

EXPERT'S INSIGHTS

Europe and the War in Ukraine: Support, Degree of Participation or Neutrality*

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Received: 14.08.2023
Available online: 12.01.2024

Abstract

The text critically examines the intricate interplay between politics, ideology, and law within the ongoing war in Ukraine. The primary aim is to comprehensively assess the multifaceted implications of the conflict for Europe's position in the evolving global context. Through the presentation of ten key points, the author explores various topics, including the erosion of sovereignty due to the Russian intervention, the absence of formal war declarations, and the far-reaching consequences of the conflict on a global scale. Additionally, the discourse delves into the crisis facing the international legal order, the emergence of a more complex bipolar world, and the expansion of EU law at the expense of national legislation.

Keywords: EU, international governance, Ukraine, war.

JEL: N4, H56, K33, K4

Political debate is usually based on some ideological positions. In a democratic society it is a prerequisite for adopting decisions that meet certain goals and interests. Our discussion, at least according to the quality of the panellists, is academic, i.e. it must be analytical and critical – it must be based on facts, it must use arguments, it must explain the processes taking place and, if possible, it must anticipate their development. Some of the issues I am

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* Speech delivered at *L'Europe et la guerre en Ukraine: soutien, neutralité, implication?* Débat, Institut Français à Sofia (11.07.2023)

going to address are beyond the scope of the topic, but I think they can help its discussion. My exposé presents questions that are summarised in ten points.

1. What is the relationship between politics, ideology and law especially in times of war? Is the idea of the rule of law compatible with its becoming entirely a function of politics even in war? Can law, without exaggerating its role, help against the escalation of war – as a means of waging it, as a territorial spread and as a precondition for its termination?

2. From the perspective of international law, a military invasion, in the case of the Russian Federation in Ukraine, violates the sovereignty and territorial integrity of another state. In fact, we are talking about war. It began as a war by Russia against Ukraine, but it has turned into a kind of world war between the West and Russia, which is being fought on the territory of Ukraine.

3. It is interesting that none of the directly belligerent states declared a state of war – for Russia this is a special military operation, and Ukraine legally simply bypasses this issue. However, this is no exception. No war in recent decades has been officially declared and qualified as such. One reason is ideological, to find justification for the war. The other reason, however, concerns the consequences of war as a legal fact, as a legal condition. In such a case, states are divided into belligerent and neutral. Any aid beyond humanitarian aid classifies states as belligerents on one side or the other. This is also the case when they provide arms and carry out a range of other actions. At least there are now limited commercial operations and some informal dialogue between the dominant parties to the conflict.

4. The war in Ukraine is not the first in Europe since the profound changes of the late 1980s and early 1990s. It is the most significant in terms of the quantity of weapons used, the number of casualties and the duration. Usually, such wars complete and strengthen different national identities, as is the case in Ukraine. The war in and against Yugoslavia at the end of the last century also played such a role in relation to some of the nations that created their own states. Politically and legally, this war resulted in a departure from the principle of the immutability of borders adopted by the Organisation for Security and Cooperation in Europe, leading to the recognition of Kosovo's independence. It was argued at the time that this should not become a precedent, but it was repeated in 2014 with Crimea. I do not underestimate the specificity of the Kosovo case and I do not share the simplistic parallels between Crimea and Kosovo, but, nevertheless, the outcome of the Kosovo crisis has unleashed processes that have affected European security. Unlike Kosovo, Crimea not only left Ukraine, but joined the Russian Federation, albeit without receiving broad international recognition.

5. We need Bulgarian and international human rights defenders to demand independent investigations into war crimes, including the use of cluster munitions, committed by either side waging the hostilities.

6. The view of this war from Europe should not obscure the global picture. The US and the majority of European countries (at least those included in the EU) are politically consolidated in their support for Ukraine, and overwhelmingly so in their opposition to Russia. I am not discussing here the different attitudes in public opinion on the issue

in individual countries, which are also important, especially in a society that claims to be democratic. However, globally, there are many more countries that not only do not want to be part of this conflict, but also do not want to engage in it. Many countries, without being in favour of Russia, at least not openly, are against being part of some future world order in which they would have a subordinate role.

7. This war is a sign of the crisis in the international legal order and in the existing system of international security. We cannot expect that, if there are no commonly worked out rules for conflict prevention and resolution, such rules can be imposed ad hoc, and in the hottest phase of such a conflict. However this war ends, it will weaken the role of Europe and, in particular, the European Union in world politics. Note that the guarantors of the unrealised Minsk agreements were France and Germany. They will not be leading at the negotiating table on the fate and reconstruction of Ukraine, at least not as much as the US.

8. More broadly, the war in Ukraine seems to mark the transition to a new and more complex bipolar world than we have known. For Europe, this means that without the formation of a polycentric world, its historic role as a factor of global influence will diminish. For Bulgaria, it means that it is unlikely to be in a better position than it was during the Cold War, because if we imagine some semblance of a notional Berlin Wall, it will no longer run through the centre of Europe, but through its eastern part.

9. The war in Ukraine shows cracks in the European legal order. The series of sanctions against Russia affect not only public structures and individuals, but also the rights of citizens – to property, to free movement, to information. In addition, we find inconsistencies in the application of European Union law. I can give a specific example with the Polish initiative, which was supported by four other countries, including Bulgaria. This is about unilateral restrictions on imports of Ukrainian agricultural products. However, the violation of one of the EU's policies and regulations was not only not sanctioned by the European Commission, but in return, farmers were even provided with additional funds for compensation, as long as the countries implemented the agricultural policy coordinated at European level towards Ukraine.

10. The war in Ukraine is accelerating the expansion of EU law that has been underway for years at the expense of Member States' national law. The problem is that this is sometimes even *ultra vires*, i.e. beyond the EU's competences as recognised in the treaties. Increasingly, the Court of Justice of the European Union (CJEU) justifies such actions by ignoring the statutory division of competence between the Union on the one hand and the Member States on the other. As a result, instead of a sustained deepening of European integration, support for it is faltering.

In conclusion, this war is leading to an expansion of NATO, and perhaps will accelerate the expansion of the European Union. But whether this will make the EU more secure and more cohesive remains to be seen. It is unlikely, however, that countries like Bulgaria will be more prosperous after the war, but that now depends not so much on the outcome of the war as on the governance of the country.