



COMMISSION NATIONALE  
CONSULTATIVE  
DES DROITS DE L'HOMME

RÉPUBLIQUE FRANÇAISE

DECLARATION

## Declaration

# " Acting in solidarity with Ukraine against violations of international law resulting from Russian aggression "

*Plenary Assembly of 17 March 2022*

*(Adopted unanimously with one abstention)*

1. On 24 February 2022, the President of the Russian Federation, Vladimir Putin, launched an all-out military attack on Ukraine. This aggression is causing significant loss of life and destruction of civilian property on a daily basis. Despite calls for an immediate ceasefire, Russian offensives continue, targeting civilians in besieged cities and creating millions of displaced people, including women, children and the elderly.

2. The CNC DH (French National Consultative Commission on Human Rights) is calling for the respect of international law and the immediate withdrawal of Russian forces in Ukraine.

### **A violation of the Charter of the United Nations and international law.**

3. The Russian armed aggression in Ukraine is a clear violation of the United Nations<sup>1</sup> calling into question the purposes and principles of the United Nations: prohibition of the use of force, peaceful settlement of disputes, sovereignty of states and respect for their territorial integrity and political independence.

4. On 2 March 2022, in an emergency special session, the United Nations General Assembly (UNGA) adopted, by an overwhelming majority, the "Aggression against Ukraine" resolution<sup>2</sup> in which it "deplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter". In particular, the UNGA demands that Russia "immediately cease its use of force against Ukraine and to refrain from any further unlawful threat or use of force against any Member State" and that it "immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine". The UNGA "condemns all violations of international humanitarian law and violations and abuses of human rights, and calls upon all parties to respect strictly the relevant provisions of international humanitarian law, including the Geneva Conventions of 1949 and Additional

Protocol I thereto of 1977 [...] and to respect international human rights law"<sup>3</sup>. In an urgent debate, the UN Human Rights Council (UNHRC) adopted an identical position<sup>4</sup>.

5. The new Russian aggression against Ukraine is also a violation of the norms, principles and commitments of the Conference on Security and Cooperation in Europe (CSCE), including the Helsinki Final Act signed in 1975 and the Charter of Paris for a New Europe signed in 1990. At the OSCE Commemorative Summit in Astana, Kazakhstan, in 2010, the Heads of State and Government of the 56 participating States reaffirmed their commitment to a "security community" based on respect for human rights and peaceful relations between States. Collective security and European stability are conceivable only with the primacy of common rules, foremost among which are the legal principles of the United Nations Charter and the founding acts of the OSCE.

6. The Council of Europe's Committee of Ministers has also condemned "*the aggression of the Russian Federation within the sovereign territory of Ukraine*", which "*constitutes a breach of peace of an unprecedented magnitude on the European continent since the creation of the Council of Europe*"<sup>5</sup>. On 16 March 2022, it decided that the Russian Federation would cease to be a member of the Council of Europe as of that date<sup>6</sup>. The day before, the Parliamentary Assembly of the Council of Europe (PACE) had unanimously adopted an opinion that the Russian Federation could no longer be a member of the Organisation<sup>7</sup>. The European Court of Human Rights (ECHR) had already found on 28 February that the military operations posed a risk of violations of the rights guaranteed by the European Convention on Human

<sup>3</sup> UNGA, *ibid.* §2; §4 and §11.

<sup>4</sup> UNHRC, Resolution 49/1, Situation of human rights in Ukraine stemming from the Russian aggression, HRC/RES/49/1, 4 March 2022.

<sup>5</sup> Council of Europe, Committee of Ministers, Meeting of 10 March 2022, Item 2.3 Consequences of the aggression of the Russian Federation against Ukraine.

<sup>6</sup> Council of Europe, Committee of Ministers, Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, 16 March 2022.

For the timeline, see [https://www.coe.int/fr/web/portal/full-news/-/asset\\_publisher/y5xQt7OdunzT/content/the-russian-federation-is-excluded-from-the-council-of-europe?\\_101\\_INSTANCE\\_y5xQt7OdunzT\\_languageId=en\\_GB](https://www.coe.int/fr/web/portal/full-news/-/asset_publisher/y5xQt7OdunzT/content/the-russian-federation-is-excluded-from-the-council-of-europe?_101_INSTANCE_y5xQt7OdunzT_languageId=en_GB).

