



Plenary sitting

B9-0281/2022

13.5.2022

MOTION FOR A RESOLUTION

to wind up the debate on the statements by the Council and the Commission

pursuant to Rule 132(2) of the Rules of Procedure

on the fight against impunity for war crimes in Ukraine
(2022/2655(RSP))

Michael Gahler, Rasa Juknevičienė, David McAllister, Vangelis Meimarakis, Siegfried Mureșan, Paulo Rangel, Andrius Kubilius, Jerzy Buzek, Traian Băsescu, Vladimír Bilčík, Vasile Blaga, Daniel Buda, Deirdre Clune, Gheorghe Falcă, Tomasz Frankowski, Andrzej Halicki, Sandra Kalniete, Arba Kokalari, Ewa Kopacz, David Lega, Miriam Lexmann, Antonio López-Istúriz White, Elżbieta Katarzyna Łukacijewska, Aušra Maldeikienė, Lukas Mandl, Marian-Jean Marinescu, Liudas Mažylis, Luděk Niedermayer, Gheorghe-Vlad Nistor, Janina Ochojska, Stanislav Polčák, Christian Sagartz, Radosław Sikorski, Michaela Šojdrová, Eugen Tomac, Inese Vaidere, Tom Vandenkendelaere, Isabel Wiseler-Lima, Milan Zver
on behalf of the PPE Group

European Parliament resolution on the fight against impunity for war crimes in Ukraine (2022/2655(RSP))

The European Parliament,

- having regard to its previous resolutions and reports on Ukraine and Russia, and in particular those of 1 March 2022 on the Russian aggression against Ukraine¹, of 24 March 2022 on the need for an urgent EU action plan to ensure food security inside and outside the EU in light of the Russian invasion of Ukraine², of 7 April 2022 on the conclusions of the European Council meeting of 24-25 March 2022, including the latest developments of the war against Ukraine and the EU sanctions against Russia and their implementation³ and of 5 May 2022 on the impact of the war against Ukraine on women⁴,
- having regard to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,
- having regard to the UN Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 and the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949,
- having regard to Chapter VII of the UN Charter (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression),
- having regard to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984,
- having regard to the Rome Statute of the International Criminal Court (ICC) of 17 July 1998, which entered into force on 1 July 2002,
- having regard to the Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal (the Nuremberg principles) developed by the International Law Commission of the UN, which determine what constitutes a war crime,
- having regard to the Helsinki Final Act and subsequent documents,
- having regard to the European Convention on Human Rights, the Budapest Memorandum on Security Assurances and the Vienna Document and the additional protocols thereto,
- having regard to the UN Framework of Analysis for Atrocity Crimes, drafted by the UN Office of the Special Advisers on Genocide Prevention and the Responsibility to

¹ OJ C 125, 18.3.2022, p. 2.

² Texts adopted, P9_TA(2022)0099.

³ Texts adopted, P9_TA(2022)0121.

⁴ Texts adopted, P9_TA(2022)0206.

Protect,

- having regard to the UN General Assembly resolutions of 2 March 2022 on the aggression against Ukraine and of 24 March 2022 on the humanitarian consequences of the aggression against Ukraine,
 - having regard to the UN resolution adopted by the Human Rights Council on 4 March 2022 on the situation of human rights in Ukraine stemming from the Russian aggression, in which the council decided to establish an independent international commission of inquiry,
 - having regard to the ruling of the UN International Court of Justice of 16 March 2022,
 - having regard to its resolution of 4 July 2017 on addressing human rights violations in the context of war crimes, and crimes against humanity, including genocide⁵,
 - having regard to the statements on Ukraine by the European Parliament’s leaders of 16 and 24 February 2022,
 - having regard to the Versailles Declaration of 11 March 2022,
 - having regard to the declaration by the High Representative of the Union for Foreign Affairs and Security Policy on behalf of the EU of 4 April 2022 on Russian atrocities committed in Bucha and other Ukrainian towns,
 - having regard to the statement of UN Secretary-General António Guterres of 5 April 2022,
 - having regard to the statement of the ICC Prosecutor, Karim A.A. Khan QC, of 2 March 2022 entitled ‘The situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation’,
 - having regard to the decisions taken by the Council on sanctions and restrictive measures against Russia, which include diplomatic measures, individual restrictive measures such as asset freezes and travel restrictions, restrictions on economic relations with Crimea and Sevastopol and with the non-government controlled areas of Donetsk and Luhansk, economic sanctions, restrictions on the media and restrictions on economic cooperation,
 - having regard to the Organization for Security and Co-operation in Europe report of 13 April 2022 on violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022,
 - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the crime of genocide, crimes against humanity and war crimes, also known as atrocity crimes, are the most serious crimes against humankind; whereas the international community has a duty to prevent atrocity crimes from taking place; whereas when such crimes happen, they must not go unpunished and their effective, fair

