

## Research Article

# RUSSIA'S INVASION OF UKRAINE AND THE DOCTRINE OF MALIGN LEGAL OPERATIONS

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## ABSTRACT

This article offers a trans-disciplinary legal analysis of the Russian Federation's total invasion of Ukraine from the perspective of *Malign Legal Operations* (MALOPs). Known colloquially as *lawfare*, the notion of MALOPs in this article is defined as 'the exploitation of legal systems by employing disinformation to shape perceptions of legitimacy, justify violations, escape legal obligations, contain adversaries, or to advantageously revise the rule of law'. Unlike the bumper-sticker term *lawfare*, MALOPs offers a theoretical approach to conceptualise,

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identify, and ultimately disrupt the practice of legal exploitation, particularly as it relates to international security. This article asserts that Russian MALOPs provided a near-certain indication of attack in the months leading up to Russia's total invasion of Ukraine. Furthermore, this research suggests that MALOPs are a principal tool for revisionist states like the Russian Federation and the People's Republic of China to pursue legal asymmetries in pursuit of geopolitical objectives. Finally, this research recommends a novel approach for responding to this behaviour in the form of the Counter-MALOPs Toolkit: *Identify; Disrupt; and Defend*.

## 1 INTRODUCTION

In 2019, I co-wrote 'The Minsk Trap: Moscow's Perversion of the Conflict Arbitration Process in Ukraine', which was featured in *The Scientific Journal of the National University of Kyiv – Mohyla Academy: Legal Sciences, volume 4*. The piece characterised the conflict arbitration process in Ukraine from Russia's invasion in 2014 to the re-emergence of the Steinmeier Formula in 2019. At the time, this so-called formula was touted as the solution to the ongoing Russo-Ukrainian war in eastern Ukraine. The article provided a summary of arbitration efforts over the previous five years and introduced my principal contribution to international legal and security studies – the notion of *Malign Legal Operations (MALOPs)*. MALOPs are best characterised as 'the exploitation of legal systems by employing disinformation to shape perceptions of legitimacy, justify violations, escape legal obligations, contain adversaries, or to advantageously revise the rule of law'.<sup>1</sup> I applied the notion of MALOPs to the Russo-Ukrainian international armed conflict to conclude that 'Minsk II is a trap set by Russia to violate Ukrainian sovereignty through the creation of special-status regions in exchange for a reduction in covert aggression'.<sup>2</sup> The article asserted that Minsk was not a binding agreement under the auspices of public international law, namely the Vienna Convention. Furthermore, the principles of Minsk I were adopted into Ukrainian domestic law as the Law of Ukraine No. 1690-VII 'On Special Self-Governance Procedure in Separate Regions of Donetsk and Luhansk Oblasts' (hereafter the law on the special status). However, this law was non-binding due to Russia's refusal to abide by its pre-conditions for full implementation. Russia spent the past eight years employing all available fora of international legal mechanisms and instruments of national power, including soft-power tactics like corruption and coercion, to force Ukraine into capitulation via this *Minsk Trap*. As stated in the 2019 article, this trap allowed Russia to:

- a. Set the terms and conditions for conflict arbitration;
- b. Create strategic predictability and constrain Ukraine;
- c. Placate the international community by offering a seemingly legitimate conflict resolution mechanism without having to offer any concessions, commitments, or cease aggression;
- d. Weaken Ukraine's sovereignty and halt its Euro-NATO ambitions; and
- e. Exercise plausible deniability regarding its direct participation in the so-called internal armed conflict, allowing it to modulate the war using separatists and Russian forces.

1 Brad Fisher, 'The Kremlin's Malign Legal Operations on the Black Sea: Analyzing the Exploitation of Public International Law Against Ukraine' (2019) 5 *Kyiv-Mohyla Law and Politics Journal* 193.

2 Nadia Volkova, 'The Minsk Trap: Moscow's Perversion of the Conflict Arbitration Process in Ukraine' (2019) 131 73.

Ultimately, the article concluded that neither the Minsk I nor II agreements were properly codified under public international law and, as written into Ukrainian law, were unenforceable without concessions untenable to Russia. This meant that Ukraine could technically avoid the trap, unencumber itself of the seemingly insurmountable international pressure to capitulate, and re-engage with the Russian Federation on new terms. These terms needed to re-characterise the conflict, primarily with Russia being acknowledged as an aggressor and participant. This would replace the status quo, which at the time was built upon Russia's terms as a so-called guarantor of regional security in what they claimed was an internal armed conflict (civil war). Unfortunately, this never came to fruition, and Ukraine spent the three years since the original article holding back Russian-led separatists at the contact line and working towards a diplomatic resolution.

On 24 February 2022, the Russian Federation initiated a full-scale and multi-axis invasion of Ukraine that it deceptively labelled a 'Special Operation to Liberate Donetsk and Luhansk' (hereinafter 'Special Operation'). The months leading up to this outright aggression followed the same Russian playbook used in Georgia and Crimea. It also followed the same Soviet playbook used against Finland, Hungary, Afghanistan, and other nations, whereby illegitimate governments were recognised and supported under the guise of the UN Charter and notions of collective self-defence and self-determination.<sup>3</sup> First, the Russian Federation established breakaway governments in the Donetsk and Luhansk Oblasts in 2014. Next, Russia recognised their independence in 2022 after failing to force capitulation from the Ukrainian Government by way of its Minsk Trap. Finally, Russia committed an act of aggression against Ukraine under the guise of assisting these so-called independent republics. In execution, Russia invaded the whole of Ukraine beyond these two oblasts, citing an obligation to address what it characterised as genocide and Nazism in Ukraine without producing evidence or bringing any such claims to international bodies. There is much to be learned by continuing my original article and assessing why the Minsk Trap concluded this way. This article makes three primary assertions:

1. *MALOPs* were employed by the Russian Federation in the months leading up to its recognition of the so-called Donetsk and Luhansk People's Republics as independent republics and, ultimately, *MALOPs* provided the purported legal basis for Russia's aggression and invasion of Ukraine;
2. *MALOPs* are a principal tool of the Russian Federation in pursuit of its geopolitical objectives;
3. Applying a *Counter-MALOPs toolkit* to the Russo-Ukrainian case offers future state victims of *MALOPs* an opportunity to defend against similar strategies.

This article asserts that *MALOPs* are a principal weapon in Russia's information warfare arsenal and are an indispensable part of the Russian grand strategy. Manipulating the *de jure* international order to create a *de facto* reality is precisely Russia's objective so that it can reshape the Rules-Based International Order in its image, or at a minimum to its advantage. Acknowledging this grand strategy, it is possible for other countries to develop a toolkit for countering *MALOPs*. In doing so, future victims can manage and avoid international pressure to capitulate, as Ukraine did for eight years. This behaviour ultimately forces the Rules-Based International Order to exercise itself in defence of its fundamental principles, lest it succumb to revisionist actors in pursuit of a *de facto* international order.

