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DRAFT REPORT

on the situation of children deprived of liberty in the world
(2022/2197(INI))

Committee on Foreign Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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The European Parliament,

- having regard to the Universal Declaration of Human Rights, to the International Covenant on Civil and Political Rights, to the International Covenant on Economic, Social and Cultural Rights, and to the Convention on the Elimination of All Forms of Discrimination against Women,
- having regard to the UN Convention on the Rights of the Child of 20 November 1989, in particular to Articles 37(b) and 40 thereof, and to its Optional Protocols,
- having regard to the UN Convention on the Rights of Persons with Disabilities of 13 December 2006, and to its Optional Protocol,
- having regard to the UN Guidelines for the Alternative Care for Children of 18 December 2009,
- having regard to the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment of 9 December 1988,
- having regard to the UN Rules for the Protection of Juveniles Deprived of Liberty ('Havana Rules') of 14 December 1990,
- having regard to the UN Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules') of 29 November 1985, to the UN Guidelines for the Prevention of Juvenile Delinquency ('Riyadh Guidelines') of 14 December 1990, to the UN Standard Minimum Rules for Non-custodial Measures ('Tokyo Rules') of 14 December 1990, to the Guidelines for Action on Children in the Criminal Justice System ('Vienna Guidelines') of 21 July 1997, and to the UN Standard Minimum Rules for the Treatment of Prisoners ('Nelson Mandela Rules') of 17 December 2015,
- having regard to Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return,
- having regard to the General Comments of the UN Committee on the Rights of the Child (CRC), and, in particular, to General comment No. 24 (2019) on children's rights in the child justice system,
- having regard to the UN Global Compact for Safe, Orderly and Regular Migration of 19 December 2018, in particular to objective 13(h) thereof, and to the UN Global Compact on Refugees of 17 December 2018,

- having regard to the UN Global Study on Children Deprived of Liberty of 11 July 2019,
- having regard to the UN resolution entitled ‘Transforming our world: the 2030 Agenda for Sustainable Development’ adopted by the General Assembly on 25 September 2015,
- having regard to the UN Development Programme report of April 2021 entitled ‘Leaving No One Behind: Impact of COVID-19 on the Sustainable Development Goals (SDGs)’,
- having regard to UNICEF’s Child Protection Strategy (2021-2030) and Strategic Plan (2022-2025), and to its Reimagine Justice for Children Agenda (2021-2030),
- having regard to the Treaty on European Union, in particular to Articles 3(5) and 21 thereof,
- having regard to of the Charter of Fundamental Rights of the European Union, in particular to Article 14 thereof,
- having regard to the Council of Europe’s Recommendation CM/Rec(2018)5 of the Committee of Ministers to member states concerning children with imprisoned parents, adopted on 4 April 2018,
- having regard to the EU Guidelines for the Promotion and Protection of the Rights of the Child of 6 March 2017,
- having regard to Council Recommendation (EU) 2021/1004 of 14 June 2021 establishing a European Child Guarantee¹,
- having regard to the Commission communication of 24 March 2021 entitled ‘EU strategy on the rights of the child’ (COM(2021)0142),
- having regard to Council conclusions of 9 June 2022 on the EU Strategy on the Rights of the Child,
- having regard to the joint communication from the Commission and the High Representative of the Union for Foreign Affairs and Security Policy of 25 March 2020 entitled ‘EU Action Plan on Human Rights and Democracy 2020-2024’ (JOIN(2020)0005),
- having regard to the African Charter on the Rights and Welfare of the Child of 11 July 1990,
- having regard to the Charter of the Organization of American States of 1948, in particular to Article 49 thereof,
- having regard to the African Charter on Human and Peoples’ Rights of 27 June 1981, in particular to Articles 17 and 25 thereof,
- having regard to the Association of Southeast Asian Nations Human Rights Declaration of 19 November 2012, in particular to Article 31 thereof,

¹ [OJ L 223, 22.6.2021, p. 14.](#)

