

*War and Peace in Ukraine. A Legal-Linguistic Perspective**

Delia Denis Stănescu

Independent Scholar, Romania

The current research overlaps a linguistic and a legal analysis of public international law in the Ukrainian case. Based on both official documents and public declarations, it explains the grounds for the wide range of understandings that the two common concepts—peace and war—may be bearing depending of the angle of looking at the matter and depending on the actor invoking them. The study develops the reasons likely to have been considered by President Putin when insisting to refer to the Russian military action started in Ukraine in February 2022 as “special military operation” instead of “war” and the cardinal difference in terms of legal impact for such a linguistic choice. It also builds on the elements which could serve as a basis for achieving a deal in obtaining peace in Ukraine, while tackling on the possible geopolitical, public communication and diplomatic hurdles, and offering clues for strategic analysis of the matter.

Keywords: war, peace, special military operation, Ukraine, United Nations Security Council

The Setting in Ukraine

What happened in Ukraine on February 24, 2022 produced a shock to the whole world. Many indicators were available ahead, yet it was difficult to believe that a XX century-style military invasion could take place in days where the democratic part of the world was fond about rights, values and rule of law, even in their imperfect form.

However, from the very beginning a linguistic detail was striking: while the first impulse was to refer to the events as “war”, the very initiators insisted on talking about performing a “special military operation”. For a wide range of reasons, this detail proved to be a game changer, notably because not considering the same referral means not obeying to the same rules—which is a typical feature of the hybrid war.

Why “Special Military Operation” and Not “War”?

From a legal perspective, a war is the gravest of all types of armed conflict to such extent that at international level it was felt the need to establish a body with the widest possible geographical coverage as a warranty against conducting such atrocious activity: the United Nations Security Council which was granted the “primary responsibility for the maintenance of international peace and security” (Art. 24 para 1 of the United Nations Charter).

* Provided that the current study refers to an ongoing event, it is recommendable to be aware about the analysis and respective conclusions relying on the information which was publicly available until May 28, 2023.

Delia Denis Stănescu, Ph.D. in applied English with focus on the peculiarities of English in EU and international affairs, a Romanian professional with 20 years of experience in EU and international affairs built on legal background, including 8 years as Justice and Home Affairs counselor at the Permanent Representation of Romania to the European Union. Since 2020 she converted the accumulated professional knowledge into developing strategic analysis for the Romanian central administration.

In legal terms, while the concept of “war” benefits of more (tentative) definitions, no matter how vague or generic, its correlative “peace” is even less of interest for a definition. For example, the very Charter of the United Nations is focused on *peace* (for obvious contextual reasons at the date of its signing) rather than *war*, while no hinting at defining either of the concepts¹. Without entering into details about legal developments on the matter following the post-World War II, the reason for such a bizarre legal situation is closely linked to the fact that from a historical point of view *being at war* or *being at peace* is a matter of statality and of sovereignty which cannot be settled by simply checking a pre-set list of conditions, but by a tailor-made solution requiring political and diplomatic endorsement.

In time, the concept of *war* has received numerous definitions, and found expression in a plethora of forms: *conventional*, *non-conventional*, *economic*, *psychological*, *technological*, *against terrorism* and more recently, *hybrid*, among others². It all started from a basic understanding of the war as being an “armed conflict between States, intended by at least one of them, and performed with a view of achieving a national interest” (Guillien & Vincent, 1999, p. 268). In other words, “war is ‘organised’ violence, first, because it is crafted to achieve specific purposes, and second, because it is collective: it involves social collaboration and coordination. Violence by lone individuals might be planned and carefully executed, but it lacks the collective element characteristic of war” (Reus-Smit, 2020, p. 50). Among its main features are the intention of aggressive act and the planning for performing it against another statal actor. For these reasons, “[r]andom acts of violence or conflict that are conducted without violence do not count as wars” (idem, p. 50).

