

Federal Public Prosecutor at the Federal  
Supreme Court Brauerstraße 30  
76135 Karlsruhe

Berlin, 6 April 2022

**Criminal complaint**

**for crimes against humanity and war crimes on the territory of  
Ukraine against Vladimir Vladimirovich Putin and others  
involved.**

Dear Mr. Frank, Attorney General at the Federal Supreme Court,

we hereby file a

**Criminal complaint**

for all criminal offences that may be considered, in particular for

**Crimes against humanity**

according to Article 7 para. 1 (1) (8) of VStGB (Code of Crimes  
against International Law) as well as because of **War crimes**

according to Article 8, para. 1 (1) (6) and para. 3 (1) of VStGB and  
Article 11 para. 1 (1) to (3) (5), and para. 3 of VStGB

**against the Russian citizens**

1. Vladimir Vladimirovich Putin (President of the Russian Federation and  
Chairman of the Security Council)
2. Dmitry Medvedev (Vice-Chairman of the Security Council)
3. Mikhail Mishustin (Prime Minister, Member of the Security Council)

4. Vyacheslav Volodin (Chairman of the State Duma, Member of the Security Council)
5. Sergei Naryshkin (Director of the Foreign Intelligence Service SWR, Member of the Security Council)
6. Nikolai Patrushev (Secretary of the Security Council, Member of the Security Council)
7. Sergei Shoigu (Minister of Defence, Member of the Security Council)
8. Sergei Lavrov (Foreign Minister, Member of the Security Council)
9. Vladimir Kolokoltsev (Minister of the Interior, Member of the Security Council)
10. Valentina Matviyenko (Chairperson of the Federation Council, Member of the Security Council)
11. Alexander Bortnikov (Director of Russia's domestic intelligence service FSB, member of the Security Council)
12. Anton Waino (Head of the Presidential Administration, Member of Security Council)
13. Sergei Ivanov (Special Presidential Envoy for Nature Conservation, Ecology and Transport, Member of the Security Council)
14. Viktor Solotov (Director of the Russian National Guard, Member of the Security Council)
15. Ramzan Akhmatovich Kadyrov (President of the Russian constituent republic of Chechnya)
16. Dmitri Valeryevich Utkin (Commander of the "Wagner" Group)
17. Oleg Leonidovich Salyukov (Commander-in-Chief of the Ground Forces)
18. Valery Gerasimov (Chief of the Army General Staff)
19. Nikolai Vasilyevich Bogdanovsky (First Deputy Chief of the General Staff of the Armed Forces of the Russian Federation)
20. Alexander Alexandrovich Shuravlev (Commander of the Western Military District Troops)
21. Aleksandr Vladimirovich Dvornikov (Commander of the Troops of the Southern Military District)
22. Alexander Pavlovich Lapin (Commander of the Troops of the Central Military District)
23. Alexander Yuryevich Chaiko (Commander of the Troops of the Eastern Military District)
24. Sergei Vladimirovich Surovikin (Commander of the Aerospace Forces)
25. Andrei Nikolaevich Serdyukov (Commander of the Airborne Forces of the Russian Federation)
26. Victor Musavirovich Afzalov, Chief of General Staff, First Deputy Commander of the Aerospace Forces, Lieutenant General
27. Andrei Vyacheslavovich Yudin (Deputy Supreme Commander of the Aerospace Forces)
28. Sergei Vladimirovich Dronov (Commander of the Air Force Lieutenant General)

29. Andrei Gennadyevich Dyomin (Commander of the Air Defence and Missile Defence Forces)
30. Alexander Anatolyevich Maximtsev, Deputy Supreme Commander of the Aerospace Forces for Political and Military Affairs
31. Zabit Zabirovich Khejrbekov (Deputy Supreme Commander of the Aerospace Forces for Logistics)
32. Yuri Nikolayevich Grekhov (Deputy Supreme Commander of the Aerospace Forces for Armament)
33. Andrei Nikolaevich Serdyukov (Commander-in-Chief of the Russian Airborne Forces)

**and the members of the following units of the Russian armed forces**

### **1. Russian Airborne Forces**

- 11<sup>th</sup> Guards Airborne Assault Brigade
- 31<sup>st</sup> Guards Airborne Brigade (Commander: Sergey Pavlovich Karasyov)
- 83<sup>rd</sup> Guards Airborne Assault Brigade
- 7<sup>th</sup> Guards Air Assault Division (Commander: Alexander Kornev)
  - 247<sup>th</sup> Airborne Regiment
  - 56<sup>th</sup> Guards Airborne Assault Brigade (Commander: Sergei Matlashevsky)<sup>1</sup>
- 76<sup>th</sup> Guards Airborne Assault Division (Commander: Sergei Chubarykin)
  - 104<sup>th</sup> Airborne Regiment (Commander: Alexey Tolmachev)
  - 234<sup>th</sup> Airborne Regiment (Commander: Artyom Igorevich Gorodilov)
- 98<sup>th</sup> Guards Airborne Division (Commander: Viktor Igorevich Gunaza)
  - 217<sup>th</sup> Guards Airborne Regiment (Commander : Viktor Drozdov)

### **2. Russian Army**

- 2<sup>nd</sup> Guard Army (Commander: Gurov, Vyacheslav Nikolaevich)

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<sup>1</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 3 April 2022, <https://gur.gov.ua/content/voennosluzhashchye-56-desantnoshturmovo-i-bryhady.html>

- 21<sup>st</sup> Motorised Guards Rifle Brigade
- 5<sup>th</sup> Army Combined Forces (Commander: Podivilov, Alexey Vladimirovich)
- 6<sup>th</sup> Army Combined Forces (Commander: Yershov, Vladislav Nikolaevich)
- 8<sup>th</sup> Guards Army of the Combined Armed Forces (Commander: Andrei Mordichev)
- 20<sup>th</sup> Guards Army of the Combined Forces (Commander: Ivanayev, Andrei Sergeyevich)
- 29<sup>th</sup> Army of the Combined Forces
  - 36<sup>th</sup> Motorised Guards Rifle Brigade (Commander: Andrei Voronkov)
- 35<sup>th</sup> Army Combined Forces (Alexander Semyonovich Sanshik)
  - 64<sup>th</sup> Motorised Rifle Brigade (Commander: Kurbanov Andrei Boyevich)<sup>2</sup>
- 36<sup>th</sup> Army of the Combined Forces (Commander: Valery Solodchuk)
  - 5<sup>th</sup> Guards Armoured Brigade
  - 37<sup>th</sup> Motorised Guards Rifle Brigade<sup>3</sup>
- 41<sup>st</sup> Army of the Combined Forces (Commander: Sergei Ryykov)
  - 74<sup>th</sup> Motorised Rifle Brigade (Commander: Pavel Yershov)
  - 35<sup>th</sup> Guards Rifle Brigade (Commander: Oleg Kurygin)
  - 55<sup>th</sup> Motorised Rifle Brigade (Commander: Denis Alexandrovich Barilo)
- 49<sup>th</sup> Combined Armed Forces Army
  - 205<sup>th</sup> Motorised Rifle Brigade (Commander: Eduard Schandura)<sup>4</sup>
  - 34<sup>th</sup> Motorised Rifle Brigade (Commander: Smirnov Andrei Valeryevich)

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<sup>2</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 4 April 2022, [https://gur.gov.ua/content/voennye\\_prestupnyky-neposredstvenno-uchastvuiushchye-v-sovershenyy-voennykh-prestupleniyi-protyv-naroda-ukrayny-v-h-bucha-voennosluzhashchye-64-otdelnoi-motostrelkovo-bryhady-35-ovvo.html](https://gur.gov.ua/content/voennye_prestupnyky-neposredstvenno-uchastvuiushchye-v-sovershenyy-voennykh-prestupleniyi-protyv-naroda-ukrayny-v-h-bucha-voennosluzhashchye-64-otdelnoi-motostrelkovo-bryhady-35-ovvo.html).

<sup>3</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 26 March 2022, <https://gur.gov.ua/content/voennosluzhashchye-batalonnoi-taktycheskoi-hruppy-37-otdelnoi-motostrelkovo-bryhady.html>.

<sup>4</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 21 March 2022, <https://gur.gov.ua/content/voennosluzhashchye-reaktyvno-artylleryiskohodyvyzyona-205-otdelnoi-motostrelkovo-kazachei-bryhady.html>.

- 58<sup>th</sup> Combined Arms Army (Commander: Mikhail Stepanovich Zusko)
  - 34<sup>th</sup> Administrative Brigade (Commander: Abramov Suren Anatolyevich)<sup>5</sup>
  - 19<sup>th</sup> Motorised Rifle Division (Dmitri Uskov)
    - 1<sup>st</sup> Battalion Tactical Group (Commander: Zigura Oleg Pavlovich)
    - 2<sup>nd</sup> Tactical Battalion Group (Commander: Kuzovlev Alexander Vladimirovich)
    - 3<sup>rd</sup> Tactical Battalion Group (Commander: Alexei Vyacheslavovich Brutski)
  - 42<sup>nd</sup> Motorised Guards Rifle Brigade (Commander: Sergei Nikolaevich Saladin)<sup>6</sup>
  - 136<sup>th</sup> Separate Motorised Rifle Brigade of the Guard (Commander: Roman Geradotovich Demurchev)<sup>7</sup>
- 1<sup>st</sup> Guards Tank Army (Commander: Sergei Alexandrovich Kisel)
  - 4<sup>th</sup> Armoured Guard Division (Commander: Yevgeny Zhuravlev)
    - 12<sup>th</sup> Guards Tank Regiment
    - 13<sup>th</sup> Guards Tank Regiment
    - 423<sup>rd</sup> Motorised Guards Rifle Regiment
    - 275<sup>th</sup> Artillery Regiment
    - 538<sup>th</sup> Guards Anti-Aircraft Missile Regiment
  - 47<sup>th</sup> Guards Armoured Division
  - 2<sup>nd</sup> Motorised Taman Garde Rifle Division (Commander: Medvedev Sergei Viktorovich)
  - 27<sup>th</sup> Separate Motorised Rifle Brigade of the Guard (Commander: Sergei Igorevich Safonov)
  - 291<sup>st</sup> Artillery Brigade (Commander: Alexei Pavlovich Smelov)<sup>8</sup>
  - 96<sup>th</sup> Reconnaissance Brigade (Commander:

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<sup>5</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 1 April 2022, <https://gur.gov.ua/content/voennosluzhashchye-34-bryhady-upravleniya.html>

<sup>6</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 25 March 2022, <https://gur.gov.ua/content/voennosluzhashchye-50-samokhodnoho-artylleryiskoho-polka.html>.

<sup>7</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 18 March 2022, <https://gur.gov.ua/content/voennosluzhashchye-136-otdelnoi-motostrelkovoi-bryhady.html>

<sup>8</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 2 April 2022, <https://gur.gov.ua/content/voennosluzhashchye-291-artylleryiskoi-bryhady.html>.

