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Support for the reconstruction of Ukraine

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Davor Ivo STIER, Croatia, Group of the European People's Party

A. Conclusions of the Committee

1. The Committee on Legal Affairs and Human Rights welcomes the report prepared by Mr Lulzim Basha (Albania, EPP/CD) and supports in general the draft resolution and recommendation. The report addresses how the Council of Europe should play a significant role in supporting the reconstruction efforts in Ukraine and the compensation for the damage caused by the Russian Federation's aggression against Ukraine, by recommending the seizure and transfer of the Russian State assets frozen by several countries following the large-scale invasion in February 2022. The draft resolution urges member and non-member States holding Russian State assets to co-operate to transfer these assets to an international compensation mechanism, which should be created under the auspices of the Council of Europe. According to the draft resolution, the transferred Russian State assets would be deposited in an international trust fund and should be used for compensation purposes. In this context, the draft resolution further calls for the establishment of an international claims commission, operating under recognised legal norms, to adjudicate claims presented by Ukraine and affected entities seeking reparation for damages. This claims commission would adjudicate the claims for damages recorded in the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, set up by the Council of Europe in 2023 in the form of an enlarged partial agreement. The draft recommendation calls on the Committee of Ministers to take action with a view to establishing the remaining components of the international compensation mechanism (international trust fund and international claims commission).

2. The Committee on Legal Affairs and Human Rights will examine these issues in more depth in its report on "Legal and human rights aspects of the Russian Federation's aggression against Ukraine" (Rapporteur: Mr Davor Ivo Stier), which it intends to submit during the Parliamentary Assembly's part-session in June 2024. Pending the finalisation of this report, the committee supports the proposals made in Mr Basha's report in that they urge the Council of Europe, and particularly the Committee of Ministers, as well as member States and like-minded non-member States, to take additional steps for ensuring a comprehensive system of accountability of the Russian Federation for its internationally wrongful acts committed against Ukraine and the international community as a whole. The Register of Damage created in Reykjavik can only be the first step of such a comprehensive compensation mechanism, which must include an international claims commission and an international compensation fund to pay the damages awarded by the commission. The Assembly, based on a report of the Committee on Legal Affairs and Human Rights (Rapporteur: Mr Damien Cottier, Switzerland, ALDE), has already expressed its view that the Council of Europe should play a leading role in setting up and managing such a compensation mechanism, having regard to its expertise in assessing and supervising the enforcement of compensation claims for human rights violations under the European Convention on Human Rights (ETS No. 5) ([Resolution 2482 \(2023\)](#)). Mr Basha's report further elaborates on

1. Reference to Committee: [Doc. 15732](#), Reference 4735 of 26 May 2023, modified on 22 January 2024, Reporting Committee: Committee on Political Affairs and Democracy. See [Doc.15932](#). Opinion approved by the committee on 4 March 2024.



why the Council of Europe, with its unique expertise and experience in the field of human rights and the rule of law, should lead this process and set an example for the international community and the rule-based world order.

3. The seizure and transfer of frozen Russian State assets raise complex issues under international law and the committee will address these in its future report. However, Mr Basha's report convincingly defends the thesis that this measure should be considered lawful under international law on State responsibility, and more particularly the law on countermeasures.² The committee agrees with the view that the transfer of these assets by third States (not directly injured) could be considered lawful as collective countermeasures against the aggressor State, the Russian Federation, for grave breaches of international law obligations with *erga omnes* character. The prohibition of aggression is a norm of international law which has been recognised as an *erga omnes* obligation by the International Court of Justice. The fact that transferring sovereign State assets for compensation purposes is unprecedented or has not been justified in the past under the law of countermeasures does not mean that it would not be legally possible under current international law. The Assembly and the Council of Europe, by politically endorsing this measure as a necessary one to enforce accountability, reparation and full compliance with international law, would contribute to the clarification and development of international law and send the message that aggressor States cannot escape from their obligation to pay for the damage caused by their acts.

4. The committee proposes several amendments to the draft resolution and draft recommendation, with a view to clarifying or strengthening certain aspects. The committee, while agreeing with the proposals in the report as regards the seizure and transfer of Russian State assets, believes that other options that are being studied or proposed by some States and international actors to ensure compensation should not be disregarded at this stage. These options and the one favoured in Mr Basha's report are not necessarily mutually exclusive.