3 Christy Scott Bartman, 'Lawfare and the Definition of Aggression: What the Soviet Union and Russian Federation Can Teach Us' (2010) 43 Case Western Reserve Journal of International Law 423 <<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1163&context=jil>>.

## 2 RUSSIA'S RECOGNITION OF THE SO-CALLED DONETSK AND LUHANSK PEOPLE'S REPUBLICS

Russian President Putin and his government employed a series of justifications for the *de facto* annexations between Transnistria, South Ossetia, Abkhazia, Donbas, and Crimea. Having failed in eastern Ukraine, these same faux legal arguments were employed to justify Russia's now outright aggression against Ukraine. These arguments include claims of humanitarian intervention, historic rights, the protection of Russian citizens, the principle of self-determination, collective self-defence, and the responsibility to protect. Practitioners of MALOPs abuse or attempt to revise the law to achieve political objectives in a Machiavellian fashion, whether on the battlefield, at the UN, diplomatically, or otherwise. They actively seek, create, and employ legal asymmetries to affect strategic outcomes. In some cases, the law is the instrument of manipulation, and in other cases it is the target of the manipulation. More often than not, however, both are true. This behaviour typically takes the form of faux legal arguments, perverted interpretations of the law, legal asymmetries, and minimum viable arguments that present sufficient uncertainty to maintain a destabilising fog of war. The list goes on, but one of the most common attributes of those who practice MALOPs is a duplicitous approach to legal domains whereby the law is overtly praised as universal while covertly abusing it to achieve objectives and undermine legal systems altogether.<sup>4</sup> As with any fraudulent activity, it benefits the MALOPs practitioner to ensure a wide subscribership to maintain an expansive locus of control.

While loosely based on legal precedent and adorned with the language of international law, these faux legal explanations fail to achieve consensus amongst the international community. However, the issue for Russia is not whether the world agrees – it is whether the Russian people agree. As the leader of the world's largest nuclear nation, Putin does not feel beholden to international condemnation but does view negative domestic opinion as an existential threat to political power. Therefore, the primary target of Russian MALOPs are the Russian people. This is supported by studies showing that organisations like Russia's 'Internet Research Agency', colloquially known as the 'troll farm', employ more information operations against Russia than any other target.<sup>5</sup> If sufficient justification can be offered to achieve domestic consensus, then power will be secured, and international opinion will become far less important. Furthermore, the aforementioned fog of war can be established by offering legal justifications based upon minimum viable arguments that create just enough confusion to spur international debate. All of this is achieved through the employment of the seven tenants of MALOPs: (I) information operations; (II) containment; (III) legitimacy shaping; (IV) probing legal lacunae; (V) exploiting loopholes; (VI) abdicating obligations; and (VII) malign influence.

### 2.1 Information Operations

There are numerous conflicting terms used to describe the act of manipulating, distorting, or otherwise instrumentalising information or data to achieve asymmetry over an adversary. The United States government recognises terms like *information warfare*, *propaganda*,

4 Vladimir Putin, 'Putin Speech and the Following Discussion at the 2007 Munich Conference on Security Policy' (2007) <<http://russialist.org/transcript-putin-speech-and-the-following-discussion-at-the-munich-conference-on-security-policy/>> accessed 28 November 2018.

5 Philip N Howard, John Kelly, Graphika Camille François, 'The IRA, Social Media and Political Polarization in the United States, 2012-2018' (2019) <<https://int.nyt.com/data/documenthelper/534-oxford-russia-internet-research-agency/c6588b4a7b940c551c38/optimized/full.pdf>> accessed 15 July 2022.

*misinformation, disinformation, information operations*, and others. Two of these terms are used for the purposes of this research. *Disinformation*, as used in the definition of MALOPs, shall be defined as follows: 'the spreading of intentionally false information.'<sup>6</sup> Examples, according to the United States Congressional Research Service's Defense Primer bulletin on the concept of *Information Operations*, include planting false news stories in the media, tampering with communications before public release, spreading deliberately crafted and unfounded conspiracy theories or hoaxes through social media, or deliberately false information masquerading as the state communications or propaganda of an adversary. The next term used in the theory of MALOPs is *information operations*. In the United States' Joint Publication 3-13, *Information Operations*, the Secretary of Defense defines the term as 'the integrated employment, during military operations, of information-related capabilities in concert with other lines of operation to influence, disrupt, corrupt, or usurp the decision making of adversaries and potential adversaries while protecting their own.'<sup>7</sup> A major problem with this widely accepted definition is that the United States unnecessarily restricts the concept by stating that activities only constitute information operations if they occur during military operations. The Russian Federation also utilises the term information operations; however, they do not artificially restrict themselves by stove-piping the term strictly to military operations or otherwise. This is no surprise, as the manipulation of information, the management of perceptions, and the control of public opinion were the bedrock of Soviet policy and continue today with the Russian Federation. Igor Nikolaevich Panarin, a PhD in psychology and member of the Military Academy of Science of the Russian Federation, dedicated his life to the study of interstate conflict in the information domain. He summarised *information warfare* in a more holistic way than Western theorists, stating that the term constitutes:

a type of confrontation between parties, represented by the use of special (political, economic, diplomatic, military and other) methods [based on different] ways and means that influence the informational environment of the opposing party [while] protecting their own [environment], in order to achieve clearly defined goals. [Therefore] The major dimensions for waging informational-psychological confrontations [are] political, diplomatic, financial-economic, [and] military... [it] aims to interrupt the balance of power and achieve superiority in the global information dimensions [by targeting] the decision-making process of the adversary.<sup>8</sup>

This definition is more inclusive than the US notion and provides the theoretical foundation for the information manipulation that is central to the theory of MALOPs, whereby deliberately fake, altered, or faux legal arguments are put forth based upon false narratives of legitimacy. Since validating an act or activity under the law is a principal way to achieve widespread recognition or legitimacy, it behoves a malicious actor to manipulate the understanding of their behaviour such that observers perceive it to be legitimate and therefore legal. This is nothing new but has not been previously recognised as a matter of state doctrine.

In the case of Russia's 2022 invasion of Ukraine, international media was flooded by false narratives claiming Ukrainian genocide in the Donbas region in the months leading up to the invasion on 24 February.<sup>9</sup> One could argue that these claims never ceased following

6 Catherine A Theohary, 'Defense Primer: Information Operations' (*Congressional Research Service*, 15 December 2020) <<https://crsreports.congress.gov/product/pdf/IF/IF10771>> accessed 27 November 2021.

