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Vitalii Yaremchuk,
PhD in International Law,
Assistant Professor of the Department
of International Law and Comparative Law,
Yuriy Fedkovych Chernivtsi National University,
Ukraine
E-mail: v.yaremchuk@chnu.edu.ua
ORCID: https://orcid.org/0000-0001-7787-8880

THE REGISTER OF DAMAGE FOR UKRAINE (RD4U): A COMPARATIVE LEGAL ASPECT

The article is dedicated to a topical, comprehensive, and systemic comparative legal analysis of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine (RD4U), contrasted with key historical judicial and quasi-judicial institutions in the field of recording, evaluation, and reparation of damage caused during international and non-international armed conflicts. The paper examines in detail the international regulatory framework governing the establishment and functioning of the Register of Damage, primarily anchored by UN General Assembly Resolution A/RES/ES-11/5 and Committee of Ministers of the Council of Europe Resolution CM/Res(2023)3, which officially approved the Statute of this mechanism. It is emphasized that the Register operates strictly as a preliminary claims-recording and evidence-gathering system, without any judicial functions, adjudicative authority, or power to determine individual state or personal liability. Furthermore, the article thoroughly discloses the substantive and procedural eligibility criteria for claims regarding temporal, territorial, and personal parameters. Within the framework of the comparative legal method, the structural legal nature, financing sources, circle of applicants, and forms of satisfaction of the Register of Damage for Ukraine are systematically compared with the United Nations Compensation Commission (UNCC), the Eritrea-Ethiopia Claims Commission, and the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina. Based on a rigorous critical analysis of the financial viability models of previous historical precedents, in particular the implementation experience of the 1995 Dayton Peace Accords, it is profoundly proven that shifting compensation burdens onto the fragile budgets of post-war states or relying on voluntary donor grants inevitably turns binding international normative obligations into a 'dead letter'. Finally, the study substantiates the critical necessity of overcoming the systemic shortcomings of previous international reparation mechanisms by lawfully engaging revenues generated from frozen and immobilized sovereign assets of the Russian Federation, as well as introducing special trade tariffs and levies, as a guaranteed, sustainable source of funding for the future International Claims Commission for Ukraine.

Keywords: *international reparation mechanisms, United Nations Compensation Commission, Dayton Accords, Eritrea-Ethiopia Claims Commission, sovereign immobilized assets, restitution in kind.*

Яремчук Віталій. Реєстр збитків для України (RD4U): порівняльно-правовий аспект.

У статті здійснено ґрунтовний порівняльно-правовий аналіз міжнародних репараційних механізмів, у межах якого особливу увагу приділено новітній цифровій інституції – Реєстру збитків, завданих агресією Російської Федерації проти України

(RD4U). Досліджено передумови створення Реєстру крізь призму резолюцій Генеральної Асамблеї ООН та Комітету міністрів Ради Європи, які сформували унікальну нормативну базу цього часткового органу. У роботі доведено, що RD4U функціонує як спеціалізований цифровий інструмент попередньої фіксації доказів і документування втрат, який свідомо позбавлений юрисдикційних повноважень щодо прямого присудження виплат або встановлення кримінальної чи міжнародно-правової відповідальності. Автором детально зіставлено ключові інституційні параметри української моделі (характер мандата, джерела фінансування, коло суб'єктів та форми сатисфакції) із класичними історичними прецедентами: Компенсаційною комісією ООН, Еритрейсько-Ефіопською претензійною комісією та Комісією з майнових претензій у Боснії і Герцеговині. Окрему увагу в дослідженні приділено аналізу фінансової стійкості попередніх репараційних циклів. Зокрема, на прикладі наслідків реалізації Дейтонських угод продемонстровано, що фінансування відновлення виключно за рахунок добровільних донорських внесків чи виснажених національних бюджетів неминуче призводить до нівелювання гарантій потерпілих, перетворюючи державні зобов'язання на декларативну «мертву норму». У висновках аргументовано, що для забезпечення реальної справедливості для України необхідно відійти від обмежених моделей минулого та законодавчо закріпити механізм безумовного стягнення репарацій за рахунок заморожених суверенних активів держави-агресора, який має стати наріжним каменем майбутнього міжнародного компенсаційного процесу.

