

February 21, 2023

Antony Blinken
Secretary of State
U.S. Department of State
2201 C St NW
Washington, DC 20520

Re: Tribunal on the Crime of Aggression against Ukraine

Dear Secretary Blinken,

We write to urge you to support the establishment of an international tribunal to prosecute the crime of aggression in Ukraine. A UN General Assembly Resolution could authorize the UN Secretary-General to negotiate an appropriate treaty between the UN and Ukraine establishing such a tribunal. This will not only fill a critical gap in efforts to hold war criminals from Russia and Belarus accountable for the crime of aggression, it will also shore up international commitments to the norms at the center of a rules-based international order. The establishment of a tribunal would be a strategic investment in future peace and stability, both internationally and in Ukraine.

We are heartened to see the large-scale efforts undertaken to systematically prosecute perpetrators of other atrocity crimes committed in Ukraine, as well as the critical role that the United States has played in supporting these efforts. Ukrainian leadership on this issue is nothing short of remarkable, and an example of the power of domestic legal systems to deliver justice for atrocity crimes. Further, support from the international community – and especially the United States – has been admirable in its breadth and depth.

We are acutely aware, however, of the remaining gap in these efforts. Russia's invasion of Ukraine – launched in 2014 and substantially ramped up in 2022 – constitutes a clear violation of the United Nations Charter. Despite this flagrant violation of the UN's founding principles, there is no current mechanism for holding Russian and Belarusian leaders accountable for the crime of aggression against Ukraine. Aggression is a leadership crime, focused on those who design policies of aggressive war and command forces responsible for conducting it. Ukrainian law, like U.S. law, provides personal immunity for heads of state, thus barring action against Russian leadership through Ukrainian courts. The Prosecutor of the International Criminal Court is precluded from investigating the crime of aggression due to Russia's status as a non-party state to the Rome Statute. As a result, no venue – domestic or international – currently exists to prosecute Russian leaders for the crime of aggression. The creation of a specialized international tribunal to prosecute the crime of aggression against Ukraine would right this wrong.

Further, the creation of a tribunal with the support of the UN General Assembly would reaffirm U.S. and international commitment to the foundational principles of the UN Charter. If Russian and Belarusian leaders are not held accountable, their actions will empower malign actors intent on further challenging these principles to pursue nationalist aims. A UN-backed tribunal is the strongest mechanism to ensure that the Russian challenge to global norms is rebuffed. In

Ukraine, where expectations for justice and accountability for atrocity crimes are extremely high, the establishment of a tribunal would demonstrate that the international community is working toward accountability for the “mother of all crimes.”

Finally, given the scope and scale of the ongoing violence in Ukraine, we must act urgently to ensure that the highest-level Russian and Belarusian perpetrators are on notice that they will be held to account for their crimes. While the proposed establishment of an international center for the investigation of the crime of aggression against Ukraine is a useful step to ensure that evidence is gathered and maintained securely in addition to the multinational efforts already under way, there remains the critical need to establish a special international tribunal focused exclusively on the crime of aggression against Ukraine – one that can *actually prosecute* based upon the collection of such evidence.

Some will argue that such an international tribunal will make it less likely that Russia’s leadership will decide to withdraw forces from Ukraine or engage in a genuine negotiation that produces a settlement on terms that Ukraine can accept. We disagree. Russian leaders are already under the threat of indictment by the International Criminal Court for other atrocity crimes. We believe that the movement to create this tribunal will increase pressure on the senior leadership – especially those around Putin who could see the war’s continuation as only increasing their legal exposure leading them to be brought to account – to seek an end to the conflict.

U.S. leadership has been critical to the success of accountability efforts for Ukraine to date, facilitating the rapid speed with which Ukrainian and European investigations have been launched. To truly hold Russia accountable for its most egregious crimes in Ukraine, however, the United States must now take steps to support filling the remaining accountability gap, working with partners and allies to establish a special tribunal on the crime of aggression inflicted upon the sovereign country of Ukraine.

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