

**UKRAINE AS A MODEL SLAVIC DEMOCRACY:
MISSION NOT YET ACCOMPLISHED***

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INTRODUCTION

The Ukraine War, also called the Russo-Ukrainian War, has upended the international legal order created in 1945 through the United Nations (“UN”).¹ For the first time, a permanent member of the UN Security Council has engaged in a war of aggression of the kind launched by Nazi Germany in 1939 and that the UN Charter seeks to make obsolete.

The first stage of the invasion of Ukraine by Russia took place in 2014 when Russian soldiers without insignia (“little green men” as they became known because of the color of their uniform) suddenly appeared in the Ukrainian territory of Crimea and took over that peninsula.² The invasion and takeover of Crimea were followed by Russian invasions of the Donbas region in Eastern Ukraine.³ Over the next few years, Russia kept biting off parts of the Donbas, first claiming portions to be independent “[p]eople’s republic[s]” and then brazenly annexing them as new constituent territories of the post-Soviet Russian Federation.⁴

1. *Founding of the United Nations 1945*, U.N., <https://www.un.org/en/video/founding-united-nations-1945> (last visited Nov. 14, 2024).

2. Jahara Matisek, *From Little Green Men to Little Blue Helmets: Imagining the Future of Russian Aggression—And What To Do About It*, MODERN WAR INST. (Nov. 2, 2021), <https://mwi.westpoint.edu/from-little-green-men-to-little-blue-helmets-imagining-the-future-of-russian-aggression-and-what-to-do-about-it/>.

3. Sammy Westfall & Claire Parker, *Why is Ukraine’s Donbas Region a Target for Russian Forces?*, WASH. POST, <https://www.washingtonpost.com/world/2022/02/21/what-is-donbas-donetsk-luhansk-conflict/> (May 3, 2022, 4:28 PM).

4. Charles Maynes, *Putin Illegally Annexes Territories in Ukraine, in Spite of Global Opposition*, NPR, <https://www.npr.org/2022/09/30/1126020895/russia-ukraine-putin-annexation> (Sept. 30, 2022, 3:50 PM).



Figure 1. Map of Russia's Invasion of Ukraine⁵

The second stage was a full-scale invasion of Ukraine. It began at 5:00 A.M. on February 24, 2022, with a military blitzkrieg of Russian troops, tanks, and aircraft crossing into Ukraine.⁶ The invasion was preceded by a month-long massive military buildup on the Ukraine border, a flurry of European top diplomats visiting the Kremlin to stave off the invasion, and false assurances by Russian officials that no attack was imminent.⁷

When it happened, almost every military analyst, including those in the United States, predicted a lightning Russian military victory.⁸ The United States was ready to send a military plane to pluck Ukraine

5. *Ukraine in Maps: Tracking the War with Russia*, BBC (Aug. 22, 2024), <https://www.bbc.com/news/world-europe-60506682>.

6. Sergiy Karazy et al., *Russian Forces Attack Ukraine's Kharkiv Region, Striking on New Front*, REUTERS, <https://www.reuters.com/world/europe/ukraine-sends-reinforcements-after-russian-forces-attack-kharkiv-region-2024-05-10/> (May 10, 2024, 5:45 PM).

7. Michael Ray, *Russia-Ukraine War*, BRITANNICA, <https://www.britannica.com/event/2022-Russian-invasion-of-Ukraine/The-Ukrainian-counterattack> (Nov. 14, 2024).

8. Mike Eckel, *How Did Everybody Get the Ukraine Invasion Predictions So Wrong?*, RADIOFREEEUROPE RADIOLIBERTY (Feb. 17, 2023, 11:19 AM), <https://www.rferl.org/a/russia-ukraine-invasion-predictions-wrong-intelligence/32275740.html>.

President Volodymyr Zelensky into exile, as it had done just six months earlier when it plucked Afghan President Ashraf Ghani out of Kabul as the Taliban were about to capture that country's capital.⁹ From all indications, it appears that Putin was told by his top military brass of the almost certain victory of what Russia called its "special military operation" ("SMO"). The invading Russian troops were even instructed to bring decorative military uniforms for the impending victory parade in Maidan Square in Kyiv city center (with Putin most likely leading the parade).¹⁰

And why not? Russia was lauded as having the world's third-largest military after the United States and China.¹¹ The person occupying the Ukrainian presidency was a former Jewish-Ukrainian comedian whose claim to fame came from playing a fictional president in the television comedy *Servant of the People*.¹² Before running for the actual presidency, Zelensky, educated as a lawyer, had no previous political experience.¹³ But, as Winston Churchill cautioned:

Never, never, never believe any war will be smooth and easy, or that anyone who embarks on the strange voyage can measure the tides and hurricanes he will encounter. The statesman who yields to war fever must realize that once the signal is given, he

9. Sharon Braithwaite, *Zelensky Refuses US Offer to Evacuate, Saying 'I Need Ammunition, Not a Ride'*, CNN, <https://www.cnn.com/2022/02/26/europe/ukraine-zelensky-evacuation-intl/index.html> (Feb. 26, 2022, 1:06 PM); Nick Schifrin & Dan Sagalyn, *Afghanistan's Former President Ashraf Ghani on the U.S. Withdrawal and Taliban Takeover*, PBS (Aug. 25, 2022, 6:40 PM), <https://www.pbs.org/newshour/show/afghanistans-former-president-ashraf-ghani-on-the-u-s-withdrawal-and-taliban-takeover>.

10. B Kean, *Russian Officers Told to Bring Dress Uniforms for Kyiv Victory Parade*, MEDIUM (Dec. 18, 2022), <https://brian-kean.medium.com/russian-officers-told-to-bring-dress-uniforms-for-kyiv-victory-parade-a138086cbf4f>.

11. Ivana Kottasová, *Russia is Now the World's Third Largest Military Spender*, CNN MONEY (April 24, 2017, 1:10 PM), <https://money.cnn.com/2017/04/24/news/russia-military-spending/index.html>. *Contra Armed Forces of Russia – Statistics & Facts*, STATISTA (May 22, 2024), <https://www.statista.com/topics/9957/armed-forces-of-russia/#editorsPicks> (listing Russia's military as ranked fourth behind the United States, China and India in 2024).

12. James Poniewozik, *Volodymyr Zelensky is Playing the Role of His Life*, N.Y. TIMES, <https://www.nytimes.com/2022/03/09/arts/television/volodymyr-zelensky-servant-of-the-people.html> (June 22, 2023).

13. Ivan Pereira & Patrick Reeve, *What to Know About Ukrainian President Volodymyr Zelensky*, ABC NEWS (Dec. 20, 2022, 6:24 PM), <https://abcnews.go.com/International/ukrainian-president-volodymyr-zelensky/story?id=83085078>.

is no longer the master of policy but the slave of unforeseeable and uncontrollable events.¹⁴

In this case, Zelensky did not flee. In a statement that reverberated around the world, he announced: “I don’t need a ride; I need ammunition.”¹⁵ He and his top officials then convened via video the various local governors and instructed them to stay put in their posts and defend every inch of Ukrainian territory.¹⁶ Many have described Zelensky’s decision as Churchillian, harking back to the days of Winston Churchill rallying the British people in their stand against Nazi Germany during the Battle of Britain.¹⁷



Figure 2. President Zelensky speaking on live TV with his ministers behind him on the streets of Kyiv on the morning of the invasion.¹⁸

Another iconic act of defiance came from Ukrainian border guard Roman Hrybov at Ukraine’s Snake Island who, in response to a radio message from a Russian missile cruiser to give up, replied: “Russian warship, go fuck yourself.”¹⁹ A Ukrainian stamp now commemorates this event.

14. *Churchill on War*, 134 *FINEST HOUR* (Spring 2007), <https://winstonchurchill.org/publications/finest-hour/finest-hour-134/churchill-on-war/>.

15. Braithwaite, *supra* note 9.

16. *Id.*

17. Andrew Marr, *Zelensky Doesn’t Know the End of His Story. Churchill Didn’t Either*, *N.Y. TIMES* (Mar. 23, 2022), <https://www.nytimes.com/2022/03/23/opinion/zelensky-churchill.html>.

18. Annabelle Timsit, *Two Years of War in Ukraine, Seen Through Its Leader’s Biggest Moments*, *WASH. POST* (Feb. 23, 2024, 7:27 AM), <https://www.washingtonpost.com/world/2024/02/23/ukraine-russia-war-anniversary-zelensky/>.

19. Luke Harding, *Russian Warship, Go Fuck Yourself: What Happened Next to the Ukrainians Defending Snake Island?*, *GUARDIAN* (Nov. 19, 2022, 4:00 AM),



Figure 3. Commemorative Stamp²⁰

As we write these words in mid-2024, more than two years later, the Ukraine War continues. Approximately 35,000 Ukrainian civilians have been killed or injured,²¹ and over 70,000 Ukrainian soldiers killed.²² On the Russian side, as many as 180,000 soldiers are reported to have been killed.²³ Russia is still occupying Crimea and portions of the Donbas, holding about twenty percent of pre-war Ukrainian territory.²⁴

All wars end eventually, either with a peace treaty or an armistice, and so will the Ukraine War. But this war, unlike all others in the last almost eighty years, has upended the international legal order and changed not only Europe but the entire world.

<https://www.theguardian.com/world/2022/nov/19/russian-warship-go-fuck-yourself-ukraine-snake-island>.

20. *Russian Warship Go... Stamps*, ROYAL MUSEUMS GREENWICH, <https://www.rmg.co.uk/national-maritime-museum/attractions/russian-warship-go-stamps> (last visited Nov. 14, 2024).

21. *Number of Civilian Casualties in Ukraine During Russia's Invasion Verified by OHCHR From February 24, 2022 to July 31, 2024*, STATISTA (Aug. 13, 2024), <https://www.statista.com/statistics/1293492/ukraine-war-casualties/>.

22. Helene Cooper et al., *Troop Deaths and Injuries in Ukraine War Near 500,000, U.S. Officials Say*, N.Y. TIMES (Aug. 18, 2023), <https://www.nytimes.com/2023/08/18/us/politics/ukraine-russia-war-casualties.html>.

23. Kathryn Armstrong, *Ukraine War: Zelensky Says 31,000 Troops Killed Since Russia's Full-Scale Invasion*, BBC (Feb. 25, 2024), <https://www.bbc.com/news/world-europe-68397525>.

24. For the latest figure see INST. FOR THE STUDY OF WAR, <https://www.understandingwar.org/> (last visited Nov. 14, 2024).

The territory comprising the modern nation-state Ukraine²⁵ has been regarded as a place of shifting borders and population mixing.²⁶ Its lands have encompassed many ethnicities.²⁷ Located at the western edge of the Eurasian steppes, Ukraine has been a gateway to Europe for many centuries and referred to as the “Gates of Europe.”²⁸

Ukraine’s modern journey toward democracy has been tumultuous, marked by fits and starts, triumphs, and setbacks. Compared to its neighbors to the West that formed part of the constellation of Soviet satellite states before the fall of the Union of Soviet Socialist Republics (“USSR” or “Soviet Union”) in 1991, it has not fared well.²⁹ Its most immediate Soviet-dominated Western neighbors, Poland and the Baltic states of Lithuania, Latvia, and Estonia, have created post-Soviet civil societies that Ukraine would very much want to emulate.³⁰ Even countries at the back of the post-Soviet Eastern European democracy train like Hungary, Romania, Czechia (the Czech Republic), and Slovakia are now part of the liberal democratic West, grateful for their membership in both the political and economic European Union (“EU”) and the military North Atlantic Treaty Alliance (“NATO”).³¹

While Ukraine still has a long way to go, in contrast to its eastern behemoth neighbor Russia (formally known today as the Russian Federation and successor to the USSR)³² and neighboring Belarus (the

25. “Ukraine” is the formal name of the country. It would be improper to call it State of Ukraine or The Ukraine. Ukraine is a republic with a presidential-parliamentary system of government, with a directly elected president, a prime minister appointed by the president and confirmed by parliament, which is a unicameral parliament and called the Verkhovna Rada. For further information, see *Explore All Countries — Ukraine*, WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/ukraine/#government> (Oct. 28, 2024).

