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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INVESTIGATING THE ROLE OF NON-STATE ACTORS IN WAR CRIMES IN UKRAINE

AUTHORED BY - ARYA AGRAWAL

ABSTRACT

The current Ukraine conflict actually validates the idea that modern warfare cannot be waged solely by state actors; instead, non-state actors have been more influential than ever before.

Some of the powerful groups in this list are media houses, think tanks, universities, religious groups, criminal groups, militia organizations, NGOs, GONGOs, and the Ukrainian diaspora. The current conflict in Eastern Ukraine, as symbolized in the media, combined with the fact of shooting down the MH-17 aircraft, which was an organized crime of the Kremlin, is challenged by new grassroots Ukrainian media venues such as Ukraine Today. Researchers and think tanks specializing in the studies of Ukraine and Russia are battling for their dominance over the rhetoric about governmental narratives and public opinion. Religious institutions have only further entrenched the position in the Ukrainian conflict by the very nature of logic put forth by the Russian Orthodox Church, claiming that the annexation of Crimea serves to fulfill the divine right of Russia. A faction of the ROC, the Ukrainian Orthodox Church, has differentiated itself and aligned itself with pro-Ukrainian militias, actively seeking to legitimize the war effort. In parallel with the militias of the organized crime, the rise of militias will be a very dangerous threat to the future stability of the nation. In Eastern Ukraine, where the Russian incursion occurred, autonomous militias have emerged because of the inability of the government to recover the disputed territories from the invaders. Organized crime has capitalized on the tenuous situation brought about by regional instability, while the annexation of Crimea has triggered a new configuration for illegal trade operations that can be accessed by external agents. The international community has become more aware of the situation in Ukraine, while in Russia, GONGOs have been researching ways to move forward with policies that support their goals. The Ukrainian diaspora has also taken actions to influence decisions in regards to policy for Ukraine, form committees and facilitate the movement of supplies to the front. The outcomes of these actions for Ukraine are still in question; however, it is unmistakably clear that every organization will significantly shape how the public views the situation.

Keywords: Non-state actors, Ukraine, Crimea, Russo-Ukrainian war.

1. INTRODUCTION

One of the key non-state actors in shaping and influential forces of conflict in Ukraine is framed by media efforts to attain a hegemonic position in this discourse by publishing conflicting narratives through various channels and running misinformation campaigns to reach confusion and instill fear. Think tanks and institutions of higher learning also influence both the public discourse and the political agenda in its totality, thereby feeding into the policy-making process. Religious organizations align either by siding with the victimized citizenry in Ukraine or by taking the lead in promoting a nationalist rhetoric cohered into religious and historical themes.¹ The Russo-Ukrainian War and illegal annexation of Crimea have created an environment that allows for the flourishing of organized crime due to the power vacuum left by the Ukrainian government, which failed to gain dominance over its sovereign territory.² In all battlegrounds of the conflict, militias have quickly mobilized and in many instances are more effective than official forces. Non-governmental and government-organized non-governmental organizations (NGOs and GONGOs) perform a multitude of tasks in Ukraine while simultaneously projecting an international function. The Ukrainian diaspora still offers various levels of facilitation to their mother country. It remains to be seen just how much in the way of influence non-state actors will actually exert in determining the conflict's resolution, but, over time, and indeed increasingly so today, non-state actors play a very significant role, ranging from the battlefields of eastern Ukraine to the legislative chambers of the US Congress.

2. RUSSIA'S STATE-CONTROLLED MEDIA APPARATUS

Russian mass media, for example, are largely controlled by the Kremlin, a characteristic of autocratic states that fear the emergence of counter-narratives to government messaging. President Vladimir Putin, observing waves of social unrest over the last decade—from color revolutions to the Arab Spring—noted how successful it was to get social media and messaging to bear the power of the new domain of information warfare. Russia Today and Channel One are two of the biggest state-owned television networks broadcasting pro-Russian multilingual programming around the world. Russia has turned a traditional non-state medium into a state

¹ 1 Orthodox Terrorism | Mykhailo Cherenkov, First Things (2015), <https://www.firstthings.com/article/2015/05/orthodox-terrorism>

