

VLADISLAV LEONIDOVICH FEDORENKO¹,
MAKSYM VLADISLAVOVYCH FEDORENKO²

Russia’s Military Invasion of Ukraine in 2022: Aim, Reasons, and Implications³

Submitted: 4.04.2022. Accepted: 30.04.2022

Abstract

The publication examines the legal nature of wars, looks into the law of war genesis, reviews its conventions, as well as identifies the aim, objectives, causes together with the consequences of Russia’s military aggression on February 24, 2022; it provides a testimony on the war of aggression against Ukraine and identifies its threats to post-war international law and order.

The aim of the article is to determine the background, nature, fundamentals and nature of the war the Russian Federation launched on February 24, 2022 against Ukraine within the context of confrontation with the values of Western democracy.

Historical-legal dialectical, comparative-legal and system-structural methods, as well as methods of formal logic (induction and deduction, analysis and synthesis, abstraction and concretization, etc.) were used to study the issues. The application of these research methods entails a cross-sectoral scientific nature.

Wars have accompanied the entire history of mankind. Since the 17th century the theoretical foundations of the law of war have been laid, which enshrined in international laws and customs of warfare (Geneva Conventions, Hague Convention, etc.) since the 19th century, thus forming the international humanitarian law. After World War II, violations of the latter by the belligerent party are viewed by

¹ Vladislav Leonidovich Fedorenko, Doctor of Law, Professor, Vladzor, Scientific Secretary of the Scientific Advisory Board under the Chairman of the Verkhovna Rada of Ukraine, Director of the Research Center for Forensic Examination on Intellectual Property of the Ministry of Justice of Ukraine, Honored Lawyer of Ukraine, 26, L. Ukrainka Boulevard, office 501, Kyiv, 01133; e-mail: fedorenko900@gmail.com; ORCID: 0000-0001-5902-1226.

² Maksym Vladislavovych Fedorenko, graduate student of the Humanities Institute of the V.I. Vernadskoho Tavriya National University; master degree student at the University of Economics and Human Sciences in Warsaw; 01042, Kyiv, 33 John McCain Str.; e-mail: lermont98@gmail.com; ORCID: 0000-0003-4392-7124.

³ The research in this article has not been supported financially by any institution.

the world community no less harshly than the mere war. The paper questions the purpose, reasons, conditions and intermediate consequences of the war of the Russian Federation against Ukraine. Obviously, the military aggression and the Russian invasion on February 24, 2022 marked the beginning of the *de facto* war, under a specific formal definition by a Russian official as a “special military operation” instead of naming it an attempt to avoid legal responsibility for war crimes committed in Ukraine. The article analyses the aggressive nature of this war on the part of the Russian Federation, demonstrates numerous violations of international law conventions by the Russian armed forces during the military invasion and temporary occupied territories in Ukraine. It emphasizes that the law of war has always been replaced by signing a peace treaty and relevant international agreements, which entails the obligation to sever the political, economic, and legal responsibility of the state violating international humanitarian law. The paper reviews the key institutions and legal tools for bringing the Russian Federation authorities to justice for the war crimes committed in Ukraine.

So far, the President of Ukraine, the Supreme Council of Ukraine, and the Cabinet of Ministers of Ukraine have managed to apply legitimate international legal mechanisms, primarily the International Criminal Court and the UN Security Council, to prosecute Russia for violating the international humanitarian law and committing war crimes in Ukraine. At the same time, on the Ukrainian territories currently liberated from the Russian army’s occupation (Bucha, Gostomel, Irpin, etc.), it is already possible to implement a special mechanism of justice, which consists in the collaboration between national and international experts: specialists, investigators, prosecutors, and judges to collect objective and impartial evidence of gross violations of international law and war conventions in Ukraine. It is obvious that for Ukraine today both the victory and just punishment for the committed and continuing committed war crimes on its territory are important. The aftermath of World War II’s “Never Again” now requires, as never before, its effective guarantee and protection.

Keywords: war, military aggression, military invasion, martial law, law of war, laws and rules of warfare, peace treaty.

VLADISLAV LEONIDOVICH FEDORENKO,
MAKSYM VLADISLAVOVYCH FEDORENKO

Zbrojna inwazja Rosji na Ukrainę w 2022 roku – cel, przyczyny i następstwa

Streszczenie

W niniejszej publikacji autorzy badają prawny charakter wojen, przyglądają się genezie wojny, pokrótce omawiają jej konwencje, jak również identyfikują cel, założenia, przyczyny i skutki wraz z konsekwencjami wojskowej agresji Rosji w dniu 24 lutego 2022 roku. Dają świadectwo wojennej agresji przeciwko Ukrainie i określają zagrożenia, jakie to za sobą niesie dla powojennego prawa i porządku.

Celem artykułu jest określenie tła, podstaw i charakteru wojny, którą Federacja Rosyjska rozpoczęła przeciwko Ukrainie 24 lutego 2022 roku, w kontekście konfrontacji z wartościami demokracji Zachodu.

Do zbadania poruszonych kwestii zastosowano metody historyczno-prawną, dialektyczną, porównawczo-prawną i systemowo-strukturalną, jak również metody opierające się na logice formalnej (indukcja i dedukcja, analiza i synteza, abstrakcja i konkretyzacja, itd.). Zastosowanie tych metod wiąże się z przekrojowym charakterem naukowym.

Wojny towarzyszyły ludzkości przez cały okres trwania jej historii. Od XVII wieku położono teoretyczne fundamenty pod prawo wojenne, które od XIX wieku jest chronione międzynarodowymi ustawami i zwyczajami dotyczącymi prowadzenia wojny (konwencje genewskie, konwencje haskie itd.), tym samym tworząc międzynarodowe prawo humanitarne. Po II wojnie światowej wspólnota międzynarodowa ocenia naruszenia tego prawa nie mniej surowo niż samą wojnę. Niniejsza praca kwestionuje cele, przyczyny, warunki oraz pośrednie konsekwencje wojny wytoczonej Ukrainie przez Federację Rosyjską. Oczywiście agresja wojskowa i rosyjska inwazja 24 lutego 2022 roku wyznaczyły początek *de facto* wojny, którą rosyjski urzędnik oficjalnie określił konkretnie jako „specjalną operację wojskową”, zamiast nazwać sprawę po imieniu, po to, żeby uniknąć odpowiedzialności prawnej za zbrodnie popełnione w Ukrainie. Autorzy analizują agresywny charakter tej wojny po stronie Federacji Rosyjskiej, pokazują liczne naruszenia konwencji prawa międzynarodowego przez rosyjskie siły zbrojne podczas inwazji oraz na tymczasowo okupowanych terenach Ukrainy. Podkreślają też, że prawo wojenne

zawsze zastępowano podpisaniem traktatu pokojowego i stosownych umów międzynarodowych, co wiąże się z obowiązkiem surowej oceny politycznej, ekonomicznej i prawnej odpowiedzialności państwa, które złamało przepisy międzynarodowego prawa humanitarnego. W pracy omówione są kluczowe instytucje i narzędzia prawne, służące postawieniu władz Federacji Rosyjskiej przed sądem za zbrodnie popełnione w Ukrainie.

Do tej pory prezydent Ukrainy, Rada Najwyższa Ukrainy oraz Rada Ministrów Ukrainy zdolali skorzystać z uzasadnionych międzynarodowych mechanizmów prawnych, przede wszystkim z Międzynarodowego Trybunału Karnego i Rady Bezpieczeństwa ONZ, w celu oskarżenia Rosji o złamanie międzynarodowego prawa humanitarnego oraz popełnienie zbrodni wojennych w Ukrainie. Jednocześnie na terenach kraju, które są obecnie wyzwolone z okupacji armii rosyjskiej (Bucza, Hostomel, Irpień itd.), możliwe jest już wdrożenie specjalnego mechanizmu wymiaru sprawiedliwości, który opiera się na współpracy krajowych i międzynarodowych ekspertów: specjalistów, śledczych, prokuratorów i sędziów, w celu zebrania obiektywnych i bezstronnych dowodów poważnych naruszeń międzynarodowych praw i konwencji wojennych w Ukrainie. To oczywiste, że dla dzisiejszej Ukrainy ważne są zwycięstwo i sprawiedliwa kara za zbrodnie wojenne popełnione – i wciąż popełniane – na jej terytorium. Następstwo „nigdy więcej” z okresu II wojny światowej wymaga teraz, bardziej niż kiedykolwiek wcześniej, skutecznej gwarancji i ochrony.

Słowa kluczowe: wojna, agresja wojskowa, inwazja zbrojna, stan wojenny, prawo wojenne, prawa i zasady prowadzenia wojny, traktat pokojowy.

Introduction

A representative study of the legal nature of the war between the Russian Federation and Ukraine was conducted at the invitation of the Editor-in-Chief of the respected journal *Critique of Law*, Ms. Prof. J. Jabłońska-Bonca. In her solidarity and support addressed to the Ukrainians during the first days of the Russian invasion of Ukraine, the researcher wrote:

In 2008, on the night of August 7–8, Russia attacked Georgia. On August 12, 2008, Lech Kaczyński arrived in the military city of Tbilisi to participate in a rally to bolster the Georgian people, along with the presidents of Lithuania, Estonia, Ukraine and the Prime Minister of Latvia. At the Chamber in the Georgian capital, Lech Kaczyński warned the whole world: "We know very well that today it is Georgia, tomorrow it can be Ukraine, the day after tomorrow it might be the Baltic states, and then time may come for my motherland, for Poland." I knew him well, he always told the truth, he was a very wise and kind man, his words, then said publicly, were and still remain prophetic for the whole civilized world.⁴

Carrying out this research on the hostilities in the capital of Ukraine, the heroic city of Kyiv, and other Ukrainian territories, in other heroic cities, towns, and villages of Ukraine, has become a new experience for us. It is obvious that the Russian invasion eventually divided the development of Ukraine and its citizens' way of life, including the authors of this publication, into "before" and "after" periods/stages. Albeit, the depth of these changes as well as the consequences of this war remain yet unknown for Ukraine.

Therefore, trying to approach these issues objectively from the inner perspective, the author investigates the causes, conditions, and consequences of the Russian war against Ukraine at the present stage, as well as draws first intermediate conclusions about such large-scale military aggression in Europe since World War II.

⁴ V.L. Fedorenko, M.V. Fedorenko, *Katalohy ukrainskykh starodrukiv, yak dzherela ekspertnoho doslidzhennia kyivskykh kyrylychmykh starodrukovanykh vydan XVII–XVIII st.*, „Ekspert: paradyhmy yurydychnykh nauk i derzhavnogo upravlinnia” 2022, No. 1(19), pp. 8–9.

Aim

The article aims to determine the purpose, conditions, nature, and tentative results of the war that the Russian Federation launched on February 24, 2022 against Ukraine and to evaluate the situation through the prism of the Western democratic values and principles.

Materials and methods

The works of think tanks and international lawyers on the law of war and peace issues serve as scientific and theoretical fundamentals of the study. The official data in the study entail official updates presented by Ukrainian authorities, the US Embassy in Ukraine, and international human rights organizations regarding the Russian armed forces deployed and operating in Ukraine.

Historical-legal dialectical, comparative-legal and system-structural methods, as well as methods of formal logic (induction and deduction, analysis and synthesis, abstraction and concretization, etc.), were applied in the study, being of the utterly interdisciplinary scientific nature.

