



Resolution 2482 (2023)¹

Provisional version

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

Parliamentary Assembly

1. The Parliamentary Assembly reiterates that the Russian Federation's armed attack and large-scale invasion of Ukraine launched on 24 February 2022 constitute an "aggression" under the terms of Resolution 3314 (XXIX) of the United Nations General Assembly adopted in 1974 and are clearly in breach of the Charter of the United Nations. The attempted annexation of the Ukrainian regions of Donetsk, Kherson, Luhansk and Zaporizhzhia, following the illegal so-called referendums organised by the Russian Federation in these regions in September 2022, is a further escalation of the aggression against Ukraine. It clearly violates the principle of international law according to which no territorial acquisition resulting from the use of force shall be recognised as legal. The Russian Federation will be considered as continuing its aggression as long as the sovereignty, territorial integrity, unity and political independence of Ukraine within its internationally recognised borders will be fully re-established. The Assembly recalls that the ongoing aggression is a continuation of the aggression started on 20 February 2014, which included the invasion, occupation and illegal annexation of Crimea by the Russian Federation.
2. The Assembly notes that the aggression constituted a serious violation by the Russian Federation of the Statute of the Council of Europe (ETS No.1), which justified the unprecedented decision by the Committee of Ministers to exclude the Russian Federation from the Organisation, in line with the unanimous position expressed by the Assembly in its [Opinion 300 \(2022\)](#).
3. The Assembly also notes that Belarus has participated in the Russian Federation's aggression against Ukraine, as it has allowed its territory to be used by the Russian Federation for perpetrating acts of aggression against Ukraine. Its role and complicity should be condemned by the international community and its leaders should be held to account.
4. The Assembly considers that the unprovoked acts of aggression committed by the Russian Federation and Belarus, given their character, scale and gravity, constitute manifest violations of the Charter of the United Nations, in particular of the prohibition on the use of force contained in Article 2(4). They lack any plausible legal justification under *jus ad bellum*, such as self-defense. These acts therefore meet the definition of the crime of aggression as set out in Article 8 bis of the Statute of the International Criminal Court (ICC) and under customary international law. The Russian and Belarusian political and military leaders who planned, prepared, initiated or executed these acts, and who were in a position to control or direct the political or military action of the State, should be identified and prosecuted. Without their decision to wage this war of aggression against Ukraine, the atrocities that flow from it (war crimes, crimes against humanity and possible genocide), as well as all the destruction, death and damage resulting from the war, including from lawful acts of war, would not have occurred. As the United Nations Human Rights Committee has stated, States engaged in acts of aggression as defined in international law, resulting in deprivation of life, violate *ipso facto* the right to life guaranteed by Article 6 of the International Covenant on Civil and Political Rights.

1. *Assembly debate* on 26 January 2023 (7th sitting) (see [Doc. 15689](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Damien Cottier). *Text adopted by the Assembly* on 26 January 2023 (7th sitting).



5. The Assembly notes that the ICC does not have at present jurisdiction over the crime of aggression committed against Ukraine, given that neither the Russian Federation, Belarus nor Ukraine are parties to the ICC Statute and that the United Nations Security Council has not referred the situation to the ICC Prosecutor. The likely exercise and abuse of the right to veto by the Russian Federation at the UNSC render such a referral highly implausible in the present circumstances. The Assembly further notes that there is no other international criminal tribunal competent to prosecute and punish the crime of aggression committed against Ukraine. Domestic prosecutions, in Ukraine and in other countries on the basis of the principles of territoriality or universal jurisdiction, face many legal and practical challenges, including in terms of perceived impartiality, legitimacy and immunities.

