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# Support for the reconstruction of Ukraine

**Report**[1]
Committee on Political Affairs and Democracy
Rapporteur: Mr Lulzim BASHA, Albania, Group of the European People's Party

*Summary*

The Council of Europe has led the way in expressing its solidarity with Ukraine and its people, condemning the Russian Federation's war of aggression against Ukraine, and excluding the Russian Federation from its membership. The Council of Europe has also shown leadership in setting up the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine. The Council of Europe should now play a significant role in supporting the reconstruction efforts in Ukraine, by recommending the seizure of Russian State assets to this purpose.

The Assembly should:

– call for the establishment of an international compensation mechanism under the auspices of the Council of Europe;

– urge Council of Europe member and non-member States holding Russian State assets to actively co-operate in the prompt transfer of these assets to the established international compensation mechanism;

– call for the creation of an international trust fund, where all Russian State assets held by Council of Europe member and non-member States will be deposited;

– call for the establishment of an impartial and effective international claims commission.

1. Reference to committee: Doc. 15732, Reference 4735 of 26 May 2023.

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## A. Draft resolution[2]

1. The Parliamentary Assembly reiterates its deep concern at the extensive devastation and acute suffering inflicted upon Ukraine and its people by the Russian Federation with its illegal war of aggression which started in 2014, and escalated into a large-scale invasion in February 2022, resulting in severe human and material losses, grave violations of human rights, and numerous war crimes.

2. The Council of Europe has led the way in expressing its solidarity with Ukraine and its people, condemning the Russian Federation's war of aggression against Ukraine, and excluding the Russian Federation from its membership because of its serious violation of international law and statutory obligations. The Council of Europe has also shown leadership in setting up the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, as a first step towards establishing a comprehensive system of accountability of the Russian Federation for its wrongful acts. Consistent with its steadfast resolve and its focus on democracy, human rights, and the rule of law, the Council of Europe should play a significant role in supporting the reconstruction efforts in Ukraine, by recommending the seizure of Russian State assets and their use in support of the reconstruction of Ukraine. This course of action would pursue a threefold objective: strengthening Ukraine; ensuring the accountability of the Russian Federation; and deterring against any other future aggression.

3. The Assembly believes that it is crucial for the international community, working in concert, to address this challenge and ensure that the victims of the aggression, Ukraine and its citizens, receive the reparations they are owed, and that there is a path towards justice. As already called for by the Assembly in its Resolution 2516 (2023) "Ensuring a just peace in Ukraine and lasting security in Europe", this shall involve establishing "a comprehensive compensation mechanism, including an international commission for the examination of claims for damages recorded in the Register of Damage, and a compensation fund to pay out on decisions on compensation for damage awarded by the commission, in particular by confiscating and otherwise using the Russian Federation's assets to pay for damage caused by the war in Ukraine".

4. The documented damages to Ukraine's infrastructure and economy caused by the Russian Federation's aggression had reached US$416 billion in June 2023. The plight of those who have had to flee Ukraine because of the war – an estimated 6.2 million people – is particularly concerning, as a humanitarian emergency in itself and also because it creates a ripple effect across borders, impacting neighbouring countries and straining resources on a larger scale. In addition, it has been estimated that approximately 17.6 million individuals in Ukraine needed humanitarian assistance in 2023, with 5.1 million people being internally displaced.

5. The Assembly acknowledges that the non-participation by the Russian Federation in international dispute settlements hinders the traditional legal channels for securing reparations. It affirms, however, the obligation of the aggressor State, the Russian Federation, to provide full compensation for the damage, loss, and injury caused by its internationally wrongful acts, including the destruction of infrastructure, loss of life, economic hardships, and other adverse effects, in accordance with the principles of international law. In this respect, the Assembly recalls 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 for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and the United Nations General Assembly Resolution A/RES/ES-11/5 of 14 November 2022 "Furtherance of remedy and reparation for aggression against Ukraine", which recognises the need for the establishment of an international mechanism for reparation.

6. The Assembly notes that several countries holding Russian sovereign assets have frozen approximately US$300 billion in Russian State assets. The frozen Russian State financial assets must be made available for the reconstruction of Ukraine. States holding these assets should co-operate and transfer them to an international compensation mechanism. Under international law, States possess the authority to enact countermeasures against a State that has seriously breached international law. Now is the time for Council of Europe member States to move from sanctions to countermeasures. The Assembly further notes that countermeasures are intended to induce the offending State to cease its unlawful behaviour or to comply with its obligations arising from that conduct, such as paying compensation for damages caused. The Assembly emphasises that the legitimacy of the recommended countermeasures remains unassailable within the framework of sovereign immunity.

2. Draft resolution adopted unanimously by the committee on 25 January 2024.

7. The Assembly believes that creating, under the auspices of the Council of Europe, an international compensation fund as well as a compensation mechanism, as a separate international instrument mandated to examine and adjudicate claims and/or pay compensation for damage, loss or injury caused by the Russian Federation's internationally wrongful acts in or against Ukraine, would provide a structured way to assess and compensate for the damages suffered by various stakeholders because of Russian Federation's illegal invasion of Ukraine. This compensation mechanism should cover a range of losses, including but not limited to infrastructure damage, environmental impacts, economic losses incurred by companies and investors, and the costs associated with hosting and supporting those who have been displaced by the aggression, in Ukraine and outside.

8. As the already established Register of Damage undertakes the laborious process of recording Ukrainian losses in preparation for an international claims process, countries that have frozen Russian assets should transfer those assets to an international compensation fund. An international commission for the examination of claims for the damages recorded in the register should be created to effectively address the claims process.

