



KYIV-MOHYLA
LAW & POLITICS JOURNAL

KYIV-MOHYLA SCHOLARLY PEER-REVIEWED JOURNALS

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Source: Kyiv-Mohyla Law and Politics Journal 2 (2016): 117–128

Published by: National University of Kyiv-Mohyla Academy

<http://kmlpj.ukma.edu.ua/>

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."¹ 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.²

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 Rossiia 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

3 “Medvedev: Ukraina mozhет idti v ES, no za posledstviia budet otvechat Kiev [Medvedev: Ukraine May Join the EU but There will be Consequences]”, *Ukrainskaia pravda*, accessed October 15, 2014, <http://www.pravda.com.ua/rus/news/2014/10/15/7040823/>.

Here and subsequently emphasis has been added by the author.

4 Vstrecha s chlenami fraktsii 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.

6 A. Krivenko, “Ukrainskii krizis i ugrozy territorialnoi tselostnosti Rossiiskoi Federatsii [Ukrainian Crisis and Threats to the Territorial Integrity of the Russian Federation],” *Vlast* 4 (2015): 14–18.

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

i pravoporiadka na territorii Chechenskoi Respubliki v 1994 godu [Comparative Analysis of the Legal Regulation of Anti-Terrorist Operations in Ukraine in 2014 and Measures to Restore Constitutional Law and Order in the Chechen Republic in 1994],” *Voprosy bezopasnosti* 2 (2016): 32.

8 A. Vilkov, “Traktovki ‘spravedlivosti’ i ‘nespravedlivosti’ i ikh ispolzovanie v sovremennykh politicheskikh processakh [Interpretation of the Concepts of ‘Justice’ and ‘Injustice’ and Their Use in Modern Political Processes],” *Izvestiia Saratovskogo universiteta* 2 (15) (2015): 64–72.

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.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.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 2014.¹¹ Later, Russia admitted its forces had participated.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.¹³ These facts include the following issues:

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- 9 A. Manoilo, "Rol tsvetnykh revoliutsii v sovremennykh gibridnykh voynakh [The Role of the 'Color Revolutions' in Modern Hybrid Wars]," *Nauka i obrazovanie* 8.63 (2015): 16.
- 10 M. Shumilov, "Rol mezhdunarodnogo sotrudnichestva v uregulirovanii vooruzhennogo konflikta na Ukraine (2014–2015) [The Role of International Cooperation in Resolving the Armed Conflict in Ukraine, 2014–2015]," *Upravlencheskoe konsultirovanie* 6.78 (2015): 38.
- 11 "Putin: V Krymu net rossiiskikh soldat. Eto samooborona Kryma [Putin: There are no Russian Soldiers in Crimea. This is Self-defense of the Crimea]," accessed October 15, 2014, <https://www.youtube.com/watch?v=WDFsnAsnoLQ>; "Putin: nashi voennye 'vstali za spinoi' samooborony Kryma [Putin: Our Military 'Stood Behind' Self-defense of Crimea]," *Soobshhenie Russkoi sluzhby BBC*, April 17, 2014; "Zasedanie Mezhdunarodnogo diskussionnogo kluba 'Valdai' [meeting of the International Discussion Club Valdai]," Press-service of the President of the Russian Federation, accessed April 17, 2014, <http://kremlin.ru/transcripts/46860>.
- 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.
- 13 "Deklaratsiia o nezavisimosti Donetskoj Narodnoj Respubliki ot 7 aprelija 2014 g. [Declaration of Independence of 'People's Republic of Donetsk']," *Medialeaks*, accessed April 20, 2014, <http://medialeaks.ru/statements/deklaraciya-o-nezavisimosti-doneckoj-narodnoj-respubliki/>; "Deklaratsiia o provozglashenii nezavisimosti i gosudarstvennogo suvereniteta Luganskoi Narodnoj Respubliki. Kak hotiat otdeliat Luganskuiu oblast: perekhvachennyi scenarij [Declaration on the Proclamation of Independence and National Sovereignty of the 'People's Republic of Lugansk.' How

