Stand Tall FOR THE RULE of LAW

SUMMIT IN LVIV

MARKING THE 75TH ANNIVERSARIES

of the Convention on the Prevention and Punishment of the Crime of Genocide and the Universal Declaration of Human Rights

December 7 to 10, 2023

Ivan Franko National University of Lviv

American Society of International Law

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Our Summit marks the 75th anniversaries of the Convention on the Prevention and Punishment of the Crime of Genocide and the Universal Declaration of Human Rights, leveraging these international law milestones to inform public opinion, strengthen shared commitments, and catalyze concrete action.

Together, the Ukrainian Association of International Law and the American Society of International Law have convened a delegation of 75 international law experts and 75 Ukrainian counterparts in the historic city of Lviv.

Indeed, international law owes a great debt to Lviv.

Rafael Lemkin provided the legal framework for the crime of genocide, coined the very word "genocide," and championed adoption of the Genocide Convention.

Sir Hersch Lauterpacht developed the concept of "crimes against humanity," for which Nazis were held accountable at Nuremberg. In his seminal book, *An International Bill of the Rights of Man*, first published in 1945, Lauterpacht advanced the notion that individuals could be and should be subjects of international law, and he set forth many of the basic rights that eventually made their way into the 1948 Universal Declaration of Human Rights.

Louis Sohn, instrumental in the drafting of the UN Charter and the Statute of the International Court of Justice, was best known for his human rights scholarship.

All three men studied law in Lviv.

Thomas Franck, a former American Society of International Law President, once said that in troubled times the lawyer must "stand tall for the rule of law."

That is why we are here.

Through its audacious annexation of Crimea and brutal invasion of Ukraine, Russia has spurned fundamental tenets of international law and sought to upend the broader global order. The war tears at the very fabric of global civil society, and its effects are far-reaching. Yet despite Russia's transgressions, international law still matters. International law remains our most effective tool for promoting peace, prosperity, and justice in the world.

OBJECTIVES

- Reaffirm commitment to fundamental principles of international law.
- Respond to the call for partnership within the international law community.
- Reflect on the role of international law at this crucial historic inflection point.

Thursday, December 7, 2023

19:00 **Reception at Town Hall** | **HOST: Mr. Andriy Sadovyi** | Mayor of Lviv

Friday, December 8, 2023

08:45 **WELCOMING REMARKS**

09:15 **The Universal Declaration of Human Rights at 75: In Your Hands**

Noel Calhoun | UN Human Rights Monitoring Mission in Ukraine

Serhiy Riznyk | Ivan Franko National University of Lviv

Allida Black | University of Oxford

Fionnuala Ní Aoláin | University of Minnesota Law School

Oleksandr Pavlichenko | Ukrainian Helsinki Human Rights Union

MODERATOR: Harold Hongju Koh | Yale Law School

When UN Member States first sat down to negotiate what would become the Universal Declaration of Human Rights, they quickly met with wide disagreement on the most fundamental questions. Drafters set out to enumerate basic rights, yet could not agree from where such rights emanate—from God, the State, the fact that humans are rationale beings, holding themselves above other creatures? Indeed, drafters could not agree whether there is a God, whether rights belong to individuals or to groups, whether people can own property, whether men and women are equal before the law, whether individuals can choose their own careers or must work their entire lives in a job chosen for them by the state, whether people should have a right to govern themselves. In the end though, they agreed on a Declaration unique in its clarity and force. This panel will illuminate the history of the Declaration's negotiation and adoption and reflect on its relevance today. The notion of human dignity manifests in all legal traditions and cultures. Yet which view of human rights should guide political projects or social movements? Eleanor Roosevelt said, "The future of human rights is in your hands." What does the future hold?

