



Resolution 2134 (2016)¹

Co-operation with the International Criminal Court: towards a concrete and expanded commitment

Parliamentary Assembly

1. The Parliamentary Assembly recalls its previous resolutions calling for the ratification of the Rome Statute of the International Criminal Court (ICC or “the Court”) and full co-operation with the latter, as well as effective implementation of the Rome Statute, in particular [Resolution 1300 \(2002\)](#) on risks for the integrity of the Statute of the International Criminal Court, [Resolution 1336 \(2003\)](#) on threats to the International Criminal Court and [Resolution 1644 \(2009\)](#) on co-operation with the International Criminal Court (ICC) and its universality.

2. The Assembly reiterates its firm commitment to fight impunity and to support the ICC, the first ever permanent independent judicial institution with jurisdiction over individuals accused of “the most serious crimes of concern to the international community as a whole”: genocide, crimes against humanity and war crimes. It is the firm conviction of the Assembly that there cannot be genuine respect for, or true promotion and protection of human rights under the European Convention on Human Rights (ETS No. 5) and the Universal Declaration of Human Rights in situations in which there is impunity for the most serious violations of international law – encompassing gross human rights violations amounting to crimes against humanity or genocide – and for the gravest breaches of international humanitarian law amounting to war crimes. Similarly, impunity for the crime of aggression – which characterises all the perpetrators of wars of aggression that have taken place since the Second World War – is certainly not conducive to the realisation of peaceful societies in which fundamental human rights are respected.

3. The Assembly believes that the universal ratification of the Rome Statute of the ICC is essential in order to avoid having situations referred to the Court by the United Nations Security Council, as these decisions might often succumb to double standards and politicisation. It notes that, since its adoption in 1998, the Rome Statute has been ratified by 124 States across the world. Regrettably, 6 member States of the Council of Europe (Armenia, Azerbaijan, Monaco, the Russian Federation, Turkey and Ukraine), 1 Council of Europe observer State (the United States), 1 State with observer status with the Assembly (Israel) and 2 States whose parliaments have partner for democracy status with the Assembly (Kyrgyzstan and Morocco) have not yet ratified it. The Assembly welcomes the changes to the Constitution of Ukraine, finally adopted by the Ukrainian Parliament, by which the ratification of the Rome Statute will be possible. At the same time, the Assembly is concerned that these changes will come into effect only in three years’ time, and not as soon as possible, as was recommended by the Assembly.

4. The Assembly welcomes the fact that, in 2010, the States Parties to the Rome Statute adopted two amendments to it (“Kampala amendments”) – one criminalising the use of certain weapons in non-international armed conflicts under the scope of the definition of “war crimes”, and another introducing the definition of “crime of aggression” and the system of exercise of jurisdiction over this crime by the ICC. The Assembly notes that so far almost half of the Council of Europe’s member States have ratified these amendments. Among the States that are already Party to the Rome Statute, 17 States of the Council of Europe (Albania, Bosnia and Herzegovina, Bulgaria, Denmark, France, Greece, Hungary, Ireland, Italy, Republic of Moldova, Montenegro, Norway, Portugal, Romania, Serbia, Sweden and United Kingdom), 3 Council of Europe observer States (Canada, Japan and Mexico) and 1 State whose parliament has partner

1. *Assembly debate* on 12 October 2016 (33rd Sitting) (see [Doc. 14136](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Alain Destexhe). *Text adopted by the Assembly* on 12 October 2016 (33rd Sitting).



for democracy status with the Assembly (Jordan) have not yet ratified the Kampala amendment on the Crime of Aggression. Moreover, among the States that are already Party to the Rome Statute, so far 17 member States of the Council of Europe (Albania, Bosnia and Herzegovina, Bulgaria, Denmark, France, Greece, Hungary, Iceland, Ireland, Italy, the Republic of Moldova, Montenegro, Portugal, Romania, Serbia, Sweden and the United Kingdom), 3 Council of Europe observer States (Canada, Japan and Mexico), and 2 States whose parliaments have partner for democracy status with the Assembly (Jordan and Palestine) have not yet ratified the Kampala amendment on war crimes.

5. The Assembly also recalls the importance of ratifying the Agreement on the Privileges and Immunities of the ICC, which facilitates the Court's independent operation by providing the Court officials with the legal status necessary, as civil servants of an international judicial institution, to conduct investigations efficiently, and urges the States that have not yet done so to ratify or accede to this treaty. So far, among the States that are already Parties to the Rome Statute, 2 member States of the Council of Europe (the Republic of Moldova and San Marino), 1 observer State (Japan), and 1 State whose parliament has partner for democracy status with the Assembly (Jordan) have not acceded to this instrument.

6. The Assembly recalls that the ICC is based on the principle of complementarity, assuming jurisdiction only as a last resort. Therefore, the States Parties to the Rome Statute should adopt national legislation to fully implement the Statute, especially by incorporating the Rome Statute crimes and general principles of law into their domestic criminal law systems. The Assembly urges the States that have not done so to fully implement the Rome Statute. So far, among the States that are already Party to the Rome Statute, 4 member States of the Council of Europe (Albania, Hungary, Italy and San Marino), and 2 States whose parliaments have partner for democracy status with the Assembly (Jordan and Palestine) have not fully incorporated those crimes and general principles of law into their domestic criminal law systems.