From a mere linguistic point of view, the first sense of the *war* as defined by the Merriam-Webster Dictionary (“a state of usually open and declared armed hostile conflict between states or nations”) is closer to its legal understanding, as it highlights the feature of “open and declared”. When “open and declared”, an act of military aggression against another state can be judged whether it complies with the legal limitations in performing such activity. The reason for this is that, when assumed, a war must observe rules and limitations in respect to the situation of civilians, of the militaries and of the targeted objectives. Not the least, the legitimacy of conducting a war within the limits of the international law can be judged when identifying the enemy and the reasons for starting the war are formulated clear enough.

For all these reasons, when claiming *war*, a set of international provisions are entitled to apply, such as the United Nations Charter³ and additional legal framework like Montreux Convention⁴ (1936) or the Helsinki Final Act⁵ (1975). In the same time, starting a war almost automatically triggers the entry into force of the martial law on the affected territory, thus bringing severe limitations to the regular legal situation of the society, including notable exceptions in performing the personal and social rights and freedoms.

For all the international actors, starting a *war* implies activation of the international humanitarian law⁶ which aims at protecting the lives of the civilians or of the people who are no longer part of the hostilities. In

¹ A more ample analysis of the legal-linguistic implications of the concept “war” versus “special military operation” was developed in Chapter 3.4.2 *Case study: Ukraine* of the author’s Ph.D. thesis “A Linguistic Approach to Negotiations in the European Union. A Comparative Study or How to Read an EU Document” due for publication in autumn 2023.

² Such as *civil*, *cold*, *licit*, *revolutionary*, *subversive*, *total war* (Guillien & Vincent, 1999, pp. 268-269).

³ <https://www.un.org/en/about-us/un-charter>.

⁴ Which sets out norms for the navigation of civilian and military ships from/towards the Black Sea through the Bosphorus and Dardanelles Straits, available at <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20173/v173.pdf>.

⁵ <https://www.osce.org/files/f/documents/5/c/39501.pdf>.

⁶ Mainly consisting of the four Geneva Conventions (1949) and its three Additional Protocols (1977, 2005).

practical terms, these provisions should translate into refraining from affecting civilians by means of warfare, allowing medical workers to perform their duties, sick and wounded being taken care of, limitations to the use of indiscriminate warfare (e.g. poison gas, cluster munitions, chemical warfare), human treatment for the prisoners of war, including the right for their image being protected from public curiosity.

The Russian approach in the Ukrainian case confirmed the Einstein's evaluation of being impossible to "simultaneously prevent and prepare for war" and from this perspective a new concept was necessary to qualify it. In President Putin's words⁷, he had decided "to conduct a *special military operation*" in Ukraine with the goal "to protect people who during eight years suffered from abuse and genocide from the Kyiv regime [...]. And for this we will strive for the demilitarisation and denazification of Ukraine and to bring to justice those who committed numerous bloody crimes against civilians, including Russian citizens"⁸.

In our opinion, one of the reasons considered by President Vladimir Putin when choosing not to refer to a war, but to a *special military operation* when he decided the military activity in Ukraine in February 2022⁹, also relates with the narrative he promoted in the article published a few months ahead¹⁰ whereby he supported the idea of Russians and Ukrainians being "one people—a single whole" which made it ideologically impossible for him to perform a war against Ukrainians, in other words, against "his own people".

However, based on the public information, it is still difficult to decipher what could be the Russian understanding for *demilitarisation* and *denazification* in the case of Ukraine. Prior to February 24, 2022, *demilitarisation* was used with the main meaning provided by Merriam-Webster Dictionary: "to do away with the military organization or potential of" or "to prohibit (something, such as a zone or frontier area) from being used for military purposes".

