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INTERNATIONAL REGISTER OF DAMAGE: THE GUARANTEE OF RECOVERING JUSTICE IN UKRAINE

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Abstract: *This study addresses the urgent need to establish a comprehensive compensation mechanism for damages incurred by Ukraine due to Russian aggression. The research analyzes the legal, procedural, and practical aspects of the Enlarged Partial Agreement on the Register of Damage instituted by the Council of Europe. Methodologically, the study employs existing literature, legal documentation, and various scientific methods to understand the dynamics of compensation mechanisms. The study identifies unresolved issues through a comprehensive literature review and proposes solutions. The study underscores the pivotal role of the Ministry of Justice of Ukraine in meticulously documenting damages and proposes specific categories of compensation claims. Overall, the research highlights the significance of international cooperation and legal frameworks in restoring justice and providing accountability for those affected by the conflict.*

Keywords: *Register of Damage; EU Law; Public Administration; Justice; Ministry of Justice; Ukraine; Russian Aggression*

INTRODUCTION

Russia's internationally illegal actions in Ukraine have prompted the international community to establish a separate legal mechanism. This mechanism is designed to facilitate the collection of evidence and information in documentary form regarding the damage caused to individuals, legal entities, and the state of Ukraine as a result of Russia's act of aggression. On 16 May 2023, the Council of Europe marked a historic milestone by instituting the Enlarged Partial Agreement of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine (referred to as the Register or RODU). This monumental decision is a crucial step towards the realization of an international claims commission for Ukraine, aligning with the United Nations General Assembly's call, as articulated in Resolution A/RES/ES-11/5 on 15 November 2022, for the establishment of an international reparation mechanism (UN ResolutionA/RES/ES-11/5 2022).

The recent geopolitical events surrounding the aggression of the Russian Federation against Ukraine have prompted significant international responses. Among these responses is the establishment of the Enlarged Partial Agreement on the Register of Damage, a mechanism designed to document evidence and claims information related to the damage, loss, or injury caused by the Russian Federation's internationally wrongful acts in or against Ukraine.

The preamble of the Statute underlines the pursuit of peace based upon justice, reflecting the commitment of the international community to address the consequences of the aggression. This paper aims to comprehensively analyze the key provisions outlined in the

Statute, shedding light on the legal, procedural, and practical aspects of the Register of Damage (Council of Europe Resolution 2023).

The author will delve into the legal foundations of the Register, examining its mandate as outlined in Article 1. This includes the temporal and geographical scope, emphasizing the importance of the Register in serving as a record for claims related to damage occurring on or after 24 February 2022 within Ukraine's recognized borders.

METHODOLOGY

The methodology is based on existing literature, books, scientific journals, official legal documentation, and EU publications. The study uses several scientific methods to understand the relationships that arise because of the creation of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine to compensate the Ukrainian victims of Russia's military aggression, such as the analytical method, the comparative method, the methods of interpreting legal norms, and the methods of induction and deduction. The author analyses specific examples and conducts a detailed study of the relevant legal framework to better understand the compensation process for damages. The study provides a comprehensive understanding of the complex dynamics associated with forming compensation mechanisms for Ukraine using these various scientific methods.

With the help of the analytical method, the author identifies patterns and trends in the functioning of compensatory mechanisms and their impact on the world situation. The methods of interpretation of legal norms are used to analyze legal documents and regulations to understand the grounds for creating an international register of damages for Ukraine. The historical method is used to understand the evolution of compensation mechanisms in Eritrea-Ethiopia and Palestinian cases. The author traces the development of the Register of Damages for Ukraine and its current role as a tool of protection against Russian foreign policy. Induction and deduction techniques are used throughout the research process to guide research and draw accurate conclusions.

The methodology used in this study highlights the importance of rigorous scientific research in this field of research. It is a valuable contribution to the existing literature on the functioning legal regulation of the International Register of Damage for Ukraine and its impact on world events. The study's findings have significant implications for policymakers and academics seeking to understand the role of the International Register of Damage in shaping international policy and security.