Results

Wars and the Humanization of the Law of War: Unlearned Lessons from History

As is widely known, wars have long accompanied the human civilization advancement. According to S. Bauer, as early as 4000 B.C., a thousand years before the first letter emerged, scratched on the fireplace the scenes depicting spearmen and prisoners, broken gates and besieged cities.⁵ Here, we are inclined to take the V. Danevsky's view about the war, where a Ukrainian lawyer speculates:

War appears as old as the oldest human alliances, there one encounters savages and culturally superior nations. The history of war, since antiquity till modern times, presents a picture of gradual transition from complete arbitrariness and domination of savage violence as a frequent de facto way of resolving disputes, to limiting them, to implementing known rules and laws in the very fact of violence.⁶

⁵ S.U. Bauer, *Istoriya Drevnego mira: ot istokov tsivilizatsii do padeniya Rima*, AST, Moskva 2014, pp. 59, 76.

⁶ V.P. Danevskij, *Posobie po izucheniyu istorii i sistemy mezhdunarodnogo prava. Vypusk IIj*, Tipograf, A.N. Guseva, Har'kov 1892, p. 88.

Certain known wars led to national self-determination, their liberation from the colonial dependence of empires and involvement into the nation-building processes, while others established the authoritarian regimes, serving as a prologue to the destruction of both states and entire civilizations.

Thus, in the despots of the Ancient East (Sumer, Akkad, Assyria, Babylon, Canaan, Egypt, Phoenicia, Media, etc.) wars witnessed the regular methods of implementing the policies of kings, pharaohs and clergy, who used to usurp power from time to time. For instance, such was the legendary Sumerian King Uruk Gilgamesh, a priest's son, the prototype in the heroic epic *About Seeing Everything* (7th century B.C.), who waged endless years of war for the conquering the kingdom of Kish and shortly before his death capturing the largest cities of Sumer.

According to S. Bauer, the war of 3200 B.C. belongs to the first great wars of that time that the legendary Egyptian king Scorpio commenced the unification of the White and Red kingdoms under one ruler. However, this victory was temporary, and 100 years later, the military unification of the two kingdoms was completed by Narmer (Menes) – the first king of Egypt.⁷ In the times of the Second Dynasty, Egypt experienced the horrors of a civil war between the South and the North, between the Horus and Seth followers. Over time, during the reign of the Eighteenth Dynasty, the Egyptians established a well-organized military empire which mastered the offensive strategies, and conquered neighboring lands “from northern Syria and the upper Euphrates – to the four Nile rapids”.⁸ However, as early as during the reign of the Nineteenth Dynasty, Ramses II lost Kadesh and a number of provinces in defensive wars against the Hittites.

Thus, among Ancient East despots, different types of wars (wars of aggression, defense, civil wars, etc.) became an acceptable form of policy. Launching warfare does not only help to seize new attractive territories, but also strengthens despotic forms of government within the country, prevents from forming the opposition. Albeit, military expansion of new warring peoples (the Kutia in the city-states of Mesopotamia, the Hyksos people in Egypt, and the Aryans in the Indian kingdoms of Harappi and Mohenj-Daro) leads to the destruction of civilizations of the ancient East.

Wars accompanied the entire history of ancient civilization. Together with the unsurpassed works of art and science, ancient Greece and ancient Rome introduced and elaborated the values of democracy and freedom, established in the 4th century B.C. – the time of Pericles and Aristotle, the generals such as Pericles, Alexander

⁷ S.U. Bauer, *Istoriya Drevnego mira: ot istokov tsivilizatsii do padeniya Rima...*, p. 40–41.

⁸ Dzh.G. Brested, *Istoriya Egipta s drevneyshih vremen do Persidskogo zavoevaniya*, Vol. I. Moskva: Knigoizd. M. i S. Sabashnikovych, Moskva 1915, p. 18.

the Great, Julius Caesar, Marcus Aurelius; they experienced large-scale and destructive wars.

Aristocratic Sparta, one of the most militant states of antiquity, waged numerous and protracted wars with neighboring nations: the Battle of Troy (1260–1230 B.C.), the three Messianic Wars (743–455 B.C.), and the Persian war (500–479 B.C.) between Achaemenid Persia and the Greek polis cities, led by Athens. The unification and military organization of the latter, in fact, formed the modern understanding of ancient Greece. The Persian Wars, according to O. Jaeger, marked the “first conflict between Europe and Asia, East, and West”,⁹ resulting in the victory of the Greeks.

The results of the Persian Wars, in turn, served a prerequisite for the Peloponnesian War (431–404 B.C.), which marked a strife between aristocratic Sparta and democratic Athens. The defeat of Athens after the death of Pericles caused by the plague eventually led to the victory of Sparta, but eventually ended up after the Battle of Mantinea in 362 B.C. with the decline of entire Greece and strengthening of “half of the barbaric state – Macedonia”.¹⁰

The phenomenon of the Hellenic military empire, created by Aristotle’s pupil Alexander the Great, remains well known in the world. It encompassed Macedonia, Greece, the conquered Persian Empire, and Egypt, and expanded with each of his successful military campaigns. However, after his untimely death in 323 B.C., the formed empire that he created got divided by his generals – *diadochi*. This led to the collapse of the Macedonian Empire 20 years after its existence in the Syrian kingdom of the Seleucids and the Egyptian kingdom of Ptolemy in the East and Macedonia and Greece in Europe.¹¹

Numerous wars accompanied the entire history of ancient Rome. These were, first of all, the three Punic Wars with Carthage (264–164 B.C.), the four Macedonian Wars (215–148 B.C.), and then the permanent wars with the barbarian tribes, which lasted from the beginning of the 2nd century to the beginning of the 5th century A.D., that is, until the decline of the ancient civilization.

During the wars conducted by the Roman Empire against barbarians, it was opposed primarily by militant Germanic tribes, in which, according to Cornelius Tacitus, “leaders fight for victory, their retinue – for the leader”.¹² Apart from the Germans, other tribes militarily competed with Rome: the Sarmatians, the Vandals,

⁹ O. Ieger, *Vseobshchaya istoriya v chetyrekh tomah. Tom pervyj. Istoriya drevnyaya*, Izd-e A.F. Marksa, Sankt Peterburg 1904, p. 109.

¹⁰ *Vsemirnaya istoriya. Chast' pervaya. Istoriya drevnego mira. Izd-e obshch.* Sv. Vasiliya V. Ungvar: V Tipograf, 1868, p. 119.

¹¹ *Ibidem*, p. 137.

¹² T.K. Sochineniya, *Rus. perevod s primech. i so stat.*, V.I. Modestova. Tom I. *Agrikola. Germaniya, Istriya*, Izd-e L.F. Panteleeva, Sankt Petersburg 1886, p. 48.

the Quads, the Lacrins, the Roxolani, the Alans, the Marcomanni, and others. During the Great Migration, they claimed the lands of the Roman Empire in search for favorable places for settlement.

The famous series of Marcomanni Wars of 166–180 followed the Parthian War, epidemics and crop failures. Numerous Germanic, Sarmatian, Marcomanni, and other tribes invaded the northern provinces of the Roman Empire from the mouth of the Danube and were defeated by Emperor Marcus Aurelius. In 180, his successor, Emperor Commodus, concluded a peace treaty with the barbarians in the Danube provinces and hurried back to Rome for triumph.¹³ However, not completed by Marcus Aurelius and abandoned by Commodus, the empire's war against the Germans, Sarmatians, Marcomanni, and Quads, in fact, facilitated new barbarian wars with Rome, which, eventually, proved disastrous for both the Roman Empire and the ancient civilization as a whole.

Notably, in ancient times a war could be declared towards the enemy state, the city-polis and the militia, as well as all residents. For F. Martens, on conquering Venice Caesar ordered all its population into slavery, and senators were to be executed for disrespecting the Roman envoys.¹⁴ The history of mankind records many examples of inhuman warfare conduct. Therefore, within world religions, wars in general are interpreted as "God's punishments" or "harbingers of the end of the world."

For instance, the Gospel of St. Matthew tells that on the Mount of Olives, Jesus told his disciples that the signs of his coming and the end of the world would be, among other things, rumors of wars: "You will hear of wars and wars. rumors, look, do not be afraid, because it should happen, which is not the end" (Matt. 24:6). That is, even rumors of war have always instilled fear in people. Instead, the Bible describes the transition to a peaceful life as opposed to the fear of war: "And they forge their swords into plowshares, and their spears into sickles. The people will not raise their swords against the people, and they will no longer learn the warfare!" (Isaiah 4:2).

The first of these wars – the Battle of Mulvia Bridge, dated 312, resulted in Constantine's defeat over the predominant army of Maxentius and made him a sole ruler of the Western Roman Empire. At the same time, Constantine I the Great together with legitimizing Christianity proclaimed it a state religion. This contributes to the assessment of Constantine's victory as the victory of Christianity over paganism. In this regard, G. Bouasier wrote: "Like Constantine, everyone saw in

¹³ F.V. Rezhabeika, *Markomanskie vojny*, Tipograf Shtaba Okruga, Odessa 1895, pp. 213–214.

¹⁴ F. Martens, *Sovremennoe mezhdunarodnoe pravo tsivilizovannyih narodov*, Tom II. Minist. Putey Soobscheniya (A. Benke), Sankt Peterburg 1883, pp. 463–464.

this the hand of some god, success being complete and rapid; sudden disintegration of the great army made it hard to imagine that it was the work of human hands".¹⁵

Along with formation of the first empires in Western Europe through numerous wars; for a start, the Frankish Empire of Charlemagne, the state-building processes of the Slavic people commenced across the Eastern Europe. According to Polish researchers, "It is well known that the Slavs used to live for a considerable time span with the Scythians, Sarmatians, Goths, Huns and consistently fell under the yoke of these peoples. They regained their freedom only in the 6th century, when nomads from Eastern Europe moved to the West".¹⁶

These Slavic tribes in modern Ukraine of the 5th–6th centuries were presented by Sklavins (*Slaveni, Sklyaveni*), the Antis, the Avars, and other tribes. Albeit, the Avar state (Khaganate) existed until 803 and collapsed under the pressure of Charlemagne and the Bulgars, whereas the Slavic tribes only regained the right to their own statehood. In particular, the formation and development of the Grand Kyiv Principality (*Kyivian Rus*) was accompanied by war and defeat of the Khazar Khaganate, military campaigns against the Bulgarians, Rus-Byzantine Wars, along with infighting among separate princes, which weakened them before the Golden Horde's military seizure.

In the early Middle Ages, the Crusades "were carried out for two centuries, from the exit in the 11th century, before the release in the 13th century; they took place in a large theater: from the Atlantic Ocean – to the Tiger..."¹⁷ The reason for these military-religious campaigns organized by Giambattista Vico's "Christian Kings, who organized the Armed Religions"¹⁸ served changes in early feudal societies, first states formation by a modern interpretation across Western Europe, as well as the revival of the Roman Church potential.

The Middle Ages, followed by the Reformation and the Renaissance, abound in endless conflicts between nations, states, churches, and individuals, were accompanied by violence against civilians and by stealing property. Their main goal, as V. Danevsky puts it, was "a total enemy destruction."¹⁹ Although wars have been divided into just and unjust since the time of Augustine, wars with infidels and heathens were considered permissible by definition.

¹⁵ G. Buas'e, *Padenie yazychestva. Issledovanie poslednej religioznoj bor'by na Zapade v chetvertom veke*, pod redakciej i s predislov. M.S. Korelina, Tipografiya E. Lissnera i Yu. Romana, Moskva 1892, p. 21.

¹⁶ *Graben'skij VI. Istoriya pol'skogo naroda*, MFCP, Minsk 2006, p. 10.

