

**OPINION OF THE COMMITTEE OF LEGAL ADVISERS ON
PUBLIC INTERNATIONAL LAW (CAHDI)
ON RECOMMENDATION 2271 (2024) OF THE PARLIAMENTARY ASSEMBLY OF THE
COUNCIL OF EUROPE ON "SUPPORT FOR THE RECONSTRUCTION OF UKRAINE"**

1. On 30 April 2024, the Ministers' Deputies, at their 1497th meeting, agreed to communicate Recommendation 2271 (2024) of the Parliamentary Assembly of the Council of Europe (PACE) on "[Support for the reconstruction of Ukraine](#)" to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments. The CAHDI also takes note of Resolution 2539 (2024), adopted alongside Recommendation 2271, which provides further explanatory detail and context.

2. The CAHDI reiterates its unwavering support for ensuring a comprehensive system of accountability for the aggression of the Russian Federation against Ukraine and all its legal and human rights consequences, as already underlined in the [Opinion](#) of the CAHDI on Recommendation 2231 (2022) of the PACE on "*The Russian federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes*" adopted on 5 September 2022, and in the [Opinion](#) of the CAHDI on Recommendation 2266 (2024) of the PACE on "*A democratic future for Belarus*" adopted on 11 April 2024.

3. **With regard to paragraphs 4.1 and 4.3 of Recommendation 2271**, the CAHDI recalls [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 ("RD4U", "the Register"). Article 2.5 of the RD4U Statute states that "[t]he work of the Register [...] is intended to constitute the first component of a future international compensation mechanism to be established by a separate international instrument in co-operation with Ukraine" and that the "Register, through its through its Executive Director and with the support of its Secretariat, shall participate in and facilitate, as appropriate, the work aimed at the establishment of such a Compensation Mechanism, and take the necessary steps to prepare for the Register to be transferred to a Compensation Mechanism in accordance with this Statute".

4. In this respect, two preparatory meetings have so far been organised in The Hague by the RD4U, on 9-10 July and 12-13 September 2024. The Council of Europe ("CoE") was represented at these meetings through its Secretariat.

5. The CAHDI underlines that precedents demonstrate that international claims commissions ("ICCs") are flexible legal instruments typically established to resolve mass claims arising from international crises.¹ They are generally created by a binding international instrument, either a treaty or by a binding resolution of an international organisation such as those adopted by the United Nations Security Council², apply international law and issue binding decisions to resolve post-conflict compensation issues through a mandatory international legal process. ICCs can provide a forum for resolving a

¹ See generally L. Brilmayer, C. Giorgetti & L. Charlton, *International Claims Commissions: Righting Wrongs after Conflict* (Elgar International law series, 2017) and C. Giorgetti, P. Pearsall and H. Ruiz Fabri, *Research Handbook on International Claims Commissions* (Elgar, 2023).

² The United Nations Compensation Commission (UNCC), for example, was created by a UN Security Council Resolution 687/1991 under Chapter VII of the UN Charter, binding on all UN members. Most other ICCs were created by treaty. The Eritrea Ethiopia Claims Commission (EECC) was created by the Algiers Peace Agreement between Eritrea and Ethiopia. The Iran US Claims Tribunal (IUSCT) was established through the Claims Settlement Declaration issued by the Algerian government (as third-party negotiator), which contained legally binding commitments to which Iran and the United States adhered.

broad array of possible claims under international law from a diverse group of injured parties, including natural and juridical persons, States and international organisations. Their principal aim is to determine and provide compensation due to individuals, States and other actors for specific losses, damages and injuries they suffered in breach of international law. They are *ad hoc* bodies and their structure, jurisdiction and procedure vary. In this regard, the CAHDI emphasises that inspiration may be drawn from international precedents, ranging from mere fact-finding bodies to those with more robust adjudicative features. The CAHDI also recognises the possibility of establishing such a claims commission under the umbrella of the CoE. This could facilitate the transition of the work of the Register to the future compensation mechanism, ensuring synergies and cost-effectiveness.