⁵ OJ C 334, 19.9.2018, p. 69.

and rapid prosecution must be ensured, at national or international level and according to the principle of complementarity;

- B. whereas accountability, justice, the rule of law and the fight against impunity constitute essential elements underpinning peace and conflict resolution, reconciliation and reconstruction efforts; whereas the ICC plays a key role in the fight against impunity, in the restoration of peace and in providing justice for victims; whereas the system of reparations for the victims of crimes falling within the competences of the ICC makes that court a unique judicial institution at the international level;
- C. whereas in November 2016, Russia decided to withdraw its signature from the Rome Statute; whereas Ukraine is not a State Party to the Rome Statute, but has twice exercised its prerogatives to accept the ICC's jurisdiction over alleged crimes under the Rome Statute occurring on its territory, pursuant to Article 12(3) of the statute;
- D. whereas the atrocities perpetrated by Russian troops reached a new low with the discovery on Sunday 3 April 2022 of the bodies of civilian men and women lying on the streets of Bucha, a town inaccessible to the Ukrainian army for almost a month; whereas the Ukrainian prosecutor-general has identified thousands of suspected Russian war crimes throughout Ukraine, including looting, murder, torture and rape; whereas these facts clearly justify setting up an international commission to investigate all of the crimes committed by the Russian armed forces since the beginning of the war;
- E. whereas the Russian armed forces continue to carry out indiscriminate shelling and aerial attacks against residential areas and civilian infrastructure, such as hospitals, schools and nurseries, which has led to the complete destruction of Mariupol, Volnovakha and many other cities and villages throughout the country; whereas the Russian armed forces have also been reported to have committed laws-of-war violations against civilians in and around the Chernihiv, Kherson, Kharkiv and Kyiv regions of Ukraine, including cases of repeated rape, summary executions and looting of civilian property, such as food and clothing;
- F. whereas on 2 March 2022, the ICC Prosecutor announced he had opened an investigation into the situation in Ukraine on the basis of the referrals received from State Parties⁶;
- G. whereas on 5 April 2022, Estonia, Germany, Latvia, Lithuania, Norway, Poland, Slovakia, Spain, Sweden, Switzerland and Ukraine all declared their intention to start investigations into war crimes committed during the 2022 Russian war of aggression

⁶ On 1 March 2022, his office received a State Party referral from the Republic of Lithuania. On 2 March 2022, the following coordinated group of State Parties submitted a joint referral: the Republic of Albania, the Commonwealth of Australia, the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, Canada, the Republic of Colombia, the Republic of Costa Rica, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the French Republic, Georgia, the Federal Republic of Germany, the Hellenic Republic, Hungary, Iceland, Ireland, the Italian Republic, the Republic of Latvia, the Principality of Liechtenstein, the Grand Duchy of Luxembourg, the Republic of Malta, New Zealand, the Kingdom of Norway, the Kingdom of the Netherlands, the Republic of Poland, the Portuguese Republic, Romania, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland.

against Ukraine by invoking the principle of universal jurisdiction;

