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## **Russia's War on Ukraine: Geopolitics, International Law, and Genocide**



**PRACE** Instytutu  
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Lublin 2023



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## Executive summary

- The analysis shows that Ukraine plays a very important role in the strategy of the Russian Federation. Its strategic location, rich history, and the presence of various ethnic groups in its territory make it a focal point in Russian geopolitical calculations.
- The conflict between Russia and Ukraine, including, in particular, the annexation of Crimea and the conflict in Donbas, has affected the geopolitical dynamic of the Eastern European region. The disputes concerning the sovereignty and territorial integrity of Ukraine have sparked international tension and affected the relations between Russia and Western countries.



- This working paper emphasises the need to reflect on the ethical aspects of the actions of Russia in Ukraine, particularly in the context of human rights violations and crimes against humanity. It is a good idea to consider the consequences of breaching international rules and moral and ethical standards.
- What is more, the crimes of the Russian state – just like the crimes committed in the past by the Soviet state and Imperial Russia – especially the crime of genocide, should be perceived as a political instrument intended to uphold the hegemony of the Russian Federation in the post-Soviet area, with distinct signs of a geopolitical philosophy (offensive realism).
- Furthermore, the aggression of the Russian Federation against Ukraine, which has been ongoing since 2014 and turned into a full-scale invasion on 24 February 2022, is not only a blatant violation of international law by Russia but also a touchstone of the Kremlin's attitude to the international law order previously presented by Imperial Russia and the Soviet Union.
- This is the polar opposite of Ukraine, which makes practical use of all available legal (and diplomatic) mechanisms, including appeals to international courts and tribunals, to legally protect its interests and pursue the overriding political goal of Kyiv, i.e., the Euro-Atlantic integration manifesting in the accession

of Ukraine into the structures of the European Union and NATO in the immediate future.

- The conclusions from this analysis are significant not only for the understanding of the Russian-Ukrainian conflict but also for the identification of challenges connected with peace and stability in Eastern Europe. It is necessary to continue investigating this topic and look for an effective resolution to the conflicts in the region.



## Introduction

Many factors contributed to the Russian aggression against Ukraine in 2014, but one of the main reasons was certainly the struggle to preserve the stability of Vladimir Putin's regime. The Russian invasion of Ukraine was clearly aimed at gaining support in Russia and reinforcing Putin's rule. Russian foreign policy has always been largely a part of its internal policy, and the significance of foreign affairs increased significantly at certain times in Russian history as an instrument of mass mobilisation.

When he returned to power (to the President's office) in 2012, Vladimir Putin tried to entrench his position in Russia

through a strict internal policy and an aggressive external policy. There were two factors in particular that motivated Putin to entrench his power in Russia and spread the doctrine of the “Russian world” (*Russkiy mir*) in the post-Soviet space in a much more radical and uncompromising version. The first of them was the protests of the political opposition in 2012 – the response of the citizens to the presidential election which the leaders of the opposition believed would be manipulated in Putin’s favour. Putin’s concerns that the Orange Revolution could be repeated in Moscow seemed justified even though the protests in Russia were unsuccessful. The second factor was the Ukrainian Revolution of Dignity – another “revolt” as described by the Russian mass media – this time, at the turn of 2013 and 2014, resulting in the ousting of the pro-Russian President of Ukraine, Viktor Yanukovich, and his escape to Russia.

The propagandist Russian media, controlled by the government, strengthened the narrative around the need to defend ethnic Russians in Ukraine, emphasising the threat of the West and its “imperialist” policy. Since the annexation of Crimea by Russia in 2014, Putin has been justifying his actions with the protection of ethnic Russians and Russian-speaking Ukrainians against “fascism” and the “hybrid war” waged by the West. The Kremlin depicted Ukraine as a country used by the West to weaken Russia. This way, the Kremlin successfully unified the Russian public in support

of the war in Ukraine, [further] securing support for the government.

According to polls by the Levada Center<sup>1</sup>, Putin's popularity poll gave him 82% support in March 2023, with only 15% disapproving of the President. The situation was slightly different in September 2022, when Putin's approval rating was 77% (with 21% disapproving of his actions) after the beginning of the Ukrainian counter-offensive in Kharkiv and the announcement of mobilisation in Russia, but it increased to 79% in October and November and stabilised at 81% in December. Vladimir Putin is enjoying the same "patriotic boost" of support that improved his ratings after the annexation of Crimea in 2014. In earlier years, 2020 and 2021, his popularity ranged from 61% to 69%, but it exceeded 70% when, at the beginning of 2022, the rhetoric of the confrontation with the West was exacerbated.

Thus, Putin's neo-totalitarian regime has benefited from the war in the Ukrainian territory and the propagandist activities that accompanied the conflict. The Kremlin used the war to reaffirm its authority in Russia and increase its influence over the Russian people.

The aim of this paper is to investigate and understand the geopolitics and the tragic genocidal aspects of the relations between the Russian Federation and Ukraine. The pri-

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<sup>1</sup> Levada-Center, *Putin's approval rating*, 30 July 2023, <https://www.levada.ru/en/ratings/>.

mary focus will be on how the Russian Federation perceived Ukraine in its geopolitical strategy and how this perspective affected the events in the region, including, in particular, the conflict in eastern areas of Ukraine. The authors will also examine the dark side of Russia's actions – the genocide and crimes against humanity committed by Russians in Ukraine – as the result of the Kremlin's attitude towards international law from the times of Imperial Russia and the Soviet Union to date.

In this context, the aim of the analysis will be to provide answers to several key questions. What were the objectives and strategies of the Russian Federation regarding Ukraine in the changing geopolitical conditions at the turn of the 20th and 21st centuries? What aspects connected with genocide and crimes against humanity in Ukraine affected the developing conflict and international relations? What are the implications of these circumstances for the future of Ukraine and the geopolitical situation in the region?

The full-scale war of the Russian Federation against Ukraine, which has been going on for almost two years now, in the context of the aggression of the Kremlin that started in 2014, can be considered both from the geopolitical perspective and through the lens of the bilateral relations between Moscow and Kyiv. The full subordination of Ukraine to Russia is a key element of the objective declared by Vladimir Putin – the reconstruction of the empire. The pursuit of this goal “justifies” all means, including crimes

against the Ukrainian nation, especially the crime of genocide. As rightly observed by Adam D. Rotfeld, the objectives defined by Russia in the war with Ukraine concern fundamental matters, i.e., the refusal to grant Ukraine such basic existential rights as the right to exist as a nation and a state separate from Russia<sup>2</sup>.

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<sup>2</sup> Cf. A. D. Rotfeld, *Wojna o wartości a porządek międzynarodowy* [The war for values and international order], Lublin 2023, p. 6; also: *Wojna hybrydowa Rosji przeciwko Ukrainie w latach 2014-2016* [The hybrid war of Russian against Ukraine in 2014-2016], W. Baluk, M. Doroszko (eds.), Lublin 2017.





## **1. War as an indispensable part of Vladimir Putin's project**

The current Russian regime, instead of relying mainly on ideology, is trying to transform its propagandist schemes into a consistent ideological platform. As observed by Sergei Medvedev: "Generally speaking, war is the essential ontology of the Russian society, the Russian perspective. The centuries-long war of a repressive colonial state with the population, perceived by the authorities as an inexhaustible natural resource"<sup>3</sup> and a new foundation of the Russian identity.

Putin's war is a personification of the Russian concept, which had never had a canonical status but was always in-

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<sup>3</sup> S. Medvedev, *Mat' rodna. Sergey Medvedev – o wojnie kak nacyonalnoj idieje*, Radio Svoboda, 18 July 2022, <https://www.svoboda.org/a/matj-rodna-sergey-medvedev-o-voyne-kak-natsionaljnoj-idee/31947357.html>.

tuitively understood by the authorities, or at least by a certain part of the public. The aggressive Russian nationalism combined with imperialism, Russian messianism and the concept of the “special way” were used to justify the role of Russia as a superpower and build a sense of superiority of the Russian nation.

In reality, it could be argued that war and imperialism have been an indispensable component of Putin's project for the Russian state since the very beginning and that this has remained true to date<sup>4</sup>. The imperial ambitions of Putin derive from the internal dynamic of his system, which has also given rise to a long-term patriarchal model of the Russian state. At the moment, the imperial spirit permeates the senseless concept of expansion, which is not only designed to manifest Russian power but, most importantly, to secure the stability of the ruling authorities. According to Vladislav Surkov, to maintain this stability, the social entropy has to be “exported so that it can replenish in foreign territory”. “The Russian state, with its raw, passive political core, has survived centuries only through the continuous attempts to go beyond its own borders. [...] For Russia, continuous expansion is not just an idea but the true essence of our historic existence”<sup>5</sup>.

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<sup>4</sup> Cf. M. H. Van Herpen, *Putin's wars: The rise of Russia's new imperialism*, Rowman and Littlefield, Maryland 2014.

<sup>5</sup> V. Surkov, *Kuda del'sya khaos? Raspakovka stabilnosti*, Aktualnye Kommentarii, 20 November 2021, <https://actualcomment.ru/kuda-delsya-khaos-raspakovka-stabilnosti-2111201336.html>.

The efforts aimed at expansion and annexation, instead of being contradictory, are actually supported by mental isolationism, one of the characteristic features of the metaphysical concept of “Russian space” (“natural sphere of influence”), which, allegedly, has no fixed borders – as indicated by Nikolay Plotnikov<sup>6</sup>. Recently, the Russian authorities have been less likely to refer to Russia as an empire, instead describing it as a separate civilisation (which, by the way, corresponds to the Kremlin’s attitude towards rules and the international law order, as will be discussed in greater detail below). In 2012, Vladimir Putin promoted the idea that Russia was a “state civilisation where there are no ethnicities, but where ‘belonging’ is determined by a common culture and shared values”. This common culture is based on “preserving the dominance of Russian culture”, which “hostile forces” try to oppose.

