



Doc. 15510 – Compendium of written amendments
27/04/2022

(Final version)

**The Russian Federation's aggression against Ukraine:
ensuring accountability for serious violations of international
humanitarian law and other international crimes**

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A. Draft Resolution

1. The Parliamentary Assembly is appalled by the ongoing war of aggression waged by the Russian Federation against Ukraine. This war is conducted with a brutality that was unprecedented in Europe since the Second World War. The use of heavy weapons in densely populated areas has caused thousands of civilian casualties, the almost complete destruction of the city of Mariupol and severe damage to civilian infrastructures such as hospitals, schools, kindergardens, water and electricity supply and residential buildings in Kharkiv and many other cities and towns throughout Ukraine.
2. The Assembly is horrified by reports of atrocities against civilians allegedly committed by Russian troops in towns and villages temporarily under their control, in particular in Bucha and other towns in the vicinity of Kyiv.
3. The Assembly is appalled by widespread reports of the use of rape and torture as weapons of war, both of which are recognised as war crimes in international criminal law.
4. The grant by the President of the Russian Federation on 18 April 2022 of an honorary title to the 64th motorised infantry brigade, which was posted in Bucha at the time of the reported atrocities, sends a devastating message to the victims' families and cynically encourages Russian troops to continue committing similar actions which may amount to war crimes and crimes against humanity with impunity.
5. The Assembly therefore urges the international community to send a clear message to the contrary, namely that perpetrators of war crimes and crimes against humanity, and possible genocide, will be held to account. The same must apply to the perpetrators of the crime of aggression, namely the political and military leadership of the Russian Federation who are responsible for launching the ongoing war.
6. The Assembly notes that relevant legal instruments already exist in order to prosecute war crimes and crimes against humanity, and possibly genocide, namely:
 - 6.1. the International Criminal Court (ICC), which in 2014 was granted jurisdiction by Ukraine to investigate war crimes and crimes against humanity on its territory;
 - 6.2. the criminal justice systems of Ukraine and any other States that have granted their courts universal jurisdiction for such crimes.
7. Leading politicians, academics and human rights lawyers have proposed the creation, by a group of States willing to take the lead, of an ad hoc international criminal tribunal to prosecute the crime of aggression. This cannot presently be covered by the ICC without a resolution by the United Nations Security Council, which the Russian Federation would probably block by using its veto.
8. In addition to criminal responsibility of individual perpetrators of international crimes, the European Court of Human Rights and the International Court of Justice

(ICJ) can hold the Russian Federation accountable for human rights violations committed by Russian troops and, in the case of the ICJ other violations of international law for which the ICJ has jurisdiction.

9. The Assembly recalls the legal duty to prevent and punish genocide under the Convention on the Prevention and Punishment of the Crime of Genocide to which all 46 member States of the Council of Europe are Contracting Parties. As interpreted by the ICJ, this obligation and a corresponding duty to act arise at the instant that one has learnt of, or should normally have learned of, the existence of a risk that genocide would be committed.

10. The Assembly therefore calls on all member and observer States of the Council of Europe to:
 - 10.1. support the ICC Prosecutor in his task of investigating and prosecuting suspected perpetrators of war crimes, crimes against humanity and, possibly, genocide, by providing political support, adequate human and financial resources and by making available any evidence in their possession, including open source intelligence, information and data, satellite imagery and intercepts of communications;
 - 10.2. make use of their universal jurisdiction, to the extent foreseen in their legislation, to investigate and prosecute international crimes;
 - 10.3. join or otherwise support the Joint Investigation Team (JIT) already set up by Ukraine, Poland and Lithuania with the support of Eurojust, for the purpose of co-ordinating their investigations and pooling their results through direct co-operation between the competent authorities of the participating States;
 - 10.4. closely co-ordinate their investigations with the ICC Prosecutor; those States participating in the JIT could include the ICC Prosecutor in the JIT;
 - 10.5. fully co-operate with the ICC Prosecutor, the members of the JIT and any other States making use of their universal jurisdiction, including by handing over to them any persons on their territory against whom arrest warrants will be issued;
 - 10.6. urgently set up an ad hoc international criminal tribunal, which should:
 - 10.6.1. receive a mandate to investigate and prosecute the crime of aggression allegedly committed by the political and military leadership of the Russian Federation;
 - 10.6.2. apply the definition of the crime of aggression as established in customary international law, which has also

Amendment 1

Tabled by Mr Emanuelis ZINGERIS, Mr Arminas LYDEKA, Mr Lukas SAVICKAS, Ms Laima Liucija ANDRIKIENĖ, Ms Inese LĪBIŅA-EGNERE, Ms Krista BAUMANE, Mr Uldis BUDRIKIS

In the draft resolution, after paragraph 9, insert the following paragraph:

The Assembly seeks to draw attention to the "Russkiy mir" (that is, "Russian world") ideology that has taken hold in the Russian Federation and has become a state ideology, which the Kremlin has turned into a tool for promoting war. This ideology is being used to destroy the remnants of civil democracy, to bring up new militarised generations in the Russian Federation, and to justify its external aggression.

