The Second Chautauqua Principles
August 30, 2022

In the spirit of humanity and peace, we who assembled here at the Chautauqua Institution recognize the prevailing impunity enjoyed by atrocity criminals around the world compels the international criminal justice system and individual practitioners to renew our commitment to a global vision of the rule of law and to develop and refine practical responses to atrocity crimes and to secure justice for victims and accountability for perpetrators.

To that end, after presiding over robust debates driven by legal practitioners, experts, academics, and stakeholders, I offer the following principles to practitioners, diplomats, and politicians grappling with these realities:

I. Atrocity Prevention is the Foundation of Accountability.

Atrocities rarely appear suddenly. Instead, the commission of human rights abuses often involving the targeting of the judiciary and the rule of law, the narrowing of space for civil society, and the commission of torture and other abuses typically preced atrocities. International human rights bodies and other global stakeholders should heed these warning signs and employ best practices in addressing looming crises. This may help to avert an atrocity cascade in which human rights abuses become endemic and a situation devolves into massive and systemic violations, war becomes more likely, and the commission of crimes against humanity near inevitability.

II. The Future of Accountability Presents New Challenges to Combating Impunity.

A commitment to prosecuting atrocities at the state and international level is essential to the principle of accountability and to combat impunity. States should incorporate the International Criminal Court (ICC) crimes of genocide, war crimes, crimes against humanity and aggression in their national legislation to be able to prosecute core crimes. The ICC and other global actors should continue to enhance the universal reach of the Rome Statute by encouraging ratification by States, and by entering into cooperative arrangements with non-State Parties who may support the goals of the Court.

In considering the future of accountability, global stakeholders should consider developing new institutions at the national or regional level including hybrid tribunals or internationalized national courts. International courts with jurisdiction over transnational crimes may be a useful addition as well. These should incorporate Rome Statute crimes and modes of liability should be based upon customary international law. There is a legal duty to prevent genocide under the Genocide Convention if there is a likelihood of its commission. There is also a duty codified in common article I of the 1949 Geneva Conventions to respect and ensure all obligations under the Conventions including the prohibition of war crimes are respected. States should negotiate and adopt a treaty on crimes against humanity that contains a similar obligation.

Criminal prosecutions should also be paired with other transitional justice mechanisms supporting local needs including, for example, established truth and reconciliation commissions. Global stakeholders should look to empower local communities to address human rights abuses, address atrocity crimes, and intervene in a context-sensitive and inclusive manner. The international community should consider the adoption of new crimes to address new or ongoing harms. These could include developing a model law on Ecocide, accounting for cyber-attacks, and other new modalities of war in existing legal frameworks. Additionally, a global investigative mechanism must be established with adequate support from the international community to ensure quality fact-finding missions can be completed in a timely and efficient manner to inform judicial proceedings and ensure due process.

III. Current Law and Existing Judicial Mechanisms are Insufficient to Adequately Secure Justice for the Crime of Aggression.

In the judgment of the International Military Tribunal at Nuremberg, the Tribunal the crime of aggression was recognized as "the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole." While the crime of aggression is defined in Article 8*bis* of the Rome Statute and represents customary international law, no competent judicial institutions have jurisdiction to prosecute those most responsible for this crime. States should consider fixing this jurisdictional gap at the ICC.

On February 24, 2022, nearly seventy-six years after the IMT's landmark judgment, Russia launched an unlawful invasion of Ukraine. Both national and international judicial systems need to prosecute those most responsible for the crimes of aggression committed in Ukraine. International tribunal jurisprudence, which renders head of state immunity inapplicable regarding international crimes, including the crime of aggression, should inform their prosecution strategies. It is also essential that, in the event of its establishment, any tribunal or court addressing the unlawful invasion into Ukraine is fair, impartial, and not directed at any particular party or State. Any new tribunal or court must adhere to a clear evidentiary standard of proof of guilt beyond a reasonable doubt.

There is an urgent need for a viable proposal for the creation of a competent international tribunal with appropriate jurisdiction to prosecute those bearing the greatest responsibility for the crimes of aggression against the people of Ukraine. With that said, any domestic or international tribunals' work, including those exercising extraterritorial jurisdiction, should not diminish, but enhance the work of the ICC.

IV. New Legal and Practical Approaches are Required to Curtail Unlawful Acts Perpetrated by Mercenaries and other Irregular Forces Engaged and Directed by States.

As States continue to engage in the use of mercenaries and irregular forces, the legal definition of a mercenary must reflect the common characteristics of modern mercenaries. To wit, the nationality limitations codified in Article 47 of Additional Protocol 1 to the Geneva Conventions should be removed in order to ensure that maligned State actors cannot use loopholes in the existing definition to insulate themselves from criminal liability. All other appropriate practical and legal measures should also be taken to ensure mercenaries and irregular forces act as lawful combatants and all high contracting parties remain in compliance with the duties

international humanitarian law requires. Finally, because States bear responsibility for the unlawful acts of their agents, States engaging in the use of mercenaries and irregular forces should provide those forces the same international humanitarian law training they would to armed forces.

As chair of the Fourteenth International Humanitarian Law Roundtable, I call upon the international community to keep the spirit of the Nuremberg Principles alive by calling to attention and putting into action the Principles included herein.

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