¹⁷ I. Shul'gin, *Izobrazhenie haraktera i sodержaniya novoj istorii pervyh desyati vekov po padeniyu Zapadnoj Rinkoj imperii (istoriya srednih vekov)*, V Tipograf. N. Grecha, Sankt Peterburg 1837, p. 216.

¹⁸ D. Viko, *Osnovaniya novoj nauki ob obshchej prirode nacij*, RIPOL klassik, Moskva 2018, p. 608.

¹⁹ V.P. Danevskij, op. cit., p. 89.

The aforementioned Crusades, as well as the Hundred Years' War between England and France (1353–1453), the Italian Wars (1494–1518), the Spanish Wars (1502–1659), the French Religious Wars (1562–1629), the Thirty Years' War in the Holy Roman Empire (1618–1648), as well as numerous Polish, Swedish, Moscow, and Cossack wars of the 15th–18th centuries have become a subject of exhaustive research. The Cossack wars formed the basis for the development of the Cossack state based on the Zaporozhian Army and a military-civilian model of local authorities.²⁰

Since the Middle Ages, the wars underwent subdivision into good faith (*bonne guerre*) and unscrupulous types. During the 16th and 18th centuries, the wars in Europe gradually eased in terms of protecting the civilian population. They are considered to be waged by states against states, not against the population. Humane institutions of armistice, capitulation, mercy for prisoners and the wounded, siege rules, etc. are being introduced. Most importantly, the 17th century witnessed a substantiation of the law of war and the law of peace, which facilitated the translation of wars into the legal plane.

A well-known book by Dr. Hugo Grotius, the University of Orleans graduate, *On the Law of War and Peace (De Jure Belli ac Pacis)*, dated 1623–1625, was influenced by the Thirty Years' War horrors, which somehow affected all nations in Europe, was introduced by the Papal Curia after publication in the *Index Librorum Prohibitorum*.²¹ However, its popularity was incredible: in the 100 years since its first publication, this work by H. Grotius has been republished many times in Latin and other European languages.²²

In his epoch-making work, H. Grotius advocated for the provision of objectively formed law of nations as international law. According to the philosopher, “since the laws of any state pursue its specific benefit, community rights and liberties could arise by mutual consent by both parties.” This is the right that we call the right of peoples, because we distinguish this right from natural law”.²³ Similarly, H. Grotius puts forward the idea that the inevitable wars were conducted in accordance with the principles of law and humanity. First of all, on the basis of intrinsic rights, which coincides, according to the researcher, with divine law.

²⁰ O.O. Iliashko, M.V. Fedorenko, *Pravovi aspekty formuvannia kozatstva, kozatskoi derzhavy ta osnov publichnoi sluzhby na ukrainskykh zemliakh u kintsi XV st. – XVI st. Naukovi innovatsii taпередovi tekhnolohii (seriia «Derzhavne upravlinnia», seriia «Pravo» i in.)* 2021, No. 2(2), pp. 86–100.

²¹ A.N. Stoyanov, *Ocherki istorii i dogmatiki mezhdunarodnogo prava. Lekcii chitan. 1873/74 akad. Godu v Har'kovskom un-te, V universit. tipogr., Har'kov 1875, p. 101.*

²² H. Grotius, *O prave vojny i mira. Tri knigi, v kotorykh obyasnayutsya estestvennoe pravo i pravo narodov, a takzhe principy publichnogo prava*, ed. S.B. Krylov, Gosud. izd. Yurid. lit., Moskva 1956, p. 867.

²³ *Ibidem*, p. 48.

H. Grotius' ideas on the right to war (*ius in bello*), as well as about waging wars in compliance with certain laws and conventions were a subject of scientific interest in the 18th–19th centuries. Thus, Giambattista Vico prepared the famous work *Fundamentals of the New Science of the General Nature of Nations* (1725), which developed the ideas of H. Grotius on the law of nations.²⁴ Notably, Immanuel Kant's prominent work *Eternal Peace* (1795) calls for recognition, in which he, a philosopher, called on the states to abstain from violent interference in other state authorities.²⁵

Significant progress in the introduction of the law of war enhanced the law enforcement practice. Three Northern Wars (1655–1660; 1700–1721), the War of the Spanish Succession (1701–1714), War of the Polish Succession (1733–1738), War of the Austrian Succession (1740–1748), the Seven Years' War (1756–1763), the American War of Independence (1775–1783), the Turkish Wars of Europe (1671–1812), the wars associated with the Partitions of Poland (1768–1795), the Napoleonic Wars (1803–1815), the War of the Unification of Italy (1859–1870), the American Civil War (1861–1865), the Prussian-French War (1870–1871), and other wars identified at least three prevailing trends: a) an increase in the number of sovereign states involved in wars, most of which were formally global; b) adherence to the values of the warring parties and principles of international humanitarian law and customs of war; c) the end of wars through the conclusion of peace treaties, the guarantees of which were provided by powerful states, the subjects of international law.

The positive law enforcement practice of war law has been enshrined in national and international law. Thus, the Ukrainian lawyer I. Ivanovsky wrote about the widespread practice of such agreements which was established in Europe since the 17th century and was interpreted as “cartels and conventions on the exchange and redemption of prisoners”.²⁶ Later on, during the American Civil War, on behalf of the US President Abraham Lincoln, Prof. Francis Liber drafted a statute on international rules of war – *Field Instructions for the United States Army* (1863).²⁷ In this document, F. Liber, a combatant at the Battle of Waterloo, defined the legal nature of martial law, outlined the peculiarities of military jurisdiction and treatment of deserters, spies, the sick and prisoners of war, discussed the occupation regime, including prohibition of torture and rape.

²⁴ D. Viko, op. cit., p. 608.

²⁵ I. Kant, *Vechnyj mir. Filosofskij ocherk*, ed. L.A. Kamarovsky, Tipogr. T-va I.D. Sytina, Moskva 1905, p. 6.

²⁶ I.A. Ivanovskij, *Zhenevskaya konvenciya 10/22 avgusta 1864 g. Polozhitel'nyj mezhdunarodnyj zakon ob uchasti bol'nyh i ranenyyh voynov vo vremya vojny*, V Universit. Tipograf. (I.I. Zavadzkogo), Kiev 1884, p. 17.

²⁷ F. Martens, *Sovremennoe mezhdunarodnoe pravo civilizovannyh narodov*, Vol. II, Tipografiya Minist. Putej Soobshcheniya (A. Benke), Sankt Petersburg 1883, p. 467.

In the course of time, the settlement of warfare rules and customs has become an important task for the international community. Thus, in 1864, 16 countries signed the First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, which removed doctors and nurses from combatants and banned them from imprisonment, encouraged protection of the sick and wounded during the war, and granted immunity to hospitals and medical staff under the Red Cross on a white cloth during hostilities. However, the image of the Red Cross could be applied in different ways: “as a bandage, as a flag and, finally, applied to various items mandatory for the sanitary service.”²⁸ Over time, the system of the Geneva Conventions has undergone amendment and improvement. Today, they entail four conventions: the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; the Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the Convention (III) relative to the Treatment of Prisoners of War; the Convention (IV) relative to the Protection of Civilian Persons in Time of War, to top up with the three additional protocols thereto.

In this respect, the draft of International Declaration concerning the Laws and Customs of War, drawn up by the International Conference on the Codification of the Warfare Laws and Customs in Brussels in 1874, also seems noteworthy. Its Clauses/Articles 12–13 claimed that “The laws of war do not recognize the warring parties’ unlimited power in choosing the means of harming each other. These amendments prohibited: 1) use of poison or poisonous weapons; 2) treacherous killings of persons belonging to the enemy army; 3) murder of an enemy who has laid down his arms or no longer has the opportunity to defend himself and wants to surrender; 4) an announcement that no one will be spared”.²⁹ These provisions were embodied in the Hague Conventions several decades later. The project itself, drafted by the Estonian international think tank F. Martens, never got its approval, as its main provisions on assistance for the sick and wounded on the battlefield were already covered by the Geneva Convention.³⁰

At the same time, the issue of international consolidation of the warfare has always been under consideration. At the first (1899) and second (1907) peace conferences in The Hague, warfare laws were adopted along with supporting the idea to establish the League of Nations, which would ensure their actual ongoing monitoring. Indeed, Article 25 to the Amendment “Convention on the Warfare on

²⁸ I.A. Ivanovskij, op. cit., p. 142.

²⁹ O. Ejhel'man, *Hrestomatiya russkogo mezhdunarodnogo prava. Chast' vtoraya*, Tipograf. V.I. Zavadzkogo, Kiev 1889, p. 422.

³⁰ F. Martens, op. cit., p. 477.

Land” (1907) of the Annex on the Warfare Regulations on Land established a direct ban on “attacking or bombing unprotected cities, towns, houses or buildings.”³¹

Notably, the base for international humanitarian treaties on the laws and regulations of warfare (Geneva and Hague Conventions) laid in 1864–1907 remains relevant for the 21st century. It can also be stated that the Russian Empire was actively engaged and took the initiative on the humanization of warfare fundamentals during this period. Therefore, mass violations of warfare fundamentals during the invasion of Ukraine in 2022 are acquiring a dangerous trend.

However, the humanization of warfare in the end of the 19th century and at the beginning of the 20th century failed in preventing the world from the horrors of new wars. The 20th century turned out to be the most “productive” in relation to large-scale wars with a significant number of states involvement, under the title “world wars”. Thus, Norman Davies aptly called the period from 1914 to 1945 “Tenebrae. The eclipse of Europe.” The researcher wrote that in Europe, where the main hearth of the First World War (1914–1918) and the Second World War (1939–1945) were, there were “inherent manifestations of barbarism, which would probably stun even the wildest barbarians”.³²

Interwar years appeared quite difficult for the development of Europe, they were marked by a wave of revolutions, the formation of new states, including revival of Poland and proclamation of the Ukrainian People’s Republic, and the domination of authoritarian regimes with the policies leading to a new war. This 30-year period of European history N. Davies qualifies as “submerged in blood” times.³³

World War II began on September 1, 1939 with Nazi Germany’s attack on Poland; on September 17, 1939, the Soviet Army invaded Poland, after which more than 60 countries were involved. In September 1939, the Moscow leadership arrogantly claimed that “the lightning defeat of Poland spoke for the non-viability of the Polish state”.³⁴ Elements of the similar Moscow rhetoric as well as plans for the “Blitzkrieg” in Ukraine took place in 2022. However, in the summer and autumn of 1941, the German army moved through the territory of the former USSR much faster than two years before in Poland. At the same time, Ukraine turned out to be the first victim of Germany’s “lightning war.”

³¹ Konventsiiia pro zakony i zvychai viiny na sukhodoli, pidpysana 18 zhovtnia 1907 r. u Haazi, Ofitsiinyi visnyk Ukrainy 2017, No. 2, s. 67.

³² N. Davis, *Evropa: Istoriia, «Osnovy»*, Kyiv 2014, pp. 10, 925–1088.

³³ Ibidem.

³⁴ Ya. Hrytsak, *Narys istorii Ukrainy. Formuvannia modernoi natsii XIX–XX stolittia*, Yakaboo Publishing, Kyiv 2019, p. 399.

World War II projected many consequences during the post-war era, not only for Ukraine and the former Soviet Union, but also for Europe and the world at large, namely, the determination by the states of the anti-Hitler coalition at the Yalta Conference of 1945 of new borders in Europe and ensuring their inviolability in the aftermath of war. Equally important, there appeared a need for introducing just punishment for war criminals through a specially created the International Military Tribunal, best known for its activities during the Nuremberg trials over a group of former Nazi German politicians.