B. Proposed amendments

Amendment A (to the draft resolution)

Before paragraph 9.1, insert the following paragraph:

"calls on Council of Europe member States and eligible non-member States to join the Register of Damage if they have not yet done so;"

Amendment B (to the draft resolution)

In paragraph 9.4, replace the words "and affected entities" with the following words:

"affected entities, as well as natural and legal persons"

Amendment C (to the draft resolution)

At the end of paragraph 9.5, insert the following words:

“,as guaranteed by the European Convention on Human Rights (ETS No. 5) and/or other international human rights law instruments;"

Amendment D (to the draft resolution)

At the end of paragraph 9.8, insert the following words:

“, including by considering other complementary or alternative proposals such as the confiscation of private assets following a criminal conviction for sanctions violations, introducing windfall taxes on the interest or profits derived from frozen Russian State assets, or using these assets as collateral for loans to Ukraine;"

2. Based on a Legal memorandum of 20 November 2023 prepared by eminent lawyers such as Professor Dapo Akande, Professor Philippe Sands, Professor Christian Tams and others.

Amendment E (to the draft recommendation)

After paragraph 4.3, insert the following paragraph:

“consider including, in the scope of the future international compensation mechanism, once established, the damage caused by the Russian Federation’s internationally wrongful acts committed in the Autonomous Republic of Crimea, the city of Sevastopol and the temporarily occupied territories of the Donetsk and Luhansk oblasts before 24 February 2022, in so far as they were caused by the aggression against Ukraine started in 2014, in particular in relation to breaches of international law confirmed by international adjudicative bodies such as the European Court of Human Rights.”

C. Explanatory memorandum by Mr Davor Ivo Stier, rapporteur for opinion

1. Introduction

1. I would like to congratulate Mr Basha for his report, which provides an excellent analysis of the issue of compensation for the damages caused by the Russian Federation’s aggression against Ukraine and the role that the Council of Europe should play in this context. His report proposes that the Council of Europe proceeds towards the establishment of an international compensation mechanism, including an international trust fund and an international claims commission, and that member and non-member States use the frozen Russian State assets for this purpose. This is the next logical step following the creation in 2023 of the Register of Damage under the auspices of the Council of Europe. The arguments used in the report for supporting the seizure and transfer of such assets, notably based on the doctrine of collective countermeasures under international law, are legally convincing. I will examine these arguments in more depth in my report on “Legal and human rights aspects of the Russian Federation’s aggression against Ukraine”, but I believe that the Parliamentary Assembly should already explicitly support at this stage the solution proposed by Mr Basha.

2. I would like to propose several amendments to the draft resolution and draft recommendation, with a view to strengthening them and covering some additional issues.

2. Explanatory notes

2.1. Amendment A (to the draft resolution)

3. This amendment aims to make an explicit call to Council of Europe member States which have not yet done so (six in total) to join the Register of Damage. It also calls on other eligible non-member States, that is to say States that voted in favour of the United Nations General Assembly Resolution A/RES/ES-11/5 of 14 November 2022 “Furtherance of remedy and reparation for aggression against Ukraine”, to do the same and join the enlarged partial agreement (as participants or associate members).

2.2. Amendment B (to the draft resolution)

4. This amendment is intended to cover natural and legal persons as possible claimants to the future international claims commission, in line with what is already provided for in the Register of Damage (article 1.1 of the Register’s Statute). This was also the case for previous international claims commissions established following an armed conflict or invasion (for instance the United Nations Compensation Commission competent to process claims and pay compensation for loss and damage suffered as a result of Iraq’s invasion of Kuwait in 1990-1991).

2.3. Amendment C (to the draft resolution)

5. This amendment aims to include a reference to the European Convention on Human Rights (ETS No. 5) and other international human rights instruments that would potentially apply to affected or innocent parties. This refers only to private individuals or entities. In this context, it is important to note that countermeasures cannot suspend human rights obligations (see Article 50.1.b of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)).

2.4. Amendment D (to the draft resolution)

6. This amendment is proposed to avoid giving the impression that other complementary or alternative solutions that are being proposed by some States and international actors should be completely disregarded at this stage. These measures and the seizure and transfer of Russian State assets are not necessarily mutually exclusive.

2.5. Amendment E (to the draft recommendation)

7. This amendment proposes that the Committee of Ministers, once the international compensation mechanism is established, considers including the damage resulting from the period 2014-2022 in the scope of the mechanism. The Assembly has already considered that the aggression by the Russian Federation against Ukraine started in 2014 and it would thus make sense to include the damage caused between 2014 and 24 February 2022 (date established in the Register's Statute) by acts committed in the Autonomous Republic of Crimea, the city of Sevastopol and the temporarily occupied territories of the Donetsk and Luhansk oblasts. This could be particularly relevant for breaches of international law that may be established by international bodies and tribunals in the future, including by the European Court of Human Rights in the exercise of its residual jurisdiction covering violations of the Convention until 16 September 2022 (for example those that have been alleged in inter-state and individual cases against the Russian Federation pending before the Court).