<sup>7</sup> PACE, Opinion 300 (2022) Consequences of the Russian Federation's aggression against Ukraine, 15 March 2022.

<sup>1</sup> See in particular Article 2-4 of the United Nations Charter.

<sup>2</sup> UNGA, Resolution on Aggression against Ukraine, A/RES/ES-11/1, 2 March 2022, 141 "for", 5 "against" and 35 abstentions.

Rights for the civilian population and had indicated to the Russian Federation a series of urgent measures<sup>8</sup>.

7. In response to the aggression against Ukraine, the G7 countries and the European Union (EU) leaders called for action and solidarity on 24 February 2022 and adopted sanctions and restrictive measures against Russia.

8. At an extraordinary plenary session on 1 March 2022, the European Parliament strongly condemned the Russian military aggression. MEPs welcomed the swift adoption of EU sanctions and called for even more restrictive measures to be put in place to strategically weaken the Russian economy<sup>9</sup>. The EU Heads of State and Government, meeting in Versailles on 10 March 2022, condemned the military aggression and reiterated their willingness “to provide *coordinated political, financial, material and humanitarian support*” to Ukraine. They strengthened measures against Russia and Belarus<sup>10</sup>.

### Respect for international humanitarian law.

9. The four Geneva Conventions of 12 August 1949 and Additional Protocol I thereto of 8 June 1977 apply to this international armed conflict: both Ukraine and Russia, as parties to these instruments, are must respect them<sup>11</sup> and may not derogate from them. International humanitarian law (IHL) aims to protect people who are not, or are no longer, taking part in hostilities and, in doing so, to restrict the means and methods of warfare.

10. However, according to various reports, violent military operations have already resulted in numerous civilian casualties, including children, widespread destruction of civilian property - homes and other property or essential infrastructure - forcing civilians to flee the fighting, resulting in massive displacement of populations.

11. It should be strongly reiterated that IHL prohibits direct attacks against civilians and civilian property, and disproportionate and indiscriminate attacks.

12. The CNCDH points out that certain weapons are prohibited and the use of others is regulated or prohibited<sup>12</sup>. For example, the International Committee of the Red Cross (ICRC) has reiterated that “the use of heavy explosive weapons in populated areas should be avoided, as it carries with it a high likelihood of indiscriminate effects” and that it is “imperative” that “civilian infrastructure such as hospitals, schools and water, gas and electricity networks be spared and actively protected from attack, whether by

kinetic or cyber means<sup>13</sup>. The CNCDH condemns the use of cluster bombs and is concerned about the threat of the use of chemical weapons<sup>14</sup>.

13. The CNCDH is particularly concerned about the specific challenges posed by attacks on nuclear power plants or other sensitive sites, with serious consequences for civilians and the environment. In this regard, it reiterates the prohibition on the employment of methods or means of warfare which may cause widespread, long-term and severe damage to the natural environment<sup>15</sup>. The CNCDH also stresses that any act of hostility against historic monuments, artwork which constitute the cultural or spiritual heritage of peoples is also prohibited<sup>16</sup>.

14. Referring to its previous opinions, the CNCDH would like to see the preservation of a neutral, impartial and independent humanitarian space to allow humanitarian actors and medical personnel to have unhindered access to civilian populations and to allow them, if they so wish, to move to safer places. In this regard, the CNCDH calls on all parties to the conflict to respect their obligations under IHL, which includes provisions governing the assistance and protection of persons in need - civilians, wounded or sick combatants - as well as provisions relating to the protection and respect of humanitarian personnel.

15. The CNCDH reiterates the obligations of the parties to the conflict with regard to prisoners of war and detainees<sup>17</sup>.

16. For these reasons, the CNCDH calls on France to reiterate its calls on the belligerents to respect the provisions of IHL and its prohibitions, in particular those relating to the conduct of hostilities, and the concomitant provision on unhindered humanitarian access.

### Establishing accountability and combating impunity.

17. The CNCDH wishes to reiterate that the crime of aggression, war crimes and crimes against humanity engage the individual criminal responsibility of their perpetrators<sup>18</sup>.

