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Legal and human rights aspects of the Russian Federation's aggression against Ukraine

Report¹

Committee on Legal Affairs and Human Rights

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

Summary

More than one year after the Reykjavik Summit, the Parliamentary Assembly should stress again the need to ensure a comprehensive system of accountability for all violations of international law and international crimes arising out of the aggression of the Russian Federation against Ukraine. There cannot be peace without justice and reparations to Ukraine and its people.

While consultations on a special tribunal for the crime of aggression against Ukraine among Council of Europe member States and other partners are still ongoing within the Core Group, the proposal of establishing such a tribunal by an agreement between the Council of Europe and Ukraine is the best feasible option. It would clearly fall within the mandate of the Organisation. All member States should support this process and participate in the final agreement. The special tribunal should have features that would make it as international as possible and encourage cross-regional support.

The Assembly should condemn all the other international crimes being committed in the context of the aggression, including an attempt to commit genocide or public incitement to commit it, and numerous war crimes and crimes against humanity. States should support the investigations by the Prosecutor of the International Criminal Court, including by enforcing the arrest warrants already issued, as well as the investigations by the Ukrainian authorities. These investigations should also cover the crimes of the Wagner Group, for which the Russian Federation bears full international responsibility.

With regards to compensation for the damage caused, member States should proceed towards the establishment of an international compensation mechanism, ensuring a leading role for the Council of Europe. States should seize frozen Russian State assets with a view to transferring them to an international compensation fund for Ukraine.

1. Reference to committee: Bureau decision, Reference 4711 of 27 January 2023.



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A. Draft resolution²

1. The Parliamentary Assembly reiterates its strongest condemnation of the Russian Federation's ongoing illegal and unjustified war of aggression against Ukraine. Its full-scale invasion launched more than two years ago is a flagrant continuous breach of the United Nations Charter and constitutes an act of aggression also according to the United Nations General Assembly. The Assembly has already determined that this war, which in fact started in 2014 with the occupation and attempted illegal annexation of Crimea, is in itself a crime of aggression under international law which entails the individual criminal responsibility of the Russian Federation's political and military leadership.

2. The Assembly further reiterates its unwavering support for the independence, sovereignty and territorial integrity of Ukraine within its internationally recognised borders and its non-recognition of the attempted illegal annexation by the Russian Federation of any parts of the Ukrainian's territory, including the Autonomous Republic of Crimea and the city of Sevastopol, as well as parts of the Donetsk, Luhansk, Kherson and Zaporizhzhia oblasts of Ukraine. This attempted annexation clearly violates the principle of international law according to which no territorial acquisition resulting from the use of force shall be recognised as legal. The fact that the Russian presidential election of 17 March 2024 was also held in the illegally occupied territories of Ukraine, through the forced imposition of Russian law, is another example of the blatant disregard that the Russian authorities have for the political independence and political rights of Ukraine and its people as well as for the most basic principles of international humanitarian law, including the obligations for an occupying power that arise under the Fourth Geneva Convention, which the Russian Federation has been bound by for decades.

3. The Assembly is appalled by the continuous, numerous reports of atrocities, violations of human rights and international humanitarian law committed by Russian military forces and proxies in Ukraine, in the course of hostilities or in the temporarily occupied areas. These include indiscriminate attacks against civilians and humanitarian and medical personnel, as well as against civilian objects such as medical facilities, schools, electric power plants, other critical infrastructure, cultural and religious heritage; the illegal abduction, detention, enforced disappearance, torture, ill-treatment and extrajudicial killings of Ukrainian citizens; the torture, ill-treatment and summary executions of Ukrainian prisoners of war; the unlawful transfer or deportation of Ukrainian children; all forms of conflict-related sexual violence; the use of chemical weapons and cluster bombs; attacks causing widespread, long-term and severe damage to the environment; looting; forced "passportisation" and conscription of Ukrainian citizens.

4. Many of these violations amount to specific war crimes under the Geneva Conventions, Protocol Additional I to the Geneva Conventions and the Statute of the International Criminal Court (ICC). Others, such as torture and ill-treatment, appear to be carried out in a systematic and widespread manner and may therefore also qualify as crimes against humanity. Most of these atrocities at the same time violate multiple international human rights treaties ratified by the Russian Federation, which continue to apply in times of war. All these acts have caused death, destruction, environmental damage and massive displacement of population within and outside Ukraine.

5. In line with its previous resolutions, notably its Resolution 2482 (2023) "Legal and human rights aspects of the Russian Federation's aggression against Ukraine", the Assembly considers that the Russian official and public media rhetoric used to justify the unlawful aggression may constitute direct and public incitement to genocide or reveal a genocidal intent to destroy the Ukrainian national group as such or at least part of it, within the meaning of the 1948 Genocide Convention. This rhetoric, which often comes from the highest level of the Russian State authorities but also from religious leaders supporting the aggression within the Russian Orthodox Church hierarchy, uses narratives such as the denial of Ukrainian identity or the "denazification" or 'de-Satanization" of Ukrainians. The genocidal intent can also be inferred from the patterns of atrocities observed against Ukrainians, such as killing, causing serious bodily or mental harm, deliberately inflicting conditions of life that are calculated to bring about the group's physical destruction and the forcible and co-ordinated transfers of children to another group. This constitutes a growing body of evidence that the Russian Federation attempts to commit genocide against the Ukrainians or at least publicly incites to it, as part of the propaganda displayed to justify its war of aggression. These actions do not only entail State responsibility and individual criminal responsibility for the Russian Federation and its State officials, but also trigger for all States Parties to the Genocide Convention an obligation to prevent genocide, in accordance with their means and their capacity to influence those suspected of preparing or committing genocide.

2. Draft resolution adopted unanimously by the committee on 21 May 2024.

6. As regards the role of the Wagner Group and its participation in the war, the Assembly notes that its status under international humanitarian law has long been disputed. Following the failed mutiny of June 2023 and the suspicious deaths of its leaders Yevgeny Prigozhin and Dmitry Utkin in a plane crash two months after, the current existence and structure of the group have evolved, with some of its fighters being incorporated into the Russian armed forces or recruited by other Russian private military and security companies or paramilitary groups. In any event, the Wagner Group continues to operate in various forms and its members who committed or continue to commit war crimes and other atrocities in Ukraine should be prosecuted and held to account before Ukrainian courts or the ICC. The Russian Federation bears full international responsibility for their actions, in view of the acknowledged links and financial and operational support extended to the group during its participation in the war, including the use of pardoned convicts as fighters and co-ordination on the ground with the regular forces. The Russian Federation cannot claim plausible deniability to escape international responsibility for the Wagner Group's actions.

7. The Assembly welcomes the fact that several national parliaments, as well as the Parliamentary Assembly of the Organisation for Security and Cooperation in Europe (OSCE) and the European Parliament, have qualified the Wagner Group as a terrorist organisation or called for its designation as such, in line with its position laid down in Resolution 2506 (2023) "Political consequences of the Russian Federation's war of aggression against Ukraine". Given that some of its crimes appear to have been committed with the purpose to provoke terror among the civilian population in Ukraine, its actions fall within some of the definitions of terrorism in existing international texts, in addition to their qualification as war crimes. This would confirm the Russian Federation's status as a State sponsor of terrorism and have a deterrent effect on those States, particularly outside Europe, and private entities, that would be tempted to co-operate with the Wagner Group or its successors.

8. More than one year after the 4th Council of Europe Summit (16 and 17 May 2023) and the Reykjavik Declaration adopted by its Heads of State and Government, the Assembly stresses once again the need to ensure a comprehensive system of accountability for all violations of international law and international crimes arising out of the Russian aggression, in order to achieve a just and lasting peace for Ukraine. There cannot be peace without accountability, as implied by the Statute of the Council of Europe (ETS No. 1), which in its preamble underlines "the pursuit of peace based upon justice and international co-operation". The Assembly therefore welcomes and supports all the initiatives and steps taken so far within the Council of Europe towards accountability, which are designed not only to help deliver justice and reparations to Ukraine and its people, but also to fight against impunity, re-establish respect for the rule of law and prevent further attacks on the international legal order. It further welcomes other initiatives taken outside the Organisation, such as the ministerial conference on "Restoring Justice for Ukraine" held in The Hague on 2 April 2024 and the First Peace Summit for Ukraine held in Bürgenstock (Switzerland) on 15-16 June 2024. Any peace process should be based on the principles of a just and lasting peace as outlined in President Zelenskyy's Peace Formula, which the Assembly and the Heads of State and Government have already expressed support to.

9. The Assembly commends the efforts and ongoing investigations carried out by the existing international and domestic accountability mechanisms competent to deal with some of the international crimes and violations of human rights committed in the context of the aggression, including the Ukrainian authorities and Prosecutor General's Office, the Office of the Prosecutor of the ICC, the Joint Investigation Team (JIT), the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA), the Independent International Commission of Inquiry on Ukraine established by the United Nations Human Rights Council, the OSCE Moscow Mechanism, and third States' authorities acting on the basis of the principle of universal jurisdiction.

10. The Assembly notes however that there is still no appropriate accountability mechanism to deal with the supreme international crime, that is the crime of aggression committed by the Russian Federation's political and military leadership against Ukraine, which enabled all other crimes and caused immeasurable suffering even beyond the violation of international humanitarian law. More than two years after the full-scale invasion and the first call by the Assembly, in April 2022, to set up a special international criminal tribunal for the crime of aggression against Ukraine, consultations among member States and other interested States and partners are still ongoing within the Core Group.

11. The Assembly notes with great satisfaction that participants in these consultations have expressed an interest in the idea of establishing a special tribunal by an agreement between the Council of Europe and Ukraine, which could be supported by an enlarged partial agreement open to non-member States and other international organisations. The Assembly considers that this is the best feasible option, in terms of legal basis and political legitimacy. It would clearly fall within the mandate of the Council of Europe, as reflected in its Statute and in accordance with the priorities set out at the Reykjavik Summit. By creating such a tribunal, the Council of Europe would ensure justice for a crime that was and is still being committed against one of its

member States by a former member State. However, it should not be understood as a merely European response to a European problem. The Council of Europe would place itself at the service of the international community as a whole, in order to uphold the international legal order and the prohibition of aggression. The special tribunal should therefore have features that would make it as international as possible and encourage cross-regional support, taking into account the need to maximise its international legitimacy and to minimise any possible legal challenges, in particular with regard to the possible reliance of key suspects on personal immunities.

12. The Assembly stresses again that the Russian Federation must bear the legal consequences of all of its internationally wrongful acts committed in or against Ukraine, including by making reparation for the injuries and losses caused by such acts to Ukraine and its citizens. The Assembly recalls in this regard its previous resolutions on this subject, notably its Resolution 2539 (2024) "Support for the reconstruction of Ukraine", as well as the United Nations General Assembly Resolution A/RES/ES-11/5 of 14 November 2022 "Furtherance of remedy and reparation for aggression against Ukraine", which recognises the need for the establishment of an international mechanism for reparation. It commends the setting up of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine in May 2023 and welcomes the opening of the process of submission of claims on 2 April 2024. It reiterates that the Register is intended to constitute the first component of a comprehensive international compensation mechanism.

13. In light of these considerations, as regards the special tribunal for the crime of aggression against Ukraine, the Assembly:

13.1. welcomes the decision of the Committee of Ministers of 30 April 2024 which gives a mandate to the Secretary General of the Council of Europe to prepare any necessary documents for the Core Group on a possible draft agreement between the Council of Europe and the Government of Ukraine on the establishment of a special tribunal for the crime of aggression of the Russian Federation against Ukraine, including its Statute, and on a possible draft enlarged partial agreement governing the modalities of support to such a tribunal, its financing and other administrative matters;

13.2. notes that this decision was taken by an overwhelming majority, which expresses a clear political will in favour of a leading role of the Council of Europe in this process, in line with the Assembly's own recommendations;

13.3. calls on the Core Group to come to an agreement on the model and legal form chosen for the special tribunal as soon as possible, taking into account the need to maintain the current momentum and in view of possible political developments;

13.4. calls on all member States to support this process and participate in the final agreement reached, including in the possible enlarged partial agreement;

13.5. calls on other States, including observer States and States whose parliament enjoy observer or partner for democracy status with the Assembly, the European Union as well as any other potentially interested regional organisations including the Organisation of American States and the African Union, to support this process and the creation of a special tribunal;

13.6. calls on the United Nations General Assembly to support this process, by adopting a resolution that would endorse the special tribunal, once established, in line with its previously expressed position that the full-scale invasion of Ukraine constitutes an act of aggression and that accountability for the most serious crimes committed needs to be ensured;

13.7. calls on the States participating in the ICPA and the JIT, as well as all member States, to foresee co-operation agreements that allow them to share the evidence collected on the crime of aggression with the future special tribunal;

13.8. expresses its gratitude to the Netherlands for its offer to host the special tribunal on its territory;

13.9. considers that the special tribunal should in any event have the following features:

13.9.1. its jurisdiction should be limited to the crime of aggression committed against Ukraine and should extend *ratione temporis* to such aggression starting in February 2014;

13.9.2. its jurisdiction should include the role and complicity of the leaders of Belarus;

13.9.3. its statute should contain a definition of the crime of aggression fully in line with Article 8 bis of the ICC Statute, which reflects customary international law;

13.9.4. personal immunities of key suspects shall not apply before the special tribunal; its statute should leave the issue of personal immunities to the interpretation of the judges of the special tribunal, having regard to the practice of other international criminal tribunals and the precedents in international law;

13.9.5. functional immunities shall not apply before the special tribunal;

13.9.6. its statute should contain a list of fair trial rights of the accused, in line with international human rights law;

13.9.7. its statute could foresee the possibility of *in absentia* proceedings before the trial stage, for instance hearings for the confirmation of charges in the absence of the suspect;

13.9.8. its role should be complementary to the ICC's jurisdiction and its statute should regulate the co-operation and sharing of evidence between the special tribunal and the ICC;

13.9.9. its statute should contain rules regarding co-operation with participating and other States, which could be complemented with specific co-operation agreements.

