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HYBRID WAR, INTERNATIONAL LAW AND EASTERN UKRAINE

The relevance of this topic cannot be underestimated. The armed conflict in Donbas, non-recognition by the Russian Federation its aggression against Ukraine with a background of nearly undisguised participation of its troops in the conflict cast a serious challenge to international law, and in fact re-incarnated Brezhnev's doctrine about "limited sovereignty". Although, as spokesman Dmitriy Peskov said: "Putin protects international law". At the same time, the legal definition of the events is not clear. I would agree with Outi Korhonen that hybrid war erases legal categories of war and peace, state and person, aggression and defense. In particular, the commonly used term "hybrid war" at least requires additional and thorough study. On the other hand, the officially run by Ukraine counter-terrorist operation, known as ATO, is also often criticized by both lawyers and international lawyers. In any case, the problem is to define the role of the Russian Federation in the events.

Nevertheless, hybrid warfare is not a new phenomenon, and it could be examined through the law: in particular, international humanitarian law and human rights law, which are universal instruments related to any armed conflict.

This article, consistently tries to consider the concept of "hybrid war", including its place in international law and national law. In addition, I will try to analyze relevant rules of international humanitarian law, human rights law and some peculiarities in combating terrorism.

Key words: hybrid war, use of force, armed conflict, international law, Eastern Ukraine, war against terrorism.

The hybrid war problem has been examined by Frank Hoffmann (widely believed as an author of the concept of "hybrid war"), P. Mansur, M. Ayshervuda, S. Reeves, O. Korhonen, Y. Klimchuk.

The first thing is to be told about hybrid war is that modern international law does not define the term "hybrid war". Hybrid war is a new form of war, that combines regular and irregular (guerrillas, insurgents, terrorists) forces on the one field that may include both state and non-state actors that are designed to achieve common political goals¹. These forces are usually carried out carefully planned and coordinated military and non-military actions and pay special attention to the terrorist, criminal, manipulative and / or demoralizing methods².

Hybrid war does not change the nature of war, it only changes the ways in which forces are involved in its conduct. Despite the fact that this term is used very often, hybrid war dates back at least Peloponnesian War in V century BC. Moreover, the twentieth century is dominated by hybrid war³.

The term "hybridity" comes from the Latin *hybrida*, *hibrida* or *ibrida*, which means the image or trouble. Its main value is mix of something. The term comes from the field of biology and subsequently was used in linguistics and theory of races nineteenth century. Its modern use is in various academic disciplines. Hybridity means that one person combines effective action with two actors, and *vice versa* (interaction). Result / return is a hybrid mixture of both. Despite the action, as a result new actors may also be the result of hybridity. In addition, the tests may be impact on the interaction between actors⁴.

Some researchers believe that the term "hybrid war" emerged after 2000 and describes the different

¹ Mansur, P. (2012). Hybrid Warfare in History. In Murrey, W. and Mansur, P. *Hybrid Warfare: Fighting Complex Opponents from the Ancient Time to Present*. New York: Cambridge University Press, 1-17.

² Sandawi, S. (2011). Back into the Fog: Hybrid threats and the Future if Conflict. In Schröfl, J., Rajae, B., Muhr, D. *Hybrid and Cyber War as Consequences of the Assymetr*. Frankfurt am Main: Peter Lang, 273-285.

³ Murrey, W. (2012). What the Past Suggestes. In Murrey, W. and Mansur, P. *Hybrid Warfare: Fighting Complex Opponents from the Ancient Time to Present*. New York: Cambridge University Press, 289-307.

⁴ Riemar, A., Muhr, D. (2011). Take off Your Sunglasses: Hybridity and Cyber Warfare – Driving moments for Assymmetric Warfare. In Schröfl, J., Rajae, B., Muhr, D. *Hybrid and Cyber War as Consequences of the Assymetry*. Frankfurt am Main: Peter Lang, 57-90.

types of wars in Afghanistan and Iraq in 2006, when Israel attacked Hezbollah in Lebanon in 2008-09, and Hamas in Gaza. During the Vietnam War instead of hybrid war was used the term “difficult war”¹.

For many analysts combination of shia militias and traditional military tactics of guerrilla and terrorist actions represents a new approach to the war, which revolutionizes the conflict in the twentieth century.

History shows that hybrid war in one form or another can be rather normal human conflict rather than the exception. Incidentally, history also shows that such conflicts are the hardest to win².

The term “hybrid war” emerged after 2002 and became the subject of professional literature, but its military definition had more years to change their vagueness to clarity. In 2007 the hybrid nature of the war became clearer when the term was used in the Joint cornerstones concepts of joint operations for the US and other documents. State Security Strategy of the USA, published in 2008, described the irregular war (threats) as the highest priority for the Department of Security of the American Forces.

Irregular war and asymmetric war (often referred to as “fourth generation war” or 4GW) has emerged as a concept in the late 1980s and is considered as part of a hybrid war, and the term is often used as a synonym for the latter. But there is a difference between them: hybrid war means the simultaneous use of traditional and irregular military means, it can be a national or transnational, it is much broader view of war: the enemy or insurgent acts not only in urban centers, to demoralize the population, and can engage in open battle in remote areas as well, undermining government support. Thus, the hybrid war is a “strategic” and asymmetrical war may be local and is more “politically tactical”³.

The key characteristics of hybrid war is a struggle simultaneous presence of traditional and alternative (asymmetric) warfare, tactics and the use of simple and complex tactics of modern, high-tech weapons systems (such as air anti-aircraft missiles, anti-tank missiles, communication equipment), terrorism, regular troops armed civilians.

Other features are:

- change of the status of forces from state to non-state;
- *ad hoc* power clans or volunteers who act independently;
- small armed groups with impeccable ability to come back from irregular forces to state forces;
- small gang of militants who attack civilians;
- **irregular and terrorist forces being transformed into semi-funded by the state (other), providing weapons and training**⁴.

Also, we should agree with Mr. Korhonen that the hybrid force will not focus on gaining military victories, but on subjugation of power. Asymmetric war is a war between parties whose relative military power or strategy or tactics differ⁵.