² Mulford, J. P. (1970, January 1). Connections the quarterly journal. Connections. <https://connections-qj.org/article/non-state-actors-russo-ukrainian-war>

tool that can shape both domestic and international opinions while silencing opposition. The use of media to demoralize, confuse and delay opponents was succinctly demonstrated after the downing of flight MH17. While Western media networks declared, on the basis of initial evidence, that it was Russian troops or Russian-backed separatists responsible, the Russian mass media immediately accused Ukrainian troops or NATO forces, thereby infusing disinformation in conspiracy theories to diminish the truth. RT, set up in 2005 to give the Russian perspective, had gained a \$275 million budget from the Russian government in 2015. But RT isn't doing too well and is considered among one of the most unreliable sources around. One such instance was when news presenter Liz Wahl resigned on air in March 2014, opposing the "whitewashing" of events by the Russian government.³

2.1 Counter-Efforts and Alternative Media Sources

As Ukraine and the West have sought to counter Russia's information advantage, for example, a Kyiv-based English-language news outlet, Ukraine Today, was launched in August 2014 to advance international communications, understanding, and peace. Alternative coverage from sources such as Ukraine Today and KyivPost seeks to inform international perception of the situation in Ukraine. Grassroots efforts aim to counter Russian propaganda from within Ukrainian civil society. StopFake.org, which was founded by graduates and students of the Mohyla School of Journalism in Kyiv, fights back against informational Ukrainian disinformation. Till the end of April 2015, the resource fact-checked over a thousand items of reporting and found about 400 stories spread under the flag of lies. Like the radio, which was founded as anti-Communist in 1949, RFE/RL keeps on playing important roles. Though once financed by the CIA, its financing today emanates from the Board of International Broadcasters supported by the U.S. Congress.⁴ The service was meant to disseminate information in areas where free media is not available. Even though the reporting on the war is generally of good quality, the service is meant to mostly target Russian speakers in Ukraine.

3. UKRAINIAN THINK TANKS AND REFORM INITIATIVES

Domestic Government Reforms and Shaping the Debate on International Support for Kyiv Ukrainian and international think tanks are exerting a strong influence. Since the collapse of the Soviet Union, think tanks like the Ukrainian Centre for Economic and Political Studies,

³ The Moscow Times, The Moscow Times (2024), <https://www.themoscowtimes.com/>

⁴ Mark Galeotti, The West Is Too Paranoid About Russia's "Infowar" (Op-Ed), The Moscow Times (2015), <https://www.themoscowtimes.com/archive/the-west-is-too-paranoid-about-russias-infowar-op-ed>

The Razumkov Centre, and The Atlantic Council of Ukraine have maintained considerable political independence. The Institute for Economic Research and Policy Consulting, with its analysis of visa requirements, investment forecasts, and impacts from the Deep and Comprehensive Free Trade Agreement, stands out among its kind.⁵ The Maidan of Foreign Affairs created after the Revolution of Dignity symbolizes the next generation of non-partisan NGOs. It was founded by diplomats and experts who opposed the Yanukovich government.

MFA concentrated on foreign policy expertise, public education, and policy debate. Among its achievements are intelligence manuals for the army, as well as strategies for regaining Crimea.

3.1 Russian Think Tanks Under State Control

Governmental pressure over Russian think tanks and academia has intensified with conclusions shaped to mirror that of the Kremlin's narratives. Critics are cowed or even forced out as is the case of former Provost Sergei Guriev, provost at New Economic School. The 2015 law on "undesirable" organizations recently targeted Amnesty International and the Carnegie Foundation made the environment so threatening that it brought brain drain and anemic internal dialogue.⁶

The Russian Institute for Strategic Research, a very influential think tank having in its past connections to Russia's Foreign Intelligence Services, supported the 2014 Ukraine invasion. RISI promotes the narrative of the "Russian World," wherein Russia serves as the protector of all Russian speakers anywhere in the world and the center of gravity in former Soviet space—not according to international principles of self-determination.

3.2 International Think Tanks and Academic Response

Outside the Ukraine and Russia, especially in Washington D.C., think tanks have been an important force in keeping the spotlight on Ukraine. The Atlantic Council, Brookings Institute, and Potomac Foundation produced high-profile reports and expert testimony to Congress. Notably, "Preserving Ukraine's Independence, Resisting Russian Aggression" and "Hiding in Plain Sight," recording all aspects of Russian involvement in Ukraine.

