

STICKER SHOCK: THE ICJ, RUSSIA, AND A \$300 BILLION PRICE TAG FOR WAR

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Ukraine has experienced unprecedented devastation since Russia launched a full scale invasion into its Eastern territory in February 2022. Thousands have been killed, and billions of dollars of infrastructure has been damaged. As a result, over the past three years, the international community has been evaluating ways to hold Russia accountable and to help rebuild Ukraine upon the cessation of the war. Billions of dollars in Russian Central Bank assets have been frozen, and multiple states have proposed seizing Russia's frozen assets to meet these objectives. However, outright asset seizure presents genuine legal concerns about foreign sovereign immunity and may set a dangerous international precedent. International legal scholars are working to find a way to seize Russian assets in accordance with international law; however, the international community can hold Russia accountable and support the rebuilding of Ukraine using an alternative method: International Court of Justice (ICJ) reparations. Applying the Articles on Responsibility of State for Internationally Wrongful Acts (ARSIWA), the ICJ Statute, and ICJ case law, this Article demonstrates how the ICJ may order Russia to pay upwards of \$300 billion in reparations for its international violations in Ukraine. Furthermore, this Article discusses how the international community would be able to enforce the ICJ's unprecedented reparations judgment against Russia using countermeasures. Enforcement of the ICJ's judgment would not only uphold international law but also serve as a critical safeguard for global security by deterring violations of sovereignty and breaches of the peace.

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I. INTRODUCTION

On February 24, 2022, Russia launched a full-scale land, sea, and air invasion into the Eastern territories of Ukraine, rapidly escalating the pre-existing conflict and further destabilizing the region.¹ Shortly after the invasion, Russian President Vladimir Putin ordered numerous missile strikes on train stations in Ukraine, conducted a siege of the Azovstal steel plant, and overtook additional Ukrainian cities.² In a matter of months, the conflict that first began with the covert invasion of Crimea in 2014 escalated into a full-scale war,³ causing over 40,000 Ukrainian casualties and displacing over fifteen million.⁴ Putin justified the invasion by alleging that Ukrainians were “committing genocide against the ethnic Russians in Ukraine.”⁵ In reality, the attack was driven by geopolitical motives, including a desire to redraw former Soviet Union-era boundaries, regain Soviet Union-type influence, and stymie North Atlantic Treaty Organization (NATO) expansion in the East.⁶

Three years after the invasion, Russian troops have caused billions of dollars in damage, and the war still is not over.⁷ Experts estimate that “more than \$2 *trillion* will be needed to compensate

¹ See *War in Ukraine*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> (Mar. 12, 2025) (noting that the armed conflict in Ukraine has been ongoing since 2014 with Russia’s invasion and annexation of Crimea; the February 2022 invasion was the “largest deployment of Russian troops” since the Cold War, escalating it to a larger, full-scale war between the two countries).

² Matthew Mpoke Bigg, *How Russia’s War in Ukraine Has Unfolded, Month by Month*, N.Y. TIMES (Feb. 24, 2023), <https://www.nytimes.com/article/ukraine-russia-war-timeline.html> (noting the monthly developments of the War in Ukraine from February 2022 to February 2023).

³ This Article primarily focuses on the events since the February 2022 invasion into Ukraine, as it relates to larger-scale destruction in the country; however, Russia’s initial invasion into Ukraine’s Eastern territory in 2014 may also be considered a violation of the U.N. Charter.

⁴ See General Mark A. Milley, Chairman, Joint Chiefs of Staff, Presentation at The Economic Club of New York (Nov. 9, 2022) (discussing the toll that the Russian invasion took on Ukraine after one year of fighting); *War in Ukraine*, *supra* note 1 (noting that, as of three years into the invasion, four million Ukrainians are still internally displaced, 6.8 million have fled Ukraine, and 14.6 million people are in need of assistance).

⁵ See Georgi Gotev, *In Putin’s Words: Why Russia Invaded Ukraine*, EURACTIV (Feb. 24, 2022), <https://www.euractiv.com/section/global-europe/news/in-putins-words-why-russia-invaded-ukraine> (discussing Putin’s goal to “demilitari[ze] and denazif[y]” Ukraine).

⁶ See Ian Hill, *Russia’s Invasion of Ukraine: Why And Why Now?*, LOWY INST. (June 22, 2023), <https://www.lowyinstitute.org/the-interpreter/russia-s-invasion-ukraine-why-why-now> (highlighting the reason for Putin’s invasion of Ukraine as “imperial nostalgia” and “bitter resentment”).

⁷ See *Ukraine War: \$100 Billion in Infrastructure Damage, and Counting*, UN NEWS (Mar. 16, 2022), <https://news.un.org/en/story/2022/03/1114022> (noting the toll on Ukrainian citizens regarding income and business loss, civilian casualties, and overall humanitarian crisis as of one year into the war).

Ukrainians for damage to lives, material goods, and the environment.”⁸ Scholars agree, “[t]he longer the destruction continues, the higher the bill.”⁹

The international community universally agreed that Russia’s invasion of Ukraine violates Ukraine’s sovereignty and the prohibition on the use of force under the U.N. Charter, marking a critical inflection point in global security dynamics.¹⁰ An absolute majority of the U.N. General Assembly¹¹, as well as Group of 7 (G-7) members—the major coalition that includes the United States, Canada, France, Italy, Germany, Japan, and the United Kingdom—have condemned Russia’s unprovoked war of aggression.¹² Furthermore, the International Court of Justice (ICJ) recognized Russia’s aggression as a violation of the prohibition on the use of force and ordered Russia to “immediately suspend the military operations” in Ukraine.¹³

Putin’s resistance to international pressures triggered Western states to impose sweeping sanctions, including freezing¹⁴ billions of dollars in Russian assets in an attempt to economically pressure the Russian government and deter further aggression.¹⁵ The United States, the European

⁸ Walter Clemens, *Calculating What Russia Owes Ukraine*, THE HILL (Aug. 31, 2023), <https://thehill.com/opinion/international/4179848-calculating-what-russia-owes-ukraine> (emphasis added).

⁹ *Id.*

¹⁰ See UN General Assembly Demands Russian Federation Withdraw All Military Forces From the Territory of Ukraine, EUROPEAN UNION EXTERNAL ACTION (Feb. 3, 2022) [hereinafter *UNGA Demands Withdrawal*], www.eeas.europa.eu/eeas/un-general-assembly-demands-russian-federation-withdraw-all-military-forces-territory-ukraine; U.N. Charter art. 2(4); Oona A. Hathaway, *How Russia’s Invasion of Ukraine Tested the International Legal Order*, BROOKINGS INST. (Apr. 3, 2023), www.brookings.edu/articles/how-russias-invasion-of-ukraine-tested-the-international-legal-order (discussing Russia’s clear violation of the U.N. Charter).

¹¹ See *UNGA Demands Withdrawal*, *supra* note 10 (highlighting that 141 members of the U.N. General Assembly voted to condemn Russia’s aggression in Ukraine, five Members voted against the resolution, and forty-one abstained).

¹² See Susan Milligan, *World Leaders Condemn Russia One Year After Ukraine Invasion*, U.S. NEWS & WORLD REP. (Feb. 24, 2023), <https://www.usnews.com/news/national-news/articles/2023-02-24/world-leaders-condemn-russia-one-year-after-ukraine-invasion> (“If we abandon Ukraine, we abandon the U.N. Charter itself.”).

¹³ See generally *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ. Fed’n) Provisional Measures*, 2022 I.C.J. 182 ¶ 18 (Mar. 16) (stating Russia’s actions “raise very serious issues of international law”).

¹⁴ See Jeffery Love, *Why the West Should Tread Cautiously When Using Asset Freezes*, OXPOL (Nov. 15, 2023), <https://blog.politics.ox.ac.uk/why-the-west-should-tread-cautiously-when-using-asset-freezes> (defining asset freezing as a form of targeted economic sanctions which entails holding a state’s assets until a certain condition occurs).

¹⁵ See Milligan, *supra* note 12 (reporting that G-7 leaders have pledged to “counter the negative impacts of the war on the rest of the world”); Michael J. Kelly, et al., *Prosecution of Russian Corporations for War Crime in Ukraine as a Precursor to Seizure of Frozen Corporate Assets in Foreign Jurisdictions*, PUB. INT’L L. & POL’Y GRP. (2024) (stating that around nineteen billion euros of Russian oligarchs’ assets have also been frozen; however, this paper is not focusing on individual asset freezes, but solely frozen state Central Bank assets).

Union (E.U.), Australia, and other G-7 states have frozen nearly \$300 billion¹⁶ in Russian Central Bank assets since the invasion in 2022.¹⁷ Experts estimate that similar amounts, over \$400 billion, will ultimately be required to rebuild Ukraine.¹⁸ Legal scholars emphasize that the Ukrainian government “will need every dollar of those frozen assets to rebuild the country.”¹⁹

International discussions have centered on repurposing frozen Russian assets for Ukraine’s rebuilding efforts.²⁰ While asset freezing is a common international practice designed to pressure international wrongdoers into complying with international law,²¹ outright asset seizure presents significant legal and security challenges and severely disrupts global norms.²² Asset seizure potentially violates customary international law and foreign sovereign immunity.²³ Additionally, outright asset seizure will set a dangerous international precedent, creating an avenue for hostile countries to use it

¹⁶ See Mark R. Ludwikowski, et al., *Legal Challenges of Confiscating Russian Central Bank Assets to Support Ukraine*, REUTERS (Aug. 1, 2024), <https://www.reuters.com/legal/transactional/legal-challenges-confiscating-russian-central-bank-assets-support-ukraine-2024-08-01> (emphasis added) (listing the countries that hold Russian Central Bank assets including the United States (\$4-5 billion), the European Union (E.U.), Australia, and other G-7 states (\$260 billion)). This Article argues that the ICJ can order Russia to pay upwards of \$300 billion in reparations to Ukraine—the \$300 billion figure is based on the amount of frozen Russian assets that can be easily reallocated from the countries holding them to Ukraine upon the conclusion of the war.

¹⁷ See Adrian Karatnycky, *Russian Assets Are Europe’s Trump Card*, FOREIGN POL’Y (Jan. 8, 2025, 6:39 AM), <https://foreignpolicy.com/2025/01/08/russia-frozen-assets-central-bank-currency-reserves-ukraine-europe-trump>; *Frozen Assets Of The Bank Of Russia Due To The War In Ukraine 2022, By Country*, STATISTA (Apr. 11, 2023), www.statista.com/statistics/1298593/frozen-assets-of-bank-of-russia-by-country.

¹⁸ See WORLD BANK GRP., UKRAINE: RAPID DAMAGE AND NEEDS ASSESSMENT 11 (2023), <https://documents1.worldbank.org/curated/en/099184503212328877/pdf/P1801740d1177f03c0ab180057556615497.pdf> (noting that the total amount required for rebuilding Ukraine is “2.6 times the actual GDP of Ukraine in 2022.”).

¹⁹ Kelly, et al., *supra* note 15.

²⁰ See Paul B. Stephan, *Seizing Russian Assets*, 17 CAP. MKTS. L. J. (2022) (highlighting the legal issues that the U.S. would encounter if it seized Russian assets); Love, *supra* note 17.

²¹ See MAHVASH ALERASSOOL, FREEZING ASSETS: THE USA AND THE MOST EFFECTIVE ECONOMIC SANCTION 1 (1993) (noting that asset freezing has been used as a policy instrument in global politics for decades).

²² Despite legal and security concerns, the European Union transferred 1.5 billion euros to Ukraine from its pool of frozen Russian assets in July 2024. The effects of this action have yet to be felt on the global stage. See *First Transfer of €1.5 Billion of Proceeds From Immobilised Russian Assets Made Available in Support of Ukraine Today*, EUROPEAN COMM’N (July 26, 2024), https://neighbourhood-enlargement.ec.europa.eu/news/first-transfer-eu15-billion-proceeds-immobilised-russian-assets-made-available-support-ukraine-today-2024-07-26_en.

²³ Sovereign immunity is when a state is immune from the jurisdiction of the courts of another state; however, this concept only applies in state-state suits domestically, not internationally. For more on the topic of sovereign international immunity, see UN Convention on Jurisdictional Immunities of States and their Property (2004), Art. 21; Menno T. Kamminga, *Confiscating Russia’s Frozen Central Bank Assets: A Permissible Third-Party Countermeasure?*, 70 NETH. INT’L L. REV. 1, 5 (2023) (explaining that central banks are considered “organs of the state,” and therefore, enjoy sovereign immunity from state courts’ jurisdictions in state-state disputes); Oona Hathaway, et al., *War Reparations: The Case for Countermeasures*, 76 STAN. L. REV. (2023) (noting that “[r]espect for sovereign immunity has given many states pause when considering possible asset seizures).

as a weapon of coercion in unjustified situations.²⁴ Seizing Russian assets may start a domino effect into a financial cold war that would result in detrimental market and geopolitical effects.²⁵ With these international legal and policy barriers in mind,²⁶ this Article proposes an alternative solution that balances international accountability with national security concerns.

The ICJ has the authority to order reparations for international law violations under its founding Statute.²⁷ Still, many discount the ICJ as a viable body to source funds to rebuild Ukraine due to its historically limited docket,²⁸ its lack of enforcement power,²⁹ and its unwillingness to order reparations required to restore the injured state to its *status quo ante*.³⁰ Skeptics could argue that Ukraine's case at the ICJ would result in either an unenforceable reparations judgment, which would fail to hold Russia accountable, or an insufficient reparations amount, which would fail to provide adequate reconstruction assistance to Ukraine. Addressing these critiques, this Article argues that the

²⁴ See Laura Dubois & Sam Fleming, *The Legal Case for Seizing Russia's Assets*, FIN. TIMES (Dec. 20, 2023), www.ft.com/content/adb09fd6-e5f7-4099-9994-806814b4c9b4 (“Confiscating Russian assets would . . . suggest[] to countries such as China or Saudi Arabia that sovereign assets stowed in euros or dollars might not always be safe.”).

²⁵ See *Russia Warns the West: We Will Be Very Tough If You ‘Steal’ Our Assets*, REUTERS (Feb. 13, 2024 3:29 AM), <https://www.reuters.com/world/europe/russia-warns-west-we-will-be-very-tough-if-you-steal-our-assets-2024-02-13> (highlighting Russia's position on its asset seizure that, if the United States and European Union seize Russian assets, Russia will seize United States and European Union assets in return).

²⁶ For more on the asset seizure discussion, see Hathway, et al., *supra* note 23; WORLD REFUGEE & MIGRATION COUNCIL, *FROZEN RUSSIAN ASSETS AND THE RECONSTRUCTION OF UKRAINE: LEGAL OPTIONS* (2022), <https://wrmcouncil.org/wp-content/uploads/2022/07/Frozen-Russian-Assets-Ukraine-Legal-Options-Report-WRMC-July2022.pdf>; Stephan, *supra* note 20; LAURENCE H. TRIBE, ET AL., *THE LEGAL PRACTICAL AND MORAL CASE FOR TRANSFERRING RUSSIAN SOVEREIGN ASSETS TO UKRAINE*, RENEW DEMOCRACY INITIATIVE (2023), <https://rdi.org/wp-content/uploads/2023/09/2023.09.17-MPP-Report.pdf>.