Thus, hybrid war is not a standard set of various types of confrontations, and sometimes disorganized opposition radial shape, which is not governed by any military tactician, and is not seeking to obtain military victory, but creates its own environment of war - usually completely ignoring the *ius in bello* and other regulations⁶. Extending the traditional war on people, the hybrid power develops, limited otherwise, and extends the conflict in time and space, increasing the chance of winning, where they could not get a traditional military victory. In traditional war hybrid forces carry out operations to destroy their regular opponents, while other forces and other agencies need to work hard to clear the area of irregular forces, to

¹ Habermayer, H. (2011). Hybrid Threats and a Possible Counter-Strategy. In Schröfl, J., Rajae, B., Muhr, D. *Hybrid and Cyber War as Consequences of the Assymetry*. Frankfurt am Main: Peter Lang, 249-272.

² Murrey, W. (2012). What the Past Suggestes. In Murrey, W. and Mansur, P. *Hybrid Warfare: Fighting Complex Opponents from the Ancient Time to Present*. New York: Cambridge University Press, 289-307.

³ Korkisch, F. (2011). Arioser an Hybrid War – Airpower’s Role in Hybrid War needs Clarification: The U.S. View. In Schröfl, J., Rajae, B., Muhr, D. *Hybrid and Cyber War as Consequences of the Assymetry*. Frankfurt am Main: Peter Lang, 91-118.

⁴ Habermayer, H. (2011). Hybrid Threats and a Possible Counter-Strategy. In Schröfl, J., Rajae, B., Muhr, D. *Hybrid and Cyber War as Consequences of the Assymetry*. Frankfurt am Main: Peter Lang, 249-272.

⁵ Riemar, A., Muhr, D. (2011). Take off Your Sunglasses: Hybridity and Cyber Warfare – Driving moments for Assymetric Warfare. In Schröfl, J., Rajae, B., Muhr, D. *Hybrid and Cyber War as Consequences of the Assymetry*. Frankfurt am Main: Peter Lang, 57-90.

⁶ Habermayer, H. (2011). Hybrid Threats and a Possible Counter-Strategy. In Schröfl, J., Rajae, B., Muhr, D. *Hybrid and Cyber War as Consequences of the Assymetry*. Frankfurt am Main: Peter Lang, 249-272.

establish lasting control over them and reorganize the public to their reconciliation¹.

It is worth saying that hybrid war in XXI century is even more dangerous because of the development of high-tech weapons. Irregular forces now fight armed with the latest weapons and equipment, which makes them very difficult to destroy. The combat ability in hybrid war is more than tanks, artillery, infantry, aircraft, ships and other weapons held by military force. Intelligence, civil relationship, psychological operations and civil resources are needed to fight the war in hybrid. The army can not fight against one item and ignore others².

There is controversy as to what legal paradigm applies to hybrid war: law enforcement or the military. Hybrid war is a combination of war and the actual law enforcement. Therefore, a *boievik* (gunman) in hybrid war combines features of international war criminal and ordinary soldier. Below, we will elaborate on what norms of International law shall be applicable for such *boieviks*. Nevertheless, taking the conflict in this way – as a hybrid – is not a useful basis for bringing the perpetrators to justice³. That is why I share the approach, proposed by M. Hnatovskiy – to divide artificially the conflict into two different legal precedents: internal armed conflict (Ukraine v. DNR/LNR) and international armed conflict (Ukraine v. Russia)⁴.

Taken together, this is the first hybrid complexity war for Korhonen - the complexity of distinction⁵. Other problems are retardation of positive law from the means and methods of hybrid warfare, and the lack of positive international law for the definition of a hybrid war.

Finally, hybrid war could, and I would say, should be deemed as clandestine war. Logically, it equals to non-declared war, and is connected to the crime of aggression.

International humanitarian law

Despite numerous violations of humanitarian law and international law in general that are taking place at all times – impunity keeps prevailing⁶. It is a paradox that together with the XX century developments in protection of human rights, their violation is also on the rise⁷. Internal conflicts and wars by proxy have become much more frequent than international conflicts nowadays. Due to little legislation regulating civil wars, countries extensively use this weakness to internalize matters to their utmost claiming that any involvement from the outside breaches their sovereignty.

Positive International humanitarian law does not regulate all possible situations⁸. Obviously, hybrid war is a kind of such situation.

After terrorist methods became a common practice, a question of abidance occurred: whether terrorists as unrecognized subjects of international law are required to preserve and can be held liable for non-compliance with international humanitarian law. Such status quo obstructs effective international engagement in the situations of humanitarian crisis. International actors are not able to acquire access to the territories controlled by the terrorists and what is most important – do not have the legal means to do it. One say, there is a prominent “Responsibility to protect” concept, but in fact it is too early to take it seriously.

¹ Mansur, P. (2012). Hybrid Warfare in History. In Murrey, W. and Mansur, P. *Hybrid Warfare: Fighting Complex Opponents from the Ancient Time to Present*. New York: Cambridge University Press, 1-17.

² Mansur, P. (2012). Hybrid Warfare in History. In Murrey, W. and Mansur, P. *Hybrid Warfare: Fighting Complex Opponents from the Ancient Time to Present*. New York: Cambridge University Press, 1-17.

³ Ross, A. (2008). The Body Counts: Civilian Casualties and the Crisis of Human Rights. In Bullard, A. *Human Rights in Crisis*. Ashgate.

⁴ Гнатівський, М.М. (2014). Взаємодія міжнародного гуманітарного права та міжнародного права прав людини під час Антитерористичної операції у східних регіонах України. У колективній монографії під заг. ред. Задорожнього О.В. *Українська революція гідності, агресія РФ та міжнародне право*. Київ: К.І.С., 791–813.

⁵ Korhonen, O. Deconstructing the Conflict in Ukraine: The Relevance of International Law to Hybrid States and Wars. *German Law Journal*. <https://www.germanlawjournal.com/pdfs/Vol16-No3/PDF_Vol_16_No_03.6_KorhonenFinal.pdf>.

⁶ Mendez, J. Thematic report on the Use of Torture-tainted Evidence and The Exclusionary Rule. <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14429&LangID=E>>

⁷ Ross, A. (2008). The Body Counts: Civilian Casualties and the Crisis of Human Rights. In Bullard, A. *Human Rights in Crisis*. Ashgate.