9. In light of these considerations, the Assembly:

9.1. calls for the establishment of an international compensation mechanism under the auspices of the Council of Europe to comprehensively address the damages incurred by natural and legal persons affected, including the State of Ukraine, due to the unlawful actions of the Russian Federation with its invasion of Ukraine;

9.2. urges Council of Europe member and non-member States holding Russian State assets to actively co-operate in the prompt transfer of these assets to the established international compensation mechanism, supports the efforts of the European Union and the United States and calls upon them and the G7 to act without delay in taking all necessary steps to ensure that all Russian Federation assets in their custody are made available for the recovery and reconstruction of Ukraine;

9.3. calls for the creation of an international trust fund, where all Russian State assets held by Council of Europe member and non-member States will be deposited, ensuring transparency, accountability, and equity in the disbursement of funds that should be used for compensation to Ukraine and natural and legal persons affected by the Russian aggression in Ukraine;

9.4. calls for the establishment of an impartial and effective international claims commission, operating under recognised judicial norms, to adjudicate claims presented by Ukraine and affected entities seeking reparation for damages caused by the Russian Federation's aggression;

9.5. stresses the utmost importance of adhering to established international legal standards and principles in the transfer and management of frozen Russian assets, ensuring fairness and proportionality, and safeguarding the rights of all affected parties;

9.6. supports the recourse to countermeasures, as outlined within the framework of international law, to induce compliance by the Russian Federation with its international legal obligations and responsibilities;

9.7. invites States concerned about breaches of *erga omnes* obligations to actively participate in the compensation mechanism, contributing to efforts aimed at halting breaches and ensuring just reparations for affected natural and legal persons, as well as the State of Ukraine;

9.8. encourages collaborative efforts among member States, international organisations, and all relevant stakeholders to expedite the process of reconstruction and to ensure comprehensive compensation for the multifaceted damages caused by the war of aggression of the Russian Federation;

9.9. calls for a unified and resolute front against aggression, emphasising the shared responsibility of the international community in upholding global norms, preventing violations of international law, and promoting lasting peace and stability.

## B. Draft recommendation[3]

1. The Parliamentary Assembly draws the Committee of Ministers' attention to its Resolution… (2024) "Support for the reconstruction of Ukraine" which makes a resolute call for using confiscated Russian State assets to compensate damages, injury and losses caused by the aggression of the Russian Federation and for supporting the reconstruction of Ukraine.

2. The Assembly refers to its Resolution 2516 (2023) "Ensuring a just peace in Ukraine and lasting security in Europe", which called for establishing "a comprehensive compensation mechanism, including an international commission for the examination of claims for damages recorded in the Register of Damage, and a compensation fund to pay out on decisions on compensation for damage awarded by the commission, in particular by confiscating and otherwise using the Russian Federation's assets to pay for damage caused by the war in Ukraine". It also refers to its Resolution 2482 (2023) "Legal and human rights aspects of the Russian Federation's aggression against Ukraine", which called on Council of Europe member States to set up an international compensation mechanism; highlighted the reasons why the Council of Europe should have a leading role in setting up and managing it; and detailed some of its key prospective features.

3. The Assembly recalls the decisions of the Committee of Ministers of 15 September 2022 and 24 February 2023 to welcome all efforts to secure full reparations for the damages caused by violations by the Russian Federation of international law in Ukraine. It also underscores that, in its 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, adopted on 12 May 2023, the Committee of Ministers agreed "to continue working, in co-operation with Ukraine and relevant international organisations and bodies, towards the establishment by a separate international instrument of a future international compensation mechanism, which may include a claims commission and a compensation fund, of which the work of the Register, including its digital platform with all data about claims and evidence recorded therein is intended to constitute an integral part".

4. In light of the above, the Assembly calls on the Committee of Ministers to:

4.1. proceed towards the establishment of an international compensation mechanism, under the auspices of the Council of Europe, to comprehensively address the damages incurred by natural and legal persons concerned, as well as the State of Ukraine due to the unlawful actions of the Russian Federation in its invasion of Ukraine;

4.2. establish an international trust fund, where all seized Russian State assets will be deposited, ensuring transparency, accountability, and equity in the disbursement of funds that should be used for compensation to Ukraine and natural or legal persons affected by the Russian aggression in Ukraine as well as to aid Ukraine's recovery and reconstruction efforts;

4.3. endorse the establishment of an international commission of claims for the damages recorded in the Register, under the auspices of the Council of Europe.

3. Draft recommendation adopted unanimously by the committee on 25 January 2024.

## C. Explanatory memorandum by Mr Lulzim Basha, rapporteur

### 1. Introduction

#### *1.1. Origin*

1. On 24 February 2022, the Russian Federation initiated the large-scale invasion of Ukraine without provocation, the largest international invasion since 1941. The Russian Federation's illegal war of aggression has caused catastrophic destruction and suffering to the Ukrainian people and Ukraine, resulting in grave human and material losses and numerous war crimes against civilians. The International Criminal Court (ICC) has already issued an arrest warrant against the Russian President and the Russian Commissioner for Children's Rights, in relation to the forced deportation of Ukrainian children.

2. As the Russian Federation continues to wage war and to commit war crimes, crimes against humanity and other serious human rights violations in Ukraine, it is clear that when this conflict is over Ukraine will require significant assistance to rebuild its civilian infrastructure. The Russian Federation should be held responsible for compensating the human and material losses incurred.

3. Since the beginning of the large-scale invasion, the Parliamentary Assembly has unanimously adopted a host of texts condemning the aggression, its aspects and consequences. In March 2022, it took a resolute position in favour of the immediate expulsion of the Russian Federation from the Council of Europe, which was subsequently followed up by the Committee of Ministers. In May 2023, as consistently asked for by the Assembly, the Council of Europe established a Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine.

4. The Russian Federation's non-participation in international dispute settlements, and noncompliance with international judgments and obligations, present a complex challenge in the pursuit of justice and reparation for the harm caused by the Russian Federation's actions in its invasion of Ukraine. Given the Russian Federation's behaviour in international forums and its use of the Security Council veto, there might indeed be obstacles to securing a direct implementation of reparations through traditional legal channels.

5. The motion for a resolution to seize and transfer Russian State assets to an international compensation mechanism is an attempt to address this challenge. This approach aims to forcibly require the Russian Federation to comply with obligations it has undertaken under international law by redirecting assets to address the damages caused.

6. This report will further demonstrate the need to establish an international compensation mechanism under the auspices of the Council of Europe.

#### *1.2. Purpose and scope*

7. The report will focus on the following objectives: 1) supporting reconstruction and recovery of Ukraine; 2) calling for and presenting the measures for the confiscation of Russian State assets; 3) establishing an international compensation mechanism under the auspices of the Council of Europe; 4) presenting a united front against the aggression worldwide.

8. The report is based on the premise that the Russian Federation must be held accountable for its destruction of Ukraine and that it can be safely assumed that it will not contribute to the reconstruction effort voluntarily. In such situations, where a State is unlikely to voluntarily agree to make full reparations, other States and intergovernmental organisations may explore alternative mechanisms to ensure that the injured parties receive the reparations they are entitled to under international law.

