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Ad hoc sub-committee of the Committee on Legal Affairs and Human Rights on carrying out a fact-finding visit to Ukraine for the purpose of gathering information on possible war crimes and crimes against humanity committed during the war of aggression launched by the Russian Federation against Ukraine (ad hoc sub-committee)

Report to the Committee on Legal Affairs and Human Rights on the ad hoc sub-committee's visit to Kyiv on 28 June 2022, prepared by the Chairperson, Mr. Damien Cottier (Switzerland, ALDE)¹

1. The ad hoc sub-committee carried out its mission between Monday 27 and Wednesday 29 June 2022. On 29 June, during its return journey, the sub-committee agreed on the attached communiqué summing up its main findings, and it held a debriefing session during which members expressed their views on the key take-aways from the short, but very intense mission.

2. This report provides the Committee on Legal Affairs and Human Rights with more detailed information on the circumstances of the mission, its main findings and it attempts to draw some conclusions.

1. Circumstances of the mission

3. The delegation consisted of Mr Damien Cottier as chairperson and two members each of the EPP/CD, SOC, ALDE and EC/DA groups, and one representative of the UEL.² One EPP/CD and one SOC representative were unable to join last minute and could not be replaced. The sub-committee was accompanied by the Head of Secretariat of the Committee on Legal Affairs and Human Rights, Günter Schirmer, and a Ukrainian temporary staff member, Bozhena Boriak. The sub-committee gives a heartfelt thanks to the staff of the Council of Europe, and specifically Mr Schirmer and Ms Boriak, as well as Secretary General, Despina Chatzivassiliou-Tsovilis, for their support in organizing this delicate visit.

4. The participants of the mission met on Monday 27 June in the morning at Warsaw airport where they took the final decision to proceed, despite reports that 14 missiles had been launched against Kyiv the day before, which ended a long period of calm in the Ukrainian capital. The sub-committee arrived in Kyiv by overnight train on Tuesday morning (28 June) and was first taken to the Kyiv suburbs of Bucha and Irpin. It then had meetings at the Verkhova Rada, in the Ministries of Justice and Foreign Affairs and the Prosecutor General's office, as well as with representatives of three leading NGOs. During the meeting in the Ministry of Foreign Affairs, Members were obliged to move to the basement because of an air raid alarm. The sub-committee took the night train the same evening and arrived back in Warsaw in the afternoon of 29 June. The sub-committee was permanently accompanied during its visit in Ukraine by several members of Ukrainian security forces, whom the sub-committee also want to thank specifically for their services.

* Document declassified by the Committee on 5 September 2022.

¹ According to one member of the sub-committee, some references in the report (in paragraphs 8, 10-11 and 28-34) go beyond the missions mandate and existing decisions of the Assembly and should therefore be discussed in the framework of future reports of the committee.

² EPP/CD: Mr Davor Stier, Croatia, and Mr Emanuelis Zingeris, Lithuania

SOC: Ms Sunna Aevardottir, Iceland, and Mr Boriss Cilevics, Latvia

ALDE: Mr Eerik Kross, Estonia, and Ms Ingvild Thorsvik, Norway

EC/DA: Mr Erkin Gadimli, Azerbaijan, and Mr Arkadiusz Mularczyk, Poland

UEL: Mr George Katrougalos, Greece.

5. The atmosphere in the group was excellent notwithstanding the dramatic context of the visit, with a spirit of solidarity and friendship. The Ukrainian hosts provided excellent security, throughout the sub-committee's stay in Ukraine. Several members of the Ukrainian delegation accompanied the sub-committee for the whole day. Members sensed the gratitude of the Ukrainian hosts and of all the people they met along the way, for the decision to go to Kyiv with a delegation of 12. In turn, the members were impressed by the strong determination and optimism of Ukrainians in the face of the immense hardship faced by their country.