⁸ Гнатівський, М.М. (2014). Взаємодія міжнародного гуманітарного права та міжнародного права прав людини під час Антитерористичної операції у східних регіонах України. У колективній монографії під заг. ред. Задорожнього О.В. *Українська революція гідності, агресія РФ та міжнародне право*. Київ: К.І.С., 791–813.

Contemporary humanitarian and human rights law find their origin in the World War II and the Holocaust, which have also had a hybrid nature. Yes, Article 1 of the UN Charter places the priority on human rights and on great collective security role of the Security Council. With the adoption of the Charter of the International Military Tribunal in Nuremberg international community has also determined another priority of accountability for massive violations of international law¹.

Indeed, International humanitarian law is applicable to all cases of armed conflict which may arise between two or more parties, even if the state of war is not recognized by one of them. Such non-recognition of the state of war should not have any effect on the applicability of the humanitarian law of war.

There are also two additional criteria derived from the practice: extent and sustained nature of armed violence, and the level of organization of non-state armed groups fighting against the regime². Given the well-known facts, the situation across Eastern Ukraine can be officially considered an armed conflict of a non-international character. The same conclusion was made by the “Human Rights Watch” NGO³. Thus, hostilities between these parties wherever they may occur in Ukraine are subject to the rules of International humanitarian law. These rules impose limits on how the fighting can be conducted, with the aim of protecting the civilian population and persons not, or no longer, directly participating in the hostilities.

Therefore, International humanitarian law is to be bound in the situation across Eastern Ukraine. Shall the consequences be considered now.

The Law of Geneva is directly inspired by the principle of humanity. It relates to those who are not participating in the conflict as well as military personnel *hors de combat*. It provides the legal basis for protection and humanitarian assistance carried out by impartial humanitarian organizations such as the International Committee of the Red Cross.

There are some basic rules that emerged out of the International humanitarian law, and are *prima facie* relevant to the conflict in Ukraine:

- Persons *hors de combat* (outside of combat) and those not taking part in hostilities shall be protected and treated humanely.
- It is forbidden to kill or injure an enemy who surrenders or who is *hors de combat*.
- The wounded and sick shall be cared for and protected by the party to the conflict which has them in its power. The emblem of the “Red Cross,” or of the “Red Crescent,” shall be required to be respected as the sign of protection.
- Captured combatants and civilians must be protected against acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.
- No one shall be subjected to torture, corporal punishment or cruel or degrading treatment.
- Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare.
- Parties to a conflict shall at all times distinguish between the civilian population and combatants. Attacks shall be directed solely against military objectives⁴.

The Geneva Conventions, by Article 3 common to them, which happens to be the first legal regulation of the internal armed conflict, stipulate that states shall apply certain rules in the case of conflict, not of an international character: “The parties to the conflict shall further endeavor to bring into force, by means of special agreements, all or part of the other provisions” of the Conventions.

Article 3 has already become something more than just a treaty provision – it was crystallized to the extent of customary law, which is confirmed by several International Criminal Tribunal decisions – *Prosecutor v. Tadic*, *Prosecutor v. Akayesu*, *Prosecutor v. Delalic* and *Prosecutor v. Furundzija*: “It is today clear that the norms of Common Article 3 have acquired the status of customary law in that most

1 Kaye, D. (2008). Human Rights Prosecutors? The High Commissioner for Human Rights, International Justice, and The Example of Syria. In Gaer, F., Broecker, C. (2013). *The United Nations High Commissioner for Human Rights: Conscience for the World*. Martinus Nijhoff Publishers, 245-268.

² Гнатівський, М.М. (2014). Взаємодія міжнародного гуманітарного права та міжнародного права прав людини під час Антитерористичної операції у східних регіонах України. У колективній монографії під заг. ред. Задорожнього О.В. *Українська революція гідності, агресія РФ та міжнародне право*. Київ: К.І.С., 791–813.

³ Лист до Президента Порошенка щодо військових операцій в Луганську та Донецьку. *Human Rights Watch*. <<http://www.hrw.org/node/254564>>.

⁴ In van der Wolf, W., Tofan, C. (2013). *Law and War in Syria. A Legal Account of the Current Crisis In Syria*. International Courts Association. Njemegen.

States, by their domestic penal codes, have criminalized acts which, if committed during internal armed conflict, would constitute violations of Common Article 3”¹.

It should be noted that until now there is no precise definition of armed conflict as such, which allows a broad interpretation of the discussed Article. This fact, however, may be considered an asset allowing to lower the threshold of the article's application in order to ensure protection of the affected people in an internal armed conflict. The ICRC Commission's of Experts for the Study of the Question of Aid to the Victims of Internal Conflicts approach is that “the existence of an armed conflict, within the meaning of Article 3, cannot be denied if the hostile action, directed against the government is of a collective character and consists of a minimum amount of organization”². Nevertheless in some cases the state may claim that the situation does not constitute an internal armed conflict, but enforced maintenance of public order, while being reluctant to bind to the rules favoring political opponents. This is exactly what is currently happening in Ukraine. International Criminal Tribunal for Rwanda in its judgment of 2 September 1998 in the *Prosecutor v. Akayesu* case stated that “an armed conflict exists whenever there is protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until, in the case of internal conflicts, a peaceful settlement is reached”³. Thus, the following features of an internal armed conflict derive from the latter:

- 1) possession of an organized military force together with the responsible authority;
- 2) recognition of the insurgents as belligerents or admission of the dispute to the agenda of the UNSC or General Assembly as a threat to international peace, breach of peace or an act of aggression;
- 3) administration of authority by belligerents within a particular territory.

Article 3 is the only article directly applicable to internal armed conflicts if the parties did not agree to bring into force in a special agreement other provisions of the Conventions. Such agreements are unfortunately very rarely concluded, and it remains an issue of moral duty rather than an obligation imposed by international law. However, in any case the customary rules of the law of war remain valid. Obligations are also imposed by international human rights law. Even though, Article 3 may be also applicable as human rights law – it does not leave to the state the possibility of derogation since it has a non-derogable status *per se*. Hence, Article 4 of the International Covenant on Civil and Political Rights also provides that no derogation is possible from the rights to life, freedom from torture, prohibition of slavery, no imprisonment for failure to fulfill contractual obligation, non-retroactivity of criminal law, recognition before the law and freedom of thought, conscience and religion.