Yevgeny Chintsov)<sup>9</sup>

- 90<sup>th</sup> Armoured Guard Division (Commander: Ramil Rakhmatulloevich Ibatullin)
  - 6<sup>th</sup> Guards Tank Regiment

### 3. Russian Air Force

- 4<sup>th</sup> Air Force and Air Defence Army (Commander: Gostev Nikolai Vasilyevich)
- 6<sup>th</sup> Air Force and Air Defence Army (Commander: Oleg Vladimirovich Makovetsky)
- 14<sup>th</sup> Air Force and Air Defence Army (Commander: Vladimir Melnikov)
  - 41<sup>st</sup> Air Defence Division
    - 388<sup>th</sup> Guards Anti-Aircraft Missile Regiment

(Commander: Alexander Alexandrovich Anufriev)<sup>10</sup>

- 31<sup>st</sup> Guards Fighter Aviation Regiment (Commander: Dmitri Alekseyevich Chernov)<sup>11</sup>
- 559<sup>th</sup> Bomber Aircraft Regiment (Commander: Vitaly Andreyevich Shishkin)<sup>12</sup>

### 4. Russian Navy

- 155<sup>th</sup> Guards Naval Brigade (Commander: Pavel Ivanovich Yendovitsky)<sup>13</sup>
- 727<sup>th</sup> Marine Infantry Battalion (Commander: Alexander Wiktorowitsch Kartawkin)<sup>14</sup>

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<sup>9</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 5 April 2022, <https://gur.gov.ua/content/voennosluzhashchye-96-otdelnoi-razvedyvatelnoi-bryhady.html>

<sup>10</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 17 March 2022, <https://gur.gov.ua/content/voennyeprestupnyky-voennosluzhashchye-388-zenytnoraketnohopolka.html>.

<sup>11</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 20 March 2022, <https://gur.gov.ua/content/voennyeprestupnyky-voennosluzhashchye-31-ystrebytelnohovyatsyonnohopolkasovershaiushchye-voennoyeprestupleniya-protyv-myrynoho-naseleniya-ukrayny.html>.

<sup>12</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 19 March 2022, <https://gur.gov.ua/content/voennosluzhashchye-559-bombardyrovochnohovyatsyonnohopolka.html>.

<sup>13</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 27 March 2022, <https://gur.gov.ua/content/voennosluzhashchye-batalonnoi-taktycheskoi-hruppy-155-otdelnoi-bryhady-morskoi-pekhoty.html>.

<sup>14</sup> Complete list of unit members compiled by the Intelligence Service of the Ukrainian Ministry of Defence, published on 11 March 2022, <https://gur.gov.ua/content/spysokvoennosluzhashchykh-727otdelnohopolka-morskoi-pekhoty-voiskovaia-chast-20264-h>

and all other eligible **members of the Russian armed forces.**

The above list of named persons and units of the Russian armed forces is **not exhaustive** and represents only a sample of possible suspects. Information on the various units involved and their commanders is freely available on the internet. On the website of the Intelligence Service of the Ukrainian Ministry of Defence (gur.gov.ua), complete lists of members of units of Russian armed forces suspected of having committed war crimes on the territory of Ukraine are published at regular intervals (in Ukrainian and Russian, not additionally in English). The lists contain the name, rank, military identification number, activity in the armed forces and date of birth. It is suggested that the lists there be given special attention in the investigations.

In the following, under **A.** the **facts of the case on which** the accusation is based are presented. Under **B.** it is then explained that the offences committed by the defendants clearly fulfil the requirements of section 7 of the Criminal Code as well as of several acts according to sections 8 and 11 of the Criminal Code and that there is undoubtedly a corresponding **initial suspicion** according to section 152, para. 2 of the Code of Criminal Procedure, which obliges the initiation of preliminary **proceedings.**

This criminal complaint is intended to contribute to the prosecution under international criminal law of the war crimes committed in Ukraine since the beginning of the Russian military attack and to support the investigations of the Attorney General against Russian responsible persons. Therefore, the criminal complaint and the annexes specifically list responsible persons from the military chain of command. Any soldier involved in the war of aggression may have been or may be liable to prosecution for participation in international crimes under the VStGB, namely war crimes or crimes against humanity.

The commission of crimes by soldiers does not only lead to the responsibility of the members of the Security Council and its chairman Putin under international criminal law.

With the adoption of the International Criminal Code, the Federal Republic of Germany has committed itself to making its contribution to the enforcement of international criminal law and to conducting national investigations on the basis of the principle of international law if the preconditions are met. With the criminal complaint we want to underline the importance and the necessity of these investigations. There must be no impunity for war crimes and crimes against humanity. Nowhere must war criminals feel safe.

## A. Facts

Since 24 February 2022, the Russian Federation has been attacking Ukraine militarily on the orders of its President Vladimir Putin without any basis in international law. According to leading experts in international law, Russia's actions constitute aggression, the prosecution of which by the Chief Prosecutor is currently failing solely due to the strict procedural hurdles. However, this does not apply to war crimes committed in the context of the Russian invasion.<sup>15</sup> The UN General Assembly (UNGA) strongly condemned the Russian incursion in its resolution A/ES-11/L.1 by a historic majority of 141 to 5 with 35 abstentions.<sup>16</sup> On 16/03/2022, the ICJ called on Russia, among other things, to immediately end its attack.<sup>17</sup> Numerous states have certain knowledge that the Russian Federation is committing war crimes in Ukraine.<sup>18</sup>

In the context of the Russian invasion, among other things, numerous civilian victims have been reported so far, of which some cases - only *pars pro toto* - will be presented here (**I.** ). Other relevant facts which give rise to at least an initial suspicion of crimes under the Criminal Code are the attacks on the theatre in Mariupol on 16.03.2022 (**II.** ), the killing of civilians in Butscha (**III.** ), the attack on the nuclear power plant in Zaporizhzhya (**IV.** ), on the children's and maternity clinic in Mariupol (**V.** ), on the Kiev TV tower (**VI.** ), the siege of Mariupol (**VII.** ), the attacks on the establishment of "humanitarian" corridors towards Belarus and the Russian Federation (**VIII.** ), the capture of civilians in Hostomel near Kiev (**IX.** ) and the use of cluster munitions (**X.**).

## I. Civilian victims

Since the beginning of the Russian invasion, 1,563 civilians have been killed, including 130 children, according to the Office of the High Commissioner for

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<sup>15</sup> See in detail, for example, Prof. Dr. Dr. h.c. Dr. h.c. with Deutschlandfunk, Internationaler Strafgerichtshof/Völkerrechtler: Es geht um den Verdacht zahlreicher Kriegsverbrechen Russlands (04.03.2022), available at: <https://www.deutschlandfunk.de/interview-claus-kressvoelkerrechtler-zukriegsverbrechen-dlf-e786f863-100.html> [last visited on: 05.04.2022].

<sup>16</sup> UN-GA, Aggression against Ukraine, A/ES-11/L.1 (01.03.2022), available at: <https://digitallibrary.un.org/record/3958976?ln=en#record-files-collapse-header> [last visited: 21.03.2022].

<sup>17</sup> ICJ, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide - Ukraine v. Russian Federation (21.03.2022).

<sup>18</sup> See only the statement of the United States Secretary of State, Antony Blinken of 23.03.2022: "Today, I can announce that, based on information currently available, the U.S. government assesses that members of Russia's forces have committed war crimes in Ukraine.", available at: <https://apnews.com/article/russia-ukraine-biden-europe-antony-blinken-nato-fa0786b41cd876208771017aa1abab13> [last visited 23.03.2022].



Human Rights (OHCHR). 2,213 civilians have been injured.<sup>19</sup> According to Ukrainian figures, the number of civilian victims is far higher. More than 2,000 people were killed in the port city of Mariupol alone.<sup>20</sup> There are numerous reports of the targeted killing of civilians by Russian troops. The following events are just a few examples:

## 1.

### **Killing of two civilians on the E-40 motorway on 07.03.2022**

On 7 March 2022, *Maksim Sergeyevich Iovenko* and his wife *Ksenya* joined up with friends in a convoy of cars to flee the combat zone around Irpin and Hostomel airport. Until then, the families had been staying in a weekend house 40 km northwest of Kiev, where they had also fled to on 28 February 2022. At 14:16 local time, the convoy was travelling on the E-40 motorway towards the centre of Kyiv. A Russian tank was positioned at the side of the road. When the first drivers noticed it, they turned back. A silver Hyundai came to halt the process. It was Mr and Mrs *Iownko's* vehicle. Mr *Iovenko* got out of the vehicle with his hands up. Immediately afterwards he was shot by the Russian soldiers. Mrs *Iovenko* was also killed. A drone video shows the incident, which was reported by ZDF on 15.03.2022.<sup>21</sup>

## 2.

### **Airstrike on residential area in Sumy with 21 dead on 08.03.2022**

On 08.03.2022, Russia flew airstrikes on numerous residential areas in the city of Sumy. According to local reports, at least 21 civilians, including two children, were killed in one of the attacks.<sup>22</sup>

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<sup>19</sup> OHCHR, Ukraine: civilian casualties, as of 6 April 2022, available at: <https://www.ohchr.org/en/news/2022/04/ukraine-civilian-casualty-update-6-april-2022> [last visited 06.04.2022], **Exhibit 1**.

<sup>20</sup> *Der Spiegel*, Kiev and Moscow Blame Each Other for Attack on Theatre (Mar. 21, 2022), available at: <https://www.spiegel.de/ausland/ukrainekrieg-kiew-und-moscow-blame-each-other-for-attack-on-theatre-a-c6974a52-2baf-41d0-8bf0-e6e42cd85679> [last visited Mar. 21, 2022], **Exhibit 2**.

<sup>21</sup> ZDF, Drone video shows shooting of civilian (15.03.2022), available at:

<https://www.zdf.de/nachrichten/zdf-mittagsmagazin/ukraine-drohne-video-zivilist-shot->

<sup>22</sup> *Reuters*, Russian air strike kills 21 civilians in Ukraine's Sumy city, say local authorities (Mar. 8, 2022), available at: <https://www.reuters.com/world/russian-air-strike-kills-21-civilians-ukraines-sumy-city-say-local-authorities-2022-03-08/> last visited on: Mar. 21, 2022], **Exhibit 4**. A video from *The Telegraph* (Mar. 08, 2022) shows the extent of the destruction, available at: <https://www.youtube.com/watch?v=cylqrAi5Y5M> [last visited on: Mar. 21, 2022], **Exhibit 5**.

### 3.

#### **Attack on an evacuation convoy with seven dead on 12.03.2022**

On 13.03.2022, according to Ukrainian information, Russian troops shelled an evacuation convoy with fleeing civilians in the village of Peremoga. According to Ukrainian information, seven civilians, including a child, were killed.<sup>23</sup>

### 4.

#### **Shelling of a residential building in Kiev with at least one fatality on 14.03.2022**

On 14.03.2022, Russian troops shelled a multi-storey residential building in the Obolon' district of Kiev. According to the Ukrainian rescue service, one person was killed.<sup>24</sup>

## II.

#### **Attack on the theatre in Mariupol on 16.03.2022**

According to Ukrainian sources and Human Rights Watch (HRW), the Russian military flew an airstrike on the theatre in Mariupol on 16.03.2022.<sup>25</sup> According to *Belkis Willis*, HRW staff member, the theatre served as a shelter for at least 500 civilians in the besieged city.<sup>26</sup> The Mariupol city administration estimates that about 300 people were killed in the airstrike.<sup>27</sup> According to satellite images taken by the US company Maxar on 14.03.2022, the word "air raid" was written in large Russian letters - clearly visible from

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<sup>23</sup> *Der Spiegel*, Seven civilians apparently killed in attack on evacuation convoy (Feb. 13, 2022), available at: <https://www.spiegel.de/ausland/russland-ukraine-krieg-seven-civiliansapparently-killed-in-attack-a-76207773-fd37-4a7e-b04b-2137b24eae86> [last visited on: Mar. 21, 2022], **Exhibit 6**.

<sup>24</sup> *Tagesschau*, At least one dead after shooting at apartment building in Kiev (14.03.2022), available at: <https://www.tagesschau.de/multimedia/video/video-1002319.html> [last visited 21.03.2022].