## 2. History as the source and justification of the Russian war in Ukraine

In 1995, a Russian historian, Alexander Yanov, discussed the “Weimar” syndrome in the context of Russia<sup>7</sup>. Three decades ago, he criticised the Western approach to post-soviet Russia,

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<sup>6</sup> N. Plotnikov, *Vviedeniye*, [in:] *Pieried licom katastrofy: sbornik statiej pod redakcyey i s priedisloviyem Nikolaya Plotnikova*, N. Plotnikov (ed.), Lit-verlag.de, 2023, p. 8.

<sup>7</sup> A. Yanov, *After Yeltsin: “Weimar” Russia*, KRUK – Slovo-Word, Moscow–New York 1995.

which was trying to introduce a free market but did not have a plan for how to introduce democracy. Yanov warned that Russia would become a “Weimar Russia”, a stepping stone for Russian revanchism – authoritarian, anti-western, and anti-democratic – and would make way for an aggressive “red-brown” state, uniting communist and fascist forces. Contemporary Russian society is not only characterised by post-soviet resentment but also a sacralisation of power and the state in the mass consciousness, which is the foundation used by Putin’s regime to build its authority in Russia. In this context, Joseph Stalin became a symbol of a powerful state and a model of a society where the individual becomes insignificant compared to the interests of the state.

The concept of power is particularly important in Russian society and helps the authorities justify their actions. In the initial term of his rule, Vladimir Putin tried to build the image of Russia as a superpower. He started creating his own interpretation of Russian history, emphasising the need to modernise the country “by force” to restore it to superpower status. The Russian invasion of Ukraine in 2022 was presented by the Russian media and authorities as an unavoidable response to the perceived threats to Russian security and interests. The key instruments of this narrative were historic analogies and symbols. President Vladimir Putin referred to the invasion as a “historic mission”, recalling the role of the Soviet Union during World War II to arouse national pride and give a sense of purpose to his actions. Putin also claimed

to be defending Russian citizens in Ukraine, referring to the idea of a common ethnic identity and a common heritage of Russia and Ukraine.

The Russian media made similar use of historical references and symbols to describe the invasion of Ukraine. For instance, the state-owned TV station RT described the intervention as the “liberation” of Ukraine, comparing it to the role of the Soviet Union in the liberation of Europe from the rule of Nazi Germany. Under Putin’s rule, the militarist cult started to take on a dynamic of its own, exceeding the boundaries of political propaganda and becoming an important aspect of mass culture. The concept of the “religion of victory” found its way into the collective imagination, reconstructing the perception of the war as a return to the battlefield, where the Soviet values were confronted with the Nazi threat. The cult provided the propagandists of Putin and their audience with a consistent model to interpret the meaning and objectives of the Russian aggression in Ukraine. According to Andrei Kolesnikov, the regime evolved from the cult of the 1945 victory into a cult of war itself: “The current war has its origins in history, it is conditioned and explained by history. What is more, both the actual historic circumstances – we are actually witnesses to an ongoing painful downfall of the Soviet empire – and the imagined historic myths concerning the lack of Ukrainian

statehood as such and the long-time efforts of the West to destroy Russia”<sup>8</sup>.

The leading narrative, promoted by both the Kremlin and Putin himself, is the claim that Ukraine is an integral part of the history of Russia. Vladimir Putin has never accepted the independence of Ukraine. In 2021, he again challenged the legitimacy of Ukraine as an independent state and highlighted the imperial ambitions of Russia. In this narrative, Ukraine is an essential part of the historic and cultural heritage of Russia, and both states share a common identity and purpose<sup>9</sup>. The promoters of this argument claim that the independence of Ukraine is a recent construction, and its reunion with Russia is required to restore historic justice and promote regional stability. This narrative is often associated with Russian nationalism and the concept of the “Russian world”, encompassing all Russian-speaking nations and regions.

In 2014, Aleksandr Dugin described the ideology of new Russia in the following words: “Russia will either be Russian, i.e., Euro-Asiatic, forming a core of the great Russian world, or it will disappear. But then, it would be better to allow everything to perish. In a world without Russia, there is

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<sup>8</sup> A. Kolesnikov, *Scientific putinism: Shaping official ideology in Russia*, Carnegie Endowment for International Peace, 21 November 2022, <https://carnegieendowment.org/politika/88451>.

<sup>9</sup> V. Putin, *On the historical unity of Russians and Ukrainians*, Kremlin.ru, 12 July 2021, <http://en.kremlin.ru/events/president/news/66181>.

simply no reason to live”<sup>10</sup>. Four years later, in a conversation with Vladimir Solovyov regarding the nuclear threat, Putin essentially repeated this thought verbatim: “Why would we need the world without Russia?”.

### **3. The significance of Ukraine for the Russian Federation's international position**

One of the main objectives in the geopolitical strategy of the Russian Federation in the times of Vladimir Putin is to reconstruct its influence in the Russian peripheries, which were lost due to the collapse of the Soviet Union. The actions of Russia regarding Eastern European countries indicate that, despite the passing of over 30 years since the collapse of the USSR, the Russian Federation is still trying to maintain a dominant position in Eastern Europe (or, more broadly: the Commonwealth of Independent States) and it uses various means to further this goal (including military power, as during the Russo-Georgian war in August 2008 and the war with Ukraine that began in 2014). Its primary objectives are to reintegrate the post-Soviet space and entrench the position of Russia as a regional leader. Through this superpower position, the Russian Federation plans to gain exclusive control of the post-Soviet space and pursue the

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<sup>10</sup> A. Dugin, *V mirie biez Rossii niezaczem zhyt'*, Izborskiy Klub, 4 August 2014, <https://izborsk-club.ru/3623>.



role of a global power – one of the power poles in the new multi-polar (as desired by Russia) international order. In this context, Eastern Europe is, therefore, the natural region for Russian actions – the historic area of its vital interests and exclusive influence as well as the subject of the Kremlin's reintegration policy pursued after 1991, i.e., after the dissolution of the Soviet Union<sup>11</sup>.

What is more, the Russian Federation has its own definition of integration, different to that of the West. To Russia, integration stands for the comprehensive reconstruction of Russian domination in the Commonwealth of Independent States and the strategic dependence of the countries in the region on Russia, particularly in terms of economy and regional security. That is why the process should not be compared to the integration pursued by the European Union, which is a grassroots initiative and is built around a unity of values and interests, voluntary accession, and mutual benefits. Also, the priority treatment of the post-Soviet space in the foreign policy of Russia is not only due to geopolitical reasons but also cultural and historic causes, common security interests, economic ties, the need to protect the Russian diaspora, etc. Russia also highly prioritises its prestige, hoping to serve as a "bridge" between Asia and Europe. Eastern

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<sup>11</sup> See S. Page, *The creation of a sphere of influence: Russia and Central Asia*, "International Journal: Canada's Journal of Global Policy Analysis" 1994, vol. 49, issue 4, pp. 788-813.

Europe is also a permanent component of the cultural identity of Russia. This manifests itself in the belief shared by the Russian public that the land of so-called Great Russia, Little Russia, White Russia, and the Transcaucasia, regarded as a cultural ecumene distinct from the West, is indivisible. This area is, therefore, important for the very essence of the Russian identity and the identification of Russia in the new spatial conditions. Ukraine and Belarus, in particular, perceived by Russia as the natural border between the East and the West, are regarded as a guarantor of the Russian superpower status. These countries are perceived as an integral part of Great Russia from linguistic, ethnic, cultural, and historical perspectives. That is why the policy towards the so-called “near abroad” is based on the persistent conviction that their independence should only be a temporary phenomenon.

#### **4. The context of the relations between the Russian Federation and the European Union**

It should be noted that the relations between Russia and the European Union are overshadowed by the superpower rhetoric and the strong preference for maintaining ties with large, strong states within the EU, e.g., Germany, France, or Italy, and ignoring its other members, particularly the countries of the former Soviet bloc and the Baltic countries. Russia also exhibits a disdainful and hostile attitude towards

the integration aspirations of Eastern European countries (particularly Ukraine). While maintaining proper relations with the main European powers, the Russian Federation ruthlessly abuses the internal divisions in the EU, using them as an instrument to gain political influence. Also, there are many elements in the mutual relations between the EU and Russia connected with potential rivalry. The conflicts of interest between the European Union, which is expanding politically and increasing its international involvement, and Russia, which is trying to preserve its former sphere of influence in Eastern Europe, is the best example of this. The complexity and ambivalence of such relations, in turn, have a negative impact on the cooperation of Russia with the EU, which has been suspended due to the annexation of Crimea and the ongoing Russian war with Ukraine<sup>12</sup> due to the sanctions introduced by the European Union in order to apply economic and political pressure on the Russian Federation and cause it to stop violating the sovereignty and territorial integrity of the Ukrainian state<sup>13</sup>.

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<sup>12</sup> Cf. *Disinformation, narratives and memory politics in Russia and Belarus*, A. Legutcka, R. Kupiecki (eds.), London 2022.

<sup>13</sup> O. Zadorozhnii, *International law in the relations of Ukraine and the Russian Federation*, K.I.S., Kyiv 2016, pp. 313-315.

## 5. The revisionism of the Russian Federation on the international scene

As a result of the collapse of the bipolar system, a new type of order is currently forming. As pointed out by Adam D. Rotfeld, force and power in international relations are both distributed and polycentric. The rules and norms agreed upon in the past, however, reflect an international situation that no longer exists, representing a situation of the past<sup>14</sup>. The norms and rules have to be adapted to the new international reality shaped by the new powers. This creates a “vacuum” that the new powers try to use. That is the reason behind the current situation, where Russia is trying to unilaterally impose new rules of the game upon the world. Examples of such actions include two new treaties, rejected by the West, that were proposed by the Kremlin to the USA and NATO in December 2021 to replace the current NATO–Russia Founding Act of 1997<sup>15</sup>. Under the treaties, Russia wanted to “decree” by the power of international law its “natural sphere of influence”, obliging NATO to discontinue further expansion to

<sup>14</sup> Cf. A. D. Rotfeld, op. cit., passim; idem, *Myśli o Rosji... I nie tylko* [Thoughts on Russia... and more], Warsaw 2012; idem, *Rosja: strategiczne dylematy* [Russia: Strategic dilemmas], “Sprawy Międzynarodowe” 2019, no. 4, passim.