⁵ Projects - Institute for Economic Research and Policy Consulting, <http://www.ier.com.ua/en/projects>

⁶ <https://www.4freerussia.org/putin.war/Putin.War-Eng.pdf>

Academic institutions have assisted through the panes and publications of top scholars discussing everything from color revolutions to corruption.⁷ Having Ukrainian musician and EuroMaidan activist Sergei Fomenko speak at George Washington University is another example of how academics have ensured the public stays informed about Ukraine, even in the face of competing global issues like the emergence of ISIS and the refugees, and Brexit-ated talks. These academic forums will continue to shed needed light on the situation despite the shifting tides of public interest.⁸

4. RELIGIOUS TENSIONS AND THE RUSSIAN ORTHODOX CHURCH'S POLITICAL ROLE

Current tensions between the Moscow Patriarchate of the Russian Orthodox Church (ROC MP) and the Ukrainian Orthodox Church of the Kyivan Patriarchate originated in 2009.

Patriarch Kirill has headed the ROC MP, and his role has been to give the "Russian World" idea advanced by Putin spiritual energy. Underpinned by the ROC MP, it has constantly fueled the Kremlin's narrative on Russia's historical and religious ties to Kyiv and Crimea. It received deep support from the Russian Orthodox Church, which "considered it an existential issue for the entire Holy Russia."⁹ However, that is only increasing, as the ROC MP continues to back Russian aggression in Ukraine. Kirill's stance - imploring international support for Russian Orthodox clergy while advocating for the violence against the other non-Russian Orthodox leaders - is a manifestation of the church attitude, "Russia is good and the rest are evil."

4.1 Religious Persecution and Shifting Allegiances

Orthodox faiths have experienced persecution, such as the kidnapping and murder in June 2014 of four leaders of the Pentecostal Church in eastern Ukraine. The situation has deteriorated to such a level that the United States Commission on International Religious Freedom classifies Russia as a Tier II country for religious freedom.

The conflict has resulted in a realignment of allegiance wherein 30 previously pro-Moscow parishes have realigned to the Kyivan Patriarchate. A 4,000-strong Russian Orthodox Army is

⁷ PUBLIC-CONSULTATION.ORG, <http://www.public-consultation.org/>

⁸ Home, Fortunatas Corner, <https://www.fortunascorner.com/>

⁹ Hannah. "Putin's War Has Come to the Pews." US News & World Report, U.S. News & World Report, 2015, www.usnews.com/opinion/blogs/world-report/2015/03/04/ukraine-crisis-threatens-to-further-fracture-orthodox-faithful. Accessed 11 Nov. 2024.

functional in eastern Ukraine, attacking non-Russian Orthodox religious institutions. The events have thus further widened the chasm separating the Ukrainian Orthodox Church under Moscow Patriarchate and the Ukrainian Orthodox Church of Kyivan Patriarchate.

4.2 The Church's Role in the Conflict and Future Implications

It has actively supported the EuroMaidan and the opposition movement, and offered church buildings to the opposition forces. Patriarch Filaret, the head of the Kyivan Patriarchate, has actively supported the war and even supplied Ukrainian soldiers with night-vision goggles, lobbied for military aid in Washington DC, and served as the interim head of the united Ukrainian Orthodox Church¹⁰.

While the Orthodox Church might potentially bridge the divisions between societies as a non-state actor, in reality, both sides have reduced possibilities for reconciliation. Both have transformed the Church as a symbol of nationalism for one and the other, and neither side is withdrawing from governmental activities until the current administrations are reversed in ROC MP and Ukrainian Orthodox Church of Kyivan Patriarchate. The multi-faith religious leaders have appealed to the international religious community and NGOs to facilitate reconciliation while addressing the 1.2 million internally displaced persons in Ukraine.

