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### *Prosecuting international crimes committed in the Russian Federation-Ukraine armed conflict*

- ☛ Statement by President von der Leyen on the establishment of the International Centre for the Prosecution of Crimes of Aggression against Ukraine, 4 March 2023, <[https://enlargement.ec.europa.eu/news/statement-president-von-der-leyen-establishment-international-centre-prosecution-crimes-aggression-2023-03-06\\_en](https://enlargement.ec.europa.eu/news/statement-president-von-der-leyen-establishment-international-centre-prosecution-crimes-aggression-2023-03-06_en)>

In a Statement of 4 March 2023, published on 6 March 2023, the President of the European Commission, Ursula von der Leyen, deplored the suffering caused by the Russian invasion of Ukraine, and commemorated the “horrors of Bucha”. Then, she brought attention to the increasing evidence of direct Russian attacks against civilians as well as on energy and other infrastructure.

President von der Leyen also recalled that grave breaches of international humanitarian law, such as torture, ill-treatment, sexual violence, and summary executions are known to have been carried out by the Russian Federation. President von der Leyen urged that there must be accountability for the crimes of the Russian Federation and that everything possible must be done to bring the perpetrators to justice. The declared position of the EU is that, while supporting the role of the International Criminal Court (ICC), a dedicated tribunal to prosecute the crime of aggression must also be established. In this spirit, President von der Leyen welcomed the signature of the agreement to set up the International Centre for the Prosecution of the Crime of Aggression (ICPA) in The Hague.

Since the ICC cannot prosecute Russia for the crime of aggression,<sup>2</sup> bearing in mind that Russia is not a State party to the ICC, the Commission called upon the Member States to take action<sup>3</sup> to guarantee that there is full accountability for all crimes committed in Ukraine. The options included the possibility of establishing an accountability mechanism to allow the prosecution of the crime of aggression. These negotiations led to the agreement on the ICPA. It is hosted by the European Union

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<sup>2</sup> Statement by President von der Leyen on the establishment of the International Centre for the Prosecution of Crimes of Aggression against Ukraine, 4 March 2023, *Background*, <[https://enlargement.ec.europa.eu/news/statement-president-von-der-leyen-establishment-international-centre-prosecution-crimes-aggression-2023-03-06\\_en](https://enlargement.ec.europa.eu/news/statement-president-von-der-leyen-establishment-international-centre-prosecution-crimes-aggression-2023-03-06_en)>.

<sup>3</sup> Ukraine: Commission presents options to make sure that Russia pays for its crimes, 30 November 2022. <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7311](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7311)>.

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Agency for Criminal Justice Cooperation (Eurojust)<sup>4</sup> and is given the task to investigate Russia's crime of aggression against Ukraine and facilitate case building for future trials. The evidence collected by the Centre could be used before other jurisdictions, including national and international courts. It will provide a structure to support investigations into the crime of aggression and contribute to the exchange and analysis of evidence gathered.<sup>5</sup>

The Centre is composed of selected national prosecutors that are already participating in the Joint Investigation Team,<sup>6</sup> to which the Centre is linked in its operations. Eurojust will sustain the ICPA by providing operational, legal, financial, and logistical support, including the possibility to use its facilities such as the Core International Crimes Evidence Database.<sup>7</sup>

The ICPA is a first step in this process to preserve evidence and prepare the prosecution for future trials, whether national or international, including a possible future dedicated tribunal backed by the United Nations and/or the international community, to be established to effectively prosecute the crime of aggression.

On 2 March 2022, the Prosecutor of the ICC announced he had proceeded to open an investigation into the situation in Ukraine.<sup>8</sup> Eurojust cooperates with the Prosecutor of the ICC, since it has the expertise and experience to support investigations and prosecutions of core international crimes.

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<sup>4</sup> Eurojust is the EU hub for judicial cooperation in criminal matters, coordinating investigations and prosecutions of serious cross-border crime in Europe and abroad. It supports national investigating and prosecuting authorities in relation to serious crimes, including genocide, crimes against humanity and war crimes (also collectively referred to as 'core international crimes'). See <<https://www.eurojust.europa.eu/eurojust-and-the-war-in-ukraine>>.

