



Brussels, 04 of April of 2022

Dear High Representative, Dear Vice President Borrell,

We are writing to you alarmed by the use of force (aggression) by Russia against the territory of Ukraine, and the indiscriminate attacks on Ukrainian civilians by Russian military forces.

Between 24 February and 15 March, the Office of the High Commissioner for Human Rights of the United Nations recorded 1,900 civilian casualties, with 726 people killed, including 52 children, mostly caused by explosive weapons in populated areas. This is in all likelihood an underestimation of the total deaths of civilians. These atrocious acts add to the invasion of Ukraine itself, an intolerable and unjustified attack on its territorial integrity, which constitutes the most serious threat to European security since the end of the cold war. The Russian Federation attack on Ukraine poses a serious challenge to the international order, based on the rule of law and the prohibition of the use of force.

International law provides for individual criminal responsibility for those who plan, prepare, initiate or execute wars of aggression. Furthermore, there is little doubt that the conduct of Russia's military operations appears to have given rise to the commission of war crimes and crimes against humanity in Ukraine.

The International Court of Justice ruled on the 16 of March 2022 that the Russian Federation must immediately suspend military operations in the territory of Ukraine, based on its jurisdiction pursuant to article nine of the Genocide Convention. A binding ruling that Russia has blatantly disregarded, showing further disrespect for international law and institutions. We welcome your support on 21 of March 2022 to the order by the International Court of Justice for Russia to stop the invasion of Ukraine, as well as the Commission of Inquiry set up by the United Nations Human Rights Council, but more must be done to ensure that the crimes perpetrated in Ukraine do not remain unpunished.

On 28 February 2022, the International Criminal Court (ICC) Prosecutor announced his intention to open an investigation by the ICC into the situation in Ukraine on the basis of alleged war crimes and crimes against humanity, while noting that the Court's jurisdiction – as of today – may not extend to the crime of aggression. We welcome your immediate support, on the [1st of March 2022](#), to the decision to open an investigation into Putin's invasion of Ukraine and the ruthless attack on the Ukrainian people, as well as your clear statement that any war crimes and crimes against humanity committed in Ukraine must be punished.

Subsequently, forty-one States Parties to the Statute of the ICC referred the situation in Ukraine to the ICC, allowing the ICC Prosecutor to open investigations, a move which you also supported with your statement of [10 of March 2020](#) and in the press on [12 March 2022](#), stating the Union's commitment to support the Court, including through the gathering of evidences. We commend your condemnation and unambiguous characterisation of the Russian attacks as war crimes, as well as the unity of Member States in denouncing war crimes and the violation of international law on [21 of March 2022](#), reinstating your support for the investigation launched by the ICC.



Other leaders have also clearly stated that there are sufficient evidences to attest that the indiscriminate attacks of Russia on Ukrainian civilians are war crimes, among them, President Biden, who qualified Vladimir Putin as 'a war criminal' on 16 March 2022. This was followed up by a statement on [23 March 2022](#) by the US department of State formally concluding that, based on information available, Russia's forces have committed war crimes in Ukraine. All these political determinations have the intrinsic limitation that only a Court of Law can make a judicial finding regarding the fact that a person would be found guilty for any crime beyond reasonable doubt.

We believe the Union should do its outmost to support the ICC in its investigations, through the gathering of evidences and by strengthening its financial support to the Court, as the importance and urgency of its mission are too substantial to let its success depend on the availability of resources. Equally, we recall the European Parliament Resolution on the crime of aggression of 17 July 2014, asking for a revised common position of the EU for the activation and universalization of the ICC jurisdiction over aggression and the need to align the jurisdictional regime on the crime of aggression to the one applicable to genocide, crimes against humanity and war crimes in accordance with the Rome Statute. Jurisdictional limitations to prosecute the crime of aggression could be addressed by a decision of States Parties to the Rome Statute of the ICC to urgently amend Article 15 bis of the Statute and ensure that such amendments immediately enter into force, upon adoption by a special session of the ICC Assembly of States Parties. As suggested in an appeal of 4 March 2022 addressed to you and to the President of the European Commission, such a reform could be proposed by any of the 27 EU Member States that collectively referred the Ukrainian situation to the jurisdiction of the ICC.

Subsidiarily, and considering the urgency and gravity of the crimes committed in Ukraine, we believe it is necessary to support the establishment of a special tribunal with a focus on the crime of aggression, which at the moment, cannot be addressed by the ICC, the European Court of Human Rights, nor the International Court of Justice. The Special Tribunal for the Punishment of the Crime of Aggression against Ukraine would mirror those established after the Second World War, where nations met in London in 1942 to draft a resolution on German war crimes. This call led to the creation of an International Military Tribunal, which in October 1946 ruled that the crime of aggression (crimes against peace, as it was then termed) was a "universal crime". This call was instrumental in laying down the foundations to split the Nazi regime and begin the persecution of the major war criminals.

The President and Foreign Minister of Ukraine have also called for the creation of a special tribunal on the crime of aggression. We understand that Ukraine is now working with other governments to examine modalities for the creation of a special tribunal¹. Its call has been supported by many people, including 140 leaders, intellectuals and experts in international law. The call has also been supported by the public, with over one and a half million people signing a petition in just a few days².

¹ <https://justice-for-ukraine.com/signatories/>; <https://www.chathamhouse.org/events/all/research-event/criminal-tribunal-aggression-ukraine>

² <https://justice-for-ukraine.com>



The Special Tribunal should be constituted with the objective to investigate the preparation and waging of a manifestly illegal war by Russia and Belorussia in Ukraine, and determine whether the crime of aggression has been perpetrated, and by who. Countries should agree to grant jurisdiction arising under national criminal codes and general international law to a dedicated criminal tribunal, and confer on such a tribunal jurisdiction to investigate both the perpetrators of the crime of aggression and those who have materially contributed to or shaped the commission of that crime.

We believe the Union, its institutions and the Member States, should join this call, lead the process and together with international partners and institutions, prepare the establishment of Special Tribunal for the Punishment of the Crime of Aggression against Ukraine.

In order to bring those responsible for the massacre of innocent civilian, including children, to justice, international solidarity will be necessary. The Union must be at the forefront of ensuring that Russia and the relevant individuals concerned will be held accountable for these serious violations and war crimes.

Kindest regards,

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3. Guy Verhofstadt, MEP, Renew
4. Tineke Strik, MEP, Greens
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6. Fabio Massimo Castaldo, MEP NI
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