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## PRACTICAL ASPECTS OF COMPENSATION FOR CIVILIAN VICTIMS IN THE CONTEXT OF THE RUSSIAN INVASION OF UKRAINE

Until the end of the twentieth century, the victim was the great absentee from international criminal law<sup>1</sup>.

From 1993 onwards, the International Criminal Tribunal for the former Yugoslavia<sup>2</sup> and, in 1994, the International Criminal Tribunal for Rwanda<sup>3</sup> provided, for the first time, for a reparation mechanism for victims<sup>4</sup>. In reality, these two specialized international courts provided for a mechanism for the restitution of illegally alienated property. In addition, a compensation procedure was possible, but its implementation was referred to the national courts, which could, under national law, order the offender to compensate the victim.

On 17 July 1998, the signing of the Rome Convention on the Statute of the International Criminal Court (ICC) changed this state of the law. From now on, the victim must be able to obtain compensation for the damage he or she has suffered as a result of the violation of international criminal law<sup>5</sup>. The ICC's Rules of Procedure and Evidence have defined a victim as *«any natural person who has suffered harm as a result of the commission of a crime within the jurisdiction of the Court. «Victim» may also include any organization or institution, including property dedicated to religion, education, the arts, sciences or charity, a historic monument, a hospital or any other place or object intended for humanitarian purposes that has suffered direct damage»*.

This recognition is not perfect. It is even far from satisfactory.

For example, the prosecuting authorities that intervene in the State or before the International Criminal Court do not seem to want to give an important place to victims. National prosecutors and the Prosecutor General at the International Criminal Court focus on the facts and the perpetrators of the crimes. The victim is not their priority.

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1 For example, during the Nuremberg and Tokyo trials, they were treated as mere witnesses, without being able to claim recognition of status or any compensation. The 1948 Conventions for the Prevention of Genocide and the 4 Geneva Conventions of 1947 also did not provide for the possibility of compensating any victim.

2 Cf. Doc. off. U.N.S.C., 48th year, appendix, U.N. Doc. S/25704 (1993)

3 Cf. Doc. off. U.N.S.C., 49th year, appendix, U.N. Doc. S/RES/955 (1994)

4 Cf. 105 of the Rules of Procedure of the International Criminal Tribunal for Rwanda and Articles 105 and 106 of the Rules of Procedure of the International Criminal Tribunal for Yugoslavia.

5 Cf. Article 75 of the ICC Statute

More fundamentally, the common law system that largely inspires international criminal justice traditionally recognizes only a limited role for the victim in the criminal trial.

However, Russia's full-scale invasion of Ukraine from February 2022 onwards has been the occasion for the observation of many war crimes, crimes against humanity and what I believe should be qualified as attempted genocide.

The context is specific in Ukraine because, with the help of Westerners, the Ukrainian state is able to gather evidence of these crimes. From this point of view, the war in Ukraine resembles the war in Yugoslavia. In particular, to cite just a few examples, the deportation of children to Russify them, the bombing of civilian areas, in particular hospitals, clinics or kindergartens, the constitution of mass graves, rapes, assassinations, various deportations, acts of torture and barbarism are numerous and quite clearly documented by the Ukrainian state.

Civilian casualties are therefore very high in Ukraine. Some observers report more than 130,000 war crimes. Even if these statistics must be taken with hindsight given the presumption of innocence, the way victims are counted or the daily evolution of the number of victims, it is clear that the number of Ukrainian civilian victims is considerable.

Moreover, the considerable work that has been carried out, in particular by the War Crimes Documentation Center, has made it possible to document and list the many crimes committed by the Russian invader.

All the conditions are therefore in place for victims to finally be recognized in their place by international criminal law, in particular at the International Criminal Court.

The time has therefore come for the victims to be compensated.

But who will be interested in the victims when international justice is done? The Public Prosecutor's Office will prosecute the perpetrators. He will lead the prosecution by trying to prove the alleged crimes. Those who are prosecuted will benefit from the rights of the defence, they will be able to put forward their arguments. What will be the place of the victims?

On a theoretical level, the situation of victims is at the heart of two main issues.

The first parameter is that of international security. Since the end of the First World War, historians, political scientists and jurists have regularly recalled that the Treaty of Versailles was so harsh against the belligerents who had capitulated, and in particular Germany, that it was one of the causes of the Second World War. Nazi propaganda was obviously fed by the «*Diktat*» of Versailles to stir up hatred against France, England and the United States of America<sup>1</sup>. Some therefore believe that too heavy reparations imposed on criminals prosecuted under international criminal law would lead to international insecurity. I think that this fear can be described as the «*Versailles syndrome*» and that it must, at least, be put into perspective in the Ukrainian context.

