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Current Issues of Public International Law

Exchange of views with Prof. Dr. Chiara Giorgetti, University of Richmond: The Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine and a future Claims Commission

Chiara Giorgetti

Good morning, it is really a pleasure and an honor to be here today and speak at CAHDI. Thank you for the kind invitation to join you.

My name is Chiara Giorgetti and I am Professor of Law at Richmond Law School and Vice Chair of the Board of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine.

Depending on how you count, the Register is either almost a year old or it just recently turned one (it was created on 16May 2023 and held its first meeting on 27June 2023, yet it elected its final constitutive body – the Board - on 16November 2023).

It seems, therefore, a good time to make an assessment of its work, and both look back at what it has done so far and also look forward and see where it is going.

I would like to do this in three parts:

1. First, I will briefly explain what the Register is and how it works;
2. Second, I will give an update on what the Register, and particularly its Board, have done so far; and
3. Third, I will offer some thoughts and general reflections on what we have learnt so far and speak about where we are going, looking at the future.

I will be happy to take questions at the end as time allows.

1. What is the Register of Damage for Ukraine?

The Register is a unique and flexible instrument, created by the Council of Europe, in application of the [UN General Assembly Resolution ES/11/5](#) of 14 November 2022 (entitled ‘Furtherance of remedy and reparation for aggression against Ukraine’) where the General Assembly (GA) made the clear syllogism that because Russia had committed internationally wrongful acts, its international responsibility was engaged and therefore had the obligation to provide reparations. Specifically, the GA recognized “the need for the establishment of an international mechanism for

reparation” and “recommended the creation of an international register of damage in co-operation with Ukraine.”¹

A few months later, in May 2023, the Council of Europe (COE) established, through an Enlarged Partial Agreement, the [Register of Damage Caused by the Aggression of the Russian Federation against Ukraine](#) (Register of Damage for Ukraine).²

Partial Agreements are a particular form of co-operation within the COE and are distinct from international treaties. Partial Agreements allow some COE Member States to act in a small group for a specific purpose, in relation to which other Members prefer to abstain. From a statutory point of view, a partial agreement remains an activity of the COE. Partial Agreements have their own budget and working methods which are determined solely by the members of the Partial Agreement itself.³ Partial Agreements can also be enlarged (Enlarged and Partial Agreement (EPA)), to allow States that are not members of the COE to participate in some specific activities.

The Register was created through an EPA designed to function as a record of all eligible claims seeking compensation for the damage, loss and injury caused by the aggression of the Russian Federation in and against Ukraine. The Register now counts 43 States and the European Union as members. In addition to COE members the US, Canada and Japan also joined the Register.⁴

The [Statute of the Register](#) at Art. 1 provides that the Register:

shall serve as a record, in documentary form, of evidence and claims information on damage, loss or injury caused, on or after 24 February 2022, in the territory of Ukraine within its internationally recognised borders, extending to its territorial waters, to all natural and legal persons concerned, as well as the State of Ukraine, including its regional and local authorities, state-owned or controlled entities, by the Russian Federation’s internationally wrongful acts in or against Ukraine.

This provision specifies the three requirements necessary for the registration of claims – and namely that the damage, loss or injury:

1. Occurred on or after 24 February 2022;
2. Occurred in the internationally recognised territory of Ukraine; and
3. Was a consequence of Russia’s internationally wrongful acts.

It also specifies that claims can be filed by individuals, legal persons and the State of Ukraine.

In accordance with its Statute, the functions of the Register are limited to receiving and processing information on claims, categorising, classifying, and organising such claims, and assessing and determining their eligibility for inclusion in the Register.

¹ UN General Assembly Resolution ES/11/5 - of 14 November 2022 (Furtherance of remedy and reparation for aggression against Ukraine), available [here](#). The Register has its own website with a lot of information, available [here](#).

² Resolution CM/Res(2023)3 Establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, 12 May 2023, available [here](#).