9. Several countries holding Russian sovereign assets have frozen approximately US$300 billion in Russian State assets. The already frozen Russian State financial assets must be made available for the reconstruction of Ukraine. States holding these assets should co-operate to transfer all the seized Russian State assets to an international compensation mechanism. In the context of this report, the term "State asset" means any funds or other property that are owned by the government of an aggressor State or an affiliated aggressor State, including by any subdivision, agency, or instrumentality of that government.

10. The scope of this report is to outline the path for the confiscation of the Russian State assets and their transfer to an international compensation mechanism to aid Ukraine's recovery and reconstruction.

## 2. General context

11. As laid down in its Statute (ETS No. 1), the Council of Europe has a core mission focused on uniting its member States to preserve and uphold shared values while advancing economic and social progress. Its primary goal is to safeguard and actualise these common principles, fostering a collective heritage while aiding in the development of member States.

12. Central to this mission is the adherence to the rule of law and the further realisation (statute 1.b) of human rights and fundamental freedoms for all individuals within the jurisdiction of each member State. This commitment underscores the Council of Europe's significance in promoting unity, democracy, and the protection of human rights across Europe. As stated in Article 3 of its Statute, “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms and collaborate sincerely and effectively in the realisation of the aim of the Council”.

13. According to principles of international law, when a State is found to be responsible for an internationally wrongful act, it is obliged to provide full compensation for the harm caused by that act. However, the forms of reparation – restitution, satisfaction, or compensation – can vary depending on the circumstances and the nature of the wrongful act. In cases where restitution (restoring the situation to what it was before the wrongful act), or satisfaction (acknowledgment of the breach and its consequences) are not feasible, compensation becomes the primary means of redress. In the context of the situation involving the Russian Federation's actions against Ukraine, given that restitution or satisfaction are impractical, international legal principles would support the necessity of compensation. This compensation could encompass damages caused by the wrongful act, such as loss of life, destruction of property, economic hardships, and other adverse effects resulting from the breach of international law.

14. Now is the time for Council of Europe member States to move from sanctions to countermeasures. Under international law, States possess the authority to enact countermeasures against a State that has seriously breached international law. These countermeasures are actions taken with the aim of inducing the breaching State to comply with its international legal obligations. They can take various forms, one of which involves the suspension or limitation of certain customary privileges or obligations that one State usually extends to another, such as in financial matters. In the case of the Russian Federation's serious breaches of international law, States may, under the principle of countermeasures, take actions that affect the Russian Federation’s financial assets or transactions.

15. Russian sovereign assets should consequently be seized and transferred to an international compensation mechanism, established under the auspices of the Council of Europe and open to both its member and non-member States. These funds would then be used to compensate Ukraine, its citizens, companies and government, for damages caused by the Russian Federation’s unlawful acts accompanying its illegal invasion.

## 3. Support for the reconstruction of Ukraine

### *3.1. The role of the Council of Europe*

16. The Council of Europe is unique for its distinctive focus on the core dimensions of the rule of law, pluralistic democracy, and human rights. As a result, the Organisation's primary objective is to serve as a fundamental pillar of democratic security and to facilitate successful and effective co-operation in these areas, not only within Europe but also on a global scale.

17. The Council of Europe plays a crucial role in defending democratic values, ensuring that the rule of law is upheld, and protecting and promoting human rights. It accomplishes these goals through various mechanisms, including conventions, monitoring processes, and dialogue with member and non-member States. That is the reason why the international compensation mechanism should be concluded under the auspices of the Council of Europe and open to both its member and non-member States.

18. In May 2023, the Council of Europe established a Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine. It is obvious that in order to ensure a comprehensive system of accountability an international compensation mechanism must be created to adjudicate, in accordance with established judicial norms, claims presented by Ukraine on behalf of its citizens, entities, and governmental entities, or directly by individuals and entities.

19. By June 2023, the documented damages to Ukraine's infrastructure caused by the Russian Federation's aggression reached US$150,5 billion as reported by the Kyiv School of Economics,[4] whereas damages to the economy reached US$265,6 billion. This brought the total of damages to US$416,1 billion by June 2023. Residential buildings account for the largest share of damages, totalling 37,1% or US$55,9 billion, followed by infrastructure at 24,3% or US$36.6 billion. Only during the first year of the war, 153 900 houses were completely destroyed.

20. Additionally, the education sector has incurred direct damages of US$9,7 billion as a result of the war, totalling 3 170 affected institutions by February 2023. These include approximately 1 500 secondary education centres, 909 preschools, and 528 higher education establishments.

21. By June 2023, the damage inflicted on Ukraine's energy sector has grown to an estimated US$8.8 billion. This increase in the assessment encompasses multiple factors. Firstly, it accounts for the damages incurred in the nuclear energy sector. Additionally, there have been updated evaluations regarding the destruction and impairment of natural gas transportation facilities. These revised calculations and assessments have contributed to the overall rise in the estimated cost of damages within Ukraine's energy infrastructure.

22. One year of the Russian Federation’s large-scale invasion has not only taken many lives, with a significant impact on Ukraine’s economy and infrastructure, but also severely affected the agricultural sector. The Rapid Damage and Needs Assessment (RDNA) that was carried out by the Government of Ukraine, World Bank, United Nations, and the European Union,[5] presents the results in detail, while not covering the damages and losses in irrigation, food industry, and agricultural logistics, which are closely linked to agriculture. It estimates US$40.2 billion in damages and losses to the agricultural sector.

23. As we near the end of the second year of the aggression, these damages and losses have multiplied, and not just in terms of infrastructure and resources but also in the humanitarian toll it has taken on the people involved. The repercussions often extend far beyond the immediate physical destruction, encompassing social and economic impacts. According to the United Nations High Commissioner for Refugees (UNHCR), the war has resulted in a significant number of internally displaced people with many more Ukrainians having left the country. The extensive shelling and conflict have driven approximately 5.1 million people from their homes, leading to internal displacement. Furthermore, over 6.2 million individuals have crossed into neighbouring countries like Poland, Hungary, Republic of Moldova, and other global destinations. Among these countries, Poland has been the primary host, welcoming nearly 60% of refugees fleeing Ukraine.[6]

24. The plight of refugees is particularly concerning, as it creates a ripple effect across borders, impacting neighbouring countries and straining resources on a larger scale. The costs associated with accommodating and supporting refugees are immense and can have long-term implications for both the displaced individuals and the nations offering aid. As the conflict continues, the humanitarian demands have further escalated during the second year and have widened. It has been estimated that approximately 17.6 million individuals in Ukraine needed humanitarian assistance in 2023.[7]

25. The Council of Europe's foundational principles, indeed centred on the rule of law, human rights, and democratic governance, create a robust framework to address the growing challenges stemming from authoritarian trends within member States and coming from outside, such as the Russian Federation's aggression against Ukraine.