At the international level the establishment of legal mechanisms to prevent future world wars to ensure guarantees of fundamental human rights and freedoms took place. If before the Second World War this protection was seen primarily as a matter of domestic national policy, the Preamble to the UN Charter of 1945 testified to the joint determination of the signatory states to reaffirm faith in fundamental human rights, dignity and human value.³⁵ First and foremost, it refers to the standardization and guarantee an inalienable human right to life, liberty and security, the prohibition of torture or cruel, inhuman or degrading treatment or punishment.

One of the first significant results of the UN's work was the proclamation on December 10, 1948 of the UN Universal Declaration of Human Rights by Resolution 217 A (III),³⁶ which became a kind of "human rights charter." Its provisions have been developed within the global and regional human rights conventions and pacts: the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950,³⁷ the Geneva Conventions of 1949,³⁸ the International Covenant on Civil and Political Rights of 1966,³⁹ the International Covenant on Economic, Social

³⁵ V.L. Fedorenko, *Konstytutsiini prava i svobody liudyny ta yikh harantuvannia y zakhyst v Ukraini: monohraf*, Vyd-vo Lira, Kyiv 2021, p. 112.

³⁶ Universal Declaration of Human Rights: Adopted and proclaimed by United Nations General Assembly resolution No. 217 A (III) of 10 December 1948, Official Journal of Ukraine, 2008, No. 93. Art. 3103.

³⁷ Konventsia pro zakhyst prav liudyny i osnovopolozhnykh svobod vid 4 lystopada 1950 r.: ratyfikovana Zakonom Ukrainy vid 17 lypnia 1997 r., razom z pershyim protokolom ta protokolamy No. 2, 4, 7 ta 11. Vidomosti Verkhovnoi Rady Ukrainy, 1997, No. 40, p. 263.

³⁸ Konventsia OON pro polipshennia doli poranenykh i khvorykh u diuchykh armiakh 1949 r. Ofitsiinyi visnyk Ukrainy, 2010, No. 62, p. 2180.

³⁹ Mizhnarodnyi pakt pro hromadianski i politychni prava vid 16 hrudnia 1966 roku: ratyfikovanyi Ukazom Prezhydii Verkhovnoi Rady URSR vid 19 hrudnia 1973 r. (z dvoma fakultatyvnymy protokolamy)/Международные акты о правах человека: сб. документов. Москва: NORMA-YNFRA-M, 1998, pp. 53–76.

and Cultural Rights of 1966,⁴⁰ the Charter of Fundamental Rights of the European Union of 2000,⁴¹ as well as documents referred to as “soft law.”⁴²

These essential international human rights tools also contributed to the establishment of institutional mechanisms for the protection of fundamental human rights during hostilities – the UN International Court of Justice, the International Criminal Court, the European Court of Human Rights, the European Court of Justice, etc.

Noteworthy, since its establishment the post-war world legal order was subjected to serious tests; The Cold War began with confrontation between the former Soviet Union and the United States, resulting in a “nuclear race,” the Caribbean crisis, attempts to revise the 1945 Yalta Conference on the postwar world order, the Warsaw Pact and NATO military blocs; wars in Afghanistan, Vietnam, Korea; the arms race and Velvet Revolutions strand of 1989–1990; and the disintegration of the so-called “socialist camp and, finally, the collapse of the Soviet Union.” On December 1, 1991, 93% of Ukrainians supported the Act of Independence of Ukraine, adopted by the Supreme Court on August 24, 1991, whilst on December 8, 1991 in Belovezhskaya Pushcha, the leaders of Ukraine, Russia, Belarus, and Kazakhstan signed an agreement in which the Soviet Union was finally brought to an end.⁴³

The collapse of the former Soviet Union and the so-called “socialist camp” took place rapidly, but without devastating wars, with the exception of a number of wars in the republics of the former Yugoslavia in 1991–2001. However, as the US President Joe Biden noted in his speech on March 26, 2022 in Warsaw, “Over the last 30 years, the forces of autocracy have revived around the world. Its features are familiar: contempt for the rule of law, contempt for democracy and freedom, contempt for the truth itself.”⁴⁴ Russia became one of the most powerful sources of aggression in the post-Soviet space. On this account, in addition to participating in a number of military conflicts in Transnistria (1991–1992), two Chechen wars

⁴⁰ Mizhnarodnyi pakt pro ekonomichni, sotsialni i kulturni prava vid 16 hrudnia 1966 r.: ratyfikovanyi Ukazom Prezydii Verkhovnoi Rady URSR vid 19 hrudnia 1973 roku/Mezhdunarodnye akty o pravah cheloveka: sb. dokumentov. Moskva: NORMA-INFRA-M, 1998, pp. 44–52.

⁴¹ *Hartiya osnovnykh prav Evropejskogo Soyuza*, http://zakon5.rada.gov.ua/laws/show/994_524 (access: 30.04.2022).

⁴² V. Fedorenko, V. Nesterovych, ‘Soft Law’ in the Mechanism of the International and National Protection of the Constitutional Electoral Rights, „Krytyka Prawa” 2020, Vol. 12, No. 3, pp. 178–195.

⁴³ R.O. Stefanchuk, V.L. Fedorenko, *Vseukrainskyi referendum u systemi referendumnoi demokracji*, monohrafiia. Vydavnychiy dim «Helvetyka», Odessa 2020, p. 101.

⁴⁴ Speech by President Biden to Unite Free World Efforts to Support the People of Ukraine, <https://ua.usembassy.gov/uk/remarks-by-president-biden-on-the-united-efforts-of-the-free-world-to-support-the-people-of-ukraine/> (access: 30.04.2022).

(1994–1996; 1999–2000), war in Georgia (2008), and the seizure of the Autonomous Republic of Crimea (2014–2022).

On February 24, 2022, Russia invaded Ukraine, launched a new large-scale war of aggression in Europe, violating all international treaties on the inviolability of state borders established after World War II along with the internationally recognized laws and warfare customs. So far, the obvious inviolability shaped during the 19th–20th centuries and human values, and principles of the law of war have been destroyed.

Objectives, Causes, and Grounds of Military Aggression and the Beginning of the Russian War against Ukraine in 2022

Almost a century and a half ago, the Ukrainian international scientist I. Ivanovsky concluded that wars are as ancient as a human race, and their origins and causes “lie deep partly in human nature, partly in historical events, war always bears the imprint of a specific epoch and a specific people.”⁴⁵ On the one hand, all wars pertain a similar nature, and on the other hand, each war has its purpose, reasons and grounds for resolving it.

Regarding the purpose, tasks and nature of wars, a well-known statement of A. Clausewitz goes “war is not only a political act, but also a true weapon of politics, continuation of political relations, conducting them in other ways. What is specific that is inherent in war, refers only to the nature of the means used by it”.⁴⁶ The difference in political objectives determines its nature. Thus, the policy of conquering new colonies with the aim of their ruthless exploitation, is always different from the national liberation wars of nations with metropolises. The policy of a state that is defending itself and waging a just patriotic war on its territory is significantly different from the policy of a state that seeks to destroy another sovereign state and seize its territory through military aggression. In this interpretation, proclamation as well as actual beginning of the war clearly reveals its purpose, tasks and nature.

At the beginning of the 17th century, Hugo Grotius recalled Demosthenes’ suggestion that war was being waged against those who were suited in court and failed. After all, all forms of justice appear valid against the weaker; wars are being

⁴⁵ I.A. Ivanovskij, op. cit., p. 1.

⁴⁶ K. Klauzevic, *O Vojne*, Eksmo, Moskva 2013, p. 38.

waged against equals.⁴⁷ In our view, starting the war with Ukraine, Russia was aware that dynamics of freedom, democracy, protection of fundamental human rights and freedoms alongside with the market economy and prospects for European integration demonstrate significant progress, unable to be restricted in a legitimate way. Notably due to the occupation of the Autonomous Republic of Crimea and certain districts of Donetsk and Luhansk regions (ORDLO) by the Russian Federation since 2014, Ukraine has been in a status of actual war with this state.

Meanwhile, reasons for the Russian war in Ukraine, which began as a “special military operation” on March 24, 2022, cannot be explained solely by the peculiarities of Ukrainian-Russian relations in 2013–2022. It is obvious that the war against Ukraine evolved as implementation of Russia’s long-standing revanchist foreign policy aimed at halting NATO enlargement, expanding the spheres of political influence of Russia abroad, and the United States in Europe, featured provisional during the Cold War period. Its second objective lay in recognizing the international community’s unconditional right to building a new “Soviet federation” and a “socialist camp” on the basis of the post-Soviet and post-socialist republics.

For a long time, political values and goals of the Russian Federation were formulated and first delivered by its president at the Munich Security Conference in 2007, followed at the Russia-NATO summit in 2008 where Vladimir Putin publicly threatened to destroy Ukraine if it joined NATO. The keynote set out in historical articles about “Ukrainians and Russians” as “one people” and about its origins from Kievan Rus (the replacement of the words “Russia” to “Russia ‘took place in the Moscow principality in the ‘90s of the 16th century’,”⁴⁸ maximally heated by the authoritarian media, being popular among the Russian community, still looked strange to the Western world.

Therefore, lack of a motivated and clearly formed, especially for the international community, political ideology of war in terms of its purpose serve the motivation behind Russia’s military aggression against Ukraine. Obviously, ideology pertains its ability to reasonably visualize the future. Instead, the slogans announced by the Russian Federation, first about “denazification” and “demilitarization,” and later about a possible threat to the Russian Federation and the chance to attack first, about the alleged development of Ukraine’s nuclear, chemical and biological weapons. These propagandistic suggestions are topped up by the statement about Russian regular troops and other military formations being at war with the United States and NATO, sound by far a grotesque and insufficiently credentialed.

⁴⁷ G. Grocij, op. cit., p. 50.

⁴⁸ M.A. Maksimovich, *Sobranie sochinenij*, Vol. II: *Otdely: Istoriko-topograficheskij, arheologicheskij i etnograficheskij*, Tipogr. M.P. Frica, Kiev 1887, p. 307.

Instead, within Russia itself, slogans about urgent extermination of the “Nazis” and “Bandera” in Ukraine enjoy popularity among Russians. To emphasize their disgust and groundlessness, US President J. Biden, on February 26, 2022 at the Royal Palace in Warsaw in a speech to support the people of Ukraine said very aptly: “President Zelensky was elected democratically. He is a Jew. His father’s family was destroyed during the Nazi Holocaust. And Putin has the audacity, like all autocrats before him, to believe that this gives him some advantages.”⁴⁹

Incorrect methods of propaganda manipulation, on the one hand, is a continuation of the postwar ideological USSR narrative as a great and sole winner in World War II, transformed into the succession of Russia in the fight against Nazism and fascism with its conventional slogan that goes “Once necessary, we will repeat!”). In fact, Russia still ideologically positions itself as the victorious state in the Great Patriotic War (the formal name and course of World War II in Russia is ignored) and as the last line of defense in the United States and NATO confrontation.

On the other hand, Russia’s slogans about “Nazis,” “Fascists,” and “Bandera” in Ukraine have for the army of the aggressor state, which invaded Ukraine and brutally kills, tortures and plunders its civilians, possess practical psychological significance. Similar tools were frequently used by various countries around the world in the second half of the 20th century for military exercises, when under the code name... alien creatures, zombies, monsters, beetles, etc. This granted the tactical forces exemption from humanistic moral and ethical constraints, the fact being far more difficult to kill and torture “Slavic brothers” rather than “Nazis,” “Bandera,” and “Fascists.”

At present, the ideology of Russia’s war with Ukraine in 2022 is based on the phantom pains of the ruling Russian political, military, and power elites since the former Soviet Union collapse and remains, in fact, a continuation of the Cold War ideology.