Ключові слова: *міжнародні репараційні механізми, Компенсаційна комісія ООН, Дейтонські угоди, Еритрейсько-Ефіопська претензійна комісія, суверенні іммобілізовані активи, натуральна реституція.*

Problem statement. The full-scale invasion of the Russian Federation into Ukraine has compelled civilized states to seek ways to hold the aggressor state, a permanent member of the United Nations Security Council, accountable for the damage caused to our state. Possessing the right of veto, the aggressor state renders the adoption of binding resolutions on the forcible collection of reparations impossible by analogy with historical precedents (in particular, the 1991 United Nations Compensation Commission model). This has forced civilized states and international organizations to seek new, alternative ways to ensure international legal responsibility and reparation for the damage caused to Ukraine.

One of the first significant steps was the establishment of the **'Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine'** (hereinafter – the Register of Damage). This is the first stage of the compensation mechanism established under the auspices of the Council of Europe. However, as historical and legal experience demonstrates, violations of the general principles of international law and of norms of jus cogens resulting from armed conflicts have occurred repeatedly, accompanied by the creation of various institutions to record damage and pay reparations. In view of this, it is critically necessary to conduct a comprehensive comparative legal analysis of the functioning of previous international mechanisms to avoid systemic financial and procedural errors and ensure the genuine effectiveness of the newly created Ukrainian reparations architecture.

The purpose of the article is to conduct a comparative legal analysis of the institutional model of the Register of Damage for Ukraine (RD4U) in comparison with international compensation precedents (the United Nations Compensation Commission, the Eritrea-Ethiopia Claims Commission, and the Commission for Real Property Claims of

Displaced Persons and Refugees in Bosnia and Herzegovina) in order to identify their doctrinal and operational flaws and to substantiate the necessity of using the frozen sovereign assets of the aggressor state as the sole guaranteed source of funding for the future Compensation Fund.

State of research on the problem. The functioning of the Register of Damage is increasingly being studied by both foreign and Ukrainian scholars, including Anna Dąbrowska [1], Marten Breuer [2], Igor Semenov [3], and others.

Presentation of the main material. First, let us examine the legal framework governing the operation of the Register of Damage for Ukraine. The first act that laid the foundation for further state cooperation in seeking ways to compensate for damage caused by the Russian Federation (hereinafter – the RF) is Resolution A/RES/ES-11/5 adopted by the United Nations General Assembly (hereinafter – the UN), entitled 'Furtherance of remedy and reparation for aggression against Ukraine' [4]. Alongside reaffirming territorial integrity and recording the gross violation of the general principles of international law by the RF, what is important in this context is the recommendation to UN Member States, in cooperation with Ukraine, to create 'an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned'.

Half a year later, the main governing body, the Committee of Ministers of the Council of Europe, adopted Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine [5], the annex to which contains the Statute of the Register of Damage. The functional duties of the Register of Damage include the collection, processing, and categorization of information; no judicial functions, in particular regarding the determination of liability, are provided for, as explicitly evidenced by Article 2.

The eligibility criteria for claims are temporal, namely, damage caused on or after 24 February 2022; territorial, namely, committed on the territory of Ukraine within its internationally recognized borders, including its territorial waters; and by subject of commission, namely, committed by the Russian Federation in or against Ukraine.

An interesting provision concerns the range of participants in the Register of Damage, namely Article 4 of the Statute provides that 'Any member or observer State of the Council of Europe and the European Union, as well as any other State that has voted in favor of the United Nations General Assembly Resolution A/RES/ES-11/5', which calls into question the participation of 73 states that abstained during the vote, and 14 states that voted against (including the aggressor state). It is worth noting that scope for accession exists thanks to paragraph 3 of the aforementioned article of the Statute, which permits the participation of other states and international organizations, subject, however, to the 'position of the Government of Ukraine' [5].

The functioning of the Register of Damage is provided for through annual contributions from participating states and voluntary contributions from associate members. According to paragraph 3 of Article 10 of the Statute, their amount is based on the criteria for determining the annual scale of contributions to the general budget of the Council of Europe.