18. The Prosecutor of the International Criminal Court (ICC) decided on 2 March 2022 to immediately open an investigation into the situation in Ukraine<sup>19</sup>, where there is “a reasonable basis” to believe that war crimes are allegedly being committed<sup>20</sup>. This investigation will cover all acts committed in Ukraine from 21 November 2013 onwards and will include “*any past and present allegations of war crimes, crimes against humanity or genocide committed on any*

8 The ECHR may, under Rule 39 of its Rules of Procedure, indicate interim measures to any State party to the European Convention on Human Rights. Interim measures are emergency measures which, according to the Court's established practice, are only applied when there is an imminent risk of irreparable damage. These are measures taken in the course of proceedings before the Court and do not prejudice its subsequent decisions on the admissibility or merits of the cases in question.

See Application 11055/22, *Ukraine v. Russia* (X), 28 February 2022 and Press Release, The European Court grants urgent interim measures in application concerning Russian military operations on Ukrainian territory, ECHR 068 (2022), 1 March 2022.

9 European Parliament resolution of 1 March 2022 on the Russian aggression against Ukraine (2022/2564(RSP)).

10 Statement of the Heads of State or Government on the Russian military aggression against Ukraine, 10 March 2022.

11 Geneva Conventions of 1949: Ukraine joined on 3 August 1954 and Russia on 10 May 1954. Additional Protocol I of 1977: Ukraine joined on 25 January 1990 and Russia on 29 September 1989.

12 Additional Protocol I, Article 35 § 1 & 2.

13 See ICRC, Humanitarian crisis in Ukraine: <https://www.icrc.org/en/humanitarian-crisis-ukraine>. See also: ICRC President's Statement, 4 March 2022 : <https://www.icrc.org/en/document/ukraine-amid-mounting-human-cost-parties-must-uphold-international-humanitarian-law-0>.

14 Customary rules of international humanitarian law, Rules 74-76.

15 Additional Protocol I, Article 35.

16 *Ibid.* Article 53.

17 The Third Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 provides, for example, in Article 13 that “prisoners of war must at all times be humanely treated” and “at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity” and that “reprisals against them are forbidden”.

18 Rome Statute of the International Criminal Court, 17 July 1998, Articles 5 and 25.

19 Although Ukraine and Russia are not parties to the Rome Statute, the Court can investigate crimes committed on Ukrainian territory, as Ukraine accepted its jurisdiction in 2014.

20 Statement of ICC Prosecutor Karim A.A. Khan on the situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation, 2 March 2022.

*part of the territory of Ukraine by any person”.*

19. Furthermore, the UNHRC, in its resolution 49/1 adopted on 4 March 2022, stresses the need to document and ensure accountability for violations and abuses of human rights and violations of international humanitarian law committed in the context of the conflict. The Council establishes an independent international commission of inquiry to, among other things, “investigate all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes, in the context of the aggression against Ukraine by the Russian Federation, and to establish the facts, circumstances, and root causes of any such violations and abuses”. This commission will also be mandated to “identify, where possible, those individuals and entities responsible for violations or abuses of human rights or violations of international humanitarian law, or other related crimes, in Ukraine, with a view to ensuring that those responsible are held accountable”<sup>21</sup>.

20. The CNCDDH considers it essential to establish accountability now in order to put an end to impunity. It welcomes the first initiatives taken in this direction and encourages France to collaborate with the ICC and to give it the necessary means to enable international criminal justice to function properly.

### **The unconditional reception and protection of exiled populations.**

21. The CNCDDH encourages the French Government to continue the efforts already undertaken to ensure the reception and protection of all persons exiled as a result of the war. The Office of the High Commissioner for Refugees (UNHCR) estimates that, since 24 February, more than 3 million people have fled Ukraine to neighbouring countries. This forced exodus of populations calls for a strong response from states, in particular the European Union (EU). The CNCDDH also reiterates the urgent need to respond to the important needs of the displaced populations within Ukraine’s borders<sup>22</sup>. As travel becomes increasingly difficult and dangerous, it is essential to mobilise the necessary means to protect them, in line with the Guiding Principles on Internal Displacement<sup>23</sup>.