LITERATURE REVIEW

While reviewing scholarly literature, the focus was placed on the works of authors such as Tom Best, Timothy L. Dickinson, and Joseph R. Profaizer. In their article "The Russia-Ukraine War: Establishing a Claims Compensation Process" (2023), these authors propose that Russia's voluntary agreement to participate in the International Register of Damage and to compensate for all incurred damages might facilitate the removal of sanctions (Best et al. 2023). Illia Chernohorenko, in "Seizing Russian Assets to Compensate for Human Rights Violations in

Ukraine: Navigating the Legal Labyrinth", underscores the critical need for establishing a compensation fund (Chernohorenko 2023). The article "War Damages Compensation: A Case Study on Ukraine", authored by Iryna Izarova, Yuliia Hartman, and Silviu Nate, brings to light the issues of compensation and the formulation of a coordinated strategy to safeguard the rights of affected individuals (Izarova et al. 2023).

Furthermore, Chiara Giorgetti and Patrick W. Pearsall's work, "Creating an International Compensation Mechanism for Ukraine", delves into the anticipated structure and functions of the damages registry mechanism, including its jurisdiction, legal status, structure, claims process, applicants, and financing (Giorgetti and Pearsall 2023). In the study titled "Socio-Political Discourses on War-Related Damage to Ukrainian Citizens: Analysis of Public Policy in the Context of Court Cases", conducted by Mariana Khmyz, Rostyslav Sopilnyk, Vitaliy Hudyma, Yurii Semchuk, Liubomyr Sopilnyk an analysis was performed on Ukrainian legal and regulatory frameworks for imposing damages on the aggressor nation and for restoring justice (Khmyz et al. 2023).

Despite the extensive academic discourse responding to the international community's creation of the International Register of Damage, a range of unresolved issues remains, which this article aims to address.

RESTORING JUSTICE: COMPENSATION MECHANISMS AND INTERNATIONAL SUPPORT FOR UKRAINE

The consolidated commitment to Ukraine underscores the gravity of the situation and emphasizes the imperative for comprehensive international engagement guided by detailed legal frameworks. From the author's perspective, this steadfast support for Ukraine signifies a cornerstone for enduring solidarity and establishes resilience in the face of the ongoing crisis.

Stating a belief that accountability is indispensable for lasting peace, the author emphasizes that the prospects for sustainable peace are undermined without holding the responsible parties accountable. According to the author, this sentiment aligns with the articulated principles for a just and enduring peace, a framework delineated in President Zelenskyy's Peace Formula (European Union External Action 2023). As stated by the author, the emphasis on an unequivocal international legal response reflects a mindful approach to addressing the multifaceted dimensions of the conflict, encompassing both individual victims and the broader Ukrainian state.

The reference to truth, justice, reparation, and guarantees of non-repetition reflects an acute awareness of the imperative to rectify past wrongs and establish a robust foundation for future unity.

In the same context, the author underscores the solidarity among EU Member and Non-Member States, emphasizing the necessity for a unified approach. The Russian Federation's military intervention in Ukraine catalyzed the prompt organization of various aid initiatives across European countries. On 4 March 2022, the European Council implemented a special status for individuals who left Ukraine - temporary protection (Abuseridze et al. 2023).

Within a similar framework, the author provides an upbeat assessment of the role of sanctions, stating that the sanctions have already had a devastating effect on the Russian

economy, and this impact is expected to intensify further in the long term (Abuseridze, Agapova, 2022). Otherwise, as per the author's evaluation, there will be severe consequences, and recent European history provides clear examples. A prominent illustration of such implications is evident in the cases of Ukraine and Georgia. Over almost three decades of independence, Ukraine and Georgia have endeavored to chart their paths as sovereign states while wanting to align more closely with Western institutions, such as the European Union and the North Atlantic Treaty Organization. Georgia and Ukraine's pursuit of Euro-Atlantic integration and adherence to Western values has been a significant source of discontent for Russia.

Consequently, this discontent manifested in the occupation of Georgia in 2008 and the occupation of Ukraine in 2014 (Abuseridze and Grasis 2022). In addition, it should be noted that before the complete occupation of the territories of Georgia in 2005, the Russian Federation launched a full-scale trade/economic blockade on Georgia. The Kremlin targeted the trading sector, which was most dependent on the Russian market then. Trade relations, governed by complex and specialized WTO laws, couldn't regulate Russia's involvement at the time due to its non-membership in the organization (Abuseridze 2021). This action also emphasizes Russia's geopolitical intentions, which were not stopped by the international community and were already followed by Georgia's aggression in 2008 (Abuseridze 2021).