Common Article 3 is binding for all parties to the conflict. It is generally accepted that it is binding on both, states and insurgents since upon ratification of the Geneva Conventions they become binding on all state's nationals, including rebels. Rebels are recognized as individuals under international law and therefore are also bound by Article 3, which constitutes the elementary considerations of humanity⁴. Its provisions fall under the definition of *erga omnes* obligations, however, they are not yet considered to be *jus cogens* even though Article 3 aims at protection of humanity, establishing the most fundamental human rights⁵. Article 53 of the Vienna Convention on the Law of Treaties provides that “a peremptory norm is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”. Article 3 definitely corresponds to these criteria but, taking into account the controversial *opinio juris* of the states, it remains applicable more as part of states' domestic law at a time. Nevertheless, there was an attempt, introduced by ICTY in the *Prosecutor v. Kupreskic* case to confer such status upon Article 3, providing that “most norms of international humanitarian law, in particular those prohibiting war crimes, crimes against humanity and genocide, are also peremptory norms of international

1 *Prosecutor v. Akayesu*, International Criminal Tribunal for Rwanda Case ICTR-96-4-T, <<http://www.unicttr.org/sites/unicttr.org/files/case-documents/icttr-96-4/trial-judgements/en/980902.pdf>>.

2 Moir, L. (2002). *The Law of Internal Armed Conflict*. Cambridge: Cambridge University Press.

3 *Prosecutor v. Akayesu*, International Criminal Tribunal for Rwanda Case ICTR-96-4-T, <<http://www.unicttr.org/sites/unicttr.org/files/case-documents/icttr-96-4/trial-judgements/en/980902.pdf>>.

4 The Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Merits), *Nicaragua v. United States of America* (1986). <<http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5>>.

5 Moir, L. (2002). *The Law of Internal Armed Conflict*. Cambridge: Cambridge University Press.

law or *jus cogens*, i.e. of a non-derogable and overriding character”¹. This clearly condemns any reprisals against protection of human persons.

Taking the abovementioned into account, the humane treatment should be granted to individuals and single soldiers who surrender even if the armed group to which they belong continues to fight. On the other hand, civilians who don't participate in armed conflict should enjoy full protection. Article 3 permits distinction between participants of an internal armed conflict on the basis of nationality, which in some cases does not seem to be unreasonable. Nevertheless, human treatment should remain a prior concern in any case, and the principles of proportionality and distinction should be obeyed. Belligerent reprisals cannot be justified under this clause, and collective responsibility should follow in the case of derogation from it.

The 1977 Protocol II, additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts is the second instrument of international humanitarian law applicable to the most intense and large-scale internal armed conflicts, which at the same time develops and supplements common Article 3. It does not however contain the full Martens Clause, in particular the part concerning the relevance of “the principles of international law derived from established custom”. The Protocol is binding upon all Contracting Parties as well as the insurgents participating in military activities during internal unrest. In case of the latter several criteria have to be met though, according to L. Moir:

- 1) contracting Parties must have intended the Protocol to be binding for the insurgents;
- 2) correspondingly, the insurgents must accept rights and duties conferred upon them².

Furthermore, since Article 3 of the Geneva Conventions is binding for all parties to the internal armed conflict – Additional Protocol II as its extension should be considered binding as well. Protocol II and common Article 3 are unilateral obligations and apply automatically, regardless of conduct of the other party and the extent to which it observes the law.

Protocol II further requires certain conditions to be met by the insurgents: possession of a responsible authority and territorial control. In that case, they can also benefit from the protection provided by the Protocol to all persons affected by the armed conflict as stipulated in Article 1.

Article 4 of the Protocol II extends the most universally accepted principles of civilization provided for in common Article 3, adding the prohibition of collective punishments, terrorism, slavery, pillage, rape, enforced prostitution and indecent assault together with threats to commit such acts. Detailed protection is also granted to children. It is furthermore prohibited to order that there shall be no survivors in a fight.

Article 5 is based on Conventions III and IV and International Covenant on Civil and Political Rights and specifically applies to those “deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained”.

Article 13 embodies the core principle of distinction in granting protection to the civilian population as a whole. It imposes obligations not only upon the party in control of the territory populated by civilians but upon everybody involved in the conflict. Some of the main and most abused loopholes in this provision are that it does not protect against indiscriminate or disproportionate attacks or use of civilians as human shields.

Article 14 prohibits starvation of civilians as a method of warfare. Therefore, objects indispensable for their survival are also protected. Article 15 prohibits attacks of objects containing dangerous forces, e.g. such as nuclear power, if it would endanger the civilian population. Article 16 protects cultural and historical heritage and places of worship. The forced movement of civilians is outlawed by Article 17, unless required by military reasons or considerations of security.

Unlike Additional Protocol I, Additional Protocol II does not contain specific provisions requiring respect for and protection of humanitarian relief personnel and objects and obliging parties to the conflict to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need and to ensure the freedom of movement of authorized humanitarian relief personnel, although it can be argued that such requirements are implicit in Article 18(2) of the Protocol. These requirements have crystallized, however, into customary international law applicable in both international and non-international armed conflicts as a result of widespread, representative and virtually uniform practice to that effect.

In this respect it should be noted that while both Additional Protocols I and II require the consent of the parties concerned for relief actions to take place, most of the practice collected does not mention this

1 *Prosecutor v. Kupreskic*, International Criminal Tribunal for former Yugoslavia. <<http://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf>>.

2 Moir, L. (2002). *The Law of Internal Armed Conflict*. Cambridge: Cambridge University Press.

requirement.

Over the last few decades, there has been a considerable amount of practice insisting on the protection of international humanitarian law in non-international armed conflicts. This body of practice has had a significant influence on the formation of customary law applicable in non-international armed conflicts. Like Additional Protocol I, Additional Protocol II has had a far-reaching effect on this practice and, as a result, many of its provisions are now considered to be part of customary international law.