- having regard the report of the UN Secretary-General of 5 June 2023 on children and armed conflict,
 - having regard to its resolution of 26 November 2019 on children’s rights on the occasion of the 30th anniversary of UN Convention on the Rights of the Child²,
 - having regard to its resolution of 11 March 2021 on children’s rights in view of the EU Strategy on the rights of the child³,
 - having regard to its resolution of 3 May 2022 toward an EU strategy to promote education for children in the world: mitigating the impact of the COVID-19 pandemic⁴,
 - having regard to Rule 54 of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs (A9-0000/2023),
- A. whereas every human being below the age of 18 is a child; whereas a child is first and foremost a child, irrespective of ethnic origin, gender, nationality, social and economic background, ability, migration or residency status; whereas every child needs special protection and is entitled to all of the rights enshrined in the UN Convention on the Rights of the Child;
- B. whereas the deprivation of liberty is any form of detention or imprisonment, or the placement of a child in a public or private custodial setting, from which the child is not permitted to leave at will, by order of or de facto under any judicial, administrative or other public authority;
- C. whereas ‘children deprived of liberty’ include children deprived of liberty in the administration of justice, for migration-related reasons, in institutions, including institutions for children with disabilities, in prison with their primary caregivers, in the context of armed conflicts, and on national security grounds; whereas the consent of the parents or the child does not determine whether a child is or is not deprived of liberty;
- D. whereas according to Article 37(b) of the UN Convention on the Rights of the Child of 1989, the deprivation of liberty of children should be used only as a measure of last resort, for the shortest possible period of time, limited to exceptional cases and subject to review; whereas although General comment No. 24 of the CRC states that exceptions should only be for genuine public health and safety, experience during the COVID-19 pandemic showed that these exceptions are being overused;
- E. whereas the deprivation of liberty of children as a punishment for their sexual orientation or gender identity, among other things, can never meet the high standard of a measure of last resort in accordance with Article 37(b) of the Convention on the Rights of the Child and is never in the best interests of the child;
- F. whereas ‘children deprived of liberty in the administration of justice’ refers to children in police custody, pre-trial detention, pending trial and upon conviction;

² [OJ C 232, 16.6.2021, p. 2.](#)

³ [OJ C 474, 24.11.2021, p. 146.](#)

⁴ [OJ C 465, 6.12.2022, p. 44.](#)

- G. whereas ‘children living in prisons with their primary caregiver’ refers to children who live with a detained or imprisoned primary caregiver, and who are de facto deprived of their liberty;
- H. whereas ‘children deprived of liberty for migration-related reasons’ refers to any setting in which a child is deprived of their liberty for reasons related to their, or their parents’, migration status, regardless of the designation and reason given for the action of depriving a child of their liberty, or the name of the facility or location where the child is deprived of liberty; whereas unaccompanied and separated children should not be deprived of their liberty and detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof;
- I. whereas ‘children deprived of liberty in institutions’ refers to children, including children with disabilities, who are separated from their families and deprived of their liberty in institutions, and who cannot leave at will for a variety of reasons;
- J. whereas ‘children deprived of liberty in the context of armed conflict’ refers to children recruited by armed forces and armed groups to serve as combatants, guards, spies, messengers, cooks and in other roles, including sexual exploitation;
- K. whereas ‘children deprived of liberty on national security grounds’ refers to children recruited by terrorists or armed groups in non-conflict countries, or those who have been charged under national security laws for exercising their right to assembly and association, for example during protests;
- L. whereas a child in conflict with the law is any child who comes into contact with law enforcement authorities because they are alleged to have, have been accused of or have been recognised as having infringed criminal law;
- M. whereas the child or juvenile justice system comprises the legislation, norms, standards, guidelines, policies, procedures, mechanisms, provisions, institutions and bodies specifically applicable to children in conflict with the law, who are at or above the minimum age of criminal responsibility;
- N. whereas children who are below the minimum age of criminal responsibility at the time of the commission of an offence cannot be held responsible in criminal law proceedings; whereas children at or above the minimum age of criminal responsibility at the time of the commission of an offence, but who are younger than 18, can be formally charged and subjected to child justice procedures, in full compliance with the Convention on the Rights of the Child;
- O. whereas children interact with justice systems for many reasons – as victims or survivors, as witnesses, when accused of an offence, as an interested party, or because an intervention is needed to ensure their proper care, protection, health or well-being;
- P. whereas children’s access to justice covers all judicial and administrative proceedings affecting children, including customary and religious justice mechanisms, alternative dispute resolution and quasi-judicial mechanisms, and applies to constitutional, criminal, civil, public, private, administrative and military law at national and international level;

