



the global voice of
the legal profession

International Scientific and Practical Conference

21 April 2026

Kyiv, Ukraine

Lawfare – the use of law as a weapon of war. Legal mechanisms to counter Russian aggression

Panel: International legal and foreign aspects of the legal battle in the Russian Ukrainian war

Dr Mark Ellis

Executive Director

International Bar Association



REMARKS

Virtual participation

The United Nations Charter is the world's most important secular document. Last year, we marked the 80th anniversary of its creation.

The Charter affirms the universal principles of human conduct that every nation has confirmed as a member of the UN. It is the cornerstone of modern international law.

Article 2 of the Charter prohibits the threat or use of force against the territorial integrity or political independence of any state.

This is the crime of aggression. It is the ‘supreme international crime’ as set out in the Nuremberg trials.

The prohibition of the crime is now recognised as a *jus cogens* norm. Thus, aggression is criminalised directly under international law and can be enforced internationally and domestically.

The ICJ [International Court of Justice], a signature component of the UN Charter, also shapes the content and jurisprudence of international law, and has upheld the prohibition of aggression.

Russia’s annexation of Crimea in 2014 and the full-scale invasion in February 2022 represent the most egregious violation of international law in Europe since the Second World War.

It is the textbook example of the crime of aggression and demands accountability. If the crime is not prosecuted now, it will be permanently normalised. The stakes could not be higher because Russia is rapidly rewriting the norms of international law.

But the enforcement of these principles, including the prohibition of the crime of aggression, depends on the political will of nations.

For example, opponents argue that seizing sovereign assets could erode international law. I strongly disagree. The confiscation of Russian sovereign assets is an important part of the accountability.

Under the International Law Commission's Articles on State Responsibility, confiscation is a lawful countermeasure in response to Russia’s ongoing, grave breach of *jus cogens* norms. We cannot shield a state from accountability for acts of aggression.

And this includes enforcing International Criminal Law, even though doing so is challenging. ICL is a mosaic of modalities.

But we have to recognise that for Russia's war against Ukraine, there are legal limitations to hold the Russian leaders criminally accountable for their actions.

1. For the UN Security Council, the issue is dormant because Russia is shielding itself from accountability, which is in direct violation of the spirit and letter of the UN Charter, which requires a Party to a dispute to abstain from voting (27(3)).
2. Within the ICC, there is a jurisdictional gap that prevents the Court from pursuing Russia for the crime of aggression.
3. Domestic prosecution within Ukraine is possible but limited by the principle of head of state's immunity.
4. Universal jurisdiction is also hindered by the same restriction, although of course, both modalities can pursue perpetrators other than the 'troika'.
5. Thus, it is the STCA [Special Tribunal for the Crime of Aggression against Ukraine] that holds the greatest promise for holding those responsible for the crime of aggression against Ukraine

But here too we are back to the political willingness of nations to support the STCA by entering into the EPA [Enlarged Partial Agreement].

The IBA continues to work with our colleagues in Ukraine to promote the STCA among nations and to ensure that the Tribunal comes to fruition. Holding Russia and its leaders accountable for their illegal war against Ukraine is not only critical for the Ukrainian people but also for the international community. If we fail to do so, then the entire international legal order is in jeopardy. We cannot fail.