²⁷ See United Nations, Statute of the International Court of Justice, art. 36 (noting that the Court can decide the “nature and extent of the reparation to be made”).

²⁸ See Yusra Suedi, *Self-Determination in Territorial Disputes Before the International Court of Justice: From Rhetoric to Reality?*, 36 LEIDEN J. INT'L L. 161 (2022) (highlighting the ICJ's role over the years in resolving territorial disputes).

²⁹ See Mariano-Florentino Cuéllar & Oona Hathaway, *The International Court of Justice's Balancing Act*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 26, 2024), <https://carnegieendowment.org/posts/2024/01/the-international-court-of-justices-balancing-act?lang=en> (highlighting that the ICJ's orders may be ignored due to its typical lack of enforcement capacity).

³⁰ *Status quo ante* is a Latin phrase that means “the previously existing state of affairs.” See Janet H. Anderson, *The Ups and Downs of a Historic Ruling on Reparations*, JUSTICEINFO.NET (Feb. 14, 2022), www.justiceinfo.net/en/87514-ups-and-downs-historic-ruling-on-reparations.html (discussing the ICJ's \$325 million reparations order after the Democratic Republic of the Congo (DRC) requested eleven billion); see also *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment (Compensation), 2022 I.C.J. 13 (Feb. 9). See generally *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicar.)*, Judgment (Compensation), 2018 I.C.J. 15 (Feb. 2) (awarding Costa Rica only 5% of its original claim).

ICJ can order reparations amounting to upwards of \$300 billion—the amount of Russian frozen assets—thereby providing a legal basis for Russian accountability and Ukrainian reconstruction.³¹ This Article will explore a strategic path forward that respects both international accountability and national security concerns.

Section II of this Article examines the legal foundation for reparations, including U.N. Charter Article 2's principle of sovereignty and prohibition on the use of force, the ARSIWA's establishment of state responsibility for unlawful aggression, and the application of countermeasures in maintaining global security. It also explores the ICJ's jurisdiction, enforcement mechanisms, and past ICJ reparations cases. Section III analyzes Russia's violations of international law, compares it to past ICJ cases, and explains why the ICJ is uniquely positioned to order its largest-ever reparations amount against Russia. It also explores the role of third-party countermeasures, including asset freezing, in enforcing an ICJ judgment against Russia. Section IV proposes a four-step strategy for Ukraine to secure reparations through ICJ proceedings, third-party enforcement through countermeasures, and frozen Russian assets, reinforcing the principle that wrongdoers face significant consequences for egregious breaches of state sovereignty.

II. BACKGROUND

There are numerous avenues in international law through which wrongdoers can be held accountable. The U.N. Charter establishes legal obligations and core international principles that all Member states must adhere to.³² The ARSIWA further codifies the obligation of states to comply with international law, outlining the legal consequences that follow a violation of the U.N. Charter and other international principles.³³ The ICJ plays a pivotal role in adjudicating international disputes

³¹ See *supra* note 16 and accompanying text.

³² See *Member States*, UNITED NATIONS, [un.org/en/about-us/member-states](https://www.un.org/en/about-us/member-states) (last visited Mar. 26, 2025) (listing the 193 Member States). See generally U.N. Charter art. 1 (discussing the purposes of the United Nations including to comply with the principles of international law and to settle international disputes following a breach of the peace).

³³ See G.A. Res. 56/83, Responsibility of States for Internationally Wrongful Acts (Dec. 12, 2001) [hereinafter ARSIWA].

and determining the legal consequences of state violations, often requiring states to pay reparations.³⁴ To understand the legal obligations of states in this context, this Article begins with an examination of the U.N. Charter's foundational principles—state sovereignty and the prohibition on the use of force.

A. U.N. Charter Article 2(4) on the Principles of Sovereignty and the Prohibition of the Use of Force

The U.N. Charter was adopted following the conclusion of World War II to establish a framework for maintaining international peace and security, resolving conflicts through peaceful means, and preventing threats to peace.³⁵ Article 2(4) of the Charter imposes a clear and binding obligation on all U.N. Member states to refrain from the “threat or use of force against the territorial integrity or political independence (sovereignty) of any state, . . . inconsistent with the Purposes of the United Nations.”³⁶ This provision enshrines the principle of non-aggression and reinforces the inviolability of state sovereignty, both of which are crucial to upholding the stability of the international order.

The prohibition of the use of force is not absolute. It allows for exceptions, most notably the right to self-defense, which is recognized in both the U.N. Charter and customary international law.³⁷ The use of force in self-defense, however, must meet the requirements of necessity and proportionality, ensuring that the response is necessary and appropriate to the threat posed to the state.³⁸ Furthermore, the principle of anticipatory self-defense allows states to take preemptive action

³⁴ See United Nations, Statute of the International Court of Justice, art. 36, ¶ 2(d) (Apr. 18, 1946) (The ICJ determines “the nature or extent of the reparation to be made for the breach of an international obligation.”).

³⁵ See U.N. Charter art. 1, ¶ 1 (noting the purposes of the U.N.).

³⁶ *Id.* art. 2, ¶ 4.

³⁷ See *id.* art. 51 (limiting the right to self-defense “until the Security Council has taken measures necessary to maintain international peace and security”).

³⁸ See *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 I.C.J. 14, 94 (June 27); David Kretzmer, *The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum*, 24 EUR. J. INT'L L. 235, 239 (2013) (asserting that customary international law recognizes the principles of necessity and proportionality).

“when an armed attack is imminent and inevitable.”³⁹ Prior to resorting to the use of force for collective or individual self-defense, however, a U.N. Member state must take necessary measures to maintain international peace and security.⁴⁰ U.N. Member states are required to exhaust all peaceful means to resolve disputes before resorting to force, underscoring the importance of diplomacy in preserving global stability.⁴¹

Violating this prohibition carries significant legal consequences, not only in international law but also global security. To address the legal ramifications of violating the U.N. Charter and other international norms, the U.N. International Law Commission (ILC) drafted the ARSIWA.⁴² The ARSIWA provides a framework for holding states accountable for wrongful acts and outlines the legal consequences that follow such violations, reinforcing the mechanisms of international law designed to safeguard peace and security.⁴³

B. Articles on Responsibility of States for Internationally Wrongful Acts

The ARSIWA was adopted in 2001 by the U.N. ILC⁴⁴ to codify state responsibility for violations of international law.⁴⁵ While the ARSIWA has not been formally concluded by the U.N. General Assembly in a treaty, “it maintains a status as ILC text approved *ad referendum* by the General

³⁹ *Use of Force Under International Law*, JUSTIA, www.justia.com/international-law/use-of-force-under-international-law (last visited Mar. 26, 2025).

⁴⁰ *See generally* U.N. Charter arts. 1, 51 (emphasizing that the primary goal of the U.N. Charter is to maintain international peace and security; states must immediately report the use of force for purposes of self-defense to the Security Council).

⁴¹ *See id.* art. 1, ¶ 1.

⁴² *See* Int’l L. Comm’n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, U.N. Doc. A/56/10 (2001) [hereinafter Draft Articles] (discussing the purpose for and goal of the ARSIWA). The Draft Articles provide general commentary on the provisions of the ARSIWA.

⁴³ *See* ARSIWA, *supra* note 33.

⁴⁴ The U.N. General Assembly established the ILC in 1947 to develop and codify international law.

⁴⁵ *See* Draft Articles, *supra* note 42 at 1.

Assembly.”⁴⁶ Furthermore, it is widely regarded as binding under customary international law due to its widespread adoption and consistent state practice (*opinio juris*).⁴⁷

Article 1 of the ARSIWA codifies international responsibility for states that breach their obligations under international law.⁴⁸ Legal consequences for international law violations are outlined in Article 28, while Article 31 specifically requires the responsible state to make *full reparation* for its violations.⁴⁹ Recognizing that the legal process of holding states accountable may not always be immediately feasible, the ARSIWA allows for the use of both preliminary measures and countermeasures.⁵⁰ Countermeasures are state actions that would ordinarily be considered violations of international law but are temporarily permitted as a means of pressuring a violating state into compliance with its legal obligations to maintain global security.⁵¹ Countermeasures must be temporary,⁵² terminating once the state comes back into compliance with international law, proportionate,⁵³ taking into account the “gravity” of the wrongful act, and compliant with certain legal obligations, protecting human rights and humanitarian principles.⁵⁴

The ARSIWA permits states that are not directly injured by wrongful acts to impose countermeasures, provided that the obligation breached is “owed to the international community as a whole.”⁵⁵ This provision underscores the collective nature of state responsibility, particularly in cases

⁴⁶ See James Crawford, *Articles on Responsibility of States for Internationally Wrongful Acts: Introductory Note*, AUDIOVISUAL LIBR. OF INT’L L. (2012) <https://legal.un.org/avl/ha/rsiwa/rsiwa.html>. James Crawford was one of the drafters of the ARSIWA.

⁴⁷ See *id.* (noting that customary international law requires consistent state practice and *opinio juris*, a perceived legal obligation).

⁴⁸ See ARSIWA, *supra* note 33, art. 1.

⁴⁹ See *id.* arts. 28, 31 (listing legal consequences for international violations, notably the payment of reparations).

⁵⁰ See *id.* arts. 48, 49 (noting that the invocation of responsibility by a State other than an injured State is permitted).

⁵¹ See Hathaway, et al., *supra* note 23, at 1017 (“Countermeasures, including asset freezes, by definition may only be taken ‘against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations.’”) (quoting Int’l L. Comm’n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, U.N. Doc. A/56/10, art. 49(1) (2001)).

⁵² See ARSIWA, *supra* note 33, art. 49 (noting that countermeasures are “limited” and only permitted for the amount of time needed to induce the responsible State to comply).

⁵³ See *id.* art. 51.

⁵⁴ See *id.* art. 50 (noting countermeasures should not interfere with a state’s other obligations under international law).

⁵⁵ ARSIWA, *supra* note 33, art. 48, ¶ 1.

involving international peace and security, where a violation by one state threatens the stability and security of the global order. Third-party states may apply countermeasures to seek the cessation of the internationally wrongful act, assurance of non-repetition, and performance of reparation.⁵⁶ In this context, the ARSIWA's provisions are often enforced by the ICJ, which plays a critical role in maintaining the balance between legal accountability and the protection of national and international security.⁵⁷

C. *The International Court of Justice*

The ICJ was established by the U.N. Charter in 1945 as the international community's judicial organ and legal enforcement body.⁵⁸ It is responsible for adjudicating questions of international law—advisory cases—as well as violations of international law—contentious cases.⁵⁹ The ICJ is also authorized to order reparations as a legal consequence for violating international law.⁶⁰

All states that are members of the U.N. may initiate a case at the ICJ.⁶¹ However, ICJ jurisdiction is not compulsory;⁶² rather, jurisdiction is granted through consent from the parties involved, either through special agreement or treaty provision.⁶³ Consent through special agreement provides the ICJ jurisdiction to hear all cases that the parties refer to it.⁶⁴ States may also provide for ICJ jurisdiction in the treaties and conventions they are party to.⁶⁵ In disputes over jurisdiction, the

⁵⁶ See *id.* ¶ 2.

⁵⁷ See generally Crawford, *supra* note 46 (discussing the approval and application of the ARSIWA at the ICJ).

⁵⁸ See *The Court*, INT'L CT. OF JUST., <https://www.icj-cij.org> (last visited Mar. 26, 2025); United Nations, *supra* note 34, art. 1.

⁵⁹ See United Nations, *supra* note 34, art. 36(2); *The Court*, *supra* note 58 (describing the ICJ's role, composition, and jurisdictional constraints).

⁶⁰ See United Nations, *supra* note 34, art. 36(2)(d).

⁶¹ See *id.* art. 35. See *States Entitled to Appear Before the ICJ*, INT'L CT. OF JUST., <https://www.icj-cij.org/states-entitled-to-appear> (last visited Mar. 26, 2025) (stating that “Members of the U.N. are *ipso facto* parties to the Statute”; Russia is a member of the U.N.).

⁶² Meaning it is not compelled by law or mandatory. See Cuellar & Hathaway, *supra* note 29 (noting “not all disputes can be submitted to the ICJ”; certain jurisdictional requirements must be met).

⁶³ *Id.*; United Nations, Statute of the International Court of Justice, art. 36.

⁶⁴ See United Nations, *supra* note 34, art. 36(1).

⁶⁵ See *id.* Any state may provide for ICJ jurisdiction over disputes in bilateral or multilateral treaties. See *Treaties*, INT'L CT. OF JUST., <https://www.icj-cij.org/treaties> (last visited Mar. 26, 2025) (noting the treaties that account for ICJ jurisdiction).

ICJ itself is responsible for settling the issue.⁶⁶ Upon hearing arguments from the parties, the Court assesses whether the parties have provided consent through a valid special agreement or treaty provision, and if so, proceeds with the merits of the case.

In the past, states have disregarded the ICJ for three primary reasons: its limited docket,⁶⁷ its lack of enforcement power,⁶⁸ and its perceived unwillingness to order reparations necessary to restore a victim state to its *status quo ante*.⁶⁹ However, concerns over the ICJ's docket, enforcement capabilities, and sufficient awards can be mitigated due to its growing docket, third-party countermeasures, and the unprecedented nature of current international law violations.

First, the ICJ's "heavy workload and ever-growing docket show[s] that the ICJ is as strong, reliable, and necessary as ever."⁷⁰ While the ICJ's docket has traditionally consisted of border disputes,⁷¹ states are now, at an unprecedented rate, calling on the ICJ to intervene in cases concerning grave international law violations, specifically in some of the world's largest ongoing conflicts.⁷² This growing dependence on the ICJ and states' increasing submission of contentious cases to the Court suggests a promising future for an expanding docket—strengthening the Court's credibility and legitimacy.

Second, there are various mechanisms that states can utilize to enforce ICJ decisions. Article 94 of the U.N. Charter obligates all Members "to comply with the decision of the International Court

⁶⁶ See *Statute of the International Court of Justice*, art. 36(6) (listing the Court's jurisdiction which includes its role in settling jurisdictional disputes).

⁶⁷ See Suedi, *supra* note 28 (highlighting the ICJ's role through the years in resolving territorial disputes).

⁶⁸ See Cuéllar & Hathaway, *supra* note 29 (noting that the ICJ lacks true enforcement powers).

⁶⁹ See Anderson, *supra* note 30.

⁷⁰ Juan Manuel Gómez-Robledo Verduzco, *The International Court of Justice: A Bright Light in Dark Times*, JUST SEC. (Oct. 24, 2022), <https://www.justsecurity.org/83723/the-international-court-of-justice-a-bright-light-in-dark-times>.

⁷¹ See Suedi, *supra* note 28.

