

КОНСТИТУЦІЙНЕ ТА МІЖНАРОДНЕ ПРАВО

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HOW RUSSIA VIOLATES INTERNATIONAL LAW BY INVADING UKRAINE

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Since February 24, 2022, Russia has engaged in full-scale aggression against Ukraine. Despite the Russian army's failure to achieve the initial goals set by the Kremlin at the beginning of the invasion, the war against Ukraine has persisted for over 600 days. Tragically, it has resulted in the loss of almost 10 thousand civilian lives (excluding data from the occupied territories) and forced approximately 8 million citizens to flee Ukraine.

The author emphasizes, that Russia-Ukraine war opened a Pandora's Box, because not only will it influence the parties of the conflict, but also it will definitely reshape the world in the next decades.

The article explores the ways in which the Russian government violates international law through its attacks on Ukraine. Despite Russia's attempts to justify its actions under self-defense or humanitarian intervention, the analysis finds these claims unsubstantiated, categorizing Russia's actions as aggression, war crimes, and potentially genocide.

A crucial aspect is the manipulation of international law by Russia to legitimize its actions. The article analyzes the concept of «authoritarian international law», where dictatorial regimes exploit legal norms for self-interest. Russia's narrative, framing the invasion as a special military operation and responding to alleged genocide, clearly constitutes an abuse of international legal principles.

The article outlines the repercussions for Russia, including exclusion from international bodies and substantial sanctions. Legal measures, such as the International Court of Justice's provisional measures and a UN resolution demanding compensation, indicate a collective international response to hold Russia accountable.

Despite these legal responses, the article acknowledges challenges in achieving justice. Russia's likely refusal to recognize jurisdiction and potential obstacles to compensation efforts prompt the proposal of a multilateral mechanism involving states controlling frozen Russian assets.

Keywords: international law; russia's full-scale aggression against Ukraine; war crimes; genocide; jus ad bellum, international humanitarian law.

Formulation of the problem. On February 24, 2022 Russia launched the largest war in Europe since the end of World War II. According to the latest report of the Office of the UN High Commissioner for Human Rights (OHCHR) 9,701 killed and 17,748 injured civilians from February 2022 to 24 September 2023 [1]. But those figures are approximate: they include only confirmed losses and no data from the occupied territories. It is still unknown how many Ukrainians died in practically destroyed Severodonetsk, Lysychansk, Bakhmut, Popasna etc. Mariupol is a different story: in the city that the Russians wiped from the face of the earth, according to the most conservative estimate, about 20,000 people could have died. Besides, more than 8 million Ukrainians have fled their homes seeking safety and protection in the EU countries, and many more have been forced to move inside Ukraine towards west [2]. At the beginning of a full-scale invasion Ukraine's and Russia's militaries were compared to David and Goliath. Russia's armed forces had much more people, weapons, fighting vehicles and aircrafts than Ukraine [3]. Besides, russia possesses the largest number of nuclear weapon on the planet [4] which makes it obvious that no country is going to step into an open conflict with russia.

However, in contrast to the prediction of Vladimir Putin that his «Special Military Operation» would take mere days and warnings of foreign officials that Kyiv would fall within 72 hours, it has already been over 600 days that Ukraine has been protecting its freedom and independence.

russia-Ukraine war opened a Pandora's Box, because not only will it influence the parties of the conflict, but also it will definitely reshape the world in the next decades. And we have to be ready for that and not to be afraid to take hard steps to protect rule of law, democracy and international cooperation.

Analysis of recent research and publications. russia's armed aggression against Ukraine, which commenced on February 20, 2014, along with the subsequent occupation of the Autonomous Republic of Crimea and parts of the Luhansk and Donetsk regions, naturally drew the attention of Ukrainian scientists. The analysis of the concept and components of the international legal order is the focus of works by M. A. Baimuratova, O. O. Merezhko, O. M. Shpakovych, M. V. Buromenskyi, A. P. Zaiats. Legal qualification of russian aggression against Ukraine is explored in works by A. O. Korynevych, O. V. Zadorozhnyi, V. M. Repetskyi, V. M. Lysyk, N. V. Antonyuk, and many others. Notable contributions from foreign scholars include the works of M. J. Kelly, J. D. Giuliani, C. Marxsen, Ingrid (Wuerth) Brunk, Monica Hakimi and others. However, russia's full-scale war against Ukraine compels us to revisit the issue of violations of established norms and principles of international law by the aggressor state, russia.