26. See SERHII PLOKHY, *THE GATES OF EUROPE: A HISTORY OF UKRAINE* xxi–xxii (2017).

27. See *id.*

28. See *id.* at xxi.

29. See Mayhill Fowler, *Soviet Ukraine in a Nutshell*, ORIGINS (July 2022), <https://origins.osu.edu/read/soviet-ukraine-nutshell>.

30. See Peter Rutland, *Introduction: Nation-Building in the Baltic States: Thirty Years of Independence*, 52 J. BALTIC STUD. 419, 420–22 (2021).

31. *Relations with the European Union*, NATO, https://www.nato.int/cps/en/natohq/topics_49217.htm, (Oct. 3, 2024, 2:41 PM).

32. See *Explore All Countries — Russia*, WORLD FACTBOOK, [hereinafter *Russia Factbook*], <https://www.cia.gov/the-world-factbook/countries/russia/> (Nov. 4, 2024). Present-day Russia calls itself the Russian Federation. See generally KONSTITUTSIJA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] (Russ.) It is an asymmetrical federation, with some of its territories called republics having more autonomy than others. Republics, for instance, within the Russian Federation have their own constitutions, official languages, and national anthems, while other regions of the Russian Federation do not. See *Russia Factbook*. The Russian Federation came into existence on December 25, 1991, when the Russian Soviet Federative Socialist Republic (“RSFSR”) changed its name during the

former Soviet Belorussia), Ukraine has much to be proud of. Russia under Vladimir Putin, who has been in power since 2000 and will likely wield absolute power until his demise or overthrow, continues to backslide from democratic norms.³³ Belarus' dictatorship, under President Aleksandr Lukashenko, who has been in power even longer than Putin (since 1994), is unlikely to become a liberal democracy anytime soon.³⁴ Ukraine, with its two populist revolutions since independence in 1991, has emerged with the potential of becoming a model Slavic democracy.

The Russian invasions of Ukraine in 2014 and 2022 have made Ukraine's struggle for independence and democracy even more difficult.³⁵ Hope remains that once the war with Russia ends, Ukraine can emerge economically stronger and more politically secure than before the attack on its sovereignty by Russia that has brought such great calamity to the country. Since the full-scale invasion by Russia in February 2022, Ukraine remains under martial law and partially occupied by Russia.³⁶ Its political and economic existence is dependent on both military and economic aid from the West, especially the United States and those countries that are members of the EU and NATO.³⁷

The fates of the postwar states that arose from the ruins of Western Europe after the Second World War can be useful models for postwar Ukraine. These states emerged economically strong and politically stable

collapse of the USSR. *Id.* The new state established a federal semi-presidential system with a federal legislature called the Duma. *See id.* The Russian Federation's constitution states that the country is a democratic federative law-governed state with a republican form of government. *See* KONSTITUTSIYA ROSSIĬSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 1 (Russ.) It also states that the federation consists of republics, krais, oblasts, cities of federal importance, an autonomous oblast, and autonomous okrugs, all of which are supposedly equal subjects of the federation. *See id.* art. 5.

33. German Lopez, *Putin vs. Democracy*, N.Y. TIMES (Feb. 27, 2022), <https://www.nytimes.com/2022/02/27/briefing/putin-democracy-ukraine.html>.

34. *See generally* ANDREW WILSON, BELARUS: THE LAST EUROPEAN DICTATORSHIP (2021).

35. *See generally Conflict in Ukraine's Donbas: A Visual Explainer*, INT'L CRISIS GRP., <https://www.crisisgroup.org/content/conflict-ukraines-donbas-visual-explainer> (last visited Nov. 14, 2024).

36. *Martial Law in Ukraine Extended Until Mid-August*, APK-INFORM (May 9, 2024, 9:00 AM), <https://www.apk-inform.com/en/news/1541371>.

37. To date, the United States has provided more than \$55.5 billion in military assistance since Russia launched its invasion in 2022 and approximately \$58.3 billion in military assistance since Russia's invasion in 2014. *U.S. Security Cooperation with Ukraine*, U.S. DEP'T OF STATE, <https://www.state.gov/u-s-security-cooperation-with-ukraine/> (Oct. 21, 2024); Mark F. Cancian, *The Impact of Ending Military Aid to Ukraine: Gradual Decline, Then Collapse*, CSIS (Dec. 19, 2023), <https://www.csis.org/analysis/impact-ending-military-aid-ukraine-gradual-decline-then-collapse>.

as a bitter consequence of the world war. Now another military conflict, the largest war in Europe since the end of the Second World War in 1945, is taking place on European soil.³⁸ It would be worthy for postwar Ukraine likewise to emerge as an independent, economically strong, and politically stable liberal democracy.

Western Europe did not do it alone. The Marshall Plan of economic aid to ravaged Western Europe by the United States rebuilt these states.³⁹ The security umbrella of NATO, led by U.S. military power, kept them safe. The same can—and should—be done to secure the future of Ukraine.

I. HISTORICAL BACKGROUND: FROM KIEVAN RUS TO SOVIET RULE

Like the history of most nations, geography plays a large part in the history of Ukraine. From the emergence of the Slavic tribes in Eastern Europe, to the rule of the Kyivan Rus Kingdom of medieval times, to the seventeenth and eighteenth century Cossacks, to the horrors of the twentieth century leading up to Ukrainian independence and the revolutions and wars of the new millennium, the story of Ukraine has largely been a story of tragedy. Nevertheless, Ukraine has remained faithful to its national identity—staying committed to holding a united front and defending its homeland from outside aggression.⁴⁰ Its rich soil has earned Ukraine the name “Breadbasket of Europe.”⁴¹ As a result, during its tumultuous history, it is seen as a worthy prize to be conquered by others, most notably its eastern neighbor to the east—Russia—and its western neighbor—Germany. Today, Ukraine remains a major exporter of grains, with the moniker still applicable to its economy.⁴²

The roots of democracy in Ukraine can be traced back to the early medieval period during the era of Kievan Rus, a powerful East Slavic kingdom from the ninth to the thirteenth centuries.⁴³ The capital Kyiv

38. *The Invasion That Shook the World*, COUNCIL OF COUNCILS GLOBAL MEMO (Feb. 22, 2023), <https://www.cfr.org/councilofcouncils/global-memos/invasion-shook-world>.

39. *Marshall Plan, 1948*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/marshall-plan> (last visited Nov. 14, 2024).

40. See Karina Korostelina & Gerard Toal, *The Dynamics of Identity in Ukrainians Living at the Front*, WILSON CTR. (June 21, 2023), <https://www.wilsoncenter.org/blog-post/dynamics-identity-ukrainians-living-front>.

41. Ian M. Sheldon, *Ukraine: The Breadbasket of Europe*, ORIGINS (June 2022), <https://origins.osu.edu/read/ukraine-food-war-agriculture>.

42. See Viktoria Hubareva, *Ukraine: Still Europe's Breadbasket*, EUROZINE (Dec. 20, 2023), <https://www.eurozine.com/ukraine-still-europes-breadbasket/>.

43. Ali Rogin & Morgan Till, *Ukraine's History and its Centuries-Long Road to Independence*, PBS NEWS (Mar. 8, 2022, 6:35 PM),

(transliterated during Soviet times as Kiev) emerged because of strategic location at the crossroads of trade routes and cultural exchange, facilitating the convergence of Slavic, Norse, Scandinavian, and Byzantine influences.⁴⁴

While not a democracy in the modern sense, the medieval Christianized Kievan Rus had elements of collective decision-making through an assembly of citizens that had a say in local governance.⁴⁵ One of the earliest legal codes in Eastern Europe was the *Ruska Pravda*, central to the governance of Kyivan Rus. Compiled during the reign of Yaroslav the Wise, the *Ruska Pravda* reflected principles of governance that shaped this early Ukrainian kingdom.⁴⁶ The legal code established rules for resolving disputes, administering justice, and upholding the rights of citizens.⁴⁷ The *Ruska Pravda* code laid the foundation for legal institutions and practices that, through memory, endured throughout Ukrainian history, making it a key source of law in the Ukrainian territory.⁴⁸

This early form of a proto-democracy was curtailed with successive invasions, or imminent threats of foreign domination, by various powers. The lack of sovereignty, or the imminent danger of losing sovereignty, has lasted for centuries and, unfortunately, continues to this day. For much of its history, the nation-state called today Ukraine was either a part of another kingdom ruled directly by others or a vassal state proclaiming fealty to a foreign power.⁴⁹

The end of the kingdom of the Kievan Rus came with the Mongol invasion from Asia into Europe in the thirteenth century.⁵⁰ The defeat of the Mongols was shortly followed by the incorporation of Ukraine into another kingdom, Poland.⁵¹ The neighboring states of the Kingdom of Poland and the Grand Duchy of Lithuania took over most Ukrainian

<https://www.pbs.org/newshour/show/ukraines-history-and-its-centuries-long-road-to-independence>.

44. Richard Antony French, *History of Kyiv*, BRITANNICA, <https://www.britannica.com/place/Kyiv/History> (Nov. 14, 2024).

45. See Clarence Manning, *Kievan Rus'*, in *THE STORY OF THE UKRAINE* 31, 40 (1947).

46. *Ruskaia Pravda*, INTERNET ENCYC. OF UKRAINE, <https://www.encyclopediaofukraine.com/display.asp?linkpath=pages%5CR%5CU%5CRuskaiaPravdaIT.htm> (last visited Nov. 14, 2024).

47. *Id.*

48. *Id.*

49. See Rogin & Till, *supra* note 43.

50. Mark Cartwright, *The Mongol Invasion of Europe*, WORLD HIST. ENCYC. (Oct. 2, 2019), <https://www.worldhistory.org/article/1453/the-mongol-invasion-of-europe/>.

51. René Nyberg, *Russia, Ukraine, and Poland: The End of a Tragic Triangle*, CARNEGIE POLITIKA (July 28, 2023), <https://carnegieendowment.org/russia-eurasia/politika/2023/07/russia-ukraine-and-poland-the-end-of-a-tragic-triangle?lang=en>.

lands and integrated them into their joint Polish-Lithuanian state, known as the Polish-Lithuanian Commonwealth.⁵² This state would dictate Ukraine's political, social, and cultural life.

The Polish-Lithuanian Commonwealth ruled Ukraine from 1569 to 1793, except for a period between 1668 and 1669 when Kyiv and Left-bank Ukraine were given to Russia.⁵³ The Commonwealth was formed in 1569 when the Kingdom of Poland and the Grand Duchy of Lithuania united through the Union of Lublin.⁵⁴ As part of this Polish-Lithuanian union, most of Ukraine was taken from Lithuania and given to Poland, which extended its borders as far east as Zaporizhzhia and Poltava.⁵⁵ The union also created the Ruthenian Voivodeship of the Polish Crown, which included the principalities of Galicia and Western Volhynia.⁵⁶

The southern European peninsula of Crimea was ruled by another empire, the Muslim Ottomans, until the Christian czarist Russian Empire in 1774 wrested Crimea from the Ottomans, subdued the local Muslim Tatar population, and then annexed Crimea into Czarist Russia in 1782.⁵⁷

The western Galicia region of Ukraine was incorporated into another empire, the Austro-Hungarian Empire, from 1772 until 1918.⁵⁸ Today, the eastern half of Galicia is part of Ukraine, and the western half is part of Poland.⁵⁹

Modern Ukraine celebrates its nationhood by recalling the revolts of the semi-nomadic warrior tribes known as the Cossacks against domination by the Polish-Lithuanian Commonwealth.⁶⁰ This conflict catalyzed the Khmelnytsky Uprising, also known as the Great Revolt, in

52. *Id.*

53. Bohdan Harasymiw et al., *History of Ukraine*, INTERNET ENCYC. OF UKRAINE, <https://www.encyclopediaofukraine.com/display.asp?linkpath=pages%5CH%5CI%5CHistoryofUkraine.htm> (last visited Nov. 14, 2024).