7 Ibid.

8 Ofer Fridman, *Russian 'Hybrid Warfare' Resurgence and Politicisation* (Oxford University Press 2018).

9 Grzegorz Rossoliński-Liebe, Bastiaan Willems, 'Putin's Abuse of History: Ukrainian "Nazis", "Genocide", and a Fake Threat Scenario' [2022] *The Journal of Slavic Military Studies* <<https://www.tandfonline.com/doi/pdf/10.1080/13518046.2022.2058179?needAccess=true>> accessed 15 July 2022.

Russia's initial invasion of Ukraine in 2014, but a trained observer would have noticed a discernible uptick in the use of the language of international law with the goal of shifting public perception in favour of a *legitimate Russia* against an *illegitimate Ukraine* under the auspices of Public International Law.<sup>10</sup> For example, Putin doubled down with German Chancellor Schultz on 15 February 2022, just nine days before the invasion. 'I have to say that Russophobia is a first step toward genocide... We see and know what is happening in the Donbas. It certainly looks like genocide'. As a point of comparison, President Putin claimed in 2014 that '[Ukraine has] demonstrated a large-scale crisis of the international law, basic norms of the universal declaration in human rights and the convention to prevent genocide'. This statement is an excellent example of Russian *legitimacy shaping* against Ukraine, which will be discussed later. From human rights to violations of international law and basic norms or outright genocide, Putin left little to the imagination. Despite being completely lacking in evidence, these accusations were damaging enough to whip up domestic support for Putin and were used to support Russia's continued intervention in Ukraine. As Professor Michael Newton opined, there exists a 'very real danger that the media can be manipulated and used to mask genuine violations of the law with spurious allegations and misrepresentations of the actual state of the law'.<sup>11</sup>

Another example is from then-Russian President Medvedev in 2008 when he justified the Russian interventions in South Ossetia and Abkhazia.

[T]he aggression and genocide unleashed by the Saakashvili [Georgian President] regime have changed the situation... We therefore had no choice but to take the decision to recognize these two subjects of international law as independent states [South Ossetia and Abkhazia] ... in order to prevent the killing of people and a humanitarian catastrophe, in order for justice to triumph and for these peoples to realize their right to self-determination, we have recognized their independence. No two cases are alike in international law.<sup>12</sup>

It is at the point where the language of international law, or legal vernacular, is used in a particular information operations campaign that the activity crosses into the realm of MALOPs. These activities are immensely powerful, and in cases where the objective is an act of aggression, these MALOPs are often reserved for the final months leading up to the aggressive act. Ultimately, terms like 'denazification' became synonymous with Russia's invasion of Ukraine and leveraged demagoguing rhetoric and historicity to shape perceptions while eliciting imagery of the Nuremberg Trials and a so-called global Ukrainian menace.

## 2.2 Legal Containment

Perhaps one of the most common forms of MALOPs is the manipulation of legal domains to achieve containment or predictability. The very nature of the law is to create standards for individuals within a society or within groups of societies to exist within an established and accepted status quo. If one wished to operate outside of that status quo, then it would be imperative to maintain a high subscribership to that system to maximise their ability to operate at the fringes. The most stunning example of this is Russia and China's common

10 The United States Department of State, 'Fact vs. Fiction: Russian Disinformation on Ukraine' (2022) <<https://www.state.gov/fact-vs-fiction-russian-disinformation-on-ukraine/>> accessed 15 July 2022.

11 Michael A Newton, 'Illustrating Illegitimate Lawfare' (2010) 43 Case Western Reserve Journal of International Law <<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1155&context=jil>> accessed 21 December 2020.

12 BBC News, 'Interview with BBC Television - President of Russia' (*The Kremlin Website*, 2008) <<http://en.kremlin.ru/events/president/transcripts/1228>> accessed 25 May 2020.

rhetoric in support of the universality of international law. It is a common talking point for Putin. 'It is necessary to make sure that international law has a universal character both in the conception and application of its norms'.<sup>13</sup> At the same time, however, the law is used as a weapon to control states that participate in this so-called universal system. Zong Wenshen noted this in his 2004 book about the Chinese Communist Party's doctrine of legal manipulation titled *Legal Warfare: Discussion of 100 Examples and Solutions*. He asserted that Legal Warfare is 'controlling the enemy through the law, or using the law to constrain the enemy'.<sup>14</sup> Another example comes from the notion of *Unrestricted Warfare*. The term was first coined in a 1999 book by the same name and written by two Chinese Colonels in the People's Liberation Army (PLA), Liang and Xiangsui. They argued that, in modern conflict, a state must do whatever is necessary to achieve its political objectives and that every adversary has weaknesses to be exploited, regardless of its military strength. To exploit these weaknesses, they argued, one must seize every opportunity to contain. 'The best way to achieve victory is to control, not to kill'<sup>15</sup> and to be the first to establish legal regulations to guarantee control as a sponsor rather than as a beneficiary.

Grigorii Ivanovich Tunkin was a principal Soviet international legal scholar whose contributions made up much of the Soviet Union's approach to international law. His comments about predictability, or containment, are particularly important to this discussion. 'The creation of norms of international law is the process of bringing the wills of States into concordance ... [a] normative system making it possible to **foresee the reaction of other actors** in the inter-States system to particular actions of a State'.<sup>16</sup> Lauri Mälksoo, who published *Russian Perceptions of International Law* in 2015, highlighted Western naivety towards the willingness of Russia to take a duplicitous approach towards international agreements in order to achieve asymmetric advantages. 'Western scholarship on Soviet approaches to international law has to some extent failed because it has taken Soviet declarations about international law too easily at their face value. The official rhetoric about international law can also have deceptive qualities when the purpose may be to mislead the other or to trump him with his own weapon'.<sup>17</sup> This approach is a key trait inherited by the Russian Federation from the Soviets. Orde Kittrie, who published the book *Lawfare* in 2016, conveyed this concept through a discussion of what he called *compliance-leverage disparity lawfare*.<sup>18</sup> Re-stated more simply, there is a form of leverage to be gained over an adversary through a manufactured disparity between compliance and feigned compliance. With MALOPs, the objective is to create this disparity without an adversary's awareness, which is a form of legal asymmetry.

