Hybrid War or Civil War? The Interplay of Some Methods of Russian Foreign Policy Propaganda with International Law

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Hybrid War or Civil War? The Interplay of Some Methods of Russian Foreign Policy Propaganda with International Law

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Abstract
This article discusses the attempts of Russian officials to hide the elephant in the room — Russia's military participation in a war that Russia falsely portrays as civil war in eastern Ukraine. Unlike Russia's propaganda, it relies on the facts of Russia's involvement in Ukraine, facts that show that Russian troops participated in the fighting in Donbas even though this has been adamantly denied by the highest ranking Russian officials. The author concludes that international law requires Russia and Russian leaders to be held responsible for waging a war of aggression against Ukraine.

Key Words: Russian Federation aggression, Crimea, Russian troops, criminal responsibility, Donbas, Ukraine.

Russia's responsibility for Ukraine's current wartime hardships is uncontested in most of the world. In 2014 Russia annexed Crimea and then attacked eastern Ukraine's Donbas region. No matter how hard Russian President V. Putin tries to deny his crimes, his actions speak louder than his words. Beginning in 2014 and now continuing in 2016, Russia's top leadership insisted that Russian troops were not in Ukraine. For example, in April 2015, V. Putin stated: “One should not even raise a question whether there are our troops in Ukraine. I tell you plainly and definitely — there are no Russian troops in Ukraine.”

In May 2014, D. Medvedev, Russia's Prime Minister, stated:

I have no desire to even comment on baseless hypotheses about Russia's intention to annex more territories, it is nothing more than propaganda. The most important task is to ease the tension within Ukraine itself. We all see what's going on there; there is nothing else but a civil war there. This is the problem to think over for all of us.

1 “Putin v ocherednoi raz zaiavil, chto rossiiskikh voisk v Ukraine net [Putin Yet Another Time Claimed that There are no Russian Troops in Ukraine].” UNIAN, April 16, 2015.

2 “Medvedev zaiavil, chto Rossii ne davala garantii territorialnoi tselostnosti Ukrainy [Medvedev Stated that Russia did not Guarantee Territorial Integrity of Ukraine].” Zerkalo nedeli, May 20, 2014.
In October 2014, he also asserted: “We are very concerned about the situation in Ukraine. We would like the civil war, provoked by a coup at the beginning of the year, to be over.”³

At a meeting with members of the Russian Duma’s political party factions on 14 August 2014, V. Putin said:

Unfortunately, Ukraine today is an example of the consequences of a national and civil disruption, radicalism and intolerance. The situation is becoming more and more dramatic; the country has plunged into bloody chaos, in a fratricidal conflict. There is a large-scale humanitarian disaster in the south-east of the country; thousands of people have died; there are hundreds of thousands of refugees who have lost literally everything. It’s a tragedy.⁴

Former Secretary of the Russian Security Council Igor Ivanov likewise characterized the war in Ukraine as a civil war:

The civil war in the territory of the largest European country with the population of 45 million people is an unprecedented event, which undermines our understanding of the state and prospects of development of the modern international system.⁵

Representatives of the Russian doctrine argue similarly.⁶ As A. Andreev and I. Yagolovich put it,

the fact that the armed conflict occurred and is playing out within a single sovereign state points to its internal nature. Repeated attempts to accuse Russia of expansion, the introduction of troops into the territory of Donbas, a continuous supply of military equipment, small arms, artillery, tanks and manpower are inconsistent, evidence of the wrongful nature of Russia’s actions in respect of Ukraine has not been presented.⁷

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Here and subsequently emphasis has been added by the author.

⁴ Vstrecha s chlenami fraktii politicheskikh partii v Gosudarstvennoi Dume (14 avgusta 2014 goda, Yalta) [Meeting with the Members of Factions of Political Parties in State Duma], Press-service of the President of the Russian Federation, August 14, 2014.

⁵ I. Ivanov, Ukrainskii krizis cherez prizmu mezhdunarodnykh otnoshenii [Ukrainian Crisis Through the Prism of International Relations] (Moscow: RSMD, 2015), 200–01.