The aim of this article is to explore the ways in which the russian government violates international law through its attacks on Ukraine. To achieve this goal, the following tasks will be undertaken: identify the crimes that russia is committing against Ukraine; analyze how russia is misusing international law to justify its aggression against a sovereign state; examine the consequences of russian actions and assess the prospects for the creation of an International Reimbursement Mechanism/Commission/Tribunal for Ukraine.

Presenting main material. Until the end of the World War I using armed force was considered as an absolutely legal and acceptable way to settle the disputes between states. The Covenant of the League of Nations, established in 1919, and the Treaty of Paris, also known as the Briand-Kellogg Pact, ratified in 1928, aimed to outlaw war as an instrument of national policy. At the end of World War II in 1945 the U.N. Charter reaffirmed this transformation. The prohibition of the use of force, enshrined in Article 2(4) of the Charter, is not only a legal principle but also the fundamental legal principle upon which the entire

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system depends. Therefore, today there are two sets of norms regulating using of force: jus ad bellum and Jus in bellum or International Humanitarian law.

Jus ad bellum refers to the conditions under which an armed conflict is considered just or lawful [5]. Thus, Article 2, paragraph 4 of the UN Charter contains a prohibition of the threat or use of force against the territorial integrity or political independence of any state. The Charter also states two circumstances that are related to exceptions where the prohibition doesn't apply. First, forcible measures may be taken or authorised by the Security Council, acting under Chapter VII of the Charter. Second, force may be used to exercise the right of individual or collective self-defence, as recognised in Article 51 of the Charter [6].

The UK Government has suggested another potential exception to the use of force, which involves taking action to prevent a massive humanitarian disaster, often called «humanitarian intervention». This concept is not explicitly stated in the Charter and would have to be found in customary international law. If force is used with the approval or at the request of the territorial State's government, it is not considered a violation under jus ad bellum [7, 352].

Of course, russia's military aggression against Ukraine does not meet any of these criteria. On the contrary, Ukraine has to defend itself from a neighboring state.

Meanwhile Jus in bello or International Humanitarian law (IHL) regulates the conduct of parties engaged in an armed conflict aiming to minimize suffering in armed conflicts, notably by protecting and assisting all victims of armed conflict to the greatest extent possible [5].

Analyzing actions of russian armed forces on the territory of Ukraine it seems that russia is committing three types of crimes: aggression, war crimes and genocide.

AGGRESSION

Right after the beginning of a full-scale invasion of Ukraine by russia on 2 March 2022 the UN General Assembly adopted Resolution *Aggression against Ukraine*, where the General Assembly demanded that russia stopped its offensive and immediately withdrew all its military forces from the territory of Ukraine within its internationally recognized borders (including Crimea).

Recalling its resolution of 14 December 1974 the UN General Assembly defines aggression «as the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter».

Dr. Lise Morje Howard correctly states that «the crime of aggression in particular threatens the very fabric of the international laws that enable all states to exist without constant threats to their borders» [8].

GENOCIDE AND WAR CRIMES

According to the «Convention on the Prevention and Punishment of the Crime of Genocide» there are five acts which can mean genocide. Genocide is based on one party's «intent to destroy, in whole or in part, a national, ethnical, racial or religious group». Intent is a critical element in determining whether an act constitutes genocide or not. Therefore, the main bar to determine whether genocide is taking place is the presence of the intent to destroy a particular group, and not the overall number of people killed. These acts include killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group [9].

Due to the comprehensive report released by the UN Independent International Commission of Inquiry on Ukraine, there was no direct proof of genocidal intent. The authors found that russia committed war crimes in Ukraine, like murder, torture, rape of civilians and even illegal transfer of children from Ukraine by russian authorities into russia constituted «war crimes» [10].

Even though this report is the highest level international inquiry so far, many scientists disagree with these results for the following reasons.

For instance, Timothy Snyder proves Putin's genocidal intention with a help of six indicators:

1. Denial that a state is a state. The first time Putin denied Ukraine's sovereignty in 2008 at the Bucharest NATO Summit. Since then he has been repeating the same in 2011, 2013, 2014, 2021 and constantly in 2022–2023.

2. **Denial of the Ukrainian people, as a people. According to russian propaganda only russians are real people in Ukraine. The rest non-russians have to be vanished. PMC «Wagner» militants confesses the were ordered to destroy all men, women, pensioners and even children in Bakhmut and Soledar.**

3. **Denial that people are human. Ukrainians are considered fascists, servants of Satan etc. by russians, but not real human beings.**

4. **Denial that other genocides took place in the past. The official russian policy denies Holodomor committed** by the Soviet Union in Ukraine in 1932–1933 as genocide, claiming «it was simply a natural disaster».

