



Hosted by the Office of Ms. Marietje Schaake, MEP

*Chairperson of the Parliamentarians for Global Action (PGA) Group in the
European Parliament*

**Roundtable at the European Parliament on the International Criminal Court
and the European Union**

*European Parliament, Alterio Spinelli Building – Brussels, Belgium
Wednesday, 1st of June, 2011, 12.00 - 14.00*

REPORT OF THE DISCUSSIONS

Background

Committed to preventing crimes against humanity, war crimes and genocide, as well as to put an end to impunity for the perpetrators of such crimes, the EU provides unwavering support to the International Criminal Court (ICC) and other international criminal tribunals. At an international level, the EU frequently includes a binding clause in agreements with third countries, requiring them to cooperate with the ICC and, when the other Party agrees, to ratify the Rome Statute of the ICC. All EU countries are States Parties to the Rome Statute, and the EU has been a consistent political, technical and financial supporter of the ICC's work. EU member countries are the biggest financial contributors to the ICC budget – along with Japan – and the EU itself funds projects supporting the ICC and international criminal justice through its European Instrument for Democracy and Human Rights (EIDHR)).

The EU support for the ICC is underpinned by an EU Common Position on the ICC, which established an agreed policy on supporting the Court in June 2003. The Common position is accompanied by the EU action plan on the ICC and was recently renewed in March 2011 by an EU Decision. The related renewal of the EU action plan on the ICC is ongoing and scheduled to be concluded under the Hungarian Presidency of the Council in June/July 2011.

Objective

The overarching objective of today is to involve concerned MEPs in making a meaningful contribution to the elaboration of the new EU Action Plan on the ICC designed to give effect to the EU Decision on the ICC of 2011. The Action Plan should be approved by end of June 2011 by EU Member States by the Hungarian Chair of the EU-Council COJUR). This is in accordance with the current EU action plan in which it is mentioned that: *'The European Parliament will be kept regularly informed by the Presidency and the Commission of significant developments concerning the ICC and its views on the ICC should be duly taken into account.'* Following the meeting we will convene the key priorities of the EP for the new action plan on the ICC to the High Representative, Catherine Ashton.

Parliamentarians for Global Action (PGA)

Further to this, today's meeting is meant to familiarize you with the work of the Parliamentarians for Global Action (PGA). PGA is a non-profit, non-partisan international network of over 1300 legislators in more than 100 elected parliaments around the globe, aims to promote peace, democracy, the rule of law, human rights, sustainable development and population issues by informing, convening, and mobilizing parliamentarians to realize these goals. For more information see: <http://www.pgaction.org/>

As the chair of PGA in the European Parliament, Marietje Schaake would like to invite all Members of European Parliament to join the PGA, which has been extremely instrumental in working with parliamentarians across the globe to include as many countries in ratifying the Rome Statute.

Programme and Minutes of the Proceedings

12:00 Welcome remarks on behalf of the PGA Group in the European Parliament

Ms. Marietje Schaake, MEP-ALDE (Netherlands), Chair, PGA Group in the European Parliament

Ms. Schaake introduced herself and PGA and gave a short background of the framework of the discussion.

- All EU member states are state parties to the Rome Statute and support the work of the ICC.
- There is the group of “Friends of the ICC” in the EP, which is chaired by Barbara Lochbihler, MEP. This group visited the ICC 3 months ago, on the 28 March 2011.
- The support of the ICC by the EU is underpinned by the new decision on the ICC, adopted on 21 March 2011, replacing the former EU common position of ICC.
- Today we should look at how to involve MEPs in the elaboration of a new EU action plan of the ICC, which is expected to be approved at end of June by EU Member States.

12:10 The EP contribution to the fight against impunity world-wide through EU policies

Including policies towards Non-States Parties and their role in promoting the fight against impunity via the UN Security Council and other instruments

Ms. Barbara Lochbihler, MEP-Greens (Germany), Chair, “Friends of the ICC” in the EP; Member PGA (full speech enclosed)

- The fight against impunity and for international justice has made positive progress in the last decade, not least with the commencement of the first cases at the International Criminal Court. Nevertheless, international justice continues to encounter obstacles in its development.
- All States have the right under international law to prosecute and try people responsible for genocide, crimes against humanity and war crimes, and other crimes under international law, such as torture, extrajudicial execution and enforced

disappearances, regardless of the nationality of the victim or the alleged perpetrators or the territory where the crimes were committed.