- Q. whereas the best interests of the child must be a primary consideration in all decisions affecting a child, including on whether to deprive a child of personal liberty; whereas the principle of the best interests of the child must be assessed by the competent authorities and requires the reintegration of children who have committed a criminal offence to be a priority; whereas this means that children should be supported, rather than punished, in order to assume a constructive role in society;
- R. whereas access to justice requires the legal empowerment of every child and must take into account their age, maturity and developing capacity;
- S. whereas diversion is the conditional channelling of children in conflict with the law away from formal judicial proceedings towards a different way of resolving the issue that enables many – possibly most – to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings such as the stigma of conviction and a criminal record, provided that human rights and legal safeguards are fully respected;
- T. whereas the UN Global Study on Children Deprived of Liberty published in July 2019, is laudable and marks a milestone in ending the invisibility and overcoming the vulnerability, stigmatisation and social exclusion of children deprived of liberty;
- U. whereas according to the UN Global Study, more than 7 million⁵ children are deprived of liberty worldwide;
- V. whereas according to the UN Global Study, of all children deprived of liberty about 94 % are boys and 6 % are girls, and about 5.4 million children are placed in institutions, which are inherently harmful to children and their development; whereas roughly 1.4 million children are deprived of liberty in police custody, pre-trial detention and prisons;
- W. whereas at least 330 000 children are detained for migration-related reasons, either unaccompanied or with their families; whereas a minimum of 19 000 children live with their primary caregivers, almost exclusively their mothers, in prison;
- X. whereas 35 000 children are currently detained in the context of armed conflicts; whereas in 2022 alone, 2 496 children were deprived of liberty for their actual or alleged association with parties to conflict; whereas a minimum of 1 500 children are currently detained on national security grounds in countries without conflict in their territories, including for activities such as peaceful protests, expressing political opinions online, involvement in banned political groups and gang activities;
- Y. whereas CRC General comment No. 24 states that children with disabilities should not be dealt with by the justice system, but must be treated separately; whereas children with disabilities are over-represented in institutions and are more likely to be subjected to exploitation, violence, abuse, torture and other forms of ill-treatment; whereas 50-75 % of children who come into contact with the justice system are already suffering from some form of mental health disorder, abuse or neglect; whereas the deprivation of liberty usually produces or exacerbates mental and cognitive health problems;

⁵ All data mentioned above is from the UN Global Study on Children Deprived of Liberty.

- Z. whereas according to the UN Global Study, children who come from a deprived economic background, with disabilities or with a migrant background, or who are part of the LGBTIQ+ community are over-represented in detention all around the world;
- AA. whereas 12 million girls are married before reaching the age of 18 and forced marriage is another form of deprivation of liberty; whereas LGBTIQ+ children under family house arrest who are compelled to undergo conversion therapies are also deprived of liberty;
- AB. whereas according to UNICEF, globally between March 2020 and October 2021, more than 45 000 children were released from detention in at least 84 countries as a COVID-19 measure against infection, showing both that ending detention is possible and that countries which do not use detention are better prepared to handle public health emergencies;
- AC. whereas the EU already plays a leading role in protecting and supporting children globally by strengthening access to education, services and health, and by protecting them from all forms of violence, abuse and neglect, including in the humanitarian context;
1. Recalls that childhood is a stage of life during which children develop their personality, their emotional relationships with others, their social and educational skills and their social competencies, and stresses, therefore, that the deprivation of liberty of children also deprives them of their childhoods and their futures;
 2. Recalls that the deprivation of liberty of children means exposing them to structural violence; recognises that although no globally accepted definition of ‘institutions’ exists, institutions are nevertheless inherently harmful to children, as they affect children’s development and psycho-social attachment;
 3. Stresses that deprivation of liberty itself constitutes a form of torture or cruel, inhuman or degrading treatment, or punishment of children, which violates international law, is explicitly prohibited by Article 37(a) of the Convention on the Rights of the Child and/or may result in the violation of the right of the child to life, survival and development enshrined in Article 6 of the Convention;
 4. Notes that according to UNICEF, the COVID-19 measures have shown that countries can act quickly when there is a clear and compelling justification to do so, in this case a public health emergency, to protect at-risk population groups, such as those in confined spaces, and that diversion and other measures involving alternatives to detention could be used explicitly for children;
 5. Considers that the international community should redouble its efforts to end the detention of children in all its forms by 2030 through the use and explicit legal recognition of diversion, non-custodial alternatives and restorative justice measures, given the irrefutable evidence that deprivation of liberty is harmful to children’s well-being and is overused;
 6. Calls on the Commission and European External Action Service (EEAS) to encourage third-country partners to increase their minimum age of criminal responsibility to at