5. **Contemporary replacement theory.** Ukrainian women and children have been deported to russia only because they are white and can easily assimilate into the russian population. At the same time males from the indigenous peoples in the Eastern and Southern parts of the russian Federation are sent in hugely disproportionate numbers to die on the front.

6. **«Postmodern».** According to Timothy Snyder «russia is deliberately overloading the system, trying to make things hard to understand it» [11].

INTERNATIONAL LAW AS A TOOL FOR DICTATOR TO REMAIN THE POWER

Today Ukraine is fighting against russia not only to liberate its territories and its people, but also for freedom, democracy and rule of law. Eventually, it is not only a conflict between two states, but also a conflict between two approaches to international law. Tom Ginsburg argues that «authoritarian international law» refers to the way in which authoritarian states try to develop and shape norms of international law in ways that extend their ability to remain in power across time and space» [12]. Dictators try to abuse norms of international law to fit their own ends.

For instance, russia notified the UN Secretary-General that its February 2022 «special military operation» was «taken in accordance with Article 51 of the UN Charter in the exercise of the right of self-defence». russia has also claimed that it is responding to genocide and that Ukraine is an illegitimate country.

russia has also applied the same approach to IHL. After several massive missile attacks on Ukraine's power infrastructure the russian Minister of Foreign Affairs Lavrov claimed that the «infrastructure supports the combat capability of the Ukrainian armed forces and nationalist battalions» and that russia's attacks were designed to «knock out energy facilities that allow you to keep pumping deadly weapons into Ukraine in order to kill the russians.»

Both arguments are absolute nonsense. Though, russia is not eager to be seen as a lawless international actor, Therefore, russia is trying to justify its violations of the norms and principles of international law by forming its own narrative misusing the norms regulating self-defense, humanitarian intervention or self-determination [13].

CONSEQUENCES FOR RUSSIA

Considering russia's aggression against Ukraine and all the atrocities committed by russian soldiers on the territory of Ukraine it may seem that International law is not working in a proper way or even at all. «But the test of a legal rule – whether domestic or international – is not determined simply by whether it is violated. It is determined, too, by the response when it is violated». Obviously, we would never state that Criminal law is not working because crimes are still committed every day. So, in order to find out if the international law remains effective it is necessary to look at the negative consequences that russia has faced and will face for this aggression and war against Ukraine.

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For the past year russia was excluded from the Council of Europe and the European Union has imposed unprecedented sanctions on the aggressor.

When russia as a permanent member of the UN Security Council vetoed the UN resolution, the Security Council activated the Uniting for Peace Resolution, which provides that if the Security Council, due to lack of unanimity among the permanent members, fails to exercise its responsibility to maintain international peace and security, the General Assembly will consider the matter immediately with the view to making recommendations to members.

On 16 March 2022 the International Court of Justice, the principal judicial organ of the United Nations indicated provisional measures in its Order. The Court ordered:

- The russian Federation to immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine;
- The russian Federation to ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations.

The Court begins by recalling that, on 26 February 2022, at 9.30 p.m., Ukraine filed an Application instituting proceedings against the russian Federation concerning «a dispute ... relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide», where Ukraine contends that the russian Federation has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, recognized on that basis the so-called «Donetsk People's Republic» and «Luhansk People's Republic», and then declared and implemented a «special military operation» against Ukraine with the express purpose of preventing and punishing purported acts of genocide that have no basis in fact. Ukraine emphatically denies that any such genocide has occurred.

At a special session on 14 November 2022, the UN General Assembly adopted a resolution prepared by Ukraine and co-sponsored by about 50 other states, which calls on russia to pay compensation for the damage caused by its full-scale invasion.

The UN countries that supported the document recognise that «the russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the Charter of the United Nations, as well as any violations of international humanitarian law and international human rights law, and that it must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts».

They also recognised the need to create, in cooperation with Ukraine «an international mechanism for reparation for damage, loss or injury, and arising from the internationally wrongful acts of the russian Federation in or against Ukraine».

It is obvious that the creation of an International reimbursement mechanism/ commission/ tribunal for Ukraine is inevitable, even if it depends on many political and military issues. Therefore, the academic society, professionals and students are to be ready to foresee the way russia and russian officials as well as Belarus officials will be responsible for all the atrocities they have caused in Ukraine.