10:30 **COFFEE BREAK**

10:45 **Reimagining our Global Security Architecture**

Mykhailo Buromenskyi | Taras Shevchenko National University of Kyiv

Hurst Hannum | Fletcher School of Law and Diplomacy

Nico Schrijver | Leiden University

Rebecca Hamilton | American University Washington College of Law

Nataliya Haletska | Ukrainian Catholic University

MODERATOR: Mykhailo Mykiyevych | Ivan Franko National University of Lviv

The UN Security Council has failed, once again, "to save succeeding generations from the scourge of war." Yet perhaps the true purpose of the Security Council, with its P5 vetoes, was merely "to save succeeding generations from the scourge of war [between the 'great powers']" and by this measure, some might argue that it has succeeded—at least so far. Discussion of Security Council reform goes back decades, and yet, little has changed. Should the Council expand with more rotating members, more permanent members—more vetoes, less vetoes, constraints on the veto? Indeed, is the Security Council even "reformable" or must we look to new institutions or arrangements? Russian aggression in Ukraine has upended the global security architecture, challenging the prohibition of the use of force. Revisiting the UN Charter, especially Article 2(4), is in order. How can we constrain justification of the use of force to avoid overly broad, self-serving interpretations? Is it time as well to revisit the archaic notion of "civilized nations" found in the Statute of the ICJ (Art. 38)? What are the sources of authority in a fragmented legal order?

12:00 **BREAK**

12:15 **Vindicating Rights across the Legal Landscape**

Anton Korynevych | Ministry of Foreign Affairs of Ukraine

Marney L. Cheek | Covington & Burling

Clint Williamson | Georgetown University School of Law

Anna Tyshchenko | Ministry of Justice of Ukraine

Margarita Sokorenko | Ministry of Justice of Ukraine

MODERATOR: Clara Brillembourg | Foley Hoag

Russia's assault on Ukraine's sovereignty, territorial integrity, people, language, and culture has met a robust military counteroffensive. Russia's attempts to forge a "west versus the rest" global political narrative has met a robust diplomatic counteroffensive. Russia's afront to the global order and international law has, likewise, met a robust legal counteroffensive. What are the contours of Ukraine's legal strategy and engagement across the accountability ecosystem? Does recourse to law and legal institutions escalate conflict or deescalate conflict? Given the breadth and depth of legal engagement, should one celebrate the power of international law to address a multitude of wrongs or lament the failure of international law to meet realpolitik? Since 2014, Ukraine has used litigation as a tool to defend its sovereignty and the rights of its citizens. Ukraine's multi-pronged legal strategy involves cases in at least five international courts and tribunals. What role does this litigation play in restoring justice in the world? What lessons can one draw?

13:30 **LUNCH**

15:00 **ROUNDTABLES**

Developing a Framework for the Return of Unlawfully Deported Children

CO-CHAIR: Volodymyr Lysyk | Ivan Franko National University of Lviv

CO-CHAIR: Charles Kotuby | University of Pittsburgh School of Law

RAPPORTEUR: Rosemary Byrne | NYU Abu Dhabi

DISCUSSANT: Delissa Ridgway | US Court of International Trade

DISCUSSANT: Borys Babin | Association of Reintegration of Crimea

The fate of Ukrainian children unlawfully deported to Russian territory must be at the center of international attention. The ICC arrest warrant for President Putin and his children's rights commissioner, Maria Lvova-Belova, helped to shine light on these crimes, but this is not enough to bring the children back. Putin and Lvova-Belova will be brought to justice one day, whether three years or thirty years from now and justice is patient. But Ukrainians cannot be patient about the return of their children. Reuniting with one's child today is more valuable than reuniting seven or ten years hence. Yet, there is no clear international legal or institutional framework for implementing the return of these children. Russia portrays the deportations as humanitarian measures designed to protect children in the war zone. Parents are left to seek the return of their children on their own or with the help of volunteers, often risking their lives. Russia has created various obstacles to family reunification. Can existing international institutions be tasked with resolving this matter or do we need new institutions, new mandates, and new international legal structures to navigate this situation?