26. The Organisation's mechanisms for dialogue, conventions, and monitoring systems offer crucial tools to engage member States in discussions and actions aimed at preserving and reinforcing democratic values. The Council of Europe's emphasis on these principles allows for constructive engagement, dialogue, and the promotion of mutual understanding among member states.

27. Moreover, the Council of Europe already employs and has excellent experience with several monitoring mechanisms to ensure its members adhere to agreed-upon standards in democracy, human rights, and the rule of law. These mechanisms will be very instrumental for the establishment and functioning of the international compensation mechanism, including: 1) The European Court of Human Rights (the Court). Although not directly a monitoring body within the Council of Europe, the Court, established by the European Convention on Human Rights (ETS No. 5), is a crucial part of its human rights monitoring system. It hears

4. Kiev School of Economics.
5. World Bank Document.
6. UNCHR.
7. Idem.

individual or State applications alleging violations of the civil and political rights set out in the Convention; 2) The Committee of Ministers, which monitors and oversees the execution of judgments by the European Court of Human Rights, ensuring member States comply with the Court's decisions; 3) The European Commission for Democracy through Law (Venice Commission), which plays a significant role in providing legal advice and expertise on constitutional matters, supporting member States in ensuring their legislation and constitutional frameworks align with European standards; 4) The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which carries out visits to places of detention in member States to prevent torture and inhuman or degrading treatment.

28. In addition, the engagement of the Assembly in critical matters, particularly those pertaining to peace and stability in Europe and beyond, reinforces its influential role. To this purpose, the diversity within the Assembly is a considerable asset, since it encompasses a wide range of political perspectives, including the opposition. This pluralist representation enables the Assembly to consider and advocate for measures like the confiscation of Russian State assets or the establishment of an international compensation mechanism, should these measures align with the overarching objectives and values of the Council of Europe. Given the complexity and significance of such measures, the diverse viewpoints within the Assembly can contribute to a more comprehensive, well-rounded discussion. This diversity can aid in deliberating on the potential ramifications, ethical considerations, and broader impacts of such actions, thus enriching the decision-making process. Furthermore, the Assembly's oversight capabilities play a pivotal role in monitoring and ensuring accountability. When proposing or implementing significant decisions, this mechanism helps maintain transparency and ethical considerations.

### *3.2. Measures for the confiscation of Russian State assets*

29. Supporting the reconstruction of Ukraine after all the damages caused by the Russian aggression is an essential aspect of the Council of Europe's mission. It is important to note that the reconstruction of Ukraine will be a multifaceted process that will require broader international co-operation and negotiations. That is why the Council of Europe should contribute significantly, within its mandate and complementing efforts by other international organisations and governments, to achieve a sustainable and peaceful reconstruction.

30. The Resolution adopted by the United Nations General Assembly (UNGA) on 14 November 2022 on "Furtherance of remedy and reparation for aggression against Ukraine"[8] explicitly invokes the claim for compensation and recommends for national and international actions, and it can fulfil specific procedural prerequisites under international law. Indeed, in the realm of international law, certain procedural steps, including the notification of claims and an opportunity to comply, are often considered necessary before implementing countermeasures. By meeting these procedural requirements, this resolution can be seen as strengthening the case for full State countermeasures under international law.

31. This resolution's articulation of the claim for compensation and its call for action can be considered as providing a formal notice and an opportunity for the Russian Federation to comply. This process would ensure that the Russian Federation has been formally notified of the claims against it and has been provided an opportunity to comply with the demands or obligations set forth in the resolution. The Russian Federation's possible failure to comply could potentially serve as a basis for the justifiable implementation of countermeasures as a means of inducing compliance with international law. This adherence to procedural requirements will bolster the legitimacy of any subsequent actions taken by concerned States or entities, as it demonstrates a commitment to legality in the pursuit of justice and reparations for breaches of international law.

32. The distinction between State and private property is a critical aspect in this context. State property, unlike private property, does not benefit from the same protections, especially when it comes to actions taken in response to breaches of international law. This legal framework underlines the authority to take executive decisions for such measures, bypassing lengthy court procedures in some cases.

33. This report outlines a proactive approach for individual States to manage and address frozen Russian State assets within their respective jurisdictions. The primary focus is on identifying and transferring these assets – including Russian central bank assets and related holdings – to an intermediary arrangement such as a central bank escrow account or trust.

8. AS/RES/ES-11/5.

34. The aim is to hold these assets in a temporary arrangement until an international compensation fund, established in accordance with international agreements and mechanisms, is ready to receive and distribute them. An international compensation fund would be responsible for managing and disbursing the assets in accordance with international resolutions and agreements, particularly those outlined in the above-mentioned UNGA resolution.

35. The establishment of an international compensation fund is not a prerequisite for individual States to initiate the process of identifying and transferring frozen Russian assets. States are encouraged to take the initial steps by relocating these assets to an escrow account within their jurisdictions, preparing for their subsequent transfer to the international compensation fund once it is established. This approach would allow for a co-ordinated and progressive handling of frozen Russian assets, ensuring their secure and organised transfer in line with international resolutions and agreements, even before the establishment of a formal international compensation fund. This method would provide a systematic and controlled means of managing these assets while awaiting the creation of the international compensation fund for their ultimate disposition and distribution.

36. The execution of such actions demands compliance with international legal standards. It is crucial to ensure that the process adheres to the principles of proportionality and fairness, protecting the rights of innocent parties while holding the responsible State accountable for its actions. Potential legal challenges from the Russian State are to be expected, but the validity of such challenges and their outcome would be determined by the specifics of international law, case law, and the evidence presented. The ultimate goal of such actions is to achieve justice and reparations for the damage caused by breaches of international law.

### *3.3. The compensation mechanism*

37. It is crucial for the international community, working in concert, to address this challenge and ensure that the victims of the aggression, in this case, Ukraine and its citizens, receive the reparations they are owed, and that there is a path towards resolution and justice. As already called by the Assembly in its Resolution 2516 (2023) “Ensuring a just peace in Ukraine and lasting security in Europe”, this shall involve establishing “a comprehensive compensation mechanism, including an international commission for the examination of claims for the damages recorded in the Register of Damage, and a compensation fund to pay out on decisions on compensation for damage awarded by the commission, in particular by confiscating and otherwise using the Russian Federation’s assets to pay for war damages in Ukraine”. This will allow a way to use these assets as a means of coercing the aggressor State to comply with its international legal obligations.

