HRC51: Commission of Inquiry determine that war crimes have been committed in Ukraine

The 51st Session of the Human Rights Council

12 September – 7 October 2022

Agenda Item 4 – Human rights situations that require the Council's attention

ID with the Commission of Inquiry on Ukraine (oral update)

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Executive Summary

On the 23rd of September 2022, the 20th and 21st meeting of the 51st Regular Session of the Human Rights Council (HRC) provided an oral update from the UN Independent International Commission of Inquiry on Ukraine (COI) on its progress in investigating human rights abuses stemming from Russian aggression against Ukraine. In May 2022, the HRC passed resolution S-34/1 which requested the COI to address events that took place between February and March in the Ukrainian cities of Kyiv, Chernihiv, Kharkiv and Sumy as a result of Russian hostility. Mr Erik Møse, Chair of the COI, discussed the Commission's findings in areas such as the conduct of hostilities and the use of indiscriminate attacks, as well as violations against personal integrity including sexual and gender-based violence. Based on the evidence gathered by the COI, Mr Møse ultimately concluded that war crimes have been committed in Ukraine.

The Commission confirmed that it will continue to investigate violations of International Human Rights Law (IHRL) and International Humanitarian Law (IHL) in the four cities mentioned in resolution S-34/1 and will gradually devote more resources to its mandate issued in resolution 49/1 which is both thematically and geographically broader.

Geneva International Centre for Justice (GICJ) commends the efforts of the COI and reiterates its desire to ensure that its work is sufficiently funded and resourced. Although the Commission has been effective in uncovering gross violations of IHRL and IHL committed by Russian forces in Ukraine, it is imperative that its members are granted access to occupied regions of the country in order to adequately assess the widespread damage caused by the conflict.

Background

On the 3rd and 4th of March 2022, the HRC held an urgent debate on 'the situation of human rights in Ukraine stemming from Russian aggression'. As a result of this meeting, member states adopted resolution 49/1 on the 'Situation of human rights in Ukraine stemming from the Russian aggression', which condemned the abuses and violations of IHRL and IHL resulting from the Russian Federation's actions against Ukraine. The adoption of the resolution included the establishment of a COI, consisting of three human rights experts, to be appointed by the President of the HRC for an initial period of one year. The members of the Commission include Erik Møse (Chairperson) Jasminka Džumhur and Pablo de Greiff. The resolution mandates the COI to identify perpetrators and collect and analyse

evidence of violations with a view to securing legal accountability. The resolution was adopted by a vote of 32 in favour, 2 against and 13 abstentions.

During its 34th special session on the 12th of March 2022, the HRC adopted resolution S-34/1 on the 'deteriorating human rights situation in Ukraine stemming from the Russian aggression' which required the COI to investigate events in the areas of Kyiv, Chernihiv, Kharkiv and Sumy between late February and March 2022. The mandate provided by this resolution requested that the COI brief the HRC on the progress of its inquiry as part of an oral update at the Council's 51st session.

Oral Update of the Commission of Inquiry on Ukraine

Geneva, 23rd September 2022. Mr Møse stressed that, seven months since the outbreak of hostilities, he and the COI continue to be concerned by the prolonged suffering the armed conflict has imposed on civilians within Ukraine. He noted that figures published by the High Commissioner for Human Rights and the High Commissioner for Refugees concerning deaths and injuries highlights the toll the conflict has taken on lives across the country. Moreover, the recent discovery of mass graves in Izium reinforces the gravity of the current situation in Ukraine. Mr Møse reminded the Council that the COI has focussed on events in Kyiv, Chernihiv, Kharkiv and Sumy in light of their gravity, their significance in demonstrating patterns of alleged violations, and the possibility of gaining access to witnesses, victims and supporting documentation. He added that the Commission has sought to coordinate its efforts with multiple entities already carrying out investigations in order to avoid duplication and re-traumatising victims. In order to achieve this, the COI has ensured that the security of victims is central to the work they conduct which has been facilitated by a strict adherence to do no harm and confidentiality principles.



