



TRANSFORMATION CHALLENGES FOR THE INTERNATIONAL HUMANITARIAN LAW SYSTEM: MIGRATION CRISIS AS THE LATEST TOOL FOR HYBRID WARFARE. (A VISION FROM UKRAINE)

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Abstract:

The article tries to present a theoretical-legal and international-practical analysis of the migration crisis as a tool for hybrid warfare, analysing the features of such a war and the peculiarities of using the flow of migrants and refugees as if they were "living" weapons in a military conflict. The authors try to prove that a migration crisis can be provoked by an aggressor country using the hybrid warfare methodology attempting to destabilize the political situation, avoiding the resistance of the civil society of the target country without engaging in open hostilities. The authors stress the uncertainty surrounding the term "hybrid warfare" and propose their own classification of the modern hybrid warfare' features. Based on the analysis of the use of migration crisis in Syria, Venezuela and Belarus, the article singles out the stages of employment of such a tool for warfare.

Key words: Hybrid war, migration crisis, hostilities, international humanitarian law, refugees.

Titulo en Castellano: *Desafíos para la transformación del sistema de derecho internacional humanitario: La crisis migratoria como la última herramienta de la guerra híbrida. (Una visión desde Ucrania)*

Resumen:

El artículo trata de presentar un análisis teórico-jurídico e internacional-práctico de la crisis migratoria como herramienta de guerra híbrida, analizando las características de dicha guerra y las peculiaridades de la utilización del flujo de migrantes y refugiados como si fuesen armas "vivas" en un conflicto militar. Los autores intentan demostrar que una crisis migratoria puede ser provocada por un país agresor utilizando la metodología de la guerra híbrida intentando desestabilizar la situación política, evitando la resistencia de la sociedad civil del país objetivo sin entrar en hostilidades abiertas. Los autores subrayan la incertidumbre que rodea al contenido del término "guerra híbrida" y proponen su propia clasificación de las características de la guerra híbrida moderna. Basándose en el análisis de la práctica de la crisis migratoria en Siria, Venezuela y Bielorrusia, el artículo señala las etapas del empleo de dicha herramienta bélica.

Palabras Clave: *Guerra híbrida, crisis migratoria, derecho internacional humanitario, refugiados.*

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1. Introduction

Military conflicts have accompanied human civilization throughout its historical development. The planet has practically never been in absolute peace. The development of human civilization, science, law, technical and globalization factors indicate changes in the classical approach to military conflicts. The instruments and resources for conducting military operations are being continuously improved and the arms race continues to take place against the background of considerable informatization and computerization of technical capabilities. Regulation of the means and methods of warfare evolved systematically after the Second World War. Consequently, a separate branch of international law - International humanitarian law - emerged. It is a specific branch of international law, as its rules are in force during an armed conflict⁶.

At the beginning of the XXI century, we can confirm the formation of the basic system of international humanitarian law. The rules, often referred to as the “law of Geneva”, define a humane approach to protecting people during hostilities, including combatants, non-combatants, prisoners of war and victims of armed conflict, while the “law of The Hague” establishes the legitimacy of methods and means of warfare. However, the effectiveness of such international institution should be discussed and asserted with caution. Though its existence indicates the progressive development of international law, the declarative nature of international humanitarian law still remains a significant problem. As M. Hrushko⁷ rightly states, the objective factors of low efficiency of international humanitarian law include "... inefficiency of the legal system of the State, imperfection of mechanisms for implementing international law, lack of its action on organizational and legal issues of implementation of international humanitarian law, low level of implementation of international humanitarian law into national legislation, the inefficiency of the legal system of the State in times of armed conflict and mechanisms of responsibility for violations of international humanitarian law".

Nowadays, a war in its legal dimension needs to be discussed much more broadly than considering basically its regulation by norms of international law. One cannot disagree with Ye Mahda⁸ when he says that “war is not only hostilities, but also competition of economies, ways of life and thinking of rulers, competition of public administration systems, clash of potentials and confrontation of ideologies”. Classic forms of military confrontation are changing to more sophisticated, though no less tragic for humanity. The system of international humanitarian law, even before the classic challenges, was rather a weak social mechanism, and at the same time became completely insignificant to the latest threats and challenges. Therefore, global challenges in the field of war and peace require special scientific attention from a legal point of view, especially in the context of hybrid forms of warfare⁹.

⁶ Guliyeva, Aida, Britchenko, Igor. and Rzayeva, Ulviyya: “Global security and economic asymmetry: A comparison of developed and developing countries”, *Journal of Security and Sustainability Issues*, Vol.7, n° 4, (2018), pp. 707-717, at [https://doi.org/10.9770/jssi.2018.7.4\(8\)](https://doi.org/10.9770/jssi.2018.7.4(8))

⁷ Hrushko, Malvina V. (2016): *Formation and specifics of the international legal regime of prisoners of war*, Odesa, Phoenix.

⁸ Mahda, Ye.V. (2015): *Hybrid war: survive and win*. Kharkiv, Vivat.