14. With regard to other international crimes, such as genocide, crimes against humanity and war crimes, the Assembly:

14.1. calls on all member States, as well as observer States and States whose parliament enjoy observer or partner for democracy status with the Assembly, to support the investigations by the Office of the Prosecutor of the ICC on any of these crimes committed in Ukraine, by sharing any evidence in their possession and making available expertise, including forensic expertise and on all States Parties to the ICC Statute to provide, in a sustainable manner, adequate human and financial resources to the Court;

14.2. welcomes the arrest warrants issued by the ICC in respect of Vladimir Putin, Maria Alekseyevna Lvova-Belova, Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov in the context of the situation in Ukraine and calls on all member States and other States to enforce these warrants should any of these suspects come within their jurisdiction;

14.3. strongly condemns the attempts of the Russian authorities to prosecute the ICC Judges and Prosecutor involved in the issuing of these warrants, as a flagrant interference with the judicial independence and mandate of the ICC;

14.4. invites the Prosecutor of the ICC to consider examining the reported allegations of genocide against Ukrainians, generally in respect of the situation in Ukraine and more specifically regarding the transfer of Ukrainian children;

14.5. invites the Prosecutor of the ICC to consider examining the individual criminal responsibility of members of the Wagner Group who participated in the commission of international crimes in Ukraine and in different countries in Africa which fall within the jurisdiction of the Court;

14.6. encourages all member States as well as other States to continue giving assistance to the Ukrainian authorities and Prosecutor General's Office, including through capacity building, expertise and resources, with a view to strengthening their capacities to investigate and prosecute these crimes, in line with international human rights law and the European Convention on Human Rights (ETS No. 5);

14.7. calls on the Ukrainian authorities to continue to comply with their obligations under international humanitarian law and to continue to conduct thorough investigations on all allegations of war crimes and violations of international humanitarian law, irrespective of the nationality of the perpetrator;

14.8. calls on the Ukrainian authorities to respect the right to a fair trial and other rights under the European Convention on Human Rights for all individuals charged with war crimes and other crimes related to the aggression, while noting that Ukraine continues to derogate from certain rights under the European Convention on Human Rights by virtue of Article 15 and the application of martial law;

14.9. calls on Ukraine and other member States to ratify the ICC Statute, including the Kampala amendments on the crime of aggression;

14.10. calls on all member States to join or co-operate with the JIT set up by Ukraine and several European Union member States under the auspices of Eurojust;

14.11. encourages all member observer States to make use of Council of Europe and other international instruments on mutual legal assistance in relation to the crimes committed in Ukraine, and to sign and ratify the new “Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes” opened for signature on 14 February 2024;

14.12. invites the United Nations Human Rights Council to consider establishing an independent international commission of inquiry to investigate alleged violations of international human rights law and international humanitarian law committed by members of the Wagner Group and affiliated entities in Ukraine and concerned countries in Africa, establish the facts, collect, consolidate and analyse evidence of such violations and preserve evidence, including in view of co-operation in any legal proceedings;

14.13. calls on member States and observer States to consider bringing new proceedings under the Genocide Convention (on the basis of Article IX) against the Russian Federation before the International Court of Justice, for concrete allegations of genocide committed in Ukraine, including incitement to genocide and attempt to commit genocide;

14.14. calls on member and observer States that have not yet done so, as well as the European Union, to consider designating the Wagner Group, other similar Russian paramilitary groups and those entities that finance them as terrorist organisations and applying to them their anti-terrorist legislation and measures, without prejudice to the consideration of their crimes as possible war crimes and other international crimes;

14.15. calls on member States as well as other States to consider designating the Russian Federation as a State sponsor of terrorism.

15. Finally, with regards to compensation for the damage caused by the aggression, the Assembly, recalling its Resolutions 2434 (2022), 2482 (2023) and 2539 (2024):

15.1. 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;

15.2. reiterates its call for the establishment of an international compensation mechanism to address the damage caused to all natural and legal persons affected, as well as the State of Ukraine, by the Russian Federation’s internationally wrongful acts arising out of its aggression against Ukraine. Such an international compensation mechanism should:

15.2.1. include an independent international claims commission mandated to examine and adjudicate claims, including those registered by the Register of Damage;

15.2.2. include an international compensation fund, from which compensation awards would be paid to successful claimants;

15.2.3. be established by a separate international instrument, open to all like-minded States and relevant international organisations, including the United Nations and the European Union;

15.2.4. be established in concertation with the Register of Damage, which participates in and facilitates the work aimed at the establishment of such a mechanism and which should be transferred to the mechanism in accordance with its Statute;

15.2.5. be in principle established under the auspices of the Council of Europe, given that the Register of Damage is a Council of Europe enlarged partial agreement and that the Organisation is playing a leading role in this area, while not excluding other options should they ensure more cross-regional support;

15.2.6. cover the damage caused by the aggression since February 2014, in particular in relation to breaches of international law confirmed by international courts and adjudicative bodies such as the European Court of Human Rights;

15.2.7. cover the damage caused by private military and security companies or paramilitary groups and proxies which have participated in the aggression on behalf of the Russian Federation, including in particular the Wagner Group in all its forms;

15.3. considers that the seizure and repurposing of Russian State assets, currently frozen by Council of Europe member States and non-member States, would constitute lawful countermeasures under international law against the Russian Federation’s aggression against Ukraine, which constitutes a manifest breach of an *erga omnes* obligation. Such countermeasures would be intended to induce

compliance by the Russian Federation with its international legal obligations, including its obligation of cessation of the aggression and making reparation to Ukraine; in view of the enormous damage caused by the Russian aggression, they would be proportionate as well as reversible in that the seized funds can be offset against the claim in reparations owed to Ukraine;

15.4. welcomes the fact that some States, including recently the United States, have already adopted legislation allowing for such measures for the benefit of Ukraine, on the basis of countermeasures;

15.5. urges member States and any other States to adopt similar measures at national level, with a view to transferring these assets to a future international compensation fund whilst respecting the rights of all affected third parties under the European Convention on Human Rights and other international human rights law instruments;

15.6. reiterates its call on member States to also repurpose the frozen assets of Russian citizens subject to targeted sanctions for their responsibilities in the war of aggression, as requested in Resolution 2434 (2022);

15.7. calls on member States, the G7, the European Union and all relevant stakeholders to continue working towards comprehensive compensation for all the damages caused by the war of aggression and the overall process of support to Ukraine, including by applying other alternative or complementary proposals that are being discussed or agreed upon, 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.

16. The Assembly calls on all member and observer States, as well as the European Union and the G7 Group, to set up a Register of entities assisting the Russian Federation in evading or circumventing restrictive measures.

17. The Assembly finally reiterates all its previous resolutions addressed to the Russian Federation since the launch of the full-scale invasion of Ukraine and calls again on the Russian Federation to cease the aggression and withdraw completely and unconditionally its occupation forces from the internationally recognised territory of Ukraine. It urges the Russian Federation to abide by its obligations under the United Nations Charter, the Genocide Convention, international humanitarian law and international human rights law, particularly in the occupied territories of Ukraine, and to co-operate with all international investigative and judicial bodies dealing with the consequences of the aggression.

B. Draft recommendation³

1. The Parliamentary Assembly draws the Committee of Ministers' attention to its Resolution... (2024) "Legal and human rights aspects of the Russian Federation's aggression against Ukraine", which stresses again the need to ensure a comprehensive system of accountability for all violations of international law and international crimes, including the crime of aggression, war crimes, crimes against humanity and genocide, allegedly committed in the context and as a result of the Russian Federation's aggression against Ukraine.
2. The Assembly refers to its Resolutions 2436 (2022) "The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes", 2482 (2023) "Legal and human rights aspects of the Russian Federation's aggression against Ukraine", 2516 (2023) "Ensuring a just peace in Ukraine and lasting security in Europe" and 2539 (2024) "Support for the reconstruction of Ukraine". It also recalls its Recommendations 2231 (2022) "The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes" and 2271 (2024) "Support for the reconstruction of Ukraine".
3. In the light of the resolutions and recommendations mentioned above, the Assembly calls on the Committee of Ministers to:
 - 3.1. continue mobilising the Council of Europe and all its political and legal instruments to support Ukraine and ensure a comprehensive system of accountability for the aggression of the Russian Federation against Ukraine and all its legal and human rights consequences;
 - 3.2. ensure that the Council of Europe continues to provide expert and technical support for the establishment and operation of a special tribunal for the crime of aggression against Ukraine, including through the Secretary General's participation and contributions to the consultations within the Core Group on a possible draft agreement between the Council of Europe and the Government of Ukraine on the establishment of a special tribunal for the crime of aggression against Ukraine, including its Statute, and on a possible draft enlarged partial agreement governing the modalities of support to such a tribunal, its financing and other administrative matters;
 - 3.3. take into account the outcome of these consultations and any proposals that may be made by the Secretary General, and work towards the establishment of a special tribunal for the crime of aggression against Ukraine as soon as possible, including as appropriate through an agreement between the Council of Europe and the Government of Ukraine and a draft enlarged partial agreement, having due regard to the considerations and features set out in Resolution... (2024);
 - 3.4. proceed towards the establishment of an international compensation mechanism for all the damage caused by the Russian aggression, including an international claims commission and a compensation fund, in co-operation with all relevant international partners and Ukraine, ensuring a leading role for the Council of Europe and taking into account the work of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine.

3. Draft recommendation adopted unanimously by the committee on 21 May 2024.

C. Explanatory memorandum by Mr Davor Ivo Stier, rapporteur

1. Introduction

1. Following the adoption by the Parliamentary Assembly of [Resolution 2482 \(2023\)](#) “Legal and human rights aspects of the Russian Federation’s aggression against Ukraine” on 26 January 2023, based on a report by Mr Damien Cottier (Switzerland, ALDE), the Bureau of the Assembly decided to seize the Committee on Legal Affairs and Human Rights for a new report to follow up on the same subject.⁴ The committee appointed me as rapporteur at its meeting in Strasbourg on 25-27 April 2023.

2. Since the adoption of Mr Cottier’s report, the Assembly has adopted several resolutions on the political or other consequences of the Russian Federation’s war of aggression, prepared by other committees.⁵ The Council of Europe as a whole has also taken numerous initiatives to implement some of the Assembly’s proposals, including those contained in [Resolution 2482 \(2023\)](#) and in Mr Cottier’s report, in order to ensure the Russian Federation’s comprehensive and full accountability for violations of human rights and serious violations of international law arising out of the aggression. In May 2023, at the Reykjavik Summit, the Heads of State and Government of the Council of Europe created the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine (as an enlarged partial agreement of the Council of Europe), as a first step towards an international compensation mechanism for the victims of the Russian aggression, in line with the Assembly’s call in [Resolution 2482 \(2023\)](#). So far, 43 countries and the European Union have joined the Register as members or associate members. As regards the establishment of a special tribunal for the crime of aggression committed against Ukraine by the political and military leadership of the Russian Federation, an idea first supported by the Assembly in [Resolution 2436 \(2022\)](#) (report by Mr Aleksander Pocij, Poland, EPP/CD), as the first international body to do so, and later in [Resolution 2482 \(2023\)](#), progress has been unfortunately slower. In Reykjavik, the Heads of State welcomed the international efforts and progress towards the establishment of such a tribunal and acknowledged that the Council of Europe should play a role in supporting this process. Since then, the secretariat of the Council of Europe has been participating in the ongoing consultations within the Core Group composed of 40 States prepared to support the creation of a special tribunal (Core Group).

3. In this report I will focus on the progress made on the different components of a comprehensive system of accountability for the Russian Federation’s aggression against Ukraine and its legal and human rights consequences, with a view to making further proposals to member States, the Council of Europe as a whole and different international actors. I will examine the measures being implemented or still needed in order to ensure accountability for the crime of aggression (section 2) and other international crimes (war crimes, crimes against humanity and genocide) (section 3) as well as the issue of compensation for the damage caused by the aggression, in particular the possible legal venues to ensure that compensation claims submitted by the State of Ukraine and individual victims will not only be registered, but also adjudicated and enforced vis-à-vis the Russian State (section 4). I will also deal with the need to ensure that the Wagner Group and other Russian proxies are held to account for their crimes, taking into account a motion for a resolution on this subject which called for their designation as a terrorist organisation (section 5).⁶

4. For the preparation of this report, the Committee on Legal Affairs and Human Rights has held two hearings and two exchanges of views with experts. On 8 September 2023, we heard from Ms Jelena Aparac, former Chairperson of the United Nations Working Group on the use of mercenaries, and Ms Nathalia Dukhan, Senior investigator focusing on war crimes and transnational criminal organisations at The Sentry

4. The Bureau has also sent to the committee the following references to be taken into account in the context of this report: [Doc. 15720](#) (“The need to designate the Russian “Wagner Group” as a terrorist organisation”, Reference 4732 of 26 May 2023); [Doc. 15712](#) (“Ensuring the right to fair trial in the context of State immunities: how to strike the right balance?”, Reference 4725 of 24 April 2023); [Doc. 15638](#) (“Recognising Russian warmonger political parties as groups and entities involved in terrorist acts that are subject to institutional sanctions”, Reference 4700 of 23 January 2023); and [Doc 15923](#) (“Establishing a Register of companies that assist Russian entities in evading sanctions and combating circumvention of restrictive measures against Russian entities”, Reference 4804 of 15 April 2024).

The committee also prepared an opinion on the report of the Committee on Political Affairs and Democracy “[Support the reconstruction of Ukraine](#)”, see [Doc. 15732](#), [Doc. 15941](#), [Resolution 2539 \(2024\)](#) and [Recommendation 2271 \(2024\)](#).

The issue of deported or transferred Ukrainian children will not be the focus of this report since it is being examined by both the Committee on Social Affairs, Health and Sustainable Development and the Committee on Migration, Refugees and Displaced Persons.

5. [Resolution 2495 \(2023\)](#) “Deportations and forcible transfers of Ukrainian children and other civilians to the Russian Federation or to temporarily occupied Ukrainian territories: create conditions for their safe return, stop these crimes and punish the perpetrators”; [Resolution 2516 \(2023\)](#) “Ensuring a just peace in Ukraine and lasting security in Europe”.

6. [Doc. 15720](#).

(Washington). They both spoke about the challenges in qualifying the Wagner Group under international law and the need to adopt targeted measures to ensure accountability of the group for its crimes and human rights abuses, including those committed in other parts of the world (in particular in Africa) and not only in Ukraine. On 12 October 2023, the committee held an exchange of views with Mr James Goldston, Executive Director of Open Society Foundations, who presented an update on recent developments regarding the establishment of a special tribunal for the crime of aggression. During the January 2024 part-session, the committee held an exchange of views with Mr Markiyani Kliuchkovskiy, Executive Director of the Register of Damage. Finally, on 4 March 2024, the committee held a hearing on the topic of compensation with three experts: Dr Anton Moiseienko, lecturer at the Australian National University; Ms Yuliya Ziskina, senior legal fellow at Razom for Ukraine (Washington); and Mr Rupert Skilbeck, Director of Redress (London). I would like to thank all the experts for their extremely valuable contributions. The secretariat of the committee has also attended different conferences related to these topics and met with a Ukrainian delegation of the Office of the Prosecutor General, National Police, State Bureau of Investigation and Security Service visiting the Council of Europe in Strasbourg (November 2023).

