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The fight against impunity for war crimes in Ukraine

European Parliament resolution of 19 May 2022 on the fight against impunity for war crimes in Ukraine (2022/2655(RSP))

(2022/C 479/07)

The European Parliament,

- having regard to its previous resolutions and reports on Ukraine and Russia,
- having regard to the Charter of the United Nations,
- having regard to the Geneva Conventions of 1949 and the additional protocols thereto,
- having regard to the Hague Conventions 1899 and 1907,
- having regard to the UN Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 and the additional protocols thereto,
- having regard to the Rome Statute of the International Criminal Court (ICC) of 17 July 1998 and the Kampala Amendments of 2010 on the Crime of Aggression,
- 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 UN Security Council Resolutions 1820 (2008) on sexual violence as a weapon of war and 1888 (2009) establishing the Special Representative on sexual violence in conflict,
- having regard to the definition of ‘rape’ during times of war, established in 1998 by the International Criminal Tribunals for Rwanda and the International Criminal Tribunals for Yugoslavia,
- 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 Parliamentary Assembly of the Council of Europe resolution of 28 April 2022 entitled ‘the Russian Federation’s aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes’,
- having regard to the Versailles Declaration of 11 March 2022,
- having regard to the visit of President Metsola to Ukraine on 1 April 2022 and her statement on the international war crimes being committed in Ukraine,
- 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,

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- 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 Organization for Security and Co-operation in Europe (OSCE) 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 the 2006 agreement between the International Criminal Court and the European Union on cooperation and assistance,
 - having regard to Council Decision (CFSP) 2022/638 of 13 April 2022 amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) ⁽¹⁾, which amended the mandate of EUAM Ukraine to provide support to the Ukrainian authorities and to facilitate the investigation and prosecution of any international crimes committed in the context of the Russian aggression against Ukraine,
 - having regard to the Commission’s proposal to amend 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),
 - having regard to reports by Human Rights Watch on Ukraine of 3 April and 21 April 2022 and the report by Amnesty International of 6 May 2022,
 - having regard to Rule 132(2) and (4) of its Rules of Procedure,
- A. whereas since 24 February 2022, when Russia started a new phase of the illegal, unprovoked and unjustified war of aggression against Ukraine, its armed forces and its proxies have been conducting indiscriminate attacks against civilians, including abductions, extrajudicial executions, and torture in both the newly invaded and previously occupied areas of Ukraine;
- B. whereas thousands of people have lost their lives or been wounded, about 7,7 million Ukrainian citizens have been internally displaced and nearly 6 million have fled to neighbouring countries; whereas, according to the Human Rights Commissioner of the Ukrainian Parliament, 400 000 Ukrainian civilians, including more than 200 000 children, have been forcibly deported from Ukraine to the Russian Federation since 24 February 2022; whereas Russian forces and their proxies have multiple times prevented the establishment of humanitarian corridors and thus blocked or obstructed the evacuation of the civilian population from the besieged territories;
- C. whereas the atrocities perpetrated by the Russian troops and their proxies reached a new low with the discovery on Sunday 3 April 2022 of the bodies of civilians lying on the streets of Bucha, a town inaccessible to the Ukrainian army for almost a month; whereas there are reports from a number of previously occupied Ukrainian towns, including Bucha, Irpen, Hostomel, Ivankiv, and from other places that have now been liberated by the Ukrainian Armed Forces, of mass graves containing hundreds of persons, and of bodies of civilians found in the streets, including those of women, children and the elderly, some with their hands tied behind their back; whereas atrocities similar to the cases mentioned above are highly likely to occur regularly in Ukrainian towns and villages invaded and still occupied by Russia and its proxies, with the real extent of war crimes likely being much larger than has been documented to date;
- D. whereas numerous reports, complemented by photos and videos, document summary executions of civilians during the Russian occupation of villages and towns, arrests of civilians without due procedure and with ill-treatment that amounts to torture, cases of rape of civilians, including children, by the Russian armed forces and their proxies, and the use of unguided artillery, cluster munitions and anti-personnel landmines during Russian attacks in populated areas; whereas sexual violence is used by Russia as weapon of war to break Ukrainian morale and as a form of torture in order to obtain confessions through rape, forced exposure and threats of sexual violence against children, women and men or

⁽¹⁾ OJ L 117, 19.4.2022, p. 38.