54. Nyberg, *supra* note 51.

55. Harasymiw et al., *supra* note 53.

56. *Id.*

57. See *The Crimean War*, NAT'L PARK SERV., <https://www.nps.gov/places/the-crimean-war.htm> (Aug. 4, 2022).

58. A useful series of ten maps showing the geopolitical history of Ukraine has been collected by the National Library of Belgium. See *Ukraine's Geopolitical History in 10 Old Maps*, KBR, <https://www.kbr.be/en/ukraines-geopolitical-history-in-10-old-maps/> (last visited Nov. 14, 2024).

59. *A Brief History of Galicia*, GESHER GALICIA, <https://www.geshergalicia.org/about-galicia/> (last visited Nov. 14, 2024) ("The term 'Galicia' no longer describes an administrative or political region in either country. In Poland, Galicia is often called 'Malopolska', or Lesser Poland.")

60. Adam Twardowski, *The Return of Novorossiya: Why Russia's Intervention in Ukraine Exposes the Weakness of International Law*, 24 MINN. J. INT'L L. 351, 354–55 (2015).

1648, led by Cossack “Hetman” (head of the new state and military commander) Bohdan Khmelnytsky, who challenged the hegemony of the Polish-Lithuanian aristocracy over the local population.⁶¹ The Khmelnytsky Uprising, sometimes also referred to as the Cossack-Polish War, transformed the region’s political map and established the Cossack state known as the Hetmanate, regarded as the foundation of modern Ukraine.⁶²

In 1654, the Ukrainian Cossacks aligned with the Russian Tsardom against the Polish-Lithuanian Commonwealth, with Khmelnytsky swearing allegiance to the Russian czar.⁶³ It was not a wise move. While Ukrainians viewed this as only a temporary submission to Moscow’s rule, the Russians interpreted it as a permanent submission to Moscovian control.⁶⁴ This remains one of the present-day justifications for Russia’s invasion of Ukraine. Soviet and post-Soviet Russian historians have celebrated this event of 1654 as the “reunification” of Ukraine and Russia.⁶⁵ This is part of the Russian imperial notion of the “triune,” which imagines Russia, Ukraine, and Belorussia (today Belarus) as one nation, with the latter two merely as sub-nations of an all-Russian nation.⁶⁶

61. *Id.* at 355.

62. *See id.*

63. Andrew Cowie, *Pereiaslav Agreement: The Treaty that Made Ukraine a Vassal of Russia*, WORLDATLAS (Feb. 26, 2024), <https://www.worldatlas.com/early-modern-era/pereiaslav-agreement-the-treaty-that-made-ukraine-a-vassal-of-russia.html>.

64. *See id.*

65. *See* Mark Kramer, *Why Did Russia Give Away Crimea Sixty Years Ago?*, WILSON CTR., <https://www.wilsoncenter.org/publication/why-did-russia-give-away-crimea-sixty-years-ago> (last visited Nov. 14, 2024).

66. *See* Vladimir Putin, *On the Historical Unity of Russians and Ukrainians*, PRESIDENT OF RUSSIA (July 12, 2021, 5:00 PM) [hereinafter *Putin’s Unity Essay*], <http://en.kremlin.ru/events/president/news/66181>. Putin’s essay, claiming Russians and Ukrainians as the same people, and posted on the Kremlin website on July 12, 2021 in both Russian and English, appears now as part of the message for the 2022 invasion. Niko Vorobyov, *Putin Says Russia, Ukraine Share Historical ‘Unity’. Is He Right?*, AL JAZEERA (Feb. 25, 2022), <https://www.aljazeera.com/news/2022/2/25/history-of-ties-between-ukraine-and-russia>. Putin’s essay provides a detailed articulation of his views on the historical and cultural ties between Russia and Ukraine. *See Putin’s Unity Essay*. Putin argues that Russians, Ukrainians, and Belarusians share a common historical and cultural heritage, tracing back to the medieval state of Kievan Rus. *Id.* This historical unity, he states, has been maintained over centuries despite periods of political separation. *Id.* According to Putin, Ukraine as a separate nation is largely an artificial construct, created as a result of geopolitical maneuvers and the influence of foreign powers, particularly during the Soviet era and afterward. *Id.*



Figure 4. Russian Triune Unification Poster⁶⁷

A new reality set in after the end of the First World War in 1918. The centuries-old Russian Empire of the czars ended. In the aftermath of the Bolshevik Revolution and the civil war that followed, Ukraine in 1922 became part of the USSR, of which Soviet Ukraine was second in population and territory to leader Soviet Russia.⁶⁸

Under Soviet rule, Ukraine experienced severe repression, most notably during the Holodomor, a man-made Soviet famine in 1932-1933 that claimed millions of lives.⁶⁹ Ukraine, the second most populous Soviet republic, comprised almost twenty percent of its population and played a significant role, given its notable agricultural potential.⁷⁰ Under Soviet dictator Josef Stalin's "forced collectivization" policy, close to four million died because Soviet authorities punished those who failed to meet grain quotas by cutting off essential supplies and confiscating grain and anything that could be used as food.⁷¹

Nazi Germany's invasion of the USSR in 1941 during the Second World War led to a further catastrophe in the region that historian Timothy Snyder rightly calls "The Bloodlands"⁷² Between five to seven

67. Ihor Vynokurov, *Malorossiya: Yet Another Russian Imperial Myth Salvaged From the Garbage Dump of History*, EUROMAIDAN PRESS (July 20, 2017), <https://euromaidanpress.com/2017/07/20/how-malorossiya-became-the-cornerstone-of-russian-imperial-ideology/>.

68. See Rogin & Till, *supra* note 43.

69. *Id.*

70. U.S. CENSUS BUREAU, UKRAINE: AN ECONOMIC PROFILE 3, 9-10 (1992).

71. See Mark Kramer, *What Was Distinctive About Katyn?: The Massacres in Context*, 44 CASE W. RES. J. INT'L L. 569, 569 (2012).

72. TIMOTHY SNYDER, BLOODLANDS: EUROPE BETWEEN HITLER AND STALIN, at vii-x (2016).

million Ukrainians were murdered during the war.⁷³ This included around 1.5 million Ukrainian Jews.⁷⁴ Before the Second World War, Ukraine was home to one of the largest Jewish populations in Europe.⁷⁵ The Nazis, often with local collaborators, carried out mass extermination of Ukrainian Jews through mass shootings.⁷⁶ The Babi Yar massacre near Kyiv is one of the most notorious events, when over 33,000 Jews were murdered in just two days in September 1941.⁷⁷ The destruction of Jewish communities in Ukraine was nearly complete, with many towns and villages of Ukraine forever losing entire Jewish populations that lived in Ukraine for centuries.

The post-Second World War period was characterized by Communist-style rebuilding and the changing of borders. The eastern part of interwar Poland in the new Communist space now became part of Soviet Ukraine, with Polish Lwow becoming Ukraine's Lvov (today transliterated as Lviv).⁷⁸ The Soviet legal and political framework was highly centralized, and authoritarian governance came from Moscow, with little room for democratic expression or national self-determination. Power was concentrated in the Communist Party of the USSR.

II. THE ROAD TO INDEPENDENCE AND THE 1991 DECLARATION

The collapse of the USSR in 1991 marked a turning point in world history, with Soviet Ukraine playing a major role in the breakup of the Soviet Union. On August 24, 1991, the Ukrainian Soviet parliament, the Verkhovna Rada, declared independence from the Soviet Union, a move that was overwhelmingly supported by the Ukrainian population in a December 1991 referendum.⁷⁹ The Verkhovna Rada's declaration of independence and the referendum were the first steps in a process to create a new constitutional framework that would define sovereign

73. Oleksa Eliseyovich Zasenka & Stephan Andriyovich Kryzhanivsky, *The Nazi Occupation of Soviet Ukraine*, BRITANNICA, <https://www.britannica.com/place/Ukraine/The-Nazi-occupation-of-Soviet-Ukraine> (Nov. 14, 2024).

74. Jennifer Popowycz, *The "Holocaust by Bullets" in Ukraine*, NAT'L WWII MUSEUM (Jan. 24, 2022), <https://www.nationalww2museum.org/war/articles/ukraine-holocaust>.

75. *See id.*

76. *Id.*

77. Patrick J. Kiger, *What Happened at the 1941 Babi Yar Massacre?*, HIST., <https://www.history.com/news/babi-yar-massacre-holocaust> (May 4, 2022).

78. Jessica Landfried, *Brief History of the City of Lviv*, UCSB ORAL HIST. PROJECT (June 2002), https://holocaust.projects.history.ucsb.edu/Resources/history_of_lviv.htm.

79. Declaration of Indep., Verkhovna Rada of Ukr. Res. 38, at 502 (1991).

Ukraine's political system.⁸⁰ It was not an easy task. The early 1990s were a period of intense political debate, as Ukraine sought to distance itself from its Soviet past and establish a legal and political order based on principles of a Western liberal parliamentary democracy.⁸¹

III. THE 1996 CONSTITUTION: FOUNDATION OF UKRAINIAN DEMOCRACY

It took almost five years to create a written constitution for the new country. On June 28, 1996, after years of political negotiation and debate, Ukraine adopted its first post-Soviet constitution.⁸² The Constitution of Ukraine enshrined the principles of sovereignty, the rule of law, and the protection of human rights.⁸³ The 1996 Constitution established Ukraine as a democratic, social, and legal state, with a commitment to uphold the fundamental rights and freedoms of its citizens.⁸⁴ The 1996 Constitution created a semi-presidential system of government.⁸⁵ The president, elected by popular vote, serves as the head of state, while the prime minister, appointed by the president with the consent of the parliament, acts as the head of government.⁸⁶ The Verkhovna Rada became Ukraine's

80. The meeting that symbolically marked the end of the USSR took place on December 8, 1991, in a secluded forest location at the state dacha in Belovezhskaya Pushcha, a nature reserve in what is now Belarus. Arkady Dubnov, *Three Men in a Forest: Shushkevich Remembers the Meeting that Ended the Soviet Union*, WILSON CTR. (Dec. 9, 2016), <https://www.wilsoncenter.org/blog-post/three-men-forest-shushkevich-remembers-the-meeting-ended-the-soviet-union>. The leaders of Soviet Russia, Soviet Ukraine, and Soviet Belarus—Boris Yeltsin, Leonid Kravchuk, and Stanislav Shushkevich—gathered to discuss the future of the USSR, which was in a state of political and economic crisis. *Id.* During the meeting, the three leaders concluded that the USSR was no longer a viable entity. *See id.* They decided to dissolve the country, also known as the Soviet Union. *See id.* This agreement is known as the Belavezha Accords. *The Belavezha Accords Signed*, PRESIDENTIAL LIBR., <https://www.prlib.ru/en/history/619792> (last visited Nov. 14, 2024). The decision was motivated by a desire to end the centralized control of Moscow over the Soviet republics, which had increasingly sought more autonomy. SERHII PLOKHY, *THE FINAL DAYS OF THE SOVIET UNION* 292 (2014). The leaders signed the accords without the involvement of Mikhail Gorbachev, the Soviet President, who was informed only after the fact. *Id.* By that time, the three Soviet Baltic republics of Lithuania, Latvia, and Estonia also bolted from the USSR and declared independence. *Id.* at 294. The remaining Soviet republics in Asia shortly did the same. *Id.*

81. *See supra* note 80 and accompanying text.