Examples of rules found to be customary and which have corresponding provisions in Additional Protocol II include: the prohibition of attacks on civilians, the obligation to respect and protect medical and religious personnel, medical units and transports, the prohibition of attacks on objects indispensable to the survival of the civilian population, the obligation to respect the fundamental guarantees of civilians and persons *hors de combat*, the obligation to search for and respect and protect the wounded, sick and shipwrecked, also, to search for and protect the dead. UN General Assembly in its Resolution 2444 from 19 December 1968 recognized the “necessity of applying basic humanitarian principles in all armed conflicts”. Resolution 2675 from 9 December 1970 also refers to armed conflicts without narrowing it down to either international or internal. Thus, basic principles for the protection of civilian populations in armed conflicts should be preserved at all times since the civilian population is in special need of increased protection in time of armed conflict. It includes the following statements:

- 1) fundamental human rights continue to apply fully in situations of armed conflict;
- 2) in military operations a distinction should be made between those who are participating in the conflict and civilians;
- 3) civilian population should be spared from ravages of war to the largest extent possible; civilians should not be the object of military operations, reprisals and forcible transfers;
- 5) hospitals and other places meant for the protection of civilians should not be the object of military operations.

However, the most significant contribution of customary international humanitarian law to the regulation of internal armed conflicts is that it goes beyond the provisions of Additional Protocol II. Indeed, practice has created a substantial number of customary rules that are more detailed than the often rudimentary provisions in Additional Protocol II and has thus filled important gaps in the regulation of internal conflicts.

All state parties to the Geneva Conventions are obliged to introduce provisions for the prosecution of humanitarian law violations into their national legislation.

Despite few weaknesses and contradictions currently available rules provide a sufficient framework for internal armed conflicts.

International human rights law: fundamental guarantees

International human rights law continues to apply during armed conflicts, as expressly stated in the human rights treaties themselves, although some provisions may, subject to certain conditions, be derogated from in time of public emergency. The continued applicability of human rights law during armed conflict has been confirmed on numerous occasions in state practice and by human rights bodies and the International Court of Justice. Most recently, the Court, in its advisory opinion on the legal consequences of the construction of a wall in the occupied Palestinian territories, confirmed that “the protection offered by human rights conventions does not cease in case of armed conflict” and that while there may be rights that are exclusively matters of international humanitarian law or of human rights law, there are others that “may be matters of both these branches of international law”¹.

International human rights law refers to the body of international law designed to promote and protect human rights at the international, regional and domestic levels. As a form of international law, international human rights law is primarily made up of treaties, agreements between states intended to have binding legal effect between the parties that have agreed to them; and customary international law, rules of law derived from the consistent conduct of states acting out of the belief that the law required them to act that way. Other international human rights instruments while not legally binding contribute to the implementation, understanding and development of international human rights law and have been recognized as a source of political obligation.

Enforcement of international human rights law can occur on either a domestic, regional or

¹ In van der Wolf, W., Tofan, C. (2013). *Law and War in Syria. A Legal Account of the Current Crisis In Syria*. International Courts Association. Njemegen.

international level. States that ratify human rights treaties commit themselves to respecting those rights and ensuring that their domestic law is compatible with international legislation. When domestic law fails to provide a remedy for human rights abuses parties may be able to resort to regional or international mechanisms for enforcing human rights. Though, in many cases this could be impeded by the SC permanent members for different reasons.

International human rights law is closely related to, but distinct from international humanitarian law. Similar, because the substantive norms they contain are often similar or related – for example both provide a protection from torture. Distinct because they are regulated by legally distinct frameworks and usually operate in different contexts and regulate different relationships. Generally, human rights are understood to regulate the relationship between states and individuals in the context of ordinary life, while humanitarian law regulates the actions of a belligerent state and those parties it comes into contact with, both hostile and neutral, within the context of an armed conflict. In line with the ICJ advisory opinion in *Legal Consequences of the Construction of Wall in the Occupied Palestinian Territory*, both International humanitarian law and Human rights law should be applied by case.

Ukraine is bound by both applicable treaty and customary human rights law. More over, Ukraine is a part to the European Convention on Human Rights.

There is increasing acceptance that armed non-state actors are also bound by at least customary norms of international human rights law. This would cover the armed groups in Ukraine. Thus, the UN Assistance Mission in Afghanistan stated in February 2012 that:

While non-State actors in Afghanistan, including non-State armed groups, cannot formally become parties to international human rights treaties, international human rights law increasingly recognizes that where non-State actors, such as the Taliban, exercise *de facto* control over territory, they are bound by international human rights obligations¹.

The following rights are indispensable, including situations of non-international armed conflicts:

- The right to life;
- The rights to liberty and security;
- The prohibition of torture;
- The right to fair trial.

Finally, the abovementioned rights must be guaranteed by every party to the conflict in Eastern Ukraine. But combating terrorism creates to some extent another rules of the game, more strict, and less human. Thus, below we will examine some derogations, which generally remain within necessity and proportionality.

Hybrid war and terrorism

First, it should be mentioned that International law does not provide a solid framework for terrorism. Just like it doesn't for hybrid warfare. Second, there are enough arguments to consider so-called DNR and LNR as terrorist organizations in line with both international and national law. Though there is no official recognition of these entities as terrorist in the international level.

Arguably, there are two important questions. The first one, whether combating terrorism justifies possible human rights violation. The second deals with interconnection between presumably terrorist organizations, and a third state which is believed to be a sponsor.

The current international legal framework for combating terrorism is comprised of: UNSC Resolutions 1373 (2001) and 1624 (2005), UNSC Resolutions on Al-Qaeda and Taliban 1267 (1999), 1333 (2000), 1390 (2002), 1735 (2006) and 2178 (2014), UNSC Resolutions on weapon of mass destruction 1540 (2004) and 1673 (2006) and United Nations conventions against terrorism, among them Convention for the Suppression of Terrorist Bombing and Convention for the Suppression of the Financing of Terrorism. It is quite surprising that together with the growing influence of the Islamic State and extremists in Eastern Ukraine in 2015 there was not a single document adopted in this regard neither by the UNSC nor by the General Assembly. A working group is drafting a new convention addressing international terrorism under the universal jurisdiction principle but the process of adopting a new convention might be very time-consuming while the current circumstances require immediate action.