38. The immobilisation or utilisation of Russian Central Bank reserves, which have been frozen in the West, is considered a significant countermeasure. As argued by experts like Lawrence H. Summers, Philip D. Zelikow, and Robert B. Zoellick, under international law, the Russian Federation is not entitled to compensation if the countermeasure is proportionate and a response to its own grave breach of peremptory norms of international law, an infringement that has been affirmed by both the International Court of Justice and the United Nations.[9]

39. The consistent stance of European Council’s President Ursula von der Leyen on holding the Russian Federation accountable with its sovereign assets further underscores the growing support for leveraging countermeasures to address breaches of international law.

40. The Council of Europe can play a role in hosting such an initiative, while working towards lasting peace and stability as well as sharing best practices and providing support in developing and strengthening democratic institutions in affected countries. This will ensure that the reconstruction funds will be used properly and that they will contribute to rebuilding a democratic Ukraine.

### *3.4. From sanctions to countermeasures*

41. The concept of countermeasures in international law refers to actions taken by one State against another in response to the latter's internationally unlawful conduct. Countermeasures are intended to induce the offending State to cease its unlawful behaviour or to comply with its obligations arising from that conduct, such as paying compensation for damages caused.

9. Foreign Affairs, “The Other Counteroffensive to Save Ukraine”, 15 June 2023.

42. The freezing of assets as part of sanctions was a measure used by countries to exert pressure on the Russian Federation immediately after the February 2022 invasion. However, there comes a point where it is essential to address the issue of compensation and reparations, especially when the freezing of assets is not sufficient to deter the aggressor State.

43. Implementing lawful State countermeasures, such as suspending ordinary obligations towards Russian State accounts, is a step that can be taken by countries opposing the Russian Federation's aggression. This approach involves reconsidering the treatment of these accounts or assets in response to the Russian Federation's actions, but it is important to conduct these actions within the boundaries of legality and international law. The focus should be on distinguishing between private property and assets directly owned or controlled by the Russian State. When implementing such countermeasures, the primary objective is not to profit from these actions but to direct the frozen or withheld assets towards aiding the victims of the Russian Federation's aggression.

44. Countermeasures are typically not compulsory and are often taken outside the UN Security Council and UN Charter Chapter 7 processes, which are used for mandates and peacekeeping operations. Instead, countermeasures are typically measures taken by States in response to unlawful actions by other States as a way to encourage compliance with international law and obligations. In this case, the UN's recognition of the Russian Federation's serious breach of international law and the resulting injury to States, as well as of the duty of the Russian Federation to compensate those States, provides a legal and moral basis for member States to take action. This acknowledgment by the UN establishes that the Russian Federation's actions are a matter of common international concern and justifies States' pursuit of countermeasures within the framework of international law.

45. As explained by the International Court of Justice in the Gabčíkovo-Nagymaros Project case,[10] countermeasures "taken in response to a previous international wrongful act of another State and [...] directed against that State" might justify otherwise unlawful conduct. This is also reflected in Article 22 of the International Law Commission (ILC) Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), which stipulates that "the wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State"[11].

46. Key conditions associated with lawful countermeasures include: 1) response to unlawful conduct which means that countermeasures must be a response to the offending State's unlawful behaviour; 2) objective of procuring compliance, meaning that they should aim to encourage the offending State to stop its unlawful conduct or fulfil its obligations, such as providing compensation; 3) proportionality, meaning that countermeasures should be proportionate to the gravity of the unlawful conduct and the injury caused by it; 4) temporary nature, meaning that they should only persist until the offending State complies with its obligations or ceases the unlawful conduct; and 5) reversibility, meaning that once compliance is achieved, normal legal relations should be restored, and the countermeasures should cease.

47. The authority to employ countermeasures lies with individual sovereign States. States intending to take countermeasures must ensure that their actions align with the outlined conditions and should ideally be taken with the aim of encouraging compliance rather than inflicting punishment. Additionally, engaging in discussions, negotiations, or seeking mediation to resolve disputes before resorting to countermeasures is often encouraged to mitigate tensions and promote peaceful resolutions.

48. Article 49 of ARSIWA outlines the framework for the use of countermeasures in response to an internationally wrongful act by a State: "1) An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act, in order to induce that State to comply with its obligations under part two [of the articles]; 2) Countermeasures are restricted to the non performance for the time being of international obligations of the State taking the measures towards the responsible State; and 3) Countermeasures shall as far as possible be taken in such a way as to permit the resumption of performance of the obligations in question.

49. Article 51 of the ARSIWA, entitled "Proportionality", adds a condition regarding the utilisation of countermeasures: "Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question".

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10. International Court of Justice, Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), judgment of 25 September 1997.
11. International Law Commission, "Articles on the Responsibility of States for Internationally Wrongful Acts", 2001.

50. Considering all four article 49 and article 50's conditions, the initial requirement outlined in paragraph 1 of Article 49 under ARSIWA mandates that "an injured State may only take countermeasures against a State which is responsible for an internationally wrongful act, in order to induce that State to comply with its obligations under part two of the articles". These obligations encompass responsibilities such as discontinuing any ongoing wrongful behaviour and providing compensation for an internationally wrongful act.

51. So, if a State commits a wrongdoing by not stopping its wrongful actions or fully compensating for the harm caused, the affected State can take measures to convince the wrongdoer to follow the duties of stopping the actions and making amends. In this scenario, if States transfer assets to an international compensation mechanism, it could prompt the Russian Federation to fulfil its duty of fully compensating Ukraine. This action could also serve as a motivation for the Russian Federation to stop its wrongful behaviour and align with the fundamental norms it is disregarding. Based on these reasons, transferring assets would be considered a legal countermeasure, as it would be seen as a means to enforce compliance with the responsible State's obligations outlined in Part Two of ARSIWA.