least 14 and urges third countries not to reduce the minimum age of criminal responsibility under any circumstances;

7. Notes that there is a lack of comprehensive, updated and disaggregated data on the number of children who are currently deprived of liberty in the world, particularly in the context of migration, institutions, national security and armed conflict; stresses the need to develop and maintain an international database;
8. Calls, therefore, for the EU institutions and the Member States to take the lead and launch a global campaign to reduce the number of children held in places of detention, including through the establishment of a UN follow-up mechanism to ensure the full implementation the UN Global Study's recommendations so that it can contribute to the effective release of children in detention; calls on the Commission and the EEAS to actively support, including through funding, initiatives taken by the authorities of third country partners and/or by local organisations in order to address the root causes leading to the deprivation of liberty in a systematic and holistic manner;
9. Welcomes the Commission's EU Strategy on the rights of the child from 2022 as a means of strengthening the EU's position as a key global player, of improving child protection capacities within the EU delegations by designating youth focal points and of ensuring the protection and the fulfilment of the rights of the child through the EU's external policy in all contexts; asks the Commission to provide an overview of such designations by 2024;
10. Recalls the importance of the EU and the Member States supporting the strengthening of regional human rights systems, including through financial assistance and cross-regional exchanges of experience; strongly believes in the role these regional systems must play in addressing the situation of children deprived of liberty, and in their complementarity with the UN human rights system;
11. Calls on the Commission and the EEAS to establish a comprehensive policy of deinstitutionalisation by supporting third-country authorities and local organisations in developing national action plans with concrete measures aimed at reducing the number of children deprived of liberty and at prioritising non-custodial solutions and family-type settings over detention;
12. Calls for the adoption of an EU list of priority countries in which the EEAS, the Commission and the Member States would step up their action in support of children deprived of liberty and engage with the local authorities in introducing or improving protection mechanisms and specific legislation aimed at guaranteeing their protection; insists that this priority list should be prepared by the EEAS, in close consultation with stakeholders and with Parliament, and updated on an annual basis; calls further on the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) to provide an annual public report on actions carried out in the priority countries;
13. Recalls that regardless of the conditions in which children are held, studies show that detention has a profound and negative impact on child health and development, and that this damage can occur even if the detention is of a relatively short duration;