Establishing comprehensive compensation mechanisms for unlawful international legal actions is a well-recognized practice globally. Of particular significance is the experience gained in crafting compensation mechanisms following violations of international law (UN 2022). Notable examples include the UN Compensation Commission, which operated to adjudicate claims and disburse compensation for damages resulting from the invasion of Iraq and the occupation of Kuwait (UNRoD 2023). Similarly, the UN Register of Damage addresses the legal ramifications of constructing a wall in the occupied Palestinian territory. At the same time, the Claims Commission deals with the consequences of the armed conflict between Eritrea and Ethiopia (Permanent Court of Arbitration 2023). These instances underscore the broader framework within which international entities respond to and address the legal aftermath of such events.

The legal framework for restoring justice and managing international claims, as well as compensating for damages in the case of Ukraine, is grounded in the following international legal documents: Resolution adopted by the General Assembly on 2 March 2022 A/RES/ES-11/1 "Aggression against Ukraine" (UN Resolution A/RES/ES-11/1, 2022); Resolution adopted by the General Assembly on 12 October 2022 A/RES/ES-11/4 "Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations" (UN Resolution A/RES/ES-11/4, 2022); Resolution adopted by the General Assembly on 14 November 2022 A/RES/ES-11/5 "Furtherance of remedy and reparation for aggression against Ukraine" (UN Resolution A/RES/ES-11/5, 2022); Resolution CM/Res(2023)3 adopted by the Committee of Ministers on 12 May 2023 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) etc.

Establishing the "Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine", marks a strategic move towards a comprehensive compensation mechanism. The Register of Damage, as delineated in Resolution

CM/Res(2023)3, is envisioned as the initial component of a broader international instrument. The author suggests that the willingness to engage with the international community for further development underscores a diplomatic and cooperative approach.

Following the legislation of the Netherlands and Ukraine, and guided by Resolution CM/Res(2023)3 provisions, the Register of Damage acquires all characteristics of a legal entity. The legal status of the Register of Damage entails the establishment of official representations both in the Netherlands and in Ukraine. By the decree of the Cabinet of Ministers of Ukraine dated 24 June 2023, No. 560-p, "On the proposal for the candidacy for the position of Executive Director of the Register of Damage caused by the aggression of the Russian Federation against Ukraine", the Ministry of Justice of Ukraine proposed the candidacy of Markian Kluchkovskyifor the position of Executive Director of the Register of Damage caused by the aggression of the Russian Federation against Ukraine. The decision of the Secretary General of the Council of Europe appointed Kluchkovskyi as the first Executive Director of the Register of Damage.

Another essential direction was the convening of a conference of justice ministers at the highest level on 11 September 2023, in Riga, initiated by Latvia and the Council of Europe: "On the Path to Justice for Ukraine: Advancing Accountability, Reuniting Children with Their Families, and Supporting the Resilience of its Justice System" (Council of Europe Office in Ukraine 2023) during which a joint political declaration condemning Russia's military aggression against Ukraine was signed.

The Declaration of the Informal Conference of Ministers of Justice on occasion: "On the Path to Justice for Ukraine: Advancing Accountability, Reuniting Children with Their Families, and Supporting the Resilience of its Justice System" (Riga Principles 2023), has become guiding directives aimed at ensuring the effective functioning of the Ukrainian Register of Damage. More than 40 countries have signed a declaration condemning Russia's political and military leadership, expressing support for the establishment of the Register of Damage caused by Russia's aggression against Ukraine and outlining international mechanisms for compensating losses. Thus, for the effective operation of the Register of Damage, the declaration proposes adhering to the following Riga Principles: 1) Victim-Centred Approach; 2) Firm Legal Basis; 3) Authority and Legitimacy; 4) Support to Ukrainian National Authorities; 5) Civil Society Engagement; 6) Work towards an effective reparation (Council of Europe, The Declaration of the Informal Conference of Ministers of Justice 2023).

There is no doubt that these principles thoroughly permeate and shape the primary goal of the European Union - restoring the violated rights of Ukrainians through compensation for damages. The operation of the Register of Damage plays a fundamental role in ensuring the rule of law and restoring justice.

