

The Russian–Ukrainian war in Ukrainian legislation from 2014 to early 2024

Abstract: Russia's deliberate armed aggression against Ukraine began in February 2014 with the seizure of part of Ukraine's territory, the Crimean Peninsula, and then the provocation of war in Donbas. On February 24, 2022, Russia launched a full-scale war against Ukraine. The Ukrainian Armed Forces, territorial defense forces, and Ukrainian civilians thwarted the Kremlin's plans for a "blitzkrieg." The study presents some aspects of Ukrainian legislation related to Russia's war against Ukraine since 2014.

Keywords: Cold War; frozen conflicts; hybrid war; temporarily occupied territories; full-scale war; martial law; Russian Federation; Ukraine.

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1. From the Paris Charter to the new Cold War

In the post-World War II bipolar world order, security was provided by two major military blocs: the NATO and the Warsaw Pact. The 40-year Cold War ended with the fall of the Berlin Wall and the Iron Curtain, the reunification of Germany, the collapse of the Socialist Camp, democratic change in Central and Eastern Europe, the dissolution of the Soviet Union, and the creation of independent countries. Formally, the Cold War had no winner. The Polish-born US National Security Advisor Zbigniew Brzezinski has said that the Cold War ended with a "lukewarm peace," as opposed to the "cold peace" that usually follows a "hot war." There was no act of surrender like those of Compiègne in 1918¹ or Reims in 1945.² Nevertheless, "the Paris conference of November 1990,

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- 1 The Compiègne Armistice of November 11, 1918, put an end to the fighting between the Entente and its last remaining opponent, Germany.
- 2 The German Third Reich unconditionally surrendered in the west to the Allied Expeditionary Force (SHAEF) at Reims on May 7, 1945, and in the east to the Soviet Red Army in Berlin on May 9, 1945.

the scene of East-West reconciliation, was in effect the ratification of the geopolitical and ideological victory of the West” (Brzezinski 1991: 3).

The Charter of Paris for a New Europe (Paris Charter), adopted at the Conference on Security and Cooperation in Europe held in Paris November 19–21, 1990, declared the end of the division of Europe that had existed since the World War II and defined new principles of cooperation. However, it was a political document, not a treaty. According to Richard Sakwa, the collapse of the post-Cold War European security order was both a cause and a consequence of the Ukraine crisis, the failure to realize the aspirations of the Paris Charter for a “Europe whole and free,” the failure of the pan-continental unity project, and Russia’s reaction to its exclusion from the new European order and its turn to neo-revisionism (Sakwa 2005: 557).

The Warsaw Pact, one of the two military blocs of the Cold War, was dissolved, but NATO, which had 16 members at the height of the Cold War, expanded to 30 by 2020. Post-Cold War aspirants to NATO membership saw joining the alliance as crucial to achieving their goals of integration with the West and protection from the Russian Federation, with which many had a troubled history. Proponents of NATO’s enlargement also saw it as essential to promoting and consolidating democracy in post-Cold War Europe. Opponents of enlargement, on the other hand, warned that it could restore a Cold War atmosphere to East–West relations (Menon–Ruger 2020: 371).

The Russian Federation was perpetuating the “frozen conflicts” of the 1990s at the cost of wars (Grant 2017: 376; Cuppuleri 2020: 1–9). The term is rarely used in international documents, but it is widely used by politicians and experts to refer to Transnistria (Trans-Dniester) in Moldova, Nagorno-Karabakh (Artsakh) in Azerbaijan,³ and South Ossetia and Abkhazia in Georgia. The common feature of these separatist territories is that they belong de jure to these countries, but de facto they are not governed by a subordinate local administration but rather are supported by a foreign state. In addition, since the 1990s, the views of Alexander Dugin, the unofficial ideologist of Putin’s Russia, the founder of neo-Eurasianism, have been gaining ground. He argues that patriotism is the need to build a new empire, a Eurasian superpower, in opposition to the Atlanticist world led by the United States, integrating the former Soviet republics into the new alliance under the aegis of Russia. This Eurasian empire must have access to the warm seas in order to face the global challenge of Atlanticism. The obstacle is Ukraine, which will either become an extension of Moscow’s hand or, if it refuses to do so, will challenge Russia’s security and become a factor of war (“The sovereignty of

3 It ceased to exist de facto from September 2023 and de jure from January 1, 2024; the leadership of the Nagorno-Karabakh Republic surrendered and accepted reintegration into Azerbaijan.

Ukraine represents such a negative phenomenon for Russian geopolitics that it can, in principle, easily provoke a military conflict” [Shekhovtsov 2014]).

In 2007, at the 43rd Munich Security Conference, Russia’s President Vladimir Putin, who was attending for the first time, delivered an unexpectedly bellicose speech. He lashed out at the United States and NATO and announced a new foreign policy strategy, an open confrontation with the United States as opposed to the partnership that had existed until then. This could be interpreted as the beginning of a second Cold War (Dalby 2016). From 2012, Russia officially made the expansion of the reach and influence of the “Russian world” (Russkiy Mir) and the Eurasian Union its main foreign policy objective, referring to the “Eurasian” ideals that bind a large part of the post-Soviet space to the “Russian world” along the lines of Russian language and culture, common history and heritage (starting with the medieval Kyivan Rus), Orthodoxy, conservative values, and the need for economic integration (Zhurzhenko 2014). Andrei Kolesnikov, director of the Carnegie Center in Moscow, on the 10th anniversary of the speech, called it Putin’s Fulton speech: “Such an offensive and aggressive speech was a ‘foul of the last hope’: the Russian president wanted to scare the West with his frankness, believing that perhaps ‘Western partners’ would take his concerns into account and take some steps towards him. [...] The effect was the opposite, but this option B was also calculated [*by Putin*]: if you don’t want it, Russia will turn from a fragment of the West into a super-sovereign island. That day Putin lost Europe and, perhaps, the entire West” (Kolesnikov 2017).

2. The concept of “peacekeeping”

According to the UN Charter (1945): “The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice” (Chapter VI Article 33[1]). If conciliatory proposals made for the maintenance or restoration of international peace and security fail, the Security Council “may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations” (Chapter VII Article 42).

