

THE RUSSIAN MILITARY AGGRESSION IN GEORGIA AND UKRAINE: A COMPARATIVE ANALYSIS*

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Abstract. Russia's aggressions in Georgia and Ukraine are part of Russian imperial policy. Therefore, the scenarios for their implementation are identical: passporting a potential victim country, accusing national minorities or Russian citizens of harassment-genocide, then invading these states and occupying/annexing their territories. In both cases, Russia has violated basic principles of international law. Moreover, both aggressions were characterised by extreme cruelty on the part of Russia: ethnic cleansing of Georgians was carried out several times in the occupied territories of Georgia. The massacre of civilians, the illegal deportation of children and other crimes against humanity are also Russia's signature in Ukraine. The article focuses mainly on the similarities between Russia's aggression in Georgia and Ukraine.

Keywords: Russian aggression; Russo-Georgian war; Abkhazia; South Ossetia; Russo-Ukrainian war; Crimea; Donbas; genocide; occupation; annexation; *ius ad bellum*; violation international law.

INTRODUCTION

The Russian aggression in Georgia in 2008 was an important event in many ways. First of all, it was the "Europe's first twenty-first century war" [Slomanson 2023, 5]. This war shocked a West that had become complacent in its belief that war in Europe is left in the past [Asmus 2010, 215]. Also, it was the first time that a member state of the Council of Europe invaded another member state. Even this facts should have been enough to recognize Russia's real intentions and for the democratic world to respond appropriately, although it is a fact that proper conclusions were not made at the time, which led the world to the Russia-Ukraine war. If Russia had faced proper consequences for its aggression against Georgia in 2008, it might not have even dared to invade Ukraine [Kramer 2017, 54].

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The main common point that unites the aggressions directed against Georgia and Ukraine is Russia's strategic line, which implies the resuscitation of the USSR or the creation of a new Russian empire. A clear confirmation of this is Putin's famous words In 2005, that the Soviet Union collapse was the greatest geopolitical catastrophe of the century,¹ and the symbolic expression is the Russian anthem with a new verse and the melody of the USSR anthem, which Vladimir Putin changed in the first year of his presidency [Goradze 2023, 54]. Even in the 21st century, the Russian government continues "with dignity" a tradition of autocracy, imperialism, militarism and genocide, which was typical for Russia throughout its history [Shenfield 2001, 46].

Some explained the Russia-Georgia war with Saakashvili's "folly" and "provocative character" [Emerson 2008, 2], however, the aggression in Ukraine soon convinced the world of the error of this opinion. In 2014, Ukraine did not give an armed response to Russia, and Russia annexed Crimea without a fight. Russia did not stop there and on February 24, 2022, a full-scale war began in Ukraine.

Thus, what unites Russia's aggressions in Georgia and Ukraine is that they are a constituent part of Russia's imperial strategy, Russia's "privileged sphere of interest" in its "Near Abroad" [Pupcenoks and Seltzer 2021, 763]. It can be said that the differences are only tactical and technical in nature.

It is difficult to fully compare Russian aggression in Georgia and Ukraine within one article. Therefore, the article focuses only on similar political and legal issues characteristic of both aggressions. Special attention is focused on the general scenario of aggression, common causes and goals of aggression.

The article mainly uses the comparative, historical-genetic and legal analysis methods.

1. SCENARIO OF RUSSIAN AGGRESSION IN GEORGIA AND UKRAINE: OCCUPATION V. ANNEXATION

The scenario of Russian aggression in the cases of Georgia and Ukraine is identical: occupation of the territory as a result of hostilities, appointment of pro-Russian rule on the seized lands and recognition of the independence of the self-proclaimed republics [Javakhishvili 2022, 12], which will be subject to his control. It can be said that this is the main line, the general scenario of Russian aggression, although Russia's approaches are different in individual cases. For example, regarding Ukraine Russia went even further and

¹ Address to the Federal Assembly of the Russian Federation on April 25, 2005, <http://kremlin.ru/events/president/transcripts/22931> [accessed: 03.08.2024].

officially annexed Ukrainian territories – Crimea² (in 2014), Donetsk³ and Luhansk⁴ (in 2022). Although, this fact, despite the occupation of Georgian territories – Abkhazia and the Tskhinvali Region (so-called South Ossetia), cannot be considered as an essential difference from Georgia, including, from a legal point of view, due to the following circumstances:

- 1) The territory of Abkhazia was actually occupied by Russia since the beginning of the 1990s. Russia did not only support the Abkhaz separatists, but the Russian regular army directly fought against Georgia. On September 27, 1993, using Russian aviation and heavy artillery, Russian regular units, along with North Caucasian military groups and Abkhaz separatists, took over the administrative center of Abkhazia – the city of Sukhumi [Malashkhia 2011, 99-100]. As a result of Russian aggression, Georgia was forced to first (on October 8, 1993) enter the Commonwealth of Independent States (CIS), created as a result of the collapse of the USSR, and then – on May 14, 1994, to sign an agreement “On a Cease-Fire and Separation of Forces” with the representatives of the separatist forces of Abkhazia in Moscow [ibid., 100-101]. According to the agreement, the military contingent of the CIS should enter the conflict zone under the auspices of the peacekeeping forces, and the units of the Georgian army in Abkhazia should completely leave the territory of Abkhazia.⁵ The same agreement also defined the mandate of the UN observers.⁶ In June 1994, about 1,600 military personnel of the Russian military forces entered the conflict zone under the CIS flag [ibid., 101]. On July 21 of the same year, the UN Security Council adopted Resolution #937, which welcomed the efforts of Russia and other CIS members aimed at establishing peace in Abkhazia, post facto approved this peacekeeping operation, and extended and expanded the mandate of the UN peacekeeping mission in Georgia.⁷ Despite the adoption of this resolution, the representatives of that time members of the Security Council – New Zealand, Pakistan and the Czech Republic were concerned over an emerging fact to attribute peace-keeping and

² See: Federal Constitutional Law of Russian Federation of March 21, 2014 “On the admission of the Republic of Crimea to the Russian Federation and the formation of new subjects within the Russian Federation – the Republic of Crimea and the federal city of Sevastopol”.

³ See: Federal Constitutional Law of October 4, 2022 “On the Admission of the Donetsk People’s Republic to the Russian Federation and the Formation of a New Subject within the Russian Federation – the Donetsk People’s Republic”.

⁴ See: Federal Constitutional Law of October 4, 2022 “On the Admission of the Luhansk People’s Republic to the Russian Federation and the Formation of a New Subject within the Russian Federation – the Luhansk People’s Republic”.

⁵ Moscow Agreement “On a Cease-Fire and Separation of Forces”, 14 May 1994, item 2(2).

⁶ Ibid., items 2(3)-(4) and (7).

⁷ See: Resolution of the United Nations Security Council of 21 July 1994 no. S/RES/937 (1994).

predominant role to the neighbouring country when it had direct political interests in the area of the conflict.⁸ In addition, the representative of Pakistan also negatively assessed the practice of post- facto endorsement by the Security Council of a regional peace-keeping operation which was outside the purview of the United Nations.⁹ A similar situation existed in Tskhinvali Region as well, where actually Russian military forces controlled this territory. The European Court of Human Rights in the decision made on January 21, 2021 on the case Georgia v. Russia (II) stated, that the Russian Federation established the fact of the occupation of Abkhazia and Tskhinvali Region (South Ossetia) after the cessation of hostilities in August 2008,¹⁰ although the actual occupation had been ongoing since the 1990s. Due to occupation (as a legal regime) is founded on a presumption of temporariness “a permanent occupation is no longer an occupation” [Levine-Schnur, Megiddo, and Berda 2023, 12].

- 2) In 2000, Russia imposed a visa regime with Georgia.¹¹ Russia established a visa regime for Georgian citizens working in Russia or visiting there, but for “humanitarian reasons”, the visas were not required of residents of Abkhazia and South Ossetia what was evaluated as the first step in Russia’s effort to annex Abkhazia and South Ossetia [Gordadze 2009, 44]. The European Parliament called de facto annexation a simplification of the visa regime for the population of Abkhazia and South Ossetia/Tskhinvali region unilaterally by Russia.¹²
- 3) In the report of September 2009 the Independent International Fact-Finding Mission on the Conflict in Georgia in several places uses the terms “progressive annexation” and “creeping annexation”. The report states that “Russia was promoting progressive annexation of Abkhazia and South Ossetia by integrating these territories into its economic, legal and security space.”¹³ As evidence of “creeping annexation”, the report mentions the mass passportisation of these territories – when Russia awarded Russian passports and citizenship of the Russian Federation to residents of these territories;¹⁴ the payment of pensions to residents of

⁸ Protocol of the 3407th meeting of the United Nations Security Council of 21 July 1994, 7, 9 and 13.

⁹ *Ibid.*, 13.

¹⁰ Judgment of the European Court of Human Rights of 21 January 2021, Georgia v. Russia (II), application no. 38263/08, 142-144.

¹¹ Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, vol. II, 2009 [hereinafter: Report], p. 410.

¹² European Parliament Resolution “on the visa regime imposed by the Russian Federation on Georgia” of 18 January 2001 no. C 262/259, item 1.

¹³ Report, p. 18-19.

¹⁴ *Ibid.*, p. 19.

Abkhazia and South Ossetia; staffing separatist governments and security forces by Russian officials, etc.¹⁵

- 4) The European Court of Human Rights on March 7, 2023 made a decision on the case of Mamasakhlisi and Others v. Georgia and Russia. Based on the evaluations of abovementioned report of the Independent International Fact-Finding Mission and European Parliament resolution of 18 January 2001, the court found Russia's effective control of the territory of Abkhazia since the 1990s and, accordingly, Russia's responsibility for human rights violations in these territories.¹⁶
- 5) The difference between illegal occupation and de facto annexation is very fragile. As they say, both lenses are part of a single pair of glasses [Levine-Schnur, Megiddo, and Berda 2023, 15]. Both are prohibited by international law, and in terms of legal consequences, both are similar – infringing on state sovereignty.
- 6) According to the legislation of Ukraine, Crimea, Donetsk and Luhansk are considered occupied territories¹⁷ as well as Abkhazia and the South Ossetia under the legislation of Georgia.¹⁸ This approach of Ukraine is understandable, because with the mentioned law it declares that the territory is illegally occupied, but does not recognize the internal, unilateral act of Russia – the law by which Russia de jure but unlawfully annexed those Ukrainian territories.

