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FORMATION OF A NEW TYPE OF STATE MATERIAL RESPONSIBILITY IN INTERNATIONAL LAW: NORMATIVE FRAMEWORKS AND PRACTICE

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Abstract. This article provides a comprehensive theoretical and legal analysis of the transformation of the concept of state responsibility in contemporary international law, focusing on ongoing international crimes, particularly the crime of aggression. It substantiates the argument that the classical model of state responsibility in international law is inherently retrospective (post factum) and therefore insufficiently effective in addressing prolonged and systematic violations of peremptory norms of international law. In the context of an ongoing act of aggression, it is demonstrated that such a model effectively leads to a delay in compensation for damage and fails to ensure adequate protection for the injured state. Particular attention is paid to analysing the normative foundations for forming a new model of responsibility, including the roles of jus cogens norms and erga omnes obligations, as well as the concept of a continuing internationally wrongful act. The argument is made that aggression, as a violation of a peremptory norm of international law, gives rise to collective responsibility and justifies coordinated action by the international community to terminate the wrongful act and minimise its consequences. The article formulates the concept of ex ante state material responsibility, which entails the implementation of property-related consequences for the state that has committed an internationally wrongful act, prior to the cessation of said act and without awaiting a final judicial decision. The key features identified are its temporary and conditional nature, compensatory orientation, collective implementation mechanism, and functional focus on terminating the violation and mitigating harm. The study also analyses contemporary international practices relating to the freezing of the aggressor state's sovereign assets, the use of income generated from these assets for the benefit of the injured state, and the development of reparation-oriented financial mechanisms. It demonstrates that these measures do not deviate from international law, but rather reflect its evolution and adaptation to new challenges. The article concludes that a new functional model of state material responsibility is emerging which combines elements of coercion and compensation, responding to contemporary needs to maintain the international legal order.

Keywords: state responsibility; international law; crime of aggression; jus cogens; erga omnes; internationally wrongful act; ex ante material responsibility; freezing of assets; international legal order.

JEL Classification: K33, K38, F51, F52

1. Introduction

Not only has the Russian Federation's armed aggression against Ukraine become the largest and bloodiest armed conflict in Europe since 1945, it has also posed a profound systemic challenge to established contemporary international legal doctrines. This challenge is particularly acute in the area of state responsibility under international law, where traditional frameworks have been found to be insufficient for addressing large-scale international crimes that are committed over a prolonged period and in clear disregard of international law. The protracted nature of the aggression, its systemic character and the aggressor state's demonstrative refusal to recognise international jurisdictional mechanisms have revealed the limitations of the classical model of state responsibility. This model was largely formed in the context of post-war settlements in the twentieth century.

The classical doctrine of state responsibility is predicated on a retrospective approach, according to

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which the legal consequences of an internationally wrongful act are realised post factum – that is, after the establishment of the violation and, as a rule, following the cessation of the wrongful conduct itself. This approach is reflected, inter alia, in the Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission in 2001 (International Law Commission, 2001). However, in the case of ongoing crimes of aggression, applying this model effectively postpones material responsibility indefinitely, despite continuous and increasing harm being inflicted on the injured state.

The crime of aggression has a specific legal status because it violates a peremptory norm of international law (jus cogens). This gives rise to obligations erga omnes, meaning obligations owed to the international community as a whole. As the International Court of Justice has emphasised repeatedly, such violations transcend bilateral legal relations and require a collective legal response. At the same time, the existing doctrinal and institutional framework of state responsibility has created a clear discrepancy between the ongoing nature of international crimes and the delayed implementation of material responsibility. This discrepancy necessitates the search for new legal and political solutions.

Between 2022 and 2025, in response to the aggression against Ukraine, a new practice emerged involving economic and financial measures. This includes freezing the sovereign assets of the aggressor state and restricting access to them, with the income derived being used for the benefit of the injured state. These measures have been implemented through coordinated actions of individual states and international organisations, particularly within the framework of the European Union and the Group of Seven (G7). The measures do not fully fit within either the classical model of sanctions or the traditional understanding of reparations as an exclusively post-conflict institution.

