

Launching an International Claims Commission for Ukraine

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Ця стаття також доступна українською мовою [тут](#).

Russia’s invasion of Ukraine has caused massive displacement of people, enormous economic and personal harm, and widespread damage to public and private property. Foreign States and individuals also have suffered damage and loss. The Government of Ukraine [recently expressed its intention](#) to cooperate with interested Parties to establish an international commission (“the Commission”) to adjudicate claims for compensation arising out of Russia’s actions. Similar to most other claims commissions, the Commission would derive its authority from an international agreement concluded between Ukraine and interested States.

International claims commissions are [flexible instruments typically established to resolve mass claims](#) arising from international crises. They can provide a forum for resolving a broad array of possible claims under international economic and humanitarian law by a diverse group of injured parties, including States, international organizations, and legal and natural persons. More than 400 international claims commissions have been created in modern times, starting with those established in the [1794 Jay Treaty](#) between the United States and Great Britain. Recent (relatively) successful examples include the Iran-United States Claims Tribunal ([IUSCT](#)), the United Nations Compensation Commission ([UNCC](#)), and the Eritrea-Ethiopia Claims Commission ([EECC](#)).

International claims commissions are bespoke instruments and can take various forms. Establishing an international claims commission presents States with an array of choices and constraints—legal, financial, diplomatic, and practical. This essay addresses the feasibility and desirability of creating an international claims commission for Ukraine.

Why States Create International Claims Commissions

International claims commissions are created in exceptional circumstances such as after an armed conflict or international crisis. States may create international claims commissions to work out post-conflict compensation through a mandatory international judicial process. They may have various motivations for doing so, including obtaining reparations, providing closure, establishing a historical record, and restoring justice and the rule of law. States may establish international claims commissions when deemed necessary, feasible, politically useful, and better than the alternatives.

States may consider international claims commissions necessary to ensuring effective reparations for loss or damage, particularly following large-scale disruptions that generate mass claims. The IUSCT, for instance, resolved some [4,700 claims](#) between the governments and nationals of Iran and the United States, awarding over \$2.5 billion in compensation to date. The EECC resolved [47 numbered claims](#) (31 by Eritrea and 16 by Ethiopia) awarding about \$163 million to the government of Eritrea and about \$174 million to the government of Ethiopia. The UNCC resolved about 2.7 million claims, awarding compensation of [\\$52.4 billion](#) to approximately 1.5 million successful claimants.

States may consider international claims commissions feasible under certain circumstances, particularly when there is money available to pay resulting awards. The IUSCT, for example, was made possible in part because the United States had frozen some \$12 billion in Iranian assets, a portion of which [was retained to pay IUSCT awards](#). The UNCC similarly was made possible by a [Compensation Fund](#), established by the UN Security Council, that was derived from a portion of Iraq's petroleum sales and used to pay successful UNCC claimants.

States may consider international claims commissions politically useful, including to serve broader interests in helping restore or maintain international peace and security. The IUSCT, for instance, helped end a protracted hostage crisis and possibly avert a war. The EECC helped two States end a bloody armed conflict. The UNCC helped restore international peace and security following Iraq's invasion and annexation of Kuwait

Finally, States may consider international claims commissions better than any alternatives. Existing legal mechanisms, such as national courts or *ad hoc* arbitral tribunals, may be unavailable or ill-suited to the task of adjudicating mass, high-value, and legally and factually diverse claims arising out of war—a point considered further below.

International Claims Commissions Can Be Flexible and Bespoke

International claims commissions are flexible, bespoke mechanisms that can fit different situations. They are generally created by a binding international instrument. The UNCC, for example, was created by UN Security Council [Resolution 687/1991](#) under Chapter VII of the UN Charter, which was binding on all UN members. Different kinds of negotiated solutions, however, can be envisaged. The IUSCT, for example, 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. The EECC was created by the [Algiers Peace Agreement](#) between Eritrea and Ethiopia and witnessed by the President of Algeria, the U.S. Secretary of State, and the highest representatives of the UN, Organization of African Unity, and European Union.

Third States or other international actors might help facilitate an international claims commissions including through negotiation, mediation, or good offices. Several States and international organizations, for example, helped resolve the Iranian hostage crisis and create the IUSCT. The lead U.S. negotiator [highlighted](#) the Algerian government's indispensable role, crediting its foreign minister with helping resolve “every one of the problems we confronted” with Iran.

