitarian Law and other International Crimes, PACE Resolution 2436 (2022, April 28). <https://Pace.Coe.Int/En/Files/30024/Html>

- Trib, L. H., & Tolentino, R. P. (2023, September 26). How to Make Russia Pay to Rebuild Ukraine. *Time*. <https://time.com/6317191/russia-frozen-assets-rebuild-ukraine/>
- Ukrinform. (2023a, March 30). *Ukraine's Area Contaminated by Landmines is Like Two Territories of Austria – Zelensky addresses National Council*. <https://www.ukrinform.net/rubric-politics/3689425-ukraines-area-contaminated-by-landmines-is-like-two-territories-of-austria-zelensky-addresses-national-council.html>
- Ukrinform. (2023b, September 15). *Confiscation of Russian Assets: Prime Minister says there is Progress in Negotiations with Partners*. <https://www.ukrinform.ua/rubric-economy/3761789-konfiskacia-rosijskih-aktiviv-premer-kaze-so-u-peregovorah-iz-partnerami-c-progres.html>
- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958, June 10). <https://www.newyorkconvention.org/english>
- United States of America v. The m/y Amadea, a motor yacht bearing international maritime organization no. 1012531, including all fixtures, fittings, manuals, stocks, stores, inventories, and each lifeboat, tender, and other appurtenance thereto, Case 1:23-cv-09304. S.D.N.Y. (23 October 2023). <https://www.courthousenews.com/wp-content/uploads/2023/10/amadea-civil-forfeiture-complaint.pdf>
- UNN. (2023, February 9). *Britain Could use Frozen Russian Assets to Help Rebuild Ukraine – British PM*. https://www.unn.com.ua/uk/news/2014748-britaniya-mozhe-vikoristati-zamorozheni-rosiyski-aktivi-schob-dopomogti-vidbuduvati-ukrayinu-premyer-britaniyi?fbclid=IwAR0-6etWT2XyOujvwwFlkxdi0q9U46LyN0jYp--rkxmBCLvwzr_8ETRwt-l
- Wither, J. K. (2020, May). *Defining Hybrid Warfare*. George C. Marshall European Center for Security Studies. https://www.marshallcenter.org/sites/default/files/files/2020-05/pC_V10N1_en_Wither.pdf
- 21st Century Peace through Strength Act, H.R. 8083, US Congr. 118th, 1st Sess. (2024, April 20). <https://www.congress.gov/bill/118th-congress/house-bill/8038/text#toc-H4E444798030B4410B37F9EE24A12291B>

Copyright © 2024 by author(s) and Mykolas Romeris University

This work is licensed under the Creative Commons Attribution International License (CC BY).

<http://creativecommons.org/licenses/by/4.0/>

