

Rt Hon Elizabeth Truss MP
Foreign, Commonwealth and Development Office King Charles Street
London
SW1A 2AH

London, 2 March 2022

Re: condemnation of unlawful invasion of Ukraine by the Russian Federation

Dear Foreign Secretary,

We, academics and Visiting Professors at the Department of Law at Goldsmiths University of London as well as academic scholars from around the UK and other parts of Europe, barristers, solicitors and other legal professionals, NGO experts and politicians we are working with, and everyone else providing their support to this letter, **condemn the Russian Federation's criminal aggression** and all that follows from it.

Russia's aggressive criminal military attack is contrary to Article 2(4) of the United Nations Charter and customary international law, which prohibit the threat or use of force against the territorial integrity or political independence of any State. The invasion orchestrated by President Putin meets the test of criminal aggression under Article 8*bis* of the International Criminal Court's (ICC) Rome Statute. Putin and other Russian military and civilian leaders are criminally responsible for the crime of aggression.

The indiscriminate and widespread killings of civilians engineered by President Putin constitute war crimes and crimes against humanity. The shelling of civilian populations is a barbaric act. In view of the 'imminent risk of irreparable harm' to the right to life, prohibition of torture and right to family life, the European Court of Human Rights has already asked 'Russia to refrain from [further] military attacks against civilians and civilian objects' (interim measures, ECHR 068, 1 March 2022). In a historic moment at the UN General Assembly, on the very day we are writing this letter, 141 member states voted a draft resolution on 'Aggression against Ukraine', deploring in the strongest terms Russian aggression against Ukraine, demanding that 'the Russian Federation immediately cease its use of force against Ukraine' and also demanding that the Russian Federation 'immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine'. And at the ICC, following the unprecedented referral from 39 states parties of the Situation in Ukraine, the ICC Prosecutor has announced his decision to 'immediately proceed with active investigations in the Situation', adding that the Court's work in the collection of evidence has already commenced.

So, what should the next steps be for the international legal order?

Prosecuting Putin before the ICC for the crime of aggression appears compromised because neither Ukraine nor Russia is a party to the Rome Statute although Ukraine, unlike Russia, has accepted jurisdiction. We can also assume that referral by the UN Security Council on the basis of article 15^{ter} of the Statute would be blocked/obstructed by Russia, using its veto power.

In addition, whilst we recognise it is highly unlikely for the International Court of Justice (ICJ) to accept it has jurisdiction to establish whether, let alone find that, the Russian Federation has perpetrated the crime of genocide on Ukrainian territory, we welcome Ukraine's application to the ICJ under the Genocide Convention. Russia has justified its intervention in Ukraine on baseless arguments that Ukraine was perpetrating a genocide in some of its Eastern regions. We support the view that this gives rise to a dispute as to the interpretation of the Genocide Convention and we urge the ICJ to send a strong signal of the vitality of the international justice system by adopting provisional measures pursuant to Ukraine's request.

In the midst of tragedy, when monstrous evil appears in full view, the courage of the Ukrainian defence and the strength of international support give us hope. Realisation comes with appreciation of past failings of the international legal order. We, the peoples of Europe, share responsibility with our legal and political institutions for not reacting with sufficient strength and courage to the violent falling dominoes – Georgia, Crimea, Donetsk, Luhansk – and for harbouring oligarchs. We also have responsibility for not being interested enough in strengthening international law; this never featured high in election manifestos – unlike populist attacks on European human rights.

Public realisation of the unfolding tragedy in Ukraine presents a unique opportunity to renew our commitment to international law and international human rights. But public realisation may be through a short-lived window of time that will close once the war is over or settled in some way. While the window is still open politicians around the globe MUST use public empathy with Ukraine's plight as a driver to move the international society forward, and the Russian war machine backwards, and to ensure 'never again' is not empty words.

The public now expect Putin to be brought to a swift and effective trial. They expect all the procedural and institutional limitations on prosecution to be swept aside. They demand the absurdity of the Security Council, sabotaged as it is by the veto powers of those responsible for war crimes, aggression and crimes against humanity, to be exposed and ended.

The UK, USA and France – the three Permanent Five Members of the Security Council – should play a leading role in this process, putting political pressure on **Russia to accept the authority of both the ICJ and ICC** for judicial resolution of all these matters. It is a time of reckoning for China too, which has the opportunity to support the above action.

If Russia refuses, the international legal order should press for an immediate and swift **ad hoc justice mechanism to bring Putin, and those around him, to justice.**

Yours sincerely
(see list of signatories overleaf)

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