52. Article 49's second requirement states that countermeasures must be temporary. They can only pause the obligations of the injured State towards the offending State for a limited time, preventing the wrongful act from being considered improper during that period. While no specific duration is mentioned, it is assumed that the measure would be legal as long as the wrongful behaviour persists, but not beyond that. This aligns with Article 49's third requirement in paragraph 3, ensuring that the countermeasure allows both the offending and injured States to eventually fulfil their mutual obligations again. This requirement says that countermeasures must be reversible, allowing "the resumption of performance of the obligations in question". According to the International Court of Justice in the Gabčíkovo-Nagymaros Project case, countermeasures should aim to prompt the wrongdoing State to comply with international law. This requirement is not about setting strict time limits but ensuring that a State can go back to fulfilling its duties once the unlawful behaviour stops and the countermeasures end, as clarified by the ILC.

53. In other words, Article 49's three requirements make it clear that countermeasures are meant to encourage the offending State to fulfil its legal duties, leading to the restoration of normal legal relations between parties. These proposed countermeasures would essentially put certain international obligations on hold, like respecting each other's financial assets or agreements for instance.

54. The concept of self-help in international law and in countermeasures revolves on unilateral action taken by a State alone, or in conjunction with other States while seeking protection or performance of international legal rights and obligations. The countermeasures are adopted as a consequence of the view of the reacting State that the target State has committed an internationally wrongful act. In other words, institutional sanctions create "vertical" relationships of enforcement, whereas in the case of decentralised countermeasures the relationships between the responsible and reacting State are "horizontal". In this case a group of like-minded States could choose to join in taking the countermeasures against the target State. In this context, compulsory mandates from international organisations are unnecessary and superfluous.[12]

55. Under Article 54 of ARSIWA, the responsibility of a State for its internationally wrongful conduct may be invoked either by an "injured State" or, in certain circumstances, by other States which are not directly injured by that conduct: "This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached."

56. The concept of *erga omnes* obligations in international law refers to obligations owed by a State to the international community as a whole, rather than to specific States. These obligations are considered fundamental principles of international law that transcend specific agreements between States and are binding on all States. *Erga omnes* obligations include duties such as prohibitions against genocide, slavery, aggression, and certain human rights protections. Violations of *erga omnes* obligations can affect all States and individuals and give rise to rights for any State or entity to demand cessation of the unlawful conduct and seek reparations for the injuries caused. Regarding third-party States not directly affected by the Russian Federation's unlawful acts, there is a recognition that they too have a stake in demanding compliance with *erga omnes* obligations.

12. Crawford, James, "State Responsibility: The General Part" (CUP, 2013) sec. 21.3.

57. The ILC acknowledges the potential for third-party States to take countermeasures to address breaches of *erga omnes* obligations. Article 54 of ARSIWA provides a saving clause that does not restrict the right of any State to invoke Article 48[13] dealing with countermeasures and take action against an offending State to ensure cessation of the breach and reparation in the interest of the injured State or the beneficiaries of the breached obligation. Thus, it effects all States, not only the direct victim of the aggression.

58. This recognition and reservation of the right to take countermeasures by third-party States in the interest of upholding *erga omnes* obligations reflect the evolving nature of international law. They acknowledge the potential customary norm that might develop allowing such actions by States not directly affected by a breach but concerned about the broader implications of a violation of *erga omnes* obligations.

59. The rule against aggression is an absolute norm of international law that applies to everyone, not just the country directly attacked. If there is a war of aggression, any State, or a group of States, can hold the aggressor accountable and seek justice.

60. Furthermore, Article 48 of ARSIWA acknowledges that third-party countries have the right to hold a wrongdoing State accountable, as follows:

> *1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if: (a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or (b) the obligation breached is owed to the international community as a whole.*
>
> *2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State (1) can demand from the responsible State: (a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and (b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.*

61. The use of such countermeasures is a way for States to leverage their collective standing and the duty of the breaching State to provide compensation for the injuries caused. It is important to ensure that these actions are consistent with international law, proportionate, and respectful of the rights of innocent parties, and that they aim to encourage compliance with international obligations and the principles of justice.

62. The suggested countermeasure, transferring frozen Russian assets to an international compensation mechanism for disbursing compensation to Ukraine or other affected parties, meets the reversibility condition according to the ILC's understanding. This action would restore the previous legal relations between the parties involved. The ILC emphasises avoiding countermeasures causing “irreparable damage” and suggests choosing measures allowing the resumption of suspended obligations.[14] For instance, when transferring frozen assets, States could agree that these assets return if the Russian Federation complies with its duties. Alternatively, rules for the compensation mechanism might credit the Russian Federation for paid reparations, reducing its remaining obligation. If the assets' value exceeds owed reparations, the excess could be returned. This way, the transfer would not harm the Russian Federation irreversibly.

63. States have already reacted against such breaches as referred to in article 48 of ARSIWA without claiming to be individually injured, including by imposing economic sanctions.[15] Such an example is the USA – Uganda case in 1978 when the US Congress imposed restrictions on exports of goods and technology to and from Uganda. It specifically highlighted the accusation that the Government of Uganda, under the leadership of Idi Amin at the time, had committed genocide against Ugandans. The rationale behind this legislation was to condemn and dissociate the United States from any foreign government engaged in the international crime of genocide.

64. After Iraq’s 1990 invasion of Kuwait, States adopted countermeasures after sanctions failed. France, the United Kingdom, and the United States led the way in transferring frozen Iraqi State funds to an international escrow account to provide compensation without Iraq’s voluntary consent. Subsequently, the UN Compensation Commission processed claims and paid compensation for loss and damage caused by the invasion to the victims, partially from frozen assets.[16] Similarly, the Russian Federation would be induced to do its duty and compensate its victims, either voluntarily or involuntarily. The aggressor’s rights do not take precedence over the rights of its victims.

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13. Article 48 ARSIWA.
14. ILC, *Yearbook of the International Law Commission* (UN, 2007), commentary to Article 49, para. 9.
15. ILC, *Yearbook of the International Law Commission* (UN, 2001) p. 137.
16. Under the auspices of Security Council Resolutions 687 (1991) and 778 (1992).

65. In the late 1990s, in response to the escalating crisis and the deteriorating humanitarian crisis in Kosovo*[17] the member States of the European Community took collective measures including adopting legislation that froze Yugoslav funds and imposed an immediate flight ban. These measures eventually contributed to the increased international attention on the situation in Kosovo and paved the way for further diplomatic initiatives and interventions in the region.