<sup>5</sup> In order to facilitate investigations into allegations of international crimes, the European Commission proposed to enhance the current set-up of the EU Agency for Criminal Justice Cooperation (Eurojust). More specifically, the EC aimed to optimise the agency's case management system in order to improve the exchange of information between national competent authorities and Eurojust. See European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1727 of the European Parliament and the Council, as regards the collection, preservation and analysis of evidence relating to genocide, crimes against humanity and war crimes at Eurojust to amend Eurojust Regulation to allow Eurojust to collect, preserve and analyse evidence related to core international crimes, Brussels, 25 April 2022, COM(2022) 187 final, 2022/0130 (COD), <[https://commission.europa.eu/document/07c68619-3fab-4d31-a54c-c3fe8a0a76c3\\_en](https://commission.europa.eu/document/07c68619-3fab-4d31-a54c-c3fe8a0a76c3_en)>.

<sup>6</sup> It was established on 25 March 2022 to enable the exchange of information and facilitate investigations into war crimes, crimes against humanity and other core crimes. It is designed as an international cooperation tool based on an agreement between competent authorities – both judicial (judges, prosecutors and investigative judges) and law enforcement authorities – of two or more states, established for a limited duration and for a specific purpose, that conducts criminal investigations in one or more of the states involved. See Joint Investigation Team, Practical Guide, Eurojust, 2021, p. 7 <[https://www.eurojust.europa.eu/sites/default/files/assets/joint\\_investigation\\_teams\\_practical\\_guide\\_2021\\_en.pdf](https://www.eurojust.europa.eu/sites/default/files/assets/joint_investigation_teams_practical_guide_2021_en.pdf)>.

A JIT agreement was signed between Ukrainian, Lithuanian and Polish authorities, supported by Eurojust and the JIT's Network Secretariat. See Establishment of a Joint Investigation Team into alleged core international crimes committed in Ukraine. European Union Agency for Criminal Justice Cooperation, Establishment of a Joint Investigation Team (JIT) to enable the exchange of information and facilitate investigations into war crimes, crimes against humanity and other core crimes, in YIHL Vol. 25, 2022, *Correspondents' Reports* <<https://www.asser.nl/media/797237/eu-report-2022.pdf>>.

<sup>7</sup> Since the Eurojust case management system did not allow it to collect, preserve and analyse evidence relating to core international crimes, including those that are likely being committed in Ukraine, due to the scale of the events and the vast amount of evidence that needs to be stored in case of the alleged commission of such crimes, the Commission proposed to amend Eurojust Regulation to allow Eurojust to collect, preserve and analyse evidence related to core international crimes, so that it is enabled to store and exchange evidence, also relating to personal data, in order to facilitate the prosecution of international crimes. COM(2022) quoted above <[https://commission.europa.eu/document/07c68619-3fab-4d31-a54c-c3fe8a0a76c3\\_en](https://commission.europa.eu/document/07c68619-3fab-4d31-a54c-c3fe8a0a76c3_en)>.

<sup>8</sup> International Criminal Court (ICC), Situation in Ukraine, ICC-01/22, <<https://www.icc-cpi.int/situations/ukraine>>.

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*Biological and Toxin Weapons Convention*

- COUNCIL DECISION (CFSP) 2023/2636 of 20 November 2023 amending Decision (CFSP) 2021/2072 in support of building resilience in biosafety and biosecurity through the Biological and Toxin Weapons Convention <<https://eur-lex.europa.eu/eli/dec/2023/2636/oj/eng>>

On 20 November 2023, the Council of the European Union adopted the Decision 2023/2636 to amend the Decision (CFSP) 2021/2072 in support of building resilience in biosafety and biosecurity through the Biological and Toxin Weapons Convention (BTWC), providing the extension of the implementation period of Decision (CFSP) 2021/2072<sup>9</sup> until 19 December 2024.

Since 2006, the European Union (EU) has supported the BTWC by means of Joint Actions and Council Decisions, following the adoption of the EU Strategy against Proliferation of Weapons of Mass Destruction in 2003.<sup>10</sup>

At that time, in the aftermath of 9/11, the fight against the proliferation of weapons of mass destruction (WMDs) became a central element in the EU's external action, to prevent, deter, halt or eliminate proliferation programmes, given that the proliferation of WMDs and their means of delivery such as ballistic missiles were deemed as a growing threat to international peace and security and that a number of states had sought or were seeking to develop such weapons. As such, the EU adopted such a strategy, also due to the risk that terrorists acquired chemical, biological, radiological or fissile materials and their means of delivery.