As for the grounds for the beginning of wars or *casus belli* (from the Latin word meaning “case for war”), in some cases, quite objective in nature, and in others utterly contrived from the beginning or post factum. Thus, the *casus belli* for the battle of Troy, according to the author of the Iliad, Homer, was the seduction and abduction of Helen – the wife of the King of Sparta Menelaus – by Paris, the son of the King of Troy.⁵⁰ The reasons behind the war between the Spartans and Messinians, according to a legend, was either the assassination of the last king of

⁴⁹ Speech by President Biden to Unite Free World Efforts to Support the People of Ukraine, op. cit.

⁵⁰ S.U. Bauer, op. cit., pp. 313–314.

the Lacedaemonians Teleclea in the temple, or the rape of the Lacedaemonian girl under the same circumstances.⁵¹

Interestingly, assassination of the heir to the Austrian throne, Franz Ferdinand, by the student Gavrilo Princip in Sarajevo (Bosnia) also serves a *casus belli* to start the First World War; yet, the military alliances of the Entente and the Central Powers entered this war only a month later.⁵² The grounds for the beginning of September 1, 1939, Germany's "defensive" war, with the support of Slovakia, with Poland are considered to be the attack on the radio station in Gliwice under a specific title of "canned intelligence." However, due to the technical level of communications in Europe at the time, this operation on August 31, 1939, hardly caused a wide wave of information in Europe in less than a day, and the attack on Poland began actually without *casus belli*.

Today, in our opinion, the *casus belli* institution has lost its significance as a basis for a start of modern wars. On the eve of the Russian invasion of Ukraine in 2022, there were attempts to create such a *casus belli* on the territory of unrecognized LPR and DPR, accusing the Armed Forces of Ukraine of allegedly shelling their territories on February 22, 2022. However, the false-flag operation turned quite unconvincing, and the Russian Federation invaded the entire territory of Ukraine without a formal *casus belli*.

Once a German professor A.-V. Gefter stated a public declaration of war is essential to precede the beginning of hostilities against a state with which the warring party was in friendly relations before. For "trust disappears and is replaced by a solitude and fear attitude as long as people are to beware of unexpected attacks every minute".⁵³ According to the conventional warfare provisions, a state-initiator of hostilities takes on the responsibility to respect the law of war.

Depending on era, the methods and forms of declaring war varied. For instance, P. Kazansky wrote that "antiquity and the Middle Ages required a solemn declaration of war (*clarigatio*) in order to consider the war legitimate (*bellum justum* – for the Romans)".⁵⁴ In turn, A.-V. Gefter wrote that ancient societies held public ceremonies before the war, whereas in Rome such declarations were based on feudal law, and in the Middle Ages chivalry adhered to the code of open statement of warfare.

⁵¹ M. Mendes, *Opyt istoriko-kriticheskogo kommentariya k Grecheskoj istorii Diodora. Otnoshenie Diodora k Gerodotu i Fukididu*, «Ekonomiceskaya» tipograf, Odessa 1901, p. 28.

⁵² Ya. Hrytsak, op. cit., p. 191.

⁵³ A.-V. Gefter, *Evropejskoe mezhdunarodnoe pravo, s izmin. i dopoln. dlya russkogo perev.*, V tipogr. V. Bezobrazova i komp., Sankt Petersburg 1880, p. 226.

⁵⁴ P. Kazanskij, *Uchebnik mezhdunarodnogo prava publicnogo i grazhdanskogo*, Tipo-litograf. Shtaba Odesskogo Voennogo Okruga, Odessa 1904, p. 430.

This tradition persisted until the 18th century and was last used in 1735,⁵⁵ but eventually done, for a declaration of warfare was preceded by the severance of diplomatic relations.⁵⁶ However, since the 19th century, wars began to take place after the publishing manifestos, or without formal warnings, via a sole sudden military invasion. That seems the way Russia started the war against Ukraine, when on February 24, 2022 at 4 a.m., the Russian leader Vladimir Putin announced the launch of a “special military operation” against Ukraine. Within minutes, on Putin’s orders, missile strikes were carried out throughout Ukraine, including neighboring towns around Kyiv, and ground and air raids by the Russian army near Kharkiv, Kherson, Chernihiv, Sumy, and other Ukrainian cities. The President of Ukraine immediately imposed martial law.⁵⁷

Thus, the beginning of the Russia war against Ukraine in 2022 in the form of military invasion from land, air and sea onto the sovereign territory of Ukraine resembles the attack of Nazi Germany on the USSR on June 22, 1941 that also took place, in fact, “treacherously and unexpectedly.” Ukraine’s case seems similar: firstly, officially defined as a “special military operation,” and secondly, not announced publicly as a formal beginning of warfare.

War, Military Aggression or a Special Military Operation? Terminological Traps

From the very beginning of its military invasion, the aggressor imposed terminological confusion at both national and international levels, which would be envied by George Orwell along with his 1984 characters. Being defined as a “special military operation,” in the Russian Federation it was forbidden to name this word under administrative and criminal liability. Such confusion seems justified for many reasons. The most obvious among them appears determination of the state and military leadership of the Russian Federation to avoid responsibility in the UN International Criminal Court for war crimes, in particular, for violating international laws and customs of warfare.

What is war and how this notion relates to other similar, somehow related but non-identical categories – “military aggression,” a “special military operation,” etc. – a nature of war has been a hotly-debated issue among thinkers and scientists. Thus H. Grotius put forward the assumption that the word “war” (*bellum*) is derived

⁵⁵ A.N. Stoyanov, op. cit., p. 610.

⁵⁶ A.-V. Gefter, op. cit., p. 226–227.

⁵⁷ *Pro vvedennia voiennoho stanu: Ukaz Prezidenta Ukrainy vid 24 liutoho 2022 r.*, «Holos Ukrainy”, 24.02.2022.

from the older word *duellum* ("duel"), and he argued that "war is a state of struggle by force".⁵⁸

In turn, Immanuel Kant wrote that "war is a sad, being permissible only in an extreme case, means in the natural state (where there is no court place, the verdict of which would have the force of law) to assert their right by force".⁵⁹ The head of the Military Academy in Berlin, General K. Clausewitz, in his famous work *On War*, published after his death in 1832, substantiated the theory and practice of war and defined the latter as acts of violence aimed at forcing your opponent to do your will".⁶⁰

F. Martens qualified wars as "terrible litigation" between states, approaching it in terms of international law, "armed struggle between independent states to protect their rights and interests".⁶¹ In his work *European International Law*, Professor of the University of Berlin A.-V. Heffter defined war *ultima ratio* and supported the statement made by Frederick II the Great in his *Anti-Machiavelli* that just wars can be considered only those "whose purpose is overthrowing usurpers, upholding legal rights, ensuring universal freedom and protection from violence and oppression of ambitionists."⁶² The Ukrainian scholar P. Kazansky, for whom war implies a *ultima ratio* a state can utilize in its conflict with another state. At the same time, "war is an open armed struggle between states through law where the descriptor Open infers struggle by all possible and non-prohibited means."⁶³

A number of definitions for the category of "war" can acquire indefinite dimension. Let us dwell on the definition of war of modern international jurist V. Denisov, who holds a view that that war is a "status in which states apply all forms of pressure against each other in compliance with the laws and customs of warfare (*ius in bello*)".⁶⁴ This definition, in our opinion, precisely summarizes the previous views of scholars on the law of warfare, but leaves additional questions to answer. The first lies in determining the legal quality of regime, something non-existent outside the norms of international treaties and customs. Secondly, the researcher questions whether the use of weapons can be considered a war by one of the parties, or both, regardless of the laws and customs of warfare. After all, numerous wars in the world have been waged without or through violating the warfare law. This does

⁵⁸ G. Grocij, op. cit., p. 68.

⁵⁹ I. Kant, op. cit., p. 7.

⁶⁰ K. Klauzevic, op. cit., p. 21.

⁶¹ F. Martens, op. cit., p. 461.

⁶² A.-V. Gefter, op. cit., pp. 216–217.

⁶³ P. Kazanskij, op. cit., p. 425.

⁶⁴ Yurydychna entsyklopediia, V 6 t. Redkol, ed. Yu.S. Shemshuchenko, Kyiv: «Ukr. entsykl.», 1998, p. 455.

not relate to the theoretical fundamentals, being illustrated in the reality of Russia's war in Ukraine in 2022.

In this context, I recall the words by A. Stoyanov, a Professor at Kharkiv University, almost 150 years before while analyzing the 19th-century wars with about 10 million casualties for centuries; he assumed that despite the triumph, some wars humiliated the winners, forcing nations into a miserable condition; yet, there remained wars that glorified nations from the morality perspective.⁶⁵

Through the prism of diversity modern wars have undergone categorization by lawyers and military theorists. For instance, A. Stoyanov advocates for the following classification of wars: 1) place of hostilities/theater of operations: continental/land or sea; 2) number of warring parties: a) civilian; b) international; c) people, both the government and the whole nation opposes the enemy; 3) motives and goals: a) to ensure political equilibrium; b) for religious purposes, for freedom of worship; c) public law (according to J. Blunchley); d) defense, etc.⁶⁶

Special literature abounds in various classifications, among which the typology of just and unjust wars prevails; however, struggle elements during the hostilities approach them as "fair." Thus, legitimacy of conduct remains the most important criterion, and entails compliance with the beginning, course, and end to the requirements of the laws and customs of war (*ius in bello*). The application of this criterion makes it possible to distinguish between wars that correspond to *ius in bello* and "barbaric" wars that are waged with demonstratively cynical disregard for international law values and norms.

We qualify the war with the Russian Federation as just, the one conducted in accordance within *ius in bello* and possessing a defensive character. Moreover, we approach this war as patriotic for Ukraine, since, firstly, it serves as Ukraine's legitimate reaction towards the unprovoked military aggression; secondly, is conducted exclusively on the Ukrainian territory aimed at liberation of the state's sovereignty; thirdly, acquires the people's qualification (according to A. Stoyanov), when the army actions being joined by territorial defense units and volunteers.

As for the relationship between the category of "war" and "military aggression," according to Articles 1, 39, and 53 of the UN Charter,⁶⁷ aggression (from the Latin *aggression*, from *aggredior* – "attacker") within the international law implies any threat to peace through application of force by one state against the sovereignty and territorial integrity of another and its people. Military aggression signifies

⁶⁵ A.N. Stoyanov, op. cit., p. 605.

⁶⁶ Ibidem, pp. 606–607.

⁶⁷ Charter of the United Nations and Statute of the International Court of Justice / Official Portal of the Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/995_010#Text (access: 30.04.2021).

here the beginning of an unprovoked war by the Russian Federation against Ukraine.

For the reasons listed above, the Russian Federation purposefully avoids to officially apply the “war” definition in legislative acts and regulatory enactments, replacing it with another category – a “special military operation.” The latter presupposes military operations carried out by specially trained and equipped special purpose regiments using unconventional warfare attack that differ from the combat operations of active armed units. In other words, the “Neptune’s Spear” military campaign, launched by the US Navy Seal Team to eliminate Bin Laden in Pakistan in 2001, serves as an example of a “special military operation,” and Russia’s military aggression against Ukraine, launched on February 24, 2022, developed into the full-scale war against a sovereign state.

Violation of International Law and Warfare Procedures during the 2022 Russia’s Military Invasion of Ukraine

Once A.-V. Gafter put forward an important principle that exhaustively represents the law of peace and conduct of war: “In peacetime, people should do each other as much good as possible, whilst during hostilities they should do as little evil as possible”.⁶⁸ This principle, in fact, characterizes the right of war genesis and evolution.