- In cases where the alleged offender is present in any territory under its jurisdiction, the State has the imperative international obligation to extradite or to bring the accused to its own national courts.
- The EU is determined to work towards the prevention of crimes of international concern and the ending of impunity for perpetrators of such crimes. It has consistently given strong support – political, financial and technical – to the effective functioning of the International Criminal Court (ICC) and other international criminal tribunals. This has been done through the EU Common Position and an EU Action Plan on ICC.
- Despite this, it is still the case that many measures and action plans developed by the departments and working groups of the European Commission, the European Council and the European Parliament are not implemented successfully. It seems that not all EU delegations are fully aware of our Human Rights Guidelines, e.g. the EU Guideline on Human Rights Defenders.
- We also have to be self-critical on the role of European countries in the cases of torture and rendition during the so called War on Terror. The European Union has until now failed to shed a light into its involvement in the illegal CIA-flights.
- The legal community and all the human rights movement must continue their efforts to attain universal justice and an end to impunity.
- The effective implementation of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is a vital instrument for gathering evidence and preventing impunity.
- Let me give you some concrete examples what the fight against impunity is about:

1. Argentina

- In December 2002 a former ex-dictator faced live imprisonment. The worst thing was the impunity that those criminals enjoyed after committing their crimes. Large efforts have brought important changes in human rights in Argentina: consciousness led to arrests.
- The Human Rights committee heard testimonies of civil society in order to exchange views. This was a very good learning experience.

2. Chile

- The Pinochet case has been a milestone in the fight against impunity: This achievement would have not been possible without the engagement and professionalism of investigative magistrate Baltazar Garzón
- Digression on the case of Spanish magistrate Baltasar Garzón, who has been charged with abuse of process for knowingly exceeding his jurisdiction by investigating crimes committed during the Franco regime. Opponents claim Spain's 1977 amnesty law protects these crimes: Mr. Garzon is, in her view, politically targeted because he is an international symbol in the fight against impunity. Judges who investigate in good faith and are backed by

international law cannot work if they fear being politically targeted with legal actions.

3. Serbia

- The arrest of Mladic is great news for the future of Serbia and the Serbian people, as it is a further step to ending impunity and reconciliation in the region. On 31 May 2011 he was transferred to Den Haag. He faces charges of genocide, crimes against humanity and war crimes. This is a milestone for Serbia and for international justice. Out of 161 indicted persons, 160 have been arrested. The remaining one, Goran Hadzic has to be arrested as well.

4. Egypt

- During many years Egypt was one of the worst examples of torture in prison. To uproot this culture of human rights abuses and impunity, the decades of human rights violations under the rule of President Hosni Mubarak must be addressed, and measures taken to ensure truth, justice and reparation for victims of human rights violations, including for former detainees.
- Holding secret service officers to account is an essential initial step towards realizing the calls to end impunity that was one of the main triggers of the recent uprising in Egypt.
- In order to truly break with the legacy of human rights violations and impunity for the violations, the Egyptian authorities must also introduce comprehensive institutional and legal reforms to guarantee that such abuses will not be repeated. Only then will Egyptians start to trust public institutions and to heal after decades of abuse.
- Truth, justice and reparations are three important elements of the fight against impunity. And these elements may help to heal the wound of past human right violations. The European Union can and must play a crucial role in supporting Egypt to overcome its legacy of impunity.

5. Colombia

- In March there was the assassination of a judge who has tried cases of rape and murder. It is assumed that members of the Colombian army are involved in her murder.
- Upcoming free trade agreement of the EU with Colombia is the right moment to press Colombia to investigate human rights abuses.

- What was done in the EP: Chad: In 2006 there was a resolution in the case of Hissène Habré, former Chadian dictator. Today he lives in Senegal and it is unclear if there will be a trial against him. The resolution should be very clear in that the EP calls on the Commission and the AU to pay due attention to this question. Sudan: In July 2008, President Al Bashir was charged with genocide. This is the first genocide charge against a sitting head of state. He visited Kenya, Chad and Djibouti, even though the EP has protested against this. Next week there will be a resolution on South and North Sudan. Mexico: In 2007 there was a resolution of the EP regarding

the ongoing mass murders of women in Central America and Mexico. Many of those killing go with impunity.

- Resolution on Kampala Review Conference: Promote member states' activities against impunity.
- She welcomes the fact that ACE-UE JPA has been active on promoting support for the ICC. In 2010 a resolution on the DRC called for an immediate end to the violence in the northeast of the country. The EP also condemned the mass rape in Walikale, North-Kivu, which occurred last July.
- The EP annual reports address the fight against impunity. This year it singles out Russia as partner country where there are still continuous human rights violations. We call upon Ms. Ashton that those who commit crimes are held accountable and appoint special envoy on international justice. But we had no success with this demand as of now.
- Also, the EP formed the group of "Friends of ICC" in the EP and visited the ICC in March this year. ICC President Song thanked the EP for the ongoing work; a resolution was adopted before Kampala which was highly appreciated.
- There are calls for support for ratification in the Asia region (confident that Philippines and Malaysia will soon join the ICC as member states).
- The financial contribution by the EU for the ICC is essential and also lobbying is very important. Work is ongoing on a new report on the ICC, led by the ICC Rapporteur in the EP, Dr. Kreissl-Dörfler. This report calls for the support for ICC related questions to base any future work on.
- More should be done in external relations: The International covenant on civil rights, the convention on torture and the international convention for protection of enforced disappearances should be ratified.
- Last but not least the European Union should in all external relations urge its partners to ratify the optional protocols to the international covenants on Civil and Political, and Economic, Social and Cultural Rights, accede to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, accede to the International Convention for the Protection of All Persons from Enforced Disappearance and implement it in national law and call upon ratification and national implementation the Rome Statute of the International Criminal Court.