Apart from international instruments there are also regional instruments. Those applicable to Ukraine and Russia in particular are adopted by the Council of Europe. They are mostly declaration and guidelines,

¹ In van der Wolf, W., Tofan, C. (2013). *Law and War in Syria. A Legal Account of the Current Crisis In Syria*. International Courts Association. Njemegen.

and three conventions: Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism, Convention on the prevention of terrorism and European Convention on the suppression of terrorism.

In its Article 2 (b) International Convention for the Suppression of the Financing of Terrorism provides a definition of terrorism: “Any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act”.

According to UNSC Resolution 1373 (2001) financing of terrorist acts is criminalized. Funds and economic resources used for sponsoring terrorism should be frozen. In this regard, United Nations member states should cooperate through bilateral and multilateral agreements. A Counter-Terrorism Committee, composed of 15 members of the UNSC, has been established in order to assist the member states in the implementation of the counter-terrorism instruments.

Article 2 of the International Convention for the Suppression of the Financing of Terrorism defines an offense of financing terrorism as an act committed by a person who by “any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out” a terrorist act. Such conduct constitutes an offense also when a person attempted to carry it out or participated in it as an accomplice, organized or directed others to participate in this act as well as intentionally contributed to the commission of the financing of a terrorist act performed by a group of persons.

Terrorist attacks have been recognized as a threat to peace in the UNSC Resolution 1368 (2001), but have not yet been acknowledged as an actual breach of peace or acts of aggression¹. Such concept was developed due to the fact that after the 9/11 attack in the United States its right to self-defense in this regard was approved. It goes in line with the UNSC position of pursuing the interests of its permanent members. Furthermore, the concept of a granted right to self-defense also entitles third states to act in collective self-defense, which in the present situation inside Ukraine might be also used by its neighboring countries.

The question remains though whether terrorist attacks are covered by International humanitarian law, and what are general conditions in fighting terrorism. It will certainly be the case if they have been conducted in connection to an armed conflict. Such connection has to undergo a certain test of the relation to the armed conflict as a whole, previously proposed by ICTY in the *Delalic* judgment. It has to be proven that the act was committed as part of hostilities in an area controlled by one of the parties to the conflict, and it does not necessarily have to be a part of its practice or policy². It is important to note that the anti-terrorist conventions are not applicable in the situation of an armed conflict as they aim at the maintenance of international peace and security before the conflict has occurred. The combatants who participate in the hostilities are exempt from the rule of the anti-terrorist conventions. Nevertheless, in cases of hostage-taking the states are required to prosecute the perpetrators in accordance with these conventions. Terrorists are not recognized as combatants under international humanitarian law and are not entitled to use violence. They are not civilians either and may possess the status of unprivileged belligerents, which does not grant them the treatment of prisoners of war³. From this point of view, treating the current East-Ukrainian conflict as internal is more beneficial for Ukraine.

Only international community can stop armed groups involved in terrorism. In this regard, it is necessary to know how to make them interested to talk. R. Thakur suggests that a democracy is instrumental in combating terrorism as it eliminates the grounds for it. People should be free to choose the way they are ruled, and those who rule them, and United Nations are capable of assisting in this process of democracy-building⁴. Same time, the last events in the Middle East clearly show that poor people are much more interested in food and water, and mythical justice. They do not want to decide, they want to be ordered, and to be a part of something great like Islamic State. Worth to note, human rights is not something important in a system of their values.

Available evidence clearly shows Russia’s support for different parties to the conflict. The fact that the states in question do not interfere and don’t become directly involved in the conflict doesn’t entitle them

1 Bianchi, A., Naqvi, Y. (2011). *International Humanitarian Law and Terrorism*. Hart.

2 *Prosecutor v. Tadic*, International Criminal Tribunal for former Yugoslavia. <<http://www.icty.org/x/cases/tadic/tjug/en/tad-ts70507JT2-e.pdf>>.

3 Bianchi, A., Naqvi, Y. (2011). *International Humanitarian Law and Terrorism*. Hart.

4 Thakur, R. (2006). *The UN, Peace, and Security*. Cambridge: Cambridge University Press.

to reject their interest in treating any of the parties advantageously. Therefore, the Ukrainian civil war may amount into a “war by proxy”.

International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Prosecutor v. Tadic* Appeals Chamber judgment stated that “a case of internal armed conflict, breaking out on the territory of a State, may become international... if some of the participants in the internal armed conflict act on behalf of another State”¹. Thus, Russia’s involvement in the Ukrainian conflict through sponsoring different rebel groups, will have to undergo the “overall control” tests as to what degree the authority is exercised, and whether the armed forces fighting on their behalf, even if they don’t possess the formal status of their organs, turn the *prima facie* internal conflict into international². The relationship of actual dependence is required to take place in this case. The ICTY has subsequently mentioned that “if, in an armed conflict, paramilitary units “belong” to State other than the one against which they are fighting, the conflict is international and therefore serious violations of the Geneva Conventions may be classified as “grave breaches”³. In particular during World War II, it has been agreed that states will be held responsible for the conducts of irregular groups sponsored by them. Hence, those having a *de facto* power should be held responsible for committed violations of international humanitarian law.

Special Court for Sierra Leone in the *Taylor* case held that “anyone who provides arms to the government forces or to armed opposition groups who is aware of the substantial likelihood that they would be used to commit international crimes may themselves be guilty of aiding and abetting those crimes”⁴. This may be relevant in Ukraine given the possibility that reprisal massacres by opposition forces will take place, or have already taken place. Another issue is a dawn of MH-17 flight, presumably committed by the Russian Federation soldiers, or by use of its anti-aircraft missile at least.

Giving arms to the DNR would be considered interference with Ukrainian state sovereignty as Poroshenko’s government remains the recognized entity in Ukraine.

At the same time, the principle of non-intervention should be preserved as defined by the International Court of Justice in the *Nicaragua* case and political, economic and social matters should remain within the jurisdiction of the parent state. The indirect support of any subversive or terrorist armed activities inside the state should also be understood under such prohibited intervention⁵.

It has been admitted by the independent international commission of inquiry on Syrian Arab Republic that involvement of neighboring countries in supporting conflicting parties expands the crises beyond the borders and threatens security and stability in the whole region. The risk of further destabilization constitutes a serious concern. State parties to the International Convention for the Suppression of the Financing of Terrorism have to take measures to prevent funding of the attacks against civilians. Private sponsors and foreign advisors providing assistance are responsible for the conduct that takes place under their control.