2. Key takeaways

2.1. *The visits to Bucha and Irpin*

6. The main findings are summed up in the aforementioned public statement (attached).³

7. Members were indeed shocked by what they saw and heard in Bucha and Irpin. **The sub-committee finds that there are clear indications that Bucha was the theatre of cold-blooded murder of civilians on a massive scale. In Irpin, the destruction witnessed in this previously pleasant, green suburb of Kyiv brought home the sheer brutality of Russia's aggression against Ukraine and the enormity of the task of reconstruction.**

8. It is recalled that the sub-committee was neither mandated nor equipped to collect actionable evidence on war crimes or crimes against humanity. This is the task of prosecutors and forensic experts. But Members gained a personal impression of the horrors of the war and the efforts made by the Ukrainian side to deal with them. This was of great importance in order to inform the political debate about the potentially long-lasting need to continue supporting the Ukrainian people in their struggle, even if this is going to require some sacrifices also from Ukraine's friends and all the countries supporting international relations ruled by law and not by force. Having seen what happened to the people in two towns that were only briefly under Russian control, most members of the sub-committee expressed the opinion that the suggestion that Ukraine should give up some territory in return for peace seems highly inappropriate.

9. **In Bucha**, the local orthodox priest described in clear and credible terms what he and his parishioners had witnessed during the short Russian occupation. This included Russian soldiers killing civilians seemingly at random in the street and at short range. Even more worryingly, there were also reports of Russian soldiers going from house to house in search of people on a list, which included family members of officers, local officials and other community leaders, who then "disappeared" or whose bodies were later found.

10. If such a systematic "hunt" for local elites can be proven also in other towns and cities under Russian control, this may well indicate that a "genocide playbook" like the one described in the infamous article "What Russia should do with Ukraine" by [Timofey Sergeytsev](#), published by the Russian State news agency Ria Novosti on 3 April 2022, is indeed being implemented: most members of the sub-committee expressed their deep fear that it is what might actually be happening. The sub-committee refrained from mentioning this in its public statement because it was only able to study the example of one town, Bucha. But if what happened in Bucha is indeed happening elsewhere in cities and towns under Russian control, in a widespread and systematic manner, then the Committee and the Assembly might have no choice but to consider calling this a genocide – with all that this entails, including the duty to prevent and punish under the Genocide Convention.⁴ Information published after the sub-committee's visit seems to support this analysis.⁵

11. It should be recalled that genocide does not require killing every member of the target group. It is enough to eliminate part of this group, in particular those members who carry forward the group's political and cultural identity, and to intimidate and brainwash the remaining population to the point that they give up their group identity.

12. **Irpin**, the second stop, used to be a pleasant suburb of Kyiv with much new construction, in particular housing and other infrastructures for young families. Members saw with their own eyes the massive destruction of residential buildings and civilian infrastructures. The damage was obviously caused by heavy weapons (artillery, tanks, multiple rocket launchers and the like), which only the Russian invaders had at their disposal in this location at the time. The use of such weapons in densely populated areas such as the town of Irpin is a

³ [PACE delegation, ending Kyiv visit: 'The worst crime of all is the war itself' \(coe.int\).](#)

⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-prevention-and-punishment-crime-genocide>.

⁵ See for example the second report of the OSCE's "Moscow Mechanism" published on 11 July 2022, at <https://www.osce.org/files/f/documents/3/e/522616.pdf>

clear violation of international humanitarian law. The massive destruction of a once thriving, peaceful town, witnessed by the sub-committee, also brought home the realisation that **the worst crime of all is the war itself**, a violent, unprovoked attack on a peaceful neighbour.

2.2. Meetings with Members of the Verkhovna Rada, senior representatives of the Ministries of Justice and Foreign Affairs and the Prosecutor General

13. In all the meetings the sub-committee had in Kyiv later in the day, the three main priorities of the Ukrainian side became very clear: (1) **accountability for the crime of aggression**, (2) the **prosecution of war crimes and crimes against humanity**, and (3) the establishment of a **compensation mechanism to fund post-war reconstruction**. These three issues will also be the main points to be covered in the report under preparation by the Committee on Legal Affairs and Human Rights on the “Legal and human rights consequences of the Russian war of aggression against Ukraine”.