2. The special tribunal for the crime of aggression against Ukraine

5. In its [Resolution 2436 \(2022\)](#) “The Russian Federation’s aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes”, adopted two months after the launch of the full-scale invasion, the Assembly unanimously supported the establishment of an *ad hoc* international criminal tribunal to investigate and prosecute the crime of aggression committed against Ukraine by the political and military leadership of the Russian Federation. The Assembly was thus the first body of an international character to support the creation of such a tribunal. As regards the modalities of its establishment, the resolution recommended that the tribunal be established by a group of like-minded States in the form of a multilateral treaty.⁷

6. In its [Resolution 2482 \(2023\)](#) “Legal and human rights aspects of the Russian Federation’s aggression against Ukraine”, the Assembly explicitly stated that the acts of aggression committed by the Russian Federation meet the threshold of the crime of aggression as set out in the Statute of the International Criminal Court (ICC) (Article 8 bis). Given that the ICC has no jurisdiction over the current crime of aggression (in the absence of a referral by the UN Security Council, and Russia not being party to the ICC Statute), the Assembly reiterated its call on all member and observer States to set up a special international criminal tribunal for the crime of aggression against Ukraine, which should be endorsed and supported by as many States and international organisations as possible, and in particular by the UN General Assembly (UNGA). It also asked the 4th Summit of Heads of State and Government to give its political support to the creation of a such a tribunal and offer the Council of Europe’s concrete expert and technical support to its establishment, in close co-ordination with other interested organisations and States. According to the Assembly, the Council of Europe should have an active, leading role in the establishment of the special tribunal and participate in relevant consultations and negotiations. The resolution set out the main features that the special tribunal should have (jurisdiction *ratione materiae*, *ratione temporis*, address the issue of personal immunities, list of fair trial rights, complementarity with the ICC, and seat). As regards the type of tribunal (purely international or internationalised hybrid) and its legal basis (multilateral treaty or agreement between an international organisation and Ukraine), the resolution left these questions open. While favouring a fully international model, the rapporteur thought that the final legal form of the instrument should be decided pragmatically, aiming to involve the largest possible number of States, ideally representative of different regions of the world.

7. In May 2023, at the Reykjavik Summit, the Heads of State and Government recognised the role played by the Assembly in providing a robust response to Russia’s war of aggression. As regards the special tribunal, they welcomed the international efforts to hold to account the political and military leadership of the Russian Federation for its war of aggression and the progress towards the establishment of a special tribunal for the crime of aggression. In line with the Assembly’s proposals, they stated that the Council of Europe should participate, as appropriate, in relevant consultations and negotiations and provide concrete expert and technical support to the process. Since then, the secretariat of the Council of Europe (Directorate of Legal Advice and Public International Law, DLAPIL) has been participating in the consultations within the Core Group.

7. In his explanatory memorandum, the rapporteur, while also referring to the possibility of establishing the tribunal through an agreement between Ukraine and an international organisation, for instance the Council of Europe, expressed a preference for the “multilateral treaty” option.

8. More recently, in [Resolution 2516 \(2023\)](#) “Ensuring a just peace in Ukraine and lasting security in Europe” (Committee on Political Affairs and Democracy), the Assembly called on the Core Group “to come to an agreement [on its] legal form as soon as possible, taking into account the need to maximise the international legitimacy and to minimise possible legal issues, in particular regarding the possible reliance of key suspects on personal or functional immunity”.

9. James Goldston, at the exchange of views that the committee held on 12 October 2023, noted that a purely international tribunal established by the UNGA, possibly through an agreement between the UN and Ukraine, would be the best solution. This model would likely have the strongest claim to being recognised as an “international tribunal”, which would facilitate denying personal and functional immunities of the most senior Russian officials. However, he said that States supporting a strictly international model (including Ukraine and much of Eastern Europe) were increasingly in a minority within the Core Group. Other models should therefore be explored. A fully regional model could be created through an agreement between Ukraine and the European Union or the Council of Europe. This model would also have some legitimacy as an “international tribunal”, especially if endorsed by most or all of the Council of Europe member States. A multilateral model could be created through a multilateral treaty between Ukraine and one or more other States. Its legitimacy as an “international tribunal” would depend on how many States would ratify the treaty. An internationalised hybrid model, supported by G7 States, including Germany, the UK and the US, would involve a tribunal rooted in Ukraine’s justice system, but with international judges. This might also raise problems, as the Ukrainian Constitution does not allow foreign judges and expressly prohibits the creation of special courts; and it might not be able to overcome personal immunities because of its ties to the Ukrainian domestic system.⁸ According to Mr Goldston, a potential compromise between the purely international model and the hybrid option supported by the G7 would be an internationalised (hybrid) model hosted in a third State and not in Ukraine. It seemed that although clearly not its first choice, Ukraine would be willing to accept this model, as long as it is based in another State’s judicial system and that system inspires confidence. Within the Core Group, the European Union External Action Service (EEAS) had also made a proposal for a “transfer of proceedings” (a Ukrainian court sitting in another country, for instance in the Netherlands).

10. On 14 November 2023, in my capacity as rapporteur I sent the following message to the Core Group of countries, in view of their meeting in Berlin on 16 November: “To maximise the future tribunal’s international legitimacy and authority, and to minimise potential legal risks linked to issues of the personal and functional immunity of senior officials, the tribunal should be as international as possible – ideally set up by an agreement between the UN and Ukraine based on a majority vote of the UN General Assembly, or by a multilateral treaty between the “Core Group” countries endorsed by as many international bodies as possible, including the Council of Europe, or even as a strongly internationalised hybrid Ukrainian tribunal, located in The Hague and staffed by Ukrainian and international judges and prosecutors. The Council of Europe could make a substantial contribution to the future tribunal. It could host a diplomatic conference to negotiate a multilateral treaty establishing the tribunal and make available its legal expertise and experience in negotiating international agreements, with the participation of interested non-member States. After adoption of the treaty, it could act as depositary so that no participating State needs to be singled out for this task. And the Council of Europe could also help to generate synergies with compensation mechanisms, including the newly established Register of Damage, and with the European Court of Human Rights.”

11. In the past months, participants in the Core Group have expressed an interest in exploring the idea of establishing a special tribunal via a bilateral agreement between Ukraine and the Council of Europe. Although no decisions have yet been taken and an alternative proposal based on a freestanding multilateral treaty remains on the table, the “Council of Europe bilateral agreement” option seems to be gaining traction. DLAPIL has been examining its legal feasibility and what an agreement and statute could look like. This momentum must also be seen against the broader political context that the UN and its General Assembly have become less likely to act in this matter, in particular since the outbreak of the Gaza conflict. Furthermore, the option of a multilateral treaty is seen by some as a more cumbersome procedure due to the need to go through numerous ratification procedures by national parliaments and also raises the issue of legitimacy (how many States parties are needed for a sufficiently international tribunal?).

8. See also: “Why a “Hybrid” Ukrainian Tribunal on the Crime of Aggression Is Not the Answer” ([justsecurity.org](#)); “Making Counter-Hegemonic International Law: Should A Special Tribunal for Aggression be International or Hybrid?” ([justsecurity.org](#)) ; “The Ukraine War and the Crime of Aggression: How to Fill the Gaps in the International Legal System” ([justsecurity.org](#)) ; see however “The Jordan Appeal Supports a Hybrid Tribunal Denying Personal Immunity” - *Opinio Juris*.

12. On 10 April 2024, a Seminar on the Special Tribunal was organised in the margins of the 66th CAHDI (Committee of Legal Advisers on Public International Law) meeting.⁹ Its title was “What role for regional organisations such as the Council of Europe?”. In his keynote speech, Professor Claus Kreß recalled the important role of the Assembly (particularly through Resolution 2482 (2023)¹⁰) and the Council of Europe’s suitability for this endeavour. In his view, this should not be seen as a European solution to what is a global challenge but should be understood in the sense that “Europe places the Council of Europe in the service of the international community as a whole”. In this regard, he strongly advocated for applying the definition of the crime of aggression in Article 8 bis of the ICC Statute instead of relying on the national criminal law of Ukraine, and at the same time criticised the idea of basing the special tribunal’s jurisdiction on a transfer of Ukrainian national proceedings. He also proposed, for the purposes of international legitimacy, that non-European judges be also elected to the special tribunal and that its institutional design be endorsed at some point by the UNGA (in line with the Assembly’s position). Professor Chiara Giorgetti gave an overview of the role of regional organisations in the pursuit of international criminal justice, with a particular focus on three recent examples (the Extraordinary African Chambers established via an agreement between the African Union and Senegal to try international crimes committed in Chad; the Kosovo*¹¹ Specialist Chambers under an agreement between Kosovo and the European Union; and a possible hybrid court being discussed between ECOWAS (Economic Community of West African States and The Gambia). She concluded that “creating a tribunal would work especially well within the context of the Council of Europe, a regional multilateral organisation with a varied and numerous membership, which would also provide substantial legitimacy to the Tribunal”. Professor Anne Peters argued that the Council of Europe enjoys treaty-making powers and that a tribunal that seeks accountability for the crime of aggression clearly falls into the mandate of the Council of Europe, whose Statute (Preamble) indeed refers to “the pursuit of peace based upon justice” and the rule of law. Finally, the chair of the Committee on Legal Affairs and Human Rights, Lord Keen, presented the Assembly’s contribution to date and concluded that “if there is sufficient political will for the Council of Europe to fill the gap left by other international organisations and take the lead, the Assembly will certainly support this, to be coherent with its previous positions and its unwavering support for Ukraine and accountability.”

13. On 30 April 2024, the Committee of Ministers adopted by an overwhelming majority a decision which authorises the Secretary General “to prepare any necessary documents to contribute to consultations within the Core Group on a possible draft Agreement between the Council of Europe and the Government of Ukraine on the Establishment of a Special Tribunal for the Crime of Aggression of the Russian Federation against Ukraine, including its Statute, and on a possible draft enlarged partial agreement governing the modalities of support to such a Tribunal, its financing and other administrative matters”.¹² While we cannot prejudge at this stage the outcome of the Core Group consultations and the final decision of the Committee of Ministers on any further steps, the Assembly should strongly welcome this decision, which gives an explicit mandate to the Secretary General (and DLAPIL) and reflects a very large majority among member States in favour of an increasingly leading role of the Council of Europe in this process, including by possibly establishing the tribunal under its institutional framework.¹³ This would be fully in line with the Assembly’s previously expressed aspirations.

14. If the “Council of Europe bilateral agreement” model was to be retained by the Core Group, there is a wide range of legal issues that would still need to be addressed in detail in the negotiations of the agreement and the statute of the tribunal. The Assembly should reiterate some of the features that the tribunal should have that were already mentioned in its Resolution 2482 (2023) and are still valid: definition of the crime of aggression in line with Article 8 bis of the ICC Statute and customary international law;¹⁴ temporal jurisdiction covering the conflict since the beginning of the aggression against Ukraine in February 2014¹⁵; personal

9. For the full text of all interventions, see: [Seminar on the Special Tribunal for the Crime of Aggression against Ukraine - Committee of Legal Advisers on Public International Law \(coe.int\)](#).

10. Which he described as “the single most enlightened official document on accountability for the crime of aggression against Ukraine”.

11. * All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

12. [CM/Del/Dec\(2024\)1497/10.2](#). The decision refers to Article 15.a of the Statute of the Council of Europe which empowers the Committee of Ministers to consider the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements.

13. See reactions to the decision: [Dmytro Kuleba on X: “I welcome today's decision by @coe's Committee of Ministers on the Special Tribunal for the Crime of Aggression Against Ukraine, and I thank all of its members who supported the move. This significant decision directs the CoE Secretary General to prepare the necessary documents” / X \(twitter.com\)](#).

14. I tend to agree with Professor Kreß that this would be a strong indicator of the international nature of the tribunal, even if created under the auspices of a regional organisation. Professor Kreß convincingly argues that the ICC definition “constitutes nothing less than the culmination of a century long search for the crime of aggression under international law”, and “reflects an international consensus achieved after painstaking negotiation work in which States, which are not yet

jurisdiction covering the role and complicity also of Belarusian leaders;¹⁶ seat in The Hague; rights of the accused, in line with the European Convention on Human Rights (ETS No. 5); complementarity with the ICC, which has jurisdiction over other international crimes committed in Ukraine. Whether some of these elements should be regulated in the agreement itself or in the statute of the future tribunal (annexed to the agreement) does not seem so crucial at this stage.

15. As regards the challenging issue of immunities, some maintain the position that personal immunities would in any event apply to the Troika (incumbent Head of State, Head of Government and Minister of Foreign Affairs), regardless of the model chosen (free-standing multilateral treaty or bilateral agreement between a regional organisation and Ukraine). This reflects in my view a very restrictive interpretation of the international case law and practice. The Assembly should continue to support the position that “personal immunities would not apply to incumbent State officials, in line with the practice of other international criminal tribunals, and that functional immunities would in any event not be applicable to the crime of aggression” (Resolution 2482 (2023), paragraph 7.3 and explanatory memorandum, paragraphs 26-27). We should consider that a tribunal established through an agreement between a regional organisation such as the Council of Europe (representing 46 States) and Ukraine, with international judges (also from non-European States), with support and financial contributions from non-member States and other international organisations (including observer States and the European Union through an enlarged partial agreement that would support the special tribunal), with an international definition of the crime of aggression, would clearly qualify as a sufficiently “international” criminal tribunal. The special tribunal would not be acting only on behalf of Ukraine or Council of Europe member States, but on behalf of the international community as a whole, in order to uphold the international legal order and the prohibition of the use of force laid down in Article 2.4 of the UN Charter. With such a status and applying the precedents of the ICC¹⁷ and the Special Tribunal for Sierra Leone,¹⁸ personal immunities of the Troika would not be applicable nor constitute a bar to prosecution.¹⁹ In any event, given the lack of unanimity on the issue of immunities among potential supporters of the tribunal, I am of the view that the best option would be not to deal with this issue explicitly in the statute but to leave it to the interpretation by the judges of the future tribunal, as Philippe Sands has argued.²⁰

16. Some have argued that the issue of personal immunities of the Troika is not so crucial given that it is very unlikely that Vladimir Putin or Sergey Lavrov will be arrested and prosecuted while still in office. I tend to disagree with this view. The special tribunal should have jurisdiction from the outset over the political and military leaders who waged the war of aggression against Ukraine. This would include the power to investigate, issue arrest warrants, indict, try and finally sentence. Even if trials *in absentia* were not to be accepted in the future statute (in line with precedents of other international criminal tribunals²¹ and the legal traditions of some member States), one could envisage a nuanced model of *in absentia* proceedings before a pre-trial chamber, where a confirmation of charges hearing could be held in the absence of the suspect, with the presentation of evidence, hearing of witnesses, victims, etc. This could be similar to the model of Article 61.2 b) of the ICC Statute, which allows for *in absentia* confirmation hearings when the suspect has fled or cannot be found, and all reasonable steps have been taken to secure his or her appearance.²² Arrest warrants against Vladimir Putin and other leaders issued by the future tribunal could have further delegitimising and deterring effects apart from the more concrete limitation on their freedom of movement.²³

party to the ICC Statute, took an active part, States such as China, Russia and, at the end of the negotiations, in particular the United States”. With regards to the Ukrainian definition of the crime of aggression see: [“Are You a Leader? Ukraine’s Supreme Court Clarifies the Definition of the Crime of Aggression” – EJIL: Talk! \(ejiltalk.org\)](#).