Mr. Edward Mc Millen Scott, MEP0-ALDE, (UK), Vice-President of the EP

- Mr. McMillan-Scott announced that he was honored to have joined PGA, a network that is playing a leadership role in promoting international justice.
- New opportunities for international justice come from the "Arab Spring".
- A few years ago, when he visited Yemen, President Ali Abdullah Saleh stated he wanted to ratify the Rome Statute of the ICC, but no concrete action took place after this façade announcement. Furthermore, Egyptian reformers are now considering the retrospective use of the Rome Statute. This does underline that the reach of the ICC is spreading around the world and let us concluding that the ICC is gaining greater significance in various areas, including the Arab region.

- In a recent meeting with Ms. Albright he underlined that in his view, the EU is an essential supporter of the ICC whereas the US has adopted a defensive position. However, he believes that it's possible that one day the USA will join the ICC.
- It is a responsibility of the EU to extend the funding for the ICC
- He expressed a particular concern about the way in which impunity still pertains in some regions (e.g. China) and how the EU addresses it
- Raised the idea of establishing an "impunity registry (index or archive)" on the international level for individuals who believe have been victims of Rome Statute crimes as a mechanism to support the future intervention of the ICC (or other mechanisms). This could help to deter potential perpetrators of such crimes and make them understand that there will be no impunity and they will have to face justice if they do commit such crimes.

ISSUES FOR DISCUSSION:

1. UNIVERSALITY OF THE ROME STATUTE:

- What are the actions that the European Parliament and MEPs have taken individually and collectively to promote universality of the Rome Statute? Is there any follow up?*
- Through which inter-parliamentary mechanism we could achieve increased impact (e.g. promotion of the ICC in transatlantic relations or in bilateral relations with Turkey)?*
- What is the specific role of the ACP-EU Joint Parliamentary Assembly (e.g. to give effect to article 11.6 of the revised Cotonou Agreements, which encourages all ACP and EU countries to ratify and implement fully the Rome Statute)?*
- Is it possible to re-introduce the cooperation with ICC in the new policy-document for the ENP (see enclosed PGA Memorandum)?*

2. IMPLEMENTATION OF THE ROME STATUTE:

- Review of the status of implementation in EU Member States: How can the European Parliament increase its involvement in ensuring the incorporation of the Rome Statute in the national legislation within the EU and in Third Countries?*
- What is the role of the EP in promoting legislation in National Parliaments of Member States?*
- How can the Annual Report on Human Rights in the World be used to have an impact on Third Countries? Similarly, how can other relevant EP reports and resolutions (e.g. on the situation in the African Great Lakes or on the Middle East and North Africa) be used to promote the anti-impunity agenda in Third Countries?*

12.40 Challenges for the system of the Rome Statute of the ICC

- *Financing of the ICC (EU Member States) and of Civil Society campaign and actions aimed at giving effect to the EU Decision on the ICC (European Instrument for Democracy and Human Rights -EIDHR- and other tools)*
- *Mainstreaming the efforts of the EU to investigate and prosecute domestically international crimes*
- *Election of the new Prosecutor and other senior officials (Judges, President of the Assembly of States Parties)*
- *Follow-up to the first Review Conference of the Rome Statute of the ICC*

Mr. Richard Howitt, MEP-S&D (UK), Head, EP Delegation to the Kampala Review Conference