6. **With respect to paragraph 4.2 of Recommendation 2271**, the CAHDI first recalls that the establishment of a compensation fund was not discussed during the first preparatory meeting, as this would only be the next step to be addressed once the claims commission is established. However, the CAHDI notes that, in general, an important feature of claims commission relates to the availability of funds to pay the final awards. No ICC can be considered entirely successful without appropriate funding to pay successful claimants.³

7. With regard to the deposit of all seized assets in an international trust fund, the CAHDI draws attention to customary international law of State immunity as codified to a significant extent in two relevant treaties that should be considered when addressing the issue of the seizure of Russian State assets: (i) the 2004 United Nations Convention on Jurisdictional Immunities of States and their Property (“UNCSI”);⁴ and (ii) the 1972 European Convention on State Immunity (ETS No. 74, “ECSI”).⁵ With respect to the use of countermeasures for this purpose, which is mentioned in PACE Resolution 2539, the CAHDI highlights the important role of the UN International Law Commission’s draft Articles on Responsibility of States for Internationally Wrongful Acts (“ARSIWA”), which reflect long-standing customary international law.

8. The CAHDI also refers to its ongoing “Indicative overview of possible options under international law aimed at securing the payment by the Russian Federation of just satisfaction awarded by the European Court of Human Rights”, which is being prepared at the request of the Committee of Ministers.⁶

³ L. Brilmayer, Understanding “IMCCs”: Compensation and Closure in the Formation and Function of International Mass Claims Commissions, 43 YJIL 274, available [here](#).

⁴ Not yet in force. The Convention currently has 23 States parties, and it needs 30 parties to enter into force. The International Court of Justice (“ICJ”) in *Jurisdictional Immunities* found that the UNCSI was “relevant only in so far as [its] provisions and the process of their adoption and implementation shed light on the content of customary international law (at para. 66), and then cited in full Articles 12, (at para. 69), 19 (at para. 116), and 6(2) (at para. 129) of the UNCSI in support of its rulings. See *Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)* (Judgment) [2012] ICJ Rep 99.

⁵ In force since 1976, with eight parties: Austria, Belgium, Cyprus, Germany, Luxembourg, Netherlands, Switzerland, and the UK.

⁶ Decision [CM/Del/Dec\(2024\)1488/10.5](#) adopted by the Ministers’ Deputies at their 1488th meeting on 7-8 February 2024: “[...] 1. invited the Committee of Legal Advisers on Public International Law (CAHDI) to explore all possible avenues consistent with international law aimed at securing the payment by the Russian Federation of just satisfaction awarded by the European Court of Human Rights, while respecting the immunities of States and their property”.

9. **With regard to paragraph 4.4 of Recommendation 2271**, the CAHDI considers that extending the temporal scope of the future international compensation mechanism to cover damage caused before 24 February 2022, due to the Russian Federation's aggression against Ukraine since 2014, is a decision that should be made at a political level. In particular, this extension would allow the inclusion of additional inter-state cases within the scope of a claims commission, irrespective of the date.⁷

⁷ Four interstate cases have been brought against the Russian Federation and are pending before the European Court of Human Rights: ***Ukraine v. Russia (re Crimea)***, nos. 20958/14 and 38334/18. This case concerns the conflict in Crimea. The [judgment on the merits](#) was delivered on 25 June 2024. It is already final and binding on the Russian Federation. The Article 41 judgment has been separated from the examination of the merits of the case and is now pending before the Court only on the issue of just satisfaction; ***Ukraine and the Netherlands v. Russia***, nos. 8019/16, 43800/14, 28525/20 and 11055/22. This case concerns Eastern Ukraine and the downing of flight MH17. [It was declared admissible](#) and consists of four separate inter-State applications. One of the four inter-State cases in this joined case, namely application no. 11055/22, concerns the war in Ukraine that started on 24 February 2022. [A public hearing](#) was held in this joined case on 12 June 2024; ***Ukraine v. Russia (VIII)***, no. 55855/18. This case concerns a naval incident which took place on 25 November 2018 at the Kerch Strait, which connects the Black Sea to the Sea of Azov, and the allegedly unlawful seizure and detention of the Ukrainian crew members by the Russian authorities. The case is pending before one of the Sections of the Court. [It was communicated in October 2023](#); ***Ukraine v. Russia (IX)***, no. 10691/21. This case concerns the Ukrainian Government's allegations of an ongoing administrative practice by the Russian Federation consisting of targeted assassination operations against perceived opponents of the Russian Federation, in Russia and on the territory of other States. This case is also pending in examination before a Section of the Court and has not yet been communicated.