

THE MONOGRAPH WHICH WE HAVE PRESENTED TO YOUR ATTENTION IS AN ATTEMPT TO INTELLECTUALLY IRRIGATE THE «BLOODY LANDS», WHICH INCLUDE THE COUNTRIES OF THE BALTIC-BLACK SEA REGION. THEY WERE THOSE WHO SUFFERED THE MOST DURING THE TWENTIETH AND EARLY TWENTY-FIRST CENTURIES FROM WORLD WARS, THE CONFRONTATION OF TOTALITARIAN SYSTEMS, AND THE IMPLEMENTATION BY THE SOVIET GOVERNMENT OF THE VAE VICTIS PRINCIPLE.

THE BOOK SHOWS RUSSIA CONTINUES TO USE AGGRESSIVE POLICY NOT ONLY ON ITS OWN TERRITORY, CONSISTENTLY REDUCING THE RIGHTS AND FREEDOMS OF RUSSIAN CITIZENS, BUT ALSO TRYING TO IMPLEMENT IT AT LEAST IN THE POST-SOVIET SPACE. THE PHANTOM PAINS OF THE EMPIRE DUE TO THE LOST INFLUENCE DO NOT PASS EASILY.



SURVIVING

NEAR THE EMPIRE: PRICE OF THE MODERN KREMLIN'S AGGRESSION

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**PRICE OF THE MODERN KREMLIN'S
AGGRESSION**

*Translated into English by
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The monograph which we have presented to your attention is an attempt to intellectually irrigate the «bloody lands», which include the countries of the Baltic-Black Sea region. They were those who suffered the most during the twentieth and early twenty-first centuries from world wars, the confrontation of totalitarian systems, and the implementation by the Soviet government of the *Vae victis* principle.

The book shows Russia continues to use aggressive policy not only on its own territory, consistently reducing the rights and freedoms of Russian citizens, but also trying to implement it at least in the post-Soviet space. The phantom pains of the empire due to the lost influence do not pass easily.

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For the design of the title page there have been used the painting by Salvador Dali «Geopolitical child watching the birth of a new man»

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FOREWORD

In a speech in 2005 the Russian president Vladimir Putin called the collapse of the Soviet Union the «greatest geopolitical catastrophe» of the twentieth century. In March 2018, before the presidential election, according to agencies, he said he would reverse soviet collapse if he could.

For the Western European countries (on the free side of the iron curtain) and the USA the end of the Soviet Union was also the end of the Cold War, which had dominated world politics for almost half a century. Several former Soviet republics could become independent states and had the chance to develop these countries to free, democratic and market-economy orientated societies. The future of Europe, so the hope at this time, should be a new era of security and stability. War should be a phenomen of the past (although the Milosevic-wars in Ex-Yugoslavia proved that a bad guy with a big army can always start a conflict).

On the other hand, the quotes from Vladimir Putin are a clear sign, that in the circles of the former rulers of the soviet empire, the cold war was lost but not over. The old

geopolitical goal to dominate the European continent and to re-integrate the former Soviet controlled territories under the rule of Moscow was still alive. The dictum from the end of history (Francis Fukuyama) was more an illusion of the Western world than a reality in world politics. The good vibes, that liberal democracy had now won its final victory, made it almost impossible to think about a revival of hegemonial policy, emerging in Moscow and threatening the independence and freedom of European countries. When Otto von Habsburg, the late president of the Paneuropean-Union, wrote several articles, warning that the new president of Russia is working on a revival of the Soviet era, many commentators said, this old man has lost contact to reality. Even experts for security policy spoke about a new era of peace and security. And if a conflict would arise, we would have about ten years to prepare for such a conflict. Finally, Europe was taken by surprise when Putin started his war against Georgia. And the same happened when the green men took Crimea.

During the Cold War the Western European countries had a lot of sovietologists, experts who had a great experience in analysing the political activities from Moscow. Within a few years most of these experts got lost, retired or started to work in a new profession, dealing with other crisis in our dangerous world. For most people in Western Europe the history of countries like Ukraine, their struggle for independence from Moscow, is completely unknown. The opinion, that this region belongs to Russia, as it has «always» been part of Russia, is widespread. In addition, the PR-strategy from Russia is doing an excellent job. Propaganda works.

Therefore, it is very important to create a new information-offensive about the real goals of Russian politics, its

capacity in propaganda, which is part of a hybrid war. This monograph will be a piece in this information policy, and I hope that we will have a chance to spread it also in the Western European countries.

Rainhard Kloucek,
secretary general Paneuropa Movement Austria
(Paneuropabewegung Österreich)

INTRODUCTION

Russia's hybrid actions in the modern world have two dimensions. On the one hand, this is the reality of the Kremlin's attempts to influence the life of the surrounding world. On the other hand — the history of the use of new technologies in combination with imperial ideology. This mix allows us to understand what the Russian Empire (federation) lives in the modern world, what will be its future intentions.

The monograph which we have presented to your attention is an attempt to intellectually irrigate the «bloody lands», which include the countries of the Baltic-Black Sea region. They were those who suffered the most during the twentieth and early twenty-first centuries from world wars, the confrontation of totalitarian systems, and the implementation by the Soviet government of the *Vae victis* principle. Russia continues to use it not only on its own territory, consistently reducing the rights and freedoms of Russian citizens, but also trying to implement it at least in the post-Soviet space. The phantom pains of the empire due to the lost influence do not pass easily.

INTRODUCTION

The international team of researchers was able to meaningfully study a set of political science and legal issues that arise in living conditions near the empire. Life or survival is a question that political scientists, human rights activists, and lawyers, for whom studying Russia's aggressive policy is a part of everyday activity, are trying to answer together. Therefore, the collective monograph sometimes resembles the notes of a front-line correspondent from the zone of intense hostilities.

The formal state of Russia as a federation conveys neither the sentiments of the local political elite nor the ideology of state-building that prevails within Russia. Imperial ideology and practice prevail in the world's largest state. That is why the definition of the Kremlin's hybrid tools in the tactical and strategic planes can be called the technology of effective counteraction to its use, and in Ukrainian realities — the key to Ukraine's survival in a long hybrid confrontation with Russia.

Does the monograph offered to your attention seem to be anti-Russian? The answer is no, because the criminal actions of the authorities of any state are international in nature and require a special counteraction procedure. Today — in the field of politics, economics, public life, tomorrow — by creating a special international judicial body. Therefore, the study of survival practices alongside an aggressive empire is important.

I.

HISTORY OF THE RUSSIAN STATE: A WARRING EMPIRE

«Why is Russia behaving aggressively?» The simplest answer to this question would be the statement that «Russia is an empire». The majority of historians believe that aggression is the means of the existence of any empire. War must be waged to build an empire, to sustain it, and to prevent it from disintegrating. According to these general criteria, the actions of the Russian Empire are similar to the actions of other empires from the past, such as: the Ottoman, British or French Empires.

Empires construct their legitimacy to dominate and conquer other territories. The key to this is the «spirit of the age». Colonialism of the XIX century legitimized itself by the civilizational mission, the supremacy of European culture, or racist arguments about «white people». Wars were fought with barbarians, which seemed absolutely right for colonizers. However, the Europeans won solely because of their military superiority. The colonial wars mostly resembled modern artillery clash with soldiers armed with bows and arrows.

In the late nineteenth century political map of the world acquired distinct outlines. A huge part of the continent was shaded red or blue in atlases of those times, where British territory was marked in red and the French — in blue. In addition, a large homogeneous spot in the form of the territory of tsarist Russia stood out on the political globe.

The history of imperialist France ends in Indo-China and Algeria, the British Empire ends with the beginning of the Suez Crisis. In both cases the collapse of these political entities linked to the process of decolonization, which began with the end of World War II.

The Russian Empire is marked by a longer and greater duration of its existence. The decolonization processes that began after the end of the Second World War did not affect Russia in any way.

In 1989-1991, the empire receives a severe blow (in territorial and demographic terms). However, after the year of 2000 the process of imperial restoration (reconstruction of imperialism) began. The processes mentioned above are associated with numerous military actions — Chechnya, Georgia, the annexation of Crimea, the war in Donbas, support for the conflict in Transnistria and intervention in Syria. In addition to the listed wars, the disinformation war against Western countries (influence on Britain's withdrawal from the European Union or on the US elections in 2016) and assassinations of political opponents in foreign countries as well.

Very often, the Kremlin justifies its actions by appealing to Russia's history. The historical approach cannot be the only explanation, and sometimes it is wrong to use it to explain the Kremlin's current military aggression. It must be analyzed in the light of modern cultural conditions and the

history of the empire, which constitute a set of mythologies which basically create a modern neo-imperial ideology. Many researchers argue that Islamic terrorism dressed up in robes of archaic traditionalism and fundamentalism is actually a product of the postmodern world and globalization. In a similar way I suggest looking at the Russian neo-imperial ideology, which is a legacy of the Soviet and tsarist past. I am sure that it is manipulative mold of various narratives that are selectively directed to various governments, social groups and environments. These actions need to be explained in the context of concepts such as «mass culture», «postmodernism» and «post truth», despite the Kremlin's appeals to historical analogies and mythologies. These narratives are subject to Russian strategic narrative that says — «the world is in chaos», but only Russia's actions make sense.

THE LEGACY OF THE EMPIRE

The territory increase always precedes the emergence of imperial ideology. In case of Russia, certain elements of the Russian imperial idea were formed before the empire itself. In the Russian case, an important place is occupied by historical argumentation and a special type of primordialism, which has neither French nor British imperial ideology. This feature works in Russia even today, a clear example serves to be Putin's statement: «The baptism of Russia began in Khersones» (That is, the annexation of Crimea in 2014 was due to the fact that Russian Christianity was born in Crimea in 988).

Russian imperial ideology consists of a number of mythologies: «The Third Rome», «Gathering the Lands of the Russians», «Slavophilism», «Rus' — Russia», «Center of Orthodoxy». In fact, these are the fundamental components

of the traditional version that was formed before the First World War. During the Soviet Union the Russian imperial ideology has undergone significant changes. Communism rejects and delegitimizes «tsarist Russia» in order to eventually return to certain parts of it, enriching it with the concepts of «statehood» and «Eurasianism.»

After 1991, Moscow accepts its complex heritage, transforming it and creating a new narrative of imperial ideology.

TERRITORY

Huge amounts of territory is an essential element of the myths of Russian ideology. The above is reinforced through Mercator, creating an optical illusion of disproportionately gigantic Russia.

The specificity of the Russian Empire is its territorial monolithic nature. The conquered territories became part of the state, which in a sense masked the colonial nature of the Russian conquests.

The liquidation of the Kazan Khanate in 1552 opened the way to Asia and the Great Steppe. That possibility of Russian expansion to the East could be considered as the beginning of imperial development¹. The colonization of new territories is associated with exploitation and extensive economic development, which is possible by the availability of large territories, their ease of capture and control. Russia produces furs, mines gold and minerals in the occupied lands. Conquered Siberia and its annexion to Muscovite Russia in the XVII century gave the empire one-third of the income.

¹ H.Carrère d'Encausse, *L'Empire d'Eurasie. Une histoire de l'Empire russe de 1552 à nos jours*, Le Livre de Poche: Paris 2005.

Colonial expansion is associated with wars that result in genocide or the partial annihilation of certain ethnic or religious groups¹. The population of Yakutia in 1642-1682 decreased by 70 %, primarily as a result of epidemics of diseases that came with the colonizers.

The Russian Empire existed in its traditional form before the First World War. Despite Russia's differences and technical and economic backwardness, it is involved in the process of colonizing the non-European world and is perceived by other empires as an equal partner and ally.

The First World War leads to a deep crisis, but the empire is revived under the Bolsheviks. Russia emerges victorious from World War II and the empire reaches its maximum borders (taking into account the territories of the satellite countries and the Warsaw Pact countries). Russia is becoming a superpower in a bipolar world.

THE THIRD ROME

The mythology of the «Third Rome» is associated with the fall of Byzantium (1463) and the symbolic marriage (1472) of the Byzantine Princess Sophia Palaeologus and Prince Ivan III of Moscow. Over time, this idea will become a fundamental element of the imperial ideology, which will combine claims to leadership in the world Orthodoxy and later transform into the idea of a separate Russian civilization.

¹ After the annexation of Kamchatka in 1697, Russia meets resistance from the local Koryaks (who lived in the north of the Far East and in Kamchatka). The purpose of the war of 1744-1747 was their «complete annihilation». The uprisings of the Itelmen, who lived in the south of Kamchatka in 1706, 1731, and 1741, were suppressed. Today, only 2.5% of Kamchatka's population is indigenous (about 10,000 from the previous 150,000). The population of Itelmen is about 3,000, most of whom speak Russian. The fate of other indigenous peoples of Siberia, such as the Chukchi, is similar.

The idea of the Third Rome positions the history of Russia in a much broader context than just a national state. We will not find any similar mythology or idea in the imperial ideology of France or Britain.

«COLLECTION OF RUSSIAN LANDS»

At the beginning of the XVI century under dynastic ties Moscow puts forward territorial claims to the whole Rus', arguing that it is the sole heir of Rurik.

The Treaty of Pereyaslav (1659) became another stage in the realization of the idea of «gathering lands,» and Moscow's desire to annex Ukraine at that time is still interpreted by Russian historians in a similar way today. Accordingly, the next stage is the conquest of Cossack Ukraine and the accession of the Hetmanate with the subsequent integration of the lands of the ancient Commonwealth. Paradoxically, but in a sense, Molotov–Ribbentrop Pact can be explained as a kind of integration of Ukrainian and Belarusian lands into the USSR and the implementation of a historical mission that has a medieval origin and is called «gathering Russian lands».

SLAVISM¹

The Russian narrative of the common origin of Russia, Ukraine, and Belarus is an invention of the XIX century (such an explanation of ethnicity in the modern sense excludes an independent account of the later history of these countries). According to the Russian view, Ukraine and Belarus are only a part of Greater Russia.

¹ (*translator's notes*) Slavicism — in a broader and theoretical sense, we can talk about slavophilism.

Rus-Russia is the mother of three nations and the sole heir of the medieval Rus. Instead, **Ukraine and Belarus were under occupation after the fall of Kievan Rus.**

RUS — ALL RUS — RUSSIA — GREAT RUSSIA

Although the Moscow principality was the first state formation of modern Russia. However, Russia is trying to derive its statehood from the era of medieval Russia, justifying it by the dynastic kinship of the Moscow princes with the Rurik. In 1432 Vasily II the Blind is crowned as «Grand Prince of All Russia».

Since the end of the XV century, Russia started to commence using the Greek name Rus in order to emphasize the ambitions of the then Muscovite Russia, as the successor to ancient medieval Rus. Russian historiography of the XIX century began to use the term of Kievan Rus (this should serve as a delegitimization of Ukrainian nation-building process). Accordingly, starting from the XIX century, an integral imperial mythology emerges: Rus — Russia — Kievan Rus. Rus-Russia is identified as an empire, and the beginning of the empire with the beginning of Rus (1552 for some European historians is a symbolic beginning of the Russian Empire, but for Russian historiography it is only a minor episode).

ORTHODOXY

Orthodoxy is associated with Russian church architecture and neo-Byzantine style¹. The Church Reform of Peter I

¹ Russian discourse in the XIX and XX centuries was created by primarily strong original Orthodoxy, which began to be associated in advance with Russian Orthodoxy, the symbol of which is the church «onion-dome» of Russian and neo-Byzantine architectural style.

finally¹ eliminated the Ukrainian (Kyiv) tradition — orthodoxy; there is a complete submission to the tsar throughout the whole Russia and the memory of medieval (Kievan) Rus is destroyed. Consequently, these processes are harmoniously combined with the mythology of the «Third Rome».

Communism destroyed and persecuted the Orthodox Church and Russian Orthodoxy started losing its imperialism. However, after a while, Russian Orthodoxy and Communism began to cooperate². After the fall of the USSR, the new government tried to support the position of **the Russian Orthodox Church**, as **the church was the only surviving framework of the disintegrated empire**. Evidence of this was the construction or reconstruction of churches in Russia and Ukraine at the expense of Russia, which eventually led to their subordination to the Moscow Patriarch.

THE FALL OF TSARIST RUSSIA

In 1917-1920 the empire collapsed, which can be explained by the exhaustion of the war. At the same time, there are numerous problems that the empire did not want and could not solve for a long time. First of all, it is a nation-building process that began in the XIX century, to which Russia was unable to respond adequately. The culmination of the nation-building process fell at the end of the First World War, when the people of the empire were seeking independence or

¹ The first stage of this process should be considered the subordination of the Kiev metropolitanate to Moscow in 1686.

² Peter I abolished the post of patriarch, which was restored after a 300-year break in 1917. New Patriarch Tikhon (Byellavin) was elected. Then the Soviet government effectively abolished the patriarchate, which Stalin would restore during World War II (1943) to raise morale. Since then, the Orthodox Church is be under strict supervision of the NKVD / KGB.

broad autonomy. Ukrainian¹, Polish, Belarusian, Finnish and Georgian hopes to free themselves from imperial oppression were carefully described and well known. Unfortunately, the events in the Volga region, Central Asia, Siberia or the Far East of those times were not so carefully documented and were of less interest to historians.

The fall of tsarist Russia meant the fall of traditional imperial ideology. This became the first signal that it was impossible to create one great Russia from a colonial empire, and the process of Russification seemed to be ineffective.

COMMUNISM AND THE «SUPERPOWER»

The Bolsheviks managed to keep the empire from being destroyed and unite it, taking into account national issues and the strength of the new ideology, along with promises of modernization. They agreed to serious concessions (to which the «whites» were not ready to), which allowed some national and left (especially non-Bolshevik) elites to refocus on the Bolsheviks. By consolidating all the forces, they could subdue the territory where the nation-building and the independence processes unfolded and actually took place after the fall of the tsarist regime. Thus, the empire began to revive, but it did not escape the trap of internal disunity and the potential process of nation-building (the dilemmas of the tsarist empire were modernized and hidden).

During the first decade of the Bolsheviks, they conducted a radical revision of Russia's tsarist ideology². Strategically

¹ S. Yekelchik, *Ukraine. Birth of a Modern Nation*, Oxford University Press: Oxford 2007.

² Mikhail Pokrovsky is considered a «revisionist» historiographer, who denounced tsarist and therefore Russian colonialism. In the 1930's he was deemed to be a «vulgarizer of history» due to the return to many practices of the tsarist era.

important decisions on national policy issues were made. Granted, they were abandoned after a while, but their consequences became fundamental to national self-consciousness. Some examples of this are teaching in the national languages (over time, this process was gradually declining). Registration of nationality in passports, special and distinct symbols of regions and preservation of national identity. Despite the brutal destruction of the ambitions for national independence, they did not fade (in particular, Executed Renaissance in Ukraine or the persecution of the «Sixties», i.e. USSR anti-religious campaign).

National tensions in the USSR erupted during World War II. Part of oppressed nations decided that war can bring liberation. The triumph called the «Great Patriotic War», became an instrument of legitimization of the empire and introduced «the narrative of the superpower» that exists in a world divided into two camps (bipolarity) into the collective consciousness of the Soviet society. A «Soviet man» who speaks Russian (even if he has his own «native» language) must feel his own involvement in the world mission of building communism, which was at the same time imbued with traditional Russian nationalism.

Partial Soviet-style modernization which was achieved by killing millions of people had numerous pitfalls. This was due to the process of urbanization, accessibility and compulsory secondary education, the formation of regional elites which gave birth to dissidents who were interested in and supported national identity.

The integration of Ukrainian and Belarusian lands through the annexation in 1939 realized the ancient mythology of «gathering Russian lands» resulting in a potential increase of nation creation of Ukraine and Belarus,

which greatly complicated the process of Russification and contributed to the collapse of the Soviet Union in the year 1989-1991¹.

The old problems between the empire and the identity of the enslaved nations (the areas where they lived) began to manifest themselves in various ways causing a new great crisis.

NEO-IMPERIALIST WARS, DOCTRINE AND PRACTICE

In his Address to the Federal Assembly in April 2005, Vladimir Putin called the collapse of the Soviet Union the greatest geopolitical catastrophe of the XX century and added that the priority of the current Russian government should be to protect the Russian-speaking population abroad. These statements are the obvious postulates of the concept of «the Russian world» and the return of Russian ideology in a neo-imperialist format.

1989-1991 marked the beginning of the crisis of the empire and were associated with the loss of one-third of its territory. Ukraine and Belarus, Caucasus and Central Asia were regarded as the most significant territorial losses. The empire lost almost half of its population (130 million vs. 270 million), which naturally affected the national component. Russians, who made up more than 50 % in the USSR, became almost an absolute majority in the Russian Federation (almost 80 %). Transformations in the economy² also took place.

¹ An important factor in the western territories was the historical memory and experience of being outside the empire. Roman Shporliuk pays special attention to these issues in his works. See: R. Shporluk, *Russia, Ukraine and the Breakup of the Soviet Union*, Hoover Institution Press: Stanford 2000.

² In 1990, Russia (as the Soviet Union) was the second largest economy in the world, and its GDP is one-third of US GDP (https://www.theodora.com/wfb/1990/rankings/gdp_million_1.html). In 1995, it ranked 10th with an income eight times lower than

However, this does not lead to the decline of Russian imperialism. Due to rising oil prices in 2000, Russia is avoiding economic collapse. The next decade, it ranks the 6th position among the world's ten largest economies, although it accounts for only 3% of world GDP and is five times smaller than the US or China's economies. There is internal stabilization, and widespread public support and consensus in society which is supported by a significant increase in consumer opportunities. All this is happening without deep and comprehensive reforms. The weakness of democratic institutions forces the government to return to neo-imperialist legitimization, that is warfare.

WAR

Even in a time of deep crisis, Russia has not given up war and militarism as a means of conducting international and domestic policy. The first post-Soviet war in Transnistria began in 1992 and ended in a frozen conflict. Then in 1994-1996 the first Chechen War took place, in 1999 — the Second Chechen War. In 2008 — war in Georgia, in 2014 the war with Ukraine began (annexation of Crimea and the attempt to form «Novorossiia»). In 2015, military intervention in Syria began, which is going on up to now. In 2021, Russia continues to threaten Ukraine.

Equally important is hidden informational warfare, based on manipulation on social networks and the internet and has all the hallmarks of hostilities. These actions can be qualified as part of general military actions as well as individual

the United States. Unsuccessful attempts at economic reform and democratization of political life took place in the 1990s. In 1998, there was a deep financial crisis and frustration with the reforms. In 2000, Russia ranked 11th among the world's economies.

military steps. Polish analyst Joanna Darczewska aptly describes these actions during the annexation of Crimea:

«Russian authors understand the concept of «information war» as the impact on the mass consciousness as a form of competition in the system of interstate relations and consider it as a civilized way of exchanging information... The concept itself mixes military and non-military ideas, technological (cyberspace) with social (informational) ones, and the analogy of the Cold War and the psychological tensions between the West and the East that took place at the time is being imposed»¹.

War in cyberspace is becoming a separate area of military actions, that is a separate field of struggle. Hacker attacks, misinformation and implicit manipulation in public space become its essential tools. As a result, Russia is gaining influence in Western society, although its scale is difficult to measure. One vivid illustration is the attack on the US elections and manipulation during the referendum on Breksitu. In the case of the US election in 2016, Russia helped the pro-Russian and destabilizing-the-world-policy Donald Trump to win.

The question is whether such wars are effective. The Chechen war brought Kadyrov to power and turned Chechnya into a de-facto Islamic republic with Sharia law, which poses a threat to Russia itself.

The annexation of Crimea has led to sanctions and destroyed many personal ties between Russia and Ukraine. At the same time, the intervention in Donbas and the desire to

¹ J. Darczewska, *Anatomia rosyjskiej wojny informacyjnej. Operacja Krymska — studium przypadku*, OSW: Warszawa 2014, s. 12.

create «Novorossiya» did not materialize, thus revealing the weakness and limited capabilities of the Kremlin itself.

Manipulations during the US elections in 2016 and the hacking attack on *SolarWinds* should be deemed as a disinformation war that led to a deep conflict with Washington. Accordingly, the election of Joe Biden as the president of the United States is a serious defeat for Russia.

DOCTRINE

The military doctrine of each state describes the military threats and the national security policy that will be implemented in the event of such threats. Russian military doctrine was proclaimed in 2010, updated in 2014 and 2016, and noted that Russia's security is threatened by NATO, which is bringing its military infrastructure closer to the borders of the Russian Federation. Since 2016 the Russian military doctrine envisages that the main threat is the potential aggression by NATO.

The issue of security goes beyond the borders of the Russian Federation (and allied states, including the self-proclaimed Abkhazia and South Ossetia) and applies to the Russians living abroad, who according to the Kremlin, may need protection. This actually means the limited recognition of sovereignty of the Soviet Union former republics.

Another important element of the doctrine is the assertion that cyber space is an area where permanent war must continue. It should be emphasized that this is not just about hacker attacks but misinformation and manipulations. The doctrine describes not only NATO but the Western media, according to Polish researcher Agnieszka Rogozińska:

«the doctrine ... accuses foreign media, pointing to the informational influence they exert against the Russians. A logical continuation of this narrative is the need to take measures to neutralize information and psychological actions aimed at violating historical values and patriotic traditions associated with the defense of the Motherland. It is important to note that historical policy, which is an important tool for the realization of Russia's national interests, occupies a prominent place among Russian disinformation operations»¹.

The alleged attacks on Russia from West justify Russia's response, which is a hybrid war.

In Russia's military doctrine, the imaginary threats are no less important than the real ones. The first ones are announced openly and loudly, the latter are often forgotten. Russia very often ignores China, which, along with radical Islam, poses the greatest threat to today's Russia. Defining the West as its enemy, the Kremlin is deliberately limiting itself to economic cooperation, which is necessary not only for reforms, but above all for the normal support of the current economy state. consent to sanctions is killing the economy and pushing Russia towards China.

A vague and ambiguous document of the doctrine, allows a free interpretation of its postulates. In this context, it is difficult to determine which actions of Russia should be considered to be military steps under the doctrine, and

¹ A. Rogozińska, *Cele Federacji Rosyjskiej w zakresie bezpieczeństwa informacyjnego na podstawie zapisów rosyjskich dokumentów strategicznych*, «Instytut Nowej Europy», 09.08.2020, <https://ine.org.pl/cele-fr-w-zakresie-bezpieczenstwa-informacyjnego-na-podstawie-zapisow-rosyjskich-dokumentow-strategicznych/>.

which are being committed arbitrarily without any formal restrictions.

PRACTICE

Putin's speech in Munich in February 2007 marked the beginning of an open conflict with the West. Records of the military doctrine of 2010 and subsequent changes in 2014 and 2016 are a formal confirmation of this.

The reality and Russian practice force many commentators to interpret Russian military doctrine not only according to the letter and spirit of the document, but primarily in light of the facts of actual hostilities and statements by high-ranking Russian military personnel. Particular attention should be paid to the speech of the Chief of the Russian General Staff Valery Gerasimov in 2013¹. He argued that **modernity is characterized by the growing role of non-military actions and means in the process of the enemy disintegration through propaganda with the simultaneous leveling of the line between war and peace, which creates new conditions for war**. Thus, he defined the actions that after the annexation of Crimea will receive a well-known name at the time — «hybrid war»². The term «Gerasimov's doctrine» is in fact, synonymous with the Russian military doctrine³. It should be emphasized that Gerasimov, like the

¹ В. Герасимов, *Ценность науки в предвидении. Новые вызовы требуют переосмыслить формы и способы ведения боевых действий*, <https://www.vpk-news.ru/articles/14632>.

² J. Darczewska, *Anatomia rosyjskiej wojny informacyjnej...*

³ Gerasimov's terminology was developed in 2013. He called the intervention in the Syrian civil war a strategy of limited action. In other words, it is the doctrine of local wars waged outside one's own territory (out-of-area). See: D. Massicot, *Anticipating a New Russian Military Doctrine in 2020: What It Might Contain and Why It Matters*, «War on the Rocks», 09.09.2019, <https://warontherocks.com/2019/09/anticipating-a-new-russian-military-doctrine-in-2020-what-it-might-contain-and-why-it-matters/>

official doctrine, considers his strategy only a response to the threats of the West, which in particular are «color revolutions». When explaining the actions of Western countries, the Russian general writes that modern wars have acquired a new character and Russia only has to adapt to them.

Gerasimov's reasoning is the military's response to the information revolution that took place at the turn of the century¹. Misinformation has always been an instrument of war. In terms of the internet and the social media growing role it has acquired a completely new meaning and has become a new means of manipulation. The concept of «hybrid war» is gaining a whole new meaning in a global context. It is no longer a question of the technical possibilities of increasing information (or misinformation), but of the broad and varied influence that can be gained on society and its individual representatives or groups. «Information War» becomes a project that relies on the depth of the mechanisms of psychosocial and subconscious activities of the masses. The main element of war is the attempt to impose one's own narrative on others, which should become a guarantee of external control or leveling of military attack.

The Kremlin is developing a «theory of information warfare» by making it an essential element of a «hybrid war». It is necessary to single out the characteristic features of the Kremlin's actions:

- The Kremlin surprised the West with its propaganda activities, when skillfully and thoroughly using the internet.

¹ The appearance of a smartphone, i.e. a pocket computer with the Internet, should be considered a historical moment (2007).

I. HISTORY OF THE RUSSIAN STATE

- Russia is investing heavily in international mis-information.
- The main message of the Kremlin's propaganda is not only the need to rebuild the Russian Empire, but to emphasize the demonstration of the decadence of the Western model of democratic societies. The message must justify the need for civilizational changes across the continent, changes that Russia will make.
- Kremlin propaganda leads to the disintegration of Western societies, and in the long run should form supporters of Russia among Western elites.
- The Kremlin's propaganda is mostly addressed to the marginals in the extreme right and left (often post-communists) of Western societies. Russia is also focusing on amorphous groups of «outraged» who are ready to question «the western way of life».
- Kremlin's propaganda is particularly intense in social networks, where it focuses primarily on young people and those with unformed views.
- Actions on the Internet — a virtual world — should be the beginning and the incentive to act in the real world.

The Kremlin's military actions are clearly correlated with propaganda. Victories in propaganda must precede or replace potential military actions. The Kremlin is carrying out the described actions in such Western countries as Germany¹,

¹ *Raport Friedrich Naumann Stiftung*, <https://www.freiheit.org/de/information-als-waffe>.

France¹, Poland², Great Britain and the United States³. This provokes an explosion of conflict between states on a global scale.

NARRATIVES OF WAR

Russian ideology, like any national ideology, is changing and adapting. Sometimes this process can be extremely surprising and new ideological versions may challenge certain points of their previous ones⁴. However, in any of the possible variants of Russian ideology, the proclamation of national or imperialist history continues. The Russian example of the evolution of the tsarist version of imperial ideology into neo-imperial after 2000 became possible with the simultaneous absorption of Soviet neo-imperialism after 1991, which should be interpreted as an example of the amazing plasticity of the Russian imperialism.

Russia is not discussing the possibility of reforming and changing its own identity, which would imply the loss of the status of a superpower and parts of the territory or even complete disintegration. Russia always chooses neo-imperialism. Russian sociologist Irina Glebova notes that the essence of this choice can be reduced to the rejection of change and turning their views to the past⁵.

¹ M.-P. Haddad, *Quels sont les liens troubles entre le Front national et le Kremlin?* «RTL», 14.03.2018, <https://www.rtl.fr/actu/politique/quels-sont-les-liens-troubles-entre-le-front-national-et-le-kremlin-7792607362>.

² K. Wóycicki, *Internet and «information warfare» of president Putin*, Kazimierz Wóycicki, 21.11.2015, <https://kazwoy.wordpress.com/2015/11/21/internet-and-information-warfare-of-president-putin/>.

³ Ch. Wylie, *Mindf*ck. Cambridge Analytica And The Plot to Break America*, Insignis: New York 2019.

⁴ This happened during the transition from the traditional tsarist version of Russian ideology to the Soviet version.

⁵ I. Glebova, *Pamięć historyczna i samoidentyfikacja narodowa we współczesnej Rosji*, [in:]

The classical elements of Russian imperial ideology remain important components of the new – eclectic version of imperialism. In some mythologies, the accents change, but they take on a new meaning and become a new part of the old-new system. The result is nostalgia, which manifests itself as an integral component of neo-imperialism. Russia is inventing a new mission to «save the world» in a global crisis caused by liberalism and «Western decadence».

«GREAT RUSSIAN» NOSTALGIA

Nostalgia for lost greatness is often transformed into an important component of social memory and manifests itself as a political tool of power. The loss of the attributes of greatness and supremacy (despite the presence of nuclear weapons and vast territory) leads to speculation on emotions and nostalgia (grief for the great past). In fact, it is a surrogate for reforms and changes in social consciousness.

Nostalgia appeals to historical and symbolic arguments – this is due to the belief that Russia has been offended (respectively – this explains why it is in its current position), while you are getting hope for a return to the times of «better past».

«In the social consciousness there is a positive assessment of their own history, which over time becomes dominant. «Historical self-criticism» flourished in 1987-1991, then changed to nostalgia ... In the XX century, the greatest trauma for Russians was the loss of world leadership and superpower status»¹.

Polska – Rosja. Poszukiwania nowej tożsamości. Podobieństwa i różnice, «Debaty Artes liberales» 2017, Tom XI, pp. 110, http://al.uw.edu.pl/wp-content/uploads/2017/07/DEB_AL_TOM_XI.pdf.

¹ I. Glebowa, *Pamięć historyczna i samoidentyfikacja narodowa ...*, s. 112, 114.

A striking example of such nostalgia is the erection of a monument to Vladimir the Great near the Kremlin walls¹. Longing for lost greatness is a significant factor in political action, more important than pragmatism and political realism.

The Russian sociologist notes that the social (group) memory of modern Russia consists of many elements associated with the fall of communism and tsarist Russia at the same time.

«The loss of the potential of the superpower was very painfully experienced by the intelligentsia. Groups of higher social status, early in 1996, often noted that the «national losses» of the Soviet period were «the idea of monarchy», «the spirit of aristocracy», «officer honor», «orthodox faith», «greatness». At the same time, the list of losses from the time of the collapse of the USSR included «pride in the great and powerful country», «world leadership and influence». Proximity of views — in almost all respects — in the assessment of past and present by older generation and intellectuals is largely due to the desire to compensate for the losses»².

Russian historical policy under Putin skillfully uses this sentimentality and encourages attempts to compensate for these losses. This support maintains a sense of threat from the outside world³, and defeats are explained solely by international conspiracies against Russia⁴.

¹ For more information on the installation of the monument, see: S. Plokhly, *The Lost Kingdom ...*, p.9-10

² Б. Дубин, Жить в России на рубеже столетий. Социологические очерки и разработки, Прогресс-Традиция: Москва 2007, p. 304, *quot. for*: I. Glebowa, *Pamięć historyczna i samoidentyfikacja narodowa ...*

³ А. Уткин, СССР в осаде, серия Проект «Антироссия», Эксмо: Москва 2010.

⁴ А. Паршев, Запад против России. Почему Россия не Америка. Книга для тех, кто остается в России, АСТ, Астрель: Москва 2009.

GLOBAL «TURMOIL»

The Russian Empire experienced numerous crises, which gave grounds to claim its longevity. The Russian narrative for describing the political crisis has its own autochthonous term, «turmoil», which was first used to describe the period of the tsar's absence after the death of the last Rurik monarch. The turmoil is the Russian perception of a crisis that, regardless of scale and depth, will be overcome and Russia will emerge stronger. The term «turmoil» is synonymous with the Greek word «crisis,» which means the disintegration of something with the possibility of being born again.