Concerning the war in Ukraine, Putin attempted to achieve legal containment over Ukraine in textbook fashion through the Minsk Agreements. The Kremlin was able to establish an

13 Putin (n 4).

14 Zong Wenshen, *Legal Warfare: Discussion of 100 Examples and Solutions* (PRC: PLA Publishing House 2004).

15 Qiao Liang, Wang Xiangsui, *Unrestricted Warfare* (Echo Point Books & Media 1999) <https://doi.org/10.33327/AJEE-18-5-4-a000456>

16 Christi Scott Bartman, *Lawfare: Use of the Definition of Aggressive War by the Soviet and Russian Federation Governments* (Cambridge Scholars Publishing 2010).

17 Lauri Mälksoo, *Russian Approaches to International Law* (OUP Oxford 2015), ISBN: "9780191789625", "abstract": "This paper points to the intimate relationship between international legal writing and history. It typifies modes of engagement with history in international law in order to contrast, rather impressionistically, a traditional approach with a set of present-day critiques. It proposes that the distinction between professional historiography and legal work proper is in some way misleading: while there are significant differences in terms of their respective objectives and styles, legal work inevitably requires a positioned engagement with the past, thus producing (or contributing to) the production of

18 There is no consensus amongst practitioners or the academy as to what normative definition, if any, can be applied to the term lawfare. It has grown to mean everything and, as a result, is diluted to the point of meaning nothing at all.

internationally recognised framework for conflict resolution and mediation framed as an internal armed conflict between the Ukrainian government and its citizens rather than as an international armed conflict with Russia as a clear aggressor against Ukraine. Furthermore, Putin achieved legal containment over the West through the Normandy Format. The leaders of France, Germany, Ukraine, and Russia met on 6 June 2014 during a ceremony honouring the 70th anniversary of the Allied invasion of German-occupied France to discuss the conflict in Ukraine. This Normandy Format established the Trilateral Contact Group to facilitate arbitration and conflict resolution between Ukraine, the separatists, and Russia, with the OSCE providing mediation. The Russian Federation refused to acknowledge its role as the aggressor and instead insisted that it was simply a 'guarantor' of regional stability rather than an antagonist.<sup>19</sup> As a result, Russia was able to apply significant pressure on Ukraine to capitulate. The pressure eventually came also from the international community, which knew that some agreement must be made within the Trilateral Contact Group for relations between Russia and the international community to normalise following the principled stance taken by the West via sanctions in 2014. Having full control over the separatists in the so-called breakaway republics, Russia was able to modulate tensions like a rheostat by controlling the Minsk process, an international legal instrument, to bend the geopolitical status quo for its benefit. Once established, the Kremlin made sure that no other internationally recognised conflict arbitration process could replace the Minsk process, thereby solidifying containment and control over the conflict.

President Putin originally had high hopes for President Zelenskyy in terms of his pliability and willingness to cede eastern Ukraine. He believed that the more progressive new Ukrainian leadership would usher in new progress towards capitulation via full Minsk implementation. Dmitry Peskov, the Kremlin's Press Secretary, noted after Zelenskyy's inauguration that the 'conflict in Eastern Ukraine' is a 'domestic [policy] issue of Ukraine which can and must be solved by the President on the basis of... [the] Minsk agreements'.<sup>20</sup> After several initial engagements between the Zelenskyy administration and the Trilateral Contact Group, Zelenskyy saw the Minsk Trap for what it was and refused to implement a one-sided agreement. Tensions flared over the preceding years, and Russia ultimately abandoned its Minsk Trap in favour of a more cumbersome and resource-intensive approach to recognise and absorb, much like it used in the weeks following the seizure of South Ossetia, Abkhazia, and Crimea. The important lesson here is that Ukraine could have reasonably predicted a full invasion, at least of the entire Donbas region, following its refusal to acknowledge and acquiesce to Putin's Minsk Trap. Putin saw this as his only option for dealing with his failure in Ukraine.

### 2.3 Shape Legitimacy

*Legitimacy shaping operations* are the manipulation of perceptions concerning a given act or fact, specifically through the lens of domestic or international law, in the eyes of the public or other targeted audiences. Information operations, as the foundation of MALOPs, are the most critical aspect of legitimacy shaping and utilise traditional media, modern information technology, and social media. The primary aspects of legitimacy shaping operations are to: manufacture uncertainty around a target's legitimate legal claim or position; wrongly claim,

19 'Russia Guarantor of Ukraine Settlement, Not Party Fulfilling Deal - Kremlin' (*Sputnik News*, 2015) <<https://sputniknews.com/politics/201502131018209668/>> accessed 16 July 2022.

20 'Putin Will Laud Zelenskyy If He Ends War & Mends Ties with Russia - Kremlin — RT World News', (*Russia Today*, 20 May 2019) <<https://www.rt.com/news/459838-putin-Zelenskyy-donbass-peace/>> accessed 16 July 2022.



deny, or accuse a target of legal violation or manipulation; prop up one's own duplicitous approach to legal domains; portray oneself favourably or as adherent to legal principles despite engaging in MALOPs; or characterise one's own malign behaviour as justified or innocent. In 2015, Aurel Sari, Associate Professor of Public International Law at the University of Exeter, asserted that 'law has become a vernacular for debating the legitimacy of war. Not only has the density of legal regulation increased, but legal processes now play a far more prominent role in warfare than they ever did before.'<sup>21</sup>

To understand the power of legitimacy shaping, one must recognise just how damaging a simple allegation, regardless of legitimacy, can be. These activities can cause enormous and even irreversible harm to an organisation, individual, or to the national security of a State. Commander Robert De Tolve described this in a 2012 article titled 'At What Cost? America's UNCLOS Allergy In The Time of Lawfare'.

While it is self-evident that the legitimacy of legal claims labeled "lawfare" must be determined on a case-by-case basis, it is likewise clear that the "sting" of an allegation of illegality can immediately and often irreparably diminish the perceived legitimacy of national security related actions in the eyes of governmental officials as well as their constituents. Therefore, regardless of their ultimate resolution, the underlying claims can instantaneously result in varying degrees of national security "cost" to the extent that they succeed in increasing skepticism of or opposition to the national security interests...<sup>22</sup>

In the case of Russia's 2022 invasion of Ukraine, legitimacy-shaping operations were a principal tactic in developing a plausible *casus belli* for invasion, especially for consumption by the Russian public. On 19 January 2022, eleven members<sup>23</sup> of Russia's communist party submitted a proposal to the Duma calling for the government to vote on sending it forward to President Putin for consideration. This proposal was titled 'To the President of the Russian Federation V.V. Putin on the need to recognize the Donetsk Republic and the Luhansk People's Republic'.<sup>24</sup> The proposal cited humanitarian purposes, the population's desire to speak and write in the Russian language, freedom of religion, and the Ukrainian government's so-called violation of their rights and freedoms. It accused the new (post-2014 revolution) authorities of Ukraine of glorifying Nazi ideologies and being intolerant of established historical norms, daily life, and the will of the people. On the one hand, the proposal cited the Russian-manufactured referendums in May 2014 titled the *Act on self-determination of the Donetsk People's Republic* and the *Act on self-determination of the Luhansk People's Republic* as reasons to recognise the so-called republics. The proposal claimed that these referendums received a majority of 89% and 96% votes, respectively. On the other hand, the proposal claimed that recognition should be approved because the Ukrainian government refused to pay pensions and provide basic government services to these people. The first argument created the conditions for the second, yet the Russian communists cited them both.

