



THE RESPONSIBILITY TO REACT: FOURTH MEETING OF THE GLOBAL PARLIAMENTARY ALLIANCE AGAINST ATROCITY CRIMES

24 November 2022 Session Summary



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More than nine months into Russia’s invasion of Ukraine, Russian troops are intensifying attacks on Ukrainians cities, targeting civilians and civilian infrastructure, including apartment buildings, hospitals, water, and electricity supplies. The European Union, the United States, and Canada continue to provide support to Ukraine, but Russia’s war of aggression has revealed important gaps in prevention and justice mechanisms.

The fourth and final meeting of the Global Parliamentary Alliance Against Atrocity Crimes (GPAAAC) explored how parliamentarians and governments can better respond to war crimes and mass atrocity crimes in Ukraine. More specifically, participants exchanged ideas about universal jurisdiction and ad hoc tribunals, failed responses to the refugee flows, and the effectiveness of sanctions. The speakers included : Irwin Cotler (International Chair of the Raoul Wallenberg Centre for Human Rights and former Minister of Justice and Attorney General of Canada), Eerik Kross (Member of the Parliament of Estonia), Azeem Ibrahim (Director, Special Initiatives, Newlines Institute), Philipp Dürr (Research Assistant, Institute for Constitutional Law University of Bonn), Eleonora Mongelli (Vice President, Italian Federation for Human Rights), Charles Tiné (Founder, The Small Projects Fund) and Christian Castagna (Parliamentary Collaborator to French Senator Jean-Yves Leconte).

International justice: advancement and shortcomings

Azeem Ibrahim, the Director of Special Initiatives at Newlines Institute, summarized the conclusions of a report titled [“An Independent Legal Analysis of the Russian Federation’s Breaches of the Genocide Convention in Ukraine and the Duty to Prevent”](#). Drafted by the Newlines Institute and the Raoul Wallenberg Center for Human Rights, the report concludes that the minimum threshold of serious risk of genocide has been reached. The international community is seeing more evidence of a genocidal war, considering a general pattern is emerging in the attacks and human rights violations committed by the Russian army, including the large-scale transfer of Ukrainian children to Russia and the destruction of cities. The language used by Russian officials and state-affiliated media is also revealing; it includes the denial of a Ukrainian identity, “accusations in a mirror”, the large-scale transfer of Ukrainian children to Russia, and the destruction of cities. Azeem Ibrahim said that Russia is using the same playbook it used in Syria: bombing and destroying civilian infrastructure to make the lives of civilians as miserable as possible to make them surrender.



Former Canadian Justice Minister Irwin Cotler presented several ongoing international legal and non-legal initiatives that could secure justice for victims and accountability for human rights violators:

- 1) Efforts to establish an international tribunal for the crime of aggression, described by Mr. Cotler as “the mother of all crimes.” He has joined forces with Hans Correll, Legal Advisor to the United Nations, and David Crane, the Chief Prosecutor of the Special Court for Sierra Leone, to achieve this goal.
- 2) Supporting Ukraine’s efforts at the International Court of Justice, especially Ukraine’s efforts to demonstrate that Russia committing the crimes that it is accusing Ukraine of perpetrating.
- 3) Efforts to establish an International Claims Commission with respect to the recovery and reconstruction of Ukraine.
- 4) Work with Ukraine and other jurisdictions in exercising the principle of universal jurisdiction in the prosecution of mass atrocities.
- 5) Russia needs to be held accountable for its breaches of the Genocide Convention.

Russia’s war of aggression has revealed important gaps in national and international justice mechanisms. Christian Castagna, the parliamentary collaborator to French Senator Jean-Yves Leconte, explained that French legislation restricts the mechanism of universal jurisdiction to prosecute the perpetrators of international crimes. For example, war crimes and crimes against humanity must be subject to “dual criminality”, meaning that it must be recognized by the country of which the alleged perpetrator is a national, to be prosecuted by the French justice. As a result, Ukrainian refugees in France can’t currently open cases for crimes committed in Ukraine. Castagna is actively working with his colleagues to change this and to strengthen bilateral cooperation between the French and the Ukrainian justice systems.

International Justice: The view of the Global South

One audience member asked about the point of view of the Global South regarding the establishment of a special tribunal for Ukraine. The question was subject to some diverging opinions.

Irwin Cotler said the tribunal would be formed and created by the international community, not the North or South, and that the participation of the Global South would be welcome in its formation, establishment, and participation. He cited the Special Tribunal for Sierra Leone as an example of the effectiveness of such mechanisms.

Philipp Dürr, Research Assistant, Institute for Constitutional Law University of Bonn, mentioned several countries have expressed criticism about international justice mechanisms in the past, particularly about the International Criminal Court, which some countries view as neo-colonial.



Mark Kersten, Assistant Professor in Criminology and Criminal Justice at University of the Fraser Valley had just returned from South Africa where he discussed the matter with Sudanese and Darfuri lawyers. There is certainly an issue, Kersten explained, particularly regarding the unequal playing field of international relations and international criminal law. In the case of Ukraine, there are discussions about national investigations, the International Criminal Court, commissions of inquiry, universal jurisdiction, and specialized tribunal, and there is money and institutional capacity being thrown at Ukraine. Meanwhile, it is hard to get attention about what is happening in Burundi or the Central African Republic. It is therefore worthwhile to ask whether this special tribunal is simply one that wouldn't resonate in the Global South, Kersten argued.