⁹ Kulikov, Oleksii Petrovych.: “Best Practices in the Prevention of Recidivism – Current State and Foreign Experience”, *Journal of International Legal Communication*, Vol. 3 n° 3 (December 2021), pp. 92-101, at <https://jilc.e-science.space/wp-content/uploads/2022/03/JILC3092-101Kulikov.pdf>



A number of scholars, including G.D. Solis¹⁰, A.F. Mazo¹¹, D. Fleck¹², J. Stanton¹³, focused on the norms and rules of waging modern classical wars and determined the legal status of their participants, legitimate means, methods and techniques of their conduct. More and more researches dedicate their scientific works to both theoretical legal aspects and practical aspects of modern humanitarian problems on a global scale.

It is necessary to understand that classical forms of military action are now devalued, therefore new forms of waging war are escalating, including hybrid means and innovative methods of warfare. Depending on the political and cultural situation, each conflict has a special and unique character, hence it is quite difficult to determine the complex legal nature of these actions. In addition, there is no harmonized international regulation of the problem. This causes significant gaps in (the light of the principles of) international humanitarian law and causes suffering and misery to a significant number of victims of a military conflict. The aim of the article is a comprehensive theoretical-legal and international-practical analysis of the migration crisis as a tool of a hybrid warfare through the analysis of features of such a war and the peculiarities of using the flow of migrants and refugees as "living" weapons in a military conflict.

2. Materials and Methodology

Global changes in legal reality have led to the rapid progress of scientific achievements that accelerated the development of science and pointed out to the relevance and demand for complex scientific postulates. The legal policy of the State must be based on scientific expertise and sound socio-legal phenomena. However, the uncertainty of the next progressive scientific development suggests the importance of expanding the research potential, because only science is able to predict the direction and evolution of State, economic, social and political phenomena. By basing political and legal management decisions on scientific findings, errors can be avoided and shortcomings and trends can be predicted for the future. Science establishes the basic paradigms and determines the guidelines of future social and legal activities. The basis of scientific research is made by a set of methodologies, philosophical, general and special scientific methods and a cluster of approaches that determine the subject of research.

The group of philosophical methods includes the following: the dialectical method- to determine the transformation of relations in the social reality and to determine the established and modern means and methods of warfare; metaphysical – to identify external factors that affect hybrid warfare and the variable regulation of this area; synergetic - given the novelty and uncertainty of the hybrid warfare, the essence of these changes can not be depicted statically, and has to be associated with challenges and crises of a global nature, so this method indicates the impossibility of a stable forecasting of international humanitarian law.

The second level of methodology includes general scientific methods, among which the following deserve special attention: analysis and synthesis are used to study the migration crisis as part of a holistic concept, which in turn can be considered as separate parts of influencing the political situation; the analogy helps to identify similar features of the hybrid warfare tools in different parts of the world (Syria, Turkey, Venezuela, Ukraine, Belarus, Morocco); abstraction helps to distinguish the subject of research from related concepts, primarily from

¹⁰ Solis, Gary D. (2021): *The law of armed conflict: International humanitarian law in war*, Cambridge, Cambridge University Press.

¹¹ Mazo, Adriana Fillol: "The protection of access to food for civilians under international humanitarian law: Acts constituting war crimes", *The Age of Human Rights Journal*, nº 14 (2020), pp. 181-209.

¹² Fleck, Dieter (2021): *The handbook of international humanitarian law*, Oxford, Oxford University Press.

¹³ Stanton, Jessica A.: "Rebel groups, international humanitarian law, and civil war outcomes in the Post-Cold War era", *International Organization*, Vol.74, nº 3 (2020), pp. 523-559.



political pressure without the presence of military aggression and from internal conflict as a special form of military action; the systematic method is used for the study of the various consequences of hybrid warfare for the State.

The third level is represented by special scientific methods, in particular the formal-legal method – one of the most used research methods allowing dogmatic analysis of clear legal phenomena, helping in the description, classification and generalization of legal concepts; legal historical method is used to analyze the historical and progressive development of international humanitarian law; and legal statistical method to study the performance of international and public institutions in the area of research (including NATO, EU, UNHCR, International Committee of the Red Cross).

3. Discussion

Modern warfare is hybrid in nature. Despite the fact that the term is commonly used in science, there is no permanent understanding of it. The term "political war" is often used as well, while such terms as "unconventional warfare"¹⁴, "irregular warfare" or "compound warfare"¹⁵ are less common. But the concept of "hybrid warfare" or "State-sponsored hybrid warfare" is the most widespread among scientists and practitioners¹⁶. We consider that all of them can be united under one term "hybrid warfare". It is necessary to distinguish the early and modern concepts of understanding the hybrid nature of warfare.

According to the first concept, the term was used in the literature to denote asymmetric wars, when one of the belligerents in hostilities can not even be considered a State in the true sense of the word¹⁷, so in hybrid warfares irregular forces (for example, insurgents or terrorists) or combat operations are employed¹⁸. Some argue that hybrid warfare simply means a war taking place in more than one dimension, which includes political, economic and civic spheres¹⁹. Eventually, the context changed. According to scholars, taking into consideration the recent international context, the term was mostly used to describe various modes of Russian aggression against Ukraine and political interference in Western countries²⁰.

