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NOTE

From:	Presidency/General Secretariat of the Council
To:	Delegations
Subject:	Russia's war of aggression against Ukraine – Fight against impunity - Short presentation by the Presidency of recent documentation

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (09.07.2024)

Introduction

Immediately after the start of the full-scale armed attack on 24 February 2022, the European Council condemned in the strongest possible terms Russia's unprovoked and unjustified war of aggression against Ukraine, which is a gross violation of international law and of the principles of the UN Charter and is causing massive loss of life and injury to civilians. In subsequent conclusions, the European Council has repeatedly addressed the issue of war crimes and the other most serious crimes.

On 1 and 2 March 2022, 39 States Parties to the Rome Statute of the International Criminal Court ('Rome Statute'), including all Member States of the European Union, made a referral to the International Criminal Court ('ICC'), asking the ICC Prosecutor to investigate the situation in Ukraine. On 2 March 2022, the ICC Prosecutor announced that he had proceeded to open an investigation into the situation in Ukraine on the basis of the referrals received¹.

¹ Subsequently, four other States Parties referred the situation in Ukraine to the ICC, bringing the total number of States Parties having done so to 43.

The competent authorities of Ukraine and of various Member States started investigations into core international crimes allegedly committed in Ukraine. So far, 17 Member States have opened such investigations ², either on the basis of personal jurisdiction (e.g., a victim or the perpetrator (also) has the nationality of a EU Member State) or on the basis of universal jurisdiction.

The rotating Presidencies, in close cooperation with the Commission and the European External Action Service, have endeavoured to coordinate in the best possible way the action of the Member States, in particular by ensuring a continuous update of information on EU and international initiatives in support of accountability for core international crimes committed in Ukraine and the status of Member States' financial and operational support to the ICC. Since the start of the full-scale Russian aggression against Ukraine, the issue of the fight against impunity has been on the agenda of all meetings of the JHA Council.

Documentation

The Presidency would like to update Member States on the documentation/information that is available in this field:

a) “Investigations of war crimes and other core international crimes allegedly committed in Ukraine – EU and international initiatives in support of accountability in Ukraine” (WK 5731/22).

This table provides an overview of EU and international initiatives in support of accountability for core international crimes committed in Ukraine. The table is regularly updated – approximately once every 6 months – and the latest version was issued on 15 January 2024 ([REV 7](#)).

b) “Additional financial support and operational support provided to the International Criminal Court by the Member States” (WK 5667/22).

In the context of ICC's investigation into the situation in Ukraine, the ICC prosecutor asked for additional financial contributions and for extra human resources in the form of secondment of prosecutors and investigators. This call was renewed at the 'Justice Ministers Conference: Supporting the ICC and its investigation into the situation in Ukraine' (London, 20 March 2023).

² BE, CZ, DE, DK, EE, ES, FI, FR, IE, LT, LV, NL, PL, RO, SE, SI, SK.

The table in WK 5667/22 provides an overview of the additional financial and operational support (human resources) provided to the Office of the Prosecutor (OTP) of the ICC by the EU Member States following the start of Russia's war of aggression against Ukraine.

The last update of this table was on 17 March 2023 (REV 23). If Member States are aware of any updates or corrections, they are invited to inform the GSC: jai.criminal.justice@consilium.europa.eu.

c) “Forensic and ballistic expertise in support of the UA judicial authorities”.

Soon after 24 February 2022, the Ukrainian authorities asked for various forms of forensic assistance, including experts specialised in victim identification, evidence experts, explosives experts, mechanical experts, and damages experts.

In order to coordinate efforts in this field, the rotating Presidency drew up a table on the provision by Member States of forensic and ballistic expertise in support of the UA judicial authorities (WK 5728/22 – the latest version is REV 6 of July 2022).

Following a proposal presented by the OTP of the ICC at the IPCR roundtable on 14 July 2022 to pool offers of forensic support by Member States to Ukraine in a rotation model with the ICC (Forensic Rotation Model, FRM), Member States were encouraged to channel their offers of forensic support through the FRM.

As Member States are now coordinating directly with the ICC, the Presidency has stopped producing updates of the table in WK 5728/22. However, the OTP of the ICC provides information on missions carried out under the FRM on a regular basis.

By December 2023 the OTP of the ICC had conducted 12 (9 in 2023) forensic and reconnaissance missions to Ukraine with over 200 personnel from six States Parties (including five EU Member States), through its FRM. Activities in 2023 primarily encompassed documentation and 2D/3D recording of multiple large scale crime scenes across the country, documentation in mortuary settings, digital forensic work, fact finding, site assessments. Through the FRM, the OTP of the ICC has also been able to provide training and engage in extensive knowledge-sharing activities with the OTP of Ukraine.

A table of missions carried out under the FRM is set out in the Annex.

The OTP of the ICC is engaged in regular exchanges with various additional States Parties (largely EU Member States) to determine their possible readiness to join the FRM in the future. A further outreach programme will be launched in early 2024, drawing on updated analysis of forensic requirements on the ground in Ukraine. This work has benefited significantly from the establishment of the ICC Field Office in Kyiv in 2023.

Concluding remarks

The Presidency intends to present this note at the meeting of the COPEN Working Party that is due to take place on 13 February 2024. Member States are invited to express any updates/comments they may have.

Where appropriate, the Presidency will inform Member States of any relevant developments in the field covered by this note.

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