<sup>25</sup> *Tagesschau*, Ukraine Reports Attack on Theatre (16 Mar. 2022), available at: <https://www.tagesschau.de/ausland/europa/angriff-mariupol-101.html> [last visited on: 21 Mar. 2022], **Exhibit 7**; *HRW*, Ukraine: Mariupol Theatre Hit by Russian Attack Sheltered Hundreds (16 Mar. 2022), available at: <https://www.hrw.org/news/2022/03/16/ukraine-mariupol-theatre-hit-russian-attack-sheltered-hundreds> [last visited on: 21 Mar. 2022], **Exhibit 8**.

<sup>26</sup> *HRW*, Ukraine: Mariupol Theater Hit by Russian Attack Sheltered Hundreds (Mar. 16, 2022), available at: <https://www.hrw.org/news/2022/03/16/ukraine-mariupol-theater-hit-russian-attack-sheltered-hundreds> [last visited on: Mar. 21, 2022], **Exhibit 8**. <sup>27</sup> *Tagesschau*, 300 feared dead after attack on theatre (25 Mar. 2022), available at: <https://www.tagesschau.de/ausland/ukraine-krieg-theater-mariupol-russland-101.html> [last visited 25 Mar. 2022], **Exhibit 8a**.

<sup>27</sup> *Tagesschau*, 300 feared dead after attack on theatre (25 Mar. 2022), available at: <https://www.tagesschau.de/ausland/ukraine-krieg-theater-mariupol-russland-101.html> [last visited 25 Mar. 2022], **Exhibit 8a**.

the air. "ДЕТИ" (English: children) painted on the pavement on both front sides of the building.<sup>28</sup>

### III. Killing of civilians in Butscha

On 04.03.2022, Russian forces rounded up five men in Butscha, about 30 kilometres northwest of Kyiv, and summarily executed one of them. A witness told HRW that the soldiers forced the five men to kneel by the roadside, pulled their T-shirts over their heads and shot one of the men in the back of the head. "He fell [down]," the witness said, "and the [bystanders] women screamed."<sup>29</sup>

US satellite imagery released on 04.04.2022 confirms that some of the bodies found in the Kyiv suburb of Butscha were there before Russian troops withdrew. The high-resolution images "confirm recent videos and photos on social media showing bodies lying in the street for weeks," said a spokesperson for the US satellite imagery company Maxar Technologies.

Satellite images of a road in Butscha from mid-March show several bodies of suspected civilians lying on or next to the roadway. Ukrainian officials had found several bodies at this spot after the withdrawal of Russian troops in early April. AFP photographers had seen around 20 bodies in civilian clothes - some with their hands tied - during a visit on 02 April 2022.<sup>30</sup>

The New York Times (NYT) compared the satellite images with various shots taken by Ukrainian officials and international media and confirmed that some of the bodies had already been in the position shown three weeks before the Russian withdrawal. At least 11 bodies had been lying on Jablonska Street since 11 March 2022, the Times writes. According to the report, the first evidence of bodies appeared between 9 and 11 March 2022. The objects had not been moved until the liberation of the city.<sup>31</sup>

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<sup>28</sup> The pictures are attached as **Annexes 9 and 10**. Two pictures from 15.03.2022 show the front of the theatre including the letter train, **Annexes 11 and 12**. Another picture shows the theatre before and after the attack, **Annex 13**.

<sup>29</sup> *HRW*, Ukraine: Alleged war crimes in Russian-controlled areas (04.04.2022), available at: <https://www.hrw.org/de/news/2022/04/04/ukraine-alleged-war-crimes-from-Russia-controlled-areas> [last visited on: 06.04.2022], **Annex 13a**

<sup>30</sup> *Der Tagesspiegel*, Satellite photos show bodies already before Russian withdrawal-Selenskyj will Aufklaerung (05.04.2022), available at: <https://www.tagesspiegel.de/politik/graueultaten-in-butscha-satellitenfotos-zeigen-leichen-already-before-russian-withdrawal-selenskyj-willaufklaerung/28228008.html> [last visited on: 06.04.2022], **attachment 13b**

<sup>31</sup> *New York Times*, Satellite images show bodies lay in Bucha for weeks, despite Russian claims(04.04.2022), available at: <https://www.nytimes.com/2022/04/04/world/europe/bucha-ukraine-bodies.html> [last visited: 06.04.2022], **Exhibit 13c**

After entering Butscha, Ukrainian troops reported dozens of dead civilians. Journalists from the AFP news agency counted 20 bodies in civilian clothes on one street alone.<sup>32</sup> The Kyiv Independent internet newspaper published pictures of those shot in civilian clothes with their hands tied behind their backs.<sup>33</sup> According to the mayor of Butscha *Anatoly Fedoruk*, over 300 residents have been discovered killed.<sup>34</sup>

According to media reports - which appear to be reliable - members of the 64<sup>th</sup> Motorised Rifle Brigade and the 234<sup>th</sup> Guard Parachute Regiment of the Russian Army were considered as perpetrators.<sup>35</sup>

#### IV.

#### Attack on the Zaporizhzhya nuclear power plant

On 04.03.2022, the nuclear power plant in Zaporizhzhya, the largest nuclear power plant in Europe, was shelled by Russian troops.<sup>36</sup> The nuclear power plant is used solely for civilian purposes. Video recordings from the nuclear power plant's surveillance cameras indicate that it was a targeted bombardment.<sup>37</sup> The footage shows Russian troops repeatedly firing heavy weapons towards the Unit 1 reactor building, the main administration building, the Unit 6 transformer and the nuclear fuel dry storage facility. This is consistent with the damage picture: The reactor building of reactor complex 1 and the facility for the dry storage of nuclear fuel were damaged. The main

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<sup>32</sup> *Frankfurter Allgemeine Zeitung*, Entsetzen über Leichenfunde in der Kiewer Vorstadt Butscha (03.04.2022), available at: <https://www.faz.net/aktuell/politik/ausland/ukraine-krieg-entsetzen-ueber-leichenfunde-in-butscha-17930623.html> [last visited on: 06.04.2022], **Annex 13d**

<sup>33</sup> *The Kyiv Independent*, Hundreds of murdered civilians discovered as Russians withdraw from towns near Kyiv (03.04.2022), available at: <https://kyivindependent.com/national/hundreds-of-murdered-civiliansdiscovered-as-russians-withdraw-from-towns-near-kyiv-graphic-images/>

<sup>34</sup> *Frankfurter Allgemeine Zeitung*, Entsetzen über Leichenfunde in der Kiewer Vorstadt Butscha (03.04.2022), available at: <https://www.faz.net/aktuell/politik/ausland/ukraine-krieg-entsetzen-ueber-leichenfunde-in-butscha-17930623.html> [last visited on: 06.04.2022], **Annex 13d**

<sup>35</sup> *Frankfurter Allgemeine Zeitung*, Which Russian units were in Butscha? (05.04.2022), available at: <https://www.faz.net/aktuell/politik/ausland/butscha-diese-russische-einheitkoennte-das-massaker-veruebt-haben-17935976.html?premium> [last visited on: 06.04.2022], **Annex 13f**

<sup>36</sup> For an analysis of the attack, see. *National Public Radio*, Video analysis reveals Russian attack on Ukrainian nuclear plant veered near disaster (Mar. 11, 2022), available at: <https://www.npr.org/2022/03/11/1085427380/ukraine-nuclear-power-plant-zaporizhzhia> [last visited: Mar. 21, 2022], **Exhibit 34**. The analysis also includes a labelled graphic of the local conditions.

<sup>37</sup> A video summary from The, available at: <https://www.theguardian.com/world/2022/mar/04/ukraine-nuclear-power-plant-fire-zaporizhzhia-russian-shelling> [last visited on: 21.03.2022] is attached as **Annex 35**. Another video is attached as **Annex 36**.

administration building and the training centre of the plant were also severely damaged.<sup>38</sup>

The Ukrainian side informed the International Atomic Energy Agency (IAEA) about the attack and said that the plant's safety systems had not been affected by the attack and that no radioactive material had escaped.<sup>39</sup> Internationally, the attack was strongly condemned. For example, the UN Under-Secretary-General for Political Affairs, *Rosemary DiCarlo*, has described the Russian activities as "irresponsible" and censured as a violation of Art. 56 of Additional Protocol 1 to the Geneva Conventions.<sup>40</sup> Experts agree that the Russian attack could have caused a nuclear meltdown with significant consequences for humans and the environment.<sup>41</sup>

## V.

### Attack on the children's and maternity clinic in Mariupol

According to the World Health Organisation (WHO), there have been 43 proven attacks on health facilities since the beginning of the conflict.<sup>42</sup> Of particular note is the Russian airstrike on a children's and maternity clinic in the city of Mariupol on 10 March 2022.<sup>43</sup> Russian Foreign Minister *Lavrov* implicitly acknowledged authorship of the attack at a press conference on the same day. However, he described the clinic as a legitimate target because there were no patients in the clinic at the time of the attack and the clinic had been taken over by "extremists of the Azov Brigade".<sup>44</sup> The Russian embassy in London spread the same message via Twitter, also claiming that the hospital had been out of service for a long time.

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<sup>38</sup> Pictures of the destroyed main administration building are attached as **Annex 37**.

<sup>39</sup> *IAEA*, Update 11 - IAEA Director General Statement on Situation in Ukraine (04.03.2022), available at: <https://www.iaea.org/newscenter/pressreleases/update-11-iaeadirector>

<sup>40</sup> A video of the speech at the UN Security Council (04.03.2022), available at: <https://www.youtube.com/watch?v=5HtVsKwMqrs> [last visited on: 21.03.2022] is attached as **Annex 39** [relevant in particular: 1:18 min as well as 2:04 min].

<sup>41</sup> *National Public Radio*, Video analysis reveals Russian attack on Ukrainian nuclear plant veered near disaster (11.03.2022), available at: <https://www.npr.org/2022/03/11/1085427380/ukraine-nuclear-power-plantzaporizhzhia> [last visited: 21.03.2022], **Exhibit 34**.

<sup>42</sup> *WHO*, WHO Director-General's opening remarks at the WHO press conference (16.03.2022), available at: <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-who-press-conference-16-march-2022> [last visited on: 21.03.2022].

<sup>43</sup> *Der Spiegel*, What Russia's troops could be charged with in The Hague (12.03.2022), **Annex 23**. A picture of the clinic before and after the attack is attached as **Annex 40**. A video of the destruction is attached as **Annex 41**. Pictures of the destruction are attached as **Annexes 42 to 45**.

<sup>44</sup> *Der Tagespiegel*, A Lavrov Appearance of False Claims (Mar. 10, 2022), available at: <https://www.tagesspiegel.de/politik/wir-haben-die-ukraine-nicht-attackiert-in-lawrow-appearance-of-false-claims/28150580.html> [last visited on: Mar. 21, 2022], **Exhibit 46**.

Moreover, the scene of destruction captured in pictures had been staged by the Ukrainian side. As alleged proof, she referred to a photo of one of the victims - namely the blogger *Evgeniy Maloletka* - and claimed that she had not been pregnant and had merely played her role as a victim.<sup>45</sup>

These claims by the Russian side are refutably false. The UN human rights team on the ground has vehemently contradicted the Russian account and confirmed that the hospital was caring for women and children at the time of the attack.<sup>46</sup> This is also consistent with a Facebook post by the hospital, which was posted on 02.02.2022, in which the hospital asks for fuel so that it can continue its work.<sup>47</sup> Pictures from the Instagram profile of blogger *Evgeniy Maloletka* prove that she was indeed pregnant.<sup>48</sup> She also lives in Mariupol. Three civilians were killed in the attack, including a child.

