

THE INTERNATIONAL CRIMINAL COURT COLLOQUIUM

Africa, the Ukraine Crisis, and International Law: *Quo Vadis?*

Wednesday, 1 June 2022, 12:00-1:30 PM ET/6:00-7:30 PM CEU)

INVITATION

The Center for International Law and Policy in Africa (CILPA), with the co-sponsorship of the American Society of International Law (ASIL) and the International Nuremberg Principles Academy (Nuremberg Academy), invites you to a roundtable discussion exploring International Law and the Use of Force, especially in the context of the ongoing conflict in the Ukraine.

Register here to receive the Zoom link for the event:

<https://us06web.zoom.us/meeting/register/tZUldu2prTwrHdwgNAkUetkAzpyjxIsthy9O>

Questions? Email: info@cilpa.org.

CONCEPT

On 24 February 2022, Russian President Vladimir Putin, declared, with reference to Article 51(7) of the UN Charter, that he was launching a “special military operation” in Ukraine. He cited NATO’s expansion eastward, together with increasing military, technology, and other capabilities of Western states as a security threat to the Russian Federation to justify a “special military operation.” President Putin also alleged the existence of a genocide against a Russian minority in Eastern Ukraine, in Donetsk and Luhansk, and unilaterally recognized the two regions’ supposed claim for independence. He asserted that the “special military operation” was not an occupation, nor did it intend to interfere with the interests of Ukrainian people, but rather that it was a response to the hostage-taking of Ukraine by neo-Nazis and Western powers.

The response of the UN and other international and regional organizations in Europe to the use of force in Ukraine has been swift. The UN Security Council, which has the primary responsibility for the maintenance of international peace and security, met in an emergency session but failed to take a decision under Chapter VII of the UN Charter due to Russia’s use of the veto. But the UNSC did refer the Ukraine situation, under the Uniting for Peace Resolution, to the UN General Assembly. For its part, the General Assembly swiftly responded in a decisive resolution with 140 votes in favor, 5 against, and 38 abstentions, condemning Russia’s unilateral use of force against Ukraine while reaffirming the territorial sovereignty and integrity of the country within its internationally recognized borders. Many Western States, joined also by countries from all regions including Africa, also pushed back against the claim of self-defence, indicating no legal effect of the recognition by Russia of the so-called “independence” of the Donetsk and Luhansk People’s Republics.

Countries, generally in the West, led by the United States and her NATO allies, have also adopted additional unilateral measures against Russia ranging from freezing of bank accounts and assets of individuals associated with the Putin regime, including his foreign minister and Putin himself, as well as other sanctions and trade blockades against Russia. Even Switzerland, traditionally a neutral state, adopted historic measures against Russians while Germany announced plans to expand its military for reasons of security. Russian membership of the Council of Europe was suspended and eventually terminated, the first time in the history of that body that a member state was ejected, while the US also successfully pushed for Russia’s membership of the UN Human Rights Council to be terminated by the UN General Assembly. In addition to the above, several European countries have announced national investigations of any commission of war crimes by Russian forces in Ukraine. Many European Union countries have opened their doors to Ukrainians fleeing war, in unprecedented ways for a war situation, and Ukraine initiated proceedings at the International Court of Justice. An unprecedented number of ICC States Parties referred the situation in Ukraine to the Prosecutor

of the International Criminal Court for investigations and prosecutions, of possible crimes, with quite a few States Parties offering funding, personnel, and other support.

The recent Russian invasion of Ukraine is not the first time that great powers have resorted to self-help to advance their interests in violation of the UN Charter. The invasion of Iraq, Kosovo and Libya by Western States are other prominent examples. But the most recent use of force, in the context of heightened antagonism between West and East with China's apparent support of Putin and among armed nuclear powers, constitute one of the biggest challenges for the peace and security of the world since the end of the Cold War. It has raised the profound questions about the system of collective security and whether or not the current global system centered around the UN is adequate, or alternatively, whether significant structural reforms may be needed to avoid the unravelling of the post-World War II legal order and future catastrophe.

For African states, which have been relatively quiet, the Ukraine crisis seems to be a double-edged sword. On the one hand, many African States have generally supported multilateral actions against Russia within the UN. On the other hand, there is also a significant number of African States that have abstained from supporting such resolutions. Some, such as South Africa, have sought diplomatic solutions, while others such as Kenya, which holds a non-permanent seat on the Security Council, have consistently reasserted the sacrosanct nature of the prohibition on the use of force and the right of self-determination. Kenya also warned of the risks of the nostalgia of empire and the dangers of unilaterally redrawing colonial-era borders while pointing to the need for UN Security Council reform, especially in the face of abuse of the veto. At a more diplomatic level, even as African States expressed strong support for and solidarity with the government and people of Ukraine, African and other foreign students and expats in Ukraine were allegedly harassed and humiliated on the basis of their race, and in some cases, denied safe passage out of the country. This led some countries such as Nigeria to call for equality of treatment of all persons seeking safety, consistent with international human rights law.

The CILPA, together with ASIL and the Nuremberg Academy, are pleased to convene an interactive dialogue to reflect on the situation in Ukraine and to explore the main international legal and policy questions from an African perspective. The roundtable dialogue, which will take place over the course of three separate events constituting the 2022 ICC Colloquium Series, will be an opportunity for both speakers and participants to engage on a range of critical issues, including the use of force in Article 2(4) of the UN Charter and the exception of self-defense contained in Article 51, as well as questions of state responsibility, the crime of aggression, the right of self-determination and *uti possidetis juris*. The panelists at the various events will be invited to ponder the present and future role of the UN Security Council, the ICC, the ICJ, including the law governing the use of the veto in the face of atrocity crimes, recent ICJ advisory opinions, and the International Law Commission's timely work on *jus cogens* and their legal consequences and the duty of states and international organizations to take steps not to aid or abet serious breaches of international law.

PROGRAM – Wednesday, 1 June via Zoom starting at 12:00 PM ET/6:00 PM CEU

12:00 I 12:15 Welcome / Opening Remarks

Mr. Wes Rist, Deputy Executive Director, American Society of International Law

Mr. Klaus Rackwitz, Director, International Nuremberg Principles Academy

12:15 I 12:45 Perspectives from Panelists

Moderator: Prof. dr. Charles C. Jalloh, Founder, CILPA and Member, International Law Commission

Prof. dr. Erika de Wet, Professor of International Law, University of Graz

Prof. dr. Phoebe Okowa, Professor of International Law, Queen Mary University of London and Member-Elect, International Law Commission

**Dr. Mohamed Helal, Associate Professor of Law, Ohio State University Moritz
College of Law and Member, African Union Commission on International Law**

12:45 I 13:15 Open Discussion / Q and A

13:15 I 13:30 Closing Reflections