⁷ A. Andreev and I. Yagolovich, “Sravnitelnyi analiz pravovogo regulirovaniia antiterroristicheskikh operatsii na Ukraine v 2014 godu i meropriiatii po vosstanovleniiu konstitucionnoi zakonnosti
A. Vilkov is sure that this so-called civil war in Ukraine arose from its peoples’ misconceptions:

The legitimacy of Ukrainian statehood has been shaped by targeted and consistent actions of the international centers of “promoting democracy,” in the framework of the “Eastern Partnership” and many other programs that have formed the Ukrainian citizens’ perspective that they belong to progressive European civilization, and have nothing in common with the imperial archaic Russian mentality. One only needs to make a final political choice in favor of breaking up with the Russian Federation to be able “to return” to the family of European nations on equal terms and to enjoy the material goods and other benefits of a liberal civilization. The outbreak of the civil war in Ukraine and the actual establishment of the nationalist regime that suppresses any manifestation of protecting the interests of the many millions of Russian-speaking population in the country clearly show what are the negative and tragic consequences of such a policy.\(^8\)

A. Manoilo believes the conflict in Donbas is a civil war waged by the Ukrainian authorities following US instructions:

Color revolutions besides the coup itself almost always bring about political chaos or like the Americans prefer calling it “controlled” chaos, the introduction of external management (it is sufficient to mention the appointment of foreign “legionnaires” on key positions in the Cabinet of Ministers of Ukraine), as well as the civil war, the genocide of civilians and military intervention. The country, which has undergone a revolution, does not become freer; on the contrary, in most cases it becomes very dependent on the US and its military and political allies, turning into their colony.

The future of these states is sad: people, economy, natural resources are expendable to instigate color revolutions in other countries, to provoke new international conflicts in which a special role is given to the new actors — States-provocateurs, Washington puppets, ready for anything to please their genuine American “masters.”

Quite often, the States-provocateurs (such as Georgia in the Russian-Georgian-South Ossetia conflict in 2008, Ukraine in the civil war in the Donbas or some of the Baltic States, making their territory available for NATO Task Forces to concentrate along the western borders

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of Russia) are granted major non-NATO ally status by the US and billions in loans for the purchase of new weapons and military equipment.\textsuperscript{9}

M. Shumilov is alarmed by Ukraine’s failure to fulfill its obligations. There is still fighting in the east of the country, during which the Ukrainian army uses heavy artillery, concentrating military forces capable of another aggression against DNR and LNR. The situation is far from clear. Such a state of affairs raises concern, pessimism and disturbing comments from the witnesses and direct participants of the events.\textsuperscript{10}

Eventually, most of the assertions of Russian officials and state media about the conflict in Ukraine have proved to be lies; a lot of them have been subsequently denied by the leadership of the Russian Federation itself. The most prominent example was Russia’s initial denial that Russian law enforcement agencies participated in the events in Crimea in February and March 2014.\textsuperscript{11} Later, Russia admitted its forces had participated.\textsuperscript{12} Even later, it disclosed the details of a pre-planned military operation “to return Crimea to Russia.”

Similar to these disclosures, the facts in the Donetsk and Luhansk regions have revealed that Russia set up, directly managed and broadly controlled the proclamation of the so-called “DNR” and the “LNR,” both of which declared independence from Ukraine in April 2014, held pseudo “referendums” and forcibly seized the Luhansk and Donetsk regions.\textsuperscript{13} These facts include the following issues:

\textsuperscript{9} A. Manoilo, “Rol tsvetnykh revoliutsii v sovremennykh gibridnykh voinakh [The Role of the ‘Color Revolutions’ in Modern Hybrid Wars],” Nauka i obrazovanie 8.63 (2015): 16.


\textsuperscript{12} “Putin: V Krym dlia razoruzheniia ukrainskikh chastei byli napravleny sily GRU [Putin: To Crimea for Disarmament of Ukrainian Units GRU Forces Were Sent],” TASS, March 15, 2015.

• the appointing of militant leaders from among Russian special services staff officers, such as I. Girkin, O. Borodai, V. Antiufeiev and a number of others. As Girkin acknowledged, his unit (which took an active part in the annexation of Crimea) was sent by the Russian Federation to Ukraine and seized Sloviansk, and, as he claimed, the unit consisted of Russians. He confessed he actually had “pulled the trigger of the war” when he stated: “If the unit had not crossed the border, eventually everything would come to an end, as it did in Kharkiv and in Odesa. There would be several dozen killed, burnt, arrested. However, it would come to an end. Practically, it was our unit who waged the war.”

• the supplying of arms, including heavy weapons to the militants by the Russian Federation;

• the financing of “the armed forces,” so-called “DNR” and “LNR” by the Russian government;

• the training of militants on the territory of Russia, which has been, in particular, mentioned by O. Zakharhchenko, one of the leaders of the “DNR”;

• the opening of “green routes” on the border with Ukraine;

• the appointing of “representatives” of “DNR” and “LNR” in Russian regions from among Russian officials;

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18 “Premier DNR zaiavil o popolnenii v 1200 boitsov, probohivshikh obuchenie v Rossii [PM of ‘DNR’ Announced Replenishment of 1,200 Fighters, Trained in Russia],” Moskovskii komsomolets, August 16, 2014.