## VI.

### Attack on the Kiev TV Tower

On 01.03.2022, Russian troops attacked the Kiev TV tower with missiles. The attack also hit the Babyn Yar Holocaust memorial, which is located in the immediate vicinity of the TV tower. In the run-up to the missile attack, the Russian Defence Ministry had announced attacks on the technological infrastructure in Kiev. Five people died as a result of the attack.<sup>49</sup>

## VII.

### The Siege of Mariupol

Russian or Russian-controlled troops began an all-out assault on the southeastern Ukrainian city of Mariupol immediately after the war began. At the latest since 03 March 2022, the city has been completely surrounded by Russian troops and the harbour was blockaded at the same time.<sup>50</sup> By 16 March 2022, the supply of food, water, medicine, heating and cooking facilities had deteriorated significantly as a result of this siege. This was confirmed by the

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<sup>45</sup> *BBC*, Twitter blocks Russian claims on hospital attack (11.03.2022), available at: <https://www.bbc.com/news/technology-60700642> [last visited on: 21.03.2022], **Exhibit 47**.  
*UN*, UN Rejects Russia's Criticism: Attack in Mariupol Was at Hospital (11 Mar. 2022), available at: <https://unric.org/de/ukraine11032022/> [last visited on: 21 Mar. 2022], **Exhibit 48**.

<sup>46</sup> *UN*, UN Rejects Russia's Criticism: Attack in Mariupol Was at Hospital (11 Mar. 2022), available at: <https://unric.org/de/ukraine11032022/> [last visited on: 21 Mar. 2022], **Exhibit 48**.

<sup>47</sup> **Annex 49**.

<sup>48</sup> **Annex 50**.

<sup>49</sup> *Der Spiegel*, What Russia's troops could be charged with in The Hague (12.03.2022), **Exhibit 23**. A video of the attack from *The Sun*, available at: [https://www.youtube.com/watch?v=nNDfKk\\_3E0g](https://www.youtube.com/watch?v=nNDfKk_3E0g) [last visited on: 21.03.2022] is attached as **Exhibit 51**.

<sup>50</sup> *HRW*, Ukraine: Ensure Safe Passage, Aid for Mariupol Civilians (21.03.2022), available at: <https://www.hrw.org/news/2022/03/21/ukraine-ensure-safe-passage-aid-mariupol-civilians> [last visited: 21.02.2022], **Annex 52**

International Committee of the Red Cross (ICRC), among others, in an appeal for humanitarian aid.<sup>51</sup>

As early as 7 March 2022, the Ukrainian representative complained to the United Nations Security Council (UNSC) that Russian troops did not allow aid convoys with urgently needed goods to enter the city of Mariupol.<sup>52</sup> This account was repeated by Ukrainian state officials in the days that followed.<sup>53</sup> In particular, aid deliveries to Mariupol were reportedly still being prevented by Russian or Russian-controlled troops on Monday 14 March 2022.<sup>54</sup> Media reports on the city of Mariupol can only lead to the conclusion that it has been in a state of complete shortage of everything, including food, drinks and essential medicines, since mid-March 2022 at the latest.<sup>55</sup>

## VIII.

### "Humanitarian" corridors towards Belarus and Russia

On 07 March 2022, the Russian side offered to open six "humanitarian" corridors to allow civilians to escape from Kiev, Kharkiv, Mariupol and Sumy. Four of the routes proposed by Russia - including from the city of Mariupol - would have led exclusively towards Belarus or Russia. This offer was rejected by both the Ukrainians and the West.<sup>56</sup> Nevertheless, the NYT reports, citing *Pyotr Andryuschenko*, an employee of the mayor of Mariupol, that between 4,000 and 4,500 civilians have already been taken against their will to the

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<sup>51</sup> ICRC, Ukraine: ICRC calls for urgent solution for Mariupol to save lives and prevent catastrophe, available at: <https://www.icrc.org/de/document/ukraine-ikrk-demands-urgentsolution-for-mariupol> [last visited on: 21.03.2022], **Annex 53**.

<sup>52</sup> UNSC, Alarmed by Targeted Attacks on Civilians Fleeing Violence, Massive Humanitarian Crisis in Ukraine, Speakers Briefing Security Council Reiterate Strong Calls to End Conflict, pp. 3, 12 (Mar. 07, 2022), available at: <https://www.un.org/press/en/2022/sc14823.doc.htm> [last visited on: Mar. 21, 2022], **Exhibit 54**.

<sup>53</sup> *Washington Post*, In embattled Mariupol, glimpses of devastation and misery emerge (15.03.2022), available at: <https://www.washingtonpost.com/national-security/2022/03/15/ukraine-mariupol-devastation/> [last visited on: Mar. 21, 2022], **Exhibit 55**; *Reuters*, Ukraine Accuses Russia of Blocking Aid Convoy to Defeated Mariupol (Mar. 15, 2022), available at: <https://www.reuters.com/world/europe/ukraine-aims-deliver-aidmariupol-open-more-humanitarian-corridors-2022-03-15/> [last visited on: 17.03.2022], **Annex 56**.

<sup>54</sup> *Democracy Now*, Mariupol Residents Evacuate as Russia Blocks Aid Convoy; Kyiv Declares Curfew(15.03.2022), available at: [https://www.democracynow.org/2022/3/15/headlines/mariupol\\_residents\\_evacuate\\_as\\_russia\\_blocks\\_aid\\_convoy\\_kyiv\\_declares\\_curfew](https://www.democracynow.org/2022/3/15/headlines/mariupol_residents_evacuate_as_russia_blocks_aid_convoy_kyiv_declares_curfew) [last visited on: 21.03.2022], **Exhibit 57**.

<sup>55</sup> *Washington Post*, In embattled Mariupol, glimpses of devastation and misery emerge (Mar. 15, 2022), available at: <https://www.washingtonpost.com/national-security/2022/03/15/ukraine-mariupol-devastation/> [last visited on: 21.03.2022], **Exhibit 55**

<sup>56</sup> *Deutsche Welle*, Ukraine rejects humanitarian corridors that lead to Russia - as it happened (07.03.2022), available at: <https://www.dw.com/en/ukraine-rejects-humanitarian-corridors-that-lead-to-russia-as-it-happened/a-61036513> [last visited on: 21.03.2022], **Exhibit 58**.

Russian city of Taganrog.<sup>57</sup> HRW also reports, citing the Russian Ministry of Defence, that some 60,000 Mariupol residents have been "evacuated to Russia". HRW points out, however, that this information could not be verified so far.<sup>58</sup>

## **IX.**

### **Capture of civilians in Hostomel**

On 03 March 2022, Russian units took control of the Pokrovsky building complex in Hostomel near Kiev. They forced 200 residents to leave their flats and hand over their mobile phones. Some of them were threatened with being shot if they did not comply. The residents were forced to stay on the ground floor of the building. They were only allowed to get food and warm clothes from their flats, and in some cases to cook together with other residents. However, they were not allowed to leave the ground floor or the building. This also applied to the few families who were allowed to remain in their flats. At least 100 Russian soldiers patrolled in front of the building, and in some cases, Russian military personnel also took up quarters in the flats. The NYT has reported prominently on this case.<sup>59</sup>

## **X.**

### **Use of cluster munitions**

HRW, Amnesty International, Bellingcat and DER SPIEGEL have documented or reported on the use of cluster munitions in a number of cases. Of particular note are the attacks in Vuhledar (Donetsk) on 24.02.2022, in Okhlyrka on 25.02.2022 and in Kharkiv on 28.02.2022. Bellingcat also reports another case of a cluster bomb dropped from the air. Bellingcat also dates this operation - without a specific date - to the end of February. It happened in Satoka (Odessa).

### **1.**

#### **Attack on Vuhledar (Donetsk) on 24.02.2022**

On 24.02.2022, a Russian 9M79 missile struck near the Central Hospital in Vuhledar. The warhead of the missile contained 50 fragmentation

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<sup>57</sup>*New York Times*, What Happened on Day 24 of Russia's Invasion of Ukraine [last updated: 21.03.2022], available at: <https://www.nytimes.com/live/2022/03/19/world/ukraine-russia-war#a-mariupol-official-accuses-russia-of-forcibly-taking-ukrainians-across-the-border> [last visited: 21.03.2022], **Annex 59**.

<sup>58</sup> *HRW*, Ukraine: Ensure Safe Passage, Aid for Mariupol Civilians (Mar. 21, 2022), available at: <https://www.hrw.org/news/2022/03/21/ukraine-ensure-safe-passage-aidmariupol-civilians> [last visited on: Mar. 21, 2022], **Exhibit 52**.

<sup>59</sup> *New York Times*, Russian Soldiers Took Their City, Then Their Homes (Mar. 20, 2022), available at: <https://www.nytimes.com/2022/03/20/world/europe/russian-soldiers-video-kyiv-invasion.html> [last visited on: Mar. 21, 2022], **Exhibit 60**.



submunitions of the type 9N123. According to the Russian manufacturer, each submunition contains 1.45 kilograms of explosives and breaks into about 316 fragments of the same size. Four civilians were killed in the attack, namely: *Maksim Sidorenko* (34), *Antonina Sidorenko* (65), *Sergei Sivukhin* (56) and *Olga Shramko* (50). In addition, ten civilians were injured. The central hospital in Vuhledar, an ambulance and three civilian vehicles were damaged.<sup>60</sup> Weapons of the same type have already been used by Russia in the Syrian conflict.<sup>61</sup>

## 2.

### Attack on Okhtyrka on 25.02.2022

On the morning of 25.02.2022, the Sonechko kindergarten in Okhtyrka was hit by a 9M27K or 9M27K1 rocket. The missile was armed with cluster munitions of type 9N210 or 9N235. Civilians were taking shelter in the building at the time of the attack. Drone footage shows at least seven impact sites, of which four on the roof and three outside the building.<sup>62</sup> Amnesty International attributes the attack to Russian forces, relying mainly on reports that Russian units were located at the site at the time of the shooting. A logistics depot 300 metres north of the kindergarten may have been the target of the attack. However, the type of missile used is unguided and imprecise.<sup>63</sup>

## 3.

### Attack on Kharkiv - 28.02.2022

On 28.02.2022, three residential areas in the city of Kharkiv were shelled with cluster munitions. The residential areas are located in the Moskovskiyi,

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<sup>60</sup> *HRW*, Ukraine: Russian Cluster Munition Hits Hospital (25.02.2022) available at: <https://www.hrw.org/news/2022/02/25/ukraine-russian-cluster-munition-hits-hospital> [last visited on: 21.03.2022], **Exhibit 14**. A picture of the destroyed hospital is attached as **Exhibit 15**. A picture of the destroyed vehicles is attached as **Annex 16**. A video of the incident by *HRW* is attached as **Annex 17**.

<sup>61</sup> *HRW*, Syria: Cluster Munition Attack on School (22.01.2020), available at: <https://www.hrw.org/news/2020/01/22/syria-cluster-munition-attack-school> [last visited on: 21.03.2022], **Annex 18**.

<sup>62</sup> *Amnesty International*, Ukraine: Cluster munitions kill child and two other civilians taking shelter at a pre school (27.02.2022), available at: <https://www.amnesty.org/en/latest/news/2022/02/ukraine-cluster-munitions-kill-child-and-two-other-civilians-taking-shelter-at-a-preschool/> [last visited: 21.03.2022], **attachment**

<sup>63</sup> *Amnesty International*, Ukraine: Cluster munitions kill child and two other civilians taking shelter at a pre school (27.02.2022), available at: <https://www.amnesty.org/en/latest/news/2022/02/ukraine-cluster-munitions-kill-child-and-two-other-civilians-taking-shelter-at-a-preschool/> [last visited 21.03.2022], **Exhibit 19**.