Additionally, the proposal cited that the Minsk agreements, which it claimed 'laid the main vector for the protection of rights and freedoms and the restoration of peaceful life citizens, infrastructure and economies of the Donetsk People's Republic and of the Luhansk People's

21 Aurel Sari, 'Legal Aspects of Hybrid Warfare' (*Lawfare: Hard National Security Choices Blog*, 2015) <<https://www.lawfareblog.com/legal-aspects-hybrid-warfare>> accessed 16 July 2022.

22 Robert De Tolve, 'At What Cost? America's UNCLOS Allergy In The Time of "Lawfare"' (2012) 61 *Naval Law Review* <<http://www.jag.navy.mil/documents/navylawreview/NLRVolume61.pdf>> accessed 16 July 2022.

23 GA Zyuganov, II Melnikov, VI Kashin, YuV Afonin, NV Kolomeitsev, DG Novikov, LI Kalashnikov, KK Taysaev, NI Osadchik, VI Bessonov, and AV Kurin.

24 GA Zyuganov and others, Draft Resolution No 58243-8, To the President of the Russian Federation VV Putin on the need to recognize the Donetsk Republic and the Luhansk People's Republic 2022.

Republics, were unfulfilled by Ukraine with none of the relevant clauses of the agreements implemented. The proposal accused Ukraine of 'simulating compliance' to work towards a truce and the implementation of Minsk II while consistently violating the cease-fire across the entire line of contact and destroying civilian homes, schools, and other infrastructure. Ultimately, the proposal repeated the false narrative that Ukraine was committing a 'genocide of their own people'. For Russia's part, the proposal claimed that 'democratic bodies have been built with all the attributes of legitimate power' and that Russia regularly sends 'humanitarian convoys... with food, construction materials, medicines and gifts for children.'<sup>25</sup>

The proposal concludes with the unmistakable faux legal claims adorned with the language of international law meant to legitimise Russia's illegal claims. These last two sentences include what a trained observer will immediately recognise as a thinly veiled declaration of war.

Recognition will create grounds for providing security guarantees and protection of their peoples from external threats and the implementation of policies of genocide against the inhabitants of the republics, as well as to strengthen international peace and regional stability in line with the goals and the principles of the Charter of the United Nations and process of international recognition of both states.

The proposal ended with the assertion that Russia and the newly recognised so-called republics will negotiate 'a legal basis for interstate relations, providing regulation of all aspects of cooperation and mutual assistance, including security issues.'<sup>26</sup>

Ultimately, on 21 February, President Putin approved the recognition of both so-called republics as 'sovereign and independent' states due to 'Ukraine's refusal to peacefully resolve the conflict in accordance with the Minsk agreements'. The declaration approved the drafting of a 'treaty on friendship, cooperation and mutual assistance'<sup>27</sup> for each so-called state and also approved the introduction of Russian peacekeeping forces on the territories of these so-called states. This declaration amounted to another clever step in Putin's shaping of the legitimacy of his imminent invasion. For those paying close attention, it was a pre-meditated and carefully choreographed plan. In November 2019, the separatist's so-called parliament passed a law on the state border, whereby they theoretically laid claim to the entire Donetsk Oblast rather than only the occupied portions. They stipulated that the self-proclaimed polity's border would only temporarily run along the line of engagement 'pending conflict resolution'.<sup>28</sup> Later, on 4 February 2022, former security minister and Russian-planted separatist leader in the self-proclaimed Donetsk People's Republic Alexander Khodakovsky requested in an interview with Reuters that Russia send 30,000 soldiers.<sup>29</sup> Unbeknownst to the international community, when Putin signed the decree of recognition on 21 February 2022, Russia's acknowledgement of these so-called states was a recognition of their entire territorial claims and not simply of the borders associated with the line-of-contact in the stalemate in eastern Ukraine. Therefore, according to Russia's justification and formal requests from the so-called republics, Ukraine immediately became an occupying force the moment Russia recognised the independence of these regions. With the intent to send

25 Ibid.

26 Ibid.

27 'Putin Signs Decrees on Recognizing Donetsk and Lugansk Republics' (*TASS*, 21 February 2022) <<https://tass.com/politics/1407731>> accessed 15 July 2022.

28 'The DPR Recognizes as Its National Border the Boundaries of the Donetsk Region - Donbass Insider' (*Donbas Insider*, 1 December 2019) <<https://www.donbass-insider.com/2019/12/01/the-dpr-recognizes-as-its-national-border-the-boundaries-of-the-donetsk-region/>> accessed 15 July 2022.

29 Anton Zverev, 'Exclusive: Senior Separatist Urges Russia to Send 30,000 Troops to East Ukraine' (*Reuters*, 7 February 2022) <<https://www.reuters.com/world/europe/exclusive-senior-separatist-urges-russia-send-30000-troops-east-ukraine-2022-02-07/>> accessed 15 July 2022.

peacekeepers, an international armed conflict was seemingly inevitable but was actually the result of a well-choreographed MALOPs campaign designed to contain Ukraine, shape its government as illegitimate and as violators of human rights and international law, and present a faux justification for invasion under the guise of historic right, responsibility to protect, collective self-defence, and the right to self-determination.

Perhaps Carl Hvenmark Nilsson of the Center for Strategic and International Studies best captured Russia's claims that Ukraine refused to peacefully settle the so-called internal armed conflict.

A strategic pattern has emerged whereby Russia, as a perpetrator of and party to a conflict, dictates the conditions of the cease-fire, and then actively pursues the violation of the same agreement for its own political, military, and territorial gain. This serves a dual function: it undermines the international legal norm of cease-fires and provides a diplomatic "process" whereby eventually the international community loses interest and focus in resolving the conflict, allowing the freeze to be controlled by the Kremlin.<sup>30</sup>

## 2.4 Probe Legal Lacunae

Gaps in legal theory or understanding are often the raw materials for Malign Legal Operators to achieve their objectives. They manipulate these gaps because it is far easier to exploit unexplored spaces than it is to manipulate the law itself. As prescribed in Unrestricted Warfare, the objective is to be the first to set up regulations and precedents. The Council of Europe described this best in 2018 with their draft resolution on the problem of so-called *hybrid warfare*.