82. Council on Foreign Relations, *A Historical Timeline of Post-Independence Ukraine*, PBS NEWS (Feb. 22, 2022, 3:11 PM), <https://www.pbs.org/newshour/world/a-historical-timeline-of-post-independence-ukraine>.

83. *See generally* CONSTITUTION OF UKRAINE, June 28, 1996.

84. *See generally id.*

85. *See generally id.*

86. *See id.* at art. 102–03.

unicameral parliament, responsible for enacting laws and overseeing the executive branch.⁸⁷

The constitution followed the models adopted by states of Western Europe after 1945, most notably in France and Germany. The 1996 Constitution guarantees a wide range of rights, including freedom of speech, freedom of assembly, freedom of religion, and the right to a fair trial.⁸⁸ It enshrines the principle of political pluralism, ensuring that multiple political parties can participate in the political process.⁸⁹ The constitutions of the Russian Federation and the Republic of Belarus (the former Soviet Belorussia) also followed the same model. Not long after, however, both Russia under President Vladimir Putin and Belarus under President Alexandr Lukashenko morphed into becoming authoritarian states.⁹⁰ Of the three Soviet republics that caused the breakup of the USSR—Russia, Belorussia, and Ukraine—only Ukraine continues on the road to democracy.

IV. LEGAL REFORMS AND CHALLENGES IN THE 21ST CENTURY

The country faced numerous challenges in its democratic development. Political instability, corruption embedded in the system from Soviet days, and the rise of oligarchs who took over the lucrative parts of the now privatized state-controlled Soviet economy⁹¹ posed major problems. External pressures, including military invasions from Russia, have tested the resilience of Ukraine's democratic institutions.

The Budapest Memorandum, signed on December 5, 1994 by Ukraine, Russia, the United States, and the United Kingdom⁹² sought to provide security assurances to Ukraine in exchange for its commitment to give up its nuclear arsenal. The three signatories committed to respecting the independence, sovereignty, and existing borders of Ukraine.⁹³ The parties also agreed not to use force or threaten to use force against Ukraine, including a pledge not to use economic coercion to

87. *Id.* at 75.

88. *See generally id.*

89. *See generally id.*

90. *See generally* ANNE APPLEBAUM, *AUTOCRACY, INC.: THE DICTATORS WHO WANT TO RUN THE WORLD* (2024).

91. Oleksandr Siedin, *The Collapse of Ukraine's Oligarchy in Ten Years of War*, WILSON CTR. (Mar. 14, 2024), <https://www.wilsoncenter.org/blog-post/collapse-ukraines-oligarchy-ten-years-war>.

92. Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, U.S.-Ukr., No. 52241, Dec. 5, 1994, 3007 U.N.T.S. 2014 [hereinafter *Treaty on the Non-Proliferation of Nuclear Weapons*].

93. *Id.*

influence Ukraine's political decisions.⁹⁴ The Memorandum stated that the signatories would seek immediate United Nations Security Council action to aid Ukraine if it became a victim of an act of aggression or a threat of aggression.⁹⁵ In 2014, Russia violated the Memorandum when it invaded and then annexed Crimea, a part of Ukraine.⁹⁶ This act was widely condemned by the international community as a breach of international law and a direct violation of the Budapest Memorandum.⁹⁷ The annexation of Crimea by Russia involved the use of military force and resulted in a change of Ukraine's borders, both of which were explicitly prohibited under the terms of the memorandum.⁹⁸ Putin's Russia also began to ferment conflict in Eastern Ukraine, supporting separatist movements and engaging in military actions.

On the domestic front, one of the most significant challenges to Ukrainian democracy came in the early 2000s during the presidency of Leonid Kuchma. Kuchma's administration was marked by corruption, electoral fraud, and attempts to consolidate power.⁹⁹ In response to widespread public dissatisfaction and allegations of vote-rigging in the 2004 presidential election, Ukraine experienced its first post-Soviet revolution, the Orange Revolution.¹⁰⁰ This mass protest movement demanded democratic reforms and free and fair elections. The Orange Revolution resulted in the annulment of the fraudulent election results and the eventual election of Viktor Yushchenko, a pro-Western reformist candidate. Yushchenko soon fell out of favor and lost reelection.¹⁰¹

Following the Orange Revolution, Ukraine undertook several legal reforms aimed at strengthening its democratic institutions. In 2006, constitutional amendments were enacted to reduce the powers of the president and increase the authority of the parliament, promoting a more balanced distribution of power.¹⁰² Ukraine's democratic progress

94. *Id.*

95. *Id.*

96. *See, e.g.*, Press Release, NATO, Wales Summit Declaration (Sept. 5, 2014), https://www.nato.int/cps/en/natohq/official_texts_112964.htm ("We condemn in the strongest terms Russia's escalating and illegal military intervention in Ukraine . . . We do not and will not recognise Russia's illegal and illegitimate 'annexation' of Crimea."); *see also* Treaty on the Non-Proliferation of Nuclear Weapons, *supra* note 92.

97. Wales Summit Declaration, *supra* note 96.

98. Treaty on the Non-Proliferation of Nuclear Weapons, *supra* note 92.

99. *See* Lucan A. Way, *Ukraine's Orange Revolution: Kuchma's Failed Authoritarianism*, 16 J. DEMOCRACY 131, 133–35 (2005).

100. *Orange Revolution: Ukraine Votes for Change*, WILSON CTR. (Mar. 8, 2005), <https://www.wilsoncenter.org/article/orange-revolution-ukraine-votes-for-change>.

101. *See generally* Thomas O'Brien, *Problems of Political Transition in Ukraine: Leadership Failure and Democratic Consolidation*, 16 CONTEMP. POL. 355, 355–67 (2010).

102. *Elections Held in 2006*, UKR., http://archive.ipu.org/parline-e/reports/arc/2331_06.htm (last visited Nov. 14, 2024).

remained uneven, however, with ongoing struggles against corruption and political instability.

The 2010 presidential election brought pro-Russian Viktor Yanukovich to power and marked another period of unrest.¹⁰³ Yanukovich's administration was characterized by democratic backsliding and led to a second popular revolt, the 2013-2014 Euromaidan Revolution, also known as the Revolution of Dignity.¹⁰⁴ This second revolution in post-Soviet Ukraine was triggered by Yanukovich's decision to abandon a European Union association agreement in favor of closer ties with Russia.¹⁰⁵ It became a defining moment in Ukraine's democratic evolution. The protests were met with violent repression and eventually led to Yanukovich's ouster and flight to Russia, where he still lives.¹⁰⁶

In Russia's narrative, the Euromaidan protests were organized by the West, specifically the United States, to overthrow the democratically elected and Russian-leaning Yanukovich.¹⁰⁷ In 2014, Vladimir Putin's Russia invaded and then annexed Crimea into Russia.¹⁰⁸ Further military incursions by Russia into Ukrainian territory followed, with the portions of the eastern Donbas region taken over by Russia and eventually annexed to Russia as new Russian territories.¹⁰⁹

A new post-Euromaidan election in 2014 was won by Petro Poroshenko, a Ukrainian businessman and politician known as the "Chocolate King" for his ownership of a confectionery company.¹¹⁰ His campaign in 2014 was centered around promises to bring stability, strengthen Ukraine's ties with the West, and counter Russian aggression.¹¹¹ He won the presidency in the first round of the election

103. *Profile: Ukraine's Ousted President Viktor Yanukovich*, BBC (Feb. 28, 2014), <https://www.bbc.com/news/world-europe-25182830>.

104. *Understanding Ukraine's Euromaidan Protests*, OPEN SOC'Y FOUNDS., <https://www.opensocietyfoundations.org/explainers/understanding-ukraines-euromaidan-protests> (May 2019).

105. *Id.*

106. *Putin: Russia Helped Yanukovich to Flee Ukraine*, BBC (Oct. 24, 2014), <https://www.bbc.com/news/world-europe-29761799>.

107. *Putin: Ukraine Becomes 'Bargaining Chip' for West*, NEWS.AZ (Sept. 2, 2024, 3:58 PM), <https://news.az/news/putin-ukraine-becomes-bargaining-chip-for-west>.

108. Shaun Walker et al., *Russian Invasion of Crimea Fuels Fear of Ukraine Conflict*, GUARDIAN (Feb. 28, 2014, 7:27 PM), <https://www.theguardian.com/world/2014/feb/28/russia-crimea-white-house>.

109. *Conflict in Ukraine's Donbas: A Visual Explainer*, *supra* note 35.

110. Shaun Walker & Alec Luhn, *New Ukraine President Petro Poroshenko Vows to Stop War*, GUARDIAN (May 26, 2014, 5:15 PM), <https://www.theguardian.com/world/2014/may/26/new-ukraine-president-petro-poroshenko-vows-stop-war>.

111. *See id.*

with over fifty-four percent of the vote,¹¹² reflecting broad public support for his pro-European Union stance and commitment to reform. Poroshenko's foreign policy was marked by a strong push for closer integration with the European Union and NATO. Under his leadership, Ukraine signed an Association Agreement with the EU.¹¹³ He also worked towards securing visa-free travel to the EU for Ukrainian citizens, which was achieved in 2017, symbolizing a significant step in Ukraine's European integration.¹¹⁴

However, matters did not go well. Poroshenko's presidency was dominated by the conflict in Eastern Ukraine, where Russian-backed separatists declared independence in the Donetsk and Luhansk regions of the Donbas, leading to a protracted and bloody war.¹¹⁵ Despite various ceasefires and peace talks, the conflict remained unresolved throughout his time in office, contributing to significant military and civilian casualties.¹¹⁶ Poroshenko sought to strengthen Ukraine's military and pursued international support, securing military aid and sanctions against Russia from Western allies.¹¹⁷ Domestically, Poroshenko pushed for reforms aimed at reducing corruption, improving governance, and modernizing the economy.¹¹⁸ Many Ukrainians grew frustrated with the slow pace of change and the perceived failure to bring about substantial improvements in living standards.¹¹⁹ His administration was also criticized for not doing enough to curb the influence of oligarchs in politics and for perceived cronyism.¹²⁰

In 2019, Poroshenko ran for re-election but was soundly defeated by Volodymyr Zelensky, a political newcomer and former TV star, who capitalized on public disillusionment with the political establishment.¹²¹

112. *Id.*

113. Steven Pifer, *Poroshenko Signs EU-Ukraine Association Agreement*, BROOKINGS (June 27, 2014), <https://www.brookings.edu/articles/poroshenko-signs-eu-ukraine-association-agreement/>.

114. *Ukraine Hails Visa-Free Travel to European Union*, BBC (June 11, 2017), <https://www.bbc.com/news/world-europe-40241348>.

115. *Conflict in Ukraine's Donbas: A Visual Explainer*, *supra* note 35.

116. *See id.*

117. The Associated Press, *Ukraine's Petro Poroshenko Tells U.S. Congress More Help Needed*, CBC (Sept. 18, 2014, 8:06 AM), <https://www.cbc.ca/news/world/ukraine-s-petro-poroshenko-tells-u-s-congress-more-help-needed-1.2770021>.

118. VINCENT L. MORELLI, CONG. RSCH. SERV., RL33460, UKRAINE: CURRENT ISSUES AND U.S. POLICY 4-5 (2017).

119. Tadeusz Iwański, *Poroshenko Stands Alone. Ukraine Politics in a Pre-Election Year*, OSW CTR. FOR E. STUD. (May 21, 2018), <https://www.osw.waw.pl/en/publikacje/osw-commentary/2018-05-21/poroshenko-stands-alone-ukraine-politics-a-pre-election-year-0>.