In this context, contemporary international law is confronted with the question of establishing a new type of state material responsibility, namely, responsibility for a continuing international crime that arises ex ante, that is, prior to the conclusion of an armed conflict or the adoption of a final judicial decision. This responsibility is collective and compensatory in nature, aimed at protecting peremptory norms of international law and preventing the aggressor state from restoring its economic status quo without bearing appropriate responsibility. In this regard, the prevailing practice of freezing and targeted use of the aggressor state's assets should not be regarded as a deviation from international law, but rather as an evolution in response to the challenges posed by ongoing international crimes and the structural inefficiency of traditional mechanisms of responsibility.

2. The Classical Model of State Responsibility in International Law and Its Limitations

In international law, the institution of state responsibility is one of the fundamental mechanisms for ensuring the effectiveness of legal norms. Its purpose is to restore the violated legal order, compensate for damage caused and prevent the recurrence of wrongful conduct. This classical model emerged in the twentieth century under the influence of two world wars and evolving state practice. Traditionally, its application requires the presence of several key elements: an internationally wrongful act (i.e., a breach of an international obligation), attribution of such conduct to a state and occurrence of damage. Establishing these elements obligates the responsible state to cease the wrongful conduct and provide full reparation for the harm caused. This model is inherently retrospective: responsibility only arises after the wrongful act has ceased or been formally determined. The model is based on the presumption that the responsible state is capable of, and willing to, comply with its international obligations, or that it can be compelled to do so through effective enforcement mechanisms.

Traditionally, two main types of state responsibility are distinguished in doctrine and practice: material and political.

As K. Hromovenko notes, these forms of responsibility are closely interrelated in practice since harm resulting from internationally wrongful conduct usually has material and political dimensions. Accordingly, political and material responsibility generally arise simultaneously, as they both stem from the same wrongful act. Political responsibility arises from the breach of an international legal norm itself, while material responsibility arises from damage caused to another subject of international law (Hromovenko, Tytska, 2023).

Material responsibility is the most well-established form of responsibility and may take the form of restitution, compensation or satisfaction. It is usually implemented at the end of armed conflicts, either through peace treaties or judicial decisions. A key precondition for material responsibility to emerge is for the wrongful act to cease, allowing the extent of the damage to be assessed and appropriate reparation mechanisms to be determined. At the same time, sanctions are widely used in international practice in response to wrongful conduct. These can include economic restrictions, embargoes, financial prohibitions and limitations on membership of international organisations. However, it is important to emphasise that sanctions do not constitute legal responsibility, as their primary purpose is coercion and deterrence rather than compensation for damage. Sanctions are classified as either preventive or punitive-restrictive, and their purpose is to influence the behaviour of the

offending state rather than providing direct reparation to the injured party. International sanctions are typically applied ex post facto, that is, in response to a wrongful act that has already occurred, with the aim of protecting and restoring violated rights rather than imposing punishment for its own sake.

Another response mechanism consists of countermeasures: temporary measures that an affected state may take against a responsible state to encourage compliance with its obligations. According to the Draft Articles, countermeasures must be proportionate and reversible, and aimed at restoring the legal relationship between the states concerned. Typically, countermeasures are implemented at a bilateral level between the affected state and the responsible state, and are not intended to address situations involving large-scale or ongoing violations of jus cogens norms.

However, all of the aforementioned instruments reveal systemic limitations in the context of ongoing crimes of aggression. Material responsibility, in its traditional sense, is deferred until the end of the conflict, meaning that it does not ensure compensation when harm is being inflicted on a daily basis. While sanctions play an important role in exerting pressure on the aggressor, they do not provide direct compensation to the injured state and remain primarily instruments of coercion rather than reparation. In turn, countermeasures lose their effectiveness when the responsible state disregards international demands and shows no genuine interest in restoring legality. Thus, the classical model of state responsibility is characterised by temporal, procedural and functional limitations. Responsibility only arises after the wrongful act has ceased, and its implementation depends on judicial decisions or peace agreements. Furthermore, the model is not well-suited to addressing ongoing international crimes. The conceptual difference between a continuing violation and deferred responsibility necessitates the development of a new model of the aggressor state's material responsibility. This model must go beyond classical categories while remaining grounded in their fundamental principles.