6. The Assembly therefore reiterates its unanimous call on member States and observer States of the Council of Europe to set up a special international criminal tribunal for the crime of aggression against Ukraine, which should be endorsed and supported by as many States and international organisations as possible, and in particular by the United Nations General Assembly. The proposal to create a special tribunal for the crime of aggression against Ukraine has so far received the support of several national parliaments and governments, the European Parliament, the European Commission, the Parliamentary Assembly of the Organization for Security and Co-operation in Europe and the Parliamentary Assembly of the North Atlantic Treaty Organization. The Committee of Ministers has welcomed the ongoing efforts, in co-operation with Ukraine, to secure accountability for the crime of aggression. The Assembly considers that the Council of Europe Heads of State and Government, at their 4th Summit in Reykjavik in May 2023, should give their political support to the creation of such a tribunal and provide Council of Europe's concrete expert and technical support to the process of its establishment, in close co-ordination with other interested international organisations and States. The Assembly considers that the Council of Europe should have an active leading role in the establishment of the special tribunal, participate in relevant consultations and negotiations and provide concrete expert and technical support for the process of establishment of the special tribunal.

7. The Assembly strongly supports the creation of a special tribunal that would have the following features:

7.1. Its jurisdiction would be limited to the crime of aggression committed against Ukraine and would extend *ratione temporis* to the aggression started by the Russian Federation in February 2014. Its jurisdiction would include the role and complicity of the leaders of Belarus in the war of aggression against Ukraine.

7.2. Its statute would contain a definition of the crime of aggression in line with Article 8bis of the ICC Statute and customary international law.

7.3. Its statute would clearly state that personal immunities would not apply to incumbent State officials, in line with the practice of other international criminal tribunals, and that functional immunities would in any event not be applicable to the crime of aggression. The official capacity as a head of State or government, a member of government or parliament, an elected representative or government official should in no case exempt the accused person from criminal responsibility for the crime of aggression or justify a mitigated punishment. This principle should apply to nationals of States non-parties to the constitutive treaty or agreement, in particular those of the aggressor State and its accomplice.

7.4. Its statute would contain a list of fair trial rights of the accused, as well as a reference to the principles of legality and *non bis in idem*, in line with international human rights law and the European Convention on Human Rights (ETS No. 5), as interpreted by the European Court of Human Rights.

7.5. Its role would be complementary to the ICC's jurisdiction and in no way limit or affect the latter's exercise of jurisdiction over war crimes, crimes against humanity and possible genocide committed in the context of the ongoing aggression and its jurisdiction in general. Both the ICC and the special tribunal should agree on practical and legal issues such as sharing of evidence, custody of suspects, developing common witness protection schemes, sequencing of trials of individuals prosecuted by both courts.

7.6. Its seat should be established in The Hague, with a view to ensuring complementarity and co-operation with the ICC and other international courts and institutions.

7.7. States and international organisations supporting the special tribunal should provide to it sufficient human and financial resources, ensuring its full independence and effective operational functioning while taking into account, in its structure, the fact that it will certainly not immediately or not permanently be able to operate at full capacity.

8. Pending the establishment of a special tribunal on the crime of aggression against Ukraine, the Assembly calls on member States and the Council of Europe to support and provide concrete expert and technical assistance to the process of setting up an Interim International Prosecutor's Office to investigate the crime of aggression, in close co-operation with the Prosecutor General's Office of Ukraine. Member States should co-operate closely with that Office and make sure in their internal legislation that close judicial co-operation with it is ensured. Such an office could be based outside Ukraine, ideally in The Hague.

9. In parallel to the creation of a special tribunal, the Assembly calls on member States and observer States that have not yet ratified the ICC Statute or the Kampala amendments to do so at the earliest possible date. They should also take the necessary steps to amend the ICC Statute's jurisdictional regime, either by allowing referrals to the ICC by the United Nations General Assembly when the UNSC is blocked, or by removing the existing limits on the jurisdiction over the crime of aggression in order to make it consistent with the other crimes subject to its jurisdiction. These changes would reinforce the overall consistency, legitimacy and universality of international criminal justice, in particular with regard to the crime of aggression. The proposal to create a special tribunal to respond to the ongoing criminal aggression against Ukraine and the long-term reform of the ICC Statute enabling the ICC to prosecute and punish similar (future) aggressions are not mutually exclusive and should be pursued in parallel.