Its implementation presupposes the observance by the warring parties, first of all, the international humanitarian law and other legislative warfare tools – the Geneva and the Hague Conventions, etc. In this respect, P. Kazanskij noted once: “A war qualifies for just on condition it begins, is conducted and concludes in accordance with the international law provisions”.⁶⁹ Instead, a violation of legislative warfare tools entails committing illegal acts – war crimes.

Specific illegal methods and warfare procedures have long been defined by theorists. Thus, in his work *Eternal Peace*, I. Kant stated: “Neither of the states at war should allow hostile actions that might undermine mutual trust for future peace; such dishonest practices include: hiring in hostile state murderers (*percussores*), poisoners (*venefici*), violation of capitulation, incitement to treason (*perduellio*) the following military tactics is approached as unfair”.⁷⁰ Most of these dishonest warfare tools are characteristic of current Russia’s military invasion of Ukraine.

⁶⁸ A.-V. Gafter, op. cit., p. 224.

⁶⁹ P. Kazanskij, op. cit., p. 427.

⁷⁰ I. Kant, op. cit, p. 7.

Making a speech in the Norwegian Parliament on March 30, 2022, the President of Ukraine V. Zelensky remarked: "Russian missiles and air bombs hit our cities and civilian infrastructure every day and every night. There seem to be no forbidden targets for Russian troops, for they have been attacking everything – from hospitals to airports, from grocery stores to residential areas. Ukraine's losses are huge. Ten thousands of houses have been destroyed, dozens of towns and villages burned, millions of people deprived of the right to lead their normal life."⁷¹

According to the Ministry of Economy of Ukraine, one-time losses of Ukraine during the Russian military invasion as of March 28, 2022 amounted to \$564.9 billion, of which \$119 billion refer to the infrastructure loss (destroyed almost 8,000 km of runway, dozens of railway stations, airports); \$112 billion – GDP losses in 2022; \$0.5 billion – civilian population damage (10 million square meters of housing, 200,000 cars, food security for 5 million people); \$80 billion – losses of enterprises and organizations; \$54 billion – the loss of direct investment in the Ukrainian economy; \$48 billion – losses of the state budget.⁷²

Regarding Ukrainian cities, towns and villages, Russia's war operations can be qualified as the ones that caused dire consequences. The Mayor of Kharkiv I. Terekhov publicized data on the city's infrastructure destruction during the first 35 days of the war in Ukraine. These are 1,292 residential buildings, 70 schools, 54 kindergartens, 16 hospitals, and 239 administrative buildings.⁷³ The infrastructure and buildings of such Ukrainian cities as Mariupol, Chernihiv, Irpin, Volnovakha, Hostomel, Trostyanets, Bucha, and others have experienced significant damage by 70% or more. Yet, the relevant data on the state of destruction by the Russian army are constantly deteriorating.

The Russian army military operations hardly stand in line with the Hague Convention in terms of damage to national cultural objects in Ukraine. Article 56 of the Hague Convention states: "The property of municipalities, religious, charitable, educational, artistic and scientific institutions, even state-run, is recognized as private property. Any seizure, destruction or willful destruction of such institutions, historical monuments, works of art and science shall be prohibited and prosecuted."⁷⁴

⁷¹ Speech by President of Ukraine Volodymyr Zelensky in the Norwegian Parliament – Storting, <https://www.president.gov.ua/news/promova-prezidenta-ukrayini-volodimira-zelenskogo-v-parlamen-73961> (access: 30.04.2022).

⁷² *Ukraina zaznala 564,9 miliardiv dolariv vtrat vid rosiiskoho vtorhnennia*, <https://www.me.gov.ua/News/Detail?lang=uk-UA&id=f951df0a-e65c-4b0e-871f-9bf1a857fe57&title=UkrainaZaznala564-9-MiliardivDolarivVtratVidRosiiskogoVtorgnennia> (access: 30.04.2022).

⁷³ I. Terekhov, *Ya nikoly ne ozvuchuvao tsykh tsyfr*, https://24tv.ua/ya-nikoly-ne-ozvuchuvav-tsih-tsifr-terekhov-rozpoviv-pro-ruynuvannya_n1929022 (access: 30.04.2022).

⁷⁴ Konventsia pro zakony i zvychai viiny na sukhodoli, pidpysana 18 zhovtnia 1907 r. u Haazi. Ofitsiinyi visnyk Ukrainy 2017, No. 2, p. 67.

Instead, according to the Ministry of Culture and Information Policy of Ukraine, as of March 31, 2022, 135 war crimes in this area have been recorded. In particular, 59 religious buildings of the Orthodox Church of Ukraine and the UOC-MP, Protestant houses of prayer, Islamic mosques, and Jewish synagogues were damaged in 10 regions of Ukraine, as were 58 monuments of architecture and urban planning, of which 5 are of national importance. Russian invaders also damaged 12 museums and historical and architectural reserves, 6 theaters and cinemas, 5 libraries.⁷⁵ The fact of Russian aggression raised the issue of preserving the monuments of fine and decorative arts, Ukrainian Cyrillic old prints from looting by the military servants,⁷⁶ including other important national culture artefacts as well as science and art items.

Violation of Human Rights and Freedoms during the 2022 War in Ukraine

From the very beginning of the Russian military invasion, on February 24, 2022 the President of Ukraine V. Zelensky introduced the martial rule, a “proclamation of the military law – *loi martiale*”,⁷⁷ it was approved by the Supreme Council of Ukraine on the same day. Importantly, constitutionally mandated by the second part of Article 64 of on the scope of human rights and freedoms, imposed martial law came into force on the whole Ukrainian territory. However, starting from February 24, 2022, it was possible to restrict only the civil rights and liberties, provided by Articles 30–34, 38, 39, 41–44, 53 of the Constitution of Ukraine.⁷⁸ Thus, the citizens of Ukraine freely exercise their major constitutional civil rights and liberties during hostilities.

However, the Ukrainian state’s guarantee to sustainability under war conditions does not mean the possibility of their suspension and violation by the Russian army during the occupation of certain Ukrainian territories. More than two centuries ago, J.-J. Rousseau wrote in his *Reflections of the Geneva Philosopher* that “each state can treat other states as an enemy, but for people”.⁷⁹ Naturally, wars have always been a breeding ground for mass violations of fundamental human rights

⁷⁵ *Ministerstvo kultury i informatsiinoi polityky Ukrainy zafiksovano 135 epizodiv voiennykh zlochyniv rosiian proty kulturnoi spadshchyny v Ukraini*, <https://mkip.gov.ua/news/7021.html> (access: 30.04.2022).

⁷⁶ V.L. Fedorenko, M.V. Fedorenko, op. cit., pp. 57–58.

⁷⁷ A.N. Stoyanov, op. cit., p. 623.

⁷⁸ *Pro vvedennia voienmoho stanu v Ukraini...*

⁷⁹ J.J. Rousseau, *Mysli zhenevskogo filozofa*, V Tipogr. S. Celivanovskogo, Moskva 1804, p. 187.

and freedoms, subsistence right, liberty and protection from torture and inhuman treatment.⁸⁰

The current war initiated by the Russian Federation in Ukraine in 2022 became the most arbitrary and inhumane in Europe after the Second World War. It violated most civil rights and freedoms established by the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights of 1966, the UN Declaration of the Rights of the Child, 1959 global and regional international human rights treaties and conventions, which can be proved by the facts below.

Thus, according to the UN High Commissioner for Human Rights, the confirmed casualties among the population during the war in Ukraine from February 24 to March 30, 2022 are 3,167 civilians, of whom 1,232 were killed. The UN High Commissioner for Human Rights also provides information to the Office of the Prosecutor General of Ukraine as of March 30, 2022 on the deaths (148 children) and injuries (232 children). The High Commissioner paid attention to the extensive use of explosive devices with a large impact zone, including heavy artillery shelling and multiple rocket launchers, as well as missiles and air strikes.⁸¹ The UN High Commissioner for Human Rights reports on the war in Ukraine also record Russia's armed forces indiscriminate attacks on civilians by unconventional cluster and phosphorus munitions, heavy firing battery systems TOS-1 "Pinocchio" and TOS-1a "Sun" for thermobaric features.

Notably, the real data on human casualties in Ukraine, according to the UN High Commissioner for Human Rights, is "much higher, especially across government-controlled territory, and especially in recent days, as information from some places of intense fighting, is delayed, and many messages are still awaiting confirmation."⁸²

The war between Russia and Ukraine led not only to the large-scale extermination of Ukrainians on their territory, but generated refugee flows. According to UN High Commissioner for Refugees F. Grandi who visited Ukraine on April 1, 2022, the Russian military invasion has caused more than 10.5 million innocent civilian population displacement within Ukraine or abroad, while 13 million people

⁸⁰ V. Fedorenko, *Problem ochrony praw człowieka w warunkach rewolucji oraz konfliktów wojennych. Ochrona praw człowieka w wymiarze uniwersalnym*, w: J. Jaskiernia, K. Sprzyszak (eds.), *Aksjologia – instytucje – nowe wyzwania – praktyka*, Toruń 2017, pp. 73–79.

⁸¹ Update to the Human Rights Council on Ukraine/Office of The High Commissioner for Human Rights, <https://www.ohchr.org/en/statements/2022/03/update-human-rights-council-ukraine> (access: 30.04.2022).

⁸² *Ibidem*.

in Ukraine still need urgent humanitarian assistance.⁸³ At the same time, the drama of internally displaced persons during the war entails the indiscriminate divorces; over 4 million Ukrainians fled mostly to the Republic of Poland (more than 2.2 million people), the vast majority comprise children, women, and the elderly, the numbers constantly rising.

Today, international organizations and law enforcement agencies of Ukraine registered numerous violations of international laws and warfare procedures by the Russian servicemen across the occupied territories of Kyiv, Donetsk, Chernihiv, and Luhansk regions; the provisions were enshrined in the Geneva Convention of 1949 and the Hague Convention of 1907. Particularly, in their report on March 4, 2022, experts of the international organization Human Rights Watch, the head of the Europe and Central Asia division, Hugh Williamson, marked dozen cases of the excessive abuse of Ukrainian civilians. Thus, human rights activists recorded amicably performed executions by the Russian invaders in Stary Bykov, the Chernihiv region where on February 27, 2022 Russian soldiers captured and executed at least 6 men.⁸⁴

Notwithstanding, atrocities caused by the Russian military invasion were disclosed to the Ukrainian military, law enforcement units, as well as international experts and media representatives after the liberation of occupied cities (Bucha, Vorzel, Irpin, Hostomel, Makariv) and villages (Vyshenky, Zabuczia, Motyzyn in the Kyiv region), around the capital city. In particular, today the city of Bucha, which human rights activists compare to the city of Srebrenica (Bosnia), has acquired a symbolic name for Ukraine, and the world of inhumane atrocities – extrajudicial executions, rape, torture, kidnapping, looting and similar crimes, strictly prohibited by Articles 44–56 of the Hague Convention.

In his speech of April 3, 2022, the President of Ukraine stated: “Hundreds of people killed. The civilians tortured and shot. Bodies on the streets. Mined area. Even the bodies of the dead were mined! The pervasive implications of looting. Absolute evil has visited our land. The killers. Executioners. Rapists. Marauders. They call themselves the army.”⁸⁵ Photos of the liberated Bucha with a detailed information about the large-scale atrocities by the Russian army on the occupied

⁸³ *Verkhovnoho komisara OON u spravakh bizhentsiv vidvidav Ukrainu*, <https://ukraine.un.org/uk/176521-verkhovnyy-komisar-oon-u-spravakh-bizhentsiv-vidvidav-ukrayinu> (access: 30.04.2022).