Shevchenkivskiy and Industrialnyi districts.<sup>64</sup> Russian-made 9M55K Smerch cluster munition rockets were used. According to HRW, the launcher for these missiles (a BM-30) has twelve barrels. The rockets are often fired in salvos. Each 9M55K cluster munition rocket contains 72 9N235 fragmentation munitions. There were no military targets in the immediate vicinity. Nor are there any known Ukrainian military activities in the areas in question before or at the time of the attacks.<sup>65</sup> Further, verified images prove that the missiles were produced in 2019. Russia has already stopped sales of this type of weapon to Ukraine before 2019.<sup>66</sup> Not least because of this, it is possible to assume Russian authorship of the cluster munitions operation. At least three civilians were killed as a result of the attacks.<sup>67</sup>

#### 4.

#### Attack on Satoka (Odessa) end of February

RBK-500 bombs loaded with PTAB-1M submunitions were used in a Russian air raid on Satoka (Odessa). Remains of these bombs were found at the White House Hotel (Белый дом - address: Pioners'ka St, 3/1a, Zatoka, Odessa Oblast, 67773, Ukraine).<sup>68</sup>

#### B.

#### Legal assessment

These facts constitute an initial suspicion under criminal procedure law, i.e. sufficient factual indications for a criminal offence (section 152 (2) SPO) with

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<sup>64</sup> A map is attached as **Annex 21**

<sup>65</sup> *HRW*, Ukraine: Cluster munitions fired at residential areas in Kharkiv (04.03.2022), available at: <https://www.hrw.org/de/news/2022/03/04/ukraine-streumuniton-auf-residential-areas-kharkiv-fired> [last visited: 21.03.2022], **Exhibit 22**; *Der Spiegel*, What Russia's troops could be charged with in The Hague (12.03.2022), **Exhibit 23**. A picture of a piece of a 9M55K charge that hit a street in Kharkiv during one of the attacks is attached as **Annex 24**. Pictures of unexploded 9N235 submunitions during the attacks are attached as **Annexes 25 and 26**. An image of a fragmentation pattern in Kharkiv is attached as **Annex 27**. Videos of the attacks are attached as **Annexes 28, 29 and 30**.

<sup>66</sup> *Bellingcat*, These are the Cluster Munitions Documented by Ukrainian Civilians (Feb. 11 , 20 22), available at: <https://www.bellingcat.com/news/rest-of-world/2022/03/11/these-are-the-cluster-munitions-documented-by-ukrainian-civilians/> [last visited on: Mar. 21, 2022], **Exhibit 31**. An image is attached as **Exhibit 32**.

<sup>67</sup> *HRW*, Ukraine: Cluster Munitions Fired at Residential Areas in Kharkiv (04.03.2022), available at: <https://www.hrw.org/de/news/2022/03/04/ukraine-streumuniton-auf-residential-areas-kharkiv-fired> [last visited: 21.03.2022], **Exhibit 22**.

<sup>68</sup> *Bellingcat*, These are the Cluster Munitions Documented by Ukrainian Civilians (Feb. 11 , 20 22), available at: <https://www.bellingcat.com/news/rest-of-world/2022/03/11/these-are-the-cluster-munitions-documented-by-ukrainian-civilians/> [last visited on: Mar. 21, 2022], **Exhibit 31**. A video documenting the incident is attached as **Exhibit 33**.

regard to various persons reported. Based on the events described under **A.**, there are sufficient factual indications that Russian and Russian-controlled troops in Ukraine are committing or have committed war crimes (**I.**) as well as crimes against humanity (**II.**). This assumption seems to be shared by 38 states parties to the Rome Statute. In an unprecedented move in the history of the ICC,<sup>69</sup> they have formally requested the Chief Prosecutor to open an investigation.<sup>70</sup>

The offences are criminally attributable to some or all of the accused (**III.**). The assignment of the respective contributions to the offences to the respective actors outside the Security Council still has to be determined in detail. The reference to the lists of the intelligence service serves this purpose of the Ukrainian Ministry of Defence, which are only reproduced in excerpts in our criminal complaint. For the assumption of an initial suspicion in criminal proceedings within the meaning of section 152 (2) of the Code of Criminal Procedure, it is already sufficient for a soldier to belong to a unit suspected of having been on the scene at the time of a criminal offence. This applies once more to the respective commander of the respective unit.

## **I. War crimes**

Based on the events described under **A.**, there is sufficient factual evidence for the commission of war crimes pursuant to Articles 8 and 11 of VStGB by the Russian and Russian-controlled troops.

### **1. Common contextual element: connection with an international armed conflict**

For all the events described under **A.**, there is no doubt that they took place in the context of the Russian war of aggression against Ukraine. The commission of war crimes according to Articles 8 ff. of VStGB presupposes that the individual alternative offences are committed in connection with an international armed conflict.

The Russian war of aggression against Ukraine obviously constitutes an international armed conflict. Its duration, intensity and the degree of

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<sup>69</sup> *Kreß*, in: LTO, The world does not back down from the aggressor (11.03.2022), available at: <https://www.lto.de/recht/hintergruende/h/ukraine-krieg-voelkerrecht-egmt-igh-istgh-aggression-claus-kre-interview/> [last visited on: 21.03.2022].

<sup>70</sup> ICC, Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation (02.03.2022), available at: <https://www.icc-cpi.int/Pages/item.aspx?name=2022-prosecutor-statement-referrals-ukraine> [last visited on: 21.03.2022].

organisation of the parties are irrelevant.<sup>71</sup> There is no doubt about the use of armed force and the necessary attribution of this to the parties to the conflict. The conflict has also existed at the latest since the beginning of the invasion in the night from 23 to 24 February 2022.

There is an "obvious connection" between the individual events and the hostilities taking place in the international conflict. This is because the events depicted represent acts of aggression by Russian troops.<sup>72</sup> It is predominantly a matter of the shelling of persons and objects with various weapon systems, which can be seen as part of the concentrated and targeted invasion of Ukraine by Russian and Russian-controlled forces.

## **2.**

### **Individual offences under sections 8 and 11 of the VStGB**

#### **a.**

#### **The killing of civilians according to Article 8 para. 1 (1), para. 6 (1) of VStGB**

With regard to the events described under **A. I., III., V. - VI. and X. 1-3.**, there are sufficient factual indications for the commission of war crimes within the meaning of Article 8 para. 1 (1), para. 6 (1) of VStGB in the form of the killing of civilians.

There are credible, reliable reports of civilian victims in all the attacks described there. In the cases described, there is no reason to doubt that the victims were protected civilians within the meaning of section 8 (6) of the Criminal Code.

There is also the obvious possibility that these killings were committed by Russian or Russian-controlled fighters, at least with conditional intent. With regard to the shooting of two civilians in case **A. I. 1.**, only an intentional killing on the part of the perpetrators can be considered. The victims were shot in cold blood. This also applies to the facts in case **A. III.**

In the numerous cases of lethal artillery and aerial bombardment, it is obvious that these killings were committed with contingent intent. In particular, the location of many targets in purely residential areas suggests that the executors and commanders behind the respective attacks consciously accepted the killing of civilians. The size of the targets, for example the children's and maternity

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<sup>71</sup> *Ambos* in: Münchener Kommentar zum StGB, 3rd edition 2018, Vorb. Article 8 of VStGB, Rn. 21.

<sup>72</sup> *Ambos* in: Münchener Kommentar zum StGB, 3rd edition 2018, Vorb. Article 8 of VStGB, Rn. 35.

clinic (A. V.), also obviously speaks against a merely negligent manner of commission.

**b.**

**Expulsion or attempted expulsion of the Ukrainian population pursuant to section 8 (1) (6) of VStGB in conjunction with sections 12 (1), 22, 23 (1) of StGB**

Furthermore, due to the circumstances described under A. VII. and VIII., it appears possible that the war crime of the expulsion of the Ukrainian population was committed or that attempts have been made and are still being made to expel parts of the Ukrainian population by forcibly transferring them to the territory of Russia in violation of general rules of international law.

Russia occupies Mariupol. According to Article. 42 (1) of the Hague Land Warfare Convention (HLKO), a territory is considered occupied if it is actually under the control of the enemy army. According to Article. 42 (2) of HLKO, occupation only extends to the areas where this power is established and can be exercised. It follows from this that both occupied and unoccupied territories can exist within a state territory and that occupation must be determined in isolation for each part of the territory.<sup>73</sup> The question of whether civilians and thus protected persons within the meaning of Article 4 of GC IV are exposed to an occupation is subject to less stringent standards than Article 42 (1) of HLKO. It is thus not important that the opposing power actually exercises authority. Rather, it is decisive that the civilians have "fallen into their hands". Otherwise, civilians would be left unprotected in an intermediate phase of the invasion and establishment of a stable regime.<sup>74</sup>

Using these standards, Mariupol's civilians have fallen into the hands of Russian troops. Russian troops have surrounded the city and are blockading the port. No civilian can leave the city without Russia's consent. Aid supplies cannot be brought into the city without Russia's consent. Consequently, the population of Mariupol is completely at the mercy of Russia's sole decisions.

There is sufficient factual evidence that the Russian armed forces used coercive measures to transfer the civilian population of Mariupol to Russia. By maintaining a state of siege in the above-mentioned cases, the Russian forces have deliberately, purposefully and on a massive scale brought about a deterioration in the living conditions of the civilian population of Mariupol. The supply of water and electricity to the civilian population was cut off and

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<sup>73</sup> also JStGH, Prosecutor v. Mladen Naletilic, aka "Tuta" and Vinko Martinovic, aka "Štela" (31.03.2003), p. 74, para. 218.

<sup>74</sup> *Pictet*, Geneva Convention IV, 1958, Art.6, p.60; JCC, Prosecutor v. Mladen Naletilic, aka "Tuta" and Vinko Martinovic, aka "Štela" (31.03.2003), p. 75, para. 221.

the shelling of civilian residential areas in particular with heavy weapons was maintained for days. The alternative acts under section 8 (1), no. 6 of VStGB cover every form of transfer, including those that take place by way of displacement through will-breaking violence takes place.<sup>75</sup> In this context, the JCC in particular has considered the creation of intolerable living conditions, continued military operations against certain cities, living in constant fear and insecurity, and the destruction of residential buildings or shelters in violation of international law as sufficient coercive measures.<sup>76</sup>

Against this background, if the inhabitants of Mariupol make their own way to Russia or take advantage of Russian "evacuation offers", this cannot be seen as a voluntary crossing of the border and thus not as consent that would exclude the offence.

Provided that the inhabitants of Mariupol did not cross the border to Russia, the announcement by the Russian forces that escape corridors from Mariupol would only be opened in the direction of Russia could constitute an attempted criminal offence. This is because the announcement constitutes an actual indication of the intention to transfer the Ukrainian population to their own Russian territory and thus to the territory of the occupying power by means of the above-mentioned coercive measures.

These attempted forced transfers also violate a prohibition of international law. This is because Article 49 of the Geneva Convention of 12 August 1949 for the Protection of Civilian Persons in Time of War permits an occupying power to forcibly transfer persons only under certain narrow conditions, which are clearly not met.

**c.**

**Unlawful detention of civilians pursuant to section 8 (3) no. 1 i.V.m. para. 6 (1) of VStGB**

Based on the events described under **A.IX**, there are sufficient factual indications that the inhabitants of the Pokrovsky building complex and thus

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<sup>75</sup> cf. *Geiß/Zimmermann* in: Münchener Kommentar zum StGB, 3rd edition 2018, Article 8 VStGB Rn. 173-175.