³ See Resolution(51) 62 of 2 August 1951, Partial Agreements, available [here](#). A list of partial agreements is available [here](#). see generally See also J. Polakiewicz, Treaty-making in the Council of Europe (1999, Council of Europe Publishing), available [here](#)

⁴ Register of Damage for Ukraine, Membership, available [here](#).

The Register itself does not have an adjudicative function and does not determine responsibility or allocate payments or compensation. Rather, the [Statute](#) (at Art. 2.5) provides that the work of the Register is the first component of a future compensation mechanism to be created separately, and which may include a Claims Commission and a Compensation Fund.

The Register is novel in international law for several aspects. I would like to focus on two issues:

- First, it is the first time that the COE is involved in the creation of a compensation mechanism. Compensation mechanisms by themselves are not new, but prior post-WWII claims commissions were created by either bilateral agreements or by a UN Security Council resolution. For example, the Iran-US Claims Tribunal (IUSCT) and the Eritrea-Ethiopia Claims Commission (EECC) were created by bilateral treaties. Differently, the United Nations Compensation Commission (UNCC) was created by a Resolution of the UN Security Council.⁵ This the first time that the COE, a widely representative regional organization, is involved in the creation of a compensation mechanism. Establishing the Register through an EPA is also particularly interesting because it also allows non-European countries to participate in the activities of the Council of Europe.
- Second, in so far as the *format* of compensation mechanism is concerned, this is the first time where there is a separation between the registration, adjudication and compensation functions. In prior international compensation mechanisms, including the UNCC, the IUSCT and the EECC, these three functions (registration, adjudication, compensation) were all performed by the same body, a claims commission. Instead, the model used by the Register of Damage for Ukraine follows the model used by the UN Register of Damage (UNROD). UNROD was created as a subsidiary organ of the GA following the 2004 Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory to “serve as a record, in documentary form, of the damage caused to all natural and legal persons concerned as a result of the construction of the Wall by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem.”⁶ The Statute of the Register of Damage for Ukraine, differently, also specifically calls for the creation of a compensation mechanism (possibly including a Claims Commission and a Compensation Fund), while there is no compensation mechanism foreseen in UNROD whose function is, at this stage, solely to register claims.⁷

The Register of Damage for Ukraine acts within the institutional framework of the COE and has its own juridical personality under Dutch and Ukrainian law (Arts. 1 & 3 Statute). Participation in the Register is open to all COE members and observer States and the EU, as well as other States that voted in favor of [UN GA Res. A/RES/ES/11/5](#) and those so authorised by the Conference of Participants, taking into consideration the position of Ukraine.

⁵ See generally C. Giorgetti, P. W. Pearsall and H. Ruiz-Fabri (eds.), [Research Handbook on International Claims Commissions](#) (2023).

⁶ See General Assembly Resolution [A/RES/ES-10/17](#) of 15 December 2006 (creating the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (NROD)).

⁷ Note, however, that the recent GA Resolution [A/ES-10/L.31/Rev.1](#) of 13 September 2024 on the 2024 Advisory Opinion by the ICJ on The Consequences Arising from Israel’s Continued presence in the Occupied Palestinian Territory calls for the creation of such a mechanism (at para. 10, which recognizes “in this regard the need for the establishment of an international mechanism for reparation for all damage, loss or injury arising from the internationally wrongful acts of Israel in the Occupied Palestinian Territory, and calls for the creation by Member States, in coordination with the United Nations and its relevant bodies, of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as to the Palestinian people, caused by the internationally wrongful acts of Israel in the Occupied Palestinian Territory, as well as to promote and coordinate evidence-gathering and initiatives aimed at securing such reparation by Israel.”).

Key Features of the Register

The Register is composed of [three main bodies](#): the [Conference of Participants](#) (COP), the [Board](#) and the [Executive Director](#), who heads the Secretariat.⁸

The Conference of Participants

The COP is composed of one representative appointed by each participant. Associate members participate without a right to vote but acquire full rights when they make voluntary contributions of specified amounts.

The COP has overall responsibility for the fulfillment of the mandate of the Register. It appoints the members of the Board, designates the Executive Director and approves the budget. It also approves the Register's rules and regulations as proposed by the Board.