3. International Legal Preconditions for the Transformation of Responsibility: Jus Cogens, Erga Omnes, and the Continuing Nature of Aggression

The prohibition of the use of force or the threat of force constitutes one of the fundamental principles of the contemporary international legal order. This principle is formally recognised in Article 2(4) of the Charter of the United Nations (United Nations, 1945) and is categorised as a peremptory norm (jus cogens), as established in both doctrine and judicial practice. In particular, in the case Military and Paramilitary Activities in and against Nicaragua (1986), the International Court of Justice emphasised that the prohibition of the use of force exists as a norm of customary international law independently of treaty obligations (International Court of Justice, 1986). A violation of a peremptory norm is subject to specific legal consequences: namely, that it cannot be legitimised by the consent of the injured state, is not subject to derogation, and affects the interests of the international community as a whole.

The use of force in an aggressive manner gives rise to erga omnes obligations for the responsible state. These are obligations owed to the international community as a whole and provide a basis for collective action. The International Court of Justice clearly articulated the concept of erga omnes obligations in the Barcelona Traction case (1970). The Court emphasised that obligations arising from certain norms, particularly the prohibition of aggression, are universal and cannot be reduced to purely bilateral relations. Other states have a legal interest in stopping such violations because they undermine the foundations of the international legal order. Accordingly, measures aimed at ending aggression and addressing its consequences are considered legitimate and legally valid by the international community as a whole. From this perspective, material measures targeting the assets of the aggressor state should not be considered arbitrary interference, but rather a specific manifestation of erga omnes responsibility – a response to a violation that affects the entire international community.

A distinguishing characteristic of any act of aggression is its persistent nature. It is evident that aggression is not confined to a single initial act; rather, it encompasses the entire period of unlawful use of force and occupation of territory. As articulated by the International Law Commission in its commentary to Article 14 of the Draft Articles on State Responsibility, "the breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation" (International Law Commission, 2001). This position emphasises the importance of considering the temporal dimension. Where a violation is ongoing, responsibility for it cannot be exclusively postponed to the post-conflict stage. In other words, international law cannot tolerate situations in which the most serious violations of jus cogens norms only give rise to responsibility once the aggressor has exhausted their capacity to wage war or agreed to cease their actions. Therefore, the ongoing nature of aggression requires a different approach to – one that operates not only after the event, but also during the conflict itself.

An important aspect of analysing the emerging model of state material responsibility is considering its relationship with the principle of sovereign immunity. In the 2012 case of Jurisdictional Immunities of the

State (Germany v. Italy), the International Court of Justice confirmed that sovereign immunity is procedural and not a norm of jus cogens (International Court of Justice, 2012). The Court emphasised that immunity is a rule of procedural international law which determines the limits of national jurisdiction, and that it does not affect the substantive content of material legal prohibitions, even those of a peremptory nature. Consequently, granting a state immunity from the jurisdiction of a foreign court neither legitimises its internationally wrongful acts nor exempts it from international legal responsibility.

At the same time, while the International Court of Justice declined to recognise an automatic exception to sovereign immunity in cases involving violations of jus cogens norms in the aforementioned case, the reasoning behind the judgment does not rule out further doctrinal development in this area. In particular, when procedural immunity is at odds with peremptory obligations to cease a continuing internationally wrongful act and to ensure reparation for the damage caused, questions arise regarding the functional limits of immunity. The norms of international law cannot be interpreted in such a way that a procedural rule effectively neutralises the operation of a peremptory substantive norm or renders the fulfilment of erga omnes obligations impossible.