<sup>15</sup> Interestingly, in 2009, i.e., one year after the Russo–Georgian War (in August 2008), Moscow also proposed a new treaty to NATO, defining the terms of cooperation in the realm of security. Cf. W. Alberque, *Russia's new draft treaties: like 2009, but worse*, International Institute for Strategic Studies, 25 January 2022, <https://www.iiss.org/online-analysis/online-analysis/2022/01/russias-new-draft-treaties-like-2009-but-worse>.

the East and dividing NATO members into “old” and “new” (including Poland, the Baltic states, and other countries of the CEE region). Although the Kremlin used the instruments of international law in this case, it did so for purely instrumental reasons – for Moscow, the international law system is simply a collection of purely procedural legal solutions without any axiology or actual significance. This is based on the assumptions of one of the theories of international relations – the theory of offensive realism, where international law is understood solely as another tool used to further the essential objective of the state, i.e., to continuously increase its potential and – as in the case of Russia – hegemony, at least in the post-Soviet area<sup>16</sup>. Consequently, such a “new game without rules” is illustrated by the attempt to subordinate Ukraine to the rules of *Russskiy mir*<sup>17</sup>.

Autumn 2013 saw the beginning of the protests in Ukraine referred to as the Euromaidan (or the Revolution of Dignity), which were the spark for geopolitical changes in Eastern Europe<sup>18</sup>. It is certain that one of the consequences of

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<sup>16</sup> See H. Edinger, *Offensive ideas: Structural realism, classical realism and Putin's war on Ukraine*, “International Affairs” 2022, vol. 98, issue 6, pp. 1873-1893.

<sup>17</sup> Cf. T. Kuzio, *Putin's war against Ukraine: Revolution, nationalism and crime*, University of Toronto, 2017.

<sup>18</sup> Cf. *Ukraina po Rewolucji Godności. Prawa człowieka – tożsamość narodu* [Ukraine after the Revolution of Dignity. Human rights – national identity], T. Lachowski, V. Mazurenko (eds.), Łódź–Olsztyn 2017; *Ukraine after Maidan. Revisiting domestic and regional security*, T. Stępniewski, G. Soroka (eds.), Stuttgart 2018.

the events taking place on Kyiv's Independence Square was the breakout of the armed conflict between Russia and Ukraine. However, it is difficult to understand the causes of the Ukrainian crisis that emerged in the early spring of 2014, without referring to the evolution of the foreign policy of Russia and the Russian perception of international relations in recent years. Richard Sakwa observes that in recent times, the policy of Russia evolved towards revisionism, leading to the confrontation in Ukraine (from the perspective of the second half of 2023, we can see that it is a confrontation between Russia and the USA or, more broadly – the West). In the opinion of the author, the change in Russian policy had at least four causes. The first of these was the gradual deterioration of the relations with the European Union. Secondly, of key importance was the successive fragmentation of the Europe-wide security system in which Russia could operate as an autonomous partner in collaboration with the West. Thirdly, Russia, and many more rising powers such as China, were undermining American claims of exceptionalism and global leadership. Fourthly, one catalyst for Russian revisionism was the ideology of “democratism”, which differs from the practice of actual democracy. Thus, R. Sakwa observes that Russia is convinced that the promotion of democracy is a cover-up used by the West to pursue its strategic objectives. It could be said that there is a protocol of disagreements between Russia and the EU regarding Eastern Europe (rivalry for the areas in the immediate vicinity,

energy issues, rules for economic cooperation, or the issues of democracy, human rights, and civil liberties). This gives rise to the question regarding the place of Ukraine in this rivalry between powers for the future power structure in this part of Europe. The other question is whether the revisionism of Russia (supported by others such as China), via the wars in Ukraine and Syria, initiated the formation of a post-monopolar international order.

## **6. Ukrainian aspirations to join the European Union and NATO – challenges and perspectives**

The Ukrainian aspirations to join the European Union and NATO are one of the key geopolitical challenges in Eastern Europe. Ever since it became independent in 1991, Ukraine has been trying to strengthen its ties with these two organisations to reaffirm its position on the international scene and obtain a guarantee of national security. Ukraine started to have close relations with the EU and NATO in the 1990s, but the process was accelerated by events such as the Orange Revolution in 2004 and the Euromaidan protests in 2013-2014. In 2014, Ukraine signed an association agreement with the EU, and since 2023, has had candidate status, which was a major leap forward towards future integration with the European Union. However, the Russian annexation of Crimea and the armed conflict in eastern areas of Ukraine

has severely restricted the opportunities for membership in these organisations.

At this point, it will be beneficial to discuss the evolution of security in Europe and the world. In the international environment of the Cold War, the perception and interpretation of security was based on several fundamental assumptions, namely a) security was perceived and associated with a sovereign and centralised nation state as the primary unit in international relations (i.e., state-centric understanding of security); b) in the structure of the international environment, security was analysed in the context of a zero-sum game (the increase of security of some countries reduced the security of others); c) the security policy was intended to safeguard the political, territorial, and ideological status quo of the Cold War era; d) in the security policy of the states, the highest priority was given to military threats from other state entities and effective protection against such threats (security and defence were synonymous); e) security was defined in negative categories, i.e., as the absence of threats, not in positive categories, i.e., the promotion of desirable situations; and f) security was restricted to states, understood as the main units of international security, by emphasising the heightened significance of the military security of state



units (reductionist and statistical interpretation of security, restricted to a narrow range of entities)<sup>19</sup>.

The new post-Cold War approach to security has resulted in the identification of new aspects of security in the theory of international relations, a departure from the military interpretation of security, and a modern categorisation of the conditions for security. Marek Pietraś identified four tendencies characteristic of the process, representing a new understanding and perception of international security: firstly, a horizontal redefinition of security connected with its material scope; secondly, a vertical redefinition, extending the range of entities “downwards” from the state and nation to social groups and even individuals; thirdly, an extension of the spatial scope, going beyond physical state borders in the interpretation of security; and fourthly, a redefinition of actions and political responsibility for security, based on all three previous tendencies mentioned above, i.e., including international organisations and NGOs – in addition to state governments – as well as multi-dimensional actions aimed at securing the international order<sup>20</sup>.

We are witnessing the collapse of the security system established under different environmental and geopolitical conditions – in the times of a bipolar division of the world.

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<sup>19</sup> Cf. M. Pietraś, *Bezpieczeństwo międzynarodowe* [International security], [in:] *Międzynarodowe stosunki polityczne* [International political relations], M. Pietraś (ed.), Lublin 2006, p. 331.

<sup>20</sup> *Ibid.*, pp. 331-332.

It should also be noted that the institutions are static while the challenges and threats are dynamic. Thus, institutions and organisations are not quick enough to adapt to the new international conditions in which they function<sup>21</sup>. Following the collapse of the bipolar system, a new type of order is now being established. In such a situation, some powers want to impose their own rules of the game. Such a “new game without rules” is illustrated by the attempt to subordinate Ukraine to the rules of *Russkiy mir*, i.e., the “Russian world”<sup>22</sup>.

The conflict in and around Ukraine has shown that the international order after the Cold War is changing, and these changes demand a thorough analysis. The armed conflict between Russia and Ukraine does not only concern Eastern Europe. It can be assumed that the international crisis manifests in the rivalry for Ukraine between two external parties – the West (USA and EU) and Russia<sup>23</sup>. Andreas Umland claims that the so-called “Ukrainian crisis” (or, more specifically, the Russo-Ukrainian crisis) concerns the devaluation of the so-called Budapest Memorandum of December 1994 (guarantees of security offered by Russia, USA, and the United Kingdom to Ukraine in exchange for its accession to

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<sup>21</sup> A. D. Rotfeld, *Porządek międzynarodowy. Parametry zmiany* [International order. Parameters of change], “Sprawy Międzynarodowe” 2014, vol. 67, no. 4, p. 47.

<sup>22</sup> *Ibid.*, p. 46.

<sup>23</sup> See R. Zięba, *Międzynarodowe implikacje kryzysu ukraińskiego* [International implications of the Ukrainian crisis], “Stosunki Międzynarodowe – International Relations” 2014, vol. 50, no. 2, p. 15.

the regime defined by the 1968 Treaty on the Non-Proliferation of Nuclear Weapons; NPT) and frustrates the efforts aimed at stopping the proliferation of weapons of mass destruction, harms the economy of Russia as an important actor in international relations, and postpones the potential integration of European Russia, also hindering the fulfilment of the concept of Wider Europe and the area of free trade and security from Lisbon to Vladivostok<sup>24</sup>.

The Ukrainian aspirations to join the EU and NATO are ambitious and require decisive reform and effort, both on the part of Ukraine and the member states of these organisations. At the moment, the perspectives of Ukraine for membership in the EU and NATO are uncertain due to the ongoing conflict in the eastern and southern regions of the country, particularly as, as of the time of writing this article, the war is still not over and its outcome is impossible to predict. Furthermore, there is a difference of opinion in the EU and NATO regarding the Ukrainian aspirations, both at the national and international levels. Some member states fear that the membership of Ukraine could exacerbate the tensions with Russia, hindering the achievement of stability in the region.

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<sup>24</sup> A. Umland, *The Global Impact of the "Ukraine Crisis": Russia's Decline and Euro-Asiatic Security in the Early 21st Century*, "Krytyka Magazine", June 2015, <http://krytyka.com/en/articles/global-impact-ukraine-crisis-russias-decline-and-euro-asiatic-security-early-21st-century#sthash.ufE1B3S9.dpuf>.

To summarise this topic, it should be emphasised that the aspirations of Ukraine to membership in the European Union and NATO are undoubtedly a key aspect of its foreign policy. However, this process presents Ukraine with significant challenges, including political, economic, and security aspects. The path to becoming a member of these organisations is a difficult one, but it may well improve the stability and security of Ukraine and the entire Eastern European region.

