

Thursday 19 January 2023

P9\_TA(2023)0015

## **The establishment of a tribunal on the crime of aggression against Ukraine**

### **European Parliament resolution of 19 January 2023 on the establishment of a tribunal on the crime of aggression against Ukraine (2022/3017(RSP))**

(2023/C 214/10)

*The European Parliament,*

- having regard to its previous resolutions on Ukraine and Russia, in particular those of 19 May 2022 on the fight against impunity for war crimes in Ukraine <sup>(1)</sup> and of 23 November 2022 on recognising the Russian Federation as a state sponsor of terrorism <sup>(2)</sup>,
- having regard to the London Declaration of 13 January 1942,
- having regard to the Charter of the United Nations,
- having regard to UN General Assembly Resolutions 3314 (XXIX) of 14 December 1974 on the Definition of Aggression and 377 (V) (the Uniting for Peace resolution) of 3 November 1950,
- having regard to the Rome Statute of the International Criminal Court (ICC), in particular Article 8 bis thereof and the Kampala Amendments on the crime of aggression thereto, and to the 2006 Agreement between the ICC and the EU on cooperation and assistance,
- having regard to Parliamentary Assembly of the Council of Europe Resolutions 2433 (2022), 2436 (2022), 2463 (2022) and 2473 (2022),
- having regard to the order of the International Court of Justice of 16 March 2022 on Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide,
- having regard to the resolution entitled ‘The Russian Federation’s war of aggression against Ukraine and its people, and its threat to security across the OSCE region’ adopted at the 29th annual session of the Organization for Security and Co-operation in Europe (OSCE) Parliamentary Assembly from 2 to 6 July 2022,
- having regard to the joint statement by the Foreign Affairs Ministers of Estonia, Latvia and Lithuania of 16 October 2022 calling for the establishment of a special tribunal for the crime of aggression against Ukraine,
- having regard to the UN General Assembly resolutions of 2 March 2022 entitled ‘Aggression against Ukraine’ and of 12 October 2022 entitled ‘Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations’,
- having regard to the UN General Assembly resolutions of 2 November 2022 entitled ‘Report of the International Criminal Court’ and of 14 November 2022 entitled ‘Furtherance of remedy and reparation for aggression against Ukraine’,
- having regard to the European Council conclusions of 20 and 21 October 2022 and of 15 December 2022,
- having regard to the statement of the President of the Commission Ursula von der Leyen of 30 November 2022 on Russian accountability and the use of Russian frozen assets, in which she makes reference to the need to set up a specialised court to investigate and prosecute Russia’s crime of aggression against Ukraine backed by the UN, and to subsequent related high-level statements from Germany, Poland and other countries,

<sup>(1)</sup> OJ C 479, 16.12.2022, p. 68.

<sup>(2)</sup> Texts adopted, P9\_TA(2022)0405.

Thursday 19 January 2023

- having regard to Rule 132(2) and (4) of its Rules of Procedure,
- A. whereas in line with the UN Charter and the principles of international law, all states enjoy equal sovereignty and must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state;
- B. whereas since February 2014, Russia has waged an illegal, unprovoked and unjustified war of aggression against Ukraine, which it relaunched on 24 February 2022 with a massive invasion of Ukraine;
- C. whereas the Russian Federation's war of aggression against Ukraine constitutes a blatant and flagrant violation of the UN Charter, the fundamental principles of international law and various international agreements, such as the Helsinki Final Act, the Charter of Paris for a New Europe and the Budapest Memorandum;
- D. whereas during this time, Russia's forces have conducted indiscriminate attacks against residential areas and civilian infrastructure, have killed thousands of Ukrainian civilians and have carried out acts of terror throughout the country targeting civilian infrastructure;
- E. whereas thousands of civilians, including children, have already been murdered and many more tortured, harassed, sexually assaulted, kidnapped or forcibly displaced; whereas this inhumane conduct by the Russian forces and their proxies is in total disregard of international humanitarian law;
- F. whereas the reported atrocities committed by the Russian armed forces in Bucha, Irpin and many other Ukrainian towns during the Russian occupation reveal the brutality of the war of aggression waged by the Russian Federation against Ukraine and underscore the importance of coordinated international action to establish accountability for the crime of aggression and all violations of international humanitarian law;
- G. whereas on 30 September 2022, Russia unilaterally declared its annexation of the partly Russian-occupied Ukrainian oblasts of Donetsk, Kherson, Luhansk and Zaporizhzhia;
- H. whereas the Russian Federation has been recognised by the European Parliament and many national parliaments and assemblies as a state sponsor of terrorism and as a state which uses means of terrorism;
- I. whereas Russia's war of aggression against Ukraine is the most outrageous act of aggression conducted by the political leadership of a given country in Europe since 1945 and thus requires an adequate legal response at the international level; whereas in its resolutions <sup>(3)</sup>, the UN General Assembly has recognised 'the aggression by the Russian Federation against Ukraine' to be 'in violation of Article 2(4) of the UN Charter' and that 'the Russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the Charter of the United Nations'; whereas those responsible for committing the crime of aggression against Ukraine must not go unpunished;
- J. whereas Russia's aggression has also been explicitly denounced by representatives of various states and international organisations, such as the Council of Europe, the OSCE, the EU, the North Atlantic Treaty Organization (NATO), the African Union, the Economic Community of Western African States, the Pacific Islands Forum, the Organization of American States, the Caribbean Community, the Nordic Council and others;
- K. whereas on 16 March 2022, the International Court of Justice ordered the Russian Federation to immediately suspend its military operations in the territory of Ukraine;