5. ORIGINS OF THE "PEOPLE'S REPUBLICS" AND POST-SOVIET CORRUPTION

It's been years in the making-the idea of the separatist's breakaway region as "The People's Republics" of the Donbas. Russia, operating as a mafia-like state, does well in having weak neighbors. Princeton historian Stephen Kotkin coined "Trashcanistan" to describe the endemic corruption in post-Soviet countries, where crime bosses became oligarchs and powerful politicians overnight¹¹. First of all, corruption and corrupt mafiosi marauders in the Donbas region, notoriously notorious in this regard, have always been historically hard to govern from both Moscow and Kyiv, as one Ukrainian local notes: "every third man in the Donetsk region is in prison, has been in prison, or will be in prison."

¹⁰ <https://www.uscifr.gov/user/41>. "USCIRF Issues Its 2015 Annual Report." USCIRF, 2024, www.uscifr.gov/news-room/releases-statements/uscifr

¹¹ Kissack, T. "Freaking Fag Revolutionaries: New York's Gay Liberation Front, 1969-1971." *Radical History Review*, vol. 1995, no. 62, 1 Apr. 1995, pp. 105-134, <https://doi.org/10.1215/01636545-1995-62-105>

5.1 The Growing "Black Hole" of Organized Crime

Crimea's annexation presented new possibilities for organized crime and black market ventures-notably similar to, but potentially more profitable than, Transnistria in Moldova. It is claimed that the instability of Ukraine has had international ripples in organized crime, at least according to reports from international law enforcement agencies. The largest Russian criminal networks continue to stretch smuggling routes through Sevastopol and Odessa by selling trafficked stolen cars, drugs, and weapons, as well as human trafficking throughout the Black Sea region.

It reaches well beyond military conflict, as Russian-Ukrainian organized criminal networks and corrupt officials are very much part of the landscape of conflict.¹² The most important of Russia's criminal organizations is the Solntsevo network, known to be close to the "Donetsk clan" and former Yanukovich's Party of Regions. The conflict has eradicated any form of crossborder law enforcement cooperation, turning Ukraine's new infrastructure into a kind of "black hole" for criminal activities. This "criminalization" of Ukraine could prove to be one of the most effective tools for Russia to counter the international sanctions imposed on it, turning the country into a real "Trashcanistan." Criminal networks profit from a dislocated population and war, and certainly all the hard-won achievements of EuroMaidan for an abuse-free Ukraine.¹³

6. THE RISE AND EVOLUTION OF ARMED MILITIAS IN UKRAINE'S CONFLICT

The complex relationship between politics and armed groups in Ukraine traces its roots back to the post-Soviet years, when centralized power breakdown led to the birth of a "Russian mafia state" that was to influence neighboring states, like Ukraine. The debate as to whether Ukraine should stand with Europe or Russia fueled political divisions, which gave politicians and oligarchs motives to form alliances with private armies or even create such armies to secure their own interests. Within these armed groups, pro-Ukrainian militias like Azov Battalion, Dnipro Battalion, and Donbas Battalion have become significant forces, especially as soon as war began in 2014 after Russia annexed Crimea.¹⁴ These militias have played a

¹² Galeotti, Mark. *Armies of Russia's War in Ukraine*. Bloomsbury Publishing, 27 June 2019.

¹³ Mary Platt Parmele. *A Short History of Russia*. Library of Alexandria, 1906.

¹⁴ Medium, Medium, <https://medium.com/@steve.senatori/preventing-genocide-in-ukraine-the-danger-of-calling-atrocities-genocide-or-dont-cry-wolf-225>)

significant role in fighting the pro-Russian separatists, particularly in the east of Ukraine, where Ukrainian state forces initially found it difficult to respond.

One of the most prominent movements was the Right Sector, which got empowered by the EuroMaidan protests while it protected activists against pro-Yanukovich police. However, the organization soon entered the political field of Ukraine to receive its share of parliamentary representation; however, it has been highly criticized for ongoing activity in illicit smuggling that is working against nationalist goals. Pro-Ukrainian militias, who participated in toppling former President Yanukovich, have since become constituent parts of Ukraine's National Guard, thereby moving closer to official institutions.

