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(Final version)

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

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A. Draft Resolution

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 Resolutions 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 against 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, 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 which are as serious as 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 characterised all the perpetrators of aggressive wars that took place after 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, six member States of the Council of Europe (Armenia, Azerbaijan, Monaco, the Russian Federation, Turkey and Ukraine), one Council of Europe observer State (the United States), one State with observer status with the Assembly (Israel) and two 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 the

other introducing the definition of crime of aggression as well as 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, so far 17 States of the Council of Europe (Albania, Bosnia and Herzegovina, Bulgaria, Denmark, France, Greece, Hungary, Ireland, Italy, Republic of Moldova, Montenegro, Netherlands, Norway, Portugal, Romania, Sweden and United Kingdom), three Council of Europe observer States (Canada, Japan and Mexico) and one State whose parliament has partner 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, Montenegro, the Netherlands, Portugal, the Republic of Moldova, Romania, Sweden and the United Kingdom), three Council of Europe observer States (Canada, Japan and Mexico), and two 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, two member States of the Council of Europe (the Republic of Moldova and San Marino), one observer State (Japan), and one 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 its 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, four member States of the Council of Europe (Albania, Hungary, Italy and San Marino), and two States whose parliaments have partner for democracy status with the Assembly (Jordan and Palestine) have not fully implemented those crimes and general principles of law into their domestic criminal law systems.
7. The Assembly also stresses the importance of States' cooperation 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

Amendment 1

Tabled by Mr Pieter OMTZIGT, Mr Joseph O'REILLY, Ms Yuliya LOVOCHKINA, Ms Deborah BERGAMINI, Mr Frank SCHWABE, Mr Bernd FABRITIUS, Mr Nico SCHRIJVER,

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 the mechanism to efficiently co-operate with the ICC as well as to sign the so-called "voluntary co-operation agreements" with the ICC (Enforcement of Sentences pronounced in the ICC's judgments, Interim and Final Release, Protection and Relocation of Witnesses). Among the States that are already Party to the Rome Statute, so far five member States of the Council of Europe (Albania, Andorra, Hungary, the Republic of Moldova and San Marino), one observer States (Mexico) and two States whose parliaments have partner for democracy status with the Assembly (Jordan and Palestine) have not established in their national legislation the mechanism to efficiently co-operate with the ICC.

8. 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 for 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 coming from more than 150 countries, which should be highly praised.
9. 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.
10. 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:
 - 10.1. 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;
 - 10.2. 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;

Mr Mart van de VEN, Ms Josette DURRIEU, Sir Jeffrey DONALDSON, Mr Valeriu GHILETCHI, Mr Vladimir GJORCHEV, Ms Boriana ÅBERG

In the draft resolution, after paragraph 7, insert the following paragraph:

"The Assembly recalls Resolution 2091(2016), on Foreign Fighters in Syria and Iraq, and the testimony of Nadia Murad, the 2016 recipient of the Vaclav Havel Human Rights Prize. The Assembly reiterates its urgent call on 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 not one prosecution has been brought against these perpetrators of genocide and crimes against humanity."

- 10.3. 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;
- 10.4. 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, protection and relocation of witnesses and interim and final release of persons;
- 10.5. providing mutual legal assistance in matters falling within the scope of the Rome Statute;
- 10.6. 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 her mandate through budgetary policies;
- 10.7. organising training for judges, prosecutors, lawyers and members of police and armed forces on issues related to the implementation of the Rome Statute;
- 10.8. 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 as well as 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 as well as the full implementation of these international treaties;
- 10.9. taking necessary awareness-raising measures to promote knowledge about the ICC among the general public;
- 10.10. providing political as well as 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, as well as providing assistance to victims of the most serious crimes of international concern;
- 10.11. 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;
- 10.12. 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.
11. 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 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.

Amendment 2

Tabled by Mr Pieter OMTZIGT, Mr Joseph O'REILLY, Ms Yuliya LOVOCHKINA, Mr Axel FISCHER, Ms Deborah BERGAMINI, Mr Frank SCHWABE, Mr Bernd FABRITIUS, Mr Nico SCHRIJVER, Mr Mart van de VEN, Ms Josette DURRIEU, Sir Jeffrey DONALDSON, Mr

**Valeriu GHILETCHI, Mr Vladimir GJORCHEV,
Ms Boriana ÅBERG**

In the draft resolution, paragraph 11, second sentence, after the words "not yet been referred to", insert the following words: "the ICC by the United Nations".

Amendment 3

Tabled by Mr Pieter OMTZIGT, Mr Joseph O'REILLY, Ms Yuliya LOVOCHKINA, Mr Frank SCHWABE, Mr Bernd FABRITIUS, Mr Nico SCHRIJVER, Mr Mart van de VEN, Ms Josette DURRIEU, Sir Jeffrey DONALDSON, Mr Valeriu GHILETCHI, Mr Vladimir GJORCHEV, Ms Boriana ÅBERG

In the draft resolution, after paragraph 11, insert the following paragraph:

"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 and Ukraine, 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 other serious war crimes in Syria and Iraq."

Amendment 4

Tabled by Mr Pieter OMTZIGT, Mr Joseph O'REILLY, Ms Yuliya LOVOCHKINA, Mr Frank SCHWABE, Mr Bernd FABRITIUS, Mr Nico SCHRIJVER, Mr Mart van de VEN, Ms Josette DURRIEU, Sir Jeffrey DONALDSON, Mr Valeriu GHILETCHI, Mr Vladimir GJORCHEV, Ms Boriana ÅBERG

In the draft resolution, after paragraph 11, insert the following paragraph:

"The Assembly also calls on the ICC Prosecutor to reconsider her decision of April 2015 not to initiate preliminary examinations into crimes committed by ISIS/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 as far as it is possible."