- Reported about the brilliant meeting in Kampala between his EP Delegation attending the Review Conference and the PGA delegation of MPs from Nigeria, Malaysia, Bahrain, New Zealand, DRC, Uruguay and several other countries. He is proud that the EP was capable of providing strong support for the ICC in Kampala.
- Stressed that this is an important follow-up meeting in the EP.
- Pledges made in Kampala were important but not every state made pledges and this effort by Member States should definitely go further and received full implementation (not serious to leave public promised unfulfilled). These pledges were rather modest, not quite the progressive ones that the EP Delegation would have wanted for the EU: Therefore, there is no excuse for their lack of full implementation.
- Over the years, the EU hasn't sufficiently used the external diplomatic services in support of the ICC – especially in its relations with non-EU member states
- In some negotiations for trade agreements it was not even mentioned that the country should join the ICC to access the “*Generalised Preference Plus*” status. It is very important that it is emphasized in every single delegation meeting that the EU wants the country in question to join the ICC and implement the Rome Statute domestically. There is no excuse for EU not to urge for it.
- This meeting is brilliant – it is a real opportunity for MPs to advance these items.
- On financing: Some money is already given to civil society – this is a good support and the EU should continue doing so.
- At the Review Conference in Kampala, Uganda, emphasis was given to the importance of giving justice to victims. Funding the Trust Fund for Victims (TFV) is one of the practical ways to do it, especially for Member States.
- In Kampala, an interesting discussion about the relationship between peace and justice took place. Especially human rights activists say that there is no compromise on justice. However, deeper research should be done in this regard, in order to allow the EU/EP to have a position in that complex matter.

Mr. Matias Hellman, External Relations Adviser, Office of the President of the ICC

- Express of appreciation for PGA and this timely meeting.

- The EU has played a crucial role in support of the ICC.
 - Currently, there are 6 active situations and the prosecutor applied the opening of a 7th situation, the Ivory Coast.
 - 3 trials ongoing, 2 are in conclusion and there are 4 approaching trials.
 - 115 states have ratified the Rome Statute and other states announced their intention to do so. All of this would have not been possible without the support of the EU and its member states.
 - The EP has played an important role by providing local support for the ICC. For example, the latest annual report on human rights in the world had an excellent section on the ICC: Basically “everything” can be found there. [Note: Sign of approval by NGOs present at the meeting.]
 - As the ICC moves forward it meets new challenges, and therefore the cooperation of the states parties is very important. We are happy to acknowledge the revision of the EU common position and the upcoming revision of the Action plan is an opportunity to put in place even more effective mechanisms and to turn them into concrete results.
1. The creation of the EU External Action Service is an opportunity for a further boost. Political and diplomatic support is the basis for tackling most of the relevant issues where the EU can make a difference. An idea, for instance, would be to appoint ICC focal points in EU delegations around the world. In addition, regular briefings could be held, so that ICC issues are mainstreamed in all contexts with member states. We should also make full use of the revised Cotonou agreement and make sure that the ICC is taken into consideration in all relevant bilateral contacts. An *EU special representative on international justice* is indeed a very interesting idea.
 2. State cooperation: the ICC has made impressive progress but a lack of full cooperation, especially in arresting suspects, is one of greatest obstacles for ICC to fulfill its mandate, as the ICC has no enforcement mechanism. The EU can ensure that full cooperation with the ICC is given the necessary weight in all bilateral settings. The recent arrest of the Serbian general Ratko Mladic for instance testifies for the incredible power which the EU can have when it comes to pushing towards further cooperation with international courts. Now only one suspect remains at large (Goran Hazcic). The impressive track record of the ICTY would not have been possible without the EUs consistent and longstanding politics with states of the former Yugoslavia. Of course the Western Balkan is a specific situation, but wherever possible, lessons learned from that situation should be applied elsewhere. There should be consistency of using both the stick and the carrots, which can allow making a big difference. Similarly, the Court appreciates swift reactions by the EU/EP to non-cooperation.
 3. Universality is a very important topic for President Song. The Court acknowledges the assistance from EU and PGA. MEPs should use their contacts with MPs around the world to take that work to the next level. The Presidency is happy to receive further ideas on this subject matter.

4. Complementarity: the ICC alone cannot end impunity, so it needs fully capable national jurisdictions. Capacity building measures and programmes as integral part of development cooperation is very important.

Dr. David Donat Cattin, Director, International Law and Human Rights Programme, PGA

