

Will Russia's War Kill the Rule of Law in Ukraine and Europe?

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Eight years after Russia illegally invaded and occupied Ukraine's Crimean peninsula in February 2014 and then illegally annexed it the following month (see Executive Order on Recognizing Republic of Crimea of 17 March 2014 viewable online from Czechia, Russian Federation and certain other countries), Russian President Vladimir [Putin announced on State TV](#) in the early morning of 24 February 2022 that he was about to launch a 'special military operation'. He declared that the operation [was intended](#) "to protect people who have been subjected to bullying and genocide ... for the last eight years", to "strive for the demilitarisation and de-nazification of Ukraine" as well as "to bring to court those who committed numerous bloody crimes against civilians, including against citizens of the Russian Federation".

Within minutes of Putin's 24 February 2022 speech, Russian armed forces invaded Ukraine from several sides, using a 'cauldron' military maneuver (a [variation of pincer operational movement](#)). Russia attacked Ukraine's North (from Belarusian and Russian territory), its East (from Russian-proxy-held Donetsk), its South (from Russian-occupied Crimea) and its coastline from Mariupol to Odessa (amphibiously from the Sea of Azov and Black Sea) to try to overwhelm Ukrainian armed forces. Kharkiv, Senkivka, Donbas, Kyiv and many other civilian and military centres were hit with ballistic and cruise missiles on the [first day of the war](#). The same day, Russian forces tried to take Kyiv's [Antonov](#) (Hostomel), [Sikorsky and Boryspil airports](#) in an effort to establish air superiority and secure supply lines, push into Kyiv's center, [decapitate](#) the democratically-elected Ukrainian government, and install a Moscow-directed [puppet regime](#) in its place. Ukraine's President Volodymyr Zelensky responded by immediately declaring martial law ([Presidential Decree No. 64/2022](#)) and rallying the country's armed forces to fight the aggressor.

Putin had apparently expected to take over Kyiv and dominate Ukraine within [2 days](#), which, at the time, seemed quite realistic given Russia's enormous operational and tactical advantage. The United States Central Intelligence Agency [predicted](#) it would not take more than [4 days](#) for Kyiv to fall. Russia is more than 28 times the geographic size of Ukraine. Russia's population of 143 million vastly outnumbers Ukraine's 43 million and its active-duty military personnel outnumber Ukraine's by almost three times. On 15 May 2018, Putin had personally inaugurated the [Kerch Straits Bridge](#), Europe's longest bridge spanning 19 kilometers, linking Russia's Krasnodar region (an important infrastructure base for the Russian Navy's Black Sea fleet) to Russian-occupied Crimea, which ensures a direct Russia-Crimea military supply line, even if vulnerable to [attack](#).

The US Government offered to evacuate Zelensky from Ukraine on 26 February, but according to the Ukrainian Embassy in the United Kingdom, Zelensky responded that "[The fight is here; I need ammunition, not a ride](#)". Instead of fleeing Ukraine,

Zelensky rallied Ukrainian troops to fight and urgently appealed for international assistance. During the first weeks of the war, it still seemed likely that Russian forces would seize most or all of Ukraine's coastline from the Sea of Azov to Crimea and westward to Odessa, enabling them to isolate the rest of Ukraine from the sea and eventually occupy at least two-thirds of Ukrainian territory, despite Zelensky's courageous and defiant stand. Step-by-step however, Ukrainian forces took full advantage of Putin's hapless strategic, tactical and logistical blunders, and staged a series of well-executed counter attacks, supported by NATO, US and EU weapons, logistics and advice, trashing Putin's plans of quick regime change. By late November 2022, Ukrainian forces had recaptured much of its territory that was lost to Russian forces in February and March, and they had gained enough momentum to turn the Russian offensive campaign into a hasty and disorderly retreat from many points in eastern Ukraine, including the strategically important regional capital Kherson. [Four sites were discovered](#) where apparently Russian forces had tortured Ukrainians during Russia's occupation of that area.