The Role of Parliamentarians

Eerik Kross, Member of the Parliament of Estonia, gave a comprehensive description of the roles that parliamentarians can take to influence foreign policy towards Ukraine. On the eve of the invasion, the Estonian Parliament passed a resolution declaring Russia's actions a crime of aggression. Since then, MPs from Estonia and other Baltic states have pushed European countries and the European Union to use the right language to describe Russia's crimes.

Kross lamented the fact that it took time for governments, as well regional and international institutions to qualify Russia's war in Ukraine for what it is: a crime of aggression. Only a few parliaments have declared that Russia is committing the crime of genocide and it is therefore crucial for parliaments to assess whether the crimes committed by Russia are systematic and therefore amount to genocide. Kross commended the EU Parliament for passing a resolution declaring Russia a state sponsor of terrorism.

Kross stated that Parliamentarians have an important role to play in foreign policy decisions. First, they can legislate. They can make sure that the crime of aggression is codified as a crime or address gaps in national law with regards to the crime of genocide.

Second, declarations made by MPs in national parliaments are not useless. Since there is widespread support for Ukraine among national populations, parliamentarians have a duty to speak up and put pressure on their respective governments: "In terms of public opinion, every parliamentarian knows that it's important at the end of the day. We can only support Ukraine as long as our people find it necessary and support it."

Philip Dürr said that the impact that parliamentarians can have on foreign policy varies greatly from country to country. In Germany, questions of foreign and security policy are mainly tasks of the Executive. This includes demands for weapons, logistical and medical support, refugee support, and the setting of an



ad-hoc tribunal for the crime of aggression. While the German parliament can influence decision indirectly, the German Chancellor sets the direction.

Where German parliamentarians can play a role is in legislating and in sharing their experience in national criminal law in prosecuting war crimes. Germany has unique experience in this area: in the name of this universal competence, a German court condemned a Syrian colonel for crimes committed in Syria. Having learned from this experience, the German State Attorney is already collecting evidence for criminal proceedings against Russian perpetrators of war crimes, crimes against humanity and genocide.

Eleonora Mongelli, Vice President of the Italian Federation for Human Rights, believes that parliamentarians should have a bigger role is garnering more support for Ukraine. First, she argued that plenty of MPs publicly support Ukraine but when it comes to action, only few of them have the political will to actually support the victims. Second, MPs can play a role in preventing Russia's propaganda from penetrating public debate. The Kremlin's goal is to affect our solidarity towards Ukraine, and Mongelli stated that MPs can play a role in keeping accountability for war crimes at on the top of the political agenda.

Finally, one audience member states that groups such as the Global Parliamentary Alliance Against Atrocity Crimes can guarantee more collaboration between legislators across borders. Such mechanisms should be institutionalized, he argued, in order to better respond to crises such as the war in Ukraine.

Sanctions work

Unprecedented sanctions have been imposed against Russia for invading Ukraine, including the freezing of assets. More than 1000 foreign companies have also left Russia. Eleonora Mongelli explained why these comprehensive and coordinated actions play a crucial role in limiting Russia's capacity to continue the war in Ukraine, and how Magnitsky-style targeted sanctions punish individuals responsible for the war. Sanctions can be an effective tool in enforcing global justice, but their effectiveness depends on how they are used, Mongelli argued. Further effort is needed in certain areas, such as the use of sanctions to put an end to Russia's information war against Ukraine. It's important for the tech industry and government to target propaganda operations and to consider how sanction regimes can include specific categories of information technologies.

Who will pay for reparations?

As Russia continues to suffer many losses in Ukraine, there was considerable discussion among the speakers on reparations to Ukraine: who is going to pay to rebuild Ukraine? Estimates indicate that, at the very minimum, the damage to Ukraine is about \$300 billion and one can expect this to rise to at least



500 billion to possibly a trillion dollars. How will money for Ukraine’s reconstruction be raised? The speakers agreed that the current political environment is not ripe to convincing European and North American taxpayers to pay for Ukraine’s reconstructions

There is a need for a novel and unique model. Azeem Ibrahim proposed the establishment of a multilateral action model on reparations that would use seized Russian assets to pay for reparations and rebuilding Ukraine. This idea was popular among speakers and participants. Azeem Ibrahim and Eleonora Mongelli are currently exploring the legal feasibility of this idea and are already engaging with European governments, the European Parliament, the British Parliament, and Canadians senators and Members of Parliament. As Eleonora Mongelli explained, the situation is unprecedented, but the European Union is working hard in order to understand how Russian assets can be used.

An urgent need for a better response to crises

Charles Tiné, the Founder of the Small Projects Fund and Board Member Team4UA, was adamant about raising attention to major shortcomings in the reception of refugees and warned that we are on the eve of a second exodus of Ukrainian refugees due to continued attacks against civilian infrastructure. Important mistakes were made in February and March 2022. Tiné was in Poland at the border with Ukraine during the first months of the war and was taken aback by the lack of presence of legacy organizations. With the Red Cross and the UNHCR absent, individuals and local civil society groups and organizations set up their own system to welcome, host and dispatch Ukrainian refugees to European countries. This led to security failures, including risks of human trafficking. When the legacy NGOs finally arrived, there was insufficient staff and the refugee welcome center sat empty. Finally, Tiné argued that European countries are unprepared to face another flow of refugees, mostly due to lack of shelter and housing.