120. *See* STEFFEN HALLING & SUSAN STEWART, "DEOLIGARCHISATION" IN UKRAINE 1 (2016).

121. *See* Marr, *supra* note 17.

V. THE 2019 CONSTITUTIONAL AMENDMENTS AND BEYOND

In the years following the Euromaidan, Ukraine continued to pursue reforms, with a particular focus on combating corruption and promoting transparency in governance.¹²² The election of Volodymyr Zelensky in 2019, a political outsider who campaigned on an anti-corruption platform,¹²³ signaled a renewed commitment to democratic values. One of the most notable developments during Zelensky's presidency has been the adoption of constitutional amendments aimed at further democratizing Ukraine's political system.¹²⁴ These amendments have included measures to decentralize power, strengthen local self-government, and enhance the independence of the judiciary.¹²⁵ Additionally, Ukraine has continued to align its legal and political framework with European Union standards, reflecting its aspiration to join the EU.¹²⁶

VI. CONTINUED EVOLUTION OF DEMOCRACY IN UKRAINE

Despite the significant progress made in the post-Euromaidan era, Ukraine's democracy continues to evolve but faces new challenges, particularly the slow development of civil society and the full-scale 2022 invasion by Russia, which sought to overthrow the Zelensky regime, labeled by Putin as thugs and neo-Nazis.¹²⁷ At the same time, civil society in Ukraine has continued to play a crucial role in shaping the country's democratic development. NGOs, advocacy groups, and grassroots

122. Joseph Moore, *Ukraine: Reflections on Building a Transparent and Accountable Nation*, TRANSPARENCY INT'L UK (July 21, 2023), <https://www.transparency.org.uk/ukraine-reflections-building-transparent-accountable-nation>.

123. See Marr, *supra* note 17.

124. Iiona Sologoub, *Zelensky's New Constitution: What is on the Table?*, VOX UKRAINE (Dec. 27, 2019), <https://voxukraine.org/en/zelensky-s-new-constitution-what-is-on-the-table>.

125. See *id.*

126. Mykhailo Zhernakov & Nestor Barchuk, *Ukraine's Judicial Reform Agenda: Strengthening Democracy Amid War*, CHR. MICHELSEN INST. (Mar. 18, 2024), <https://www.u4.no/blog/ukraines-judicial-reform-agenda-strengthening-democracy-amid-war>.

127. See Allan Ripp, *Ukraine's Nazi Problem is Real, Even if Putin's 'Denazification' Claim Isn't*, NBC NEWS (Mar. 5, 2022, 5:38 AM), <https://www.nbcnews.com/think/opinion/ukraine-has-nazi-problem-vladimir-putin-s-denazification-claim-war-ncna1290946>.

organizations have been instrumental in pushing for reforms in areas such as anti-corruption, judicial independence, and electoral integrity.¹²⁸

VII. INVASION: THE CHALLENGE OF EXTERNAL AGGRESSION

Ukraine's democratic development has been significantly shaped by its geopolitical context, particularly its relationship with Russia.¹²⁹ The invasion and annexation of Crimea by Russia in 2014 and the ongoing war in Eastern Ukraine have posed serious challenges to Ukraine's sovereignty and democratic stability.¹³⁰ These events have not only resulted in territorial losses and humanitarian crises but have also created an environment of heightened political tension and insecurity.¹³¹

The Russian invasions of 2014 and 2022 reinforced the country's determination to pursue a European-oriented path and to consolidate its democratic institutions.¹³² As a bulwark against Russian aggression, Ukraine seeks to join NATO as a full-standing member protected by Article 5 umbrella of the NATO treaty, which holds that an attack on one NATO member state is an attack on all, including the United States.¹³³ On the economic front, Ukraine wants to become the newest member state of the EU.¹³⁴ Ukraine's aspiration to join the European Union provides a powerful incentive for continued democratic development. The prospect of EU membership offers a pathway to greater political and economic stability, as well as a framework for aligning Ukraine's legal and institutional practices with European standards.¹³⁵

While joining NATO and the EU remains a strong desire, it is not clear whether and when this will ever take place. The European Union, the United States, and other international partners have provided critical military and financial assistance, technical support, and

128. See Emma Landi, *The Role of Civil Society in Ukrainian Reconstruction*, CSIS (June 30, 2023), <https://www.csis.org/blogs/development-dispatch/role-civil-society-ukrainian-reconstruction>.

129. Johnathan Masters, *Ukraine: Conflict at the Crossroads of Europe and Russia*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/background/ukraine-conflict-crossroads-europe-and-russia> (Feb. 14, 2023, 7:00 AM).

130. See *id.*

131. See *id.*

132. See *id.*

133. Steven Pifer, *For a Secure and Stable Europe, Put Ukraine on a Definitive Path to NATO*, BROOKINGS (Dec. 13, 2023), <https://www.brookings.edu/articles/for-a-secure-and-stable-europe-put-ukraine-on-a-definitive-path-to-nato/>.

134. Angela Charlton, *Ukraine's a Step Closer to Joining the EU. Here's What it Means, and Why it Matters*, AP NEWS, <https://apnews.com/article/european-union-ukraine-membership-questions-45b7f723761f5e5fa7a49d7302033469> (Dec. 14, 2023, 9:43 PM).

135. See *id.*

diplomatic backing to Ukraine's reform initiatives.¹³⁶ These partnerships have been instrumental in helping Ukraine navigate the complex challenges of democratic consolidation in the face of its ongoing war with Russia.

VIII. JUDICIAL REFORM AND THE RULE OF LAW

One of the most pressing issues in Ukraine's democratic development has been the reform of the judiciary and the establishment of the rule of law. For many years, Ukraine's judiciary was plagued by corruption, inefficiency, and political interference, undermining public trust in the legal system and hindering the enforcement of democratic rights.¹³⁷ In recent years, there have been concerted efforts to overhaul the judiciary and strengthen the rule of law. These efforts have included the establishment of new judicial bodies, such as the High Anti-Corruption Court ("HACC"), which was created in 2018 to specifically handle cases of high-level corruption.¹³⁸ The HACC represents a significant step forward in Ukraine's anti-corruption efforts, although its effectiveness continues to depend on the broader political and institutional environment.

In addition to judicial reform, Ukraine has undertaken legislative changes aimed at enhancing the independence and accountability of the judiciary. The adoption of new laws on the judiciary, the public prosecutor's office, and the bar association are part of a broader strategy to ensure that the legal system operates in accordance with democratic principles and international standards.¹³⁹

IX. ELECTORAL REFORMS AND POLITICAL PLURALISM

Electoral reforms have been another key area of focus in Ukraine's democratic development. Ensuring free and fair elections is fundamental to any democracy, and Ukraine has made significant strides in improving

136. See, e.g., *Actions to Support Ukraine's Economic Recovery*, U.S. DEPT STATE (June 16, 2024), <https://www.state.gov/actions-to-support-ukraines-economic-recovery/>; *EU Assistance to Ukraine (in U.S. Dollars)*, DELEGATION OF EUR. UNION U.S. (Sept. 23, 2024), https://www.eeas.europa.eu/delegations/united-states-america/eu-assistance-ukraine-us-dollars_en?s=253.

137. Volodymyr Kashporov, *Judiciary System and Reform*, RAZOM <https://www.razomforukraine.org/projects/policyreport/judiciary-system-and-reform/> (last visited Nov. 14, 2024).

138. *Can the High Anti-Corruption Court Fix Ukraine's Corruption Problem? Q&A with REECA Grad Ivanna Kuz*, HARV. UNIV. UKRAINIAN RSCH. INST., <https://huri.harvard.edu/high-anti-corruption-court-ivanna-kuz> (last visited Nov. 14, 2024).

139. See Zhernakov & Barchuk, *supra* note 126.

its electoral processes. The adoption of the new Electoral Code in 2020 marked a major milestone in this regard, introducing a proportional representation system with open party lists for parliamentary elections.¹⁴⁰ This reform was aimed at increasing transparency, reducing the influence of oligarchs, and promoting greater political pluralism.

The new electoral system has also been designed to foster stronger ties between elected representatives and their constituents, thereby enhancing accountability. By allowing voters to choose not only a party but also specific candidates within that party,¹⁴¹ the system encourages politicians to be more responsive to the needs and concerns of their electorate.

Challenges remain, particularly in ensuring that elections are conducted fairly across the entire country. The ongoing aggression by Russia into Eastern Ukraine and the annexation of Crimea and parts of Eastern Ukraine have made it difficult to hold elections. The Ukrainian presidential election, originally scheduled for March 2024, was postponed due to the ongoing war with Russia and the imposition of martial law across the country.¹⁴² Under martial law, it is constitutionally impermissible to hold elections,¹⁴³ as the conditions necessary for a free, fair, and safe electoral process are not possible. Delaying elections indefinitely, however, poses its own risks. It weakens Ukraine's democratic credentials. Overall, the situation remains complex, with no clear path forward. The timing and circumstances of any future election will likely depend on the course of the war with Russia.

As Ukraine looks to the future, its commitment to democracy will continue to be tested by both internal and external challenges. The ongoing struggle against corruption, the need to strengthen the rule of law, and the threat of external aggression from Russia are all formidable obstacles that Ukraine must navigate in its quest to build a stable and prosperous democracy.

Nevertheless, there are reasons for optimism. Ukraine's vibrant civil society, its active engagement with international partners, and the

140. Tetiana Kavunenko, *The Elections in Ukraine. The New Electoral Code: What's What?*, INST. RESPUBLICA, <https://inrepublica.org.ua/en/novyny/onovlenyj-vyborchij-kodeks-shho-do-chogo.html> (last visited Nov. 14, 2024).

141. IFES, *Ukraine's Parliament Adopts Historic Election Code*, U.S.-UKR. BUS. COUNCIL (Dec. 19, 2019), <https://www.usubc.org/site/recent-news/ukraine-rsquo-s-parliament-adopts-historic-election-code>.

142. See Andrew Carey et al., *Ukraine's Election Day Dawned with no Vote in Sight and Little Appetite for One – for Now, Anyway*, CNN, <https://www.cnn.com/2024/03/30/europe/ukraine-election-zelensky-intl/index.html> (Apr. 1, 2024, 9:33 AM).

143. See CONSTITUTION OF UKRAINE art. 83 (amended 2019).

resilience of its democratic institutions all suggest that the country is on a positive trajectory. The continued implementation of reforms, particularly in areas such as anti-corruption, judicial independence, and electoral integrity, will be essential to consolidating democracy in Ukraine.

X. THE CASE OF CRIMEA: RUSSIFICATION OR DEMOCRATIZATION?

Even before the Russian invasion of Crimea in 2014, the peninsula boasted an intricate history, shaped by a succession of civilizations and empires. Over the centuries, Crimea has been colonized and controlled by a diverse array of powers, including the Greeks, Romans, Huns, and the Roman Byzantine and Russian Czarist Empires.¹⁴⁴ The USSR, as the successor of the czars, ruled Crimea since the Bolshevik Revolution overthrew the last Romanoff czar.¹⁴⁵

In the thirteenth century, the Tatars established their presence in Crimea,¹⁴⁶ and their Turkic-speaking Muslim descendants remain integral to the region's cultural fabric to this day. Initially part of the Golden Horde of the Mongol Empire, Crimea saw the rise of the Crimean Khanate by the fifteenth century, which became a vassal state of the Ottoman Empire while also asserting its own authority.¹⁴⁷ The Russian Empire's annexation of Crimea in 1783¹⁴⁸ marked a significant turning point in the region's history, setting the stage for further geopolitical shifts in the years to come.