Putin's War Strikes at the Heart of Democracy, Human Rights and the Rule of Law in Ukraine and in Russia Itself

In its 18 October 2022 [report](#), the [UN Human Rights Council's Independent International Commission of Inquiry on Ukraine](#) noted the impact of explosive weapons in civilian areas, indiscriminate attacks, deliberate Russian positioning of troops or equipment in residential areas, Russian armed attacks on fleeing civilians, "summary executions, torture, ill-treatment, and sexual and gender-based violence, unlawful confinement and detention in inhumane conditions, and forced deportations" as well as wounding of persons protected under the Geneva Conventions. On 14 October, Pramila Patten, [UN Special Representative of the Secretary-General on Sexual Violence in Conflict](#) underlined that "When women are held for days and raped, when you start to rape little boys and men, when you see a series of genital mutilations, when you hear women testify about Russian soldiers equipped with Viagra, it's clearly a military strategy" and "a deliberate tactic to de-humanise the victims". The Special Representative referred to over a hundred confirmed instances the UN had verified since the war began and she noted that victims of sexual violence ranged from 4 to 82 years of age. There can be no doubt that millions in Ukraine will suffer severe, long-term and inter-generational trauma from the death and destruction. On 22 November 2022, [UNHCR indicated](#) that the number of refugees recorded across Europe had reached 7.9 million Ukrainians and that some 6.9 million Ukrainians were estimated to have been displaced inside Ukraine, which together comes to just over one-third of Ukraine's 43.8 million suffering forced displacement.

It is one thing to conduct a short military operation to make a point, settle a border dispute or carry out a so-called 'surgical strike' on 'terrorists', and quite another thing for an aggressor to deliberately perpetrate a widespread, sustained and systematic attack on the civilian population. On 8 October 2022, Putin made army general [Sergei Surovikin](#), infamous for his brutality in Afghanistan, Chechnya and

Syria, commander of all Russian forces in Ukraine. Under Surovikin's command, Russian forces launched [hundreds of missiles](#) that knocked out 60% of Ukraine's civilian energy and power grid as the weather across Ukraine turned colder by late November. Russian forces and mercenaries seem to have intentionally, persistently and systematically inflicted the most cruel of atrocities upon Ukrainian civilians, apparently without any fear of prosecution from Russian military authorities, which strongly suggests that war crimes have been instigated or at least tolerated or ignored from Russia's [chain of command](#).

Russia's campaign to destroy Ukraine and terrorize its population constitutes nothing less than the most blatant and direct attack on the international rule of law and the most fundamental human rights and freedoms of all of Ukraine's people. Aggression is the most serious violation of the Charter of the United Nations that negates the UN's primary purpose to maintain international peace and security. The crime of aggression also violates the Rome Statute of the International Criminal Court which, jurisdictional issues aside, mandates criminal prosecution of anyone, regardless of official rank or capacity, even a Head of State, who may be responsible for committing or ordering to be committed aggression, or for that matter, war crimes, crimes against humanity or genocide. These crimes are well defined not just in the Rome Statute, but in general international law, and their prohibition forms part of *jus cogens* that peremptorily binds all members of the international community without exception, begging the question of criminal accountability for Putin and his cohorts. All this makes Ukraine's complete and full cooperation with the Prosecutor of the ICC to investigate all Rome Statute crimes, regardless of who may have perpetrated them or against whom, all the more essential. In a 25 September 2022 speech to the UN General Assembly, [Czech Republic Foreign Minister Jan Lipavsky called for](#) Putin to be prosecuted by the International Criminal Court, or if necessary, by a special international tribunal for the crime of aggression and war crimes. Lipavsky's reiteration of this proposal on [6 November](#) seemed to have struck a raw nerve in Russia, judging by Russian Foreign Ministry spokeswoman [Maria Zakharova's shrill response on Telegram](#): "Start with yourselves. Iraq with remnants of Libya will give recognition to active repentance of the West. Serbia also, by the way. The immune ones, when do you plan to administer justice for yourselves?" in a feeble attempt at ['whataboutism'](#).