In this framework, the Council adopted some decisions to support the BTWC, its inter-sessional programmes and the preparations for its Review Conferences, in particular by means of relevant projects. Council Decision (CFSP) 2021/2072 of 25 November 2021, mentioned above, complemented Council Decision (CFSP) 2019/97 of 21 January 2019 in support of the BTWC in the framework of the EU Strategy against Proliferation of Weapons of Mass Destruction,<sup>11</sup> which aimed to support BTWC universalisation; foster biosecurity networks in the Global South; support the preparedness of States Parties to prevent and respond to attacks involving biological agents; and enable tools for outreach, education and engagement.

One of the projects foreseen in this framework was aimed at supporting the BTWC inter-sessional programme by facilitating consultations and integrating scientific perspectives on topics under discussion to strengthen biosafety and biosecurity capabilities in Africa through increased regional coordination, by increasing the capacities of national authorities and regional entities and organizations dealing with such issues in Africa. Another was related to capacity building for BTWC National Contact Points and supporting the inter-sessional discussions on national implementation and measures on confidence-building and transparency. In particular, it aimed to create training materials and providing dedicated training to BTWC National Contact Points (NCPs) on national implementation of the BTWC.

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<sup>9</sup> Council Decision (CFSP) 2021/2072 of 25 November 2021 in support of building resilience in biosafety and biosecurity through the Biological and Toxin Weapons Convention (OJ L 421, 26.11.2021, p. 56).

<sup>10</sup> <<https://data.consilium.europa.eu/doc/document/ST-15708-2003-INIT/en/pdf>>.

<sup>11</sup> Council Decision (CFSP) 2019/97 of 21 January 2019 in support of the Biological and Toxin Weapons Convention in the framework of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 19, 22 January 2019, p. 11–19 <<https://eur-lex.europa.eu/eli/dec/2019/97/oj/eng>>.

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A third project aimed at facilitating the review of science and technology (S&T) of relevance to the Convention, since States Parties repeatedly recognized the importance of info sharing due to the fact that the technology surrounding BTWC is inherently dual-use.

Another project was aimed at promoting transparency and building confidence under the Convention, by foreseeing voluntary transparency exercises carried out by States through the establishment of an exchange platform including, inter alia, the identification of lessons from those activities.

The implementation of these projects together with UNODA are fully in line with the EU commitment to prohibit the use of biological and toxin weapons during an armed conflict, based on the view that the BTWC is one of the major pillars of the global disarmament and non-proliferation architecture and embodies the legally-binding norm that the development, production, stockpiling and usage of biological agents and toxins as weapons is unacceptable.

Facing the risk of natural or accidental spread of dangerous pathogens, strengthening the BTWC and its implementation was made more urgent after the Covid-19 pandemic, which showed how quickly diseases can cross borders and how dangerous and disruptive they can be.

The project foreseen by Decision 2021/2072 was to be implemented by the United Nations Office for Disarmament Affairs (UNODA) Geneva Branch.

Decision (CFSP) 2021/2072 had been adopted on 25 November 2021, and initially provided for a 24-month project-implementation period commencing after the date of conclusion of the agreement with UNODA referred to in its Article 3(3), so it was to end on 19 December 2023.

Then, a further 12-month extension was requested by UNODA on 23 August 2023 and the Council Decision (CFSP) of 20 November 2023 provided for it.<sup>12</sup>

Decision 2023/2636 was adopted following the proposal from the High Representative of the Union for Foreign Affairs and Security Policy, and the related legal basis was provided by Articles 28(1) and 31(1) of the Treaty on European Union. The extension does not have any implication as regards financial resources.

It further strengthens biosafety and biosecurity at the national, regional, and international levels. In order to avoid future deliberate manipulations of a disease to be more virulent, or intentionally released in multiple places at once, the need was felt to step up efforts to address biosafety and biosecurity issues in the context of the BTWC.

This was also due to the fact that even if advances in biotechnology can lead to multiple benefits with a positive impact on sustainable development, on the other hand they can bear multiple risks with potentially catastrophic consequences.

*Humanitarian situation in Gaza in relation to the Israel-Hamas armed conflict*

- Statement by the High Representative on behalf of the European Union on humanitarian pauses in Gaza, 12 November 2023, <<https://www.consilium.europa.eu/en/press/press-releases/2023/11/12/statement-by-the-high-representative-on-behalf-of-the-european-union-on-humanitarian-pauses-in-gaza/>>

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<sup>12</sup> Council Decision (CFSP) 2021/2072 of 25 November 2021 in support of building resilience in biosafety and biosecurity through the Biological and Toxin Weapons Convention (OJ L 421, 26.11.2021, p. 56).