2.2.1. Accountability for the crime of aggression

14. The Nuremberg Tribunal, in its judgment of 30 September 1946 famously declared: *“To initiate a war of aggression is not only an international crime; it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”*⁶ Customary international law, as reflected in the Kampala Amendments to the Rome Statute of the ICC,⁷ essentially requires just two elements for a conviction, namely that the war in question was indeed one of “aggression”, i.e. not justified as self-defence or as an intervention to stop a genocide in fulfilment of the “duty to protect”; and that the accused was indeed at least partly responsible for starting and conducting the war, i.e. part of the political and military leadership of the State that started the war. In this case, it must be established that Ukraine was not a threat for Russia justifying self-defence. As to the duty to protect, the International Court of Justice in the Hague has already ruled, in an Order on provisional measures dated 16 March 2022,⁸ that it was not aware of any evidence that Ukraine was committing a genocide against ethnic Russians in the Donbass region.

15. The Ukrainian side acknowledges that the crime of aggression cannot be prosecuted by the International Criminal Court (ICC), as both countries have not ratified the Rome Statute. The only other option is the adoption of an UN Security Council resolution on this issue, but it would certainly be vetoed by Russia. The Ukrainian interlocutors are however confident that Ukraine can soon rally a group of “like-minded countries” needed to set up an ad hoc tribunal for the sole purpose of prosecuting the crime of aggression, by analogy to the International Military Tribunal (Nuremberg Tribunal) after the Second World War. The sub-committee was informed by the representatives of the Ministry of Foreign Affairs that such a group already exists (though no countries could be named at this stage) and that it is growing. The Ukrainian side believes that once such a tribunal is launched by a core group of countries, others will join. The different interlocutors were very grateful for the Assembly’s unanimous vote in favour of the creation of an ad hoc tribunal, as the first international body to do so.⁹ They are also aware that support in the UN General Assembly is not certain as Russia is spending a lot of political – and, as members were told, other forms of – capital on obtaining the support of a number of African, Asian and South American countries. But they count on the Council of Europe and its member and observer states to help establish a core group of like-minded countries, and beyond this, political and logistical support from the Council of Europe and the European Union as a whole.¹⁰

⁶ The International Military Tribunal (IMT) judgment available at: https://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf, quotation at page 25.

⁷ See for example <http://iccreviewconference.blogspot.com/> <https://www.internationalcrimesdatabase.org/Crimes/CrimeOfAggression>.

⁸ see the Order on provisional measures of the International Court of Justice dated 16 March 2022 in the case of *Ukraine v. Russian Federation* on Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (available at: <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>) at paragraph 59.

⁹ In [Resolution 2436](#) dated 28 April 2022 (Rapporteur: Aleksander Pocij, Poland/EPP); on 19 May 2022, the European Parliament also called for the establishment of an ad hoc criminal tribunal for crimes of aggression, see <https://www.europarl.europa.eu/news/en/press-room/20220517IPR29931/ukraine-meps-want-a-special-international-tribunal-for-crimes-of-aggression>.

¹⁰ See interview with Andrij Smirnov (in German) “Wenn Putin nur noch nach Nordkorea und Syrien reisen kann, ist das Ziel erreicht“, at: <https://www.spiegel.de/ausland/ukraine-krieg-andrij-smirnow-putin-fuerchtet-einen-solchen-strafgerichtshof-a-8a22a122-0ca7-4916-8b5d-48de797b15eb>

2.2.2. *Accountability for war crimes and crimes against humanity*

16. The Ukrainian Prosecutor General, Ms Iryna Venediktova, who came across as energetic and outspoken,¹¹ informed the sub-committee that over 19.000 cases of suspected war crimes had already been opened.¹² She indicated that separate departments dealt with war crimes allegedly committed by the “invaders”, and by Ukrainian forces. In reply to a question regarding cases of atrocities allegedly committed by Ukrainian fighters shown in video recordings circulating on the internet, the Prosecutor General assured members of the sub-committee that investigations were ongoing and that the Ukrainian side were well aware that it was absolutely in their interest to also prosecute crimes on their own side. As a matter of principle, but also of self-interest, prisoners of war were being treated very well, not least to encourage surrenders, according to the Ukrainian side.