19 D. Aleksandrov, “Milonova naznachili predstavitelem DNR v Peterburge [Milonov was Appointed Representative of DNR in St. Petersburg],” Slon, June 2, 2014; “Predstavitelstvo DNR nachnaet rabotu v Moskve [Representation of ‘DNR’ Starts Functioning in Moscow],” Kommersant, June 19, 2014;
• the subordinating of the “DNR” and “LNR” leaders to senior officials of Russia and V. Putin’s allies;
• the influencing of the militants by Putin, who gives them direct instructions;
• the advocating by senior Russian leaders for the “exit” of the Donetsk and Luhansk regions from Ukraine (for example, the respect of the “referendum” held by the militants in May 2014, the “election” in November 2014 and other actions against the territorial integrity of Ukraine;
• the recognizing of the “DNR’s” independence by the South Ossetia authorities, who are under complete control of the Kremlin; and
• the unrelenting heralding of the militants by the Russian Federation’s state-controlled media.

International law provides two approaches to the issue of responsibility for the conduct of armed groups in a foreign state. The first is the doctrine of effective control a set out in the ICJ’s Nicaragua judgment and in the case of Bosnia and Herzegovina against Serbia in 2007. This doctrine applies when the person or group of persons is in fact acting on the instructions of or under the direction or control of that State in carrying out the conduct (Art. 8 of Articles


“Strelkov признал, что главами террористов руководят неприятели из Кремля [Strelkov Recognized that Terrorist Leaders are Directly Managed by the Kremlin],” Obozrevatel, November 11, 2014.

“Glava MID Frantsii: Olland govoril s Putinym o peremirii na Ukraine [French Foreign Affairs Minister: Hollande Talked with Putin about a Truce in Ukraine],” Deutsche Welle, June 6, 2014.


on Responsibility of States for Internationally Wrongful Acts adopted by General Assembly resolution 56/83 of 12 December 2001).\(^{28}\)

The second is the overall control doctrine formulated by the ICTY Appeals Chamber in the Tadic case.\(^{29}\) This doctrine implicates a foreign state when it organizes, arms and finances military groups and coordinates or plans their actions, thus exercising “overall control” over them.\(^{30}\) In accordance with these two doctrines, Russia is responsible for the conduct of “DNR” and “LNR” because it directs, equips, finances and supervises the militants. In other words, Russia exercises general and effective control over armed forces that are essentially its proxy combatants.

Moreover, Russian army units actively participate in the fighting in the Donetsk and Luhansk regions.\(^{31}\) This is confirmed, for example, by NATO,\(^{32}\) the National Security and Defence Council of Ukraine,\(^{33}\) Ukraine’s Security Service, interrogations of Russian military personnel,\(^{34}\)

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\(^{33}\) National Security and Defense Council of Ukraine.

Russian media inquiries, confessions of the Russian military and militant leaders in the Donbas, and other compelling evidence.


It was the Russian army, which in August 2014 occupied a significant part of the Donetsk and Luhansk regions, that managed to succeed when the “militia” was almost destroyed. Russia’s argument that these soldiers were “on leave” and therefore free from Russian direction and control does not hold water either under Russian legislation or the facts.  

In fact, the Russian army waged war against Ukraine. The Russian military’s active involvement in the battle for Debaltsevo in February 2015 (when A. Merkel, F. Hollande and P. Poroshenko negotiated the end of the bloodshed with V. Putin) and in other specific operations is well documented. This can be seen in the respective stances of the US and the EU and in the decisions of the Council of the European Union. For example, on 9 February 2015, the Council applied sanctions against A. Antonov and A. Bahin, Deputy Ministers of Defense of the Russian Federation, for “sending Russian troops to Ukraine” and against the Chief of the Main Operational Directorate of the General Staff of the Russian Armed Forces Colonel General O. Kartapolov for “planning and launching of the Russian military campaign in Ukraine.” L. Mälksoo, in a study published in March 2015, noted the absurdity of Russian military personnel “on leave” fighting the Ukrainian army as Ukraine tried to regain control over its Donetsk and Luhansk regions, all of which occurred while the Russian Foreign Ministry declared Russia’s commitment to international law and a peaceful settlement. Again, Russia’s actions contradicted its words.  

When V. Putin was asked during a press conference in December 2015 if Russian troops were in the Donbas, he claimed: “We have never said that there are no people busy with

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38 Russian Defense Minister Order [prikaz] of 31 July 2006 № 252 (“On the Organization of the Russian Federation Military Exit”), accessed October 15, 2015, http://vip-basa.fvds.ru/%D3%E9%F4%D0%BD%81%BC%81%BC%BD%80%DD%80%F8%B8%BD%BD%80%BD%80%B7+D3%E9%F4%D0%BC%DC%BD%81%AC+%E2%84%96+252%DO%BD%80%DO%BF.html; V. Kichanova, “Chto delat soldatam, kotorye ne hotiat voevat [What to Do Those Soldiers, Who do not Want To Fight],” Slon, September 5, 2014.
performing certain tasks there, including those in the military sphere, but it does not mean that there are regular Russian troops there. Feel the difference. Putin did not specify how the Russian military personnel “performing certain tasks” differed from regular Russian troops. Nor could he. All Russian military personnel are regular Russian troops; the Russian military does not have “irregular” troops.