In Russian journalism, the 1990s are called «turmoil». In Russia, there is a talk about an internal crisis that goes beyond the 90s of the twentieth century. However, some Kremlin analysts claim that the crisis is not related to the internal Russian situation, but to the global crisis — «non-Russian unrest.»¹ Since the XIX century decadence is the leading element of the Russian idea about Western world. Exploring contemporary Russian intellectual life one can be surprised to learn that the Russians thoroughly and deeply study postmodernism and creative thinkers such as Michel Foucault.² However, what postmodernism offers to interpret as a form of radical emancipation, in Russia it is considered to be a manifestation of the leveling of values. This view allows Russia to join the cultural conflict of the West on the side of populist conservatism. Neo-imperial ideology thesis about the decadence of the West gets new

¹ М. Делягин, *Выживет ли Россия в нерусской смуте? Кризис человечества*, АСТ, Астрель: Москва 2010.

² See: И. Крижановский, *Посмодернизм: шаг в «неточном направлении»*, https://rtj.mirea.ru/upload/medialibrary/372/RTZH_6_2018_101_116.pdf.

political significance. The West is degrading not only in a moral sense, decadence is leading to its political weakness and causing a global crisis that can only be overcome by applying the Russian recipe.

Such ideas allow Russia to gain support among Western populists, such as Le Pen, Salvini, Orban or Kaczynski. Using divisions in Western societies, especially between the liberal center and the populist right, Russia positions itself as the last bastion of conservative values that are the foundation of its policies.

The victory of «the global turmoil» is possible only if the the liberal West falls. The Kremlin's views actually coincide with those of Steve Benon, one of Donald Trump's top advisers¹. Modern world conflicts are cultural and symbolic, which allows the Kremlin theorists to bridge the gap between war and peace, as mentioned in Gerasimov's doctrine. Such «culturological» approaches make it possible to implement narratives about the deep crisis of Western democracy into Western society and sow distrust in the media². Consequently, it should cast doubt on democratic values as such³.

¹ Ch. Wylie, *Mindf*ck. Cambridge Analytica...*

² P. Surowiec, *Post-Truth Soft Power. Changing Facts of Propaganda, «Kompromat», and Democracy*, «International Engagement on Cyber» 2017, Vol. 18, No 3, <https://www.jstor.org/stable/26395920?seq=1>.

³ W. J. Broad, *Putin's Long War Against American Science*, «The New York Times», 13.04.2020, <https://www.nytimes.com/2020/04/13/science/putin-russia-disinformation-health-coronavirus.html>; K. Kirk, *How Russia Sows Confusion in the U.S. Vaccine Debate*, «Foreign Policy», 09.04.2019, <https://foreignpolicy.com/2019/04/09/in-the-united-states-russian-trolls-are-peddling-measles-disinformation-on-twitter/>.

EURASIANISM

The intensification of Russia-West confrontation organically provokes a turn towards Asia and rapprochement with China.

Eurasianism is a rather late product of Russian imperial ideology. Its authors are «white» immigrants¹ who were looking for a specific Russian identity, which, in their opinion, was destroyed by the Bolsheviks. It should be emphasized that the Bolsheviks themselves were considered by the «whites» to be a product of the West.

They believe that by turning their attention to Asia, it is possible to preserve Russia's power and survive the crisis caused by the First World War. The ideas of Eurasianism later seep into Bolshevik Russia, primarily thanks to the works of Lev Gumilev.

In 2005, Putin organized the reburial of the most famous Eurasian philosopher Ivan Ilyin in Russia in the necropolis of the Don Monastery in Moscow near the tomb of Denikin. The above should be interpreted as a symbolic step of the Russian president towards his favorite philosopher².

GEOPOLITICAL RATE

The concept of geopolitics holds a particular place in the Russian political thought and neo-imperial ideology. Russia's territory remains its important tool, which makes it possible to use geography in a political sense. The geopolitical method forces us to study Russia in terms of its size and geographical location, along with other world superpowers

¹ T. Snyder, *Droga do niewolności*, Znak Horyzont: Kraków 2019.

² Ilyin's works have become a must-read in Putin's team. It should be added that the famous Alexander Dugin is extremely liberal compared to Ivan Ilyin.

(such as the United States, the European Union, India or China). The Kremlin does not want to join the development of international cooperation, but seeks to create its own project of international cooperation in which the United States and the West do not play a significant role.¹

The Kremlin's geopolitical rate is the collapse of the European Union and the collapse of the West. Presidency of Donald Trump brought the possibility of dividing the world into three parts, which will respectively be governed by Washington, Moscow and Beijing. The disintegration of the European Union in such a situation will inevitably lead to the return of Moscow's influence in Central and Eastern Europe. The result is an increase in dominance over the rest of Europe and a loss of American support with the simultaneous internal disintegration of the Western world. Such a political plan is a clear manifestation of the unrealized imperial ambitions of the modern Kremlin².

**«RUSSIAN WORLD», «PEOPLE OF NATIONS»
AND THE RUSSIAN CIVILIZATION**

«Russian world» — is a concept of the formation of a Russian-centric and pan-Slavic project, which should be an alternative to European integration and at the same time should be reminiscent of the ancient tsarist tradition of the empire. The constituent component of «Russian world» is Orthodoxy.

¹ One of them was a project launched by Russia in 2009, a multipolar world, the so-called BRICS (Brazil, Russia, India, China and South Africa). However, this widely publicized project proved unrealistic and unable to realize Russia's ambitions to become a superpower due to Russia's own economic weakness, China's economic growth, and internal conflicts (tensions between Delhi and Beijing).

² Alexander Dugin is a special theorist of Russia's geopolitical ambitions, his specific views were so unrealistic and so radical that he was deprived of influence (which he seemed to have) and marginalized.

The boundaries of the «Russian world» cannot be determined. They are defined by the Russian culture itself, language and the national minority, if talking about the areas outside the Russian Federation¹. Accordingly, the scope of the «Russian world» extends beyond the current borders of the federation itself.

Sometimes the term «Russian civilization» or «Orthodox civilization» is used as a little unclear terminology, which is associated with a special mission that is integrated into the concept of Eurasianism.

The concept of «Russian world» by being a form of neo-imperial ideology, inherited the ancient dilemmas of Russian imperialism.

The ethnonationalist concept of the «Russian world» opposes cultural approaches that seek to take into account the existence of national and religious minorities². A clear evidence of this is the entry in the Constitution of the Russian Federation of the formula: «We are a multinational people united by a common destiny on their land».

ECLECTIC IDEOLOGY AND HYBRID WAR

The concept of the «Russian world» together with Orthodoxy and the greatest geopolitical catastrophe of the XX century, the fall of the atheist Soviet Union (which persecuted the Orthodox Church), should have divided Russian society.

¹ Поддержка соотечественников, проживающих за рубежом: проблемы, перспективы, пути совершенствования законодательного обеспечения, Издание Совета Федерации, <http://council.gov.ru/media/files/41d44f2436b81b-8ff253.pdf>.

² The distinction between a Russian as a citizen of the Russian Federation and a Russian as an ethnic Russian introduced by B. Yeltsin. These concepts have not received a legal form and have not been established as identical.

However, both statements belong to the same person — Vladimir Putin.

In a similar way, the constitutional statement about a «multinational people on one common land» is shockingly lacking in logic. Russian political scientist Yuri Pivovarov writes about identity and legitimacy in modern Russia, defines them as «an unordered mixture that creates seemingly unnatural connections and relationships»¹. A similar oxymoron is the concept of «managed democracy», in which the main element of Russian democracy is its manageability. The result is the transformation of liberal politics into authoritarianism, where political opponents can be killed if the need arises².

Such unnatural connections and relationships can also be seen in official military doctrine, which call attention to fictitious threats but ignores real problems.

Europe and the West do not pose a danger to Russia and do not seek war. Russia's conflict with the West pushes Moscow into the arms of Beijing, despite the fact that in the long run the real problems should be expected from China.³ Only some people in Russia are aware of this.

¹ J. Piwowarow, *O tożsamości i legitymizacji we współczesnej Rosji*, «Debaty Artes Liberales» 2017, Tom IX, s. 40.

² An interesting illustration of the eclecticism of modern Russian consciousness is the debate announced by the Moscow authorities in February 2021 on the possibility of reconstructing the monument to Felix Dzerzhinsky on Lubyanskaya Square (which was dismantled in 1991). 50% of voters supported the reconstruction of the monument to the founder of the Cheka in front of the historic building where the FSB is today, and previously housed the Cheka, the NKVD and the KGB. The remaining 50% voted for the erection of a monument to Alexander Nevsky. Finally, the vote was canceled. The place of the monument remains empty. Next to the square is a symbolic monument «Solovetsky Stone», dedicated to the victims of the Gulag with the inscription «Victims of the totalitarian regime».

³ Ю. Чихичин, Китайская угроза: миф или реальность, <https://cyberleninka.ru/article/n/kitayskaya-ugroza-mif-ili-realnost/viewer>.

Another major threat to Russia is demographic processes: the increase of the Muslim minority from 20 % to almost 50 % in 2050¹. Focusing on Asia does not solve problems, it only deepens them. There are serious demographic processes associated with the slow and stable growth of the indigenous population and the beginning of the formation of the Siberian identity² in the territories beyond the Urals (12.7 million km²). Russia hasn't become a world leader in economics or population growth. Russia occupies only 3 % of the world economy and has a population of 2 % worldwide.

The main resource of modern Russia — in addition to nuclear weapons — is the territory and the myth of an empire that can win and survive in any crisis. The traditional image of Russia as a world and eternal power is supported by a narrative about the crisis and decadence of the West. Nevertheless, the most important factor for domestic and foreign policy remains the conduct of war. **Russia's military doctrine is a document that should be intimidating, as Russia says it is ready to launch a nuclear attack first if it is drawn into a conventional conflict. At the same time, the document does not describe Russia's hybrid war practice and disinformation narrative.**

Russian military practice is explained by neo-imperial ideology and legitimizes Putin's rule. The power of the tsar or Soviet leader had different legitimacy (but it always was). In the first case it is historically-religious and in the second

¹ It should be added that this change will be associated with a nominal reduction in the Russian population.

² M. Bassin, *Classical Eurasianism and the Geopolitics of Russian Identity*, http://www.dartmouth.edu/~crn/crn_papers/Bassin.pdf; V. Shevtsov, I.Nam, E.Khakhalkina, *Siberian identity in the historical perspective and at present*, [in:] *Research Paradigms Transformation in Social Sciences (RPTSS 2015)* 2016, Vol. 28, https://www.shs-conferences.org/articles/shsconf/pdf/2016/06/shsconf_rptss2016_01092.pdf.

utopian-ideological legitimacy. The lame democracy of the 1990s was transformed under Putin into a real dictatorship. At first it tried to legitimize herself through «sovereign democracy»¹, but finally chose the method of self-affirmation exclusively through war.

The annexation of Crimea, sending of «separatists» to Donbas, the detention of troops in Transnistria, the manipulation of the US vote and the referendum on Britain's exit from the EU can be explained by Russian military doctrine, but they are based on hybrid neo-imperial ideology. The ideology of neo-imperialism becomes the only one that can be used to legitimize power before a society that nostalgizes and consumes the ideas of «Russian measure» and is convinced of the geopolitical significance of its own territory. **Authorities that use eclectic ideology for their legitimacy give themselves the right to wage a hybrid war and manipulate the virtual world internationally.**

RUSSIAN QUESTION AND PROCESSES OF NATION-BUILDING

Russian nation-building processes never went beyond imperial or neo-imperial ideology. The only historical moment that can be attributed to the democratic process of nation-building may be the beginning and end of the XX century (the period before the First World War and the first decade after the collapse of the USSR).

¹ The author of the concept is Vladislav Surkov, who opposed the Western type of democracy and proposed for Russia a «managed democracy» or a «sovereign democracy». See : В. Сурков, Наша российская модель демократии называется «суверенной демократией», <https://web.archive.org/web/20080430012854/http://www.edinros.ru/news.html?id=114108>.

There was no decommunization process in Russia, and the need to reassess its colonial past was not even discussed. The revaluation was transformed into a hybrid mixture of post-Soviet nostalgia and the revival of royal traditions.

The main condition for the development of the national project is the complete rejection of the imperial ballast. The disintegration of the current quasi-federation will not pose a threat to Russia itself if it chooses the path of the state with a national rather than an imperial consciousness. More than 100 million Russians — are a colossal society, and with no imperialism Russia would be an influential player in the international arena (subject to modernization and reform).

These conditions were partially implemented in 1991. Russia rejected part of the imperial legacy. Ethnic composition — 80 % of Russians and only 20 % of ethnic minorities. However, there are still large areas inhabited by people with local and regional self-identity (even if it has undergone significant Russification). This local identity has a high value and impact as compared to the capabilities of the center¹.

Due to the demographic transformation (permanent reduction of Russian majority) the dilemmas of the Empire — division into the Russian and not-Russian — will be reborn with renewed vigor. Demographic forecast states that the number of Muslims in 2050 will be 35-50 % of the total population of the Russian Federation². Nation-building processes are being continued throughout the former Soviet Union, as exemplified by recent events in Belarus³. Similar processes,

¹ E.W. Clowes, *Being a Sibiriak in Contemporary Siberia: Imagined Geography and Vocabularies of Identifying Regional Writing Culture*, «Region» 2013, Vol. 2, No 1, pp. 47–67.

² M. Laruelle, *How Islam Will Change Russia*, «The Jamestown Foundation's», 13.09.2016, <https://jamestown.org/program/marlene-laruelle-how-islam-will-change-russia/>.

³ K. Wóycicki, *W pogoni za wolnością. Białoruska rewolucja*, Pracownia Wydawnicza, Warszawa 2020

although with less intensity, occur in Russia itself — among the Tatars, Yakuts and even the Cossacks. It is clear that these processes are not the biggest threat to Moscow, but in the long run the described trends will intensify.

The antique and eclectic narrative of neo-imperial ideology is not capable of stimulating the modern process of nation-building that could implement reforms and modernize present-day Russia. It is currently facing national-territorial dilemmas, which have twice led to a deep crisis of the empire.

Modern national minorities and autonomist movements have, in contrast to those of the XIX century, well-educated elites who are able to articulate their own self-identity and related aspirations¹.

Religion can be a particularly important factor. Up to 15-20 % of citizens of the Russian Federation are Orthodox, and 10-15 % are Muslims. The struggle against the religion of the Soviet era has left deep scars on the body of all Russian society, indicating that the importance and role of the Orthodox Church will not be reborn. At the same time, Moscow must take into account the growing number of Muslims, which organically complicates the maintenance of the revived imperial narrative of «Orthodoxy and the Motherland.»

The emphasis on «russianness» in its neo-imperialist format intensifies the processes of self-identification among the non-Russians (especially according to the demographic

¹ Ukrainian historiography, largely related to the American-Ukrainian School of History (Harvard Ukrainian Research Institute (HURI) Omelyan Prysak, Orest Subtelny, Serhiy Yekelchuk, Serhiy Plokhly, Roman Shporliuk). Being a powerful scientific and intellectual resource, Ukrainian historians create their own story about the Ukrainian past and form an independent view of Russia's neighbor. It cardinally changes the old situation, when Russian historiography (and in this sense imperial) had a monopoly on the creation of narratives about the past in all regions of the empire.

trends). The processes of self-identity are enhanced by modernization, even if it is partial and incomplete. Regardless of the pragmatism of Putin's policies, these processes cannot be stopped.

On the other hand, according to Ellen Carrer d'Ancoss one may ask whether the world leaders are interested in the disintegration of the Russian Federation. Whether, under the condition of modernization, Russia is able to become an authentic Federation and a macro-organism that will be part of the international order. The current state of Russia does not make it possible to predict such a future.

The disintegration of the Russian Federation should be considered a significant threat to the West which will lead to an automatic increase in China's power. Undoubtedly, the countries and societies on which Russia influences and which depend on it will be happy with the demise of the current quasi-federation and will gladly be freed from its centuries-old oppression. However, all of these processes will occur in a somewhat predictable way, and the consequences of these changes cannot be predicted.

Until Russia doesn't get rid of its neo-imperial ambitions, it is forced to wage limited wars and destabilize the international order.

In the West, there is a stereotyped-vulgar idea about Russia, and Russia itself uses these biases to conduct its policy on the patterns of neo-imperial ideology. Neither the demonization of Russia nor the recognition of its claims to the imperial legacy provide an opportunity to adequately understand the goals and methods of Russian policy. In a sense, Russia itself is hostage to its ideology in its relations with the West.

The deconstruction of Russian imperial ideology should take place through the construction of narratives of individual regions of the current Russian Federation and the demystification (disengagement) of neo-imperial ideology, which would allow the Russian process of nation-building to crystallize.

CONCLUSIONS

Russia's military practice is only partially related to **the official military doctrine, remaining in symbiosis with Russian neo-imperial ideology.** It justifies the conduct of war, and the conflict should create only a certain idea of imperial power in the image of modern Russia as a world leader and superpower.

War and neo-imperial ideology legitimize the power of several oligarchs based on KGB structures. Russian wars are hybrid, due to modern digitalization and the low cost of such hostilities. A troll factory costs less than tanks or planes. Military manipulations of Russia, regardless of the damage done, have great symbolic significance and make it possible to maintain the image of a country that is equivalent in strength to the United States.

The ideology – which pushes Russia to war and justifies its expediency – is characterized by a mix of historical doctrines, in which individual elements are selected in an arbitrary manner as for current needs. This is a consequence of the deep crisis of Russian self-identity and the incompleteness of the nation-building process. The formation processes of Russia after the collapse of the Soviet empire in 1989-1991 were transitional and marginal. Russia's process of nation-building has not been implemented, respectively, Russia still remains in the net of imperial ideology.

Giant territories, despite significant losses, still remain a significant burden on nation-building. In the middle of this large and diverse image, interesting and original processes of the non-Russian nation-building are taking place. They are ambiguous and slow, but they have a demographic potential and the incomplete control of economic relations throughout the territory will help them.

The goal of the war waged by Russia is the need to maintain its image of a superpower before foreign (international politics) and domestic (own society) actors. Russia's outward war is, in a sense, a continuation of the war it is waging against its own society.

Russian neo-imperial ideology is deeply connected to the historical heritage of tsarist and Soviet Russia. The result is ingrained and very stereotypical notions of Russia in the West.

Russian military doctrine believes that the greatest threat is **the violation of historical values and patriotic traditions associated with the defense of the Motherland.** Paradoxically, Russia's greatest weakness is its neo-imperial ideology, which stems from its military doctrine and military practice.

There is a need for a **new look at Russia, without existing prejudices and neo-imperial narratives that use a «map and geography» that hides the colonial past and uses the «superpower» mythology.** Diagnosing Russia's internal problems will eventually be possible without the neo-imperial ideology used by the authoritarian Kremlin to legitimize its power.

Dialogue with Russia should be a conversation with society, with its various parts and fragments by means of various narratives. It must be something more than the usual informational activity provided by Radio Liberty (Svoboda).

It seems that the United States of America (the only one with scientific and technological potential) can play a leading role in this process and modern Ukraine can play a special role in terms of its cultural capital.

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II.

DEEPENING OF HYBRIDITY: INSTRUMENTAL MODERNIZATION OF THE KREMLIN TRADITIONAL POLICY

Russia's hybrid war against Ukraine has been going on for eight years. During this time, the world community has passed through from being in an information bubble, created by Russian propaganda, to a gradual realization of the threats to the EU and the US posed by the Kremlin policy. This realization turned out to be a difficult process which is connected with the acquisition of new knowledge about the technologies of Russian hybrid influence.

Important factors in the transformation of awareness have become not only the influence of the Russian propaganda machine in different countries of the world but also the stubbornness in which the citizens of Ukraine defended and are defending their own land. The death of a Boeing 777 «Malaysia Airlines» with 298 people on board, where 2/3 of the passengers were citizens of the Netherlands in the sky of Donbass in July 2014 was the catalyst for changing attitudes to the conflict in the eastern regions of Ukraine by the European Community.

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It would be a mistake to assume that in the hybrid confrontation with Ukraine, Russia relies solely on military force and related technologies of traditional propaganda dating back to Soviet times. The Kremlin has been creative in inventing new tools for hybrid influence. In an effort to use them as efficiently as possible, Russia repeatedly finds organizational, financial and information resources to exercise simultaneous systemic influence in a number of countries or state associations. This is facilitated by some obvious facts:

- The presence of a vertical decision-making process in the Russian Federation aiming at restoring «the greatness of Russia».
- Significant financial resources, some of which are gained by the sale of energy resources to the EU.
- The format of «sovereign democracy» supported by the size of the state and its nuclear arsenal which makes Russia little sensitive to criticism from other countries.
- Socio-political discourse is being monopolized by the government within the Russian Federation, squeezing the opposition to the margins.
- Information triad due to growing funding «Russia Today» — news agency «Sputnik» «Olgin» bots and trolls which are able to dictate the mood in much of the world.
- Methodological awareness of the peculiarities of European system and using them by leaders of the Russian Federation.
- The presence of an extensive network of archives on the territory of the Russian Federation allows the

Kremlin to manipulate historical facts and events in a favorable direction.

- Readiness to use the COVID-19 pandemic for its own geopolitical purposes, the availability of the necessary intelligence and research capabilities and production capacity.
- Political will to dehumanize the enemy under the laws of war without declaring war.

In recent years, the Russian Federation has consistently used a number of hybrid influence technologies which can claim universal application. They include: **interference in the US and EU electoral procedures, hybridization of the Holocaust and manipulation of historical memory, infodemia of fake news and narratives related to spread of COVID-19, dehumanization of the enemy by the hybrid activity of Russia.** These tools provide an opportunity to have a large-scale impact on the current socio-political situation, to spread false narratives, to undermine the principles of domestic policy of Russia's opponents.

Let's consider the peculiarities of different hybrid instruments applied by Russia and determine the priority areas of their application.

The Kremlin's interference in electoral procedures has a number of preconditions:

- The spread of hybridity in international relations as one of the key elements of the world order.
- Optimizing the use of resources for aggressive actions.

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- Belonging of elections to the category of democratic values and problems of the West with combating foreign interference.
- Ability to control the object of influence through sociological research and adjust the tactics of using hybrid tools.
- Promotion of information triad such as RT TV channel — Sputnik news agency — bots/trolls.
- Lack of legislation which is capable of counter acting hybrid interference in electoral procedures.
- Demonstration of hybrid influence possibilities on the political situation in different countries.

It is worth paying attention to the most significant manifestations of interference in democratic procedures committed by Russia. As an attempt made by the Kremlin forces was a referendum in the Netherlands dedicated to the fate of the Association Agreement between Ukraine and the European Union. It took place on April 6, 2016 and was formally consultative. The Netherlands was the last country in the European Union which was to carry out the ratification procedure of the Association Agreement, and it triggered the Kremlin to react. The second plan objective was the desire of the Russian leadership to find a kind of confirmation of their own version of Ukraine's involvement in the disaster MH17 in the summer of 2014 already mentioned above. Note that the law defining the format of the referendum came into force only on July 1, 2015¹. There is reason to believe that the Russian agents of influence who initiated this referendum

¹ В. Червоненко, Як Україна програла референдум у Нідерландах, «BBC News — Україна», 07.04.2016, https://www.bbc.com/ukrainian/politics/2016/04/160407_netherlands_referendum_results_hk.

used existing democratic norms to solve their own political problems. Despite the negative result of the will of Dutch citizens for Ukraine Russia failed to achieve its main goal — to disrupt the Association Agreement between Ukraine and the European Union. However, the government of the Netherlands was forced to make the ratification of the Agreement conditional on the statement that it does not create the prospect of joining Ukraine to the European Union¹. Another assessment was made by Ukrainian diplomat, now — the Minister of Foreign Affairs Dmitry Kuleba: «The turn to the European Union is completed»².

It is important to emphasize that Russia was systematically interfering in democratic procedures in the European Union and the United States. The intervention culminations were Russia's support for a positive vote during Brexit — referendum on Britain's withdrawal from the European Union. It took place on June 23, 2016, 52 % voted for Britain's exit, 48 % — against. When it comes to Russia's influence on the will of the British Isles, it should be emphasized that by indirect supporting for Britain's exit from the EU the Kremlin is creating a field for geopolitical maneuver. In particular, in the future it will be possible to promote a new «exit» of another EU member state.

The procedure for implementing the referendum decision deserves to be defined as a «slow-moving geopolitical bomb» as it has negatively affected the political climate within the European Union. Discussion on political and economic

¹ С. Соколов, Нідерланди vs Україна. Питання і відповіді про майбутнє асоціації, «DW українською», 16.12.2016, <https://www.dw.com/uk/нідерланди-vs-україна-питання-і-відповіді-про-майбутнє-асоціації/a-36781500>.

² В. Єреміца, «Останні в черзі»: Нідерланди сказали «так» Угоді про асоціацію між Україною та ЄС, «Радіо Свобода», 30.05.2017, <https://www.radiosvoboda.org/a/28519092.html>.

circumstances of the «divorce between the United Kingdom and the European Union», which was widely covered in the media, not only exacerbated the contradictions that existed, but also gave rise to the new ones. Another bonus earned by the Kremlin — was publicly expressed willingness to fight for Scotland's secession from the United Kingdom which was confirmed by the results of the Scottish Parliament elections in May 2021¹.

The Kremlin's desire to influence the outcome of the presidential race in the United States should be viewed as indicative and sometimes irrational. It's not just about securing the victory of Republican candidate Donald Trump (after all, contacts with the Kremlin were carried out by representatives of both the Democratic and Republican parties for a long time), but also about demonstrating their own hybrid capabilities. The principle of this intervention is the presentation of Russian ability to encroach on the results of electoral procedure in a state that positions itself as the leader of a democratic world. In this context, both the indirect assistance to Donald Trump's victory in 2016 and the impact on the course of the presidential campaign in 2020 were significant. The unprecedented storming of the Capitol by Trump supporters from the Qanon movement on January 6, 2021 was the culmination of this geopolitical equation².

Russia's attempt to interfere in the course of US political life turned into the adoption of a package of sanctions CAATSA

¹ О. Краєв, Крок до виходу з Британії: які наслідки матимуть вибори у Шотландії, «Європейська правда», 11.05.2021, <https://www.eurointegration.com.ua/articles/2021/05/11/7122989/>.

² Е. Зуркер, Штурм Капітолія. Що цей смертельний день означає для Трампа? «BBC News — Україна», 07.01.2021, <https://www.bbc.com/ukrainian/features-55571672>.

(Countering America's Adversaries through Sanctions Act) against it in August 2017. It is worth paying attention to the demonstrative consolidation around the solution both in the House of Representatives and the Senate of Congress — more than 90 % of congressmen supported this decision. However, the 45th President of the United States Donald Trump did not dare to fully impose «hellish sanctions» against Russia¹. His successor, Democratic MP Joseph Biden, proved more determined: US imposed sanctions against Russian businesses and individuals for cyber attacks and attempts to interfere with the election course in April 2021, that is, before the end of 100 days in office².

Presidential elections in France also did not escape Russia's interference. Obviously, this is due to several factors:

- The French President's amount of powers is one of the largest in Europe.
- Traditional ties between Russia and France, which are more than 200 years old and can claim to be one of the most stable in Europe.
- The participation of France in the Normandy format which aims to resolve the conflict in eastern Ukraine.
- Paris' traditional claims to leadership in Europe and manifestations of anti-Americanism by French political elite.

¹ В. Егисман, Насколько эффективны санкции против России? «Голос Америки», 10.12.2020, <https://www.golosameriki.com/a/caatsa-us-russia/5693985.html>.

² Речь Байдена о санкциях против России и разговоре с Путиным, «РБК.ru», 16.04.2021, <https://www.rbc.ru/politics/16/04/2021/60794a179a79473496593ee6>.

After Francois Hollande refused to run in the presidential election¹, young technocrat Emmanuel Macron, «National Front» leader Marine Le Pen and neo-holist Francois Fillon became favorites². The logic of Russian influence was to reach the second round of voting for Le Pen and Fillon (both politicians positively viewed the prospect of improving relations with Russia). Because this scenario was not implemented due to the scandal concerning the actions of the latter³, Russian hybrid influence was focused on discrediting Macron⁴.

Since democratic elections are a «sacred cow» for the EU and the United States, on one hand, the procedure for their implementation is brought to automatism and until recently ruled out the possibility of unauthorized interference, on the other hand, Russia was given considerable room for action. It is noteworthy that even journalistic investigations into election interference, which took place postfactum, did not lead to a review of their results⁵. Lack of legislation in the civilized world which would effectively identify interference in the conduct of elections as well as the very possibility of cross-border intervention in the course of electoral

¹ Олланд отказался от участия в президентских выборах 2017 года, «Интерфакс», 01.12.2016, <https://www.interfax.ru/world/539528>.

² Ле Пен, Фийон и Макрон являются лидерами президентской гонки во Франции — опрос, «Європейська правда», 19.01.2017, <https://www.eurointegration.com.ua/rus/news/2017/01/19/7060393/>.

³ Экс-премьер Франции получил пять лет за фиктивное трудоустройство жены, «BBC News — Россия», 29.06.2020, <https://www.bbc.com/russian/news-53224524>.

⁴ Передвыборчий штаб Макрона повідомив про кібер-атаку, «Укрінформ», 06.05.2017, <https://www.ukrinform.ua/rubric-world/2223210-peredvibornij-stab-makrona-povidomiv-pro-hakersku-ataku.html>.

⁵ M. Jane, *How Russia Helped Swing the Election for Trump*, «The New Yorker», 24.09.2018, <https://www.newyorker.com/magazine/2018/10/01/how-russia-helped-to-swing-the-election-for-trump>.

procedures turn electoral weapons into a priority instrument of the Kremlin's hybrid influence. It is worth recalling that Russia and China, unlike much of the civilized world, practically do not depend on the results of the will of their citizens. The impact on electoral processes is a powerful lever to discredit democratic institutions, therefore, it can be countered only through systematic and coordinated actions of institutions of state power, participants in the electoral process and civil society structures:

- Conducting information campaigns with the public opinion leaders to prevent vote-buying and unauthorized influence on voting.
- Spread of information about possible technologies of intervention among a significant number of voters on a supra party-basis. Public determination of open and transparent elections by participants in the electoral process as a strategic component of national interests.
- Prompt public response to attempts of electoral interventions at any level.

In today's world the ability to respond quickly is one of the signs of the state subjectivity. However, for a number of states the coronavirus pandemic created grounds for demonstrating their own influence on the development of the situation.

At the turn of 2019-2020 the world faced the pandemic of the coronavirus COVID-19. The spread of dangerous disease has not only been a test for the health care system, struck a blow to the world economy but also caused «infodemia».

Infodemia – active dissemination of unverified information, fakes, manipulations, which exacerbates the negative impact of coronavirus disease on democracies; this is an excessive amount of information about the problem which makes it difficult to find an effective solution. The term «infodemia» appeared in the public domain in February 2020 during the traditional Munich Security Conference. When delivering a speech in the Bavarian capital, Director-General of the World Health Organization (WHO) Tedros Adhanom Ghebreyesus stated: «We are not just fighting an epidemic; we are struggling with infodemia»¹. Infodemia can hinder the effective response to health care challenges, to provoke confusion and distrust in people.

By analyzing the preconditions and reasons for infodemia spread, let's pay attention to global trends which include:

- The destruction of the usual picture of the world creates despair and panic among a large number of people, regardless of nationality, religion, level of well-being.
- The unexpected nature of challenges only stimulates the spread of conspiratorial sentiments and fear. In such conditions, the seeds of populism quickly sprout.
- Significant slowdown in the economic development pace of the world is taking place, instead, there has been an unprecedentedly powerful recession in the world economy over the past decades. What's

¹ *UN tackles «infodemic» of misinformation and cybercrime in COVID-19 crisis*, United Nations (UN), <https://www.un.org/en/un-coronavirus-communications-team/un-tackling-%E2%80%98infodemic%E2%80%99-misinformation-and-cybercrime-covid-19>.

more, the factor of economic problems anticipation stimulates the desire to quickly find the culprit.

- There is no universal treatment protocol for COVID-19, competition between vaccine manufacturers is intensifying.
- During the pandemic restrictions on the rights and freedoms of citizens in a number of countries are perceived as an appropriate (though not always effective) method of combating the spread of coronavirus. So many are ready to give a part of their civil liberties in exchange for imaginary security.
- World leaders are ill and in isolation mode.
- Fake information about the coronavirus spreads much faster than the true one, sometimes even faster than the coronavirus itself.

The coronavirus reality causes the basic foundations of democracy to be shaken, creates a temptation to severely restrict the rights and freedoms of citizens under the pretext of protecting their health. Democratic procedures are also under attack, for example, the dates of the parliamentary elections in Northern Macedonia were postponed¹. Date correction of the presidential campaign in Poland significantly changed its image². Coronavirus in the United States has not only destroyed the economic achievements of Donald Trump administration, but also turned into an unexpected third player in the presidential election.

¹ Північна Македонія відтермінувала вибори до парламенту через коронавірус, «Укрінформ», 18.03.2020, <https://www.ukrinform.ua/rubric-world/2898699-pivnic-na-makedonia-vidterminovala-vibori-do-parlamentu-cerez-koronavirus.html>.

² S. Walker, *Duda narrowly re-elected in Poland in boost for ruling nationalists*, «The Guardian», 13.07.2020, <https://www.theguardian.com/world/2020/jul/13/incumbent-andrzej-duda-wins-polish-presidential-election-commission>.

Russia and China appear to be the main beneficiaries of the pandemic impact on democratic procedures, whose leaders do not depend on the results of the democratic will of their citizens¹.

It is worth paying attention to a number of Russian fakes, which were retransmitted by Ukrainian politicians from Russia's sphere of influence in 2020. Renat Kuzmin, a representative of OPZZh (Opposition Platform – for Life), paid a lot of attention to the functioning of the «secret American bacteriological laboratories in Ukraine»², his efforts were supported by the head of the party's political council Viktor Medvedchuk. Such statements are aimed at undermining the image of another strategic partner of Ukraine – the United States. Another obvious goal of the Kremlin is to discredit the manufacturers of vaccines against coronavirus in order to promote worldwide their own – Sputnik V³.

In addition, the texts about the influence of George Soros/Bill Gates on the appearance of coronavirus are repeatedly found in the information space. The financial support provided by these entrepreneurs and philanthropists to civil society institutions is the main reason for such information attacks. George Soros's concept of an «open society» globally contradicts the matrix of the «sovereign

¹ Россия и Китай продвигают конспирологические нарративы о коронавирусе – агентство ЕС, «Європейська правда», 21.04.2020, <https://www.euointegration.com.ua/rus/news/2020/04/21/7108976/>.

² ОПЗЖ ініціює кримінальне розслідування фактів незаконного функціонування американських бактеріологічних лабораторій в Україні, Телеканал «112», <https://112.ua/mnenie/opzzh-iniciiruet-ugolovnoe-rassledovanie-faktov-nezakonnogo-funkcionirovaniya-v-ukraine-amerikanskih-voennyh-bakteriologicheskikh-laboratoriy-533959.html>.

³ 18. Офіційна сторінка «Спутнік V» маніпулює інформацією про вакцини – *DFRLab*, «Радіо Свобода», 13.05.2021, <https://www.radiosvoboda.org/a/31253506.html>.

democracy» on which Vladimir Putin relies. There is no coincidence that the pro-Russian media are extremely active in demonizing Soros in the post-Soviet space. Russian propaganda machine used the speech of Bill Gates in 2015 against him. The inventor and philanthropist declared that a viral infection was a greater threat to humanity than nuclear war. Five years later in just a few months' more than a million posts linking Bill Gates and the coronavirus appeared on the Internet¹.