During the tumultuous period of the 1917 Russian Revolution, Crimea once again found itself at the center of power struggles as Tsarist, Bolshevik, and anarchist forces vied for control. Following the Bolshevik victory, Crimea became part of the Russian Soviet Federative Socialist Republic ("RSFSR").¹⁴⁹ In 1954, the Soviet Union transferred Crimea from the RSFSR to the Ukrainian Soviet Socialist Republic, a decision with lasting implications for the region's future.¹⁵⁰ With the dissolution of the Soviet Union in 1991, Crimea became part of independent Ukraine, leading to a demographic landscape characterized by a diverse

144. *History of Crimea*, BRITANNICA, <https://www.britannica.com/place/Crimea/History> (Nov. 14, 2024).

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. Kramer, *supra* note 65.

150. *Id.*

population comprised of ethnic Russians (58%), Ukrainians (24%), and returning Crimeans Tatars (12%).¹⁵¹

Throughout its history, Crimea has been a melting pot of cultures, traditions, and influences, reflecting the ebb and flow of empires and peoples across the centuries. Most recently, Crimea is now ruled by the Russian Federation under President Vladimir Putin as a result of the illegal annexation of its territory by Russia, beginning with the Russian military invasion of Ukrainian Crimea in 2014.¹⁵²

In 1921, the establishment of the Crimean Autonomous Soviet Socialist Republic took place within the boundaries of the Russian Soviet Federative Socialist Republic.¹⁵³ During its era under the Soviet Union, Crimea experienced significant demographic shifts. The entire Crimean Tatar population was expelled by the Soviet authorities due to accusations of collaborating with the Germans during the Second World War, and the peninsula was then repopulated predominantly with Russians and Ukrainians.¹⁵⁴ Contemporary scholars believe this mass deportation was aimed at facilitating Soviet access to the Dardanelles and possibly annexing territory in Turkey, where the Tatars had ethnic ties, or to eliminate minority groups from the border areas of the Soviet Union.¹⁵⁵ The deportation led to the deaths of nearly 8,000 Crimean Tatars, with thousands more dying later due to the severe conditions of their exile, leaving behind approximately 80,000 deserted households and 360,000 acres of unused land.¹⁵⁶ The region, stripped of its titular nationality, was demoted to an oblast status within the Russian SFSR on June 30, 1945.¹⁵⁷

151. Katherine Gypson, *Crimea's Complicated History in Brief*, VOA NEWS (Mar. 5, 2014, 4:55 PM), <https://www.voanews.com/a/crimeas-complicated-history-in-brief/1865120.html>.

152. Gwendolyn Sasse, *Revisiting the 2014 Annexation of Crimea*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Mar. 15, 2017), <https://carnegieendowment.org/posts/2017/03/revisiting-the-2014-annexation-of-crimea?lang=en>.

153. See, e.g., *Crimean Autonomous S.S.R.*, BRITANNICA, <https://www.britannica.com/place/Crimean-Autonomous-SSR> (last visited Nov. 14, 2024).

154. Gypson, *supra* note 151.

155. See DENNIS J.D. SANDOLE ET AL., HANDBOOK OF CONFLICT ANALYSIS AND RESOLUTION 94 (2008).

156. *Id.*

157. Minorities at Risk Project, *Chronology for Crimean Tatars in Ukraine*, UNHCR, <https://www.refworld.org/docid/469f38ec14.html> (last visited Nov. 14, 2024). Oblast is a word denoting a designated area or region with limited powers of governance.

XI. THE 2014 INVASION OF THE LITTLE GREEN MEN

The term “little green men,” which refers to unmarked soldiers or military personnel, emerged in Crimea during the 2014 annexation of the region by Russia.¹⁵⁸ These troops, usually seen wearing green uniforms without insignias, were widely reported to be Russian forces, although the Russian government initially denied their involvement.¹⁵⁹ The sudden and unexpected presence of these troops beginning in February 2014¹⁶⁰ facilitated the takeover of key sites in Crimea, including government buildings and military bases, and played a significant role in the subsequent referendum that led to Crimea being annexed by Russia. This situation raised various international legal and political issues, leading to widespread condemnation from many countries and organizations, which viewed the annexation as a violation of Ukraine’s sovereignty and international law.¹⁶¹ The term “little green men” has since become emblematic of hybrid warfare tactics, where states use deniable forces to achieve political objectives without overt military intervention.

158. See Matisek, *supra* note 2.

159. See generally “LITTLE GREEN MEN”: A PRIMER ON MODERN RUSSIAN UNCONVENTIONAL WARFARE, UKRAINE 2013–2014 (2014).

160. Nigel Walker, *Conflict in Ukraine: A Timeline (2014 – Eve of 2022 Invasion)*, UK PARLIAMENT: HOUSE OF COMMONS LIBR. (Aug 22, 2023), <https://commonslibrary.parliament.uk/research-briefings/cbp-9476/>.

161. See Wales Summit Declaration, *supra* note 96.



Figure 5. Map of Russia-Ukraine Conflict¹⁶²

XII. RESPONSE TO THE RUSSIAN INVASION OF CRIMEA

The 2014 invasion took place during the Obama presidency. The Obama, Trump, and Biden Administrations thereafter issued numerous Executive orders regarding a state of emergency with respect to Ukraine.¹⁶³ The executive actions of 2014 were in reaction to Russia's invasion of Crimea, which would be the foreshadowing of the full-scale invasion in February 2022 by Russia.¹⁶⁴ On March 18, 2014, President Vladimir Putin addressed State Duma deputies, Federal Council members, heads of Russian regions, and civil society representatives in the Kremlin. Regarding the invasion and subsequent events in Crimea, Putin explained:

A referendum was held in Crimea on March 16 in full compliance with democratic procedures and international norms. More than 82 percent of the electorate took part in the vote. Over 96 percent

162. Laris Karklis & Ruby Mellen, Four Maps That Explain the Russia-Ukraine Conflict, WASH. POST, <https://www.washingtonpost.com/world/2022/01/21/ukraine-russia-explain-maps/> (Feb. 26, 2022, 3:39 PM).

163. See, e.g., Joseph R. Biden, Jr., *Notice of the Continuation of the National Emergency with Respect to Ukraine*, WHITE HOUSE (Mar. 1, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/03/01/notice-on-the-continuation-of-the-national-emergency-with-respect-to-ukraine-3/>.

164. See Julia Kazdobina et al., *Why the Russo-Ukrainian War Started Already in February 2014*, SCEEUS (Feb. 22, 2024), <https://sceeu.se/en/publications/why-the-russo-ukrainian-war-started-already-in-february-2014/>.

of them spoke out in favor of reuniting with Russia Incidentally, the total population of the Crimean Peninsula today is 2.2 million people, of whom almost 1.5 million are Russians, 350,000 are Ukrainians who predominately consider Russian their native language, and about 290,000 – 300,000 are Crimean Tatars who, as the referendum has shown, also lean towards Russia True, there was a time when Crimean Tatars were treated unfairly, just as a number of other people in the USSR. There is only one thing I can say here: millions of people of various ethnicities suffered during those repressions—and primarily Russians.¹⁶⁵

In response to Russia's invasion of Crimea, President Obama issued Executive orders in an attempt to deescalate the situation and assist Ukraine in protecting its sovereignty. During a statement on March 20, 2014, after the Executive orders were made, Obama summarized the situation:

We've seen an illegal referendum in Crimea; an illegitimate move by the Russians to annex Crimea; and dangerous risks of escalation, including threats to Ukrainian personnel in Crimea and threats to southern and eastern Ukraine as well. These are all choices that the Russian government has made – choices that have been rejected by the international community, as well as the government of Ukraine. And because of these choices, the United States is today moving, as we said we would to impose additional costs on Russia.¹⁶⁶

On March 6, 2014, Obama issued Executive Order 13660.¹⁶⁷ It declared a national emergency pursuant to the International Emergency Economic Powers Act. (50 U.S.C. 1701-1706). This order addressed how to cope with the unusual and severe threat to national security and foreign policy of the United States “constituted by the actions and policies of persons that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its

165. *Address by President of the Russian Federation*, PRESIDENT OF RUSSIA (Mar. 18, 2014), <http://en.kremlin.ru/events/president/news/20603>.

166. Barack Obama, President of the United States, Statement by the President on Ukraine (Mar. 20, 2014) (transcript available at <https://obamawhitehouse.archives.gov/the-press-office/2014/03/20/statement-president-ukraine>).

167. Exec. Order No. 13660, 79 C.F.R. § 13493 (2014).

assets.”¹⁶⁸ This Executive Order (“EO”) was the beginning of the United States stepping in through executive action as the tension between Russia and Ukraine was rising.

Section 1. (a) All property and interest in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked any not be transferred, paid, exported withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to be responsible for or complicit in, or to have engaged in, directly or indirectly, any of the following:

(A) actions or policies that undermine democratic processes or institutions in Ukraine;

(B) actions or policies that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine; or

(C) misappropriation of state assets of Ukraine or an economically significant entity of Ukraine;

(ii) to have asserted governmental authority over any part of region of Ukraine without the authorization of the Government of Ukraine;

(iii) to be a leader of an entity that has, or whose members have, engaged in any activity described in subsection (a)(i) or (a)(ii) of this section or of an entity whose property and interests in property are blocked pursuant to this order;

(iv) to have materially assisted, sponsored, or provided financial material, or technological support for, or goods or services to or in support of, any activity described in subsection (a)(i) or (a)(ii) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf or, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.¹⁶⁹

168. *Id.*

169. *Id.*

On March 16, 2014, Executive Order 13661 expanded on Executive Order 13600 by expanding *Section 1* of that order.¹⁷⁰

Section 1. (a) All property and interest in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked any not be transferred, paid, exported withdrawn, or otherwise dealt in:

- (i) the persons listed in the Annex to this order; and
- (ii) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State:
 - (A) to be an official of the Government of the Russian Federation;
 - (B) to operate in the arms or related material sector in the Russian Federation;
 - (C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly;
 - (1) a senior official of the Government of the Russian Federation; or
 - (2) a person whose property and interest in property are blocked pursuant to this order; or
 - (D) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of:
 - (1) a senior official of the Government of the Russian Federation; or
 - (2) a person whose property and interest in property are blocked pursuant to this order.¹⁷¹

Four days later, on March 20, 2014, Executive Order 13662¹⁷² expanded the scope further from Executive Order 13660 and 13661.

Section 1. (a) All property and interest in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked any not be transferred, paid, exported withdrawn, or otherwise dealt in: any person

170. Exec. Order No. 13661, 79 C.F.R. § 15535 (2014).

171. *Id.*

172. Exec. Order No. 13662, 79 Fed. Reg. 16169 (Mar. 24, 2014).

determined by the Secretary of the Treasury, in consultation with the Secretary of State:

- (i) to operate in such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, such as financial services, energy, metals and mining, engineering, and defense and related material.
- (ii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interest in property are blocked pursuant to this order; or
- (iii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked to this order.¹⁷³

Obama explained:

I signed a new Executive order today that gives us the authority to impose sanctions not just on individuals but on key sectors of the Russian economy. This is not our preferred outcome. These sanctions would not only have a significant impact on the Russian economy but could also be disruptive to the global economy. However, Russia must know that further escalation will only isolate it further from the international community.¹⁷⁴

On December 19, 2014, Executive Order 13685¹⁷⁵ took further steps to address the Russian occupation of Crimea. The Executive Order focused on blocking transfers of property with certain persons and prohibiting certain transactions with respect to the Crimean region of Ukraine.¹⁷⁶

President Donald Trump continued to put pressure on Russia. On September 20, 2018, Executive Order 13849 set out additional sanctions.¹⁷⁷ This Executive Order prohibited U.S. financial institutions from engaging in transactions, loans, transfers of credit, or payments

173. *Id.*

174. Remarks on the Situation in Ukraine, 2014 DAILY COMP. PRES. DOC. 201400178 (Mar. 20, 2014).

175. Exec. Order No. 13685, 79 Fed. Reg. 77357 (Dec. 14, 2014).

176. *Id.*

177. Exec. Order No. 13849, 83 Fed. Reg. 481195 (Sep. 21, 2018).

with sanctioned persons, and blocked all property and interests in property of sanctioned persons within U.S. jurisdiction.¹⁷⁸

President Joe Biden continued the policy of his predecessors. On February 21, 2022, President Biden issued Executive Order 14065.¹⁷⁹ This EO further expanded the scope of the national emergency declared through previous orders and found that:

[T]he Russian Federation's purported recognition of the so-called Donetsk People's Republic or Luhansk People's Republic regions of Ukraine contradicts Russia's commitments under the Minsk agreements and further threatens the peace, stability, sovereignty, and territorial integrity of Ukraine, and thereby constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.¹⁸⁰

Unfortunately, Russian military invasions of Ukraine continued, the war escalated, and Crimea today has now endured ten years of Russian occupation.