Therefore, those who ally themselves with Russia in claiming that Russia has not actively participated in the armed conflict in the Donbas do so in the face of solid, irrefutable evidence to the contrary. However, this does not silence them. M. Shumilov, for instance, is absolutely positive that,

in spite of Ukraine’s accusations of Russia’s support of militias, neither NATO nor the United States has provided any credible evidence to that effect.

Whereas, according to the French and German security services, Russia has never set a goal to seize the Donbas.

His assertion is twice-flawed. First, he deceptively cites tabloid Internet resources as special services’ reports. Second, apart from this deception, even if Russia did not or does not want to seize the Donbas, this does not mean that Russia does not want to wage war against Ukraine in the Donbas for other reasons, including to weaken Ukraine financially, politically, and in other ways.

The Russian Federation has no international legal arguments to justify its use of force against Ukraine. Thus, its military actions are illegitimate under international law.

Under international law, Russia is an unlawful military aggressor. That is, it has used its armed force against the sovereignty, territorial integrity or political independence of another State (Art. 1 of the “Definition of Aggression” of the UNGA resolution № 3314 (XXIX) dated 14 December 1974 and Art. 8-bis of Statute of the International Criminal Court).

More specifically, the existent evidence overwhelmingly demonstrates that Russia has waged the following acts of aggression against Ukraine in Donetsk and Luhansk regions (Art. 3 of resolution on the Definition of Aggression and Art. 8-bis of the ICC Statute):

- the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

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47 “AgoraVox: Kiev i NATO narushili pochti vse punkty minskikh soglashenii Donbassa [Kyiv and NATO Violated almost all the Points of the Minsk Agreements on Donbas],” RIA Novosti, April 13, 2015.
an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; and

- the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.\(^51\)

International law imposes a special regime of international responsibility on a State that violates the peremptory norms of general international law, including the prohibition of aggression. Those responsible for committing the crime of aggression are subject to individual criminal responsibility under international law. And the implementation of relevant international legal standards must be mandatory if the international community wants to stop the destruction of international peace and security.

Aggression is the most severe international crime because it violates mandatory international law. Aggression threatens the international legal order and the values common to all States and the international community as a whole. The international legal responsibility of the aggressor State, therefore, demands redress for both the injured State and the international community as a whole.

This redress contemplates restoring the international rule of law, compensating the injured State and imposing sanctions against and restrictions on the breaching State, including economic sanctions. Stronger sanctions can include limitations on the offending State's sovereignty, deprivation of ill-gotten territory, and a ban on certain types of armed forces.

Individuals bear individual criminal responsibility. President V. Putin has repeatedly claimed that the armed men who committed the acts of aggression starting from 26 February 2014 were the Russian military personnel, and, in March 2015, he stated that he personally took the decision to “start working on the return of Crimea to Russia” on the night of 23 March 2014 and was in charge of the military operation.\(^52\) Of course, other Russian Federation leaders who acted in concert with President Putin also bear responsibility.

Their responsibility is beyond reasonable doubt. Indeed, President Putin’s statement amounted to a confession that he and others committed the crime of aggression. Applying a paraphrasing of the relevant standard for liability, he and others planned, prepared, initiated and executed, as persons in positions effectively in control over and directing the political or military action of their State, an act of aggression which, by its character, gravity and scale, violated the Charter of the United Nations. These prohibited acts are articulated in Art. 8-bis of the Statute of the International Criminal Court.\(^53\) Criminal responsibility in this case can also arise from war crimes and crimes against humanity committed in the course of the aggression.


\(^{52}\) “Putin: narushenii so storony Rossii pri smene vlasti v Krymu ne bylo [Putin: There were no Violations by the Russian Federation to the Change of Power in Crimea],” Novaia gazeta, March 15, 2015.

\(^{53}\) Rome Statute of the International Criminal Court.
The State’s authorities are responsible for the promoting, pandering, or failing to take preventive measures against these crimes.

The specific institutional mechanisms for acting in this case, which might be the International Criminal Court or an ad hoc International Criminal Tribunal, will depend on further developments. Nevertheless, imposing responsibility on Russia as a State and taking measures by the international community aimed at preventing the repetition of such acts in the future are obligatory.

Bibliography


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