Putin's ill-conceived 'special military operation' not only attacks the rule of law in Ukraine, but also the rule of law throughout the Russian Federation. First, Russia has severely restricted and punished freedom of assembly, freedom of speech and independent media, locking up thousands of protestors and journalists across Russia for opposing or criticizing the war, and even for referring to Putin's so-called 'special military operation' as a 'war'. On 20 October 2022, the [UN Human Rights Committee noted](#) that "there had been thousands of cases of harassment and persecution of journalists, and dozens of murders and attempted murders" and that "[j]ournalists had also been abducted and tortured" while there "was no information that these cases had been effectively investigated". The Human Rights Committee noted that "[h]undreds of Russian journalists had been detained for reporting on the war in Ukraine or protests about the war" and that "a growing number of journalists, lawyers and Russian dissidents had been targeted, murdered,

or detained by Russian forces”. Second, Putin’s [‘partial mobilization’](#) (i.e. forcible military conscription) brought the Russian war in Ukraine home to citizens in Russia. By throwing Russian conscripts, untrained, inexperienced and ill-equipped, into combat against well-trained and battle-hardened Ukrainian men and women soldiers who have shown great determination to save their own families, homes and homeland from destruction, the Kremlin not only [weakened the morale](#) of its own armed forces, but spread disgust within much of Russia’s public. Many Russian citizens, perhaps apathetic or cynically acquiescent of Kremlin war policy, found they suddenly risked losing loved ones at front lines in a senseless war with Ukraine. Conscription scared hundreds of thousands of military age men to [flee Russia](#) for [Turkey](#), [Kazakhstan](#), [Kyrgyzstan](#), [Tajikistan](#), [Uzbekistan](#), [United Arab Emirates](#), [Greece](#), [Bulgaria](#), [Serbia](#), [Georgia](#), [Switzerland](#), [Finland](#), [Mongolia](#), [Cyprus](#) and [many other countries](#), to avoid possibly dying for a cause they don’t support. Russia’s Federal State Statistics Service (Rosstat) [estimated](#) that the number of Russians departing Russia (including tourists and business people likely to return) reached 8.5 million in the first half of 2022, an increase of 25% from January to June 2021. The war also spurred brain drain and massive [flight of capital](#) from Russia into [Dubai](#) and other places. Widespread protests in Russia forced [Putin to end conscription](#) on 31 October 2022. While conscription may have been terminated for now because of [‘mistakes’](#) that [Putin admitted](#) in a televised speech had occurred, the [arbitrary](#) way in which many Russian men seem to have been snatched and hustled off to war and that [recruited members of ethnic minorities first](#), risks weakening [Russian confidence](#) in the integrity of their own public institutions, although by how much remains an [open question](#). On 4 November 2022, a [new law entered into force](#) which Putin had signed a few days earlier that offers prisoners convicted of murder amnesty [from their sentence](#), plus salary and payment to family upon death, if they agreed to serve in the Russian armed forces. Russian mercenary groups, such as [Yevgeny Prigozhin’s Wagner Group](#) reportedly offered a [similar deal](#).

Putin’s War Threatens the Rule of Law in Europe and the World

Putin’s senseless violence threatens the rule of law beyond Ukraine and Russia for several reasons. Protracted war risks spilling beyond the national borders of Ukraine and the Russian Federation. It affects neighboring countries and regions and undermines human security, even far from the battlefield. Peace, justice, universal human rights and human security are indivisible in the sense that our individual lives are interdependent with everyone else’s in one way or another and regardless of where we live. The indivisibility of the human condition is not at all an abstract, metaphysical or esoteric concept. The [World Bank noted that the war impeded post-pandemic economic recovery](#) in emerging Europe and Central Asia. In August 2022, the [UN estimated](#) that the war increased the number of people around the globe suffering acute hunger to 47 million, pushed 71 million into extreme poverty and precipitated a global energy crisis that hurts the more vulnerable the most. If that were not bad enough, [Putin’s thinly veiled threats to use nuclear weapons](#), coupled with the Kremlin’s clumsy attempts to spread [false flag rumors that Ukraine planned](#)

[to set off a dirty bomb](#), conjure up nightmare scenarios of retaliation, escalation and all-out nuclear catastrophe and spread fear across Europe and the [world](#).

