



Brussels, 04/03/2022

Ms. President of the Commission Ursula Von Der Leyen
per e-mail Ursula.VON-DER-LEYEN@ec.europa.eu

Mr. Vice President of the Commission/High Representative Josep Borrell
per [e-mailJosep.BORRELL-FONTELLES@ec.europa.eu](mailto:Josep.BORRELL-FONTELLES@ec.europa.eu)

Subject: Appeal of MEPs in support of the ICC Prosecutor to proceed with opening an investigation into the Situation in Ukraine and to the States Parties to the Rome Statute of the ICC – including all EU Member States – to provide effective support to the ICC and align the jurisdiction on the crime of aggression to the other international crimes

Dear President,

Dear Vice-President/High Representative,

With evidence mounting of Russia's use of indiscriminate cluster munitions and potential use of thermobaric weapons on Ukrainian cities, and the levelling of residential buildings in Kharkiv in particular, we, undersigned Members of the European Parliament, express our profound concern at the unfolding of an increasingly violent and dramatic situation in Ukraine characterized by the perpetration of war crimes or crimes against humanity.

As reaffirmed by the United Nations' General Assembly "Uniting for Peace" resolution adopted on 2 March 2022, which "[d]eplores in the strongest terms *the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter*", this tragic situation has been brought about by a war of aggression that has been the consequence of the planning, ordering and waging of a crime of aggression, in the meaning of Article 8bis of the Rome Statute of the ICC.

The newly appointed Prosecutor of the International Criminal Court (ICC) in The Hague, Mr Karim A. A. Khan, has announced that he will launch an investigation into possible war crimes or crimes against humanity in Ukraine. The Prosecutor also noted that the Court's jurisdiction – as of today – may not extend to the crime of aggression.

Even though neither Russia nor Ukraine are States Parties to the Rome Statute, after the events of Maidan in November 2013, which had led to a violent repression of street demonstrations by the government of President Janukovyč and 22 February 2014, Ukraine, sent on 9 April 2014 to the Registrar of the ICC, pursuant to Art. 12(3) of the Statute (and following the relevant decision of the Ukrainian Parliament), a Declaration of ad hoc acceptance of the ICC's jurisdiction over criminal acts committed on its territory from "21 November 2013 to 22 February 2014", which was later extended to an indefinite period of time, with a further ad hoc Declaration, which was sent to the Registrar of the Court on 8 September 2015.

In the Resolution of the European Parliament of Tuesday 1 March 2022, we underlined that “the EU and its Member States will ensure that the perpetrators of war crimes and human rights violations, including those who assisted such crimes by way of propaganda, will be held accountable” and therefore we called on the EU and its Member States to “work with international bodies to collect evidence and to support and promote the International Criminal Court's jurisdiction and investigation of any war crime committed within the territory of Ukraine since 20 February 2014 onwards.

On the following day, all the 27 EU Member States – jointly with other 12 States Parties to the Rome Statute (Albania, Australia, Canada, Colombia, Costa Rica, Georgia, Iceland, New Zealand, Liechtenstein, Norway, Switzerland and UK) referred the situation in Ukraine to the jurisdiction, hence demonstrating once again that the fight against impunity for international crimes is instrumental to the affirmation of the primacy of the Rule of Law and to the restoration of International Peace and Security.

27 EU Member States, the above mentioned 12 States and other 102 States – for a total of 141 States – voted on 2 March 2022 to adopt a UN General Assembly “Uniting for Peace” resolution, which replaces the Chapter VII resolution, vetoed by Russia, that should have ascertained the aggression against Ukraine in accordance with Article 39 of the UN Charter. Similarly, in light of a jurisdictional provision in the Amendments to the Rome Statute of 2010

requiring the consent of the State of nationality of the aggressor for the exercise of the Court's jurisdiction on aggression (in the absence of a UN Security Council referral), the ICC has been blocked on the crime of aggression by the non-ratification by Russia of the amended Rome Statute. In line with the letter and spirit of the European Parliament Resolution on the crime of aggression of 17 July 2014, which calls for a revised common position of the EU for the activation and universalization of the ICC jurisdiction over aggression, it is unacceptable that the crime of aggression against Ukraine, within which all the other international crimes are being perpetrated, would remain unpunished.