- inspired the definition of the crime of aggression in Article 8 bis of the ICC Statute;
- 10.6.3. have the power to issue international arrest warrants and not be limited by State immunity or the immunity of heads of State and government and other State officials;
 - 10.6.4. be set up notably by a group of like-minded States in the form of a multilateral treaty endorsed by the United Nations General Assembly and with support to be provided by the Council of Europe, the European Union and other international organisations;
 - 10.6.5. have its headquarters in Strasbourg (France), in view of possible synergies with the European Court of Human Rights, which is dealing with numerous related individual and interstate applications;
 - 10.7. sign and ratify the Rome Statute of the ICC and the Kampala amendments introducing Article 8 bis on the crime of aggression;
 - 10.8. avail themselves of the opportunity under Article 33 of the European Convention on Human Rights (ETS No. 5) to refer to the European Court of Human Rights, individually or through joint legal action, any alleged breach of the Convention and its Protocols by the Russian Federation occurring until 16 September 2022, when the Russian Federation will cease to be a Party to the Convention.
11. The Assembly further invites:
- 11.1. the European Court of Human Rights to consider prioritising cases stemming from the Russian aggression against Ukraine and making use of the possibility to engage in fact-finding under Article 38 of the European Convention on Human Rights;
 - 11.2. the Commissioner for Human Rights of the Council of Europe to closely follow the human rights situation in Ukraine and to identify and swiftly denounce, in her targeted reports or statements, any patterns of serious human rights violations or violations of international humanitarian law she detects;
 - 11.3. the ICC and its Prosecutor to:
 - 11.3.1. prioritise the investigation and prosecution of war crimes and crimes against humanity committed during the

Amendment 2

Tabled by Mr Oleksii GONCHARENKO, Mr Emanuelis ZINGERIS, Ms Laima Liucija ANDRIKIENĖ, Mr Bob van PAREREN, Mr Alex AHRENDTSEN, Mr Dmytro NATALUKHA, Lord Simon RUSSELL, Mr Eduard KÖCK, Ms Theo CLARKE, Mr Birgir THÓRARINSSON, Mr Jaroslav BŽOCH, Mr Jacques LE NAY, Ms Nicole DURANTON, Mr Paulo PISCO, Ms Rita TAMAŠUNIENĖ, Ms Larysa BILOZIR, Ms Mariia MEZENTSEVA-FEDORENKO, Lord Leslie GRIFFITHS, Ms Imane LAMAOU, Mr Erkin GADIRLI

In the draft resolution, after paragraph 10.8, insert the following paragraph:

"use the assets of Russian citizens subject to targeted sanctions for their responsibilities in the war of aggression launched against Ukraine by the Russian Federation, once they are confiscated definitively, to compensate Ukraine and its citizens for any damage caused by the Russian Federation's war of aggression."

- ongoing war of aggression launched by the Russian Federation against Ukraine;
- 11.3.2. swiftly conclude investigations in the most glaring cases and issue indictments and arrest warrants against the suspected perpetrators;
 - 11.3.3. co-operate closely with the national prosecutorial authorities exercising their universal jurisdiction following the principle of complementarity and participate in the co-ordination of relevant investigations through the JIT set up by several States with the support of Eurojust;
 - 11.4. the Independent International Commission of Inquiry set up by the UN Human Rights Council to investigate all alleged violations of human rights in the context of the Russian aggression against Ukraine and to co-operate and co-ordinate its activities closely with the Prosecutor of the ICC and the national prosecutorial authorities investigating international crimes under their universal jurisdiction;
 - 11.5. the United Nations General Assembly to:
 - 11.5.1. support setting up an ad hoc international criminal tribunal to prosecute the crime of aggression allegedly committed by the political leaders and military commanders of the Russian Federation against Ukraine and encourage United Nations member States to step up their efforts in providing full support to establishing such a tribunal;
 - 11.5.2. request an Advisory Opinion from the International Court of Justice on possible limits to the veto rights of permanent members of the United Nations Security Council that could be based on the general legal principles of the prohibition of the abuse of rights and the duty of member States of international organisations to exercise their membership rights in good faith.
 12. The Assembly finally calls on the Russian Federation to:
 - 12.1. cease hostilities against Ukraine and immediately, completely and unconditionally withdraw its military forces from the territory of Ukraine within its internationally recognised borders, and comply strictly with its obligations under human rights and international humanitarian law;
 - 12.2. ensure accountability for crimes committed by its forces and all entities for which it bears responsibility according to its obligations under international humanitarian law and human rights law, including the Geneva Conventions, the International Covenant on Civil and Political Rights and the European Convention on Human Rights, which is still binding on the Russian Federation until 16 September 2022, also bearing in mind the binding nature of the judgments of the European Court of Human Rights, those already pending supervision over execution and those still to be adopted.

B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution... (2022), stressing the need to ensure accountability for war crimes, crimes against humanity and possible genocide as well as the crime of aggression in connection with the Russian war of aggression against Ukraine.
2. The Assembly invites the Committee of Ministers to:
 - 2.1. strengthen the competent services of the Council of Europe in order to enable them to provide technical assistance and advice to Ukraine and those member States exercising their universal jurisdiction with investigating and documenting gross human rights violations, including those amounting to war crimes, crimes against humanity and possible genocide, on the scale required;
 - 2.2. invite the expert bodies of the Council of Europe, notably the Consultative Council of European Judges and the Consultative Council of European Prosecutors, the European Commission for the Efficiency of Justice and the European Commission for Democracy through Law (Venice Commission), and other monitoring and standard-setting mechanisms of the Council of Europe concerned, to produce expert recommendations and guidelines relating to these issues within the ambit of their competence;
 - 2.3. encourage all member States to participate in setting up an ad hoc international criminal tribunal to prosecute the crime of aggression allegedly committed by the political leaders and military commanders of the Russian Federation against Ukraine, by way of a multilateral treaty between like-minded States;
 - 2.4. examine ways and means for the Council of Europe as a whole to play an active role in setting-up and operating such a tribunal, including by providing logistical or other technical assistance.