NATO²¹ updated its understanding of hybrid warfare. It considers that hybrid threats occur where conventional, irregular and asymmetric threats are combined in the same time and space. Conflict can involve a range of transnational, State, group and individual participants operating globally and locally. Some conflicts may involve concurrent inter-communal violence, terrorism, cyberspace attacks, insurgency, pervasive criminality and widespread disorder. The actual ideologue of hybrid warfare going on in Ukraine - Russian General V. Gerasimov²² gives a brief description of the basic principles of hybrid warfare:

¹⁴ Special Operations, Joint Publication 3-05, Department of Defense, The Joint Staff, Washington, DC, 16 July 2014.

¹⁵ Cruceru, Valerică: "On contemporary warfare: short review of specific concepts", *Revista Academica Fortelor Terestre*, Vol.3 (2014), pp. 231-237.

¹⁶ Johnson, David E. (2010): *Military capabilities for hybrid war insights from the Israel Defense Forces in Lebanon and Gaza*, Santa Monica, CA, RAND Corporation.

¹⁷ McCuen, John.J.: "Hybrid wars", *Military Review*, Vol.2 (2008), p.108.

¹⁸ Hoffman, Frank G. (2007): "Conflict in the 21st century: the rise of hybrid wars", Virginia, Potomac Institute for Policy Studies.

¹⁹ Buchanan, Elizabeth.: "Hybrid warfare: Australia's (not no) new normal", *The Strategist*, May 9, 2019, at <https://www.aspistrategist.org.au/hybrid-warfare-australias-not-so-new-normal/>

²⁰ Rác, András (2015): "Russia's hybrid war in Ukraine: breaking the enemy's ability to resist," Helsinki, The Finnish Institute of International Affairs.

²¹ NATO. (2017): "Allied joint doctrine edition", E Version 1, Brussels, NATO Standardization Office.

²² Gerasimov, Valery.: "The value of science in foresight", *Military Industrial Courier*, Vol.8, nº 476 (2013), p. 3.



- the growing role of non-military means in achieving political and strategic goals, which in some cases significantly exceeded the effectiveness of weapons;
- shifting the focus of the confrontation towards political, economic, informational, humanitarian and other non-military measures implemented with the use of the protest potential of the population;
- the hidden nature of military measures, including confrontation of information and actions of special forces;
- using force openly (often under the guise of peacekeeping and crisis management) only in the final stages, mainly to achieve ultimate success.

There are no complex features of this type of warfare in scientific doctrine, therefore we believe that the analysis of various scientific positions will provide an opportunity to generalize the concepts and highlight the main features of such type of warfare. In our opinion, they are the following:

Firstly, all of them point to the blurring outlines of the military conflict and the involvement of non-military means, which usually are not directly related to the classic military confrontation. Quite often the war is undeclared, and the rules of conspiracy and disguising their actions as humanitarian, protective actions are used²³. It has frequently been observed in the literature on hybrid wars that there is a grey zone between peace and war, and that hybrid wars are conflicts which are not clear cases of war²⁴. According to S.D. Bachmann and A.B. Munoz Nosquera²⁵, hybrid wars raise the question of whether "aggression meets the threshold of 'armed attack' as a clear violation of the United Nations Charter in the use of force by a State against the sovereignty, territorial integrity or political independence of another State". The vagueness and lack of action, which can be classified as direct military confrontation, is an essential feature of the nature of hybrid warfare.

Secondly, hybrid warfare includes both classic forms of hostilities and those aimed at social destabilization of the enemy. They involve using all available military actions, regular and irregular, cyber and those allowing the use of weapons of mass destruction, and also information, psychological and propaganda war using the latest information and media technologies. These methods and means affect war as a social phenomenon.

Typical hybrid military tactics include: wide use of effective non-lethal weapons; the increasing use of irregular militia groups (paramilitary forces); the increasing reliance upon and use of radio-electronic, psychological and information warfare via cyber assets; the increasing warfighting from a distance through the use of special operations; the transition of the primary warfighting responsibilities to cyber and airspace environments; increase in asymmetric combat actions²⁶.

The parties conduct hostilities concealing themselves among supportive civilian populations. These tactics is called "urban battlefield" and is widespread in Syria and Ukraine. Insurgents or weaker parties have sought to hide amongst civilian populations in towns and cities, leaving conventional actors to be drawn into a fight where large amounts of civilians are

²³ Holovkin Bohdan M.; Tavolzhanskyi Oleksii V. and Lysodyed Oleksandr V. : "Corruption as a cybersecurity threat in the new world order", *Connections: The Quarterly Journal*, Vol.20, n°.2 (2021), pp. 75-87.

²⁴ Almäng, Jang: "War, vagueness and hybrid war", *Defence Studies*, Vol.19, n° 2 (2019), pp. 189-204, at <https://doi.org/10.1080/14702436.2019.1597631>

²⁵ Bachmann, Sascha. Dov and Munoz Nosquera, Andrés.B.: "Hybrid warfare as lawfare: towards a comprehensive legal approach" in Cusumano Eugenio and Corbe Mairam (eds.) (2018): *A civil-military response to hybrid threats*, Cham, Palgrave MacMillan, pp.61-76.

²⁶ Danyk, Yuriy, Maliarchuk, Tamara and Briggs, Chad: "Hybrid war: High-tech, information and cyber conflicts", *Connections: The Quarterly Journal*, Vol.16, (2017), pp. 5-12, at <https://doi.org/10.11610/Connections.16.2.01>



put at extreme risk²⁷. In 2017 “War in cities” was published in the International Review of the Red Cross which described the situation in Syria with systematic shelling of government districts, concealing among civilians and children, systematic looting of civilians by informal military groups²⁸.