Mr Møse thanked the Ukrainian government for its cooperation with the Commission's investigation and appealed to the Russian Federation to grant it access to occupied regions of Ukraine. Although he noted that attempts to engage in a constructive dialogue with Russia have proved unsuccessful, he claimed that the COI would persist in its efforts. In its investigation the COI visited 27 towns and settlements and interviewed more than 150 victims and witnesses. Furthermore, sites of destruction, graves, places of detention and torture, weapon remnants, and a large number of documents and reports were inspected by the Commission. Based on the evidence gathered by the COI it has concluded that war crimes have been committed in Ukraine. Mr Møse proceeded to list the various ways this assessment was justified.

With regards to the conduct of hostilities, the Commission found that the use of explosive weapons with wide area effects in populated areas is a source of immense harm and suffering for civilians. Members of the COI observed first-hand the destruction such weapons have caused to residential buildings and civilian infrastructure including schools and hospitals. The Office of the High Commissioner for Human Rights (OHCHR) has confirmed

that most conflict-related deaths have been caused by the use of these weapons, while Mr Møse highlighted that they have been used to devastate the entire area of Kharkiv city. In the view of the COI, their repeated use provides an explanation for why a third of the Ukrainian population have been forced to flee the country. The Commission also acknowledged that a large number of attacks have been carried out without distinguishing between combatants and civilians in direct violation of IHL. This includes attacks with cluster munitions and airstrikes in populated areas.

Mr Møse drew the Council's attention to violations against personal integrity committed in the areas concerned. The Commission expressed shock at the high number of executions carried out in these areas and is currently investigating such deaths in 16 towns and settlements, as well as having received credible allegations of many more cases of executions which are being documented. Additionally, witnesses provided consistent accounts of ill treatment and torture which had been carried out during unlawful confinement. Many victims were reportedly transferred to the Russian Federation for weeks and held in prisons after their initial detentions in Ukraine at the hands of Russian forces. Victims claimed to have endured beatings, electric shocks and forced nudity while in confinement while many have disappeared after being transferred. The COI acknowledged that 2 incidents of ill treatment against Russian soldiers by Ukrainian forces had taken place. Although few in number, such cases continue to be the subject of the Commission's attention. Regarding cases related to sexual and gender-based violence, Mr Møse noted that investigating such crimes presented specific challenges as these acts often constitute violations of different rights including sexual violence, torture, and cruel and inhuman treatment. However, he contended that Russian soldiers had carried out such crimes on numerous victims ranging from 4 to 82 years of age. Moreover, he emphasised that children have been killed and injured in indiscriminate attacks with explosive weapons while others have been forced to endure torture and unlawful confinement. He added that repeated exposure to explosions, crime, forced displacement, and separation from family members will have a deep impact on the mental and physical well-being of children.

The COI will continue its inquiry into the four regions mentioned in resolution S-34/1 and will gradually devote more resources to the mandate of resolution 49/1 which includes issues related to the use of filtration camps and the alleged forced transfer of people. Depending on the availability of resources the COI will also seek to investigate other types of violations including the destruction of civilian infrastructure and economic resources, violations of the right to food, and the legality of changes in local administrations. Mr Møse added that in addition to making future recommendations of criminal accountability, the Commission will propose suggestions about other dimensions of accountability which victims can avail of.

Speaker of the Country Concerned

The Ukrainian representative thanked the COI for its oral update which he noted was an important means for providing accountability for Russia's crimes against Ukraine. He emphasised that when the Russian government launched its unprovoked full-scale invasion of Ukraine in February, it became evident that it would not shy away from using the cruellest tactics possible which would have a devastating toll on millions of civilian lives. Ukraine has launched a comprehensive effort, alongside all relevant national and



international mechanisms, to guarantee that those who perpetrate human rights abuses are held accountable for their actions. The COI is a crucial element in this undertaking and Ukraine is relying on it to ensure impunity does not become an enduring feature of the conflict. In the view of the delegate, mass killings carried out against Ukrainians have shaken the world's consciousness and provide a strong pretext for the COI to examine such crimes within their mandate. Ukraine reminded the Council that his country is relying on the COI and all of the UN's human rights mechanisms to ensure that the world does not forget the atrocities perpetrated by Russia and its military, for example, in Mariupol and Odessa. In line with this, he remained optimistic that accountability would be provided for the murder of almost 400 Ukrainian children caused by Russian artillery.