Whatever sense of complacency governments may have had since 2014 about Kremlin intentions towards Ukraine instantly evaporated on 24 February 2022. Many European governments, particularly of the [Baltic States](#), expressed fears that their countries could be next in line for Russian aggression. Each one of the [frozen conflicts featuring unwanted Russian interference](#), namely Moldova's Transnistria, Azerbaijan's Nagorno-Karabakh, Georgia's Abkhazia and Ukraine's Crimea, Donetsk and Luhansk, presents its own distinct medieval-style, macabre morality play, and warns that 'rule of law', 'democratic governance', 'human rights' and 'international peace and security', are in fact precious, vital and concrete values critical to modern human life rather than abstruse concepts or gratuitous western-inspired propaganda. There is nothing at all abstract about aggression, invasion, violence, war crimes atrocities, spilt blood, rape victims, displaced population, broken bones, broken families, broken homes and traumatized children.

The European Union Fights Back to Restore the International Rule of Law

Spectacularly, the European Council took decisions on 28 February, 23 March, 13 April, 23 May and 21 July 2022 to authorize the European Peace Facility, [established](#) in March 2021, to provide lethal defensive military assistance to Ukraine. By mid-October 2022, military assistance from the EU to Ukraine reached a total of [EUR 3.1 billion](#). On 17 October 2022, the EU Council took another momentous decision to set up a [Military Assistance Mission](#) on EU soil to support Ukrainian Armed Forces with training and further enhance Ukraine's military capacity. This unprecedented military action by the EU continues to play an enormously important role in safeguarding the sovereign independence of Ukraine and standing up for the international rule of law.

Equally if not more important has been the hard, less visible work the EU has been steadily carrying out to maintain, reform and update rule of law institutions in Europe, including in Ukraine. The EU's rule of law assistance programs are unique in their sheer depth, specificity, concreteness, level of detail and practicality of their recommendations for sustained institutional and programmatic reform. EU recommendations condition the degree to which a country can associate with, participate in, or become a member of, the European Union – a trading bloc serving around 446 million people and commanding around [one-sixth of world GDP](#). The prospects of reaping the immense benefits of closer association with the EU can strongly motivate non-EU countries in Europe to institute EU rule-of-law standards in their law, policy and practice.

Almost from the moment Ukraine proclaimed its independence from the Soviet Union in 1991, the EU has helped Ukraine associate more closely with it by strengthening Ukraine's participation in the regional and global trading system, its human rights

protection, democratic governance, anti-corruption efforts, and its capacity to chart its own political future and foreign policy free from external interference.

Ukraine's relationship with the EU has developed over many years in fits and starts because opposing political parties with diametrically opposed foreign policy agendas alternated in government. Leonid Kravchuk, the first president of newly independent Ukraine, struck a pro-Europe stance, but then lost power to Leonid Kuchma who favored renewing closer ties with Russia. Presidential power then shifted back and forth between on the one hand pro-Russian Kuchma and his colleague Viktor Yanukovich, leader of the Party of Regions, who tilted Ukraine away from Europe and towards Russia, and on the other hand, strongly pro-Europe leaders Viktor Yushchenko (who led 'Our Ukraine' party), Petro Poroshenko (who leads the 'European Solidarity' party) and Volodymyr Zelensky (who leads the 'Servant of the People' party). In June 1994, Ukraine signed a [Partnership and Cooperation Agreement](#) with the EU that entered into force in March 1998. In May 2004, the EU recognized Ukraine as a priority partner within its European Neighbourhood Policy, but Ukraine's government at the time almost derailed this development until Ukraine's November 2004 Orange Revolution protested the Kuchma regime's corruption, attacks on press freedoms and blatant [electoral fraud](#) that had brought Putin protégé Viktor Yanukovich to power. In May 2009, Yanukovich's rival, President Viktor Yushchenko who won a second round of run-off elections after the Supreme Court nullified Yanukovich's first round win because of credible allegations of electoral fraud, and brought Ukraine into the EU's [Eastern Partnership Initiative](#). That moved Ukraine a step closer to the EU. In power again in November 2013, President Yanukovich suddenly rejected the [European Union-Ukraine Association Agreement](#) and pivoted towards the Russian Federation and the [Eurasian Economic Union](#) (comprised of some former Soviet States) which was what set off the [Euromaidan](#) protests that began on 21 November 2013. Yanukovich then refused to sign the [EU Association Agreement / Deep and Comprehensive Free Trade Area \(AA/DCFTA\)](#) which triggered the [Revolution of Dignity](#) in February 2014 that ended up [ousting Yanukovich](#) (for a second time) and convinced Putin to invade and occupy Crimea within days. In 2019, during Petro Poroshenko's presidency, [335 out of 450 Members of the Verkhovna Rada](#) voted to amend Ukraine's Constitution towards "full membership of Ukraine in the European Union and the North Atlantic Treaty Organization". Ukraine acceded to several key EU treaties, visa-free travel throughout the Schengen area from June 2017 and deep EU-Ukraine cooperation to bring Ukraine closer in line with the EU [acquis](#). The EU has consistently backed up its cooperation with Ukraine with [substantial financial assistance](#), projected to reach EUR 18 billion in 2023.