[T]here is no universally agreed definition of hybrid war and there is no law of hybrid war. However, it is commonly agreed that the main feature of this phenomenon is legal asymmetry, as hybrid adversaries, as a rule, deny their responsibility for hybrid operations and try to escape the legal consequences of their actions. They exploit lacunas in the law and legal complexity, operate across legal boundaries and in under-regulated spaces, exploit legal thresholds, are prepared to commit substantial violations of the law and generate confusion and ambiguity to mask their actions.<sup>31</sup>

Russia's weaponisation of referendums is a prime example of this behaviour. It was used in Crimea, Donetsk, Luhansk, South Ossetia, Abkhazia, and Chechnya. Since the 2022 invasion, referendums have been executed in occupied Kherson, Zaporizhzhia, Donetsk, and Luhansk. Russia purports that over 90% of voters decided to join Russia, which now claims ownership of over 18% or 90,000 square kilometres of Ukrainian territory. Furthermore, Russia is issuing Russian passports and fast-tracking the application process for Ukrainian citizens in occupied territories via an executive decision from Putin in May.<sup>32</sup> They are also forcefully deporting Ukrainian citizens to re-education camps inside Russia, changing area codes and cellular service in occupied territories, and re-settling Russian citizens into these

30 Carl Hvenmark Nilsson, 'Revisiting the Minsk II Agreement' (2016) <[www.csis.org](http://www.csis.org)> accessed 23 September 2019.

31 COE Draft Resolution 14523, 2018.

32 '№ 183 Об Определении в Гуманитарных Целях Категорий Лиц, Имеющих Право Обратиться с Заявлениями о приеме в Гражданство Российской Федерации в Упрощенном Порядке' (Указ Президента Российской Федерации, 25 May 2022) <<http://publication.pravo.gov.ru/Document/View/0001202205250004#print>> accessed 16 July 2022.

areas to ensure a positive vote once the referendum occurs. In fact, US Secretary of State Antony Blinken confirmed on 22 September that Russian citizens were temporarily bussed into these regions for the sole purpose of ensuring a positive vote. In May, the United Russia party's secretary general visited Kherson and announced 'Russia is here forever',<sup>33</sup> while Peskov said on 19 May that 'nothing should be done with Ukraine's occupied territories without the will of the people of those territories' and that Kherson should be absorbed into Russia 'as legitimately as Crimea'. He reiterated that

the inhabitants of Kherson Region should decide after all – this is the primary thing. And the inhabitants of Kherson region should also determine their fate. Of course, this issue should be clearly and carefully verified and assessed by lawyers and legal specialists, because, of course, such fateful decisions should have an absolutely clear legal background, legal justification, and be absolutely legitimate, as was the case with Crimea.<sup>34</sup>

The chair of the Federation Council Committee on Constitutional Legislation, Andrey Klishas, also stated that citizens of all Ukrainian territories occupied by the Russian Federation, not just those living in Donbas, have the right to decide if they would like to become part of Russia.

It's not just citizens of the Donetsk People's Republic and the Luhansk People's Republic who have the right to decide whether to continue to stay with Russia. So do residents of the Kherson region, Zaporizhzhia, all of the territories where denazification has taken place and people have gained the right to determine their future.<sup>35</sup>

These are all methods of shaping the legitimacy of illegal aggression and occupation. They fall perfectly within the definition of MALOPs. Whenever confronted over this abuse, Russia cites the *Kosovo Precedent* and the principle of self-determination.<sup>36</sup> However, Russia distorts these principles by manufacturing referendums, coercing civilian populations, or manipulating the results in its favour. The referendum itself is of little consequence to MALOPs practitioners and only serves as a tool to legitimise its behaviour to naïve observers, those looking for plausible deniability, or for political expediency.

## 2.5 Exploit Loopholes

Unambiguous language is often impossible when crafting international treaties because small details cannot be agreed upon in full. To preserve the interests of all parties, the language of the agreement is deliberately left vague or is simply not comprehensive. As a consequence, unclear or incomplete language can be used by MALOPs practitioners to manipulate agreements in ways other than intended. Sari highlighted that these so-called *legal vulnerabilities* are often created for the sake of political pragmatism.

33 Roman Petrenko, 'Путінський Сенатор Приїхав у Херсон і Заявив, Що "Росія Тут Назавжди" | Українська Правда' (*Ukrainska Pravda*, 6 May 2022) <<https://www.pravda.com.ua/news/2022/05/6/7344470/>> accessed 16 July 2022.

34 Roman Petrenko, 'Putin Official Says Kherson Region Should Enter Russian Federation "as Legitimately as Crimea" | Ukrayinska Pravda' (*Ukrainska Pravda*, 11 May 2022) <<https://www.pravda.com.ua/eng/news/2022/05/11/7345495/>> accessed 16 July 2022.

35 Olha Hlushchenko, 'Russian Media: Russian Passports to Be Issued in Kherson and Zaporizhzhia Oblasts', (*Ukrainska Pravda*, 27 May 2022,) <<https://news.yahoo.com>> accessed 16 July 2022.

36 Dean B Pineles, 'How the "Kosovo Precedent" Shaped Putin's Plan to Invade Ukraine | Balkan Insight' (*Balkan Transitional Justice*, 9 March 2022) <<https://balkaninsight.com/2022/03/09/how-the-kosovo-precedent-shaped-putins-plan-to-invade-ukraine/>> accessed 16 July 2022.

[T]hresholds and lines exist not because they are the result of legislative oversight or incompetence, but because they reflect underlying political choices and stalemates. There are gray areas in the law because States do not want, or could not agree, that all of it is black and white. Consequently, combating legal uncertainty at best offers only a partial solution. Developing sound policy and doctrine would seem to be a more realistic way of maintaining unity of effort.<sup>37</sup>

An example is Russia's abuse of the Organization for Security and Cooperation in Europe's (OSCE) 2011 Vienna Document. It requires states to provide public declarations at least 42 days in advance of military exercises. According to Art. 41, 'Notifiable military activities carried out without advance notice to the troops involved are exceptions to the requirement for prior notification to be made 42 days in advance'. Furthermore, Art. 47 states that notifications are only required if over 13,000 troops are involved. Finally, Art. 58 waives these declarations when they pertain to no-notice drills of less than 72 hours in duration. Russia exploits these articles as legal loopholes by declaring snap exercises and deploying troops to coerce others, support ongoing military operations, or intimidate neighbouring states. Between 2014 and 2022, Russia conducted numerous snap exercises in Belarus and along Ukraine's border. In 2021, Russia amassed troops along the Belarusian and Russian borders with Ukraine in almost the same way as it did prior to the invasion in 2022. These activities not only prepared Russian forces for the invasion but had a coercive effect on Ukraine and the West. Finally, it desensitised the international community. In the months leading up to February of 2022, the snap drills in 2021 were cited constantly by those claiming that no invasion would occur or that it was just another intimidating tactic.