Sovereign Immunity in the Face of Aggression and Atrocity

CO-CHAIR: Ihor Zeman | Ivan Franko National University of Lviv

CO-CHAIR: David Pinsky | Covington & Burling

RAPPORTEUR: Ingrid Brunk | Vanderbuilt Law School

DISCUSSANT: Ivan Horodyskyy | Ukrainian Bar Association

DISCUSSANT: Chimène Keitner | UC Davis School of Law

*Ukraine is revising its approach to foreign sovereign immunity in domestic proceedings. The country does not currently have the equivalent of, for example, the U.S. Foreign Sovereign Immunities Act (FSIA). It may not need such an act, given the peculiarities of the Ukrainian legal system, but a discussion of the restrictive theory of sovereign immunity is needed, especially the issue of sovereign immunity from adjudication for acts committed during armed conflicts. Under the "restrictive theory," foreign states are immune from suits based on sovereign acts (acta jure imperii) but not from suits based on non-sovereign acts (acta jure gestionis). What does the ICJ's decision in Jurisdictional Immunities of the State (*Germany v. Italy*) (2012) or Iran's current ICJ case against Canada tell us about the state of play? Does Russian aggression in Ukraine invite a new exception to the common law rule of sovereign immunity?*

The Role of Sanctions in Moderating Russian Federation Behavior

CO-CHAIR: Oleksii Plotnikov | Association of Reintegration of Crimea

CO-CHAIR: Colleen P. Graffy | Pepperdine Caruso School of Law

RAPPORTEUR: Perry S. Bechky | Berliner Corcoran & Rowe LLP

DISCUSSANT: Tetiana Komarova | Yaroslav Mudryi National Law University

DISCUSSANT: Cindy G. Buys | Southern Illinois University

The United States, European Union, allies, and partners around the world have imposed extensive and unprecedented sanctions on Russia in response to its war of aggression against Ukraine. Coordinated international pressure was, and remains, vitally important for Ukraine. However, by exploiting the vulnerabilities of a deeply fragmented international order, Russia retains significant international political power and has, with some degree of success, created an alternative political context that undermines the effectiveness of sanctions and coordinated pressure on behalf of Ukraine. Economic, political, cultural, and historic ties make it difficult to isolate Russia in an effective manner. What further steps can be taken to strengthen the effect of sanctions and pressure Russia to stand down? How can those supporting Ukraine's independence increase the potency and accelerate the effectiveness of sanctions? For decades, political and economic isolation could be used to compel constructive international behavior, but with shifting alliances, are coalitions of authoritarian states able to minimize the impact of sanctions and, with growing strength and in growing numbers, perhaps even reverse the polarity so that liberal democracies become the subject and target of isolation?

Accountability for the Leadership Crime of Aggression

CO-CHAIR: Vitalii Gutnyk | Ivan Franko National University of Lviv

CO-CHAIR: Edward Swaine | George Washington University Law School

RAPPORTEUR: Patryk Labuda | Polish Academy of Sciences

DISCUSSANT: Anton Korynevych | Ministry of Foreign Affairs of Ukraine

DISCUSSANT: Monica Eppinger | St. Louis University School of Law

The crime of aggression is often characterized as the initial or foundational crime, a "leadership crime" upon which subsequent crimes are perpetrated. Aggression can also be an ongoing or continuous crime as individual acts of aggression manifest over the time horizon. While many UN Member States were initially skeptical about the possibility of prosecuting Russian leadership for the crime of aggression, the political conversation has shifted from whether one should prosecute, to how one should prosecute. What is the most legitimate, effective, and efficient modality? The debate touches on various proposals, including an international, "internationalized," or hybrid court, as well as domestic courts. A central question deals with personal immunities. In Arrest Warrant, *the ICJ held that the "troika"—head of state, head of government, and foreign minister—enjoy personal immunity from the criminal jurisdiction of foreign states with respect to international crimes. Is there a proposal that might attract deeper support from the Global South and others who echo the narrative of "selective justice."*

Reintegration of Newly Liberated Territories

CO-CHAIR: Olga Poiedynok | Taras Shevchenko National University of Kyiv

CO-CHAIR: Steven Hill | International Insitute for Justice and the Rule of Law

RAPPORTEUR: Ronald A. Brand | University of Pittsburgh School of Law

DISCUSSANT: Lynn Sheehan | European Union Assistance Mission Ukraine

DISCUSSANT: Zakhar Tropin | Taras Shevchenko National University of Kyiv

Reintegration of newly liberated territories into Ukraine's national social, economic, and political structures will pose tough questions regarding accountability, reconciliation, and governance. What balance must be struck between the demand of victims and the desire for reconciliation? Crude binaries—accountability vs. impunity, collaborator vs. patriot—may undermine reconstruction and reintegration goals. In territories such as Crimea, which have been under Russian control for nearly a decade, the process will involve not only reintegration, but also "disintegration," especially for young people who may never have been exposed to the broader Ukrainian social context. To what degree will authority be devolved from Kyiv to newly liberated regions, and what degree of autonomy will be afforded those regions? What international legal norms, human rights principles, and transitional justice frameworks can inform the reintegration process?