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<sup>(3)</sup> UN General Assembly resolutions of 2 March 2022 entitled 'Aggression against Ukraine', of 24 March 2022 entitled 'Humanitarian consequences of the aggression against Ukraine' and of 15 November 2022 entitled 'Furtherance of remedy and reparation for aggression against Ukraine'.

Thursday 19 January 2023

- L. whereas since 2 March 2022, the Prosecutor of the ICC has been conducting an investigation into the situation in Ukraine in relation to past and present allegations of crimes committed by the Russian Federation since 21 November 2013, including genocide, war crimes and crimes against humanity; whereas although Ukraine is not a party to the ICC, it has acknowledged the jurisdiction of the ICC and is cooperating with it;
- M. whereas UN General Assembly Resolution 3314 (XXIX) of 14 December 1974 defines aggression as ‘the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations’ and states that a ‘war of aggression is a crime against international peace’ and that ‘aggression gives rise to international responsibility’; whereas Article 8 bis of the Rome Statute defines the ‘crime of aggression’ as ‘the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale constitutes a manifest violation of the Charter of the United Nations’; whereas an ‘act of aggression’ means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the UN Charter; whereas according to the Rome Statute of the ICC, the crime of aggression is different from war crimes or crimes against humanity; whereas the crime of aggression is generally a leadership crime in that it can only be committed by those with the power to shape a state’s policy of aggression; whereas the International Military Tribunal at Nuremberg, which focused on the crime of aggression, ruled in 1946 that aggression was ‘the supreme international crime’;
- N. whereas a war of aggression is a grave international crime, especially in the context of the possible use of all types of weapons of mass destruction leading to catastrophic consequences for world peace and human livelihood, as well as severe, long-term damage to the natural environment and climate;
- O. whereas in the Barcelona Traction case, the International Court of Justice indicated that the obligations derived from outlawing acts of aggression are obligations towards the international community as a whole as opposed to towards individual states;
- P. whereas the ICC, following two ad hoc declarations by Ukraine, has jurisdiction over war crimes, crimes against humanity and the crime of genocide committed on the territory of Ukraine since November 2013, but does not have jurisdiction over the crime of aggression, as defined in Article 8 bis of the Rome Statute and the Kampala Amendments, in this situation, because neither Ukraine nor the Russian Federation have ratified the Rome Statute and the amendments related to the crime of aggression; whereas the Prosecutor of the ICC has been conducting an investigation into the situation in Ukraine since 2 March 2022; whereas the establishment of a special tribunal on the crime of aggression will not affect the jurisdiction of the ICC over other crimes, and will instead complement it;
- Q. whereas the European Parliament and the Parliaments of Czechia, Estonia, France, Latvia, Lithuania, the Netherlands and Poland have adopted resolutions supporting the establishment of the ad hoc international special tribunal;
- R. whereas on 30 November 2022, the Commission presented alternative options on how to establish an accountability mechanism for the crime of aggression against Ukraine; whereas any decision on such a mechanism should be taken in close cooperation with Ukraine;
- S. whereas in its conclusions of 15 December 2022, the European Council encouraged further efforts to ensure full accountability for war crimes and to secure accountability for the crime of aggression and invited the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) and the Council to take this work forward, in accordance with EU and international law, stressing that the prosecution of the crime of aggression is of concern to the international community as a whole;

Thursday 19 January 2023

T. whereas the UN Security Council is paralysed over the situation in Ukraine owing to Russia's ability to veto any substantive action; whereas UN General Assembly Resolution 377 (V) set a precedent by providing the UN with an alternative avenue for action when at least one permanent member of the UN Security Council uses its veto to obstruct the Security Council from carrying out its functions as mandated by the UN Charter;

1. Reiterates its condemnation, in the strongest possible terms, of the Russian war of aggression against Ukraine, its unwavering support for Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders and its call on Russia to immediately terminate all military activities in Ukraine and unconditionally withdraw all forces and military equipment from the entire internationally recognised territory of Ukraine;