In the same vein, *denazification* was in direct relation with the Nazi regime which ruled in Germany during the 1933-1945, associated with Adolf Hitler. For example, a "denazification trial" designates the legal procedures to undergo in order to legally prove unfounded accusations of collaborationism with the Nazi regime, like it was the case of director Wilhelm Furtwängler when he retired in Switzerland and handed over the lead of the Berlin Philharmonic Orchestra¹¹. Explanations like the one provided by the spokesperson of the Russian Ministry of Foreign Affairs, Maria Zakharova, on the refusal to share the borscht recipe standing for Ukrainian "xenophobia, Nazism and extremism"¹² cannot be taken seriously, even though they can give an impulse for including that legacy to the UNESCO's List of Intangible Cultural Heritage in Need of Urgent Safeguarding¹³.

As for the international reaction to what happened in Ukraine, in the beginning, the wording used by the European Union only referred to "unprovoked and unjustified military aggression" or "illegal military actions"¹⁴,

⁷ <https://tass.com/pressreview/1410663>.

⁸ <https://www.youtube.com/watch?v=5jSMj-ILdeo>.

⁹ <https://www.bing.com/videos/riverview/relatedvideo?&q=putin+declares+war+ukraine+video&&mid=C76B5DBAF7D9800F1173C76B5DBAF7D9800F1173&&FORM=VRD GAR>.

¹⁰ The article "On the Historical Unity of Russians and Ukrainians" wrote by President Vladimir Putin and available since July 12, 2021 at <https://en.kremlin.ru/events/president/news/66181>.

¹¹ More about the implications of the "denazification trial" undergone by Wilhelm Furtwängler are to be found, for example, in Lang, K. (2015). *Celibidache și Furtwängler - Marele conflict postbelic de la Filarmonica din Berlin*. București: Humanitas.

¹² <https://www.express.co.uk/news/world/1593577/russia-Maria-Zakharova-ukraine-war-share-borscht-recipe-latest-vn>.

¹³ <https://ich.unesco.org/en/USL/culture-of-ukrainian-borscht-cooking-01852>.

¹⁴ Conclusions of the special meeting of the European Council (February 24, 2022), EUCO 18/22, p. 2, point 1 state that "The European Council condemns in the strongest possible terms the Russian Federation's unprovoked and unjustified military aggression against Ukraine. By its illegal military actions, Russia is grossly violating international law and the principles of the UN Charter and undermining European and global security and stability".

trying to elude the word “war”. The reasons behind such an approach are given by a Treaty limitation in respect to the European Union’s competence in taking action in war matters, in contrast with the respective legal capacity of its Member States as individual signatories of the United Nations Charter. However, one year on, the Council Conclusions of March 23, 2023 clearly refer to “Russia’s *war of aggression* against Ukraine” (para 1) in conjunction with the correlative international initiative represented by the new International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA) in The Hague¹⁵.

A clear indication about the “war on words” and their impact was offered by the Bulgarian Prime-Minister who replaced the Minister of Defense in his Cabinet on grounds of naming the Russian military action in Ukraine “operation” and not “war”¹⁶. In the same vein, but with opposite polarity of the interpretation, the Turkish authorities unilaterally considered that what started in Ukraine stands for a *war*, which enabled them to trigger the activation of the relevant provisions of the Montreux Convention in order to stop entries of vessels in the Black Sea¹⁷.

Even one year after the starting of hostilities, in their common call for peace in Ukraine¹⁸, the Chinese President Xi Jinping and the Belarusian homologue, Alexander Lukashenko, have referred to the “armed conflict” and “crisis” in Ukraine. In line with their mediator ambitions (or “pro-Russian neutrality” as some call it), the two Presidents carefully avoided both the word “war” for designating what happens in Ukraine (as commonly used by the Western countries), and the word “special military operation” (as designated by the Russian side).

While the United Nations referred to the events by using the term “hostilities” (Resolution of February 23, 2023), the European Union usually call them “war of aggression” (e.g. Council Conclusions of March 23, 2023).

What About “Peace”?