⁸⁴ *Ukraine: Apparent War Crimes in Russia-Controlled Areas: Summary Executions, Other Grave Abuses by Russian Forces/ Human Rights Watch*, <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas> (access: 30.04.2022).

⁸⁵ *Chas zrobyty vse, shchob voieni zlochyny rosiiskykh viiskovykh staly ostannim proiavom tsoho zla na zemli – zvernennia Prezydenta Ukrainy*, <https://www.president.gov.ua/news/chas-zrobiti-vse-shob-voyenni-zlochyni-rosijskih-vijskovih-s-74053> (access: 30.04.2022).

territories have been brought to international partners and will be considered by the UN Security Council.

It is now clear that after the liberation of other towns and villages in Ukraine either under occupation or siege by the Russian army, the martyrology of victims, and committed war crimes against fundamental human rights and liberties may be multiplied. Therefore, it is important that these crimes against humanity in the heart of Europe in the 21st century do not escape punishment at the international level.

The Right to Peace and Late-War Design of Russian Military Invasion of Ukraine

In his work, *On the Law of War and Peace*, Hugo Grotius notes that “all mutual disputes between persons not bound by a single unified domestic law relate to the state of war or peace. ... The war itself then brings us to peace as its ultimate goal”.⁸⁶

The war chronicles discuss various grounds, reasons, procedures, and modes of ending. In contrast to the wars of classical antiquity and the Middle Ages, which presupposed a complete defeat of one warring party, seizure of its territory, and its status termination as a legal entity under public law (*debellatio*), starting from the 18th century, wars are increasingly culminating in the *de facto* reconciliation of the parties with the consolidation of these relations in peace treaties.

At the same time, as V. Danevsky wrote, often preceded by “*preliminary peace treaties* or draft final peace treaties (“trial balls,” as Prof. F. Martens puts it), which can be altered in the interests of the *international union*. The latter, being interested in the legal consequences of the war, which affect the international order of relations, must have the right to vote and exercise a decisive influence in assessing the terms of the peace treaty”.⁸⁷ Thus, international guarantees of peace treaties are an important factor of their a) fairness; b) reliability; c) applicability for the law of peace and the international community.

Nowadays, Ukraine has not only been heroically waging war with the aggressor, but also realizing the full potential of domestic and international democracy to convey Ukraine’s position on the grounds and prospects of concluding an agreement with Russia to end the war. Negotiations on the key points for future peace talks between the Presidents of Ukraine and Russia are being carried out at

⁸⁶ H. Grotius, op. cit., p. 67.

⁸⁷ V.P. Danevskij, op. cit., pp. 129–130.

the level of political advisers, Ministers of Foreign Affairs both countries, with the involvement of international partners as mediators.

So far, official provisions for these peace talks have not been released. At the same time, discussions on the principled foundations of the future peace treaty have been extensively debated by Ukrainian scholars and international law experts. In his open letter addressed to the head of state, a judge of the International Criminal Tribunal for the former Yugoslavia (2002–2005) V. Vasylenko suggested that the key provisions of the agreement with Russia should focus on “exercising an effective international mechanism to guarantee Ukraine’s security and selecting procedural tools for its implementation, compensation for all damage caused to Ukraine by Russian aggression since February 2014, extradition of Russian armed forces members who committed war crimes, anti-seizure of Crimea and ORDLO, eliminating any bans on Ukraine’s membership in the EU and restrictions on Ukraine’s armed forces on modern weapons, in particular, high-precision missiles of any range.”⁸⁸ Still, there appear other views on the implementation of Ukraine’s right to establish peace in the war conflict with Russia.

Notably, Carl von Clausewitz wrote that “even the final, decisive act of the war as a whole can hardly be interpreted as something absolute, for the defeated state often perceives it in terms of only imported evil that can be corrected in the future in the course of the forthcoming political relations”.⁸⁹ It is obvious that the late-war design involves concluding a peace treaty. Such steps would first guarantee the state sovereignty and territorial integrity of Ukraine together with ensuring the sustainability of its national security and defense; second, feasible international mechanisms would be suggested to guarantee Ukraine’s security against the revanchist policy of the Russian Federation; third, the design would constitute a global tool for the demilitarization of Russia and preventive measures for unleashing aggressive wars against other states.

Responsibility for Military Aggression and Russia’s Imperialist War against Ukraine

It seems obvious that a military campaign against sovereignty, territorial integrity, and constitutional values and principles, directly aimed at seizing territory, overthrowing legitimate state power, committing brutal and mass war crimes against

⁸⁸ V. Vasylenko, *Zelenskomu shchodo peremovyn z RF: «Za zhodnykh obstavyn Rosiia ne mozhe buty derzhavoiu-harantom»*, <https://censor.net/ua/n3330197> (access: 30.04.2022).

⁸⁹ K.O. Klauzevic, op. cit., p. 29.

civilians, is considered unjust. It violates all international humanitarian law provisions, or the "peoples' rights," as H. Grotius puts it, it undermines the world order and is subject to legal responsibility. Provoking a war results in political, economic, and legal responsibility on the part of the aggressor state.

From the very first days of military aggression, the Russian leadership was politically condemned by the majority of countries for unjustified military aggression against Ukraine. The country leaders, including Presidents of the United States, Poland, and France, the Prime Ministers of Great Britain, Canada, Lithuania, Germany, the UN Secretary General, policymakers and leaders of other international organizations denounced the war started by Russia in Europe, together with the Russian political regime headed by Vladimir Putin to start the unprovoked military aggression against a sovereign state.

On April 1, 2022, the Supreme Council of Ukraine adopted the Act "On the Prohibition of Propaganda of the Russian Neo-Nazi Totalitarian Regime, an Act of Aggression against Ukraine by the Russian Federation as a Terrorist State, Symbols Used by Armed Forces and other Military Formations of the Russian Federation in the war against Ukraine" (Reg. 7214 of March 26, 2022).⁹⁰ Thus, Russia is already politically responsible for the war provoked against Ukraine.

Russian people's involvement and responsibility with regard to the resolution of the war by their elected head of state remains a strikingly controversial issue, taking into consideration the high level of support for the military aggression against Ukraine the Russian citizens express. Regarding this matter, we note that in the prolegomenon to *Three Books on the Law of War and Peace*, H. Grotius mentions that just as a citizen who violates domestic law for individual immediate gain undermines the foundations of his well-being together with that of his descendants, a nation – by violating intrinsic rights and people's rights – undermines the foundation of their sustainable peace in perspective.⁹¹

Russia's war against Ukraine also caused a considerable rise in systemic economic and financial-banking sanctions against the aggressor state which have significantly weakened its banking, financial, and economic sectors over a month. Relevant sanctions have come at a price for Russian society, with Russia having been warned by the West before starting its war against Ukraine. It is obvious that the issue of the effectiveness of these sanctions remains the subject of independent

⁹⁰ *Pro zaboronu propahandy rosiiskoho neonatsystiskoho totalitarnoho rezhymu, aktu ahresii proty Ukrainy z boku Rosiiskoi Federatsii yak derzhavy-terorysta, symboliky, yaka vykorystovuietsia zbroinymy ta inshymy voiennymy formuvanniamy Rosiiskoi Federatsii u viini proty Ukrainy»: Proiekt zakonu (reiestr. 7214 vid 26.03.2022), <https://itd.rada.gov.ua/billInfo/Bills/Card/39284> (access: 30.04.2022).*

⁹¹ H. Grotius, op. cit., p. 48.

expertise and further scholarly studies. What is noteworthy, the withdrawal of foreign banks and most Western corporations from Russia, the curtailment of economic cooperation with the United States and EU member states, energy export, other resources restrictions and cessation have significantly undermined the “war economy.”

Political, economic, and other responsibility for launching a military attack together with violations of international laws and customs of warfare cannot be replaced by mandatory legal liability for war crimes against peace. It is obvious that Russian officials who unleashed aggression in Ukraine that resulted in a large-scale destruction of its civilian population and the critical infrastructure damage, as well as extrajudicial executions, torture, rape, other forms of sexual abuse, and the kidnapping of the civilians on territories temporarily occupied by the Russian army are subject to criminal punishment.

Today, the International Criminal Court, also known as the Hague Tribunal, which operates under the Rome Statute and deals with crimes against humanity, investigates war crimes committed by more than 40 countries (USA, UK, EU member states, Canada, and Australia). Since February 24, 2022, this list has been extended by Russia with its military invasion in Ukraine. Shortly, on February 28, 2022, the Chief Prosecutor of this Court, Karim Khan, announced the beginning of a case study into Ukraine, and on March 16, 2022, the official arrived in Ukraine as an investigation team member in collaboration with the Ukrainian colleagues, examining facts and evidence of war atrocities. The activity of the International Criminal Court in The Hague with proven effectiveness in exploring war crimes, including the genocide in Rwanda and the former Yugoslavia, has launched the prosecution process.

It seems essential to assist the International Criminal Court and other international bodies to review the situation in Ukraine by gathering facts of Russia’s violation of international laws and warfare procedures. An objective and well-formed evidence base, free from inaccurate information and fakes, will facilitate inevitability of punishing war criminals. The United States, Great Britain, Poland, France, Lithuania, and other countries have joined their efforts to accumulate database, a good example serves the activity of the Rafał Lemkin Center for documenting Russian crimes in Ukraine, which is located in Poland.⁹²

The key role in collecting evidence of Russian atrocities in Ukraine undoubtedly belongs to Ukraine itself. In his speech about crimes against humanity in Bucha, President of Ukraine V. Zelensky informed about his setting up a special machinery of justice to investigate and prosecute every crime of invaders in our country. It binds the joint work of national and international experts: investigators, prosecutors,

⁹² V.L. Fedorenko, M.V. Fedorenko, op. cit., p. 8.

and judges. This tool will assist Ukraine and the world to bring to justice those who have unleashed or in any way were engaged in military activities and atrocities toward Ukrainian people.

“The Ministry of Foreign Affairs, the Prosecutor General’s Office, the National Police, the Security Service, Intelligence, and other structures within their competence should make every effort to ensure its immediate realization.”⁹³

Conclusions

Despite fulfilling their main duty – to organize effective defense and protection of civilians during armed hostilities, the President, the Supreme Council of Ukraine, and the Cabinet of Ministers of Ukraine have managed to apply legitimate international legal mechanisms, especially the International Criminal Court and the UN Security Council, to finally bring Russia to justice for violating international humanitarian law and committing war crimes in Ukraine. Just when the territories of Ukraine were liberated from the occupation of the Russian army (Bucha, Hostomel, Irpin, etc.), it is already possible to implement a special mechanism of justice, which lies in the joint work of national and international experts and judges to collect objective and impartial evidence about drastic violations of international laws and warfare procedures in Ukraine.

No doubt, both Ukrainian victory and the just punishment of the Russian armed forces who have committed and continue atrocities on the Ukrainian territory are of prime importance for Ukraine today. The aftermath of World War II’s “Never Again” now requires, as never before, its effective guarantee and protection.

Translation from Ukrainian into English:
Dr Maria Onyshchuk

Bibliography

- Bauer S.U., *Istoriya Drevnego mira: ot istokov tsivilizatsii do padeniya Rima*, AST, Moskva 2014.
- Brested Dzh.G., *Istoriya Egipta s drevneyshih vremen do Persidskogo zavoevaniya*, Vol. I, Knigoizd. M. i S. Sabashnikovych, Moskva 1915.