## **7. The aggression of Russia towards Ukraine shows the attitude of the Kremlin towards international law**

The attitude of Russia towards international law referred to above – resulting from the geopolitical ambitions of the Russian Federation – is still rooted in the long-standing attitude of the Kremlin to the external world, manifesting already in the times of the Tzar and evolving further in the era of the Soviet Union. An Estonian researcher, Lauri Mälksoo, emphasises that this is a result of the long-standing discourse regarding the affinity of Russia in terms of culture and identity – potentially as a “normal” European state or, on the other pole, as a representative of the Eurasian/Pan-Slavic world (based on the concept of Moscow as the “third Rome”) or even a separate “planet” on the orbit of the international

law order (a manifestation of Russian nativism)<sup>25</sup>. The final triumph of nativism and Eurasianism thus represented a full acceptance of the expansionist policy of the Moscow state and then Imperial Russia as well as the implementation of messianic ideas. This was addressed in the writings of the influential Soviet jurist, Fyodor Kozhevnikov, who stated that the annexation of Dorpat and Narva during the first Livonian War by Imperial Russia in 1558 was an example of a “just war” because Tsar Ivan IV the Terrible only wanted to gather together “historic Russian/Ruthenian land”<sup>26</sup>. This rhetoric persists in the Russian Federation of today. Moscow still regards its military interventions in the discussed area as “just wars”, i.e., essentially “defensive wars” (which – as the exercise of the immanent right to self-defence vested with each state – are not prohibited by international law). This term includes both the Russo-Georgian war of 2008 (understood as the “defence of the residents of South Ossetia against the nationalist Georgia led by Mikheil Saakashvili”) and the aggression against Ukraine started in 2014, justified by the need to “protect the Russian-speaking population against a fascist junta that came to power as a result of the Maidan *coup d'état*”. On 24 February 2022, the conflict evolved into a full-scale invasion allegedly intended to “protect the

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<sup>25</sup> L. Mälksoo, *O osobliwościach rosyjskiego stosunku do prawa międzynarodowego* [On the peculiarities of the Russian attitude to international law], Warsaw 2022, p. 94 et seq.

<sup>26</sup> *Ibid.*, p. 96.

Russian-speaking population against genocide at the hands of Ukrainian Nazis”.

Importantly, Russian policy often refers to terms originating from the Western doctrine and practice of international law such as humanitarian intervention or the concept of the responsibility to protect, but it does so more in the rhetorical layer rather than actually using the instruments of international law. This was particularly noticeable in the attempts to justify the “need” for Russia to enter Crimea and Donbas in 2014 to “protect the Russian and Russian-speaking population” against the most severe crimes under the international law “committed” by the authorities in Kyiv<sup>27</sup> and begin a “special military operation” on 24 February 2022<sup>28</sup>. The narrative of the Kremlin, compounded with the efforts made in connection with the “special military operation” concerning the “genocide of the Donbas population by the fascist junta in Kyiv”, was, on the one hand, supported by the initiation of national criminal proceedings by the Investigative Committee of the Russian Federation in the relevant case as

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<sup>27</sup> Cf. V. Bílková, *The use of force by the Russian Federation in Crimea*, “Heidelberg Journal of International Law” 2015, vol. 75, p. 49; M. Kersten, *Does Russia have a “responsibility to protect” Ukraine? Don’t buy it*, The Globe and Mail, 4 March 2014, <https://www.theglobeandmail.com/opinion/does-russia-have-a-responsibility-to-protect-ukraine-dont-buy-it/article17271450/>.

<sup>28</sup> P. Grzebyk, *“Specjalna operacja wojskowa” Rosji w Ukrainie – indywidualna odpowiedzialność za zbrodnie agresji i zbrodnie wojenne* [The special military operation of Russia in Ukraine – Individual responsibility for the crimes of aggression and war crimes], “Państwo i Prawo” 2022, no. 9, pp. 56-76.

early as 2014 but, on the other hand, did not result in Russia lodging a case with the International Court of Justice (ICJ) in The Hague against Ukraine under the UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (hereinafter referred to as the Genocide Convention), to which both states are a party. The only example of the use of legal instruments by Moscow that is worthy of mention was the inter-state complaint against Ukraine filed on 22 July 2021 with the European Court of Human Rights (ECHR) regarding a potential violation of various human rights of the Russian-speaking population in Crimea and Donbas by the Ukrainian authorities. However, the complaint was deleted from the list of cases by ECHR on 18 July 2023, which means that its content was not considered<sup>29</sup>. The general unwillingness of the Kremlin to use international law mechanisms may lead to two different conclusions. Firstly, the image of

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<sup>29</sup> In the opinion of the ECHR, there were two reasons why the Russian Federation did not intend to fully support its complaint before the Court. Firstly, although in April 2022, Russia presented more than 2000 collections of documents to confirm the administrative practices of Ukraine violating the right to life, freedom from torture, the right to liberty and personal safety, the right to privacy and family life, or the prohibition of discrimination guaranteed by the European Convention on Human Rights, it did not reply to the request of the Court to provide their translation and did not reply to the enquiry regarding the wish to reaffirm its complaint. Secondly, as a result of the decision of the Committee of Ministers of the Council of Europe (CE), on 16 March 2022, the Russian Federation was excluded from the CE and was no longer subject to the jurisdiction of the ECHR as of 16 September 2022, which required the Kremlin to unequivocally declare if it wished to reaffirm its previous claim. See the Decision of the ECHR of 4 July 2023 on the case of *Russia v. Ukraine*, application no. 36958/21.

the “genocide of the Donbas population by Ukrainian Nazis” promoted by the Kremlin was actually false or, secondly, the constant references to terms of international law by the Russian leaders are only a part of the broader policy of Moscow regarding the external world (particularly the West, for which international law is the natural language) instead of a genuine belief in the significance of international law mechanisms. After all, the Kremlin has long been using the tactic of “symmetrical response” to the countries of the Western world, accusing them of “being the first” to violate international law (e.g., due to the humanitarian intervention of NATO in Kosovo in 1999 or the US invasion of Iraq in 2003 as well as the activity of the International Criminal Court (ICC) in The Hague regarding the situation of Ukraine) and Russia only “responding” – which can sometimes also be legally “controversial” – e.g., by assisting the exercise of the “right to self-determination” of the so-called “Republic of Crimea” in 2014<sup>30</sup>. This process also manifests in the criminal proceedings conducted by the Russian Investigative Committee against the President of the ICC, Piotr Hofmański, the prosecutor of the ICC, Karim A.A. Khan, and the ICC judg-

<sup>30</sup> T. Lachowski, *Ludobójstwo w służbie imperium — podglebie ideowo-prawne i zbrodnicza praktyka Kremla. Rozważania na kanwie książki autorstwa Lauriego Mälksoo pt.: O osobliwościach rosyjskiego stosunku do prawa międzynarodowego* [Genocide in the service of the empire – The ideological and legal foundation and criminal practice of the Kremlin. Discussion inspired by the book by Lauri Mälksoo titled: “On the peculiarities of the Russian attitude to international law], “Sensus Historiae” 2022, vol. 48, no. 3, pp. 89-90.



es who issued a warrant on 17 March 2023 for the arrest of Vladimir Putin and Maria Lvova-Belova. Also, appropriate investigations have also been initiated against the judges of the Constitutional Court of Ukraine who, in 2014, declared the so-called referendum in Crimea on 16 March 2014 unconstitutional under the Ukrainian constitution – which is also interesting in the context of the historic policy of Russia pursued in “its natural sphere of influence” – and judges of Lithuanian courts who, in their judgements of 2019 and 2021, convicted the perpetrators of the massacre under the TV tower in Vilnius in January 1991 (including the former USSR Minister of Defence, Dmitry Yazov) for crimes against humanity and war crimes. In all the cases indicated above, the use of international law instruments by international bodies (ICC) or national bodies (Ukrainian and Lithuanian courts) is regarded by the Kremlin as completely “erroneous” and essentially “politicised” (i.e., “hostile”), “forcing Russia to respond” using the instruments of Russian national law<sup>31</sup>.

It should be emphasised that in the legal (*ius ad bellum* regime) and actual sense, the first part of the Russian aggression was the separation of Crimea from Ukraine and its subsequent illegal occupation by the Russian Federation at

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<sup>31</sup> Cf. O. Nykorak, *The Empire strikes back: Russian mirroring countermeasures in the legal domain*, Lithuania Tribune, 14 September 2023, <https://lithuaniatribune.com/the-empire-strikes-back-russian-mirroring-countermeasures-in-the-legal-domain/>.

the end of February 2014<sup>32</sup> as well as the starting of war in the east of Ukraine by Moscow (also) with the involvement of pro-Russian fighters who created illegal territorial regimes supported by the Kremlin in Ukraine, i.e., the so-called Donetsk (DPR) and Luhansk People's Republic (LPR)<sup>33</sup>. Russia's behaviour violated Article 2(4) of the UN Charter (UNC) stipulating a prohibition on the use of force or a threat to use force in international relations, and it did so in its qualified form, i.e., an act of aggression according to the provisions of the Resolution of the General Assembly (GA) of the UN No. 3314 (XXIX) of 14 December 1974<sup>34</sup>. Also, the annexation of Crimea and the creation of the so-called DPR and LPR in the east of Ukraine were examples of the simultaneous violation of other cardinal rules of international law reflected in the UNC, i.e., the principle of sovereignty and territorial

<sup>32</sup> The Office of the ICC Prosecutor indicated the date of 26 February 2014 as the date when the Russian forces – although bearing no visible national insignia – gained effective control over the city of Sevastopol in Crimea. See The Office of the Prosecutor of the International Criminal Court, *Report on preliminary examination activities 2018*, 5 December 2018, <https://www.icc-cpi.int/ItemsDocuments/181205-rep-otp-PE-ENG.pdf>.