While the war benefits ever since ancient times of legal rules (law of war) for declaring it (*jus ad bellum*) and for conducting it (*jus in bello*), the peace is treated rather in accordance with the simplest of its definitions, namely “peace is the absence of war”. From a broader perspective, this is an indicator for considering peace as the common, regular state of a society and therefore war as an exceptional situation that requires dedicated legal framework.

The situation is reflected by specific glossaries which treat extensively the concept of war, but remain silent about peace (Guillien & Vincent, 1999), or treat it from a rather philosophical angle (Freeman, Jr., 2010). In other works (Friedrich, 2016, pp. 7-8), *peace* is being referred to mainly considering the Galtung’s understanding, namely as “negative peace” when designating the absence of war and as “positive peace” when indicating building of strong social institutions, which would help prevent war in the first place.

Theoreticians of war like Clausewitz consider that achieving peace can only happen when three conditions are met: (1) destroying the armed forces of the opponent; (2) occupying the enemy country; and (3) breaking the enemy’s will. Yet peace cannot be simply achieved by checking that list (Cimbala, 1991, p. 17) and striking a deal is simply depending on such a wide range of different conditions on every occasion that their common feature appears to be rather in relation to the most generic understanding of *peace*, namely *absence of war*—more precisely *the absence of war* in classical, kinetic, military sense.

¹⁵ <https://www.consilium.europa.eu/en/press/press-releases/2023/03/23/european-council-conclusions-on-ukraine/>.

¹⁶ <https://www.politico.eu/article/bulgaria-pm-fires-defense-minister-stefan-yanev-promote-vladimir-putin-spin/>.

¹⁷ <https://www.msn.com/en-xl/news/other/turkey-overseeing-passage-to-black-sea-calls-russian-invasion-war/ar-AAUmNaD?ocid=msedgntp>.

¹⁸ <https://www.reuters.com/world/china-work-with-belarus-promote-bilateral-relations-state-media-2023-03-01/>.

From this perspective, achieving peace in Ukraine could happen when at least several benchmarks can be satisfactorily resolved in conjunction, namely:

A Different Territorial Mapping Between the Russian Federation and Ukraine as Compared to the One Recognised by Both Parties Before February 24, 2022

The border issue in the case of the Russia-Ukraine line is additionally complicated by a number of factors:

1. The understanding from 2014, when Ukraine has compromised the border with the Russian Federation on Kerch Strait, including the whole Crimean Peninsula, as well as the problematic Eastern oblasts—the so-called Donetsk People’s Republic and Luhansk People’s Republic, controlled by pro-Russian forces. This understanding was covered by the guarantee conferred by the Minsk Agreements which could see itself *de facto* invalidated by the Russian invasion in Ukraine in February 2022.

2. The bogus referenda of September 2022 performed by the Russian military administration in the two south-eastern oblasts in Ukraine: Kherson, Zaporizhzhia, in addition to the two so-called People’s Republics of Donetsk and Luhansk. Despite their rejection under the international law by the United Nations¹⁹, their legality was confirmed by Decree of the President of the Russian Federation even against the background of numerous international reactions condemning it and warning about lack of legitimacy and legality. Further legal complications in this respect stem from the unusual decision of leaving aside precision about the exact border line of the annexed territories to the Russian territory which would have to be determined at a later date.

It is worth mentioning that a different territorial mapping than the one prior to February 24, 2022 may also mean Ukrainian authority over Crimea, as recently claimed by President Zelensky as among key objectives for Kyiv. Such a variant could prove unacceptable for Kremlin in its vindictive mood as currently manifested, but from a territorial point of view could play the role of an ideal goal to attain for the Ukrainian side.

A Formula for Security Pledge

In direct connection with the above arguments, it is likely to expect that a solution is sought for providing a set of guarantees against reiterating the “Ukrainian scenario”. Such a need may be manifested in respect to Ukraine in its individual capacity, but also in respect to the international community which might see itself asking for additional safe nets than currently in place or reforming the existing ones.

