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THE RUSSIA-UKRAINE SPECIAL ISSUE: INTRODUCTION

Russia's full-scale invasion of Ukraine on February 24, 2022 has had vast and unprecedented reverberations across the international arbitration landscape. This Special Issue of the *American Review of International Arbitration* features a diverse set of authors exploring the ever-changing impacts of the ongoing Russia-Ukraine war with a special emphasis on Ukrainian legal practitioners' perspectives.

First, the Russia-Ukraine war has triggered potential arbitration disputes in a wide range of industries, especially the energy sector. Oksana Karel and Daryna Hrebenuk predict upcoming international arbitration disputes arising from the energy sector. Yaroslav Petrov, Oleksandr Volkov, and Marko-Bohdan Malinovskiy examine how the Russia-Ukraine war has damaged the Ukrainian energy industry, ranging from oil facilities to nuclear plants, and the various avenues for obtaining compensation.

Second, international arbitration can be weaponized as a tool for justice. Anna Guillard Sazhko explains the key jurisdictional elements for potential arbitration claims, categories of Ukrainian territory occupied and attacked by Russia, and the considerations for evaluating sources and the standard of proof. Yuliia Demianchuk discusses how past investor-state arbitration cases related to investments in Crimea can inform prospective efforts to sue Russia for property affected by the Russia-Ukraine war. Olga Kuchmiienko examines how past investor-state arbitration cases related to investments in Crimea applied the concept of effective control to justify jurisdiction, which may not be applicable in other instances of Russian occupation in Ukraine. Oleksii Maslov and Mariana Antonovych analyze potential challenges to future arbitrations, especially in the areas of effective control and sovereign immunity. Henrietta Yaitska contends that effective control is a reliable instrument for attributing acts of Russia-backed separatist groups in Ukraine to Russia. Dmytro Donenko argues that given the lack of effective international mechanisms to hold Russia accountable, arbitration under the Russia-Ukraine BIT is a potential option. Olena Perepelynska examines various evidentiary challenges for potential claimants that justify a broader interpretation of the Russia-Ukraine BIT. Olexander Droug, Andriy Stetsenko, and Katalina Shkuro analyze the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry's response to the Russia-Ukraine war as well as potential trends in future investment arbitrations against Russia and Ukraine. Iryna Ivanova and Serhii Uvarov argue that denial of benefit clauses in investment treaties can be used to prevent Russian investors from abusing international treaty protections. Daniel Knaap discusses the applicability of Russia's treaty obligations in investor-state disputes arising out of its annexation of the Donetsk, Kherson, Luhansk, and Zaporizhzhia oblasts.

Third, any international arbitration arising from the context of the Russia-Ukraine war must remain cognizant of other international mechanisms for justice. Olga Hamama and Khrystyna Pogoretska contend that in a context where available international mechanisms fall short of justice, a Special Tribunal for the Crime of

Aggression Against Ukraine and a compensation commission is necessary to effect reparative justice. Marianna Kychenko discusses the challenges that the European Union sanctions regime pose to international arbitrations involving Russian parties. Noah Rubins and Maxim Pyrkov consider the issue of parallel proceedings in light of Russia's adoption of provisions establishing the exclusive jurisdiction of Russian courts over parties affected by sanctions. Maximilian Frank presents a series of policy options that may decrease the risk that parallel BIT arbitrations arising out of Russian aggression pose to a reparations mechanism. Merrilee Agather analyzes the funding challenges facing an international claim commission for Ukraine.

Because past investor-state arbitration cases related to investments in Crimea under the Russia-Ukraine BIT have attracted much attention as inevitable influences on future arbitrations arising from the Russia-Ukraine war, this Special Issue presents a deep-dive into those cases written by Karan Joseph, Dushyanth Narayanan, and Yash Khanna. In particular, the authors critique those cases as short-sighted in their failure to consider the impact on future investment claims in disputed territories and constitute a departure from established jurisprudence with the unintended and undesirable effect of deterring foreign investment.

This Special Issue aims to be a generative contribution to ongoing conversations about the Russia-Ukraine war's implications for international arbitration as one tool amongst many in the toolbox of international reparative mechanisms. The *American Review of International Arbitration* is proud to present this Special Issue with special thanks to our authors and readers.

Olivia Lu
Student Editor in Chief, ARIA