In conclusion, we can say that the territories of Georgia – Abkhazia and South Ossetia de jure are occupied by Russia, but de facto – they are annexed. Russia avoided open or de jure annexation of Georgian territories “by several obstacles, ranging from Russia's military conflict in Chechnya to its interest in avoiding a massive confrontation with the West.”¹⁹ However, this does not mean that Russia will maintain the status quo and will not try to annex the occupied territories of Georgia, especially after the invasion of Ukraine and the start of a large-scale war, when it entering into an open confrontation with the West.

As for Ukraine, its territories de jure are annexed (by Russian unilateral law). Thus, the difference between Georgia and Ukraine in this matter is purely formal, but legal and factual results are identical in both cases.

¹⁵ Ibid.

¹⁶ Judgment of the European Court of Human Rights of 7 March 2023, Mamasakhlisi and Others v. Georgia and Russia, application nos. 29999/04 and 41424/04, item 135.

¹⁷ See: Law of Ukraine of 15 April 2014 “On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine”.

¹⁸ See: Law of Georgia of 30 October 2008 “On Occupied Territories”.

¹⁹ Report 2009, p. 19.

2. REASONS FOR RUSSIAN THE AGGRESSIONS

The main reason for the Russian aggression in 2008 was that Russia was losing Georgia, and its strategic (imperial) interest was threatened.

The new government that came in charge of Georgia after the Rose Revolution in 2003 presented a clearly reform-oriented program that included economic liberalization, the fight against corruption, and institution-building [Nilsson 2009, 89]. Georgia soon achieved considerable success on the path of reform. In 2004-2008, its GDP reached the 10 percent mark, and according to the World Bank index, Georgia took its place among top ten reforming countries; State institutions were established or successfully rebuilt and corruption reduced [ibid., 89-90].

Georgia started moving rapidly toward Euro-Atlantic integration [Cornell and Starr 2009, 4]. In 2004, Georgia became part of the European Union's neighborhood policy, which was significantly influenced by the expectations created by the Rose Revolution. Georgia received the five-year action plan of the European Union neighborhood policy [Gogolashvili 2017, 8]. In April 3 of 2008 NATO summit in Bucharest adopted a declaration where NATO welcomed Ukraine's and Georgia's Euro-Atlantic aspirations for membership in NATO and declared that these countries will become NATO members.²⁰

On September 26, 2007, at the session of the UN General Assembly, the President of Georgia spoke about the negative role of the Russian troops under the UN mandate in Abkhazia and raised the issue of replacing them with neutral international troops [Saakashvili 2007]. This meant that the Russian army would lose the legal basis for its presence in Abkhazia, which it had since 1994.

On 15 May 2008 the General Assembly of United Nations adopted a Resolution on "Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia". The resolution recognized the right of return and of all refugees and internally displaced persons and their descendants to Abkhazia, Georgia as well as emphasized the importance of preserving the property rights of refugees and internally displaced persons from Abkhazia, Georgia, including victims of "ethnic cleansing". The resolution also underlined the urgent need for the rapid development of a timetable to ensure the prompt voluntary return of all refugees and internally displaced persons to their homes in Abkhazia, Georgia and Requested the Secretary-General to submit to the General Assembly at the next session a comprehensive report on the implementation of the present resolution.²¹ This meant that the return of the IDPs from Abkhazia had to really start implementation from autumn

²⁰ Bucharest Summit Declaration of the North Atlantic Council of 3 April 2008, para. 23.

²¹ Resolution of the General Assembly of the United Nations of 15 May 2008 #A/RES/62/249 on "Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia", items 1-4.

of the same year and not remain just on paper from September 2008, it was planned to develop a timetable for the return of IDPs, which would inevitably lead to the issue of replacing the peacekeeping contingent to ensure the safe return of IDPs and their property [Malashkhia 2011, 13].

Soon after the Rose Revolution of 2003 the new government resolved a problem with Ajara, especially with Aslan Abashidze, the leader of the Autonomous Republic of Ajara, who ruled this autonomy since 1992 [Felgenhauer 2009, 177]. Abashidze had established authoritarian, semi-separatist regime within the Ajara, and created long-term problems with the central authorities of Georgia. Abashidze was supported by Russia military contingent stationed in the region for several years and became a kind of private army for Abashidze [Gordadze 2009, 34]. Sure, Ajarian leader “was a loyal client of Moscow” [Artman 2013, 687] and after Rose Revolution looked to Moscow for support in his political confrontation with the new Georgian government.²² Finally, with Kremlin’s positive interference Aslan Abashidze fled to Moscow [Illarionov 2009, 55]. The Autonomous Republic itself, which was outside the constitutional order of Georgia, returned to the legal space of the country [Goradze 2021, 403].