⁷² See Verduzco, *supra* note 70; see also *International Court of Justice Preliminary Decision in Ukraine v. Russia*, EUROPEAN PARLIAMENT (Mar. 2022), [https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729350/EPRS_ATA\(2022\)729350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729350/EPRS_ATA(2022)729350_EN.pdf); Mike Corder & Raf Casert, *Top UN Court Orders Israel to Prevent Genocide in Gaza But Stops Short of Ordering Cease-fire*, AP NEWS (Jan. 26, 2024), apnews.com/article/israel-gaza-genocide-court-south-africa-27cf84e16082cde798395a95e9143c06.

of Justice in any case to which it is a party.”⁷³ If a state fails to comply with an ICJ judgment, the victim state can impose countermeasures under Article 49 of the ARSIWA.⁷⁴ Further, a state can call on the U.N. Security Council to enforce ICJ judgments through its Chapter VII powers.⁷⁵ However, any Member of the Security Council can veto the measures used to enforce an ICJ decision, even members who are party to the ICJ case at hand.⁷⁶ When a measure is stalled by the U.N. Security Council, the General Assembly can vote by a two-thirds majority to recommend that the state comply with the judgment under Article 10 of the U.N. Charter.⁷⁷ The General Assembly can then recommend Member states impose additional measures to compel compliance with the judgment, including third-party countermeasures under Article 48 of the ARSIWA.⁷⁸ Utilizing this system, “only a minority of [ICJ] judgments have not been implemented at all.”⁷⁹ The reasons for the ICJ’s past unwillingness to order reparations sufficient to restore the victim state to its *status quo ante* will be discussed in greater detail below.

D. Responsibility to Pay Reparations

Many states agree that reparation payments for international violations are a matter of customary international law.⁸⁰ This requirement is also mandated by the ARSIWA and the ICJ Statute, which have been utilized in past situations to require a violating state to pay full reparations to a victim

⁷³ U.N. Charter art. 94, ¶ 2. Articles 92–96 of the U.N. Charter pertain to the ICJ. Article 94 specifically notes the requirements to comply with judgments and measures that can be applied to “give effect to the judgment.” *Id.*

⁷⁴ See ARSIWA, *supra* note 33, art. 49; Irène Couzigou, *Enforcement of U.N. Security Council Resolutions and of ICJ Judgments: The Unreliability of Political Enforcement Mechanisms*, in THE ENFORCEMENT OF E.U. LAW AND VALUES: ENSURING MEMBER STATES’ COMPLIANCE 363, 374 (András Jakab & Dimitry Kochenov, eds., 2017) (“The successful litigant may . . . seize the assets of the unsuccessful litigant under its control . . . to persuade it to comply with the ICJ judgment.”).

⁷⁵ See U.N. Charter art 94, ¶ 2 (providing that Chapter VII powers allows the Security Council to “determine the existence of any threat to the peace . . . or act of aggression and shall make recommendations . . . to maintain or restore international peace and security” under Article 39).

⁷⁶ See Couzigou, *supra* note 74.

⁷⁷ See U.N. Charter, art. 10 (discussing the functions and power of the General Assembly); Couzigou, *supra* note 74.

⁷⁸ See ARSIWA, *supra* note 33, art. 48; Couzigou, *supra* note 74.

⁷⁹ Couzigou, *supra* note 74.

⁸⁰ See Rivera Rios Julio, *Reparation*, JUSMUNDI, <https://jusmundi.com/en/document/publication/en-reparation> (Oct. 7, 2024).

state for the resulting injuries.⁸¹ Paying reparations is fundamental not only for justice but also for maintaining international order and security, as it serves to restore international stability and deter future violations.

1. Under the ARSIWA

Article 1 of the ARSIWA holds that states must be held responsible for every internationally wrongful act.⁸² The ARSIWA requires states to pay reparations for any injury caused as a result of its international law violations.⁸³ The ARSIWA drafters emphasized in the Draft Articles on Responsibility of States for Internationally Wrongful Acts (Draft Articles), general commentaries to complement the reading of the ARSIWA, that the obligation to pay reparations is not necessarily the right owed to an injured state. Rather, it is the obligation that the responsible state owes upon breaching international law.⁸⁴

Under Article 34 of the ARSIWA, reparations can take the form of restitution, compensation, satisfaction, or any combination of the three.⁸⁵ Restitution requires “reestablishing the situation which existed before the wrongful act was committed.”⁸⁶ Restitution could take the form of returned property or persons. When restitution is impracticable or insufficient, like in the case of destroyed or damaged property, financial compensation is provided as payment for “any financially accessible damages, including the loss of profits insofar as it is established” before the ICJ.⁸⁷ The Draft Articles clarify that compensation is meant to “address the actual losses incurred as a result of the internationally wrongful act,” as opposed to any future or potential losses.⁸⁸ Where neither restitution

⁸¹ See ARSIWA, *supra* note 33, art. 31 (emphasizing the requirement to make full reparation for internationally wrongful acts); *Statute of the International Court of Justice*, art. 36 (highlighting that the Court can decide the “nature and extent of the reparation to be made”).

⁸² See ARSIWA, *supra* note 33, art. 1.

⁸³ See *id.* art. 31.

⁸⁴ See Draft Articles, *supra* note 42, art. 31(4).

⁸⁵ See ARSIWA, *supra* note 33, art. 34.

⁸⁶ Draft Articles, *supra* note 42, art. 35.

⁸⁷ *Id.* art. 36.

⁸⁸ See *id.* art. 36(4).

nor compensation is a sufficient remedy, satisfaction may be ordered.⁸⁹ Satisfaction consists of “an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality.”⁹⁰

The ARSIWA requires several elements to be met before reparations can be ordered. States must provide sufficient evidence of actual injury,⁹¹ causation linking the injury to the state,⁹² and feasibility of payment.⁹³ These elements are also utilized by the ICJ and applied in the cases below. First, a state must provide sufficient evidence of actual loss and injury.⁹⁴ The ARSIWA states that the obligation to pay reparations extends only to the amount of the injury caused directly by the wrongful act.⁹⁵ Injury includes both material damage, such as to property, as well as moral damage, such as individual pain and suffering caused by the act.⁹⁶

Second, the ARSIWA requires a state to show a causal link between the victim state’s injury and the violating state’s international contravention.⁹⁷ The ARSIWA limits the injury to the specific harm “resulting from and ascribable to the wrongful act,” as opposed to “any and all consequences flowing from an internationally wrongful act.”⁹⁸ Causation under this framework may be evidenced if “state organs deliberately caused the harm in question.”⁹⁹ Put simply, a causal link is present when an actual injury is caused due to a state’s wrongful acts.¹⁰⁰

⁸⁹ *See id.* art. 37.

⁹⁰ *Id.*

⁹¹ *See* ARSIWA, *supra* note 33, art. 31.

⁹² *See* Draft Articles, *supra* note 42, art. 31(9).

⁹³ *See* ARSIWA, *supra* note 33, art. 35.

⁹⁴ *See id.* art. 31.

⁹⁵ *See* Draft Articles, *supra* note 42, art. 31(5).

⁹⁶ *See id.*

⁹⁷ *See* ARWISA, *supra* note 33, art. 31; *see* Draft Articles, *supra* note 42, art. 31(9).

⁹⁸ *Id.*

⁹⁹ *Id.* art. 31(10).

¹⁰⁰ *See generally id.* (providing legal analysis on the causation between injury and wrongful acts).

Finally, the ARSIWA limits reparations to an amount that is feasible for the violating state to pay. Restitution, which is meant to restore the victim state to its *status quo ante*,¹⁰¹ is thus limited to cases where the payment is neither materially impossible nor out of proportion to the benefit derived.¹⁰² When restitution is disproportionate to the harm incurred, like in instances when it is impracticable or insufficient, financial compensation is then ordered to cover “any financially accessible damage including loss of profits.”¹⁰³ Compensation is not meant to be punitive but is intended to offset the damage incurred by the victim state.¹⁰⁴ If a state’s injury can be remedied by restitution or compensation, satisfaction is infrequently sought.¹⁰⁵

2. Under the ICJ Statute

The ARSIWA’s principles of reparation largely originate from the Permanent Court of International Justice (PCIJ) and the ICJ.¹⁰⁶ The PCIJ first discussed the concept of reparations in 1927 in its *Factory at Chorzów* case¹⁰⁷, where it held that it is “a principle of international law that the breach of an engagement involves an obligation to make reparations in an adequate form.”¹⁰⁸ The PCIJ’s opinion in *Factory at Chorzów* remains one of the most cited principles on the payment of reparations

¹⁰¹ See *id.* art. 35(2) (noting that one definition of restitution is “reestablishing the *status quo ante*, i.e. the situation that existed prior to the occurrence of the wrongful act.”).

¹⁰² See ARSIWA, *supra* note 33, art. 35. Material impossibility may be determined if the thing to be restored no longer exists, for example.

¹⁰³ See Draft Articles, *supra* note 42, art. 35(3) (noting that tribunals would consider financial compensation only after concluding the restitution cannot be affected); *id.* art. 36(1) (noting that ARWISA article 36(2) develops such requirement for compensation when restitution cannot make good on the damages).

¹⁰⁴ See *id.* art. 36(4) (“[T]he function of Article 36 is purely compensatory . . .”). A more in-depth discussion of the feasibility element is discussed in ICJ precedent below.

¹⁰⁵ See *id.* art. 37(1) (noting that satisfaction is “rather exceptional” and is only required when restitution and reparation do not offer total reparation).

¹⁰⁶ United Nations, *History*, INT’L CT. OF JUST., <https://www.icj-cij.org/history> (last visited Feb. 3, 2025). The Permanent Court of International Justice (PCIJ) is the ICJ’s predecessor court.

¹⁰⁷ For more on the facts and holding in *Factory at Chorzów*, see Felix E. Torres, *Revisiting the Chorzów Factory Standard of Reparation—Its Relevance in Contemporary International Law and Practice*, NORDIC J. INT’L L. 190, 193–94 (2021).

¹⁰⁸ *Factory at Chorzów* (Ger. v. Pol.), Judgment (Merits), 1928 P.C.I.J. (Ser. A) No. 17, at 29 (Sept. 13).

and provides the ICJ with precedent to order reparations as a natural consequence of international law violations.¹⁰⁹ The ICJ developed this principle over time, applying it on several occasions.¹¹⁰

The ICJ often issues limited reparations orders due to a lack of evidence of actual injury, lack of causation between the breaching state's actions and the victim state's injury, or a state's inability to pay a greater sum (feasibility).¹¹¹ Failure to order sufficient reparations, however, can have serious implications for global security, as unresolved grievances may lead to further conflicts and destabilize the region, potentially impacting other states. The three required elements of reparations present in both ICJ jurisprudence and the ARSIWA—evidence of injury, causation, and feasibility—will be discussed further in the four case analyses below.

E. *The ICJ's Past Reparations Cases*

In the century following *Factory at Chorzów*, the ICJ significantly developed its reparations jurisprudence. The cases below illustrate the evolution of ICJ reparations cases, focusing on core principles like evidence of injury, causation, and feasibility. These cases include the seminal *Corfu Channel* (1949) case, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (2007) (the *Genocide Case*), and two of the ICJ's most recent reparations decisions, *Certain Activities Carried Out by Nicaragua in the Border Area* (2018) (*Certain Activities*) and *Armed Activities on the Territory of the Congo* (2022) (*Armed Activities*). Together, these reparation cases highlight the ICJ's evolving approach to reparations and its careful consideration of each element that justifies its awards.

¹⁰⁹ See generally Yang Liu, *Compensation in the Jurisprudence of the International Court of Justice: Towards an Equitable Approach*, 15 OXFORD J. INT'L DISP. SETTLEMENT 73, 74-75 (2024) (emphasizing that while Article 36 of the ARSIWA provides a basis for reparations in international law, cases such as *Factory at Chorzów*, one of “the most-cited pronouncements of compensation,” guide the ICJ’s jurisprudence on the application of reparations as a natural consequence for international law violations).

¹¹⁰ See Draft Articles, *supra* note 42, art. 1(2).

¹¹¹ See Anderson, *supra* note 30.

1. *Corfu Channel (1949)*

The *Corfu Channel* case was the ICJ's first reparations decision, establishing core principles that continue to influence its jurisprudence.¹¹² Following the conclusion of World War II, the United Kingdom (U.K.) brought a case to the ICJ after its warships were damaged and several crew members died when an undetonated minefield left in Albania's Corfu Channel exploded.¹¹³ Albania denied responsibility for the explosion, arguing that it did not plant the minefield and that no sufficient proof existed to link Albania to the U.K.'s subsequent damage.¹¹⁴ The ICJ, however, held that even if Albania did not place the mines themselves, it should have known they were on its sovereign territory.¹¹⁵ The Court held that the laying of the minefield "could not have been accomplished without the knowledge of the Albanian Government," therefore, Albania was obligated under international law to notify those passing through the Corfu Channel of its existence.¹¹⁶ Because "nothing was attempted by the Albanian authorities to prevent the disaster" that occurred in its own waterways, the Court found a sufficient causal link and held it liable for the damage.¹¹⁷

The ICJ ordered Albania to pay restitution and compensation totaling approximately £844,000 in 1949, which equates to £37 million, or \$46.6 million, today.¹¹⁸ This compensation covered both the value of the U.K.'s ships and other personnel-related losses.¹¹⁹ Specifically, the ICJ ordered Albania to compensate the U.K. for "the cost of pensions and other grants made by it to victims or their dependents and for costs of administration, medical treatment, etc."¹²⁰

¹¹² See *Corfu Channel (U. K. v. Alb.)*, Judgment (Compensation), 1949 I.C.J. 244 (Dec. 15).

¹¹³ See *id.* at 245.

¹¹⁴ *Corfu Channel (U.K. v. Alb.)*, Judgment (Merits), 1949 I.C.J. 4, 11 (Apr. 9).

¹¹⁵ See *id.* at 22.

¹¹⁶ See *id.*

¹¹⁷ See *id.* at 23.

¹¹⁸ See *Corfu Channel*, Judgment (Compensation), 1949 I.C.J. at 250; Ian Webster, *Currency Conversion*, OFF. DATA FOUND., <https://www.in2013dollars.com/uk/inflation/1949> (Feb. 12, 2025).

¹¹⁹ *Corfu Channel*, Judgment (Compensation), 1949 I.C.J. at 250

¹²⁰ See *id.* at 249.