- the appointing of militant leaders from among Russian special services staff officers, such as I. Girkin, O. Borodai, V. Antiufiev and a number of others. As Girkin acknowledged, his unit (which took an active part in the annexation of Crimea)¹⁴ 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.”¹⁵
- the supplying of arms, including heavy weapons to the militants by the Russian Federation¹⁶;
- the financing of “the armed forces,” so-called “DNR” and “LNR” by the Russian government¹⁷;
- the training of militants on the territory of Russia, which has been, in particular, mentioned by O. Zakharchenko, one of the leaders of the “DNR”¹⁸;
- the opening of “green routes” on the border with Ukraine;
- the appointing of “representatives” of “DNR” and “LNR” in Russian regions from among Russian officials¹⁹;

They Want to Separate the Luhansk Region: The Intercepted Script],” accessed April 20, 2014, <http://www.pravda.com.ua/rus/articles/2014/05/6/7024570/?attempt=3>.

- 14 “Igor Girkin Strelkov: My nasilno sgoniali deputatov Kryma golosovat za otdelenie ot Ukrainy [Igor Girkin Strelkov: We Forcibly Drove Crimean Deputies to Vote for Secession From Ukraine],” Youtube, accessed April 20, 2014, <https://www.youtube.com/watch?v=hPSUUNngoQk>.
- 15 “Strelkov: Spuskovoi kriuchok voiny nazhal ia [Strelkov: I Pulled the Trigger of War],” *Novaia gazeta*, November 20, 2014; A. Prohanov and I. Strelkov, “Kto ty, ‘Strelok’? [Who are You, ‘Strelok?’],” *Zavtra*, November 20, 2014; “Ideoloh separatystiv: Rosiia postachaie ‘DNR’ suchasnoiu bronetekhnikoii [Ideologist of the Separatists: Russia Supplies ‘DNR’ with Modern Armor],” *Hromadske.tv*, accessed November 20, 2014, <http://www.hromadske.tv/society/boioviki——dnr——zhaliyutsya-shchorosiya-pogano/>.
- 16 “Ideoloh separatystiv”; “NATO Reports Sightings of Russian Tanks and Troops Entering Eastern Ukraine,” *The Guardian*, November 12, 2014; D. Herszohorn, “Fears Rise as Russian Military Units Pour Into Ukraine,” *New York Times*, November 12, 2014; “Press Availability With Ukrainian Prime Minister Arseniy Yatsenyuk after Meeting. Remarks by Secretary Kerry: February 2015,” *U. S. Department of State*, 2015; “Donbass. Russian Army,” *Bellingcat*, accessed April 20, 2014, <https://www.bellingcat.com/?s=Russia+weapon+Donbass>.
- 17 “Luhanski terorysty podiakuvaly rosiiskym komunistam za pidtrymku [Luhansk Terrorists Thanked the Russian Communists for Support],” *Espresso*, accessed April 21, 2015, http://espresso.tv/news/2014/06/25/luhanski_terorysty_podyakuvaly_rosiiskym_komunistam_za_pidtrymku.
- 18 “Premier DNR zaiavil o popolnenii v 1200 boitsov, prohodivshikh 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 nachinaet 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 allies²⁰;
- the influencing of the militants by Putin,²¹ who gives them direct instructions²²;
- 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 2014,²³ the “election” in November 2014)²⁴ 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 Kremlin²⁵; 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 set out in the ICJ’s Nicaragua judgment²⁶ and in the case of Bosnia and Herzegovina against Serbia in 2007.²⁷ 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

V. Makarenko, “V Rostove-na-Donu sozdano predstavitelstvo Donetskoj Narodnoj Respubliki [In Rostov-on-Don Created Office of the ‘People’s Republic of Donetsk’],” *Novaia gazeta*, May 29, 2014.

20 “Strelkov priznal, chto glavariami terroristov rukovodiat napriamuiu iz Kremliia [Strelkov Recognized that Terrorist Leaders are Directly Managed by the Kremlin],” *Obozrevatel*, November 11, 2014.