10. The Assembly is outraged by the numerous reports of atrocities, gross human rights violations and violations of international humanitarian law committed by Russian forces or affiliated armed groups, and specifically the horrendous role of the Wagner Group, in the course of hostilities or in areas temporarily occupied by them during the ongoing war of aggression. These include indiscriminate attacks against civilians and civilian objects, including hospitals, schools, nuclear power plants, energy and water infrastructure, and cultural heritage sites, in breach of the principles of distinction, proportionality and precaution. They also include summary executions of civilians; targeted killings; torture and ill-treatment of civilians and prisoners of war; enforced disappearances; abductions; rape and other forms of sexual violence; unlawful confinement of civilians; forcible transfer and deportation of Ukrainian citizens, including children, to the Russian Federation or Russian-occupied areas; use of explosive weapons in populated areas; looting; forced "passportisation" and conscription of Ukrainian citizens; and trials and death sentences against prisoners of war. There are strong indications that many of these violations amount to grave breaches of the Geneva Conventions and war crimes and that some may even qualify as crimes against humanity, as part of a widespread or systematic attack against the civilian population in Ukraine.

11. The Assembly utterly condemns these crimes and reiterates its call on the international community to send a clear message that perpetrators of war crimes and crimes against humanity will be held to account and that impunity for such crimes is unacceptable. This applies equally to low-ranking perpetrators and those who bear command responsibility for the crimes. Both the Russian Federation and Ukraine have a primary responsibility under international law to investigate and prosecute such crimes and to bring the perpetrators to justice.

12. The Assembly notes that there is mounting evidence that the Russian official rhetoric used to justify the full-scale invasion and aggression against Ukraine, the so-called "de-Ukrainianisation" process, carries characteristics of public incitement to genocide or reveals a genocidal intent to destroy the Ukrainian national group as such or at least part of it. It recalls that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, to which both Ukraine and the Russian Federation are parties, prohibits direct and public incitement to commit genocide and the attempt to commit genocide. It also notes with the utmost concern that some of the acts committed by Russian forces against Ukrainian civilians could fall under Article II of the Convention, such as killings and forcible transfer of children of one group to another group for russification purposes through adoption by Russian families and/or transfer to Russian-run orphanages or residential facilities like summer camps.

13. The Assembly recalls that all States Parties to the Genocide Convention have a duty to punish genocide. As interpreted by the International Court of Justice, they also have an obligation to prevent genocide and a corresponding duty to act, which arises at the instant when the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.

14. The Assembly notes that international and domestic accountability mechanisms already exist in order to investigate, prosecute and, where appropriate, punish war crimes, crimes against humanity, and possible genocide committed during the ongoing war. These include the ICC, which has jurisdiction over such crimes allegedly committed on Ukrainian territory; the criminal justice system of Ukraine; and the criminal justice systems of third States that have jurisdiction on the basis of the principle of universal jurisdiction or the principles of active or passive personality. The Assembly welcomes the referral of the current situation in

Ukraine to the ICC Prosecutor by 43 States Parties to the ICC Statute. It strongly supports the investigations opened by the ICC Prosecutor, the Prosecutor General's Office of Ukraine and third countries and welcomes the setting up of a Joint Investigation Team to co-ordinate relevant efforts.