International efforts to hold the Russian Federation accountable for its war of aggression and the progress toward establishing a special tribunal underscore the commitment to justice at the highest levels. Acknowledging the pivotal role played by the Committee of Ministers and the Parliamentary Assembly, the author states a commitment to strengthening the Council of Europe's role in supporting national and international efforts, including engagement with institutions like the European Court of Human Rights and the International Criminal Court. According to the author, this showcases a multifaceted approach to addressing the conflict.

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The outcomes of the Reykjavík Summit, as interpreted by the author, reflect a deeply analytical and diplomatically astute response to the conflict in Ukraine. Using academic language, nuanced legal considerations, and a commitment to multifaceted international cooperation underscores a holistic approach to addressing the situation's complexities.

ROLE OF THE MINISTRY OF JUSTICE OF UKRAINE IN ENSURING THE REGISTER OF DAMAGE

In the intricate aftermath of the Russian Federation's aggression against Ukraine, the Ministry of Justice assumes a profound role in the meticulous documentation of damages. This responsibility transcends mere record-keeping, delving into the complex terrain of legal intricacies, comprehensive data collation, and facilitating avenues for redress and compensation. At its core, the Ministry becomes the custodian of a repository known as the Register of Damage, intricately designed to encapsulate the multifaceted repercussions of the conflict. In weaving together this comprehensive tapestry, the Ministry collaborates extensively with various governmental entities, ensuring that the register reflects tangible property damage and nuanced socio-economic and humanitarian impacts on individuals and communities.

Establishing a robust legal framework surrounding the register becomes a paramount task. The Ministry of Justice, in this capacity, becomes an architect of legal mechanisms, forging guidelines that align with national and international legal standards. Furthermore, the Ministry becomes a guardian of justice, ensuring that the documentation is not merely an administrative formality but a potent instrument for seeking legal remedies and reparations. It champions the cause of individuals and entities affected by the aggression, safeguarding their legal rights and providing a conduit for seeking redress through legal avenues. The collaborative dimension extends beyond national boundaries as the Ministry of Justice engages in international cooperation. By sharing the compiled information with international bodies, human rights organizations, and legal forums, the Ministry contributes to a global understanding of the impacts of the aggression. This collaboration, in turn, has the potential to set the stage for legal accountability on an international scale.

Emphasis should be placed on the fact that, in compliance with international legal acts, a series of normative legal acts have been adopted to create compensation mechanisms and reimburse damages. Specifically, these include Presidential Decree of Ukraine No. 346/2022 dated 18 May 2022, "On the working group for the development and implementation of international legal mechanisms for compensating the damage caused to Ukraine as a result of the armed aggression of the Russian Federation" (Decree of the President of Ukraine No. 346/2022, 2022); Order of the Cabinet of Ministers of Ukraine No. 560-r dated 24 June 2023, "On submitting a proposal for the position of Executive Director of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine" (Order of the Cabinet of Ministers of Ukraine No. 560-r, 2023); Decree of the Cabinet of Ministers of Ukraine No. 985-r dated 27 October 2023, "On the submission of candidates to the Council of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine" (Decree of the Cabinet of Ministers of Ukraine No. 985-r 2023) and others.

Considering the Ministry of Justice of Ukraine's role in proposing candidates to the Council of the Register of Damage, developing a framework for documenting damages resulting from the aggression of the Russian Federation against Ukraine, and implementing other compensatory measures deserves approval.

In the ongoing efforts to document damages resulting from the Russian Federation's aggression against Ukraine, the Ministry of Justice of Ukraine plays a pivotal role. The recent developments at the inaugural meeting of the Board of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine further accentuate the significance of these efforts. At its meeting in the Hague from December 11-15, the Board made substantial progress in shaping the trajectory of the Register. It elected Robert Spano, Partner at Gibson, Dunn & Crutcher and former President of the European Court of Human Rights, as its Chair and Dr. Chiara Giorgetti, Professor at Richmond Law School, as Vice-Chair (Council of Europe Portal 2023).

Adopting Rules of Procedure and urgent discussions on eligible claims underscore the meticulous groundwork undertaken. The Board received a comprehensive briefing from the Register of Damage caused by the aggression of the Russian Federation against Ukraine (RD4U) Executive Director Markiyan Kliuchkovskyi, highlighting the extensive preparatory work for the Register's systems and functions.