- Acknowledgement of PGA board member Mr. Alain Destexhe, MP (Belgium), who is present today, as well as the colleagues from HRW and CICC. Thankful also to EC officials and former officials who honor us with their presence: PGA is grateful to the EC for its support to civil society, including PGA, via the EIDHR.
- On 30 May 2011, the Pre-Trial Chamber II of the ICC rejected the Kenyan Government's challenges to the admissibility of the two cases brought before the Court, considering that the applications do not provide concrete evidence of ongoing proceedings before national judges, against the same persons suspected of committing crimes falling under the ICC's jurisdiction. This highlights not only the right of a state to exercise jurisdiction, but that it is also an *obligation* - the obligation of implementing the principle of complementarity. This was also underscored by the Kampala Review Conference, and this is at the basis of PGA's global effort to secure as many domestic legislations as possible to incorporate Rome Statute's crime and general principles of law, as well as procedures for full cooperation with the ICC, so that every State can play its role in closing the "impunity gap".
- There are several challenges for the future of the ICC. The first challenge is to strengthen domestic tools to end impunity. Yesterday, on 31 May, PGA held a meeting in the Swiss parliament on sexual and gender-based violence in the DRC (www.pgaction.org/Bern_May_31_11.html) during which the failure to protect civilians was identified as one of the most serious problems. Participants agreed that the civilian component/Police component in UN Peace-keeping operations (like MONUSCO) has to be strengthened in order to provide effective protection and conduct the necessary "arrest operations" to stop and bring to justice the suspected criminals. And we have witnessed in Sierra Leone and Ivory Coast how very few "Special Forces", acting with a UN mandate, were able to end the fighting through precise arrest-operations in the cases of Foday Sankoh, head of the RUF, and former President Lurance Gbagbo and MP Simone Gbagbo. This is the crucial area where we have an "efficiency- gap" within the Rome Statute system: There are still many people at large whom we do not manage to arrest. Intervention of law-enforcement is clearly needed, but there is a lack of means and capability: In Central Africa, several States want to arrest Kony and other 3 ICC "indictes", but they have failed over the last 6 years. The case of Sudanese President Al Bashir is even more complicated as he is a sitting Head of State and a law-enforcement intervention will not suffice, but at least he should not be allowed to travel to ICC States Parties like Chad, Kenya and Djibouti without being arrested: This is the main threat to the credibility of international justice. There is a big challenge as there are not yet sufficient tools to efficiently and promptly execute pending arrest warrants.

- One idea to address this difficulty could be to intensify the work via Interpol (International Criminal Police Organization – ICPO). The constitution of Interpol, which does not have a legally binding mandate to carry out arrest operations, could be amended to include the necessary legal basis to permit an increased “law-enforcement” capacity. Another idea could be to support the adoption of a new “Crimes against humanity convention” – an effort initiated by professors Leyla Sadat and Cherif Bassiouni –, and such a Convention will not duplicate what we have in the Rome Statute in terms of definition of crimes, but should serve as the “EU Arrest Warrants” to permit the automatic execution of an order for the extradition to another State or surrender to the ICC of a suspected war criminal. As of today, in many situations in which there is no implementing legislation to cooperate fully with the ICC, when “indicted” persons travel to these ICC Member States, local authorities subsequently say that they have no concrete measure to execute the arrest warrant. So, this is an area where much more work has to be done.
- Budget: There is a need to strengthen national budgetary allocations for the fight against impunity. National budgets are largely insufficient (e.g. the DRC) and other problems such as corruption are further impeding efficient measures. We need an integrated approach and have to take additional measures in this respect.
- Following-up to the Review Conference in Kampala, PGA fully supports to integrate the definition and conditions for jurisdiction for the Crime of Aggression in article 5 of the Rome Statute. Tunisia may be able to ratify the Rome Statute by directly including the definition of the Crime of Aggression and the other Kampala Amendments of war crimes. Whereas the EU member states are divided on the Kampala compromise, there is room for improvement and space that the EP can cover by launching new actions in this field (e.g. through a resolution to launch a campaign for the global ratification and implementation of the Kampala Review Conference amendments).

ISSUES FOR DISCUSSION (partial list)

3. COOPERATION WITH THE ICC:

- What can the EU do to galvanize and lead the International Community efforts to build coalitions of States and international organizations that may assist each other in the endeavor to arrest fugitives from justice who are under arrest warrants issued by the ICC?*
- What is the role of the European Parliament in promoting EU leadership in this delicate field of law-enforcement?*

4. RATIFICATION OF THE KAMPALA REVIEW CONFERENCE AMENDMENTS

- Can the European Parliament play a role in urging EU Member States to approve and transmit the first amendments to the Rome Statute of the ICC to National Parliaments for consideration and approval?*
- Can the European Parliament recommend to Member States to incorporate the Kampala Review Conference Amendments on the list of prohibited weapons in*

internal armed conflicts (war crimes) and the definition of the crime of aggression in their domestic legal orders?

13:00 Towards a new EU action plan on the ICC (2011)

Dr. Christian Behrmann, EU Focal Point on the ICC, European External Action Service

- MPs play a crucial role in support of the ICC. Will give today a preview of what is expected to come out of revision process of the EU action plan for the ICC. This process will be finalized by end of June.
- Key political messages and legal basis:
 - The EU is a strong supporter of the ICC (no impunity for the most serious international crimes, support for the international order based on effective multilateralism). All EU member states have ratified the Rome Statute, which is fully in line with the principles and the legal basis of the treaty on the EU (art 2, art 3 (5), 21(1)), the treaty on the functioning of the EU (art. 205 TFEU), the Council decision 2011/168/CFSP (art. 1(2), revised common position).
 - The revised common position lays out 5 clear objectives:
 - (1) Coordination of EU activities
 - (2) Universality and Integrity
 - (3) Independent and effective ICC
 - (4) Cooperation with the Court
 - (5) Principle of complementarity