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

22 “Prezident Rossii Vladimir Putin obratilsia k opolcheniu Novorossii [Russian President Vladimir Putin Appealed to the Militia of New Russia],” Official website of the Russian President, accessed April 21, 2015, <http://www.kremlin.ru/transcripts/46506>.

23 “Interviu Ministra inostrannykh del Rossii S. V. Lavrova telekanalu ‘Blumberg’ Moskva, 14 maia 2014 goda [Interview of Russian Minister of Foreign Affairs Sergei Lavrov to ‘Bloomberg,’ Moscow, May 14, 2014],” The Ministry of Foreign Affairs of the Russian Federation, accessed April 21, 2015, http://www.mid.ru/brp_4.nsf/o/41F16D84381234C144257CD8006C0936; “S. Mironov: Gosduma mozhet rekomendovat Putinu priznat itogi referendum na Ukraine [S. Mironov: The State Duma may Recommend Putin to Recognize the Results of the Referendum in Ukraine],” *Vzgliad*, May 12, 2014.

24 “Zaiavlenie Ministerstva inostrannykh del Rossiiskoi Federatsii o vyborah 2 noiabria v Donetskoj i Luganskoj oblastiakh [Statement of the Ministry of Foreign Affairs of the Russian Federation on the Russian Elections on November 2 in the Donetsk and Luhansk Regions],” *Press Service of the Ministry of Foreign Affairs of the Russian Federation*, November 3, 2014.

25 Decree [Ukaz] “On the recognition of the Donetsk People’s Republic” dated 27.06.2014, President of the Republic of South Ossetia, official website, <http://presidentruo.org/?p=9295>, accessed July 27, 2014.

26 Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*); Merits, International Court of Justice (ICJ), 27 June 1986, accessed August 9, 2015, <http://www.refworld.org/docid/4023a44d2.html>.

27 Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*), General List No. 118, International Court of Justice (ICJ), 18 November 2008, <http://www.refworld.org/docid/4937d5e62.html>, accessed 9 August 2015.

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

28 Draft Articles on Responsibility of States for Internationally Wrongful Acts, text adopted by the International Law Commission at its 53rd Session, 2001 Doc. A/56/10, *Yearbook of the International Law Commission*, vol II, part 2, 2001.

29 *Prosecutor v. Dusko Tadic*, Judgement, ICTY, Case No. IT-94-1-A., 1999, 49–50.

30 W. Fenrick, “The Development of the Law of Armed Conflict through the Jurisprudence of the International Tribunal for the former Yugoslavia,” in *International Law Studies: Volume 71, The Law of Armed Conflict: Into the Next Millennium*, ed. Michael N. Schmitt and Leslie C. Green, 85–92, Newport: US Naval War College, 1998.

31 M. Dalton, “EU Foreign Ministers Say Russia May Face Tougher Sanctions,” *Wall Street Journal*, August 15, 2014; “V seti poiavilis foto unichtozhennogo terroristami lageria ATO pod Zelenopolem [The Photo of the Destroyed by Terrorists ATO Camp Appeared in the Network],” *Obozrevatel*, July 15, 2014; “Rosiiany vyklady u merezhu dokazy obstrilu Ukrainy z teritorii RF [The Russians have Put in a Network Evidence of the Attack on the Territory of Ukraine],” *5 kanal*, accessed July 27, 2014, https://www.youtube.com/watch?v=GVXz6XliRvQ&feature=youtuve_gdata; “Operatyvna informatsiia Informatsiino-analitichnogo tsentru RNBOU [Operational Information of the Information-Analytical Center of the NSDC],” National Security and Defense Council of Ukraine, accessed July 27, 2014, <http://www.rnbo.gov.ua/news/1792.html>.