<sup>33</sup> P. Grzebyk, *Aneksja Krymu przez Rosję w świetle prawa międzynarodowego* [Annexation of Crimea by Russia in the context of international law], "Sprawy Międzynarodowe" 2014, no. 1, p. 20; O. Merezko, *International legal aspects of Russia's war against Ukraine in Eastern Ukraine*, [in:] *The use of force against Ukraine and international law. Jus ad bellum, jus in bello, jus post bellum*, S. Sayapin, E. Tsybulenko (eds.), T.M.C. Asser Press/Springer, 2018, pp. 111-121.

<sup>34</sup> However, it should be noted that resolutions of the UN General Assembly are not legally binding, but they may – as was the case here – reflect a fully binding customary law.

integrity and the principle of non-interference in domestic affairs of a particular state. Moreover, there are examples of bilateral agreements – such as the Treaty on Friendship, Cooperation, and Partnership of 1997 (renewed in 2008) or the agreements of 1997 and 2010 confirming the legality of the presence of the Russian Black Sea Fleet on the Crimean Peninsula – and political agreements, e.g., the Budapest Memorandum of 1994, also violated by Russia. Despite the limited response of the Western world (not to mention other parts of the globe) to the actions of Russia against Ukraine in 2014, there were many international organisations that referred to the behaviour of the Russian Federation as an aggression even then, e.g., the Parliamentary Assembly of the OSCE in resolutions of 2014 and 2015; the Parliamentary Assembly of the Council of Europe in the resolution of 2016 or the declaration of the EU of 2016<sup>35</sup>. The UN, in turn, only reacted more decisively after the so-called Kerch Strait incident of 25 November 2018, when Russian vessels openly attacked vessels of the Ukrainian navy – in Resolution No. 73/193 of 5 December 2018 of the General Assembly of the UN, Russia was referred to as the occupying power of a part of the Ukrainian territory<sup>36</sup>.

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<sup>35</sup> See S. Sayapin, *The end of Russia's hybrid war against Ukraine?*, *Opinio Juris*, 4 January 2019, <http://opiniojuris.org/2019/01/04/the-end-of-russiashybrid-war-against-ukraine/>.

<sup>36</sup> As a matter of fact, it should be noted that the UN General Assembly called upon Russia already in its resolution No. 68/262 of 27 March 2014 to respect the sover-

As a consequence of the Russian invasion of Ukraine on 26 February 2014, Russia and Ukraine became engaged in an international armed conflict – irrespective of the absence of a formal declaration of war between the sides of the conflict – within the meaning of the international humanitarian law, which continues to date (*ius in bello* regime). This was also confirmed by the Office of the ICC Prosecutor in its report of 2016, particularly in the context of the situation on the Crimean Peninsula after its occupation by Russia – a parallel non-international and international armed conflict was recognised in Donbas (according to the findings of the Office of the ICC Prosecutor – since 17 July 2014) if the operations directly involved the Russian army or the pro-Russian fighters remained under the effective control of the Russian Federation<sup>37</sup>. This is an important observation because, in the period between 2014 and 24 February 2022, Russia tried to impose the narrative of an exclusively internal (non-international) armed conflict on the Ukrainian territory, which was one of the many instruments of hybrid war waged by the Russian Federation not just against the Ukrainian state but also against the western world<sup>38</sup>. The statement of the

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eignty and territorial integrity of Ukraine and its internationally recognised borders.

<sup>37</sup> The Office of the Prosecutor of the International Criminal Court, *Report on preliminary examination activities (2016)*, 14 November 2016, p. 35, [www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE\\_ENG.pdf](http://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE_ENG.pdf).

<sup>38</sup> Cf. *Wojna hybrydowa Rosji przeciwko Ukrainie...*; Є. Магда, *Гібридна агресія Росії: уроки для Європи*, Каламар, Київ 2017.

Office of the ICC Prosecutor was a blow to the (mis)information policy of the Kremlin promoting the image of a Ukrainian civil war, even causing Vladimir Putin to notify that the Russian state did not intend to ratify the Rome Statute of the ICC anymore, claiming that it was a “pro-western” and “politicised” court<sup>39</sup>.

Russia's military operation, waged after 24 February 2022 in Ukraine, referred to as a full-scale invasion, is essentially the next act of the same aggression that took place at the end of February 2014 in the context of international law. As rightly indicated by Patrycja Grzebyk, the Russian actions that resulted in the annexation and occupation of a part of the Ukrainian territory such as the bombarding of the entire territory of Ukraine, the blockade of ports and the Ukrainian coast, the attacks on all kinds of armed forces in Ukraine, and sending armed groups and mercenaries on Russia's behalf (e.g., the “military” of the so-called DPR and LPR) met the criteria for aggression as defined in UN General Assembly resolution No. 3314 (XXIX), constituting a severe breach of Article 2(4) of the UNC. It should be noted that the conduct of Belarus, which permitted Russia to enter its ter-

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<sup>39</sup> In 2000, President Putin signed the Rome Statute of the ICC. The decision of 2016, in turn, is sometimes referred to as the “withdrawal of the signature” by the Russian head of state, which is inaccurate from the formal perspective. See S. Sayapin, *Russia's withdrawal of signature from the Rome Statute would not shield its nationals from potential prosecution at the ICC*, EJIL: Talk!, 21 November 2016, [www.ejiltalk.org/russias-withdrawal-of-signature-from-the-rome-statute-would-not-shield-its-nationals-from-potential-prosecution-at-the-icc/](http://www.ejiltalk.org/russias-withdrawal-of-signature-from-the-rome-statute-would-not-shield-its-nationals-from-potential-prosecution-at-the-icc/).

ritory to invade Ukraine (particularly the northern oblasts, including Kyiv itself), should also be referred to as aggression<sup>40</sup>. In resolution No. A/ES-11/1 of 2 March 2022 adopted by the UN General Assembly as part of the “Uniting for Peace” formula, the conduct of Russia and Belarus was defined as an act of aggression and a violation of the most fundamental rules of the international law order<sup>41</sup>. Russia's attempt to provide a legal justification for its actions, i.e., the reference to Article 51 of the UNC; aid in the exercise of the right of self-defence of two self-proclaimed republics in Donbas (so-called DPR and LPR) recognised by the Russian Federation, which took place on 21 February 2022, however, has no basis in international law, which prohibits the recognition of unlawful situations<sup>42</sup>. It should be noted that the formation of the so-called DPR and LPR in 2014 took place following the first phase of the Russian aggression, preventing them from being legally recognised by the international community, which means that the “request” for military aid to Russia to exercise “their” “right to self-defence” is legally invalid.

<sup>40</sup> P. Grzebyk, *“Specjalna operacja wojskowa” Rosji w Ukrainie...*, p. 58.

<sup>41</sup> It should be highlighted that during the vote on this resolution, 141 states voted in favour, 35 abstained from voting and only 5 states (including Russia and Belarus) were against. 12 states did not take part in the voting at the UN General Assembly.

<sup>42</sup> Cf. M. Dawidowicz, *The obligation of non-recognition of an unlawful situation*, [in:] *The law of international responsibility*, J. Crawford, A. Pellet, S. Olleson (eds.), Oxford University Press, Oxford 2010, pp. 676-686.

## **8. Genocide as an instrument used by the Kremlin to preserve its empire – history and modern times**

As a result of their aggression, Russia and its representatives committed many crimes in the territory of Ukraine that could be referred to as international crimes (these crimes are still taking place at the time this paper is being prepared). In this context, reference should be made, for instance, to the findings of the international commission of inquiry appointed upon the initiative of the UN Human Rights Council, which, in its reports of 15 March 2023 and 19 October 2023, pointed out many violations of international humanitarian law and human rights by Russia during the military operations in Ukraine – which could be qualified as cases of war crimes or crimes against humanity<sup>43</sup>. The key question, however, concerns the “crime above all crimes” – can the criminal conduct of Russia and its representatives towards the Ukrainian nation be classified as the crime of genocide? The answer to this question, it would seem, also depends on the attitude of the Kremlin towards international law (both historically and in contemporary times) and the geopolitical ef-

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<sup>43</sup> *Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/52/62*, 15 March 2023, [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A\\_HRC\\_52\\_62\\_AUV\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf); *Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/78/540*, 19 October 2023, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A-78-540-AEV.pdf>.

forts of the Russian Federation – which were analysed above in this paper – particularly in its immediate surroundings.

That is because Russia defines itself as an “imperial subject under international law” and, according to Moscow, only such entities can be fully sovereign and capable of acting freely on the international scene (similarly to – according to the Kremlin – the USA and China)<sup>44</sup>. Small and medium states, in turn, are forced to only be a part of the “natural sphere of influence”, and if they sometimes “revolt”, they should be “punished”. This was particularly noticeable during the rule of Joseph Stalin, when, despite the formal federalisation of the Soviet Union, the individual republics were regarded as internal colonies of Moscow. According to some researchers, this was one of the key factors behind the genocidal policy in the times of Stalin<sup>45</sup>, which, when combined with the personal distrust or even hatred of Joseph Vissarionovich Stalin towards the individual ethnic groups in the USSR, such as Ukrainians and Poles, led to mass crimes<sup>46</sup>. The

<sup>44</sup> L. Mälksoo, *O osobliwościach...*, pp. 301-302.

<sup>45</sup> Cf. N. Iwanow, *Zapomniane ludobójstwo. Polacy w państwie Stalina – „Operacja Polska” 1937-1938* [Forgotten genocide. Poles in Stalin's state – “Polish Operation” 1937-1938], Wydawnictwo Znak, 2014, pp. 448-449; G. Pobereżny, *Totalitarno-kolonialny wymiar sowieckiego ludobójstwa narodu ukraińskiego w świetle myśli Rafała Lemkina. Analiza politologiczna* [Totalitarian-colonial dimension of the Soviet genocide of the Ukrainian nation in the context of the philosophy of Rafał Lemkin. Politological analysis], *Władza Sądzenia* 2021, no. 20, pp. 58-59.