1 Cf. Johann Chapoutot « Les juristes nazis face au traité de Versailles (1919- 1945) », (2012), *Relations internationales*, n° 149 (1), p. 73-88

The second parameter is technical. To recognize victims as such in international criminal law, they must be allowed to participate in proceedings and receive compensation and compensation to provide them with an adequate level of reparation. It is therefore necessary to define what is meant by compensation for victims. Practical and financial means must also be found to ensure that victims can obtain reparations. Finally, we must find ways to ensure that these compensations are paid as much as possible by the perpetrators of the crimes.

The theoretical analysis of these parameters would be fascinating, especially as it evolves. I will do so in a future contribution. However, I thought it was important to recall these parameters in order to present the practice of compensating Ukrainian victims of the crimes perpetrated by the Russians during Russia's full-scale invasion of Ukraine.

After three years of work in the field with Ukrainian victims, it appears that the practice is not the same for compensation for victims whether it is considered within the framework of the International Criminal Court system (I) or outside this framework (II).

#### ***Part I – The practice of compensating Ukrainian victims in the framework of the International Criminal Court***

The prospect of referral to the International Criminal Court is part of a rigid framework. The conditions for compensating victims are set out in the Statute of the International Criminal Court. Compensation for victims is therefore based on theoretical conditions that are sometimes difficult to meet (A). For victims, the consequences of these procedures are sometimes difficult to measure, to the point that it is necessary to ask what victims should expect in practice from the referral to the International Criminal Court (B).

#### **A – The theoretical conditions for compensating the victim before the ICC are difficult to implement in Ukraine**

In order for victims to be compensated in Ukraine, it is necessary that the International Criminal Court can be seized. This presupposes, on the one hand, the legal qualification of a legal qualification falling within the competence of the International Criminal Court and, on the other hand, the existence of effective prosecutions.

On a practical level, legal qualification is often difficult. The material elements of crimes are most often easy to identify. For example, the Russian army does not hide when it decides to bomb hospitals or museums. In the same way, the effect of rape, murder or forced deportation of the population is often established as central to factual difficulties.

In the present case, on a practical level, the facts found may give rise to hesitation between several legal classifications. For example, bombing a hospital is likely to be qualified as a war crime, a crime against humanity if it is part of a concerted or systematic plan, or a crime of genocide if the objective is to destroy an entire population by preventing it from receiving treatment.

The same hesitation can be found, for example with an infrastructure bombing. When Russia systematically bombs energy infrastructure so that civilian populations

cannot heat themselves during the winter, it is at least a war crime. It can also be a crime against humanity, if it is a concerted plan systematically targeting all energy infrastructure in an attempt to cause serious consequences for the entire population. Finally, it may be an act constituting the crime of genocide if the objective is to destroy an entire population.

In concrete terms, from the point of view of the victim, from the moment the war crime is committed, the International Criminal Court has jurisdiction, unless it considers that the offence is not serious enough.

On a practical level, the collection of sufficiently precise complaints can be correlated with the search for evidence carried out by Ukrainian or foreign national institutions as well as NGOs such as the Documentation Centre

The second condition to be met in order to be able to prosecute a perpetrator of war crimes, crimes against humanity or genocide before the International Criminal Court is the existence of an effective remedy for the victims.

Indeed, if a perpetrator of a war crime, crime against humanity or genocide is not effectively prosecuted, he or she cannot be ordered to compensate the victim. Moreover, if the victim does not have a right of his own to act against the perpetrator of the crime, he or she will not be able to feel involved in the prosecution.

What seems obvious here is in reality far from being the case in practice.

For political and cultural reasons, Western states and their public opinion focus on the perpetrators of war crimes, crimes against humanity, crimes of genocide or crimes of aggression. As such, it is interesting to remember that at the beginning of the full-scale invasion, many considered that prosecution of the Russian authorities, and in particular Vladimir Putin, would be illusory. On the ground, meetings with the first victims required educational work to show them how useful it was to refer the matter to the International Criminal Court. Today, even the most skeptical minds are aware of the existence of the International Criminal Court. However, in the minds of those who are not experts in international criminal law, the function of the International Criminal Court is to punish the perpetrators of crimes, but not to compensate the victims of those crimes.