17. Regarding international cooperation, the Prosecutor General was grateful for assistance provided in particular by France and several Baltic countries. They had provided teams of forensic experts, which Ukraine was particularly short of, and continued working even during the heavy shelling of Kharkiv. The ICC prosecutor had indicated to her that they could only deal with 10-20 of the most egregious and high-profile cases. The Joint Investigation Team (JIT) bringing together investigators from 43 countries, with coordination provided by Eurojust, was a very important tool.

18. Regarding the possible crime of genocide, the Prosecutor General acknowledged the difficulty of investigation without access for Ukrainian or international investigators to the temporarily occupied territories. But some elements had already been established in the areas liberated by the Ukrainian forces, in particular in Bucha and Irpin and in the area surrounding Kharkiv. The Prosecutor General also mentioned cases of “ecocide” in which the invaders caused huge environmental damage.

19. Another type of crime that was particularly difficult to prove is rape and other forms of sexual violence. According to the Prosecutor General, only 30 criminal cases had so far been opened, as most victims were either still in Russian-controlled areas or had fled abroad.

20. As confirmed by the NGO representatives the sub-committee met later in the day, sexual violence is still largely covered by a taboo, which makes it difficult for victims to come forward. According to the NGOs, less than 1% of cases come to the attention of the authorities, and only a small part of these are successfully prosecuted. NGOs are now campaigning to encourage victims to come forward, and to fight the societal taboo surrounding sexual violence. They also call on the prosecutorial authorities of the states where refugees are now staying, to interview victims and help preserve evidence. The NGOs also strongly supported the ratification, by Ukraine, of the Council of Europe’s Istanbul Convention.¹³

21. Sub-committee members were convinced of the necessity for the Ukrainian authorities to be more active in supporting victims of gender-based violence and sexual crimes in order to act against impunity. The authorities should work actively with civil society against the existing taboos in this domain. The accession of Ukraine to the Istanbul Convention, that occurred right after the visit, is an encouraging sign. Concrete actions in this domain are needed and the Council of Europe can certainly provide valuable know how and support.

22. Cooperation between the Prosecutor General’s Office and relevant NGOs is seen as very useful by both sides. The sub-committee was told that many traumatised victims first speak with specialised NGO activists, who are trained to record their initial testimony, provide psychological assistance and direct them on to the competent law enforcement bodies.

23. Given the sheer number of alleged war crimes and crimes against humanity, and the limited capacity of the Ukrainian prosecution service, even aided by colleagues from other countries and the team of prosecutors sent by the ICC, the orderly investigation, prosecution and adjudication of war crimes is a herculean task. It will be difficult to streamline and coordinate the efforts of the different actors involved.

¹¹ Meanwhile, Ms Venediktova was removed from her post (suspended) on 17 July 2022, reportedly for not having been able to prevent “treason and collaboration activities” within the ranks of the prosecution service (see Washington Post, Zelensky dismisses security chief and prosecutor general, <https://www.washingtonpost.com/world/2022/07/17/ukraine-bakanov-venediktova/>); the newly appointed acting prosecutor general, Mr Oleksiy Symonenko, was also present at our meeting at the Prosecutor General’s office.

¹²The figure cited by the Prosecutor General’s office on 11 July is 22.500 (<https://www.ukrinform.net/rubric-ato/3526274-russia-has-committed-22500-war-crimes-in-ukraine-prosecutor-generals-office.html>).

¹³On 18 July 2022, Ukraine ratified the Istanbul Convention, see <https://www.coe.int/en/web/istanbul-convention/-/ukraine-ratifies-the-istanbul-convention>.

24. The Ukrainian side understands that justice must be done and seen to be done. To what extent this requires international involvement, also in the process of adjudication, for example in the form of hybrid courts (with Ukrainian and international judges), needs to be examined in more depth. Our interlocutors in Kyiv seemed somewhat reluctant as regards the participation of foreign judges, mainly due to practical issues (language, knowledge of Ukrainian criminal procedure). Some sub-committee members insisted on the importance to work more on this issue. This question should be discussed further in the preparation of the report on the Legal and human rights consequences of the Russian war of aggression against Ukraine.