While the case was groundbreaking for establishing reparations as a legal remedy, it also underscored the Court's focus on causation—even when a state's direct action (such as Albania personally placing the mines in the Channel) could not be proven.¹²¹ However, even when the act and the injury are assumedly attenuated, like in Albania's case, the causation element is not always satisfied in cases before the ICJ. In the 1993 *Genocide Case*, the Court took a different approach because Bosnia was unable to demonstrate sufficient causation for reparations despite evidence of genocide during the Bosnian War.¹²²

2. The *Genocide Case* (2007)

Bosnia and Herzegovina initiated the *Genocide Case* in 1993, alleging that the Federal Republic of Yugoslavia (Yugoslavia) was responsible for committing genocide in Srebrenica during the Bosnian War (1992-1995).¹²³ While the ICJ found that the killing of Bosnian Muslims at Srebrenica amounted to genocide, it concluded that Bosnia failed to establish a direct causal link between its injury and the Yugoslav state's actions.¹²⁴ The Court emphasized that Bosnia had not proven that the genocide at Srebrenica could have been avoided if the *state* attempted to prevent it.¹²⁵ Although the Court conceded that the Army of the Republic of Srpska, the perpetrator of the genocide, was acting with the aid and assistance of the Yugoslav state for the general purposes of the war, it could not find beyond a reasonable doubt that the state both knew that the genocide was about to occur as well as shared in the specific intent to commit genocide, or “destroy, in whole or in part, a human group.”¹²⁶ Rather, the Court held that the genocide was orchestrated largely by armed Serbian militants, the Army of the Republic of Srpska, who the state was unable to control. Thus, the ICJ could not hold

¹²¹ *Corfu Channel*, Judgment (Merits), 1949 I.C.J. at 22.

¹²² *See* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment (Compensation), 2007 I.C.J. 47, 218 (Feb. 26).

¹²³ *See id.*

¹²⁴ *See id.* at 421–22 (discussing the court's test for causation as well as its application to the facts of this case).

¹²⁵ *See id.* at 234.

¹²⁶ *See id.* at 218, 422 (finding that the Yugoslav state did not know either that the genocide was about to take place nor share in the specific intent of genocide).

Yugoslavia directly responsible for the genocide under the Genocide Convention¹²⁷ and declined to order the state to pay reparations.¹²⁸

In contrast to the *Corfu Channel* case, where the harm was directly linked to the state's action for failing to secure its own waterways, the harm in the *Genocide Case* was perpetrated by Serbian militants. Resultantly, the ICJ held that the harm was not caused nor could have been prevented by Yugoslavia's actions alone.¹²⁹ Thus, rather than ordering Yugoslavia to provide restitution or compensation, the ICJ deemed that satisfaction in the form of "assurances and guarantees of non-repetition" was sufficient.¹³⁰ The Court further required Yugoslavia to uphold its international obligation under the Convention on the Prevention and Punishment of Genocide¹³¹—to punish individuals responsible for acts of genocide—relying on the findings of individual criminal responsibility adjudicated at the International Criminal Tribunal for the former Yugoslavia (ICTY).¹³²

While the ICJ acknowledged the atrocity of the Srebrenica massacre, it ultimately found that Bosnia had not proven Serbia's complicity in the genocide to the standard required for reparations. This ruling underscores the ICJ's rigorous approach to causation, particularly in cases where the link between *state* action and harm is less attenuated. However, in contrast to the *Genocide Case*, two of the ICJ's more recent reparations decisions involved cases where the victim states successfully demonstrated both injury and causation. In these instances, the violations committed by the

¹²⁷ See Torres, *supra* note 107.

¹²⁸ Genocide Case, 2007 I.C.J. 47, 239.

¹²⁹ See *id.*; Corfu Channel (U.K. v. Alb.), Judgment (Merits), 1949 I.C.J. 4, 22 (Apr. 9).

¹³⁰ See Genocide Case, 2007 I.C.J. at 235.

¹³¹ Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260A (III), art. I, U.N. Doc. A/RES/260 (Dec. 9, 1948).

¹³² See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, 234–35, 238–39 (Feb. 26) (requiring Serbia and Montenegro to "transfer individuals accused of genocide, or any other act prohibited by the Convention to the [International Criminal Tribunal for the former Yugoslavia (ICTY)] and to fully co-operate with this Tribunal"). The ICTY operated from 1993 to 2007; it indicted over 160 people and convicted 92. For more information on this Tribunal, see generally Lina Strupinskiene, *Life After Conviction at the International Criminal Tribunal for the former Yugoslavia: Mapping the Empirical Reality*, 21 J. INT'L CRIM. JUST. 113 (2023) (discussing the purpose of the ICTY to prosecute core international crimes of the Balkan war in the 1990s and analyzing the cases of the over 160 persons subsequently charged).

defendant states met the three required elements for reparations, prompting the ICJ to order varying amounts of compensation to the victim states.

3. *Certain Activities (2018)*

In 2010, Costa Rica initiated proceedings at the ICJ against the Republic of Nicaragua.¹³³ Costa Rica alleged that Nicaragua, in breaching Costa Rica's territorial integrity, violated the U.N. Charter's Article 2(4) principle on sovereignty and the prohibition on the threat or use of force.¹³⁴ Specifically, Costa Rica claimed that Nicaragua occupied its territory while constructing a canal from the San Juan River to Laguna los Potrillos.¹³⁵ Costa Rica presented evidence that the dredging had serious effects on the water flow to one of Costa Rica's main rivers, which damaged Costa Rica's wetlands and protected areas.¹³⁶ Costa Rica requested that the Nicaraguans cease construction and withdraw from its territory.¹³⁷

Upon determining that Nicaragua violated international law, the ICJ assessed the evidence of injury and causation to determine appropriate reparations, finding both sufficient evidence of damage and an adequate causal link.¹³⁸ In 2018, the Court ordered Nicaragua to pay compensation, particularly for the cost of restoring the contested area as well as costs and expenses that occurred as a result of Nicaragua's activities, such as the cost of fuel and maintenance services for the affected area.¹³⁹ The

¹³³ *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicar.)*, Judgment (Merits), 2015 I.C.J. 665, 673, ¶ 1 (Dec. 16).

¹³⁴ *See Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicar.)*, Judgment (Compensation), 2018 I.C.J. 15, 20, ¶ 3 (Feb. 2).

¹³⁵ *See Certain Activities*, 2015 I.C.J. at 680, ¶ 47.

¹³⁶ *See id.*

¹³⁷ *See id.* at 682, ¶ 48.

¹³⁸ *See id.* at 703, ¶ 92.

¹³⁹ *See id.*; *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicar.)*, Judgment (Compensation), 2018 I.C.J. 41, ¶ 92 (Feb. 2).

total amount was approximately \$378,000, which was only 5% of the compensation Costa Rica originally requested.¹⁴⁰

In *Certain Activities*, the ICJ required Nicaragua to pay compensation for the environmental damage caused by its international law violations.¹⁴¹ The ICJ held that “damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law.”¹⁴² As a result, the Court broadened its compensation jurisprudence by assessing the diverse effects of international law violations. Namely, the ICJ held that damages shall be assessed by an “overall assessment of the loss,”¹⁴³ rather than “attributing values to specific categories” of things.¹⁴⁴ The ICJ stated that a broader assessment of the damage allows it to consider the long-term effects of the damages presented, in this case, “the capacity of the damaged area for natural regeneration.”¹⁴⁵

When assessing the violation of state sovereignty, the ICJ considered the evidence used to find injury and causation.¹⁴⁶ However, due to the limited amount of compensation ordered by the ICJ, the feasibility of payment was not explicitly discussed as the Court presumed that it was feasible for Nicaragua to pay the ordered amount. However, in the case of *Armed Activities*, when the ICJ ordered its largest-ever reparations order for \$325 million, approximately ten times the amount it ordered in *Certain Activities*, the feasibility element was carefully considered.¹⁴⁷

¹⁴⁰ 2018 I.C.J. at 58, ¶ 156; Diane Desierto, *Environmental Damages, Environmental Reparations, and the Right to a Healthy Environment: The ICJ Compensation Judgment in Costa Rica v. Nicaragua and the LACtHR Advisory Opinion on Marine Protection for the Greater Caribbean*, EUROPEAN J. INT'L L. BLOG (Feb. 14, 2018), <https://www.ejiltalk.org/environmental-damages-environmental-reparations-and-the-right-to-a-healthy-environment-the-icj-compensation-judgment-in-costa-rica-v-nicaragua-and-the-iacthr-advisory-opinion-on-marine-protection>.

¹⁴¹ See *Certain Activities*, 2018 I.C.J. at 31, ¶ 53.

¹⁴² *Id.* at 28, ¶ 42.

¹⁴³ Desierto, *supra* note 140.

¹⁴⁴ *Certain Activities*, 2018 I.C.J. at 37, ¶ 78.

¹⁴⁵ *Id.* at 38, ¶ 81.

¹⁴⁶ See *id.* at 39, ¶ 88.

¹⁴⁷ See *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment (Compensation), 2022 I.C.J. 13, 21 (Feb. 9); Anderson, *supra* note 30.

4. Armed Activities (2022)

In *Armed Activities*, the ICJ ordered Uganda to pay \$325 million to the Democratic Republic of Congo (DRC), an unprecedented amount in reparations and its largest to date.¹⁴⁸ In this case, the DRC alleged that Uganda violated U.N. Charter Article 2(4) during the Second Congo War.¹⁴⁹ The DRC requested compensation for Uganda's "violation of sovereignty and territorial integrity, military intervention, occupation of Ituri,¹⁵⁰ violations of international human rights law and of international humanitarian law, looting, plunder, and exploitation of the DRC's natural resources."¹⁵¹

Following the First Congo War (1996-1997), Uganda and Rwanda invaded the DRC in 1998, causing the Second Congo War, which lasted five years (1998-2003).¹⁵² An estimated 5.4 million people died as a result of the Second Congo War alone.¹⁵³ The ICJ noted that this conflict was one of the most "complex and deadliest armed conflicts to have taken place on the African continent."¹⁵⁴ Following the Second Congo War, the DRC claimed that Uganda should be held responsible for its armed aggression "in flagrant violation of the U.N. Charter."¹⁵⁵ The DRC ultimately requested that Uganda pay over *\$13 billion* in reparations for its actions during the Second Congo War.¹⁵⁶

The ICJ held that by engaging in military activities, occupying territory, and "extending military, logistic, economic, and financial support to forces" in the DRC, Uganda violated the DRC's

¹⁴⁸ See *Armed Activities*, 2022 I.C.J. at 21.

¹⁴⁹ See *id.*

¹⁵⁰ Ituri is one of the DRC's twenty-one provinces, located in the northeast corner, bordering Uganda.

¹⁵¹ See *Armed Activities*, 2022 I.C.J. at 42.

¹⁵² See *id.* at 41; Center for Preventative Action, *Conflict in the Democratic Republic of Congo*, COUNCIL ON FOREIGN RELATIONS, [cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo](https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo) (Mar. 20, 2024) (discussing that the peace agreement to end the war was signed in 2002, but the new DRC government was not formed until 2003, marking the true end of the war).

¹⁵³ See Chris McGreal, *War in Congo Kills 45,000 People Each Month*, THE GUARDIAN (Jan. 23, 2008, 4:28 AM), <https://www.theguardian.com/world/2008/jan/23/congo.international>.

¹⁵⁴ *Armed Activities*, 2022 I.C.J. at 41.

¹⁵⁵ See *id.* at 25.

¹⁵⁶ See *id.* at 33; *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment (Merits), 2005 I.C.J. 168, 168 (Dec. 19) (holding that the DRC "consented to" Uganda's actions in its territory in 1998).

sovereignty and the U.N. Charter's prohibition against the use of force.¹⁵⁷ The Court unanimously held that Uganda violated its obligations under international human rights and humanitarian law by killing and torturing DRC civilians, destroying villages, and training child soldiers, among other violations.¹⁵⁸ The ICJ applied the causation standard from *Corfu Channel* and the *Genocide Case* and held that there was sufficient evidence to show a causal link between Uganda's actions and the damage caused in the DRC.¹⁵⁹ In particular, the evidence demonstrated the presence of Ugandan armed actors committing illegal acts in the DRC at the time of the war, triggering the "[i]nternational responsibility of Uganda as an occupying power."¹⁶⁰ Contrary to the *Genocide Case*, the soldiers in the DRC were under the control and direction of the Ugandan government, so their actions could sufficiently be linked to the state.¹⁶¹

In its reparations hearings, the ICJ assessed the evidence found in certain third-party reports to determine the level of damage in the DRC attributable to Uganda's violations. The Mapping Report published by the U.N. Office of the High Commissioner for Human Rights described 617 violent incidents committed by Ugandan forces in the DRC over ten years; each incident was backed with sufficient evidence to prove their occurrence.¹⁶² The Porter Commission Report, a post-conflict report created by the Ugandan government, documented allegations of illegal exploitation of natural resources and other forms of wealth by Uganda forces in the DRC.¹⁶³ The DRC issued claims for four types of compensation: damage to persons (loss of life, injuries to persons, sexual violence, child

¹⁵⁷ See *Armed Activities*, 2005 I.C.J. at 280 (holding that Uganda "violated the principle of non-use of force in international relations and the principle of non-intervention").

¹⁵⁸ See *id.*

¹⁵⁹ See *id.* at 171.

¹⁶⁰ See *id.*; Ori Pomson, *The ICJ's Armed Activities Reparations Judgment: A Brave New World?*, LIEBER INST. (Feb. 16, 2022) <https://lieber.westpoint.edu/icj-armed-activities-reparations-judgment>.

¹⁶¹ See *Armed Activities*, 2005 I.C.J. at 280.

¹⁶² See *DRC: Mapping Human Rights Violations*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/countries/africa/2010-drc-mapping-report> (last visited Mar. 27, 2025).

¹⁶³ See *Jud. Comm'n of Inquiry Final Report* (2002). Established Pursuant to Legal Notice No. 5/2001 (2001) Concerning Allegations into Illegal Exploitation of Nat. Res. and Other Forms of Wealth in the Dem. Rep. Congo (Nov. 2002), <http://archive.niza.nl/docs/200305271650358053.pdf>.

soldiers, displacement), damage to property (civilian and military), damage to natural resources (minerals such as gold, diamonds, and coltan, as well as flora and fauna), and damage to the economy (general slowdown in economic activity and loss of revenue).¹⁶⁴ The ICJ rejected the claim of macroeconomic damage, citing insufficient evidence of causation; however, the ICJ held that sufficient evidence of the remaining three claims was provided and ordered compensation for each.¹⁶⁵

Upon reviewing the evidence and finding sufficient causation for damage to persons, property, and natural resources, in 2022, the ICJ issued its largest-ever reparations order for \$325 million.¹⁶⁶ To determine the compensation amounts, the ICJ assessed the scope and value of the damage.¹⁶⁷ The Court's final compensation amount included three categories of reparations: \$225 million for damage to persons, including rape, conscription of child soldiers, and displacement of persons, \$40 million for damage to property, and \$60 million for damage to natural resources.¹⁶⁸ In the verdict, the ICJ president defended these calculations by saying that the "reparations were compensatory and not meant to be punitive."¹⁶⁹ The ICJ explained the unprecedented judgment, stating:

"The Court may, on an exceptional basis, award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking account of equitable considerations. Such an approach may be called for where the evidence leaves no doubt that an internationally wrongful act has caused a substantiated injury but does not allow a precise evaluation of the extent or scale of such injury"¹⁷⁰

Although this is the largest amount the ICJ has ever ordered, critics claim the amount was diminutive compared to the damage that Ugandan forces caused in Ituri, a single DRC province, in one year alone.¹⁷¹ Many scholars claim that, compared to the DRC's requested \$13 billion, "in the

¹⁶⁴ See *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment (Compensation), 2022 I.C.J. 13, 58–128 (Feb. 9); Pomson, *supra* note 160.