Some of the most common legal loopholes exploited by Russia concern the law of the sea and other treaties delimiting the world's oceans. For example, NordBalt was a €550 million, 450-kilometre underwater cable project from Sweden to Lithuania that would fulfil over half of Lithuania's energy needs at a time when it was dependent upon Russia for 35.5% of its energy. The Russian Navy repeatedly executed snap drills within Lithuania's Exclusive Economic Zone to close portions of the Baltic Sea under the guise of military exercise zones with the sole objective of imposing cost and risk on the project. Another example concerns the Black Sea. The Montreux Convention of 1936 establishes the acceptable use of the Bosphorus and Dardanelles straits (hereinafter the Turkish Straits) and restricts the passage of ships to and from the Black Sea. It was intended to maintain Turkish control over the straits, to restrict the navies of Black Sea nations from utilising the sea as a base of operations for expeditionary activities, and to satisfy the West by containing the Soviet Union to the Black Sea. The Convention specifies when submarines belonging to Black Sea nations may transit the straits:

Black Sea Powers shall have the right to send through the Straits, for the purpose of rejoining their base, submarines constructed or purchased outside the Black Sea, provided that adequate notice of the laying down or purchase of such submarines shall have been given to Turkey. Submarines belonging to the said Powers shall also be entitled to pass through the Straits to be repaired in dockyards outside the Black Sea...<sup>38</sup>

Turkey is not a signatory member of UNCLOS, therefore the Montreux Convention is the only international governance structure for the use of the straits. In the years leading up to Russia's full-scale invasion, it frequently manipulated the convention by sending its diesel-electric submarines south through the straits for critical repairs, only to take part in combat

37 Sari (n 21).

38 League of Nations, '1936 Montreux Convention' (1936) <[http://sam.baskent.edu.tr/belge/Montreux\\_ENG.pdf](http://sam.baskent.edu.tr/belge/Montreux_ENG.pdf)> accessed 21 May 2019.

operations against anti-government forces in Syria for years before slowly steaming for St Petersburg while touting its expeditionary naval power.

Russia's weaponisation of *Status of Forces Agreements* (SOFA) is another loophole. For example, the Russian Federation signed a SOFA with the Syrian government on 26 August 2015 titled the 'Agreement between the Russian Federation and the Syrian Arab Republic on the deployment of an aviation group of the Russian Armed Forces on the territory of the Syrian Arab Republic'. It served as Russia's legal justification for direct military action in Syria. This document achieved, *inter alia*, the following Russian objectives: control of an air base at no charge; the right to move personnel, weapons, equipment, and ammunition freely to Syria and at no charge; and diplomatic immunity for personnel and property to include no taxes or legal vulnerability for any actions taken by Russian forces while in Syria. In comparison, US SOFAs with other nations are long and extremely detailed, while the aforementioned SOFA was only seven pages in length. US SOFAs do not offer blanket indemnification in the way that Russia's do. In essence, the Russia-Syria SOFA provides free reign to Russian Forces in Syria. Politically, Russia shaped its pro-Syrian government intervention in much the same way it did with interventions in its near-abroad under the guise of so-called humanitarian peace-making efforts. However, in this instance, the underlying narrative was not built on the so-called responsibility to protect Russian speakers or the Russian world abroad but a more general claim ostensibly under the guise of the UN Charter's Art. 51 right to collective self-defence. This more generalised justification is what makes Russia's intervention in Syria particularly concerning because it laid the groundwork for MALOPs outside of the former Soviet sphere.

## 2.6 Abdicate Obligations

The previously discussed tenants of MALOPs often constitute the *legal and informational preparation* of the battlefield. When a MALOPs practitioner is successful in shaping the legitimacy of a conflict or situation and achieves sufficient legal containment over an adversary, they can begin to abdicate legal obligations to justify follow-on actions. This includes a military intervention or illegal incursion. For example, Russia used numerous faux legal arguments to justify its violation of Ukraine's sovereignty from 2014-2022. This includes Agreements between the Russian Federation and Ukraine on Friendship, Cooperation, and Partnership in 1997, on the Black Sea Fleet in 1999, on the Azov Sea and Kerch Strait in 2003, on the state border in 2003, and the foundational principles of the UN Charter. Of importance to this discussion is that blatant violations of the law do not constitute MALOPs. It is the perversion of legal mechanisms to justify violations that qualifies a particular act as MALOPs. Putin illustrated the abdication of legal obligations perfectly in 2014 following his invasion of eastern Ukraine and the illegal occupation of Crimea.

[I]f it's a revolution, what does that mean? It is difficult for me then to disagree with some of our experts who believe that there is a new state in this territory. Just as it was after the collapse of the Russian Empire, after the Revolution of 1917, a new state emerges. And with this state and in relation to this state, we did not sign any binding documents.<sup>39</sup>

This same technique was used leading up to Russia's 2022 invasion through the recognition

39 Vladimir Putin, 'Vladimir Putin Answered Questions from Journalists about the Situation in Ukraine' (*The Kremlin*, 2014) <<http://www.kremlin.ru/events/president/news/20366>> accessed 5 January 2019.

of the so-called Donetsk and Luhansk republics.<sup>40</sup> In doing so, Russia was able to cite the so-called legitimate invitation of a newly-recognised nation as justification to introduce forces on sovereign Ukrainian territory. This was not a coincidence but rather the result of years of careful planning. In fact, one can now see that more time was spent on the legal and informational preparation of the battlefield than on actually preparing for battle. Ukrainian forces left Russia's self-proclaimed world-class military bloodied following strategic defeat within 48 hours of the invasion. Even months into the invasion, Russia continues to employ information operations adorned with the language of international law to justify its blatant violation of the UN charter, the definition of aggression, and the principles of international law to continue its aggression.

