



FOR IMMEDIATE RELEASE – October 14, 2022

Contact: Eric Friedman
efriedman@nycbar.org

Eli Cohen
ecohen@nycbar.org

Sham Russian Referenda and Illegal Annexation of Ukrainian Sovereign Territory

The New York City Bar Association¹ unequivocally rejects and strongly condemns the illegitimate Russian referenda held in the Donetsk, Kherson, Luhansk, and Zaporizhzhia regions between September 23 and 27, as well as the subsequent illegal annexation of these Ukrainian territories by Russia on September 30. The referenda and annexation were conducted contrary to Russia's obligations under the Charter of the United Nations, the Final Act of the Conference on Security and Co-Operation in Europe, and numerous other legal instruments to which both Russia and Ukraine are parties. The New York City Bar Association urges all members of the international community to reject these illegal acts, for third parties to cease support for Russia's illegal conduct, and for Russia to immediately comply with its obligations under international law and as a founding member of the United Nations.²

¹ The New York City Bar Association is grateful for the guidance of its Council on International Affairs, Foreign & Comparative Law Committee, United Nations Committee and Rule of Law Task Force in the drafting of this statement.

² See "G7 Foreign Ministers' Statement on the Illegal Annexation of Sovereign Ukrainian Territory," Press Release, U.S. Department of State, Sept. 30, 2022, <https://www.state.gov/g7-foreign-ministers-statement-on-the-illegal-annexation-of-sovereign-ukrainian-territory/>; "Statement from President Biden on Russia's Attempts to Annex Ukrainian Territory," The White House, Statements and Releases, Sept. 30, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/30/statement-from-president-biden-on-russias-attempts-to-annex-ukrainian-territory/>; United Nations General Assembly Resolution calling on nations not to recognize the annexation of four regions of Ukrainian territory and demanding that Russia reverse course on its attempted illegal annexation of Ukrainian territory, October 12, 2022, <https://news.un.org/en/story/2022/10/1129492>; "The IBA Condemns Russia's Disregard for Civilian Life and International Law Amid Intensified Shelling of Ukraine," International Bar Association, October 13, 2022, <https://www.ibanet.org/IBA-condemns-Russias-disregard-of-civilian-life-and-international-law-amid-intensified-shelling-of-Ukraine>.

Russia's actions of annexing Ukrainian sovereign territory through the use of Kremlin-engineered referenda³ violate basic tenets of international law, including international humanitarian law and the international law of occupation, which only compounds its previous flagrant violations of international law and the Charter of the United Nations.⁴

After committing the crime of aggression and violating Article 2(4) of the United Nations Charter by illegally annexing Crimea in 2014 and invading Ukraine without legal justification in 2022,⁵ Russia became an occupying power in territories over which it exercises effective control. As an occupying power over sovereign Ukrainian territory, Russia has legal obligations under international law, including the Fourth Geneva Convention. Specifically, Article 47 of the Fourth Geneva Convention states:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.⁶

Russia must maintain the *status quo ante* within the regions it occupies and may not justify the violation of the territorial integrity of Ukraine through referenda, particularly through referenda that are not freely held in accordance with international standards. All available evidence indicates that the referenda did not meet the international standards for free and fair elections.⁷ Furthermore,

³ See “Blinken Likens Russian Referenda in Ukraine to Attempted ‘Land Grab,’” Reuters, Sept. 29, 2022, <https://www.reuters.com/world/blinken-likens-russian-referenda-ukraine-attempted-land-grab-2022-09-29/>

⁴ These previous violations of international law and the Charter of the United Nations by Russia include, but are not limited to, its 2014 annexation of Crimea, its actions in the Luhansk and Donetsk regions prior to its full-scale invasion in 2022, its full-scale invasion of Ukraine beginning on February 24, 2022, and its commission of atrocity crimes during its invasion from February 24, 2022, through the present day. The NYCBA has issued numerous statements addressing Russia's violations of international law during its illegal invasion of Ukraine. These statements can be found here: <https://www.nycbar.org/media-listing/media/detail/russian-federations-invasion-of-ukraine>; <https://www.nycbar.org/media-listing/media/detail/russian-war-crimes-in-ukraine-investigation-request>; <https://www.nycbar.org/media-listing/media/detail/concerns-over-russian-attacks-on-freedom-of-expression-and-press>; <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/nyc-bar-urges-usa-to-assist-international-crime-court>; and <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/mounting-evidence-against-russia-for-crimes-against-humanity>.