As regards Ukraine, the security pledge might tend to replace the Minsk Agreements since they have proved unfit for purpose by the way in which events have developed. In our opinion, the guarantors in the Minsk Agreements see the chances of renewing their role considerably diminished. Among them, especially the Organization for Security and Cooperation in Europe (OSCE) is very unlikely to play again this role in what concerns Ukraine.

It remains to be determined whether a similar need would have to be fulfilled in respect to the wider international community in the subsequent logic of the balance of powers at super-national level. The latter would also depend on the developments of the situation in Ukraine, taking into account direct and active implication of other actors, for example NATO²⁰.

¹⁹ <https://news.un.org/en/story/2022/09/1128161>.

²⁰ The “direct and active implication” covers in this case both proper sense (e.g. NATO assuming not merely supporting Ukraine, but also militarily fighting against the Russian Federation) and figurative—in the sense of perceived implication based on both facts or intentions (e.g. the first large-scale defence plans for decades prepared by the North-Atlantic Alliance since the Cold War as a response to a possible Russian attack against it, which are likely due for approval at the NATO’s Summit in Vilnius, July 2023). For further details see https://www.nato.int/cps/en/natohq/news_214767.htm.

A Mechanism for Assessing the Criminal Liability of Those Found Guilty in the Matter

As a first step in this direction, on May 17, 2023 it was decided to set up a Register of Damage under the auspices of the Council of Europe²¹ with the seat in The Hague. The Register, which will be operationalised soon, seeks at allowing the reception of claims from the victims of the Russian aggression with a view to achieving justice and reparations for the victims. The activity of the Register of Damage will need to be soon complemented by a compensation mechanism aiming at the Russian Federation paying full reparations to Ukraine and Ukrainians who are victims of the Russian aggression, in compliance with the international legal framework, including by making use of the Russian internationally located assets. More than 40 countries have already joined this initiative of the Council of Europe.

Ideally, a fourth benchmark in the list should play the role of lessons learned for the international community as a whole and lead to a reform of the international setting, especially the United Nations which was created as guarantor of peace and whose basic principles were betrayed from within in the Ukrainian question. Strangely enough, even though this might not take the shape intended by the Russian Federation, a reform of the international arena coincides with a declared objective of the power in Kremlin when it started the invasion of Ukraine.

The initial list of conditions set out by Ukraine by the President Zelensky's voice on the occasion of the UN Security Council in September 2022²² pertains to:

1. The Russian Federation being punished for waging war on Ukraine through further sanctions;
2. The United Nations stripping Moscow of its powerful role as a permanent Security Council member;
3. Protecting Ukrainian lives;
4. Respecting the Ukraine's internationally recognized borders;
5. Ensuring new security guarantees for Ukraine;
6. The world staying united in calling out Russia's armed aggression.

Further on, some variations of the above-list could be noticed, usually in relation with the evolution of the situation in the battlefield.

On the eve of one year anniversary of the Russian invasion in Ukraine, a symbolic landmark was established by the United Nations General Assembly Resolution on the occasion of the eleventh emergency special session of the General Assembly of February 23, 2023 underpinning the *Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine* (A/RES/ES-11/6). The peculiarity that is worth mentioning about this text is that the word "war" only appears in the generic wording of the recital 8²³ and paragraph 10²⁴, as well as in the fifth paragraph of the dispositive part where are expressly invoked several instruments of international law whose titles already contain that word²⁵. The mishap of the text derives from the slight incongruence given by the fact that the same paragraph 5 talks about "prisoners of

²¹ <https://www.coe.int/en/web/portal/-/council-of-europe-summit-creates-register-of-damage-for-ukraine-as-first-step-towards-an-international-compensation-mechanism-for-victims-of-russian-aggression>.

²² <https://www.newsweek.com/ukraine-zelensky-un-five-conditions-peace-russia-1745298>.