On that basis, the EU action plan will be revised under the presidency of Hungary

- How will the action plan respond to each and every one of these objectives:
 - (1) Coordination of EU activities: The key players at EU level will continue to be well coordinated. In the past this worked well, but some improvements are necessary (EEAS EU focal points, MS focal points. COJUR working group, EC, EP, EU Special Representatives)
 - (2) Universality and Integrity: This stays the fundamental pillar. Universality and Integrity will continue to be mainstreamed in internal and external policies (Council conclusions, summits and ministerials, policy documents (e.g. joint EU-AU strategy), demarches, political dialogues, international agreements, statements and declarations, EU action at the UN, technical and financial assistance).
 - (3) Independent and effective ICC: Technical (e.g. deployment of experts) and financial assistance as well as different agreements (e.g. witness protection and relocation of witnesses, enforcement of sentences)
 - (4) Cooperation with the Court: Agreement on cooperation and assistance (April 2006), Security arrangements for the protection and exchange of classified information (2008), diplomatic debriefings (political importance of ICC has increased with situations in Ivory Coast, Libya, Arab spring i.a.)

- (5) Principle of complementarity: Support the rule of law and capacity building projects, thus enhancing the ability of states to hold accountable those responsible for relevant crimes, complementarity toolkit/guidebook currently being developed (will be addressed to policy and development officers both in headquarters and delegations to make use of the complementarity principle in rule of law projects).

13:15 Open debate

Priorities of the EP for the new EU Action Plan on the ICC

ISSUES FOR DISCUSSION:

4. *MASTREAMING THE FIGHT AGAINST IMPUNITY AND SUPPORT FOR THE ICC:*
 - a. *What is the status of implementation of “ICC-clauses” in partnership agreements with Third Countries in association (e.g. Ukraine) or cooperation (e.g. Indonesia) with the EU?*
 - b. *What can the European Parliament do to enhance the efforts of the EAAS?*
 - c. *How can the EU promote with other regional organizations the European Arrest Warrant’s model, which include the automatic execution of arrest warrants for genocide, crimes against humanity and war crimes?*
 - d. *What is the percentage of international cooperation-aid given by the EU to developing countries to promote the Rule of Law in general and to support the investigation and prosecution of international crimes and the protection of the rights of victims of gross human rights’ abuses in particular?*
 - e. *What are the strategies of the EU to ensure that the principle of “complementarity” (to fight impunity through domestic jurisdictions) is duly prioritized by EU institutions, organs and Member States (e.g. via the new EU Tool-Kit on Complementarity announced by the Commission at the Kampala Review Conference)?*

The debate was opened by a short resume by Ms. Marjiete Schaake on the previous interventions. She further underlined that this is a difficult time for the EU to make financial reallocations and that Europe is confronted with growing populism and an anti-international justice atmosphere.

Mr. Francesco De Angelis, former EC Director at EuropeAid

- He pointed out that there is an urgent need for the 27 EU States Parties to the Rome Statute to take measures to give effect to the Rome Statute by domestically implementing the relevant provisions on complementarity and cooperation with the Court. Without such implementing legislation, many EU member states will not be able to prosecute alleged perpetrators of Rome Statute crimes. Reaction of Dr. David Donat Cattin: It is indeed true that the national penal law of many countries is insufficient. This is why PGA, in the framework of its *Campaign for the Universality*

and Effectiveness of the ICC, is committed to work with parliamentarians worldwide in order to strengthen national legislation on Rome Statute provisions. As Mr. de Angelis pointed out, the EU must have its “house in full order” to be a credible partner in its external relations for the full implementation of the RS.

- He further stated that the idea of ICC focal points is excellent but shall involve the head of all EU delegations and be accompanied with training for the support of the ICC. A focal point without an appropriate framework will not give the necessary concrete results. Reaction by Dr. Christian Behrmann: In each EU delegation, there are already two Human Rights focal points, one in the political section and one in the development section. In his view, drawing up a new independent focal point would be too ambitious at that point because it may possibly duplicate already existing efforts. Reaction of Dr. David Donat Cattin: When organizing meetings in different countries, the head of the EU delegation is always invited by PGA to present the EU common position on the ICC (PGA made excellent experiences in that respect in different countries, most recently in Kuala Lumpur at the occasion of PGA’s Asia-Pacific Parliamentary consultations). These examples show that the EU has been very successful in mainstreaming ICC knowledge at the highest levels, as Ambassador van der Geer demonstrated when he promoted the anti-impunity agenda as EU Special Representative on the African Great Lakes region with offices in Goma.