<sup>76</sup> cf. *Geiß/Zimmermann* in: Münchener Kommentar zum StGB, 3rd edition 2018, Article 8 VStGB, marginal no. 175 with further reference.

persons protected under section 8 (6) no. 1 of the Criminal Code (civilians) were unlawfully detained by the Russian troops.

The constituent element of unlawful detention within the meaning of section 8, par. 3 (1) of VStGB is to be understood broadly.<sup>77</sup> It also covers the deprivation of personal liberty and can only be justified, if the behaviour of the person held captive threatens a party to the conflict or if the person is under reasonable suspicion of corresponding activity. Even then, imprisonment may only be a last resort. Imprisonment solely because of the civilian's political views, national affiliation or gender, or as a collective punishment, cannot be considered in any case.<sup>78</sup>

Based on these standards, these conditions seem to be fulfilled. The personal freedom of movement of the residents of the Pokrovsky building complex was restricted by the fact that they were not allowed to leave the building or its ground floor. It is not evident that the residents posed a danger to the Russian troops or that there were grounds for suspicion in this regard. The same can be assumed for the capture of the person in Butscha.

**d.**

**Directing an attack against the civilian population as such or against individual civilians in accordance with section 11, para. 1 (1) in conjunction with para. 2 of VStGB.**

Due to the events described under **A. I. - III.** as well as **V.** and **X.**, there are also sufficient factual indications for the commission of war crimes pursuant to section 11, para. 1 (1) of the Criminal Code. It is highly probable that these were military attacks as defined by the norm, i.e. military operations, here in the form of offensive use of force.<sup>79</sup> The attacks described were partly carried out with small arms (e.g. **A. I. 1.**) but often with the use of heavy military equipment (namely: artillery, rockets or in the form of bombardments from the air). They were also likely to have been coordinated militarily. It is obvious that the attacks were carried out specifically against the civilian population or individual civilians. This is particularly evident in case **A. I. 2. - 4.** from the fact that the shelling was directed against purely residential areas or large, clearly civilian building blocks.

The reports on the use of cluster bombs, especially in residential areas, presented under **A. X.**, also support the suspicion of an attack against the civilian population as such. For the use of cluster bombs suggests a targeted

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<sup>77</sup> *Geiß/Zimmermann* in: Münchener Kommentar zum StGB, 3rd edition 2018, Article 8 VStGB, marginal no.234.

<sup>78</sup> *Werle/Jeßberger*, Völkerstrafrecht, 5th edition 2020, p. 601 marginal no. 1328 with further references.

<sup>79</sup> *Werle/Jeßberger*, Völkerstrafrecht, 5th edition 2020, p. 627, marginal no. 1397.

attack against the civilian population due to the special characteristics of this weapon. Cluster bombs cannot be used specifically against individual military targets precisely because of their scattering effect. Their single explosive charges, which often remain as duds, pose less danger to trained military personnel than to untrained civilians. Children, in particular, mistake the individual detonators for discarded beverage cans or toys because of the usually colourful paint. The use of cluster bombs in civilian areas is therefore not a militarily justifiable use against military forces of the opposite side.

The obviously targeted shelling of the Mariupol theatre (A. II.) also strongly suggests a targeted attack against the civilian population. As a magnificent old building, the theatre was not in the immediate vicinity of other buildings and obviously not in the vicinity of military targets. In addition, there was clearly visible writing on the pavements in front of both front sides of the theatre, suggesting the presence of children. In view of this, it is completely implausible that this building should have been fired upon by Russian or Russian-controlled troops by chance and not in a targeted manner. Moreover, according to Ukrainian sources, up to 300 people were killed.

Finally, the targeted shooting of two civilians in case A. I. 1. clearly constituted a targeted attack against civilians.

Due to the circumstances described in the above-mentioned cases, there are also sufficient factual indications for the commission of the qualification of success under section 11, para. 2 of VStGB. This also extends to the qualification of intentional killing according to section 11, para. 2, sentence 2 of the Criminal Code, because in any case, it is extremely obvious that the Russian or Russian-controlled troops condoned the killing of civilians in these cases.

e.

**Directing a military attack against civilian objects, especially hospitals, cultural sites, dwellings and facilities containing dangerous forces pursuant to section 11, para. 1 (2) in conjunction with para. 2 of VStGB.**

As can be seen from cases A. I. 2. - 4., II., IV. - VI. and X. 1. - 3., there are sufficient factual indications for the commission of war crimes pursuant to section 11 (1) no. 2 of VStGB.

They show that a hospital, namely a children's and maternity clinic in Mariupol, residential buildings, a theatre, a TV tower and a nuclear power plant were hit by heavy weapons. All these objects constitute civilian objects in the sense of the norm.



Civilian objects are - negatively defined - those that are not military. Military objects, in turn, are, according to the two-step test to be applied, those which (1.) by their nature, location, purpose or use, effectively contribute to military action and (2.) the total or partial destruction, seizure or neutralisation of which, under the circumstances prevailing at the time, would constitute a clear military advantage.<sup>80</sup>

The objects shelled by Russia do not meet these two criteria. Neither for the children's and maternity clinic in Mariupol, nor for the affected residential buildings, the Mariupol theatre, the Kyiv TV tower or the Zaporizhzhia nuclear power plant is it in any way apparent how they would have effectively contributed to military action and how the attack on them would have constituted a clear military advantage. In particular, it is not apparent that a nuclear power plant, by its nature, location, purpose or use, effectively contributes to military action. In any case, its seizure, destruction or neutralisation does not constitute a clear military advantage, because military infrastructure, unlike civilian infrastructure, is often prepared for a failure of the central power supply.

In all the above-mentioned cases, the apparent use of basically controllable heavy weapon systems suggests that the attacks were targeted. For the shelling of the residential buildings, the children's clinic, the TV tower and the theatre in Mariupol, this is already clear from the fact that they cannot be considered accidental targets due to their location and size. For the Zaporizhzhya nuclear power plant, too, its isolated location on the shore is a particular reason of the Dnepr, which makes a collateral hit seem extremely unlikely, is worth mentioning.

The elements of a war crime pursuant to section 11, para. 1 (2) of the Criminal Code do not require the occurrence of a serious consequence in the form of injuries or killings. However, due to the circumstances described, there are sufficient factual indications for the existence of the qualification of success under section 11, para. 1 (2) in conjunction with para. 2, sentences 1 and 2 of the Criminal Code. It seems possible and, due to the weapon systems used, also obvious that the attacks in question were at least carried out with a conditional intention to kill. With the exception of cases **A. II** and **A. IV**, where no fatalities are currently known, people were killed in all of the cases mentioned.

**f.**

**Attacks which were certainly expected to cause disproportionate injury and damage according to section 11, para. 1 (3) in conjunction with par. 2 of VStGB.**

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<sup>80</sup> *Dörmann* in: Münchener Kommentar zum StGB, 3rd edition 2018, 3rd ed. 2018, Article 11 of VStGB Rn. 46-5. Cf. also with regard to the corresponding offence of the Rome Statute: *Werle/Jeßberger*, Völkerstrafrecht, 5th ed. 2020, p. 639 Rn. 1416 et seq.

Even if the attacks described under **A. X.** had been aimed at military targets or the Mariupol Theatre (**A. II.**) had been a military target, there was sufficient factual evidence that the requirements of section 11 (1) no. 3 in conjunction with Article 2 of VStGB were fulfilled.

For the realisation of Article 11 para. 1 (3) of VStGB, it does not depend on the fact that a civilian object was targeted. Rather, in the run-up to an attack on a military target, the expected military advantage and the expected accompanying civilian damage must be weighed against each other. If the latter are disproportionate to the former and the attack is nevertheless carried out, the offence is fulfilled. It is therefore not decisive whether there is actually concomitant civilian damage as a result of the attack. Only the perpetrator's expectation is decisive.<sup>81</sup>

The weapons operations described under **A. X.** fulfilled these requirements. The cluster munitions or bombs were used in residential areas or mixed-use urban areas. Every user of cluster munitions or cluster bombs must be aware of the fact that they were used in residential areas or in mixed-use urban areas, due to the requirements described under **B. I. 2. d.**, it must be clear that the use of these weapon systems in the abovementioned types of areas - even when targeting military objectives located there - will always primarily affect the civilian population and have far-reaching consequences. On concrete as far as we know, Russia has not claimed any direct military advantages.

Also with regard to the use of weapons described under **A II.** the requirements of Article 11 para.1 (3) of VStGB seem to be fulfilled. It was generally known that the Mariupol Theatre served as a place of refuge for a large number of civilians. In this respect, too, according to the information available here, Russia has not stated anything about concrete direct military advantages.

Because of the realisation of the qualification of success in Article 11 par. 2 of VStGB in the cases **A. X. 1. - 3. reference is made to B. I. 2. d.**

**g.**

**Starvation of civilians as a method of warfare pursuant to section 11  
(1) no. 5 of VStGB**

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<sup>81</sup> cf. *Werle/Jeßberger*, Völkerstrafrecht, 5th edition 2020, p. 646 marginal no. 1434.

In the context of the extensive and prolonged siege of Mariupol, there is also an initial suspicion of starvation of civilians as a method of warfare pursuant to section 11 (1) no. 5 of VStGB. It seems quite possible that Russian troops in the city of Mariupol used starvation of civilians as a method of warfare, or at least attempted to do so, by obstructing aid deliveries in violation of international humanitarian law (section 11 (1) no. 5 var. 2 of VStGB) and at the same time making escape from the city impossible through constant shelling - including of escape corridors.

The siege of Mariupol described under **A. VII**, in particular the blockade of aid convoys, constitutes an obstruction of aid deliveries to the civilian population of Mariupol. Starvation within the meaning of the offence is first of all causing famine by withholding food and drink. However, the offence is interpreted broadly and also includes the obstruction of deliveries of blankets, medicines and other essential supplies.<sup>82</sup> The act must be deliberately used as a military means, i.e. as a weapon. It must therefore not be a deprivation of war as a side effect.<sup>83</sup> It seems possible that the prevention of aid deliveries to Mariupol, together with the shelling of escape corridors by Russian or Russian-controlled troops, may be used precisely as a means of warfare. At the time of these actions, the Russian advance on Mariupol had also stalled, so it seems conceivable that the attacking troops deliberately wanted to use the withholding of necessary aid supplies as a method of war. This withholding may also constitute a violation of international humanitarian law, as required by the facts of the case. In particular, a violation of Article 23 of the Geneva Convention of 12 August 1949 for the Protection of Civilian Persons in Time of War, according to which aid deliveries to the civilian population must always be granted under certain conditions, may be considered. It also seems possible that the blockades of aid convoys violated Articles 69-71 of the First Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I, Adopted 8 June 1977). Aid deliveries are to be allowed to occupied territories (Article 69) and non-occupied territories (Article 70 in conjunction with Article 69).

#### **h.**

#### **Military attack with the certain expectation of causing widespread, long-term and serious damage to the environment pursuant to Section 11 (3) of the Criminal Code.**

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<sup>82</sup> *Dörmann* in Münchener Kommentar zum StGB, 3rd edition 2018, Article 11 of VStGB marginal no. 113; Cf. also on the similar offence in Article 8 (2)(b)(xxv) Rome Statute: *Werle/Jeßberger*, Völkerstrafrecht, 5th ed. 2020, p. 661f., marginal no. 1476.

