

**RESOLUTION OF THE
NEW YORK STATE BAR
ASSOCIATION
REGARDING INVESTIGATION AND
PROSECUTION
OF THE RUSSIAN FEDERATION
AND ITS CULPABLE OFFICIALS
ARISING FROM ITS ILLEGAL
MILITARY INVASION OF UKRAINE**

**Adopted by the Executive Committee on
July 19, 2022**

REPORT AND RESOLUTION OF THE NEW YORK STATE BAR ASSOCIATION REGARDING INVESTIGATION AND PROSECUTION OF THE RUSSIAN FEDERATION AND ITS CULPABLE OFFICIALS ARISING FROM ITS ILLEGAL MILITARY INVASION OF UKRAINE

The New York State Bar Association and the Rule of Law

The New York State Bar Association (“NYSBA”) is the largest voluntary state bar association in the United States. NYSBA was founded in 1876 with the objective of cultivating the science of jurisprudence, promoting reform in the law, facilitating the administration of justice and elevating the standards of integrity, honor, professional skill and courtesy in the legal profession. NYSBA has approximately 30 sections, each devoted to a particular area of the law. Among them is the International Section (“NYSBA International Section”).

NYSBA has a long-standing and unwavering commitment to the rule of law and has not hesitated to speak out to defend it against actions – whether domestic or international – which would imperil and undermine its existence. For example, in 1896, NYSBA proposed the first global means of settling disputes among nations, what is now called the Permanent Court of Arbitration at The Hague. More recently, on April 4, 1992, the Executive Committee of NYSBA adopted a resolution calling for the establishment of an International Criminal Court (“ICC”).

The Russian Federation’s Invasion of Ukraine, and the Responses of NYSBA, the NYSBA International Section, and the Ukrainian Bar Association

The Ukrainian Bar Association (“UBA”) is a non-governmental, non-profit organization that unites lawyers from all areas of the legal profession in Ukraine. Since its establishment in 2002, its goal is to promote adherence to the rule of law and development of the legal profession in Ukraine.

With tensions between the Russian Federation (“Russia”) and Ukraine mounting, in December 2021, NYSBA and the UBA entered a Memorandum of Understanding and NYSBA’s International Section formed a Chapter in Ukraine in association with the UBA. On February 15, 2022, the NYSBA International Section and the UBA formed a Ukraine Task Force (“NYSBA/UBA UTF”). The NYSBA/UBA Task Force held its first meeting on February 17, 2022 and scheduled its next meeting for February 24, 2022.

On February 24, 2022, Russia invaded Ukraine. The world has since witnessed an onslaught of airstrikes, missile attacks and ground assaults, leading to massive casualties among Ukrainian soldiers and civilians, extreme human suffering and hardship, property damage and an unprecedented volume of displaced persons. Russia’s invasion of Ukraine, a sovereign state, is a violation of international law, as are Russia’s

intentional, systemic, and widespread attacks on Ukraine's civilian population. Russia's acts, as well as the acts of its military and its agents, must be investigated by an international tribunal.

NYSBA's response to Russia's aggression was immediate and unequivocal. On the very day that the invasion began, NYSBA President T. Andrew Brown issued the following statement:

This act of unwarranted and illegal military aggression against a sovereign state is a flagrant violation of the United Nations Charter, Helsinki Accords, and established norms and principles of international law. ... NYSBA joins the international community in demanding that the Russian Federation immediately withdraw its armed forces from Ukraine and restore Ukraine's territorial integrity and international borders. NYSBA supports our new friends and colleagues in Ukraine and, in this dark hour, NYSBA stands with Ukraine.

Russian President Vladimir Putin has publicly justified Russia's aggression by, among other things, calling into question Ukraine's legitimacy as a nation and its inherent right to independence and sovereignty. Under Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, killing members of "a national group" and causing serious bodily and mental harm to members of that group comprises "genocide." The world has seen relentless shelling of civilian areas throughout Ukraine, which continues to this date. The Russian state and the actions of its military and their agents must be investigated for its actions against the Ukrainian people for actions deliberately "calculated to bring about [their] physical destruction in whole or in part."

Finally, the actions of Russia, its military and their agents have caused untold damage to the people and property of Ukraine, including immense economic loss and privation, for which Russia would have state responsibility as a matter of customary international law (as most recently articulated in the Articles proposed in 2001 by the International Law Commission on Responsibility of States for Internationally Wrongful Acts), for which Ukraine is entitled to reparation in the form of restitution, compensation and satisfaction. There is ample precedent, which NYSBA supports, for the establishment of an international tribunal to investigate and hold to account all those responsible for violations of international law, including but not limited to the crime of aggression.