7. The Assembly also stresses the importance of States' co-operation with the ICC in investigating and prosecuting crimes within its jurisdiction, in particular as regards the arrest and surrender of suspects or accused persons, the seizure of assets of crime and the collection and preservation of evidence. In this regard, the Assembly calls on the member States of the Council of Europe that have not yet done so to establish in their national legislation a mechanism to efficiently co-operate with the ICC, and to sign the "voluntary cooperation agreements" with the ICC (on the enforcement of sentences pronounced in the ICC's judgments, interim and final release, and the protection and relocation of witnesses). Among the States that are already Party to the Rome Statute, so far 5 member States of the Council of Europe (Albania, Andorra, Hungary, the Republic of Moldova and San Marino), 1 observer State (Mexico) and 2 States whose parliaments have partner for democracy status with the Assembly (Jordan and Palestine) have not established in their national legislation a mechanism for efficient co-operation with the ICC.

8. The Assembly recalls [Resolution 2091 \(2016\)](#) on foreign fighters in Syria and Iraq, and the testimony of Nadia Murad, the 2016 recipient of the Václav Havel Human Rights Prize. The Assembly reiterates its urgent call for member States to fulfil their positive obligations under international law to prevent the ongoing genocide in Syria and Iraq, and to ensure the prosecution of those responsible for committing acts of genocide and other serious war crimes against Yazidis, Christians and other religious minorities in the region, especially where the perpetrators are citizens of member States and/or arrive on European soil. The Assembly deeply laments the fact that hardly any prosecution has been brought against these perpetrators of genocide and crimes against humanity.

9. The Assembly welcomes the work of Parliamentarians for Global Action, a non-profit, non-partisan international network of committed legislators, which informs and mobilises parliamentarians in all regions of the world to advocate human rights and the rule of law. Through its Campaign for the Universality and Effectiveness of the Rome Statute, it has contributed to 77 of the 124 ratifications and provided technical assistance for full implementation of the Rome Statute to several of its members. The Assembly also stresses the decisive role played by civil society, in particular the Coalition for the ICC, which gathers together some 2 500 NGOs from more than 150 countries, and which should be highly praised.

10. The Assembly notes with concern that the integrity and independence of the ICC has recently been called into question by some member States of the African Union. It considers that any attempt to undermine the authority of the Court as an independent permanent international judicial institution should be stopped.

11. The Assembly therefore urges the Council of Europe's member States, its observer States, Assembly observer States and States whose parliaments have partner for democracy status with the Assembly to reaffirm their commitment to the ICC by:

- 11.1. signing and ratifying without further delay the Rome Statute, the Kampala amendments and the Agreement on the Privileges and Immunities of the ICC, if they have not yet done so;

11.2. adopting effective legislation to implement the Rome Statute, in particular by introducing the crimes and general principles of law defined therein into their domestic criminal legislation and establishing procedures allowing full and effective co-operation with the Court;

11.3. fully co-operating with the ICC and providing judicial assistance to it, in line with the obligations stemming from the Rome Statute, for example by appointing a special focal point for co-operation with the ICC;

11.4. concluding co-operation agreements with the Court to facilitate the investigation and prosecution of crimes within its jurisdiction, as well as the enforcement of the sentences pronounced in its judgments, the protection and relocation of witnesses and the interim and final release of persons;

11.5. providing mutual legal assistance in matters falling within the scope of the Rome Statute;

11.6. providing the ICC with effective budgetary resources in order to allow it to fulfil its tasks in an independent and efficient manner while respecting the autonomy of the Office of the Prosecutor in determining the situations that deserve investigation and prosecution under the Rome Statute and avoiding interference with its mandate through budgetary policies;

11.7. organising training for judges, prosecutors, lawyers and members of police and armed forces on issues related to the implementation of the Rome Statute;

11.8. organising seminars and conferences with members of parliament in collaboration with parliamentary networks, such as Parliamentarians for Global Action, in order to generate awareness and political will, and to provide the national parliamentarians and their staff with the necessary tools to advance the process of ratification of the Rome Statute, the Kampala amendments and the [Agreement on the Privileges and Immunities of the ICC](#), and the full implementation of these international treaties;

11.9. taking necessary awareness-raising measures to promote knowledge about the ICC among the general public;

11.10. providing political and financial support to non-governmental organisations combating impunity, promoting the universality and effectiveness of the Rome Statute system and the compliance of States with the Rome Statute obligations, and which provide assistance to victims of the most serious crimes of international concern;

11.11. taking any other action to protect the integrity and the independence of the ICC, especially in respect of policies of other regional organisations, such as the African Union;

11.12. making meaningful financial contributions to the ICC's Trust Fund for Victims, thereby signalling that the ICC is not only delivering retributive and preventative justice, but also restorative justice.

12. The Assembly welcomes the referral of situations such as those in Darfur (Sudan) or Libya, by the United Nations Security Council to the ICC. It regrets that the situations in Syria and Iraq have not yet been referred to the ICC by the United Nations Security Council. It calls on the United Nations Security Council to fulfil its responsibilities to implement the decisions and orders of the Court and to provide it with sufficient financial resources to fulfil its tasks.

13. The Assembly calls on member States and observer States who are members of the United Nations Security Council, namely Russia, the United Kingdom, France, the United States, Spain, Ukraine and Japan, to collaborate and, within two months, to put a resolution to the United Nations Security Council which ensures the effective prosecution of those responsible for acts of genocide, crimes against humanity and war crimes in Syria and Iraq.

14. The Assembly also calls on the ICC Prosecutor to reconsider her decision of April 2015 not to initiate preliminary examinations into crimes committed by Daesh foreign fighters, in the light of new and overwhelming evidence available to her, and to expeditiously recognise her jurisdiction over the perpetrators of genocide, crimes against humanity and war crimes in Syria and Iraq, to the greatest extent possible.