It is advisable to pay attention to measures that can provide effective informational vaccination against coronavirus as in Ukraine and states of transition democracies, which make up the majority of state formations in the post-Soviet space such as:

Taking into account the national specifics of information perception. Russian television channels are formally banned in Ukraine and the use of Russian social networks is restricted. However, the flow of misinformation has not stopped and will not stop in the near future — to build an informational «iron curtain» is practically impossible, and the need to protect oneself from Russian information aggression is not always perceived despite the formation of state bodies in order to combat disinformation.

Maximum call efficiency response. There is objectively insufficient daily information on the number of detected coronavirus patients from the Ministry of Health, a number of thematic video appeals by Volodymyr Zelensky did not turn into a breakthrough in communication with fellow citizens.

¹ Д. Кошельник, Билл Гейтс стал героем теорий заговора про коронавирус. В чем его обвиняют? «Vector», 17.04.2020, <https://vctr.media/gates-ne-vinovat-40264/>.

II. DEEPENING OF HYBRIDITY

Information submission «One Voice» (communicational platform). Unfortunately, after the election of Volodymyr Zelensky as President of Ukraine the program «One Voice» for the executive branch was phased out. It seems problematic to deploy it in the conditions of coronavirus. The absence of the program has led to growing distrust of government messages concerning both the coronavirus pandemic and domestic politics in general.

Revolver speech principle of VIP-speakers. The decline of Ukrainian government authority prevents the effective use of this step, however, it should be taken into account due to indefinite duration of the coronavirus pandemic. Thus, the main task for the reformatted Ministry of Culture and Information Policy is to form a message box of government officials on the coronavirus topic.

Case-studies for typical misinformation. To be at the forefront of a hybrid war against Russia means to face the active information activities of the Kremlin in various fields including a pandemic injection (propaganda) which seems to be the main. As for Ukraine it seems to be logical to try to systematize the experience of counteraction and broadcast it in the interests of other states, primarily GUAM partners and representatives of the European Union.

Show «light at the end of the tunnel». The instability of the coronavirus pandemic situation requires decisive and resonant steps from Ukrainian authorities. Lack of financial capacity should push the government to asymmetric actions and consolidation of the society.

Interaction with civil society and relevant international initiatives. Yes, the initiative «On the other side of the pandemic» is already functioning in Ukraine (<https://coronafakes.com/>). This platform, was launched and supported on a voluntary

basis, promptly checks the information and refutes the coronavirus fakes. There are initiatives at the international level such as <https://shareverified.com/en> — UN initiative and <https://euvsdisinfo.eu/category/blog/coronavirus/>.

If the coronavirus pandemic is the latest challenge to humanity and the latest tool for hybrid exposure, then the Kremlin's use of historical policy for its own purposes has substantial grounds. The most important among them are the European Parliament resolution on the joint responsibility of Nazi Germany and the Soviet Union adopted in September 2019¹ and the celebrations of the end of World War II in Europe, curtailed by the coronavirus pandemic.

In order to understand the reasons for the the Kremlin powerful hybridization of historical memory one should pay attention to the following facts:

- Russia has consistently imposed its own interpretation of the facts, based on the archives of both the Russian Empire and the USSR on its own territory to support itself.
- There is a large-scale program in Russia of «Russification» of the history of the post-Soviet space.
- The Kremlin is successfully exploiting the concept of the imperial historical past, seeking to reduce the role of Ukrainians and other nations of the Russian Empire from the public sphere to the functions of service.
- Ukraine significantly lacks an effective state policy of historical memory which might give a powerful

¹ *Importance of European remembrance for the future of Europe*, European Parliament, https://www.europarl.europa.eu/doceo/document/TA-9-2019-0021_EN.html.

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impetus to the political nation formation in modern conditions.

Preparation of historical memory on the eve of 2020 and during the year itself, the 75th anniversary of the end of World War II became the basis of the Kremlin's diplomatic action in the international arena.

It is significant that this time the attack was carried out not only at the highest state level, but also against a state for which its own history is an important component of domestic policy. However, not only Poland was affected by the threat but the whole European Union.

This is facilitated by the nature of Polish-Russian relations since 2010, when the Tu-134 plane was lost near Smolensk, with a large part of the Polish political and military elite on board. Since then, relations between Moscow and Warsaw have been strained and there is no chance of their improvement. Putin is trying to shift responsibility for the Molotov-Ribbentrop Pact from the Soviet Union by accusing the leadership of the Second Commonwealth of collaborating with Hitler.

The Russian leadership finds and uses new historical themes for manipulations and methods of using contradictory and painful events/epochs to achieve foreign policy goals. In this case, they remain unchanged — discrediting Poland, Ukraine, the Baltic countries in the eyes of Jewish circles in the United States and Western Europe, creating new dividing lines in the European Union, weakening the European community through the escalation of historical disputes, fueling internal tensions through the spread and intensification of domestic anti-Semitism, for example, as well as the delegitimization of Ukrainian statehood historical

longevity. Russia's motives also include the desire to compensate for the image losses that Russia has suffered after the annexation of Crimea and the beginning of hybrid aggression in the Donbas.

We believe it is possible to talk about the established principles and implementation of the Kremlin's New Historical Policy aimed at achieving Russia's geopolitical goals of undermining the EU from inside and destroying the prospects for its development.

What is fundamentally new in it? The first thing to note is the focus — this time not only Ukraine is under attack but also other countries and topics — Poland, World War II, the Holocaust, collaboration with the Nazis. At the same time, let us repeat, the whole European Union is under attack and consensus on certain aspects of commemorative policies. What is the confirmation of this thesis?

This is witnessed by some thesis in the discussion materials about historical memory of Russian historians¹. They refer, for example, to proposals to claim that World War II did not begin in 1939 with the attack on Poland, but in 1931 with the aggression in Manchuria, to emphasize that Poland is actually a common enemy of Russia and the European bureaucracy and so on.

The article, publicly mentioned by Putin will fully comply with the «victory» trend which has existed in Russia for many years and is exacerbated by the Kremlin. Their own version of the Second World War events (in the Russian version, of course, the «Great Patriotic War») ceased to be

¹ Историческая память — еще одно пространство, где решаются политические задачи, «Россия в глобальной политике», 31.12.2019, <https://globalaffairs.ru/articles/istoricheskaya-pamyat-eshhe-odno-prostranstvo-gde-reshayutsya-politicheskie-zadachi/>.

the factor of the society consolidation in Russia and vigorously reaches the international level. The above-mentioned resolution of the European Parliament during December 2019 caused Vladimir Putin public outrage and this gives grounds to speak about his *modus operandi*.

During the last decade of 2019, Vladimir Putin publicly criticized Poland's policy in the pre-war period, actually accusing its leadership of allied relations with the Third Reich and anti-Semitism as a part of public policy. In addition, at this time Vladimir Putin began the hybridization of the Holocaust. On December 24, at an expanded board of the Ministry of Defense, Putin called the Polish ambassador to Germany, Józef Lipski, a «bastard» and «anti-Semitic pig», who, according to the Russian president, in 1938 praised the persecution of Jews¹.

Polish Prime Minister Mateusz Morawiecki responded to Putin by stressing that Russia had systematically lied about Poland and its history². A special headquarters headed by Prime Minister Mateusz Morawiecki has also been set up in Warsaw.

History of World War II with the consequent formation of the powerful pro-Soviet camp and the emergence of new dividing lines in Europe, remains largely ideological. The wounds inflicted by it may still bleed at the first careless or, on the contrary, deliberate touch. Let me remind you

¹ Владимир Путин регулярно обвиняет Польшу в развязывании Второй мировой. Похоже, из-за того, что его не позвали в Варшаву на 80-летие начала войны, «Медуза», 05.02.2020, <https://meduza.io/feature/2020/02/05/vladimir-putin-regulyarno-obvinyayet-polshu-v-razvyazyvanii-vtoroy-mirovoy-pohozhe-iz-za-togo-ch-to-ego-ne-pozvali-v-varshavu-na-80-letie-nachala-voyny>.

² М. Гвоздьж-Паллокат, Спор об истории: Польша против Путина, «DW на русском», 01.01.2020, <https://www.dw.com/ru/спор-об-истории-польша-против-путина/a-51848429>.

that Russia has the Russian Empire archives as well as a significant part of the Nazi Germany archival documents at its disposal. Using them by offering their own compelling version of controversial historical events and promoting them in the information space of European countries is by large the matter a question of technology for the Russian propaganda machine.

Why is Poland the object of Putin's «historic» blow? The first reason is that historical memory is an important element of domestic politics in this country and any external speculation will somehow resonate because Poland held presidential elections in 2020. The second — during the reign of «Rights and Justice» Poland has gradually become a powerful center of influence in Central Europe as well as «*an enfant terrible*» of the European Union regarding the number of issues. We can recall two more facts — the final Brexit is scheduled for January 2020 and Emmanuel Macron's visit to Moscow announced for May 2020 in order to realize the scope of the Kremlin's plan.

Vladimir Putin continues to seek the collapse of the European Union and in the year of the 75th anniversary of World War II end, he used historical tools after calculating their impact on the world community. Anyone interested should read the materials of Russian historians' discussion about historical memory¹. It refers to proposals to claim that World War II did not begin in 1939 with the attack on Poland (such versions do exist), in order to emphasize that Poland is a common enemy of Russia and the European bureaucracy. If such thoughts are published, you can only imagine what

¹ Историческая память — еще одно пространство... <https://globalaffairs.ru/articles/istoricheskaya-pamyat-eshhe-odno-prostranstvo-gde-reshayutsya-politicheskie-zadachi/>.

is behind the closed doors. There should be no doubt that Russia intends to use history as a weapon in its own efforts to strengthen its position on the world stage.

At the end of January 2020, during the Holocaust Remembrance Forum in Jerusalem organized largely with a view to Vladimir Putin's participation in it, the Russian president expressed a key thesis. He stressed that the Holocaust was carried out by the Nazis and their accomplices in the occupied territories. In the next paragraph of Putin's speech he mentioned 1.4 million Jews that were exterminated in Ukraine and the almost complete extermination of Jews in Latvia during World War II¹. It can be called an example of the Kremlin's post-truth, when a true historical fact and a false historical interpretation are skillfully mixed together in one presentation.

Putin's speech showed a significant trend. The President of Russia and the Russian propaganda machine seek to use historical memory for their own tactical and strategic purposes. Firstly, the enormous sacrifices of the Holocaust require constant reflection and it has been taking occurring in a number of post-socialist countries in recent years adding public interest to the problem. Secondly, the tragedy scale allows the Kremlin to skillfully manipulate and if not whiten the Nazis, then carry out the hybridization of the Holocaust, shifting the blame for the extermination of Jews on the inhabitants of the occupied territories. Third, Russia seeks to emphasize its role in defeating Nazism and is trying to inflate it.

¹ Форум «Сохраняем память о Холокосте, боремся с антисемитизмом», Официальный сайт президента РФ, 23.01.2020, <http://kremlin.ru/events/president/news/62646>.

However, there is another factor: there are many archival documents (and not only Russian or Soviet) on the territory of Russia, there is a political desire to use them in their own interests and information machine that can deliver the appropriate signal virtually worldwide. Therefore, we can talk about the emergence of a new historical policy of the Kremlin aimed at achieving Russia's geopolitical goals of undermining the EU from inside and destroying the prospects for its development.

A striking example of manipulation was a salute in Moscow in January 2020 in honor of the 75th anniversary of the liberation of Warsaw from the Nazis. As you know, the units of the Workers' and Peasants' Red Army (frequently shortened to Red Army) from the other bank of the River Vistula observed the suppression of the Warsaw Uprising by the Nazis which began in August 1944. The cynical celebration of the anniversary of the liberation of Warsaw took place together with the publication of archival documents about the unpreparedness of the uprising — and here the version of Russian propaganda falls entirely on the traditional Soviet propaganda point of view.

However, not only the 75th anniversary of the victory over Nazism was widely used in public rhetoric in Russia in 2020. June 4, 2020 marks the 100th anniversary of the Treaty of Trianon whose signing caused significant territorial losses to Hungary. «Trianon's Trauma» is still one of the cornerstones of the foreign policy of the government of Victor Orban. Its spearhead is directed against Ukraine, as aggressive actions against other neighboring countries with Hungary, where a significant number of the Hungarian diaspora lives, may have negative consequences for Budapest at the European level. However, after being criticized by the

European institutions Orban's government is always trying to win back Ukraine, where the Hungarian diaspora can not qualify for impact across the state neither in absolute figures nor by percentage of the population.

Russia's position here is to form a special relationship with Viktor Orban leading to the actual coordination of joint actions against Ukraine. This coordination takes place both in the public sphere¹ and by carrying out provocations in Transcarpathia, where the Hungarian national minority compactly lives².

Let's mention **the basic points of Russia's new historical policy:**

- *The desire to reconsider the history of World War II in the context of the 75th victory over Nazism.*
- *Implementation of Holocaust hybridization in public perception and intentions to use anti-Semitism and the facts of collaboration as a factor in discrediting Poland, Ukraine and the Baltic States.*
- *Creating and spreading the myth of Russia's role in the victory over Nazism which would significantly change other mythologies of an imperial nature.*

With the beginning of the undeclared (unconventional) war in Donbas in the spring of 2014 the process of the enemy dehumanization began. If the actions of the Russian Federation and its puppets were more systematic and

¹ Путін і Орбан активно паплюжили Україну перед Трампом — топ-чиновник Держдепу, «Європейська правда», 08.11.2019, <https://www.euointegration.com.ua/news/2019/11/8/7102817/>.

² Y. Mahda, *Hungary and Russia: Alliance of Convenience*, «GeoPolitica», https://www.geopolitic.ro/2020/01/hungary-russia-alliance-convenience/?fbclid=IwAR2wAMV-vJ4efG_GumsLxvRiWFq7aDzygzttBQ8KfxEmuBFPilij_l9IsJLM.

prepared (details below), Ukraine's reaction was situational. Ukrainian servicemen and soldiers of volunteer battalions began to be called Ukrop (literally «dill» as a plant, that is a Russian ethnic slur referring to Ukrainians), members of pro-Russian illegal armed groups — «Colorados» (by the color of «St. George's ribbon» and by analogy with pests). However, the mass dehumanization of the enemy in the modern world seems ineffective without personalized sensitive topics.

In early April 2021 the Russian and ORDLO media reported the death of 5-year-old Vladislav Shyhova in the village of Oleksandrivske as a result of a grenade explosion which was allegedly dropped by a Ukrainian UAV (unmanned aerial vehicle or uncrewed aerial vehicle). This message began to be actively circulated in the Russian media, the boy's grandmother even appeared on the air of Russia-1 TV channel. However, she did not mention aircraft and spoke only of the circumstances of the boy's death. After the telephone survey the OSCE SMM concluded that the child was the victim of an unidentified explosive device found in his own backyard¹. However, the informational use of the relevant version continued.

The initiators of the media coverage of the murder of a child by the Ukrainian military were not stopped by several range of facts — from lack of technical ability to strike by drones owned by the Armed Forces, to the lack of logic in the message of the child's death. This did not stop the speaker of the Russian Federation State Duma Vyacheslav Volodin

¹ Ежедневный отчет № 80/2021, опубликованный Специальной мониторинговой миссией ОБСЕ в Украине (СММ) 8 апреля 2021 года, <https://www.osce.org/ru/special-monitoring-mission-to-ukraine/483044>.

from the call to exclude Ukraine from the Council of Europe¹. The Investigative Committee of the Russian Federation has opened a criminal case over the death of a child, which, I remind, took place on the territory of Donetsk region which is not under the control of the official power of Ukraine.

Enemy dehumanization is a technique that has been used in hostilities for a long time. The First and Second World Wars presented numerous examples of such technologies in practice. If the actions of Nazi Germany were based primarily on the «racial theory» of the Aryan (German) race superiority over the Slavs and Jews, the Soviet propaganda acted more widely. In the summer of 1942, a famous Soviet poet who worked as a front-line correspondent, Kostiantyn Simonov wrote the poem «Kill him» (Kill the German!), which was widely distributed in the Soviet Union and was used to raise the morale of the soldiers of the Red Army. After a while, a publicist Ilya Ehrenburg wrote an article «Kill!».

In modern conditions, the Russian government also relies on the work of military correspondents, however, their functions are somewhat different. Oleksandr Kots, Semen Pegov, Yuriy Kotenok, Daria Aslamova are not only covering the armed conflicts in which the Russian military is directly or indirectly involved, but also take part in information and psychological operations of wide influence. They were working in Georgia in 2008, widely covered the events in Crimea and Eastern Ukraine since the spring of 2014, did the reports from Syria. Experts consider them to be agents of influence of the Main Intelligence Directorate of the General Staff of the Russian Federation and this influence

¹ Володин предложил поднять вопрос об исключении Украины из Совета Европы, «РБК.ру», 03.04.2021, <https://www.rbc.ru/politics/03/04/2021/6068a8379a7947c-fad5eb9f2>.

should not be ignored. In April 2021, in the midst of the escalation of the situation on the Russian-Ukrainian border, Russian Foreign Minister Sergei Lavrov said «we have full information about the situation in Donbass from our war correspondents»¹.

The activities of Graham Phillips — a British citizen, who worked in the Donbass in the interests of Russian TV channels «Zvezda» and «Russia Today» are very revealing. Not only did he cover the course of hostilities in the Donbas in a favorable light for the Kremlin, but also carried out direct provocations against the citizens of Ukraine².

Let's recall one more case of dehumanization of the enemy by the Russian propagandists. It's about a «crucified boy» — a widely circulated television story about the demonstrative execution of a little boy by the Ukrainian military³. The absurdity of the accusations gradually turned this statement into an illustration of the cynicism of Russian propaganda, however, in July 2014, in the midst of hostilities in the eastern regions of Ukraine, its customers could well have had the desired effect.

No less interesting is the fate of a woman who acted as the promoter of this fake in 2014. Halyna Pyshnyak, the wife

¹ Интервью Министра иностранных дел Российской Федерации С.В.Лаврова Генеральному директору МИА «Россия сегодня» Д.К.Киселеву, Москва, 28 апреля 2021 года, https://www.mid.ru/ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4715136.

² Блогер-українофоб Філіпс влаштував провокацію під час звільнення Жемчугова — Герашенко вимагає реакції, «Детектор Медіа», 18.09.2016, <https://detector.media/community/article/118885/2016-09-18-blogger-ukrainofob-fillips-vlaskuvav-provokatsiyu-pid-chas-zvillennya-zhemchugova-gerashchenko-vymagaie-reaktsii/>.

³ Распятие трехлетнего мальчика в Славянске и фрагмент об украинской армии, https://www.youtube.com/watch?v=kgfkWExDrUQ&ab_channel=Pravoslavnyihristianin.

of a former Berkut special police officer, was interviewed by Dozhd TV in April 2021. Significantly, this case is called «fake major war in Donbas»¹, and the heroine herself did not receive a positive attitude in the Russian province². This is a rather demonstrative situation that the actual attitude of propagandists to the «consumables» for spreading fakes is humiliating.

Although dehumanization can be called an element of modern warfare, it would be a mistake to assume that such operations are conducted exclusively in theaters of war operations. The spread of the absurd rumors about the death of young boys as a result of war crimes both in 2014 and in 2021 could be a catalyst for mobilization of ORDLO population and public opinion in Russia. In the spring of 2021, this did not happen due to the refusal of the Russian leadership to further escalation of tension, however, the very fact of using such operations is a powerful signal of preparing for hostilities.

In the autumn of 2018, information about the murder of a local Ukrainian boy by a group of teenagers was spread in local public social networks in Zakarpattia. It was illustrated with a photograph of a grief-stricken mother near the coffin with a boy. The Department of the National Police in the Zakarpattia region did not confirm the information about the commission of such a crime³.

¹ М. Борзунова, История «распятого мальчика»: мы нашли героиню главного фейка войны в Донбассе. Эксклюзив *Fake News*, Телеканал «Дождь», 11.04.2021, https://tvrain.ru/teleshov/fake_news/ekskljuziv_fake_news-527992/.

² П Калашник., Автор фейка о «распятом мальчике» сожалеет о своих словах и жалуется на плохое отношение в России, «Громадське», 12.04.2021, <https://hromadske.ua/ru/posts/avtor-fejka-o-raspyatom-malchike-sozhaleet-o-svoih-slovah-i-zhaluetsya-na-plohoe-otnoshenie-v-rossii>.

³ Фейк: Возле Берегово венгры жестоко убили 12-летнего украинского мальчика,

It should be emphasized that Russia is taking measures to dehumanize the enemy not only in Ukraine. Following the deployment of an additional NATO contingent in the Baltic States, cases of sexual crimes began to appear in the public domain there. The accusation was directed against Bundeswehr soldiers which suggests a desire to use stereotypes about World War II. The use of historical memory elements in such episodes is a trademark of the Russian propaganda, however, Lithuania and Germany managed to quickly refute the fake¹.

Since the intensity of political events is unlikely to decrease and the confrontation between Russia and the EU is manifested over and over again, I would like to focus on a **number of recommendations for combating against dehumanization:**

- *Dehumanization of the enemy has not lost its relevance since the world wars, today it is more accentuated.*
- *The main tools of dehumanization are fakes about crimes against children committed by the enemy's military or in some cases by representatives of other nationalities.*
- *Fake accounts are used to spread fake information, local news sites, however, in the case of Russia, they reach the federal level, become elements of the national agenda.*

«StopFake», 05.11.2018, <https://www.stopfake.org/ru/fejk-vozle-beregovo-ven-gry-zhestoko-ubili-12-letnego-ukrainskogo-malchika/>.

¹ Как Вильнюс и Берлин разоблачили фейк о бундесвере в Литве, «DW на русском», 17.02.2017, <https://www.dw.com/ru/как-вильнюс-и-берлин-разоблачили-фейк-о-бундесвере-в-литве/a-37601820>.

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- *The logic of using such information suggests its dissemination against political opponents during election campaigns or at the culmination of political crises.*
- *In modern world dehumanization of the enemy requires a dense flow of information, which does not allow the recipient to critically evaluate it.*
- *It orders to counteract dehumanization we should disassemble fakes into components by using the official position and promptly provided materials.*

Russia's use of the latest hybrid instruments of influence allows us to assert its policy flexibility towards various subjects in international relations as well as their readiness to systemically influence over the world politics by pursuing their own interests. Hybrid thinking and action are viewed as a guarantee of achieving the Kremlin's goals and, thus, these approaches are likely to be applied in the future.

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II. DEEPENING OF HYBRIDITY

Walker S., *Duda narrowly re-elected in Poland in boost for ruling nationalists*, «The Guardian», 13.07.2020, <https://www.theguardian.com/world/2020/jul/13/incumbent-andrzej-duda-wins-polish-presidential-election-commission>.

III.

**HUMANITARIAN DISASTER IN
THE OCCUPIED TERRITORIES:
HUMAN RIGHTS AS A VICTIM OF THE
KREMLIN'S NEW EMPIRE**

III.I

EXPERIENCE OF DONBASS

Russian aggression towards Ukraine and its partial occupation since 2014 are accompanied by humanitarian disaster which affects various aspects and existence of the population in separate districts of Donetsk and Luhansk regions (ORDLO) which aren't controlled by the Ukrainian state. There is no single definition of a humanitarian disaster, so we offer our own¹. It is the violation of the normal life of the population in a certain area or within the country as a result of hostilities, natural cataclysms, political decisions and so on. This disaster has a triple nature: on one hand, it is inability of the Russian Federation to establish the process of managing the occupied territory, which includes providing for the basic needs and interests of the population. On the other hand — it is a part of conscious anti-Ukrainian policy

¹ For example, Wikipedia defines a humanitarian catastrophe as «a severe phenomenon resulting from the effects of hostilities, natural disasters, economic blockades or political decisions and causing casualties mainly among civilians», which threatens the destruction of a certain territory or society as a result of migration, famine, loss of morals, epidemics and violence against civilians. (See.: https://uk.wikipedia.org/wiki/Гуманітарна_катастрофа).

that foresees the creation of maximum obstacles which are to make impossible or enormously complicate the process of reintegration of these territories back to Ukraine. Finally – humanitarian disaster in the ORDLO resulted in satisfying of their own economic interests of individuals and power groups in the Russian Federation.

Humanitarian disaster is not limited to the socio-economic aspects that are primarily related to the survival and satisfaction of basic needs of the population. This phenomenon also includes cultural and spiritual aspects concerning the threat to the preservation of the main features of the identity of the occupied territories of Donbass. Both of them are interrelated: the violation of cultural and spiritual citizens' rights contributes to the spread of indifference, fear and passivity which don't let people defend their socio-economic and political rights, on which their habitat ultimately depends.

Furthermore, in our opinion, when analyzing the humanitarian disaster in the occupied territories it is necessary to take into account the following circumstance: since 2014 people living in the occupied territories gradually adapted to the conditions of life due to the relative adjustment of pensions and other benefits in Ukraine, certain stabilization of the socio-economic situation in separate districts of Donetsk and Luhansk regions in the absence of massive hostilities after 2015 as well as massive pro-Russian propaganda. Therefore, the perception by most of the inhabitants of their situation may not necessarily be a humanitarian disaster. It is rather an external observer sees features of this disaster than someone who is in the region.

**CULTURAL AND IDEOLOGICAL MANIFESTATIONS
OF THE HUMANITARIAN DISASTER IN THE CONTEXT
OF THE RUSSIAN FEDERATION'S TAKEOVER OF THE
OCCUPIED TERRITORIES**

Humanitarian disaster has the features of cultural and ideological crisis as the consequence of the situation taking place in the region before the Russian aggression in 2014 as well as the external deliberate action by the Russian invaders. The latter realized that the separate districts of Donetsk and Lugansk regions wouldn't be able to turn out into a «cancerous tumor» of Ukraine, and therefore they began to implement a plan for the gradual integration of the occupied territories into Russia's socio-economic, political, and cultural-ideological space, followed by annexation. The implementation of Russia's strategy in the occupied territories will lead to the consolidation of elements of the rigidly authoritarian political regime of the Russian model with its systematic violation of socio-economic and political human rights, and hence consolidation of the state of humanitarian disaster.

Experts of the Eastern Human Rights Group, while monitoring socio-political processes in the occupied territories, came to the conclusion that the Russian Federation is carrying out a non-military stage of a hybrid war against Ukraine, which can be tentatively called «takeover». According to their definition, non-military actions — are «implementation of political, economic, informational and other special operations, aiming at the total occupation of the territory of another country (state) not only its capture, but also the

conviction of the inhabitants in the correctness of the aggressor's actions»¹.

It is achieved by promoting the idea of «the Russian world» among the population, teaching the history of Russia in schools and universities, the creation of military-patriotic youth organizations and attracting young people to different events in Russia and so on. The aim of the Russian strategy through the use of «soft power» is to root the ideas of «the Russian world» in the people's minds, and thus preparing the separate districts of Donetsk and Luhansk regions for take-over such as the annexation of Crimea and Sevastopol².

One of the most important elements of this strategy was the imposition of illegitimate passports of the so-called «LPR» and «DPR» as the first step towards obtaining Russian citizenship. It completely fulfils the purpose of the Russian leadership to prepare the local population for annexation on one hand and creating grounds for an armed invasion of Ukraine under the pretext of protecting Russian citizens, as it was done in 2008 for Georgia³. Obtaining a «passport» is mostly compulsory and is mandatory for individuals, which are working in the occupied enterprises, as well as the local military formations. Refusal to pass certification entails fines, non-payment of wages and even dismissal. According to the Eastern Human Rights Group, passports are issued at the workplaces of enterprises; also this process is actively taking place for such categories of the population as officials, military and pupils of 9-11 classes⁴. It should be

¹ Восточная правозащитная группа. Поглощение. Интеграционные процессы РФ в ОРДЛО 2020. Аналитический отчет. Октябрь 2020, Днепр 2020, p.8.

² Ibid, p.7.

³ On the eve of the Russian aggression in August 2008, there were reports of mass issuance of passports to residents of Abkhazia. See: Ibid, p.18-19.

⁴ Ibid, p.11.

noted that coercion to obtain passports is a flagrant violation of international law, according to Geneva Convention of 1949 on the protection of civilians in time of war and Article 75 of the Additional Protocol¹. However, in 2019 the occupation administrations of ORLO issued 150 thousand passports and ORDO – 195 thousand².

The next step was actually the beginning of the mass issuance of Russian passports to residents of the occupied territories. This can be seen as establishing control over territories by controlling people. It is clear that the passportization of the inhabitants of ORDLO will expand the scale of the Russian occupation and strengthen its control over the region. Experts of the Eastern Human Rights Group also draw attention to the fact that the presence of their citizens on a foreign territory is designed to partially legitimize direct funding from the budget of the Russian Federation, as well as the protection of the borders by the Russian military and the presence of Russian troops under the guise of a peace-keeping contingent³. In the absence of legal occupation there is an actual one, as there are no formal occupation administrations, but there are «authorities» elected by local residents. However, in reality, Russia controls this territory through citizenship, finance and military presence.

One should pay attention to that when taking the oath, which is an integral attribute of obtaining Russian citizenship,

¹ Конвенція про захист цивільного населення під час війни. Женева 12 серпня 1949 року, https://zakon.rada.gov.ua/laws/show/995_154#Text; Додатковий протокол до Женевських конвенцій від 12 серпня 1949 року, що стосується захисту жертв збройних конфліктів міжнародного характеру (Протокол I), від 8 червня 1977 року, https://zakon.rada.gov.ua/laws/show/995_199#Text.

² Восточная правозащитная группа. Поглощение. Интеграционные процессы РФ в ОРДЛО 2020. Аналитический отчет. Октябрь 2020..., р. 11.

³ Ibid, p. 18-19.

this procedure is recorded in photos and videos. In addition, fingerprints are taken. Thus, a person who has acquired the Russian citizenship essentially cuts off their way back and becomes dependent on the occupiers.

Another illegal act of the Russian occupiers which already has and will have severe humanitarian consequences in the future was the accelerated militarization of children and youth. What does it mean? Firstly, the occupation administration prepares «cannon fodder» from the locals to reinforce its armed formations, thereby threatening people's lives. Secondly, young people undergo a total «brainwashing» and they are instilled with hatred for Ukraine, which will seriously hamper the reintegration of the local population in the future. Third, the growing number of people that have undergone military training will, anyway, increase the number of weapons and criminal groups on uncontrolled territories, and therefore will help to maintain a suitable level of crime and, as a consequence, socio-political instability.

For this purpose, similarly to the Russian Federation, mass and continuous propaganda with the involvement of narratives of the Soviet period is widely used, such as «victories in the Great Patriotic War» in particular. It should be noted that militarization takes place on the basis of normative documents similar to the Russian ones and under total Russian control¹. The main directions of militarization can be considered the involvement of children and adolescents in paramilitary organizations (such as «Yunarmia»), military-patriotic clubs, participation in «patriotic actions», visiting «military-patriotic camps» etc. The purpose of these organizations is not only psychological and ideological

¹ Ibid, p. 22.

treatment of youth, but also their preparation for real hostilities. It should be noted that the organizations mentioned above use the experience of the Russian Federation in their work. The unification of these structures, their subordination to illegal armed groups and strengthening control over the expenditure of funds aimed at the militarization of the younger generation are being conducted¹.

Unfortunately, it should be noted that measures to militarize adolescents and young people are becoming increasingly popular and involve more and more participants, as a consequence of prolonged absence of Ukraine in these areas. This means that the younger generation is gradually drawn into military conflict.

Another means of influence over the younger generation was the restructuring of the education system towards the Russian language and history, as well as complete withdrawal from the educational process and the ban on the Ukrainian language and history of Ukraine. Its killing two birds with one stone: the occupiers' narratives are formed in the minds of students, and it becomes virtually impossible for them to enter Ukrainian universities. In fact, secondary and higher educational institutions of ORDLO switched to educational programs of the Russian Federation².

Thus, the Russian Federation creates preconditions for non-return or the most complicated return of the occupied territories under the control of Ukraine and these manifestations have signs of a humanitarian disaster in the spiritual and ideological sphere. The ultimate goal is to completely «recode» the consciousness of the young population as one

¹ Ibid, p. 33.

² Ibid, p. 61.

of the important prerequisites for the absorption of the occupied territory of Donbass.

**SOCIO-ECONOMIC AND POLITICAL ASPECTS
OF THE HUMANITARIAN DISASTER**

In addition to spiritual and cultural components, the humanitarian disaster contains significant manifestations in the socio-economic and political spheres. This was especially noticeable immediately after the end of the «hot phase» of the war. In early April 2015 at a briefing in Kiev, when summing up the visit to Donetsk and the region M. Botsyurkiv, the Representative of the Special Monitoring Mission (SMM) of OSCE in Ukraine noted that the infrastructure of many villages and cities in Donetsk region, in particular educational and medical, is destroyed – hospitals and schools are not working. He used the term «humanitarian disaster» to refer to what is going on in many parts of Luhansk and Donetsk regions. According to observers, hospitals in many villages have been destroyed and there are no medicines. «Many of the children left in the region are in a state of shock, they have nowhere to play and study; people do not have access to social assistance» – he noted. According to the head of the UGCC Shevchuk, humanitarian structures do not have access to the occupied areas of Donbass with the population of 4 million people. That is why Ukraine has not only become a victim of the Russian aggression, but also «appears to be the scene of the greatest humanitarian disaster in Europe since World War II»¹.

Another evidence of the humanitarian disaster is the updated Humanitarian Map of Donbass, presented on June

¹ Гуманітарна і екологічна катастрофа на Донбасі (світова преса), «Радіо «Свобода», 19.11.2018, <https://www.radiosvoboda.org/a/29608515.html>.

23, 2015 by Rinat Akhmetov's Humanitarian Staff which reflects the needs of people of ATO area and IDPs. It is based on a study by the Kyiv International Institute of Sociology (KIIS). According to survey, 52 % of people surveyed in cities which are not under the control of Ukraine, need medicines, 41 % — food, 34 % — household goods. The most problematic situation is in Stakhanov, Rovenky and Dzerzhinsky. 80 % of respondents said they needed food, medicine and hygiene products in Stakhanov¹.

The humanitarian disaster has several dimensions related to socio-economic and political processes in the occupied territories, as well as among themselves. First of all, we are talking about the attempts of the occupation administrations to establish the extraction and sale of coal at the ORDLO mines. At the same time, most of the mining enterprises are closed for the purpose of exporting scrap metal and mining equipment for quick earnings and at the same time the exploitation of workers in the mines is increasing.

During the occupation from 2014 to 2020, 70 % of enterprises which were operating under Ukraine were liquidated, looted and flooded². All this creates another serious problem for the environment of the occupied territories. On January 11, 2020, 39 coal mines are flooded in the ORDO and some of them contain hazardous industrial waste³. Human rights activists and environmentalists pay special attention to the closed mine «Young Communist» where a canned capsule

¹ Гуманітарна катастрофа чи гуманітарна голка — дві сторони однієї медалі: доступ до гуманітарної допомоги в умовах збройного конфлікту на сході України, (eds.) А.П. Бущенко, Українська Гельсінська спілка з прав людини, КИТ: Київ 2016, р.10.

² Восточная правозащитная группа. Социально-экономическое положение в ОРДЛО 2020. Аналитический отчет. Февраль 2020, Днепр 2020, р. 6.