¹⁶⁵ *Armed Activities*, 2022 I.C.J. at 58.

¹⁶⁶ See *id.*

¹⁶⁷ See Pomson, *supra* note 160.

¹⁶⁸ See *id.*

¹⁶⁹ *Armed Activities*, 2022 I.C.J. at 50.

¹⁷⁰ *Id.* at 52.

¹⁷¹ Anderson, *supra* note 30 (noting that Uganda "got off quite lightly considering how much damage they caused" in the DRC).

context of the DRC and the scale of violations, it's a drop in the bucket," with some viewing the \$325 million award as a purely symbolic order.¹⁷² However, the amount was justified because "big reparations schemes are [about] what's acceptable to the parties, what's feasible."¹⁷³ Thus, in addition to the evidence and causation elements, the ICJ considered the feasibility element in its calculations and found that it was satisfied in the \$325 million amount.

The ICJ defined the feasibility element as the respondent state's "financial capacity" to pay reparations as ordered.¹⁷⁴ Specifically, the Court noted that it is permissible to take into account the "financial burden imposed on the responsible state, given its economic condition, in particular, if there is any doubt about the state's capacity to pay without compromising its ability to meet its people's basic needs."¹⁷⁵ Ultimately, the Court determined that \$325 million was permissible because it was "within the capacity of Uganda to pay."¹⁷⁶

III. ANALYSIS

The ICJ has a unique opportunity to issue upwards of \$300 billion in reparations due to Russia's unprecedented aggression and multiple violations of international law since its full-scale invasion of Ukraine in February 2022. Russia's unprovoked attack on Ukraine is not only a breach of Ukraine's sovereignty but also poses a significant threat to international security.¹⁷⁷ The war has exacerbated tensions across the United States, Europe,¹⁷⁸ and the Middle East¹⁷⁹ and directly impacted

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *See* *Armed Activities*, 2022 I.C.J. at 53.

¹⁷⁵ *See id.*

¹⁷⁶ *Id.* at 137.

¹⁷⁷ *See NATO's Response to Russia's Invasion of Ukraine*, N. ATL. TREATY ORG., https://www.nato.int/cps/em/natohq/topics_192648.htm (Feb. 17, 2025, 2:27 PM) (noting that large international players, such as those in NATO, view Russia's invasion of Ukraine as "unprovoked" and "brutal").

¹⁷⁸ *See id.* (noting that Russia's actions have further strained its relations with NATO, a military alliance of thirty-two members largely comprised of North American and European allies).

¹⁷⁹ *See* Jeffrey Mankoff, *The Middle East and the Ukraine War: Between Fear and Opportunity*, 31 MIDDLE EAST POL'Y 47 (2024) (examining how Middle Eastern states have sought to navigate the countervailing pressures they face from the United States and Russia over the war in Ukraine).

the global security architecture.¹⁸⁰ Russia's actions have destabilized the region, eroded vital international norms, and threatened the principles of state sovereignty and territorial integrity.¹⁸¹ Referred to as “the largest ground war in Europe since the end of WWII,” the war has produced far-reaching consequences, affecting not only Ukraine but also global economic and security stability.¹⁸² Ukraine's struggle has thus become emblematic of the fight for security and stability in Europe, the Middle East, and the international order as a whole.¹⁸³

ICJ precedent has positioned the Court to issue reparations far exceeding its previous orders because, for the first time, a victim state can adequately and convincingly meet the legal standards of evidence of injury, causation, and feasibility. This section will discuss a legal path that would enable Ukraine, via the ICJ, to seek reparations upwards of \$300 billion. The following subsections will delve into the applicable provisions of the ARSIWA, applying countermeasures against Russia, the ICJ's jurisdiction over Russia and its discretionary authority to order reparations under both the ARSIWA and the ICJ Statute, as well as posit a comparison of prior ICJ reparations cases and a proposed solution to address the enforcement challenges. Ultimately, the outcome of Ukraine's case at the ICJ will have significant implications not only for Ukraine's recovery but also for the future of international accountability.

¹⁸⁰ See Robert Pszczel, *The Consequences of Russia's Invasion of Ukraine for International Security—NATO and Beyond*, NATO REVIEW (July 7, 2022), <https://www.nato.int/docu/review/articles/2022/07/07/the-consequences-of-russias-invasion-of-ukraine-for-international-security-nato-and-beyond/index.html> (discussing the effects of Russia's invasion of Ukraine as “a manifestation of a huge security danger that has shattered peace in Europe” as well as the destruction of “the entire security architecture built patiently on the continent over many decades . . .”).

¹⁸¹ See *id.*

¹⁸² See *id.*; Hathaway, *supra* note 10 (emphasizing the severity of Russia's invasion of Ukraine and the size of Russia's forces).

¹⁸³ See *NATO's Response to Russia's Invasion of Ukraine*, *supra* note 177; Mankoff *supra* note 179.

A. Russia's Violation of the U.N. Charter and ARSIWA

The ARSIWA, accepted *ad referendum* by the General Assembly and as customary international law, can be applied to Russia's actions against Ukraine.¹⁸⁴ Under Article 1 of the ARSIWA, Russia has committed numerous international wrongful acts attributable to the state under international law, breaching its international obligations under the U.N. Charter and other international agreements.¹⁸⁵ Notably, but not exclusively, Russia violated U.N. Charter Article 2(4), which enshrines state sovereignty and prohibits the unprovoked use of force.¹⁸⁶ Russia violated Ukraine's state sovereignty by illegally and forcibly entering and occupying Ukrainian territory in February 2022.¹⁸⁷ Many scholars agree that Russia's action constitutes a "clear and egregious violation of Article 2(4) of the U.N. Charter."¹⁸⁸ Key international players, such as those in the U.N., NATO, and G-7, similarly acknowledge that Russia's invasion of Ukraine breached Ukraine's sovereignty.¹⁸⁹

Beyond the violation of sovereignty, Russia's unprecedented aggression further violated the prohibition on the use of force by launching a full-scale attack against Ukraine.¹⁹⁰ Russia has justified

¹⁸⁴ Dr. Kathryn Allinson, *Can Russia Be Held Responsible For Their Invasion of Ukraine?*, UNIV. OF BRISTOL L. SCH. BLOG (Apr. 4, 2022), <https://legalresearch.blogs.bris.ac.uk/2022/04/can-russia-be-held-responsible-for-their-invasion-of-ukraine>. "Ad referendum" means subject to agreement and finalization of the details.

¹⁸⁵ See ARSIWA, *supra* note 33, art. 1.

¹⁸⁶ See U.N. Charter art. 2, ¶ 4; John B. Bellinger III, *How Russia's Invasion of Ukraine Violates International Law*, COUNCIL ON FOREIGN RELATIONS (Feb. 28, 2022, 2:25 PM), <https://www.cfr.org/article/how-russias-invasion-ukraine-violates-international-law>.

¹⁸⁷ See Bellinger, *supra* note 186; *Russia's Invasion of Ukraine is a Violation of the UN Charter*, UN Chief Tells Security Council, UN SUSTAINABLE DEV. GRP. (May 5, 2022), <https://www.unsdg.un.org/latest/announcements/russias-invasion-ukraine-violation-un-charter-un-chief-tells-security-council>. This Article focuses on the February 2022 invasion, though it does not discount the international violation of the preceding invasion in 2014. See, e.g., MICHAEL KOFMAN, ET AL., LESSONS FROM RUSSIA'S OPERATIONS IN CRIMEA AND EASTERN UKRAINE (2017), https://www.rand.org/content/dam/rand/pubs/research_reports/RR1400/RR1498/RAND_RR1498.pdf.

¹⁸⁸ Catherine Amirfar, *Expert Q&A on What International Law Has to Say About Assistance to Russia's War Against Ukraine*, JUST SEC. (May 2, 2023), <https://www.justsecurity.org/86102/expert-qa-on-what-international-law-has-to-say-about-assistance-to-russias-war-against-ukraine>; Hathaway, *supra* note 10 (discussing Russia's violation of the U.N. Charter).

¹⁸⁹ See *UNGA Demands Withdrawal*, *supra* note 10 (highlighting that 141 members of the U.N. General Assembly voted to condemn Russia's aggression in Ukraine, five Members voted against the resolution, and forty-one abstained); Milligan, *supra* note 12 ("If we abandon Ukraine, we abandon the U.N. Charter itself."); *NATO's Response to Russia's Invasion of Ukraine* *supra* note 177.

¹⁹⁰ See Hathaway, *supra* note 10 (highlighting that Russia's invasion is the "largest ground war in Europe" since WWII and describing Russia's "full-out assault" of Ukraine in 2022).

its actions as anticipatory self-defense in response to an imminent threat of force.¹⁹¹ Russia claimed it invaded Ukraine for purposes of humanitarian intervention and self-defense of ethnic Russians living in Ukraine’s Eastern territories.¹⁹² Specifically, Putin claimed that Ukraine would “undoubtedly bring war to Crimea” as they have “done in Donbas.”¹⁹³ He went so far as to say that Russians in Donbas have “asked Russia for help” in response to the “genocide of millions of people who lived there.”¹⁹⁴ However, Russia’s claims are unsubstantiated, as there is no credible evidence to demonstrate that Ukrainians had the specific intent to destroy, in whole or in part,¹⁹⁵ ethnic Russians living in its Eastern territories.¹⁹⁶ Moreover, there is no credible evidence that NATO nor any state “was engaged in . . . activities that would have enabled them to attack Russia on short notice.”¹⁹⁷ The law for anticipatory self-defense requires the “enemy to be at the gates in a tangible sense;” the threat must be so imminent as to be underway.¹⁹⁸ In this instance, no action by NATO or Ukraine reached the threshold of being ‘imminently underway’ to justify Russia’s actions.¹⁹⁹

Even assuming Russia perceived a viable threat, the use of force in self-defense must adhere to principles of necessity and proportionality.²⁰⁰ The principle of necessity requires that the resort to self-defense is in response to an “imminent threat of unlawful violence,” while the principle of

¹⁹¹ See Gotev, *supra* note 5 (discussing Putin’s true goal to “demilitari[ze] and denazif[y]” Ukraine and discounting its claims of self-defense).

¹⁹² Marc Weller, “*A Perversion of Both the Facts and the Law*”: *Russian Attempts to Invoke International Law Dismantled*, UNIV. OF CAMBRIDGE (Mar. 9, 2022), <https://www.cam.ac.uk/stories/weller-ukraine> (discounting Russia’s various, unilaterally held justifications for its invasion of Ukraine).

¹⁹³ See Michael N. Schmitt, *Russia’s “Special Military Operation” and the (Claimed) Right of Self-Defence*, LIEBER INST. W. POINT (Feb. 28, 2022), <https://www.lieber.westpoint.edu/russia-special-military-operation-claimed-right-self-defense>.

¹⁹⁴ *See id.*

¹⁹⁵ The legal definition for genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260 A (III) U.N. Doc. No. 1021 (1948).

¹⁹⁶ See Egbert Fortuin, “*Ukraine Commits Genocide on Russians*”: *The Term “Genocide” in Russian Propaganda*, 46 *RUSSIAN LINGUISTICS* 313 (Sept. 7, 2022) (asserting that Russian propaganda is often “based on exaggerations, hyperbolic use of terminology, and lies” and claims of genocide against Russians are invalid).

¹⁹⁷ Schmitt, *supra* note 193 (noting that Russia’s self-defense claims fall short of the international legal definitions).

¹⁹⁸ *See id.*

¹⁹⁹ *See id.*

²⁰⁰ *See* Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, 94, ¶ 176 (June 27); Kretzmer, *supra* note 38 (asserting that customary international law recognizes the principles of necessity and proportionality in the use of force); *Use of Force in International Law*, *supra* note 39.

proportionality requires that armed response must be in proportion to the deemed threat.²⁰¹ Russia's supposed anticipatory attack exceeded any practical or legal justification for either principle.²⁰² Not only was the attack not necessary, as there was no rationally imminent attack by either NATO or Ukraine, but the attack was overwhelmingly disproportional to the supposed threat.²⁰³ Comparative military statistics indicate that Russia's military assets were overwhelmingly superior to Ukraine's, with nearly five times the number of active personnel, almost five times the number of armored vehicles, and ten times the number of aircraft.²⁰⁴ Furthermore, it spent roughly ten times more annually on its military than Ukraine.²⁰⁵ Therefore, Russia's actions were not justified under Article 51 of the U.N. Charter on the basis of anticipatory self-defense and failed to meet the requirements of proportionality and necessity.²⁰⁶

Given its clear breach of U.N. Charter Article 2(4), Russia must be held accountable, and Article 1 of the ARSIWA presents a viable avenue to do so. Furthermore, under Article 28 of the ARSIWA, Russia's internationally wrongful acts have legal consequences.²⁰⁷ Holding Russia accountable is critical for ensuring Ukraine's sovereignty and for maintaining international peace and security. Russia's actions represent a significant threat to the global order—they undermine the principles that protect smaller nations from unnecessary aggression and have the power to destabilize

²⁰¹ See Geoffrey S. Corn, *The Essential Link Between Proportionality and Necessity in the Exercise of Self-Defense*, in NECESSITY AND PROPORTIONALITY IN INTERNATIONAL PEACE AND SECURITY LAW 79, 81 (Claus Kieß, & Robert Lawless eds., 2020).

²⁰² See *id.* (asserting that even when a self-help response is justified the scope of the response may be so out of proportion to the triggering threat that the action can no longer be deemed necessary).

²⁰³ See Marie Gavendová, *Is the Russian Invasion of Ukraine Justifiable From the View of Public International Law?*, CZECH CTR. FOR HUM. RTS. & DEMOCRACY (May 19, 2022, 9:00 PM), <https://www.humanrightscentre.org/blog/russian-invasion-ukraine-justifiable-view-public-international-law>.

²⁰⁴ See Hathaway, *supra* note 10.

²⁰⁵ See *id.*

²⁰⁶ See generally *Setting the Record Straight: De-bunking Russian Disinformation on NATO*, N. ATL. TREATY ORG., <https://www.nato.int/cps/en/natohq/115204.htm> (Oct. 24, 2024, 11:07 AM) (emphasizing that Russia's war in Ukraine is illegal and discounting all of Russia's claims for its allegedly justified invasion of Ukraine).

²⁰⁷ See generally ARSIWA, *supra* note 33, art. 28 (“The international responsibility of a State which is entailed by an internationally wrongful act . . . involves legal consequences as set out in this part.”).

regional security in Europe and globally. If left unchecked, such violations weaken the credibility of international norms and encourage further disregard for rules-based systems.