14. Calls urgently for an end to discrimination against children with disabilities in all laws, policies and practices that relate to the right to personal liberty; calls on the EU delegations to support third-country authorities in mainstreaming the rights and needs of children with disabilities in all areas of law and policy which are directly or indirectly relevant to preventing and eliminating unlawful and/or arbitrary detention, and to ensure the full and effective participation of children with disabilities in all decision-making processes, including all phases of policy development aimed at ending the deprivation of liberty of children; encourages and supports awareness-raising campaigns and training programmes, particularly for policy makers, public officers, service providers and the media, about the right to liberty and security of children with disabilities, including combating stereotypes, prejudices and harmful practices;
15. Reiterates its call on the Commission, the EEAS and the EU Member States to support third-country authorities in ensuring that all children are able to enjoy their right to primary education and to take action to ensure that secondary education is available and accessible; insists, therefore, that children deprived of liberty are properly included; calls, furthermore, on the Commission, the EEAS and the Member States to support third-country authorities in developing and implementing digital teaching and learning methods, and to facilitate internet access for all children;
16. Condemns all forms of punishment leading to the deprivation of liberty of children based on their sexual orientation, gender identity, on having an abortion or for consensual and non-exploitative sexual activities between adolescents of similar ages; urges the Commission and the EEAS to support the relevant UN agencies and local civil society actors involved with third-country authorities to address all discriminatory laws against adolescents on the basis of their sexual orientation and gender identity, and stresses that proper care and protection from all forms of discrimination, violence and sexual exploitation must be ensured in places of detention;
17. Stresses that the over-representation of boys in detention must be addressed by all possible means, including by promoting diversion at all stages in the criminal justice system and by proportionally applying non-custodial solutions to boys and girls; considers it urgent to introduce a gender dimension into child justice systems and to address the disparities in accessing child justice services;
18. Calls on the Commission and EEAS to encourage third-country partners to ratify the Optional Protocol to the Convention against Torture and to establish independent and effective National Preventive Mechanisms with particular expertise to conduct visits to places where children are, or may be, deprived of liberty; urges partner countries to ratify the third Optional Protocol to the Convention of the Rights of the Child on a communications procedure, enabling children to seek redress for violations of their rights;
19. Recalls that public policies are effective when designed on the basis of complete, timely and trustworthy data; encourages the EU and its Member States to propose tailor-made assistance and methodological support to third-country authorities on data collection, including technical means and legal frameworks, in order to facilitate data sharing between state institutions, as well as with relevant non-state actors (for example international organisations); underlines the need to systematically collect disaggregated

data to better understand the pathways of boys and girls leading to detention in all situations of the deprivation of liberty of children;

20. Regrets the fact that since the adoption of the EU Guidelines on the Promotion and Protection of the Rights of the Child in 2017, no review has been conducted by the EEAS; considers that launching an impact assessment of how the EU delegations are implementing the guidelines in third countries is a matter of urgency;
21. Calls on the Commission and EEAS to include children's rights systematically in the political dialogue with partner countries, as is already being done in the context of accession negotiations and the stabilisation and association process;

Children within the administration of justice

22. Calls on the EEAS and Commission to propose in all its cooperation programmes on rule of law and justice capacity-building a specific chapter focused on supporting third-country authorities to establish effective child justice systems, which would include applying diversion from the very beginning and at every stage of the criminal procedure, maintaining or increasing the age of criminal responsibility to at least 14 years, decriminalising status offences, ensuring child-friendly information and child participation mechanisms, and shortening the length of detention to the minimum if unavoidable;
23. Calls on the EEAS and Commission to further develop, together with third-country partners, training programmes for justice and law enforcement staff to develop child-friendly hearings and proceedings, and to determine how best to obtain children's views, as they are entitled to participate in and appeal against decisions leading to the deprivation of their liberty; underlines the right for all children to have access to free legal aid, representation and services, including access to mental health and psychological support, child experts and trusted legal practitioners who can make a difference to a child's experience of the justice system and the outcome of the case;

Children and their primary caregivers

24. Underlines that states should refrain as much as possible from detaining primary caregivers with very young children and, if this is not done, to develop child-friendly 'parent-child units' in prisons, establish special accommodation for pre-natal, peri-natal and post-natal care and treatment, and to aim to release children together with their parents; recalls that all necessary measures must be taken to ensure the safety, dignity and development of any child living with a parent in prison and that protection from violence, trauma and harmful situations must be ensured at every moment;
25. Recalls the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment on facilitating the imposition of alternatives to detention as regards pregnant girls and young mothers in order to avoid the situation of children living in detention;
26. Stresses that authorities should incorporate assessments of the best interests of the child into all decision-making processes in which the detention of a parent could result in the deprivation of liberty of a child, which includes pre-trial decisions, sentencing decisions

and any kind of decision addressing whether and for how long a child is supposed to live with a primary caregiver in prison;