³ Ibid. p.7

with radioactive substances has been stored after an experimental nuclear explosion in 1979. In order to keep the capsule dry, water was constantly pumped out. However, in April 2018, the Yenakiyev administration, due to lack of funds, stopped the pumps and by the beginning of 2020, 35 % of underground workings were flooded¹. The probability of flooding the radioactive capsule with groundwater becomes more and more real, which poses a threat of water contamination of the main waterway of the region — the Seversky Donets River with subsequent entry into the Azov and Black Seas. Another dangerous consequence of the cessation of groundwater pumping was the subsidence of the soil in the cities of Donetsk, Horlivka and Makeyevka by about 10 cm, as evidenced by space images obtained by the OSCE and the Space Agency of Ukraine.²

From the very beginning, the occupation administrations began the systematic and purposeful removal of unique enterprises from the ORDLO areas. According to experts of the Eastern Human Rights Group, this was facilitated by purposeful work of the Russian special services, who had previously collected information about the most successful and modern enterprises in the region in order to export them to Russia, and create a shortage of jobs in the occupied territories and thus making the local population more willing to join the Russian armed forces.³

The solvency of the population has decreased due to the decommissioning of industrial enterprises and infrastructure, staff reductions, late payment of wages and lack of new jobs. Another consequence of the occupation was

¹ Ibid. p.7.

² Ibid. p.8.

³ Ibid. p.6.

the division of previously economically united areas. There is an increase in prices for vital goods and services. In general, the cost of food and basic necessities is quite high, comparable to the price level in Russia and, accordingly, higher than in Ukraine¹.

The outflow of qualified specialists has become a serious problem. In particular, there is a shortage of doctors, especially pediatricians, as well as specialists in engineering, coal, chemical and other industries. The majority of the working population goes to Russia, others to the areas controlled by Ukraine. Due to lack of labor (in the case of doctors), the quality of life decreases due to the inability to timely receive and qualified medical care. The lack of technical specialists leads to an increase in accidents in the industry and threats to human security in general, as this mainly concerns high-risk enterprises.

The general decline of industry in the occupied territories resulted in an increase in injuries and deaths. This is especially true for the coal industry. A vivid illustration of this was the accident at the Vostok-Carbon mine in the village of Yurivka, Lagutyn district, Luhansk region, which took place on April 25, 2019 and killed 17 miners. A few hours after the underground explosions, employees of the local rescue team were unable to begin work due to lack of the appropriate equipment. Moreover, such equipment could not be provided by the rescuers from the neighboring ORDO. Therefore it was necessary to address to the corresponding services of the Russian Federation, who got to the crash site in 24 hours the next day². According to the Eastern Human Rights Group, the mine management

¹ Ibid, p.9.

² Ibid. p.10.

did not monitor the level of methane in the mine workings and the company did not take any prophylactic measures to prevent the accumulation and ignition of methane, and the workers did not have SHI-6 devices for measuring the composition of oxygen in the mine atmosphere. According to the workers, the owner of the mine forced them to buy the rescue equipment ShSS-1 at their own expense¹. The reaction to the accident of the head of the Luhansk occupation administration L. Pasichnyk was indicative, as he did not even seek help from the Ukrainian authorities, instead, he was waiting for the arrival of rescuers from the Rostov region of the Russian Federation.

Since 2017, the most profitable companies have come under the external management of the Russian CJSC «Vneshtogrservis». Since 2019, this structure has had problems with the payment of wages at controlled enterprises².

Most enterprises in ORDLO operate at 15-20 % of capacity from the level before the occupation in 2014. It is due to the destruction of the management system and the rupture of technological ties with partners in the territory controlled by Ukraine, physical destruction by hostilities, a sharp outflow of labor, a transport blockade by Ukraine, as well the export of production to Russia. With regard to the ORDO, it should be noted that the occupation administrations closed 19 coal mines in the Donetsk region, reducing 28.7 thousand jobs. Thus, many settlements were left without city-forming enterprises³.

¹ Восточная правозащитная группа. Уголь ценой жизни. Смертность и травматизм шахтеров на оккупированной территории Донбасса 2020. Аналитический отчет. Февраль 2020, Днепр 2020, р. 8-9.

² Ibid, p. 8.

³ Ibid, p.16.

In order to streamline the actual process of looting industry on the occupied territories, in the summer of 2015, the occupation administration of the ORLO passed a law «On the prohibition of the export of industrial equipment outside the LNR», which prohibited the export of equipment without the permission of the administration¹.

From 2014 to 2019, coal worth \$ 4.7 billion was exported and sold from the territory of ORDLO. This amount does not include profits from the sale of mining equipment and the coal sale from mines². In general, these funds were not returned and were not invested in the development of production.

According to the Eastern Human Rights Group, during «Restructuring» operation 25 thousand jobs at the coal enterprises of ORLO were reduced and 10 thousand jobs in ORDO, respectively. Upon dismissal, workers were not given new jobs, and salary arrears at such state-owned enterprises as Donbassantratsyt, Luhansk Coal, and Anthracite were simply written off and not returned to employees of the enterprises³. The occupation administrations decided to simply close the unprofitable mines and to minimize protests by miners and residents of mining towns, the main liquidation of enterprises occurred in the midst of the Covid-19 epidemic in April 2020⁴. The occupiers also took other measures to minimize workers' protests. Thus, from 2014 to 2020, the control over public organizations was established by the so-called Ministry of State Security of the State Security Service

¹ Ibid, p.9.

² Ibid p. 23.

³ Восточная правозащитная группа. Социально-экономическое положение в ОРДЛО 2020. Аналитический отчет. Февраль 2020..., p. 14.

⁴ Ibid, p.9.

of the Luhansk National Republic. Independent trade unions were banned, and existing ones had to be registered with the Russian occupation administrations. Thus, a «pocket» federation of trade unions was created, completely under the control of the administration and special services¹.

Official trade unions imitate the protection of workers' rights, and it is clear that this has no effect on the situation with timely payment of wages, compliance with health and safety at enterprises. Thus, according to the experts of the Eastern Human Rights Group, «the constant deterioration of the socio-economic situation in ORDLO contributed to the development of the parallel protest movement, which actually operated underground»².

Despite harassment by the authorities, workers' protests took place in the occupied territories. From 2015 to 2020, about a dozen protests by industrial workers and small entrepreneurs took place in ORDLO. The claims mainly concerned chronic non-payment of wages, the inability of the authorities to organize the production process and the increase in taxes on small businesses.

The two most resonant and largest actions took place in 2020. Thus, on April 29, 2020, the second shift of miners of the Nikanor-Nova mine in the city of Zorynsk, Perevalsky district, Luhansk region refused to rise to the surface, protesting against the intentions of the occupying authorities to close the mine, as well as non-payment of wage arrears. In general, the strikers' demands included the abolition of the mine closure and a guarantee of its operation for 5 years; repayment of salary arrears starting from 2017; repayment of debt for the transfer of contributions to the

¹ Ibid, p.14.

² Ibid.

social insurance fund; non-application of repressions against protesters by special services¹.

This protest lasted for six days and all this time the miners remained underground. The miners were supported by their families and residents of Zorynsk. This event received an informational response on social networks. In fact, this was the first protest of miners in six years since the Russian-Ukrainian war in the occupied territories². The occupation administration tried to extinguish the protest by negotiating with the strikers, as well as by the pressure from the «MGB LNR» on family members. The so-called «Minister of Energy and Coal Industry of LNR» stated that either the miners stop the protest or they will be personally handled by the MGB³. Finally, on May 6, the miners stopped the strike, receiving a promise of employment in other mines, as well as coverage of wage arrears for two months.

From June 6 to 14, 2020, by the similar scheme, the second notable protest of workers of the mine «Komsomolskaya» took place in the city of Anthracite, Luhansk. 63 miners refused to rise to the surface, demanding repayment of wage arrears for the spring months of this year. The protest was organized by the Anthracite Workers 'Committee and the Zorynsk Workers' Committee with the support of human rights activists, in particular, the Eastern Human Rights Group. The occupation authorities, under the pretext of the lockdown, effectively closed the city and put pressure on the strikers and their families. On July 10, an additional contingent of units of the People's Militia of LNR descended into the mine. The special services incriminated cases

¹ Ibid. p.19.

² Ibid. p.18.

³ Ibid. p.21.

of overthrowing the «constitutional order in the LNR», and also tried to find a «Ukrainian trace» in the miners' protests¹. 38 people were detained and interrogated, three of whom, according to the Eastern Human Rights Group, went missing².

Thus, violations of socio-economic rights of citizens inevitably lead to violations of political rights and freedoms of residents of the occupied areas of Donbass.

CONCLUSIONS

Russian aggression since 2014 has led to a humanitarian disaster which manifested itself in the massive violation of human rights in the spiritual, ideological and socio-economic spheres. It should be emphasized that in most cases this was the result of purposeful activity of the Russian occupation administrations on de-Ukrainization, deindustrialization and gradual political and economic absorption of ORDLO by the Russian Federation. All this will create serious difficulties on the way to reintegration of the occupied territories in the future. Therefore, the Ukrainian state must take extraordinary measures in the struggle for the minds and souls of the local population, which has not yet fully absorbed the poison of «the Russian world».

¹ Ibid. p.25.

² Ibid. p.28.

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III.II EXPERIENCE OF DONBASS

III.11

EXPERIENCE OF THE AUTONOMOUS REPUBLIC OF CRIMEA

From the first days of the Crimean peninsula occupation, the author who was not only the witness of this special operation performed by the Russian Federation, but also the participant of resistance, had no doubt that the sole Putin's purpose was to continue using Crimea as a military base to radically change the geopolitical and military-strategic balance in Europe and the Mediterranean.

However, in the first year of occupation — until about mid-2015 — Russia tried to «sell» the whole bouquet of ultramodern non-military ideas but tourism, investment and technological development of its new military trophy to the stunned world and to the own population. So to speak, a «new showcase of Russia», which was to be even better than «the Olympic Sochi». I must say that many people in Russia and others throughout the world believed in this smokescreen.

In fact, from the first days of the Crimean occupation, Russia pursued the implementation of the only one target program — the «military development» of Crimea.

The marker of this was that after two weeks after the illegal annexation — March 31, 2014¹ — the Ministry of Crimean Affairs of the Russian Federation was liquidated on July 15, 2015².

On July 28, 2016, the status of the occupied Crimea and Sevastopol as part of Russia was reduced — Putin's decree liquidated the Crimean Federal District³, created immediately after the annexation — March 21, 2014⁴. The so-called «subjects of the federation» the Republic of Crimea and the city of Sevastopol are now included in the Southern Federal District with its center in Rostov-on-Don.

By this act, among other things, political and administrative management were unified with the military one, as all units of the armed forces of the Russian Federation in Crimea were from the very beginning included in the Southern military district with a headquarters in Rostov-on-Don.

The militarization of Crimea has become not only the main subject of the Crimean policy of the Russian Federation, but also the main driver of the economy of the occupied peninsula.

¹ Подписаны указы о создании Министерства по делам Крыма и назначении Олега Савельева Министром по делам Крыма, 31.03.2014, <http://www.kremlin.ru/events/president/news/20665>.

² Подписан Указ об упразднении Министерства по делам Крыма, 15.07.2015, <http://kremlin.ru/events/president/news/49998>.

³ Крымский федеральный округ включен в состав Южного федерального округа, «Интерфакс», 28.07.2016, <https://www.interfax.ru/russia/520930>.

⁴ Указ президента Российской Федерации о создании Крымского федерального округа, <http://static.kremlin.ru/media/events/files/41d4cb1349c4325d7681.pdf>.

CREATION OF MISSILE POTENTIAL IN THE OCCUPIED CRIMEA

In March-April 2014 coastal missile systems (DBK) «Bastion» were deployed on the coast of Crimea¹, they are designed to destroy not only surface ships but also ground targets. DBK «Bastion» with cruise missiles «Onyx» is able to protect the coast for more than 600 km.

Also in March-April, 2014, in addition, the Russian Federation transferred DBK «BAL» to Crimea², which was previously deployed in the Caspian Sea. One division of these DBKs was relocated to Sevastopol and introduced into the 15th separate (newly-formed) coastal missile brigade. DBK «BAL» is designed to control territorial waters and is a mobile system which carries two types of anti-ship missiles (RCC) in transport and launch containers (TPK). The range of the X-35 E missile is 120 km, and the X-35B missile is 260 km.

DBK «BAL» and «Bastion-P» are located near the village of Reservne — between Sevastopol and Balaklava. «Bastion-P» (K300P), mobile version of the complex on the chassis MZKG-7930, can be equipped with missiles with a nuclear warhead. On May 9, 2014, mobile DBK «BAL» and «Bastion-P» already took part in a military parade in Sevastopol.

In May and June 2014, according to the monitoring groups of «Maidan of Foreign Affairs», echeloned air defenses were deployed near Feodosia, including mobile systems of air and missile defense «S-400» (far echelon) and «Pantsir-S1M»

¹ Россия накапливает войска в районе Перекопа, «BlackSeaNews», 12.03.2014, <https://www.blackseanews.net/read/77669>.

² В Крыму проходят учения ракетных комплексов «Бастион» и «Бал», «BlackSeaNews», 16.04.2015, <https://www.blackseanews.net/read/98300>.

(near echelon). This is confirmed by the National Security and Defense Council of Ukraine¹.

Missile frigates «Admiral Grigorovich» and «Admiral Essen» were located near the berth in the main bay of Sevastopol. Both fired caliber missiles at Syria several times. The Russian Black Sea Fleet already has three such frigates. Each can carry 8 missiles.

Without the occupation of Crimea, the renewal of the Black Sea Fleet by frigates, corvettes and submarines with cruise missiles would be impossible.

In November 2014, according to the «Maidan of Foreign Affairs», the first operational and tactical missile systems (OTMS) «Iskander-M» appeared in the occupied Crimea.

On May 20, 2015, the Secretary of the National Security and Defense Council of Ukraine (NSDC) Oleksandr Turchynov stated that 10 units of Iskander-M OTMS have already been delivered to the occupied peninsula, they are located near the towns of Shcholkin and Krasnopere Kopsk. In addition, Russia is preparing to place similar complexes near the town of Dzhankoy and the village of Chornomorske².

In addition, according to the Secretary of the National Security and Defense Council, the group will include three divisions of OTMS «Iskander-K», including manned missiles with nuclear warheads.

The Secretary of the National Security and Defense Council also stated that the Russian Federation is planning to deploy a regiment of Tu-22MZ bombers, equipped with

¹ Россия разместила ЗРС С-400 в Крыму, «BlackSeaNews», 12.03.201, <https://www.blackseanews.net/read/119607>.

² Олександр Турчинов: Ядерна загроза з боку Росії – реальність, Рада національної безпеки і оборони, 20.05.2015, <https://www.rnbo.gov.ua/ua/Diialnist/2144.html>.

guided bombs of a new modification and hypersonic «air-to-ground» X-15 (in the future X-102) missiles in Crimea.

In order to provide infrastructure for the aviation component of the Crimean nuclear forces, the Russian command pays special attention to repairing and modernizing the runways at «Hvardiiske» (Simferopol), «Belbek» (Sevastopol) and «Dzhankoy» air bases to accommodate and base Tu-22MZ bombers.

The Russian military has already rebuilt an airfield in the village of Kirovske (near Feodosia) in order to test new models of aviation weapons, including the air-to-ground missiles X-15 and X-102.

During the years 2015-2018, there was a significant quantitative increase in the combat capacity of the Black Sea Fleet of the Russian Federation.

In 2015, 2 new missile submarines of project 636.3 and 2 new small missile ships (corvettes) of project 21631 arrived to the Black Sea Fleet, all 4 new combat units are equipped with «Caliber» cruise missiles with a range of up to 2,500 km, capable of carrying a nuclear warhead:

- On September 28, 2015, the first of 6 new submarines of the 636.3 project arrived in Sevastopol — the B-261 Novorossiysk submarine with «Caliber» cruise missiles.
- On November 18, 2015, 2 new missile ships equipped with «Caliber» cruise missiles arrived in Sevastopol: small missile ships (corvettes) «Green Dol» and «Serpukhov».
- On December 25, 2015, the second of 6 new submarines of the 636.3 project arrived in Sevastopol — the submarine B-237 «Rostov-on-Don» with cruise

missiles «Caliber». On November 17, 2015 during the transition from the Baltic Fleet to the Black Sea they launched cruise missiles on targets in Syria from the eastern Mediterranean.

In 2016, the Russian Black Sea Fleet included 2 new missile ships — a frigate and a submarine:

- On June 9, 2016, a new frigate of the Black Sea Fleet of the Russian Federation «Admiral Grigorovich» entered Sevastopol, the main frigate of the new series of 6 ships of the 11356 project, equipped with «Caliber» cruise missiles.
- On June 29, 2016, «Stary Oskol» — the third of 6 new missile submarines entered the Black Sea.

In total, on January 1, 2017, the Black Sea Fleet of the Russian Federation had 7 warships (including submarines), armed with cruise missiles capable of carrying a nuclear warhead. Prior to the occupation of Crimea, only one ship had such an opportunity — the flagship of the Black Sea Fleet of the Russian Federation named «Moscow» — the Soviet-era missile cruiser.

In 2017, the Russian Black Sea Fleet included 2 more missile frigates and 3 submarines armed with «Caliber» cruise missiles. At the same time, 2 small missile ships from the Black Sea Fleet, «Green Valley» and «Serpukhov» were transferred to the Baltic Fleet.

In 2018, the Russian Black Sea Fleet included 1 more missile frigate and 3 small missile ships, armed with «Caliber» cruise missiles. The composition of missile ships — carried cruise missiles of the Black Sea Fleet of the Russian Federation on January 1, 2019:

1. Missile cruiser «Moscow», the flagship of the Black Sea Fleet, since 1983;
2. Missile Submarine «Novorossiysk», since September 21, 2015;
3. Missile Submarine «Rostov-on-Don», since December 25, 2015;
4. Missile frigate «Admiral Grigorovich», since June 9, 2016;
5. Missile submarine «Stary Oskol», since June 29, 2016;
6. Missile frigate «Admiral Essen», since July 5, 2017;
7. Missile Submarine «Krasnodar», since August 9, 2017;
8. Missile submarine «Great Novgorod» arrived in the Mediterranean on August 28, 2017 and was part of the Mediterranean squadron based on Tartus and arrived in Sevastopol on March 29, 2019;
9. «Kolpino» missile submarine arrived in the Mediterranean on August 28, 2017, arrived in the Black Sea on May 1, 2019, and was part of a Mediterranean squadron based at Tartus;
10. Rocket corvette (small rocket ship) «Vyshny Volochyok» (project 21631, code «Buyan-M»), since May 25, 2018;
11. «Admiral Makarov» missile frigate arrived in the Mediterranean at the end of August 2018, and on October 5 at its permanent base in Sevastopol;
12. Rocket corvette (small rocket ship) «Orekhovo-Zuevo» (project 21631, code «Buyan-M»), since December 10, 2018;

13. Rocket corvette (patrol ship) «Vasily Bykov» (the main modular corvette of the project 22160), since December 20, 2018.

Moreover, the Black Sea Fleet of the Russian Federation is expecting in 2019-2020 the arrivals of:

- 2 missile corvettes of the near sea zone of the project 21631 (code «Buyan-M») — «Ingushetia» and «Grayvoron»;
- 3 missile corvettes of the far sea zone of project 22160 — «Dmitry Rogachev» (undergoing testing), «Pavel Derzhavin», «Sergei Kotov» (under construction at the plant «Gulf» in Kerch);
- 6 missile corvettes of the near sea zone of project 22800 (code «Karakurt»). All these corvettes also carry «Caliber» cruise missiles.

Thus, during 2019-2020, there will be 24 cruise missile carriers at the Black Sea Fleet.

In November 2016, the decommissioned and restored mine coastal missile complex «Utes» of the USSR began to operate. It is located near Cape Aya (Balaklava district of Sevastopol). At the end of 2016, it fired several Progress anti-ship missiles of 1982. This is an upgraded version of the Soviet P-35 anti-ship missile. Shooting range is up to 460 km. Equipped with 560-kilogram high-explosive warhead or nuclear warhead up to 20 kilotons.¹

On April 26, 2017, calculation of DBK «Cliff» launched a cruise missile on a sea target. The P-35 missile successfully

¹ Что российские военные развернули в оккупированном Крыму за два года, «BlackSeaNews», 17.03.2016, <https://www.blackseanews.net/read/113678>.

hit the naval shield, drifting in the sea at a distance of about 170 km. During 2017, DBK «Cliff» conducted several dozen missile launches.

By 2020, the «Cliff» complex will be replaced by the first stationary shore-based and mine-based missile complex «Bastion-C» (up to 36 «Onyx» missiles).

OCCUPIED CRIMEA AND CHANGE OF MILITARY BALANCE IN THE REGION

Impact missile potential and means of its delivery concentrated in 2014-2018 in the occupied Crimea, led to a significant change in the military-strategic balance in the Black Sea region and the situation in the Black Sea-Mediterranean and Black Sea-Caspian regions in favor of Russia.

Prior to the first combat use of «Caliber» naval cruise missiles on October 7, 2015, it was estimated that their range was 300 km. During the first combat use in Syria, the missiles hit targets at a distance of more than 1,500 km. There is information about the true range of these missiles up to 2600 km.

On October 22, 2016, Rear Admiral V. Kochemazov, Chief of the Combat Training Department of the General Staff of the Russian Navy, said that «Caliber» naval-based cruise missiles had a range of up to 2,000 kilometers. «Depending on the objects to which the weapon is used, land or sea, depending on the route, taking into account the need to bypass obstacles on the ground, in general, the range of these missiles is up to 2 thousand kilometers», — Kochemazov stated. The range of these missiles is up to 2,600 km as it is openly stated on specialized sites.¹

¹ А. Валагин, Названа дальность ракет «Калибр», «Российская газета», 26.10.2015, <https://rg.ru/2015/10/26/raketa-site-anons.html>.

Thus, the missiles of the «Caliber» ships of the Black Sea Fleet of the Russian Federation are able to achieve by firing the targets in all European countries (except Norway, Great Britain and Spain), as well as North Africa and the Middle East from the area of Sevastopol.

Mobile coastal missile complex «Bastion» with cruise missile «Onyx» is capable, like «Caliber», of shooting not only at ships, but also at small targets on land, with its probable range of 600 km.

«Bastion» when firing from the Sevastopol area is able to hit the land targets in the coastal areas of all Black Sea countries. It can also be used with a nuclear warhead.

«Iskander» ground-to-tactical mobile missile systems officially have approximately the same range of 500 km and are capable of carrying a nuclear warhead of up to 50 kilotons.

However, many experts believe that the official range of the missile is understated, to conceal violations of the Treaty on the Elimination of Medium-Range and Short-Range Missiles and the actual range of this cruise missile is up to 2000-2600 km.

Planned location of the missile regiment of Tu-22 M3 bombers includes 16 aircraft,

each of which is capable of carrying 10 Kh-101 cruise missiles (Kh-102) with a range of about 5 thousand km including a nuclear warhead of 250 kilotons.

Kh-101 (Kh-102 in the version with a nuclear warhead) — strategic cruise «air-to-surface» missile with using technologies to reduce radar visibility. According to the test results, it has a circular probable deviation of 5 m at a range of 5,500 km and can destroy mobile targets with an accuracy of 10 meters.

In general, coastal land-based missile systems «Iskander», «Bastion» and naval missiles «Caliber» on ships of the Black Sea Fleet, available on the occupied Crimean peninsula, in combination with Tu-22MZ missile carriers schemes pose a threat not only, as previously thought, to the entire Black Sea coast, but also to the whole of Europe, especially its southern flank.

Thus, in 2014-2018, the military-strategic importance of the Crimean peninsula for Russia has increased significantly and this process continues. It accelerated even more after the completion of the Kerch Bridge due to a radical improvement in logistics. The military potential of the Crimean peninsula is a new and quite unique world phenomenon.

As a result of the militarization of the occupied Crimea, there was an absolute military-strategic advantage of the Russian Federation in the Black Sea region with its projection on the South Caucasus and the Middle East.

Given the fact that Turkey's relations with NATO, the EU and the US in the years 2017-2018 deteriorated, and improved with Russia — up to Turkey's purchase of the S-400 air defense system in Russia and the actual construction of the first line of the Turkish Stream gas pipeline, the following conclusion can be drawn:

As a result of the Crimean militarization, the absolute military-strategic advantage of the Russian Federation in the Black Sea region with its projection on the South Caucasus and the Middle East was gained.

It should be noted that in 2017, unrecognized Abkhazia and South Ossetia actually joined the Russian military structure.

**RESTORATION OF NUCLEAR INFRASTRUCTURE ON
THE OCCUPIED PENINSULA¹**

Experts strongly believe that the existence of nuclear warheads for naval and coastal missile systems in the Crimea have been available since about 2016.

In March-April 2014, from the first days of the occupation of Crimea, the Russian military took control of the base for storage and maintenance of nuclear weapons on the territory of the Crimean peninsula, which had been there since Soviet times.

In May 2014, the Russian command inspected the main base for storage and maintenance of nuclear weapons – the facility «Feodosia-13».

On January 26, 2015, Russian media reported that in the framework of the Russian military group in Crimea, the territorial body of the 12th main department of the General Staff of the Ministry of Defense of the Russian Federation engaged in the storage, transportation and disposal of nuclear units for tactical and ballistic missiles was formed.

On April 25, 2015, the Information and Analytical Center of the National Security and Defense Council of Ukraine announced that on April 23, 2015, the Consulate General of Ukraine in Rostov-on-Don received a report that several wagons with the sign «Nuclear Danger» were passing through the Rostov railway station, presumably towards the Crimean Peninsula.

Earlier, according to residents of the peninsula, such cargoes have repeatedly been seen in the occupied autonomous republic.

¹ Гучакова Т., «Сіра зона». Кримський півострів: чотири роки окупації: аналітична доповідь, Майдан Закордонних Справ, Київ 2018.

The basic nuclear weapons service complex is currently being restored — one of the central bases for the storage of nuclear weapons of the USSR is the military unit No. 62047, known as «Feodosia-13», village Kiziltash (Krasnokamyanka), in a mountain tract between Sudak and Koktebel.

Reference: «Feodosia-13» has been operating since 1955 and has been used to store nuclear munitions for aircraft, artillery and missiles, including warships of the USSR Black Sea Fleet. Atomic bombs, which were used in September 1956 during exercises at the Semipalatinsk test site, were mase at the site. In 1959, the first nuclear warheads were sent from Kiziltash to the GDR (Fürstenberg). In September 1962, as part of «Anadyr Operation», during the Caribbean Crisis, six air bombs made in Kiziltash were sent to Cuba. Prior to the occupation of Crimea in 2014, the complex of buildings and structures was used as a permanent location of the 47th Special Purpose Regiment «Tiger» of the Internal Troops of the Ministry of Internal Affairs of Ukraine, which included two special battalions. The military commandant's office of the 51st joint BMC of Ukraine and the patrol battalion were also stationed there.

During the Soviet era, about 100,000 servicemen and 60,000 employees of the Soviet Army and Navy were stationed on the Crimean peninsula. Prior to the occupation of Crimea, 12.5 thousand servicemen of the Black Sea Fleet of the Russian Federation were on its territory under the agreement with Ukraine with the number of up to 25 thousand people allowed by the agreement.

At the beginning of 2017, the number of the Russian Armed Forces in the occupied Crimea was up to 60 thousand people with the prospect of increasing to more than 100 thousand people. For comparison: according to the US

Department of Defense, all US bases in Japan deployed about 50 thousand people.

On March 6, 2015, the report on «Human Rights in the Occupied Crimea» to the «Maidan of Foreign Affairs» was presented at *Freedom House* in Washington, DC. The report, in particular, stated: «Putin is building an enormous military base throughout Crimea at an incredible pace. Its number, according to our estimates, will reach 100,000 people».

Our forecast was based on the official statement of the press service of the Southern Military District of the Ministry of Defense of the Russian Federation dated September 17, 2014 entitled: «Newly formed military units of the Southern Military District in Crimea will be presented with new standard battle banners.» The message said: «By the end of this year, more than 40 formations and military units of the Southern Military District (SMD) will be presented with the battle flags of the new model. Most of the military units of the Southern Military District, which are to host solemn rituals for presenting battle flags, are recently formed in the Crimean aviation, anti-aircraft missile, engineering, artillery, RCB protection **regiments**, separate brigades of coastal troops, logistical support etc.».

In the Armed Forces of the Russian Federation, battle flags are awarded to military units (regiment, separate battalion) and formations (brigade, division, army). The number of personnel of the regiment in the Armed Forces of the Russian Federation is from 2000 to 3000 servicemen (soldiers, sergeants, ensigns, officers) and civilian personnel, brigades — up to 3000-4000.

On June 8, 2015 in the speech at a meeting of the NATO-Ukraine Interparliamentary Council in Kyiv, the Minister of Defense of Ukraine said: «The Russian Federation is

increasing the number of military groups in Crimea. Now this number is about 24 thousand servicemen... The deployment of strategic nuclear weapons on the peninsula is highly probable. In fact, Russia is forming a powerful group in Crimea to guarantee the maintenance of the occupied territory and to defend its interests in Ukraine and other states.» According to him, if such a build-up continues, it is possible that by 2017 Russia may double the number of its troops and form a powerful union there with a total number of 43 thousand people¹.

On June 30, 2016, the President of Ukraine Petro Poroshenko, while visiting Bulgaria, in his interview with the Bulgarian television said: «More than 60,000 Russian troops are stationed on the Crimean Peninsula and there is a great danger of nuclear weapons being placed there»².

At the end of February 2018, Deputy Minister of Defense of Ukraine Anatoliy Petrenko stated: if in 2013 the number of Russian servicemen in Crimea was about 12 thousand, now it exceeds up to 31 thousand.

That is, the actual number of Russian troops in the occupied Crimea remains a matter of debate.

The naval component of the Russian troops in Crimea includes surface and submarine forces of the Black Sea Fleet. Surface forces include shock (missile and artillery ships), landing (large landing ships), water protection (anti-submarine and minesweepers).

¹ К. Каплюк, Полторац: *Росія нарощує військову присутність у Криму*, «DW українською», 08.06.2015, <https://www.dw.com/uk/полторац-росія-нарощує-військову-присутність-у-криму/a-18502152>.

² Б. Яременко, Т. Гучакова, А. Клименко, О. Корбут, Ю. Смелянський, *Військове освоєння Криму, «Чорноморська безпека» 2017, № 2(30), pp.17*, https://crimeahrg.org/wp-content/uploads/2017/12/bss_2_6.pdf, p. 28.

The UN General Assembly «expresses their grave concern over the progressive militarization of Crimea by the Russian Federation as an occupying state...».

The basis of the naval component of the Russian troops in Crimea consists of:

- 30th Division of surface ships;
- 197th Brigade of Landing Ships;
- 41st Missile Boat Brigade;
- 68th Brigade of water area protection ships;
- 4th Submarine Brigade;
- 519th Separate Division of Reconnaissance (Spy) vessels;
- 176th Separate Division of Oceanographic Research Ships;
- 205th Auxiliary Fleet Detachment;
- 145th Detachment of Rescue Vessels;
- 58th group of supply vessels (Feodosia).

In addition, the Black Sea Fleet includes:

- 115th commandant's office of protection and service;
- 184th research experimental base;
- Mine and anti-mine weapons base;
- Missile and Artillery Repair Plant;
- 13th Shipyard;
- 91st Shipyard;
- 17th Naval School of Junior Specialists;
- Black Sea Higher Naval School;
- Sevastopol Presidential Cadet School.

We want to remind that the missile frigate «Admiral Makarov», 2 missile corvettes of project 21631 («Buyan-M»), 2 missile corvettes of project 22160 arrived on the Black Sea Fleet of the Russian Federation in 2018.

In addition, in 2018 the Black Sea Fleet was replenished with a reconnaissance ship by the project 18280 «Ivan Hurs».

The basis of the land component of the Russian troops in Crimea consists of:

- 810th Separate Marine Brigade (Sevastopol);
- 126th Separate Coast Guard Brigade (Simferopol district, Perevalne);
- 15th Separate Coastal Missile Brigade (Sevastopol);
- 127th separate reconnaissance brigade (Simferopol);
- 1096th Anti-Aircraft Missile Regiment (Sevastopol);
- 8th Artillery Regiment (Simferopol);
- 68th Separate Naval Engineering Regiment (Evpatoria);
- 4th Regiment of Radiation, Chemical and Bacteriological Protection (Sevastopol);
- airborne assault battalion AB (Dzhankoy);
- 171st Separate Assault Battalion (Feodosia).

Re-equipment of these parts and connections to the latest models of equipment is constantly in progress. Thus, the 810th separate brigade of the Marines of the Black Sea Fleet of the Russian Federation was reinforced by 40 newest armored personnel carriers APC-82A in spring of 2016. This model has a combat module with an automatic gun instead of a traditional machine gun turret, paired with a machine

gun, more powerful engine, fragmentation protection, fifth generation communications and a topographic orientation system, as well as an air conditioning system.

According to the Ministry of Defense of Ukraine, the actual situation with the technical rearmament of Russian troops over the four years of occupation can be described as follows: in 2013 there were no tanks in Crimea at all, however, on January 1, 2018 — there were 40 tanks; number of armored personnel carriers increased from 92 up to 583, artillery systems — from 24 up to 162, aircraft — from 22 up to 113.

At the end of 2016, the corps department of the 22nd Army Corps of the Black Sea Fleet in Crimea was formed in order to manage coastal units and formations¹.

Major General A.V. Kolotovkin, who had previously served as commander of the 58th Army in the North Caucasus, was appointed as the corps commander.

The 22nd Army Corps included the coastal troops of the Black Sea Fleet, which had previously been under control of the Deputy Commander of the Coastal Fleet.

Reference. The Army Corps is a general military unit of the Russian ground forces. Designed to solve operational and tactical tasks. May include two-four or more divisions. The size of the army corps can reach tens of thousands of servicemen. The number of divisions in the RF Armed Forces — is 7 thousand servicemen and more.

The air defense of the occupied Crimea is provided by the 31st Air Defense Division of the 4th Army of the Air Force and Air Defense, parts of which are stationed in Sevastopol (12th Anti-Aircraft Missile Regiment), Feodosia (18th Anti-Aircraft

¹ В Крыму сформирован 22-й армейский корпус Черноморского флота, «РИА Новости», 10.02.2017, <https://ria.ru/20170210/1487713296.html>.

Missile Regiment), Evpatoria (Anti-Aircraft Missile Regiment) and in 2018 — in Dzhankoy, northern Crimea.

In 2017, anti-aircraft missile regiments in Sevastopol and Feodosia were rearmed from S-300 complexes to the latest S-400s. In 2018, the S-400 was re-equipped with an anti-aircraft missile regiment in Evpatoria.

The air component of the Crimean group of troops of the Russian Federation includes parts of bombing, assault, fighter, army aircraft, which belong to the 4th Army of the Air Force and Air Defense, as well as naval aviation of the Black Sea Fleet.

Naval aviation of the Black Sea Fleet of the Russian Federation:

- 43rd Separate Naval Assault Air Regiment (Saki);
- 318th Detached Mixed Air Regiment (Kacha).

In addition to naval aviation, a new aviation association was created in the Crimea — the 27th Mixed Aviation Division consisting of three disparate regiments:

- 37th Mixed Air Regiment (Hvardiiske),
- 38th Fighter Regiment (Belbek),
- 39th Helicopter Regiment (Dzhankoy).