66. Concerning the use of countermeasures by third-party States, there has been significant evolution in State practice since 2001. This development solidifies the significance of Article 48 as a recognised representation of present-day international law. The instances of their implementation have increased substantially. Acknowledging this trend, the Institut de Droit International passed a Resolution on "Obligations *erga omnes* in international law" in 2005, which included the following provision (Article 5): "Should a widely acknowledged grave breach of an *erga omnes* obligation occur, all the States to which the obligation is owed: (a) shall endeavour to bring the breach to an end through lawful means in accordance with the Charter of the United Nations; (b) shall not recognize as lawful a situation created by the breach; and (c) are entitled to take non-forcible countermeasures under conditions analogous to those applying to a State specially affected by the breach."[18]

67. The precedent set since the Iraq-Kuwait conflict demonstrates that compensation can extend beyond the direct parties involved in a conflict to encompass other affected countries, international organisations, and individuals or entities that have suffered losses due to the aggression. Although Kuwait or Kuwaitis received about 80% of the awards of the compensation, more than ten other countries and international organisations also received awards for damages they suffered during the conflict, such as environmental damages. These claimants included Saudi Arabia, Iran, and Israel.

68. In the case of the conflict in Ukraine and the Russian Federation's actions, there are various dimensions to consider when seeking compensation. Beyond the direct impact on Ukraine and its citizens, there are ripple effects that affect neighbouring countries, companies, investors, and displaced persons. These parties may have legitimate claims for compensation under international law due to the damages incurred as a result of the conflict.

69. Over the last twenty years, measures such as freezing an offending State's assets and implementing economic sanctions have been frequently utilised. These measures have often been employed by States not directly affected as a response to breaches by the offending State of obligations owed to the international community at large. Examples include: 1) In 2011, Switzerland and the US froze assets of Colonel Gaddafi and the Libyan Central Bank; 2) In March 2011, European Union member States imposed measures by freezing the assets of President Al-Asad and the Central Bank of Syria. Today there are 83 States and international organisations which have welcomed these sanctions adopted by the European Union; 3) In March 2014, EU member States, Australia, Canada, Japan, Lichtenstein, Switzerland and the US imposed measures against the Russian Federation for its destabilising role in Ukraine; 4) Since the invasion of Ukraine, EU member States and 14 other States plus Taiwan have adopted a wide range of measures against the Russian Federation, including assets freezes, economic and financial sanctions, property seizures; 5) The EU and other States have adopted measures against Myanmar in 2000, Zimbabwe in 2002 and Belarus in 2004.

70. It is important to note that the measures taken would have been deemed unlawful if they were enacted without the presence of internationally wrongful conduct by the targeted State. Under ARSIWA, their wrongful nature was only prevented by their implementation as countermeasures in response to the targeted State's wrongful conduct. Thus, the measures adopted by States not directly affected were considered justified as legitimate countermeasures according to Part 2, Chapter II of ARSIWA.

71. Therefore, countermeasures should serve as an instrumental purpose rather than being punitive. As per the law on countermeasures, certain measures that would typically be unlawful can be justified if specific conditions are fulfilled. These conditions include: (a) being a response to a State's unlawful behaviour, (b) aiming to stop this behaviour or ensure compensation for it, (c) being proportionate to the seriousness of the wrongdoing and resulting harm, (d) only being in effect until compliance is achieved, and (e) allowing for a return to normal relations once compliance occurs. Each State using countermeasures must ensure these conditions are met. The decision to take countermeasures is within the authority of individual sovereign States, making it a decentralised and voluntary obligation.

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17. * All reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.
18. www.idi-iil.org/app/uploads/2017/06/2005_kra_01_en.pdf.

72. Moreover, to meet the proportionality condition in Article 51, the countermeasures must align with the severity of harm to the injured State and the seriousness of the offending State's wrongful behaviour. Additionally, to fulfil Article 53, these countermeasures should be ended promptly once the offending State starts following its international duties again.

73. Regarding their legality, there exists no significant distinction between freezing another State's assets and transferring them to the victim of the wrongful conduct as compensation for the harm suffered. While transferring assets goes further than freezing them, both actions would be considered lawful if executed in response to a breach of obligations under an internationally recognised norm of international law. These actions would aim to prompt the cessation of wrongful behaviour or the reparation for the harm inflicted on the affected State.

74. Thus, creating a fund or mechanism to address all the diverse claims could indeed provide a structured way to assess and compensate for the damages suffered by various stakeholders because of the Russian Federation's illegal invasion of Ukraine. This fund could potentially cover a range of losses, including but not limited to infrastructure damage, environmental impacts, economic losses incurred by companies and investors, and the costs associated with hosting and supporting displaced persons. However, the establishment and administration of such a fund would require careful deliberation, international co-operation, and adherence to legal principles to ensure fairness and accountability in addressing the multifaceted damages caused by the conflict.

75. The already established Register of Damage will undertake the laborious process of recording Ukrainian losses in preparation for an international claims process – for instance, through an international compensation fund and international commission for the examination of claims for the damages recorded in the Register. But a long, drawn-out claims process alone cannot rapidly address the broad disruption of Ukraine's economy and society. Through countermeasures, countries that have frozen Russian assets can flexibly fashion massive programs of reconstruction and recovery while also funding a process to compensate other injured States and claimants.

76. The legitimacy of the suggested countermeasures remains unassailable even within the framework of sovereign immunity. Sovereign immunity operates as a principle preventing one State's domestic courts from adjudicating on the governmental actions of another State or seizing that State's assets. The countermeasures discussed would not be subject to judicial imposition. Instead, they would be strictly executed by the executive arm of government, established through legislation or cabinet resolutions within parliamentary systems.

77. While Article 52 of ARSIWA outlines the prerequisites for an "injured State" to initiate countermeasures, those same conditions would similarly apply to other States contemplating such actions. Therefore, before a State can impose countermeasures against the Russian Federation for its internationally wrongful aggression against Ukraine, that State must have requested the Russian Federation to fulfil its international legal obligations. This entails ceasing the aggression, withdrawing forces from Ukrainian territory, and compensating Ukraine and other affected parties for damages resulting from the wrongful conduct. Additionally, the State must notify the Russian Federation of its intention to initiate countermeasures and extend an offer for negotiation to address the fulfilment of obligations. It could be argued that these requirements have been met through the adoption of UNGA resolutions, given their content and supporting statements. However, satisfying these prerequisites independently would not pose significant challenges.

### *3.5. United front against aggression*

78. Utilising frozen or seized assets as a means of funding a recovery program for Ukraine would serve as both a warning and a strategic move with broader implications. Such an action would showcase the significant repercussions of violating global norms and engaging in wars of aggression. It would serve as a reminder of the interconnectedness of the world and the collective responsibility to uphold international law and prevent such actions from going unchecked.