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their relatives; whereas rape as a war crime is the hardest crime to document in a manner that can be brought to court and will stand the test of trial; whereas victims of sexual war crimes may face multiple risks of discrimination and stigma, in addition to physical harm; whereas time is of crucial importance in collecting evidence and testimonies and in providing medical and psychological assistance to the victims of sexual violence;

- E. whereas Russian armed forces and their proxies have been detaining, abducting, kidnapping, targeting and killing journalists, mayors and human rights defenders; whereas journalists and media workers are protected under international humanitarian law by Article 79 of Additional Protocol I to the Geneva Conventions; whereas according to the Council of Europe platform for the protection of journalism and safety of journalists, at least 10 Ukrainian and international media workers have been killed and many others wounded;
- F. whereas Russian armed forces and their proxies have been implicated in the looting of civilian property including food, clothing, household appliances, firewood and a large amount of grain, as well as in the battering of civilian infrastructures including those catering to the needs of vulnerable social groups, residential buildings, schools, nurseries and hospitals; whereas the Russian Federation's armed forces and proxies have been systematically taking away pieces of art, artefacts and other objects of high cultural value; whereas Ukraine has accused Russia of stealing several hundred thousand tonnes of grain and the UN has confirmed that there is mounting evidence that Russian troops have looted stocks of Ukrainian grain and destroyed grain storage facilities, which has exacerbated the global food crisis and is contributing to a possible famine in Ukraine; whereas nearly 25 million tonnes of grain remain trapped in Ukraine due to the destruction of logistical infrastructure and the sea blockade by Russia; whereas the environmental and health impact of the war will also be devastating and long term;
- G. whereas the four Geneva Conventions and Additional Protocol I, to which Ukraine and the Russian Federation are state parties, establish that serious violations of international humanitarian law, together with grave breaches, constitute war crimes; whereas anyone who orders or commits such acts, or aids and abets them, is responsible for such crimes;
- H. whereas in November 2016, Russia withdrew 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;
- I. whereas on 2 March 2022, the ICC Prosecutor announced he had proceeded to open an investigation into the Situation in Ukraine on the basis of the referrals received from State Parties ⁽²⁾;
- J. whereas on 3 March 2022, Ukraine, with the support of 45 participating states, invoked the OSCE Moscow Mechanism to address the human rights violations and the humanitarian impact of the Russian invasion of Ukraine;
- K. whereas in the first three months of the war, the Ukrainian prosecutor-general opened at least 9 300 investigations and identified hundreds of suspects from Russia for alleged war crimes, which include looting, murder, torture and rape;

⁽²⁾ 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.

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- L. whereas governmental and international judicial bodies have initiated a series of accountability efforts, including the opening of a formal investigation by the ICC, as well as criminal investigations under the principle of universal jurisdiction by France, Germany, Lithuania, and Sweden;
- M. whereas on 4 March 2022 the UN Human Rights Council voted to create the International Commission of Inquiry on Ukraine with a mandate to investigate violations of human rights and international humanitarian law in the context of the 2022 Russian invasion of Ukraine; whereas the UN Security Council is paralysed over the situation in Ukraine owing to Russia's ability to veto any substantive action;
- N. whereas on 25 March 2022, Poland, Lithuania and Ukraine announced the creation of a Joint Investigative Team to collect evidence and investigate war crimes and crimes against humanity, with the support of the European Union Agency for Criminal Justice Cooperation (Eurojust) and the participation of the Office of the Prosecutor of the ICC, as announced on 25 April 2022; whereas coordination between the investigations of the ICC and those of governmental bodies and other mechanisms is essential to bring justice swiftly;
- O. whereas the ICC does not have jurisdiction over the crime of aggression in this situation, as neither Ukraine nor the Russian Federation have ratified the Rome Statute and the amendments thereto related to the crime of aggression; 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. Reiterates its condemnation in the strongest possible terms of the unprovoked, illegal, and unjustified Russian war of aggression against and invasion of Ukraine, and demands that Russia immediately terminate all military activities in Ukraine and unconditionally withdraw all forces and military equipment from the entire internationally recognised territory of Ukraine, as ordered by the International Court of Justice on 16 March 2022;
2. Expresses its utmost outrage and indignation over reported atrocities, including the indiscriminate shelling of cities and towns, forced deportations, the use of banned ammunitions, attacks against civilians trying to flee conflict areas via pre-agreed humanitarian corridors, executions of civilians, sexual violence, forced displacement and the deliberate looting and targeting of residential areas and civilian infrastructure, such as hospitals, medical facilities, schools, shelters and ambulances, all of which amount to gross violations of international humanitarian law and may amount to war crimes by the Russian Federation and its proxies in Ukraine, all of which have thus far gone unprosecuted and unpunished;
3. Strongly condemns the horrifying, systemic use of sexual and gender-based violence as a weapon of war by the Russian armed forces and their proxies and, recalling UN Resolution 1820 (2008) on sexual violence as a weapon of war, affirms that rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide and should thus be prosecuted in accordance with the provisions of international law and the Rome Statute of the ICC, particularly Articles 7 and 8 thereof; regrets the limited progress on the effective prosecution of sexual and gender-based crimes within the ICC; is of the opinion that the cases of the victims of the illegal invasion of Ukraine could set a precedent in this respect; calls on the EU and its Member States to support gender mainstreaming in any ongoing and future investigations;
4. Expresses its full support for the investigation launched by the ICC Prosecutor into alleged war crimes, crimes against humanity and crimes of genocide committed in Ukraine, for the work of the Commission of Inquiry of the Office of the UN High Commissioner for Human Rights and for the efforts of independent civil society organisations working to collect and preserve evidence of war crimes; underlines the importance of swift work and progress in order to secure the necessary evidence for the investigation and prosecution of all those responsible for authorising, committing and concealing war crimes and other violations of human rights and international humanitarian law; stresses the grave risk that evidence related to war crimes is being destroyed and cannot be collected and safely stored for the purpose of investigations into war