It is widely believed that the issue of compensation for the consequences of military actions (which is often outdatedly called «reparations») did not arise after the Second World War. However, the international practice of the last decades knows many cases when this problem was solved.

The most obvious solution is to appeal to international courts, first of all to the UN International Court of Justice. In such cases, the International Court of Justice often leaves the question of compensation to the discretion of the parties, and only if they do not reach an agreement, it determines its amount. russia will definitely refuse to recognize jurisdiction.

Another option is the creation of a separate international body under the auspices of an international organization. This happened, for example, to compensate Kuwait for losses due to the aggression of Iraq in 1990–1991.

To resolve the issue of compensation, the UN Security Council created a special compensation commission. However, a similar model also seems unlikely due to the expected blocking of this process by the Russian Federation. The fact that Iraq recognized and implemented the decision of the commission is also important, which in our case, most likely, will not happen.

Therefore, the most likely is the creation of a certain multilateral mechanism with the participation of Ukraine and the states that control the frozen Russian assets, which will solve the issue of compensation for losses due to Russian aggression. In turn, its activities can be supported by decisions of international judicial bodies and political decisions at the level of individual states.

The thesis about the importance of the decisions of the International Criminal Court regarding war crimes in Ukraine is definitely correct. However, these decisions by themselves will not automatically create grounds for compensation to our state and citizens at the expense of Russian funds, which are currently frozen in Ukraine and abroad.

Conclusions. Russia's full-scale invasion of Ukraine constitutes a major violation of international law, including the UN Charter's prohibition on the use of force against the territorial integrity or political independence of another state (*Jus ad bellum*).

Even though the international community, as represented by the UN General Assembly, has condemned Russia's aggression and demanded the immediate withdrawal of its forces from Ukrainian territory, it has not stopped the Russian Armed Forces from committing aggression, war crimes, and potentially genocide on the territory of Ukraine.

The international response to the atrocities of war involves taking significant actions for protection of the core principles and norms of international law. Despite international condemnation and legal actions, there are challenges in achieving justice, particularly as Russia may refuse to recognize jurisdiction and block compensation efforts. The mechanisms of reimbursement for Ukraine are still unclear, but they will definitely involve existing international courts.

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ЯК РОСІЯ ПОРУШУЄ МІЖНАРОДНЕ ПРАВО ЧЕРЕЗ ВТОРГНЕННЯ ДО УКРАЇНИ

Від 24 лютого 2022 року триває масштабна агресія росії проти України. І хоча російська армія не досягла поставлених на початку вторгнення Кремлем цілей, вже більше 600 днів війна триває проти України, забравши життя майже 10 тисяч цивільних (без даних щодо окупованих територій) та змусивши покинути Україну близько 8 млн громадян.

Автор наголошує, що російсько-українська війна відкрила скриньку Пандори, адже ця війна не лише вплине на сторони конфлікту, але й безперечно змінить світ у найближчі десятиліття.

Стаття досліджує порушення росією міжнародного права через напад на Україну.

Незважаючи на спроби росії виправдати свої дії самообороною або гуманітарним втручанням, ці заяви російських вищих посадових осіб є необґрунтованими, а відтак дії росії слід кваліфікувати як агресію, воєнні злочини та злочин геноциду.

Вирішальним аспектом є маніпулювання росією міжнародним правом для легітимізації своїх дій. У статті аналізується концепція «авторитарного міжнародного права», коли диктаторські режими використовують правові норми у власних інтересах. Наратив росії, яка виправдовує вторгнення до України як проведення спеціальної воєнної операції у відповідь на ймовірний геноцид, явно є зловживанням міжнародно-правовими принципами.

У статті описуються також наслідки для росії, також виключення з міжнародних організацій і значні санкції. Юридичні заходи, такі як тимчасові заходи Міжнародного суду ООН і резолюція ООН з вимогою компенсації, свідчать про колективну міжнародну відповідь для притягнення Росії до відповідальності. Незважаючи на це, у статті виокремлено проблеми щодо досягнення справедливості. Ймовірна відмова росії визнати юрисдикцію міжнародних судів та потенційні перешкоди зусиллям щодо компенсації шкоди, завданої Україні повномасштабним вторгненням, спонукають до пропозиції багатостороннього механізму за участю держав, які контролюють заморожені російські активи.

Ключові слова: міжнародне право; повномасштабна агресія росії проти України; воєнні злочини; геноцид; *jus ad bellum*; міжнародне гуманітарне право.