On 30 September 2026, the phased launch of all 43 categories of claims for compensation for damage caused by the RF to Ukraine was completed.

To summarize, the Register of Damage is neither an independent international organization nor a direct judicial or quasi-judicial body. Moreover, the ratification of the Convention establishing an International Claims Commission for Ukraine [6] is currently

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underway, and as of early October, 10 of the 25 required states have ratified. It should be noted that there are currently 41 signatories to the Convention [7]. The International Claims Commission will become the successor to the Register of Damage, although the latter will not cease its activities.

Among analogous mechanisms for compensation of damage, **the United Nations Compensation Commission** is also worth considering. In terms of legal nature, the difference from the Register of Damage lies in the fact that it is a quasi-judicial subsidiary organ of the UN Security Council, an *ad hoc quasi-judicial body*, as rightly noted by Peter H. Sand [8], which was established by UN Security Council Resolution 687 of 3 April 1991 [9].

Payment of all losses was provided for from revenues derived by Iraq from the export of petroleum and petroleum products, at a rate of 30%, which, depending on the year, was reduced to 0.5–3% [10]. In total, USD 52.4 billion was paid out. That is, the UN Security Council Resolution permitted the export of Iraqi petroleum only on the condition that all proceeds would be deposited into a dedicated UN Escrow Account, which served as a kind of 'sieve' separating funds for the compensation of damage caused to Kuwait [11].

Unfortunately, the impossibility of adopting a corresponding resolution in the case of the aggression of the RF against Ukraine is obvious due to the fact that Russia occupies the seat of a permanent member of the Security Council and possesses the right of veto. Therefore, the application of Article 25 of the Charter of the United Nations, which requires 'to accept and carry out the decisions of the Security Council', has deprived us of an effective mechanism for enforcing compensation for damage caused [12].

As a consequence, the rather successful example of the United Nations Compensation Commission hinged on the consolidated will of the permanent members of the UN Security Council and the legal isolation of the state that violated norms of *jus cogens*. For Ukraine and our partners, the challenge lies in creating a legal mechanism for the compulsory enforcement of damages from the aggressor state through revenues from the frozen assets of the Central Bank of the RF and/or special trade tariffs.

Next, let us consider **the Eritrea-Ethiopia Claims Commission**, established in the aftermath of the armed conflict between the states. The legal basis of the Commission is set out in a bilateral peace treaty, the Algiers Peace Agreement of 12 December 2000 [13], which immediately distinguishes it from the two preceding mechanisms. That is, it was an *ad hoc* inter-State arbitral tribunal operating under the auspices of the Permanent Court of Arbitration.

The Agreement provided a format for inter-State claims by allowing the governments of Ethiopia and Eritrea to file claims on their own behalf or on behalf of their citizens, thereby applying the *parens patriae* approach. This precluded direct access for citizens, as the individual interests of thousands of deported and dispossessed persons were averaged out and partially lost within the scope of inter-State claims. As Sean D. Murphy rightly noted, the Commission's decision in the case in which Eritrea violated the prohibition on aggression against Ethiopia raises concerns and calls into question the proper role of arbitral tribunals in such cases [14, p. 699].

A dangerous approach used in the examined bilateral arbitration is the 'symmetry of liability', in which the aggressor state filed counterclaims against the victim state. As a result, this took the form of a set-off mechanism, effectively nullifying the victims' satisfaction and resulting in USD 12.8 million in Ethiopia's favor.

Accordingly, despite the payment outcomes in Ethiopia's favor, the calculation mechanism itself and the approaches embedded in the Algiers Peace Agreement raise numerous questions.

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Also among the world precedents under study, attention should be drawn to **the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina**, which is considered a successful precedent for establishing a mass quasi-judicial body for the restitution of civilian property rights under confirmed international management, as noted, for example, by Hans Van Houtte in the study 'Mass Property Claim Resolution in a Post-War Society: The Commission for Real Property Claims in Bosnia and Herzegovina' [15, p. 625].