In the Cold War era, peacekeeping was mainly about maintaining demilitarized zones and ceasefires, but since then it has become increasingly about intervening in an ongoing conflict.

At the international level, peacekeeping is the responsibility of the United Nations, but the concept is understood and interpreted differently in different countries. In Russia, according to the Constitution of the Russian Federation (1993), the president

decides on the possibility of deploying the army abroad on the basis of the authority of the upper house of parliament (Article 102[1.d]). Following the dissolution of the Soviet Union in 1991, Russia succeeded it as a permanent member of the UN Security Council. Russia's relationship with UN peacekeeping changed when Vladimir Putin came to power, and since then Russia has emphasized that these peacekeeping missions are in the interests of the West. The Russian Federation has reduced its participation in UN peacekeeping operations, sending only special units and sometimes only military experts (Romańczuk 2018: 43–44).

In the 1990s, the UN intervened in Abkhazia, part of Georgia, and the OSCE in South Ossetia. This status quo was changed by the 2008 Russian–Georgian War, which could no longer be interpreted as peacekeeping and was widely condemned by the international community, while Georgia lost the opportunity to have a say in the life of the two regions for an indefinite period. The situation was different in Transnistria, where Russia not only deployed a peacekeeping contingent but also provided a wide range of support, including military assistance, to the local separatists. The conflict in Moldova has become a kind of “testing ground” for the new Russian concept of maintaining its influence in the post-Soviet space. The Russian Federation's tactic is “controlled chaos,” based on unresolved and “frozen” armed conflicts (Romańczuk 2018: 47–49). In Moscow's view, the interventions in Tajikistan (1992) and Kazakhstan (2022) were also “peacekeeping.” What Moscow has called as international operations in conflict zones has been aptly described by Alexander Nikitin as “simulative peacekeeping” (“*military*” operations with various legal underpinnings but not United Nations mandates”; Nikitin 2013: 158–180; cf. Williams 2022).

Following Russia's intervention in Ukraine in 2014 (the occupation of Crimea and covert support for the armed conflict in Donbas), there was a relatively brief debate on the feasibility of sending UN peacekeepers to eastern Ukraine. The issue failed to advance in the Security Council, leaving OSCE monitors⁴ as the only legitimate peacekeepers in Ukraine. A few days before Vladimir Putin announced the recognition of the Luhansk and Donetsk quasi-states on February 21, 2022, Secretary General of the Collective Security Treaty Organization (CSTO) Stanislav Zas gave an exclusive interview to Reuters in Moscow, in which he said that the CSTO could send peacekeepers to the Donbas if there was an international consensus for such a deployment. “I don't believe that the situation now will return to how it used to be when tanks were housed at their bases and soldiers in their barracks. It won't happen. There needs to be an understanding about the necessity to sit down at the table and agree something. It's a new reality,” he said. Zas rejected the idea that the CSTO was an instrument of Russian influence,

4 OSCE Special Monitoring Mission to Ukraine (<https://www.osce.org/special-monitoring-mission-to-ukraine-closed>).

but left no doubt that “we have colossal potential in our hands [...] believe me, we can send as many as needed” (Osborn 2022; cf. Williams 2022).

The CSTO was not deployed, but Russian regular forces nevertheless launched a full-scale war (invasion) of Ukraine on February 24, 2022, from the territories of the two CSTO member states: the Russian Federation and Belarus.

3. The status of the war in internal law

Following the second wave of the Majdan protests in early 2014, which saw Ukrainian President Viktor Yanukovich flee his country, the Winter Olympics in Sochi in the Russian Federation, and an emergency military exercise near the Ukrainian border, armed men without insignia appeared in Crimea on February 27. Kyiv identified them as Russian troops, while Moscow claimed that they were not soldiers but members of the local “people’s self-defense.” Both the Ukrainian and Russian press immediately dubbed the gunmen “little green men” (or “desert tourists”), who had seized government buildings on the peninsula and blockaded military installations and the navy. The new pro-Russian prime minister (illegitimate under international and Ukrainian law), Sergei Aksyonov, appealed to Vladimir Putin to ensure “peace and tranquility” on the peninsula. On March 1, the Russian president initiated the deployment of the Russian army “in connection with the extraordinary situation in Ukraine and the threat to the lives of Russian citizens,” which was approved the same day by the upper house of parliament, the Federation Council. On March 18, following the controversial referendum of March 16, Putin and representatives of the Russian occupation administration in Crimea signed the so-called Treaty on the Accession of the Republic of Crimea to the Russian Federation (in reality the annexation of Crimea; Gardner 2016: 490–505; Vidmar 2015: 365–383).

Following the annexation of Crimea, protests under the Russian flag began in major cities in the eastern and southern provinces of the Ukraine, with demonstrators occupying administrative buildings, looting police armories, beating people and even causing violent deaths, and calling for another “Crimea.” Unidentified Russian armed groups infiltrated Crimea, led by a former FSB officer, Igor Girkin (aka Strelkov, “Shooter”), who himself made the following statement back in November 2014:

This is my fifth war. There were two wars in Chechnya, Transnistria and Bosnia. [...] When the events in Crimea took place, it was clear that it would not end with Crimea alone. Crimea as part of Novorossiya is a colossal acquisition, a diamond in the crown of the Russian Empire. And Crimea alone, separated [with Russia] by the land bridge of an enemy state, was not the real thing. [In the Donbas] at first, no one wanted to fight. The first two weeks passed under the banner that both

sides wanted to convince each other. During the first days in Slovyansk, both we and they were extremely careful about using weapons. [...] If in April and May everything was on the upswing, i.e. the territory of the uprising was expanding, we were gradually taking control of the settlements of the Donetsk Republic, spreading the movement, then in June we began to retreat. [...] And the enemy began to be motivated to fight. [...] At that moment, I understood perfectly well that Donetsk and Luhansk alone would not be able to fight against the Ukrainians.