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crimes in Ukraine, owing to the ongoing hostilities; considers that swift action is of crucial importance for taking all necessary measures to make sure that those who have committed human rights violations and war crimes in Ukraine are held accountable;

5. Calls for support to be given to the ICC Prosecutor in investigating and prosecuting suspected perpetrators of war crimes, crimes against humanity and, possibly, genocide, by providing political support, making available any evidence in their possession, including open source intelligence, information and data, satellite imagery and intercepts of communications, and providing adequate human and financial resources to the ICC's general budget in order to fully protect its independence and impartiality;

6. Welcomes and fully supports the efforts of Ukrainian prosecutors and investigators to bring to justice those responsible for war crimes and crimes against humanity, and calls on the EU Member States, the international community and relevant institutions to fully assist the Ukrainian authorities in this process;

7. Calls on the Member States and the Commission to provide all necessary assistance to bolster Ukraine's judicial capacity and resources to effectively investigate and try war crimes; calls on the Commission and the Member States to provide support to Ukrainian authorities in meeting key benchmarks to fight impunity for serious international crimes, including war crimes and crimes against humanity, at the domestic level;

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 support the prosecution of the Russian and Belarussian regimes for war crimes, crimes against humanity, crimes of genocide and crimes of aggression; calls, furthermore, for these investigations and their consequent prosecution to also be applied to all Russian armed forces personnel and government officials involved in war crimes; welcomes, therefore, the inquiries and investigations launched by several Member States under the principle of universal jurisdiction and in support of the work done by the ICC; equally welcomes the amended mandate of EUAM Ukraine, which will allow it to support Ukrainian authorities in the investigation and prosecution of any international crimes committed in the context of the Russian invasion of Ukraine;

9. Calls on the Russian authorities to end immediately the forced displacement of Ukrainian citizens and to permit the Ukrainian citizens forcibly displaced to the territory of the Russian Federation to return safely to Ukraine;

10. Calls on the Member States to collect evidence and support an investigation of the ICC Prosecutor in order to establish whether the war crimes and crimes against humanity committed by Russian forces and their proxies in Ukraine amount to genocide;

11. Insists on the need to increase coordination of the various mechanisms established for the fight against impunity for war crimes in Ukraine, including through an international meeting aimed at coordinating evidence collection and thus improving the efficiency of accountability processes; calls on the EU institutions to support these coordination efforts;

12. 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 and the Council of Europe, 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 establishment of this tribunal;

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13. 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;

14. Welcomes the setting up of the joint investigation team by Lithuania, Poland and Ukraine, coordinated by Eurojust, in which the Office of the Prosecutor of the ICC will be a first-time participant, aiming to facilitate investigations and prosecutions in the participating states as well as those that could be taken forward before the ICC; encourages the Member States to join the joint investigation team;

15. Welcomes the Commission's proposal of 25 April 2022 to extend Eurojust's mandate and operational functions with regard to the 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 offences⁽³⁾; 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;