25. The Prosecutor General stressed the importance of international support for scientific expertise for the crimes committed. She insisted that evidence fades quickly (destruction, reconstruction, cleaning and repair work, fading memories, desire to forget the trauma, as examples). The support of foreign experts, particularly in forensics and ballistics, was considered important and urgent by our interlocutors.

2.2.3. Compensation mechanism

26. The Ukrainian side (in particular, the representatives of the Verkhovna Rada and the Ministries of Justice and Foreign Affairs presented the sub-committee with a detailed, well-thought-out proposal for a compensation mechanism to fund reconstruction after the end of the war, based on the precedent of the UN Iraq/Kuwait compensation commission (UNCC).¹⁴

27. The Ukrainian side also provided the sub-committee with a “conservative estimate” that as of the end of June 2022, the cost of reconstruction would be around USD 600 bn.¹⁵

28. The sub-committee agreed that not rebuilding Ukraine after the war is not an option. The cost should be borne – at least partially – by those who caused the destruction, namely the Russian Federation, and not exclusively by Western countries’ taxpayers, who already face a heavy financial burden due to the massive refugee crisis caused by the invasion – 5 million Ukrainians fled abroad at the time of the visit, 7 million became IDPs, who also require urgent humanitarian aid – and by the need to strengthen Ukraine’s own defence against the newly understood threat from the Russian Federation.

29. Even if the sub-committee did not have the possibility to discuss this proposal in detail during its visit, it should be noted that the Ukrainian proposal fits in with the Assembly’s recent reports promoting non-conviction based confiscation in the context of organized crime and the reversal of the burden of proof in specific situations¹⁶ as well as a possible social re-use of confiscated assets. The report by André Vallini (France/SOC) adopted in April¹⁷ explicitly refers to possibility of re-using, for reconstruction purposes, assets confiscated from Russian oligarchs linked to the regime and of frozen central bank and other state assets. In the discussions of the sub-committee it was underlined that a clear difference is to be made between frozen assets directly owned by the Russian government or governmental institutions – like the central bank – and assets owned by individuals. In this second case only a thorough legal procedure, allowing the protection of private property and ensuring due process and the rights of the defence can come into consideration under the Convention.

30. The logic is the following: the Russian Federation has a debt towards Ukraine. State assets seized abroad could be assigned to Ukraine to be offset against this debt or serve as guarantees for the payment of reparations by the Russian Federation.

31. Frozen private assets that are established as illegal through a thorough legal procedure because it has been established that they were effectively stolen from the Russian State should normally be returned. But as the Russian State has a debt towards Ukraine, they could, again, be assigned to Ukraine to be offset if national legislation allows it, or be used as guarantees. The main issue with the confiscation of private assets is to establish in an undisputable way that they were indeed amassed illegally. The sub-committee is conscious that such procedures are extremely complex and that national legislation at the time of the beginning of the conflict as well as the guarantees of the Convention (fair trial, guarantee of property rights, etc.) shall be

¹⁴See <https://uncc.ch/home>. According to the UNCC, the USD 52.4 billion of compensation awarded has been paid in full and distributed to the 1.5 million claimants after the January 2022 payment made by Irak. The Commission will wind down its operations over the course of 2022.

¹⁵ Some days after at the Ukraine Recovery Conference in Lugano (Switzerland) on 4-5 July, the Prime minister presented the Recovery Plan of the Ukrainian Government and spoke of 750 bn USD <https://www.urc2022.com/urc2022-recovery-plan>.

¹⁶ Resolutions 2218 (2018) “Fighting organised crime by facilitating the confiscation of illegal assets” and 2365 (2021) “Urgent need to strengthen financial intelligence units – Sharper tools needed to improve confiscation of illegal assets “

¹⁷[Resolution 2434 \(2022\)](https://www.un.org/pressdocs/2022/res2434.htm) “How to put confiscated criminal assets to good use?” <https://pace.coe.int/en/files/30019>.

respected at all times. All these complex legal issues are to be explored in detail as part of the preparation of the report on the Legal and human rights consequences of the Russian war of aggression against Ukraine.