(Prochanov 2014)

The mercenary leader of the private military company, Yevgeny Prigozhin, also publicly admitted that the Wagner Group was involved in the fighting in Donbas (Chajkovskaja 2023). Moreover, Sergei Mironov of the Just Russia party admitted that not only medicine and food have been delivered to Donbas since 2014. “Let me be clear: we are supplying [the Donbas] with dual-use products. Today we can talk about it openly.”⁵ The facts go on and on, while the official narrative in Russia was that there was a civil war in Ukraine. In fact, it was a Russian pseudo-civil war against the Ukrainian state.

The separatists set up a camp in the territory under their control where not only prisoners but also members of the local population deemed unreliable were held captive and tortured (Aseyev 2020). Eight years of brainwashing and indoctrination did not, however, result in the local population becoming full supporters of the “Russian world” and of “Novorossiia.” There have also been cases of administrative and police buildings being occupied in the western part of Ukraine, but the difference is that they have not obstructed the functioning of the offices, called on foreign forces such as NATO to intervene, or called on Poland to occupy the part of the country. People were also beaten up during the riots in the western part of the country, but there was only one fatality. The incident in Odesa of May 2, 2014 (Goncharenko 2015) then became Russia’s main point of reference against Ukraine. We were in the aftermath of the Kyiv massacre, where the armed forces fired on the revolutionaries, killing over a hundred people, Crimea was lost, and the state lost control over a parts of the Luhansk and Donetsk regions. This does not explain the brutality of the incident in Odesa, but it is an important element of the fear that fueled it.

Donbas is a contraction of the Slavic name for the Donetsk Basin, named after the river Donetsk, originally a geographical area and industrial region that crosses state borders, with most of the area belonging to Ukraine and the rest to Russia. In Ukrainian, the acronym LDNR is widely used, which is the result of the merging of the initials of the

5 Сергей Миронов, December 5, 2022, (https://twitter.com/mironov_ru/status/1599715504880771072).

quasi-state formations Luhansk People's Republic (Ukrainian and Russian: LNR) and Donetsk People's Republic (Ukrainian and Russian: DNR). The industrial rise of the Donetsk Basin began at a dizzying pace in the second half of the 19th century. By the end of the century, almost half of the Russian Empire's coal production came from here. The rapid industrial development continued into the Soviet period, and it was one of the strongholds of Soviet heavy industry, including the military industry, and eventually it was one of the most important economic regions of independent Ukraine, which was then cut off from the country's bloodstream by the war and largely destroyed by the war.

On the basis of the decision of the National Security and Defense Council (NSDC, Ukrainian: RNBO) of April 13, 2014, Ukraine launched an "Anti-Terrorist Operation" (in both Ukrainian and English: ATO) against the separatist regions on the following day, April 14, 2014. The NSDC decision was a secret clause of Presidential Decree 405 of 2014 "On the Decision of the National Security and Defense Council of Ukraine of April 13, 2014, 'On Urgent Measures to Overcome the Threat of Terrorism and Preserve the Territorial Integrity of Ukraine,'"⁶ the text of which is not public. The ATO was a special legal regime, without the imposition of martial law, under the control of the Security Service of Ukraine (SSU, Ukrainian: SBU).

On the third day of the operation, April 15, 2014, the Ukrainian parliament, the Verkhovna Rada, voted in favor of the Law of Ukraine 1207-VII of 2014 "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine."⁷ The law was adopted in the second reading, after almost 200 amendments, including the deletion of the concept of "collaboration." The law defines the status of the "temporarily occupied territory" as a result of the armed aggression of the Russian Federation:

The territory of Ukraine temporarily occupied by the Russian Federation are an integral part of the territory of Ukraine, which is subject to the Constitution and laws of Ukraine and international treaties ratified by the Parliament of Ukraine.

Article 1[1] considers February 19, 2014, as the date of the beginning of the temporary occupation (Article 2[1]). It introduces a "special legal regime" in this territory (Article 4), and it specifies the details of the activities of state bodies, local self-governments, enterprises, institutions, and organizations under this legal regime, and the observance and protection of human and civil rights and freedoms, as well as the

6 Decree of President of Ukraine 405 of 2014 On the Decision of the National Security and Defence Council of Ukraine of April 13, 2014, "On Urgent Measures to Overcome the Terrorist Threat and Preserve the Territorial Integrity of Ukraine" (<https://zakon.rada.gov.ua/laws/show/405/2014#Text>) (last accessed 2023.11.21.)

7 Law of Ukraine 1207-VII of 2014 "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine," (<https://zakon.rada.gov.ua/laws/show/1207-18>).

rights, freedoms, and legitimate interests of legal persons. The law states that citizens of Ukraine have the right to enter and leave the temporarily occupied territories freely and without hindrance upon presentation of a document proving their Ukrainian citizenship. The entry and exit of foreigners and stateless persons into the temporarily occupied territories is subject to special authorization through the entry and exit points established for such persons. The law also stipulates that Ukraine does not recognize the “compulsory automatic” acquisition by its citizens of the citizenship of another state (Article 5[6]).

On March 16, 2018, President Petro Poroshenko announced on the battlefield in Donbas that the era of the ATO was over.⁸ On April 30, 2018, the President of Ukraine signed the Law of Ukraine 2268-VIII of 2018 “On the Specifics of the State Policy on Ensuring State Sovereignty of Ukraine in the Temporarily Occupied Territories Donetsk and Luhansk Regions,”⁹ which replaced the ATO with the Joint Forces Operation (JFO, Ukrainian: OOS), now under the command of the Joint Operational Headquarters (JOH) of the Armed Forces under the strategic direction of the General Staff (until February 24, 2022).¹⁰ The basis for the ATO was the Ukrainian parliament’s designation of the breakaway republics as terrorist organizations and the designation of these terrorist organizations as the enemy. The new legal status, JFO, classified Russia as the aggressor. Ukraine is not fighting terrorists; it is fighting the Russian aggressor, which is not a matter for the services but a military task. The JOH controls of all the organizations of violence in the Donbas not just the military. The main objective is to “contain” the enemy. The temporarily occupied territories have been excluded from the parliamentary, local, and presidential elections that have taken place since.

Pursuant to Decree of the President of Ukraine 303 of March 17, 2014, “On partial mobilization” for military service has begun.¹¹ The last conscription was due to take place in autumn 2013, but it was reinstated on May 1, 2014, due to the deterioration of the situation in eastern Ukraine.