This aviation group is capable of performing combat missions to the full depth of the Black Sea region. It received new Su-Z0 SM fighters (in January 2015), modernized Su-27SM and Su-24M front-line bombers, Su-25SM attack aircraft. Moreover, the 39th Helicopter Regiment includes Ka-52, Mi-28N and Mi-8AMTSH helicopters.

The biggest Southern Military District of the Russian Federation which is directly bordering Ukraine continues

to increase. At the end of 2016, the 150th Motorized Rifle Division in the Rostov Region, the 42nd Motorized Rifle Division in Chechnya, a squadron of Ka-52 attack helicopters in the Krasnodar Territory, and a number of others were formed and began combat training.

On July 1, 2016, Colonel-General A. Dvornikov, who had previously commanded a Russian group in Syria and received the title of Hero of the Russian Federation, was appointed as the commander of the Southern Military District, which includes the occupied Crimea.

In 2017, due to the approaching completion of the bridge construction across the Kerch Strait, the formation of a naval brigade for the protection of the bridge began. The brigade is formed in the structure of the troops of the National Guard of the Russian Federation on new anti-sabotage boats of the project 21980 — «Grachonok». It will include a squad of combat scuba divers, whose task will include repelling saboteur attacks and searching for explosives, special reconnaissance submarines, high-resolution sonar systems¹.

In 2017, airborne assault battalions of airborne troops were formed in Dzhankoy and Feodosia. In 2018, the 97th Guards Parachute Regiment as part of the 7th Mountain Assault Division was deployed on their base².

In 2017, it was decided to place a stationary long-range missile detection station «Voronezh-SM» (detection range up to 6 thousand km)³ in the occupied Crimea. It will be

¹ И. Апулеев, Морская бригада: как защищают Крымский мост, «Газета.ру», 21.07.2019, https://www.gazeta.ru/auto/2019/06/21_a_12431551.shtml

² Окупанти розгорнуть парашутно-десантний полк у Криму, «Українська правда», 14.12.2016, <https://www.pravda.com.ua/news/2016/12/14/7129795/>.

³ В. Смирнов, Е. Петрашко, «Глаза» ракетной обороны: в Крыму появится радиолокационная станция «Воронеж-СМ», «RT», 30.11.2017, <https://russian.rt.com/russia/article/454912-rls-voronezh-krym-sprn>.

located on Cape Khersones in Sevastopol. Also in 2017, the technical re-equipment of the captured Ukrainian space flight control center in Evpatoria began. This center which has one of the world's largest full-range radio telescopes with a diameter of 70 meters, has been included to the Russian Air Force. Today it is called the «40th separate command and measurement complex (Center for Long-Range Space Communications) as part of the Main Test Space Center named after GS Titov».

CONCLUSIONS

During the years of occupation, the most striking «success story» of the Russian Federation in Crimea was the «military development» of its territory:

- the largest in Europe interspecific grouping of Russian troops has been rapidly created and is growing on the peninsula;
- the newest and the latest models of military equipment and weapons are sent to Crimea as a matter of priority from the first days of its occupation;
- all the numerous military airfields, missile launch sites, air defense facilities, air defense systems, radar systems, and Soviet nuclear weapons depots available in Crimea during the Soviet times are being restored;
- a new fortified district has been created and is in progress of developing in the north of Crimea;
- there is a construction of new and reconstruction of old military camps for the deployment of new military units, as well as housing for servicemen and their infrastructure;

- the number of servicemen and other various special services is increasing;
- due to targeted military orders, the work of military-industrial complexes (military instrument making, ship building and ship repair) was restored. These enterprises are included in the structure of the relevant state concerns of Russia.

All the spheres of life in Crimea, that is, the economy, social sphere, human rights, information space and national policy are subordinated to the ideologies of the military bridgehead.

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III.II EXPERIENCE OF THE AUTONOMOUS REPUBLIC OF CRIMEA

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IV.

HOW CAN JUSTICE BE POSSIBLE NEAR THE EMPIRE

FROM USSR TOTALITARIANISM TO PUTINISM — IS NUREMBERG-2 TRIAL POSSIBLE CONCERNING SOVIET CRIMES?

INTRODUCTION

In 2021, 30 years have passed since the collapse of the Union of Soviet Socialist Republics (USSR) — however, it is still difficult to talk about saying goodbye to the Kremlin-run communist totalitarian system. According to various estimates, it is believed that within a series of the Soviet Union crimes on the way to the implementation of the ideology of creating a new «Soviet man» (*Homo Sovieticus*) during the 1917-1991 from 20 to 60 million people were killed by Soviet officials¹. In fact, only a very small group of states emerged from the ruins of the former Soviet empire, took up the cause in full force to condemn the totalitarian practices of the former regime. The Baltic states have held the lead in this for years (*de jure occupied by the USSR from the period of World War II until 1991*). and recently Ukraine (after the Revolution of Dignity). Although the latter, in contrast to

¹ S. Courtois, *Zbrodnie komunizmu*, [in:] *Czarna księga komunizmu. Zbrodnie, terror, prześladowania*, K. Bartosek, S. Courtois, J.-L. Margolin, A. Paczkowski, J.-L. Panné, N. Werth, Prószyński i S-ka: Warszawa 1999. Rudolf Rummel wrote about 61 million 911 thousand victims of the USSR (*Lethal Politics: Soviet Genocide and Mass Murder since 1917*, Transaction Publishers: New Jersey 1990).

the previously mentioned, managed to do so without using the criminal mechanisms in practice. The situation in the countries of the former Eastern bloc looks a little better, which after 1945 did not become republics of the USSR, and on the transformation of the authoritarian system into democracy after the year of 1989 used certain legal instruments focused on the calculation of ancien régime, which, however, in addition, are aimed at the relatively local (state) communist government, not the Soviet system as such.

Instead, the Russian Federation remains on the opposite pole, which even in the days of President Boris Yeltsin, refusing to take any action, designed to deal with the totalitarian past¹, at the moment, is increasingly aimed at rehabilitating the activities of the USSR in the international arena (as well as the creation of «quasi-normative» arguments of «defense» in the question of possible legal responsibility of Russia as the the legal continuator state of the Soviet Union for the illegal actions of the latter on the basis of international law). An example of this is modern foreign policy and the related historical policy of the Russian state under Vladimir Putin². Modern Putinism is largely a continuation of the totalitarian USSR, including «positive memory» of the empire

¹ A. M. Khazanov, S. G. Payne, *How to Deal with the Past?* [in:] *Perpetrators, Accomplices and Victims in Twentieth-Century Politics. Reckoning with the Pasts*, (eds.) A. M. Khazanov, S. G. Payne, Routledge 2009.

² An example of such a Kremlin policy was the adoption by the State Duma in the first reading of a bill amending the law «*On the perpetuation of the Victory of the Soviet people in the Great Patriotic War of 1941-1945*» since February 17, 2021, on the basis of which it is planned to prohibit the identification of the role of the USSR with the actions of Nazi Germany. In other words, this confirms the narrative that for the Soviet state the war began with the attack of the Third Reich on June 22, 1941 (the «Great Patriotic War»), and therefore, the USSR was not an aggressor in its actions against Poland, Finland or the Baltic states in 1939-1940. See the bill by the link: <https://sozd.duma.gov.ru/bill/1064063-7.s>

«achievement» or methods of its functioning¹. Consequently, there is no doubt that without the necessary political will from Moscow settling of scores with the Soviet regime seems, if not impossible, then at least difficult. However, the question of the possibility of activity at the international level remains open, which could give a legal (punitive) answer to the crimes of the Soviet regime (and its satellites), as well as an assessment of activities already implemented in this area.

The famous Russian dissident Vladimir Bukovsky, who died in 2019, shortly before his death together with Professor Renato Cristin from the University of Trieste sent an appeal to the international community demanding the establishment of the International Criminal Tribunal to convict the crimes of communism on the model of the International Military Tribunal (IMT) in Nuremberg². It should be noted that although the idea was received with restraint among the (international) public opinion, however, it was supported by the Platform of European Memory and Conscience³. This is an important initiative that brings together 62 different institutions (public and private), working in the field

¹ More about the birth and formation of the formula of government of the Russian Federation, named Putinism in honor of the leader of the state: M. H. Van Herpen, *Putinizm. Powolny rozwój radykalnego reżimu prawnicowego w Rosji*, Wydawnictwo Józef Częścik: Gdańsk 2014.

² *Appeal for Nuremberg Trials for Communism*, 7.11.2019, <https://appeal.nuremberg-forcommunism.org/>. The very idea of Nuremberg 2 to deal with the crimes of communism is not new, and some attempts — though more symbolic than strictly legal — have been made before. One example of it was the establishment of the International Public Tribunal for the Crimes of Communism at the Vilnius Congress on June 12-14, 2000. However, the said Tribunal was not a tribunal *sensu stricto*.

³ Comp. : *Platform supports new Appeal for Nuremberg Trials for Communism*, 8.11.2019, <https://www.memoryandconscience.eu/2019/11/08/appeal-for-a-nuremberg-of-communism/>.

of preservation of national memory, fight against impunity of those who committed the greatest crimes, and promotes human rights in post-violence societies not only in Europe but also in the United States and Canada.

This article is an attempt to answer the question of whether it is legally possible to establish an international criminal tribunal for crimes of the Soviet regime — a conditional «Nuremberg-2» — and if so, what may be its powers and jurisdiction. In order to outline some of the necessary pre-conditions for the above considerations, the analysis and the list of the most important mechanisms of the international law aimed at combating the impunity of those guilty of the most serious crimes — international crimes is carried out. This section also presents the context of legal and political restrictions on the use of criminal law mechanisms as part of a policy of reckoning with the communist (Soviet) past in Central and Eastern Europe. The analysis of several examples of attempts of conviction presented in this study, within the framework of the national legal systems of individual countries in the region of the most serious crimes of the Soviet regime, including the crime of genocide, provides an opportunity to formulate a thesis on the importance of settling the totalitarian past for individual countries of Central and Eastern Europe — first of all, in order to deal with the historical injustice, rehabilitate the victims and finally tell the world its true history, not distorted by the propaganda and misinformation policies of the past used by the Kremlin authorities to this day. This section uses research methods specific to the legal sciences (in particular, international law), that is, the analytical-comparative method, the theoretical-legal method and — to a limited extent — the dogmatic method.

At this stage, a caveat should be made about a kind of «post-script» to Soviet crimes, which the Russian Federation added in the twenty-first century in relation to the states that were part of the USSR (in particular, with regard to Georgia in the summer of 2008 and Ukraine since the spring of 2014). There is no doubt that the above actions constitute a violation of international law and must be duly assessed and convicted, and current Russian policy based on the ideological concept of the «Russian world», for a large group of experts and researchers is a direct continuation of the imperial policy of the USSR towards the nations gathered in the former «prison of nations»¹. However, for the purity of the analysis, with regard to a possible tribunal for the crimes of the Soviet regime and mechanisms for settling accounts with the totalitarian past, these questions should be clearly separate in legal and conceptual plan — this will also be demonstrated in this study.

¹ This similarity can be traced regardless of the obvious differences between communist ideology, officially based on the idea of internationalism (and atheism), and the concept of «Russian world» with Russian nationalism, conservatism and Orthodoxy as an important religious factor in the combination. However, the common denominator is the creation of an ideological basis for the Kremlin's imperial or neo-imperial policy toward its immediate neighbors, former prisoners of the Russian Empire or the Soviet Union. См. Т. Кузьо, *Війна Путіна проти України. Революція, націоналізм і криміналітет*, Дух і Літера: Київ 2018, pp.71–132; A. Sergunin, L. Karabeshkin, *Understanding Russia's Soft Power Strategy*, «Politics» 2015, Vol. 35 (3-4), pp.347–363. In this light, an interesting legislative idea is the bill submitted to the Verkhovna Rada of Ukraine on March 17, 2021, which proposes to add to the law condemning the communist and Nazi regime also the condemnation of Russian ideology. («Draft Law on Amendments to Certain Laws of Ukraine Convicting the Ideology of the «Russian World»).

**THE DEVELOPMENT OF INTERNATIONAL LAW IN
THE FIGHT AGAINST IMPUNITY FOR PERPETRATORS
OF THE MOST SERIOUS INTERNATIONAL CRIMES**

Taking into account the main topic of this section, that is, the possibility of decoding the parameters of a potential international criminal court for crimes of the Soviet regime, it is necessary to monitor the development of international law in the field of individual responsibility for international crimes. In addition to some interesting but single historical examples of individuals appearing before international courts (for example, the trial of Peter von Hagenbach in 1474), only at the end of the First World War there was an attempt at the first large-scale action in this regard¹.

International humanitarian law, then known more as law of war (law of armed conflict) developed as a customary law from the second half of the XIX century and was to some extent codified in the Hague Conventions of 1899, 1904 and 1907. They established obligations for member states to abide by the rules of war (*ius in bello*), but did not include the obligation to prosecute individuals. This obligation appeared in the Treaty of Versailles in 1919, in which allies and related states brought public charges against former German Emperor Wilhelm II Hohenzollern «For the highest damage to international morality and the sacred authority of treaties» (Article 227), establishing at the same time the obligation to try persons guilty of war crimes in the national courts of individual states (Articles 228-230). Due to the refusal of the Netherlands to extradite the former Kaiser, the International Criminal Court proclaimed by

¹ W. Czaplński, *Odpowiedzialność za naruszenia prawa międzynarodowego w związku z konfliktem zbrojnym*, Wydawnictwo Naukowe Scholar: Warszawa 2009, p.232.

the Treaty of Versailles was not established, and the ongoing criminal proceedings in the German national courts (Leipzig trial) against a very small number of convicts were very disappointing. The establishment of an international criminal court was also provided for in the Treaty of Sevres in 1920 – on the prosecution of those responsible for the murder of Armenians in the Ottoman Empire later regarded as crimes against humanity¹ (the term first appeared in a joint declaration by Britain, France and Russia in 1915 in the context of the killings of the Armenian population at the time). However, the Treaty itself did not enter into force, and the new Lausanne Treaty of 1923 did not contain provisions on the criminal liability of individuals. As a result, none of the peace treaties after the First World War led to the creation of an international criminal court, although their contribution to the development of international law in this matter should not be underestimated – discussion on the establishment of an international court that could try individuals for the most serious offenses and the development of a Code of international Crimes continued throughout the interwar period².

The trauma of World War II crimes has accelerated the process of prosecuting individuals for international crimes. The need to convict the guilty was emphasized at the London Conference on January 13, 1942, in the Moscow Declaration of October 30, 1943 (after which the UN Commission on War Crimes was established) and in the Potsdam Agreement

¹ In the Ukrainian language, two translations of the term crimes against humanity are used in parallel – «crimes against mankind» and «crimes against humanity». In this section, the author consistently uses the term «crimes against humanity».

² P. Grzebyk, *Odpowiedzialność karna za zbrodnię agresji*, Wydawnictwo Uniwersytetu Warszawskiego: Warszawa 2010, p.122–126.

since August 1945. The International Military Tribunal (IMT) headquartered in Nuremberg was created as a result of the London Agreement of the four states on the prosecution and punishment of major war criminals of the European axis since August 8, 1945, to which the IMT Charter (Statute of the Tribunal) was added. Article 6 of the Charter indicated the following criminal acts falling within the jurisdiction of the IMT: crimes against peace, war crimes and crimes against humanity¹. According to the Allies' intentions, the Nuremberg trial focused mainly on convicting those guilty of crimes against peace (punishment for aggressive war²). Suffice it to say that the category of crimes against humanity – within which there were, inter alia, acts such as murder, extermination (genocide as a separate crime was not regulated by the IMT statute) – was closely linked to armed conflict and war crimes (*war nexus*). Basically the Nuremberg Trials, which took place from November 20, 1945 to October 1, 1946, 19 people were finally sentenced (twelve to death), and three were acquitted – as is well known, the indictment concerned only representatives of the Third Reich. The crimes of the Allies, including the USSR, were not under the jurisdiction of the IMT. What's more, disagreements between recent allies have led to that only one international trial took place before the IMT, the rest took place before the American military tribunals in Nuremberg (twelve proceedings).

¹ Similarly, the substantive jurisdiction of the International Military Tribunal for the Far East (IMTFE) has been determined, based in Tokyo to hear cases against Japanese war criminals. In the trial in Tokyo, which lasted from April 29, 1946 to November 12, 1948, 25 people were finally convicted.

² The Briand-Kellogg Pact of August 27, 1928, condemned the resort to aggressive war in international relations, thereby making aggressive war illegal in international law.

The postwar period contributed to the further development of international law in the field of research. The UN General Assembly (GA) in Resolution 95 (I) 1946 reaffirmed the principles of international law recognized by the IMT Charter and the decision of the Tribunal («Nuremberg Principles»), stimulating the further work of the international community in this regard. Established in 1947, the International Law Commission (ILC; UN expert body) developed and presented to the UN General Assembly the Nuremberg Principles in 1950. They have become the core of international law, which establishes the criminal responsibility of individuals for international crimes (*«crimes against international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced»*¹) without the possibility of reference to immunity or the fact that these criminal acts have not been punished by the national law of that state. It is assumed that the categories of war crimes and crimes against humanity have become part of common customary law (the practice of prosecuting perpetrators of war crimes was known even before the Second World War). In 1949, four Geneva Conventions were adopted, which provided for the obligation to prosecute perpetrators of «serious violations» (grave breaches) in their provisions (although the conventions themselves do not use the term war crimes). In this context reference to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted in 1968 should also be made, which clearly stated that the application of the statute of limitations to these two types of international

¹ Judgment of the IMT, Court of Major War Criminals, 30.09.1046/01.10.1946, https://avalon.law.yale.edu/subject_menus/judcont.asp.

crimes, as provided for by national law, effectively supports the impunity of the perpetrator. At the same time, the UN General Assembly instructed the ILC to develop a Code of Crimes against Peace and Security of Mankind based on the Nuremberg Principles. The final draft of the Code was published in 1996. He foresaw that the crimes analyzed were crimes within the meaning of international law that should be prosecuted and punished regardless of the provisions of national law¹. The Nuremberg Principles as common law have been used in many criminal proceedings as in national courts (for example, the trial of Adolf Eichmann in Israel or Klaus Barbie in France) and in international courts (for example, the International Criminal Tribunal for the Former Yugoslavia). In addition, the Nuremberg Principles have also been recognized by the European Court of Human Rights (ECtHR) as universal in cases analyzed in this study on crimes committed by Soviet authorities against the societies of the Baltic States (*Kolk and Kislyiy v. Estonia*)².

The concept of genocide, created by Polish lawyer Rafał Lemkin, also deserves a few words. This seems to be a key category of international crime for the idea of Nuremberg II (more about this in the following sections of this chapter). This crime was not included in the acts covered by the understanding of the IMT, although actions that could be described as such — namely, directed at a particular community (national or ethnic) with the aim of its complete or partial destruction — have been many in the recent history

¹ Det. : E. Greppi, *The Evolution of Individual Criminal Responsibility under International Law*, «International Review of the Red Cross» 1999, Vol. 81, No. 835, pp.531–553.

² Review of case law with reference to the Nuremberg Principles: A. Cassese, *Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal General Assembly resolution 95 (I)*, «Audiovisual Library of International Law», pp.5–6, https://legal.un.org/avl/ha/ga_95-I/ga_95-I.html.

of mankind (for example, colonial crimes in the Congo or Namibia, the extermination of Armenians, the Holodomor and, finally, the Holocaust). Only immediately after World War II, in the Resolution 96 (I) of 1946, the UN General Assembly stated that the crime of genocide is a crime within the meaning of international law, separate from the crime against humanity, which can be committed both in war and in peacetime, and which was later included in the UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948. Article II of the Convention defines genocide as «any of the following acts with the aim of destroying, in whole or in part, a national, ethnic, racial or religious group as such: a) murder of group members; b) causing serious harm to the body or mental health of group members; c) deliberate creation of living conditions designed to cause complete or partial physical destruction for members of the group; d) application of measures aimed at birth prevention within groups; e) forced transfer of children of one group members to another group». Specified definition that contains an objective element (certain actions by which genocide can be committed) and a subjective element, that is a special intention (*dolus specialis*) destroy all or part of one of the four protected groups, was the result of a political compromise between the great powers (at the same time representing a certain distortion of Lemkin's concept, expressed in the famous book «Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress» of 1944). Major players in the international arena feared an overly broad definition of genocide, which could cover a wider range of acts (such as these crimes in the colonies, as well as the inclusion of other groups in the group of protected groups such as, first of all, a political group or

a social group) led by the Soviet side, which even wanted to link the category of genocide with Nazi-fascist ideology¹. Regardless of the problems with the definition of the crime (which was in fact carried out only by the jurisprudence of modern international criminal courts), the Convention of 1948 became a very influential international normative act, which imposes an obligation to prevent, prosecute and punish genocide cases in national courts or in a competent international court based on universal jurisdiction. Then the common definition of genocide was transferred to the statutes of international courts, which address issues of criminal liability of individuals, which appeared almost half a century after the adoption of the relevant UN Convention.

The creation of an international criminal court, as mentioned in the Genocide Convention, was not realized until the 1990s, when the sheer number of crimes committed during the conflict in the former Yugoslavia, Rwanda and many other countries (for example, Sierra Leone) led the international community to understand the need to establish judicial mechanisms to effectively counter the situation of impunity for those guilty of the most serious offenses. UN Security Council Resolution establishes International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in 1993 and 1994, respectively and a number of so-called hybrid criminal courts (for example, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia). The culmination of this process was the establishment of a permanent International Criminal Court (ICC) with headquarters in The Hague in 1998, which came

¹ Det. : W. Schabas, *Genocide in International Law. The Crime of Crimes*, Cambridge University Press: Cambridge 2009, pp. 59–116.

into force on July 1, 2002. And although the functioning of tribunals established in the 1990s and XXI century is limited when thinking about Nuremberg-2 for the crimes of the Soviet regime, it should be emphasized, however, that the jurisdiction of the ICC can be seen as the next step towards the full codification of international crimes (although in this case it is limited to the member states of the Rome Statute). The Statute of the ICC identifies four crimes — the crime of genocide, crimes against humanity, war crimes and the crime of aggression, which are considered today as the material essence of modern international criminal law.

Finally, it should be added that in recent decades, international human rights law has become a special complement to the mechanisms of international humanitarian law and international criminal law associated with it¹. Separate «conventions on human rights» on the universal (for example, the International Covenant on Civil and Political Rights, ICCPR, 1966, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984) or regional level (led by the European Convention on Human Rights, ECHR 1950, as well as the American Convention on Human Rights, 1960) prescribe the obligation of States Parties to prosecute and punish persons whose conduct is contrary to the provisions of these conventions. Codification of the rights of victims of the most serious crimes in the jurisprudence of international courts and doctrines has become important in this regard for countries struggling with the burden of past crimes, normatively based on rights recognized by all human rights conventions, in particular the right to life, the prohibition of torture — these are the right

¹ See: A.Seibert-Fohr, *Prosecuting Serious Human Rights Violations*, Oxford University Press: New York 2009.

to justice, the right to truth and the right to reparation¹. The first is the legitimate legal expectation that the guilty person will bear criminal responsibility for his conduct. The second concerns the right, which exists both on the part of the individual and on the part of society as a whole, to know the truth, in particular, on the nature of the commission of mass crimes and serious human rights violations, as well as on the perpetrators. The third indicates the obligation of the state to carry out reparations, but not limited to material damage. It should be emphasized that all three rights have become fundamental to meeting the needs and legitimate expectations of victims in post-totalitarian/post-authoritarian or post-conflict societies, setting a benchmark for past crime policies using transitional justice mechanisms (*transitional justice*)².

¹ Det. : T. Lachowski, *Perspektywa praw ofiar w prawie międzynarodowym. Sprawiedliwość okresu przejściowego (transitional justice)*, Wydawnictwo Uniwersytetu Łódzkiego: Łódź 2018.

² Transitional justice is a concept bordering on legal and political science, is based on a set of judicial and extrajudicial mechanisms used by post-authoritarian/post-totalitarian societies and post-conflict societies at the time of the transition from a non-democratic system to democracy and/or from war to peace in order to formulate a legal response to «crimes of the past», such as international crimes, mass human rights violations or political repression. The main instruments of transitional justice include: criminal proceedings (international or national), mechanisms of truth-seeking and truth-telling (for example, the Truth and Reconciliation Commission, the most famous example, the South African Commission set up after the fall of the apartheid system; Institutions of national memory have become a equivalent in Central and Eastern Europe, created on the model of the German institution of the Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic, the so-called Gauck's office), reparations programs, inspections/lustrations and institutional reforms. Det.: R. G. Teitel, *Transitional Justice*, Oxford University Press: Oxford 2000; J. Elster, *Closing the Books: Transitional Justice in Historical Perspective*, Cambridge University Press: Cambridge 2004.

**THE MAIN DIFFICULTIES IN THE IMPLEMENTATION
OF CRIMINAL LAW MECHANISMS FOR THE
SETTLEMENT OF CRIMES OF THE COMMUNIST
GOVERNMENT IN CENTRAL AND EASTERN EUROPE**

After the overthrow of the yoke of authoritarianism and transformation in 1989 Central and Eastern European countries face a dilemma regarding the implementation of certain transitional justice mechanisms, aimed at settling scores with the past system, including historical injustice, political repressions and crimes of the communist regime (its functionaries). After 1991, this group was joined by countries that restored or gained their independence on the ruins of the USSR. The main challenges that post-communist countries faced at the time included: the problem of legal continuity between the old and new regimes; prosecution of those guilty of these crimes (representatives of the communist system); carrying out decommunization/lustration; opening archives of former services; rehabilitation of victims; return of property confiscated by the communist authorities¹.

In fact, each of the states has taken a slightly different path in (non) settlement of *ancien régime*², using legal mechanisms related to various aspects of transitional justice — criminal (retribution), historical (restoration), restorative (reparation), constitutional and administrative justice³. At the same time, it is difficult to say that any of the post-communist states

¹ Comp. : A. Czarnota, *Między polityką a prawem, czyli o sprawiedliwości okresu przejściowego*, «Acta Universitatis Lodziensis. Folia Philosophica. Ethica-Aesthetica-Practica» 2005, Vol. 27, p.18.

² Det. : A. Grajewski, *Balast po komunizmie. Instytucjonalne rozliczenie komunizmu w krajach Europy Środkowej — opis struktur oraz okoliczności ich powstania*, «Pamięć i Sprawiedliwość» 2013, Vol. 22, nr 2, pp. 153–182.

³ R.G. Teitel, *quot.*, pp. 6–9.

has fully condemned the past regime, which was primarily due to the negotiated nature of the transformation in the vast majority of Central and Eastern European countries (a kind of social agreement between the old and the new elite, as illustrated by the discussion of the Round Table in Poland in the first half of 1989.), in practice excluding radical solutions in this matter. Given the main topic of this study – criminal law settlement of crimes of the past – it is the difficulties in applying the tools of criminal justice that will be analyzed in more detail.

The first problem concerned the lack of a proper law to punish acts that were obvious or potentially criminal in nature – were considered legal under the legislation in force during the communist regime – this meant that the democratic government, making efforts to bring the perpetrators to justice, subjected itself to accusations of acting contrary to the fundamental principle of criminal law, as well as the entire legal order based on the values of the rule of law, i.e. *nullum crimen sine lege*. An example is the behavior of border guards in the former German Democratic Republic (GDR) or Czechoslovakia, who could have killed people who tried to cross the border with the Federal Republic of Germany (Germany) or Austria illegally without warning (with some exceptions), based on the law in force at the time. After the transformation (and «Velvet Divorce») the Czech Republic and Slovakia have decided to apply the law in force at the time a deed was committed – this has significantly limited the possibility of prosecuting¹. Instead, German behaved differently after reunification. German courts have

¹ M. Faix, O. Sváček, *Dealing with the Past: Prosecution and Punishment of Communist Crimes in Central and Eastern European Countries*, «Espacio Jurídico Journal of Law» 2015, Vol. 6, No. 3, pp. 39–40.

interpreted the law in the GDR in the light of the international legal obligations assumed by the former East German state (The GDR ratified the ICCPR in 1974). This argument was supported by the ECtHR in the case of former high-ranking GDR officials Fritz Strelets, Heinz Kessler and Egon Krenzavid in 2001¹. The court disagreed with the applicants' arguments that Germany had violated Art. 7 (1) ECtHR (prohibition of punishment without legal grounds), pointing out that a manifestly incorrect and unjust right that violates the right to life is incompatible with the nature of human rights obligations. Hungarian courts also referred to international law, in this case customary law, in resolving the problem of criminal offenses committed during Hungarian revolution in 1956. On the other hand, a new category has appeared in Polish law — communist crime defined in Art. 2 paragraph 1 of the Law on the Institute of National Remembrance as a crime consisting of «acts committed by officials of the communist state in the period from November 8, 1917 to July 31, 1990, involving repression or other forms of human rights violations against individuals or groups of the population, or in connection with their use, which are offenses under Polish criminal law in force at the time of their commission» (after the last amendment in 2020, which is not covered by the statute of limitations). It should be emphasized that communist crime applies only to those acts which have already been punished by the law in force at the time of their commission — therefore, it is not an example of a violation of the principle of non-punishment without a legal basis.

Another difficulty in the administration of criminal justice «over the years» is related to the statute of limitations. Much

¹ Judgment of the European Court of Human Rights in the case of *Streletz, Kessler and Krenz v. Germany*, 22 March 2001, applications № 34044/96 and 35532/97.

of the actions of the former government were punished at the time of their execution — expired before or in the first years after the transformation. With this in mind, the national parliaments of individual countries (such as Poland, the Czech Republic and Hungary) have passed laws which restored, extended or even abolished statutes of limitations for criminal acts, which the prosecutor's office did not investigate for political reasons until 1989. At the same time, these states have been accused of violating one of the key principles of a democratic state governed by the rule of law, that is, the principle of legalism, in the eyes of critics who try to act in the spirit of the Roman *paremia fiat iustitia, et pereat mundus* (justice must be done, even if the world is to perish), as opposed to the rule of law. This issue has been clarified in the jurisprudence of the constitutional courts of Poland, the Czech Republic and Hungary¹. The Constitutional Tribunal of the Republic of Poland took the position that the principle of irreversibility of criminal law is not absolute, especially taking into account the historical uniqueness of change and the need to ensure a sense of social justice, including the possibility of criminal prosecution, in particular of those guilty of Stalin's crimes. In his 1991 decision, he also added, that any deviation from the classical understanding of the principle *lex retro non agit* (law isn't retroactive) must be accurately identified in a specific legal act². The Constitutional Court of the Czech Republic, in turn, stressed the importance of substantive justice, emphasizing the importance of constitutional values

¹ See : M. Krotoszyński, *Modele sprawiedliwości tranzycyjnej*, Wydawnictwo Naukowe UAM: Poznań 2017, p.244–258.

² Judgment of the Constitutional Tribunal of the Republic of Poland, 25 September 1991, case № S 6/91.

and the goals of the law in the transition period and considering the far-reaching law on the illegality of and opposition to the communist regime of 1993 as constitutional, and hence the legality of the provisions extending the limitation period¹. Unlike the Czech court, the Hungarian Constitutional Court emphasized the importance of formal justice, pointing to the unconstitutionality of the provisions extending the statute of limitations for crimes, if they were not both international crimes, which were not covered by the statute of limitations².

One way out of the above impasse may be the direct application of international criminal law. However, it seems that the countries of Central and Eastern Europe regions while transforming at the turn of the 1980s and 1990s, did not have the necessary experience and knowledge in this field, and «Nuremberg law», which has existed since the ICT, proved to be incompatible with the problems of peacetime. It should also be noted that the heyday of international criminal law actually took place with the functioning of the ICTY, the ICC, the ICC and other international criminal courts, and therefore, after the first years of transformation of post-communist states, when in general the public and political desire for unambiguous criminal law actions in terms of settlement of the previous regime was much greater than in subsequent years. However, in Hungary there were several trials of the perpetrators of crimes during the revolution of 1956 brutally suppressed by the Soviet tanks — using the means of international criminal law, however, according to

¹ Judgment of the Constitutional Court of the Czech Republic, 21 December 1993, case № 19/93.

² L. Sólyom, *The Role of Constitutional Courts in the Transition to Democracy with Special Reference to Hungary*, «International Sociology» 2003, Vol. 18, p. 133–161.

researchers, in fact with the misapplication of the category of international crimes¹. In other words, there was confusion in the interpretation of the concept of war crimes and crimes against humanity, which only weakened the dimension of the criminal law reaction of the Hungarian state to the crimes of the past. On the other hand, the attempt of a local institute of national memory (*Ústav pamäti národa*) to present arguments in favor of the legal qualification of the conduct of the Czechoslovak border services as presented above, as systemic and structural, and therefore consistent with the legal structure of crimes against humanity, not covered by the statute of limitations (present in Czechoslovak law due to the direct obligation of the ICT) was not approved by the law enforcement authorities of Slovakia². Finally, in the framework of high-profile criminal proceedings against the perpetrators of martial law in Poland (1981-1983), incl. Generals Wojciech Jaruzelski and Czesław Kiszczak, courts did not share the arguments of the investigative unit of the Institute of National Remembrance with the requirement to try General Kiszczak for crimes against humanity (but he was convicted under the law for «participation in an armed criminal group»)³.

A brief overview of the most important challenges in the implementation of criminal law mechanisms after the transformation from an authoritarian system to democracy highlighted the fundamental problem of numerous post-communist states. This is a situation of a kind of legal

¹ T. Hoffmann, *Crimes against the People — a Sui Generis Socialist International Crime?* «Journal of the History of International Law» 2019, Vol. 21, pp. 320-324.

² M.Faix, O. Sváček, *Quot. s.*, pp. 40-41.

³ E.Koj, *Śledztwo w sprawie wprowadzenia stanu wojennego*, [in:] *Zbrodnie stanu wojennego — aspekty prawne*, (ed.) A. Dziurok, Instytut Pamięci Narodowej: Katowice-Warszawa 2017, pp. 28-36.

and political expansion between the desire to unambiguously settle the ancien régime and the compliance of such activities with the principles of a democratic state governed by the rule of law and standards arising from international law, complementing the «normative anchor» of transitional justice in terms of retribution for old crimes. In addition, the position of a significant part of the political scene (and society) on the complete abandonment of the policy of settlements should also be added.

**ATTEMPTS TO CONDEMN THE CRIMES OF THE SOVIET
GOVERNMENT UNDER CRIMINAL LAW — SELECTED
EXAMPLES**

The above-mentioned inconsistent practice of using the tools of retributive justice was an attempt at a criminal assessment of human rights violations and the policy of repression carried out by the communist authorities of some Eastern Bloc countries. However, as a rule, law enforcement agencies in Central and Eastern Europe did not directly refer to crimes committed by the Soviet regime and its representatives.

At the same time, we should not forget that the vast majority of the most serious Soviet crimes — especially those now classified as international crimes that are not subject to statute of limitations and to which the structure of universal jurisdiction could be applied — were committed in the 1920s and 1930s as well as in the 1940-50s of the last century¹. The first were aimed at the peoples living in the

¹ Of course, this does not mean that in the subsequent period of the Soviet Union there were no violations of human rights and fundamental freedoms, as well as mass political repression. However, it seems that these were the first four decades of the Soviet state, in which, firstly after the First World War and then after the Second World War, the Kremlin sought to consolidate its dominance over the conquered states and nations, noting the greatest brutality. However, it is worth mentioning

USSR during the interwar period as a result of the conquest of their states by the Bolsheviks, and included such examples as the Great Famine (Holodomor) of 1932-1933; as well as actions aimed at national minorities, an example of which was the so-called — the Polish operation in 1937-1938. The second period covers, in fact, crimes committed during World War II (including the Katyn Massacre, mass deportations of Baltic people or, for example, Crimean Tatars far into the Soviet Union) or shortly after it in the struggle against the independent underground of various states, which after the Yalta Conference found themselves either directly in the USSR or in the Soviet sphere of influence. As Yuri Kahanov rightly pointed out, this was also the period of the first stage of realization of the ideology of creating a new «Soviet man» — the stage that ended with the death of Joseph Stalin in 1953¹. On the other hand, in legal terms, this period means that the direct perpetrators of the above crimes usually no longer live or live out their last days.