15. One of the arguments used to limit the temporal jurisdiction of the tribunal to 24 February 2022 is that the UNGA only qualified as an act of aggression the large-scale invasion started on that date. But it has to be borne in mind that the Assembly has consistently held in its resolutions that the aggression commenced on 20 February 2014 with the invasion, occupation and illegal annexation of Crimea.

16. See also Resolution 2530 (2024) “A democratic future for Belarus”, paragraph 11.4.

17. ICC, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, judgment of 6 May 2019, Appeals Chamber, paragraphs 113 and 115.

18. Special Court for Sierra Leone, *The Prosecutor against Charles Ghankay Taylor*, “Decision on Immunity from Jurisdiction”, Appeals Chamber, 31 May 2004, paragraphs 52-53. In reaching its conclusion, the Appeals Chamber clarified that “the Special Court is not a national court of Sierra Leone and is not part of the judicial system of Sierra Leone exercising judicial powers of Sierra Leone”. (paragraph 40).

19. See also: [www.europarl.europa.eu/RegData/etudes/IDAN/2022/702574/EXPO_IDA\(2022\)702574_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702574/EXPO_IDA(2022)702574_EN.pdf), 9 December 2022, pp. 25-29.

20. [London - Conference on Special Tribunal for the crime of aggression against Ukraine - YouTube](#), 1st February 2024.

21. Only the Special Tribunal for Lebanon explicitly allowed for *in absentia* trials.

22. See ICC-02/04-01/05-466, *The Prosecutor v. Joseph Kony*, 23 November 2023, Pre-Trial Chamber II. See in this regard the contribution to the CAHDI Seminar of 10 April 2024 by Vincent de Graaf, “State of play of discussions in the Core Group. Working Group on Cooperation”.

Advancing investigations and proceedings in absentia up to the trial stage could also serve truth-finding, by assessing the evidence while it is still fresh, and the interests of the victims of the aggression (first and foremost the Ukrainian State and people) and, last but not least, it would serve deterrence purposes.

17. It should also be recalled that the Assembly no longer recognises the legitimacy of Vladimir Putin as President of the Russian Federation, given that the abolition of presidential term limits for his benefit violated not only well-established international legal principles, but also the Russian Constitution itself (Resolution 2519 (2023), based on findings of the European Commission for Democracy through Law (Venice Commission). It has therefore called on member States to no longer recognise Vladimir Putin as the legitimate President of the Russian Federation, after the end of his previous presidential term, following the March 2024 sham election.²⁴ Similarly, with regards to Belarus, the Assembly refuses to recognise the results of the 2020 elections and considers Mr Lukashenka as self-proclaimed *de facto* president (Resolution 2519 (2023)). While it is not the object of this report to examine the legal consequences of these considerations, including for the recognition of immunities of MM. Putin and Lukashenka under international law, the Assembly could invite the Committee of Ministers, the international community and the future special tribunal to further explore these issues.

18. In any event and at this stage, the Assembly should strongly support the consultations within the Core Group with a view to finding a final compromise on the model of the special tribunal as soon as possible, while at the same time showing its clear preference for the Council of Europe bilateral agreement option. As the experts eloquently showed at the CAHDI seminar, the Council of Europe is particularly well placed to set up a special tribunal for the crime of aggression against Ukraine. The pursuit of accountability for the violations of international law and the international crimes committed in and against Ukraine clearly falls within the mandate of the organisation, as reflected in its Statute (and preamble): “the pursuit of peace based upon justice and international co-operation”, the protection of the rule of law and respect for human rights. The protection of the rule of law (including the international legal order) and of the human rights of the Ukrainian citizens justifies the Council of Europe’s action to ensure that the “supreme international crime”, that is the crime of aggression, does not go unpunished. The Council of Europe would be acting on behalf of the international community, filling a gap in the international legal order. We should not forget that when Russia began its aggression against Ukraine in 2014 and when it launched its full-scale invasion in 2022 the Russian Federation was still a member State of the Council of Europe. This justifies all the more the competence of the Council of Europe to take action in order to ensure justice for such a crime, which was and is still being committed against one of its member States by a former member State. This unprecedented step for the Council of Europe would be in line with the priority given to accountability by the Heads of State and Government in Reykjavik.²⁵ It would also confirm that the Organisation is willing and able to innovate and face the legal challenges posed by the Russian aggression, as shown already by the creation of a Register of Damage for Ukraine through an enlarged partial agreement. Time is of the essence in view of some political developments in 2024 (elections to the European Parliament, US elections). There is a risk that further delays in deciding on the model of the tribunal, or on the outstanding legal issues, lead to a loss of momentum.²⁶ The Council of Europe option has a sound legal basis and strong legitimacy, we just need the political will to seize the opportunity and make it happen.

19. Finally, the Assembly should reiterate its call on member and observer States to strengthen the existing international criminal justice system, its legitimacy and universality. This means, in parallel to the creation of the special tribunal, supporting and moving forward with the amendment to the ICC Statute, with the aim of bringing the jurisdictional regime on the crime of aggression in line with the other international crimes. It also means urging all member and observer States, including Ukraine, to ratify the ICC Statute and the Kampala amendments.²⁷ I note with interest that since our call last year, there have been several proposals in the direction of amending the ICC Statute, including by parliamentarians and high-ranking government officials.²⁸

23. [“Putin to miss BRICS summit by mutual agreement, South Africa says” | News | Al Jazeera](#) (following the ICC’s arrest warrant against him).

24. [Presidential election in Russia: “Let’s not recognise Putin’s legitimacy as president”, PACE President says \(coe.int\)](#).

25. See also [Russia’s full-scale aggression against Ukraine: two years on, Council of Europe leaders reiterate support and solidarity \(coe.int\)](#); [CM/Del/Dec\(2024\)1490/2.3.](#), Consequences of the aggression of the Russian Federation against Ukraine, 21 and 23 February 2024.

26. [Ukraine Warns the World: It’s Now or Never for Prosecuting Putin - PassBlue](#).

27. [Prosecuting the Crime of Aggression in Ukraine and Beyond \(justsecurity.org\)](#).

28. [Proposal to Amend the Rome Statute Kampala Amendment on the Crime of Aggression - News Center \(pgaction.org\)](#); [Strengthening International Law in Times of Crisis - Speech by Federal Foreign Minister Annalena Baerbock in The Hague - Federal Foreign Office \(auswaertiges-amt.de\)](#) ; [Ending Selective Justice for the International Crime of Aggression \(justsecurity.org\)](#) ; [Amending the Kampala Amendments: A Proposal to Harmonize the ICC’s Jurisdiction - Opinio Juris](#).

3. Other international crimes (war crimes, crimes against humanity and possible genocide) and human rights violations committed in the context of the aggression

3.1. Alleged international crimes and human rights violations

20. The Assembly should again condemn all the other international crimes committed in the context of the war of aggression by the Russian Federation against Ukraine, including the ill-treatment and even execution of prisoners of war, the use of chemical weapons, unlawful attacks on civilians and humanitarian and medical personnel, as well on civilian objects such as medical facilities, schools, electric power plants, infrastructure and cultural heritage sites; the illegal abduction and detention, enforced disappearance, torture, ill-treatment and extrajudicial killings of Ukrainian citizens in the Russian Federation and the territories temporarily occupied or controlled by Russia; the unlawful transfer of Ukrainian children within those territories and/or their deportation to Russia or Belarus; all forms of conflict-related sexual violence and gender-based crimes; and unlawful attacks causing widespread, long-term and severe damage to the environment. I will never forget my own visit to the Kyiv suburbs of Bucha and Irpin, as a member of the *ad hoc* sub-committee set up to visit Ukraine²⁹ back in June 2022, shortly after the Russian occupants were driven from the Kyiv region.³⁰ What we saw and heard about first-hand was simply horrific.

21. Since the adoption of Mr Cottier's report in January 2023, there have been numerous international reports documenting war crimes, crimes against humanity and human rights violations that appear to have been committed by Russian forces during the ongoing war of aggression. For example, the OSCE (Organization for Security and Co-operation in Europe) Moscow Mechanism report published on 24 May 2023 entitled "Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation", concluded that a large number of Ukrainian children have been, since 24 February 2022, displaced from the territory of Ukraine to the temporarily occupied territories and to the territory of the Russian Federation.³¹ While being placed in various institutions, Russian families, or being adopted, Ukrainian children are being exposed to pro-Russian propaganda campaigns amounting to targeted re-education. The report also established that no functioning mechanisms facilitating family reunification have been put in place. Practices of non-consensual evacuations, transfers and prolonged displacement of Ukrainian children constitute violations of international humanitarian law, and in certain cases amount to grave breaches under the Fourth Geneva Convention and war crimes, or even crimes against humanity.³² They also violate numerous provisions of the UN Convention on the Rights of the Child.³³

22. On 4 October 2023, the Secretary General of the Council of Europe presented to the Committee of Ministers a report on the human rights situation in the Autonomous Republic of Crimea and the City of Sevastopol since the beginning of the full-scale invasion.³⁴ The report indicates that, while the peninsula has not witnessed large-scale hostilities during the last year, the Russian forces have extensively exploited Crimea for their ground offensive and air attacks, including by the Black Sea Fleet headquartered in Sevastopol. The Russian military effort has also relied on unlawful conscription and military enlistment of the peninsula's population, logistics and healthcare capacities, as well as the tapping of other resources of the temporarily occupied territory. Many of these abusive human rights practices and violations appear to have been replicated and scaled up in the illegally temporarily occupied territories of the regions of Donetsk, Kherson, Luhansk and Zaporizhzhia since 2022. The Committee of Ministers therefore invited the Secretary General to further examine the human rights situation in all territories of Ukraine temporarily controlled or occupied by the Russian Federation and encouraged the Commissioner for Human Rights to do the same.³⁵

29. *Ad hoc* sub-committee of the Committee on Legal Affairs and Human Rights on carrying out a fact-finding visit to Ukraine for the purpose of gathering information on possible war crimes and crimes against humanity committed during the war of aggression launched by the Russian Federation against Ukraine.

30. See the report of the *ad hoc* sub-committee at <https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2022/AS-JUR-2022-27-EN.pdf>.

31. OSCE, "Moscow Mechanism "Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation", 24 May 2023, p. 76-78.

32. See Article 49 (forceful transfer or deportation), Article 50(2) (altering the personal status of children) of the Fourth Geneva Convention, and Article 7(1)(d) of the Rome Statute (deportation or forcible transfer of population).

33. See also the resolutions of the Assembly on Ukrainian children: Resolution 2529 (2024) "Situation of the children of Ukraine" and Resolution 2495 (2023) "Deportation and forcible transfers of Ukrainian children and other civilians to the Russian Federation or to temporarily occupied Ukrainian territories: create conditions for their safe return, stop these crimes and punish the perpetrators".

34. SG/Inf(2023)29, "Human rights situation in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine", 31 August 2023.

23. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment conducted an official visit to Ukraine between 4 and 10 September 2023 and published a report on 15 February 2024. The report discloses credible allegations of torture and inhuman treatment of Ukrainian civilians and prisoners of war by the armed forces of the Russian Federation and potentially other actors supporting the Russian war, treatment such as the use of electric charges on ears and genitals, the use of dogs, mock executions and “humiliation ceremonies” where detainees were required to run while being beaten. The report also mentions abusive detention conditions and alleged sexual torture against both men and women. On the basis of interviews and other documentation, the rapporteur found, “a repetitive and continuing situation whereby torture and other ill-treatment or punishment was carried out in an organized and systematic manner, within the framework of a higher order policy”.³⁶

24. The Independent International Commission of Inquiry on Ukraine, whose mandate was extended by the UN Human Rights Council for a further period of one year in April 2024, published its last report on 15 March 2024, detailing continuous violations of international humanitarian law (IHL) and international human rights law (IHRL).³⁷ The Commission found further evidence showing that in the context of the full-scale invasion of Ukraine, Russian authorities have committed a wide array of violations of IHRL and IHL, including war crimes. These include indiscriminate attacks affecting civilians and civilian objects, medical institutions and cultural objects, in violation of IHL, and the war crimes of torture, wilful killing, rape and sexual violence and the forcible transfer of children. These actions also violate international human rights. The evidence gathered reinforced the Commission’s findings that Russian authorities used torture against both Ukrainian prisoners of war and civilians in a widespread and systematic way. The Commission provided in this report an initial assessment of the impact of the heavy fighting and siege of the city of Mariupol at the outset of the full-scale invasion (from 1 March to 20 May 2022), which led to large-scale death, injury, destruction, and unbearable suffering. Residents from the city of Mariupol described a lack of access to necessities, as well as attacks with explosive weapons and air strikes on populated areas causing the destruction of buildings, houses and medical facilities. The Commission concluded that the attacks against medical facilities were indiscriminate, constituting war crimes.³⁸ The Commission will continue to investigate whether the conduct of hostilities and the siege of Mariupol, as well as the widespread use of torture, may also constitute crimes against humanity. With regard to genocide, the Commission examined allegations on whether the rhetoric transmitted in Russian State and other media constitutes direct and public incitement to commit genocide. While recommending continued investigations into this matter, it expressed special concerns about statements by individuals supporting the invasion calling for the killing of a large number of persons.

25. The Office of the High Commissioner for Human Rights (OHCHR) has recently published a report focusing on the human rights situation during the Russian occupation of territory of Ukraine and its aftermath from 24 February 2022 until 31 December 2023, based on the work of the UN Human Rights Monitoring Mission in Ukraine.³⁹ The report describes persistent patterns of violations of IHRL and IHL by the Russian Federation in occupied territory. The focus is on territory of Ukraine that fell under Russian occupation following the full-scale invasion, specifically areas of the Donetsk, Kharkiv, Kherson, Luhansk, Mykolayiv and Zaporizhzhia regions. The report finds a systematic dismantling of fundamental rights and freedoms; cross-sector measures to stifle dissent; the subversion of Ukrainian systems of governance, administration, justice and education; the imposition of Russian systems and legal frameworks; and the suppression of expressions of Ukrainian culture and identity. Russian armed forces conducted widespread arbitrary detentions, including enforced disappearances, in the initial months of occupation, first targeting veterans of the Ukrainian Armed Forces (UAF), then persons suspected to have links to the Security Service of Ukraine and their families. This practice then broadened to different categories of civilians whom they perceived as opposing the occupation. During their detention, many detainees experienced torture or ill-treatment (beating, kicking, mock executions, waterboarding, and electric shocks), and were kept in inhumane conditions of detention (overcrowded cells, lack of medical care, extreme temperatures). The Mission also documented conflict-related sexual violence in

35. Committee of Ministers, 1477th meeting, [Decisions CM/Del/Dec\(2023\)1477/2.4](#), 4 October 2023. The new Council of Europe Commissioner for Human Rights conducted his first visit to Ukraine in April 2024: “[Human Rights Commissioner O’Flaherty calls for stronger support to Ukraine](#)” - Commissioner for Human Rights (coe.int).