<sup>83</sup> *Dörmann* in Münchener Kommentar zum StGB, 3rd edition 2018, Article 11 of VStGB marginal no. 16.

There is an initial suspicion of conducting a military attack with the certain expectation of causing disproportionate environmental damage through the shelling of the Zaporizhia nuclear power plant. As described above (A. IV.), the nuclear power plant was shelled and hit several times.

There is the (obvious) possibility that the shelling of the nuclear power plant was carried out with the intention of hitting the reactors or other sensitive installations and that the attackers thereby expected as certain that this attack would cause far-reaching, long-term and severe environmental damage that would be out of proportion to the expected concrete and immediate military advantage of the shelling. The certain expectation was directed at the uncontrollable consequences of the destruction of the reactor blocks of the nuclear power plant, whereby the perpetrators assumed that these consequences would cause extensive, long-term and severe damage to the flora and fauna.<sup>84</sup>

The fact that the bombardment was directed against the nuclear power plant and thus a civilian facility does not prevent the offence from being committed. Contrary to opinions in the literature, the offence is an independent offence in addition to section 11, para. 1 of the Criminal Code, which protects the integrity of the natural environment beyond the variants of para. 1. In particular, Section 11 (1) no. 2 of VStGB alone is not relevant here.<sup>85</sup> This is because section 11, para. 1 (2) of VStGB only protects civilian objects from military attacks. The natural environment is indeed a civilian object within the meaning of section 11, para. 1 of the Criminal Code. Para. 3, however, additionally penalises attacks that are not directly directed at the environment, but where severe consequences for the environment are expected precisely as a result of an attack on another object. The structure of the offences - an excessive internal tendency is not required for para. 1 (2) - as well as the lack of a less serious case for para. 3 indicate that they are two different offences. Contrary to an opinion expressed in the literature, it is therefore wrong to limit the offence of para. 3 beyond the wording to attacks on military objects. Rather, para. 3 covers all military attacks, regardless of their objective, which are conducted in the certain expectation that they will cause far-reaching, long-term and severe environmental damage.

There is no doubt about the deliberate shelling of the Zaporizhia nuclear power plant by Russian troops. Camera footage of the attack shows the shelling of the power plant from a distance, but the muzzle flash of the weapon systems, the

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<sup>84</sup> *Dörmann* in: Münchener Kommentar zum StGB, 3rd edition 2018, Article 11 of VStGB marginal no. 168 f. The expected damage would also have lasted "years or decades", as is required for the comparable Art. 8 (2) (b) (iv) Rome Statute, see *Werle/Jeßberger*, Völkerstrafrecht, 5th ed. 2020, p. 647 f. marginal no. 1438.

<sup>85</sup> But so *Dörmann* in: Münchener Kommentar zum StGB, 3rd ed. 2018, Article 11 of VStGB marginal no. 170.

trajectory of the projectiles or missiles and thus also the angle of fire from the location of the weapon systems can be seen. The comparison of the angle of fire with the documented hits at the facility shows that the fire was directed specifically in the direction of the facility for the dry storage of nuclear fuel and at units 1 and 6. Due to the topography of the plant, there can be no doubt that the fire was aimed at the reactor blocks. This is because the reactor blocks are the tallest buildings in the plant, which must also have been visible from the direction of the firing weapon system. This also applies despite the night time at which the attack took place, since it can be assumed that the attackers had the corresponding technical possibilities to identify their targets, as standard equipment.

Against this background, it is also possible that the shelling was carried out with the certain expectation that the attack would have far-reaching, long term and to cause serious environmental damage. It is obvious that the attacking Russian troops recognised the plant as a nuclear power station, despite the time of night. Experts have confirmed that the most serious nuclear consequences could have resulted from direct hits on the reactor blocks or from hits that would have disabled the power plant's safety system.<sup>86</sup> Since the nature of the facility as a nuclear power plant and the generally high danger that can emanate from uncontrolled processes in nuclear power plants are commonly known, it is also possible that the Russian or Russian-controlled soldiers of the units acting there expected to cause far-reaching, long-term and severe damage to the natural environment.

## **II. Crimes against humanity**

The events described also provide sufficient factual indications that crimes against humanity pursuant to section 7, para. 1 (1) (8) as well as section 7, para. 1 (4) of the Criminal Code in conjunction with sections 22, 23, para.1 of the Criminal Code were committed by Russian and Russian-controlled troops in Ukraine, which are criminally attributable to some or all of the accused.

### **1. Contextual element: Prolonged and systematic attack on the civilian population**

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<sup>86</sup> *National Public Radio* (fn. 36).

The cases presented make it seem possible that numerous individual acts were committed as part of an extended or systematic attack against the Ukrainian civilian population.

The context element of crimes against humanity according to section 7, para.1 of the Criminal Code presupposes as an attack an overall process that includes the multiple commission of individual acts of section 7, para. 1 (1-10) of the Criminal Code. This attack must be directed against the civilian population and must take place in an extended or systematic manner. An attack is extensive if a large number of victims are affected or the individual acts extend over a large geographical area. It is systematic if the use of force is organised and planned in the sense of consistent action.<sup>87</sup> A civilian population is any majority of persons who have a common characteristic that makes them the target of the attack, is connected, which can be fulfilled by inhabiting a territory together.<sup>88</sup> Also the general and indiscriminate attack on the "Population" may suffice for this purpose.<sup>89</sup>

There is ample evidence that these conditions were realised in the context of the Russian attack on Ukraine. As stated above, since the beginning of the war of aggression on the night of 23-24 February 2022, shelling of exclusively civilian inhabited or used areas of Ukrainian cities has occurred with great and increasing regularity. In the process, numerous people were killed and injured and civilian buildings, in particular also purely residential buildings, were destroyed or massively damaged. The cases described above are thus part of a long list of behaviours that could possibly be qualified as individual acts according to Article 7 para. 1 (1) to (10) of VStGB. They represent a widespread attack, because spatially, such conduct may have occurred in Ivano-Frankivsk, Vinnytsia, Zhytomyr, Malyn, Bila Tserkva, Odessa, in the greater Kiev area including the suburb of Hostomel, as well as in Chernihiv, Mykolaiv, Kherson, Sumy, Mariupol, Oktyrka and Kharkiv (from west to east). The number of civilian casualties suspected so far, ranging from 800 to several thousand depending on the source, also suggests a widespread attack on the civilian population.

In addition, it seems possible that these attacks are carried out as organised and planned attacks on the civilian population. This is supported by the use of certain weapons systems that cannot distinguish between combatants and civilians per se and are therefore deliberately selected by the users to harm the civilian population (cluster bombs). In addition, there is the intensity and duration of the attacks. In the cases of the cities of Kiev and Mariupol, the

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<sup>87</sup> *Werle* in: Münchener Kommentar zum StGB, 3rd ed. 2018, Vorb. Article 8 VStGB Rn. 14, 2326; *Ambos*, Internationales Strafrecht, 5th ed. 2018, Article 7 Rn. 184.

<sup>88</sup> *Werle/Jeßberger*, Völkerstrafrecht, 5th ed. 2020, p. 446 marginal no. 973 (on the offence of crimes against humanity in Art. 7 Rome Statute).

<sup>89</sup> *Ambos*, Internationales Strafrecht, 5th ed. 2018, Article 7 marginal no. 189 cit.

attacks lasted for days and involved the use of heavy equipment against entire districts, which would not have been possible without appropriate organisation and planning. The classification of these circumstances as a widespread and systematic attack on the civilian population is not altered by the fact that military targets were also hit and Ukrainian troops fired upon. For the circumstances described show that within a very short time after the beginning of the war of aggression, more and more civilian objects were also fired upon and civilians were killed and injured. The simultaneous conduct of a military operation against defending forces can be attributed to the assumption that of a widespread and systematic attack on the civilian population in such circumstances.

Whether a political element in the sense that the attack must take place "in execution of or in support of the policy of a state or organisation which has such an attack as its objective" is necessary for the crimes against humanity according to section 7 of VStGB has so far been left open by the Federal Supreme Court.<sup>90</sup>

International law and international criminal law jurisprudence, as well as considerable parts of the literature reject this requirement.<sup>91</sup> It is not part of customary international law and is not required by the ad hoc tribunals for Yugoslavia and Rwanda or by the International Criminal Court.<sup>92</sup> Regardless of this, however, it seems obvious anyway that the systematic and widespread attacks on the civilian population also follow a policy set by Russian leaders to target these attacks. The policy element of crimes against humanity, if one wants to accept it, does not presuppose a publicly formulated policy, but merely a planned, directed or organised commission of the crime.<sup>93</sup>

The widespread and sustained attack on the civilian population would not be taking place in this way without underlying planning, organisation and approval by the highest Russian politicians and military officials. There can be no doubt that the Russian state is run by a highly centralised regime whose state apparatus is clearly hierarchical and where key decisions in an armed conflict are taken by the highest authorities. It is hard to imagine that a deviation from predetermined plans for military action, especially one of the size and scope of the Russian invasion of Ukraine, is possible without the Russian military and political leadership intervening and ordering corrections in the course of action. It also seems extremely likely, based on the Russian leadership's public

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<sup>90</sup> *BGH*, judgement of 20 December 2018, 3 StR 236/17; decision of 9 February 2021, AK. /21, para. 33.

<sup>91</sup> cf. *Werle* in *Münchener Kommentar zum StGB*, 3rd ed. 2018, Article 7 VStGB marginal no. 27 with further evidence.

<sup>92</sup> *Werle* in *Münchener Kommentar zum StGB*, 3rd ed. 2018, Article 7 of VStGB Rn. 32 f.

<sup>93</sup> *Werle* in *Münchener Kommentar zum StGB*, 3rd ed. 2018, Article 7 of VStGB marginal no. 34.

statements to date, that it is calculating the commission of numerous individual acts against the civilian population of Ukraine precisely in order to assert its imperialist claim to power and territory over Ukrainian territory.

## **2.**

### **Alternative offences under section 7 of the Criminal Code**

#### **a.**

#### **Killing and inflicting serious bodily or mental harm pursuant to section 7, para. 1 (1) of VStGB.**

Due to the acts described above in cases **A.I, II, V.-VI.** and **III. 1-3**, there is an initial suspicion that the crimes against humanity pursuant to section 7, para. 1 (1) (8) of VStGB were committed. According to the reports, at least 847 civilians have been killed so far. The acts described there were also part of the systematic and widespread attack against the civilian population. In any case, a conditionally premeditated manner of commission seems to be obvious.

#### **b.**

#### **Expulsion or attempted expulsion Article 7 para. 1 (4) of VStGB iVm Articles Sections 22, 23 (1) of StGB**

With regard to the suspicion of the concrete acts of the - in any case attempted - expulsion, reference can be made to the description of the war crime pursuant to section 8, para. 1 (6) and para. 6 of VStGB (**B.I.2.b.**). The commission or attempted commission of the humanity crime of expulsion also comes into consideration for the circumstances described under A. VII. and VIII. These acts, which were possibly committed with the aim of expelling the civilian population of Mariupol, also present themselves as an expression of the systematic attack on the Ukrainian civilian population.

## **III.**

### **Criminal attribution according to Article 2 of VStGB in connection with Article 25, 26, 27 of StGB as well as Article 4 of VStGB**

The criminal liability of the persons reported for the events described can be derived from Article 2 of VStGB in conjunction with Articles 25 para. 1 Alt. 1, Alt. 2, paras. 2, 26, 27 of StGB as well as from section 4 of VStGB.