Some exceptions to attempts to convict Soviet crimes lawfully include: the Polish investigation into the Katyn Massacre in the spring of 1940 (ongoing investigation since November 30, 2004), conducted under the Law on the Institute of National Remembrance, which allows to investigative actions even after the death of potential perpetrators (which is a sign of the right to the truth mentioned above)²,

that even the system of labor camps (GULAG), in which hundreds of thousands of «enemies of the Soviet government» died, functioned until 1987.

¹ Ю. Каганов, *Конструювання «радянської людини» (1953-1991): українська версія*, Інтер-М: Запоріжжя 2019, с. 11.

² Investigation over the case No. S 38.2004.Zk on the so-called — The Katyn Massacre, which is a war crime and a crime against humanity, has been carried out by the Commission of the Division for the Investigation of Crimes against the Polish Nation in Warsaw since November 30, 2004. (<https://ipn.gov.pl/sledztwa/>)

Ukrainian proceedings on the crime of genocide committed by the top leadership of the USSR and the Ukrainian SSR in 1932-1933 (Holodomor) and criminal proceedings conducted by Baltic law enforcement agencies committed during or immediately after World War II. As it is easy to understand all these efforts concern events that are very distant in time (an example of action in the formula of so-called *post-transitional justice*) are currently classified as international crimes that are not covered by the statute of limitations. At the same time, they are an expression of the sovereign will of states and can be interpreted as an element of the practice of condemning «crimes of the past» (committed by the representatives of the USSR) on the basis of domestic law using categories of international law.

KATYN MASSACRE

In the framework of the Katyn Massacre carried out as a result of Resolution No. P13/144 of March 5, 1940, signed by Joseph Stalin and members of the Politburo (the supreme policy-making body of the Communist Party of the Soviet Union), NKVD officers killed at least 21,768 Polish citizens (of various nationalities – except of the Polish as well the Ukrainians, the Belarusians and the Jewish). Prosecutors of the Institute of National Remembrance describe this crime as a crime against humanity (to which it should be added: «in the most serious form – genocide, because the motive of the perpetrators who issued the Resolution of March 5, 1940 was the liquidation of Polish citizens because of their nationality, which had to «prevent future revival, based on their intellectual potential, the Polish statehood»¹) and a war

zbrodnia-katynska/24212,Zbrodnia-Katynska.html).

¹ *Zbrodnia Katyńska. Polskie śledztwo*, Warszawa 2005 («Zeszyty Katyńskie», No. 20), p.

crime. It should be noted that the legal qualification of genocide as a form of crime against humanity is a direct reference to the ICC Statute in Nuremberg, in which genocide did not function as a separate crime, but as one of the consequences of crimes against humanity — so that the Polish investigation is regarded mainly under the «Nuremberg law».

Regardless of this qualification, it is worth mentioning that in the Polish literature on this topic the position on the legitimacy of the qualification of the Katyn Massacre as a crime of genocide (except for the qualification as a war crime) prevails¹. Karol Karski emphasizes that the Katyn Massacre was a specific end to the genocidal Soviet policy aimed at eliminating all forms of Polishness in the Soviet Union («Polishness» is understood as a completely independent national tradition and identity contrary to the concept of *homo sovieticus*), which began with the so-called — the Polish operation of 1937-1938². In this context, Witold Kulesza refers to the arguments of the Soviet side itself, which was presented during the main Nuremberg trial and tried to falsely shift the blame for the Katyn Massacre to Germany, in which Soviet prosecutors pointed to «extermination» and «genocide against the national group» of the Polish population as part of the Katyn crime³. The researcher concludes

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¹ However, not everyone shares this point of view. P. Grzebyk, *Mord katyński — problematyczna kwalifikacja (w związku z artykułem Karola Karskiego)*, «Sprawy Międzynarodowe» 2011, No. 2, pp.83–102. The author does not refuse to qualify the Katyn Massacre as an international crime (war crime).

² K. Karski, *The Crime of Genocide Committed Against the Poles by the USSR Before and During WWII: An International Legal Study*, «Case Western Reserve Journal of International Law» 2013, Vol. 45, No. 3, pp.706–712.

³ W. Kulesza, *Zbrodnia katyńska jako zbrodnia ludobójstwa*, [in:] *Zbrodnia katyńska. W kręgu prawdy i kłamstwa*, (ed.) S. Kalbarczyk, Instytut Pamięci Narodowej: Warszawa 2010, s.52–67.

that in fact the Resolution of March 5, 1940 served as proof of the so-called successive genocide against citizens of the Second Republic of Poland committed by the Third Reich after the defeat of the Polish state in autumn 1939 and the beginning of the German occupation of a part of its territory (argument, in particular, that after the signing of the Molotov-Ribbentrop Pact on August 23, 1939 the Third Reich and the USSR at that time became close allies, which was confirmed in the German-Soviet Treaty of Friendship and Border of September 28, 1939). Moreover, the Soviets considered prisoners of war the elite of the Polish state, and thus their elimination could have a significant impact on the survival of the Polish nation as such — independent and separate — and at the same time facilitate the Sovietization of the rest of the Polish nation. areas forcibly included in the USSR as the result of aggression on September 17, 1939. It seems that the completely planned nature of the operation to shoot Polish prisoners of war (based on personal lists), defined as «members of Polish nationalist organizations, members of exposed insurgent organizations» who (...) are staunch enemies of the Soviet government, full of hatred for the Soviet system»¹, allows us to see the signs of a crime of genocide, «committed with the aim of destroying all national, ethnic, racial or religious groups or parts thereof» (Article II of the 1948 Genocide Convention).

At present, the Russian side is unlikely to question Soviet involvement in the Katyn Massacre, but a careful analysis of Witold Kulesza regarding the circumstances of the Resolution taken by the Russian General Prosecutor's Office to suspend the Russian investigation into the Katyn Massacre

¹ Id. p.63.

(dated September 21, 2004) because of the death of the main responsible persons still remains a secret decision, which stipulates that the Russian Prosecutor's Office does not classify the Katyn Massacre as an international crime («at least» a war crime), but as an expired crime of abuse of power¹. It should also be noted that the termination of the investigation in the Russian Federation was the source of a complaint by the families of the victims of the Katyn Massacre to the ECHR (*Janowiec and others against Russia*), based in principle on the procedural nature of Russia's obligations to the ECHR regarding the prisoners of war (recognized on the basis of a complaint «missing»)². To the disappointment of the applicants and many observers, the Strasbourg Court in its Judgement of the Grand Chamber of 21 October 2013³ did not uphold the arguments of the complaint, pointing to the need for a special legal link between the date of death of the direct victims and the date of ratification of the ECHR by this state — not more than 10 years. Moreover, the ECHR emphasized that in 1998 — when the Russian Federation was bound by the provisions of the Convention — the fate of the victims of the Katyn Massacre was already widely known, which meant that Russia's behavior towards the victims' families could not be described as constituting «state of inhuman treatment» (Article 3 of the ECHR). It is worth mentioning that the violation of this article of the

¹ Id. p.66.

² The complaint did not concern Russia's responsibility for the Katyn Massacre (by violating its negative obligations regarding the right to life) because the crime was committed not only before the Russian Federation was linked to the ECHR, but above all 10 years before the Convention was adopted itself.

³ Judgment of the Grand Chamber of the European Court of Human Rights in the case of *Janowiec and Others v. The Russian Federation*, 21 October 2013, applications № 55508/07 and 29520/09.

Convention by the Russian State against the applicants in the Janowiec case was decided by the ECHR Chamber in 2012¹, when it was stated that the opportunity to know the fate of their loved ones is an integral part of the right for the truth, which for half a century had been propagated by the Soviet authorities and the Polish communist authorities. Finally, in the Judgement of the Grand Chamber, the Strasbourg court closed the possibility of considering all «historical cases» that took place before November 5, 1950, i.e. before the adoption of the ECHR². Prominent researcher of international criminal law and human rights William Schabas called the decision of the Grand Chamber not to use the historic opportunity to «supplement» the decision of the IMT in Nuremberg³.

There is no doubt that the possible completion of the Katyn investigation by the prosecutors of the Institute of National Remembrance will be, first of all, symbolic, but at the same time completely legal — officially sanctioned by the Polish state — as well it will determine the nature and qualification of the crime committed in the spring of 1940 by the USSR. Since the direct perpetrators cannot be prosecuted (they are dead), the findings of the investigation will, in principle, constitute the realization of the right to the truth for close victims and the whole of Polish society. In this context, it

¹ Judgment of the European Court of Human Rights in the case of *Janowiec and Others v. The Russian Federation*, 16.04.2012, application № 55508/07 and 29520/09.

² Criticism of the Grand Chamber's Judgement was expressed by the main author of the complaint, in particular in the text: I. C. Kamiński, *Katyński wyrok Wielkiej Izby Europejskiego Trybunału Praw Człowieka*, «Kwartalnik o Prawach Człowieka» 2013, No. 4, pp.3–8.

³ W. Schabas, *Katyn: Amnesia in Strasbourg*, «PhD Studies in Human Rights Blog», 21.03.2013, <http://humanrightsdoctorate.blogspot.com/2013/10/katyn-amnesia-in-strasbourg.html>.

should be noted that the proceedings conducted in 2009-2010 by the Security Service of Ukraine (SBU) and the Ukrainian Prosecutor's Office in the Holodomor case were similar in terms of legal structure.

**THE CRIME OF GENOCIDE COMMITTED BY CREATING
AN ARTIFICIAL FAMINE IN SOVIET UKRAINE
(HOLODOMOR OF 1932-1933)**

By the decision of the Security Service of Ukraine of May 22, 2009, a corresponding investigation was launched into the Holodomor as a genocide committed by the Soviet authorities against the Ukrainian people. After its completion, the General Prosecutor's Office of Ukraine indicted representatives of the top leadership of the USSR and the Ukrainian SSR — in the person of Joseph Stalin, Vyacheslav Molotov, Lazar Kaganovich, Pavel Postyshev, Stanislav Kosior, Vlas Chubar and Mendel Chataevich — accusing them of committing crimes against the Ukrainian people by creating an artificial famine, which led to the death of at least 3 million 941 thousand people in the period of 1932-1933¹. The legal basis for the accusation was Article 442 of the Criminal Code of Ukraine (2001), which punishes the crime of genocide in the domestic legislation of Ukraine, as well as the relevant provisions of the UN Convention on Genocide. On January 12, 2010, the Kyiv Court of Appeal² ruled that the case was

¹ According to various estimates, the total number of victims is between 3 up to 10 million. In light of recent documents declassified by the archives of the SBU and the Ukrainian Institute of National Remembrance, the most probable death toll is 6 million, a comparison of the 1937 census with that of the 1920s. See: Центр досліджень визвольного руху, *НКВД та Голодомор: опубліковані документи репресій за перепис населення*, <http://cdvr.org.ua/28371/2020/11/27/?fbclid=IwAR3Vki-7FrAd2i0uH9uz3grV15pOoErKpX-2zUPPvAQ8JAn8sm9E3feXJDILs>.

² Decision of the Court of Appeal of Kyiv, January 13, 2010, case № 1-33/2010.

closed due to the deaths of the accused, deliberately and systematically creating conditions for artificial starvation. It was also emphasized that the purpose of the perpetrators (*dolus specialis*) was to destroy, in part, the Ukrainian national group as a subject with the right to self-determination (also guaranteed by the USSR Constitution of 1924) and thus to try to break the national spirit and prevent the creation own independent state. The peasant population was at that time the main emanation of the Ukrainian nation. Finally, the decision of the Court of Appeal indicated that the evidence gathered (documents, testimony of witnesses) confirms the correctness of the legal qualification of the actions of the Soviet authorities as genocide in the light of both domestic legislation of Ukraine and the UN Genocide Convention.

In the context of the analyzed sentence, it should be noted that for some experts the greatest doubts about the legal qualification of the Holodomor as genocide lie in the assumption whether the Ukrainian national group should be the subject of the alleged genocidal acts. It is alleged that the creation of conditions for artificial famine was directed against a social (political) group, in particular the rich peasantry (the so-called kulaks, which in itself is not true) and that social and political groups are not protected under the 1948 UN Convention (it is enough to say that this happened mainly as a result of the activities of the USSR during the work on this convention). Critics also point out that similar artificial famine situations have occurred in other Soviet republics, so the Ukrainian Holodomor did not have the characteristics of «uniqueness»¹. However, it

¹ Г. Касьянов, *Past Continuiouis. Історична політика 1980-х — 2000-х: Україна та сусіди*, Видавництво «Лаурис. Антропос-Логос-Фільм»: Київ 2018, pp.110–112;

should be noted that the creator of the concept of genocide Rafał Lemkin in his article «Soviet Genocide in Ukraine» in 1953 argued that the actions of 1932-1933 were in fact part of a broader policy of Soviet power against the Ukrainian people, carried out since the 1920s. Lemkin understood the extermination of the Ukrainian peasantry as an act aimed at the «body» of the Ukrainian national fabric, which took place after the Soviet comrades destroyed the «brain» (repression against the intelligence) and the «soul» (repression against the clergy and the destruction of the Ukrainian church) of the Ukrainian nation»¹. Myroslava Antonovych notes that the Holodomor can be described as genocide – first, the Great Famine of 1932-1933 as such (in the narrow sense) and, secondly, as part of a much larger Soviet genocide against Ukrainians from the initial stage of Soviet rule on the territory of Ukraine (then the Ukrainian People's Republic)². In particular, in the light of the case of *Drelingas v. Lithuania* before the ECtHR, which appears to be substantive, such an argument is correct even in the narrow sense, since the peasant population constitutes a significant emanation of the Ukrainian nation, provisions of the 1948 Genocide Convention³.

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¹ R. Lemkin, *Sowieckie ludobójstwo w Ukrainie*, [in:] Рафаель Лемкін: Радянський геноцид в Україні. Стаття 28 мовами, Майстерня книги: Київ 2009, pp.160–165.

² М. Антонович, *Голодомор 1932-1933 років в Україні в контексті радянського геноциду проти української нації*, [in:] *Голодомор 1932-1933 років в Україні як злочин геноциду згідно з міжнародним правом*, (eds.) В. Василенко, М. Антонович, Видавничий дім «Киево-Могилянська академія»: Київ 2016, pp.92–93.

³ Сomp. : К. Бондар, *Правова кваліфікація Голодомору 1932-1933 років як геноциду за Конвенцією ООН про запобігання злочину геноциду та покарання за нього*, [in:] *Голодомор 1932-1933 років в Україні...*, pp.95–119; М. Гнатівський, *Удар по злочинах СРСР: що змінює рішення ЄСПЛ у справі про геноцид у Литві*, «Європейська правда», 21.03.2019, <https://www.eurointegration.com.ua/articles/2019/03/21/7094191/>.

Regardless of the voices of Ukrainian doctrine (which one can generally agree with at the level of academic analysis), serious legal doubts may arise precisely with the reverse effect of the 1948 Genocide Convention. Till the assess of the events of 1932-33, however, there had been condemnation of war crimes, but still not crimes of genocide¹, as well as modern national legislation to assess past events. If the persons named in the decision of the Court of Appeal were still alive and decided to file a complaint to the ECtHR in connection with the violation of Article 7 of the ECHR (prohibition of punishment without legal basis) by Ukraine, the Strasbourg Court would undoubtedly agree with the applicants' position (as confirmed, in particular, by the cited Judgement of the Grand Chamber of the ECtHR in the «Katyn case»). Therefore, the Judgement of the Kyiv Court of Appeal in 2010 should be considered in terms of symbolic realization of (collective) right to the truth and as an element of combating the past with the use of criminal law mechanisms than the work of the classical criminal court in the strict sense.

**CRIMINAL PROCEEDINGS AGAINST INTERNATIONAL
CRIMES COMMITTED BY THE SOVIET REGIME AGAINST
THE SOCIETIES OF THE BALTIC STATES**

Finally, it is worth noting the efforts made in recent years in the Baltic States to treat Soviet crimes as international crimes. In contrast to the above cases, namely the Katyn Massacre and the Holodomor, which actually constituted

¹ Suffice it to say that a year later Rafal Lemkin published his conclusions to the V International Conference on the Unification of Criminal Law in Madrid in 1933, in which he only postulated the prohibition of crimes of vandalism and barbarism, and therefore the progenitors of genocide.

the exercise of the (collective) right to the truth through judicial instruments, in the cases of Lithuania, Latvia and Estonia there were actual convictions of specific persons for crimes committed during actual stay of these three Baltic states in the competence of the USSR.

It seems that the rather high activity of the Balts in the field of retribution was the result of the adoption by Lithuania, Latvia and Estonia of an unambiguous legal position, which indicated that in the period from 1940 to 1991 (except of 1941-1944, i.e. the times of German occupation) they were under Soviet occupation as a result of the aggression of the Soviet Union – so their independence was restored, not obtained after the collapse of the Soviet Union, and the states considered themselves direct successors of the Baltic countries that existed in the interwar period¹. This fundamental difference from other former Soviet republics had political and legal consequences. The first concerned the possibility of faster integration with the Euro-Atlantic world and at the same time the adoption of bolder political decisions in the domestic sphere related to the Soviet past. The latter created the possibility of judicial (criminal-legal) settlement of the Soviet aggression in 1940 (which, however, did not happen) and crimes committed during the two Soviet occupations (1940-1941 and 1944-1991). The Baltic states were quick to transpose relevant instruments of international criminal law, including the definition of genocide, crimes against humanity and war crimes². It should be emphasized

¹ K. Karski, *Rozpad Związku Radzieckiego a prawo międzynarodowe*, Bellona: Warszawa 2015, pp.147–157.

² E.-C. Pettai, *Prosecuting Soviet Genocide: Comparing the Politics of Criminal Justice in the Baltic States*, «European Politics and Society» 2017, Vol. 18, Issue 1, c.52–65; J. Žilinskas, *Broadening the Concept of Genocide in Lithuania's Criminal Law and the Principle of Nullum Crimen Sine Lege*, «Jurisprudence» 2009, No 4 (118), pp.333–348.

that the definition of genocide in the legislation of the three Baltic States was expanded to include the 1948 Convention by two more categories of protected groups: «political» and «social», which had legal significance, as most «Baltic cases» ended up were sent to the ECtHR. The vast majority of these proceedings concerned former officers, including the NKVD, the MGB, the KGB, the Red Army, or other Soviet authorities, convicted under national law of genocide, war crimes, or crimes against humanity against civilians, including intellectual elites, and officials or the academic community of interwar Lithuania, Latvia, and Estonia (for example, through mass deportations or large-scale repression), as well as the «forest brothers» operating in the three Baltic states, the anti-Soviet independence movement.

The Reglamentaions of the Strasbourg Court served as a reference to a certain standard of application of criminal law mechanisms in the field of crimes committed during or immediately after the Second World War. The scheme of most cases was similar — the Baltic states, on the basis of their own national law, using the category of international crimes, convicted those guilty of certain crimes, which were then transferred to the ECtHR on the basis of violation of Article 7 of the ECHR, i.e. no punishment without a proper legal basis. The applicants most often alleged that they were unaware of their further legal qualifications at the time the act was committed and that international and national law in force at the time had not yet developed an appropriate standard for prosecuting crimes against humanity and genocide (retrospective application of criminal law)¹.

¹ L. Mälksoo, *The European Court of Human Rights and the Qualification of Soviet Crimes in the Baltic States*, «Human Rights Law Journal» 2019, Vol. 39, No. 1-12, pp.19-22.

The first complaints in *Penart v. Estonia*¹ and *Kolk and Kislyiy v. Estonia*² (both since 2006), in which the applicants had previously been convicted by Estonian courts of crimes against humanity, were found by the ECHR to be *manifestly ill-founded*. It was noted that in the second half of the 1940s — early 1950s, when crimes were committed, the standard of prosecution of crimes against humanity was already defined by the IMT Charter and the Nuremberg Principles, collected in the UN General Assembly Resolution of 1946. *Kononov's case v. Latvia* in 2009 had an even greater resonance on the international arena³. Vasily Kononov, a Red Army soldier and, during the German occupation of Latvia, a Soviet partisan, took part in the pacification of one of the Wehrmacht-controlled areas in May 1944, during which at least nine people were killed. After Latvia regained its independence and initiated proceedings, Kononov was convicted under the Criminal Code of the Latvian SSR of 1961 of committing a war crime — the final decision of the Latvian Supreme Court dates back to September 2004. During the trial, the defendant's argument that the village pacification was an act of revenge for the previous provision with information by its inhabitants to the Germans about the whereabouts of Soviet guerrillas, was rejected. Kononov appealed against the decision of the Latvian courts to the European Court of Human Rights — in the Judgement of June 24, 2008, the Chamber of Court ruled that Latvia had violated Article

¹ Judgment of the European Court of Human Rights in the case of *Penart v. Estonia*, 24 January 2006, application № 14685/04.

² Judgment of the European Court of Human Rights in the case of *Kolk and Kislyiy v. Estonia*, 17 January 2006, applications № 23052/04 and 24018/04.

³ Judgment of the European Court of Human Rights in the case of *Kononov v. Latvia*, 24.07.2009, application № 36376/04.

7 of the ECHR against the applicant, as at the time of the act he could not have foreseen criminal liability for a war crime, having the right to assume that the villagers themselves were lawful participants in hostilities under the law of armed conflict, a party of the Third Reich. The ECtHR Judgement sparked a wave of comments pointing to the misapplication of the war crimes prosecution standard (the «discriminatory nature of the concept of war crimes» is more favorable to the perpetrator than to the victims, also due to the fact that residents of the pacified area, i.e. a country against which a broad anti-fascist front was raised, including the USSR)¹. Finally, the Grand Chamber of the European Court of Human Rights ruled in a Judgment of May 17, 2010² that Latvia had not violated the principle of non-punishment without legal grounds against Kononov. It is worth mentioning that the «universal concept of war crimes» prevailed, and the Judgement of the Grand Chamber actually became the first international judicial confirmation of a war crime committed by a representative of the Allies (USSR) during World War II.

However, the real breakthrough in the Soviet regime's crimes was the «Lithuanian cases», in particular the trial of MGB/KGB officer Stanislovas Drelingas for the crime of genocide committed in 1956, the legality of which was confirmed by the ECtHR in the Chamber's Judgement of March 12, 2019³ (later by the Grand Chamber in its Judgement

¹ L.Mälksoo, *Kononov v. Latvia*, «The American Journal of International Law» 2011, Vol. 105, No. 1, pp.105–106.

² Judgment of the Grand Chamber of the European Court of Human Rights in the case of *Kononov v. Latvia*, 17 May 2010, application № 36376/04.

³ Judgment of the European Court of Human Rights in the case of *Drelingas v. Lithuania*, 12 March 2019, application № 28859/16.

of September 9, 2019 rejecting the applicant's request to hear the case).

It should be emphasized that on important «historical issues» Lithuanian law enforcement agencies have adopted a consistent policy of prosecuting crimes against genocide (rather than, for example, crimes against humanity) committed against members of the Lithuanian nation by members of the imposed Soviet regime¹ certainly emphasizing this, in contrast to the Baltic neighbors (especially Estonians)². Individual indictments were based on Article 99 of the Criminal Code (entered into force in 2003), which foresees the criminalization of the crime of genocide (and in fact, also a crime against humanity), committed to destroy in whole or in part (also) «political group» and «social group», i.e. unknown categories to the 1948 UN Convention. It should be added that the Prosecutor's Office considered the crimes committed against members of the Lithuanian underground independence movement which had been committed against members of a «political group». Retrospective application of national criminal law to assess events more than half a century ago eventually led to a complaint filed by one of the ECHR convicts. In the case of *Vasiliauskas v. Lithuania*, the Grand Chamber found a violation of Article 7 of the ECHR by the Lithuanian State, although the USSR signed the Genocide Convention on December 16, 1949 and finally ratified it on May 3, 1954 (and therefore the consequences of the crime of genocide could have been foreseen by the applicant), the extension of the definition

¹ N. Bruskina, *The Crime of Genocide Against the Lithuanian Partisans: A Dialogue Between the Council of Europe and the Lithuanian Courts*, «European Papers — A Journal on Law and Integration» 2020, Vol. 5, No. 1, p.144.

² E.-C. Pettai, *Quot.*, pp. 61–62.

of crimes in national law applied retrospectively, led to the inability to predict the consequences of his action (since 1953) — Vytautas Vasiliauskas (MGB employee)¹. There is no doubt that a state may extend the definition of the crime of genocide in its domestic law comparing with that in the UN Convention of 1948, but then, to an extent unknown to that act of international law, an act of national law cannot be applied retrospectively (so that only «for the future»).

However, a heavy defeat in a prestigious case in Strasbourg did not stop Lithuania from trying to convict the former Soviet Union of «crime of crimes». At the same time, the legal circumstances have changed significantly — mainly as a result of the Judgement of the Constitutional Tribunal of Lithuania of March 18, 2014², which ruled on the unconstitutionality of Article 99 of the Criminal Code, as this provision applied retrospectively to «political groups» and «social groups». At the same time, the decision stressed that the actions of the Soviet authorities against the Lithuanian people led to a reduction of the Lithuanian population by more than 1/5, indicating that the crimes committed were systemic totalitarian practices against Lithuanians to fully subordinate society to the government in the Kremlin. Moreover, the Tribunal presented a methodology for applying the 1948 UN Convention to assess actions against Lithuanian guerrillas as a crime of genocide, assuming that members of the anti-Soviet independence movement were an important element of the Lithuanian nation (in particular for

¹ Judgment of the Grand Chamber of the European Court of Human Rights in the case of *Vasiliauskas v. Lithuania*, 20.10.2015, application № 35343/05.

² Judgment of the Constitutional Court of Lithuania of 18 March 2014, case № KT11-N4/2014.

its continued existence) and should be considered «national group» or «ethnic-national group» (and not as a «political group»). Finally, these considerations were upheld by the Supreme Court of Lithuania as the court of last instance in the case of Stanislovas Drelingas (MGB/KGB officer) for committing the crime of genocide by participating in an operation in 1956 in which Adolfas Ramanauskas («Vanagas») was detained with his wife — one of the main figures of the Lithuanian underground movement. It was noted that during Drelingas' activities, he could assume that Vanagas, as the leader of the Lithuanian partisans, would inevitably be executed. It was emphasized that the operation to seize «Vanagas» was part of a systemic policy of repression against the Lithuanian independence movement — the emanation of the Lithuanian nation (understood as a community of many different groups that make up this nation, not just as blood community). Finally, after Drelingas sued the Lithuanian state in Strasbourg, the ECtHR concluded that Lithuania had not violated Article 7 of the ECHR against the applicant, emphasizing the correctness of the arguments presented by the Lithuanian national courts in important «historical cases» and the conformity of the current assessment of events more than half a century ago with the then binding norms of international law on the prevention and punishment of genocide crime (as well as the Judgement of the Grand Chamber on Kononov — provoked a protest from the Russian Federation).

* * *

At the end of this excerpt, it should be made clear that the efforts to investigate the Katyn Massacre, the Holodomor and crimes against the nations of the Baltic States (and

possibly bringing the perpetrators to justice if they are still alive), the use of the category of international crimes and the application of international law as «strengthening» of the instruments of national law, including «crime of crime», i.e. genocide, seems crucial for understanding the idea of «Nuremberg-2» for the crimes of the Soviet regime and its potential implementation. There is no doubt that the memory of these crimes during the Soviet era was one of the key elements in preserving its separate national identity and preventing the full domination of Soviet power, including the Kremlin's ideology in creating *homo sovieticus*¹.

«NUREMBERG-2» FOR THE CRIMES OF THE EMPIRE?

In their call for a special tribunal for the crimes of communism, Vladimir Bukovsky and Renato Cristin stressed that, unlike the Nazi ideology that gave rise to the large-scale crimes that led to the trial of its most important perpetrators (though not all) during the Nuremberg Trials, morally and politically communist ideology, as well as the crimes, repressions and practices of the totalitarian system that embodied it, did not receive such a calculation. The reasons for this state of affairs were primarily political, when in the period after World War II not only Soviet crimes but also the crimes

¹ Historian Przemysław Gasztold-Señ writes about the struggle for the truth on the topic of the Katyn massacre, against which the communist authorities in Poland fought fiercely: «People of different professions, religions and political views were repressed. They were all linked to the truth about the Katyn massacre, for which they suffered undeserved punishment. Despite the terror of the security apparatus, they could afford to publicly tell the truth about the tragic fate of Poles in the East. Thanks to them, we can today honor the memory of the killed Polish officers». P. Gasztold-Señ, *Siła przeciw prawdzie. Represje aparatu bezpieczeństwa PRL wobec osób kwestionujących oficjalną wersję Zbrodni Katyńskiej*, [in:] *Zbrodnia katyńska...*, p.153.

of Western allies were not taken into account (for example, the bombing of the German cities of Dresden or Hamburg in 1945). According to Lavinia Stan, in the latter case there was even a certain paradox, because thanks to the policy of perestroika and publicity pursued by Mikhail Gorbachev at the end of the Soviet Union, discussions of difficult history opened earlier in the USSR than in the Eastern bloc, that were outside it¹. However, despite some measures to rehabilitate the repressed or establish the Memorial Society, all attempts to lustrate or decommunize Russia failed during the first years of Boris Yeltsin's presidency — a similar situation existed in other republics of the former Soviet Union (except the Baltic states) in which Soviet/Russian agents continued to operate after independence². To this should be added the fundamentally contractual nature of the transformation in the vast majority of Central and Eastern European countries, as noted earlier in the study.

Finally, a factor that has so far hindered the institutional international evaluation of the crimes of communism (the Soviet regime and its satellites) is clearly another modern collective memory of Western European societies, built on trauma but also on the «uniqueness» of the Holocaust. The memory of the nations of Central and Eastern Europe who suffered at the hands of two totalitarianisms³. Importantly, in addition to the political or symbolic dimension, this

¹ L. Stan, *Limited Reckoning in the Former Soviet Union: Some Possible Explanations*, [in:] *Transitional Justice and the Former Soviet Union. Reviewing the Past, Looking Toward the Future*, (eds.) C. M. Horne, L. Stan, Cambridge University Press 2018, pp.19–44. It should be added that, for example, in Poland, criminal proceedings against people fighting for the truth about Katyn were conducted almost until the end of the communist regime in 1989. See : P. Gasztold-Seń, *quot.*, p.149–153.

² A. Grajewski, *Balast po komunizmie...*, p.168.

³ Г. Касьянов, *Past Continuous...*, pp.47–80.

specific dualism of the collective memory of the European continent also has certain legal consequences. An example is the significantly different approach of the ECtHR to the public memory of the Holocaust trauma (completely protected from any attacks, insults, degeneration or negativism¹) in the public space of the Council of Europe than the memory of repression and communist crimes (when defined). relativization or, for example, promotion in public space through communist symbols is sometimes interpreted as a manifestation of permissible freedom of speech²). Sometimes it seems that in this area there is still a certain iron curtain that stretches over Europe.

What could this «Nuremberg-2» be like for the crimes of the Soviet regime?

In their address, Bukovsky and Cristin point to the need to create an international criminal tribunal modeled on the IMT, which would support by individual governments, political parties, NGOs, professionals and experts, to stigmatize and preserve the memory of the crimes of this criminal ideology³. Łukasz Kamiński, head of the Platform of European

¹ A. Gliszczyńska-Grabias, *Orzecznictwo Europejskiego Trybunału Praw Człowieka wobec totalitarnej przeszłości Europy — wybrane przykłady*, [in:] *Odpowiedzialność za negowanie zbrodni międzynarodowych*, (ed.) P. Grzebyk, Instytut Wymiaru Sprawiedliwości: Warszawa 2020, pp.81–88.

² Indicative in this respect was the ECtHR's Judgment in *Vainai v. Hungary* (August 8, 2008, Statement No.33629/06), in which the Court found that the application of an administrative penalty by the Hungarian State to a person who publicly promoted communist symbols (red star), which was prohibited by national law as a crime, is a violation of Article 10 of the ECHR (freedom of expression), also because, according to the ECtHR, «there is currently no real threat of the reproduction of the communist system». With regard to the promotion of Nazism (or its symbols) in public, the ECtHR has consistently stated that the legislative actions of the ECHR state members that prohibit or punish this type of expression are justified and do not violate freedom of expression. See *id.*

³ *Appeal for Nuremberg Trials for Communism...*

Memory and Conscience, and in 2011-2016 director of the Polish Institute of National Remembrance, while remaining skeptical about the possibility of creating a «real tribunal», stressed that it is worth organizing a symbolic, but at the same time time professionally trained court on communism. Representatives of individual states (not only European ones) could submit documented indictments on their behalf to such a court, which would include prominent lawyers specializing in international law»¹. While agreeing that it is difficult to be overly optimistic about the creation of a «classic» criminal court for the crimes of communism, given the lack of political will, but also more objective factors such as the deaths of the vast majority of potential defendants, one should consider how such a «symbolic» tribunal could function.

Institutionally, the best solution would be to set up such a tribunal on the basis of a multilateral international agreement. Recognizing the political difficulties, the expected lack of interest from the Russian Federation, and the likely indifference of many Western countries (stemming, for example, from the duality of collective memory on the European continent, as noted above), the negotiation process must begin first in the post-communist and post-Soviet Central and Eastern Europe, but leave the door open as an opportunity for other countries to join the treaty in the future (open nature of the international agreement). It seems that a concise international legal core of such a tribunal would significantly increase its socio-political legitimacy than it would in the case of a (quasi) judicial institution established by non-governmental organizations. In addition, the contractual basis

¹ Ł. Kamiński, *Jest późno, lecz nie za późno*, «Teologia Polityczna», 12.11.2019, <https://teologiapolityczna.pl/lukasz-kaminski-jest-pozno-lecz-nie-za-pozno-1>.

may oblige States-parties to cooperate with the tribunal, for example, by compulsory participation in the collection of evidence or by providing access to state archives to its representatives in order to increase the efficiency of such a court and increase its chances of success of his work. Finally, the international legal nature of the tribunal should mean the international composition of prosecutors, judges and other experts who work with it.

Taking into account the largely symbolic nature of the court — primarily in view of the deaths of key officials — as well as the key task it would have to perform, i.e. to deal with «crimes of the past» through international criminal law, it would be worth considering on the transfer of some experience of transitional justice mechanisms (in the regime of *dealing with the past*), in particular restorative justice/historical justice. Importantly, perhaps somewhat unexpectedly for some, these include non-judicial mechanisms, such as truth and reconciliation commissions. These are *truth-telling/truth-seeking* institutions that are reluctant to be recognized among the post-communist states of Central and Eastern Europe, although it should be added that bodies similar in origin were established in the late 1990s in the three Baltic states¹. Such institutions have extensive experience in investigating past events, often with a mandate covering many decades of repression and violations of fundamental human rights, such as commissions in Paraguay (49 years) or Kenya (45 years). Many times the truth and reconciliation commissions have also tried to legally classify the facts under investigation using categories of international law and human rights (for example, Commissions in Sierra Leone,

¹ L. Stan, *Truth Commissions in Post-Communism: The Overlooked Solution?*, «The Open Political Science Journal» 2009, Vol. 2, pp.1–13.