Mr. Willy Fautre, *Director, Human Rights Without Border*

- Question: Belgian courts have universal jurisdiction. Has there been contact between the ICC and the Belgian Minister of Justice on how the two instruments can be complementary? Response by Matias Hellman: The Rome Statute system is built on the presumption that national jurisdictions will investigate regardless the involvement of the ICC. Only if they fail, the ICC will step in. Therefore, there does not need to be a special conduct for that matter. It is the role of the ICC states parties to make their own national jurisdictions work efficiently.

Ms. Ana Gomes, MEP-S&D, (Portugal)

- Experience has taught us that lobbying with regard to the ICC can be very effective and can even provoke counteraction: One example is the framework agreement negotiated between the EU and Libya where the particular clause on the ICC has encountered the largest resistance by the Ghadafi government. Reaction by Dr. Christian Behrmann: In his experience, pressure on ICC clauses has indeed been very successful. At the moment, several agreements are being negotiated in which the pressure in that respect shall be upheld.
- While talking to members of the transition council in Benghazi about the future regarding possible ICC action in Libya, she was told that if Ghadafi was caught alive, he should be tried domestically. Of course this will require support by the ICC and

- the EU to assure that the trial respects international standards. This will be an interesting challenge for the ICC to collaborate with future authorities of Libya.
- Regarding the Review Conference of the ICC, the Ratification Campaign shall be included by the EP in the new Report that is being prepared by Mr. Kreissl-Dorfler, MEP
 - Question: Can the ICC act upon the transmission of evidence submitted by individuals (victims and relatives) and without a referral from the Security Council (in the case of non-member States of the ICC)? Response by Matias Hellman: No, there is no legal basis for the ICC to take action in a non state party and without a referral from the Security Council. Only if non-States parties accept the jurisdiction of the Court on an *ad hoc* basis (as in the case of Ivory Coast), the Court has jurisdiction without a Security Council referral. In order to change the conditions for the jurisdiction of the Court, the member states would have to amend the Statute. Reaction by Dr. David Donat Cattin: This legal basis for the jurisdiction of the Court is the reason why the issue of universality is so important. The Rome Statute does not attribute universal jurisdiction to the ICC; instead the Courts' jurisdiction is based on active nationality and territoriality. In the case of Sri Lanka for instance, China vetoed a referral of the situation to the ICC, thus, the ICC has no jurisdiction in that country which is a non-state party of the Court.

Ms. Sarah Ludford, MEP- ALDE, (UK)

- Mladic. Was a close call to discomfort: the long delay in arresting him, 16 years, which could have resulted in his death. So, "too close to call" for making a true victory of international justice, which however prevailed, not without surpassing obstacles that may still prevail elsewhere.
- Within the EP she tries to press for follow up on the report on torture/rendition, but so far it was not possible to follow up on the report, as some political parties do not want to see this. The EP is not being active enough in this respect. (*Lochbihler*: responded by stating that we need to be strategic in our efforts within the EP.)

Dep. Alain Destexhe, MP, (Belgium), Member of the Executive Committee of PGA

- With regard to Sri Lanka, the magnitude of crimes committed may be among the worst in the world and yet no action had been taken by the UN Security Council on the basis of the UN Panel Report. Can the EP contribute in this regard? Reaction by Ms. Barbara Lochbihler: As a follow-up to the UN Expert Panel report on Sri Lanka's accountability in the armed offensive against the Tamil Tiger terrorists, an urgency resolution was tabled in the EP. However, an apparent majority in the EP was very reluctant and the text of the resolution turned out to be rather weak (and even used by the Sri Lankan government as propaganda tool). In that sense, weak resolutions can even be counterproductive.

Mr. Stijn Houben, EU Commission, DGDEV European Instrument for Democracy and Human Rights

- The EC is very committed to further advance the principle of complementarity. Within existing means much more can be involved. For example, substantial support from the EC to Ivory Coast has already been decided upon and meetings of the EU delegation with the new administration have taken place. Further, the EC will look at how national capacities can be strengthened.
- With regards to the funding of the ICC and civil society, the EC is giving a large contribution and is very satisfied with the results. The EC is committed to continue this support and is reflecting on how such support can be continued at similar levels in the future.

Mr. Tor-Hugne Olsen, Zimbabwe Europe Network

- Question: What measures are taken by the ICC in Cooperation with the African Union and the African Court? Response by Matias Hellman: With regards to Africa, the ICC is putting a great effort into maintaining good relations with the AU and the African countries in general. The ICC has not received any additional resources from the Assembly of States Parties (ASP) last year. A joint technical seminar ICC-AU will be held in Addis Ababa in July 2011. This is a very positive development and will hopefully further pave the way for increased cooperation. The regional ICC seminar which took place in May in Doha, Qatar, was a very positive accomplishment too. There are further signs of improved relations of the ICC with the AU. So, in conclusion, the relations with the AU have not deteriorated at all.

