

STATEMENT OF THE UKRAINIAN BAR ASSOCIATION ON THE URGENT CREATION OF A SPECIAL INTERNATIONAL TRIBUNAL ON THE CRIME OF AGGRESSION AGAINST UKRAINE

1. Armed aggression of the Russian Federation against Ukraine has been ongoing since February 2014. More than 7 months have passed since the beginning of the full-scale invasion. The war of aggression waged by the Russian Federation against Ukraine is the largest and most brutal on the European continent since World War II and is taking place on many fronts. Daily war crimes, crimes against humanity, and presumable genocide are supplemented by economic blockade, nuclear blackmail, cyber-attacks, and propaganda.
2. The Government of the Russian Federation and personally President Putin consciously and purposefully planned, prepared, initiated, and carried out an act of aggression against Ukraine and violated the fundamental principles of territorial integrity and political independence by developing state and military policy regarding aggression, adopting the necessary legislative changes, spreading – directly and through state-controlled media – narratives about the destruction of the Ukrainian nation. The open aggressive policy of the Russian Federation against Ukraine began in 2014 with the illegal annexation of the Crimean Peninsula and occupation of parts of Donetsk and Luhansk oblasts and peaked in February 2022 with the maximum concentration of Russian troops along the entire perimeter of the border of Ukraine, the recognition of the "independence" of quasi-formations in the occupied territories of Donetsk and Luhansk oblasts and, finally, the full-scale cynical attack.
3. The specified actions of President Putin and the military and political leadership of the Russian Federation fall under the definition of the crime of aggression in accordance with [Article 8 bis of the Rome Statute](#) and the act of aggression in accordance with [UNGA Resolution 3314 \(XXIX\)](#) (Definition of aggression) of December 14, 1974: "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations Organization...".
4. The act of aggression by the Russian Federation against Ukraine led to commission of war crimes, crimes against humanity and presumable genocide, which still continue as the armed conflict continues. All these categories of crimes are subject to investigation by the International Criminal Court (ICC), national and universal jurisdictions. At the same time, **none of the mechanisms of international law and none of the existing international judicial institutions – neither the ICC, nor the International Court of Justice or the European Court of Human Rights – have jurisdiction over the investigation and prosecution of the crime of aggression against Ukraine** aimed at ensuring criminal liability of the highest military and political leadership of the Russian Federation.
5. **Ensuring the inevitability of punishment is a key principle of democratic legal systems. The legal community of Ukraine has repeatedly emphasized that ALL violations of international law, in particular of international humanitarian and criminal law, committed by the Russian Federation, its leadership and its military against Ukraine and its citizens should be subject to trial. If the system of international public law built since the beginning of World War II cannot respond to the key crime of the Russian Federation against Ukraine - the crime of aggression – then it must be reformed in view of the realities of the war in Ukraine.**

6. The Ukrainian legal community is convinced that neglecting the crime of aggression against Ukraine today will create a dangerous precedent in the future and will violate the principle of the rule of law. Moreover, impunity for a crime committed by a member of the United Nations and a permanent member of the Security Council could call into question the mandate of the United Nations and seriously shake the entire system of the democratic international legal order.
7. **The inability of the international legal system to respond to egregious crimes in the past became the basis for the creation of international tribunals and special courts:** Nuremberg and Tokyo Tribunals, the International Criminal Tribunals for the former Yugoslavia and Rwanda, the International Residual Mechanism for Criminal Tribunals, the Special Tribunal for Lebanon, the Special Court in Sierra Leone and many others. **The crime of aggression against Ukraine cannot be addressed by the existing international mechanisms, and therefore, the creation of a separate institution – the Special International Tribunal – with the mandate to consider the crime of aggression against Ukraine, is a necessity.**
8. The President of Ukraine, the Minister of Foreign Affairs, and other representatives of Ukrainian authorities at the highest level have repeatedly [urged](#) the world to support Ukraine in establishing the Special Tribunal for the crime of aggression against Ukraine.
9. Political support with appropriate recommendations for the establishment of the Special Tribunal has already been granted by the Parliamentary Assembly of the Council of Europe, the European Parliament, the OSCE Parliamentary Assembly, and the NATO Parliamentary Assembly.
10. **The creation of the Special Tribunal is also a demand of the Ukrainian and international legal communities aimed at restoring the rule of law, human rights, and democratic governance in Ukraine.** On July 19, 2022, the New York State Bar Association adopted a [resolution](#) prepared jointly with the UBA whereby NYSBA urged the UN General Assembly to take action by authorizing the UN Secretary General to establish a tribunal(s) to address violations by the Russian Federation of international law and commission, among another crimes, of the crime of aggression against Ukraine, as well as bringing the perpetrators to justice. On August 9, 2022, the American Bar Association adopted a similar [resolution](#) calling on the UN General Assembly to invite the UN Secretary General to report expeditiously on "what further steps are necessary to ensure the prosecution of those who have committed war crimes, crimes against humanity, genocide and the crime of aggression".
11. Former political figures and [experts](#) in the field of international criminal and [humanitarian law](#), as well as [civil society organizations](#) of Ukraine, demanded that the governments of the countries of the world support the creation of the Special Tribunal.
12. Comprehensive proposals on the Special Tribunal, its jurisdiction, establishment procedure, and other aspects of its activities were prepared by the [Global Accountability Network](#) and the [Yale Club](#).
13. **Since the beginning of the full-scale invasion, the UBA has repeatedly – by means of letters to governments, petitions, and public statements – appealed to the international community for their support of the creation of a Special Tribunal for the crime of aggression against Ukraine.**
14. **At the same time, the recent decisions of the Russian Federation regarding the [attempted annexation of four regions of Ukraine](#) made the issue of establishing a tribunal urgent.**

15. **Given the above, the UBA, as an organization whose goal is to strengthen the rule of law and enhance the protection of human rights in Ukraine, continues to strongly condemn the aggression of the Russian Federation and:**
- Urges governments of world countries and the international legal community to **publicly support the creation of the Special International Tribunal for the Crime of Aggression against Ukraine as soon as possible and to cooperate in this regard.**
 - Proposes **to limit the jurisdiction of the Special Tribunal exclusively to the crime of aggression against Ukraine**, so that the work of the Special Tribunal does not duplicate but complements the jurisdiction of the ICC and other international judicial institutions.
 - Proposes to enable the Special Tribunal to consider events starting **at least from 2014 with no limit on the timeline as the armed aggression of the Russian Federation against Ukraine continues.**
 - Invites the international community **to agree**, as a result of a dialogue with Ukrainian authorities and expert environment, **on a platform** (UN, EU, EC, or a treaty between states), which will become the basis for the creation of the Special Tribunal, with the possibility for individual states to join.
 - Emphasizes that the legal principles of inevitability of punishment and prevention of impunity mean that **no diplomatic negotiations can impede the creation of the Special Tribunal and prosecution of persons guilty of the crime of aggression against Ukraine.**
 - Assures the authorities of Ukraine of the readiness of the Ukrainian legal community to support the creation of the Special Tribunal and launching its operation.