8 Порошенко оголосив про завершення АТО. *РБК-Україна*, May 16, 2018. (<https://www.rbc.ua/ukr/news/poroshenko-obyavil-zavershenii-ato-1521212346.html>).

9 Law of Ukraine 2268-VIII of 2018 “On the Specifics of the State Policy on Ensuring State Sovereignty of Ukraine in the Temporarily Occupied Territories Donetsk and Luhansk Regions,” (<https://zakon.rada.gov.ua/laws/show/2268-19#Text>). (last accessed 2023.11.21.)

10 Law of Ukraine 2217-IX of 2022 “On Amendments to Certain Laws of Ukraine Regarding the Regulation of the Legal Regime in the Temporarily Occupied Territory of Ukraine,” (<https://zakon.rada.gov.ua/laws/show/2217-20#Text>). (last accessed 2023.11.21.)

11 Decree of the President of Ukraine 303 of 2014 “On partial mobilization,” (<https://www.president.gov.ua/documents/3032014-16358>) (last accessed 2023.11.21.)

Until 2022, the events were described in both the literature and the wider public in terms of the “Ukrainian crisis” or “hybrid warfare.” The Budapest Memorandum (1994), which was supposed to ensure Ukraine’s sovereignty and integrity, including through Russia, did not serve to prevent aggression. On the contrary, it served as an example of how international treaties can be ignored. The Cold War as a form of global conflict is being replaced by a hybrid war. There are several definitions of the term, but the essence is that the state waging such a war makes deals with non-state actors (armed groups, local populations, and organizations with which formal contact is completely impossible) who can do things that the state itself cannot. The term was first applied to Ukraine by the Dutch politician and retired general Frank van Kappen in April 2014. Previously used in relation to Chechnya, Iraq, and Lebanon, the term has taken on a broader meaning for Ukraine than before. Russia’s hybrid warfare in Ukraine, which was not openly declared until 2022, was not limited to the battlefield or the theater of operations but also included influencing the highest levels of political decision-making (Rácz 2015: 41–43).

The extension of the conflict in early 2022 is usually described as a “full-scale war” (invasion). In January 2023, the Grand Chamber of the European Court of Human Rights in its decision to the case of Ukraine and the Netherlands versus Russia declared the applications partly admissible.¹² Ukraine has asked the international court to declare that Russian military personnel have been present in Donbas since April 2014, that Russian soldiers have been fighting as members of pro-Russian separatist armed groups and have been present in command positions. At the latest from August 2014, in connection with the battle of Ilovaik, Russian troops were deployed on a large scale, so it was not a “civil war” as propagated by Russia, but the Russian-Ukrainian war has been going on since 2014.

4. Donbas Reintegration Law

On June 6, 2014, in Bénouville, Normandy, on the occasion of the 70th anniversary of the Normandy landings, French President François Hollande invited the German chancellor, the Russian president, and the Ukrainian president, among others, to discuss the possibility of a peaceful settlement. Negotiations on a settlement began in June in the framework of the Trilateral Contact Group of the OSCE, Ukraine, and the Russian Federation, set up at the suggestion of the Normandy Four. Following the negotiations,

¹² European Court of Human Rights, Grand Chamber: Case of Ukraine and the Netherlands v. Russia (Applications nos. 8019/16, 43800/14, and 28525/20). Decision. Strasbourg, January 25, 2023. (<https://www.courthousenews.com/wp-content/uploads/2023/01/Ukraine-and-the-Netherlands-V.-Russia.pdf>).

the Normandy Four signed a document in Minsk on September 5, 2014, under the auspices of the OSCE, aimed at preventing the escalation of the war in eastern Ukraine. This was the Minsk-1 agreement, which summarized the settlement plan in 12 points, the most important of which were an immediate OSCE-monitored ceasefire, exchange of prisoners, amnesty, and legislation (including constitutional amendments) on the special status of the eastern regions.

As a follow-up to Minsk-1, the Trilateral Contact Group and the representatives of the eastern regions signed a protocol on the conditions of the ceasefire on September 19, 2014, also in Minsk. However, a full ceasefire did not materialize. On February 11–12, 2015, another attempt was made in Minsk to agree on “Package of Measures for the Implementation of the Minsk Agreements,” the Minsk-2 agreement. This time, the joint press conference of the leaders of Ukraine, the Russian Federation, Germany, and France was cancelled and only a short statement was published on the Kremlin’s website expressing their joint support for the agreement. The document was not signed by the negotiators but only by the mediators. On February 17, on Russia’s initiative, the UN Security Council unanimously welcomed both the package and the statement.

Minsk-2 further elaborated on 13 points from Minsk-1. Minsk-2 included 13 of Minsk-1’s proposals: ceasefire; holding of local elections; pardon and amnesty for persons involved in the event; exchange of all hostages and illegally detained persons “all for all”; ensuring the delivery of humanitarian aid; restoration of socio-economic ties with the rest of Ukraine; restoration of state border control to Ukraine after the elections; withdrawal of all foreign armed formations and military equipment, including mercenaries, from the territory of Ukraine; constitutional reform on the specific status of particular regions; and intensification of the work of the Trilateral Contact Group, including through the establishment of working groups on the implementation of relevant aspects of the agreements (Lieven 2022; Allan 2020).

The signing took place in the days of the bloody clashes over the Battle of Debaltseve. Together with the battles for Ilovaisk and Donetsk Airport, these were the most serious clashes of the war. By the end of the month, the intensity of the fighting had decreased significantly and the line of demarcation between government forces and separatist-controlled areas, covering about a third of the territory of the two districts, had stabilized. The Trilateral Contact Group continued to meet and, since May 2015, separate working groups, led by OSCE coordinators, have been established to address military, political, economic, and humanitarian issues. Over time, however, its activities were exhausted by periodic prisoner exchanges, which were discontinued. A single general prisoner exchange took place in 2019, after the inauguration of Ukraine’s President Volodymyr Zelenskyy, and then the process was interrupted again.