The Donbas Battalion, an organization initially comprised of volunteers from the Donbas region motivated by the desire to prevent disintegration between Ukrainians, has evolved into one of the best units of fighters, encompassing representatives from all corners of Ukraine and even from overseas. The battalion members-the list includes, among others the Ukrainian-American West Point graduate Mark Paslawsky, who became a martyr-are set to protect Ukraine.¹⁵ The commander of the Donbas Battalion, Semen Semenchenko, has called for external assistance to Ukraine and has sought to build up the defense capabilities of Ukraine more on par with that of Israel's more mature national security model. Still, as a semi-official body of the Ukraine Ministry of Internal Affairs, it does maintain an independence while securing much of its financing from private civilian contributions.

Kyiv officials find themselves between a rock and hard place: cursing the illegal action taken by those militias while keeping their pro-Ukrainian forces on hand in case pro-Russian separatists receive further backing. Attempts to place all militias under either the Ministry of Defense or Interior to fall under unified command will likely be moot with Yarosh, the Right Sector leader, being appointed in 2015 as an advisor to the Ministry of Defense. This integration is necessary to prevent the trend of destabilizing central government of Ukraine, set up by the self-governing militias.¹⁶

¹⁵ "Yahoo News: Latest and Breaking News, Headlines, Live Updates, and More." Yahoo News - Latest News & Headlines, 2024, news.yahoo.com/us-army-walks-cultural-minefieldtraining-ukraine-troops-151608593.html.

¹⁶ Snowiss, Mark. "Q&A: Ukraine's Donbas Battalion Commander Seeks US Support." Voice of America, Voice of America (VOA News), 16 Sept. 2014, www.voanews.com/content/ukrainedonbas-battalion-commander-seeks-us-support/2452051.html.

The side opposite to this is represented by a coalition of various pro-Russian separatist militias, amongst whom are organized crime groups and mercenaries and other combatants from Chechnya and Cossacks. Those militias took the local administration offices and police stations, having been active in an effort to take control over the eastern region of Ukraine; sometimes, their recruits are also from both Ukraine and Russia. These groups often employ social media, including Facebook and VKontakte, to recruit and mobilize themselves. This fact shows that this is quite a decentralized, sometimes very messy conflict.¹⁷

7. THE BATTLE OF NGOS: RUSSIA'S GONGOS VS WESTERN CIVIL SOCIETY IN UKRAINE

He had increasingly wary eye on the influence of Western democratic NGOs in the course of the 2000s and particularly the way they exploited their presence to enforce democratic reforms and social development in former Soviet states. Russia has responded to this challenge by establishing its own NGOs in a form known as "GONGOS" (government- organized non-governmental organizations), it is to promote a "Russian model" of governance. Russia's aims are to rollback U.S. influence in the region and again establish itself as the central power in Eurasia.¹⁸ Since regaining power, Putin has attempted to "nationalize" Russian civil society by mobilizing and co-opting pro-Russian think tanks, election observers, human rights groups, and youth organizations in order to promote support for Russian interests, above all in Ukraine. These GONGOs have been critical in activities such as supporting the annexation of Crimea, countering the Revolution of Dignity, and fanning the flames of social divisions in Ukraine.¹⁹

Russia has around 150 GONGOs outside the Russian Federation, acting as a measure to influence elites, policymakers, and youth beyond Russian borders. Unlike Western interest groups, which engage arguments in public domain media outlets, many Russian GONGOs use financial compensation to create links, especially in Germany, Italy, and France. These efforts have contributed to a relatively tame response from Europe towards the aggressive steps from Russia, where military intervention has been ruled out so far and which limits the international

¹⁷ "Non-State Actors in the Russo-Ukrainian War on JSTOR." Jstor.org, 2016, www.jstor.org/stable/26326442?searchText=euromaidan&searchUri=%2FdoBasicSearch%3FQuery%3Deuromaidan%26so%3Drel&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3A3fb355c66f85550af0f14ba1f25dd28c&seq=5, <https://doi.org/10.2307/26326442>.

¹⁸ Law, Nathan, and Evan Fowler. Freedom : How We Lose It and How We Fight Back. London, Transworld Digital, 2021.