In its Annual Human Rights and Democracy in the world Report, the EU reputedly **confirmed its full support to the global fight to end impunity** and its continued commitment to ensure that perpetrators of the most serious crimes under international law are held accountable for their actions. The efforts to achieve justice for victims of genocide, war crimes, crimes against humanity and the crime of aggression also include **providing support and assistance to the International Criminal Court (ICC) and to cooperate with it.**

The support of States Parties and the international community more broadly will be essential as we seek to meet the inherent challenges faced in the conduct of the investigation into the crimes committed in Ukraine. In particular, in a statement dated 28 February 2022, the ICC Prosecutor has announced that he “will be calling for additional budgetary support, for voluntary contributions to support all our situations, and for the loan of gratis personnel. The importance and urgency of our mission is too serious to be held hostage to lack of means.” (Cf. www.icc-cpi.int/Pages/item.aspx?name=20220228-prosecutor-statement-ukraine).

We therefore want to express our preoccupation concerning the unfolding of events in Ukraine and reiterate the European Union and EU Member States support to the ICC and we call on you, as Commission President and VP/HR, by virtue of your roles,

- to call on all those engaged in hostilities in Ukraine to adhere strictly to the applicable rules of international humanitarian law, human rights law and international criminal law;
- to speak on behalf of the European Union to clearly and publicly support the Prosecutor in the fulfilment of his statutory mandate;

- coordinate and support the Member States' offers of voluntary contributions to address the lack of means denounced by the ICC Prosecutor in his statement of 28 February 2022 in which he announced the opening of an investigation on the situation in Ukraine;

- re-open the EU Decision (common position) of 2011 on the ICC and include the strongest possible support for the criminalization of aggression, as defined in Article 8bis of the Rome Statute, and launch a joint initiative by all like-minded States in the Assembly of States Parties to the Rome Statute for the removal of the procedural conditions of Article 15 bis that exempt nationals of States Non Parties to the Statute (e.g. the leaders of the Russian Federation) from the ICC jurisdiction on the crime of aggression: This will align the jurisdictional regime on the crime of aggression to the one applicable to genocide, crimes against humanity and war crimes in accordance with the Rome Statute;

- to clarify what initiatives the UE intends to take to reaffirm this stronger support for the ICC and their role in upholding international law and contribute to the fight against impunity worldwide, which shall include the support of global civil society advocacy-campaigns against impunity and in support of international criminal justice.

We believe greater efforts from the European Union are needed now more than ever to protect the global rule of law and the civilian population of Ukraine.

Yours sincerely,

Fabio Massimo CASTALDO, MEP, NI, Chair of the PGA Group in the European Parliament

Chiara Maria GEMMA, MEP, NI

Peter VAN DALEN, MEP, EPP

Miriam LEXMANN, MEP, EPP

Tiziana BEGHIN, MEP, NI

Thijs REUTEN, MEP, S&D

Urmas PAET, MEP, RENEW

Domènec RUIZ DEVESA, MEP, S&D

Mario FURORE, MEP, NI

Eugen TOMAC, MEP, EPP

Jan-Christoph OETJEN, MEP, RENEW

Juozas OLEKAS, MEP, S&D

Pierre LARROUTUROU, MEP, S&D

Andrus ANSIP, MEP, RENEW

Bettina VOLLATH MEP, S&D

Anja HAZEKAMP, MEP, The Left

Petras AUŠTREVICĪUS, MEP, RENEW

Mounir SATOURI, MEP, GREENS/EFA

Patryk JAKI, MEP, ECR

Vlad GHEORGHE, MEP, RENEW

Sergey LAGODINSKY, MEP, GREENS/EFA

María Soraya RODRÍGUEZ RAMOS, MEP, RENEW

Rasmus ANDRESEN, MEP, GREENS/EFA

Dorien ROOKMAKER, MEP, ECR

Nils UŠAKOVŠ, MEP, S&D

Dino GIARRUSSO, MEP, NI

Juan Fernando LÓPEZ AGUILAR, MEP, S&D

Reinhard BÜTIKOFER, MEP, GREENS/EFA

Heidi HAUTALA, VP, GREENS/EFA

Nikolaj VILLUMSEN, MEP, The Left

Helmut SCHOLZ, MEP, The Left