B. Utilizing Unilateral State Action and Countermeasures Under the ARSIWA

Third-party states can unilaterally impose countermeasures on Russia under Article 38 of the ARSIWA because Russia's obligations to abide by the provisions of the U.N. Charter are "owed to the international community as a whole."²⁰⁸ Since Russia invaded Ukraine in 2022, numerous states have employed countermeasures in the form of economic sanctions, most notably through asset freezing.²⁰⁹ States have frozen nearly \$300 billion in Russian Central Bank assets as countermeasures for Russia's continued violations of international law.²¹⁰ Despite sustained pressure from the international community, Russia has failed to comply with its international obligations, refuses to terminate its war in Ukraine, and continues to violate the U.N. Charter more than three years after its initial invasion. As a result, current countermeasures—Russia's frozen assets—have not been terminated by third-party states.²¹¹

While countermeasures will not alleviate Ukraine's suffering during or after the conflict, they serve a critical role in deterring further violations and reinforcing international accountability. Moreover, countermeasures imposed by third-party states will be instrumental to the enforcement of any reparations order issued by the ICJ. In the context of national security, these countermeasures also demonstrate a collective response aimed at preserving global stability by ensuring compliance with international norms. By freezing assets and restricting Russia's economic activities to the extent

²⁰⁸ See ARSIWA, *supra* note 32, art. 48.

²⁰⁹ See Alerassool, *supra* note 21.

²¹⁰ See Ludwikowski, et al., *supra* note 16 (listing the countries that hold Russian Central Bank assets including the United States (\$4-5 billion), the European Union, Australia, and other G-7 states (\$260 billion)); ARSIWA, *supra* note 33, art. 49.

²¹¹ See *id.* art. 52–53.

provided by its Central Bank assets, these measures weaken Russia's ability to finance continued aggression, indirectly contributing to broader security objectives in Europe and beyond.²¹²

C. The ICJ's Jurisdiction Over Russia

As a Member of the U.N., Russia is *ipso facto* party to the ICJ Statute.²¹³ Therefore, Russia may be a party to any contentious cases initiated at the ICJ and is obligated to comply with the ICJ rulings in cases to which it is a party.²¹⁴ However, because ICJ jurisdiction is not compulsory in contentious cases, international law does not require Russia to appear before the ICJ.²¹⁵ As such, Ukraine will need to obtain consent from Russia, either by special agreement or treaty, before it can submit a dispute to the ICJ.²¹⁶

Consent by either special agreement or treaty may be viable options to get Russia to the ICJ. Ukraine and Russia are signatories to numerous multilateral treaties that provide for ICJ jurisdiction over certain categories of disputes.²¹⁷ Though it appears that Russia would resist being brought before the ICJ via special agreement, circumstances may prompt a shift in its stance for two key reasons. First, Russia may consent to ICJ jurisdiction to justify its invasion into Ukraine on the world stage and attempt to repair its international reputation.²¹⁸ Second, Russia may consent to ICJ jurisdiction to compel states to release its frozen Central Bank assets. Presently, Ukraine has two contentious cases

²¹² See discussion *infra* Part III.F.

²¹³ *States Entitled to Appear Before the ICJ*, *supra* note 61. “Ipso facto” is a Latin phrase meaning “by the fact itself” or “as a result of” one thing. Here, Russia is a party to the ICJ Statute as a result of its status as a U.N. Member.

²¹⁴ See U.N. Charter art. 94.

²¹⁵ See Statute of the International Court of Justice, art. 36.

²¹⁶ See *id.*

²¹⁷ See *Treaties*, *supra* note 65 (noting the multilateral treaties that allow for ICJ jurisdiction).

²¹⁸ See Schmitt, *supra* note 193 (discussing Putin's justifications for its invasion of Ukraine, which Russia may seek to argue in front of the ICJ to alleviate its international reputational harm).

against Russia before the ICJ,²¹⁹ so Ukraine will likely be able to bring this dispute before the Court using a special agreement or treaty to permit these filings.²²⁰

Significantly, the ICJ has already intervened in the present dispute by issuing a preliminary decision on the matter under the Genocide Convention, in which Russia and Ukraine have provided for ICJ jurisdiction.²²¹ In March 2022, the ICJ ordered Russia to suspend its invasion of Ukraine and rejected Putin's justification for the use of violence as self-defense under Article 51 of the U.N. Charter.²²² While the ruling did not deter Putin's actions in Ukraine, the order provides further justification under which Ukraine can initiate a case at the ICJ in the future. Furthermore, scholars claim that Russia's failure to comply with the order "shows a disrespect for international law,"²²³ and its decision will cause Russia reputational harm in the long term.²²⁴

In future ICJ proceedings brought by Ukraine, the Court will likely face similar enforcement issues. Specifically, Russia will likely refuse to pay reparations, should the ICJ order it to do so.

²¹⁹ See *Mixed Decisions by the International Court of Justice on Russia's Responsibility in Crimes Committed in Ukraine*, RELIEF WEB (Feb. 6, 2024), <https://www.reliefweb.int/report/ukraine/mixed-decisions-international-court-justice-russias-responsibility-crimes-committed-ukraine> (noting Ukraine's case regarding terrorist financing and racial discrimination, as well one regarding genocide at the ICJ).

²²⁰ The means of getting the case to the ICJ are beyond the scope of this article. For more, see Lawrence Hill-Cawthorne, *How Are International Courts Dealing With Russia's Invasion of Ukraine?*, UNIV. OF BRISTOL L. SCH., <https://legalresearch.blogs.bris.ac.uk/2022/07/how-are-international-courts-dealing-with-russias-invasion-of-ukraine> (July 4, 2022).

²²¹ See *International Court of Justice Preliminary Decision in Ukraine v. Russia*, *supra* note 72 (holding that while the ICJ had jurisdiction over the genocide claims between Russia and Ukraine, the issues of the use of force and breach of state sovereignty go beyond the Convention and must be litigated under other international law provisions (*see* ¶¶ 146-147)). Although Ukraine may seek to maintain jurisdiction before the ICJ via the Genocide Convention and argue that Russia committed genocide against Ukrainians, it may not be able to obtain a sufficient remedy under genocide claims alone. In contrast, Ukraine is likely to be awarded a larger reparations sum if it brings claims for violations under U.N. Charter Article 2(4) where it can more specifically delineate the destruction that has occurred as a result of that international violation. See *States Entitled to Appear Before the ICJ*, *supra* note 61 ("Members of the U.N. are *ipso facto* parties to the Statute."). Russia is a Member of the U.N. and therefore may be compelled to appear before the ICJ for its violations of the U.N. Charter).

²²² See *International Court of Justice Preliminary Decision in Ukraine v. Russia*, *supra* note 72; *see also* Julian Borger, *UN International Court of Justice Orders Russia to Halt Invasion of Ukraine*, THE GUARDIAN (Mar. 16, 2022, 1:04 PM), <https://www.theguardian.com/world/2022/mar/16/un-international-court-of-justice-orders-russia-to-halt-invasion-of-ukraine>.

²²³ See Anne Peters, *The War in Ukraine and the Curtailment of the Veto in the Security Council*, LE GROUPE D'ÉTUDES GÉOPOLITIQUES (June 2023), <https://geopolitique.eu/en/articles/the-war-in-ukraine-and-the-curtailment-of-the-veto-in-the-security-council>.

²²⁴ See Borger, *supra* note 222 (highlighting the consequences of Russia's decision not to comply with the ICJ order).

Enforcement by the Security Council is not an option because Russia holds veto power as a permanent Member of the Security Council and is entitled to veto a resolution enforcing an ICJ order, even if it is a party to the case.²²⁵ However, the U.N. General Assembly can recommend Member states enact countermeasures to force Russia to comply with the ICJ judgment.²²⁶ Enforcement by members of the General Assembly would have a lasting effect on global security, as it would signal the international community's commitment to holding aggressor states accountable, thereby deterring future violations.²²⁷

D. Russia's Responsibility to Pay Reparations

Under customary international law, ARSIWA, and the ICJ Statute, Russia is required to pay reparations for any injury²²⁸ caused by its internationally wrongful acts.²²⁹ Russia's obligation to pay reparations is not the right of Ukraine as the injured state, but the obligation of Russia as the violating state.²³⁰ Russian reparations can take the form of restitution,²³¹ compensation,²³² satisfaction,²³³ or any combination of the three. In this case, restitution would entail the return of stolen persons,²³⁴ objects, or territory belonging to Ukraine.²³⁵ However, because much of the damage that has been done in Ukraine cannot be reestablished to its *status quo ante*, reparations may "have to be completed by compensation in order to ensure full reparation for the damage caused."²³⁶ It is likely that upon the

²²⁵ See Couzigou, *supra* note 74 at 10.

²²⁶ See *id.* at 3.

²²⁷ See discussion *infra* Part III.F.

²²⁸ See ARSIWA, *supra* note 33, art. 31 (defining injury as material or moral damage caused by the act); Draft Articles, *supra* note 42, art. 31(5) (clarifying the definition of injury as any damage caused by the act).

²²⁹ See United Nations, Statute of the International Court of Justice, art. 36; ARSIWA, *supra* note 33, art. 31; see Julio, *supra* note 80.

²³⁰ See Draft Articles, *supra* note 42, art. 31(4).

²³¹ See ARSIWA, *supra* note 33, art. 35 (defining restitution as re-establishing the situation that existed before the wrongful act was committed).

²³² See *id.* at art. 36 (defining compensation as the payment for any financially accessible damage including loss of profits).

²³³ See *id.* at art. 37 (defining satisfaction as acknowledgement of the breach, an expression of regret, or a formal apology).

²³⁴ See *Deportation, Treatment of Ukraine's Children by Russian Federation Take Centre Stage by Many Delegates at Security Council Briefing*, (Aug. 24, 2023), SC/15395, <https://press.un.org/en/2023/sc15395.doc.htm>.

²³⁵ See Draft Articles, *supra* note 42, art. 30(7), 34(3).

²³⁶ See *id.* at art. 35(2).

return of persons, property, and territory, the payment of compensation would be required to further restore Ukraine to its *status quo ante*.

Compensation paid by Russia would consist of “any financially accessible damages suffered” by Ukraine or its nationals, including “the loss of profits.”²³⁷ The World Bank has reported that Ukraine will need over \$411 billion for the reconstruction of the state as a result of the Russian invasion.²³⁸ This staggering financial toll underscores not only the extent of the destruction but also the direct economic implications for global markets and international financial stability.²³⁹ Global effects include rising inflation and deglobalization, potentially “upend[ing] fiscal and monetary policy in advanced economies.”²⁴⁰ Domestic effects in Ukraine include unprecedented poverty and reconstruction costs, as well as business destruction and revenue loss after three years of war.²⁴¹ In theory, at the very least, Russia could be liable to Ukraine for the total sum of the losses incurred, specifically the damage suffered to its territory and its people.

Finally, to the extent that restitution and compensation are insufficient, the ICJ may order satisfaction. Satisfaction could consist of Russia providing an acknowledgment that its aggression in Ukraine was a violation of international law, an expression of regret, a formal apology, or a commitment to non-repetition.²⁴² Given the extent of its injuries, Ukraine would likely view satisfaction as a tertiary remedy to restitution and compensation. However, satisfaction carries symbolic weight, reinforcing international legal norms and deterring future acts of aggression. While it is not as clear that Russia may concede to restitution or compensation, it may concede to satisfaction,

²³⁷ ARSIWA, *supra* note 33, art. 36.

²³⁸ See *Ukraine: Rapid Damage and Needs Assessment*, *supra* note 18.

²³⁹ See Kenneth Rogoff, *The Long-Lasting Economic Shock of War*, INT’L MONETARY FUND, <https://www.imf.org/en/Publications/fandd/issues/2022/03/the-long-lasting-economic-shock-of-war> (last visited Mar. 26, 2025).

²⁴⁰ See *id.*

²⁴¹ Michelle Kilfoyle, *Ukraine: What’s the Global Economic Impact of Russia’s Invasion?*, ECONOMICS OBSERVATORY (Oct. 24, 2023), <https://www.economicsobservatory.com/ukraine-whats-the-global-economic-impact-of-russias-invasion>.

²⁴² See ARSIWA, *supra* note 33, art. 37.

albeit in the distant future, to remedy its reputational harm.²⁴³ Holding Russia accountable through restitution, compensation, and satisfaction not only supports Ukraine's recovery but also demonstrates the international community's resolve in upholding state sovereignty, deterring similar violations, and safeguarding the stability of the global order.

E. Distinguishing the ICJ's Past Reparations Cases

The ICJ utilizes evidence of injury, causation, and feasibility when assessing reparations orders.²⁴⁴ ICJ reparations orders range from tens of thousands to hundreds of millions USD.²⁴⁵ In cases where the damage was great and causation was strong, the ICJ still ordered limited reparations due to a state's inability to pay the amount initially requested.²⁴⁶ Because of this consideration, the ICJ has never ordered a state to pay reparations in the billions.

By distinguishing the ICJ's precedent and reparations orders, the following sections will discuss that, while the ICJ's reparation precedent will be hard to overcome, the case of Russia is distinctly unique. Many of the limitations the ICJ has faced in its past cases, lack of evidence of injury, causation, or feasibility, are not present in this case. Therefore, it is likely that the ICJ could order reparations in the order of billions in Russia's case, specifically \$300 billion, the amount of its frozen Central Bank assets.

1. *Corfu Channel* (1949)

In *Corfu Channel*, the ICJ ordered Albania to pay reparations for specific damages it caused via the mine explosions only after finding a sufficient causal link between Albania's control of the

²⁴³ See generally Borger, *supra* note 222 (noting the reputational harm that follows Russia's failure to comply with an ICJ order).

²⁴⁴ See generally Juan-Pablo Pérez-León-Acevedo, *Compensation in Cases of Mass Atrocities at the International Court of Justice and the International Criminal Court*, 22 THE L. & PRAC. INT'L CTS. & TRIBUNALS 30 (2023) (assessing the ICJ's past reparations cases for mass atrocities and comparing the elements the Court has applied overtime, including injury and causation).

²⁴⁵ See generally *id.* (highlighting the Court's reparations judgment in *Armed Activities* where it ordered Uganda to pay \$325 million to the DRC, as well as other ICJ cases like *Certain Activities* that resulted in the payment of only \$325,000).

²⁴⁶ *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment (Compensation), 2022 I.C.J. 13, 116 (Feb. 9).

waterway and the United Kingdom's damaged ships.²⁴⁷ The ICJ ordered Albania to pay the U.K. £844,000 in reparations,²⁴⁸ today equating to over £37 million, or \$46.6 million.²⁴⁹ The total amount included the cost of ships, plus additional costs for the victims' and their families' losses.²⁵⁰ Similar to the damage Albania caused to the British ships in *Corfu Channel*, Russia's actions have caused specific and quantifiable damage to infrastructure, property, and human capital in Ukraine.²⁵¹

Ukraine can provide adequate evidence to prove that there is a sufficient causal link between Russia's violation and the damage done in Ukraine.²⁵² Three weeks into its invasion, Russia caused over \$100 billion worth of infrastructure damage in Ukraine.²⁵³ Specifically, one year into the war, there was an estimated \$50 billion in damage to housing, \$36 billion in damage to transportation, \$11 billion in damage to commerce and industry, \$11 billion in damage to energy, and \$9 billion in damage to agriculture.²⁵⁴ In addition, it has been reported that Russia caused over \$3.5 billion in damage to Ukraine's heritage and cultural sites.²⁵⁵ As in *Corfu Channel*, the ICJ can find that there is sufficient evidence to show that Russia has caused specific damage to infrastructure and property in Ukraine as a result of its breach of international law. Therefore, the ICJ can order Russia to pay, at a minimum, for the physical damage done by Russia in Ukraine.

