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Honorable Mr. President,

On behalf of **Parliamentarians for Global Action (PGA)**, a global network of over 1,200 members of parliaments from more than 130 democratically elected legislatures, including Ukraine, and **Centre for Civil Liberties (CCL)**, Ukrainian civil society organisation, it is our honour to write to you concerning two crucial subjects: the **membership of Ukraine in the International Criminal Court (ICC)** and the **signature of the Law No. 1164-IX “On amendments to certain legislative acts on the Enforcement of International Criminal and Humanitarian Law”** which was adopted by the Verkhovna Rada on 20 May 2021.

We have been observing with grave concerns the military mobilisation of Russia on the Ukraine’s borders, followed by the cyberattack against the government websites of Ukraine on 14 January 2022. We reaffirm that any attack, including a cyberattack, against national institutions and infrastructures as well as diplomatic sites represent a breach of International Law as it violates the prohibition of the use of force and non-interference in domestic affairs. If the unlawful use of force may be attributed to the responsibility of State actors or non-State actors falling under the control of Governmental authorities, it may constitute a **crime of aggression, criminalised under the Rome Statute of the ICC**.

This attack, as well as the increasing military mobilisation of Russia at the Ukrainian borders, firmly demonstrate the importance of strengthening the position of Ukraine in the international community, especially given its vulnerability as a non- member of NATO. **The membership of Ukraine in the ICC, through the ratification of the Rome Statute, would reinforce the Ukrainian position in the international politics and negotiations and would prevent and deter a potential aggressor State from committing international crimes and interfering in Ukrainian internal affairs.**

While Ukraine has already lodged two “ad hoc” declarations under Art. 12.3 of the Rome Statute, accepting the jurisdiction of the ICC over alleged crimes committed on its territory from 21 November 2013 onwards, the current status quo does not grant the full protection and rights to Ukraine. While the preliminary examination has already been concluded by the ICC Prosecutor with the determination that there is a reasonable basis to believe that war crimes and crimes against humanity were committed in the context of the on- going armed conflicts in Ukraine, the Prosecutor may not allocate sufficient resources to the investigation, including into the alleged crimes committed by Russia against Ukrainian civilians, unless Ukraine becomes a member of the ICC. As such, by not ratifying the Rome Statute, **Ukraine is depriving itself of the full protection and rights it would enjoy as a member of the ICC**. This would further entail the decision- making rights at the Assembly of States Parties of the ICC and thus the ability to shape the course of international criminal justice. In contrast, through the submission of the 12(3) declarations, it has only accrued the same obligations as it if it were a State Party to fully cooperate with the ICC in the context of the proceedings.

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PGA and CCL would like to respectfully highlight that the **ratification of the Rome Statute has been compatible with the Constitution of Ukraine** since 1 July 2019, after the entry into force of the amendment to Art. 124 of the Constitution, which recognises the jurisdiction of the ICC by Ukraine. The commitment to the ratification is also cemented in the international instruments signed by Ukraine, including in **Art. 8 of the EU-Ukraine Association Agreement**, which entered into force on 1 September 2017 and reads: “*The Parties shall cooperate in promoting peace and international justice by ratifying and implementing the Rome Statute of the International Criminal Court (ICC) of 1998 and its related instruments.*”


Nevertheless, as recognised by the ICC through the principle of complementarity, it is of the utmost importance, that State investigates, prosecutes, and adjudicates the crime of genocide, crimes against humanity, war crimes and crime of aggression at the domestic level, whereas the ICC is able to intervene only when the State is unwilling or unable to do so. To this effect, the most important condition enabling a State to abide to this obligation is the existence of legislation that incorporates these crimes in their domestic law. Such law, **No. 1164-IX, was already adopted by the Verkhovna Rada on 20 May 2021, but still awaits your signature.** Once promulgated, **the legislation will establish accountability for the grave human rights violations** committed in Eastern Ukraine and the occupied territory of Crimea in the context of the ongoing almost 8-year armed conflicts and give hope for domestic recourse to justice to thousands of victims of atrocities, in line with international law.

The entry into force of the Law No. 1164-IX is instrumental as within its current legal framework, **Ukraine lacks comprehensive legal instruments to ensure criminal accountability for the atrocities committed in the context of the current armed conflicts.** The Law No. 1164-IX addresses the existing gaps in the criminal code of Ukraine, namely, includes provisions on crimes against humanity, otherwise missing in the criminal code currently in force, and defines war crimes in conformity with the requirements of International Law. As only the international crimes are exempt from statutory limitations, the accurate qualification of these acts today is particularly crucial for bringing those responsible to justice even in the distant future.

The Law empowers Ukrainian prosecutors and judges to investigate, prosecute and adjudicate international crimes, building on the creation of the specialized “*Department for Supervision in Criminal Proceedings of the Crimes Committed in Armed Conflict*” in October 2019. Consequently, the Law will strengthen the domestic justice system and respect for the Rule of Law. Importantly, it will send a strong **message to the people of Ukraine and the international community that your country is committed to bringing perpetrators of international crimes to justice, and that the suffering of victims will not be ignored.** Most of all, while enabling Ukraine to achieve accountability for international crimes committed in Eastern Ukraine and the occupied territory of Crimea, the entry into force of the Law aligns with the commitments of Ukraine stemming from various international and European instruments, including the above-mentioned **Art. 8 of the EU- Ukraine Association Agreement.**

Both the Rome Statute and the domestic criminal legislation offer effective justice to victims of the on-going crimes, creating a synergy between justice at the international and domestic level. Both legal instruments generate a deterrent effect on the commission of crimes by removing the impunity, which is a prerequisite to peace, stability, development, and the protection of human rights. There is no sustainable peace without justice and no justice as long as there is impunity. We therefore encourage you to take action and to **transmit to the Rada the legislative bill on the ratification of the amended Rome Statute of the ICC**, which will ensure the full exercise of the ICC jurisdiction on the gravest crimes of international concern that might victimise Ukrainians within the legitimate borders of Ukraine. To complement this recourse to international justice, we further respectfully ask you to **sign the Law No. 1164-IX** to address accountability and end impunity at the domestic level, while offering victims of atrocities committed in the context of the ongoing armed conflicts in Ukraine an effective access to justice.

Please accept, Mr. President, the assurances of our highest esteem and consideration.


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