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On 12 November 2023, the High Representative of the Union for Foreign Affairs and Security Policy and Vice President of the Commission (HR/VP) made a statement to express the EU's grave concern about the deepening humanitarian crisis in Gaza. It follows and repeals the European Council Conclusions of 26 and 27 October 2023 on the Middle East.<sup>13</sup> The HR/VP expressed grave concerns about the humanitarian crisis in Gaza and urged for immediate pauses in hostilities and the establishment of humanitarian corridors, including through increased capacity at border crossings and through a dedicated maritime route, so that humanitarian aid can safely reach the population of Gaza. Then, after recognizing Israel's right to defend itself in line with international law and international humanitarian law, called for immediate pauses in hostilities and the establishment of humanitarian corridors to ensure rapid and safe humanitarian access and aid for those in need.

The position stressed the results of the Humanitarian conference held in Paris on 9 November 2023.<sup>14</sup> In line with its Global Strategy, the EU' strategy is to approach the crisis together with all the partners at the international level, including the UN and other agencies as well as countries in the region, including with the Palestinian Authority,<sup>15</sup> based on an integrated approach.<sup>16</sup>

In her statement on behalf of the EU, the HR/VP recalls several issues of international humanitarian law, recognizing that some violations have occurred during the armed conflict.

Hamas was called upon for the immediate and unconditional release of all hostages and to grant the International Committee of the Red Cross (ICRC) access to them. Then, in line with IHL, the EU recalls that hospitals, medical supplies and civilians inside hospitals must be protected. Additionally the most urgent medical supplies must be provided as well as the evacuation of the patients that require urgent medical care.<sup>17</sup>

The HR/VP's speech is coherent with the conclusions of the European Council<sup>18</sup> and the Statement of its Members of 15 October 2023.<sup>19</sup> All of them took a strong position regarding the use of civilians as human shields by Hamas, qualifying it as a "particularly deplorable atrocity"<sup>20</sup> and condemning it.

In each of these examples, the EU stresses the importance of ensuring the protection of all civilians at all times in line with international humanitarian law and deplores all loss of civilian life.<sup>21</sup>

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<sup>13</sup> European Council, Conclusions, 26 and 27 October 2023, EUCO 14/23 <<https://www.consilium.europa.eu/media/67627/20241027-european-council-conclusions.pdf>>.

<sup>14</sup> <<https://newsroom.consilium.europa.eu/events/20231109-eu-international-humanitarian-conference-for-the-civilian-population-in-gaza>>.

<sup>15</sup> The Palestinian Authority is expressly mentioned in the European Council, Conclusions, 26 and 27 October 2023, quoted above.

<sup>16</sup> European External Action Service (2016). *Shared Vision, Common Action: A Stronger Europe - A Global Strategy for the European Union's Foreign and Security Policy*. <<https://www.coe-civ.eu/kh/a-global-strategy-for-the-european-unions-foreign-and-security-policy>>.

<sup>17</sup> Statement by the High Representative, p. 1.

<sup>18</sup> European Council, Conclusions, 26 and 27 October 2023, EUCO 14/23 <<https://www.consilium.europa.eu/media/67627/20241027-european-council-conclusions.pdf>>.

<sup>19</sup> Statement of the Members of the European Council on the situation in the Middle East, 15 October 2023 <<https://www.consilium.europa.eu/en/press/press-releases/2023/10/15/statement-agreed-by-the-27-members-of-the-european-council-on-the-situation-in-the-middle-east/>>.

<sup>20</sup> Ibid.

<sup>21</sup> Israel/Palestine: Statement by the Spokesperson on the situation in Gaza, 9 May 2023. <[https://www.ceas.europa.eu/ceas/israelpalestine-statement-spokesperson-situation-gaza\\_en](https://www.ceas.europa.eu/ceas/israelpalestine-statement-spokesperson-situation-gaza_en)>.

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Furthermore, in its Conclusions, the European Council recalled the need to avoid regional escalation, to revive a political process on the basis of the two-state solution, and to support an international peace conference soon.

Finally the HR/VP in her Statement expressed the EU's commitment to provide a sustained flow of assistance and facilitate humanitarian assistance and namely access to food, water, medical care, fuel and shelter.

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