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Resolution 2556 (2024)[1]

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

Parliamentary Assembly

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 Charter of the United Nations 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 Ukrainian 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 relative to the Protection of Civilian Persons in Time of War, by which the Russian Federation has been bound for decades.

3. The Assembly is appalled by the continuous and numerous reports of atrocities and violations of human rights and international humanitarian law committed by Russian military forces and their 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, and 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; and the forced "passportisation" and conscription of Ukrainian citizens.

4. Many of these violations amount to specific war crimes under the Geneva Conventions, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 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 violate, at the same time, multiple

1. *Assembly debate* on 26 June 2024 (19th and 20th sittings) (see Doc. 15998, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Davor Ivo Stier). *Text adopted by the Assembly* on 26 June 2024 (20th sitting).
See also Recommendation 2279 (2024).

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 the 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 Convention on the Prevention and Punishment of the Crime of Genocide (the 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-Satanisation" 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 is attempting to commit genocide against Ukrainians or is at least publicly inciting to it, as part of the propaganda displayed to justify the 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.

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 later, 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 private Russian 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 these 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 Organization for Security and Co-operation 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 the position laid down in Assembly Resolution 2506 (2023) "Political consequences of the Russian Federation's war of aggression against Ukraine". Given that some of the Wagner Group's crimes appear to have been committed with the purpose of provoking 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 Summit of Heads of State and Government of the Council of Europe (16 and 17 May 2023) and the Reykjavik Declaration adopted there, 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 "Restoring Justice for Ukraine" held in The Hague on 2 April 2024 and the Summit on Peace in Ukraine held in Bürgenstock (Switzerland) on 15 and 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, to which the Assembly and the Heads of State and Government of the Council of Europe have already expressed their support.

9. The Assembly commends the efforts and ongoing investigations carried out by the existing international and domestic accountability bodies 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 in the "Core Group" are still ongoing.

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 (the Register) 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 the 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 demonstrates 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 parliaments enjoy observer or partner for democracy status with the Assembly, the European Union as well as any other potentially interested regional organisations, including the Organization 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 parliaments 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 calls 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, Viktor Nikolayevich Sokolov, Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov 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 judges and the Prosecutor of the ICC who were 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, the Convention);

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 into 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 Convention 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 Convention 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 the European Union Agency for Criminal Justice Cooperation (Eurojust);

14.11. encourages all member and 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, which 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. referring, in particular, to the resolutions of the OSCE Parliamentary Assembly and the North Atlantic Treaty Organization (NATO) Parliamentary Assembly, calls on member States, as well as other States, to consider the possibility of designating the Russian Federation, which implements the genocidal theory and practice of "ruscism", as a State sponsor of terrorism.

15. Finally, with regard to compensation for the damage caused by the aggression, the Assembly, referring to 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 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;

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, 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 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 to cease the aggression and make reparations to Ukraine; in view of the enormous amount of 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 of America, 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 while respecting the rights of all affected third parties under the Convention 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 damage 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, 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 Charter of the United Nations, 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. In this regard, the Assembly urges the Russian Federation to comply with the recent judgment of the European Court of Human Rights in the interstate case of *Ukraine v. Russia (re Crimea)*, concerning multiple violations of the Convention beginning in February 2014, and in particular with the obligation to ensure, as soon as possible, the safe return of the relevant prisoners transferred from Crimea to penal facilities located on the territory of the Russian Federation.