However, in addition to the physical property damage, Russia has created a devastating humanitarian crisis as a result of the war—some say one of the worst Europe has seen since World

²⁴⁷ See *Corfu Channel (U.K. v. Alb.)*, Judgment (Compensation), 1949 I.C.J. 244, 250 (Dec. 15).

²⁴⁸ See *id.*

²⁴⁹ Webster, *supra* note 118.

²⁵⁰ See *Corfu Channel*, Judgment (Compensation), 1949 I.C.J. at 250.

²⁵¹ *Beneath the Rubble: Documenting Devastation and Loss in Mariupol*, HUM. RTS. WATCH (Feb. 8, 2024), <https://www.hrw.org/feature/russia-ukraine-war-mariupol> [hereinafter *Beneath the Rubble*].

²⁵² *Id.*

²⁵³ *Ukraine War: \$100 Billion in Infrastructure Damage, and Counting*, *supra* note 7.

²⁵⁴ *Estimated Total War Damage Value in Ukraine From February 24, 2022, to February 24, 2023, By Sector*, STATISTA, www.statista.com/statistics/1303344/ukraine-infrastructure-war-damage (last visited Mar. 26, 2025).

²⁵⁵ *Russia-Ukraine War: List of Key Events, Day 721*, AL JAZEERA (Feb. 14, 2024), <https://www.aljazeera.com/news/2024/2/14/russia-ukraine-war-list-of-key-events-day-722> (noting over 5,000 cultural sites destroyed).

War II.²⁵⁶ The U.N. has reported thousands of civilian casualties—with over 12,000 killed and nearly 27,000 injured²⁵⁷—millions of people displaced, and widespread torture at the hands of Russian forces.²⁵⁸ Other sources note accounts of “summary executions, torture, and rape.”²⁵⁹ The U.N. human rights chief stated that the human cost of the war will be felt “for generations.”²⁶⁰ There is an abundance of evidence demonstrating the impact on and losses of Ukrainian citizens at the hands of Russian forces.²⁶¹ Therefore, in addition to the property damage, the ICJ can order additional reparations for victim costs, as it did in *Corfu Channel*.

2. The Genocide Case (2007)

The ICJ’s refusal to order Serbia and Montenegro to pay reparations in the *Genocide Case* was due to insufficient causation; Bosnia could not adequately show that the Yugoslav state’s intervention could have prevented the genocide.²⁶² In contrast, Ukraine can show a clear causal link between Russia’s violation and Ukraine’s injury, as the U.K. did in *Corfu Channel*. In February 2022, Putin stated that he approved the “special military operation” and asked rebel-held territories in Ukraine for its support.²⁶³ Following this announcement, Russia invaded Ukraine by land, sea, and air.²⁶⁴ In August 2022, Putin “signed a decree . . . increasing his country’s armed forces by 137,000.”²⁶⁵ In November 2023, Putin “ordered the country’s military to increase the number of troops by nearly 170,000 to a

²⁵⁶ See *Ukraine Crisis*, RESCUE.ORG, www.rescue.org/topic/ukraine-crisis (last visited Mar. 26, 2025).

²⁵⁷ *Number of Civilian Casualties in Ukraine During Russia's Invasion Verified by OHCHR From February 24, 2022 to October 31, 2024*, STATISTA, <https://www.statista.com/statistics/1293492/ukraine-war-casualties> (last visited Mar. 24, 2025).

²⁵⁸ *Ukraine: Report Reveals War's Long-Term Impact Which Will Be Felt 'For Generations'*, UN NEWS (Feb. 22, 2024), <https://news.un.org/en/story/2024/02/1146842> [hereinafter *UN News Report*].

²⁵⁹ See *War in Ukraine*, *supra* note 1.

²⁶⁰ *UN News Report*, *supra* note 258.

²⁶¹ See *Beneath the Rubble*, *supra* note 251.

²⁶² See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bos. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, 218 (Feb. 26).

²⁶³ See Gotev, *supra* note 5.

²⁶⁴ See *War in Ukraine*, *supra* note 1.

²⁶⁵ Yuliya Talmazan, *Putin Orders Russian Military to Increase its Forces as Ukraine War Passes the Six-Month Mark*, NBC NEWS, <https://www.nbcnews.com/news/world/putin-orders-increase-russian-armed-forces-ukraine-war-rcna44774> (Aug. 25, 2022, 11:46 AM).

total of 1.32 million.²⁶⁶ Still today, as of January 2025, Putin continues to advance troops into Ukraine and refuses to engage in meaningful ceasefire talks.²⁶⁷ These facts alone demonstrate that the Russian state directly orchestrated the wrongful acts and, therefore, caused the harm in question.²⁶⁸

Furthermore, the war is being orchestrated by the Russian-funded military, which acts at the direction of Putin. At the start of the war, Russia had 900,000 active troops, two million reserve troops, over 15,000 armored fighting vehicles, and a defense spending budget of \$45.8 billion.²⁶⁹ Ukraine can highlight the number of armed actors on the ground in Ukraine to show that Russia's military resources have been directly applied to its use of force and aggression in Ukraine, resulting in major destruction and harm. Therefore, as opposed to the situation in the *Genocide Case*, the ICJ can find a sufficient causal link between the damage done in Ukraine and the Russian state's violation of U.N. Charter Article 2(4).

3. *Certain Activities (2018)*

In *Certain Activities*, Costa Rica sought to protect its sovereignty and territorial integrity rights, similar to the rights Ukraine seeks to protect today. However, there are two clear differences between Costa Rica and Ukraine's claims that justify distinct reparations amounts: the clarity and blatancy of the U.N. Charter violations. Costa Rica's claim in *Certain Activities* focused on Nicaragua's breach of Costa Rica's sovereignty and use of force when it constructed a canal from the San Juan River to the Laguna los Potrillos.²⁷⁰ Upon determining that Nicaragua violated Costa Rica's sovereignty and

²⁶⁶ *Putin Orders the Russian Military to Add 170,000 Troops for a Total of 1.32 Million*, AP NEWS (Dec. 1, 2023), <https://apnews.com/article/russia-ukraine-putin-army-expansion-a2bf0b035aabab20c8b120a1c86c9e38>.

²⁶⁷ *What's the Future of the War in Ukraine?*, UNIV. OF CHICAGO NEWS (Jan. 2, 2025), <https://news.uchicago.edu/story/whats-future-war-ukraine>.

²⁶⁸ See generally Draft Articles, *supra* note 42, art. 31(10) (highlighting that causation is satisfied when a "State organ deliberately caused the harm in question").

²⁶⁹ Angela Dewan, *Ukraine and Russia's Militaries are David and Goliath. Here's How They Compare*, CNN, <https://www.cnn.com/2022/02/25/europe/russia-ukraine-military-comparison-intl/index.html> (Feb. 25, 2022, 3:11 PM).

²⁷⁰ See *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicar.)*, Judgment (Compensation) 2018 I.C.J. 15, 20 (Feb. 2).

territorial integrity, the ICJ ordered Nicaragua to pay reparations for the damage done to the environment, specifically, the costs of restoration and associated expenses.²⁷¹ In Russia's case, however, the violation of Ukraine's territorial integrity is clearer, and the damage done is far more severe, thus necessitating a higher reparation amount.

In *Certain Activities*, Costa Rica's sovereignty violation occurred solely at the border and resulted solely in "damage to the environment."²⁷² The damage in Costa Rica was minor, and the scope of the damage was narrow, relative to the damage in Ukraine. However, the ICJ assessed the damages using an "overall assessment of the loss," which accounted for the long-term effects of the damage.²⁷³ In Ukraine's case, the overall assessment of loss is significant. In addition to the damage to infrastructure, property, and human capital, there have been numerous incidents at Ukrainian nuclear power plants and energy facilities (including oil and gas facilities, mines, and pipelines), causing severe damage to Ukraine's environmental state.²⁷⁴ Moreover, "thousands of possible incidents of air, water, and land pollution and the degradation of ecosystems" were identified just one year into the war.²⁷⁵ Ground and surface water have been polluted, hazardous substances have been released into the air, and agricultural sites have been destroyed.²⁷⁶

Therefore, not only can Ukraine demonstrate that Russia's violation of Ukraine's sovereignty was more blatant than Costa Rica's, it can also prove the heightened severity of damage based on the abundance of evidence recorded. These differences may be reflected in the ICJ's reparation order. The violation and damage calculations in Costa Rica were relatively minimal, so the reparation amount

²⁷¹ See *id.* at 28, 39

²⁷² *Id.* at 35.

²⁷³ *Id.* at 37.

²⁷⁴ See *The Toxic Legacy of the Ukraine War*, UN ENV'T PROGRAMME (Feb. 22, 2023), <https://www.unep.org/news-and-stories/story/toxic-legacy-ukraine-war>

²⁷⁵ *Id.*

²⁷⁶ See *id.*

was, too. Here, the violations and damages are that of a full-scale war, so the ICJ's reparation judgment may account for that increased severity.

4. *Armed Activities* (2022)

Finally, the *Armed Activities* case demonstrates the ICJ's ability to order a state to pay unprecedented reparations. In this case, the DRC argued that Uganda violated U.N. Charter Article 2(4) and, therefore, should be responsible for its armed aggression "in flagrant breach of the United Nations Charter."²⁷⁷ While there are significant differences between *Armed Activities* and the Russian case, three similarities stand out. First, in both conflicts, the violating state blatantly violated U.N. Charter Article 2(4) on the principles of sovereignty and prohibition of the use of force, resulting in significant casualties. Next, both conflicts led to major humanitarian crises and mass displacements of the population. Finally, both conflicts led to the mass destruction of the countries' infrastructure.

However, despite underlying similarities, the major distinction between the Second Congo War and the war in Ukraine is the demographic of the aggressor. Specifically, there are stark differences between the aggressor states' financial health and, notably, each state's ability to pay reparations—a critical element in ICJ reparations cases. The ICJ noted in *Armed Activities* that a consideration may be made for the financial burden of the state and its ability to meet the basic needs of its citizens upon the payment of reparations.²⁷⁸ In that case, the DRC requested Uganda pay reparations of \$13 billion.²⁷⁹ However, \$13 billion was well outside of Uganda's capacity to pay.²⁸⁰ In contrast, upwards of \$300 billion is well within Russia's capacity to pay. This determination can be made by comparing Russian and Ugandan gross domestic product (GDP) and military spending budgets.

²⁷⁷ *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment (Compensation), 2022 I.C.J. 13, 116 (Feb. 9).

²⁷⁸ *See id.* at 53.

²⁷⁹ *See id.*

²⁸⁰ *UN List of Least Developed Countries*, UNCTAD, <https://unctad.org/topic/least-developed-countries/list>.

The differences between Uganda and Russia's GDP and military spending budgets sufficiently highlight the states' differing abilities to pay reparations. Uganda's GDP in 2022, when Uganda paid its first installment of the ICJ reparations order of \$65 million,²⁸¹ was \$45.57 billion, its highest ever.²⁸² In contrast, Russia's GDP in 2022 was \$2.24 trillion, and in 2023, after a year of war, it was still \$2.02 trillion.²⁸³ Russia's GDP is approximately 45 times greater than Uganda's. Furthermore, Russia's GDP is the eleventh highest in the world,²⁸⁴ whereas Uganda's GDP ranks 90th in the world,²⁸⁵ earning it a place on the world's list of least-developed countries.²⁸⁶ The stark differences between Russian and Ugandan GDP should be considered when assessing Russia's ability to pay reparations and, therefore, reflected in the respective reparations orders issued by the ICJ.

Furthermore, the differences between Russian and Ugandan military spending budgets at the time of the war should inform the feasibility element. At the height of the Second Congo War, Uganda's military expenditures reached a height of \$159 million.²⁸⁷ In comparison, at the start of the war in Ukraine, Russia's military expenditures were \$86.37 billion.²⁸⁸ Uganda's defense spending budget at the height of the Second Congo War was 0.2% of Russia's at the height of the Ukraine War. While there are vast differences between the economies of Uganda and Russia, the countries' GDPs and military spending budgets make it clear that Russia can pay reparations far and beyond what was feasible for Uganda to pay.

²⁸¹ See *Uganda Says Paid First Installment in Congo War Reparations*, REUTERS (Sept. 12, 2022, 11:16 AM), <https://www.reuters.com/world/africa/uganda-says-paid-first-installment-congo-war-reparations-2022-09-12>.

²⁸² *GDP: Uganda*, WORLD BANK GRP. DATA, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=UG> (last visited Mar. 26, 2025).

²⁸³ *GDP: Russian Federation*, WORLD BANK GRP. DATA, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=RU> (last visited Mar. 26, 2025).

²⁸⁴ See *id.*

²⁸⁵ *GDP: Uganda*, *supra* note 282.

²⁸⁶ *UN List of Least Developed Countries*, *supra* note 280.

²⁸⁷ *Military Expenditures: Uganda*, WORLD BANK GRP. DATA, <https://data.worldbank.org/indicator/MS.MIL.XPND.CD?locations=UG> (last visited Mar. 26, 2025).

²⁸⁸ *Military Expenditures: Russian Federation*, WORLD BANK GRP. DATA, <https://data.worldbank.org/indicator/MS.MIL.XPND.CD?locations=RU> (last visited Mar. 26, 2025).

While the Second Congo War and the war in Ukraine are similar on several levels, the clear distinctions between the two aggressors' ability to pay reparations create a unique opportunity for the ICJ to order unprecedented reparations. Despite being one of the world's least developed countries,²⁸⁹ the ICJ ordered Uganda to pay \$325 million for its international violations in the DRC.²⁹⁰ Therefore, as the world's eleventh richest country, the ICJ can order Russia to pay an amount that is proportional to Russia's GDP and military spending budget.

As additional evidence of Russia's ability to pay upwards of \$300 billion in reparations, the ICJ can assess Russia's ability to wage a full-scale war despite having over \$300 billion of its assets frozen. This alone demonstrates that "it is within the capacity" of Russia to pay and that Russia can sufficiently "meet its people's basic needs" without over \$300 billion at its disposal.²⁹¹ Russia has proven to the world that it can properly function as a state without access to billions of dollars of liquid assets. Therefore, the ICJ's feasibility element can be sufficiently met by Russia's frozen Central Bank assets alone.

The ICJ stated in *Armed Activities* that it may "award compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations . . . where the evidence leaves no doubt that an internationally wrongful act has caused a substantiated injury."²⁹² In Russia's case, it is clear that the ICJ can award this amount of compensation because of the substantial evidence of destruction at its disposal, the clear causal link between Russia's violation and Ukraine's injury, and the feasibility of Russia to pay an unprecedented reparations amount of upwards of \$300 billion.