Liability as an indirect perpetrator by virtue of organisational dominance pursuant to Article 25 para. 1 alt. 2 of StGB is obvious. It can be assumed if a person triggers regular processes within an organisational power structure that lead to the commission of a criminal offence. This form of perpetration can, if it is exercised jointly by several persons, also be found in the form of indirect



complicity or complicity in indirect perpetration.<sup>94</sup> Case law has extensively recognised and further developed indirect perpetration by virtue of organisational rule and has also made it clear that decision-makers at middle hierarchical levels of a power structure can also be indirect perpetrators.<sup>95</sup> In addition, the Federal Supreme Court has also affirmed the criminal liability of several backers who, through their voting behaviour in committee situations, have passed (unlawful) orders carrying state and political weight, in its very first case.<sup>96</sup>

The indicted persons occupy different positions in the Russian state apparatus. Most of those indicted are officially, i.e. de facto and de jure, involved in the apparatus and hold high political and military offices there. Other indictees belong to the middle hierarchical levels of the Russian military. Last but not least, some of the accused are leaders and commanders of mercenary groups active on the Russian side in the war of aggression against Ukraine. All of the accused must be assumed to be involved in smoothly functioning state decision-making structures. Within these structures, the decisions of the indicted Putin as head of state are adopted by the members of the National Security Council of the Russian Federation and then passed "down" the state administrative and military hierarchy. In the process, the decisions are further concretised at subsequent levels and coordinated between the various branches of the state apparatus. Those below the level of members of the National Security Council then assume independent decision-making positions within the power apparatus. These positions include - with a shrinking spatial and functional area of responsibility - decision-makers up to lower hierarchical levels of the political, administrative and above all military Russian state apparatus. In particular, military commanders with authority over individual regions of the battlefield Ukraine as well as the commanders of individual contingents of troops involved also come into consideration. They, too, have parts of the state (military) apparatus and can trigger regular procedures within this apparatus due to their position. This also applies to those accused who are not de jure part of the state apparatus. As commanders of mercenary groups, they are under the de facto control of the Russian government and occupy decision-making positions within these groups.

The overwhelming number of possible crimes against the civilian population goes far beyond the acts reported here. Many of these acts suggest complete indifference on the part of the perpetrators to the persons and objects protected by international humanitarian law. In particular, the apparently targeted killing

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<sup>94</sup> cf. in this regard *Heine/Weißer* in Schönke/Schröder/Heine/Weißer, 30th ed. 2019, StGB, Article 25 para. 1, 27.

<sup>95</sup> established case law since BGHSt 40, 218 in NJW 1994, 2703; see in particular the *obiter dictum* on indirect perpetration by commanders (there: of the GDR border troops) in BGHSt 42, 65 in NJW 1996, 2042.

<sup>96</sup> cf. BGHSt 40, 218 in NJW 1994, 2703 (National Defence Council of the GDR); BGHSt 45, 270 in NJW 2000, 443 (Politbüro of the GDR).

of civilians, the indiscriminate nature of these killings, as well as the large-scale shelling of purely civilian neighbourhoods, make it appear extremely obvious that these acts are being committed in execution of plans and orders issued at the highest level of the state and concretised at numerous subsequent levels of the hierarchy. For this purpose, the established regular procedures of the Russian state and its military machinery were and continue to be used, which as a result is also the responsibility of the highest levels of decision-makers in the state - normatively - assures control, i.e. the mastery, over the acts committed.

In all relevant cases of orders that explicitly or implicitly have the commission of crimes as their object, incitement (Articles 3 of VStGB iVm 26 of StGB) to commit international crimes by the reported leaders is also conceivable. Higher hierarchical levels can also be liable in the context of so-called chain instigation.<sup>97</sup> There is the obvious possibility that in many cases Russian or Russian-controlled soldiers only decided to commit international crimes because of the corresponding orders (see above).

Political, administrative and military leaders may also be liable under the so-called superior responsibility pursuant to section 4 of the Criminal Code. According to this, military and civilian superiors are liable as perpetrators of a crime if they do not prevent the commission of crimes by their subordinates. Pursuant to section 4, para. 2 of the Criminal Code, the imputation also expressly extends to such persons who only occupy de facto military or civilian superior positions. It can be assumed that the Russian military, as well as irregular Russian-controlled troops deployed in the Ukraine invasion, have functioning, strict hierarchies and disciplinary mechanisms. Therefore, in all cases where crimes are committed without explicit or implicit orders, there is a possibility that the respective superiors are liable for not having prevented the commission of these crimes. This is because it is possible that in such cases leaders knowingly failed to take the necessary and required measures to prevent their subordinates from committing specific crimes.<sup>98</sup>

In any case, a violation of the duty of supervision (section 14 of VStGB) as well as a failure to report a criminal offence (section 15 of VStGB) always comes into consideration for the aforementioned leaders).

For the Russian or Russian-controlled fighters acting directly in the conflict, direct perpetrator liability comes into consideration in the first instance in the event of direct participation in the acts of aggression in the cases described (section 25, para. 1, alternative 1 of the Criminal Code). In addition, there is in

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<sup>97</sup> *Heine/Weißer* in: Schönke/Schröder, 30th ed. 2019, StGB, Vorb. Articles 25 ff. marginal no. 26.

<sup>98</sup> On the preconditions: *Weigend* in: Münchener Kommentar zum StGB, 3rd ed. 2018, Article 4 of VStGB marginal no. 47 ff.

principle at least an initial suspicion of aiding and abetting (section 3 of the Criminal Code in conjunction with section 27, para. 1 of the Criminal Code) to the above-mentioned acts. This is because both in the case of participation in the direct combat operations in Ukraine and in the case of supporting activities within the military operations of the Russian and Russian-controlled troops, there is the possibility that fighters have made contributions which have in any case promoted the commission of the offences described above. There is also the possibility that the promotion of such possible war crimes and crimes against humanity took place intentionally, at least to a certain extent.

### C.

#### The procedural situation

The international jurisdiction of the German criminal justice system results from Article 1 sentence 1 of VStGB. The investigations of the ICC, which have already been announced and have meanwhile begun, do not stand in the way of this, because the jurisdiction of the ICC is subsidiary to that of any state "having jurisdiction".<sup>99</sup>

The jurisdiction of the German criminal justice system on the basis of the principle of international law is subordinate to national jurisdictions on the basis of the principle of personality and territoriality.<sup>100</sup> However, prosecution on the part of the Russian Federation can currently be considered impossible, as the Russian authorities will not be willing to consider any conduct of Russian or Russian-controlled troops under criminal law aspects. Ukraine, on the other hand, is currently not sufficiently in a position to do so in the acute war situation.

Some of the accused hold the highest Russian state offices; this applies to the members of the Security Council. According to Article 18 para. 1 (20), para. 2 of GVG in conjunction with customary international law, a temporary immunity of heads of state and ministers (alone) is to be assumed (*ratione personae*).<sup>101</sup>

Material or functional immunity (*ratione materiae*) for crimes under international law committed from state offices does not exist: "Crimes against

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<sup>99</sup> cf. *Ambos* in: Münchener Kommentar zum StGB, 3rd edition 2018, Article 1 of VStGB marginal no. 22.

<sup>100</sup> *Ambos* in: Münchener Kommentar zum StGB, 3rd edition 2018, Article 1 of VStGB Rn. 23.

<sup>101</sup> *Werle/Jeßberger*, Völkerstrafrecht, 5th edition 2020, p. 386 marginal no. 812; *Ambos* in: Münchener Kommentar zum StGB, 4th edition 2020, Vorb. Article 3 of StGB Rn. 106 with further references.

international law are committed by human beings and not by abstract entities".<sup>102</sup>

Therefore, even the highest state officials who order international crimes in the exercise of their official functions can be individually criminally liable. The Federal Supreme Court has so far left this question open.<sup>103</sup> However, there is much to suggest that, from the perspective of international law, there is no functional immunity for anyone for crimes against nations, neither before international nor before national courts.<sup>104</sup> The Attorney General also takes the view that there can be no functional immunity for persons who commit international crimes in the exercise of their sovereign function.<sup>105</sup>

Personal immunity (immunity *ratione personae*), which is only effective for a limited period of time, pursuant to sections 18 (1), 20 (2) of GVG, is limited to heads of state, heads of government and ministers, so that it does not apply at all to many of the persons charged here, i.e. not even at present. For those indicted, Vladimir Vladimirovich Putin, the Prime Minister Mikhail Vladimirovich Mishustin and the ministers of the Russian Federation, this immunity ends the moment they leave office. Until then, the war crimes and crimes against humanity planned, organised, ordered and carried out by them are not subject to the statute of limitations according to Article 5 of VStGB.

An initial suspicion within the meaning of section 152 (2) of the Code of Criminal Procedure also exists against the defendants who are currently protected by immunity. This is because the initial suspicion only requires that it appears possible according to criminalistic experience that a prosecutable criminal offence has been committed, i.e. that there is a possibility of a subsequent conviction.<sup>106</sup> The - albeit limited number of cases - Experience in dealing with crimes committed in foreign armed conflicts shows that it is possible to prosecute such acts in the longer term. Thus, in the recent past in particular, the German judiciary has prosecuted and sentenced crimes that took place in the former Yugoslavia, the Democratic Republic of Congo, Syria and Iraq. Any expected time delays associated with the necessarily time-consuming prosecution of international crimes cannot alone lead to a denial of the possibility of a later conviction. In this respect, the limited personal immunity

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<sup>102</sup> IMG, Judgment of 1 October 1946, in: International Military Tribunal Nuremberg, The Nuremberg Trial of the Major War Criminals, vol. 1 (1947), pp. 189, 249, quoted in *Werle/Jeßberger*, Völkerstrafrecht, 5th ed. 2020, para. 15.

<sup>103</sup> BGHSt 65, 286.

<sup>104</sup> *Kreß*, comment on BGH judgement of 28.01.2021 - 3 StR 564/19, NJW 2021, 1335; cf. also the detailed comment by *Kreß* in: *Ambos*, Rome Statute of the International Criminal Court, 4th ed. 2022, Art. 98 Rn. 22 ff.

<sup>105</sup> *Frank/Barthe*, Immunitätsschutz fremdstaatlicher Funktionsträger vor nationalen Gerichten, ZStW 133 (2021), 235, 238 et seq.

<sup>106</sup> *Peters* in: Münchener Kommentar zur StPO, 1st ed. 2016, Article 152 marginal no. 35 with further references.

of heads of state does not prevent the affirmation of initial suspicion. Moreover, it must be borne in mind that the offences in question, some of which are the most serious known to our legal system, are offences that are not subject to a statute of limitations.

Questions of immunity, on the other hand, do **not** arise for persons below the President of the Russian Federation Vladimir Vladimirovich Putin, the Prime Minister Mikhail Vladimirovich Mishustin and the appointed ministers of the Russian Federation. There is already no obstacle to prosecution here, so that if there is an urgent suspicion of a (international) crime, the other requirements for issuing an arrest warrant should also be met.

**D.**

We request that you inform us of the **file number** of the proceedings.

For any queries, concerns and requests during the structural investigation procedure, we are available directly and through our legal representatives Dr. Nikolaos Gazeas and Dr. Andrej Umansky, who are representing us in this matter. We would like to support the investigations to the best of our ability and where possible.

We are firmly convinced that with the strength of the law, in the medium and long term, a more peaceful coexistence of the people affected by the crimes to be tried under international criminal law can be contributed to. The international crimes charged here are not subject to the statute of limitations. The national proceedings for the violation of international criminal law will also have their deterrent effect.

With kind regards

Sabine Leutheusser- Schnarrenberger  
Lawyer  
Former Federal Minister

Gerhard R. Baum  
Lawyer  
Former Federal Minister

Annexes 1 to 60