In doctrine, it has been convincingly argued that in cases of conflict between an absolute interpretation of sovereign immunity and obligations arising from jus cogens norms, priority should be accorded to peremptory obligations (Popa Tache, 2023). In this particular context, the concept of sovereign immunity cannot be regarded as an absolute barrier to the application of measures of ex ante material responsibility, provided that certain fundamental criteria are met. These include, inter alia, the temporary and conditional nature of the relevant property restrictions, their orientation towards terminating the continuing violation and mitigating harm, and the absence of a definitive deprivation of property rights without due legal process and international legal legitimacy.

The combination of the following factors – namely, the structural limitations of the classical model of state responsibility, the absolute nature of the prohibition of aggression and its universal consequences, and the ongoing nature of the harm caused – objectively determines the transformation of the institution of state responsibility in contemporary international law. It is on this basis that a new, functionally driven model of material responsibility of the aggressor state is emerging. The defining feature of this model is the implementation of responsibility not only post factum, after the end of an armed conflict, but also concurrently with its course, within the framework of international legal mechanisms responding to ongoing violations of peremptory norms.

4. Formation of the Model of Ex Ante State Material Responsibility and Contemporary International Practice

In international law, the concept of ex ante state material responsibility is defined as the implementation of property-related consequences for a responsible state before an internationally wrongful act is ceased and before a final judicial decision is adopted, when obtaining such a decision is objectively impossible or blocked. In other words, it involves applying the consequences of responsibility (such as property restrictions or financial transfers) during an ongoing violation rather than only afterwards.

In contrast to classical material responsibility post factum, ex ante responsibility: (a) arises in response to an ongoing internationally wrongful act; (b) is temporary and conditional; (c) aims to terminate the violation and mitigate harm, rather than punish the responsible state; (d) is implemented collectively, taking into account the erga omnes nature of the breach. From a doctrinal perspective, this model is based on a series of principles set out in the Draft Articles on State Responsibility. These include the notion of a continuous wrongful act (Article 14), the duty to cease (Article 30) and the duty to provide full reparation (Article 31) (International Law Commission, 2001). Therefore, the proposed construction does not reject the fundamental principles of responsibility established in international law, namely the principles of cessation and full reparation, but rather reconfigures them in temporal terms.

Although the concept of ex ante material responsibility has not yet been formally codified, its functional elements can be seen in certain historical examples. Notably, the United Nations Security Council has established sanction regimes in response to ongoing violations of international law, restricting the access of responsible states to financial resources. Examples include the sanctions imposed on Iraq, Yugoslavia, Iran, and North Korea. Such measures were formally classified as sanctions within the framework of collective security. However, their economic effect was to de facto limit a state's ability to use its own resources until it changed its behaviour. These UN sanctions regimes did not, however, create a direct compensation mechanism for a specific injured state, distinguishing them from the contemporary model currently emerging in relation to Ukraine. Thus, it is possible to identify the de facto elements of ex ante logic earlier on (namely, the temporary "freezing" of an aggressor's assets as a means of coercion), albeit without the resulting benefits being directed to the injured party.

The international community's response to Russia's aggression against Ukraine in 2022 marked a new stage in practice. For the first time, material restrictions have been applied not only as deterrent sanctions, but also as elements of future compensation, with

measures explicitly benefiting a specific injured state. Furthermore, these measures are legally justified by violations of jus cogens norms and erga omnes obligations. These features mean that this approach can be considered fundamentally novel.

A significant manifestation of this novel paradigm has been the freezing of sovereign assets of the Russian Federation in 2022. In the aftermath of the outbreak of full-scale aggression against Ukraine, a substantial volume of sovereign assets of the Russian Federation, including the reserves of its central bank, was frozen by Western states. From a legal standpoint, it is noteworthy that these assets were not expropriated; the title of ownership formally remains with the Russian Federation, yet the aggressor state has been deprived of the ability to utilise these assets for as long as the violation persists. Consequently, such freezing can be considered congruent with the logic of a temporary property restriction as a form of responsibility for a continuing wrongful act. This constitutes a functional limitation of the sovereign rights of the aggressor state over its financial resources: while ownership remains de jure, the exercise of that ownership (use and disposal) is suspended in response to violations of international law. This may be interpreted as a form of temporary material responsibility that persists until the aggressor ceases its conduct. It is important to note that the collective nature of these measures serves to reinforce their legitimacy, as the decisions to freeze assets were collectively adopted by a group of leading states (including the European Union and the G7), rather than being taken unilaterally by individual states (Barrucho, 2025).