These and other more or less important issues were the basis of Russia’s concern, because parallel to these changes taking place in Georgia, Russia’s increasingly aggressive foreign policy was shaped by the sphere of influence-thinking [Cornell and Starr 2009, 4].

Here the similarity with Ukraine is obvious:

- 1) In 2004, the Orange Revolution took place and a pro-European government came to power, which initially had a negative impact on Ukraine-Russia relations [Muradov 2022, 21]. Like the Georgian Rose Revolution, the Orange Revolution in Ukraine alarmed Moscow. Both of these revolutions were the very first signals of the future eastward expansion of EU and U.S. interests [Matsaberidze 2015, 79].
- 2) Russian Kremlin-backed Viktor Yanukovych became the Prime Minister in 2006 and the President in 2010, and it seemed that Russia had strengthened its position in Ukraine, but after the 2013 Euromaidan and Yanukovych was ousted, and a new era began in Ukrainian politics that determined relations with Moscow [Muradov 2022, 21].
- 3) After the 2008 Bucharest Summit, NATO emphasized the importance of cooperation with Ukraine in practically every summit declaration,²³

²² Report 2009, p. 12.

²³ See: Strasbourg / Kehl Summit Declaration of the North Atlantic Council of 04 April 2009, para. 29-30; Lisbon Summit Declaration of the North Atlantic Council of 20 November 2010, para. 22; Chicago Summit Declaration of the North Atlantic Council of 20 May 2012, para. 35; Wales Summit Declaration the North Atlantic Council of 05 September 2014, para.

except London Declaration in 2019,²⁴ and in the declarations of the 2009, 2018 and 2021 summits with regard to Ukraine, it was stated that NATO remained committed to the decision taken at the Bucharest Summit.²⁵

- 4) After Yanukovych's departure, Ukraine soon – on 21 March 2014 signed an EU-Ukraine Association Agreement.²⁶
- 5) Ukraine has modernized its army in cooperation with the United States, England, and Turkey. This process has been accelerated by threats from Russia. In this regard, time worked in favor of Kiev [Muradov 2022, 22].

Russia's main fear regarding Georgia and Ukraine was related to their "Westernization". Kremlin's important goal was to prevent Georgia and Ukraine from becoming a member of NATO. As later at a meeting with military officers in Vladikavkaz, the then President of Russia, Dmitry Medvedev, said that if not for the invasion of Georgia in 2008, a range of countries which the NATO tries to artificially "protect" would have been within it.²⁷ Under "range of countries" he definitely meant Georgia and Ukraine.

But it would be a mistake to think that Russia's aggression was only due to this and only Georgia and Ukraine were Russia's target. As many authors say, Georgia and Ukraine were not Russia's primary objectives, they were only the tools for gaining leverage over the West [Matsaberidze 2015, 84]. The war in Georgia in 2008 was at the same time a response to the West for the declaration of independence of Kosovo [Bescotti, Burkhardt, Rabinovych, et al. 2022, 3]. As Ronald Asmus noted, this war was directed not only against Georgia, but against the West more generally. Georgia was a physical target, but the West was also a political target. "Tbilisi became the whipping boy for Russian complaints and resentments that had been building for years against the United States, NATO, and those countries Moscow saw as giving encouragement to Georgia" [Asmus 2010, 217]. The same was with Ukraine. By declaring Crimea, Luhansk, and Donetsk as independent

29; Warsaw Summit Communiqué of the North Atlantic Council of 8-9 July 2016, para. 118; Brussels Summit Declaration of the North Atlantic Council of 11-12 July 2018, para. 66; Brussels Summit Communiqué of the North Atlantic Council of 14 June 2021, para. 69.

²⁴ The only exception was the London Declaration of the North Atlantic Council 3-4 December 2019 dedicated to the NATO's 70th anniversary in 2019, which was much smaller than usual, consisted of a total of 9 paragraphs and only generally responded to current events in the world. See: London Declaration of the North Atlantic Council of 3-4 December 2019.

²⁵ See: Strasbourg / Kehl Summit Declaration of the North Atlantic Council of 04 April 2009, para. 29; Brussels Summit Declaration of the North Atlantic Council of 11-12 July 2018, para. 66; Brussels Summit Communiqué of the North Atlantic Council of 14 June 2021, para. 69.

²⁶ See <https://ukraine-eu.mfa.gov.ua/en/2633-relations/ugoda-pro-asociaciyu-mizh-ukrayinoyu-ta-yes> [accessed: 03.08.2024].

²⁷ *Medvedev: Russia's 2008 War with Georgia Prevented NATO Growth*, 21 November 2011, <https://www.atlanticcouncil.org/blogs/natosource/medvedev-russias-2008-war-with-georgia-prevented-nato-growth/> [accessed: 03.08.2024].

states, Russia once again reminded the West, “What you did in Kosovo, we can do elsewhere” [Värk 2022, 6].