⁹³ *Chas zrobyty vse, shchob voieni...*

- Buas'e G., *Padenie yazychestva. Issledovanie poslednej religioznoj bor'by na Zapade v chetvertom veke*, eds. M.S. Korelina, Tipografiya E. Lissnera i Yu. Romana, Moskva 1892.
- Chas zrobyty vse, shchob voienni zlochyny rosiiskyykh viiskovykh staly ostannim proiavom tsoho zla na zemli – zvernennia Prezydenta Ukrainy*, <https://www.president.gov.ua/news/chas-zrobiti-vse-shob-voyenni-zlochiny-rosijskih-vijskovih-s-74053> (access: 30.04.2022).
- Danevskij V.P., *Posobie po izucheniyu istorii i sistemy mezhdunarodnogo prava. Vypusk II*, Tipograf, A.N. Guseva, Har'kov 1892.
- Davis N., *Evropa: Istoriia*, «Osnovy», Kyiv 2014.
- Ejhel'man O., *Hrestomatiya russkogo mezhdunarodnogo prava. Chast' vtoraya*, Tipograf. V.I. Zavadzko, Kiev 1889.
- Fedorenko V., *Problem ochrony prav czlowieka w warunkach rewolucji oraz konfliktów wojennych. Ochrona praw czlowieka w wymiarze uniwersalnym*, in: J. Jaskiernia, K. Sprzyszak (eds.), *Aksjologia – instytucje – nowe wyzwania – praktyka*, Toruń 2017, pp. 73–79.
- Fedorenko V.L., Fedorenko M.V., *Katalogy ukrainskyykh starodrukiv, yak dzherela ekspertnoho doslidzhennia kyivskyykh kyrylychnyykh starodrukovanyykh vydan XVII–XVIII st.*, „Ekspert: paradyhmy yurydychnyykh nauk i derzhavnoho upravlinnia” 2022, No. 1(19).
- Fedorenko V., Nesterovych V., *'Soft Law' in the Mechanism of the International and National Protection of the Constitutional Electoral Rights*, „Krytyka Prawa” 2020, Vol. 12, No. 3, pp. 178–195.
- Geffer A.-V., *Evropejskoe mezhdunarodnoe pravo, s izmin. i dopoln. dlya russkogo perev.*, V tipogr. V. Bezobrazova i komp., Sankt Petersburg 1880.
- Graben'skij Vl. Istoriya pol'skogo naroda*, MFCP, Minsk 2006.
- Grotius H., *O prave vojny i mira. Tri knigi, v kotoryh obyasnuyutsya estestvennoe pravo i pravo narodov, a takzhe principy publichnogo prava*, ed. S.B. Krylov, Gosud. izd. Yurid. lit., Moskva 1956.
- Ieger O., *Vseobshchaya istoriya v chetyrekh tomah. Tom pervyj. Istoriya drevnyaya*, Izd-e A.F. Marksa, Sankt Peterburg 1904.
- Hartiya osnovnykh prav Evropejskogo Soyuzu*, http://zakon5.rada.gov.ua/laws/show/994_524 (access: 30.04.2022).
- Hrytsak Ya., *Narys istorii Ukrainy. Formuvannia modernoi natsii XIX–XX stolittia*, Yakaboo Publishing, Kyiv 2019.
- Iliashko O.O., Fedorenko M.V., *Pravovi aspekty formuvannia kozatstva, kozatskoi derzhavy ta osnov publichnoi sluzhby na ukrainskyykh zemliakh u kintsi XV st. – XVI st. Naukovi innovatsii ta peredovi tekhnolohii (seriia «Derzhavne upravlinnia», seriia «Pravo» i in.)* 2021, No. 2(2), pp. 86–100.
- Ivanovskij I.A., *Zhenevskaya konvenciya 10/22 avgusta 1864 g. Polozhitel'nyj mezhdunarodnyj zakon ob uchasti bol'nyh i ranenyyh voinov vo vremya vojny*, V Universit. Tipograf. (I.I. Zavadzko), Kiev 1884.
- Kant I., *Vechnyj mir. Filosofskij ocherk*, ed. L.A. Kamarovsky, Tipogr. T-va I.D. Sytina, Moskva 1905.

- Kazanskij P., *Uchebnik mezhdunarodnogo prava publichnogo i grazhdanskogo*, Tipo-litograf. Shtaba Odesskogo Voennogo Okruga, Odessa 1904.
- Klauzevic K., *O Vojne*, Eksmo, Moskva 2013.
- Konventsiiia OON pro polipshennia doli poranenykh i khvorykh u diuchykh armiakh 1949 r. Ofitsiyni visnyk Ukrainy, 2010, No. 62, p. 2180.
- Konventsiiia pro zakony i zvychai viiny na sukhodoli, pidpysana 18 zhovtnia 1907 r. u Haazi, Ofitsiyni visnyk Ukrainy 2017, No. 2.
- Konventsiiia pro zakhyst prav liudyny i osnovopolozhnykh svobod vid 4 lystopada 1950 r.: ratyfikovana Zakonom Ukrainy vid 17 lypnia 1997 r., razom z pershym protokolom ta protokolamy No. 2, 4, 7 ta 11. Vidomosti Verkhovnoi Rady Ukrainy, 1997, No. 40.
- Maksimovich M.A., *Sobranie sochinenij*, Vol. II: *Otdely: Istoriko-topograficheskij, arheologicheskij i etnograficheskij*, Tipogr. M.P. Frica, Kiev 1887.
- Martens F., *Sovremennoe mezhdunarodnoe pravo civilizovannykh narodov*, Vol. II, Tipografiya Minist. Putej Soobshcheniya (A. Benke), Sankt Petersburg 1883.
- Mendes M., *Opyt istoriko-kriticheskogo kommentariya k Grecheskoj istorii Diodora. Otnoshenie Diodora k Gerodotu i Fukididu*, «Ekonomicheskaya» tipograf, Odessa 1901.
- Ministerstvom kultury i informatsiinoi polityky Ukrainy zafiksovano 135 epizodiv voiennykh zlochyniv rosiian proty kulturnoi spadshchyny v Ukraini*, <https://mkip.gov.ua/news/7021.html> (access: 30.04.2022).
- Mizhnarodnyi pakt pro ekonomichni, sotsialni i kulturni prava vid 16 hrudnia 1966 r.: ratyfikovanyi Ukazom Prezydii Verkhovnoi Rady URSR vid 19 hrudnia 1973 roku/ Mezhdunarodnye akty o pravah cheloveka: sb. dokumentov. Moskva: NORMA-INFRA-M, 1998, pp. 44–52.
- Mizhnarodnyi pakt pro hromadianski i politychni prava vid 16 hrudnia 1966 roku: ratyfikovanyi Ukazom Prezydii Verkhovnoi Rady URSR vid 19 hrudnia 1973 r. (z dvoma fakultatyvnymy protokolamy)/Mezhdunarodnye akty o pravakh cheloveka: sb. dokumentov. Moskva: NORMA-YNFRA-M, 1998, pp. 53–76.
- Pro vvedennia voiennoho stanu: Ukaz Prezydenta Ukrainy vid 24 liutoho 2022 r.*, «Holos Ukrainy», 24.02.2022.
- Pro zaboronu propahandy rosiiskoho neonatsystskoho totalitarnoho rezhymu, aktu ahresii proty Ukrainy z boku Rosiiskoi Federatsii yak derzhavy-terorysta, symboliky, yaka vykorystovuietsia zbroinymy ta inshymy voiennymy formuvanniamy Rosiiskoi Federatsii u viini proty Ukrainy»:*
- Proiekt zakonu* (reiestr. 7214 vid 26.03.2022), <https://itd.rada.gov.ua/billInfo/Bills/Card/39284> (access: 30.04.2022).
- Rezhabecka F.V., *Markomanskie vojny*, Tipograf Shtaba Okruga, Odessa 1895.
- Rousseau J.J., *Mysli zhenevskogo filozofa*, V Tipogr. S. Celivanovskogo, Moskva 1804.
- Shul'gin I., *Izobrazhenie haraktera i sodержaniya novoj istorii pervykh desyati vekov po padeniyu Zapadnoj Rimkoj imperii (istoriya srednih vekov)*, V Tipograf. N. Grecha, Sankt Peterburg 1837.

- Sochineniya T.K., *Rus. perevod s primech. i so stat*, V.I. Modestova. Tom I. *Agrikola. Germaniya, Istriya*, Izd-e L.F. Panteleeva, Sankt Petersburg 1886.
- Speech by President Biden to Unite Free World Efforts to Support the People of Ukraine, <https://ua.usembassy.gov/uk/remarks-by-president-biden-on-the-united-efforts-of-the-free-world-to-support-the-people-of-ukraine/> (access: 30.04.2022).
- Speech by President of Ukraine Volodymyr Zelensky in the Norwegian Parliament – Storting, <https://www.president.gov.ua/news/promova-prezidenta-ukrayini-volodimira-zelenskogo-v-parlamente-norvegi-73961> (access: 30.04.2022).
- Stefanchuk R.O., Fedorenko V.L., *Vseukrainskyi referendum u systemi referendnoi demokratii, monohrafiia*. Vydavnychy dim «Helvetyka», Odessa 2020.
- Stoyanov A.N., *Ocherki istorii i dogmatiki mezhdunarodnogo prava. Lekcii chitan. 1873/74 akad. Godu v Har'kovskom un-te*, V universit. tipogr., Har'kov 1875.
- Terekhov I., *Ya nikoly ne ozvuchuvav tsykh tsyfr*, https://24tv.ua/ya-nikoly-ne-ozvuchuvav-tsykh-tsyfr-terehov-rozpoviv-pro-ruynuvannya_n1929022 (access: 30.04.2022).
- Vasylenko V., *Zelenskomu shchodo peremovyn z RF: «Za zhodnykh obstavyn Rosiia ne mozhe buty derzhavoiu-harantom»*, <https://censor.net/ua/n3330197> (access: 30.04.2022).
- Ukraina zaznala 564,9 miliardiv dolariv vtrat vid rosiiskoho otorhnennia*, <https://www.me.gov.ua/News/Detail?lang=uk-UA&id=f951df0a-e65c-4b0e-871f-9bf1a857fe57&title=UkrainaZaznala564-9-MiliardivDolarivVtratVidRosiiskogoVtorgnennia> (access: 30.04.2022).
- Ukraine: Apparent War Crimes in Russia-Controlled Areas: Summary Executions, Other Grave Abuses by Russian Forces/ Human Rights Watch*, <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas> (access: 30.04.2022).
- Universal Declaration of Human Rights: Adopted and proclaimed by United Nations General Assembly resolution No. 217 A (III) of 10 December 1948, Official Journal of Ukraine, 2008, No. 93. Art. 3103.
- Update to the Human Rights Council on Ukraine/Office of The High Commissioner for Human Rights, <https://www.ohchr.org/en/statements/2022/03/update-human-rights-council-ukraine> (access: 30.04.2022).
- Verkhovnoho komisara OON u spravakh bizhentsiv vidvidav Ukrainu*, <https://ukraine.un.org/uk/176521-verkhovnyy-komisar-oon-u-spravakh-bizhentsiv-vidvidav-ukrayinu> (access: 30.04.2022).
- Viko D., *Osnovaniya novoj nauki ob obshchej prirode nacij*, RIPOL klassik, Moskva 2018.
- Vsemirnaya istoriya. Chast' pervaya. Istoriya drevnego mira. Izd-e obshch.* Sv. Vasiliya V. Ungvar: V Tipograf, 1868.
- Yurydychna entsyklopediia*, V 6 t. Redkol, ed. Yu.S. Shemshuchenko, «Ukr. entsykl.», Kyiv 1998.