Thirdly, the transformation of belligerents through the hybridity of actors. Combatants have the right to engage in hostilities. In the case of capture, they acquire the status of prisoners of war. Such persons may not be prosecuted or punished simply for having engaged in hostilities²⁹. In contrast, non-combatants are not directly involved in armed conflict and do not have the right to be treated as prisoners of war. Any use of force against this category of persons is prohibited, they cannot be the target of military operations. At the same time, the Additional Protocol I of 1977 extends the protection of the Geneva Conventions to civilian medical personnel, equipment and supplies and to civilian units and transports.

Not only a hybrid warfare blurs the dividing line between peace and war, and between civilian and military endeavors, it also uses civilian instruments to achieve certain objectives³⁰. All other persons involved in hostilities are unlawful combatants. This term was used by the US Supreme Court in case *Ex Parte Quirin*. The case involved the criminal punishment of eight German soldiers who entered the United States to sabotage, but were arrested. The United States did not grant these persons the status of prisoners of war, because after entering the country, they changed its uniform to civilian clothes. The Court ruling states that unlawful combatant is a combatant who is directly involved in an armed conflict on the side of the enemy and without uniform comes secretly through the military lines for the purpose of destruction of life or property.

Unlawful combatants, unlike lawful combatants, are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful. The decision emphasizes the necessity of making a distinction between the armed forces and the peaceful populations of belligerent nations and also between those who are lawful and unlawful combatants³¹. Modern hybrid warfare is characterized by employment of unlawful combatants at the forefront instead of regular armies, in particular:

- Criminal, mafia-type paramilitary forces of transnational organized crime groups, among which drug cartels have played a critical role and, at present, as we stress the migration mafias/criminal groups;
- Armed formations of international terrorist organizations and groups;
- Extremist illegal militant groups that existed under the roof (patronage) of special services of various countries (the so-called proxy organizations);
- Titushky (Ukrainian – “thugs”) – irregular semi-criminal groups tacitly supported and funded by official authorities (with the help of which the authorities suppress protests in the country, i.e. they indirectly apply the methods of terror against those in

²⁷ Jones Meredith, Bachmann, Sascha Dov: “Syria – a hybrid war case study”, *Journal of Military and Strategic Studies*, Vol. 21, n° 3 (2021), pp. 33-55

²⁸ ICRC: “Voices and Perspectives, Life in a war-torn city: Residents of Aleppo tell their stories”, *International Review of the Red Cross*, Vol.98, n° 1 (2017), pp. 15-20.

²⁹ Geneva Convention (IV) relative to the Protection of Civilian Persons in Times of War, at <https://www.ohchr.org/en/resources/educators/human-rights-education-training/4-geneva-convention-iv-relative-protection-civilian-persons-times-war-1949>

³⁰ Stoker, Donald and Whiteside, Craig.: “Blurred lines: Gray-zone conflict and hybrid warfare and Hybrid war—two failures of American strategic thinking”, *Naval War College Review*, Vol.73, n° 1 (2020), pp. 1-37.

³¹ Resolution 1368 (2001) of UN Security Council, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement>



disagreement with the authorities, such as ‘collectivos’ in Venezuela, ‘titushky’ in Ukraine, ‘proxy’ in Syria and Libya etc.);

- Contract fighters;
- Tribal levies headed by tribal sheikhs that are typical for regions with existing congeneric practice and tribal societal system.

It is these unconventional actors that are ideal for waging new-type hybrid wars – special, mobile, diversion-terrorist, quasi-insurgent wars, three quarters of which are clandestine operations and operational combinations run by intelligence services³². The modern world faces legal uncertainty of the functioning of private military formations. The nature and role of paid foreign military forces changed significantly in the late 20th century. "Military companies" - private firms that provide active military assistance in some cases related to hostilities - have taken advantage of the growing reluctance of Western governments and multilateral organizations to intervene directly in civil conflicts.

As a result, their influence intensified. Efforts to limit the activities of military companies through the development of international or domestic law have been ineffective to date and are likely to remain so. However, such institutions are actively used today. Scholars justify the benefits of using surrogate forces: internal events, including new social sentiments, may explain the desire to hide victims from the public; concerns about the legal and reputational consequences for the State; the use of militias and private contractors has certain military advantages for the party³³. Besides, the economic component is the undoubted advantage, "Private Military Companies... are part of a multi-billionaire industry profiting over US\$ 100 billion in revenue per year. They are present in 50 different countries and boosted by significant world's events"³⁴.

Fourthly, this State of undeclared confrontation is ongoing. M. Orenstein³⁵ explains "Russia's stealth invasion of Ukraine and its assault on the US elections in 2016 forced a reluctant West to grapple with the effects of hybrid war. While most citizens in the West are new to the problems of election hacking, State-sponsored disinformation campaigns, influence operations by foreign security services, and frozen conflicts, citizens of the frontline States between Russia and the European Union have been dealing with these issues for years".