The representative highlighted that the people of Ukraine are not solely affected by the conflict as Russia's actions have placed numerous countries on the verge of famine, exacerbated extreme poverty, created the threat of nuclear catastrophe, and undermined the prospects and livelihoods of millions across the globe. In order to thoroughly investigate Russia's actions in Ukraine, the delegate believes it is necessary to address the gaps in the architecture of the international criminal justice system and establish a special tribunal which would have specific jurisdiction over the crime of aggression against Ukraine. This tribunal would be responsible for investigating and prosecuting senior political and military leadership of the Russian Federation for committing these crimes. Ukraine appealed to the Council to provide support for this measure and reaffirmed that, alongside international organisations and relevant institutions, his country will use every tool available to seek justice for every victim of Russia's aggression and will work tirelessly to pursue accountability for victims.

Interactive Dialogue

Finland on behalf of the Nordic-Baltic countries stated that the reported international law violations discussed in the COI's update escaped any reasoning and called for the need to hold Russia accountable for its actions. He noted that deliberate attacks on schools, the use of forced deportation, and acts of rape are not only a source of deep concern but may amount to war crimes and crimes against humanity. The delegate expressed shock at the discovery of mass graves in Izium and condemned the use of civilian filtration camps and unlawful trials of Ukrainian prisoners of war. Finland affirmed its support for the Commission's crucial contribution to ensuring accountability for violations of IHRL and IHL and called on Russia to immediately end its aggression in Ukraine. The representative voiced deep concern regarding the disproportionate impact the conflict is having on children, women, the elderly and persons with disabilities. He implored Russia to grant humanitarian actors full and unfettered access to occupied regions of Ukraine and allow safe passage for civilians who wish to leave.





The European Union commended the COI for its work and acknowledged that increasing evidence of IHRL and IHL violations in Ukraine, including indiscriminate attacks and attacks intentionally directed at civilians and civilian objects, may amount to war crimes.

The delegation stressed the importance of collecting, consolidating and analysing evidence of all violations and abuses of human rights and related crimes committed in the context of Russia's aggression against Ukraine and supported all measures to ensure accountability. The representative also underscored that all international and regional accountability and monitoring mechanisms should be granted full, secure and unrestricted access to the entire territory of Ukraine, including to all war-related detainees.

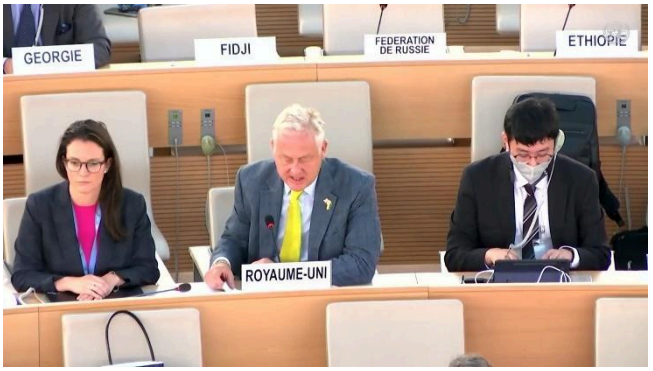
The representative of Belarus claimed that events in Ukraine stemmed from the *"irresponsible western policy"* pursued by the European security system which failed to take into account the legitimate security interests of all countries. The delegate lamented the lack of attention paid to Russian speakers in the Donbas region and underlined that since 2014 the OHCHR has failed to offer effective protection for civilians in this area. She added that *"biased discussions"* in the HRC focussed on accusing Russia of committing crimes are a dead end and that the international community should concentrate on preventing additional tragedies in Ukraine through a peaceful settlement. Belarus stated that its leadership has done everything in its power to launch peace negotiations to end hostilities and called for the conflict not to be further provoked.



In the view of **the delegation of the United States,** the COI's briefing shone a light on Russia's blatant and numerous human rights violations and abuses in its unprovoked war against Ukraine. The representative affirmed her support for President Biden's claim that Russia's actions are about destroying Ukraine's right to exist as an independent nation. The United States urged the Commission to examine evidence of Russia's use of filtration camps, forced deportation and disappearances. The delegate called on the Russian government to end the forceful deportation of Ukrainian civilians, which she claimed is currently estimated to number between 900,000 to 1.6 million. The United States concluded by reiterating its dedication to ensuring Ukraine can defend itself against Russian aggression and expressed a desire to guarantee accountability for Russia's crimes.