The COP has so far met four times: first, in June 2023 in Strasbourg to appoint its Chair (Ambassador Sandy Moss from the UK) and the two Vice-Chairs (Ambassador Tanja Gonggrijp from the Netherlands and Mr Emil Ruffer from Czechia). It also designated the Executive Director. The COP's second meeting discussed financial issues and approved the 2023 budget. It also agreed on the rules for the appointment of the members of the Board. The seven members of the Board were elected at the COP's third meeting in November 2023. Finally, the COP met in The Hague in April 2024 to announce the opening of the claims' submission process. The COP's next (fifth) meeting is scheduled for October in Strasbourg.

Board of the Register

The [Board of the Register](#), elected by the COP, is composed of seven members, each nominated by COP members. [Robert Spano](#), former President of the European Court of Human Rights from Iceland and now a partner in the law firm of Gibson, Dunn & Crutcher LLP, chairs the Board. I, Prof. [Chiara Giorgetti](#) (from Italy), Professor of International Law and an international arbitration expert, have the honor to be the Vice-Chair. The other members are Dr. [Veijo Heiskanen](#) (Finland), international arbitrator and former partner at Lalive, Ms [Aleksandra Mężykowska](#) (Poland) Associate Professor at Institute of Law Studies, Polish Academy of Sciences, [Lucy Reed](#) (USA), international arbitrator and former partner at Freshfield Bruckhaus Deringer LLP, and Dr. [Norbert Wühler](#) (Germany), who has served in several international claims commissions. One spot on the Board was reserved for a Ukrainian nominee, and [Yulia Kyrpa](#), executive partner at Aequo, was elected by the COP to that spot.

The Board includes members with a variety of relevant expertise, including international claims commissions and human rights. Board members serve for a three-year term renewable once and sit in their individual capacity.

Under [Art. 6 of the Statute](#) the Board has responsibility for the exercise of the function of the Register and proposes rules and regulations governing the Register's work, in particular in regards to the determination of the categories of claims and the process for receiving, processing and recording them, as well as the format of the claims form and the requirement for evidence for each category of claims. The rules and regulations are approved by the COP. The Board also has ultimate authority to determine the eligibility of claims to be recorded, based on the recommendations of the Executive Director, and performs any other function not otherwise vested in other organs of the Register.

⁸ See generally Chiara Giorgetti, [The Register of Damage for Ukraine Opens for Claims Submissions](#), Just Security, 16 May 2024.

The Board met four times so far, as further elaborated below.

Executive Director

The Executive Director, Markiyan Kliuchkovskiy (former partner at Asters) was designated by the COP upon proposal of Ukraine. He has the day-to-day responsibility for overseeing and administrating the work of the Secretariat, and, together with the Secretariat, ensures substantive, technical, administrative and organisation support for the work of the COP. He is also responsible for forwarding claims to the Board for approval and recording them in the Register and for liaising with relevant national and international bodies on issues related to its work and the process of claims collection and evidence.

2. The Activities of the Board So Far

In December 2023 the Board held its inaugural meeting in The Hague. The Board has so far met four times. During its [inaugural meeting](#) in December 2023 it elected its Chair and vice-Chair, adopted rules and procedures and discussed the categories of claims that will be eligible for submission to the Register, in accordance with its Statute and international law. It also stated its intention to address as a matter of urgency the collection and recording of claims from individuals who have been most affected by the war and claims related to Ukraine's critical infrastructure.

The Board held its second meeting in March 2024, and focused on the adoption of rules and regulations necessary for the operation of the Register (including rules of procedure and on conflict of interest) and preparation for the launch of the submission of claims.⁹

Eligible Claims

The Board adopted [categories of claims eligible for recording](#) at its [second meeting](#) of March 2024 and the Conference of the Participants approved the categories a few days later, on 26 March 2024. Categories include claims by natural persons ([Category A](#)), which include claims related to involuntary displacement – in and outside Ukraine - personal injuries, claims deriving from torture and sexual violence, death, as well as economic claims including loss of property, income and livelihood and loss of access to public services. [Category B](#) includes Claims by the State of Ukraine, while Claims by legal entities other than those included in B are found in [Category C](#). Category B includes damage or destruction of property, loss of historic, cultural and religious heritage, damages to the environment and natural resources as well as humanitarian public expenditure and demining. Category C includes damage or destruction of property, loss of historical, cultural, and religious heritage, business and other economic losses and humanitarian expenditures.