22. The countries bordering Ukraine and the EU have been heavily involved in the reception of these people since the first days of the conflict. The CNCDDH welcomes the activation on 3 March, based on the proposal of the European Commission, of the Temporary Protection Directive<sup>24</sup>. The CNCDDH calls on France to ensure its effective and complete implementation, which means guaranteeing the unrestricted reception of all persons fleeing Ukraine, regardless of their nationality and administrative situation, as provided for in Article 7 of the Directive and Article L581-7

of the *Ceseda*<sup>25</sup>. The CNCDDH is concerned about the situation of third-country nationals who have to prove they were legally residing in Ukraine “on the basis of a valid permanent residence permit issued in accordance with Ukrainian law and who are unable to return to their country or region of origin in safe and durable conditions”<sup>26</sup>, and about the exclusion of asylum seekers who have to reapply in the country where they are and who may be confronted with the application of the Dublin Regulation by countries of arrival.

23. More broadly, France, which holds the Presidency of the EU Council, must ensure that implementation of the Directive is monitored throughout the Union and over time, which means opening the borders with Ukraine, guaranteeing free movement within the EU - although internal border controls have been re-established since 2015 in France - and respecting the principle of non-refoulement. The many solidarity initiatives that have sprung up across Europe must be coordinated and sustained throughout the conflict, ensuring that the burden of reception is shared between the different Member States. In this respect, the CNCDDH reiterates that solidarity between Member States, as set out in the Temporary Protection Directive, must prevail both in terms of reception facilities and in budgetary terms<sup>27</sup>.

24. The CNCDDH takes note of the measures put in place to deal with the large influx of people from Ukraine and, in particular, the strengthening of reception and accommodation facilities, as well as coordination with local authorities and associations, including citizen initiatives<sup>28</sup>. It urges the Government to mobilise more resources urgently and in the long term, as existing mechanisms are already saturated. The Commission recalls that public accommodation can only be a transitional solution and a last resort. Furthermore, the reception of displaced persons from Ukraine must not lead to the exclusion of other asylum seekers, all of whom must benefit from comprehensive and professional support provided by the public authorities.

25. People exiled as a result of war are placed in a very vulnerable situation. States must ensure that persons received in their territory are offered appropriate support and protection, including through the mobilisation of medical and psychological support services. Elderly people need special support, as do people with disabilities, women

<sup>25</sup> Code d’entrée et du séjour des étrangers et des demandeurs d’asile (French Code of Entry and Residence of Foreigners and Right of Asylum), Article L581-7: “Under the conditions laid down in Article 7 of Council Directive 2001/55/EC of 20 July 2001, additional categories of displaced persons not referred to in the Council Directive provided for in Article 5 of the same Directive may be granted temporary protection when they are displaced for the same reasons and from the same country or region of origin. The provisions of Articles L 581-3 to L 581-6 are applicable to these additional categories of persons” (free translation).

<sup>26</sup> Ukraine: implementation of the temporary protection scheme, Ministry of the Interior, General Directorate for Foreigners in France, 15 March 2022 (free translation).

<sup>27</sup> Directive 2001/55/EC, *op. cit.*, § 20 of the preamble and Articles 24 and 25.

<sup>28</sup> Interministerial crisis unit (Cellule interministérielle de crise). Monitoring committee on the policy for receiving displaced persons from Ukraine with associations of local elected representatives, in conjunction with the Ministry of the Interior and the Ministry of Territorial Cohesion and Relations with Local Authorities (Comité de suivi de la politique d’accueil des déplacés d’Ukraine avec les associations d’élus locaux, en lien avec le ministère de l’Intérieur et le ministère de la Cohésion des territoires et des Relations avec les collectivités territoriales).

First reception facility for people who have fled Ukraine (Structure de premier accueil dédié aux personnes ayant fui l’Ukraine).

*Je m’engage pour l’Ukraine* platform.

<sup>21</sup> UNHRC, Resolution 49/1, *op. cit.*, § 9.