3. SIMILAR PURPOSES OF RUSSIAN AGGRESSIONS

3.1. Prevention of Genocide

The main similarity between Russian aggression in Georgia and Ukraine is the false premises for initiating these aggressions. Russia justified its aggressions in both Georgia and Ukraine with humanitarian purposes and cited stopping the genocide of Ossetians or the population living in Donbas (mainly Russian-speaking) as one of the reasons [Pupcenoks and Seltzer 2021, 763].

In 2008, Russia cited the genocide of the local population in the South Ossetia as a pretext for initiating aggression in Georgia, but this was a lie. The Independent International Fact-Finding Mission on the Conflict in Georgia did not find any evidence substantiating this,²⁸ but on the contrary indicated that “ethnic cleansing was carried out against ethnic Georgians in South Ossetia both during and after the August 2008 conflict.”²⁹ Ethnic cleansing of Georgians in the occupied territories and especially in South Ossetia has been recognized by many other international organizations such as Parliamentary Assembly of Council of Europe,³⁰ NATO Parliamentary Assembly,³¹ European Parliament resolution,³² etc.

From a legal perspective, very important is the decision of Pre-Trial Chamber I of the International Criminal Court (ICC) of 27 January 2016, where the court affirmed the facts of attacks in August 2008 “targeted mainly ethnic Georgians following a consistent pattern of deliberate killing, beating and threatening civilians, detention, looting properties and burning houses... These acts were reportedly committed with a view to forcibly expelling ethnic Georgians from the territory of South Ossetia in furtherance of the overall objective to change the ethnic composition of the territory.”³³ As a result of these attacks, there were between 51 and 113 cases of deliberate

²⁸ Report 2009, p. 430.

²⁹ *Ibid.*, p. 394.

³⁰ See: Resolution of the Parliamentary Assembly of Council of Europe #1633 (2008) of 2 October 2008 on “The Consequences of the War Between Georgia and Russia”, para. 13, 24.4.

³¹ See: Resolution of the NATO Parliamentary Assembly № 382 of 16th of November 2010 “On the Situation in Georgia”, para. 14 (a).

³² See: Resolution of the European Parliament #P7 TA (2011)0514 of 17 November 2011 on “Negotiations of the EU-Georgia Association Agreement”, para. F.

³³ Decision of Pre-Trial Chamber I of the International Criminal Court of 27 January 2016, No.: ICC-01/15, para.

killings of ethnic Georgians and the displacement of from 13,400 to 18,500 ethnic Georgian inhabitants from villages and cities in South Ossetia and the “buffer zone.”³⁴ Later, the same court in 24 June 2022 adopted three arrest warrants for Mikhail Mindzaev Gamlet Guchmazo and David Sanakoev who held high positions in the *de facto* South Ossetian government. They were found allegedly responsible for war crimes (unlawful confinement, torture and inhuman treatment, outrages upon personal dignity, hostage taking, and unlawful transfer of civilians) committed between 8 and 27 August 2008.³⁵

The European Court of Human Rights in the case of *Georgia v. Russia (II)* shared the assessments of the abovementioned Independent International Fact-Finding Mission on the Conflict in Georgia and international organizations as well as the decision of Pre-Trial Chamber I of the ICC of 27 January 2016 regarding the ethnic cleansing of Georgians in South Ossetia and responsibility for this mass violation of human rights were attributed to Russia.³⁶

As for the “genocide” carried out by Ukraine in Donbas, Russia has not presented any real evidence to prove it. There is a near consensus among experts that like in Georgia, the situation in Ukraine did not meet the conditions for intervention because there was no evidence of imminent genocide or similar atrocity crimes [Pupcenoks and Seltzer 2021, 771].

Moreover, On February 26, 2022, Ukraine lodged a complaint with the International Court of Justice (ICJ) against Russia, requested the court to Adjudge and declare that: contrary to what the Russian Federation claims, no acts of genocide have been committed in the Luhansk and Donetsk oblasts of Ukraine; the Russian Federation cannot lawfully take any action in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide in the Luhansk and Donetsk oblasts of Ukraine; recognition of the independence of the so-called ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’ by Russia as well as the ‘special military operation’ were based on a false claim of genocide and therefore have no legal basis.³⁷ In the order of preliminary measures of 16 March 2022 the ICJ stated that “the Court is not in possession of evidence substantiating the allegation of the Russian Federation that genocide has

³⁴ *Ibid.*, para 22.

³⁵ See: “Arrest warrant for David Georgiyevich Sanakoev” of Pre-Trial Chamber I of the International Criminal Court of 24 June 2022, No. ICC-01/15; “Arrest warrant for Gamlet Guchmazov” of Pre-Trial Chamber I of the International Criminal Court of 24 June 2022, No. ICC-01/15; “Arrest warrant for Mikhail Mayramovich Mindzaev” of Pre-Trial Chamber I of the International Criminal Court of 24 June 2022, No. ICC-01/15.