36. UN, Human Rights Council, “[Visit to Ukraine, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards](#)”, 15 February 2024, A/HRC/55/52/Add.1, paragraphs 34 to 50. The report also addresses the conditions of detention and treatment of Russian prisoners of war and alleged collaborators detained in Ukraine.

37. UN, Human Rights Council, “[Report of the Independent International Commission of Inquiry on Ukraine](#)”, Doc. A/HR/55/66, 15 March 2024.

38. Articles 51(4)-(5) and 85(3)(b) of Protocol Additional I to the Geneva Conventions.

39. UN, OHCHR Ukraine, “[Human rights situation during the Russian occupation of territory of Ukraine and its aftermath](#)”, 20 March 2024.

occupied areas and in detention, with practices such as rape, gang rape, threats of rape, genital mutilation, beatings and electric shocks to genitals and breasts, forced nudity and sexual touching. The report mentions the widespread pillage of private property, as well as of equipment of educational and medical facilities. While conducting frequent searches of persons and property, Russian armed forces used elements of physical violence and degrading treatment such as verbal abuse, forced stripping, threats and destruction of property. The high number of such acts resulted in the creation of a climate of fear for the residents, in an atmosphere of generalised impunity. As of 31 December 2023, Russian authorities had initiated criminal investigations in only four instances of alleged misconduct. In June 2023, the Russian Federation adopted a law which effectively granted amnesty to Russian servicepersons for a wide range of crimes, potentially including gross violations of IHRL or serious violations of IHL. The Fourth Geneva Convention requires the occupying power to minimise changes to the *status quo ante*,⁴⁰ however the report discloses numerous violations of its provisions. This is apparent in the imposition of Russian systems of governance and administration, compelling public workers to continue working in key positions and to show allegiance to Russian institutions, and through the application of Russian law, touching all spheres of political, social, cultural and economic life. Following the illegal annexation of the occupied areas, the Russian Federation intensified pressure on local residents to obtain Russian passports, discriminating non-passport holders by denying them access to healthcare and humanitarian aid, freedom of movement, or payment of salaries. The report also describes how the Russian system sought to suppress expressions of Ukrainian culture and identity, with policies targeting children (for example, children are studying in Russian language with an imposed Russian curriculum including narratives justifying the aggression). The Mission documented violations concerning the enlistment of children, via the use of Russian youth groups where they are taught Russian patriotism and prepared for serving in the Russian Armed Forces.⁴¹ Large movements of population, including the fleeing or evacuation of Ukrainian civilians from areas affected by hostilities and the forced transfer or deportation of protected persons by Russian authorities, have resulted in substantial demographic changes in the occupied territories of Ukraine.

26. In its latest updated report on the situation in Ukraine (1 December 2023-29 February 2024), OHCHR reported an increase in civilian casualties due to an intensification of attacks by Russian armed forces with missiles and loitering munitions during this period, with at least 128 civilians killed and 584 injured.⁴² In Kharkiv city, one of the locations most targeted, the OHCHR documented attacks that struck residential areas, boarding schools, different hotels, educational and healthcare facilities. Since the beginning of the full-scale armed attack on 24 February 2022, OHCHR has verified that the conflict has killed at least 10 675 civilians and injured 20 080.⁴³ The report also discloses violations of provisions on the treatment of prisoners of war. Prisoners of war continued to experience widespread and routine torture and ill-treatment (beating, electric shocks, threats of execution, mock executions, positional torture, sleep deprivation), and were being held in poor conditions (lack of food, limited access to medical assistance, lack of basic personal hygiene items, spread of diseases). Some prisoners of war were subjected to sexual violence during their detention, including attempted rape, threats of rape and castration, and electric shocks to genitals. OHCHR received reports that 32 Ukrainian prisoners who had been captured, were summarily executed. It verified three of these incidents in which Russian servicemen executed seven Ukrainian servicemen hors de combat. In occupied territory, Russian authorities continued imposing Russian political, legal and administrative systems in violation of their IHL obligations as an occupying power. Contrary to the prohibition against compelling inhabitants to swear allegiance to the occupying Power, the Russian authorities systematically exerted pressure on residents to acquire Russian Federation citizenship and passports, and to engage in other “patriotic” activities to demonstrate loyalty. OHCHR expressed concerns about a draft law registered in Ukraine which would provide for the possibility of being stripped of Ukrainian citizenship in case of voluntary acquisition of the citizenship of an “aggressor State”.⁴⁴ Since many people in the occupied territories acquired Russian citizenship under duress from the occupation authorities, or because of fear, OHCHR noted that such acquisition of citizenship should not be considered “voluntary acquisition”.

40. Article 27 to 34 and Art. 47 to 78 of GC IV.

41. Article 50 of GC IV.

42. UN, OHCHR, “[Report on the Human Rights Situation in Ukraine \(1 December 2023 – 29 February 2024\)](#)”, 26 March 2024.

43. Actual numbers are probably much higher, since civilian casualties that OHCHR has not been able to verify are not included.

44. Ukraine, draft law No. 10425 “On certain issues in the migration sphere concerning the grounds and procedures of acquisition and loss of citizenship”.

27. Allegations that the Russian Federation and its State officials are committing genocide in Ukraine have continued to be made, mostly by political leaders and national parliaments.⁴⁵ As mentioned above, the UN Independent International Commission of Inquiry has expressed concerns about the rhetoric of Russian media, which may constitute incitement to genocide, and will continue to look into this issue.

28. The Assembly has expressed similar concerns. In its Resolution 2482 (2023) “Legal and human rights aspects of the Russian Federation’s aggression against Ukraine”, it emphasised that the official Russian rhetoric used to justify the aggression against Ukraine, the so-called “de-Ukrainianisation” process, carries characteristics of public incitement to genocide or reveals a genocidal intent to destroy the Ukrainian national group as such or at least part of it within the meaning of the 1948 Genocide Convention. It also noted that some of the acts committed by Russian forces against Ukrainian civilians could fall under Article II of the Genocide Convention (to which both the Russian Federation and Ukraine are parties), such as killings and forcible transfer of Ukrainian children for russification purposes.

29. Similarly, in its Resolution 2495 (2023) “Deportations and forcible transfers of Ukrainian children and other civilians to the Russian Federation or to temporarily occupied Ukrainian territories: create conditions for their safe return, stop these crimes and punish the perpetrators”, the Assembly expanded on these concerns, supporting the need for thorough recording, gathering and assessment of evidence of the crime of genocide. In addition, the Assembly invited the International Criminal Court to examine the possible prosecution of the crime of genocide as regards the State policy of the Russian Federation towards Ukrainian children.⁴⁶

30. The updated edition of the 2022 report produced by New Lines Institute and the Raoul Wallenberg Centre for Human Rights (referred to in Mr Cottier’s report), was published in July 2023, establishing that there are: (1) reasonable grounds to believe that Russia is responsible for direct and public incitement to commit genocide; (2) reasonable grounds to believe that Russia is responsible for the commission of genocide against the Ukrainian national group, on the basis of a pattern of atrocities from which an inference of intent to destroy the national group in part can be drawn and documented evidence of one or more of the prohibited acts in violation of the Genocide Convention; and (3) signs of serious, escalating genocide and genocidal incitement in Ukraine.⁴⁷ The report relies on the official Russian propaganda campaign to establish the incitement to genocide. It analyses the renewal and resurgence of the slogan “we can do it again”, an historical allusion to some of the darkest periods of Ukraine’s 20th century history. Russian State actors appear to believe that past atrocities “can be repeated”. The report also mentions five key narratives and dynamics that are used to incite genocide: (1) the denial of the Ukrainian identity, (2) accusation in a mirror (whereby perpetrators accuse the targeted group of similar atrocities that the speakers envision against them), (3) the use of dehumanising rhetoric about Ukrainians, including that Ukrainians must be “denazified” or “de-Satanised”, (4) the construction of Ukrainians as an existential threat, and (5) conditioning the Russian audience to commit or condone atrocities. The incitement to genocide comes from the highest level of the Russian State authorities, and Russian State occupation authorities with direct control over Ukrainians in occupied territories.

31. The report argues again that there is evidence of the existence of a “general plan” and a genocidal intent, which are key subjective elements to qualify the specific crime of genocide. According to the report, those elements are visible by the striking patterns or methods of atrocities, which suggest systematic State and military policy. It lists examples of acts directed towards the Ukrainian national group, that may constitute at least one of the five material acts constituting the crime of genocide under Article II of the Genocide Convention, such as killing members of the national group, causing serious bodily or mental harm and deliberately inflicting conditions of life that are calculated to bring about its physical destruction in whole or in part. The report also documents acts intended to prevent births within the group, such as the widespread use of rape and sexual violence against women and testimonies of castration of male Ukrainians in Russian detention centres. The report also presents evidence of systematic, co-ordinated forcible transfer of large numbers of Ukrainian children to Russia with signs of attempts to eradicate their Ukrainian identity and obstructing their return home. The report concludes that in view of the increasing evidence showing that

45. Canada (lower house), Estonia, Latvia, Lithuania, Poland (Sejm), Ukraine.

46. See also the comments by Ukraine to the OSCE [Moscow Mechanism](#), “[Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation](#)”, in the sense that forcible transfer or deportation of Ukrainian children to the Russian national group may also constitute genocide.

47. Kristina Hook, New Lines Institute and Raoul Wallenberg Centre for Human Rights, “[The Russian Federation’s Escalating Commission of Genocide in Ukraine: A Legal Analysis](#)”, July 2023. See also a collection of Russian rhetoric: [Russia’s Eliminationist Rhetoric Against Ukraine: A Collection \(justsecurity.org\)](#).

Russia's attempts to commit and incite genocide against Ukrainians have intensified and evolved, States Parties to the Genocide Convention need to step up their efforts to fulfil their obligation to prevent genocide under Article I of the Convention.⁴⁸

3.2. Existing accountability mechanisms

32. On 2 March 2022, the ICC Prosecutor, Karim Khan, announced that he had opened an investigation into the situation in Ukraine on the basis of referrals received from 39 States Parties to the ICC Statute (including 34 Council of Europe member States).⁴⁹ The scope of the situation being investigated encompasses any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person from 21 November 2013.⁵⁰

33. In the context of this investigation, on 17 March 2023, ICC Pre-Trial Chamber II issued [warrants of arrest for two individuals](#): Vladimir Putin, and Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation. Pre-Trial Chamber II considered that there were reasonable grounds to believe that each suspect bears responsibility for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children.⁵¹ As regards more specifically Vladimir Putin, the chamber considered that he could bear responsibility for having committed the acts directly, jointly with others and/or through others, and for his failure to exercise control properly over civilian and military subordinates who committed the acts or allowed for their commission. On 5 March 2024, ICC Pre-Trial Chamber II issued two further warrants of arrest for two individuals: Sergei Ivanovich Kobylash, a Lieutenant General in the Russian Armed Forces who at the relevant time was the Commander of the Long-Range Aviation of the Aerospace Force, and Viktor Nikolayevich Sokolov, an Admiral in the Russian Navy, who at the relevant time was the Commander of the Black Sea Fleet. Pre-Trial Chamber II considered that there were reasonable grounds to believe that each suspect bears responsibility for the war crime of directing attacks at civilian objects, the war crime of causing excessive incidental harm to civilians or damage to civilian objects, and the crime against humanity of inhumane acts.⁵² It is also important to note that a field office of the ICC has been opened in Kyiv.

34. In Ukraine, the Criminal Code criminalises the violation of laws and customs of war and genocide, but not crimes against humanity. As of 31 December 2023, according to the Prosecutor General's Office figures, 138 044 crimes relating to the full-scale invasion had been registered, out of which 119 071 war crimes. As regards specifically war crimes (Article 438 of the Criminal Code), 472 suspects had been notified, 314 persons had been indicted and 73 persons had been convicted.⁵³ As of 6 May 2024, there were 131 325 crimes of aggression and war crimes registered, out of which 127 432 war crimes.

35. There are other investigations apart from those led by the ICC Prosecutor and the Prosecutor General of Ukraine. Already at the end of March 2022, a Joint Investigation Team (JIT) was set up by Poland, Lithuania and Ukraine under the auspices of Eurojust. It is aimed at exchanging evidence and information in connection with the ongoing investigations in these countries on alleged core international crimes (war crimes, crimes against humanity and genocide) committed in Ukraine. It also allows investigators to operate in the

48. With a reference to the case law of the International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, judgment of 26 February 2007, paragraphs 430-431. According to the ICJ, "a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit". The ICJ also refers in this area to a "due diligence" assessment, looking at factors such as the State's "capacity to influence effectively the action of persons likely to commit, or already committing, genocide".

49. The number later increased to 43 States.

50. Jurisdiction granted on the basis of two declarations made by Ukraine in 2014 and 2015 under Article 12(3) of the ICC Statute, which enables a State not Party to the Statute to accept the exercise of jurisdiction by the ICC over alleged crimes committed on its territory.

51. Under Articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute. ICC, "[Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova](#)", 17 March 2023.

52. Under Articles 8(2)(b)(ii), 8(2)(b)(iv) and 7(1)(k) of the ICC Rome Statute; ICC, Press Release "[Situation in Ukraine: ICC judges issue arrest warrants against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov](#)", 5 March 2024.

53. As regards the crime of aggression the figures were higher: 684 suspects notified, 410 persons indicted and 138 convictions.

partner countries, with the consent of the State involved. The ICC Prosecutor and Europol have joined the JIT, as well as Estonia, Latvia, Slovak Republic and Romania.⁵⁴ The JIT's seven national authorities have also signed a memorandum of understanding with the US Department of Justice.

36. The Assembly should welcome and acknowledge the work of all the existing accountability mechanisms for international crimes committed in Ukraine and call on all member and observer States to continue supporting them, through expertise, capacity-building, financial resources, secondments of staff and co-operation. It should call on all States to take note of the arrest warrants issued by the ICC and enforce them should any of the suspects come within their jurisdiction. The Assembly should strongly condemn the attempts of the Russian Federation to prosecute the ICC Judges and Prosecutor involved in the issuing of these arrest warrants, as a flagrant interference with judicial independence and the mandate and integrity of the ICC.⁵⁵ The Assembly should also invite the ICC to consider examining the reported allegations of genocide, generally in respect of the situation in Ukraine and more specifically regarding the transfer of Ukrainian children.

37. The Council of Europe should strengthen and develop its assistance and co-operation activities with the Ukrainian authorities, particularly with the Prosecutor General's Office, within the context of its Action Plan for Ukraine, entitled "Resilience, Recovery and Reconstruction" (2023-2026).