79. Moreover, the creation of a European recovery program centred on Ukraine, funded by Russian assets, presents a multifaceted approach. Not only would it provide a means to facilitate Ukraine's recovery and restoration after the conflict, but it would also serve to counter Moscow's strategy of attrition and ruin.

80. By using the assets left in the hands of free countries, this approach would turn a mistake on the Russian Federation's part into an opportunity for the international community to create a positive impact. It would not only address the immediate needs of recovery but would also signify a stance against aggression and a commitment to upholding global norms, showcasing the potential of collective action for positive change.

## 4. The European and global institutional landscape

### *4.1. European Union*

81. The co-operation between the Council of Europe and the European Union is marked by a complementary relationship aimed at promoting and upholding shared values, particularly in the areas of democracy, human rights, and the rule of law. This partnership ensures a more unified and comprehensive approach to upholding democratic principles and human rights within our region.

82. The Council of Europe has developed numerous conventions and legal instruments focusing on human rights, rule of law, and democracy. The European Union often aligns its legislation and policies with these standards, and in some cases, accession to the Council of Europe's conventions is a condition for EU membership. The new geopolitical context makes it even more necessary for the Council of Europe and the European Union to deepen their partnership.

### *4.2. The G7*

83. The G7 leaders have strongly condemned the Russian Federation’s actions, labelling the attack on Ukraine as an unprovoked and unjustified assault.[19] This condemnation is based on the premise that the Russian Federation's actions violate several international agreements and commitments, including: 1) international law: the attack is seen as a serious violation of international law and a breach of the United Nations Charter, which emphasises the respect for the sovereignty and territorial integrity of all member States; 2) the Helsinki Final Act and the Charter of Paris: the Russian Federation's actions are regarded as transgressions against the principles outlined therein, both of which stress the importance of respecting the sovereignty and borders of European States; 3) the Budapest Memorandum: signed in 1994, it assured Ukraine's territorial integrity and security in exchange for giving up its nuclear arsenal. The G7 leaders view the Russian Federation's actions as a direct breach of this agreement.

84. The strong language used by the G7 leaders emphasises the gravity of the Russian Federation’s actions, highlighting their belief that these actions constitute a violation of various international agreements and principles that are fundamental to global peace and stability. This condemnation serves to underscore their consensus against such breaches of international law and commitments.

85. The subject of countermeasures was deliberated upon in December 2023 by both G7 finance ministers and their deputies. The United States has put forward a proposal for working groups within the G7 to investigate methods to access approximately US$300 billion in frozen Russian assets.[20] This initiative is part of the collective efforts by allied nations to finalise a plan in time for the second anniversary of Moscow's large-scale invasion of Ukraine. Specifically, the US, supported by the UK, Japan, and Canada, has suggested advancing the preparatory work to ensure that potential strategies are prepared for a potential gathering of G7 leaders around 24 February, coinciding with the 2022 illegal invasion of Ukraine.

### *4.3. United Nations*

86. The relationship between the UN and the Council of Europe is marked by a recognition of their respective strengths and expertise. While the Council focuses regionally on Europe, it contributes significantly to global discussions on human rights and legal standards. This partnership enables a cross-pollination of ideas and standards, contributing to a more unified approach in advancing common values and principles on a global scale.

19. G7 Leaders’ Statement on the invasion of Ukraine by armed forces of the Russian Federation, 24 February 2022.
20. www.ft.com/content/d206baa8-3ec9-42f0-b103-2c098d0486d9.

87. The adoption of Resolution A/RES/ES-11/1 on “Aggression against Ukraine” by the UNGA on 2 March 2022 represents a significant global criticism of the Russian Federation's actions against Ukraine. This resolution strongly condemns the aggression by the Russian Federation, specifically noting that the actions violate Article 2(4) of the UN Charter, which prohibits the use of force against the territorial integrity or political independence of any State.

88. The resolution emphasises the demand for the immediate cessation of the use of force by the Russian Federation against Ukraine. It further calls for the complete and unconditional withdrawal of all Russian military forces from the territory of Ukraine within its internationally recognised borders.

89. In addition to this, the UNGA endorsed the creation of an international mechanism for compensating Ukraine for loss, damage and injury suffered during the war. Resolution A/RES/ES-11/5 recommends “the creation […] of an international register of damage to serve as a record […] of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of the Russian Federation in or against Ukraine”. Subsequently, the Council of Europe has established a Register of Damage caused by the Aggression of the Russian Federation Against Ukraine.

## 5. Way forward

90. The Council of Europe, as the oldest European institution, has to lead this process and set an example. With its focus on democracy, human rights, and the rule of law, the Council of Europe should play a significant role in supporting the reconstruction efforts in Ukraine, through the seizure of Russian State assets.

91. The volatile global and regional security setting calls for a renewed commitment to common values among all member States, particularly in addressing critical issues like the reconstruction of Ukraine in the aftermath of conflict.

92. The seizure of Russian State assets and the establishment of a comprehensive compensation mechanism require a unified and concerted effort within the framework of international law, and the Council of Europe should serve as a platform for member States to discuss and co-ordinate actions regarding these assets. The Organisation's commitment to upholding shared values will provide a basis for collective action in support of Ukraine's reconstruction.

93. In the pursuit of supporting Ukraine's reconstruction, it is crucial that any proposed action is in accordance with international law and aligns with the values and principles upheld by the Council of Europe. This approach ensures a responsible and lawful engagement in addressing regional security challenges.

94. While witnessing a crucial moment in the 21st century and maintaining and strengthening our unity against this aggression, we should be steady in our objective to fortify Ukraine so that the consequences – including those of financial nature – of the Russian Federation’s aggression serve as deterrence against any other future aggression.

**Appendix I – Texts on the Russian Federation's aggression against Ukraine**

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"

Resolution 2482 (2023) "Legal and human rights aspects of the Russian Federation's aggression against Ukraine"

Resolution 2463 (2022) "Further escalation in the Russian Federation's aggression against Ukraine"

Resolution 2448 (2022) "Humanitarian consequences and internal and external displacement in connection with the aggression of the Russian Federation against Ukraine"

Resolution 2436 and Recommendation 2231 (2022) "The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes"

Resolution 2433 and Recommendation 2228 (2022) "Consequences of the Russian Federation's continued aggression against Ukraine: role and response of the Council of Europe"

Opinion 300 (2022) "Consequences of the Russian Federation's aggression against Ukraine"