15. The Assembly calls on member States and observer States of the Council of Europe to:

15.1. fully support the investigation launched by the ICC Prosecutor into the situation in Ukraine, by sharing any evidence in their possession, and by providing in a sustainable manner adequate human and financial resources to the ICC enabling it to face its increased and unprecedented workload;

15.2. assist the Ukrainian authorities and, in particular, the Prosecutor General's Office in their ongoing efforts to investigate alleged international crimes committed in Ukraine, by strengthening their capacities, by providing resources and expertise, including forensic experts, and where appropriate, by collecting, preserving and sharing evidence from potential victims and witnesses who have fled Ukraine, in accordance with human rights standards in order to ensure its admissibility in criminal proceedings;

15.3. provide expert support to the Ukrainian authorities in their efforts to investigate conflict-related sexual violence, which is often under-reported by victims;

15.4. make use of the principle of universal jurisdiction or other principles (active or passive personality) to investigate and prosecute alleged international crimes committed in Ukraine;

15.5. join or co-operate with the Joint Investigation Team set up by Ukraine and certain European Union member States under the auspices of Eurojust and with the participation of the ICC Prosecutor, with the aim of exchanging evidence and information in connection with the ongoing investigations on alleged crimes committed in Ukraine;

15.6. make use of Council of Europe and other international instruments on mutual legal assistance to the widest extent possible, for the purposes of collecting, transferring and using evidence in connection with alleged crimes committed in Ukraine, and if necessary envisage extending them;

15.7. support the work of Ukrainian and international non-governmental organisations, as well as human rights defenders and journalists on the ground, in the collection of evidence and documentation of alleged international crimes or the provision of different types of assistance to victims and witnesses, including with regard to the forcible transfer of children to the Russian Federation and Russian-occupied territories;

15.8. ensure increased co-ordination and coherence between all accountability mechanisms and actors involved, with a view to preventing duplication and enhancing efficiency;

15.9. ratify the Rome Statute of the ICC and its amendments, including the Kampala amendments, if they have not yet done so.

16. The Assembly calls on the Ukrainian authorities to strictly comply with their obligations under international humanitarian law and to conduct thorough investigations of all alleged war crimes and violations of international humanitarian law allegedly committed by Russian or by Ukrainian forces and combatants, regardless of the affiliation of the perpetrator or the victim. All trials before Ukrainian courts should be conducted respecting the right of the suspects to a fair trial under international human rights law and international humanitarian law. To this end, the Assembly encourages the Ukrainian authorities to co-operate with international trial observers and to consider inviting international legal professionals to participate in upcoming trials. Resulting convictions should be compatible with the principle of legality enshrined in Article 7 of the European Convention on Human Rights, which cannot be subject to derogation in time of war.

17. The Assembly also calls on the Ukrainian authorities to put a particular emphasis on activating all the relevant procedures to gather information on and ensure the safe return of forcibly transferred Ukrainian children from the Russian Federation and Russian-occupied territories.

18. The Assembly welcomes the adoption on 14 November 2022 by the United Nations General Assembly of the resolution entitled "Furtherance of remedy and reparation for aggression against Ukraine", which recognises that the Russian Federation must bear the legal consequences of all its internationally wrongful acts in or against Ukraine, including by making reparation for the injuries and losses caused by such acts. This resolution further recognises the need for the establishment of an international mechanism for the reparation of related damage, loss or injury and recommends the creation by member States, in co-operation with Ukraine, of an international register of damage.

19. In this context, the Assembly reiterates its call on all member States of the Council of Europe to set up an international compensation mechanism, including an international register of damage, in co-operation with the Ukrainian authorities. The Assembly stresses the Council of Europe's comparative advantage due to the experience gained by the European Court of Human Rights and the Committee of Ministers in assessing and enforcing just satisfaction claims for serious human rights violations and considers that the Organisation should play a leading role in setting up and managing the future mechanism. Such a mechanism would have the following features:

19.1. It would be established by a multilateral treaty or agreement, open to all like-minded States, with the support of the United Nations, the Council of Europe, the European Union and other international organisations.

19.2. It would include as a first step a register of damage, which would create a record of evidence and claims on damage, loss or injury caused to all natural and legal persons in Ukraine, as well as the State of Ukraine, by violations of international law arising from the Russian Federation's aggression against Ukraine.