³⁶ Judgment of the European Court of Human Rights of 21 January 2021, *Georgia v. Russia (II)*, application no. 38263/08, 142-144.

³⁷ Order of the International Court of Justice of 16 March 2022 on Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*), No. 182, para. 2(a-d).

been committed on Ukrainian territory.”³⁸ By the way, in this order ICJ ordered the Russian Federation, as a provisional measure, to immediately suspend the military operations it began on February 24, 2022 on the territory of Ukraine.³⁹ Despite the court’s decision, Russia has not halted its military operations. Thus, it violated Article 94 of the Charter of the United Nations, which obliges each Member of the United Nations to comply with the decision of the International Court of Justice in any case to which it is a party.⁴⁰

It can be said that terms such as “ethnic cleansing”, “genocide” or “crimes against humanity” are increasingly applied to Russia and its military personnel or officials [Goradze 2023, 51]. The Bucha massacre, the illegal deportation and transportation of Ukrainian children, the bombing of populated areas and other crimes against humanity show us that kremlin leaders are cruel criminals [ibid., 56]. A legal evidence of this is that several arrest warrants issued by the ICC for Vladimir Putin, the President of the Russian Federation, Maria Lvova-Belova, the Commissioner for Children’s Rights in the Office of the President of the Russian Federation, Sergei Kobylash, the Commander of the Long-Range Aviation of the Aerospace Force of Russia, Viktor Sokolov, the Commander of the Black Sea Fleet of Russian Federation, Sergei Shoigu, the Minister of Defense of the Russian Federation and Valery Gerasimov, Chief of the General Staff of the Armed Forces of the Russian Federation. They are suspected of war crimes and crimes against humanity in Ukraine. Especially the first two of them – Putin and Lvova-Belova are allegedly responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation.⁴¹

3.2. Protection of Russian Citizens

Russia began the “preparatory work” for the argument of protecting Russian citizens long before, and it is called “passportisation”.

Passportisation is an instrument of Russian foreign policy for dealing with territorial conflicts in the post-Soviet space [Burkhardt 2020, 4]. Russia is involved as a patron and protector of secessionist entities in protracted territorial conflicts in this space [Bescotti, Burkhardt, Rabinovych, et al. 2022, 2].

Russia used this policy Since the early 1990s, the Russian Federation has had a policy of issuing passports to both South Ossetia and Abkhazia [Green 2010, 66], but the active “passportisation” policy started only since

³⁸ Ibid., para. 59.

³⁹ Ibid., para. 86(1).

⁴⁰ The United Nations Charter, Article 94(1).

⁴¹ See <https://www.icc-cpi.int/situations/ukraine> [accessed: 03.08.2024].

July 2002 when new Russian Law on Citizenship was adopted.⁴² According to Nagashima, the Kremlin launched passportisation in Abkhazia in June 2002 on an ad hoc basis, even before the adoption of the new citizenship law, and in South Ossetia in May 2004 [Nagashima 2017, 187]. This passportisation process accelerated significantly during 2008 [Green 2010, 66]. Putin blanketed the Georgian provinces of Abkhazia and South Ossetia with Russian passports [Slomanson 2023, 5]. As a result, the overwhelming majority of the residents of Abkhazia and South Ossetia became Russian citizens until August of 2008.⁴³ The naturalizations of the residents of South Ossetia and Abkhazia were not collective naturalizations in a formal sense. They operated upon individual application and not *ex lege* (by law). However, the procedures were so simplified that, in practical terms, the naturalizations constituted a mass phenomenon and they might be qualified as *de facto* collective naturalizations of persons residing outside Russia.⁴⁴ This practice of widespread distribution of passports was even called “manufacture of nations” [Green 2010, 66].

Like Abkhazia, in Transnistria passportisation began in 2002 and by 2020 some 220,000 inhabitants (44 per cent of population) held a Russian passport [Burkhardt 2020, 4].

Nagashima believes that the policy of passportisation, which Russia implemented in Abkhazia, the South Ossetia and Transnistria, was caused by its reaction to the current political processes, thus he tried to some extent justify this policy. He also concludes that “Russia might implement passportization in Donbas only if it became quite likely that the Ukrainian government would succeed in regaining its control over the separatist region by force and it became necessary for Russia to foil Ukraine’s ambition” [Nagashima 2017, 196]. The fallacy of this conclusion, made by Nagashima in 2017, was soon revealed. On 24 April 2019 the President of Russian Federation issued a Decree No. 183 “On the Definition for Humanitarian Purposes of Categories of Persons Entitled to Apply for Admission to Citizenship of the Russian Federation in a Simplified Manner”. Despite the general nature of the title, the decree referred only to residents of so-called Donetsk and Luhansk People’s Republics.⁴⁵ Accordingly, only in 2019 more than 136,000 residents of the so-called Donetsk and Luhansk People’s Republics and additional 60,000 people from the Donbas received Russian citizenship. By mid-June 2020, more than 180,000 new inhabitants from these “People’s Republics” had been given Russian passports [Burkhardt 2020, 2-3]. Russia

⁴² Report 2009, p. 165.