²⁸⁹ *UN List of Least Developed Countries*, *supra* note 280.

²⁹⁰ *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment (Compensation), 2022 I.C.J. 13, 116 (Feb. 9).

²⁹¹ *See id.* at 53.

²⁹² *Id.*

F. *Enforcement of the ICJ's Reparation Judgment*

Despite the ICJ having sufficient evidence of injury, adequate causation, and clear feasibility, scholars say that the challenge “is not Russia’s ability but its willingness to pay.”²⁹³ Therefore, enforcing the ICJ’s reparations order will be a grueling task for the international community, despite Article 94 of the U.N. Charter requiring that all Members agree “to comply with the decision of the International Court of Justice in any case to which it is a party.”²⁹⁴ However, Ukraine can enforce an ICJ ruling through a variety of measures, including through the U.N. Security Council, General Assembly, or the use of countermeasures.²⁹⁵ Because of Russia’s veto power on the Security Council, enforcement using the Security Council is impracticable.²⁹⁶ However, the General Assembly can recommend Member states enact countermeasures to pressure Russia to comply with the judgment.²⁹⁷

Numerous states have frozen nearly \$300 billion of Russian Central Bank assets.²⁹⁸ The assets, in the form of securities and cash, are held primarily by the G-7 partners, the E.U., and Australia “with more than two-thirds of those immobilized in the E.U.”²⁹⁹ Under the ARSIWA, these states are legally permitted to enforce economic sanctions as Russia’s breach is “owed to the international community as a whole.”³⁰⁰ Furthermore, economic sanctions are legal under the ARSIWA because they are not a form of punishment. Rather, third-party countermeasures are the states’ way to force Russia back into compliance with international law. Specifically, the countermeasures are meant to pressure Russia to cease its violation of Ukraine’s sovereignty and its use of force in Ukraine.³⁰¹ In addition, the

²⁹³ Clemens, *supra* note 8.

²⁹⁴ U.N. Charter art. 94.

²⁹⁵ See Couzigou, *supra* note 74; ARSIWA, *supra* note 33, art. 48.

²⁹⁶ See Couzigou, *supra* note 74.

²⁹⁷ See *id.*

²⁹⁸ See Kelly, et al., *supra* note 17.

²⁹⁹ *Immobilized Russian Assets: Council Decides to Set Aside Extraordinary Revenues*, EUROPEAN COUNCIL (Feb. 12, 2024, 5:14 PM), <https://www.consilium.europa.eu/en/press/press-releases/2024/02/12/immobilised-russian-assets-council-decides-to-set-aside-extraordinary-revenues/>.

³⁰⁰ See ARSIWA, *supra* note 33 art. 48.

³⁰¹ See *id.* art. 49.

countermeasures are proportional to the damage Russia is causing in Ukraine, and the states have given Russia ample opportunity to comply with its obligations.³⁰²

The final limitation placed on countermeasures under the ARSIWA is that countermeasures must terminate after the state has been brought back into compliance with its international obligations.³⁰³ While Russia may argue that the states are required to unfreeze its assets as soon as the war has ended, Ukraine can assert that the assets should remain frozen until Russia has paid reparations for its international violation, as the payment of reparations is a requirement of international law.³⁰⁴ Therefore, even after Russia has been brought back into compliance with its international obligations under U.N. Charter Article 2(4) and terminates its war in Ukraine, it will continue to be in breach of international law so long as it fails to pay the required reparations.

Furthermore, upon a judgment from the ICJ, Russia will similarly violate its obligations under Article 94 of the U.N. Charter should it refuse to pay the reparation order.³⁰⁵ Therefore, states can continue to hold Russian Central Bank assets until Russia complies with all of its international obligations—stopping its invasion of Ukraine's territory, refraining from the use of violence in Ukraine, and paying reparations for the violation. Thus, the ICJ reparations order can be upheld and enforced by the Member states of the U.N. General Assembly via countermeasures.³⁰⁶

IV. RECOMMENDATIONS

Ukraine can utilize the legal avenue provided by ICJ reparations to hold Russia accountable and rebuild Ukraine. Although the ICJ has never issued a reparations order in the billions of dollars, the Russia/Ukraine case provides the ICJ a unique opportunity to do so. Furthermore, this order

³⁰² See *id.* art. 50–52.

³⁰³ See *id.* art. 53.

³⁰⁴ Draft Articles, *supra* note 42, art. 31(4).

³⁰⁵ U.N. Charter art. 94 (“Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.”).

³⁰⁶ See Couzigou, *supra* note 74.

would set a new reparations precedent to deter future violators of international law, enhancing global security by reinforcing the accountability of states for egregious violations. This section proposes four recommendations: (1) Ukraine initiates ICJ proceedings against Russia for violating international law; (2) the ICJ considers ordering reparations against Russia; (3) third-party states continue to hold frozen Russian assets until Russia agrees to pay the reparations; (4) states unfreeze Central Bank assets in small amounts, and Russia releases the unfrozen funds to a Ukrainian reparations mechanism in installments, or states transfer frozen Central Bank assets directly to a Ukrainian reparations mechanism.³⁰⁷

First, Ukraine should initiate ICJ proceedings against Russia for violating international law. Ukraine can do so by filing a contentious case at the ICJ and obtaining Russia's consent to be a party to the dispute either by special agreement or treaty.³⁰⁸ Ukraine can begin the proceedings with an application to the ICJ,³⁰⁹ listing Russia's actions since its invasion in February 2022, and alleging Russia's clear violation of U.N. Charter Article 2(4) on sovereignty and the prohibition on the use of force, among other violations.³¹⁰ This case represents a direct challenge to Russia's expansionist actions, which threaten not only Ukraine but the broader security of the international community. It is recommended that the Court give Ukraine's claim serious consideration, assessing the evidence of the violation as provided by the parties.

Second, if the Court determines that Russia violated international law, the ICJ has the authority to order Russia to pay reparations to Ukraine.³¹¹ While the ICJ typically refers questions of reparations back to the states, Russia and Ukraine are unlikely to agree on a negotiated reparations amount.³¹²

³⁰⁷ A "reparations mechanism" is a system or process established to provide compensation or redress to victims of international law or human rights violations, often including financial payments.

³⁰⁸ See United Nations, Statute of the International Court of Justice, art. 36.

³⁰⁹ See *id.* art. 40 ("Cases are brought before the court, . . . by a written application addressed to the Registrar.").

³¹⁰ See *Russia's Invasion of Ukraine is a Violation of the UN Charter*, *supra* note 187.

³¹¹ United Nations, Statute of the International Court of Justice, art. 36.

³¹² *The Practical Guide to Humanitarian Law: The International Court of Justice (ICJ)*, MEDECINS SANS FRONTIERES, <https://guide-humanitarian-law.org/content/article/3/international-court-of-justice-icj/>.

Thus, the question of reparations will likely be up to the ICJ to determine, at which point the ICJ can determine the reparations order using its discretion.³¹³ Ukraine will likely argue that it is entitled to the full amount of damage caused by Russia, applying both restitution and compensation amounts to return Ukraine to its *status quo ante*.³¹⁴ Russia will likely contest that a reparations order in the billions is contrary to the ICJ's reparations precedent and unreasonable in this case. However, in light of Russia's continued violations and the geopolitical risks associated with its behavior, this order could serve as a significant national security measure, not just for Ukraine but for the entire international community.

The ICJ should give serious consideration to the three standards for reparations – evidence of injury, causation, and feasibility. Ukraine can argue that the reparations amount should reflect the severity of Russia's violation and resulting damage. First, Ukraine can provide evidence, as gathered by numerous entities since the start of the conflict in 2022.³¹⁵ Second, Ukraine can argue that there is sufficient causation between Russia's violation of international law and the physical and economic damage done in Ukraine.³¹⁶ Finally, Ukraine can argue that it is feasible for Russia to pay the full amount of calculated reparations by analyzing the distinctions between *Armed Activities* and this case, as well as evidence of Russia's frozen assets, namely Russia's ability to wage a full-scale war since its assets have been frozen by the states.³¹⁷ Ukraine can support its position by arguing that ICJ has never decided a case where all three elements are so sufficiently met, justifying a reparations order of upwards of \$300 billion.

³¹³ See *id.*

³¹⁴ Clemens, *supra* note 8.

³¹⁵ See Lisa Schlein, *UN Investigators Find Growing Evidence of Russian War Crimes in Ukraine*, VOA NEWS (Sept. 25, 2023, 11:18 AM), <https://www.voanews.com/a/un-investigators-find-growing-evidence-of-russian-war-crimes-in-ukraine/7282889.html>.

³¹⁶ See Madeline Halpert, *War Has Caused \$108 Billion In Damage To Ukraine's Infrastructure, Study Finds*, FORBES (Aug. 2, 2022), <https://www.forbes.com/sites/madelinehalpert/2022/08/02/war-has-caused-108-billion-in-damage-to-ukraines-infrastructure-study-finds>.

³¹⁷ Clemens, *supra* note 8.

Third, upon finding Russia's actions violated international law and ordering Russia to pay reparations, the ICJ's judgment can be enforced using countermeasures. Namely, a countermeasure of economic sanctions would best suit the matter at hand, and countermeasures can be applied by U.N. Member states, as recommended by the U.N. General Assembly. Additionally, states may continue to hold Russian Central Bank assets until Russia agrees to pay the reparations amount, as the failure to pay reparations violates international law,³¹⁸ and the "obligation breached is owed to the international community as a whole."³¹⁹ If Russia chooses not to pay reparations to Ukraine, the whole of the international community will be forced to financially support the rebuilding of Ukraine.³²⁰ Thus, states may continue to hold Russian Central Bank assets until Russia agrees to pay and begins paying reparations to Ukraine. This would create a legally viable enforcement mechanism that would address the ICJ's often criticized lack of enforcement power.³²¹

Finally, Russia can pay the reparations amount to a Ukrainian reparation mechanism. A reparation mechanism may be used to provide for a streamlined and effective transfer of funds for rebuilding in Ukraine.³²² Conveniently, the U.N. General Assembly has already provided a pathway for the creation of an international reparation mechanism to hold and distribute funds to Ukraine for the injury it has suffered as a result of Russia's "internationally wrongful acts."³²³ Russia could satisfy its reparations judgment in one of two ways. One option the ICJ could consider is to encourage states

³¹⁸ See ARSIWA, *supra* note 33, art. 48–53.

³¹⁹ *Id.* art. 48.

³²⁰ Jonathan Masters & Will Merrow, *Here's How Much Aid the United States Has Sent Ukraine*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/article/how-much-us-aid-going-ukraine> (Mar. 11, 2025, 5:45 PM) (noting that as of March 2025, the United States alone has allocated more than \$175 billion in assistance to Ukraine); Nick Eardley, *How Much Has the U.S. Given to Ukraine?*, BBC (Mar. 1, 2025), <https://www.bbc.com/news/articles/crew8y7pwd5o> (noting that the European Union has provided almost \$139 billion in assistance to Ukraine).

³²¹ See Cuellar & Hathaway, *supra* note 29.

³²² See PUBLIC INTERNATIONAL LAW & POLICY GROUP, POSSIBLE AVENUES FOR THE ESTABLISHMENT OF A UKRAINE REPARATIONS MECHANISM (2023) (unpublished report) (on file with author); Maggie Mills et al., *How to Make Russia Pay to Rebuild Ukraine*, JUST SEC. (Feb. 20, 2024), <https://www.justsecurity.org/92460/how-to-make-russia-pay-to-rebuild-ukraine>. Although beyond the scope of this paper, organizations like the Public International Law and Policy Group (PILPG) and others have developed plans for a Ukrainian reparation mechanism.

³²³ See G.A. Res. A/ES-11/L.6, *Furtherance of Remedy and Reparation for Aggression Against Ukraine* (Nov. 7, 2022).

holding Russian Central Bank assets to release portions of the assets to Russia over time. For example, the United States could release \$10 million of Central Bank assets back to Russia, and Russia could then pay the amount to the Ukrainian reparation mechanism. So long as Russia continues to transfer the funds to the mechanism, states can continue to release the frozen assets to Russia. Ultimately, Russia would have all of its Central Bank assets released, with some, if not all, of the assets applied to satisfy the ICJ reparations order. This option would allow for a slower, methodical approach for Ukraine to rebuild and restore national security.

A second, and arguably more reliable, option that the ICJ could consider is to direct states to transfer the amount of the reparations order from Russia's frozen assets to the reparation mechanism directly. This option would be preferred, as it would allow Ukraine to receive the funds in one lump sum, as opposed to small installments over time, for rebuilding. This would allow for immediate reconstruction as well as eliminate the uncertainty of future installments. Direct transfer from third-party states to the reparations mechanism allows for Russian Central Bank assets to be repurposed under the color of the law by the ICJ. It is a narrowly tailored option to seize Russian assets and circumvents the outright seizure concerns under international law and policy, namely the foreign sovereign immunity and precedent problems.³²⁴

By implementing these recommendations, the ICJ can establish a clear precedent for the consequences of international law violations and the use of countermeasures to enforce and uphold both international judicial decisions and reparations orders. Therefore, a reparations order issued by the ICJ is a viable solution to holding Russia accountable and rebuilding Ukraine.

³²⁴ While the direct transfer of Russian Central Bank assets to a Ukrainian reparation mechanism is beyond the scope of this article, see generally Federica Paddeu, *Transferring Russian Assets to Compensate Ukraine: Some Reflections on Countermeasures*, JUST SEC. (Mar. 1, 2024), <https://www.justsecurity.org/92816/transferring-russian-assets-to-compensate-ukraine-some-reflections-on-countermeasures> (outlining the purpose and scope of countermeasures in the Russia/Ukraine context).

V. CONCLUSION

The international community needs a long-term solution to hold Russia accountable and to direct money to Ukraine. Although states propose the seizure of frozen Russian assets, this option may present numerous legal and policy concerns. Reparations issued by the ICJ are a prudent alternative to outright asset seizure. The ICJ, as the arbiter of international disputes, has the authority to both hold Russia responsible for its violations of international law and to order Russia to pay Ukraine reparations. This mechanism would not only ensure accountability for Russia but also reinforce the international legal order, supporting global peace and security in the process.

The ICJ has a sufficient legal and practical basis to order reparations of upwards of \$300 billion, aligning with the existing freeze on Russian Central Bank assets and meeting the established standards for evidence of injury, causation, and feasibility. Issuing a reparations order of this magnitude would set a powerful precedent, reinforcing that violations of international law carry significant and enforceable consequences. The judgment could be upheld by leveraging countermeasures, as Russia's failure to pay reparations would itself constitute a violation of international law. By maintaining the freeze on Russian Central Bank assets until Russia complies, states can ensure enforcement while also advancing broader national security interests. This approach not only facilitates Ukraine's reconstruction efforts but also serves as a critical deterrent against future unlawful state aggression. Beyond its immediate impact, such a decision would bolster the ICJ's role as a key institution for justice and peace, reaffirming international law as an essential pillar of global security in an increasingly interconnected world.