19.3. It would include at a later stage an international compensation commission, mandated to review and adjudicate the claims submitted and documented by the register, as well as a compensation fund, from which compensation awards would be paid to successful claimants. The founding treaty or agreement would regulate matters such as the funding of the compensation fund, the enforcement of compensation awards, and how decisions by other international bodies and courts on reparation and compensation in connection with the Russian aggression, such as judgments of the European Court of Human Rights, could be enforced through such a mechanism.

20. The Assembly, while reiterating its previous recommendations addressed to the Russian Federation since the outbreak of its aggression against Ukraine, calls on the Russian Federation to:

20.1. cease its aggression against Ukraine immediately and unconditionally;

20.2. completely and unconditionally withdraw its occupying forces, including its own military as well as proxies, from the internationally recognised territory of Ukraine;

20.3. comply strictly with its obligations under international law, including the Charter of the United Nations, international human rights law and international humanitarian law;

20.4. immediately stop attacks against civilians and civilian objects, including mass indiscriminate attacks, ensure full respect for the principles of distinction, proportionality and precaution, and authorise the International Committee of the Red Cross to have full access for visits to prisoners of war;

20.5. immediately cease the forced deportation and transfers of Ukrainian civilians, including children, to the Russian Federation and the Russian-occupied territories, allow their safe return and, in the case of children, ensure that they are promptly reunited with their families;

20.6. investigate effectively all allegations of war crimes, crimes against humanity and possible genocide committed by Russian forces and affiliated armed groups, and ensure as appropriate that all perpetrators and those bearing command responsibility are properly prosecuted and punished;

20.7. co-operate with the investigations and proceedings before the ICC and the International Court of Justice (ICJ) and comply with their decisions, including the ICJ order of 16 March 2022 indicating that the Russian Federation should immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine;

20.8. co-operate with the United Nations Commission of Inquiry on Ukraine and comply with its recommendations;

20.9. co-operate with proceedings before the European Court of Human Rights, in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred up until 16 September 2022, in particular in the context of the inter-state case *Ukraine v. Russia (X)* concerning alleged mass and gross human rights violations committed by the Russian Federation in Ukraine since 24 February 2022, and of any related individual applications against the Russian Federation, and comply with the interim measures indicated by the Court under Rule 39 of its Rules of Court in the context of these proceedings.

21. The Assembly furthermore invites:

21.1. the European Court of Human Rights to further prioritise the examination of inter-state and individual applications against the Russian Federation stemming from the ongoing war of aggression;

21.2. the members of the United Nations Security Council to consider putting to a vote and not obstructing a Security Council resolution seeking referral of the situation in Ukraine to the ICC Prosecutor under Chapter VII of the Charter of the United Nations;

21.3. the United Nations General Assembly to support and endorse the setting up of a special international criminal tribunal for the crime of aggression against Ukraine and of an international compensation mechanism for the injury, damage and loss incurred by the State of Ukraine as well as by natural and legal persons in Ukraine, due to the Russian war of aggression;

21.4. the European Union to co-ordinate closely its efforts with the Council of Europe in ensuring a comprehensive system of accountability for the Russian Federation's aggression against Ukraine, including the crime of aggression, war crimes, crimes against humanity, possible genocide, and reparation of damages.

22. The Assembly calls on Belarus and the regime in place to refrain from any further involvement in the aggression, including by allowing its territory to be used by the Russian Federation for perpetrating acts of aggression against Ukraine, and to comply with its obligations under international law.

23. The Assembly considers the inability of the United Nations and its Security Council to counter the Russian aggression due to an abuse of the right to veto to be an existential threat to international rule-based order and the democratic security of Council of Europe member States. In this respect, the Assembly supports all efforts and discussions on unblocking the situation at the United Nations and making the United Nations more efficient, including a call to request an advisory opinion from the International Court of Justice on potential limitations of the right to veto implicit in the Charter and general principles of law.

24. The Assembly should continue to follow developments relating to the Russian Federation's aggression against Ukraine and its legal and human rights aspects. Once hostilities have ended, the Assembly should consider holding one of its part-sessions in Kyiv, as an expression of solidarity with Ukraine.