Fifthly, informal means of a hybrid warfare are aimed at an individual State as an enemy and other international entities and States that support the opposing side in the international arena as well. M. Galeotti³⁶, for example, distinguishes between two senses of the term hybrid war: "it must be emphasized that there are two, cognate phenomena at work: the essentially bloodless, if no less ruthless ‘political war’ which is essentially what is currently being waged on the West, and the political-military ‘hybrid war’ experienced in Ukraine". C. Chivvis³⁷

³² "Modern-Day Information Warfare and Hybrid War Operations", at

https://www.ifimes.org/en/researches/modern-day-information-warfare-and-hybrid-war-operations/4915#_ftn

³³ Rauta, Vladimir A.: "Conceptual critique of remote warfare", *Defence Studies*, Vol. 21, n° 4 (2021), pp. 545-572, at <https://doi.org/10.1080/14702436.2021.1994398>

³⁴ Bijos, eila. and De Souza, Renan: "Private military companies and the outsourcing of war: A spark of Destabilisation to the global security", *Annales de la Faculté de Droit d'Istanbul*, Vol.69 (2020), pp. 87-118, at <https://doi.org/10.26650/Annales.2020.69.0004>

³⁵ Orenstein, Mitchell A. (2019): *Russia's hybrid war on the west, The Lands in Between*, Oxford, Oxford University Press, pp. 8-46, at <https://doi.org/10.1093/oso/9780190936143.003.0002>

³⁶ Galeotti, Mark (2016): *Hybrid war or gibridnaya voina? Getting Russia's non-linear military challenge right*, Prague, Mayak Intelligence.

³⁷ Chivvis, Christopher C.: "Hybrid war: Russian contemporary political warfare", *Bulletin of the Atomic Scientists*, Vol.73, n° 5 (2017), pp. 316-321.



assumed that Russia is waging a hybrid warfare against US interests in Europe and elsewhere facilitated by the Internet, cyber tools, cable news, and especially social media.

Globalization of social and legal reality, simplification of border crossing conditions, development of tourism, establishment of special rules of visa-free regime between certain States, strengthening of transport communication and informatization of social processes cause large-scale migration flows. The latest trend in psychological change of society is to search for better living conditions, due to the availability of information. The population of Third World countries is receiving a new narrative of additional opportunities in economically developed countries and seek to enjoy such benefits. At the present stage of statehood development, migration processes are becoming more extensive and have an increasing impact on international relations, and international security can be used as a means of hybrid warfare.

The migration issue is classically considered as a domestic problem and only the scientific doctrine of the last decade has analyzed this issue in the context of interstate integration through security factors, intercultural communication, environmental challenges, socio-economic and interfaith aspects. Currently, the migration crisis can be used as a means of political struggle, "From time to time, political leaders use the migration issue to influence voters, seek influence on other States, etc."³⁸.

This is due to the fact that migrants are able to create situations that threaten the social and political stability of both the country and the region (the Venezuelan migration crisis affected around 17 countries of the whole Latin America and the Caribbean). Migration policy is used as a means of hybrid warfare, as it causes systemic destabilization in all spheres of State functioning, creates a distortion of the political system, additional economic complications and socio-cultural imbalances. This is a fundamental factor in gauging the consequences of permissiveness in the acceptance of dual nationality, maintaining the nationality of origin, for example of migrants from neighboring countries of the EU, including their social and religious organization by third countries. Migration can thus be used to shake the foundation of statehood – a specific civil society.

“In the context of the hybrid conflict the aggressor is interested in weakening the target State, its destabilization, so the feasibility of application the migration flows is explained by the negative implications, that are natural for the spontaneous migration, but not necessarily critical and do not necessary lead to the destabilization of the State; but in case of the external influence on the migration process it can be turned into the fully destructive process. At the same time, we have to point out that the target country itself, where the migration flows are directed, is limited in its possibilities to react on the situation in migration sphere because of the necessity to follow the principles of the human rights and its international commitments”³⁹.

The migration crisis is most often caused by hostilities. For example, the Syrian war is an ongoing conflict between the Syrian regime, its domestic and foreign allies, and many domestic and foreign forces that oppose it. It emerged in 2011 over dissatisfaction with the regime's violent crackdown of civil uprisings that sparked widespread protests by the Arab Spring. The Syrian conflict has displaced more than 11 million people, half the country's population. 6.5 million internally displaced persons and 5 million crossed the border to seek refuge abroad, in

³⁸ Perepolkin, Serhii M. and Trostianska, Polina V : “The gist of the World Customs Organization”, *Journal of International Legal Communication*, Vol.1, n° 1 (2021), pp. 139-148, at <https://doi.org/10.32612/iw.27201643.2021.1>.

³⁹ Danyk, Yuriy and Semenkova, Maryna: “Controlled migration as a means to achieve the goals of hybrid warfare. *Bulletin of Kharkiv National University named after V.N. Karazina. Political Science Issues Series*, Vol.35 (2019), pp. 72-79, at <https://doi.org/10.26565/2220-8089-2019-35-09>



neighboring countries such as Turkey, Lebanon, Jordan, Iraq and Egypt, and elsewhere, both regionally and globally⁴⁰.