The Commission was established pursuant to the 1995 Dayton Accords [16], which constituted a peace agreement between Serbia, Croatia, and Bosnia and Herzegovina ending the Bosnian War.

An important approach applied within the framework of the Commission was the standard of 'plausible ownership' and the recognition of all property transactions concluded after the outbreak of the conflict as null and void. This should be viewed as a legal benchmark for the operation of the Register of Damage for Ukraine regarding damaged and destroyed housing in the temporarily occupied territories.

Funding for the operation, pursuant to Article XI(2) and Article XIV(1) of Annex 7 to the Dayton Accords, was structured through two avenues: operational work was assigned to the parties to the conflict, while the Compensation Fund was to be formed through a combination of direct contributions from the parties, revenues from property management, and international donor grants. As noted in the handbook of the International Organization for Migration, this mechanism was unsuccessful: 'However, the compensation fund never became operational. The income-generating compensation scheme could never be set up due to a lack of funds to cover its operational costs. Furthermore, no direct voluntary contributions were received from the international donor community' [17, p. 89].

Thus, the practical implementation of the financial model under the Dayton Accords confirmed that shifting compensation payments onto the budget of a post-war state or relying on voluntary donor grants turns normative promises into a 'dead letter'. It was precisely due to the lack of receipts from the Compensation Fund that the Commission was forced to abandon monetary compensation and limit its mandate exclusively to the restitution of property in kind.

For a clearer comparison of the key criteria of the Register of Damage for Ukraine, the United Nations Compensation Commission, the Eritrea-Ethiopia Claims Commission, and the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina, we propose referencing Table 1 compiled by the author.

Table 1

	Register of Damage for Ukraine (RD4U)	**United Nations Compensation Commission (UNCC)**	**Eritrea-Ethiopia Claims Commission (EECC)**	**Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina (CRPC)**
Legal Basis	Resolution CM/Res(2023)3 of the Committee of Ministers of the	United Nations Security Council Resolution 687 (1991) of 3 April 1991	Algiers Agreement of 12 December 2000	The General Framework Agreement for Peace in Bosnia and Herzegovina

	Council of Europe of 12 May 2023			of 14 December 1995 (Dayton Accords)
Legal Status	Claims Registration System	Quasi-judicial administrative compensation body under the UN Security Council	Ad hoc international arbitral tribunal	Quasi-judicial international administrative body for the determination of property rights
Sources of Funding	Operational budget: donor contributions; Compensation Fund: frozen Russian sovereign assets and windfall profits generated therefrom	A percentage of proceeds from Iraqi petroleum export sales	Contributions of the parties and set-off of awarded amounts	Contributions of the parties, rental income, and donor grants
Circle of Applicants	Natural persons, legal persons, and the state, local and municipal authorities	Natural persons, legal persons, governments, and international organizations (via states)	The States of Eritrea and Ethiopia on their own behalf and on behalf of their nationals	Natural persons, specifically refugees and internally displaced persons
Form of Satisfaction	Recordal and preservation of evidence of loss or damage for future monetary compensation and property restitution awarded by a future Compensation Commission	Direct monetary compensation	Interstate set-off of awarded amounts	In-kind restitution of property rights and possession

Comparative Legal Analysis of the Register of Damage for Ukraine (RD4U) and Key Historical International Reparation Mechanisms

Conclusions. The comparative legal analysis of international reparation mechanisms demonstrates the evolution of approaches to the recordal and compensation of war-related damage, with the Register of Damage for Ukraine standing out as an unprecedented institutional step under the auspices of the Council of Europe. Unlike the United Nations Compensation Commission, which operated under a consolidated mandate of the UN Security Council and relied on a dedicated oil revenues fund, or the Eritrea-Ethiopia Claims Commission, which was limited to an interstate set-off mechanism, the contemporary Ukrainian model combines digital evidence recordal with the prospect of leveraging the frozen sovereign assets of the aggressor state. At the same time, the historical experience of Bosnia and Herzegovina proves that relying on voluntary donor contributions or national budgets for compensation renders such obligations a 'dead letter', making the imperative enforcement against Russian sovereign assets the sole viable guarantee for restoring justice.

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