2. Emphasises that the Russian crime of aggression against Ukraine is a clear and undisputed breach of the UN Charter, which, in the interests of global security and the rules-based international order, cannot remain unanswered by the international community; reiterates its call on the Commission, the VP/HR and the Member States to support full accountability for all crimes committed by Russia and its allies and proxies during their war of aggression against Ukraine;

3. Underscores the urgent need for the EU and its Member States, in close cooperation with Ukraine and the international community, preferably through the UN, to push for the creation of a special international tribunal to prosecute the crime of aggression against Ukraine perpetrated by the political and military leadership of the Russian Federation and its allies and to find a legally sound, common way forward on this matter; believes that establishing such a tribunal would fill the large gap in the current institutional international criminal justice set-up and should be based on the standards and principles that apply to the ICC as set out in the Rome Statute;

4. Calls for the EU institutions and the Member States to work in close cooperation with Ukraine to seek and build political support in the UN General Assembly and other international forums, including the Council of Europe, the OSCE and the G7, for creating the special tribunal for the crime of aggression against Ukraine;

5. Considers that the establishment of the special tribunal would complement the investigative efforts of the ICC and its Prosecutor, as it would focus on alleged genocide, war crimes and crimes against humanity committed in Ukraine; reiterates its full support for the ongoing investigation by the Prosecutor of the ICC into the situation in Ukraine; underlines the importance of Ukraine ratifying the Rome Statute of the ICC and its amendments and formally becoming a member of the ICC;

6. Calls for the active use of EU public diplomacy and strategic communication in support of the creation of the special tribunal;

7. Underlines that, while the exact composition and methods of operation of the special tribunal remain to be determined, they will have to respect the highest criteria on transparency and impartiality; deems, furthermore, that the special international tribunal must have jurisdiction to investigate not only Vladimir Putin and the political and military leadership of the Russian Federation, but also Aliaksandr Lukashenka and the political and military leadership in Belarus, as an enabling state, from the territory of which and with the logistic support of which the Russian Federation is committing its war of aggression against Ukraine, as it falls under the description of a crime of aggression according to Article 8 bis of the Rome Statute;

8. Emphasises that the EU's preparatory work on the special tribunal should begin without delay, focus on establishing the arrangements for the special tribunal in cooperation with Ukraine and support Ukrainian and international authorities in securing evidence to be used in the future special tribunal;

9. Calls for the EU institutions, in particular the Commission and the European External Action Service, to provide support in the meantime for the establishment of an interim prosecutor and notes that setting up this office would be a very important practical step forward in the investigation and prosecution by the future special tribunal of the crime of aggression against Ukraine;

10. Condemns the Russian practice of blocking any action at UN level aimed at holding it accountable for the war of aggression against Ukraine;

Thursday 19 January 2023

11. Emphasises the important role of a special tribunal on the crime of aggression against Ukraine in seeking justice for the Ukrainian people, in deterring other international actors from imitating Russia's illegal aggression and in facilitating the claim for reparations and any future reconciliation;
  12. Invites the EU and the Member States, as well as their partners and allies, to engage in discussion on the legal possibility of using sovereign assets of the Russian state as reparations for the violations of international law by Russia in Ukraine, including potentially by denying such assets the protections of sovereign immunity or limiting such protections owing to the gross nature of these violations;
  13. Strongly believes that the establishment of this special tribunal for the crime of aggression would send a very clear signal to both Russian society and the international community that Putin and the Russian political and military leadership can be convicted for the crime of aggression in Ukraine; underscores that the establishment of this tribunal would also be a clear signal to the political and business elite in Russia and Russian allies that it is no longer feasible for the Russian Federation under Putin's leadership to return to 'business as usual' with the West;
  14. Supports the UN General Assembly recommendation as the first step towards the establishment by UN member states, in cooperation with Ukraine, of an international register of damage to serve as a record for future reparations for damage, loss or injury to all natural and legal persons concerned, and the long-term, widespread and severe damage to the natural environment and the climate, as well as to the state of Ukraine, caused by the internationally wrongful acts of the Russian Federation and its allies in or against Ukraine, as well as to promote and coordinate evidence gathering;
  15. Calls for the EU to adopt a common position on the crime of aggression and on the Kampala Amendments on the crime of aggression to the ICC's Rome Statute; calls on Bulgaria, Denmark, France, Greece, Hungary and Romania to accept and ratify the Kampala Amendments;
  16. 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 Secretary-General of the United Nations, the Council of Europe, the Organization for Security and Co-operation in Europe, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, the International Criminal Court, the G7 countries, the African Union, the Economic Community of West African States, the Pacific Islands Forum, the Organization of American States, the Caribbean Community, the Belarussian authorities, the President, Government and Parliament of the Russian Federation, and the President, Government and Parliament of Ukraine.
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