Deputy Minister of Justice of Ukraine Iryna Mudra presented a proposal for categories of claims adopted by the Government of Ukraine on 1 December 2023, reflecting the government's commitment to this initiative. The Board, in its statement, acknowledged the importance of the Register of Damage for Ukraine as a crucial initiative for justice and accountability. It emphasized the consideration of categories of claims in alignment with the Register's Statute and international law. The commitment to developing rules and regulations, including claims categories, was emphasized, recognizing the urgency conveyed by Deputy Minister Mudra.

The proposed categories of claims cover a broad spectrum, including loss of life, torture, sexual violence, personal injury, involuntary displacement, forced relocation, economic loss, damage to infrastructure and governmental facilities, historical and cultural heritage, environmental damage, and other categories determined by the Board. This comprehensive approach aligns with the nuanced nature of the damages incurred during the conflict.

At the same time, the significance of Cabinet of Ministers of Ukraine Resolution No. 326 dated 20 March 2022, titled "On approval of the Procedure for determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation, cannot be overstated in the context of establishing criteria for assessing damage and losses" (Resolution of the Cabinet of Ministers No. 326 2022). The resolution proposes a categorization of losses into three main groups based on the entity: Category (A) - subject of submission: natural persons; Category (B) - subject of submission: the state of Ukraine, including central and local state authorities, state or state-controlled institutions; Category (C) - subject of submission: legal entities, enterprises, including state enterprises, enterprises of critical infrastructure, and natural persons – entrepreneurs (Ministry of Justice of Ukraine 2023).

The Ministry's pivotal role in meticulous documentation, in tandem with the recent developments at the inaugural Board meeting, demonstrates a dedicated commitment to addressing the multifaceted repercussions of the conflict. As categories of claims are considered,

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including those related to loss of life, economic loss, and damage to infrastructure, the comprehensive approach underscores a collective determination to provide redress for the impacted Ukrainian populace. The harmony between legal intricacies, international cooperation, and the recognition of urgent claims exemplifies a holistic endeavour to ensure justice and accountability for those affected by the aggression.

CONCLUSION

In conclusion, this article serves as more than just a summary of findings; it encapsulates a crucial moment in the ongoing discourse surrounding the conflict between Ukraine and the Russian Federation. Through meticulous research and analysis, the author has explored the intricate legal frameworks, international responses, and humanitarian imperatives that underpin the establishment of the Register of Damage for Ukraine.

The final word on the issues raised within this article reveals that the Register represents a significant milestone in pursuing justice and accountability. By providing a platform for documenting damages and fostering international cooperation, it is a tangible manifestation of the international community's commitment to upholding the rule of law and seeking redress for the victims of aggression.

The implications of this study extend far beyond the immediate context of Ukraine. Establishing the Register sets a precedent for international responses to aggression, highlighting the importance of collaborative mechanisms in addressing complex geopolitical challenges. Furthermore, it underscores the interconnectedness of global security and the necessity of collective action in safeguarding peace and stability.

The importance of the ideas presented in this article cannot be overstated. Through rigorous analysis and synthesis of existing literature, the author has illuminated the conflict's legal, humanitarian, and socio-economic dimensions, providing valuable insights for policymakers, academics, and practitioners alike. These findings underscore the urgency of addressing the consequences of aggression and the imperative of collective action in promoting peace and reconciliation.

Looking ahead, it is essential to consider possible new or expanded ways of thinking about the research problem. Future endeavours may explore the long-term impacts of the Register on international law and conflict resolution, assess its effectiveness in promoting reconciliation and peace-building efforts, and examine its potential as a model for addressing similar conflicts in the future. Additionally, further investigation into the nuanced socio-economic impacts of conflict and the role of international institutions in addressing them could yield valuable insights for policymakers and practitioners.

Summarizing the results of the research, the author provides the following Recommendations:

1. Advance the establishment of the International Compensation Commission, ensuring inclusive representation from the public and private sector and international legal experts.

2. Collaboratively develop a mechanism to involve Russia in the proceedings of the International Compensation Commission, prioritizing negotiation and legal processes.

3. Implement European and Ukrainian legislation amendments to bolster the legal framework supporting the above objectives.

Ultimately, establishing the International Register of Damage represents a legal mechanism and a symbol of resilience, solidarity, and unwavering commitment to the principles of truth and justice. Through ongoing research, collaboration, and advocacy, the author remains steadfast in contributing to a future where conflicts are resolved through dialogue, understanding, and respect for human rights.

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