The OSCE launched its Special Monitoring Mission (SMM) at Ukraine’s request back in March 2014, sending envoys to Kyiv, Lviv, Ivano-Frankivsk, Chernivtsi, Odesa, Kherson, Dnipro, Donetsk, and Luhansk. Following the Minsk agreements, the monitoring compliance with the ceasefire agreements has become a priority, and a checkpoint

has been established on the territory of the Russian Federation. According to regular and detailed reports, in the almost eight years since April 2014, the intensity of the fighting has only temporarily decreased in some periods.¹³

In the Minsk process, the agreed principles of the settlement were interpreted differently by the parties, leaving no chance for agreement. German Foreign Minister Frank-Walter Steinmeier (head of state since 2017) then developed a concept for implementing the political clauses of the Minsk agreements. On October 2, 2015, at the Paris summit of the leaders of the Normandy Four in Paris, he presented the first version of what he later called the formula (which was continuously supplemented in the following years in order to reach an agreement). It provided for the following steps: 1) a constitutional provision on the special status of the Luhansk-Donetsk region; 2) an amnesty law on the impunity of those responsible official in the region; and 3) a special law on the holding of elections in the region. The idea was that the Ukrainian parliament would provisionally adopt the law on special status on the evening of the election day, which would become final after the OSCE Office for Democratic Institutions and Human Rights certified the elections as valid.

Steinmeier said that elections should be held regardless of who controls the territory and that the region could be integrated with an elected leadership and special status under the Minsk agreements. However, this has not led to results. Kyiv could only recognize the elections as legitimate if they were not held under the shadow of Russian military control and the local administration it had created, and Russia's position was that the withdrawal of military forces and the restoration of Ukrainian control would be possible after these elections were held locally and internationally recognized. Germany and France have called for the elections to go ahead, while the United States has taken the position that a secure environment must be created before the political and technical procedures for the elections can be carried out, with the withdrawal of the combatants from the area as a minimum precondition (Miller 2014).

In Ukraine, the only legislation on the special status of the Donbas region did not affect the status itself. This was the aforementioned Law of Ukraine 2268-VIII of 2018 (popularly known as the Donbas Reintegration Law), which introduces the concept of “temporarily occupied territories” (Article 1[1]) and refers to Russia as an “aggressor” (Preamble) and an “occupier” (Article 7[2]). It also states that *the armed aggression of the Russian Federation began with the undeclared and covert invasions of the territory of Ukraine by divisions of armed forces and other security agencies of the Russian Federation, as well as with the organization and support of terrorist activities [...] the Russian Federation commits a crime of aggression against Ukraine and performs temporary occupation of part of its territory by means of the paramilitary groups of the*

13 OSCE Special Monitoring Mission to Ukraine (<https://www.osce.org/special-monitoring-mission-to-ukraine-closed>).

Russian Federation consisting of regular connections and divisions, subordinated to the Ministry of Defense of the Russian Federation, the divisions and special forming subordinated to other security agencies of the Russian Federation [...] the actions of the Russian Federation on the territory of certain districts of the Donetsk and Luhansk regions, the Autonomous Republic of Crimea and the city of Sevastopol grossly violate the principles, and norms of international law. (Preamble)

In addition to the Trilateral Contact Group, meetings with the Normandy Four continued. It is therefore no coincidence that French President Emmanuel Macron and German Chancellor Olaf Scholz visited Kyiv shortly before the invasion and then Moscow in February 2022. On February 14, the day of Scholz's visit, Vadim Pristaiko, Ukraine's ambassador to London and former foreign minister, was asked by journalists if Ukraine could consider renouncing its NATO membership, even though it was against the country's constitution, to which the ambassador replied in the affirmative.¹⁴ However, in a joint press conference with Scholz, Ukraine's President Volodymyr Zelensky, when asked about Pristaiko's statement, had already replied that Ukraine's attitude towards NATO membership had not changed, but that it was not up to him but to the Western partners.¹⁵

On February 21, 2022, Russia's President Vladimir Putin announced the recognition of the breakaway republics of Donbas, and the next day he told journalists that "of course, the Minsk agreements no longer exist."¹⁶ On February 23, the Russian Federation celebrated the Day of the Defender of the Fatherland. The next day, February 24, 2022, the full-scale war of Ukraine began. German Chancellor Olaf Scholz said on that day in a dramatic televised address to the citizens of Germany:

*Fellow citizens, today is a terrible day for Ukraine. And a dark day for Europe. We are all concerned about peace. I can well imagine the questions you will be asking yourselves this evening. I am no different. The situation is very serious. We are currently witnessing the start of a war, a war the likes of which we have not seen in Europe more than 75 years. Russia's President Putin has decided to launch a military attack against Ukraine. This is an attack on an independent sovereign country. Nothing and nobody can justify it.*¹⁷

14 Україна може відмовитись від вступу в НАТО – посол Пристайко. *BBC News Ukraine*, February 14, 2022 (<https://www.bbc.com/ukrainian/news-60373189>).

15 Зеленський: НАТО є гарантією безпеки України, іншого шляху немає. *BBC News Ukraine*, February 17, 2022 (<https://www.bbc.com/ukrainian/news-60417961>).

16 Путин заявил, что минских соглашений больше не существует. *TACC*, 22 февраля 2022 (<https://tass.ru/politika/13811259>).

17 Televised address by Federal Chancellor Olaf Scholz on the Russian attack against Ukraine, Berlin, February 24, 2022 (<https://www.bundesregierung.de/breg-en/news/televised-address-by-federal-chancellor-olaf-scholz-on-the-russian-attack-against-ukraine-2007846>).

5. Martial law

In accordance with Section I, Article 17 of the Constitution of Ukraine, the protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security are the most important tasks of the state and the concern of the entire Ukrainian people (first indent), the defense of Ukraine and the protection of its sovereignty are entrusted to the Armed Forces of Ukraine (second indent), the defense of Ukraine and the protection of its sovereignty, territorial integrity, and inviolability are entrusted to the Armed Forces of Ukraine (second indent), the provision of state security and the protection of the state borders of Ukraine are entrusted to the appropriate military formations and law enforcement bodies of the State (third indent), and the establishment of foreign military bases on the territory of Ukraine is not permitted (seventh indent).