International law envisages legal interest of all states where certain norms are violated by any third state. In particular, it concerns *erga omnes* obligations binding for all states and entitling all states to act when such obligations are breached, among them: acts of aggression, genocide, basic human rights and certain obligations under international humanitarian law and torture. Nevertheless the common opinion is that enforcement of such rules reflects political, economic and social interests of the powerful actors of the current time. Therefore international law stands applicable for peace, security and justice to the extent agreed by the states as an issue of solidarity within a community. It brings to the conclusion that the state values, benefits and interest of survival are prevailing rather than those of a human being.

It is clear that international law provides rules regulating the behavior of third countries towards situations of internal unrest inside the country in question and committed violations of universally accepted norms. However, these instruments of influence expect the undertaking party to act with due diligence and

1 *Prosecutor v. Tadic case*, International Criminal Tribunal for Former Yugoslavia, <<http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>>.

2 *Prosecutor v. Tadic case*, International Criminal Tribunal for Former Yugoslavia, <<http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>>.

3 *Prosecutor v. Tadic case*, International Criminal Tribunal for Former Yugoslavia, <<http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>>.

4 *Prosecutor v. Taylor case*, Special Court for Sierra-Leone. <<http://www.scsldocs.org/documents/view/6981-6981>>.

5 The Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Merits), Nicaragua v. United States of America (1986). <<http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5>>.

good intentions, which, pursuant to the number of risks and circumstances is often not possible. Therefore, in the sphere of individual states' performance international law is lacking the paramount mechanism of influence and control, the availability of which in the modern world is more than desirable.

National Settlement

Ukraine and Russia both are members of the UN, and therefore they are also parties to all conventions that compose the system of humanitarian law. As has been said before, unlawful acts under these conventions should also be reflected in national legislation of Ukraine and Russia.

The Criminal Code of Ukraine (CCU) includes Chapter XIX "Crimes against the established order of military service (war crimes)". In chapter 1, article 401 is indicated that subjects of such crimes are military and military service, leaving aside all other potential participants of war and crimes such as civilians with weapons, insurgents, guerrillas, rebels, separatists and terrorists. They can be considered as accomplices, then said in chapter 3, article 401 of the Criminal Code, but we know that it is not the same thing. Many actions (and omissions) are criminalized for dealing with state property and disobedience to the authorities, but there are actually crimes directly related humanitarian law: article 432 (looting), article 433 (abuse of a population in an operational zone), article 434 (ill-treatment of prisoners of war) and article 435 (illegal use of symbols of the Red Cross, Red Crescent, Red Crystal and abuse it). Based on the current circumstances, it should be noted that a huge drawback is that for war crimes that directly violate international humanitarian law, can be held liable only military. In the area of ATO they have become common, but with no reflection in the Ukrainian legislation.

A separate section XX of the CCU includes crimes against peace, human security and international law. Obviously, the legislator was guided by intent to draw CCU in compliance with international law, or at least to create such an impression. However, since Ukraine has not yet ratified the Rome Statute, which provided for such crimes - they are there in the CCU. Consequently, article 436 criminalizes the promotion of war and, since recent amendment, manufacturing, distributing communist, Nazi symbols and propaganda of the Communist and National Socialist (Nazi) totalitarian regimes (article 436-1). Planning, preparation, launching and conducting an aggressive war is prohibited by the article 437. Noteworthy is article 438 - violations of the laws and customs of war, which involved abuse of prisoners of war or civilians, the expulsion of civilians for forced labor, looting of national property in occupied territory, the use of means of warfare prohibited by international law and other violations of the laws and customs of war.

Other articles of Section XX involve the use of weapons of mass destruction (article 439), development, production, purchase, storage, sale or transportation of weapons of mass destruction (article 440), ecocide (article 441), genocide (article 442), assault a life of representative of a foreign state (article 443), crimes against persons and institutions that have international protection (article 444), repeatedly and separately - illegal use of symbols of the Red Cross, Red Crescent, Red Crystal (article 445), piracy (article 446) and mercenaries (article 447).

Section VII "Crimes in the sphere of economic activity" includes article 209-1, which involves the deliberate violation of the law on prevention of legalization (laundering) of proceeds from crime or terrorist financing. Section IX "Crimes against public safety" includes articles 258, which prohibits terrorist acts, as well as article 258-1 - involvement in the commission of a terrorist act, article 258-2 - public incitement to commit a terrorist act, article 258-3 - the creation of a terrorist group or terrorist organization, article 258-4 - facilitate the commission of a terrorist act and article 258-5, which criminalize terrorist financing. Separately, have been adopted Law "On prevention of legalization (laundering) of proceeds from crime, terrorist financing and the financing of proliferation of weapons of mass destruction" and law "On combating terrorism".

It should be noted that the Criminal Code does not contain the term "non-state armed groups", and therefore does not consider such groups as the subjects of the aforementioned crimes. Thus, the legislation Ukraine is not oriented to potential participants of hybrid war.

On the other hand, Russia is well prepared for the hybrid war. Section 33 "Crimes against military service" of its Criminal Code (CCRF) in the article 331 contains a clause that responsibility for war crimes in wartime or under military circumstances shall be governed by the legislation of wartime. Thus, unlike the Criminal Code of Ukraine the CCRF makes possible responsibility for war crimes not only for servicemen.

Section 34 is named "Crimes against the peace and security of mankind". The similarity with the CCU is not accidental, because Russia also has not ratified the Rome Statute. This section criminalizes planning, preparation, unleashing and conducting a war of aggression in article 353 and, most interestingly, public calls for breaking an aggressive war in article 354. One say, what is wrong, but in fact this provision

is completely inconsistent with most current broadcasting Russian TV channels. Indeed, as they show, the most popular motto of Russian people is “Putin, vvodi voiska!” (“Putin, put in troops!”). Given an absence of legal grounds for such entering under International law, it sounds just like the article 354 prescribes in its body. Still, no one is charged. In article 355 is prohibited development, production, stockpiling, acquisition or sale of weapons of mass destruction. The use of prohibited means and methods of warfare is criminalized by article 356. Other articles prohibit no more and no less than genocide (article 357), ecocide (article 358), mercenaries (article 359) and attack on persons or institutions who enjoy international protection (article 360). This is the last article in the CCRF and apparently almost no article contains references to international humanitarian law.