Another important consideration is the identity of likely claimants. International claims offer unique flexibility in this regard. Claimants can include States, natural and juridical persons, and international organizations. International claims may grant individuals direct and immediate access to file their own claims, without a State acting on their behalf. Claims of individuals can be expedited, and compensation can be made directly to them. The UNCC, for example, [prioritized the approximately 1.5 million claims of individuals](#) who had fled Kuwait following Iraq's invasion over larger and more complex claims filed by States. These smaller individual claims were heard through a mass-claims

process, and successful individual claimants received fixed, though relatively modest, compensation for injuries to themselves or their families (so-called [A, B and C Claims](#)).

As flexible, bespoke instruments, international claims commissions also allow for a greater variety of claims arising under different legal instruments. The five-member [EECC heard claims](#) for loss, damage or injury by one government against the other government for “violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.” [These included](#) claims related to the treatment of prisoners of war, internees and civilians, the expulsion and displacement of people from their residences, the legality of certain means and methods of warfare, the treatment of diplomatic premises and personnel, as well as the looting, seizure, and unlawful destruction of private property. Contract and other private claims can also be included in the jurisdiction of any international claims commission. In addition to interstate claims and interpretive disputes, the [IUSCT heard claims and counterclaims](#) of U.S. and Iranian nationals arising out of debts, contracts, expropriations, or “other measures affecting property rights.” The UNCC heard [claims](#) by the oil sector and other corporate claims for contract and financial losses, construction and engineering, and claims for loss of performance, as well as from States for environmental damage to air, soil, and water.

Another key and difficult issue concerns funding. Although every international claims commission has various [conflict-resolution functions](#), no international claims commission can be considered entirely successful without appropriate funding for paying awards. For the IUSCT, for example, the [General Declaration](#) provided for the cost of the tribunal to be shared equally and for Iran to place \$1 billion in a Security Account for paying of claims and to keep the account at \$500 million until all awards against Iran were satisfied. In the [UNCC context](#), the running cost and the payment of awards derived from the (highly contested) Compensation Fund financed by a percentage of the value of Iraq’s petroleum and petroleum-product exports, which was controlled by the UN. Such mandatory mechanisms were [lacking at the EECC](#) and, though the parties agreed to equally split the cost of the EECC, the final awards were never paid.

An International Claims Commissions for Ukraine

In light of the foregoing considerations, the Government of Ukraine recently endorsed a proposal for a Commission to secure reparations from Russia for damage caused by Russia's unlawful acts. The Commission could serve three primary purposes: (i) adjudicating claims for compensation; (ii) preserving or collecting Russian assets for paying awards; and (iii) providing a means of enforcing awards on compensation. To that end, the international agreement establishing the Commission could provide the legal framework to allow contracting States to transfer blocked assets to a fund from which compensation will be paid. Such an instrument could be flexible, made for a specific purpose, and could ensure a sufficient degree of international cooperation and legitimacy.

The Commission could accomplish these goals better than alternative fora for seeking reparations, namely national courts, existing international courts and tribunals, and U.N. bodies. First, recourse to national courts in the first instance is either undesirable or unavailable. Pursuit of reparation through national courts implicates sovereign immunity, an absence of appropriate causes of action, and risks of contradictory judgments.

Second, existing international adjudicative bodies such as the International Court of Justice (ICJ), European Court of Human Rights, or private arbitral tribunals are not well suited to a compensation program of the size and breadth necessary to satisfy the needs arising from this conflict.

Third, working within existing institutional frameworks of the U.N. Security Council is limited by challenges within the Council, namely Russia's veto. That said, the General Assembly may play a role. Indeed, [the Security Council in Resolution 2623 \(2022\)](#), given the lack of unanimity that prevented it from exercising its primary responsibility for the maintenance of peace and security, in application of the [Uniting for Peace](#) framework, convened a General Assembly emergency session. The General Assembly responded with a series of resolutions, including the widely supported [Resolution ES-11/1 \(2022\)](#), which (i) "deplored in the strongest terms the aggression by the Russian Federation against Ukraine"; (ii) demanded Russia to "cease its use of force against Ukraine" as well as to "immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders"; (iii) condemned

“all violations of international humanitarian law and violations and abuses of human rights,” demanding that parties to the conflict “fully comply with their obligations under international humanitarian law to spare the civilian population”; and (iv) authorized the President of the General Assembly to resume the Emergency Special Session upon request from Member States.