The legal basis for the imposition of martial law is the Constitution, Law of Ukraine 389-VIII of 2015 “On the Legal Regime of the Martial Law”¹⁸ and the presidential decree imposing martial law. Several articles of the constitution deal with martial law and states of emergency: expropriation of private property (Article 41); work under martial law or state of emergency (Article 43); special restrictions of rights and freedoms (Article 64); if a decree of the President of Ukraine declares the introduction of martial law or a state of emergency in Ukraine or in certain regions of Ukraine, the Verkhovna Rada of Ukraine shall hold a session without prior convocation within two days; if the term of the powers of the Verkhovna Rada of Ukraine expires while martial law or a state of emergency is in force, its powers shall be extended until the date of the first meeting of the first session of the Verkhovna Rada of Ukraine elected after the lifting of martial law or a state of emergency (Article 83); the Verkhovna Rada of Ukraine shall, within two days from the date of the address by the President of Ukraine, adopt decrees on the introduction of martial law or a state of emergency in Ukraine or in its particular regions, on full or partial mobilization (Article 85[31]); and on the legal regime of martial law and a state of emergency, on zones of ecological emergency (Article 92[19]).

Article 1 of the abovementioned Law of Ukraine 389-VIII of 2015 “On the Legal Regime of the Martial Law” contains the following definition: “Martial law is the particular legal regime introduced in Ukraine or in its certain areas in case of the armed aggression or threat of attack, danger of the state independence of Ukraine, its territorial integrity and restriction of constitutional rights and freedoms of man and citizen, rights and legitimate interests of legal entities with indication of an effective period of these restrictions provides to relevant organs of the government, military command, military

18 Law of Ukraine 389-VIII of 2015 “On the Legal Regime of the Martial Law” (<https://zakon.rada.gov.ua/laws/show/389-19#Text>).

authorities, and local government bodies of the powers necessary for prevention of threat, repulse of the armed aggression and ensuring national security, elimination of threat of danger of the state independence of Ukraine, its territorial integrity, and also temporary, caused by threat.” In other words, the law allows for the introduction of an extraordinary legal order as soon as the threat arises and makes its effect time limited.

In Ukraine, self-governance has been defined by Chapter XI of the Constitution (1996), two laws on self-government (1990, 1997), and the administrative reform called decentralization, which was implemented between 2015 and 2020. Since 2015, there have been two temporary state bodies in the public administration: the civil-military administration under the Law of Ukraine 141-VIII of 2015 “On the Civil-Military Administration”¹⁹ and the military administration under the above-mentioned Law of Ukraine 389-VIII of 2015 “On the Legal Regime of the Martial Law.”

In 2015, 19 civil-military administrative units were established in the Luhansk and Donetsk regions of Ukraine. Of these, two were at the oblast level and 17 at the municipal level, operating as part of the Counter-Terrorism Center of the Security Service of Ukraine or the Joint Operational Command of the Armed Forces of Ukraine. Their main task was to exercise the powers of local executive authorities and local self-government bodies. During the existence of the civilian-military administration, the civil administration ceased its activities.

According to Article 10(2) of Law 389-VIII of 2015, municipalities and municipal-owned companies are subordinate to the military administration established at local level, while Article 10(1) states that: the activities of the president, the parliament (Verkhovna Rada), the government (Cabinet of Ministers), the National Bank, the Ombudsman for Human Rights, the courts, the law enforcement bodies, the investigative bodies, and the secret services may not be suspended. Military administrations are temporary state bodies that, during martial law, are responsible for ensuring the functioning of the constitution and laws of Ukraine; for implementing, together with the military command, the measures of the martial law legal regime; for national defense, civil defense, public security, and public order; and for the protection of the rights, freedoms and legitimate interests of citizens. The establishment of a military administration is decided by the President of Ukraine on the proposal of the regional state administration or the military headquarters. The Head of the Military Administration is appointed and dismissed by the President of Ukraine on the recommendation of the General Staff of the Armed Forces or the competent regional state administration.

19 Law of Ukraine 141-VIII of 2015 “On the Civil-Military Administration” (<https://zakon.rada.gov.ua/laws/show/141-19#Text>).

On February 24, 2022, the Decree of the President of Ukraine 68 of 2022 “On the Establishment of Military Administrations”²⁰ established 25 regional military administrations throughout Ukraine. The heads of the regional (the 24 regions) and state administrations of the capital Kyiv (the governors and the mayor) were appointed heads of the military administrations. At the same time, the corresponding district military administrations were created on the basis of the existing district state administrations, and their heads became the heads of the former civil administrations. In peacetime, heads of municipalities and district administrations are elected officials, while governors are administrative leaders appointed from above by the head of state, in addition to the elected deputies. Military administrations continue to function during martial law and for 30 days after its termination or suspension. The jurisdiction of the military administrations shall be maintained in the temporarily occupied territories. If the threat to security and public order in the region ceases to exist, the Ukrainian parliament may, on a proposal from the president, decide before the expiry of the 30-day period, but not before the date of the termination or cessation of martial law, to return the region concerned to civil administration.

The constitution extends the five-year term of office of the Verkhovna Rada of Ukraine; if it expires while martial law or a state of emergency is in force, its authority is extended until the date of the first sitting of the first session of the Verkhovna Rada of Ukraine elected after the lifting of martial law or a state of emergency (Chapter IV, Article 83[4]). Unlike parliamentary elections, the constitution does not explicitly prohibit the holding of presidential elections under martial law. Article 108 states that the president exercises his powers until the newly elected President of Ukraine takes office, but Article 103 sets a five-year presidential term. At the same time, Ukrainian electoral law prohibits the holding of elections under martial law (Skorkin 2024).

Thus, in the event of a threat to national security, the procedure for introducing martial law is as follows: the National Security and Defense Council of Ukraine, taking into account the situation, makes a proposal to the head of state, who submits it to the parliament in the form of a presidential decree, which the parliament enacts into law. Martial law has been introduced twice in independent Ukraine, in 2018 and 2022.