16:15 **COFFEE BREAK**

16:30 **ROUNDTABLES** (Continued)

17:30 **FREE TIME**

19:00 **DINNER**

Saturday, December 9, 2023

ANNIVERSARY OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

09:00 **Convention on the Prevention and Punishment of the Crime of Genocide at 75: Never Again**

Mykola Gnatovskyy | European Court of Human Rights

Stephen Rapp | University of Oxford

Naomi Kikoler | United States Holocaust Memorial Museum

Yuriy Byelousov | Office of the Prosecutor General of Ukraine

Scott Straus | University of California, Berkeley

MODERATOR: Nataliia Hendel | Geneva Academy of International Humanitarian Law and Human Rights

In the spring of 1949, just months after the U.N. adopted the Genocide Convention, Raphael Lemkin stood on the floor of the Annual Meeting of the American Society of International Law advocating Senate ratification. In addressing an ABA representative who had argued that this new Convention was "a danger to the American tradition and American heritage," Lemkin characterized the document as "a modest convention…a timid convention." "You could not satisfy everybody," he said. "One party wanted to have everything and the other nothing. So, we have compromised on something which would establish the rule of law in international relations, the rule of law which is in accordance with the American heritage." Is the Genocide Convention indeed modest, timid? This panel will revisit the origins of the concept of "genocide" and the role of the "Lviv School of Thought," exploring whether a degree of neglect of this history in Western discourse may have adversely influenced foreign policies in the post-Soviet era. The panel will highlight Ukraine's current Genocide Convention claims before the International Court of Justice and interrogate the concept of "ecocide."

10:15 **COFFEE BREAK**

10:30 **An International Legal Framework for Democratic Reconstruction**

Mykola Stetsenko | Ukrainian Bar Association

Olena Boryslavska | Ivan Franko National University of Lviv

Jennifer A. Hillman | Georgetown Law Center

Jeffrey Pryce | Johns Hopkins School of Advanced International Studies

Andriy Sadovyi | Mayor of Lviv

MODERATOR: Neha Jain | Northwestern University Pritzker School of Law

Over the last thirty years, and against overwhelming odds, Ukraine has nurtured a civic culture committed to human rights, democracy, and the rule of law. In war—and in post-war societies focused on reconstruction—such commitments often come under strain. What is the relationship between human rights, democracy, and the rule of law during post-war reconstruction and how can international law inform the reconstruction process. In building a people-centered justice, to what extent can we rely upon the legal profession and to what extent must the work be interdisciplinary, engaging professionals from other disciplines beyond law. How can war-torn societies such as Ukraine rebuild in a way that advances their commitment to the SDGs, and especially to SDG 16. More specifically, what obstacles must Ukraine overcome to negotiate integration into the European Union and what are the broader geopolitical implications of such integration.

11:45 **BREAK**

12:00 **The International Legal Order: Radical Speculation**

Olga Butkevych | Ukrainian Association of International Law

Mortimer Sellers | University of Baltimore School of Law

Arnulf Becker Lorca | European University Institute

MODERATOR: Oona Hathaway | Yale Law School

During World War II, Lemkin began collecting evidence of a crime with no name. He later conceived the crime, coined the word "genocide," and championed the Genocide Convention. In 1945, Lauterpacht made the case that individuals could be subjects of international law, paving the way for adoption of the Universal Declaration of Human Rights. Sohn helped draft the UN Charter and Statue for the ICJ. In their time, these were all radical acts in the development of international legal order. Is incremental, progressive development of international law enough to meet this present moment in history, or have we reached another inflection point when the world demands radical thinking. Russia's invasion of Ukraine has challenged the international legal order. Many countries and the traditional transatlantic alliance have mobilized. Russia's aggression was condemned by 143 UN Member States. Yet, many do not see this war as the global threat that the West portrays. Dismissing these alternative perspectives risks perpetuation of a legal order that merely reflects the balance of power. More dialogue is required to generate a shared vision for the future of the international legal order.