The categories of Claims may be subject to change and/or clarification, in accordance with the Register's Statute and Claims Rules.

⁹ All of the documents proposed by the Board and approved by the COP are available online in the Register's website [here](#): Rules include Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine (12 May 2023 and amended on 27 September 2023), Rules of Procedure of the Conference of Participants of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine (27 June 2023), Rules on the appointment and removal of the members of the Board of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine (27 June 2023), Rules of Procedure of the Board of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine (11 December 2023), Rules on Conflicts of Interest and Disclosure for Members of the Board of the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine (21 March 2024).

Claims Rules

The Board has also approved Rules Governing the Submission, Processing and Recording of Claims ([Claims Rules](#)) which specify how claims can be submitted and by whom, as well as the technical submission requirements, eligibility requirements and the process for review and processing by the secretariat and consideration and recording by the Board.

Opening the Register for Claims

The submission of claims in the first category – damages or destruction of residential immovable property – was opened at the fourth meeting of the COP on 2 April 2024. The Board prioritized this category because of its significant impact on people's lives and because substantial evidence was readily available. The Register will continue to periodically launch other submissions of claims from individuals who have been most affected by the war and for damages to critical infrastructure of Ukraine.

At its [third meeting](#), in June 2024, the Board adopted claims forms and rules related to 12 claims categories, including death and disappearance of immediate family members, involuntary internal displacement, and several new categories related to damage and destruction of property. The Board also adopted the claims form and rules governing claims for damage and destruction of Ukraine's critical infrastructure. These claims forms were approved by the COP in July, together with rules on representatives, which allow claimants to appoint representatives who can submit claims on their behalf (includes parents and guardians).

In accordance with international law and the object and purpose of the Register's Statute, the Board also decided that claims by Russian nationals are not eligible for recording in the Register. However, claims by Russian nationals may be recorded if they can establish that they also hold another nationality. This decision follows the practice of prior international claims commissions, including the UNCC.

Meeting of September 2024

The Board met for its [fourth meeting](#) in September 2024. In addition to the thirteen claim forms already adopted and in the process of being launched, the Board focused on the claim forms and rules for an additional sixteen categories of claims.

The Board adopted claim forms and rules for the following sixteen categories:

- Involuntary displacement outside of Ukraine
- Serious personal injury
- Torture or inhuman or degrading treatment or punishment
- Sexual violence
- Deprivation of liberty
- Forced labour or service
- Deportation and forcible transfer of children and adults
- Loss of housing
- Loss of employment
- Loss of private enterprise
- Loss of access or control of immovable property in the temporarily occupied territories
- Damage or destruction of public buildings and facilities
- Damage or destruction of non-residential immovable property (not related to business losses)
- Damage, destruction or loss of assets
- Loss of control of property in the temporarily occupied territories
- Relocation (evacuation) of businesses

Once the claim forms and rules for these new categories are examined and approved by the COP, they will be opened for submission.

Building on the experience with residential property claims, in preparing claims for submissions the Register is focusing on ensuring that the submission process is smooth and user-friendly and can be easily used by individuals with different backgrounds.

There is a lot of work in the pipeline, and we expect several claim forms to be opened soon for submission. The Board also expects to begin the review of claims for inclusion in the Register soon.

3. Assessment – Future

In sum, a lot has been done in less than a year: the Board approved three large categories of claims (claims by natural persons, claims by the State of Ukraine and claims by legal entities), as well as a variety of sub-claims within these categories. In so doing, it followed precedent in international law, particularly that of the UNCC.

The work of the Board and the Register has been steadfast and committed. I believe the results so far show how much work has already been done. The Board has also already made some significant choices.