32. Another possible source of income for the compensation mechanism could result from the G7's ongoing efforts to place a cap on oil and gas prices, by means of a "buyer's cartel". The difference between the capped price and the market price could be placed in the compensation fund and used to pay off, over time, part of the Russian debt resulting from the damage Russia is causing in Ukraine. A similar solution was found for the above-mentioned Irak/Kuwait compensation commission – for decades, Irak paid a share of its oil and gas revenue to compensate Kuwait for the damage caused during the invasion, until all claims (assessed at a total of USD 52.4 bn) were paid in full, in January 2022.¹⁸

33. A solid legal basis must be established in all countries concerned in order to treat fairly in particular private individuals whose assets have been frozen and may be confiscated. It must be established in fair proceedings that the assets in question were indeed "illegal", i.e. ultimately stolen from the Russian people. Only then can they be used to offset part of the debt that Russia has incurred vis-à-vis Ukraine because of the war of aggression waged by its leadership or be used as guarantees for the payment of reparations by the Russian government.

34. Solutions, as mentioned in paragraphs 28-32, must be analysed in more detail in the coming months and, if appropriate, must be part of a comprehensive peace agreement, a package deal which could include the partial lifting of sanctions in return for a Russian contribution towards the reconstruction of Ukraine.

35. The European Commission is proposing relevant draft legislation.¹⁹ Many members of the sub-committee are of the opinion that the Council of Europe should join forces with the European Union in order to create a workable legal framework, in accordance with the European Convention of Human Rights, in the interest of justice and durable peace and stability.

¹⁸ Cf. UNSC Resolution 687 (1991), paragraph 19; the percentage was originally set at 30% of the proceeds of export sales of Iraqi petroleum and related products under UNSC Resolution 705 (1991); the percentage was reduced to 25% in December 2000 and to 5% in May 2003 (detailed information about the claims procedure and awards criteria can be found at <https://uncc.ch/payment-claims>).

¹⁹ See "Ukraine: the Commission proposes rules on freezing and confiscating assets of oligarchs violating restrictive measures and of criminals", https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3264

APPENDIX

PACE delegation, ending Kyiv visit: 'The worst crime of all is the war itself'

29/06/2022 Legal Affairs and Human Rights



A cross-party delegation of ten members of the Parliamentary Assembly of the Council of Europe (PACE),* ending a visit to Kyiv on Ukraine's Constitution Day (28 June 2022), has expressed shock at the level of evidence of war crimes and crimes against humanity it saw, denounced the war in the strongest terms, and pledged determination to fight impunity and achieve just compensation for Ukraine.

"We were shocked by what we saw and heard in Bucha and Irpin," the sub-committee of PACE's Committee on Legal Affairs and Human Rights concluded. "We saw clear indications that Bucha really was the theatre of cold-blooded murder of civilians on a massive scale. The destruction in Irpin brought home the sheer brutality of Russia's aggression against Ukraine and the enormity of the task of reconstruction. During our visit, Ukraine was once again hit by a missile strike on a civilian target, this time a shopping mall in Kremenchuk in central Ukraine. We express our heartfelt condolences to the relatives and friends of the victims."

The members of the delegation added: "We were impressed by the courage of the many Ukrainians from all walks of life that we met, and their determination to hold the perpetrators of war crimes and crimes against humanity to account. The worst crime of all is the war itself, the groundless and brutal aggression against a peaceful neighbour that is a clear and grave breach of international law."

"We heard from many of our interlocutors that one priority shall be the establishment of an ad hoc international tribunal to prosecute the crime of aggression, as proposed by the Assembly in April. The second priority is the establishment of a compensation commission empowered to seize certain Russian assets for funding the reconstruction of Ukraine. Last but not least, through joint efforts of Ukrainian and international investigators

and prosecutors, individual perpetrators of war crimes and crimes against humanity shall be prosecuted and punished in accordance with the law. Special attention must be given to punishing widespread sexual violence, despite the difficulties of collecting and preserving evidence,” the parliamentarians said.

“We are determined to contribute to the fight against impunity and achieving just compensation, in our work back home,” they concluded.

As well as visiting Bucha and Irpin, the delegation met with senior representatives of the Verkhovna Rada, the Ministries of Foreign Affairs and Justice and the Prosecutor General, as well as representatives of leading NGOs.

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