5.1. Martial law in particular areas in the years 2018

On November 25, 2018, the so-called Kerch incident took place, when the Russian Navy attacked the Ukrainian naval vessels *Berdyansk*, *Nikopol*, and *Yani Kapu*, which were on their way from Odessa to Berdyansk, seizing the ships and taking 24 sailors

²⁰ Decree of President of Ukraine 68 of 2022 “On the Establishment of Military Administrations” (<https://www.president.gov.ua/documents/682022-41405>).

captive. Ukraine immediately convened a meeting of the National Security and Defense Council, which proposed to President Petro Poroshenko that martial law be imposed for a period of 60 days. The next day, November 26, Poroshenko signed the decree during the day.²¹ In the late afternoon, however, he announced that he would ask parliament to impose martial law for 30 days, to avoid it spilling over into the upcoming presidential election campaign.²² Poroshenko stressed that the introduction of martial law at this time was necessary because, for the first time since the beginning of Russian aggression, Russian forces were acting officially and under their own flag.²³

According to Article 85(31) of the constitution, within two days of the President of Ukraine's address, parliament must approve the decree on the introduction of martial law or a state of emergency in Ukraine or in its particular regions. In this case, on the same day, the parliament voted on the law on the implementation of the presidential decree,²⁴ which introduced a state of martial law for 30 days in 10 regions (near the Moldovan and Russian borders; the Black Sea coast; and the regions bordering the eastern front: Vinnytsia, Donetsk, Mikolaiv, Odesa, Sumy, Kharkiv, Chernihiv, Kherson, and Zaporizhzhya) and the Ukrainian internal waters of the Azov-Kerch Aquatory. In Ukraine, the army was put on alert, only Ukrainian citizens were allowed to cross the administrative border separating Ukraine from Crimea (Milanova 2018), the entire Ukrainian–Russian border was closed to Russian citizens of military age, except for humanitarian purposes (e.g., funerals), and diplomats and cargo vehicles were allowed to travel freely (Leonova 2018). The movement of Ukrainian citizens was not restricted here either. There was no mobilization due to martial law in particular areas.²⁵

Critics have linked the timing to the political ambitions of Poroshenko, who had been in office since May 2014 (he wanted to run again in the upcoming presidential elections while his popularity was on the decline) and in this regard have pointed to several military incidents after the Russian military intervention in Ukraine in 2014 that were far more serious than the Kerch crises (Mirovalev 2018). At a meeting of the

21 Указ Порошенка щодо підготовки до воєнного стану – повний текст. *Радіо Свобода*, November 26, 2018 (<https://www.radiosvoboda.org/a/news-rnbo-vojennyi-stan/29621708.html>).

22 Порошенко запропонує Раді ввести воєнний стан на 30 днів. *Радіо Свобода*, November 26, 2018 (<https://www.radiosvoboda.org/a/news-poroshenko-viyskovyi-stan/29621996.html>).

23 Чому воєнний стан в Україні ввели лише зараз: пояснення Порошенка. 24 *Канал*, November 28, 2018 (https://24tv.ua/chomu_voyennyi_stan_v_ukrayini_vveli_lishe_zaraz_royasnennya_poroshenka_n1071105).

24 Law of Ukraine 2630-VIII of 2018 “On Approval of the Decree of the President of Ukraine on Imposition of Martial Law in Ukraine” (<https://zakon.rada.gov.ua/laws/show/2630-VIII#Text>).

25 У Генштабі заявили, що мобілізації через воєнний стан не буде. *РБК-Україна*, November 28, 2018 (<https://web.archive.org/web/20181130071804/https://www.rbc.ua/ukr/news/genshtabe-zayavili-mobilizatsii-voennogo-1543421526.html>).

National Security and Defense Council on December 26, President Petro Poroshenko announced the end of martial law in 10 regions of Ukraine as of 14:00 on December 26. The president stressed that this was “a decision of principle. It is based on the analysis of all components of the current security situation in the country.”²⁶

5.2. Martial law throughout the country in 2022

Following Russia’s invasion of Ukraine, a state of war and general mobilization was declared in Ukraine from 5:30 a.m. Kyiv time on February 24, 2022. The proposal to impose martial law in Ukraine or in certain regions of Ukraine is submitted by the National Security and Defense Council of Ukraine to the President of Ukraine. In order to take a decision on the martial law, the President of Ukraine issues a decree on the introduction of martial law and immediately submits it to the parliament for approval, at the same time submitting the relevant draft law. Within two days of the president’s decree, the parliament will meet without convening and will consider whether to approve the decree. Martial law is declared for a period of 90 days, and the procedure is that before the end of the 90 days, parliament may extend the period for a further 90 days. This continues until martial law is lifted. Martial law is lifted by decree of the President of Ukraine when the threat that justified its imposition has passed. The main restrictions of martial law are that the constitution cannot be amended, referendums cannot be held, strikes cannot be called, mass rallies cannot be organized, etc. However, the parliament continues to function; there is no government by decree.

On February 24, 2022, in connection with the military aggression of the Russian Federation against Ukraine and in order to ensure the defense of the state, the Law of Ukraine 2105-IX of 2022 approved Decree of the President of Ukraine 69 of 2022 “On General Mobilization,”²⁷ by which general mobilization was ordered. This lasted for 90 days and was extended in the same way as martial law. All citizens (so far only men) between the ages of 18 and 60 who are able to perform military service can be mobilized. Dynamic changes have been made to the main categories of persons eligible for conscription and exemption.

On July 26, 2021, the Ukrainian parliament adopted Law of Ukraine 1702-IX of 2021 “On the Fundamentals of National Resistance,” which entered into force on January 1, 2022.²⁸ According to this law the national resistance is a set of actions

26 Порошенко оголосив про завершення воєнного стану. *Українська правда*, December 26, 2018 (<https://web.archive.org/web/20200810061854/https://www.pravda.com.ua/ews/2018/12/26/7202331/>).

27 Law of Ukraine 2105-IX of 2022 “On Approval of the Decree of the President of Ukraine On General Mobilization” (<https://zakon.rada.gov.ua/laws/show/2105-20#Text>).