38. Finally, we should not forget other existing international mechanisms that may adjudicate and ultimately establish the international responsibility of the Russian Federation (as a State, not its officials) for the numerous human rights violations committed in the course of the aggression. First and foremost, the European Court of Human Rights, which is still competent to deal with applications against Russia concerning violations of the European Convention on Human Rights which occurred until 16 September 2022. Ukraine lodged an inter-state case against Russia (*Ukraine v. Russia (X)* (No. 11055/22)) which concerns allegations of mass and gross human rights violations committed by the Russian Federation in the context of the war against Ukraine since 24 February 2022. The Court has joined this case to the previously lodged inter-state case *Ukraine and the Netherlands v. Russia* concerning warfare in eastern Ukraine since 2014 and the downing of flight MH17, which was declared partly admissible on 30 November 2022.⁵⁶

39. Ukraine also brought proceedings under the Genocide Convention before the International Court of Justice (ICJ), claiming that Russian accusations against Ukraine of committing genocide in the Luhansk and Donetsk oblasts were unfounded and could not justify the large-scale invasion in 2022. After having indicated provisional measures to the Russian Federation to immediately suspend the military operations commenced in February 2022, which were blatantly disregarded, the ICJ delivered a judgment on preliminary objections which can be seen as rather disappointing for Ukraine. The ICJ held that it does not have jurisdiction to entertain two of Ukraine's claims, namely that (i) the Russian Federation's use of force in and against Ukraine beginning on 24 February 2022 violates Articles I and IV of the Genocide Convention; and that (ii) Russia's recognition of the independence of the so-called "Donetsk People's Republic" and "Luhansk People's Republic" on 21 February 2022 violates Articles I and IV of the Genocide Convention. The ICJ considered that even if those actions undertaken by the Russian Federation were based on a bad faith application of the Genocide Convention, it did not automatically bring the Convention obligations into play. The ICJ accepted its jurisdiction only in respect of one claim submitted by Ukraine, namely, to declare that there is no credible evidence that Ukraine is responsible for committing genocide in the Donetsk and Luhansk oblasts.⁵⁷ While the judgment on the merits, should it be favourable to Ukraine, may serve in the future to debunk one of Russia's arguments to justify its war of aggression, the ICJ will not be able to determine whether Russia itself has violated the Genocide Convention or order reparations for Ukraine. However, it cannot be excluded that Ukraine or other States bring new proceedings under the Genocide Convention against Russia before the ICJ, for concrete allegations of genocide committed against the Ukrainians, at least in the form of incitement to genocide or attempt to commit genocide. The Assembly should invite them to do so, considering that the

54. ["Agreement to extend the joint investigation team into alleged core international crimes in Ukraine for two years" | Eurojust | European Union Agency for Criminal Justice Cooperation \(europa.eu\)](#). Also based at Eurojust, the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) was established in July 2023, as a co-ordination platform to support national investigations into the crime of aggression and secure key evidence for future prosecutions.

55. ["Russia issues arrest order for British ICC prosecutor after Putin warrant" | International criminal court | The Guardian](#); ["After arrest warrant for Putin, Russia opens case against ICC" | Russia-Ukraine war News | Al Jazeera](#).

56. There are currently three other inter-state applications and thousands of individual applications pending before the Court concerning the events in Crimea, eastern Ukraine and the Sea of Azov.

57. ICJ, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, judgment of 2 February 2024.

prohibition of genocide is an *erga omnes* obligation under international law and that any State Party to the Convention may bring a dispute concerning another State Party's responsibility for genocide to the ICJ by virtue of its Article IX.

4. Compensation for the damage caused by the aggression

40. The legal principle that a country should "make full reparation for the injury caused by [an] internationally wrongful act" is well established. There is also a recent precedent of a State doing so, after the invasion of Kuwait by Iraq in 1990.⁵⁸ The UNGA said already in 2022 that an international reparation mechanism was needed.⁵⁹ It also called on members to set up a register of claims against Russia. In response, the Council of Europe has set up such a register. While there has been so far no decision on which body should adjudicate the registered claims, the UNGA's support gives legitimacy to actions to hold Russia accountable for the war damages caused by its aggression.⁶⁰

41. The Register of Damage was established at the Reykjavik Summit in May 2023, under the auspices of the Council of Europe (in the form of an enlarged partial agreement). It will serve as a record, in documentary form, of all claims and supporting evidence of damage, loss or injury caused by Russia's full-scale aggression against Ukraine (on or after 24 February 2022) on the territory of Ukraine. The Register is mandated to receive and process claims for damages submitted by individuals, legal entities and the State of Ukraine, and any evidence supporting these claims; it will categorise, classify and sort such claims; assess and determine the eligibility of claims for inclusion in the Register and record the eligible claims for the purposes of their adjudication by a future compensation mechanism. The Register has its seat in The Hague and a satellite office in Kyiv. To date, 43 countries (all member States of the Council of Europe except Armenia, Azerbaijan, Bosnia and Herzegovina, Hungary, Serbia and Türkiye; in addition, Canada, Japan and the United States) and the European Union are participating in the Register, either as full members or associates. Its Board, chaired by Robert Spano, former President of the European Court of Human Rights, held its inaugural meeting in The Hague on 11-15 December 2023. According to the Board, the categories of claims shall include, *inter alia*: loss of life, torture and sexual violence, as well as personal injury; involuntary displacement, and forcible transfer of individuals; loss of property and revenue, and other forms of economic loss; damage to critical infrastructure and other governmental facilities; damage to the historic and cultural heritage; and environmental damage. The submission of claims was opened on 2 April 2024. Currently, and since the Register will be launched in stages, only claims related to damage or destruction of residential immovable property can be submitted.⁶¹

42. During the Conference held in Riga on 11 September 2023, the Ministers of Justice of the Council of Europe adopted a declaration that outlines the principles ([Riga Principles](#)) for member States of the Register of Damage to consider, to ensure the efficient functioning of the Register. These include: a victim-centered approach; a firm legal basis in international law on State responsibility; authority and legitimacy, including by taking due account of the case law of the European Court of Human Rights; support to the Ukrainian national authorities to facilitate co-ordinating the domestic efforts to support the Register; coherence, complementarity and interoperability; civil society engagement; and work towards effective and full reparation of all damage.

43. As the Assembly has already said, the Register can only be the first step of a comprehensive international compensation mechanism, which should include an international commission for the examination and adjudication of claims recorded in the Register, and a compensation fund to pay the damages awarded by the commission.⁶² The legal instrument establishing the compensation mechanism should regulate matters such as the funding of the compensation fund, the enforcement of awards and how decisions by other international bodies and courts, including those of the European Court of Human Rights, could also be enforced through this mechanism.⁶³ In the resolution establishing the Register, the participants agreed to continue working in co-operation with Ukraine and relevant international organisations and bodies towards the establishment, by a separate international instrument, of a future international compensation mechanism. The Register 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 its transfer to the future fully-fledged

58. United Nations Compensation Commission (UNCC), established by the UN Security Council, which operated from 1991 and provided payments (sourced in part from funds from the export of Iraqi petroleum) to individuals, corporations, governments, and international organisations.

59. UNGA Resolution ES-11/5 of 14 November 2022.

60. See "[Reparation bonds could unlock \\$300 billion for Ukraine](#)" – Euractiv (15 January 2024).

61. [Homepage - Register of Damage for Ukraine \(coe.int\)](#).

62. Resolution 2516 (2023), paragraph 15.2; Resolution 2482 (2023), paragraph 19.

63. Resolution 2482 (2023), paragraph 19.

compensation mechanism.⁶⁴ States should therefore continue working on the establishment of this mechanism, and the Council of Europe, as the organisation that created its first component (the Register), should be ready to play a leading role in setting up and managing it. Most recently, in its Recommendation 2271 (2024) “Support for the reconstruction of Ukraine” (Committee on Political Affairs and Democracy, rapporteur; Mr Luzlim Basha (Albania, EPP/CD); with an opinion by our committee prepared by myself), the Assembly called on the Committee of Ministers to “proceed towards the establishment of an international compensation mechanism under the auspices of the Council of Europe ...; establish an international trust fund, where all seized Russian State assets will be deposited ...; endorse the establishment of an international commission of claims for the damages recorded in the Register, under the auspices of the Council of Europe”. Our committee successfully proposed to add in the recommendation that the Committee of Ministers should 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 and the temporarily occupied territories of the Donetsk and Luhansk oblasts before 24 February 2022 (date established in the Register’s Statute), in line with the Assembly’s constant position recalling that the Russian Federation’s aggression against Ukraine has in fact started in February 2014, with the annexation of Crimea and the proxy warfare in eastern Ukraine.

44. With regards to the potential options for the effective payment of the compensation that may be awarded to the victims of the aggression (the Ukrainian State as well as natural and legal persons), the Assembly had already held that confiscated Russian assets should be used to pay for war damages in Ukraine.⁶⁵ Mr Cottier’s earlier report did not adopt a final position on this but rather referred to the different legal questions that the confiscation of Russian assets could raise under the law of State immunities and IHRL, including the European Convention on Human Rights.⁶⁶

45. At our hearing of 4 March 2024, Dr Moiseienko defended the possibility of seizing and transferring the frozen Russian State assets to Ukraine on the basis of the doctrine of collective or third-party countermeasures, in accordance with the International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). Third party or collective countermeasures are envisaged in Article 54 of the ARSIWA, which refers to “the right of any State, entitled under Article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached”. Article 48, paragraph 1, foresees the right of non-injured States to invoke the responsibility of another State when the obligation breached is owed to the international community as a whole (*erga omnes*).⁶⁷ Dr Moiseienko argued that these countermeasures would be lawful and meet the requirements of temporariness and reversibility. In reply to the objection of it being an unprecedented measure, he noted that the circumstance that hundreds of billions of frozen Russian assets are available across the States that pledge their commitment to the principle that Russia must pay the damage it caused by its aggression was also unique and unprecedented. Ms Ziskina presented the US and Canadian perspectives on “repurposing” frozen Russian assets. The US Government had endorsed the use of countermeasures to unlock the 300 billion frozen assets and use them to support Ukraine; a bipartisan bill named the REPO Act (applicable only to Ukraine) was explicitly based on the doctrine of countermeasures. It would empower the President to confiscate the Russian assets and instruct him to work with US allies to establish an international compensation mechanism that would pool together all the frozen assets.⁶⁸ Canada was also supportive of asset confiscation, since it had passed in June 2022 groundbreaking legislation authorising the government to confiscate and repurpose private or State assets and use them for the reconstruction of a foreign State adversely affected by a grave breach of international peace and security, as well as for the compensation of victims. The UK was also supportive of the seizure option. However, since about two thirds of the reserves were frozen in the European Union, these three countries were offering to act in concert with the EU countries to seize the reserves and thereby eliminate any danger to the stability of the euro. Mr Skilbeck noted the importance of reparations going along with reconstruction, while admitting that there are currently no principles or guidance on how to balance the two.

64. [Statute of the Register](#), Articles 2 and 14.

65. Resolution 2434 (2022), paragraph 9.6, referring to assets of Russian citizens and State enterprises subject to targeted sanctions for their responsibilities in the war of aggression against Ukraine; Resolution 2516 (2023), paragraph 15.3, referring more generally to the Russian Federation’s assets.

66. Explanatory memorandum, paragraphs 67-72.

67. See “[Funding Ukraine’s Aid: New Challenges](#)” – EJIL: Talk! (ejiltalk.org) ; “[Legal: The Freezing of the Russian Central Bank’s Assets](#)” | European Journal of International Law | Oxford Academic (oup.com); “[Transferring Russian Assets to Compensate Ukraine: Some Reflections on Countermeasures](#)” (justsecurity.org).

68. The REPO (Rebuilding Economic Prosperity and Opportunity for Ukrainians) Act was finally signed by President Biden on 24 April 2024. [REPO for Ukrainians Act Provides for the ‘Repurposing’ of Seized Russian Sovereign Assets | Skadden, Arps, Slate, Meagher & Flom LLP - JDSupra](#).

He recommended to follow a survivor-centered approach in the work of the Register of Damage and other mechanisms, and to consider how reparation fits with international criminal justice. He also recommended considering alternative solutions to provide funds for reparation, such as asset confiscation following penalties imposed for sanctions violations.

46. In my view, as already expressed in my opinion, Mr Basha's report on "Support for reconstruction of Ukraine" persuasively defends the legality of transferring frozen Russian assets to an international compensation mechanism for Ukraine on the basis of collective countermeasures.⁶⁹ The prohibition of aggression is a norm of international law which has been recognised as an obligation *erga omnes* by the International Court of Justice. Therefore, third States not directly injured by the aggression are entitled to take countermeasures against a serious breach of international law such as a war of aggression recognised by the UNGA as a violation of the UN Charter. For their legality, they must comply with conditions analogous to countermeasures by an injured State, including proportionality, temporariness and reversibility.⁷⁰ Given the enormous damage caused by the aggression, estimated by the World Bank at USD 411 bn⁷¹ already in March 2023, even the freezing of the USD 300 bn does not seem to raise any proportionality issues. The mere freezing of assets also does not raise an issue of reversibility. The question remains whether the doctrine of countermeasures can also justify the "repurposing" of the frozen assets to help Ukraine fight off the aggression and to obtain compensation for the damage caused by it. It can be argued that the subsequent possibility of a set-off against a claim for reparations owed under international law as part of a future peace settlement would qualify as "reversing" the freezing and repurposing of the funds, which are after all fungible. The question as to what part of the frozen assets would be repurposed for the compensation fund and what proportion for Ukraine's immediate reconstruction and recovery would also need to be addressed.⁷²

47. It has also been argued that the frozen funds can be treated as "collateral" for loans granted to Ukraine by its allies and confiscated only if and when Ukraine does not obtain the reparations due under international law that would allow it to pay back these loans.⁷³ A more sophisticated version of this proposal is the suggestion for Ukraine to issue "reparation bonds" backed by future claims for war damages against Russia. Since the reserves are accruing interest, they could be used to pay both the bonds' principal and coupons. This would be different from confiscation, because the assets would only be transferred if a legitimate compensation mechanism first ruled that damages were due to Ukraine. Arguably, the legal basis for using Russia's foreign currency reserves to pay off the reparation bonds would be particularly strong if Ukraine assigned claims for damages against Russia to the Western States which bought the bonds. The governments could rely on the common law principle of "set-off", under which an entity's assets can be used to pay its debts.⁷⁴

48. While the legal debate on full asset seizure and transfer continues, governments and scholars have explored additional options such as: asset confiscation following a criminal conviction for sanctions violations and repurposing of monetary penalties; or introducing windfall taxes/contributions on the interest or profits derived from frozen assets.⁷⁵ The Council of the European Union adopted in February 2024 a decision and a regulation clarifying the obligations of Central Securities Depositories (CSD) holding assets and reserves of the Central Bank of Russia that are immobilised. According to this decision, Central Securities Depositories holding more than 1 million EUR of Central Bank of Russia's assets must account extraordinary cash balances accumulating due to EU sanctions separately and are prohibited from disposing of the ensuing net profits. This decision paves the way for a possible financial contribution to the EU budget raised on these net profits to support Ukraine and its reconstruction at a later stage.⁷⁶ The European Commission is preparing further legislation to seize the profits that will be set aside, and then transfer them to a fund for Ukraine. This

69. Doc. 15932. See also the legal memorandum published on 20 November 2023 by eminent lawyers including Professors Dapo Akande, Philippe Sands, Christian Tams and others: [Legal Memorandum - d1e00ek4ebabms.cloudfront.net](https://d1e00ek4ebabms.cloudfront.net) ; and the study prepared by Philippa Webb for the European Parliamentary Research Service, February 2024: "Legal options for confiscation of Russian state assets to support the reconstruction of Ukraine" | Think Tank | European Parliament (europa.eu).