A particularly illustrative and innovative element of contemporary international practice has been the use of income generated from frozen sovereign assets of the aggressor state for the benefit of the injured state. Between 2023 and 2024, a consolidated approach was developed at the level of political coordination among leading states within the framework of the Group of Seven (G7). According to this approach, excess profits arising from the management of the Russian Federation's frozen foreign exchange reserves should be directed towards supporting Ukraine. At the G7 Summit in Hiroshima in May 2023, for example, the leaders of the participating states officially confirmed that Russian sovereign assets would remain frozen until the aggressor state had compensated Ukraine for the damage inflicted (President of Ukraine, 2023). This position was subsequently reaffirmed in a statement on February 24, 2024, in which G7 leaders emphasised once again that the unfreezing of Russian assets would only be possible upon full compensation for the damage caused. They also expressed their support for the European Union's initiatives to utilise income derived from such assets for Ukraine's benefit (Radio Svoboda, 2024).

This approach has been formally legalised at the level of the European Union. In May 2024, Council Regulation (EU) 2024/1469 came into effect, thereby establishing a distinct legal framework for the utilisation of net income (windfall profits) derived from frozen assets of the Russian Federation's Central Bank, with the objective of financing Ukraine's recovery, reconstruction, and defence (Council Regulation (EU) 2024/1469, 2024). This act incorporated provisions requiring financial institutions to transfer interest accrued on frozen Russian assets (after deduction of operational costs) to a dedicated support fund for Ukraine, as part of the EU sanctions regime. It is crucial to note that the implementation of these measures is directly associated with the actions of the aggressor state. As explicitly stated in the preamble of Regulation 2024/1469, these financial mechanisms remain in effect until the Russian Federation ceases its armed aggression and ensures compensation for the damage caused.

From the perspective of international law, this model of "freezing and utilising income from assets" entails the deprivation of the aggressor state of the ability to derive any economic benefit from its sovereign assets during the period of an ongoing internationally wrongful act. Concurrently, the relevant income (interest and investment returns) is allocated towards partial compensation of the damage suffered by the injured state. The present text constitutes an analysis of the implementation of the compensatory function of international responsibility prior to the cessation of armed conflict. It is posited that this can be achieved without the formal confiscation of assets and without the final resolution of reparation claims. This approach facilitates the provision of material support to the injured state in real time, while deferring the final settlement of ownership and reparation issues to the post-conflict stage, based on judicial decisions or international agreements.

A further element that has contributed to the development of this novel model is the emergence of financial mechanisms that may be described as reparation-oriented lending. This refers to the provision of financial assistance to Ukraine at present, with a direct linkage to future reparations from the Russian Federation. For instance, in 2024, the G7 countries committed to providing Ukraine with long-term financial assistance amounting to approximately 50 billion USD in the form of loans, to be serviced and repaid from future income generated by frozen Russian assets (Forbes Ukraine, 2024). This approach allows Ukraine to receive the necessary resources immediately while establishing the fundamental principle that Ukrainian taxpayers will not be burdened with repayment, as the loans are intended to be repaid through Russian assets or future contributions. Conceptually, this reflects a shift in which the economic burden of aggression is

initially assigned to the aggressor rather than the victim, creating a hybrid form between traditional lending and reparations. Furthermore, this mechanism strengthens the compensatory nature of ex ante measures, demonstrating the adaptability of international financial law in responding to unprecedented challenges.