27. Calls on partner countries to enact laws and regulations that support and prioritise non-custodial solutions for parents of dependent children over custodial solutions, and promote a judicial evaluation of each individual case based on the criteria of necessity, proportionality and reasonableness when considering pre-trial and sentencing detention decisions;
28. Calls on the Commission and the EEAS to support partner countries in shaping rehabilitation programmes for primary caregivers inside prisons, which should include protection mechanisms for the child to prevent stigmatisation, and to encourage building cooperation and coordination between the relevant public departments and civil society organisations for the purpose of reintegrating children into society after they leave detention centres;

Children in a situation of migration

29. Stresses that the provisions on the detention of children (as a ‘measure of last resort’) in the Convention on the Rights of the Child are not applicable to immigration proceedings and therefore cannot be used to justify the immigration-related detention of children;
30. Expresses concerns about the increasing number of countries that hold irregular migrants, among whom there are children, in various temporary or permanent settings such as reception centres, shelters and holding rooms;
31. Stresses that the irregular entry of children must be decriminalised and considers that non-custodial solutions must be found to stop the detention of child migrants and that the issue of whether or not a child is deprived of liberty does not depend on the name or classification assigned by the state to the institution where the detention is carried out, but on whether the reality and severity of the restrictions imposed amount to deprivation of liberty; calls, in this context, on the EU Member States to lead by example and support transit and destination countries in ending this practice;
32. Recalls the state’s obligation to protect and respect the rights and best interests of the child at all times, regardless of their migration status or that of their parents, by ensuring the availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements which ensure access to education and healthcare, and respect their right to family life and family unity, and by working to end the practice of child detention in the context of international migration;
33. Notes with concern the existence of cases where children are treated as adult migrants and deprived of their liberty owing to a lack of birth registration and the inability to determine their age; calls on partner countries to ensure prompt, child-friendly and gender-sensitive comprehensive assessments of the child’s development carried out by experts whose decisions can be appealed against, and to guarantee that in the event of inconclusive evidence after this process, the subject of the age assessment is presumed to be a child;

Children affected by conflict

34. Recalls that children detained in the context of occupation or armed conflict must be considered first and foremost as victims and must never be detained or punished solely for their membership of armed forces or groups; stresses the need to develop adequate mental and psychosocial care to enable children to reintegrate into communities and find their place in post-conflict society, as a means of preventing and disrupting the transmission of violence to the next generation and to avoid peace-building efforts being undermined; underlines the need to promote equal access to reintegration and rehabilitation assistance for boys and girls formerly associated with armed forces and armed groups, and to ensure reunification with their families;
35. Welcomes the new set of joint EU-UN priorities for 2022-2027 and the joint commitment to include children affected by armed conflict as cross-cutting priorities; stresses the need to create paths for reintegration and reparations for children whose rights have been violated and that the UN agenda on children and armed conflict must be mainstreamed into all of the EU's external actions;
36. Calls on the Commission and the VP/HR to intensify efforts to prevent and end grave violations against children affected by deprivation of liberty in armed conflicts; stresses the importance of advancing the children and armed conflict agenda in the EU's external action and counter-terrorism and security policies, and of integrating it into common security and defence policy operations, security sector reforms and mediation;
37. Supports the mandate of the UN Special Representative for Children and Armed Conflict to push for strengthening the protection of children affected by armed conflict, to raise awareness, promote the collection of global data about the situation and foster international cooperation to improve children's protection;
38. Underlines that children associated with groups designated as terrorists or violent extremists are victims and not perpetrators; recalls that states bear the responsibility for their child nationals detained abroad and encourages them to facilitate their return to their country of origin upon request; calls on the EU Member States concerned to ensure the protection and the repatriation of children who are their nationals and who are imprisoned or detained in third countries;
39. Stresses that children peacefully exercising their rights to freedom of expression, freedom of religion or belief, or freedom of association and assembly must never be detained or sanctioned on national security grounds;

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40. Instructs its President to forward this resolution to the Council and the Commission.