16. 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;

17. 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 Member States with appropriate tools to effectively allow them to gather the necessary evidence for war criminals to be convicted; encourages the Member States to make effective use of the principle of universal jurisdiction for the investigation and prosecution of war crimes in Ukraine, and to step up cooperation among themselves, with a coordinating and promoting role for the Commission;

18. Reiterates its call on the Commission to present an EU action plan on impunity and calls for a specific chapter on Ukraine;

19. Calls on the Commission to work closely together with the ICC and Eurojust under its revised mandate on the documentation of wartime rape, abuse and or other forms of sexual violence in Ukraine, including by collecting statistical or pattern-related evidence from relevant experts and medical and pharmaceutical records, and by searching for and documenting accounts of war rape in Ukraine that appear online in the press and on social media and which can lead investigators to the victims of rape and sexual violence; calls for this work to be complemented by similar efforts in refugee camps and, whenever possible, on the ground in Ukraine; calls for the EU and host and transit countries to guarantee access to sexual and reproductive health and rights services, particularly emergency contraception, post-exposure prophylaxis and abortion care, including for survivors of rape;

20. Calls on the international community to also seriously investigate and penalise environmental crimes, notably massive environmental pollution, including cross-border environmental harm, as Russia continues to target industrial and fuel facilities, power supplies, water supplies, sewage systems and other facilities, creating widespread contamination and devastating wetlands, forests, national parks, protected areas, including the 30-kilometre exclusion zone in Chernobyl, and homes to endangered and threatened species, with grave long-term impacts;

21. Urges for investigations into alleged pillaging and destruction of food storage facilities by Russian forces and their proxies, as well as a meaningful assessment of their global impact, in particular on food-importing developing countries;

⁽³⁾ 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).

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22. Underlines the importance of large-scale EU IT systems to ensure that war criminals cannot abscond and enter EU territory unnoticed; 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;
 23. Regrets 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;
 24. Calls on the Commission and the Member States to support activities facilitating training and awareness for human rights defenders as well as for judges and prosecutors, on digital evidence and digital registration of human rights violations in order to increase clarity on criteria of admissibility in domestic and international courts;
 25. Welcomes the adoption by the Verkhovna Rada of Draft Law #7304, which provides for the admission of the ICC to work inside Ukraine and calls on the Ukrainian authorities to support accountability efforts for serious international crimes by urgently ratifying the Rome Statute of the ICC and formally becoming a member of the ICC; calls on the Ukrainian authorities to align Ukraine's national legislation and procedures with international law, thereby strengthening the domestic legal mechanisms to counteract impunity for crimes, to harmonise domestic legislation, notably the Criminal Code, with international criminal law and international humanitarian law, and to adopt a clear and practical framework for cooperation with the ICC and other bodies investigating crimes committed in Ukraine; recalls the need for all parties to a conflict to strictly uphold international humanitarian law;
 26. Calls on the Commission, the Member States and the international community to provide increased financial resources and technical assistance for the collection and storage of the vast amount of evidence of violations of international humanitarian law, war crimes, and crimes against humanity in Ukraine; calls on the EU, in this respect, to support this process through increased funds from the Neighbourhood, Development and International Cooperation Instrument — Global Europe;
 27. 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; calls for the swift adoption of the sixth sanctions package; calls on the Commission to urgently establish a legal instrument allowing for frozen Russian assets and funds to be confiscated so that they can be used as reparations and for the reconstruction of Ukraine;
 28. 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; notes that there are many non-governmental organisations in Ukrainian territory putting effort into documenting war crimes, including mass rapes during war time, and that their efforts need to be supported and consolidated; calls on all international and national accountability actors to work closely with civil society in assisting judicial processes, including by improving access to information and outreach to victims and affected communities, ensuring publicity, transparency of the process and civil society engagement in response to the atrocities committed by the Russian Federation;
 29. Urges the Member States, including through their participation in the Fifth Committee of the UN General Assembly, and the UN, to ensure that the UN Human Rights Council's Commission of Inquiry has sufficient financial resources to carry out all aspects of its mandate in an independent manner;
 30. Deeply regrets the decision to close the OSCE Special Monitoring Mission to Ukraine following the lack of consensus at the OSCE Permanent Council on 31 March 2022 on extending the mission's mandate, and urges the Member States to explore every option to re-establish its mandate;
 31. 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, the President, government and parliament of the Russian Federation and the Prosecutor General of the ICC.
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