¹⁹ "Ukraine: Breaking Bodies: Torture and Summary Killings in Eastern Ukraine." Amnesty International, www.amnesty.org/en/documents/eur50/1683/2015/en/.

community's bargaining power vis-à-vis Moscow. Russian GONGOs directly influenced the divided stance of the West on the Ukraine crisis by creating opposition to sanctions and to international condemnation of Russian aggression. In the annexation of Crimea by Russia, for example, Russian GONGOs such as the Luzhkov Sevastopol Foundation and the Moscow House of Crimea funded separatist leaders and organized pro-Russian demonstrations. Sergey Tsekov is a separatist leader from Crimea who has been running since 2008 a pro-Russian youth movement in favor of reunification with Russia and against NATO. Other similar projects, such as the Novorossiia project, referring to a territory in eastern Ukraine aligned with Russia, have received ideological and practical support from GONGOs. Separatists are also assisted by agencies, such as the Izborskiy Club and the St. Basil's Foundation, that assist in the organization of governance as well as humanitarian aid.²⁰

Russia also has been a source of ideological fighters brought into the fight by recruitment networks. The Russian Volunteers, as well as the Russian Imperial Movement, have streamed fighters into this fight in eastern Ukraine. Russia's GONGOs attempted to build a narrative of a "Eurasian community" with Russia at the center, which the continued conflict in Ukraine over time has gradually eaten away at in Ukraine, whose public sentiment increasingly has come to favor alignment with Europe.

7.1 Western NGOs and Ukraine's Democratic Transformation

On the West side, NGOs remain the most important kind of organizations still ready to support Ukrainian civil society. The National Endowment for Democracy funds more than 80 NGOs across Ukraine focusing on issues, such as transparency of government, public accountability, and development of media.²¹ Recently, for example, NED-funded organizations launched the Independent Association of Broadcasters—an initiative of creating bipartisan videos comparing different political platforms for youth engagement in political discourse. Advocating for a civil and participatory society by helping the NGO sector in Ukraine NED's efforts have been incredibly important to this end and certainly went a long way in the mass protests that led to the exit of pro-Russian President Viktor Yanukovich.

International NGOs have actively documented human rights violations in Ukraine, especially

²⁰ The Public Service Media and Public Service Internet Manifesto. Edited by Christian Fuchs and Klaus Unterberger, University of Westminster Press, 7 Sept. 2021.

²¹ https://www.swp-berlin.org/publications/products/fachpublikationen/KS_Stewart_final_Ukraine_NGOs.pdf

regarding mistreatment of prisoners and war crimes. In May, Amnesty International published **Breaking Bodies: Torture and Summary Killings in Eastern Ukraine**, a report detailing gross abuses by prisoners detained on both sides of the conflict. The report stated that prisoners were subjected to beatings, electric shocks, sleep deprivation, and mock executions-horrific evidence of the brutality of this conflict and the speed needed in rendering human rights accountability. Pro-Russian and pro-Western civil society groups in Ukraine are vociferously opposed to each other, thus epitomizing the wider conflict between the Russian and Western spheres of influence. Whereas Russia strives to project an authoritarian and centralized model, Ukrainian civil society increasingly strives to dismantle systemic corruption and incorporate itself into Europe through democratic reforms. This polarization has fueled grassroots action against the elites still loyal to Moscow and, in so doing, reaffirmed Ukraine's national and democratic aspiration.

8. CONCLUSION

However, the current situation in Ukraine shows the grim reality of this new era of war: non-state actors are playing a much greater role than ever before. They have been very instrumental and significant not only in the origin of the causes that have led to the Revolution of Dignity but also to the annexation of Crimea and the protracted war in eastern Ukraine. Russia has thus found it necessary to use the myriad of old non-state tools as well to protect its strategic interests in Ukraine. In Kyiv, the Ukraine government has to grapple with a fight for its survival as it battles a war and is simultaneously immersed in an economic crisis and from where it must take into account the interests of other non-state actors. Leaders who understand the influence Of these categories, sources of funding and motivation will find it much easier navigating the complex environment of this battleground, where one uninformed decision can lead to the latter's devastating effects and thereby prolong suffering. Battlefield in Ukraine of the 21st century is an incredibly complex landscape with fully enlisted non-state actors and fertile ground for hate and lethal struggle over geostrategic, economic, and security interests. The end of the conflict would depend on whether either party could take advantage of the power of non-state actors both in Ukraine but also transnationally.