Even the states that are most committed to Ukraine for justice are struggling to retain a specific perspective for victims. In European states, faced with the horror of the crimes committed by the Russians in Ukraine, the reaction of public opinion is to demand justice so that the criminals pay.

On the ground, non-governmental organizations have therefore mobilized to assist the victims. Some of them do a titanic job, over the long term. They have been assisting victims for three years and will probably continue to do so for years to come, providing them with daily assistance on a medical, psychological, psychiatric, social and financial level,...

This work is obviously essential, but it is not enough.

In order for victims to have a right to be recognized as victims in the International Criminal Court system, it must benefit from specialized field assistance in international criminal law.

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This is why the profession of Ukrainian victim delegate was invented. Volunteers, most of whom are already volunteers in field organizations, but also, for example, students from law faculties, have been trained in this new profession.

These delegates receive basic training in international criminal law, criminal procedure, the collection of testimonies in trials before international courts, basic security reflexes, complaint writing, the functioning of the compensation mechanism for victims, psychology and sexology.

The victims' delegates are supervised and all the back office work is carried out by a specialized law firm.

The practical difficulties are considerable. They range from dealing with security issues, to collecting evidence in occupied areas, to dealing with a rape victim to avoid evidence being lost and the victim being traumatized.

For example, a language assistant had a nervous breakdown as a result of video conferences with victims. Since then, we no longer use videoconferences to communicate with victims because human contact is imperative for this work to be effective.

These professionals, some of whom are unfortunately now experienced, have made it possible to carry out field work that has made it possible to collect complaints from victims one by one. This work is becoming more and more important.

Thanks to this work, the International Criminal Court will be able to be seized. What should we expect from it in practice?

### **B – The effects of compensation for the victim before the ICC: what should we expect in practice?**

Compensation for victims by the International Criminal Court is a long-term process. The usual duration of proceedings is counted in decades. Despite this, the filing of complaints before the International Criminal Court has a practical interest.

For the victims, first of all, the procedure allows the recognition of the status of victims. It allows them to participate as a party in the hearings, even if the role of victims in the proceedings before the International Criminal Court is still too small and deserves to be further conquered. It also makes it possible to obtain compensation from the ICC itself or from the compensation fund.

In recent years, many debates have been held around the status of victims at the International Criminal Court. In particular, the promotion of restorative justice, concerned with the recognition of the status of victims rather than their compensation in order to ensure lasting peace. A restorative justice measure is one that allows a victim and a perpetrator to actively participate in resolving the difficulties resulting from the offence. The objective is to ensure social peace based on dialogue. It aims to allow a common understanding of the personal, family and social consequences of the offence and to allow the reconstruction of the victim, the responsibility of the perpetrator and social peace.

In international criminal law, restorative justice obviously makes sense, particularly when international criminal justice intervenes in a context of ethnic conflicts, which has often been the case on the African continent. It is linked to the maintenance of lasting peace.

However, it seems that it does not meet the practical demand of Ukrainian victims.

For many years, Ukrainian victims have been seeking recognition of their status as victims and justice so that a lasting peace can be established. Contrary to what can be seen in other contexts of international criminal law implementation, the financial condemnation of those who have enriched themselves as a result of crimes committed in Ukraine is an element of restorative justice. Acknowledging a victim, in the context of the invasion of Ukraine, also means forcing the perpetrator of the crime to impoverish himself in order to compensate him.

On the ground, Ukrainian victims are therefore more attached to traditional compensation mechanisms. Restorative justice can therefore only be implemented as a complement to financial compensation worthy of the name. In the Ukrainian context, it will not be able to replace the traditional mechanisms of sentencing perpetrators or participating in and compensating victims.

However, the system of compensating victims before the ICC is not perfect.

It allows victims to speak, who have a specific place and are no longer simple witnesses. However, the place of the victims is secondary. For example, they cannot refer the matter directly to the ICC. If they want their case to be examined before the International Criminal Court, they must refer the matter to the Chief Prosecutor of the International Criminal Court and convince him that the crimes against them are sufficiently established and serious enough for him to decide to prosecute.

ICC jurisprudence has strengthened the role of victims during criminal proceedings by ruling in 2006 that they should be able to intervene before the ICC independently of the ICC prosecutor and that they should be able to «express their interests» at the investigation stage<sup>1</sup>.

In practice, this participation is very difficult. Victims often have no means, no advice, no possibility to interfere with the Prosecutor at the International Criminal Court. In reality, the ICC Prosecutor General is conducting the investigation without involving the victims.