<sup>46</sup> Cf. N. M. Naimark, *Stalin's genocides*, Princeton University Press, 2010, pp. 132-135.



Great Famine (Holodomor) in Soviet Ukraine in 1932-1933<sup>47</sup> or the so-called “Polish operation” of the NKVD of 1937-1938<sup>48</sup> are increasingly often regarded as incidents of intentional genocide although, strictly speaking, only 34 countries (plus the Holy See) currently recognise the Holodomor as genocide<sup>49</sup>.

A very similar assessment of the Soviet policy towards the Ukrainian nation was presented by Raphael Lemkin, a Polish lawyer of Jewish origin and the founder of the term “genocide” in international law<sup>50</sup>. Lemkin understood genocide as an imperial-totalitarian crime (or an imperial-colonial crime)<sup>51</sup>, discussing this in his book titled *Axis Rule in occupied Europe* (1944). The crime was defined as a coordinated plan of different actions aimed at annihilating a specific national or ethnic group “as such” with the objective of the “disintegration of the political and social institutions, of

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<sup>47</sup> See M. Antonovych, *Legal accountability for the Holodomor-Genocide of 1932-1933 (Great Famine) in Ukraine*, “Kyiv-Mohyla Law and Politics Journal” 2015, no. 1, pp. 159-176.

<sup>48</sup> Cf. 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.

<sup>49</sup> On the other hand, however, after 24 February 2022, Holodomor was recognised as genocide by additional 17 countries, which may prove that a parallel was observed between the historical crimes of the Kremlin and its contemporary crimes committed in Ukraine.

<sup>50</sup> R. Lemkin, *Axis Rule in occupied Europe: Laws of occupation, analysis of government, proposals for redress*, Carnegie Endowment for World Peace, 1944, p. 79.

<sup>51</sup> A. Dirk Moses, *Raphael Lemkin, culture, and the concept of genocide*, [in:] *The Oxford handbook of genocide studies*, D. Bloxham, A. Dirk Moses (eds.), Oxford University Press, 2010, pp. 25-26.

culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups”<sup>52</sup>. Lemkin also emphasised that “[G]enocide has two phases: one, the destruction of the national pattern of the oppressed group, the other, the imposition of the national pattern of the oppressor”<sup>53</sup>. In accordance with this view, Lemkin formulated his New York address in 1953, delivered on the 20th anniversary of the Great Famine, where he defined the Soviet repressions of the Ukrainians starting from the second half of the 1920s through the 1930s as “perhaps the classic example of Soviet genocide, its longest and broadest experiment in Russification – the destruction of the Ukrainian nation” (to implement the idea of *homo sovieticus*)<sup>54</sup>. According to Lemkin, the process was implemented in four steps. Firstly, by destroying the Ukrainian intelligentsia (“the brain of the nation”). Secondly, by destroying the Ukrainian Autocephalous Orthodox Church (“the soul of the nation”). Thirdly, by starving the peasants to death (“the body of the nation”). Finally, the imperial element of the Soviet activities was for the Kremlin to settle the east and south of Ukraine, i.e., the

<sup>52</sup> R. Lemkin, *Axis Rule...*, p. 79.

<sup>53</sup> *Ibid.*, p. 79.

<sup>54</sup> R. Lemkin, *Sowieckie ludobójstwo w Ukrainie* [Soviet genocide in Ukraine], [in:] Рафаель Лемкін: Радянський геноцид в Україні. Стаття 28 мовами, Р. Сербин (ed.), Майстерня книги, Київ 2009, p. 160.

areas that suffered the most as a result of the Holocaust, with other nationalities, including ethnic Russians<sup>55</sup>.

It should be noted that Lemkin formulated these ideas after the entry into force of the Genocide Convention of 1948, which took place in 1951. Also, the Convention included a much narrower definition of genocide than the original understanding of Lemkin. As a result of the negotiating position of the USSR, it was decided that the treaty would not protect political and social groups, and, as a result of the stance of the Western colonial powers and the USA, the definition excluded the cultural genocide that was so important to the Polish lawyer<sup>56</sup> – focusing only on cases of physical or biological genocide committed on one of the four protected groups (national group, ethnic group, racial group, or religious group) with the intent to destroy it as such in whole or in part<sup>57</sup>. However, it would be difficult to assume that at the time of his address in 1953, Lemkin ignored the Genocide Convention that was already in effect. It was most likely

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<sup>55</sup> Ibid., pp. 161-163.

<sup>56</sup> A. Weiss-Wendt, *The Soviet Union and the gutting of the UN Genocide Convention*, University of Wisconsin Press, 2017, p. 81-96.

<sup>57</sup> In Article II of the 1948 Convention, the crime of genocide was defined as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group".

a way of demonstrating that – although only retrospectively – the Soviet policy towards the Ukrainian national group (and not the so-called political group, i.e., the kulaks, as emphasised by the Kremlin propaganda) was genocidal in the context of the 1948 Convention because it was implemented to destroy the Ukrainian nation. To Lemkin, instances of political or cultural genocide were only complementary to the genocidal intentions of Moscow.

It should be noted that today's genocidal policy of Moscow towards Ukraine is perceived similarly by Timothy Snyder<sup>58</sup>. The American researcher indicates that the Russian leaders, led by Vladimir Putin, systematically refuse Ukraine the right to sovereignty and independent existence, and refer to the Ukrainian nation as "artificial". In this context, the ongoing "special military operation" is intended to serve as "just punishment" for Ukraine for its "sins", i.e., primarily the rejection of the idea of *Russkiy mir*. As was mentioned above, the Convention on the Prevention and Punishment of Genocide of 1948 that is currently in force requires proving a special intent (*dolus specialis*) of destroying one of the four groups protected in whole or in part "as such", which can be reconstructed from the public speeches of Putin<sup>59</sup>,

<sup>58</sup> T. Snyder, *Russia intends to commit genocide in Ukraine, six ways to prove it*, European Pravda, 23 October 2022, <https://www.eurointegration.com.ua/eng/articles/2022/10/23/7149219/>.

<sup>59</sup> V. Putin, *Address by the President of the Russian Federation*, Kremlin.ru, 21 February 2022, <http://en.kremlin.ru/events/president/news/67828>.

Dmitry Medvedev (the former President of the Russian Federation, presently the deputy chairman of the Russian Security Council)<sup>60</sup>, or Russian propaganda officers<sup>61</sup>, who deliberately dehumanise the representatives of the Ukrainian nation, referring to them as “nazis”, “servants of Satan”, or “drug addicts”, calling upon their complete eradication<sup>62</sup>. The propagandist “denazification” should, therefore, be regarded as the desire to “de-Ukrainise” Ukraine. Despite the fact that the final definition of genocide in the 1948 Convention did not include political and cultural genocide, which was particularly noticeable in the parts of Ukraine temporarily occupied by Russia, the attack on Ukrainian culture and identity – such as the destruction of Ukrainian Orthodox churches, libraries, museums, or the replacement of the Ukrainian curriculum in schools with a Russian equivalent – can be perceived as further evidence of the genocidal intent of the Kremlin. This has also been confirmed by the

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<sup>60</sup> Дмитрий Медведев написал статью, разоблачающую “глубинное украинство”, Новые Известия, 5 April 2022, <https://newizv.ru/news/politics/05-04-2022/dmitriy-medvedev-napisal-statyu-razoblachayuschuyu-glubinnoe-ukrainstvo>.

<sup>61</sup> Т. Сергейцев, *Что Россия должна сделать с Украиной*, РИА Новости, 3 April 2022, <https://web.archive.org/web/20220403212023/https://ria.ru/20220403/ukraina-1781469605.html>.

<sup>62</sup> Cf. D. Irvin-Erickson, *Is Russia committing genocide in Ukraine?*, Opinio Juris, 21 April 2022, <https://opiniojuris.org/2022/04/21/is-russia-committing-genocide-in-ukraine/>.

rulings of international tribunals<sup>63</sup> and the views of legal commentators and experts<sup>64</sup>, also in reference to specific Russian crimes committed in Ukraine<sup>65</sup>.

Genocide itself, in turn, manifests in the criminal killing of Ukrainians only because they identify as Ukrainian and not representatives of the “Russian world” (as was the case in Bucha, Izium, or Mariupol), mutilation, also in the mental sense (e.g., through mass rapes or confinement in special isolation camps/areas, often combined with torture), and forcible transfer of Ukrainian children to Russia to raise them in the spirit of Russian imperialism. These are examples of physical and biological genocide that are recognised by international law under the Genocide Convention of 1948 as well as customary law. The above-mentioned decision of the ICC of 17 March 2023 regarding the issue of a warrant

<sup>63</sup> Cf. judgement of the ICJ in the case of *Bosnia and Herzegovina v. Serbia*, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (Judgment)*, ICJ Reports 2007, par. 344.

<sup>64</sup> See W. Schabas, *Genocide in international law. The crime of crimes*, Cambridge University Press, 2009, p. 267.

<sup>65</sup> M. Shaw, *Russia's genocidal war in Ukraine: Radicalization and social destruction*, “Journal of Genocide Research” 2023, DOI: 10.1080/14623528.2023.2185372; The New Lines Institute and Raoul Wallenberg Centre, *An independent legal analysis of the Russian Federation's breaches of the Genocide Convention in Ukraine and the duty to prevent*, May 2022, <https://newlinesinstitute.org/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent>, and *The Russian Federation's escalating commission of genocide in Ukraine: A Legal Analysis*, July 2023, <https://newlinesinstitute.org/rules-based-international-order/genocide/the-russian-federations-escalating-commission-of-genocide-in-ukraine-a-legal-analysis/>.

of arrest for President Putin, among others, for the establishment of a system of theft of Ukrainian children shows that the highest official in the Kremlin is the source of the criminal policy against Ukrainians<sup>66</sup>. It is true that, for the time being, the actions of the ruling Russian President are classified in the arrest warrant as an example of a war crime, but this may change if additional evidence is collected to support the allegation of genocide (or – crimes against humanity) because “forcibly transferring children of the group to another group” is one of the examples of genocide in the 1948 Convention<sup>67</sup>.