NYSBA International Section's Resolution

The NYSBA International Section has thus approved the following Resolution calling for the establishment of an international tribunal to investigate and prosecute violations of international law arising from, relating to or connected with Russia's illegal invasion of Ukraine, including but not limited to the crime of aggression. (The Appendix to this Report and Resolution sets forth the legal framework for such prosecution of international war crimes.)

RESOLUTION

WHEREAS, NYSBA, the nation's largest voluntary state bar association, has a long, consistent and proud tradition of defending the rule of law, both domestically and internationally; and

WHEREAS, NYSBA's defense of the rule of law has included support for the establishment of the Permanent Court for Arbitration at The Hague and the ICC; and

WHEREAS, Russia's unlawful invasion of Ukraine is a direct attack on the rule of law, in that it violates the prohibition of the use of force against the territorial integrity and political independence of another state as proscribed by Article 2(4) of the Charter of the United Nations and most fundamental peremptory norms of international law, and is contradictory to the mission of the United Nations to end war and promote peace; and

WHEREAS, the actions by Russia in launching its prolonged armed attack on Ukraine constitutes a direct violation of the 1994 Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, whereby Russia reaffirmed its obligation to refrain from the threat or use of force against the territorial integrity and political independence of Ukraine, and also agreed to refrain from any form of economic coercion designed to subordinate to its own interest the exercise by Ukraine of the rights inherent in Ukraine's sovereignty and thus to secure advantages of any kind at Ukraine's expense; and

WHEREAS, the invasion of Ukraine by Russia constitutes an "act of aggression" and, by virtue of its sustained military presence and offensive within the borders of Ukraine, "a war of aggression" and, therefore, a "crime against peace," all as defined in the Declaration of the United Nations General Assembly on Principles of International Law Concerning Friendly Relations and Cooperation Among States (Resolution 2625 (XXV) and the General Assembly's Resolution 3314 (XXIX) on the Definition of Aggression; and

WHEREAS, the reported actions by Russia, including, wantonly attacking and decimating cities, towns and villages of Ukraine; in targeting civilian institutions, buildings, and property, resulting in the deaths of thousands of civilians; deporting civilians to the Russian territory, imposing Russian political control over occupied parts of Ukraine, among other acts, which if proven, would constitute war crimes and crimes against humanity committed in connection with the crime of a war of aggression, and therefore are worthy of investigation, prosecution, and upon conviction, punishment under the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal; and

WHEREAS, these reported actions of Russia, while it calls into question Ukraine's legitimacy and its inherent right to independence and sovereignty, would constitute genocide within the meaning of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, which is also a crime against international law and punishable thereunder; and

WHEREAS, Russia's war of aggression has caused untold damage to the people and property of Ukraine, resulting in immense economic loss and privation, for which Russia has state responsibility as a matter of customary international law as most recently articulated in the Articles proposed by the International Law Commission on Responsibility of States for Internationally Wrongful Acts, for which Ukraine is entitled to reparation by Russia in the form of restitution, compensation and satisfaction; and

WHEREAS, NYSBA is encouraged that democratic nations around the world are standing together to assist Ukraine in fighting Russia's aggression and taking appropriate legal actions to support Ukraine; and

WHEREAS, NYSBA is also encouraged that, among other organizations, the Council of Europe Parliamentary Assembly and the Parliament of the European Union have condemned Russia's War Crimes, including the crime of aggression, committed in and against Ukraine, and have called for appropriate legal actions to support Ukraine; and

WHEREAS, NYSBA supports the United Nations General Assembly's condemnation of the invasion of Ukraine by Russia and Russia's alleged violations of international law; and

WHEREAS, there already exists strong legal and diplomatic precedent, supported by well-settled jurisprudence, for the establishment of a justice mechanism to investigate, indict, and prosecute the leadership of Russia and its armed forces and agents for violations of international law such as the crime of aggression, crimes against the peace, crimes against humanity, and acts constituting genocide; and

WHEREAS, the jurisdiction of the ICC over Russia for the crime of aggression is uncertain but, nevertheless, Russia's aggression against Ukraine must be fully investigated and prosecuted by the international community through some other appropriate tribunal in accordance with the rule of law; and