⁴³ *Ibid.*, p. 147.

⁴⁴ *Ibid.*, p. 169.

⁴⁵ Decree of the President of Russian Federation No. 183 of 24 April 2019 “On the Definition for Humanitarian Purposes of Categories of Persons Entitled to Apply for Admission to Citizenship of the Russian Federation in a Simplified Manner”, item 1.

flooded the Donbas with Russian passports for all who desired to become Russian citizens [Slomanson 2023, 13]. As a Crimea, “annexation came before the conferral of citizenship” [Hoffman and Chochia 2018, 232], but after the annexation during 2014-2017 only about 10 thousand people were naturalized, because of “automatic naturalization” after annexation. It means that the Russian state automatically considers local residents as Russian citizens after a one-month opt-out period. This is confirmed by the fact that in Crimea, Russia issued 1,865,000 domestic passports only in 2014, and in 2014-2017 – about 2,300,000 [Burkhardt 2020, 14-15].

The Independent International Fact-Finding Mission on the Conflict in Georgia found the conferral of Russian nationality on a large scale as a probable basis (or rather a pretext) for military intervention.⁴⁶ The practice of passportisation was a pretext for intervention, especially considering that a large number of these passports were issued immediately before the conflict. The widespread issuance of passports may be seen as indicative of a general premeditated tactic to annex the region. Further circumstantial evidence to support this is the fact that in July 2006, the Russian Duma adopted a resolution explicitly authorizing Russian troops to defend Russian nationals anywhere [Green 2010, 67]. It is true that the Independent International Fact-Finding Mission on the Conflict in Georgia as well as Green’s opinion applies to Georgia, but the same applies to Eastern Ukraine, whose annexation was preceded by mass passporting. Of course, this is Russia’s strategic line, within which there may be other goals of a consequent nature. For example, maintaining constant tension, prolonging the peace process and freezing the conflict, demographic changes in Russia itself by artificially increasing the number of citizens [Burkhardt 2020, 14-15], etc. But the developments proved that in Georgia and East Ukraine Russia implemented the policy of passporting in order to justify its invasion of the territory of another state under the pretext of the “protection of nationals abroad” doctrine, that is “actual or threatened – outside of its own territory, without the consent of the state against which the force is used or the authorization of the UN Security Council” [Green 2010, 58].

Passportisation policies had mainly two common components in the different regions: First, these policies were unlawful from an international law perspective, and a second common component – a phenomenon so-called “petrification of the exceptional”, deriving from the fact that Russia actually did intend to make use of lawful measures on an international scale, but simply concentrated on non-public (and most often hard-power-driven) measures intending to factually gain or keep control over Russian-speaking individuals in these countries [Hoffman and Chochia 2018, 233].

⁴⁶ Report 2009, p. 172.

Another similarity that characterizes the passportisation carried out in Georgia and Eastern Ukraine is wrapping it with humanitarian rhetoric by Russia. If in the case of Georgia it was announced that passportisation was provided to allow Abkhazians and Ossetians to travel internationally,⁴⁷ in the case of Ukraine it took a more cynical form. In the decree of the President of Russia of 24 April 2019 “On the Definition for Humanitarian Purposes of Categories of Persons Entitled to Apply for Admission to Citizenship of the Russian Federation in a Simplified Manner”, the basis for its adoption and therefore granting Russian citizenship to residents of Donetsk and Luhansk regions was declared protection the rights and freedoms of human and citizen as well as the generally recognized principles and norms of international law.⁴⁸

In conclusion, it can be said that passportisation in Georgia and Ukraine worked as a tool of interference with the sovereignty of these countries [Bescotti, Burkhardt, Rabinovych, et al. 2022, 2].

3.3. Overthrowing the Government

In the case of Georgia, Russia only tried to wrap its aggression with its invented pretext and named the goal of protecting the ethnically Ossetian population and citizens of Russia. However, Russia’s real goals were soon revealed: On August 10, 2008, At an emergency session of the United Nations’ Security Council the US representative to the UN, Zalmay Khalilzad, officially stated, that Moscow’s goal was to overthrow the democratically elected Georgian government. The Russian ambassador to the UN objected to the disclosure of a confidential phone call between top diplomats (the US Secretary of State and Russian Foreign Minister), but then added that some leaders “become an obstacle” and “some situations take courageous decisions with regard to the political future,”⁴⁹ thus factually confirmed the Russian ulterior intentions. Later Condoleezza Rice, the US Secretary of State confirmed Zalmay Khalilzad’s statement and accused Russia of aggression and attempt to overthrow the president of Georgia [Traynor 2008].

In the case of Ukraine, Russia has moved to more open action. Russia’s strategic narrative during the first step of aggression in Crimea and eastern Ukraine in 2014-2016 was initially focused on delegitimizing the Ukrainian government by punishing it for its alleged atrocities and continuously

⁴⁷ Ibid., p. 409.