13:15 **LUNCH**

14:45 **ROUNDTABLES**

Filtration, Forcible Transfer, and Mass Scale Arbitrary Detention

CO-CHAIR: Nataliia Hendel | Geneva Academy of International Humanitarian Law and Human Rights

CO-CHAIR: Helen Keller | European Court of Human Rights

RAPPORTEUR: Claire Catherine O'Connell | Global Rights Compliance

DISCUSSANT: Taras Tsymbrivskyi | Ukrainian Helsinki Human Rights Union

DISCUSSANT: Andrew Boyle | Brennan Center for Justice

DISCUSSANT: John Cerone | Fletcher School of Law and Diplomacy

Human rights organizations have collected evidence of forcible transfers of Ukrainians including vulnerable groups, such as children, older people, and people with disabilities. Russian authorities and their proxies are conducting filtration operations in occupied areas of Ukraine. As many as 1.6 million Ukrainians have been detained, interrogated, forcibly deported, disappeared, arbitrarily detained, tortured or otherwise abused in a coordinated effort to suppress resistance. Russian actors confiscate passports and other personal identification and collect biometric data on those subject to filtration, including photographs and fingerprints. Children are subjected to "rehabilitation," and Ukrainian citizens are forced to apply for Russian citizenship. These acts constitute serious war crimes and likely crimes against humanity. What international legal and institutional frameworks can be mobilized not only to hold perpetrators accountable, but also to facilitate the return of citizens who want safe passage back to Ukrainian controlled territory? Can Russia be compelled to issue "letters of transit" on such a mass scale?

Civil Compensation, Making Russia Pay

CO-CHAIR: Zakhar Tropin | Taras Shevchenko National University of Kyiv

CO-CHAIR: Patrick Pearsall | Columbia Law School

RAPPORTEUR: Luis Gonzalez Garcia | Matrix Chambers

DISCUSSANT: Ivan Horodyskyy | Ukrainian Bar Association

DISCUSSANT: Svitlana Starosvit | Harvard Law School

DISCUSSANT: Catherine Amirfar | Debevoise & Plimpton

Even those who argue that Russia's aggression was provoked, still recognize Russia as the aggressor. The human toll in Ukraine—injuries, displacement, loss of life and loss of livelihoods—is overwhelming. Likewise, the widespread destruction of personal property, civic infrastructure, and cultural heritage, along with irreparable environmental damage, must be compensated. This raises two questions: how compensation should be funded and how compensation should be distributed. Russian central bank assets have been frozen, but there is a qualitative difference between freezing assets and seizing assets. Does international law permit the seizure of central bank assets? Does the law here align with our sense of justice? To what extent would seizing central bank assets change not only the international legal order, but also the international financial order? The doctrine of countermeasures holds that acts otherwise considered illegal may be justified in response to the illegal acts of one's adversary. Does the doctrine of countermeasures provide for justifiable asset seizure? Any compensation mechanism must be international in character. Is the United Nations, therefore, a natural channel through which to create such a mechanism? Finally, how can law inform complex issues of equity with respect to compensation? Should individual losses be prioritized over institutional losses? Should some funds be invested, for example, into Ukraine's national health system or national education system, to promote intergenerational equity?

Law and Development in Ukraine

CO-CHAIR: Marta Mochulska | Ivan Franko National University of Lviv

CO-CHAIR: Lucinda Low | Steptoe & Johnson

RAPPORTEUR: Anna-Alexandra Marhold | Leiden University

DISCUSSANT: Oleg Tarasov | Yaroslav Mudryi National Law University

DISCUSSANT: Daniel Magraw Jr. | Center for International Environmental Law

The impact of the war on Ukraine's economy, demography, social systems, and political life, is difficult to calculate. Reparations alone will not meet the demand for damages, much less the additional resources needed to support broader reconstruction and meet Ukrainian aspiration for a brighter future. How can international law support the sustainable development of a post-war Ukraine? What role is there for the World Bank, IMF, WTO, European Investment Bank, private investors? If Ukraine joins the European Union, should the EU delegate some of its competence in the trade area, empowering Ukraine to pursue bilateral investment treaties (BITs)? What other international legal instruments, institutions, and infrastructures can support Ukraine's sustainable development needs and ambitions?