28 Law of Ukraine 1702-IX of 2021 “About Bases of National Resistance” (<https://zakon.rada.gov.ua/laws/show/1702-20#Text>).

organized and carried out for the purpose of assisting the defense of Ukraine by the broadest participation of citizens of Ukraine in actions aimed at providing military safety, sovereignty, and territorial integrity of the state and controlling and repulsing aggression (Article 1[1][8]). Volunteers of territorial defense of the Armed Forces of Ukraine can be Ukrainian citizens, foreigners, or stateless persons (Article 1[1][1]). The most important amendment to the law was made by the Law of Ukraine 2237-IX of 2022 “On amendments to the Law of Ukraine ‘On the Fundamentals of National Resistance,’”²⁹ which allowed the deployment of territorial defense units in the areas of conduct (active military operations).

Defending the independence and territorial integrity of the country is the constitutional duty of every Ukrainian citizen, male or female. The Law of Ukraine 2232-XII of 1992 “On Military Service and Conscription” has been amended several times.³⁰ Among other things, the 2010 amendment allows women who are on the military register to be called up for military service or recruited to perform work to ensure the defense of the state in times of war. In times of peace, women may be called up for military service and service in the military reserve only on a voluntary (contractual) basis (Article 1[12][1]). According to the 2018 amendment, women shall perform military service on an equal footing with men (except in cases stipulated by legislation on the protection of motherhood and childhood and on the prohibition of discrimination on the basis of sex), which includes voluntary enlistment (under contract) and conscription for military service, military service, service in the military reserve, performance of military service in the reserve, and compliance with the rules of military registration (Article 1[12][2]). Moreover, in 2021 it was added to the law that women who have a specialty and/or profession related to the relevant military accounting specialty, defined in the list approved by the Ministry of Defense of Ukraine, and are suitable for military service for health and age, will be included in the military registration of military personnel (Article 1[11][1]–[2]).

On April 11, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine 3633-IX of 2024 “On Amendments to Certain Legislative Acts of Ukraine on Certain Issues of Military Service, Mobilization, and Military Registration.”³¹ President of Ukraine Volodymyr Zelenskyy signed the law on mobilization on April 16. The document was published on April 17 and came into force on May 18. The law introduced the fol-

29 Law of Ukraine 2237-IX of 2022 “On Amendments to the Law of Ukraine On the Fundamentals of National Resistance” (<https://zakon.rada.gov.ua/laws/show/2237-IX#Text>).

30 Law of Ukraine 2232-XII of 1992 “On Military Service and Conscription” (<https://zakon.rada.gov.ua/laws/show/2232-12#Text>).

31 Law of Ukraine 3633-IX of 2024 “On Amendments to Certain Legislative Acts of Ukraine on Certain Issues of Military Service, Mobilization, and Military Registration” (<https://zakon.rada.gov.ua/laws/show/3633-20#Text>).

lowing main changes within 60 days from the date of entry into force of this law: persons subject to military service must update their personal military registration data; male citizens aged 25–50 must undergo a repeated medical examination if they are assigned to disability group II or III for the first time after February 24, 2022; an exhaustive list of valid reasons for not appearing at the military registration office; basic military service (instead of compulsory military service); women on the military register may be called up for military service or engage in wartime defense work on a voluntary basis; and the list of criteria for deferring mobilization is specified (McKenzie 2024). According to Government Decision 443 of April 23, 2024, men between the ages of 18 and 60 are no longer allowed to obtain identity cards and passports (lost, expired) at diplomatic missions abroad but only on the territory of Ukraine.³²

Shortly beforehand, on April 2, 2024, President Volodymyr Zelenskyy signed an amendment to the law, passed by the Ukrainian parliament in May 2023, lowering the country's minimum conscription age from 27 to 25.³³ This means that from April 4, 2024, according to the Ministry of Defense, it will allow more men fit for military service to be mobilized.³⁴ The President explained:

We need to form brigades to replace those that have been at the front for two years. For this to happen, and for them to be an adequate replacement, people must be trained and be in good physical condition. With all due respect to our soldiers, we are saying that there is a difference between a 25-year-old soldier and a 50-year-old soldier. And that is a fact. Different fronts present different challenges, different warfare and different technologies. (cited by Protz 2024)

6. Summary

According to United Nations General Assembly Resolution 3314 (XXIX) of December 14, 1974, the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, constitutes aggression (Article 1). The first use of armed force by a state in contravention of the charter shall constitute prima facie evidence of an act of aggression (Article 2). The study examines some aspects of Ukrainian legisla-

32 Decision of Cabinet of Ministers of Ukraine 443 of 2024 (<https://www.kmu.gov.ua/npas/pro-vnesennia-zmin-do-punktu-11-poriadku-realizatsii-eksperymentalnoho-proektu-shcho-do-oformlennia-pasporta-hromadianyna-ukrainy-ta-pasporta-hromadianyna-ukrainy-i230424-443>).

33 Law of Ukraine 3127-IX of 2023 “On Amendments to the Law of Ukraine On Military Service and Conscription” (<https://zakon.rada.gov.ua/laws/show/2232-12#Text>).

34 Міністерство оборони України: Удосконалення військового обліку призовників триває навіть в умовах воєнного стану (<https://www.mil.gov.ua/news/2023/05/04/udoskonallyennya-vijskovogo-obliku-prizovnikiv-trivay-navit-v-umovah-voennogo-stanu/>).

tion on Russia's war against Ukraine from 2014 to early 2024. Russia's deliberate armed aggression against Ukraine began in February 2014 with a military operation by the Russian armed forces to seize a part of Ukrainian territory, the Crimean Peninsula, and then to start the war in Donbass. Moreover, on February 24, 2022, Russia launched a full-scale war against Ukraine after the Russian President announced the launch of a so-called "special military operation" under the pretext of the "demilitarization and denazification of Ukraine." The Ukrainian armed forces, territorial defense forces, and population thwarted the Kremlin's "blitzkrieg" plans to seize territory in Ukraine and change the government in Ukraine. The pre-invasion phase can be described in the terminology of hybrid warfare, followed by a full-scale war, the worst European conflict since the Second World War, and an unprecedented humanitarian catastrophe.

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