13:50 Concluding comments

Ms. Marietje Schaake, MEP-ALDE (Netherlands), Chair, PGA Group in the European Parliament

- One issue we have not talked about is the matter of preliminary investigations conducted by the ICC Office of the Prosecutor. They are in fact an excellent tool to mainstream the work on the ICC and have a possibly deterrent effect. More work should be done to disseminate knowledge about them.
- There is a risk among Human Rights activists to be very active but not concrete enough. Therefore, we should always be aware of political realities.
- It is very important to think of ways on how to frame our actions.
- Thanks to all the participants and organizers

Ms. Marietje Schaake, MEP-ALDE (Netherlands)

Marietje Schaake is a Member of the European Parliament with the Alliance of Liberals and Democrats for Europe (ALDE) political group. She serves on the Committee on Foreign Affairs (AFET), where she focuses on neighborhood policy, human rights and Iran. In the Committee on Culture, Media, Education, Youth and Sports she works on Europe's Digital Agenda and is rapporteur of a Report on the role of culture and new media in the EU's external actions (vote expected February 2011).

Marietje is chairperson of the PGA EP Group. She is also a member of the delegation for relations with the United States, a substitute member on the delegation with the Balkan countries and a founder of the European Parliament Intergroup on New Media and Technology.

Mrs. Barbara Lochbihler, MEP-Greens (Germany)

Barbara Lochbihler is a Member of the European Parliament for the Greens/EFP political group. Mrs Lochbihler is the chair of the delegation for relations with Iran. She is a member of the conference of delegations chairs and the sub committee on human rights. In addition she serves as a substitute member in the Committee on Foreign Affairs and the delegation for Relations with India. Before joining the Parliament, Mrs. Lochbihler was among other things, from 1999 to 2009, the Secretary General of the German section of Amnesty International. She is a member of the Women's International League for Peace and Freedom, the German Institute for Human Rights, and the United Nations Association of Germany.

Mr. Matias Hellman, External Relations Adviser, Office of the President of the ICC

Matias Hellman has been the External Relations Adviser of the Presidency of the International Criminal Court (ICC) since July 2010. Prior to joining the ICC, he served in the United Nations' International Criminal Tribunal for the former Yugoslavia (ICTY), most recently as the Legacy Officer in the Office of the ICTY President. Before that, he was posted in the ICTY's field offices in Zagreb (Croatia) Belgrade (Serbia) and Sarajevo (Bosnia and Herzegovina) for eight years, first as Outreach Coordinator and later as Registry Liaison Officer. A national of Finland, he holds an LLM (with distinction) in International Human Rights Law from the University of Essex and an MA (*laudatur*) in Slavic Languages and Cultures from the University of Helsinki.

Mr. Richard Howitt, MEP-S&D (UK)

Richard Howitt is a Labour Member of the European Parliament for the East of England, first elected in 1994. He is a member of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and is the Labour European Spokesperson on Foreign Affairs. Richard is a member of the EU-Turkey Joint Parliamentary Committee, and was recently a member of the Parliament mission to the UN Human Rights Commission in Geneva, and head of the EP delegation to the Kampala review conference. Richard Howitt is also a member of the Committee on Employment and Social Affairs, and is European Parliament Spokesperson on Corporate Social Responsibility (CSR).

Dr. David Donat Cattin, Director, International Law and Human Rights Programme, PGA

David Donat Cattin (Ph.D Law, Italy) is the Director of the International Law and Human Rights Programme and Development Advisor of Parliamentarians for Global Action (PGA). Over the past eleven years, Dr. Donat Cattin worked to promote the universality and effectiveness of the International Criminal Court (ICC) Statute in approximately 90 countries. Under his coordination, PGA Members contributed to the ratification process of 69 out the current 115 States Parties to the Statute, including Mexico (2005), Japan (2007), Madagascar, Suriname and the Cook Islands (2008), Chile and the Czech Republic (2009), the Seychelles and St. Lucia (2010).

Dr. Donat Cattin holds a Ph.D in International Law and Human Rights (2000) from the University of Teramo (Italy), Faculty of Law, and a 'magna cum laude' law degree (1994) from the LUISS-Guido Carli University of Rome (Italy), Faculty of Law. Since 1999, Dr. Donat Cattin is a lecturer at the Salzburg Law School on International Criminal Law in Austria. Further, he has been heard as expert-witness on the ICC and fight against impunity for core crimes under international by the German, Italian and the Ugandan Parliaments, as well as by the plenary of the Africa-Caribbean-Pacific—European Union Joint Parliament Assembly.

Dr. Christian Behrmann, EU Focal Point on the ICC, European External Action Service

Annexes:

- EU Decision on the ICC (March 2011)
- EU Action Plan on the ICC [2003]