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**Minister of State at the Federal Foreign Office, Katja Keul,
at the Nuremberg Academy Lecture “The Ukraine War and the Crime of Aggression”
organised by the International Nuremberg Principles Academy
on 4 May 2023**

Professor Kreß, Director Safferling,

Mayor König, ladies and gentlemen,

It's a great pleasure for me to attend this important lecture and event here in Courtroom 600, the birthplace of modern international criminal law, and I applaud the Nuremberg Principles Academy and its new Director, Professor Safferling, on devoting this year's academic lecture to an issue of the highest political and judicial relevance:

The accountability of states and the fight against impunity of state leaders, especially for the crime of aggression. The significance of this issue cannot be overstated.

Sadly, Russia's full-scale invasion of Ukraine and its war of aggression show how important it is to promote and defend the UN Charter, the sovereignty of nations, and international law.

Professor Kreß,

Let me start by thanking you for your most interesting lecture. You know how much I value our exchange and debate on these issues from our last meeting at the Federal Foreign Office in Berlin.

We absolutely agree on the need for accountability for the crime of aggression, and this is our point of departure: There must be no impunity for the crime of aggression, neither in the current situation of Russia's war of aggression, nor in any other case anywhere at any time. If at this juncture the law of the strong were to prevail, then in the future a victory for justice will become ever less likely.

That's why, back in 2010, we campaigned in Kampala for the jurisdiction of the International Criminal Court to be expanded. At the time, we managed to extend the ICC's jurisdiction, which had been limited to three crimes, to a fourth, namely the crime of aggression. This reform wasn't perfect; it was achieved through a difficult compromise, and its limitations are now becoming more apparent than ever.

The lack of prosecution in cases such as Russia's attack on Ukraine is painful. That's why we're now pressing for a new attempt at reform, to universalise ICC jurisdiction for the crime of aggression. Foreign Minister Baerbock made this clear in her speech at the Hague Academy of International Law on January, 16th.

Reform of the Statute will not be accomplished overnight, as we well know. Many countries are opposed to this, also within the G7. However, we want to stay strongly engaged in efforts

to expand the ICC's jurisdiction to include wars of aggression. The momentum we're witnessing due to Russia's outrageous attack on Ukraine must be seized to find a solution not only for this particular case, but to bring about a solution that is comprehensive.

That said, we're aware of our own historic responsibility – as is clear not only since entering this courtroom – as well as of our responsibility as one of the 44 Kampala countries. In the future, it must be possible to investigate nationals of all countries for the crime of aggression – irrespective of whether or not the aggressors have ratified the Rome Statute.

The ability to prosecute crimes in connection with a war of aggression would then be based on the ratification of the Statute by the state that is attacked, and on a crime having been committed on its territory. However, this is and will remain a mandatory prerequisite for the ICC to have jurisdiction – even in the event that the Statute is amended. That's why we are clearly pressing for the Rome Statute to be ratified by Ukraine itself.

As we work to expand the legal basis within the framework of the agreements, we by no means intend to sit back and wait when it comes to the current case of Russian aggression. We're determined to use the existing legal basis to enable these criminal offences to also be prosecuted to the fullest possible extent.

We therefore support the idea of a special internationalised tribunal for the crime of aggression against Ukraine, the jurisdiction of which would be based on Ukrainian law. It would not be possible for third parties to call into question the legitimacy of such a court rooted in Ukrainian criminal law.

In recent weeks, I have had a great number of exchanges on this issue, the most recent of which included US counterparts – who support the idea of an internationalised court along with many other partners, most prominently the G7 countries.

The fact that the United States – after a difficult national coordination process involving the State Department, the Pentagon, the Department of Justice and the National Security Council – also supports a special internationalised tribunal is something of a mini-Zeitenwende in terms of US policy.

On 18 April of this year, the G7 Foreign Ministers and the High Representative of the EU issued a Communiqué expressing their common position on the most effective means to pursue accountability for the crime of aggression against Ukraine.

They stated: “We support exploring the creation of an internationalised tribunal based in Ukraine's judicial system to prosecute the crime of aggression against Ukraine.”

The authority of this court is to be strengthened by its international elements:

- its location outside of Ukraine,
- an international investigative authority and judiciary,
- international financial support,
- and endorsement by the United Nations in the form of a resolution of the General Assembly welcoming the establishment of the tribunal.

In our view, such a court would also be in a position to bring charges for leadership crimes of aggression, despite the functional immunity enjoyed by the Russian leadership.

However, we do believe that the troika is an exception, because only the ICC– and this is another recent development in international law – would have the power to overcome its immunity. In the Federal Government’s opinion, even the UN General assembly does not have the authority to change this.

By issuing resolutions, it can only provide political support for special courts; it is not, however, able to create a court’s legal foundation and thereby establish its legitimacy.

All special courts in the past derived their legitimacy either from UN Security Council resolutions (Al Bashir, the Sudan) or with the consent of the state in question as in Sierra Leone. Despite all of our collective misgivings about the limitations of the existing legal framework, there is, unfortunately, no shortcut to legitimacy.

Finding a solution based on existing law will not only be less open to criticism, but can also not be suspected of challenging, or even weakening, the ICC. What’s more, such a solution will underscore the need for comprehensive reform and the necessary empowerment of the ICC.

Let me close here and thank you all once again for inviting me.

Not only am I passionate about academic exchange, I also highly value legal discussions as a profound and important tool when it comes to shaping new ideas and coming to assessments.

I’m grateful to the Academy for organising this second event within the Nuremberg Principles Academy lecture series, and, of course, I want to thank everyone here in this historic courtroom for your interest.

And now I’m looking forward to our discussion and to hearing questions from the audience.