Another example is the migration crisis in Venezuela, with statistically more than 5.4 million refugees and migrants in late 2020⁴¹. Therefore, this country is the second country of origin of people crossing international borders after Syria. The United Nations defines the stream leaving Venezuela as a “mixed flow” of migrants and asylum-seekers, and has for the first time in its institutional history created a joint platform of the UNHCR and IOM to assist them. According to the 1951 Refugee Convention, a refugee is someone with a well-founded fear of persecution for reasons of race, religion, nationality, membership in a social group or political opinion. While some of the people leaving Venezuela fit into that category, it does not apply to the majority of those who have fled. Nor does the conventional definition of a migrant, someone who voluntarily leaves his or her country of origin in order to seek a better life and who does not face impediments to returning home⁴².

Therefore, a distinction should be made between the spontaneous flow of migration caused by the economic, political or State crisis in the country of origin and the purposeful political mechanism of creating migration problems in the opposite side in order to destabilize the situation, as was the Bielorussian and Moroccan cases. However, there is a third type of use of the humanitarian sector - the movement of its citizens to the temporarily occupied territory in order to assimilate them and strengthen the political electorate of the aggressor country in the future. Thus, according to the National Security and Defense Council of Ukraine⁴³ Russia brought 600,000 of its citizens to the territory of the occupied Crimea by the end of 2021. In our opinion as a means of hybrid warfare the aggressor's migration policy includes at least four mandatory stages:

The first stage involves setting up an information campaign in a third country, which advertises new opportunities for migrants through the media and other information resources and social networks, pointing to a fast and relatively cheap way to cross the border to a desirable economically developed country.

The second stage is to facilitate the flow of migrants by accompanying them to the chosen country and facilitating the organizational and operational components for these people.

The third stage envisages intensification of the international community on the humanitarian problem of migrants, coverage of the position on the human rights crisis and violation of the principles of humanity and the rule of law. Usually, all available institutional measures are used for this: international human rights organizations, international authorities, mass media, religious organizations, etc. Given that migrants are human beings, the emphasis on human rights is also justified. For example, Pope Francis condemned the treatment of migrants by governments around the world, saying that “the underlying causes should be confronted, not the poor people who suffer the consequences, and are then used for political

⁴⁰ Rochelle, Davis: “Gendered vulnerability and forced conscription in the war in Syria”, *The Long-Term Challenges of Forced Migration: Perspectives from Lebanon, Jordan and Iraq*, LSE Middle East Centre Collected Papers, Vol.6 (2016), pp. 49-54.

⁴¹ RMRP: “For Refugees and Migrants From Venezuela Regional Response Plan January – December”, (May 19, 2021), at <https://www.r4v.info/es/document/rmrp-2021-es>

⁴² Van Praag, Oriana.: “Understanding the Venezuelan Refugee Crisis”, Wilson Center, September 13, 2019, at <https://www.wilsoncenter.org/article/understanding-the-venezuelan-refugee-crisis>

⁴³ Secretary of the National Security and Defense Council named the number of Russians brought to Crimea by the Russian Federation, at <https://zn.ua/POLITICS/sekretar-snbo-nazval-kolichestvo-rossijan-kotorykh-rf-zavezla-v-krym.html>



propaganda”⁴⁴. However, the Universal Declaration of Human Rights is clear regarding the obligations of the States. Article 13 establishes that everyone has the right to freedom of movement and residence within the borders of each State and has also the right to leave any country, including his own, and to return to his country. But it does not establish the obligation of States to admit migrants from third countries unless they have a recognized refugee status - with strict standards - and the country where they seek asylum has signed the 1951 Refugee Convention and the 1966 Additional Protocol. Many times, these provisions are forgotten when politicians and religious leaders speak about migration and human rights. Even the signing of the Convention and the Additional Protocol currently constitutes an incentive for the use of migratory flows against these signatory States by third countries that have not signed these legal instruments. To this, the crucial role of the mafias and organized crime is to be added. - something fundamental in this tool for hybrid warfare. The cost of the movement of irregular migratory flows and the fees to be paid to organized crime depend on the transport means to be used, the distances to be traveled, security to be provided, forgery of documents, bribes to be paid to different officials, the porosity or non-porosity of the borders to be crossed etc. This extremely vast traffic of people, still qualified as irregular migration and even as a “humanitarian” challenge, is considered to be more profitable than drug trafficking.

The fourth stage is to create destabilization and destabilize the situation in the country of resettlement. Due to the differentiation of cultural and mental values, destabilization will occur without the participation of the aggressor country, but the situation is exacerbated by creating public resistance, increasing crime and deliberately causing problems. The civil society of the host party must ensure norms of tolerance and non-discrimination in the axiological interpretation, which is difficult to achieve in praxiology. Let's turn to the practice of Ukraine. The United Nations Migration Agency presented the results of the first comprehensive study, which shows that every fifth report (22%) in the national media portrayed migrants, including foreign students and tourists, as "inconvenient to the citizens of Ukraine." The language used in such publications indicates a lack of understanding of ethical and journalistic standards, because migrants have often been referred to as "hybrid weapons", "criminals", "illegals" or "inadequate foreigners"⁴⁵.