⁵ Article 2(4) of the Charter of the United Nations states, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” See <https://www.un.org/en/about-us/un-charter/full-text>.

⁶ Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf.

⁷ See e.g., “Reports of Voter Coercion as Russia Imposes Referendums on Parts of Ukraine,” Radio Free Europe Radio Liberty, Sept. 23, 2022, <https://www.rferl.org/a/russia-ukraine-elections-sham/32047316.html>; David L. Stern and Robyn Dixon, “With Kalashnikov Rifles, Russia Drives the Staged Vote in Ukraine,” Washington Post, Sept. 24, 2022, <https://www.washingtonpost.com/world/2022/09/24/ukraine-putin-referendums/>; James Waterhouse

even if the referenda were freely held, they could not be held in compliance with international law without the consent of the territorial state, Ukraine.⁸ The illegal annexation of Ukrainian territory is an act of aggression committed by Russia against Ukraine, which constitutes an additional crime of aggression.

As a result, the unlawful referenda and purported annexation of Ukrainian territory by Russia lack validity and can have no impact on the legal status of these territories under international law. Russia remains an occupying power in these regions and Ukraine's inherent right to self-defense under Article 51 of the Charter of the United Nations remains unchanged notwithstanding these sham referenda and the illegal annexation of Ukrainian territory.⁹ The New York City Bar Association further rejects the assertions of Russian officials that Russia's use of force in Ukraine may be justified as self-defense¹⁰ under Article 51 of the Charter of the United Nations because Ukraine did not commit or threaten to commit any armed attack against Russia or any other United Nations member state.

The New York City Bar Association is gravely concerned that the referenda and illegal annexation of Ukrainian territory will be used by Russia as a means to forcibly conscript residents of these regions to participate in Russia's war of aggression and that they may be used as a justification for the use of tactical nuclear weapons during the prosecution of its illegal war against Ukraine. Either of these acts would blatantly violate the foundational principles of international law and numerous international treaties to which Russia is a party.

The New York City Bar Association calls on the international community to refuse to recognize the referenda and illegal annexation of the Ukrainian sovereign territory by Russia. The New York City Bar Association further calls on all stakeholders to take all possible measures to hold Russia and senior Russian officials accountable for these flagrant violations of international law and the Charter of the United Nations.

(Ukraine), Paul Adams and Merlyn Thomas (London), "Ukraine 'Referendums': Soldiers Go Door-to-Door for Votes in Polls," BBC News, Sept. 23, 2022, <https://www.bbc.com/news/world-europe-63013356>; Jason Beaubien, Kat Lonsdorf, and Charles Maynes, "Occupied Regions of Ukraine Vote to Join Russia in Staged Referendums," NPR, Sept. 27, 2022, <https://www.npr.org/2022/09/27/1125322026/russia-ukraine-referendums>.

⁸ See Eliav Lieblich and Just Security, "Q&A on Russia-Backed Referendums in Eastern Ukraine and International Law," Just Security, Sept. 24, 2022, <https://www.justsecurity.org/83221/qa-on-russia-backed-referendums-in-eastern-ukraine-and-international-law/>.

⁹ Article 51 of the Charter of the United Nations states, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." See <https://www.un.org/en/about-us/un-charter/full-text>.

¹⁰ See "Kremlin Says Any Attack on Annexed Territory Will Be an Attack on Russia," Reuters, Sept. 30, 2022, <https://www.reuters.com/world/europe/kremlin-says-any-attack-annexed-territory-will-be-an-attack-russia-2022-09-30/>.