In order to avoid methodological confusion, it is essential to clearly distinguish the proposed model of ex ante material responsibility from traditional sanctions, countermeasures or reprisals. As mentioned previously, international sanctions are instruments of coercion and pressure that aim to influence the behaviour of the offending state. They do not provide for systematic compensation to a specific injured party. In contrast, ex ante material responsibility is fundamentally different in nature: it is restorative and compensatory, directly linked to the extent of the damage caused. The financial restrictions within its framework are oriented towards remedying the consequences of the wrongful act, rather than "punishing" the offender.

Similarly, the ex ante model should not be confused with classical countermeasures. Countermeasures are temporary, bilateral actions that one state may lawfully take against another to encourage compliance with its obligations. For example, this could involve suspending the performance of its own obligations in response. They are subject to strict proportionality requirements and are intended to restore bilateral legal relations between specific states. In contrast, ex ante material responsibility is implemented collectively, is based on violations of norms of jus cogens, and aims to protect the international legal order as a whole rather than merely bilateral interests.

In their classical sense, reprisals have largely disappeared from the modern era: contemporary international law has largely prohibited reprisals against fundamental norms, particularly those of jus cogens. The emerging ex ante model in no way legitimises unlawful conduct. On the contrary, all measures, including the freezing of assets, income allocation and collective financial mechanisms, are implemented within the legal framework, relying on existing legal norms and the collective decisions of international bodies. Thus, ex ante material responsibility is an independent form of state responsibility under international law. It combines property-related restrictions with a compensatory purpose, corresponding to the erga omnes nature of the prohibition of aggression. It is not a sanction, a countermeasure or a reprisal in the classical sense. Its legal basis lies in the peremptory norms and obligations of the international community, and its practical mechanism is based on the coordinated actions of states and international organisations.

Historically, the classical concept of state responsibility has been based on a bilateral logic: "responsible state – injured state". However, this framework proves insufficient in the case of aggression, since aggression is a violation of jus cogens that harms not only the directly affected state, but also undermines the foundations of the international legal order as a whole. Consequently, the response extends beyond purely bilateral relations and takes on a collective character. Accordingly, material responsibility is implemented not individually, but through the coordinated actions of groups of states and international organisations. International organisations have been identified as playing a leading role in the institutionalisation of this collective responsibility. In particular, the United Nations General Assembly, in its resolution ES-11/5 of 14 November 2022 (UN General Assembly, 2022), recognised the need to ensure reparation for damage caused by the aggression of the Russian Federation against Ukraine and recommended the establishment of an international compensation mechanism and a Register of Damage. Through this historic resolution, the General Assembly called for the establishment of a compensation framework and affirmed Russia's legal responsibility to pay reparations to Ukraine. Subsequently, in May 2023, the Council of Europe established the Register of Damage for Ukraine (RD4U), collecting evidence of damage as a first step towards a future compensation mechanism (Council of Europe, 2023).

As previously mentioned, the European Union has adapted its sanctions legislation in order to partially shift it from a punitive to a compensatory dimension – namely, through the use of profits generated from frozen assets for the benefit of Ukraine. The G7 has facilitated political coordination of these efforts: at its summits, common approaches have been agreed upon regarding the restriction of Russian sovereign assets, their linkage to the cessation of aggression, and their role in future reparation payments. Consequently, the actions of leading states and organisations have formed a unified line of conduct that possesses not only political but also norm-setting significance. Rather than constituting a form of collective punishment of the population of the aggressor state, collective ex ante material responsibility aims to protect the international legal order. In particular, collective measures targeting the assets of the aggressor state aim to: (1) ensure the cessation of ongoing violations, (2) minimise damage caused by aggression, and (3) prevent the aggressor from restoring its economic status quo without bearing the cost of the harm inflicted. In this sense, collective measures of material responsibility serve as a mechanism for upholding the rule of law at an international level by ensuring that serious violations of jus cogens are not without consequence. The combination of the limitations of the classical model (Section 1), the peremptory nature of the prohibition of aggression (Section 2), the emergence of ex ante responsibility (Section 3), the functional

limitation of immunity (Section 4) and the collective mode of implementation demonstrates a qualitative transformation of the institution of state responsibility in international law.