<sup>22</sup> According to the UNHCR, as of 11 March, there were 1.85 million internally displaced persons. These are in addition to the 1.6 million internally displaced persons since 2014 (Office of the High Commissioner for Human Rights <https://www.ohchr.org/en/press-releases/2017/06/conflict-ukraine-enters-its-fourth-year-no-end-sight-un-report?LangID=F&NewsID=21730>).

<sup>23</sup> UNHCR, Guiding Principles on Internal Displacement (extracted from E/CN.4/1998/53/Add.2 dated 11/02/1998).

<sup>24</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

and children (some unaccompanied or separated from their parents or relatives)<sup>29</sup>, who are at increased risk of violence, abuse and exploitation. For example, UNICEF and UNHCR “urge all neighbouring and impacted countries to ensure the immediate identification and registration of unaccompanied and separated children fleeing from Ukraine, after allowing them access to their territory. States should offer safe spaces for children and families immediately following border crossings, and link these to national child protection systems”<sup>30</sup>. Unaccompanied minors must be given special attention, and cooperation between States must be strengthened in order to ensure that they are identified and their progress within the EU monitored, to avoid any disappearance of children and to enable family links to eventually be re-established.

26. The CNCDH recommends that the French Government strengthen existing cooperation with the countries bordering Ukraine and other host countries in the fight against human trafficking, in order to put in place measures to identify possible victims and means of prevention.

27. Finally, the CNCDH calls on the public authorities to put an end to direct or indirect deportations<sup>31</sup> to Ukraine, Russia and Belarus. For nationals of these three States already on French soil, the CNCDH calls for their situation to be re-examined on the basis of the “*change of circumstances*”: the opening of procedures for re-examining asylum applications for those who have been rejected by the French Office for the Protection of Refugees and Stateless Persons (OFPRA) and the National Court of the Right of Asylum (CNDA), and the suspension of transfer orders to other European countries pursuant to the procedure provided for by the Dublin III Regulation.

### The protection of human rights and civil society in Russia and Belarus.

28. Russian society is in danger of being cut off from the rest of the world. A whole series of laws and measures have long contributed to this, denying the universality of human rights<sup>32</sup>.

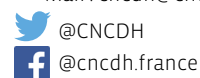
29. Obstacles to democratic debate and violations of human rights, in particular civil and political rights (such as the prohibition of public gatherings, the denial of freedom of associations or the dissolution of some of them, the control of the media through, among other things, legislation on “false information”<sup>33</sup>, or the control of the Internet, etc.) have helped silence any organised opposition. In this context, voices against the conflict in Ukraine are censored; recent

demonstrations in Russia against military aggression are severely repressed and demonstrators arrested. The same is true in Belarus<sup>34</sup>.

30. Solidarity with the people of Ukraine must be accompanied by increased support for Russian and Belarusian civil society actors working for human rights and peace. The CNCDH calls on the French Government and the EU to considerably strengthen actions in their favour and to facilitate the obtaining of Schengen visas.

31. The Commission will pay particular attention, in the international networks of which it is a member (International and European networks of national human rights institutions), to initiatives aimed at strengthening the capacities of the various actors working to protect and promote human rights in Russia and Belarus.

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<sup>29</sup> It should be noted that most orphanages and children's homes have been evacuated.

<sup>30</sup> Joint statement by UNICEF Executive Director Catherine Russell and United Nations High Commissioner for Refugees Filippo Grandi, 7 March 2022.

<sup>31</sup> By transferring to European states that practice deportation to these countries.

<sup>32</sup> For more information, see Human Rights Watch, World Report 2022, for Russia pp. 547 ff.

<sup>33</sup> The 4 March Law on Fake News makes the dissemination of fake news, coverage of the war in Ukraine other than in terms validated by the Russian authorities, calls for sanctions, and participation in public actions opposing Russian military action in Ukraine punishable by heavy fines and prison sentences ranging from 3 to 15 years. These penalties are applicable to both legal entities and natural persons. The decree adopted by the Russian Prosecutor's Office on 27 February criminalises the provision of financial, technical, material, advisory or any other form of assistance to a foreign government, international or foreign organisation or their representatives in their activities directed against the security of the Russian Federation.

<sup>34</sup> Human Rights Watch, World Report 2022, for Belarus, pp. 82 ff.