

Anniken Huitfeldt
Minister of Foreign Affairs
E-mail: utenriksminister@mfa.no

Oslo, 22 March 2022

Dear Minister,

The Norwegian Helsinki Committee and the Norwegian section of the International Commission of Jurists (ICJ Norway) are deeply concerned about the Russian invasion of Ukraine. We refer to, and support, the referrals of 3 March 2022 from 39 ICC States Parties to the International Criminal Court (ICC) regarding the situation in Ukraine and the opening of an investigation by the ICC Prosecutor Karim A.A. Khan and his Office of the Prosecutor.

This means that war crimes, crimes against humanity and, if relevant, genocide can be investigated and may lead to indictment and arrest warrants, and later to conviction and sentencing of persons responsible for such crimes at the ICC.

It is in our view important that the ICC, as the permanent and now mature International Criminal Court, on behalf of the international community makes clear that the most responsible persons for the aggressive acts in Ukraine must be held accountable for the possible crimes being committed by the Russian leadership, including President Putin.

Because of the special jurisdictional rules pertaining to the crime of aggression in the Rome Statute, ICC cannot convict any person for this crime in the current situation. This has led several highly respected lawyers to propose an international *ad hoc* tribunal, or possibly a hybrid Ukrainian and international court, for the prosecution of the crime of aggression committed by Russia against Ukraine. This is a laudable initiative, but it may have some disadvantages as well.

We believe that a good solution remains with the ICC if the ICC Prosecutor is prepared to consider all options available under the Rome Statute. This includes taking the crime of aggression into account in the investigations and prosecution of other crimes in the Ukrainian situation, as suggested and discussed by Terje Einarsen, Professor of International Law at the University of Bergen, and Joseph Rikhof, adjunct Professor at the University of Ottawa, in a [Policy Brief recently published with Torkel Opsahl Academic EPublisher \(TOAEP\)](#).

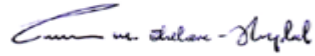
The prosecutorial strategy proposed here is practical, feasible, and may serve justice. It also provides the ICC with an opportunity to prove its relevance as the leading and best equipped international court to deal with the gravity of the Ukraine situation as a whole.

For these reasons, we hope that your government may underline that the proposed strategy ought to be considered seriously by the ICC Prosecutor, leaving of course the final and fully politically independent decision to be taken by the ICC Prosecutor.

On behalf of the Norwegian Helsinki Committee and ICJ Norway,



Mads Harlem
Head of ICJ Norway Sub-Committee
on International Humanitarian Law



Gunnar M. Ekeløve-Slydal
Deputy Secretary General
Norwegian Helsinki Committee