On 28 February 2022, just four days after Russia's invasion, Ukraine launched a formal application to become a full EU member, which the European Commission then assessed. In its [Opinion](#) of 21 June 2022, the European Commission observed that Ukraine had undertaken successful decentralization, strengthened its judicial independence, established anti-corruption bodies and improved its legal and institutional human rights framework which the Commission considered generally to follow European and international standards. It considered that "Ukraine is well advanced in reaching the stability of institutions guaranteeing democracy, the rule

of law, human rights and respect for and protection of minorities”, that Ukraine had achieved an ‘overall satisfactory track record of implementation’ of the European *acquis*, and had “given ample proof of its adherence to the values on which the European Union is founded”. It recommended to the European Council that “Ukraine should be given the perspective to become a member of the European Union” and ‘candidate status’ pending implementation of a number of recommendations. On 23 June 2022, the European Council endorsed the Commission’s Opinion and granted Ukraine the status of ‘candidate’ for EU membership.

Will Russia’s War Kill the Rule of Law in Ukraine and Europe?

No – Russia’s war of aggression, even though its damaging effects have been severely exacerbated by what looks like deliberate, widespread and systematic infliction of cruelty upon Ukrainian civilians, will not kill the rule of law in Ukraine or in Europe, and there are at least four reasons why not.

First, the enormous suffering inflicted by Russia on Ukrainians from all walks of life has only strengthened Ukraine’s resolve to fight for the right to determine its own future, to enter into agreements and associations it so wishes, and to thrive as part of the European family of nations, free from foreign domination or domestic dictatorship. Ukrainians have proven themselves willing to risk life and limb for European values including the rule of law.

Second, Ukrainians have consistently demonstrated their resolve to fight Russian-backed attempts to force Ukraine away from Europe and towards Russia: that is what the Orange Revolution, Euromaidan, Revolution of Dignity and the current existential armed struggle are all about.

Third, the EU, NATO and much of the international community at large have responded with remarkable solidarity in denouncing Russia’s aggression and in providing diplomatic, economic and moral support to Ukraine in its hour of need, thereby standing up for rule of law principles at all levels. The brilliant leadership of [European Commission President Ursula von der Leyen](#) and her team to bring robust, thoroughly humane, timely and well targeted assistance to Ukraine, has proven pivotal in this regard and its importance cannot be overstated.

Finally, worries that the EU’s fast tracking of Ukraine into candidate status for EU membership somehow weakens the rule of law across the entire EU because Ukrainian public administrative institutions and judicial reform have a way to go before they conform to EU standards, are misplaced. It will certainly take time and effort for Ukraine, with a long Soviet past, to learn and practice genuine free and democratic governance, full human rights observance, and the rule of law throughout its governance institutions and across civil society, but the EU cannot in good conscience ignore Ukraine’s legitimate aspirations to improve the lives of its people particularly in its greatest hour of need. The EU must share its Enlightenment values and good practices with Ukraine, instead of abandoning Ukraine to the Kremlin’s deformed and twisted attempts to treat it as an inferior vassal State.

Ultimately, the vibrancy of the rule of law in Ukraine, Europe, and for that matter in Russia or anywhere in the world, can survive even violent onslaught, wherever people are willing to fight for rule of law institutions and practices, sometimes at great risk to themselves. If all freedom loving countries support one another with full and deep cooperation to promote peace, democracy, human rights, and the rule of law at all levels, as the EU has done with Ukraine for decades, the rule of law, democracy and human rights will continuously strengthen and increasingly enable people to thrive in conditions of peace, security and human dignity.