XIII. RUSSIFICATION OF CRIMEA

The onset of the hot war in 2014, marked by Russia's occupation of parts of Ukraine, signaled the beginning of Russia's systematic effort to erase Ukraine's national identity.¹⁸¹ Russia immediately violated international humanitarian law by imposing its own legal system and initiating a process of Russification under Vladimir Putin.¹⁸² The proportion of Crimean residents identifying as Ukrainians or Crimean Tatar has significantly declined.¹⁸³ In 2014, all permanent residents of Crimea were automatically designated as Russian citizens, with the option to formally opt out within one month of the annexation.¹⁸⁴ Those who chose not to accept Russian citizenship were compelled to obtain Russian passports under threat of having their human rights infringed,

178. *Id.*

179. Exec. Order No. 14065, 87 Fed. Reg. 10293 (Feb. 23, 2022).

180. *Id.*

181. Karolina Hird, *Fact Sheet: The Kremlin's Occupation Playbook: Coerced Russification and Ethnic Cleansing in Occupied Ukraine*, ISW PRESS (Feb. 20, 2024), <https://www.understandingwar.org/backgrounder/fact-sheet-kremlins-occupation-playbook-coerced-russification-and-ethnic-cleansing>.

182. *Id.*

183. Amnesty Int'l, *Russia/Ukraine: 10 Years of Occupation of Crimea*, AI Index EUR 50/7805/2024 (Mar. 2024) at 3.

184. *Id.* at 6.

losing access to essential services, or facing deportation.¹⁸⁵ Furthermore, there is evidence suggesting that Russia relocated its own population to Crimea,¹⁸⁶ a clear violation of international law.

Putin has made concerted efforts to suppress non-Russian identities in Crimea and enforce Russification, with the education system being a primary battleground.¹⁸⁷ In 2014, Russia imposed its own curriculum in Crimea, introducing military education and “patriotic” classes designed to promote its agenda.¹⁸⁸ By 2022 in Crimea, students, staff, and parents were frequently required to attend “informational sessions” that endorse and justify Russia’s war in Ukraine.¹⁸⁹ The educational environment in Crimea has been saturated with propaganda that supports this war and undermines the legacy of the Crimean Tatars as an indigenous people. Moreover, Russia has systematically restricted access to education in the Ukrainian language. In 2014, about 9.3% of children in Crimea were educated in Ukrainian, but by 2022, this figure had plummeted to just 0.1%.¹⁹⁰

In 2016, Russia enacted legislative amendments that made praying, preaching, or disseminating religious material outside specifically designated places or without official permission a punishable offense.¹⁹¹ This had a great impact on Muslims (most of whom are Crimean Tatars) and Jehovah’s Witnesses in Crimea.¹⁹² Over one hundred Crimean Tatars have been prosecuted and convicted by military courts in Russia, violating international humanitarian law.¹⁹³ As of 2024, the Orthodox Church of Ukraine no longer functions in Crimea, removing another Ukrainian identity marker in Crimea.¹⁹⁴

Further Russification efforts have been imposed through the media. Russia announced that media outlets in Crimea should re-register in accordance with Russian legislation and warned that “provocative” acts would result in sanctions.¹⁹⁵ Ukrainian-language television and radio

185. *Id.* at 3.

186. Alexander Alikin, *Russia: Migration Helping to ‘Russify’ Crimea*, EURASIANET (Jan. 27, 2017), <https://eurasianet.org/russia-migration-helping-to-russify-crimea>.

187. See Amnesty Int’l, *supra* note 183, at 7–8.

188. Kateryna Vovk, *Ten Classes Under Occupation. Education in the Temporarily Occupied Territories Since 2014*, SVIDOMI (Feb. 18, 2024, 6:00 PM), <https://svidomi.in.ua/en/page/ten-classes-under-occupation-education-in-the-temporarily-occupied-territories-since-2014>.

189. Amnesty Int’l, *supra* note 183, at 7.

190. *Id.*

191. *Id.* at 9–10.

192. *Id.* at 10.

193. *Id.*

194. *Id.* at 3.

195. *Id.* at 11.

channels were taken off the air and replaced by Russian media as early as March 2014.¹⁹⁶ The only Ukrainian-language newspaper was banned.¹⁹⁷ Authorities have silenced any dissenting voices in print, often replacing them with Russian-language media.¹⁹⁸

Over the past ten years of occupation, Russia has stripped the identity and culture of Crimea. Ukrainians can be seen celebrating the anniversary of annexation while holding Russian flags.¹⁹⁹ The crumbling democracy in Crimea as the once independent part of Ukraine is seen through this danger of Russification. Crimeans now identifying as Russian leaves little hope that a Ukrainian democracy will return to Crimea as a Ukrainian culture.

Despite international condemnation and United Nations resolutions affirming Ukraine's sovereignty, Crimea operates under Russian influence, including its currency, tax system, time zone, and legal framework.²⁰⁰

196. *See Id.* at 11–12.

197. *Id.*

198. *Id.*

199. Vasco Cotovio, et al., *Ten Years Since its Illegal Annexation, Crimea is a Template for Newly Occupied Parts of Ukraine*, CNN (Mar. 18, 2024, 12:00 AM), <https://www.cnn.com/2024/03/17/europe/crimea-russia-annexation-anniversary-intl-cmd/index.html>.

200. *See Freedom in the World 2024: Crimea*, FREEDOM HOUSE, <https://freedomhouse.org/country/crimea/freedom-world/2024> (last visited Nov. 14, 2024).

XIV. RUSSIFICATION OF THE DONBAS REGION OF UKRAINE



Figure 6. Poster marking September 30 as a new Russian national holiday to commemorate the supposed annexation of Kherson, Melitopol, Donetsk and Luhansk regions of Ukraine as new territories of the Russian Federation.²⁰¹

The Donbas region of Eastern Ukraine encompasses the Donetsk and Luhansk oblasts.²⁰² The territory has experienced significant Russification even before the fall of the USSR, with the process intensifying after Russia's annexation of Crimea in 2014 and the subsequent separatist movement fueled by Moscow, which was a ruse to break away the Donbas from Ukraine and make it part of the Russian Federation.²⁰³ The city of Mariupol is a key urban center in Donbas and one of the cities captured by the Russian forces after its full-scale invasion of Ukraine in February 2022.²⁰⁴

201. *Alley of the First*, UKSAP (Oct. 2, 2023), <https://www.uksap.ru/2023/10/02/alleya-pervyh/>.

202. *Donbas*, BRITANNICA, <https://www.britannica.com/place/Donbas> (Nov. 13 2024).

203. David Gormezano, *In Ukraine's Donbas, Ten Years of War and Russification*, FRANCE24 (Aug. 4, 2024, 7:34 PM), <https://www.france24.com/en/europe/20240408-ukraine-donbas-ten-years-of-war-russification-russia-donetsk-luhansk>.

204. *See Ukraine in Maps: Tracking the War with Russia*, BBC (Aug. 22, 2024), <https://www.bbc.com/news/world-europe-60506682>.



Figure 7. Map Showing Areas of Russian Control²⁰⁵

Originally a part of the Ukrainian Soviet Socialist Republic, Donbas was heavily industrialized during the Soviet era, attracting a large Russian-speaking population.²⁰⁶ The USSR promoted Russian language and culture across all the fifteen Soviet republics,²⁰⁷ and Donbas was one of the areas that became heavily Russified. This Russification laid the groundwork for the region's mixed identity, which became more pronounced after Ukraine gained independence in 1991.

Mariupol, located in the southern part of Donetsk Oblast, is a significant industrial hub, particularly known for its steel industry.²⁰⁸ The city has historically been a melting pot of various ethnicities, with a

205. *Id.*

206. Yulia Abibok, *The "Russian Minority in Donbas" and the History of the Majority*, IWM, <https://www.iwm.at/publication/iwmpost-article/the-russian-minority-in-donbas-and-the-history-of-the-majority> (last visited Nov. 14, 2024).

207. Madeline Meyer, *Language and Geopolitics: A Case Study of the Former Soviet Union*, TOWSON UNIV. J. OF INT'L AFFAIRS (Dec. 8, 2021), <https://wp.towson.edu/iajournal/2021/12/08/language-and-geopolitics-a-case-study-of-the-former-soviet-union/>.

208. Becky Sullivan & Joanna Kakissis, *How a Massive Steel Plant Became the Center of Ukraine's Resistance in Mariupol*, NPR (May 5, 2022, 3:09 PM), <https://www.npr.org/2022/05/05/1096880452/mariupol-steel-plant-ukraine-resistance>.

large proportion of Russian speakers.²⁰⁹ The strategic location of Mariupol on the Sea of Azov makes it a vital port city, further elevating its importance in the context of the rivalry between Russia and Ukraine.

After the invasion and annexation of Crimea by the Russian Federation in 2014, pro-Russian separatists in Donetsk and Luhansk declared independence from Ukraine, establishing the so-called Donetsk People's Republic ("DPR") and Luhansk People's Republic ("LPR").²¹⁰ These self-declared republics, while not recognized internationally, have been supported by Russia both militarily and legally.²¹¹ Russian media and political messaging portray the Ukrainian government in Kyiv as illegitimate and seek to foster a sense of shared destiny of the Donbas region with Russia.²¹² Russian became the dominant language in public life, education, and administration.²¹³

The Russification of Donbas took place with the establishment of parallel governance structures aligned with Russian interests. One of the most significant legal measures in the broader Donbas region, including Mariupol, has been the mass distribution of Russian passports to residents.²¹⁴ This measure effectively extended Russian legal jurisdiction into Ukrainian territory, as Russia now claims the right to protect its territory and its citizens.²¹⁵ The political leadership in these occupied regions was handpicked or heavily influenced by Moscow, ensuring that the region's political direction aligns with Russian objectives.²¹⁶ Elections held in the Russian-occupied Donbas, described as "sham elections" by international observers,²¹⁷ have been used to legitimize pro-Russian leadership in Donbas.²¹⁸ These elections lack transparency and free

209. See Briar Stewart & Corinne Seminoff, *Remaking Mariupol into a Russian City*, CBC NEWS (Mar. 3, 2024), <https://www.cbc.ca/newsinteractives/features/remaking-mariupol-into-a-russian-city>.

210. Gormezano, *supra* note 203.

211. *Russia Recognizes Independence of Ukraine Separatist Regions*, DEUTSCHE WELLE (Feb. 21, 2022), <https://www.dw.com/en/russia-recognizes-independence-of-ukraine-separatist-regions/a-60861963>.

212. *DISINFO: Ukraine is Ruled by a Nazi Junta*, EUVSDISFINO (Oct. 26, 2021) <https://euvsdisinfo.eu/report/ukraine-is-ruled-by-a-nazi-junta/>.

213. Marusia Sinkevich, *How Russia Tried to Erase the Ukrainian Language, But Failed*, UNITED24 MEDIA (Apr. 4, 2024, 3:04 PM), <https://united24media.com/culture/how-russia-tried-to-erase-the-ukrainian-language-but-failed-8>.