In addition, it is necessary to pay attention to the possibility of using migrants as an internal enemy, namely the cause of the following destabilizing factors: electoral opposition in the future; changing the demographic structure of the population; economic expenditure on the migrants' educational and labor adaptation⁴⁶- for example Iraq spent 298 million a year on Syrian refugees causing a 5% fall in GDP-; reducing the share of population that could ensure the territorial integrity and defense capabilities of the country; cultural and mental contradictions and problems of a long-term nature; terrorist threats -according to the Lebanese government, about 2% of Syrian refugees heading to the European Union are members of the Islamic State terrorist group⁴⁷, the threat of epidemics and the spread of disease, especially in the context of the COVID-19; disparities in legal policy between States⁴⁸.

⁴⁴ “The collapse of civilization”: The Pope called for a change in attitudes towards migrants, at <https://www.dw.com/uk/krakh-tsyvilizatsii-frantsysk-zasudyv-stavlennia-do-mihrantiv/a-60027733>

⁴⁵ Coverage of migration and migrants in the Ukrainian media, at https://iom.org.ua/sites/default/files/migration_media_narratives_report_2021_ukr.pdf

⁴⁶ United Nations High Commissioner for Refugees: “Iraq – Regional Refugee & Resilience Plan 2016–2017”, January 12, 2016, at <https://data2.unhcr.org/en/documents/details/44364>

⁴⁷ Biloshytskyy, S.: “International migration as a type of modern weapon: socio-cultural and political aspects”, Scientific notes of the Institute of Political and Ethno-National Studies I.F. Kuras NAS of Ukraine, Vol.2 (2016), pp. 138-156.

⁴⁸ In particular disparity among the Western Countries. This hybrid warfare tool is very difficult/impossible to be applied easily (without involving a fight or the adoption of very strong security/military measures) for instance in



As for the latter, we will demonstrate it with the example of the 2015 European migrant crisis, a period of significantly increased movement of refugees and migrants into Europe in 2015 due to a confluence of conflicts in parts of the Middle East, Asia and Africa. Not only was this crisis caused by political problems, but also the Russian government facilitated the influx in an attempt to distract Europe from illegal actions in Ukraine by sponsoring radical right European organizations and radical anti-Islamic movements, therefore using migrants as a means of hybrid warfare. For the first time, the EU had to find a collective response to this crisis because of its scale and intensity and the involvement of many countries along the route followed by the migrants⁴⁹. EU members will have to address some of the contentious issues they have so far avoided: whether burden sharing should be compulsory or voluntary, whether migration should be permanent or temporary, whether to implement financial solidarity, and whether to allow limits on the free movement of workers. In reality, the unilateral decision in fall 2015 by a growing number of Central European governments to close their national borders led to a progressive breakdown of solidarity in the EU's passport-free Schengen zone and on the Dublin Regulation for determining asylum applications. This decision progressively put most of the pressure on Greece as migrants arriving on that country's shores were stalled and unable to move farther on. Unilateralism led to a situation in which the final responsibility for tackling the whole migration flow was pushed down the road and transferred to the first EU country that migrants entered, namely Greece, which consequently could not handle the magnitude of the numbers⁵⁰.

The issue is especially relevant in light of the latest 2021 challenges for Europe, organized jointly by the Belarusian and Russian authorities to take revenge for the position of the EU countries on the legitimacy of the Belarusian president and again to distract attention from the intervention in Ukraine, destabilize European integrity, etc. The Baltic States – Lithuania, Latvia and Estonia – have claimed that the Belarusian government is waging a "hybrid war" against them, creating a migration crisis. As of the end of November 2021, there were about 10,000 migrants near the border with Belarus, according to the EU or 16,000 according to the National Security and Defense Council of Ukraine.

The Prime Minister of Poland M. Morawiecki accused Lukashenko of "using the civilian population as a weapon for modern hybrid warfare"⁵¹. C. Michel, President of the European Council, called the crisis "a brutal, hybrid attack on our EU borders"⁵². And NATO⁵³ has condemned "irregular migration artificially created by Belarus as part of hybrid actions" targeted against the EU. Belarusian security forces are massively transporting migrants from

Asia, where borders, nationality and migrant approaches are substantially different from those of the West. This is another good lesson for those who publicly advocate and defend universal approaches -social, political or religious- valid for all in migration matters, overlooking the profound differences that exist between countries, geographical areas and non-Western political cultures, and, in particular, without prioritizing the need for a previous global unification/reconfiguration of political and legal approaches to migration (a precondition that must be implemented and very difficult indeed!).

⁴⁹ Sopilko, Iryna M.: "Information security as an object of regulation in the law of Ukraine", *Journal of International Legal Communication*, Vol.1, n° 1, (2021), pp. 11-22, at <https://doi.org/10.32612/uw.27201643.2021.1.pp.11-22>

⁵⁰ Vimont, Pierre.: "Migration in Europe: Bridging the solidarity gap", September 12, 2016, at <https://carnegieeurope.eu/2016/09/12/migration-in-europe-bridging-solidarity-gap-pub-64546>

⁵¹ Address of Prime Minister Mateusz Morawiecki to officers of the Border Guard, Police and soldiers, at <https://www.gov.pl/web/primeminister/address-of-prime-minister-mateusz-morawiecki-to-officers-of-the-border-guard-police-and-soldiers>

⁵² Cook, Lorne: "EU values, laws under threat amid standoff at Belarus border", Associated Press, November 11, 2021, at <https://apnews.com/article/european-union-alexander-lukashenko-lithuania-minsk-united-nations-28b4c0ca00074caaf8384f5539811>

⁵³ NATO: "Statement by the North Atlantic Council on the situation at the Poland-Belarus border", Press Release 2021 n° 165, November 12, 2021, at https://www.nato.int/cps/en/natohq/news_188529.htm



many countries through their territory, providing them with visa and tourist support and purposefully shifting the flow to the borders with Poland, Lithuania and Latvia, as well as providing them with wire cutters to break through the fence and lanterns to blind EU security forces. According to the European Commission, almost 8,000 migrants arrived in the European Union via Belarus in 2021. 4,300 people arrived in Lithuania, 3,200 – in Poland and 400 – in Latvia.