The recognition of the status of victims is therefore real but difficult to implement, at least at the beginning of the procedure.

Similarly, compensation paid to victims at the end of ICC proceedings is very small. Often, perpetrators of international criminal offences have become impecunious when they appear before the ICC. Despite the existence of the Trust Fund for Victims of Crimes under the Jurisdiction of the ICC, compensation paid to victims is often particularly meagre.

Compensation for victims before the ICC will therefore require the prosecution of criminals who enriched themselves during the conflict to seize their assets, freeze them for the duration of the proceedings, and use them to compensate victims. Let us hope that the international criminal justice system will rise to this challenge!

## ***Part II – The practice of compensating victims outside the framework of the International Criminal Court***

1 Cf. ICC, Decision on Applications to Participate in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6, Pre-Trial Chamber I, 17 January 2006.

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In parallel with the referral to the International Criminal Court, two specific mechanisms for compensating victims have been developed in the Ukrainian context. These are the E-recovery systems (A) and the Damage Register for Ukraine (Rd4U) (B).

#### **A – The E recovery system**

The E-recovery system has been developed and implemented by the Ukrainian administration to enable compensation for all victims of war damage since February 2023. It was opened in July 2023 and modernized in January 2024. This system was developed with the support of the World Bank, the United Kingdom and the United States after more than 143,000<sup>1</sup> buildings, including 142,000 private buildings, were destroyed by the war in Ukraine. The system was intended to provide prompt compensation for victims, by prioritizing based on categories of victims.

To be eligible for compensation under the E-recovery system, it is therefore not necessary to provide proof of a war crime, a crime under international criminal law. This has two consequences.

First, compensation can be paid long before the crime is recognized by an international court.

Secondly, the recognition of war damage is much broader than that of a war crime. The E-recovery system therefore makes it possible to quickly pay a sum of money to the victims of the war.

This system has many advantages. It allows victims to be rescued quickly. The use of Diia makes it possible, for example, to facilitate the referral of the compensation mechanism, in a context that is both painful and complex on a daily basis for victims.

This mechanism also has the major advantage of not conditioning the payment of compensation according to the classification of a crime or the imputability of the damage. It is not redundant with compensation based on the recognition of war crimes, crimes against humanity, genocide or aggression, since international criminal law does not apply the principle of full reparation for injury.

Even if it is a model of compensation for victims in a particularly innovative context of war, this system has disadvantages.

In practice, victims sometimes regret that it is difficult to implement or not well known. Relations with the Ukrainian administration are sometimes difficult. The administration requests the communication of proof of the victims' situation, which obviously seems legitimate since it is a question of distributing a sum of money to those who can justify being able to benefit from it. However, in practice, it is often difficult to obtain such evidence, for example when the victims have had their homes destroyed by an explosion or burned after a bombing and the documents have been destroyed during the explosion or fire.

The other disadvantage of the E-recovery system is that the Ukrainian state compensates its own nationals for war damages. In a state at war, the amounts of compensation can only be limited. Moreover, the theory of liability assumes that the

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<sup>1</sup> This figure has changed since 2023. Now, estimates have brought the estimated number of buildings destroyed by the war in Ukraine to more than 250,000.

perpetrator of the criminal act compensates the victims. It is therefore the Russian Federation and its nationals who should compensate the Ukrainians, not the Ukrainian state.

## **B – The Rd4U system**

The system of the Register of Damage for Ukraine (Rd4U) has been defined within the framework of the Council of Europe.

The United Nations General Assembly adopted a resolution on 14 November 2022<sup>1</sup> recommending the establishment of an international register of damage to identify harm resulting from internationally wrongful acts committed by the Russian Federation.

On 2 April 2024, the Council of Europe set up an intergovernmental platform with legal personality to identify victims of intangible and material damage.

Considerable work has been carried out by the Council of Europe to define the platform, recruit experts to verify the reality of the damage suffered, and set up cooperation with the Ukrainian state so that it can effectively be accessible.

This platform is setting up damage declaration forms that are starting to be accessible on Diia.

Damage to and destruction of housing<sup>2</sup> and the death of close family members<sup>3</sup> can now be the subject of complaints submitted to the Register.

It is essential that victims fill out Rd4U's damage census forms, even if compensation has not yet been paid.

This is important because these damage assessments are obviously linked to the establishment of a special tribunal for Russian aggression in Ukraine. Russian aggression is an illegal international act. The damage suffered by the victims is the consequence. Identifying this damage will therefore make it possible to compensate them and to put the consequences of the crime of aggression into perspective. In a word, this census will be useful for the recognition of the victims.