32 “NATO Releases Satellite Imagery Showing Russian Combat Troops Inside Ukraine,” Ministry for Foreign Affairs of Ukraine, accessed July 20, 2015, <http://mfa.gov.ua/en/news-feeds/foreign-offices-news/27224-nato-releases-satellite-imagery-showing-russian-combat-troops-inside-ukraine>; “Russian Soldiers ‘Dying in Large Numbers’ in Ukraine — NATO,” *BBC*, March 5, 2015; “NATO Says Russian Troops Still in Ukraine,” *UA Today*, accessed July 20, 2015, <http://uatoday.tv/politics/nato-says-russia-troops-still-in-ukraine-556196.html>.

33 National Security and Defense Council of Ukraine.

34 “SBU prezentuie dokazy rosiiskoi agresii na skhodi Ukrainy — tanky T-72 vyrobництва RF [Security Service Presents Evidence of Russian Aggression in Eastern Ukraine — Tanks T-72 Produced in Russia],” YouTube channel of the Security Service of Ukraine, accessed December 3, 2015, <https://www.youtube.com/watch?v=ReomFFJQfVw>; “Viiskovosluzhbovci RF, iaki braly uchast v boiovykh diiakh na skhodi Ukrainy [Russian Soldiers who Participated in the Fighting in Eastern Ukraine],” YouTube channel of the Security Service of Ukraine, accessed March 18, 2015, <https://www.youtube.com/watch?v=-AitK5LeV9I>; “SBU nadala novi bezzaperechni dokazy uchasti rosiiskykh viiskovykh

Russian media inquiries,³⁵ confessions of the Russian military and militant leaders in the Donbas,³⁶ and other compelling evidence.³⁷

u boiovykh diiakh v Ukraini [Security Service of Ukraine has Provided New Unequivocal Evidence of Russian Military Involvement in the Fighting in Ukraine],” YouTube channel of the Security Service of Ukraine, accessed July 29, 2015, <https://www.youtube.com/watch?v=ZvBBBhhB5Jw>; “SBU pokazala rosiiskykh GRUshnikiv [SBU Showed Russian Special Forces Members],” YouTube channel of the Security Service of Ukraine, accessed July 28, 2015, <https://www.youtube.com/watch?v=Ra-tK5AM1uQ>; “Sluzhba bezpeky Ukrainy zatrymala rosiiskoho spetspryznachentsia [The Security Service of Ukraine Detained a Russian Special Forces Member],” YouTube channel of Special correspondent, March 5, 2015, <https://www.youtube.com/watch?v=zCLlyx2V9bk>; “SBU opublikovala video doprosa plennykh rossiiskikh voennykh [SBU Published a Video Interrogation of Prisoners of War],” *Radio Svoboda*, May 19, 2015.