- H. whereas the Organization for Security and Co-operation in Europe report of 13 April 2022 concluded that ‘the Mission is not able to conclude whether the Russian attack on Ukraine per se may qualify as a widespread or systematic attack directed against a civilian population. It however holds that some patterns of violent acts violating [international human rights law]... have been repeatedly documented in the course of the conflict’;
 - I. whereas there can be no impunity for the crime of aggression, which is being perpetrated on a large scale against Ukraine;
 - J. whereas the ICC does not at present have the jurisdiction to investigate and, as appropriate, prosecute the crime of aggression committed on the territory of Ukraine; whereas this gap should be addressed by setting up a special international tribunal, which would be mandated to investigate and prosecute the alleged crimes of aggression committed against Ukraine by the political leaders and military commanders of Russia and its allies;
1. Expresses its outrage and indignation over the reported atrocities, including the raping and execution of civilians, forced displacements, the looting and targeting of civilian infrastructure, such as hospitals, medical facilities, schools, shelters and ambulances, and the shooting of civilians trying to flee conflict areas via pre-agreed humanitarian corridors committed to by the Russian armed forces in a number of occupied Ukrainian towns, such as Bucha and Irpin;
 2. Recalls the EU’s commitment to act on the international scene in the name of the principles that inspired its creation, including democracy, the rule of law and respect for human rights, and in favour of the principles of the UN Charter and international law; reaffirms, in this context, that it should be of paramount importance for the EU to address and hold accountable those responsible for severe violations of human rights reaching the gravity threshold for crimes against humanity, and grave breaches of international humanitarian law reaching the level of war crimes;
 3. Reaffirms the paramount importance of universal adherence to the Rome Statute; calls on the states which have not yet done so to ratify the Rome Statute, the Agreement on Privileges and Immunities of the International Criminal Court and the Kampala amendments to the Rome Statute, in order to support accountability;
 4. Notes with the utmost regret the withdrawal of some State Parties from the Rome Statute; highlights that even though Russia withdrew its signature of the Rome Statute in 2016, the principle of universal jurisdiction still applies;
 5. Insists that perpetrators of war crimes and other serious rights violations, as well as the government officials and military leaders in charge, must be held to account; fully supports the investigation launched by the ICC Prosecutor into war crimes and crimes against humanity, as well as the work of the Commission of Inquiry of the Office of the United Nations High Commissioner for Human Rights;
 6. Expresses its utmost support for the decision of the ICC Prosecutor to open an

investigation into alleged war crimes and crimes against humanity committed in Ukraine and underlines the importance of swift work and progress in order to secure the necessary evidence; notes, furthermore, that increased activity on the part of the Office of the Prosecutor leads to an increased need for outreach, victim participation and other essential functions; calls on the Member States to step up their efforts to support the ICC with additional resources to enable it to carry out investigations and prosecutions to the best of its ability e.g. by allowing the European Union Advisory Mission Ukraine to assist with the documentation of evidence; highlights, however, the importance of coordination among the different actors, including civil society organisations and the UN, in order to ensure the highest level of investigation and evidence gathering;

7. Highlights the link between impunity for previous violations committed by Russia, notably with respect to Crimea in 2014 and Georgia in 2009, and the recent and ongoing violations being committed in Ukraine;
8. Calls for the EU institutions and the Member States to take all necessary action in international institutions and proceedings and at the ICC or other appropriate international tribunals or courts to prosecute the actions of Vladimir Putin and Aliaksandr Lukashenka as war crimes and crimes against humanity, and actively participate in their investigation; calls, furthermore, for these investigations and their consequent prosecution to also be applied to all Russian armed forces personnel and individuals involved in war crimes;
9. Welcomes the proposal of the Commission of 25 April 2022 to extend Eurojust's mandate and operational functions with regard to the collection, analysis, preservation and sharing of evidence in support of investigations and prosecutions of core international crimes, in particular genocide, crimes against humanity, war crimes and related criminal offences⁷; calls on the Commission and the Council to accept Parliament's position that the mandate of Eurojust should be extended to include crimes of aggression, the fourth crime under the Rome Statute; calls on Eurojust to use these new powers to support the Member States' competent authorities with analysis of evidence to help ensure the subsequent admissibility of such evidence in national or international courts or equivalent mechanisms; underlines that the extension of the mandate should be coupled with an adequate increase in funding for Eurojust;
10. Emphasises the need for the EU and its Member States to make full use of their capabilities and available legal avenues to hold the perpetrators of war crimes to account; welcomes, in this regard, the readiness of Europol to support a joint investigation team and calls on the agency to cooperate closely with Eurojust if so requested; in this context, urges the Commission to step up its efforts to make progress in its negotiations with non-EU countries on international agreements enabling Europol to exchange personal data, subject to appropriate data protection safeguards;
11. Recalls that the principle of universal jurisdiction seeks to avoid impunity of war criminals by enabling all states to fulfil their duty to prosecute and punish perpetrators; considers it important to provide law enforcement and judicial authorities in the