WHEREAS, the United Nations General Assembly, in its very first session, in the aftermath of World War II, in Resolution 3, called on member and non-member states to take all necessary measures to cause the arrest of those war criminals who have been responsible for or taken a consenting part in such crimes and to cause them to be returned to the countries where they committed their crimes "that they may be and punished according to the law of those countries"; and

WHEREAS, the United Nations General Assembly, in Resolution 3074, enunciated Principles of International Cooperation in the Detection, Arrest, Extradition & Punishment of Persons Guilty of War Crimes & Crimes Against Humanity, including that States shall cooperate with each other in the collection of information and evidence which would help to bring to trial persons against whom there is evidence that they have committed international crimes; and

WHEREAS, the United Nations General Assembly, has played a leading role in establishing judicial mechanisms and commissions to investigate and prosecute criminal violations of international law, including Resolutions 52/135 and 57/228 calling for the formation of the Extraordinary Chambers of the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, and in Resolution 63/19, endorsing the International Commission Against Impunity in Guatemala;

IT IS THEREFORE RESOLVED THAT:

NYSBA hereby deplores and condemns Russia's unlawful invasion of Ukraine, causing untold harm to the people of Ukraine; and it is further resolved that

NYSBA hereby supports any and all international and domestic efforts to investigate, prosecute, and hold Russia's armed forces and officials accountable for acts committed by Russia, its military and its agents, in the prosecution of its unlawful war of aggression; and it is further resolved that

NYSBA hereby calls upon those members of the international community with deep, actual experience in the investigation and prosecution of war crimes, to investigate, prosecute, and bring to justice Russia and its culpable officials, its military and its agents; and it is further resolved that

NYSBA calls upon the United Nations General Assembly to take action by authorizing the Secretary General of the United Nations to establish, at an appropriate time and place, such tribunals – *e.g.*, a hybrid international war crimes tribunal involving Ukraine, similar to those established to investigate and prosecute war crimes in Sierra Leone, Rwanda, and Cambodia – as he shall deem appropriate to exercise jurisdiction and hear and determine whether Russia and its culpable officials violated international law, including but not limited to the crime of aggression against Ukraine, and hold to account those responsible.

APPENDIX

THE LEGAL FRAMEWORK FOR

INTERNATIONAL WAR CRIME PROSECUTION

The invasion of Ukraine by Russia is a direct violation of the prohibition of the use of force against the territorial integrity and political independence of another state, contained in Article 2(4) of the Charter of the United Nations. This prohibition is also considered a fundamental peremptory norm (*jus cogens*) of international law, and Russia's conduct is also a direct and unequivocal contradiction of the mission of the United Nations to end war and promote peace. No credible defense of the invasion as justified under the inherent right of self-defense under Article 51 of the Charter has been offered or articulated.

In addition, the actions by Russia in launching its prolonged armed attack on Ukraine constitutes a direct violation of the 1994 Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, whereby Russia (in addition to the United States and the United Kingdom) reaffirmed its obligation to refrain from the threat or use of force against the territorial integrity and political independence of Ukraine, and also agreed to refrain from any form of economic coercion designed to subordinate to its own interest the exercise by Ukraine of the rights inherent in Ukraine's sovereignty and thus to secure advantages of any kind at Ukraine's expense.

The invasion of Ukraine by Russia constitutes an "act of aggression," and, by virtue of its sustained military presence and offensive within the borders of Ukraine, "a war of aggression" and, therefore, a "crime against peace," all as defined in the Declaration of the UN General Assembly on Principles of International Law Concerning Friendly Relations and Cooperation Among States (Resolution 2625 (XXV) and the General Assembly's Resolution 3314 (XXIX) on the Definition of Aggression.

Evidence from the world media indicates that the armed forces of Russia are engaged in wantonly attacking and decimating cities, towns and villages of Ukraine, in targeting civilian institutions, buildings and property, in killing thousands of civilians, in deporting civilian residents of Ukraine to Russia's territory, in creating a huge population of displaced persons within and without Ukraine, and in imposing Russian political control over occupied parts of Ukraine. Most if not all of these acts would constitute "war crimes" under the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal as "violations of the laws or customs of war, which include, but are not limited to, murder, ill-treatment or deportation to slave-labor or for any other person of civilian populationsand wanton destruction of cities, towns or villages, or devastation not justified by military necessity." These would constitute crimes against humanity under the same Principles precisely because they are being committed in connection with a "crime against the peace," *i.e.*, "the planning, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances," and, therefore, are worthy of prosecution and punishment under the same Principles.