- 35 M. Solopov, “Rassledovanie RBK: otkuda na Ukraine rossiiskie soldaty [Investigation RBC: Where Russian Soldiers Come from in Ukraine],” *Rossbizneskonsalting*, accessed October 2, 2014, <http://top.rbc.ru/politics/02/10/2014/542c0dcfcbb20f5d06c1d87a>; “Zaderzhannykh vo vremia boia v Donbasse rossiian obvinili v terrorizme [Detained During a Fight in the Donbas Russians Accused of Terrorism],” *Kommersant*, accessed May 20, 2015; A. Koshik et al., “Ya ne khotel uchastvovat v boevykh deistviiakh na territorii Ukrainy. Maikopskikh kontraktnikov, ispugavshihsia otpravki na Ukrainu, sudiat za dezertirstvo [I did not Want to Take Part in the Fighting on the Territory of Ukraine. Maikop Contractors who Feared Sending to Ukraine, on Trial for Desertion],” *Gazeta.ru*, accessed July 11, 2015, http://www.gazeta.ru/politics/2015/07/10_a_7633125.shtml; M. Solopov, “Sluzhba ponevole: kak srochnikam naviazylaiut kontrakt i poezdku pod Rostov [Involuntarily Service: How Conscripts are Forced to Sign a Contract and be Sent to Rostov],” *RBK*, February 3, 2015; E. Racheva, Bilet v odin konets. Kak voiuut v Ukraine rossiiskie desantniki [One Way Ticket. How Russian Paratroopers Fight in the War in Ukraine],” *Novaia gazeta*, September 8, 2014; V. Dergachev et al., “Tam russkie gibnut, vy dolzhny ikh zaschischat.” V SPCh soobshhili o murmanskikh kontraktnikakh, kotorye otkazalis ehat v Donbass [There are Russians Killed, you Have to Protect Them.” The HRO Reported About Murmansk Contract Soldiers who Refused to go to Donbass],” *Gazeta.ru*, accessed February 13, 2015, http://www.gazeta.ru/politics/2015/02/11_a_6408545.shtml; E. Kostiuhenko, “Armiia i dobrovoltsy [Army and Volunteers],” *Novaia gazeta*, September 3, 2014.
- 36 “Interviu Vsevoloda Kozlova, otsa desantnika Nikolaia Kozlova [Interview with Vsevolod Kozlov, Father of Paratrooper Nikolai Kozlov],” *Ekho Moskvy*, accessed September 3, 2014, <http://www.echo.msk.ru/programs/beseda/1392680-echo/>; P. Kanygin, “Derzhis i znai, chto doma, na rodine tebia vseгда zhduť [Hold on and Know that at Home, in the Motherland, you are Always Waited for],” *Novaia gazeta*, 97 (2015); P. Kanygin, “Nikogda takogo ne bylo, chtoby ia mame zvonil, a ona trubku ne brala [It had Never Happened that I Called my Mother, but she did not Take the Phone],” *Novaia gazeta*, 55 (2015); P. Kanygin, “Prikaza primeniati oruzhie ne bylo [There was no Order to Use Weapons],” *Novaia gazeta*, 53 (2015); E. Kostiuhenko, “My vse znali, na chto idem i chto mozhnet byt [We all Knew What we’re Going to and What Could Happen],” *Novaia gazeta*, 22 (2015); A. Baklanov, “Rossiiskie ofitsery provodiati otpusk v Donetske [Russian Officers Spend Their Holidays in Donetsk],” *Snob*, August 28, 2014.
- 37 “Nezavisimyi ekspertnyi doklad ‘Putin. Voina’ [Independent expert report ‘Putin. War’],” (Moscow, 2015), accessed February 13, 2015, <http://www.putin-itogi.ru/putin-voina/>.

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.³⁸

In fact, the Russian army waged war against Ukraine. The Russian military’s active involvement in the battle for Debaltsevo in February 2015³⁹ (when A. Merkel, F. Hollande and P. Poroshenko negotiated the end of the bloodshed with V. Putin)⁴⁰ and in other specific operations is well documented.⁴¹

This can be seen in the respective stances of the US and the EU⁴² and in the decisions of the Council of the European Union.⁴³ 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.”⁴⁴ 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.⁴⁵ 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

38 Russian Defense Minister Order [prikaz] of 31 July 2006 № 250 (“On the Organization of the Russian Federation Military Exit”), accessed October 15, 2015, <http://vip-basa.fvds.ru/%D0%9F%D1%80%D0%B8%D0%BA%D0%B0%D0%B7+%D0%9C%D0%9E+%D0%A0%D0%A4+%E2%84%96+250%D0%B4%D1%81%D0%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.

39 I. Barabanov, “V pampasakh Donbassa [In Pampas of Donbas],” *Kommersant*, February 19, 2015.

40 “The War Next Door: Can Merkel’s Diplomacy Save Europe?” *Spiegel*, February 14, 2015.

41 P. Gregory, “Europe and U. S. Finally Declare That Russian Soldiers are Fighting in Ukraine,” *Forbes*, February 17, 2014; “Bored Silly: The Russian Invaders’ Games in Donbas,” *InformNapalm*, accessed January 10, 2016, <https://informnapalm.org/en/jan10-donbas-games/>; F. Bjorn, “The ATO Headquarters Briefs Foreign Press on Frontline,” *InformNapalm*, accessed March 15, 2015, <https://informnapalm.org/en/the-ato-headquarters-briefs-foreign-press-on-frontline/>; F. Bjorn, “Units of the Russian Armed Forces which have been Deployed to Fight in Eastern Ukraine,” *InformNapalm*, accessed September 21, 2014, <https://informnapalm.org/en/identification-units-russian-armed-forces-deployed-fight-eastern-ukraine/>.