Still, it should be noted that not all researchers agree with the claim that the Russian state and its representatives are committing genocide on the Ukrainian nation. The counter-argument is based on the assumption that it is still impossible – particularly in the context of the accountability of the individuals under criminal law – to rule out a non-genocidal intent behind the crimes committed against the Ukrainian nation by Russia. That is why specific

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<sup>66</sup> See T. Lachowski, *Czy Władimir Putin trafi do Hagi? O prawno-politycznych konsekwencjach nakazów aresztowania wydanych przez Międzynarodowy Trybunał Karny* [Will Vladimir Putin be sent to the Hague? On the legal and political consequences of the arrest warrants issued by the International Criminal Court], “Komentarze IeŚ” 2023, no. 819, <https://ies.lublin.pl/komentarze/czy-wladimir-putin-trafi-do-hagi-o-prawno-politycznych-konsekwencjach-nakazow-aresztowania-wydanych-przez-miedzynarodowy-trybunal-karny/>.

<sup>67</sup> Cf. Y. Ioffe, *Forcibly transferring Ukrainian children to the Russian Federation: A genocide?*, “Journal of Genocide Research” 2023, DOI: 10.1080/14623528.2023.2228085.

instances of crimes could be qualified as “only” war crimes or crimes against humanity, not genocide<sup>68</sup>. However, it seems that the most atrocious international crimes of Russia in Ukraine should not be regarded as randomly occurring as they manifest the genocidal intent to destroy the Ukrainian nation and the geopolitical plan of the Kremlin to win Ukraine back for the “Russian sphere of influence”. The example of the Russian crimes concerning Ukrainian children – forcibly integrated into Russian society and raised in the spirit of the extremely anti-Ukrainian and anti-Western Russian imperialism and the ideology of *Russkiy mir* – is a clear confirmation of this<sup>69</sup>. It is also a kind of parallel to the criminal policy of the Soviet Union towards Ukrainians, which was conducted at that time as part of the imperial ideology of *homo sovieticus*. Now, the Ukrainian nation is once again a victim of similar practices, i.e., killings, tortures, or deportations as well as the settlement of a part of Ukrainian territory temporarily occupied by Russia with Russian nationals, i.e., coordinated efforts to destroy the Ukrainian nation<sup>70</sup>. Still, the question of whether this is how the Rus-

<sup>68</sup> See W. Schabas, *Genocide and Ukraine: Do words mean what we choose them to mean?*, “Journal of International Criminal Justice” 2022, vol. 20, issue 4, p. 843.

<sup>69</sup> Cf. I. Garner, *Z Generation: Into the heart of Russia's fascist youth*, C Hurst & Co Publishers Ltd, 2023.

<sup>70</sup> D. Azarov et al., *Understanding Russia's actions in Ukraine as the crime of genocide*, “Journal of International Criminal Justice” 2023, <https://doi.org/10.1093/jicj/mqado18>.



sian crimes against the Ukrainians will be classified by the ICC in The Hague remains open.

## **9. The Ukrainian use of international law instruments to oppose the Russian aggression and its consequences – legal and political aspects**

Unlike the Russian Federation, Ukraine – since the first weeks of the Russian invasion in 2014 – has been using the broadest possible spectrum of international law instruments to counteract the consequences of the Russian aggression, including appeals to the most important international courts such as the International Court of Justice (ICJ), European Court of Human Rights (ECHR), International Criminal Court (ICC), International Tribunal for the Law of the Sea (ITLOS), and arbitration tribunals and courts<sup>71</sup>. It should be emphasised that this had both a strictly regulatory aspect, to protect the Ukrainian rights and interests in the strictly legal sense, and a political aspect, to help enforce a specific pro-Ukrainian narrative regarding the Russo-Ukrainian conflict in the eyes of the international community, particularly among the western countries. In other words, Ukraine was looking for confirmation in international courts that the

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<sup>71</sup> Due to the limited scope of this paper, only the most important actions of the ICJ, ECHR, and ICC in the context of Ukraine will be discussed.

conflict going on in 2014-2022 in its territory was of an international nature (and not, as presented by the rhetoric of the Kremlin, a civil war) and resulted from the Russian aggression. After 24 February 2022, in turn, relevant decisions/judgements of international courts finding that the actions of Russia in Ukraine were illegal and criminal became an additional argument for Kyiv in its attempts to convince international partners of the need to continue wide-scale military, political, and economic aid.

The decision of the ECHR of 16 December 2020 concerning the events in Crimea in response to the inter-state complaint of Ukraine against Russia was particularly relevant to both of these aspects<sup>72</sup>. Partially admitting the Ukrainian complaint, the ECHR found that the Russian Federation has exercised effective control of the Crimean Peninsula since 27 February 2014, i.e., even before 18 March 2014, the date of the illegal incorporation of Crimea into Russia (after that date, the Kremlin did not dispute its authority of the Peninsula during the proceedings). As a result of the confirmation of the Russian jurisdiction over Crimea, the ECHR stated that the Russian Federation conducted administrative practices that violated the human rights of the residents of the Crimean Peninsula. Due to the nature of human rights proceedings, the ECHR avoided answering

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<sup>72</sup> Decision of the ECHR of 16 December 2020 in the case *Ukraine v. Russia (re Crimea)*, applications no. 20958/14 and no. 38334/18.

the question of the sovereignty of one or the other state over Crimea<sup>73</sup>, however, it should also be noted that there is no other way of viewing the conduct of Russia manifesting in the effective control of the Crimean Peninsula since the end of February 2014 than as resulting from the act of aggression and violation of the sovereignty and territorial integrity of the Ukrainian state. Consequently, the decision of the ECHR destroys the myth promoted by the Kremlin, claiming that Russia was aiding the “population of Crimea” who wanted to exercise its right to self-determination via the so-called referendum of 16 March 2014 and the subsequent “request” to incorporate the “independent” “Republic of Crimea” into the Russian Federation. The decision of the ECHR of 16 December 2020 also affects other ongoing proceedings before the Court in Strasbourg by indicating that Russia had jurisdiction over the events taking place in the territory of Ukraine, affecting both inter-state complaints<sup>74</sup> and individual complaints<sup>75</sup>, which, despite the exclusion of Russia from the Council of Europe, can still be heard because they were registered before the expiry of Russia’s obliga-

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<sup>73</sup> Cf. M. Milanovic, *ECtHR Grand Chamber declares admissible the Case of Ukraine v. Russia re Crimea*, EJIL: Talk!, 15 January 2021, <https://www.ejiltalk.org/ecthr-grand-chamber-declares-admissible-the-case-of-ukraine-v-russia-re-crimea/>.

<sup>74</sup> See Decision of the ECHR of 25 January 2023 in the case *Ukraine and the Netherlands v. Russia*, applications no. 8019/16, no. 43800/14 and no. 28525/20.

<sup>75</sup> At the time of preparation of this paper, the ECHR has recorded more than 8500 individual complaints against Russia in connection with the events in Ukraine (some of the complaints are also addressed against Ukraine).

tions under the European Convention on Human Rights, i.e., 16 September 2022.

Ukraine is also trying to defend its rights before the ICJ. In 2017, Ukraine sued Russia in the context of the events in Crimea and Donbas under two conventions to which the two countries were parties, also agreeing to the jurisdiction of the Court – the Convention on the Elimination of All Forms of Racial Discrimination of 1966 and the Convention for the Suppression of the Financing of Terrorism of 1999. In 2019, the ICJ decided that it had jurisdiction over the case and was competent to hear it<sup>76</sup>. In response to the full-scale invasion of 24 February 2022, which the Kremlin claimed was due to the “need” to “protect the civil population of Donbas” against “genocide at the hands of the Ukrainian state”, Ukraine sued Russia before the ICJ under the Genocide Convention. In an order of 16 March 2022, the ICJ found that it had *prima facie* jurisdiction in the case and the Genocide Convention itself did not permit a unilateral military operation<sup>77</sup>, which also demolished the pseudo-legal Russian argument claiming that its actions were lawful because they were a “human-

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<sup>76</sup> The International Court of Justice (ICJ), *Judgment on the 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)*, 8 November 2019.

<sup>77</sup> See Order of the ICJ of 16 March 2022 on the provisional measures in the proceedings concerning the allegations of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russia).

itarian intervention” or an implementation of the concept of “responsibility to protect (R2P)”.

Another very important factor is the involvement of the ICC in the Ukrainian situation<sup>78</sup>. Interestingly, Ukraine is still not a party to the Rome Statute of the ICC (although the Ukrainian authorities have been consistently declaring that this would change soon)<sup>79</sup>. Still, in 2014 and 2015, it submitted two *ad hoc* declarations under Article 12(3) of the Rome Statute accepting the jurisdiction of the Court over crimes against humanity and war crimes committed in Ukraine since 20 February 2014 (final days of the Revolution of Dignity) without indicating a final date. In December 2020, the Prosecutor of the ICC, after the preliminary investigation of the case, found that there were reasonable grounds to assert that the events of 2014 in Ukraine led to crimes against humanity and war crimes<sup>80</sup>. As a result of the full-scale invasion on 28 February 2022, the Prosecutor of the ICC decided to extend the current proceedings to in-

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<sup>78</sup> It should be emphasised that the jurisdiction of the ICC is complementary to the national judicial systems, i.e., the primary competence with judging cases of international crimes taking place in Ukraine would rest with domestic Ukrainian courts.

<sup>79</sup> *Ukraine's Foreign Minister says ratifying the Rome Statute won't harm Ukraine*, European Pravda, 24 March 2023, <https://www.pravda.com.ua/eng/news/2023/03/24/7395007/>.