It is also important because the number of referrals to the Rd4U will show the need for a compensation mechanism. The next challenge for the Damage Register is the creation of a new international organization that will have to pay compensation to the victims<sup>4</sup>. It will probably make it possible to distribute part of the Russian assets already seized to pay them to the victims and to facilitate the effective recognition of the Ukrainian victims of the Russian invasion.

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1 Cf. Resolution adopted by the UN General Assembly on 14 November 2022, «Aggression against Ukraine: remedies and reparations», A/ES11/L.6. A translation has been made by Dean Nataliia Yatskiv into Ukrainian in N. Ligneul (ed.), N. Yatskiv, D. Piguet, «Practical Guide for the Compensation of Victims of the Russian Invasion of Ukraine», Fuvic ed. Kyiv, 2024, p.241 et seq.

2 Cf. Form A3.1 of the Rd4U, reopened since January 29, 2025 following a cyber-attack.

3 See Form A2.1 of the Rd4U, since January 2025.

4 Negotiations on this treaty are expected to start in The Hague in March 2025.

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The more information the register has been completed, the more the work of Rd4U and the Council of Europe will be facilitated.

On a practical level, it is difficult to convince victims to fill in a register organised by the Council of Europe to obtain future compensation, the contours of which are still difficult to define. This is why the practical guide for compensating victims of the Russian invasion of Ukraine has been drafted<sup>1</sup>. It is a practical guide written in French, English and Ukrainian. It should provide victims with an extension tool to use E-recovery and Rd4U effectively.

The objective of this guide is therefore to facilitate the identification, recognition and reparation of the damage suffered by victims.

On a more theoretical level today, these two compensation mechanisms seem to be linked to the constitution of the qualification of the crime of aggression. The damage identified in these mechanisms is indeed the consequence of Russia's aggression against Ukraine.

In the event of the creation of a special tribunal on Russian aggression in Ukraine, the recognition of Russian guilt would allow the recognition of these victims. It would then not be utopian to hope to use the seized Russian assets to distribute them to the victims listed in the damage register for Ukraine and to reimburse the Ukrainian state for the sums paid as part of E-recovery.

The syndrome of the Treaty of Versailles was that of the imposition of too heavy war damages. It is to be hoped that the invasion of Ukraine does not create an inverse syndrome in which the victims will feel despised and forgotten. Because despising the victims of a war prohibits the construction of a lasting peace.

#### **Nicolas LIGNEUL. Practical aspects of compensation for civilian victims in the context of the Russian invasion of Ukraine**

Historically, victims were considered the «great absentees» of international criminal law until the late 20th century. This article examines the transformative shift initiated by the Rome Statute of the International Criminal Court (ICC), which formally recognized the right of victims to reparations. However, the author contends that current judicial practices remain predominantly «perpetrator-centric,» often sidelining victims' interests due to the procedural traditions of common law and the strategic priorities of international prosecutors.

In the context of Russia's full-scale invasion of Ukraine, the scale of documented war crimes—including the bombing of civilian infrastructure, forced deportations, and acts of genocide—necessitates a robust compensation framework. The article provides a critical analysis of the ICC's restorative justice model, arguing that while social dialogue is valuable, Ukrainian victims primarily demand traditional financial reparations as a prerequisite for lasting peace. A significant practical innovation highlighted is the introduction of «victim delegates»—specially trained professionals who facilitate legal access for victims directly in the field.

The study further evaluates two parallel compensation pathways: the Ukrainian national E-recovery system and the Council of Europe's Register of Damage for Ukraine (Rd4U). While E-recovery offers immediate relief, it is funded by the Ukrainian state, raising questions

1 Cf. N. Ligneul (ed.), N. Yatskiv, D. Piguet, «Practical guide for the compensation of victims of the Russian invasion of Ukraine», Fovi ed. Kyiv, 2024, 303 pages.

of liability. Conversely, the Rd4U serves as a vital international mechanism for documenting claims that could eventually be satisfied through seized Russian assets. The author concludes by addressing the «Versailles syndrome,» arguing that international security depends on avoiding the «inverse syndrome» of ignoring victims; true peace can only be constructed if the perpetrators are held financially accountable for the damages they have caused.

**Keywords:** International criminal law, International Criminal Court (ICC), Rome Statute, Ukraine-Russia war, victim compensation, reparations, restorative justice, victim delegates, E-recovery system, Register of Damage for Ukraine (Rd4U)