

23 December 2024

**OPINION OF THE COMMITTEE OF LEGAL ADVISERS ON
PUBLIC INTERNATIONAL LAW (CAHDI)
ON RECOMMENDATION 2285 (2024) OF THE PARLIAMENTARY ASSEMBLY OF THE
COUNCIL OF EUROPE ON "MISSING PERSONS, PRISONERS OF WAR AND
CIVILIANS IN CAPTIVITY AS A RESULT OF THE WAR OF AGGRESSION OF THE
RUSSIAN FEDERATION AGAINST UKRAINE"**

1. On 23 October 2024, the Ministers' Deputies, at their 1510th meeting, agreed to communicate Recommendation 2285 (2024) of the Parliamentary Assembly of the Council of Europe (PACE) on "[*Missing persons, prisoners of war and civilians in captivity as a result of the war of aggression of the Russian Federation against Ukraine*](#)" to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments.
2. The CAHDI examined the abovementioned Recommendation via written procedure and made the following comments which concern aspects of the Recommendation which are of particular relevance to the Terms of Reference of the CAHDI.
3. The CAHDI recalls the applicability of both international humanitarian law and international criminal law to the taking of prisoners of war and civilian captives during international armed conflict.¹ All parties to an armed conflict must respect and ensure respect for international humanitarian law. With regard to international armed conflicts, the Third and Fourth Geneva Conventions of 1949 as well as Additional Protocol I of 1977 provide a range of protections for prisoners of war and civilians respectively. Grave breaches, as defined in these Conventions,² and other serious violations of international humanitarian law constitute war crimes. The Rome Statute of 1998 of the International Criminal Court (ICC) sets out the crimes falling within the jurisdiction of the ICC, including a range of war crimes relevant regarding the abovementioned Recommendation.³ With regard to missing persons, the CAHDI recalls that international humanitarian law contains extensive requirements with the aim to prevent disappearances (e.g. registration, visits and transmission of information with respect to persons deprived of their liberty) and notes that enforced disappearance violates a range of rules and principles of international human rights⁴ and humanitarian law. Enforced disappearance constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack pursuant to Article 7(1)(i) of the Rome Statute.
4. The trend of increasing torture and killings of Ukrainian prisoners of war and civilians is becoming alarming. The CAHDI emphasises the need to investigate each fact of these incidents which may amount to war crimes in accordance with the recommendations of the 1999 Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and to take decisive measures to expedite the prosecution of suspects.

¹ The CAHDI recalls that not all States participating in its work are Party to the Rome Statute of the International Criminal Court or to the Additional Protocols to the Geneva Conventions.

² Article 130 of the Third Geneva Convention and Article 147 of the Fourth Geneva Convention. Article 85 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

³ Article 8(2)(a) and (b) of the Rome Statute.

⁴ See, International Convention for the Protection of All Persons from Enforced Disappearance, which not all States participating in CAHDI's work are Party to.

5. The arbitrary deprivation of liberty of civilians is a matter of fundamental concern to international law. The CAHDI notes that the arbitrary deprivation of liberty of civilians during armed conflict is prohibited under customary international humanitarian law and that civilian internees in a situation of international armed conflict are afforded specific guarantees by the Fourth Geneva Convention. Moreover, persons in the power of a party are afforded specific protections under Article 75 of the 1977 Protocol I Additional to the Geneva Conventions. The prohibition of arbitrary deprivation of liberty is further safeguarded by Article 5 of the European Convention on Human Rights (ETS No. 5), Article 9 of the 1966 International Covenant on Civil and Political Rights, and Article 3 of the 1948 Universal Declaration of Human Rights.

6. The numerous facts of mass deportations of Ukrainian children require special attention. The CAHDI emphasises the need to implement the warrants of the ICC by the State Parties to the Rome Statute for the arrest of all individuals suspected of the illegal forcible transfer and unlawful deportation of Ukrainian children from the occupied territories of Ukraine to the Russian Federation.

7. Regarding paragraph 4 of Recommendation 2285, the CAHDI recalls that States may adopt measures against foreign legal or natural persons responsible for the unlawful deprivation of liberty of Ukrainian civilians, including State officials, insofar as the measures taken are consistent with international law.

8. As it was stated by the CAHDI in its [opinion](#) on Recommendation 2197 (2021) of the Parliamentary Assembly on the “*Protection of Victims of Arbitrary Displacement*” of 17 May 2021 “States have the right to vest universal jurisdiction in their national courts over war crimes and crimes against humanity [...]. An increasing number of member States of the Council of Europe have made use of this opportunity.”⁵

9. Nevertheless, the primary responsibility for prosecuting war crimes and crimes against humanity lies with the State or States with direct jurisdictional links with these crimes, notably those with territorial or personal jurisdiction.⁶ The CAHDI further recalls that States “must make every effort to cooperate, to the extent possible, with each other in order to facilitate the investigation of war crimes and the prosecution of the suspects”.⁷

10. Further, the CAHDI notes that the ICC has jurisdiction with respect to the situation in Ukraine subject to admissibility in light of the principle of complementarity, including jurisdiction over the war crime of unlawful deportation, transfer or confinement pursuant to Article 8(2)(a)(vii) of the Rome Statute and the crime against humanity of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law pursuant to Article 7(1)(e).

11. The CAHDI remains ready and willing to assist the Committee of Ministers in relation to any further questions concerning the above matters.

⁵ Para. 13.

⁶ S. Macedo et al., *Princeton Principles on Universal Jurisdiction*, Introduction, p. 24. In 2018, at its 70th Session, the International Law Commission decided to include the topic of universal criminal jurisdiction in its long-term programme of work. See, also, the work of the Sixth Committee of the United Nations General Assembly on [“The scope and application of the principle of universal jurisdiction”](#).

⁷ CAHDI Opinion on Recommendation 2197 (2021) of the Parliamentary Assembly of the Council of Europe on the “*Protection of Victims of Arbitrary Displacement*” of 17 May 2021, para. 19.