South Africa or Guatemala). Although it is obvious that the commissions are not courts and do not have the possibility of sentencing and convicting the perpetrator under criminal law. It should be added that in some cases, members of such bodies were representatives of international law (both theory and practice), as well as historians or representatives of other social sciences¹. For a tribunal to deal with the crimes of the Soviet government, which are often very distant in time, this is invaluable experience, and the cooperation of lawyers with representatives of other scientific disciplines (led by historians) seems necessary to achieve the expected goal (analogically The Polish Institute of National Remembrance functions). An interesting example that can serve as a great illustration of this idea is the International People's Tribunal for Iran (functioning in 2011-2013), which was to determine the responsibility of this state for crimes against humanity committed by the Iranian authorities against its population in 1980-1988². It is a completely civic project created at the initiative of the victims and victims' loved ones of the massacres committed in the 1980s — due to the lack of consent of the Iranian authorities, it operated in London and The Hague. Interestingly, the final decision of the Tribunal, made in February 2013, was preceded by the work of the related Truth and Reconciliation Commission, and the report issued by it with the statements of victims of crime and witness testimony became an integral part of the court decision. Given that the International People's Tribunal for Iran was in fact an example of an informal institution set up by private individuals (civil society), its

¹ T. Lachowski, *Perspektywa praw ofiar...*, pp.103-107.

² The mandate, powers and functions of the International People's Tribunal for Iran, as well as the final verdict, can be found on the website: <https://irantribunal.com>.

«decision» was therefore not binding, and its very structure combined «historical» and «investigative» units (which complemented each other), this seems to be a good starting point for discussing the international (criminal) tribunal for the crimes of the Soviet regime.

Turning to the question of determining the jurisdiction of «Nuremberg-2», it seems that the court itself should extend its jurisdiction only to the crimes of the Soviet regime (and its satellites at the time — now independent states) and in a strictly historical sense («crimes of the past» committed during the existence of the USSR in the period 1917-1991), leaving out of its interest other cases of domination of criminal communist ideology to this day in some countries, such as the People's Republic of China. Unconsciously extending the jurisdiction of a potential tribunal to «crimes of the present» or «crimes of the future», which would essentially coincide with the functioning of existing international criminal courts headed by the ICC, would in practice hinder its creation or unnecessarily blur the context of crime settlements committed by USSR.

Nevertheless, the definition of substantive jurisdiction (i.e. the answer to the question of which crimes are subject to judicial review) and the definition of current legislation in the (inter) temporal sense seems to be the most difficult tasks. Taking into consideration the above-mentioned context of the USSR's criminal activities, which largely coincided with World War II and the first post-war years, it appears that, in essence, the jurisdiction of the proposed tribunal should be similar to that of the Nuremberg IMT (crimes against peace, war crimes and crimes against humanity). However, it should not be forgotten that the IMT was created strictly in connection with the attempt to condemn crimes committed

by members of the Third Reich, and in fact can be directly applied only to crimes committed during World War II (or up to 1948, i.e. the period adoption of the UN Convention on the Prevention and Punishment of the Crime of Genocide). Moreover, the main shortcoming of «Nuremberg law» is the strict combination of the fact of committing crimes against humanity with armed conflict and the lack of a separate category of crime of genocide. Only UN General Assembly Resolution 96 (I) of December 11, 1946 (read in conjunction with UN General Assembly Resolution 95 (I), which affirms that the Nuremberg Principles reflect existing customary law) emphasized that genocide was a crime of international law, that in the sense of contract law, was sanctioned by the UN Convention on the Prevention and Punishment of the Crime of Genocide, adopted in 1948. The efforts of Central and Eastern European countries to address the crimes of (Soviet) genocide analyzed in this study, regardless of whether millions of victims were killed as a result (Holodomor in Ukraine), thousands (Katyn Massacre) or individual units (Lithuanian cases) — clearly point to the special importance of the calculation of «crime of crimes», which was the main method of implementing the Soviet ideology of «Soviet man» in order to fully subordinate the societies of the region and eliminate all forms of resistance and independence within them. It even seems that even dealing with crimes against peace was the most significant for IMT, «Nuremberg-2» should focus on the crime of genocide. However, it should be remembered that the Soviet Union signed the Genocide Convention on December 16, 1949 and finally ratified it on May 3, 1954, which also calls into question the applicability of its provisions to previous events. One option could be to try to codify customary law

in force at the time (for which the IMT Charter and the decisions of the Nuremberg Tribunal would be the main, but perhaps not the only, manifestations of international practice), which would be the starting point for formulating the Charter of «Nuremberg-2», not forgetting that although this court would be mainly a body with a symbolic dimension, it functioned on the basis of international criminal law in force during the analyzed period.¹ However, even with such an interpretation, it would be difficult to defend the possibility of judging events before World War II using the category of (especially) genocide, as well as crimes against humanity, without risking encountering a retroactive claim (as in the past mentioned symbolic Ukrainian proceedings concerning the trial of the Holodomor as a crime of genocide). Finally, given that «Nuremberg-2», with all its limitations, will be an emanation of the right to justice and the (collective) right to truth of the societies of Central and Eastern Europe, it should be noted that the death of the perpetrators should not be a reason to terminate the prosecutor's office proceedings and court proceedings aimed at reaching a final decision on crimes *delicta iuris gentium*.

The above considerations — certainly incomplete and not without possible gaps or difficulties in interpretation — are an attempt to start a real discussion on the form of the International Criminal Tribunal for crimes of the Soviet regime, which can be informally called «Nuremberg-2».

¹ In contrast, it should be noted that the potential definition of acts falling under the jurisdiction of Nuremberg II, like the jurisdiction of the ICC in The Hague, can be interpreted as a reverse application of modern international criminal law to assess the events of the past, especially the period World War II and the postwar years, when the vast majority of international crimes took place in the USSR, the occupied states and satellite states (post-war Eastern Bloc).

Surely there are far more questions than answers, starting with the most fundamental, that is, the location of the tribunal? Following the idea of the original Nuremberg and the location of the IMT in the city where the criminal National Socialist German Workers' Party (NSDAP) was born and where the racial Nuremberg Laws against Jews were proclaimed, Moscow should probably become such a place. However, given the fact that this is currently impossible for political reasons, it seems that such a court could be established in Kyiv (a symbol of the Holodomor trauma and modern Kremlin neo-imperial aggression), without excluding other Central and Eastern European states that suffered greatly from Soviet totalitarianism. However, notwithstanding these discussions, it should be made clear that such a tribunal should ultimately be established — and that the prosecution of the crimes of communism should look more than a record of past wrongs and injustices (introducing, at least to some extent, international obligations for the states according to the international law), but also as a clear opposition to negativism and historical revisionism, which are currently promoted by the authorities of the Russian Federation.

At the end of this fragment of the study, it should be recalled that the conviction of individuals by the state is only one form of responsibility of this state under international law. Therefore, regardless of the analyzed idea of creating «Nuremberg-2», the interested states of the Central and Eastern Europe region have all the international legal means to establish legal responsibility of the Russian Federation for a number of illegal actions of the USSR under international law, which is a direct consequence of is the legal continuator state (not the successor) of the Soviet Union, and therefore

an entity identical to the USSR.¹ Public international law, in turn, does not know the statute of limitations for illegal acts committed in relations between subjects of international law.

**FROM THE TOTALITARIANISM OF THE USSR
TO PUTINISM IS THE POSTSCRIPT OF TODAY**

As it have been already emphasized, modern Russia under Vladimir Putin is guided by historical policy, based on the idea of rehabilitating the Soviet Union, in particular by appropriately celebrating the myth of the Great Patriotic War, which ended in victory over Nazism. This state of affairs means that there are currently discussions on the settlement of Soviet crimes in Russia (even extrajudicial, for example, by appointing a special historical commission or other mechanism to search for and voice the truth), not to mention the appointment of a special criminal tribunal (mentioned above «Nuremberg-2»), *in/or with the participation* of the Russian Federation doomed to failure.

In a strictly legal sense, this is especially noticeable at the level of Russian laws on memory (*memory laws*), which are aimed at preserving the memory of the historical «achievements» of the USSR, at the same – time punishing all attempts to undermine the myth of the Great Patriotic War. Łukasz Adamski emphasizes in this context: «So, in practice, it is a question of banning such historical interpretations of the foreign policy of the Soviet Union in the period of 1938-1945, which the Kremlin considers undesirable and constitutes, as Russian diplomacy says, «blasphemy»². The main

¹ K. Karski, *Rozpad Związku Radzieckiego...*, p.187–197.

² Ł. Adamski, *Pamięć pod specjalnym nadzorem. Ile lat więzienia grozi za zajmowanie się historią w Rosji?* «Kresy24.pl», 31.05.2021, <https://kresy24.pl/>

legal basis in this regard is: the Criminal Code of the Russian Federation (amended in 2014, i.e. after Russia's aggression against Ukraine), which provides for criminal liability for the rehabilitation of Nazism, questioning the International Tribunal verdict in Nuremberg and spreading «false» information about the role of the USSR during World War II; and since 1995 — adopted to the 50th anniversary of the victory over the Third Reich — the law «On perpetuating the victory of the Soviet people in the Great Patriotic War.»¹ On May 5, 2021, a group of deputies of the State Duma amended this law aiming at: «prohibition of public comparison of goals, decisions and actions of the USSR authorities, command of the armed forces and soldiers of the USSR with goals, decisions and actions of Nazi Germany, command of the armed forces and soldiers of Nazi Germany and the Axis countries during World War II, denial of the decisive role of the Soviet people in the defeat of Nazi Germany and the humanitarian mission of the USSR in the liberation of European countries»². Taking into account the current amendment to the Constitution of the Russian Federation from 2020, which says that «the Russian Federation honors the memory of the defenders of the Motherland and ensures the protection of historical truth. It is unacceptable to downplay the importance of the great efforts of the people to protect the homeland»³, planned amendment to the law «On the perpetuation of the victory

dr-lukasz-adamski-pamiec-pod-specjalnym-nadzorem-ile-lat-wiezienia-grozi-zajmowanie-sie-historia-w-rosji/.

¹ In the Russian Federation, cases of conviction of individuals on the basis of the above laws have already been reported. G. Baranowska, A. Gliszczyńska-Grabias, «*Right to Truth*» and Memory Laws: General Rules and Practical Implications, «Polish Political Science Yearbook» 2018, Vol. 47, Issue 1, pp. 104–105.

² Quot. for: Ł. Adamski, *Pamięć pod specjalnym nadzorem...*

³ Quot. for: *ibid.*

of the Soviet people in the Great Patriotic War» aims to confirm the narrative that for the Soviet state the war began with the attack of the Third Reich on June 22, 1941, and, consequently, the USSR was not an aggressor in its actions against Poland, Finland or the Baltic countries in 1939-1940. In addition to this context of criminal and international law (although, in this case, no instrument of domestic law can affect the objective assessment of the actions of the Soviet Union towards its neighbours during the Second World War in the light of international law), existing or planned law of the Russian Federation is also directed at domestic use. It aims to strengthen the belief of Russian society in the validity of modern aggressive actions of the Russian Federation against states, which, according to the Russian narrative, betray the myth of the Great Patriotic War, giving a mandate to govern the state to nationalist politicians (or even «neo-Nazi» politicians).

It should be emphasized that Russia's aggressive actions towards Ukraine after 2014 or in relation to Georgia in the summer of 2008 was invested in the so-called «Putin doctrine», to represent the legal and political basis of the ideology of the «Russian world»¹. In other words, «Putin's doctrine» is built around the belief in Russian dominance in the post-Soviet space, «referring to common values», implies the possibility («legal») of the use of armed force outside the Russian Federation, if there is a «threat» to the Russian-speaking population (not Russian citizens) and the Orthodox, in respect of which Moscow asserts historical rights². As a result, the Kremlin uses non-legal categories («common

¹ See link No. 8.

² M. Menkiszak, *Doktryna Putina: Tworzenie koncepcyjnych podstaw rosyjskiej dominacji na obszarze postradzieckim*, «Komentarze OSW», 28.03.2014, nr 131.

values», «language community» or «religion community») to create a form of legality of its activities on the basis of international law, in fact, violating it. Interestingly, both in 2008 and in early 2014, the Russian Federation justified the use of force in Georgia and Ukraine by the UN concept of «responsibility to protect» (R2P)¹, which basically indicates that in a situation in which the state is unable (or unwilling) to ensure the security of its population against the threat of falling victim to the most serious international crimes (genocide, crimes against humanity, war crimes and ethnic cleansing), the obligation to take responsibility for the protection of such a population passes to the international community, which must respond to the possible use of force in accordance with the principles of the UN Charter². Russia referred, in particular, to the right of the population of Crimea, Donbass, or Abkhazia and South Ossetia to self-determination, due to the threat of «nationalist policy» of the authorities in Kyiv or Tbilisi³. However, in fact, first, there was no credible evidence that the population living in the above areas (integral parts of Ukraine and Georgia), may feel the risk of a systemic and structured policy of repression, directed at them by the authorities of these states, and secondly, armed intervention «in the name» of the R2P concept is possible on the basis of permission to use armed force, provided by the UN Security Council in accordance with Art. 42 of the UN Charter (and not as unilateral actions).

¹ M. Kersten, *Does Russia have a 'responsibility to protect' Ukraine? Don't buy it*, «The Globe and Mail», 4.03.2014, <https://www.theglobeandmail.com/opinion/does-russia-have-a-responsibility-to-protect-ukraine-dont-buy-it/article17271450/>.

² Det. about the concept R2P: G. Evans, *The Responsibility to Protect — Ending Mass Atrocity Crimes Once and for All*, Brookings Institution Press: Washington DC 2008.

³ Comp. : Veronika Bílková, *the Use of Force by the Russian Federation in Crimea*, «Heidelberg Journal of International Law» 2015, Vol. 75, p. 27–50.

Reflecting in this passage only on the case of Ukraine, it should be noted that in contrast to the above rhetoric («narrative») Kremlin, since the end of February 2014¹ the act of aggression of the Russian Federation against Ukraine in the light of international law continues to this day². The most significant manifestations of Russian armed violence were: illegal rejection of the Crimean peninsula from Ukraine and the spread of the international armed conflict in the Donbass (including the use of pro-Russian militants), one of the consequences of which was the creation of two illegal parastates in eastern Ukraine (Donetsk People's Republic and Luhansk People's Republic), which is a violation of the territorial integrity of the Ukrainian state. In the course of its activities, Russia violated the basic provisions of the UN Charter (including the prohibition of the threat or threat of its use, as well as the sovereignty of Ukraine), Budapest Memorandum 1994 and bilateral agreements with Ukraine (for example, the provisions of the two treaties of 1997 and 2010, which guaranteed the deployment of the Russian Black Sea Fleet in the ports of Crimea and the Treaty of Friendship, cooperation and partnership between Ukraine and the

¹ It should be noted that in its decision of December 16, 2020 on the admissibility of Ukraine's complaint against the Russian Federation in the «Crimean case» (statement № 20958/14; 38334/18) The ECtHR confirmed that Russia exercised effective control over the Crimean peninsula from 26-27 February 2014, that is, about ten days before the falsified referendum in Crimea and the agreement on the accession of Crimea to the Russian Federation. The decision of the Strasbourg court is in fact a destruction of the Russian myth of «further acceptance» of the right to self-determination of the people of Crimea, expressed in the so-called referendum on March 16, 2014 on the inclusion of the peninsula in the Russian Federation on March 21, 2014.

² Det. : W. Czapliński, S. Dębski, R. Tarnogórski, K. Wierczyńska, *The Case of Crimea's Annexation Under International Law*, Wydawnictwo Scholar: Warszawa 2017; S. Sayapin, E. Tsybulenko (eds.), *The Use of Force against Ukraine and International Law. Jus Ad Bellum, Jus In Bello, Jus Post Bellum*, T.M.C. Asser Press: The Hague 2018.

Russian Federation 1997). Finally, through activities contrary to Article IV of the Convention on the Laws and Customs of War on Land, namely the illegal inclusion of Crimea in the Russian Federation, the Russian state also violates international law governing the obligations of the occupying power.

Taking into account the leading topic of this section — that is, criminal liability of individuals for committing international crimes — it should be emphasized that, in addition to the responsibility of the Russian state for violations of international law¹, we can talk about the criminal responsibility of specific individuals (both on the Russian and Ukrainian sides), who from 2014 to the present have committed crimes classified as *international core crimes*, in Crimea and Donbass. In legal terms, «there is a high probability that crimes against humanity and war crimes could be committed as part of ongoing military operations», which was confirmed by the Prosecutor's Office of the International Criminal Court in a statement in December 2020². It should be emphasized that the Hague Tribunal operates on the basis of complementarity principle, which indicates the basic obligation to prosecute crimes by the state, in whose interests it is, and the further activities of the ICC in cases

¹ It should be added that since 2014 Ukraine has been pursuing an active policy aimed at bringing Russia to international responsibility in various international courts («judicial front»), in particular the International Court of Justice in The Hague or the European Court of Human Rights in Strasbourg. Det. : T. Lachowski, *Prawo międzynarodowe praw człowieka jako instrument przeciwdziałania skutkom poważnego naruszenia prawa międzynarodowego publicznego — analiza wybranych aspektów przypadku agresji Federacji Rosyjskiej wobec Ukrainy (w latach 2014-2018)*, «Wschodni Rocznik Humanistyczny» 2018, Vol. 15, no. 4, pp. 25–58.

² See : *Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine*, 11.12.2020, <https://www.icc-cpi.int/Pages/item.aspx?name=201211-otp-statement-ukraine>.

where that State «does not want» or «cannot» condemn criminal acts¹.

It seems that the «modern postscript» described above has become possible — along with a number of other factors — also due to the lack of judicial review of Soviet crimes at the international level («Nuremberg-2»), and at the national level (except for the Baltic States). The trial of the perpetrators of the most serious international crimes should not be interpreted solely in terms of the individual criminal responsibility of individuals, and as a guarantee that there will be no such violations in the future. A state that decides to settle accounts with its past sends a clear signal to the international community, which definitively dissociates itself from criminal activity, accuses and condemns it at the legal, political and moral levels. In the case of the Russian Federation, such a situation did not occur — on the contrary, pursuing its aggressive policy towards independent states and once the Soviet republics, it commits illegal conduct under international law («act of aggression», «international crimes»), which at the same time forms the basis of the international order. Thus, today's Putinism has become a kind

¹ It should be emphasized that the Ukrainian proceedings initiated over the events in Crimea and Donbass were ineffective, largely due to the fact that domestic criminal law did not comply with international criminal law (there are no relevant definitions of international crimes). As a result, often instead of open cases, such as war crimes, Ukrainian prosecutors decided to prosecute terrorist acts that were substantively and formally inconsistent with the actual situation. The hope for a change in this state of affairs was the adoption by the Verkhovna Rada of Ukraine in May 2021 of the law on the implementation of the provisions of international criminal law and international humanitarian law in the domestic legal order, thereby adapting the Ukrainian Criminal Code to the Rome Statute of the ICC. See: Y. Rudenko, *Ukraine moves closer to restoring justice for victims of Russia's war crimes*, «Euromaidan Press», 26.05.2021, <http://euromaidanpress.com/2021/05/26/ukraine-moves-closer-to-restoring-justice-for-victims-of-russias-war-crimes/>.

of new embodiment of the former Soviet imperial policy towards individual nations, who, in fact, did not voluntarily end up in the «prison of the peoples».

CONCLUSIONS

Thirty years after the collapse of the USSR, the postulate of the legal settlement of Soviet crimes has not yet been implemented. It is mainly explained as due to political restrictions and the fact that the successor of URSS, that is, in the Russian Federation, there was no real discussion about the calculations with communism; today's Kremlin policy is an attempt to rehabilitate the Soviet Union, rather than stigmatizing totalitarian practices and criminal legacy. The situation in other countries of the former Eastern bloc (Poland, the Czech Republic, Romania and Germany in terms of settlements with the GDR heritage) looks somewhat better in this regard, although, given the former Soviet republics, there are in fact only three Baltic states (de jure occupied by the USSR in 1940-1941 and 1944-1991) and Ukraine after the Revolution of Dignity took wider measures to review or condemn the crimes of the Soviet regime.

This study tries to answer the questions, whether it is possible to create a special international criminal tribunal to deal with the crimes of communism (Soviet power), to what Vladimir Bukovsky and Renato Cristin called in 2019. Aware of many limitations, especially political (lack of will on the part of Russia, indifference of Western European countries, lack of coordination in this regard among the countries of Central and Eastern Europe), but also legal (the question of proper determination of the jurisdiction of such a court in the sense of the subject, because most of the potential perpetrators are already dead, object and

time), it seems that such a court should be created, even if it is «only» a symbolic court (also basing on the experience of various truth and reconciliation commissions), but not strictly criminal. Of course, the cooperation of many countries is needed to create it (preferably on the basis of an agreement), as well as attracting a number of people from different professions — lawyers, historians, political scientists, sociologists, and finally — we need living victims and witnesses of crimes. Attempts to do so are justified by at least a few factors. First, bringing to justice those guilty of crimes, many of which can be qualified as non-statutory, is the duty of states under international law (both conventional and customary). Secondly, examples of attempts to condemn the most serious crimes, including the crime of genocide, some Central and Eastern European countries (Poland, Ukraine, the Baltic States), presented in this section, indicate the importance of international law for the realization of the most important rights of individuals, and post-authoritarian/post-totalitarian societies in general — that is, the right to justice and the right to truth — as part of a policy to overcome historical injustice, sometimes very remote in time (*dealing with the past*). It is the memory of Soviet crimes, including the «crime upon crimes», that was one of the key factors in the resistance of these nations against the final and irreversible imposition of ideology on them *homo sovieticus*. Thirdly, condemning the crimes of the USSR can be an effective tool to counter the policy of negativism and historical revisionism, which has been characteristic of Russia for years, although similar attitudes are also familiar to the societies of other states. Finally, dealing with the crimes of the past serves as a legal, moral and political guarantee that such violations will not occur in the future — this is especially important in

the current (neo) imperial policy of the Russian Federation (which is manifested in repeated violations of basic norms of international law) regarding its closest neighbors, such as Ukraine or Georgia.

The considerations presented in this section are also an invitation to other researchers from various disciplines to discuss the creation of an international criminal court — the conditional «Nuremberg-2» — concerning the crimes of the Soviet regime (and its satellites). It seems that the 30th anniversary of the collapse of the «Soviet spike» is a good reason for this, but also perhaps one of the last chances for the actual establishment of such a tribunal and the final settlement with the USSR.

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OCCUPATION OF CRIMEA AND MILITARY INVASION OF DONBASS: INTERNATIONAL LAW AND RESPONSIBILITY OF THE RUSSIAN FEDERATION

Although Russia is trying to portray the occupation of Crimea as a reaction to the Revolution of Dignity, which the Russian government calls a «fascist coup», a direct sign of the pre-planned Russian invasion can be considered the creation of a medal in Russia called «For the return of Crimea» and rewarding the main participants of the events of that time who made efforts for the so-called «reunification» of Crimea and Russia. This medal is based on the unrealized model of the Soviet medal «For the liberation of Crimea», however, it differs from its previous version by the presence of minting with the exact date of the operation of accession of the Crimean peninsula to the Russian Federation, i.e. February 20 — March 18, 2014¹. Thus, this means that the beginning of the operation under the command of the Ministry of Defense of the Russian Federation in order to return Crimea began

¹ С. Гакман, *Російсько-український конфлікт щодо територіальної приналежності Криму у контексті міжнародного права*, «Медіафорум: аналітика, прогнози, інформаційний менеджмент» 2014. Вип. 2, pp. 158-171, http://nbuv.gov.ua/UJRN/mfapim_2014_2_15.

two days before removal of the current president Victor Yanukovich. In this way, the Russian Federation debunked its own propaganda about the non-preliminary and unplanned actions within the process of «return» of Crimea, as according to Volodymyr Putin, the Russian Federation's measures to join the Crimean peninsula began only» after receiving data on the mood of local residents following the overthrow of the then legitimate president of Ukraine»¹.

The occupation of the Crimean peninsula was only the first step in the clearly planned actions of the Russian government to create «Novorossiya» consisting of at least nine regions of Ukraine, as a geographically and socio-economically separated pseudo-state on the historical model of the province of the Russian Empire under the same name as mentioned above, which embodied in the transfer of hostilities to Eastern Ukraine, to create a puppet state and realize Russia's imperial ambitions². However, the heroic resistance of Ukrainian volunteer patriots, the Ukrainian army, the National Guard and volunteers as a result of bloody fighting was able to stop the Russian invasion. As a result, today the Russian Federation has been able to occupy only Crimea and some are as of Donetsk and Luhansk regions (hereinafter the ORDLO), continuing to conduct low-intensity hostilities in the region.

Thus, in the first part of this chapter we consider the legal substantiation of occupation of the Crimean peninsula through the prism of legal documents of international

¹ Ibid.

² С. Адамович, *Російський слід у формуванні «новоросійства» з метою дезінтеграції Півдня і Сходу України (1990-2016 рр.)*, [in:] *Російська окупація і деокупація України: історія, сучасні загрози та виклики сьогодення* (eds.) П. Гай-Нижник, МП Леся: Київ 2016, pp. 171.

intergovernmental organizations, in particular the main resolutions of the UN General Assembly, the OSCE and the PACE. In the second part, we will analyze the invasion of the Russian Federation and the occupation of certain districts of Donetsk and Luhansk regions (ORDLO) in terms of international law. Also, the third part of this study will focus on the international responsibility of the Russian Federation to the World Community on the occupation of the Autonomous Republic of Crimea and the deployment of the armed conflict in Donbass, despite the Russian Federation's complete non-recognition of being involved in the above events.

OCCUPATION OF THE AUTONOMOUS REPUBLIC OF CRIMEA AND SEVASTOPOL BY THE RUSSIAN FEDERATION

On February 22, 2014, following the victory of the Revolution of Dignity, the Verkhovna Rada of Ukraine adopted a resolution on the removal of the then President of Ukraine, Viktor Yanukovich. The Russian Federation, taking advantage of the state's vulnerability while the change of power, has already begun the open process of «returning Crimea» and joining the peninsula to Russia.¹ In parallel with the military operation, Russia actively inspired numerous anti-Ukrainian demonstrations in Crimea, which, in accordance with the narratives of Russian propaganda, initiated the separation of the territory of the peninsula from the sovereign Ukrainian state. On February 27, 2014, the buildings of the Verkhovna Rada of the Autonomous Republic of Crimea and the Council of Ministers of the Autonomous Republic of Crimea were captured by special forces in military ammunition with

¹ Y. Arbadgi, *Russian annexation of Crimea: a five-year-old lighter*, «Epistemological studies in Philosophy, Social and Political Sciences» 2019, No 2 (1), p. 32.

the complete absence of any identification marks (further developments proved that it was the Russian special forces which took part in the capture)¹. Later on, the main strategic points of the Autonomous Republic of Crimea, first of all, Ukrainian military units, Belbek Airport and Simferopol Airport were captured and eventually controlled by the Russian occupation forces, which included numerous paramilitary groups of the so-called «Crimean self-defense Cossacks» and Berkut personnel².

The next step in the occupation of Crimea was a so-called «referendum» on the accession of the peninsula to Russia. A «referendum» was scheduled for March 16, 2014 under the full control of the occupying forces after the capture of the Parliament of the Autonomous Republic of Crimea. According to the published results of the «referendum», according to information on voter turnout, which was 81.4 %, 96.77 % of them voted for the accession of the Crimean peninsula to the Russian Federation. However, the leader of the Crimean Tatar people, Mustafa Dzhemilev, openly called the referendum illegitimate, after all, according to him, voter turnout was no more than 32.4 % of the peninsula's population³. These data seem more objective, because the Crimean Tatars, a large number of Ukrainians and even Russians sometimes the entire villages boycotted the referendum.

¹ П. Гай-Нижник, Окупація та анексія Криму Російською Федерацією у 2014 р. як акт агресії проти України: перебіг вторгнення і свідчення міжнародного злочину, «Гілея: науковий вісник» 2017, Вип. 118, pp. 110-125, http://nbuv.gov.ua/UJRN/gileya_2017_118_28.

² Ibid.

³ Є. Юрійчук, Особливості зовнішньополітичної легітимації референдуму в Автономній республіці Крим 16 березня 2014 р., «Міжнародні відносини. Серія «Політичні науки» 2015, № 5, http://journals.iir.kiev.ua/index.php/pol_n/issue/view/134.

Moreover, shortly before the occupation, according to the social research of the Razumkov Independent Analytical Center (Razumkov Centre) 71.3 % of the Crimean population considered Ukraine to be their homeland. What is interesting, 66.8 % of ethnic Russians living in Crimea at the time called Ukraine their home. So, despite the efforts of the authorities of the Russian Federation to justify their wrongdoing by claiming that the «referendum» was the will of the locals, the results of the above-mentioned social research indicate the falsification of voting results by special services and occupiers of Russian origin¹, let alone the general illegitimacy of this farce. It was to turn out later that this operation to «join» the Crimean peninsula to Russia was clearly planned by the government of the Russian Federation, and as mentioned earlier, this is confirmed by the minting of the date of the start of the operation to join the Crimea «February 20, 2014» on the so-called medal «For the return of the Crimea», the proof of this is the minting the date of the beginning of the operation of joining Crimea «February 20, 2014» on the so-called «For the return of Crimea» medal². Moreover, this was later repeatedly acknowledged by Putin himself.

Moreover, due to numerous recorded violations of Ukrainian and international law during the organization and conduct of this «referendum», Ukraine and the World Community did not recognize the above-mentioned referendum and its results as legitimate. In particular, in accordance with Resolution A/RES/68/262 on the territorial

¹ E. Tsybulenko, B. Kelichavi, *International Legal Dimensions of the Russian Occupation of Crimea*, [in:] S Sayapin, E. Tsybulenko, *The Use of Force against Ukraine and International Law: Jus Ad Bellum, Jus in Bello, Jus Post Bellum*, T.M.C. Asser Press/Springer 2018, DOI: 10.1007/978-94-6265-222-4, pp.277-298.

² С. Гакман, *Російсько-український конфлікт...*, с. 165.

integrity of Ukraine, UN General Assembly states that referendum on Crimea's accession to Russia has no legal force. As a result, the Autonomous Republic of Crimea and the city of Sevastopol were recognized as active territories of independent Ukraine. Furthermore, the General Assembly called on all countries and international organizations not to recognize any changes in the status of the Autonomous Republic of Crimea after the so-called «referendum»¹. UN Resolution A/RES/71/205 on the human rights situation, was one of the first to directly recognize the status of the Autonomous Republic of Crimea, as a territory temporarily occupied by the Russian Federation². The latest Resolution on the situation of human rights in the Autonomous Republic of Crimea A/RES/75/192³, which was established according to the report of the Third Committee (A/75/478/Add.3) with reference to previous Resolutions A/RES/71/205⁴, A/RES/72/190⁵, A/RES/73/263 an important point is the appeal of the General Assembly to international organizations and specialized agencies of the UN system when mentioning Crimea in their official documents and publications to use «Autonomous Republic of Crimea and the city of Sevastopol,

¹ *United Nations General Assembly Resolution on Territorial Integrity of Ukraine A/RES/68/262. (Adopted on 27 March 2014)*, <https://www.undocs.org/ru/A/RES/68/262>.

² *United Nations General Assembly Resolution on Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine A/RES/71/205 (Adopted on 19 December 2016)*, <https://undocs.org/en/A/RES/71/205>.

³ *United Nations General Assembly Resolution on Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine A/RES/75/192 (Adopted on 16 December 2020)*, <https://www.undocs.org/A/RES/75/192>.

⁴ *United Nations General Assembly Resolution on Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine A/RES/71/205 ...*

⁵ *United Nations General Assembly Resolution on Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine A/RES/72/190 (Adopted on 19 December 2017)*, <https://undocs.org/en/A/RES/72/190>.

Ukraine, temporarily occupied by the Russian Federation»¹, the General Assembly also expressed its concern about the Russian Federation's failure to comply with the above-mentioned Resolutions, non-compliance with international agreements and decisions of international organizations in full, which led to reducing the level of respect for human rights in the temporarily occupied territory. In addition, this Resolution reaffirms that the occupying power blocks access to the Crimean peninsula for a human rights monitoring mission in Ukraine and implements inappropriate, unjustified restrictive measures to combat the pandemic COVID-19, which creates additional difficulties with the realization of human rights for local residents. The resolution also condemns the retroactive application of the laws of the Russian Federation, use of force and torture to obtain false testimony by the Russian authorities². In addition, another clear evidence of human rights violations on the Crimean peninsula is persecution, illegal searches of apartments and unjustified detentions of Crimean Tatar people, who do not support the annexation of the peninsula. The Russian authorities consider any negative comments on social networks about the occupation and actions of the Russian government on the peninsula as the acts of separatism that carries criminal penalties of imprisonment for up to two years³.

¹ *United Nations General Assembly Resolution on Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine A/RES/73/263 (Adopted on 22 December 2018)*, <https://undocs.org/en/A/RES/73/263>.

² *United Nations General Assembly Resolution on Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine A/RES/75/192...*

³ E. Tsybulenko, A. Platonova, *Violations of Freedom of Expression and Freedom of Religion by the Russian Federation as the Occupying Power in Crimea* (2019) «Baltic Journal of European Studies» 2019, Vol. 9, No 3 (28), pp.134–147.

It is worth noting that the resolutions of the UN General Assembly within the bloc, concerning the occupation of Crimea and the unstable situation in the waters of the Black and Azov Seas, over the years have acquired a more critical connotation in relation to the actions of the Russian Federation as an occupying power. Thus, in Resolution A/RES/74/17, the General Assembly, referring to the previous Resolution A/ RES/73/194¹, noted that the military seizure of the territory of the Crimean peninsula is a direct violation of international law. In addition, the increase in the armed forces of the contract military was condemned as well as the supply of weapon systems, in particular aircraft and missiles capable of carrying nuclear weapons of the Russian Federation in the Azov and Black Seas, which undermines stability in the whole region. It was noted that the Russian Federation, as an officially recognized occupying force of the Crimean peninsula, violating navigation rights and freedoms in the Black and Azov Seas, periodically intentionally blocks the passage through the Kerch Strait and certain sea areas under the pretext of military exercises².

The definition of the Russian Federation as an occupier and aggressor also appears in official documents of other international organizations. Thus, in accordance with Resolution 1990 «Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation»,

¹ *United Nations General Assembly Resolution on Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov A/RES/73/194 (Adopted on 17 December 2018)*, <https://undocs.org/en/A/RES/73/194>.

² *United Nations General Assembly Resolution on Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov A/RES/74/17 (Adopted on 9 December 2019)*, <https://undocs.org/A/RES/74/17>.

Parliamentary Assembly of the Council of Europe (PACE) considers that the actions of the Russian Federation, in particular the military occupation of Ukrainian territory and the threat of military force, recognition of the illegal referendum, as well as the subsequent annexation of the Autonomous Republic of Crimea and its accession to the Russian Federation are obvious violations of international law, including the Charter of the United Nations¹ the Organization for Security and Co-operation in Europe (OSCE) Helsinki Final Act².

