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# Potential paths for enforcement of claims against Russia in light of war in Ukraine

Marina Skarbek-Kozietulska  
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## Liability of the state for delicta imperii

- General principle of immunity of sovereign state against suit and enforcement against its property in courts of other states for sovereign acts
- Acts of the sovereign state state have to constitute a violation of international law (crimes against humanity, aggression etc).
- War in Ukraine – this premise partly confirmed by the judgement of ICJ (unrecognized by Russia).
- Act should be attributable to the state
- Damage and causal effect
- Issue of the competent court

## Potential path for private commercial claims: bilateral investment treaties

- BITs (total Russia signed 85, in force now 64 – not all ratified, some terminated).
- Claim can be made directly by entity who suffered damages.
- Claim should be made to court deemed competent in BIT (dependent on particular BIT provisions)
- Can be also argued that liability extends for actions of state outside of recognised border of state – on the territory where the state executes factual power (arbitration related to investments in Crimea)



## Potential path for private commercial claims: Chorzow factory case

- Chorzow factory case 1927 – short summary
- Claim to ICJ has to be brought by state
- State will need to act as „trustee” for investor claims
- ICJ jurisdiction not recognized by Russia
- ICJ preliminary decision from 16 March 2022 (taken under the Genocide convention) is an important step towards proving the illegality of the war under international law
- Also widely argued as violation by multiple international law experts

## Enforcement

- Realistically foreign assets (outside of Russia) at the moment
- Extremely long enforcement proceedings even after the award
- Yukos award



Thank you

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**Rö Radwan-Röhrenscheff Petruczenko Sp. k.**

Wola Center, ul. Przyokopowa 33, 01-208 Warszawa

t. +48 22 266 0 900

[sekretariat@ro-legal.com](mailto:sekretariat@ro-legal.com)

[www.ro-legal.com](http://www.ro-legal.com)