The representative of the UK emphasised that no state can alter the international borders of a sovereign nation through armed force no matter how many referendums are imposed on the general public. He added that since April, the UK has followed reports of heinous crimes that Russia has sought to cover up with horror. The delegate noted that it is sobering to hear the COI's account of the scope and scale of such atrocities and the



lasting impact on the lives of hundreds of thousands of innocent civilians including children. He underlined that the Commission's findings support the claims that serious violations of human rights and IHL including war crimes have been committed within Ukraine and appealed to the HRC and the wider international community to ensure that those responsible are held to account. He concluded by claiming that as we celebrate the liberation of parts of Ukraine, we can't help but fear what further atrocities will be uncovered.

Statements from Non-Governmental Organisations and Civil Society Organisations

Numerous NGOs highlighted the global repercussions presented by the conflict in Ukraine, particularly in developing countries which have been pushed to the brink of famine following global food shortages. Despite this, these organisations maintained that the democratic world must demonstrate that its principles have strength and that it values the promotion and protection of human rights. Many groups commended the work of the COI and urged its members to carry out a full analysis of the gendered impacts of the conflict within the scope of its mandate. Concern was expressed regarding the rise of enforced disappearances which have been used as a form of intimidation and a tool to suppress resistance among the Ukrainian population. One particular NGO claimed that 311 cases of enforced disappearances had taken place in the newly occupied territories of Ukraine which included journalists, local officials, volunteers, teachers, activists, religious figures who did not agree with the occupation, as well as members of their families. However, the actual numbers are likely to be much higher. Moreover, many groups stressed that children are increasingly falling victim to the practice of enforced disappearances with many being separated from their families and transported to the Russian Federation. Organisations called for a prompt investigation into the killings of prisoners of war and all violations related to their mistreatment including arbitrary detention, torture and lack of due process. Countless NGOs concluded by imploring Russia to end its aggression in Ukraine and appealed to the international community to ensure that those who are responsible for violating IHRL and IHL be held accountable for their actions.

Concluding Remarks

Many states discussed issues around the cooperation and coordination of actors on the ground which the Commission sought to address. Mr Møse noted that the variety of actors on the ground presents difficult and complex issues as many have different terms of reference and are seeking to achieve different aims. Despite this, the Commission has established regular contact with those bodies who are relevant to its work and its mandate. The COI currently has contact with the ICC and is cooperating and exchanging information with the permanent mission of Ukraine to build upon the work of this body.

The Commission confirmed that it has identified a number of possible methods of seeking accountability at the national, regional and international level but is currently not in a position to conclude what approach should be taken. This will be discussed in the Commission's next report due in March. With regards to investigating and documenting alleged crimes, the COI stressed that it is vital that all actors use their resources efficiently and ensure effective coordination with other groups. Mr Møse acknowledged that forensic investigations need to be strengthened through greater expertise as this is an incredibly complicated process. Moreover, he conceded that the Commission has faced challenges in conducting its work as they have been unable to access certain parts of Ukraine.

Position of Geneva International Centre for Justice

Geneva International Centre for Justice (GICJ) reaffirms its support for the work of the COI and welcomes its efforts to shine a light on the serious violations and abuses of IHRL and IHL that have been committed in Ukraine. It is imperative that the HRC and the wider international community maintains its support for Ukraine's territorial sovereignty and continues to apply pressure on the Russian government to cease its aggression in the region. GICJ once again condemns Russia's actions in Ukraine and urges all parties to the conflict to abide by its obligations under IHL and IHRL.

It is vital that Russian forces grant the COI unfettered and unhindered access to occupied parts of Ukraine to allow it to accurately document the living conditions of civilians on the ground as well as the treatment of POWs within detention facilities. Moreover, it is essential that the international community, and all investigative teams involved in documenting human rights violations perpetrated in Ukraine, coordinate efforts to hold all actors accountable for any crimes they may have committed.

Although the Commission has provided a detailed account of the situation on the ground, GICJ eagerly awaits its March report which will delve even deeper into conflict-related crimes committed during hostilities including the use of filtration camps as well as the alleged forced transfer of people. It is hoped that this report will offer a more thorough examination of accountability mechanisms the international community can pursue to hold perpetrators of human rights abuses accountable for their crimes.

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