⁴⁸ See: Decree of the President of Russian Federation No. 183 of 24 April 2019 “On the Definition for Humanitarian Purposes of Categories of Persons Entitled to Apply for Admission to Citizenship of the Russian Federation in a Simplified Manner”, preamble.

⁴⁹ *Russia Trying to Topple Georgian Government*, <https://edition.cnn.com/2008/WORLD/europe/08/10/un.georgia/> [accessed: 03.08.2024]; <https://www.icc-cpi.int/situations/ukraine> [accessed: 03.08.2024].

establishing links between fascism and anti-Russian groups in Ukraine [Pupcenoks and Seltzer 2021, 768].

In his address of February 24, 2022, the President of Russia named “demilitarization and denazification” of Ukraine as one of the main goals of starting the war.⁵⁰ “Denazification” exactly meant the violent overthrow of the Ukrainian government.

4. VIOLATIONS OF INTERNATIONAL LAW

There are fundamental similarities between the two aggressions. This is a violation of the international law.

Russia violated the norms and principles of international law, particularly on the initiation of war (*ius ad bellum*) by invading Georgia [Malashkhia 2011, 30-33] and Ukraine [Slomanson 2023, 8-11], attempting to overthrow the democratically elected government, and carrying out aggressions. First of all, this is Article 2(4) of the UN Charter, according to which “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” It is the fundamental principle of the post-World War II international order and prohibits the unilateral use of force in international relations [Slomanson 2023, 8-9]. In case of threat to the peace, breach of the peace, or act of aggression, only the UN Security Council can decide what measures shall be taken⁵¹ including using forces if it is necessary to maintain or restore international peace and security.⁵² Neither before (nor after) the invasion of Georgia nor Ukraine did the UN Security Council make a similar decision, which confirms Russia’s violation of the above-mentioned articles of the UN Charter. Moreover, in contrary, Russia has vetoed all Security Council attempts to limit its use of force [Slomanson 2023, 11].

Russia also violated the 1975 Helsinki Final Act, which is a fundamental document for security and cooperation in Europe. Russia has violated at least the first six articles of this act: I. Sovereign equality, respect for the rights inherent in sovereignty, II. Refraining from the threat or use of force, III. Inviolability of frontiers, IV. Territorial integrity of States, V. Peaceful settlement of disputes, VI. Non-intervention in internal affairs. In terms of the use of military force Article II is particularly important. This article prohibits the use of force in international relations against the territorial

⁵⁰ Address by the President of the Russian Federation. 24 February 2022, <http://kremlin.ru/events/president/news/67843> [accessed: 03.08.2024].

⁵¹ The United Nations Charter, Article 39.

⁵² *Ibid.*, Article 42.

integrity or political independence of any State, as well as any manifestation of force for the purpose of inducing another participating State to renounce the full exercise of its sovereign rights. “No consideration may be invoked to serve to warrant resort to the threat or use of force in contravention of this principle” – is stated in the same article.

Thus, Russia ignored the fundamental principles of international law and the modern world order with the aggressions carried out in Georgia and Ukraine, the declaration of parts of the territories of these countries as independent states and the occupation/annexation.

CONCLUSION

The aggression carried out by Russia in Georgia and Ukraine has several fundamental similarities.

First and foremost is the basis of the aggression – Russia’s imperial aspirations. Georgia and Ukraine are important components of the common strategic line of these aspirations. Russia considers Georgia and Ukraine within its “sphere of influence” and cannot accept these countries’ independent choice to be part of the democratic and free world. For Russia, as a dictatorial type of state, the “Westernization” of “its sphere of influence” is unacceptable. Therefore, Russia perceives this more as an expansion of the West (NATO and the EU) rather than a choice of the Georgian and Ukrainian people.

The second fundamental similarity is the violation of international law. Russia violated the principles of international law that underlie the world order established after World War II.

The third similarity is the common scenario of aggressions: mass passportisation, accusing the potential victim countries of genocide, invading these countries, occupying/annexing their territories, and attempting to overthrow democratically elected governments.

The fourth similarity is Russia’s exceptional cruelty. Russia is extremely ruthless in satisfying its imperial ambitions. In Georgia, Russia, directly or through separatist puppets, organized ethnic cleansing of Georgians in several waves (in the 1990s, directly during the August 2008 war period and after). Russia also carried out multi-stage aggression in Ukraine (first, the annexation of Crimea and de facto occupation of eastern Ukraine in 2014-2016, then – the start of the war on February 24, 2022), during which it showed extreme cruelty that could be qualified as genocide.

The only real difference between these two aggressions is that the aggression carried out in Georgia was not followed by a significant reaction from the world. However, it should be said that the annexation of Crimea did not become

a reason for active actions of the democratic world either. The West only woke up after the invasion of Ukraine and starting the large-scale war in February 2022.

Russia's violation of fundamental principles of international law and crimes against humanity cannot remain without accountability. This is not only legally necessary but also morally justified [Kramer 2017, 13]. Otherwise, the existence of international law will lose its meaning and humanity will find itself in uncontrollable chaos.

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