214. Fabian Burkhardt, *Russia's "Passportisation" of the Donbas*, SWP (Mar. 8, 2020), <https://www.swp-berlin.org/10.18449/2020C41/>.

215. *See id.*

216. Nathan Williams & Sergei Goryashko, *Ukraine Condemns 'Sham' Elections in Russian-Occupied Regions*, BBC (Sept. 8, 2023), <https://www.bbc.com/news/world-europe-66750202>.

217. *Id.*

218. *Id.*

competition and are conducted in a heavily militarized environment,²¹⁹ ensuring that only pro-Russian candidates can win.

The Russification of Donbas through legal, political, and constitutional measures has profound implications for the region and for Ukraine as a whole. The erosion of Ukrainian law, the establishment of Russian-dominated political structures, and the integration of Donbas into Russia's constitutional and economic framework have effectively created a parallel reality in the region. This parallel reality is one where Donbas exists as a de facto part of Russia, despite its de jure status as part of Ukraine. The Russification of the Donbas region of Ukraine, including the strategically important city of Mariupol, is a multi-faceted process driven by legal, political, and constitutional measures designed to undermine Ukrainian sovereignty and integrate the region into Russia's sphere of influence. This process has been carefully orchestrated to change the region's identity, governance, and legal framework, making it increasingly difficult for Ukraine to reclaim control. As the Russo-Ukraine war continues, the future of Donbas and Crimea remains uncertain, but what is clear is that the region's identity has been profoundly altered by the Russification efforts initiated and sustained by Russia.

XV. RETURN TO DEMOCRACY

As of this writing in 2024, there is hope for the continued democracy for Ukraine outside of the annexation of Crimea and the Donbas regions occupied by Russia. This optimism is bolstered by Ukraine's resolute resistance, as evidenced by the August 2024 invasion into the Russian territory of the Kursk Oblast. In August 2024, Ukrainian Armed Forces launched a surprise invasion into Russian territory,²²⁰ showcasing their determination and capacity to defend their sovereignty by now attacking Russia, not to capture and make Kursk part of Russia but to bolster its position in any negotiations, i.e., "we give you back Kursk and you give us back Donbas."

For Ukraine, the loss of portions of Donbas and the entire Crimean Peninsula represents not just a loss of territorial control but also a challenge to its national identity and sovereignty. For the people of Russian-occupied Ukraine, it has led to a loss of civil liberties, economic hardship, and an uncertain future caught between two national

219. *See id.*

220. Jonathan Landay, *Russia Faces 'Difficult Fight' to Retake Ukraine-Held Area, Says Top US Spy*, REUTERS (Aug. 28, 2024, 6:34 PM), <https://www.reuters.com/world/ukraine-intent-keeping-russian-territory-us-intelligence-official-says-2024-08-28/>.

identities.²²¹ Internationally, the situation is a flashpoint for broader geopolitical tensions between Russia and the West.

Meanwhile, the future of Crimea and the occupied portion of Donbas remains uncertain. If Crimea does not return to Ukraine, it may either become an independent state or remain under Russian control. Should these regions remain part of the Russian Federation, the local population can draw inspiration from the Baltic States—which demonstrated that democracy can emerge even after a long period of illegal occupation—when Lithuania, Latvia, and Estonia in 1939 were forced to become part of the USSR.²²² It took the Baltic states over a half-century to regain independence after the fall of the Soviet Union in 1991.²²³ By all measures, they are thriving mightily. During the time of Soviet (aka Russian) control, the Balts kept alive their separate national identity and memory of their interwar years of independence.²²⁴ Crimea and the Donbas can do the same.

XVI. HISTORY AND MEMORY

Timothy Snyder's characterization of the region as the Bloodlands²²⁵ should not be viewed as one in which the Ukrainian population is always the victim. Two particularly significant periods of Ukrainians as perpetrators are the seventeenth century Khmelnytsky Uprising and the twentieth century Second World War.

As discussed above, the Khmelnytsky Uprising was a rebellion led by Cossack leader Bohdan Khmelnytsky against the rule of the primarily Polish nobles of the Polish-Lithuanian Commonwealth. The Christian (and fellow Slavic) Poles, as the ultimate rulers of Ukraine, faced significant violence during the Cossack Uprising. The rebellion was driven by a desire for Ukrainian autonomy and resistance to Polish

221. Nancy Popson, *Ukrainian National Identity: The "Other Ukraine"*, WILSON CTR., <https://www.wilsoncenter.org/publication/ukrainian-national-identity-the-other-ukraine> (last visited Nov. 14, 2024).

222. Lewis Siegelbaum, *Baltic Independence*, SEVENTEEN MOMENTS IN SOVIET HIST., <https://soviethistory.msu.edu/1991-2/baltic-independence/#:~:text=Out%20of%20the%20turmoil%20of,Soviet%20Pact%20of%20August%201939> (last visited Nov. 14, 2024).

223. *Id.*

224. See Lauri Mälksoo, *The Specter of Red October Still Haunts the Baltics*, EURASIANET (Nov. 3, 2017), <https://eurasianet.org/the-specter-of-red-october-still-haunts-the-baltics>.

225. See generally SNYDER, *supra* note 72.

involvement of Ukrainians in the Holocaust was motivated by a combination of antisemitic ideology, greed through robbery of the Jews, and a desire to align with Nazi Germany in the hope of achieving Ukrainian independence.²³⁵ Here, one individual has gained prominence as a hero and villain: Stepan Bandera, a far-right military and political Ukrainian nationalist.²³⁶ Historian Timothy Snyder described Bandera as a fascist who “aimed to make of Ukraine a one-party fascist dictatorship without national minorities.”²³⁷ For many Ukrainian nationalists today, he is revered as a “national hero who fought Soviet domination,” Bandera’s OUN initially “collaborated with the Nazi occupiers in the hope of gaining support for the establishment of an independent Ukraine.”²³⁸ “It reversed its position in 1941 when Germany made it clear it didn’t support an independent Ukraine.”²³⁹ “After the war, [Bandera] continued to oppose Russia’s Soviet regime” until his assassination in 1959.²⁴⁰

The murder of Poles by Ukrainians took place in the Volhynia and Eastern Galicia regions.²⁴¹ The violence reached its peak in 1943-1944, during the so-called Volhynian Massacre, where tens of thousands of Poles were killed in the Ukrainian nationalists’ efforts to create an ethnically homogenous Ukrainian state.²⁴² The brutality of the violence was also influenced by a deep-seated historical enmity between Poles and Ukrainians, which had been exacerbated by years of conflict and competing nationalisms.²⁴³

The violence perpetrated by Ukrainians against Jews and Poles during the Khmelnytsky Uprising and the Second World War has left a lasting legacy in the region. The memories of these events continue to shape inter-ethnic relations in Ukraine and have been the subject of

235. Wendy Lowler, *Anti-Jewish Violence in Western Ukraine, Summer 1941: Varied Histories and Explanations*, in *THE HOLOCAUST IN UKRAINE: NEW SOURCES AND PERSPECTIVES* 143, 163 (2013).

236. *Id.*

237. Timothy Snyder, *A Fascist Hero in Democratic Kiev*, N.Y. REV. (Feb. 24, 2010), <https://www.nybooks.com/online/2010/02/24/a-fascist-hero-in-democratic-kiev/>.

238. Mariana Tsybalyuk, *Who Was Stepan Bandera, Ukraine’s Controversial Nationalist Figure?*, GENEVA SOLUTIONS, <https://genevasolutions.news/ukraine-stories/who-was-stepan-bandera-ukraine-s-controversial-nationalist-figure> (Jun. 30, 2022, 2:16 PM).

239. *Id.*

240. *Id.*

241. Pawel Nalezniak, *Genocide in Volhynia and Eastern Galicia 1943-1944*, 3 *THE PERSON & THE CHALLENGES* 29, 29 (2013).

242. *Poland Starts Observances of WWII Massacres by Ukrainians That Have Marred Neighborly Ties*, AP NEWS (July 7, 2023, 8:39 AM), <https://apnews.com/article/ukraine-poland-volhynia-massacre-reconciliation-0a44c28c5ae5aa6c9e8afa020f27d72e>.

243. *Id.*

historical debate. In recent years, there has been a growing effort to confront this difficult past, with historians and political leaders in Ukraine, Poland, and Israel working towards a more nuanced understanding of these events.

In Ukraine, the legacy of the Khmelnytsky Uprising is complex. While Khmelnytsky is celebrated as a national hero who fought for Ukrainian independence, there is also a recognition of the tragic consequences of the uprising for the Jewish population.²⁴⁴ Similarly, the role of Bandera and the UPA during the Second World War remains a contentious issue, with some viewing them as freedom fighters while others condemn their involvement in ethnic cleansing.²⁴⁵

Ironically, the Russian invasion of Ukraine has brought Poland and Ukraine closer together, as millions of Ukrainians fled to neighboring Poland.²⁴⁶ Though today a member of NATO, Poland still fears a repeat of another Russian invasion of its territory, and so the two countries have become stronger allies.²⁴⁷ As a result, the deep historical wounds between Ukraine and Poland around the Volhynian Massacre are on the road to being healed through joint commemorations and historical research.

CONCLUSION

Memory of history, with dueling narratives, has played a major role in how Ukraine and Russia view each other today. Putin's original excuse for the 2022 invasion was to remove the supposed neo-fascist Banderite regime in Kyiv, a specious reason not based on facts. Having a Jew as president of Ukraine makes it difficult for Russia to argue this rationale with a straight face. And so now the rationale by Russia for invading Ukraine has morphed into another reason: The West, particularly the United States, seeks to dominate Russia and is hell-bent on moving NATO to Russia's borders by having Ukraine join the North Atlantic military alliance.²⁴⁸ Invading Ukraine, therefore, is an act of self-defense against invasion by NATO countries. Never mind that the 2022 invasion

244. Amelia Glaser & Taras Koznarsky, *Chmielnitzki/Khmelnytsky*, OXFORD BIBLIOGRAPHIES, <https://www.oxfordbibliographies.com/display/document/obo-9780199840731/obo-9780199840731-0156.xml> (July 26, 2017).

245. Tsybalyuk, *supra* note 238.

246. Tamar Jacoby, *Living in Limbo: Displaced Ukrainians in Poland*, MPI (Nov. 2, 2022), <https://www.migrationpolicy.org/article/living-limbo-displaced-ukrainians-poland>.

247. Tamar Jacoby, *As Ukraine Struggles, Fears of Russian Aggression Soar in Poland*, WASH. MONTHLY (Apr. 19, 2024), <https://washingtonmonthly.com/2024/04/19/as-ukraine-struggles-fears-of-russian-aggression-soar-in-poland/>.

248. See Ellen Knickmeyer & Lorne Cook, *Ukraine is on an 'Irreversible' Path to NATO. But Only After War with Russia Ends*, AP NEWS, <https://apnews.com/article/ukraine-nato-membership-summit-4156df4062e69e0da38e7c18bf657285> (July 10, 2024, 9:38 PM).

was a trigger for Finland to join NATO, and so Putin's fearful prophecy has turned into a reality with next-door Finland now part of the mutual self-defense umbrella of article 5 of the NATO treaty. NATO troops can now be stationed in Finland.

For Ukraine, history is everything. Russia, as it has done so many times before in its various permutations (the Czarist Russian Empire, the USSR, and now the Russian Federation), once again seeks to make Ukraine part of Russia—or a vassal state of Russia. The current war for Ukraine is a fight to remain fully sovereign and truly independent from Russia. For the West, if Ukraine emerges as a model Slavic democracy after the war ends, it can present to Russians and Belarusians a real-life alternative to the authoritarian regimes of Russia and Belarus.