Establishing the Commission

Ukraine and interested States could lay the groundwork for concluding an international agreement to establish the Commission. First, they could engage directly through diplomatic channels and through a conference convened to discuss and negotiate the principles underlying an international agreement.

At the same time, Ukraine and its partners could work within existing international organizations to pass resolutions recognizing Russia’s breaches of international law and supporting the creation of the Commission.

The International Agreement

An international agreement establishing the Commission could be short, flexible, and definite. This approach would emphasize consensus and efficiency over drawn-out negotiations among the contracting States.

a. The Claimants

The Commission could address claims of States and natural or juridical persons (regardless of nationality) against Russia arising from loss or damage suffered under international law (including international humanitarian law, jus ad bellum, and international economic law), as well as claims arising from investments, contracts, expropriations, or other measures affecting property rights.

b. The Commission

An international agreement could establish a Commission based in part on the models of the UNCC, the IUSCT and EECC.

The Commission would have jurisdiction to consider claims of different categories. The categories could have different bases — for example, the identity of the claimant(s) (whether individuals, legal entities, or States); subject-matter of claims (such as those for personal injury, economic injury, or other types of injury, such as environmental harm); or claims that will be adjudicated on a case-by-case basis versus claims that will be adjudicated on a collective/mass claim basis.

Building on the success of the UNCC, each category could be divided into sub-categories or classes that would have varying priority and procedural rules. For example, certain claims could be expedited and resolved as mass claims. The framework of the international agreement would establish and clarify basic procedural rules and due process rights.

The Commission could also have jurisdiction over claims of third States and non-Ukrainian individuals and entities. Accordingly, the international agreement could make clear that the Commission's jurisdiction over such claims is exclusive or has priority.

c. The Fund

The Fund can be financed in two principal ways: (i) assets of Russia and related entities and individuals that are frozen/seized by States; and/or (ii) direct contributions by Russia and other entities.

The possibility of using frozen assets will be key to giving the Commission backing and potentially bringing Russia to the negotiating table. The contracting States could, for example, commit to financing the Fund using frozen Russian assets.

The international agreement could identify other matters related to the Fund that will need resolving. For instance, the agreement would need to address how the Commission will constitute and manage the Fund itself, how it will liquidate frozen assets, and other operational concerns.

d. Enforcement

To the extent possible, execution and enforcement of awards should be made from the Fund. Insofar as the money in the Fund is sufficient to satisfy the awards issued by the Commission, the awards should be self-executing via direct payments from the Fund. Additionally, the international agreement could establish a simplified procedure to provide an “on-ramp” to enforce decisions of other international bodies in connection with Russia’s invasion of Ukraine (e.g., decisions of the [ICJ](#), [European Court of Human Rights](#), [International Criminal Court](#), or a [possible special tribunal](#) for the crime of aggression).

Should the Fund not have sufficient money, successful claimants could potentially enforce the Commission’s awards in courts of the contracting States.

Conclusion

Russia’s invasion of Ukraine engages core principles of international law and raises the specter of mass claims among diverse parties, with many possible causes of action, seeking massive amounts of money, under many different laws and legal instruments. Existing legal mechanisms may be poorly equipped for such a monumental task.

It is urgent that Ukraine and its international partners agree upon the best way to hold Russia accountable for the damage its unlawful conduct has caused to Ukraine and Ukrainians, as well as to other States and their nationals. Preliminary estimates have calculated \$60 billion worth of physical damage, to say nothing of the human suffering. While the final extent of that damage is yet to be determined, Ukraine and its partners cannot wait for Russia to conclude its unlawful acts before envisaging possible reparations processes. Rather, they should initiate diplomatic talks now, thereby taking advantage of current political support to hold Russia accountable and signaling to Russia that it will pay for the harm it continues to cause.

The authors write under the auspices of the International Claims and Reparations Project of Columbia Law School (ICRP), which is formally advising the Government of Ukraine on questions of international law, including on issues related to international claims and reparations in relation to Russia’s aggression in Ukraine. In the coming weeks, the ICRP will publish updates and details of next steps.

IMAGE: Ukrainian President Volodymyr Zelenskyy addresses a press conference with international media in an underground metro station in Kyiv on April 23, 2022. (Photo by GENYA SAVILOV/AFP via Getty Images)

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