70. Articles 49 and 51 of the ARSIWA.

71. In March 2023, the World Bank estimated the damages until then to have reached USD 411 bn (see <https://apnews.com/article/ukraine-russia-war-damage-world-bank-6ecb537d2ab78a347306883603e65c33>).

72. Mr Basha's report suggests using them for both, since an international claims process will take time and cannot rapidly address the needs for reconstruction.

73. "Collateralising Russia's Frozen Currency Reserves: A Creative Solution, Playing for Time, or Both?" – EJIL: Talk! (ejiltalk.org): Anton Moiseenko argues that this option would just postpone the challenges associated with a transfer of the assets. Philippa Webb considers that the use of the assets as a guarantee would also involve confiscation as Russia would lose ownership, and in turn would also need justification as a countermeasure under international law.

74. See the Euractiv/Reuters article referred to in footnote 58.

75. "Reparations for Ukraine: Three Proposals from Europe" (justsecurity.org).

option raises issues as to the ownership of the profits (Russia or the Central Securities Depositories) and the effects on the reputation of the euro. Some argue that the legal justification should be similar to that needed for confiscating the principal assets.⁷⁷ Furthermore, in practical terms, the sum that this proposal would produce would be small compared to the estimated damage caused to Ukraine.⁷⁸ New legislative proposals within the European Union to use the windfall profits from Russian assets to finance the purchase of weapons for Ukraine are also being discussed.⁷⁹

49. Although the Assembly should pursue the seizure and transfer of assets to the future compensation fund as the preferred option, it could still leave the door open to other complementary or alternative proposals to ensure compensation. Like with the special tribunal for the crime of aggression, confiscation and transfer of assets are legally feasible but require determination and political will from all actors involved, including the G7 and the European Union. The main political argument against confiscation is that this may affect the trust in the euro and its stability. But what if the opportunity to confiscate these assets is missed and the Western taxpayers grow tired of paying for supporting Ukraine? What will happen to the stability of the euro if and when Russia wins in Ukraine and then threatens the Eurozone? The trust issue can be addressed by making it very clear that the precedent set by the freezing and confiscation of State assets justified as countermeasures applies only to egregious violations of international law such as a war of aggression recognised as such by the UNGA. States that do not intend to attack their neighbours have nothing to fear and no reason to shun the euro or the dollar, to be replaced by which other currency, actually?

50. In addition to the USD 300 bn in Russian State assets (mostly currency reserves), Western States have also frozen approximately USD 80 bn in assets owned by Russian oligarchs supporting Vladimir Putin's regime. These assets are private property, protected by Article 1 of the Additional Protocol to the European Convention on Human Rights (ETS No. 9). But the protection of private property is not absolute. The European Court of Human Rights has accepted the "Irish model" of non-conviction based confiscation of illegal assets, with the reversal of the burden of proof regarding the legality of the origin of the assets in question. Italy, the United Kingdom and other countries have introduced similar legislation for purposes of combating organised crime. The Assembly has recommended the use of non-conviction based confiscation of illegal assets with reversal of the burden of proof in its [Resolution 2218 \(2018\)](#). *Mutatis mutandis*, a (rebuttable) presumption could be made that the huge assets owned by Russian oligarchs were illegally acquired – in essence, stolen from the Russian people, whose natural riches Vladimir Putin's regime illicitly gave away to the oligarchs to buy their support. These assets could thus also be transferred to Ukraine, which could offset them against part of the debt owed by Russia to Ukraine, as envisaged by the Assembly in [Resolution 2434 \(2022\)](#).⁸⁰

51. I have not examined in this report the possible use of frozen Russian assets for the enforcement of just satisfaction judgments of the European Court of Human Rights against the Russian Federation. This issue is currently being considered by the CAHDI and will also be the topic of a hearing before the Sub-Committee on the implementation of judgments of the European Court of Human Rights of the Committee on Legal Affairs and Human Rights. Furthermore, the Court will take time in delivering judgments (on the merits and on just satisfaction) concerning the consequences of the aggression against Ukraine and we need to find more short-term solutions to secure compensation. In any event, my position is that the future international compensation mechanism should also include within its mandate the enforcement of any future Court just satisfaction judgment relating to the aggression against Ukraine (since 2014).

5. The role of the Wagner Group⁸¹

52. Since 2014, the private military company Wagner (commonly known as the Wagner Group) has become the most notorious Russian private military company (PMC). Although initially shrouded in secrecy, it became known that it was founded by a Russian oligarch and former convict, Yevgeny Prigozhin⁸² and a former GRU (Russian military intelligence service) and Spetsnaz operator, veteran of the Chechen wars and Nazi sympathiser Dmitry Utkin⁸³ (whose nom de guerre was "Wagner", intended as a reference to Hitler's favourite composer).

76. ["Immobilised Russian assets: Council decides to set aside extraordinary revenues" - Consilium \(europa.eu\)](#). Belgium has taken a similar action by recently seizing profits generated from the RCB's frozen reserves of 1.7 billion euros.

77. ["Immobilised Assets, Extraordinary Profits: The EU Council Decision on Russia's Central Bank Reserves and Its Legal Challenges" – EJIL: Talk! \(ejiltalk.org\)](#).

78. The European Union estimated that some 15 billion euros in such profits could be carved out for Ukraine over the next 4 years.

79. ["EU to discuss compromise text on windfall profits from immobilised Russian assets next week" – Euractiv](#).

80. See in particular paragraph 9.6.

53. The world first glimpsed Wagner fighters during the illegal annexation of Crimea in 2014 and then during the war in eastern Ukraine, where “Wagnerites” would not only further Russia’s goal of undermining Ukraine’s territorial integrity but were also involved in assassinating disobedient leaders of the self-proclaimed peoples’ republics.⁸⁴ Since then, the Wagner Group also established a firm presence in Syria, Libya, the Central African Republic, Mali, Sudan and other African States,⁸⁵ often exploiting these States’ natural resources in order to boost its own and Russia’s revenues and allow Russia to circumvent economic sanctions. Despite strong evidence of the Wagner Group’s reliance on the Russian armed forces’ infrastructure and the support of the top Russian political and military leadership, the Russian Government had consistently denied any links. Russian law explicitly prohibits the operation of private military companies, hence the PMC Wagner did not formally exist, allowing Russia to deploy it under the cover of (more or less plausible) deniability.⁸⁶

54. Following the full-scale invasion of Ukraine on 24 February 2022, the PMC Wagner fought alongside regular Russian troops, sustaining heavy losses⁸⁷ and committing numerous war crimes.⁸⁸ In order to provide reinforcements and avoid a further partial mobilisation, Wagner’s leadership turned to recruiting convicted criminals. According to our expert, Jelena Aparac, prisoners in various facilities have allegedly been offered amnesty or presidential pardon after six months of service with the Wagner Group, and a monthly payment of between EUR 1 600 – 3 200 to be paid to the prisoners’ relatives. The information provided suggests that by the end of October 2022 Wagner Group recruiters had visited approximately 63 correctional facilities in 34 Russian regions, and that around 7 130 prisoners had been recruited. In some cases, the recruiters offered financial compensation of up to EUR 68 000 to the relatives if a prisoner was killed in action and around EUR 4 000 in case of an injury. Furthermore, members of the Wagner Group were said to be primarily recruiting prisoners convicted of murder or robbery and being in good physical condition, while those convicted of sexual offences or terrorism seemed to be excluded. Bellingcat, an independent investigative journalism group, reported that several convicted murderers and former gang leaders (referred to as “volunteer detachments” by the Russian media) sentenced to lengthy imprisonment died during their service with Wagner.⁸⁹ Other news outlets shared stories of pardoned Wagnerites, including those openly admitting to having committed war crimes, who returned to their communities, terrorising the local population.⁹⁰ Wagner personnel used Russian fighter jets, planes, helicopters, artillery pieces and other advanced weaponry,⁹¹ not even attempting to hide its dependence on, and symbiosis with, the Russian Army. The Russian Ministry of Defence openly acknowledged the role of the Wagner Group in specific military actions in Ukraine, for instance in capturing the cities of Soledar and Bakhmut.⁹² The Russian Government also granted the status of combat veterans to Wagner contractors who took part in Russia’s invasion of Ukraine.⁹³

55. In June 2023, a large contingent of Wagnerites marched practically unopposed to Moscow. The apparent mutiny was stopped by a deal with Vladimir Putin that allowed the Wagner fighters to relocate to Belarus.⁹⁴ Shortly thereafter, Vladimir Putin admitted that the PMC Wagner had been financed with tens of billions of roubles from the State budget,⁹⁵ thus confirming what has long been known by the international

81. The Committee on Legal Affairs and Human Rights is working on a parallel report “On private military companies, mercenaries, foreign fighters and their impact on human rights” (rapporteur Mr Andrea Orlando, Italy, SOC). See introductory memorandum: [AS/Jur\(2024\)05](#).

82. www.theguardian.com/world/2022/sep/26/putin-ally-yevgeny-prigozhin-admits-founding-wagner-mercenary-group.

83. www.france24.com/en/live-news/20230825-utkin-the-nazi-tattooed-commander-who-gave-wagner-its-name.

84. <https://russianpmcs.csis.org/>.

85. www.cfr.org/in-brief/what-russias-wagner-group-doing-africa.

86. www.csis.org/blogs/post-soviet-post/band-brothers-wagner-group-and-russian-state.

87. www.independent.co.uk/news/world/europe/russia-wagner-3000-troops-killed-ukraine-b2062198.html.

88. www.theguardian.com/world/2023/apr/18/wagner-mercenary-admits-tossing-grenades-at-injured-ukrainian-pows.

89. “How Wagner Gave Three Russian Crime Bosses from the 90s a New Lease of Death” - [bellingcat](#).

90. “Murder, ‘alcohol and prostitutes’: Wagner convicts pardoned by Putin return to terrorise home towns” | Russia | [The Guardian](#).

91. www.theguardian.com/world/2023/jul/12/wagner-hands-thousands-of-tonnes-of-weaponry-to-russian-army, “Accountability for Crimes of Personnel of the Wagner Group in Ukraine”, briefing paper, Open Society Justice Initiative, November 2023, p. 38.

92. “Accountability for Crimes of Personnel of the Wagner Group in Ukraine”, briefing paper, Open Society Justice Initiative, November 2023, p. 35.

93. [State Duma passes law giving Wagner mercenaries ‘combat veteran’ status — Meduza](#).

94. www.bbc.com/news/world-europe-66211121.

95. www.politico.eu/article/vladimir-putin-yevgeny-prigozhin-russia-kremlin-gave-wagner-group-nearly-1-billion-in-the-past-year/.

community and fervently denied by the Kremlin.⁹⁶ According to a leaked document that was characterised as the founding document of the Wagner Group, Wagner's founding principles were to fight Russia's war in Ukraine in loyal service to Vladimir Putin and "the Russian nation".⁹⁷

56. Two months later, the Wagner Group's top leaders (including Y. Prigozhin and D. Utkin) perished in a plane crash, which is widely assumed to be an assassination ordered by Vladimir Putin as a form of retribution for the above-mentioned mutiny. According to the official version of events, presented by Mr Putin himself, the plane was brought down by its passengers having become intoxicated and playing with hand grenades.⁹⁸ The deaths of Wagner's leaders resulted in some of their fighters being incorporated into the Russian military and Rosgvardiya (National Guard) or hired by other Russian PMCs, such as Redut.⁹⁹ On 26 August 2023, Vladimir Putin signed a decree, obliging paramilitary fighters to sign an oath of allegiance to the Russian State, thus tying them more closely to its armed forces. The decree applies to all members of "volunteer formations" – a term used to describe private military companies, whose existence is still formally illegal under Russian law.¹⁰⁰ In September 2023, the Ukrainian military reported that around 500 Wagner Group fighters returned to fight in the Donetsk oblast for the first time since its failed mutiny.¹⁰¹ The following months saw an expansion of the Russian PMC activity in Africa. Media reported that the Wagner Group, now under a strict supervision of the Russian Ministry of Defence, underwent "rebranding" of its African operations and was renamed "Africa Corps" – another obvious reference to Nazi Germany.

57. From mass murders of civilians and other war crimes in Ukraine¹⁰² or Mali¹⁰³ to brutally murdering its own militants¹⁰⁴ – everywhere Wagner Group has shown up, a long trail of evidence of atrocities followed (often voluntarily shared by their perpetrators to brag and intimidate; they enjoyed absolute impunity). Ukrainian intelligence services uncovered a plot where a special operations unit, consisting of some 400 militants belonging to the Wagner Group, had been deployed to Kyiv to assassinate Ukrainian President Volodymyr Zelensky and his cabinet.¹⁰⁵

58. In the face of mounting evidence of serious violations of human rights law and international crimes, the Russian Government consistently denied the existence of the Wagner Group, allowing it to operate with impunity in various conflict zones around the world. This has raised serious concerns about accountability for these actions and the need for an international legal response to ensure justice for victims. To this end, the Parliamentary Assembly of the OSCE adopted a resolution in which it determined "that the actions of the Wagner Group on behalf of the Russian Government can rightly be characterized as terroristic in nature and intent, and that designation of the Wagner Group as a terrorist organization by national authorities is therefore justified". It further called on its member States to take action against the Wagner Group, including through "its designation as a terrorist organisation".¹⁰⁶ A similar call was made by the European Parliament in its resolution of 23 November 2022.¹⁰⁷ The Council of the European Union has sanctioned the Wagner Group for its actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.¹⁰⁸ The Parliamentary Assembly also invited national parliaments of Council of Europe member States to designate the Wagner Group (as well as Kadyrov's Guard) as terrorist organisations and to call for the full accountability of all military and paramilitary groups that participate in the Russian aggression against Ukraine (Resolution 2506 (2023) "Political consequences of the Russian Federation's war of aggression against Ukraine", based on a report prepared by Mr Emmanuelis Zingeris (Lithuania, EPP/CD) for the Committee on Political Affairs and Democracy).¹⁰⁹

96. www.wsj.com/articles/eu-sanctions-russias-wagner-group-to-thwart-private-military-11636995416.

97. [/www.newsweek.com/putin-russia-ukraine-wagner-leak-document-1811833](https://www.newsweek.com/putin-russia-ukraine-wagner-leak-document-1811833).