First, it decided to give priority to claims from individuals and those concerning Ukraine's critical infrastructure.

It also recognised claims for mental pain and anguish as separate from pecuniary consequences of an event (see for example the claim form for [claims for the death of an immediate family member](#)).

The Register is sensitive to individuals' claims and has adopted a victim-centered approach that it applies throughout its work, from the determination of categories of eligible claims to the designation of the claims submission process and recording.

It is anticipated that several thousands (and possibly hundreds of thousands) of claims will be received. Article 20 of the Rules of Claims provides for the use of Mass Claims Processing Techniques and Computer Software to process the claims expeditiously to determine their eligibility for registration. Mass claims techniques have been used before, for example by the UNCC, but technology has evolved significantly since then, so these techniques will prove even more helpful.

Claims will be submitted completely electronically in a simple process. The Register will also rely on digital data and will operate a secure digital platform to receive, process and categorise claims and evidence. Indeed, the technology must now ensure claims already approved can be properly submitted.

Claim forms for the remaining claims categories, including those related to loss of historic, cultural and religious heritage, damage to the environment and natural resources, demining and clearance of unexploded ordnance, will be considered and approved in the next few months.

A Future Claims Commission and Compensation Fund

The Register of Damage is the first step of a larger compensation mechanism that under the Statute may include a Claims Commission and a Compensation Fund.

Indeed, in parallel to the work of the Register, discussions on the creation of a Claims Commission are also underway. I am not involved in the negotiations, though it is an issue that I am interested in, also as an academic.

The [second preparatory meeting](#) on an international instrument to establish a Claims Commission for Ukraine took place in The Hague on 12-13 September 2024. The event was organized by the Office of the President of Ukraine, Ukraine's Ministry of Foreign Affairs, the Ministry of Foreign Affairs of the Netherlands, and the Register. It was chaired by Dr. René Lefeber, Legal Adviser and Head of the International Law Division of the Dutch Foreign Affairs. Fifty-seven delegations participated.

This followed the [first meeting](#) which was held in July, also in The Hague, where discussions focused on the framework for the establishment of a Claims Commission, including the types of foundational instruments.

At the second meeting, delegates also reviewed a "zero draft" of the proposed international instrument. Another preparatory meeting is scheduled for November 2024.

Some of the important issues to be discussed relate to the kind of instrument to be used to create a claims commission. In this context, an international treaty could provide the necessary framework. An EPA, similar to the one used for the Register, could also be used to create a Claims Commission.

The examples of past claims commissions could be helpful as the framework for the Claims Commission for Ukraine is considered.¹⁰ For example, the UNCC may provide important guidance on the use of mass claims techniques, the use of set amount to compensate specific claims by individuals, and also in its prioritization of small individual claims over large and complex claims. The differentiation between individual claims and large and complex claims can also be helpful to classify the work of the Claims Commission. Similarly, the EECC could also provide interesting models. The EECC was established by an international treaty, and the Secretariat of the Permanent Court of Arbitration served as its secretariat and registrar. The EECC included five commissioners. This example could be helpful especially in the initial phases of a Claims Commission, with a possibility to scale up and increase the size and number of Commissioners as necessary.

The establishment of the Claims Commission for Ukraine will be an important and necessary step to provide compensation, and it will go hand in hand with the work of the Register.

In sum, in little more (or less) than a year, there have been significant steps forward in ensuring accountability for damage, loss and injury suffered because of Russia's wrongful acts. The Board and the Register have worked attentively and thoroughly to make sure that the process continues and is successful and productive. The claims collected and registered in the Register will be key to understand the kinds and amount of damage and ensure compensation to individuals, legal persons and the State of Ukraine. Indeed, the Register is uniquely positioned to be a fundamental part of the mechanism to ultimately provide compensation to those who suffered damage, injuries and loss because of Russia's violation of international law.

Thank you for your kind attention.

¹⁰ See generally C. Giorgetti, P. W Pearsall and H. Ruiz-Fabri (eds.), [Research Handbook on International Claims Commissions](#) (2023).