The establishment of a novel paradigm of ex ante material responsibility for aggressor states has been demonstrated to exert a comprehensive and system-forming impact on contemporary international law. This is not merely the introduction of an ad hoc mechanism of response, but rather a gradual transformation of the very paradigm of legal reactions to the most serious international violations. This transformation entails a shift away from an exclusively retrospective logic of responsibility, under which legal consequences for the responsible state arose only post factum, towards a model of parallel responsibility implemented simultaneously with efforts to terminate the internationally wrongful act. This approach serves to reinforce the preventive and deterrent function of international law, thereby demonstrating that mechanisms for imposing the material burden of damage on the aggressor state are in place even during an armed conflict.

Concurrently, a conceptual convergence emerges between the individual criminal responsibility of persons accused of international crimes and the material responsibility of the state as a subject of international law. The contemporary approach is predicated on the parallel functioning of these two dimensions of responsibility: while international judicial institutions prosecute individual perpetrators of war crimes, the international community simultaneously applies property-related measures to the aggressor state, including the freezing of state assets, the establishment of compensation funds, and the allocation of income derived from such assets for reparation purposes. This combination reflects a holistic approach to transitional justice and the restoration of justice. It recognises that responsibility is not confined to the individual, but also extends to the state's structural responsibilities.

Particular attention should be paid to rethinking the role of economic instruments in ensuring compliance with peremptory norms of international law (jus cogens). Economic sanctions and financial restrictive measures are increasingly being viewed as instruments for enforcing a responsible state's international obligations, particularly the obligation to compensate for damage caused by acts of aggression, as well as political or coercive tools. As noted in the doctrine, contemporary state practice shows signs of a new quasi-customary norm emerging regarding the permissibility of such measures in response to serious violations of peremptory norms (Popa Tache, 2023). Should such practices be observed in analogous situations, it is feasible to predict the gradual establishment of a customary rule. This rule would recognise three aspects: first, the right of states to impose temporary property restrictions against an aggressor state ex ante; second, the compensatory nature of such measures; and third, an expanded doctrine of responsibility for aggression encompassing not only post-war reparations but also ongoing material mechanisms of response. In this sense, the practice that has emerged in connection with the Russian–Ukrainian war may be regarded as one that has the potential to be integrated into the general regime of state responsibility in international law.

In terms of the potential for codifying this model, several complementary approaches can already be identified. The first of these is associated with the further development of the existing codified framework, primarily the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001). In the future, the International Law Commission could refine the commentaries to Articles 14, 30, and 31, taking into account the specific nature of continuing violations of jus cogens norms and erga omnes obligations. In particular, it seems important to clarify that the obligations of cessation (Article 30) and full reparation (Article 31) arise immediately in cases of ongoing serious breaches of peremptory norms of international law, and must be implemented in real time.

The second area of focus involves the conclusion of specialised international agreements aimed at regulating compensation for damage caused by aggression, or the establishment of dedicated compensation funds. A historical precedent for this is the United Nations Compensation Commission for Iraq, which was established under the auspices of the United Nations following the 1991 Gulf War. Similarly, one could envisage an international agreement on Ukraine's compensation, funded by the aggressor state's assets, being concluded as part of a future peace settlement, which could institutionalise the relevant mechanisms (Horodyskyi, 2023).

The third pathway involves the institutionalisation of the new model of responsibility through the activities of international organisations. Corresponding mechanisms are already emerging at universal and regional levels. Examples include the Register of Damage established under the auspices of the Council of Europe, targeted support funds for Ukraine and mechanisms developed by the European Union for using income derived from frozen assets. These initiatives effectively embed the structural elements of the new model of responsibility within the institutional practices of the international community.

