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Violations of international humanitarian law in the Russian Federation-Ukraine armed conflict

- European Union External Action, 'Russia-Ukraine: Statement by High Representative Borrell and Commissioner Lenarcic on violations of international humanitarian law of 10 March 2022', <https://www.eeas.europa.eu/eeas/russiaukraine-statement-high-representative-borrell-and-commissioner-lenarcic-violations_en>

On 10 March 2022, a statement on violations of international humanitarian law (IHL) in the Russian Federation-Ukraine armed conflict was jointly issued by Josep Borrell, High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission (EC), along with Janez Lenarčič, European Commissioner for Crisis Management.²

Within the statement, the European Union (EU) takes a clear position on the use of force in relation to the armed conflict between the Russian Federation and Ukraine. It classifies the use of force against Ukraine as an act of aggression and holds the Russian Federation accountable. It also condemns serious violations of IHL that have occurred within the armed conflict, including the shelling of the maternity hospital in Mariupol by Russian Armed Forces and the siege of the city of Mariupol and other Ukrainian cities under heavy bombardment, both of which have caused damage to civilian populations and produced humanitarian disasters.

The Russian Federation is called upon to immediately cease its military actions, withdraw all military forces from the territory of Ukraine and fully respect Ukraine's territorial integrity, sovereignty and independence within its internationally recognised borders. The EU notes its concerns with the lack of protection of the civilian population, stresses the need to respect humanitarian corridors and allow for the evacuation of the civilian population and the delivery of humanitarian assistance in Ukraine.³

¹ This report was prepared by Valeria Eboli. She is a Professor of International Law at the Italian Naval Academy, Livorno, Italy. The views and opinions expressed are those of the author only.

² European External Action Service, 'Russia/Ukraine: Statement by High Representative Borrell and Commissioner Lenarcic on violations of international humanitarian law', 10 March 2022, <https://www.eeas.europa.eu/eeas/russiaukraine-statement-high-representative-borrell-and-commissioner-lenarcic-violations_en>.

³ *Ibid.*

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The EU welcomes the establishment of a Commission of Inquiry within the UN Human Rights Council as well as the opening of an investigation by the Prosecutor of the International Criminal Court (ICC).⁴

Regulation proposal authorising Eurojust to collect, preserve and analyse evidence related to genocide, crimes against humanity and war crimes

- European Commission, 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1727 of the European Parliament and the Council, as regards the collection, preservation and analysis of evidence relating to genocide, crimes against humanity and war crimes at Eurojust to amend Eurojust Regulation to allow Eurojust to collect, preserve and analyse evidence related to core international crimes', 25 April 2022, COM(2022) 187 final, 2022/0130 (COD), <https://commission.europa.eu/document/07c68619-3fab-4d31-a54c-c3fe8a0a76c3_en>

In April 2022, the EC proposed to enhance the current set-up of the EU Agency for Criminal Justice Cooperation (Eurojust). More specifically, the EC aimed to optimise the agency's case management system in order to improve the exchange of information between national competent authorities and Eurojust. The primary goal was that of facilitating investigations into allegations of international crimes. Eurojust is the EU hub for judicial cooperation in criminal matters, coordinating investigations and prosecutions of serious cross-border crime in Europe and abroad. It supports national investigating and prosecuting authorities in relation to serious crimes, including genocide, crimes against humanity and war crimes (also collectively referred to as 'core international crimes').⁵

Due to the ongoing hostilities in Ukraine, evidence cannot be stored securely. As a result, there is an urgent need for the EU to secure a suitable backup or storage location. The current Eurojust case management system does not allow it to "collect, preserve and analyse evidence relating to core international crimes, including those that are likely being committed in Ukraine, due to the scale of the events and the vast amount of evidence that needs to be stored in case of the alleged commission of such crimes".⁶ In essence, the aim of the proposal is to allow Eurojust to store and exchange evidence, also relating to personal data, in order to facilitate the prosecution of international crimes.

As mentioned, the Prosecutor of the ICC announced that he had proceeded to open an investigation into the situation in Ukraine on 2 March 2022.⁷ Eurojust, having the expertise and experience to support investigations and prosecutions of core international crimes, cooperates with the Prosecutor of the ICC.

⁴ *Ibid.*

⁵ In accordance with Regulation (EU) 2018/1727 ('Eurojust Regulation'), <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1727>>.

⁶ European Commission, 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1727 of the European Parliament and the Council, as regards the collection, preservation and analysis of evidence relating to genocide, crimes against humanity and war crimes at Eurojust to amend Eurojust Regulation to allow Eurojust to collect, preserve and analyse evidence related to core international crimes', 25 April 2022, COM(2022) 187 final, 2022/0130 (COD), <https://commission.europa.eu/document/07c68619-3fab-4d31-a54c-c3fe8a0a76c3_en>.

⁷ International Criminal Court, Situation in Ukraine, ICC-01/22, <<https://www.icc-cpi.int/situations/ukraine>>.

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Establishment of a Joint Investigation Team into alleged core international crimes committed in Ukraine

- European Union Agency for Criminal Justice Cooperation, 'Establishment of a Joint Investigation Team (JIT) to enable the exchange of information and facilitate investigations into war crimes, crimes against humanity and other core crimes', <<https://www.eurojust.europa.eu/sites/default/files/assets/joint-investigation-team-into-alleged-core-international-crimes-committed-in-ukraine-milestones.pdf>>

On 25 March 2022, Eurojust established a Joint Investigation Team (JIT) to enable the exchange of information and facilitate investigations into war crimes, crimes against humanity and other core crimes committed in Ukraine. A JIT agreement was signed between Ukrainian, Lithuanian and Polish authorities, supported by Eurojust and the JIT's Network Secretariat.⁸

A JIT is "an international cooperation tool based on an agreement between competent authorities – both judicial (judges, prosecutors and investigative judges) and law enforcement authorities – of two or more states, established for a limited duration and for a specific purpose, that conducts criminal investigations in one or more of the states involved".⁹

The main aim of this JIT is to support the gathering of evidence related to international crimes committed during the armed conflict in Ukraine. Eurojust commits itself to providing operational, analytical, legal and financial assistance to JIT parties while facilitating the coordination and cooperation between all national investigating and prosecuting authorities conducting investigations into core international crimes.

Eurojust and the JIT partner states are cooperating with the Office of the Prosecutor of the ICC to ensure a continuous information exchange.¹⁰

All these acts, taken at different levels, demonstrate a strong commitment by the EU to fight against impunity and ensure the prosecution of the international crimes committed within the context of the Russian Federation-Ukraine armed conflict.

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⁸ See European Union Agency for Criminal Justice Cooperation, 'Establishment of a Joint Investigation Team (JIT) to enable the exchange of information and facilitate investigations into war crimes, crimes against humanity and other core crimes', <<https://www.eurojust.europa.eu/sites/default/files/assets/joint-investigation-team-into-alleged-core-international-crimes-committed-in-ukraine-milestones.pdf>>.

⁹ Eurojust, 'Joint Investigation Team, Practical Guide', 2021, p. 7, <https://www.eurojust.europa.eu/sites/default/files/assets/joint_investigation_teams_practical_guide_2021_en.pdf>.

¹⁰ See 'Statement by ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Investigation Team on international crimes committed in Ukraine', 25 April 2022, <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-office-prosecutor-joins-national-authorities-joint>>.