



21 March 2022

**JOINT RESPONSE TO THE STATEMENT ABOUT UKRAINE
ISSUED BY THE ASSOCIATION OF LAWYERS OF RUSSIA
ON FEBRUARY 28, 2022**

To the Association of Lawyers of Russia (ALR):

On February 28, 2022, you issued a statement that, you claim, legitimizes Russia's illegal, immoral invasion of Ukraine. Without dignifying your statement, a copy of it in its original Russian and an English translation are attached as Annex 1 to this letter (hereafter, the Statement). Michael Galligan, a highly respected former Chair of the International Section of the New York State Bar Association (NYSBA Int'l), which has been collaborating closely, since the first day of Russia's invasion, with the Ukraine Bar Association (UBA), has prepared this analysis of your Statement. As you will see for yourselves, your statements of fact about the recent history of Ukraine are untrue, and your purported arguments, allegedly based on international law, in support of Russian invasion are invalid. Your Statement disappointingly fails to acknowledge the clear violations of international law by Russia in or with reference to Ukraine, at least since Russia began its invasion of Ukraine on February 24, 2022.

Analysis

First, the Statement elementally fails to recognize or admit the statehood of Ukraine and its sovereignty. The Statement refers to Ukraine as a "territory" and the purpose of the military intervention as a "denationalization." At the same time, it assumes without basis in law that the recognition by the Russian Federation of the so-called "People's Republics" of Luhansk and Donetsk and the so-called "treaties" with them signed by Russia last month alone confer statehood on these regions. Luhansk and Donetsk are part of the sovereign territory of Ukraine recognized by the United Nations and the world community at least since Ukraine was admitted as a member of the United Nations in 1945.

Russia has no right to consider the actions taken by Ukraine to defend its authority over the territory of Luhansk and Donetsk as an act of aggression because aggression, by definition, can only take place by one country attacking the territory of another country. It is Russia that has been attacking Ukraine and committing aggression against it by sending military forces into Luhansk and Donetsk and Crimea before 2022 and now in 2022 by sending forces into all the parts of Ukraine where Russia's army can now be found.

The appeal to the Convention Against Genocide is unavailing. Russian troops intervened on the side of separatist forces in Luhansk and Donetsk in August of 2014, thereby endangering the provision of water, electricity and gas to the Donbass. The Ukrainian State continued the provision of gas and electricity to Luhansk and Donetsk until separatist forces, backed by Russia, took control.

By contrast, the actions of Russia in the last two weeks can well be said to cross the line into "genocide." Under Article II of the Convention Against Genocide, genocide is defined to include "killing members of the group;" "causing serious bodily or mental harm to members of the group" and "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction" with an intent, "to destroy, in whole or in part, a national, ethnical or religious group." The Statement itself refers approvingly to efforts to "denationalize" Ukraine and the relentless shelling and bombing of most of the major cities of Ukraine appear to be squarely aimed at this objective. Killing civilians, destroying hospitals and orphanages, cutting off supplies of water, food and energy, endangering nuclear facilities - all speak of an intent to destroy the identity and even the existence of Ukraine as a nation and a people.



21 March 2022

Page 2

Moreover, it seems clear that the military actions of Russia in Ukraine action constitute “crimes against peace” and “crimes against humanity” under the Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal, which were commissioned by the UN General Assembly and adopted by the International Law Commission in 1950.

The actions of Russia qualify as “crimes against peace” under the Nuremberg Principles because they amount to a “war of aggression” and a “war in violation of international treaties, agreements or assurances.” The actions of Russia constitute a war of aggression because Ukraine has not threatened the independence or integrity of the Russian Federation nor done anything else to justify the attack against Ukraine as some form of anticipatory self-defence. Moreover, they directly violate the solemn obligation Russia undertook in Budapest in 1994, when Ukraine ceded control over its nuclear weapons, to not only recognize Ukraine but to safeguard the national integrity of Ukraine within its borders at that time (which included Crimea and the areas now claimed by the Luhansk and Donetsk “Republics”).

The actions of Russia also constitute “crimes against humanity” under the Nuremberg Principles because they involve murderous attacks on civilian populations carried out in connection with the crimes against peace just described.

ALR's Statement argues that the actions of NATO in Yugoslavia in 1991 and the airstrikes by the United States in Syria 2021 violate international law because they were not authorized by the UN Security Council in accordance with the UN Charter. That these actions were not formally pre-authorized by the Security Council does not change the fact that the military intervention of Russia in Ukraine has not been authorized by the Security Council. If pre-authorization of military action by the United Nations were the only test of the legality of the use of military force in the relationship between States, which we doubt, still nothing about the possible legal deficiencies of the 1991 and 2021 actions changes the fact that the actions of Russia suffer from the same deficiencies to an even greater extent. Moreover, unlike with the examples cited in the Statement, the Security Council and the General Assembly, both by substantial majorities of the member states of the United Nations, have condemned the actions of Russia and required Russia to cease the campaign of destruction it is waging against the Ukrainian nation and its people.

We urge the ALR to recognize the errors of its Statement and to work with NYSBA Int'l and UBA, and lawyers around the globe, in concert with leaders in all walks of life, to stand up for the rule of law and international law.

