



Resolution 1785 (2011)¹

Final version

The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes

Parliamentary Assembly

1. The Parliamentary Assembly recalls, as emphasised in its Resolution 1564 (2007) on the prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY), that individual justice and accountability for war crimes committed in the conflicts that occurred on the territory of the states of the former Yugoslavia are essential components in the process of regional reconciliation for the victims, communities and states concerned. Hence, impunity must be fought resolutely.
2. In line with the Completion Strategy of the ICTY, Resolution 1564 (2007) underlined that the main responsibility to ensure accountability of the perpetrators lies with the states concerned. In this context, while reiterating the obligation to fully and effectively co-operate with the ICTY, the Assembly underlined the importance of effective domestic war crime trials and co-operation between the countries concerned in ensuring the effective conduct of justice in the region.
3. The Assembly welcomes, in this context, progress made by the states of the former Yugoslavia, narrowing the “impunity gap” through increased co-operation, including the conclusion of agreements on bilateral extradition and recognition of foreign judgments. The Assembly welcomes, in particular, the co-operation between national prosecutors who have concluded special bilateral agreements which have facilitated the transfer of information and evidence and have proven to be effective.
4. However, it is clear that the states concerned cannot fully succeed in combating impunity when the alleged perpetrators of war crimes are out of their reach in third countries. Therefore, other member and observer states must likewise fight impunity when persons suspected of war crimes are found on their territories. These persons must be either extradited or prosecuted in their countries of residence.
5. Consequently, co-operation between all states is essential, as already underlined in United Nations Security Council Resolution 827 (1993) establishing the ICTY. It is crucial to avoid the regional impunity gap being replaced by an impunity gap elsewhere in Europe or in the world.
6. In respect to extradition, the Assembly has clearly stated that the ban on extradition of nationals constitutes a serious obstacle to the course of justice. The Assembly welcomes the fact that one of the states concerned, namely Croatia, has lifted the constitutional ban on extradition of its nationals. That said, restrictions on the extradition of nationals are common in member states of the Council of Europe.
7. Council of Europe treaty law, in particular the European Convention on Extradition (ETS No. 24) and its three protocols (ETS Nos. 86 and 98 and CETS No. 209) set out the norms applicable to extradition requests. However, these protocols have not yet been ratified by all member states and no observer state has ratified either the convention or its protocols. The general rule of compulsory extradition is subject to significant exceptions and conditions already specified in the convention itself and in its protocols. In addition, these instruments are subject to different interpretations by member states and declarations and reservations further narrow the scope of their application.

1. Assembly debate on 26 January 2011 (5th and 6th Sitings) (see [Doc. 12454](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Dorić). Text adopted by the Assembly on 26 January 2011 (6th Sitting). See also Recommendation 1953 (2011).



8. Furthermore, it is disappointing that other Council of Europe and international standards relevant to the fight against impunity have not been widely accepted. Very few member states have ratified the 1974 European Convention on the Non-applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 82). Less than half of the member states have ratified the United Nations convention on the same issue. Six member states and two observer states have not yet ratified the Rome Statute of the International Criminal Court. Eleven member states have not yet ratified the Agreement on the Privileges and Immunities of the International Criminal Court. Less than half of the member states have ratified the European Convention on the International Validity of Criminal Judgments (ETS No. 70). Even when ratified, these instruments are often subject to various reservations and restrictive declarations.

9. The Assembly also reiterates its Recommendation 1427 (1999) on respect for international humanitarian law in Europe, inviting member states to introduce the principle of *aut dedere aut iudicare* (extradite or prosecute) in their national criminal law, thus allowing for the trial of all perpetrators of war crimes in the country of their present residence, when there are obstacles to their extradition to the states where the crimes were committed.

10. The Assembly urges all member and observer states to:

10.1. take all necessary measures to combat impunity for war crimes, in accordance with the initiatives of the Assembly and of the United Nations;

10.2. sign and ratify the conventions and protocols mentioned in paragraphs 7 and 8 and in its Recommendation 1803 (2007) on the prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY), and withdraw, where relevant, declarations and reservations thereto that contravene the object and purpose of those instruments;

10.3. refrain from granting nationality or refugee status to a person charged for war crimes in another state;

10.4. examine requests for extradition speedily;

10.5. process requests for extradition for war crimes in good faith;

10.6. introduce – in particular in respect of war crime trials – the principle of *aut dedere aut iudicare* in their national criminal law.

11. In addition, the Assembly encourages the states concerned in the region to:

11.1. continue to reform their national legislation by bringing it into line with international standards and with a view to further facilitating war crime trials, including the transfer of war trial proceedings;

11.2. pursue effective mutual co-operation in the prosecution of war crimes, in particular through co-operation of national prosecutors' offices regarding the transfer of information and legal evidence;

11.3. improve data collection specifically for extradition requests for war crimes or war-related crimes, as well as for information on international arrest warrants already issued, in order to correctly assess the scope of the problem and its possible systematic solution;

11.4. follow the best practices in the region in respect of lifting the ban on extradition of nationals and recognition of foreign judgments;

11.5. remove all remaining legal hindrances to the prosecution of war crimes, as specified in its Resolution 1564 (2007).

12. The Assembly encourages the ICTY and the United Nations Security Council to take into account, in the light of the Completion Strategy, the role played by states other than those directly concerned in the prosecution of war crimes committed in the former Yugoslavia.

13. The Assembly also encourages the European Union – as the states concerned wish to commence or have commenced the European Union accession process – to explore possibilities for enhanced co-operation between European Union member states and the states concerned in the prosecution of war crimes, in particular within the European Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes, set up by European Union Council Decision 2002/494/JHA of 13 June 2002.