<sup>80</sup> *Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine*, 11 December 2020, <https://www.icc-cpi.int/news/statement-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-ukraine>.

clude new crimes covered by the jurisdiction of the Court that were committed as a result of the events of 24 February 2022<sup>81</sup>. Finally, in March and April 2022, 43 states (parties to the Rome Statute), including Poland, requested that the Office of the ICC Prosecutor prosecute the crimes committed in Ukraine<sup>82</sup>. This extended the investigated area to include the crime of genocide (which was not included in either of the Ukrainian *ad hoc* declarations) while also making it possible to proceed from the stage of preliminary examination to the stage of investigation. On 25 April 2022, the Office of the ICC Prosecutor joined the Joint Investigation Team (JIT) created on 25 March 2022 by the authorities of Poland, Lithuania, and Ukraine, and on 14 September 2023, an Office of the ICC was opened in Kyiv to facilitate cooperation between the Prosecutor of the ICC and national Ukrainian investigators.

It is evident that, so far, the most significant effect of the commitment of the ICC in Ukraine was the decision of 17 March 2023 on the issue of the warrant of arrest against the sitting Russian President, Vladimir Putin, and the Children's Rights Commissioner of the Russian Federation, Ma-

<sup>81</sup> *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I have decided to proceed with opening an investigation"*, 28 February 2022, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening>.

<sup>82</sup> *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation*, 2 March 2022, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>.

ria Lvova-Bełowa. Both of them are suspected of war crimes due to “unlawful deportation or transfer or unlawful imprisonment” (Article 8(2)(a)(VII) of the Rome Statute), and the “deportation or transfer of all or parts of the population of the occupied territory within or outside this territory” (Article 8(2)(b)(VIII)), which, in the context of the evidence collected by the Prosecutor, concerned particularly all of the Ukrainian children deported into Russia. As a result, 123 state parties to the Rome Statute of the ICC have a legal obligation to arrest Putin and Lvova-Bełowa, if they are found in the jurisdictional space of any of them, and then transfer them to The Hague<sup>83</sup>. Despite certain legal questions (the matter of the immunity of the sitting head of a state that is not a party to the Rome Statute) and political doubts (the unwillingness of certain states to aggravate their relations with Russia), the decision of the ICC isolated President Putin on the international scene<sup>84</sup>.

It should be noted that although it is theoretically possible for the ICC to try such crimes as genocide, crimes against humanity, and war crimes, as a result of the limited formal and legal scope, the Court in The Hague cannot try the crime of aggression (both states – the aggressor and the victim of the aggression – must be parties to the Kampala document

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<sup>83</sup> On 1 February 2024, the Rome Statute will enter into force for Armenia, which will become the 124th state party to the ICC Statute.

<sup>84</sup> Cf. T. Lachowski, *Czy Władimir Putin trafi do Hagi?*...

of 2010 introducing the definition of the crime of aggression in the Rome Statute, which is not the case here)<sup>85</sup>. That is why the Ukrainian authorities appealed to the international community to support the idea of establishing a special tribunal to try the Russian aggression against Ukraine. The first variant provides for the appointment of a court based on a universal international treaty. The second – hybrid – variant concerns a possible international agreement between Ukraine and the United Nations, (e.g., as a result of the initiation of another “Uniting for Peace” procedure by the UNGA), resulting in a hybrid court partially based on the national jurisdiction of Ukraine or a third country (e.g., the Netherlands) with international components<sup>86</sup>. It seems that it would be more beneficial to create a fully international tribunal because this would enable the practical elimination of the problem of immunity of the top political and military authorities of the Russian Federation before such a court (assuming that the Russians would most likely not become its state party), but so far there has been no consensus among the countries of the Global South. Interestingly, the West now seems to be more inclined towards the option of a hybrid court, which, however, entails a tangible risk of creating a court immediately tasked with the impossible problem of the immunity of the Russian leadership

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<sup>85</sup> P. Grzebyk, *“Specjalna operacja wojskowa” Rosji w Ukrainie...*, p. 68.

<sup>86</sup> *Ibid.*, p. 69.



under the applicable international law, meaning it would be completely dysfunctional<sup>87</sup>. However, it should be noted that, as a result of the commitment of the European Union, an International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) was formed in Hague on 3 July 2023 in order to support the operations of the aforementioned JIT<sup>88</sup>. Also, third countries initiated relevant national criminal proceedings under universal or protective jurisdiction (e.g., Poland) to help with the prosecution of the perpetrators of international crimes in Ukraine. Nonetheless, there is still the problem of the need to respect the immunity of the top officials of the Russian state before the national courts of the third countries, which is a customary rule of international law, and which refers especially to the crime of aggression as a leadership crime<sup>89</sup>.

The aforementioned efforts of Ukraine to use the instruments of international law to counteract the effects of

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<sup>87</sup> Cf. P. Labuda, *Making counter-hegemonic international law: Should a special tribunal for aggression be international or hybrid?*, Just Security, 19 October 2023, <https://www.justsecurity.org/88373/making-counter-hegemonic-international-law-should-a-special-tribunal-for-aggression-be-international-or-hybrid/>.

<sup>88</sup> *Ukraine: International Centre for the Prosecution of Russia's crime of aggression against Ukraine starts operations today*, 3 July 2023, [https://neighbourhood-enlargement.ec.europa.eu/news/ukraine-international-centre-prosecution-russias-crime-aggression-against-ukraine-starts-operations-2023-07-03\\_en](https://neighbourhood-enlargement.ec.europa.eu/news/ukraine-international-centre-prosecution-russias-crime-aggression-against-ukraine-starts-operations-2023-07-03_en).

<sup>89</sup> Such was the decision of the ICJ, in particular, in the judgement of 14 February 2002 in the case concerning the arrest warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*), ICJ Reports 2002, p. 3, section 58 et seq., although this judgement was heavily criticised by the legal commentators on international law. Cf. P. Grzebyk, *"Specjalna operacja wojskowa" Rosji w Ukrainie...*, pp. 71-72.

Russian aggression are complemented by various types of diplomatic activity, e.g., attempts to create an international reparation mechanism<sup>90</sup>. Still, it should be very clearly indicated that the authorities in Kyiv also refer to the rules of international law with a clear political objective. They want to present Ukraine as a fully transparent entity by submitting to international regulation, which is also supposed to help the Ukrainian state join the countries of the Euro-Atlantic world through accession to the European Union and NATO. In our view, respect for international law and the appeals to international institutions by Ukraine are meant as a remedy for the geopolitical efforts of the Russian Federation described above, which is ready to constantly violate the most fundamental rules of international law in order to preserve its empire and “natural sphere of influence”.

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<sup>90</sup> On 14 November 2022, UNGA passed resolution no. A/ES-11/L.6 (“Furtherance of remedy and reparation for aggression against Ukraine”) by the votes of 94 states in favour of the creation of an international mechanism of reparation for Ukraine from Russia in the future under the auspices of the UN. In this context, it should be added that in May 2023, upon the initiative of the countries of the European Union and the Council of Europe, the international Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine was established in The Hague, which is the first real step towards the creation of a comprehensive reparation mechanism.

## Conclusions

The brutal war of Putin's Russia against Ukraine, which has been going on for over nine years and turned into a full-scale invasion almost two years ago, is not just a "whim" of the Kremlin leader. It stems from a desire to be recorded in the annals of history as another Russian/Soviet leader gathering the "historic lands" in the "natural sphere of influence" of Moscow to restore the Russian Federation to the status of a superpower capable of effectively changing the rules of the geopolitical game. In this context, the committed crimes, particularly genocide, can be perceived as one of the means used to reconstruct and preserve the empire in the name of the idea of *Russkiy mir*, just like the Russian nativism in the times of Imperial Russia or the *homo sovieticus* in the USSR. In this context, independent Ukraine as a separate nation with a strong identity, seeking integration with the Euro-Atlantic world, is an obstacle for Moscow in the fulfilment of its objectives.

Consequently, we can draw a few final conclusions:

1. The analysis shows that Ukraine plays a very important role in the strategy of the Russian Federation. Its strategic location, rich history, and the presence of various ethnic groups on its territory make it a focal point in Russian geopolitical calculations.
2. The conflict between Russia and Ukraine, including, in particular, the annexation of Crimea and the conflict in Donbas, has affected the geopolitical dynamic of

- the Eastern European region. The disputes concerning the sovereignty and territorial integrity of Ukraine have sparked international tension and affected the relations between Russia and the Western countries.
3. This working paper emphasises the need to reflect on the ethical aspects of the actions of Russia in Ukraine, particularly in the context of human rights violations and crimes against humanity. It is a good idea to consider the consequences of a breach of international rules and moral as well as ethical standards.
  4. What is more, the crimes of the Russian state – just like the crimes committed in the past by the Soviet state and Imperial Russia – especially the crime of genocide, should be perceived as a political instrument intended to uphold the hegemony of the Russian Federation in the post-Soviet area, with distinct signs of a geopolitical philosophy (offensive realism).
  5. Furthermore, the aggression of the Russian Federation against Ukraine, which has been ongoing since 2014 and turned into a full-scale invasion on 24 February 2022, is not only a blatant violation of international law by Russia but also a touchstone of the Kremlin's attitude to the international law order previously presented by Imperial Russia and the Soviet Union.
  6. This is the polar opposite of Ukraine, which makes practical use of all available legal (and diplomatic) mechanisms, including appeals to international courts

and tribunals, to legally protect its interests and pursue the overriding political goal of Kyiv, i.e., Euro-Atlantic integration manifesting in the accession of Ukraine into the structures of the European Union and NATO in the immediate future.

7. The conclusions from this analysis are significant not only for the understanding of the Russian-Ukrainian conflict but also for the identification of challenges connected with peace and stability in Eastern Europe. It is necessary to continue investigating this topic and look for an effective resolution of the conflicts in the region.
8. Ultimately, the analysis of the role of Ukraine in the strategy of the Russian Federation shows a complicated and multi-dimensional geopolitical context that affects the international situation. At the same time, this context directly affects the policy of the Ukrainian state, which appeals to various recognised international institutions and to international law to fulfil its overriding geopolitical objective, i.e., accession to the European Union and NATO. It is evident that the analysis of this topic is critical for a better understanding of today's world and the challenges faced by the international community.

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