42 P. Gregory, “Europe and U. S. Finally Declare That Russian Soldiers Are Fighting In Ukraine,” *Forbes*, February 17, 2015.

43 M. Dalton, “EU Foreign Ministers Say Russia May Face Tougher Sanctions,” *Wall Street Journal*, August 15, 2014.

44 Council Decision (CFSP) 2015/241 of 9 February 2015 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Official Journal.

45 L. Mälksoo, *Russian Approaches to International Law* (Oxford: Oxford University Press, 2015), 191.

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.”⁴⁶ 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,⁴⁷ Russia has never set a goal to seize the Donbas.⁴⁸

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 1974⁴⁹ and Art. 8-bis of Statute of the International Criminal Court).⁵⁰

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;

46 N. Khomami, “Vladimir Putin Press Conference: ‘Russian Military Personnel were in Ukraine,’” *The Guardian*, December 17, 2015.

47 “AgoraVox: Kiev i NATO narushili pochtu vse punkty minskikh soglashenii Donbassa [Kyiv and NATO Violated almost all the Points of the Minsk Agreements on Donbas],” *RIA Novosti*, April 13, 2015.

48 Shumilov, “Rol mezhdunarodnogo sotrudnichestva,” 34–35.

49 E. Wilmschurst, “Definition of Aggression” (United Nations, 2008), 4.

50 UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), July 17, 1998, accessed August 9, 2015, <http://www.refworld.org/docid/3ae6b3a84.html>.

- 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.

51 General Assembly Resolution [Adopted without a Vote on a Report from the Sixth Committee] 3314 (XXIX). Definition of Aggression. — A/RES/29/3314, United Nations, 1974, 2; The Review Conference, Resolution RC/Res.6. Adopted at the 13th plenary meeting, on 11 June 2010, by consensus, ICC, 2010.

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

- Andreev, A., and I. Yagolovich. "Sravnitelnyi analiz pravovogo regulirovaniia antiterroristicheskikh operatsii na Ukraine v 2014 godu i meropriatii po vosstanovleniiu konstitutsionnoi zakonnosti i pravoporiadka na territorii Chechenskoii Respubliki v 1994 godu [Comparative Analysis of the Legal Regulation of Anti-Terrorist Operations in Ukraine in 2014 and Measures to Restore Constitutional Law and Order in the Chechen Republic in 1994]." *Voprosy bezopasnosti* 2 (2016): 27–42.
- Fenrick, W. "The Development of the Law of Armed Conflict through the Jurisprudence of the International Tribunal for the former Yugoslavia." In *International Law Studies: Volume 71, The Law of Armed Conflict: Into the Next Millennium*, edited by Michael N. Schmitt and Leslie C. Green, 77–118. Newport: US Naval War College, 1998.
- Manoilo, A. "Rol tsvetnykh revoliutsii v sovremennykh gibridnykh voynakh [The Role of the 'Color Revolutions' In Modern Hybrid Wars]." *Nauka i obrazovanie* 8.63 (2015): 13–18.
- Mälksoo, L. *Russian Approaches to International Law*. Oxford: Oxford University Press, 2015.
- Shumilov, M. "Rol mezhdunarodnogo sotrudnichestva v uregulirovanii vooruzhennogo konflikta na Ukraine (2014–2015) [The Role of International Cooperation in Resolving the Armed Conflict in Ukraine, 2014–2015]." *Upravlencheskoe konsultirovanie* 6.78 (2015): 24–39.
- Vilkov, A. "Traktovki 'spravedlivosti' i 'nespravedlivosti' i ikh ispolzovanie v sovremennykh politicheskikh processakh [Interpretation of the Concepts of 'Justice' and 'Injustice' and Their Use in Modern Political Processes]." *Izvestiia Saratovskogo universiteta* 2.15 (2015): 64–72.



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