²³ "Noting with deep concern the adverse impact of the war on global food security, energy, nuclear security and safety and the environment".

²⁴ "Urges all Member States to cooperate in the spirit of solidarity to address the global impacts of the war on food security, energy, finance, the environment and nuclear security and safety, underscores that arrangements for a comprehensive, just and lasting peace in Ukraine should take into account these factors, and calls upon Member States to support the Secretary-General in his efforts to address these impacts".

²⁵ "Geneva Convention relative to the Treatment of Prisoners of War".

war” and conditions for their exchange without formally having a war declared in this particular case, but a “special military operation” which does not know a definition in the international law and by consequence knows no legal constraints.

The strongest provision of this resolution targeting the Russian Federation is to be found in paragraph 5 stating that “[The General Assembly] [r]eiterates its demand that the Russian Federation immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders, and calls for a cessation of hostilities”.

In reaction, on May 27, 2023, the Russian Deputy Foreign Minister Mikhail Galuzin made public the Moscow’s conditions for achieving a peace in Ukraine²⁶:

- Cessation of the hostilities of the Armed Forces of Ukraine as well as the supply of Western weapons;
- Ukraine to return to the neutral non-aligned status enshrined in the 1990 declaration on its state sovereignty, refusing to join NATO and the EU;
- Recognition of the “new territorial realities that have emerged as a result of the realization of the right of peoples to self-determination”;
- Protection of the rights of Russian-speaking citizens and national minorities, including as regards the status of the Russian language and freedom of religion.

The conditions of “protection of the inhabitants of Donbass, the demilitarization and denazification of Ukraine, the elimination of threats to Russia’s security emanating from its territory” remained unchanged on the Russian list of conditions for achieving peace.

The public declaration that Deputy Foreign Minister Galuzin recently made also bears a political significance, since it occurs after a long lapse of time when the Russian side did not react to the idea of striking a peace deal, irrespective of how feasible or not the conditions were.

Conclusions²⁷

In particular cases, definitions of apparently simple concepts like *peace* and *war* can take individual representations with opposite polarity which in itself is equivalent to a state of war. In such a case accommodating the different understandings is equivalent to bringing peace. This is the reason for which peace is a negotiated status of the nations as long as it is acceptable to those which have played a role in defining it or their successors. From this perspective, *war* and *peace* may mean different things even between the same actors, but in different times or different circumstances.

Judging on the available public information, the Russian decision of going militarily in Ukraine follows the line of thinking expressed by the renowned sociologist and political scientist Charles Tilly “[...who] argued that war makes states” (Reus-Smit, 2020, p. 52). In this current context, the biggest political problem with that approach is the close similitude with revisionism which was considered an undignified political attitude in the XXI century. This also goes hand in hand with the principle dilemma that the United Nations Security Council is facing for his statutory revision, since one of his five permanent members has initiated a serious breach in the

²⁶ <https://tass.ru/politika/17858337>.

²⁷ The above conclusions intrinsically rely on the public information available until May 27, 2022 and on the basic scenario that the main actors at that date are the same as those involved in negotiating peace for Ukraine, while excluding a critical bold move of either of parts or a Black Swan scenario. Any change to the mentioned pre-conditions can lead to different conclusions and forecast.

security of another UN Member State by military means and with violation of its territory as recognised at international level.

But since “[t]he ultima ratio... of all effective diplomacy...is war” (Freeman, Jr., 2010, p. 56), the rationale goes in circle and suggests that diplomacy is the tool to put an end to it.

In our opinion, in the Ukrainian case a minimum of conditions must be met in order to start talking about peace, namely: (1) a different territorial mapping between the Russian Federation and Ukraine as compared to the one recognised by both parties before February 24, 2022; (2) a formula for security pledge; and (3) an internationally-recognised mechanism for assessing the criminal liability of those found guilty in the matter. These three basic lines must find an optimal diplomatic environment and international political will to get promoted and eventually embodied for the sake of saving lives.

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