A fourth avenue for the codification and institutional consolidation of the new model of responsibility lies in potential judicial practice. The Special Tribunal for the Crime of Aggression against the Russian Federation has already received an international legal basis in the form of an agreement between

Ukraine and the Council of Europe, which was signed on 25 June 2025 (Special Tribunal for the Crime of Aggression against Ukraine, 2025). This agreement has created a formal legal foundation for the operation of the Tribunal. Although this body has not yet begun to function as a fully operational judicial institution and several key issues relating to its jurisdiction, procedures and mechanisms are still being developed, the emergence of this institutional project itself reflects a trend towards the judicial consideration of not only the criminal law aspects of aggression, but also its material consequences, including issues of reparations and other forms of state responsibility.

In this context, the issue of the political and legal legitimacy of the Special Tribunal is of particular importance. As O. Voloshchuk convincingly argues, the politico-legal dimension of the tribunal's legitimacy is no less significant. Support for the Tribunal from partner states and influential international organisations generates legal, moral and political legitimacy, thereby enhancing its preventive effect and signalling to potential aggressors that they will be held accountable for their crimes. The Special Tribunal's legitimacy should be established through a combination of treaty-based, institutional and precedential foundations, reinforced by substantial international backing and robust evidence documenting particular instances of the crime. This would allow an institutional framework to be established that can effectively implement the principle of the inevitability of punishment, even in cases where the aggressor state refuses to recognise the tribunal's jurisdiction (Voloshchuk, 2025).

At the same time, any codification of this model must be accompanied by the necessary safeguards to prevent misuse and the destabilisation of international relations. In this regard, the following guarantees are of particular significance: firstly, the new model is to be applied exclusively to the most serious violations of international law, in particular aggression, genocide and mass war crimes; secondly, the decision-making process regarding the application of ex ante measures is to be conducted through international organisations or coalitions of states, rather than on a unilateral basis; thirdly, property-related restrictions are to be temporary and their reversibility is to be conditional on the conduct of the responsible state; and fourthly, there is to be a close functional link between the measures applied and the specific damage caused, as well as a transparent mechanism for the use of funds for compensation purposes. Adherence to these conditions lends legitimacy to the new model of material responsibility, which is considered exceptional yet objectively necessary for safeguarding the fundamental principles of the contemporary international legal order.

5. Conclusions

The analysis shows that contemporary international law is seeing the emergence of a new type of state responsibility: ex ante responsibility for ongoing international crimes, particularly aggression. This model differs fundamentally from classical sanctions and countermeasures in that its purpose is to ensure compensation for damage and restore justice in real time, rather than to have a punitive impact. The basis of this concept is found in violations of peremptory norms (jus cogens) and erga omnes obligations. Its implementation is achieved through the collective action of the international community, and its realisation is facilitated by property-related and financial mechanisms of a compensatory nature.

The novelty of this model lies in its departure from an exclusively post-conflict approach to the responsibility of the aggressor state. Material responsibility is established concurrently with the onset of armed conflict, thereby reinforcing the deterrent effect of international law, amplifying pressure on the aggressor, and concurrently providing support to the injured state. The 2022–2024 practice, encompassing the freezing of sovereign assets of the Russian Federation, the allocation of income derived from such assets for the benefit of Ukraine, the establishment of the Register of Damage, and the development of reparation mechanisms, substantiates the evolution of this model into an emerging and increasingly consolidated international practice.

The response of international law to unprecedented aggression demonstrates its evolutionary flexibility and its capacity to transform the institution of state responsibility. In this context, ex ante responsibility is shown to be an integral element of the transition from exclusively post factum reparations towards a dynamic preventive-compensatory model. The aim of this model is threefold: firstly, to deter aggression; secondly, to ensure immediate protection of victims; and thirdly, to maintain the international legal order.

This model has realistic prospects of being codified within the framework of the United Nations system, either through the conclusion of specialised international agreements or through the development of precedent-based judicial practice. Priority areas for development include clarifying the Draft Articles on State Responsibility in relation to ongoing violations of jus cogens, establishing international compensation mechanisms for damage caused by aggression and institutionalising practices relating to the use of the aggressor state's frozen assets. Implementing these approaches is expected to contribute to the normative consolidation, legitimacy and effectiveness of the new model of state material responsibility, while also ensuring that responsibility for the most serious international crimes is inevitable.

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