

U.S. Helsinki Commission Hearing of 04.05.2022

CONTRIBUTION BY PROFESSOR WOLFGANG BENEDEK ON **REPORT OF MISSION OF EXPERTS UNDER THE MOSCOW MECHANISM ON VIOLATIONS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW, WAR CRIMES AND CRIMES AGAINST HUMANITY COMMITTED IN UKRAINE SINCE 24 FEBRUARY 2022**

Mr. Chairman,

In response to the invasion by Russia, on the 3rd of March Ukraine, supported by 45 participating States resorted to the Moscow Mechanism of the human dimension of the OSCE inviting a Mission of Experts to address a very comprehensive mandate, as in particular,

to establish the facts and circumstances surrounding possible contraventions of OSCE commitments, and violations and abuses of international humanitarian law and international human rights law and of possible cases of war crimes and crimes against humanity;

as well as to collect, consolidate, and analyze this information with a view to presenting it to relevant accountability mechanisms, international courts or tribunals.

Our mission of experts consisted of Prof. Veronika Bílková from Charles University of Prague, Czech Republic, Prof. Marco Sassòli from University of Geneva, Switzerland and myself, Wolfgang Benedek, from the University of Graz, Austria, who was elected as the chair of the Mission by my colleagues.

According to the rules of the Moscow Mechanism the report was to be completed within three weeks, a challenge which we managed to meet making it the first report of an international mission of inquiry on the matter.

WITH REGARD TO OUR METHODOLOGY, we could only cover the first five weeks of the war while new developments were still unfolding as in particular the discovery of large numbers of civilians killed during the Russian occupation of villages in the proximity of Kyiv which points to a major war crime and a crime against humanity committed by the Russian forces which requires a serious international enquiry with forensic experts.

In spite of the ongoing hostilities in March which prevented us to go to Ukraine and other limitations, the Mission has been able to get access to a variety of **sources** allowing to gain a good oversight of the situation in general and of particular issues under review. This was due to a large number of contacts within international organizations like the United Nations Human Rights Monitoring Mission in Ukraine and information from specialized non-governmental organizations like the Platform for the Investigation of War Crimes in Ukraine consisting of more than 20 Ukrainian NGOs as well as international investigative NGOs like Bellingcat, specialized on digital open source investigations, but also special university research undertaken for example by the Humanitarian Research Lab of the Yale School of Health.

With regard to **ensuring accountability for IHL and HR violations, war crimes and crimes against humanity** the report highlights the relevant principles and obligations enshrined in accountability mechanisms at different levels including the pertinent courts, some of which are already at work. The main responsibility is with Ukraine but the task to prevent impunity and provide justice is enormous and requires international cooperation.

While the findings of this report are – at least in part – necessarily preliminary, they can inform other bodies’ more in-depth investigations into legal and also political accountability like the UN Independent International Commission of Inquiry on Ukraine. In the case of my report as OSCE Moscow Mechanism rapporteur on Belarus of 2020, based on my suggestions an “International Accountability Platform for Belarus” has been created to help documenting the violations in a quality that can be used in courts and in reaction to the crimes committed in Ukraine a Global Accountability Platform following Russia’s aggression against Ukraine has been launched which could make a similar contribution. However, the several ongoing initiatives on the collection and preservation of evidence on the global, regional and national levels by both public and private actors could benefit from **better coordination**.

While our report was able to contribute to a first collection and analysis of facts, more detailed investigations are necessary, in particular to establish individual criminal responsibility for war crimes. This is a task for the prosecutors and courts which can benefit from the collections of evidence by professional organizations and from the assessment of patterns and specific incidents by Missions of inquiry like our own.