What's more important is that according to the OSCE Parliamentary Assembly Resolution (2015) on «The Continuation of Clear, Gross and Uncorrected Violations of OSCE Commitments and International Norms by the Russian Federation» actions of the Russian Federation on the territory of the Autonomous Republic of Crimea and the city of Sevastopol, as well as certain districts of Donetsk and Luhansk regions should be regarded as acts of military aggression against Ukraine. In addition, the OSCE Parliamentary Assembly stressed that the Russian Federation is the Occupying Power in the Autonomous Republic of Crimea, and that is why it should be responsible for granting admission to work and monitoring the situation to international intergovernmental and non-governmental organizations in the occupied territories³.

¹ *Charter of the United Nations*, United Nations Organization, <https://www.un.org/en/about-us/un-charter/preamble>.

² *Parliamentary Assembly of the Council of Europe (PACE) Resolution 1990 «Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation» (Adopted on 10 April 2014)*, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=20882&lang=en>.

³ *Parliamentary Assembly Resolution on The Continuation of Clear, Gross and Uncorrected Violations of OSCE Commitments and International Norms by the Russian Federation*

It should be noted that refusal to recognize the referendum results and the legitimacy of the «unification» of the Autonomous Republic of Crimea to the Russian Federation takes place at the level of sovereign states through individual actions. An example of this is the recent situation with a British destroyer HMS Defender in the waters of the Autonomous Republic of Crimea in June 23 2021. According to the Ministry of Defense of the United Kingdom, the destroyer made a peaceful passage through the territorial waters of Ukraine near Cape Fiolent (ARC) in accordance with Article 17 of the United Nations Convention on the Law of the Sea, UNCLOS¹ in order to cross from the port of Odessa to Batumi. This act confirms the non-recognition of the affiliation of the Autonomous Republic of Crimea to the Russian Federation by Britain, despite the loud disagreement of the Russian Federation with such actions of Her Majesty's Navy².

It is important to mention that according to paragraph 2 of Article 2 common to all 4 of the Geneva Conventions «On the protection of victims of the 1949 war» the term international armed conflict includes «partial or complete occupation of the territories of the High Contracting Party, even if no armed resistance is offered to that occupation»³. The fact of occupation of the Autonomous Republic of Crimea

(Adopted on 8 July 2015), <https://www.oscepa.org/meetings/annual-sessions/2015-annual-session-helsinki/2015-helsinki-final-declaration/2282-07>.

¹ *United Nations Convention on the Law of the Sea (Adopted on 10 December 1982)*, https://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

² A Serdy, *What Does the Law of the Sea Say About the HMS Defender Incident?* «The Maritime Executive», 28.06.2021, <https://www.maritime-executive.com/editorials/what-does-the-law-of-the-sea-say-about-the-hms-defender-incident>.

³ *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. (Adopted on 12 August 1949)*, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>, Art.2(2).

is recognized by most countries and international organizations on the world stage, that satisfies the above criteria for determining the existence of an international armed conflict. In addition, despite the spread of misinformation about the lack of resistance from the population of the Crimean peninsula during the annexation, the first official victims of occupation were: Reshat Ametov, a participant in a protest action against the occupation of Crimea, which was found with traces of brutal torture after he disappeared after visiting the Simferopol military registration and enlistment office, and Ensign Sergei Kokurin who was shot dead during the storm of the Photogrammetric Center of the Main Administration Operational Support to the Armed Forces of Ukraine in Simferopol¹. Today it is known about the deaths of at least 6 people, however, due to the refusals of the Russian Federation to provide mandates for the work of international organizations, there is reason to believe that these data on the number of dead and missing citizens who opposed the Russian occupation of Crimea are not accurate². Despite the above, it is obvious that there is resistance of local residents against the occupation of the Autonomous Republic of Crimea by the Russian Federation.

In order to classify the actions of the Russian Federation in the Autonomous Republic of Crimea as an international armed conflict there is also a Preliminary Report of the **International Criminal Court (ICC)**. Report on Preliminary

¹ М. Кошелев, Кривава анексія без «жодного пострілу», «Громадське», 16.03.2017, <https://hromadske.ua/posts/richnicya-aneksii-krimu>.

² *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)*, Office of the United Nations High Commissioner for Human Rights, http://www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf.

Examination Activities (2018) says that the events in Crimea and Sevastopol constitute a state of occupation, which continues to this day and, accordingly, there is an international armed conflict¹.

**OCCUPATION BY THE RUSSIAN FEDERATION
OF SEPARATE DISTRICTS OF DONETSK AND LUHANSK
REGIONS (ORDLO)**

After the occupation of the Autonomous Republic of Crimea, the armed conflict was continued by Russia on the territories of Eastern Ukraine. Therefore, it should be noted that the military conflict in some districts of Donetsk and Luhansk regions (ORDLO) should be considered as a full-fledged continuation of the Russian Federation's aggression against Ukraine, which was launched in the Autonomous Republic of Crimea².

The actions of the Russian Federation in many resolutions of international organizations, including the OSCE³, PACE⁴, are clearly defined as military aggression, occupation of part of Ukrainian territory and even as 'the ongoing Russian war against Ukraine'⁵, and the International Criminal Court

¹ *Report on Preliminary Examination Activities 2018*, International Criminal Court (ICC), <https://www.icc-cpi.int/Pages/item.aspx?name=181205-rep-otp-PE>.

² Є. Цибуленко, І. Тетера, Міжнародно-правова кваліфікація окупації Донбасу. Псевдодержави і колабораціонізм на цій території, «Право України: юридичний журнал» 2020, с. 65-79, ISSN 1026-9932.

³ *OSCE Parliamentary Assembly's Resolution the Continuation of Clear, Gross and Uncorrected Violations of OSCE Commitments and International Norms by the Russian Federation (2015)*, <http://old.oscepa.org/meetings/annual-sessions/2015-helsinki-annual-session/2015-helsinki-final-declaration/2282-07>.

⁴ *PACE Resolution on Political consequences of the Russian aggression in Ukraine, 2132 (Adopted on 12 October 2016)*, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23166&lang=en>.

⁵ *PACE Resolution on Humanitarian consequences of the war in Ukraine, 2198 (Adopted on 23 January 2018)*, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en>.

considers this situation as an international armed conflict on the territories of Eastern Ukraine, as evidenced by direct armed clashes between the armed forces of the Russian Federation and Ukraine, which began no later than July 14, 2014¹.

We will consider why the position of Ukraine and most democracies, expressed both in the official statements of their representatives and in the above-mentioned resolutions, that Russia's actions in Eastern Ukraine qualify as aggression against Ukraine with the occupation of certain territories, is completely legally justified in accordance with UN General Assembly Resolution A/RES/29/3314 on the definition of aggression.² The resolution lists and characterizes the actions of one state against another, the existence of which fully confirms the existence of aggression.

In accordance with Article 1 of the above-mentioned Resolution:

Aggression is the use of force by a foreign state against the sovereignty, territorial integrity or political independence of another state or in any other way that is incompatible with the UN Charter³.

In addition, Article 3 of this Resolution deals with certain actions that qualify as an act of aggression, regardless of the fact of declaration of war.

In addition, Article 3 of this Resolution deals with certain actions that qualify as an act of aggression, regardless of the fact of declaration of war.

asp?fileid=24432&lang=en.

¹ *Report on Preliminary Examination Activities 2018...*

² *United Nations General Assembly Resolution on Definition of Aggression A/RES/29/3314 (Adopted on 14 December 1974)*, <http://www.un-documents.net/a29r3314.htm>.

³ *Ibid*, Art.1.

a) Thus, under Article 3 (a), an act of aggression is:

Invasion or attack by the armed forces of a State on the territory of another State or any military occupation, whatever its temporary nature, resulting from such invasion or attack, or any annexation by force of the territory of another State or parts thereof.¹

Confirmation of this point regarding the qualification of the actions of the Russian Federation as aggression is the use in the east of Ukraine of the Special Operations Forces (SSO), which are part of the regular armed forces of Russia. From the very beginning of the conflict, the SSO of the Russian Federation took an active part² in the seizure of buildings and the distribution of weapons to collaborators³. But since the summer of 2014, the land and airborne troops of the Armed Forces of the Russian Federation have been directly involved in hostilities. The largest units of the Russian army were used during the Ilovaysk events, as well as during the assault on Debaltsev. The collaborators themselves have repeatedly noted that the presence of regular Russian troops was crucial to victory in battle⁴.

¹ *United Nations General Assembly Resolution on Definition of Aggression A/RES/29/3314...*, Art.3(a).

² T. Bukkvoll, *Russian Special Operations Forces in Crimea and Donbas*, «Parameters» 2016, Vol. 46, No. 2, <https://press.armywarcollege.edu/parameters/vol46/iss2/4>.

³ E.Tsybulenko, J. Francis, *Separatists or Russian Troops and Local Collaborators? Russian Aggression in Ukraine: The Problem of Definitions*, [in:] S Sayapin, E. Tsybulenko, *The Use of Force against Ukraine and International Law: Jus Ad Bellum, Jus in Bello, Jus Post Bellum*, T.M.C. Asser Press/Springer 2018, DOI: 10.1007/978-94-6265-222-4, pp.125-127.

⁴ T. Parfitt, *Separatist fighter admits Russian tanks, troops 'decisive in eastern Ukraine battles*, «The Telegraph», 31.05.2015, <https://www.telegraph.co.uk/news/worldnews/europe/russia/11506774/Separatist-fighter-admits-Russian-tanks-troops-decisive-in-eastern-Ukraine-battles.html>.

Even if at the initial stage of the war due to the confusion of wartime in the occupied territories of ORDLO there were some separate gangs not controlled by the Russian Federation, in recent years all militant units were taken under effective control of the Russian command, moreover, were reduced to two corps. «1st Army Corps» of the «DPR» and «2nd Army Corps» of the «LPR». Both of the above-mentioned army corps are de facto part of the newly formed 8th Guards General Army of the Russian Federation¹.

It is necessary to note separately the presence of the latest Russian weapons on the territory of ORDLO, which has never been registered with the Armed Forces of Ukraine. Thus, the statement of militants-collaborators of Donbass about seizure of the weapon of the Ukrainian army is untrue. Such models of military armament as battle tanks T-72BA, T-72B3 and T-90A; armored personnel carriers BTR-82A; special vehicles for transportation of personnel GAZ-233014 «Tiger», GAZ-39371 «Vodnik» and KamAZ-43269 «Shot»; armored trucks Mustang KamAZ-5350; rocket systems of volley fire 2B26 «Grad-K»; ground artillery reconnaissance station 1RL232-2M «Leopard»; tactical surface-to-air missile systems 9K332 «TorM-2»; anti-aircraft missile and cannon systems 9K66 «Pantsir-C1»; complexes of electronic counteraction (REP) RB-341V «Leer-3» and «Mercury-BM»; unmanned aerial vehicles (UAVs) «Granat-1», «Granat-2», «Outpost», «Orlan-10», «Eleron-3SV» and «Zastava», etc., are not only proof of Russia's supply of weapons to the occupied territories of Ukraine, but it also serves as an indisputable proof of the existence of professional soldiers on the occupied territories of Ukraine, because, without prior specific

¹ Е. Цыбуленко, Почему их нельзя называть «сепаратистами»? «Регион. Эксперт», 14.01.2019, <https://region.expert/ordlo/>.

military training, ordinary inexperienced military «miners and tractor drivers» would not be able to use high-tech Russian weapons¹.

The most notorious case of Russian intervention is the downing of a Malaysian passenger Boeing 777 over the occupied territories of Ukraine on an international flight MH17, and as the result killing all passengers and crew of 298 people, including 80 children.

According to the findings of the International Commission of Inquiry, the plane was shot down by SAM «Buk», which belonged to the 53rd Air Defense Brigade of the Russian Armed Forces and was delivered to Ukraine from Russia on the day of the crash, and after launching the missile which shot down the plane, SAM «Buk» was returned on the Russian territory².

A detailed list of units and subdivisions of the Russian army, a list of personnel and command of the Russian Federation that took a direct part in the war against Ukraine, as well as military equipment provided to collaborators, can be found in the database of the international volunteer community Inform Napalm³.

b) According to Article 3 (b) of the UN Resolution on the Definition of Aggression, the second act meaning direct aggression is:

¹ Balaban M., *Donbas in Flames: Guide to the Conflict Zone*, NGO «Prometheus» 2017, https://prometheus.ngo/wp-content/uploads/2017/04/Donbas_v_Ogni_ENG_web_1-4.pdf, pp.74-80.

² *Update in criminal investigation MH17 disaster*, Netherlands Public Prosecution Service, 24.05.2018, <https://www.prosecutionservice.nl/topics/mh17-plane-crash/news/2018/05/24/update-in-criminal-investigation-mh17-disaster>.

³ *Database of Russian Aggression*, InformNapalm, 12.04.2018, <https://informnapalm.org/en/?s=database>.

Bombing by one state's armed forces the territory of another state or the use of any weapon by this state against the territories of another state¹.

In the summer of 2014, numerous artillery shellings of Ukrainian ORDLO territories from the territory of the Russian Federation were documented, including with the use of volley fire systems². The special insidiousness of such shelling, as a result of which Ukrainian troops suffered heavy losses, was that the Ukrainians could not return fire in response, as this could serve as a pretext for a larger offensive by Russian troops on Ukrainian territory. Given the above facts, it can be argued that such artillery shelling is a direct manifestation of Russia's aggression against Ukraine.

c) Article 3 (c) deals with another type of controlled actions that are qualified as aggression:

Blockade of ports or shores of a state by the armed forces of another state³.

The Kerch Strait, which is controlled by the Russian Federation, is the point of entry into the Sea of Azov, and as a consequence, also the main reason for the blockade of Ukrainian ports⁴. After the illegal construction of the Kerch Bridge, cargo turnover and the number of vessels serviced by the port has almost halved, as a result, in 2018 the amount of losses for Ukraine reached 6 billion hryvnias.

¹ *United Nations General Assembly Resolution on Definition of Aggression A/RES/29/3314...*, Art.3(b).

² S. Case, K. Anders, *Putin's Undeclared War: Summer 2014-Russian Artillery Strikes against Ukraine*, Bellingcat, https://www.bellingcat.com/app/uploads/2016/12/ArtilleryAttacks_withCover_EmbargoNote.pdf.

³ *United Nations General Assembly Resolution on Definition of Aggression A/RES/29/3314...*, Art. 3(c).

⁴ І. Токарта, І. Аннітова, Азовський конфлікт: як Росія «віджимає» Азов, «Крим. Реалії», 29.11.2019, <https://ua.krymr.com/a/azovskyi-lonflikt-azovske-more-kerchenska-protoka/30287137.html>.

One of the reasons for the blockade is the height of the bridge, which does not allow some large commercial vessels to pass under the arch of this new building¹. In addition, since April 30, 2018, maritime border guards of the Russian Federal Security Service have significantly increased the number of spot checks and detentions aimed at foreign ships bound for the ports of Mariupol and Berdyansk, and therefore were in the passage between the Kerch Strait and the Sea of Azov². The Russian authorities justified such a blockade in order to ensure security in the Kerch Strait and especially under the arch of the Kerch Bridge. In addition, Article 3 (d) of the aforementioned UN Resolution refers to the qualification of an attack by a state's armed forces on the naval forces and navy of another state as another sign of the existence of aggression.

Thus, the escalation of the situation with the economic blockade of Ukrainian ports in the Sea of Azov took place in November 2018, when ships of the Naval Forces of the Armed Forces of Ukraine attempted to cross the Kerch Strait to cross the Sea of Azov. It was then that the forces of the Russian Navy and Coast Guard opened fire and captured three Ukrainian warships and captured 24 Ukrainian sailors, 6 of whom were wounded³. Again, such actions are qualified as Russia's aggression against Ukraine, in accordance with Article 3 (d) of the UN Resolution on the Definition of Aggression. Up to now, the Russian Federation has partially unblocked the passage under the Kerch Bridge,

¹ М.Топалов, «Мертве» море: як Росія знищує судноплавство на Азові, «Економічна правда», 04.12.2019, <https://www.epravda.com.ua/publications/2018/12/4/643247>.

² С.Дорош, Як Азов і Керченська протока постраждали від анексії Криму, «ВВС-Україна», 16.03.2020, <https://www.bbc.com/ukrainian/features-50486941>.

³ Токарта, І. Аннітова, Азовський конфлікт: як Росія...

however, repeated inspections and detentions of ships have become a mandatory part of the process of crossing ships from the Black Sea to the Sea of Azov. Moreover, there is a possibility of a complete blockade of ports in the Sea of Azov in case of escalation of the military conflict on the territories of ORDLO¹.

d) According to the last provision of Article 3 of the UN Resolution on the Definition of Aggression, an act meaning aggression is:

Expulsion by or on behalf of a State of armed gangs, groups, unregulated forces or mercenaries who commit acts of armed force against another State that are so serious that they are equivalent to, or substantially involved in, the acts listed above².

Confirmation of the above position is that in addition to the regular Russian army, mercenaries of Wagner's private military company (Wagner's APC) and more than 10,000 Russian «volunteers» who were involved in the war in Donbass through the Union of Volunteers of Donbass were sent to the territory of ORDLO³.

Although Wagner *de jure* is considered a private security company, it should be considered *de facto* a Russian military structure, as it is systematically funded by the Russian Federation, uses weapons provided by Russia and is under the command of retired lieutenant colonel of the Armed Forces of the Russian Federation and a friend of V.

¹ Ibid.

² *United Nations General Assembly Resolution on Definition of Aggression A/RES/29/3314...*, Art.3(g).

³ *Statement by the Delegation of Ukraine at the 832nd FCS Plenary Meeting FSC.DEL/202/16*, Permanent Mission of Ukraine to the International Organizations in Vienna, 13.10.2016, <http://www.osce.org/fsc/276271?download=true>.

Putin — Dmitry Utkin¹. Wagner’s mercenaries are used by Russia not only on the territory of Ukraine, but also in other countries, including Syria and Libya, and their transfer to Syria was carried out by military transport aircraft of the Russian Air Force. Another confirmation that the private military company Wagner is a de facto military structure of the Russian Federation is that the activities of the Wagner APC, as a private company, on the territories of ORDLO fall under Article 359 («mercenary») of the Criminal Code, which states that recruitment training, financing or other material support of the mercenary, as well as its use in armed conflict or hostilities in foreign countries provides for up to 8 years in prison, but no criminal case has been initiated in Russia².

Considering the separate phenomenon of recruiting and sending «volunteers» to the occupied territories of Ukraine, it becomes clear that the involvement of Russian volunteers in the war is not only through a separate organization «Union of Donbass Volunteers», but also through other organizations³, including those with the support of Russian military enlistments. Moreover, Russian border guards do not prevent these individuals from crossing the Ukrainian border on the Russian side, which has been officially declared closed by the Ukrainian side.

Thus, Russia’s actions on the territories of the ORDLO correspond to five of the seven (though even one would be enough) paragraphs of Article 3 of UN General Assembly Resolution 3314 (XXIX), which determines the existence of an

¹ *Database of Russian Aggression...*

² Путін публічно збрехав, відповідаючи на запитання журналіста про ПВК «Вагнера»: СБУ та *InformNapalm* відреагували на його брехню, «*InformNapalm*», 20.12.2020, <https://informnapalm.org/ua/putin-publichno-zbrekhav-vidpovidai-uchy>.

³ *Statement by the Delegation of Ukraine at the 832nd FCS Plenary Meeting...*

act of aggression in the actions of the Russian Federation against Ukraine.

However, Russia denies its involvement in any action on the ORDLO territories, and at the same time seeks to build a reputation as a peacekeeping state not involved in the conflict. That is why it is worth mentioning the existence of so-called «humanitarian convoys» that Russia has repeatedly sent to the Donbass for the pseudo-purpose of «helping the civilian population». This situation cannot be considered as humanitarian activity, as such «humanitarian convoys» arrived in the complete absence of a request for assistance from the injured party, i.e., the Ukrainian authorities, and even in the absence of Ukraine's consent to receive these «humanitarian convoys»¹. Moreover, the refusal of the Russian authorities to allow the review of the composition of «humanitarian convoys» for the Ukrainian side and even such a respectable organization operating on the principles of neutrality and impartiality as the International Committee of the Red Cross suggests that the content of such convoys is inconsistent with the basic legal definition of humanitarian aid. Therefore, there is reason to believe that «humanitarian convoys» are used to cover up the fact of transportation of Russian army personnel, military equipment and weapons on the territory of ORDLO, as well as the evacuation of the bodies of the dead Russian occupiers.

As for the status of the territories occupied by Russia, since the Russian Federation denies its presence in the ORDLO, we need to use a test of «effective control» to determine whether the situation is qualified as an occupation

¹ М. Антонович, Право на гуманітарну допомогу під час збройного конфлікту і відповідальність за його порушення згідно з міжнародним правом, «Наукові записки НаУКМА. Юридичні науки» 2015, Т. 168, pp. 93-94.

from the point of view of international humanitarian law. According to the 2016 Commentary to Article 2 of the Geneva Conventions for the Protection of Victims of War of 1949, this test requires three elements, namely: 1. the armed forces of a foreign state are physically on another's territory without the consent of the local sovereign; 2. the ability of foreign forces to exercise power over the relevant territory instead of the local sovereign; and 3. the related inability of the latter to exercise its power over the territory¹.

The above data can clearly show that all three criteria are met and, accordingly, the territories occupied in Eastern Ukraine as a result of Russian aggression are occupied by the Russian Federation. It is noteworthy that at the initial stage of the conflict, Russia did not burden itself even to find local collaborators to occupy leading political positions. For example, the first so-called «Chairman of the Council of Ministers of the Donetsk People's Republic» was a Russian citizen, Alexander Borodai, who was closely associated with the Russian secret services. Now the occupied territories are fully managed and financed by the Russian Federation, the territory is transferred to the ruble zone, the population is issued Russian passports.

LIABILITY OF THE RUSSIAN FEDERATION FOR VIOLATION OF INTERNATIONAL LAW

Today, Ukraine is trying to use the full range of international courts and arbitrations to bring the Russian Federation to justice.

¹ *Commentary of 2016, Geneva Convention (I) for the Amelioration of the Conditions of Wounded and Sick in Armed Forces in the Field. (Adopted on 12 August 1949)*, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518>.

One of Ukraine's lawsuits against Russia is a lawsuit at the United Nations International Court of Justice. Unfortunately, the court's jurisdiction is limited, so Ukraine's lawsuit was considered under only two conventions that do not cover the term «aggression» (which made it impossible for Ukraine's position to demand that Russia to be recognized as an aggressor), namely the International Convention for the Suppression of the Financing of Terrorism¹ and the International Convention on the Elimination of All Forms of Racial Discrimination², which had jurisdictional reservations and of which both Ukraine and Russia were members. Accordingly, the case of *Ukraine v. Russia* in the UN International Court of Justice was entitled «Application of the International Convention for the Suppression of the Financing of Terrorism and the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukraine v. Russia*)» and of the *International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*³.

Thus, the Ukrainian side argued that the Russian Federation supported illegal armed groups in the Donbass by financing and providing weapons, as well as actively promoting a campaign of ethnic discrimination against non-Russians on the Crimean peninsula and a policy of eliminating

¹ *International Convention for the Suppression of the Financing of Terrorism (adopted on 9 December 1999)*, <https://treaties.un.org/doc/db/terrorism/english-18-11.pdf>.

² *International Convention on the Elimination of All Forms of Racial Discrimination (Adopted on 21 December 1965)*, <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>.

³ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, <https://www.icj-cij.org/en/case/166>.

cultures of non-Russians. An example of the above policy is the ban on the activities of the Mejlis of the Crimean Tatar people.

A previous court ruling on precautionary measures, which Russia has defiantly ignored, was to oblige the Russian Federation to refrain from restricting the Crimean Tatar People's Majlis. Also, the court called for maintaining a proportional level of access to education in the Autonomous Republic of Crimea in Ukrainian¹. A resolution on the merits of the dispute is expected in the future.

Another case concerning the rights of the population of the Crimean peninsula due to the events connected with the annexation of the peninsula by the Russian Federation was «*Ukraine v. Russia (concerning Crimea) 20958/14*» according to the statement of Ukraine against the Russian Federation to the European Court of Human Rights, in accordance with Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Government of Ukraine sent a statement containing a list of systematic human rights violations under Articles 2 (Right to Life), 3 (Prohibition of Torture), 5 (Right to Freedom and Security), 6 (Right to a Fair Trial), 8 (Right to respect for private and family life), 9 (Freedom of thought, conscience and religion), 10 (Freedom of expression), 11 (Freedom of association) of the Convention for the Protection of Human Rights and Fundamental Freedoms (further – «Convention»), Article 14 (Prohibition of discrimination) of the Convention in conjunction with Articles 3, 5, 6, 8, 9, 10, 11 of the Convention, Article 18 (Limitation on Use of Restrictions on Rights) in conjunction with Article 6 of the Convention and Articles 1

¹ Ibid.

(Protection of Property), 2 (Right to Education) and 3 (Right to Free Elections) of the First Protocol to the Convention, Article 2 (Freedom of Movement) of the Fourth Protocol to the Convention, Article 1 (General Prohibition of Discrimination) of the Twelfth Protocol to the Convention.

An important goal of Ukraine in this case is to prove the fact of effective control of the Russian Federation over the territory of the Autonomous Republic of Crimea, as well as the protection of human rights in this temporarily occupied territory of the peninsula. Thus, on January 14, 2021, the Grand Chamber of the European Court of Human Rights ruled on the admissibility of this case for further trial¹.

Also, Ukraine filed a lawsuit against Russia for violation of the rights and freedoms of the 71 citizens of Ukraine, who were illegally detained/are still being held in the temporarily occupied territory of the Autonomous Republic of Crimea and the territory of the Russian Federation. This case «*Ukraine v. Russia (VII) No.38334/18*» concerns the use of torture and psychological pressure on illegally detained Ukrainian citizens. Moreover, convicts are held in inadequate, unsanitary conditions and are regularly denied by the Russian authorities to provide adequate medical care. At the moment, this case is under consideration for its admissibility for further trial².

It should be noted that due to numerous human rights violations on the occupied territories of Donetsk and Luhansk regions, as well as the downing of a Malaysian passenger

¹ *Ukraine v. Russia (reCrimea) no. 20958/14*, European Court of Human Rights https://www.echr.coe.int/Pages/home.aspx?p=hearings&w=2095814_11092019&language=lang.

² *Grand Chamber Admissibility Decision in the case of Ukraine v. Russia (re Crimea) (app nos 20958/14 and 38334/18)*, European Court of Human Rights, <https://www.refworld.org/cases,ECHR,60016bb84.html>.

Boeing 777, the Ukrainian authorities have submitted comments to the European Court of Human Rights on additional issues in the case of *Ukraine and the Netherlands v. Russia* (applications No. 8019/16, 43800/14 and 28525/20)¹.

On November 27, 2020, by the decision of the Grand Chamber of the European Court of Human Rights, this case was joined to the case «*Ukraine v. Russia (II)*» (a case of abduction, actual transportation to the territory of the Russian Federation and attempts DNR and LNR) and the case «*Ukraine v. Russia (concerning Eastern Ukraine)*». From now on, the above cases will be hereinafter referred to as «*Ukraine and the Netherlands v. Russia* (applications No. 8019/16, 43800/14 and 28525/20)» and by the decision of the Grand Chamber, will be considered on November 24, 2021².

The occupation of the Crimean peninsula also caused losses to certain legal entities. Thus, Joint-Stock Company PrivatBank Commercial Bank and Finance Company Finilon have started arbitration (*Joint Stock Company Commercial Bank PrivatBank and Finance Company Finilon, Limited Liability Company v. The Russian Federation, Permanent Court of Arbitration (PCA) Case No. 2015-21*) in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) against the Russian Federation in accordance with the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Investment Promotion and Mutual Protection. PrivatBank and Finance Company Finilon complained about Russia's violation of the Agreement, taking

¹ *Grand Chamber Admissibility Decision in the case of Ukraine and the Netherlands v. Russia* (nos. 8019/16, 43800/14 and 28525/20), European Court of Human Rights, <https://www.echr.coe.int/Pages/home.aspx?p=hearings/gcpending&c>.

² *Ibid.*

measures that corresponded to the expropriation of the bank's assets and made it impossible to carry out banking activities in the Autonomous Republic of Crimea¹.

Another company that also initiated arbitration against the Russian Federation on the basis of violations of a number of articles of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on investment, promotion and mutual protection (including the article prohibiting expropriation of assets) was NJSC Naftogaz of Ukraine (PCA Case No. 2017-16, NJSC Naftogaz of Ukraine et al. v. the Russian Federation). Thus, the Tribunal has established, as in the previous case, the liability of the Russian Federation for breach of the above agreement, however, there is no decision yet on the obligation to pay the defendant \$5.2 billion at the request of the plaintiff².

Oschadbank, in turn, filed a lawsuit against Russia to the International Court of Arbitration of the International Chamber of Commerce.

Another, no less important case against the Russian Federation is the *Dispute before an Arbitral Tribunal constituted under Annex VII to the 1982 UN Convention on the Law of the Sea concerning coastal state rights in the Black Sea, Sea of Azov, and Kerch strait* (Ukraine v. the Russian Federation)³. This case was initiated by Ukraine on the basis of Russia's misuse of carbon and marine resources in the waters of the

¹ JSC CB PrivatBank v. The Russian Federation, Permanent Court of Arbitration (PCA), <https://pca-cpa.org/en/cases/130>.

² NJSC Naftogaz of Ukraine (Ukraine) et al. v. The Russian Federation, Permanent Court of Arbitration (PCA), <https://pca-cpa.org/en/cases/151>.

³ *Dispute before an Arbitral Tribunal constituted under Annex VII to the 1982 UN Convention on the Law of the Sea concerning coastal state rights in the Black Sea, Sea of Azov, and Kerch strait* (Ukraine v. Russian Federation), PCA Case No. 2017-06, <https://pca-cpa.org/en/cases/149>.

Autonomous Republic of Crimea, which under international law and recognition of other states on the world stage is the legal territory of Ukraine, which means that the Russian Federation illegally uses natural resources without the authorization of Ukraine, i.e. violates the rights of Ukraine in accordance with the UN Convention on the Law of the Sea. Russia's position on this case is a clear denial of the Tribunal's jurisdiction over Ukraine's claim. However, a decision on the dispute has not been formally issued yet¹.

One of the latest cases in the Black Sea was the «*Dispute concerning the detention of three Ukrainian naval vessels and the twenty-four servicemen on board*», which was brought before the International Tribunal for the Law of the Sea after the shelling of Ukrainian warships (during their attempt to cross the Kerch Strait to relocate ships to the ports of the Sea of Azov) on November 25, 2018, the Russian Federation detained warships and personnel in order to prosecute them contrary to the UN Convention (UNCLOS — United Nations Convention on the Law of the Sea), according to which naval vessels and personnel have absolute immunity and cannot be arrested by foreign states.

Thus, the preliminary purpose of Ukraine's lawsuit is to find Russia guilty of violating the provisions of the UN Convention on the Law of the Sea, and to obtain compensation for the damage caused by the above violation.

Moreover, on May 25, 2019, despite the Russian Federation's refusal to participate directly in the case, the International Tribunal for the Law of the Sea issued an order requiring the Russian Federation to immediately release the Ukrainian vessels Berdyansk, Nikopol and Yani Kapu,

¹ Ibid.

to return them under the control of Ukraine, as well as to immediately release the detained Ukrainian servicemen and allow them to return to Ukraine. However, 24 servicemen were returned to Ukraine only on September 7, 2019, and warships were handed over to Ukraine on November 18 without equipment and only as material evidence in the criminal proceedings of the Russian Federation (after Russia's previous proposal to transfer ships and servicemen only with Ukraine's guarantees of involvement detainees to criminal liability under Russian law). At present, the case is in the process of considering the positions of the parties¹.

According to the above situation with the seizure of three Ukrainian warships and 24 sailors, Ukraine has also filed an international lawsuit against the Russian Federation to the European Court of Human Rights for violating the rights of captured Ukrainian servicemen in the case «*Ukraine v. Russia case. (VIII) No.55855/18*». The Ukrainian government alleges violations of the rights of 24 servicemen as a result of an illegal attack on three Ukrainian warships, the wounding and capture of Ukrainian sailors, and the illegal arrest and detention of Russian sailors. This case is currently being considered for admissibility for further trial².

It should be noted that despite the fact that Ukraine is not a member of the International Criminal Court, the Government of Ukraine has recognized *ad hoc* jurisdiction of this court. The official results of the Prosecutor's Office preliminary investigation into the situation in Ukraine

¹ *Dispute before an Arbitral Tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea concerning the detention of three Ukrainian naval vessels and the twenty-four servicemen on board (Ukraine v. Russian Federation)*, PCA Case No. 2019-28, <https://pca-cpa.org/ru/cases/229>.

² *Ukraine v. Russia (VIII)*, application No 55855/18, European Court of Human Rights.

provided a classification of war crimes and crimes against humanity according to the court's jurisdiction, namely: crimes committed in the context of hostilities; crimes committed during detentions; and crimes committed in the Crimea. In addition, it was noted that the crimes committed by the various parties to the conflict were serious and therefore deserved more attention and required further permission to be investigated by the judges of the Preliminary Trial Chamber¹.

Special mention should be made of the criminal court in the Netherlands over the persons involved in the downing of flight MH17, which was discussed in the second part. This court is not international, because Russia in the UN Security Council vetoed the establishment of an international tribunal on this issue, which actually signed its guilty plea. However, its role in establishing the truth and punishing criminals is also extremely important.

The international justice system is very slow, but inevitable. It is like a heavy flywheel that has a very large inertia – it is difficult and long to untwist, but it is almost impossible to stop it later. Therefore, I am fully confident that the Russian Federation will be held accountable for all its atrocities committed both in Ukraine and in other countries.

¹ Заява Прокурора Міжнародного Кримінального Суду Пані Фату Бенсуді Щодо Закінчення Попереднього Розслідування у Справі «Ситуація в Україні», International Criminal Court 2020, <https://www.icc-cpi.int/Pages/item.aspx?name=201211-otp-statement-ukraine&ln=Ukrainian>.

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AFTERWORD

Living and surviving alongside an aggressive empire requires considerable effort. Her desire to dominate the surrounding states and absorb them at the first opportunity is beyond doubt. Therefore, the resistance must be meaningful and offensive.

We suggest the following components of this confrontation, which may be useful to a number of countries in the region of Central and Eastern Europe, which are in the Kremlin's area of increased attention:

- It is advisable to know that the mythologists of the Russian Empire are still actively used by the modern authorities of Russia, the imperial ideology has found practical development in modern Russian politics.
- The tools of Russia's hybrid influence remain quite broad, the Kremlin is constantly improving it, but we can talk about the intensive use at the present stage of elements of dehumanization of the enemy

and historical disputes in Central and Eastern Europe.

- Another constant target of Russia's hybrid influence is electoral procedures in both civilized countries and countries in transition democracies in order to discredit the electoral component.
- The humanitarian catastrophe on the territories of Ukraine temporarily occupied by Russia has regional differences, but is united by a common desire to undermine the foundations of the Ukrainian state and complicate the prospect of Ukraine's re-integration.
- One of the important components of Russia's occupation policy is the militarization of the population of the occupied territories and the military development of Crimea.
- Russia continues research on the use of the Homo soveticus model for its own purposes, appropriately modernized to modern needs.
- The Kremlin considers the occupied territories of Ukraine as a military trophy, so it exposes them to looting in combination with the implementation of a harsh occupation policy.
- Private military companies created in Russia have become one of the leading tools of hybrid influence in Ukraine, Syria and other hotspots where the Kremlin has interests.
- There is an urgent need to give a clear legal definition of both the crimes of the USSR and the Russian Federation; otherwise, it would be objectively difficult to counter them.

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