The present migration crisis that mixes refugees and non-refugees “*in a totum revolutum*”, destroys the value of international regulations and also points out problems of a legal nature, for instance a departure from the recognized principle of non-refoulement. This principle is most often referred to in the context of refugee protection, given its codification in Article 33 of the Convention relating to the Status of Refugees⁵⁴ and in regional refugee law instruments. Over the past decades, however, the principle has also been included in human rights treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), the International Convention for the Protection of All Persons from Enforced Disappearance (Article 16) and in regional human rights instruments. Moreover, the UN Human Rights Committee has considered that non-refoulement is an integral component of the protection against torture or other forms of cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life.

Regional human rights courts have made similar conclusions, in particular the case *Soering v. the United Kingdom*, § 88⁵⁵. Basically, the principle of non-refoulement is considered to be a part of customary international law. However, under the influence of hybrid means, States are forced to defend themselves, so on October 14, 2021, the Polish Parliament⁵⁶ passed an amendment to the Law on Foreigners that repels migrants at the border and ignores asylum applications made by those who entered the country illegally. The ECHR⁵⁷ received 47 requests for interim measures brought by a total of 198 applicants and ruled that the applicants should not be pushed back to Belarus if they were indeed on Polish territory, according to Articles 2 (right to life) and 3 (prohibition on inhuman and degrading treatment) of the European Convention on Human Rights.

4. Conclusion

The migration crisis can be provoked by an aggressor country and used as a method of hybrid warfare aimed at destabilizing the political situation and weaken the resistance of the civil society of the target country without engaging in open hostilities. The following features of hybrid warfare can be singled out:

- there are no classical approaches to hostilities in the State of the "gray" zone between peace and war;
- the war is undeclared, and their actions are disguised as humanitarian/protective actions;
- hybrid warfare includes both classic forms of hostilities and those aimed at social destabilization of the target enemy;
- the transformation of belligerents through the hybridization of different actors

⁵⁴ Convention and Protocol Relating to the Status of Refugees, at <https://www.unhcr.org/3b66c2aa10>

⁵⁵ Case of *Soering v. The United Kingdom*. Application no. 14038/88, at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-57619%22%5D%7D>

⁵⁶ Ustawa z dnia 14 października 2021 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw [Act of October 14, 2021 amending the act on foreigners and certain other acts], at <https://www.prezydent.pl/prawo/ustawy-podpisane/pazdziernik-2021-r,35942>

⁵⁷ Requests for interim measures concerning the situation at the borders with Belarus. ECHR 372. 06.12.2021, at <https://hudoc.echr.coe.int/eng-press#%20>



(unlawful combatants);

- the state of confrontation is ongoing;
- hybrid warfare is not focus only on an individual State as a target enemy. It includes other international entities and States that support this State in the international arena as well.

Based on the analysis of the use of migration crisis by Syria, Turkey (a NATO country), Venezuela and Belarus, putting aside the migration crisis (aggression) deliberately mounted by Morocco on Spain in 2021, the principal stages of this tool for warfare can be identified as following:

- setting up an information campaign in a third country, which advertises new opportunities for migrants through mass media and other information resources;
- facilitating the flow of migrants by accompanying them to the chosen country and facilitating the organizational and operational components for these people, using different tools: mafias and criminal groups, special units etc.
- intensification of the international propaganda, including religious propaganda, on the “humanitarian” problem of migrants;
- creating destabilization and promoting internal division in the country of resettlement.

In general, we can say that an induced migration crisis can cause the following destabilizing factors:

- electoral opposition in the future to the traditional political platforms and parties or even its exploitation by domestic and foreign political forces;
- changes in the demographic structure of the population;
- increasing economic expenditures on educational and labor adaptation of migrants;
- a reduction of the share of population that could ensure the territorial integrity and defense capabilities of the country;
- cultural and even psychological contradictions and long-term problems, given the significant difficulties experienced in various countries for the integration and adaptation (including the lack of will to adapt) of these massive migration flows;
- terrorist threats;
- the threat of epidemics and the spread of disease;
- differences in legal policies between States.⁵⁸

⁵⁸ In particular disparity among the Western Countries. This hybrid warfare tool is very difficult/impossible to be applied easily (without involving a fight or the adoption of very strong security/military measures) for instance in Asia, where borders, nationality and migrant approaches are substantially different from those of the West. This is another good lesson for those who publicly advocate and defend universal approaches -social, political or religious- valid for all in migration matters, overlooking the profound differences that exist between countries, geographical areas and non-Western political cultures, and, in particular, without prioritizing the need for a previous global unification/reconfiguration of political and legal approaches to migration-(a precondition that must be implemented and very difficult indeed!).



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