

United States Senate

WASHINGTON, DC 20510

June 23, 2023

The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear President Biden:

Just weeks after Russian President Vladimir Putin launched his full-scale, illegal invasion of Ukraine, you told the Ukrainian people, “We stand with you. Period.” One year into the war, you returned to Ukraine and pledged to hold the perpetrators of the unspeakable war crimes and crimes against humanity unfolding in Ukraine accountable. We write to express our continued support for standing by Ukraine as it defends itself and the rules-based international order upon which our own safety and security depend. Your leadership in rallying the international community and NATO in defense of Ukraine and in rejection of Russian tyranny has been critical.

However, there is one important issue we have raised before that still requires your timely attention—ensuring that the United States’ is doing all that it can to hold the perpetrators of atrocities in Ukraine accountable. More specifically, despite congressional authorization to assist the International Criminal Court’s (ICC) investigation into Russian war crimes in Ukraine, your Administration still has not taken the important step of sharing critical intelligence with the ICC.

For more than a year, the world has borne witness to the unspeakable horrors that Putin and his forces have inflicted on the Ukrainian people: bombing maternity wards, beheading prisoners, raping women, torturing and executing civilians, and abducting thousands of Ukrainian children. Ukraine’s Office of the Prosecutor General has documented more than 77,000 war crimes and crimes against humanity, and the number continues to grow with each passing day.

Even as Ukraine is fighting for its very survival, Ukrainian authorities are engaged in a heroic effort to investigate, document, and prosecute these crimes. But Ukraine cannot do it alone. Ensuring accountability for these atrocities requires the support of allies and international institutions, including the ICC.

Last month, a bipartisan group of Senators met with ICC Prosecutor Karim Khan, who described how the ICC is helping Ukraine investigate and prosecute Russian forces and leadership who are responsible for these heinous crimes. The U.S. reportedly has evidence in its possession, including evidence relating to Russia’s targeting of civilian infrastructure and abduction of thousands of Ukrainian children, that would help the ICC identify the perpetrators of these crimes. However, your Administration is withholding this evidence from the ICC over unrelated concerns that the Court might one day try to initiate unwarranted prosecutions of U.S. servicemembers. We understand that the United States’ unwillingness to share this key information with the ICC is causing partner nations to hold back as well. Despite your public condemnation of Russian crimes against humanity and war crimes in Ukraine, our current

posture on the ICC sends a message to the world that parochial self-interested concerns, even where unfounded, take priority over seeking justice for Putin's crimes.

We believe it is possible to support credible investigations by the court without putting our own servicemembers at risk of prosecution, a position reaffirmed by international law and policy experts, including many in your Administration. That is why Congress passed—on a bipartisan basis—carefully crafted authorities for providing support to the ICC in appropriate circumstances. In a clear signal of Congress's intent, these additional authorities include greater flexibility to share evidence with the court specifically in relation to the ICC's Ukraine investigation.

We wrote to you in March to emphasize the urgency of aiding the ICC's investigation into Russian atrocities in Ukraine. Yet it is our understanding that the Administration—reportedly at the behest of the Department of Defense—has still failed to implement the additional authorities provided to it by Congress last December. It is unconscionable for the United States to withhold critical support, including evidence that could help identify the perpetrators of war crimes and crimes against humanity.

It has been nearly six months since Congress provided your Administration with expanded authorities that it has yet to utilize. During that time, Ukraine's Office of the Prosecutor General has documented more than 34,000 additional war crimes by Russian forces. The Ukrainian people cannot afford another day of delay. We urge you to find a path forward to ensure the United States of America is doing all it can to hold the perpetrators of atrocities in Ukraine accountable. We would like to meet with you and Secretary Austin to discuss the matter as soon as possible.

Sincerely,



Richard J. Durbin
United States Senator



Lindsey O. Graham
United States Senator



Robert Menendez
United States Senator



Thom Tillis
United States Senator