Nevertheless, there are a lot of articles devoted to terrorism: article 205 (terrorist act), article 205-1 (facilitating terrorist activity), article 205-2 (public calls to terrorist activity or public justification of terrorism), article 205-3 (passing training with the aim of terrorist activity), article 205-4 (organization of a terrorist organization and participation in it), article 205-5 (organization of terrorist organizations).

Unlike the CCU the CCRF contains a definition of extremism: article 280 (public calls for extremist activity implementation), article 282-1 (organization of an extremist group) and article 282-2 (organization of an extremist organization).

Therefore, in the criminal legislation of Ukraine and Russia there are rare hybrid war components settled, though this is not addressed as such.

Military Doctrine of Ukraine was approved in 2012, and does not mention directly hybrid war or a threat or as a trend or issue. However, there are some assumptions are far in the context of issues of military-political relations:

“Incomplete legal registration of the state border of Ukraine, so that the probability of nomination territorial claims to Ukraine and the emergence of disputes between States remains;

manifestations of separatism, caused by dissatisfaction because of cultural needs of ethnic minorities, low living standards and peculiarities of national ethnic policy of neighboring States;

interference in Ukraine's internal affairs of other States to warm socio-political, interdenominational and interethnic relations, creating unforeseen unlawful paramilitary or armed groups.”

Further, it states that Ukraine considers as a military and political risks or challenges that increase the level of threat of use of military force against Ukraine, intention or action states:

“Informational and psychological measures to destabilize the sociopolitical situation, interethnic and interfaith relations in Ukraine or its separate regions and areas where national minorities;

support of separatism.”

Russia's military doctrine, approved in 2014, does not mention hybrid war, but there are interesting points on the main external military threats to Russia:

“- application of armed force on the territory of states, contiguous to the Russian Federation and its allies, in violation of International law;

- existence (appearance) of armed conflicts, and its escalation on the territory of contiguous states;

- development of global threats of extremism (terrorism) and its new forms under conditions of lack of international co-operation in this issue;

- existence (appearance) of focal international ethnic and religious conflicts, tensions, activities of armed radical groups and private foreign companies on the territory of states, contiguous to the Russian Federation and its allies;

- establishment in the states, contiguous to the Russian Federation, regimes, including, as a result of coup, which policy endanger interests of the Russian Federation.

Also, there are other provisions which characterize modern armed conflicts:

“a) combined application of military force, political, economic, informational and other non-military measures, implemented with the extensive use of the protest potential of the population, and special operations forces;

g) establishment in the territories of the warring parties a permanent war zone;

h) participation in the military actions of irregular armed groups and private military companies;

j) use of indirect and asymmetric modes of action;

k) use of externally-funded and managed by the political forces, social movements.”

Therefore, the main objective of deterrence and prevention of military conflicts are:

“creating conditions for reducing the risk of the use of information and communication technologies in the military-political purposes for acts contrary to international law against the sovereignty, political

independence, territorial integrity of States and a threat to international peace, security, global and regional stability.”

If one asks about the most hypocritical provision, I would oscillate among the following two:

“Demonstration of military force during exercises on the territories of states contiguous with the Russian Federation and its allies” is surprisingly deemed as a threat for the Russian Federation, and

“The Russian Federation considers it lawful to utilize the Armed Forces, other troops and bodies to repel aggression against it and (or) its allies, and maintaining (recovery) of the world to address the UN Security Council and other collective security structures, as well as to ensure the protection of its citizens beyond the outside the Russian Federation in accordance with the generally recognized principles and norms of international law and international treaties of the Russian Federation.” In other words, we shall fight for our citizens abroad.

In contrast to the Ukrainian and Russian military doctrine, the doctrine of the United States contains a hybrid concept of war and even underlines the need to have it in mind. In the doctrine stating that it is difficult to distinguish between traditional and irregular war, because it is one piece and includes many elements, both traditional and irregular. Creative, dynamic and synergistic combination of both is most effective. All US military operations since the terrorist attacks September 11, 2001 were irregular.

In American doctrine is also determining irregular war (emphasis on precisely this term) - violent struggle among state and non-state actors for legitimacy and influence the appropriate population. Irregularity of this form is its non-Westphalia context. US hybrid approach to war is that military action is not enough to win. That is why the United States developed a unified doctrine that combines offensive, protective and stabilization operations.

No need to carry out a deep analysis to see how backward is the doctrine of Ukraine and Russia and how detailed and modern is the doctrine of the United States. The same applies to the legislation and its compliance with the requirements of modern reality.

Conclusion

The concept of hybrid war is not developed enough in International law. In fact, this term remains mainly in political or military dictionaries. There is no simple answer to the question what kind of war is hybrid war. Its more common features are believed the following: a struggle simultaneous presence of traditional and alternative (asymmetric) warfare, tactics and the use of simple and complex tactics of modern, high-tech weapons systems (such as air anti-aircraft missiles, anti-tank missiles, communication equipment), terrorism, regular troops armed civilians. Consequently, some authors consider hybrid war just like non-declared war, thus – non-recognized international armed conflict.

As to the Eastern Ukraine, no doubt the situation could be amounted to an internal armed conflict. From the other hand, there is still only one state involved into the conflict officially. Therefore, the approach to divide the conflict into two legally different conflicts seems to be quite constructive.

In hybrid war one of fighting sides is not a subject of International law in majority of cases. So, the question arises as what is its legal status, and what rules should be applied: just national law, just international, or both of them and to what extent.

In international law, relevant norms are: common article 3 for Geneva Conventions, its Additional Protocol II, and a good portion of international human rights norms. Also, in some cases it is appropriate to apply international anti-terrorist conventions.

National legislation of Ukraine is not ready to deal with a threat of hybrid warfare. In somewhat better this problem is solved in the legislation of the Russian Federation. The criminal codes of these countries haven't neither compliance with international humanitarian law, nor mention of unusual military action.

Military doctrine of Ukraine and Russia also does not contain the concept of a hybrid war, unlike the US military doctrine which details the threat of hybrid war and regulates the proper response.

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