98. www.aljazeera.com/news/2023/10/6/putin-suggests-wagner-mercenary-chiefs-plane-brought-down-by-grenade-blast.

99. www.politico.eu/article/new-wagner-russian-mercenary-group-recruits-prigozhins-ex-fighters-redut/.

100. www.rferl.org/a/russia-putin-decree-paramilitary-forces-oath/32564923.html.

101. "Ukraine's military confirms Wagner fighters return to front" (kyivindependent.com).

102. www.spiegel.de/international/germany/possible-evidence-of-russian-atrocities-german-intelligence-intercepts-radio-traffic-discussing-the-murder-of-civilians-in-bucha-a-0a191c96-634f-4d07-8c5c-c4a772315b0d

103. www.theguardian.com/world/2023/may/20/russian-mercenaries-behind-slaughter-in-mali-village-un-report-finds.

104. www.reuters.com/world/europe/sledgehammer-execution-russian-mercenary-who-defected-ukraine-shown-video-2022-11-13/.

105. www.businessinsider.com/russia-orders-mercenaries-assassinate-ukraine-president-report-2022-2?r=US&IR=T.

106. Resolution on the Wagner Group's terroristic nature and actions. Adopted by the OSCE Parliamentary Assembly at the 30th Annual Session (Vancouver, 30 June to 4 July 2023) as a part of the Vancouver Declaration and Resolutions.

107. European Parliament Resolution of 23 November 2022 on recognising the Russian Federation as a State sponsor of terrorism (2022/2896(RSP)).

108. Council Implementing Regulation (EU) 2023/755 of 13 April 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. OJ L 100I, 13.4.2023, p. 1–3.

59. Several national parliaments of the Council of Europe member States also resolved to designate the PMC Wagner as a terrorist organisation (including Lithuania,¹¹⁰ Estonia,¹¹¹ France¹¹² and the United Kingdom).¹¹³ The United States Treasury Department sanctioned it as a transnational criminal organisation, resulting in disruptions of its global operations.¹¹⁴

60. As noted by our expert, Jelena Aparac, due to the narrow scope of Article 47, paragraph 2, of Protocol Additional I to the Geneva Conventions, the Wagner Group is unlikely to fulfil the six cumulative criteria set out therein, that would allow to qualify its fighters as “mercenaries” under international humanitarian law. I agree with that position, especially given that most Wagnerites are believed to be Russian nationals¹¹⁵ and there is not enough evidence to conclude that they are being promised “material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces”.

61. Considering that personnel of Russian PMCs are believed to serve under a private contract rather than as formal members of the Russian armed forces, they are not regular soldiers either.

62. Although new information has surfaced as to the PMC Wagner’s former leadership, its actual structure and evolution following the 2023 events remain largely unknown. Ms Aparac and the research conducted by the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination found no evidence of commercial registration of the Wagner Group, making it unlikely that it would formally qualify as a “private military and security company” (whose operation would in any event be illegal under Russian law).

63. In the light of the foregoing and the scarcity of evidence concerning the internal organisation of the PMC Wagner and its actual command structure, the question arises as to whether its fighters meet or met the criteria necessary to be qualified as “combatants”, as defined in Article 43, paragraph 2, of Protocol Additional I to the Geneva Conventions.¹¹⁶ If they cannot be qualified as “combatants”, this would of course not deprive them of basic guarantees of international humanitarian law applicable to civilians; however, such “unlawful” combatants, upon capture, could be tried and punished under domestic law for their unprivileged belligerency (that is mere participation in the hostilities) as they could not enjoy combatant immunity that is applicable to prisoners of war.¹¹⁷ In any event, they could be prosecuted for the commission of alleged international crimes committed in Ukraine, before the ICC or in another State with jurisdiction, including Ukraine or any other State under the principle of universal jurisdiction.¹¹⁸

109. This resolution also called on member States to issue INTERPOL Red Notices (warrants) against the leaders and members of these international terrorist groups; asked the ICC to issue arrest warrants against them; and the Conference of Participants of the Register of Damage to clarify that the register will also record acts committed by private military groups, paramilitary groups and other military groups fighting for the Russian Federation, including the Wagner Group and Kadyrov’s forces. The Assembly has even called on member States to declare the current Russian regime as a terrorist one (Resolution 2463 (2022), “Further escalation in the Russian Federation’s aggression against Ukraine”, paragraph 13.7).

110. www.rferl.org/a/ukraine-wagner-terrorist-organization-lithuania/32317062.html.

111. www.riigikogu.ee/en/news-from-committees/foreign-affairs-committee/riigikogu-declared-russia-a-terrorist-regime/.

112. www.lemonde.fr/en/politics/article/2023/05/10/french-parliament-calls-on-eu-to-list-wagner-as-terrorist-group_6026136_5.html.

113. www.gov.uk/government/news/wagner-group-proscribed.

114. home.treasury.gov/news/press-releases/jy1220.

115. The requirement that one not be “a national of a Party to the conflict nor a resident of a territory controlled by a Party to the conflict” would automatically exclude Wagnerites from the definition of mercenaries in Ukraine, but not in Africa.

116. Article 43(2): “members of the armed forces of a Party to a conflict ... are combatants”. Article 43(1) contains a definition of armed forces: the armed forces, groups and units must be “organized” and “under a command responsible to that State party”. It also requires that such armed forces be subject to an “internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict.”

117. Dörmann, K. (2003). The legal situation of “unlawful/unprivileged combatants”. *International Review of the Red Cross*, 85(849), pp. 70-71. For further references also see “Accountability for Crimes of Personnel of the Wagner Group in Ukraine”, briefing paper, Open Society Justice Initiative, November 2023, pp. 50-52. According to this briefing paper, factors weigh in favour of finding that Wagner Group personnel should generally be treated as combatants (subject to a case-by-case determination): “The Wagner Group may meet the ‘organized’ requirement, since it has demonstrated an ability to conduct large-scale and complex military operations, including in the strategic seizure of several cities in Ukraine ... Whether the Wagner Group meets the ‘responsible command’ requirement is more uncertain ... Several facts suggest that Russia has organized, coordinated, and planned the military actions of the Wagner Group in Ukraine ... Significantly, President Putin has expressly admitted that Russia has financed the Wagner Group.”

118. See as an example the confession of possible war crimes committed in Ukraine by a former Wagner fighter: www.theguardian.com/world/2023/apr/18/wagner-mercenary-admits-tossing-grenades-at-injured-ukrainian-pows.

64. Regardless of the legal classification of Wagnerites under IHL, Russia should bear full international responsibility for the actions of its private military or paramilitary companies in Ukraine and elsewhere. In order to establish the international responsibility of States for conduct of private persons or groups of persons, we need to refer to the ARSIWA. Article 8 requires that the acts be committed under the State's instructions, direction, or control to be attributable to that State.¹¹⁹ In its judgment in the case of *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the ICJ established the so-called "effective control" test, under which actions of a non-State actor may be attributable to a State itself, if that State "directed or enforced the perpetration of the acts contrary"¹²⁰ to international law. Although this establishes a rather high threshold for attribution of private party's unlawful conduct to a State (as it requires effective control to be exercised "in respect of each operation in which the alleged violations occurred, not generally in respect of the overall actions taken by the persons or groups of persons having committed the violations"),¹²¹ I think that this threshold was met in the case of Wagner Group and its participation in the war of aggression against Ukraine. We should also not forget that State responsibility could potentially be determined also on the basis of acknowledgment and adoption of the conduct of Wagner as its own (under Article 11 of ARSIWA).¹²²

65. In any event, what is clearly attributable to Russia is its utter and complete disregard for its obligations stemming from international humanitarian law and human rights law. According to Article 1 of the Geneva Conventions "[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." This obligation clearly includes a duty to prevent and prosecute war crimes. In this context I also note that a case against Russia is pending before the European Court of Human Rights, concerning the alleged murder of a Syrian journalist by members of the Wagner Group, in which the Court will have to examine Russia's State responsibility under the Convention.¹²³

66. I want to stress that neither a corporate veil, nor a "fog of war" should prevent us from making sure that every single damage caused by fighters of the Wagner Group and other Russian proxies in the hostilities in Ukraine is included in the Register of Damage for Ukraine, as already requested by the Assembly.¹²⁴ The international community must hold Russia to account for actions of all troops under its control or fighting on its behalf, be it regular soldiers, PMCs or fighters in clandestine operations.

67. Before those responsible for their crimes face justice, we must also address the risk that the Wagner Group and other Russian PMCs continue to pose to the international community. Barbaric actions perpetrated in Ukraine, Africa and the Middle East leave no doubt that Wagnerites and other Russian PMCs will stop at nothing to further the Kremlin's political agenda. In this context, I commend the Parliamentary Assembly of the OSCE and several of our member States who have already designated the Wagner Group as a terrorist organisation. There is no doubt in my mind that acts such as the indiscriminate killing of innocent civilians¹²⁵ and booby-trapping children's toys¹²⁶ with the purpose to provoke a state of terror among the civilian population justify designating them as such. The International Convention for the Suppression of the Financing of Terrorism of 1999 includes in the definition of terrorism (for the purposes of criminalising the financing of terrorism) "any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."¹²⁷ This definition was also incorporated in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No. 198, Warsaw, 2005). Both conventions oblige State Parties to seize, forfeit or confiscate any funds used for the purpose of committing terrorism or the proceeds of the crime. Given the nature of some of the atrocities committed by the Wagner Group, I consider it fully justified to designate its crimes against the civilian population as terrorism (in addition to their qualification as war crimes¹²⁸) and the

119. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), judgment, ICJ Reports 2007, paragraph 398.

120. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits, judgment. ICJ Reports 1986, paragraph 115.

121. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), judgment, ICJ Reports 2007, paragraph 400. See also: "Ukraine Symposium – The Wagner Group: Status and Accountability" - Lieber Institute West Point.

122. "Recalling an Outlier for Gauging Russian Responsibility in its Relationship with the Wagner Group" - *Opinio Juris*

123. www.fidh.org/en/region/north-africa-middle-east/syria/syria-russia-wagner-appeal-european-court-human-rights.

124. www.coe.int/en/web/kyiv/-/ukraine-register-of-damage-should-also-record-loss-caused-by-wagner-and-kadyrov-groups-says-pace-president.

125. www.theguardian.com/world/2023/may/20/russian-mercenaries-behind-slaughter-in-mali-village-un-report-finds.

126. www.theguardian.com/world/2022/may/25/russian-mercenaries-accused-over-use-of-mines-and-booby-traps-in-libya.

127. UN Convention on the Suppression of Financing of Terrorism, Article 2(1)(b).

group as a terrorist organisation. Our experts on the Wagner Group seemed to consider that this would not change much.¹²⁹ We should however not underestimate the symbolic importance of such a designation. It would further confirm Russia's status as a State-sponsor of terrorism and have an additional deterrent effect on those States and private entities that would consider co-operation with Wagner or similar Russian PMCs.

68. Finally, the Assembly should invite the ICC to consider examining the individual criminal responsibility of members of the Wagner Group and other Russian PMCs and where appropriate issue arrest warrants against them, in the context of the different investigations and preliminary examinations opened in relation to Ukraine and different countries in Africa. With a view to enhancing accountability and truth-finding, it should also recommend to the UN bodies, in particular the Human Rights Council, to set up an independent commission of inquiry into all alleged violations of IHRL and international crimes committed by members of the Wagner Group in different conflicts around the world, including Ukraine and many countries in Africa. This could also serve the purpose of examining more widely the role that the Wagner Group has had in furthering Russian's aggressive foreign policy, focusing on its transnational dimension.

6. Conclusions

69. Since the beginning of the Russian Federation's large-scale aggression against Ukraine, the Council of Europe, and in particular the Parliamentary Assembly, have set an ambitious agenda to support Ukraine and its people and ensure justice and accountability for all violations of international law committed. A Register of Damage for Ukraine was established in 2023 at the Reykjavik Summit and has recently started to receive claims from Ukrainian victims. Although it will take time to deliver justice and reparations, more needs to be done to meet the expectations of the Ukrainian people and our own ambitions.

70. The Assembly should therefore urge member and observer States to continue working on a comprehensive system of accountability for all violations of international law arising out of the aggression, including the crime of aggression committed by Russia's political and military leaders. The Assembly should strongly support the current consultations within the Core Group with a view to finding a compromise on the model of special tribunal for the crime of aggression, and as soon as possible. The model based on a bilateral agreement between the Council of Europe and Ukraine seems to be gaining traction and we should support this as the best feasible option, while insisting on the characteristics that would make the tribunal as international as possible (for example, definition of the crime of aggression in line with the ICC Statute, composition, etc.). As some have said, by setting up a tribunal through an agreement with Ukraine, the Council of Europe would not be acting only on behalf of its member States. It would be placing itself in the service of the international community as a whole, in order to uphold the international legal order that was deliberately attacked by Russia.

71. Furthermore, the Assembly should strongly condemn all the other international crimes committed in the context of the aggression, including war crimes, crimes against humanity and most probably genocide. It should welcome the ongoing work by all existing accountability mechanisms, in particular the ICC and the Ukrainian authorities, and invite all member States to contribute to such work through their expertise, assistance, capacity-building and resources. With regards to compensation, and in line with previous resolutions, the Assembly should call on the Committee of Ministers to proceed, as soon as possible and in consultation with the Register of Damage, towards the establishment of an international compensation mechanism under the auspices of the Council of Europe. Such a mechanism would include an international claims commission and an international trust fund, where all seized Russian State assets currently frozen would be transferred. The Assembly should clearly support the seizure and transfer of these assets as a completely valid legal option under international law, as shown by many international law experts, including some that our committee and other committees of the Assembly have heard. This would be the best solution if we want to ensure compensation for all the damage caused to Ukraine as a consequence of the aggression and if we want to avoid placing an unfair burden on the taxpayers of our countries. In addition, the Assembly should express its support for all other options currently being examined to make use of the frozen State assets and reiterate its call on the international community to also repurpose the frozen assets of Russian oligarchs for assisting Ukraine.

128. For instance, Article 51(2) of Protocol Additional I to the Geneva Conventions states that "acts or threats of violence the primary purpose of which is to spread *terror* among the civilian population are prohibited". For an application of this provision, see ICTY, Trial Chamber, *Prosecutor v. Stanislav Galic*, judgment of 5 December 2003, case No IT-98-29.

129. The European Union for instance has already sanctioned the Wagner Group under different EU sanctions regime, but not under the EU terrorist list.

72. Finally, the Assembly should address the role of the Wagner Group and its participation in the Russian aggression against Ukraine. Individual criminal responsibility for the crimes committed in Ukraine should be investigated, by the ICC or other States under the principle of universal jurisdiction. A newly established UN-mandated commission could look into the role of the Wagner Group in different conflicts around the world and its multiple human rights violations. The Russian Federation should bear full responsibility for the violations committed by the Wagner Group in Ukraine and the related damage should be covered by the future compensation mechanism.