⁷ Commission proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1727 of the European Parliament and the Council, as regards the collection, preservation and analysis of evidence relating to genocide, crimes against humanity and war crimes at Eurojust (COM(2022)0187).

Member States with appropriate tools to effectively allow them to gather the necessary evidence for war criminals to be convicted; points, in particular, to the proposed European Production Orders and European Preservation Orders⁸, which will facilitate and accelerate cross-border access to evidence in criminal proceedings, and calls for a swift conclusion of the long-standing negotiations thereon;

12. Underlines the importance of external border controls, making full use of the available large-scale EU IT systems, and of registering refugees entering EU territory to ensure that war criminals cannot not enter unnoticed and assimilate; is convinced that the ongoing reform of the EU legal framework on information exchange between law enforcement authorities will accelerate the compilation of relevant information held on war criminals in the police databases of different Member States;
13. Takes note of the strengthened supervision and monitoring measures implemented by Interpol concerning Russia in reaction to its invasion of Ukraine; understands that data exchanges through Interpol can contribute to investigations of war crimes; regrets, nonetheless, that Interpol's constitution does not provide for the possibility to suspend membership and calls on Interpol to at least suspend the access of Russia's National Central Bureau to Interpol's databases;
14. Calls on the Ukrainian authorities to ratify the Rome Statute, which was signed by Ukraine in 2000; also calls on President Zelenskyy to sign into law Bill 2689 on amendments to certain legislative acts on the enforcement of international criminal and humanitarian law, which was adopted by the Ukrainian Rada in May 2021 and would align Ukraine's national legislation with international law;
15. Call on the Commission and the Member States to provide support to the Ukrainian authorities and encourage Ukraine to meet key benchmarks to fight impunity for grave international crimes, including war crimes and crimes against humanity;
16. Welcomes the sanctions packages against Russia and underlines that their full and effective implementation throughout the EU and by the EU's international allies must now be a priority;
17. Expresses its deep appreciation and respect for the work and dedication of Ukrainian civil society, including its work documenting ongoing violations in Ukraine and its advocacy in support of the fight against impunity in Ukraine;

Special international tribunal for the punishment of the crime of aggression

18. Calls on the EU institutions, in particular the Commission, to support the creation without delay of an appropriate legal basis, with the support of established multilateral forums such as the UN, to allow for the setting-up of a special international tribunal for the punishment of the crime of aggression committed against Ukraine by the political leaders and military commanders of Russia and its allies; calls on the EU institutions, in particular the Commission, to provide, as soon as possible, all the necessary human and budgetary resources and administrative, investigative and logistic support for the

⁸ Commission proposal for a regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters (COM(2018)0225)

establishment of this tribunal;

19. Calls on the EU institutions, in particular the Commission, to seek political support from like-minded international partners and organisations, in particular the UN General Assembly, for the establishment of this tribunal;

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20. Instructs its President to forward this resolution to the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission, the governments and parliaments of the Member States, the United Nations, the Council of Europe, the Organization for Security and Co-operation in Europe, the President, Government and Parliament of Ukraine and the President, Government and Parliament of the Russian Federation.