Sincerely,

Anna Ogrenchuk
President, Ukraine Bar Association

/s/ Edward K. Lenci

Edward K. Lenci
Chair, International Section
New York State Bar Association



ANNEX 1

[Translation of the statements issued by the Association of Lawyers of Russia dated 28 February 2022 as read under the following link: <https://alrf.ru/news/zayavlenie-sopredsdateley-assotsiatsii-yuristov-rossii-v-svyazi-s-provedeniem-voennoy-spetsoperatsii/>]

STATEMENT OF THE CO-CHAIRMEN OF THE RUSSIAN BAR ASSOCIATION WITH REGARD TO THE MILITARY SPECIAL OPERATION TO PROTECT DONBASS

Over the past decades, the world community has repeatedly witnessed and continues to witness violations of the basic principles of international law associated with the manifestation of armed aggression of certain countries against others.

For example, in March 1999 NATO military-political bloc started a military operation against Yugoslavia (codenamed "Allied Force"). The formal reason for the airstrikes were accusations against official Belgrade of carrying out ethnic cleansing against the Albanian population of Kosovo. At the same time, the UN Security Council did not give its permission to bomb Yugoslavia.

The NATO attacks in Yugoslavia resulted in the deaths of approximately 2,000 civilians. The military operation was carried out with blatant disregard for the norms of international humanitarian law, resulting in the bombing of defenseless civilian targets. The fundamental principles enshrined in the UN Charter and the Helsinki Final Act were flagrantly violated. The actions of the initiators of the military operation were also inconsistent with the North Atlantic Treaty of 1949, which formed the NATO military-political bloc.

In February 2021, the United States of America carried out airstrikes on Syrian territory on the command of U.S. President Joseph Biden. This act of aggression, without a doubt, also remains outside the bounds of generally accepted norms and principles of international law. Arbitrary detentions, extrajudicial executions and torture, bombardment with unconventional (prohibited) weapons, and illegal strikes against civilian objects are only some of the legal arbitrariness that has occurred.

Since 2014, international norms and agreements have continued to be violated in the territory of Donbass, where an unexplainable genocide of the civilian population has been taking place before the eyes of the world. During the entire period of Ukrainian aggression in the Donetsk and Luhansk People's Republics, more than 5,000 people were killed, including around 100 children! More than 1,600 people became disabled. More than 8 thousand people were wounded with various degrees of severity.

The people of Donbass were persecuted based on ethnicity, language, and political beliefs.

In recent days, the situation in Donbass has sharply escalated. On February 24, 2022, Russian President Vladimir Putin announced that he had decided to conduct a special military operation to demilitarize and denationalize the territory of Ukraine.

It should be noted that the actions of the Russian Federation are certainly taken in order to provide military and technical assistance to the sovereign states recognized by Russia and other countries - the Luhansk People's Republic and the Donetsk People's Republic in connection with the existence of facts of aggression against them.

Provision of military and technical assistance to the recognized sovereign states complies with all the necessary legal norms adopted at the level of the United Nations, because the republics and the Russian Federation has signed the respective treaties on friendship, cooperation and mutual assistance. These treaties contain provisions on mutual obligations to provide assistance to help eliminate emerging threats and mutually ensure defense and security.

In addition, the actions of the Kiev authorities with respect to the republics recognized by the Russian Federation are interpreted as manifestations of aggression according to the criteria defined by UN General Assembly resolution 3314 (XXIX) of December 14, 1974.

Thus, the legality of the decisions taken by the President of the Russian Federation follows from the applicable international law, interstate agreements and federal laws of the Russian Federation, which



regulate that decision-making as to the provision of the Russia's military and technical assistance to foreign countries falls within the competence of the President of the Russian Federation.¹

It is also necessary to note the obligation of the Russian Federation as a state governed by the rule of law to take maximum possible measures to bring to justice persons who organized the genocide of the population of Donbass since 2014.

The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by UN General Assembly resolution 260 (III) of December 9, 1948, provides that genocide means actions committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, including intentionally creating the living conditions for a group with are intended to result in its physical destruction in whole or in part.

Thus, the international community and UN member states are obliged to take into account that in accordance with the norms of the above-mentioned Convention, the actions of official Kiev to cut off access to electricity, gas and drinking water to the residents of Donbas indisputably fall under the concept of genocide even if the Kiev authorities deny their involvement in nationalist criminal gangs on the territory of the republics.

We cannot ignore the criminal methods of warfare on the Ukrainian side, which we have been encountering since the start of the special military operation: the deployment of multiple-launch rocket launchers in residential areas, the shooting of civilians by nationalist battalions, the misinformation by the international community regarding the goals and course of the peacekeeping operation, and the uncontrolled distribution of automatic weapons to all comers, which inevitably leads to an outburst of pillaging and terrorism and new human casualties.

Unfortunately, as of today, a number of UN member states are unwilling to see the massive and well-documented evidence of a blatant violation of the fundamental norms of international humanitarian law.

The politicized opinion of some subjects of international law often is based on a fact that the government of Ukraine acts in accordance with the laws of its state. In this regard, the outcome of the Nuremberg Tribunal cannot be ignored. Today, the lessons of this major trial of the 20th century are of particular significance.

We would like to recall that in accordance with the principles of international law, recognized by the statute of the Nuremberg Tribunal and expressed in the decision of this Tribunal: "The fact that no punishment is established under domestic law for any act recognized as a crime under international law does not exempt the person who committed this act from responsibility under international law".

The Russian Bar Association expresses the hope that any actions and events in the current situation will be regarded by the international community solely from the standpoint of international law, and not the international political claims of individual states and their capacities in the international information and economic space.

Sergey Stepashin, Viktor Blazheev, Vladimir Pligin, Pavel Krasheninnikov.

¹ Federal Law No. 114-FZ of 19.07.1998 "On Military-Technical Cooperation between the Russian Federation and Foreign States".