International Crimes Across an Emerging Accountability Ecosystem

CO-CHAIR: Kristina Petroniuk | Ministry of Justice of Ukraine

CO-CHAIR: Meg deGuzman | Temple Law School

RAPPORTEUR: Steve Koh | Boston University School of Law

DISCUSSANT: Christian de Vos | Physicians for Human Rights

DISCUSSANT: Claudio Pala | European Union Advisory Mission Ukraine

DISCUSSANT: Kateryna Busol | National University of Kyiv-Mohyla Academy

The Ukrainian Prosecutor General has documented more than one hundred thousand war crimes since the start of the Russian invasion in February 2022. Evidence collected by the Prosecutor General and cooperating entities, such as the Atrocity Crimes Advisory Group, the Center for Civil Liberties (2022 Nobel Laureate), and others now equals more than 500 terabytes of data. Experts anticipate that once occupied territories are liberated, evidence of further

crimes will emerge. How will this mounting case load be distributed both inside and outside of Ukraine; what tools are available in the broader accountability ecosystem. For example, the Convention against Torture obligates parties to prosecute or extradite suspected offenders and the 1949 Geneva Conventions impose similar requirements for those suspected of committing or ordering a grave breach of the Conventions. The United States fully implemented this obligation in domestic law earlier this year, and nearly all countries (but not the U.S.) are parties to the 1977 Additional Protocol I, which expands the scope of grave breaches to include directed attacks on civilians, indiscriminate attacks, attacks against works containing dangerous forces, and attacks against those who are hors de combat. How universal is universal jurisdiction?

Return, Post-war Migration, and Inclusion

CO-CHAIR: Olga Butkevych | Ukrainian Association of International Law

CO-CHAIR: Tom Syring | Human Rights Research League

RAPPORTEUR: Caleb McDonald | Schulich School of Law

DISCUSSANT: Yuliia Fysun | Ukrainian Center for International Humanitarian Programs

DISCUSSANT: Olga Poiedynok | Taras Shevchenko National University of Kyiv

DISCUSSANT: Hurst Hannum | Fletcher School of Law and Diplomacy

Ukrainian national minority policy has endured convulsions over the last several decades, especially following the Maidan revolution. Minority communities in Ukraine include ethnic Bulgarians, Hungarians, Roma, Poles, Romanians, and Crimean Tatars, in addition to a significant native Russian speaking population. Following Russia's 2014 annexation of Crimea, Ukraine restricted the rights of all minorities to be educated in their native language and limited the definition of "indigenous" minorities, effectively excluding ethnic Russians. This legislation was perhaps an overreaction to Yanukovych's prior policy, which disproportionately advantaged the Russian language. In 2019, the Orthodox Church of Ukraine was granted autocephaly, ending more than three centuries of Russian domination of religious life in Ukraine, but creating new tensions. In 2021, a new bill passed recognizing Crimean Tatars, Karaites and Krymchaks as "indigenous peoples of Ukraine," signally support for minorities, but the bill excluded Russians and others on the theory that those groups are indigenous to other countries. In April 2023, the European Commission for Democracy through Law (Venice Commission) proposed a new legal framework "on national minorities (communities) of Ukraine." Will this be taken up? Postwar Ukraine will look different than pre-invasion Ukraine. In addition to existing minority communities, reconstruction will no doubt draw migrant laborers from a wide variety of cultures. What steps must Ukraine take to align itself with international human rights norms and minority rights norms and with the European Union Association Agreement.

16:15 **COFFEE BREAK**

16:30 **ROUNDTABLES** (Continued)

17:30 **FREE TIME**

19:00 **DINNER**

Sunday, December 10, 2023

HUMAN RIGHTS DAY

9:00 **REPORT OUT FROM ROUNDTABLES** (5 minutes each)

10:00 **COFFEE BREAK**

10:15 **LVIV DECLARATION**

10:45 **CLOSING REMARKS**

Special Thanks

Dapo Akande
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Ingrid Brunk
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George Chopivsky
Hillary Rodham Clinton
Laryssa and William Courtney
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