## 2.7 Malign Influence

The final tenant of MALOPs is malign influence or *corruption*. Anton Shekhovtsov, a member of the Free Russia Foundation, established malign influence as 'soft coercion, sharp power, mimetic power and dark power with the intent to mislead and confuse democratic nations and their leadership, hence the influence emanating from these approaches is inevitably negative in the normative sense and is termed here as malicious.'<sup>41</sup> As it pertains to the law and Public International Law, malign influence within legal domains was previously defined by this author as 'a dual or mimetic application; the first is a seemingly genuine effort to uphold and support the international norms and institutions that comprise international order. The second to be observed is a simultaneous and malign effort to subvert and exploit these same norms and institutions for geopolitical gain.'<sup>42</sup> For example, Russia vetoed the UNSC resolution to nullify the illegal referendum in Crimea in 2014 in what French diplomat Gérard Araud claimed amounted to a veto of the UN Charter itself. This occurred again in 2022 following the invasion. Even in the months leading up to Russia's invasion, a carefully choreographed show played out in Russia as the world watched in confusion. From Putin selecting the communist party to put forth the proposal for the recognition of the so-called republics to the Duma considering competing proposals to maintain a destabilising legal fog of war to keep the world from responding in advance of the recognition, the entire process was an elaborate farce built upon malign influence and corruption.<sup>43</sup> The primary talking point from Russian state media and propaganda outlets was that the proposal could not be taken seriously precisely because it came from the communist party. This elaborate deception worked because these same talking points were echoed by pundits throughout the international community, including within western media. Even US officials largely dismissed the proposal and ultimate recognition, claiming that Russian 'peacekeepers' in Donbas represented no significant departure from the norm.<sup>44</sup> However, a trained MALOPs

40 'State Duma Ratifies Treaties on Friendship, Cooperation, Mutual Assistance with DPR, LPR - Russian Politics & Diplomacy - TASS' (TASS, 22 February 2022) <<https://tass.com/politics/1408337>> accessed 16 July 2022.

41 Anton Shekhovtsov, 'Conceptualizing Malign Influence of Putin's Russia in Europe' (2020) <[https://www.4freerussia.org/wp-content/uploads/sites/3/2020/04/Maligh-Influence\\_web\\_eng-5.pdf](https://www.4freerussia.org/wp-content/uploads/sites/3/2020/04/Maligh-Influence_web_eng-5.pdf)> accessed 7 May 2020.

42 Brad Fisher, 'Ideological Aggression and International Law: Soviet and Russian Malign Influence Withing Legal Domains (MILDs)' (2020) 5 Наукові записки НАУКМА. Юридичні науки <<http://nrplaw.ukma.edu.ua/article/view/208086>> accessed 16 July 2022.

43 'State Duma to Consider Two Competing Appeals to President on Donbass — Speaker - World - TASS' (TASS, 14 February 2022) <<https://tass.com/world/1403111>> accessed 16 July 2022.

44 Jeff Mason and Idrees Ali, 'Russian Troops in Ukraine's Donbas Won't Trigger Broader Sanctions - U.S. Official' (Reuters, 21 February 2022) <<https://www.reuters.com/world/us-casts-doubt-biden-summit-with-putin-eyes-new-sanctions-tuesday-official-2022-02-21/>> accessed 16 July 2022.

defender would have seen the initial reporting and immediately understood that Russia not only intended to invade Ukraine but that they planned to do so by recognising the whole of the Donetsk and Luhansk oblasts as independent republics and then offering security assistance to expel the so-called Ukrainian invader. Further malign influence comes in the form of a coalition built by the Russian Federation to normalise the recognition as a matter of custom. So far, eight countries and five *de facto* states have publicly supported either the recognition or the decision to recognise the so-called republics.<sup>45</sup>

Another example of malign influence within legal domains comes from the International Tribunal for the Law of the Sea. It rules 19-1 that Russia was in violation of UNCLOS and must return the three Ukrainian naval vessels and 24 sailors seized during the 2018 Kerch Strait incident. The single dissenting vote was a Russian judge that argued in favour of UNCLOS Art. 298 para. 1(b), which excluded military activities and therefore meant that ITLOS had no jurisdiction over the Kerch incident. Russia claimed that the sailors were seized in a law enforcement operation, would not treat them as prisoners of war, and charged them as criminals under domestic Russian law. Simultaneously, Russia argued before the tribunal that their activities included a mix of law enforcement and military vessels, meaning that their military activities did not fall under the purview of ITLOS. This lone dissenting Russian judge may have been inconsequential to the overall ruling; however, his position was broadcast over Russian media, social media, blogs, and periodicals. His talking points were all the Kremlin needed to shape the legitimacy of the case, at least domestically, and to ignore the ruling altogether. In a win for Putin, the case was ultimately settled extrajudicially when the newly elected President Zelenskyy executed a prisoner swap for the sailors. Zelenskyy's motivation for doing this was entirely pragmatic, and rightfully so, to save his sailors, but it also legitimised Russia's faux legal objection because the prisoner swap was used within Russian media to justify the no-jurisdiction claims.

### 3 DEVELOPING A MALIGN LEGAL OPERATIONS DEFENCE

The aforementioned tenants of MALOPs are intangible and often extremely difficult to discern from the regular and, at times, messy course of public international law. It can be challenging to determine what is malign and what is a good-faith legal position or justification. This fact creates a scenario wherein a practitioner of MALOPs can accuse or counter-accuse a good-faith actor of MALOPs in order to further confuse the facts and deepen the destabilising fog of war surrounding a particular situation or case. There are many reasons that this author coined the term MALOPs rather than the colloquially accepted term, *lawfare*. Specifically, the term is obsolete, doctrinally inappropriate, and incomprehensive in describing or accounting for the modern realities associated with the manipulation of legal domains. Additionally, the term *lawfare*, as commonly accepted and as defined by Maj Gen Charles Dunlap in 2001, is value-neutral. Value neutrality consistently fails to capture the modern realities of conflict both with and within legal domains. The act of playing a sport in accordance with the rules can be very simply called by the name of the sport. The act of playing outside the rules of a sport is known as cheating, and this word is reserved to describe and account for those who refuse to conform to established norms. As defined, using the term *lawfare* to describe both the proper and improper applications of legal domains muddy the proverbial waters and does more harm than good in identifying and holding the practitioners of MALOPs accountable. To defend against MALOPs, other countries in the crosshairs of Russia's – and China's – legal manipulation can apply the MALOPs toolkit.

<sup>45</sup> **States:** Russia, Syria, North Korea, Belarus, Central African Republic, Nicaragua, Sudan, Venezuela.  
**De Facto States:** Donetsk People's Republic, Luhansk People's Republic, South Ossetia, Abkhazia, Artsakh.



This toolkit identifies three necessary actions: identify MALOPs, disrupt them, and then present an enhanced defence against them. The **identification stage** includes: (1) raising MALOPs literacy; (2) gathering and sharing MALOPs intelligence; and (3) operationalising the legal domain and its operators. MALOPs literacy, for example, is exactly what this article intends to achieve. The **disruption stage** includes: (1) integrated strategic litigation; (2) combatting the litigator's dilemma; (3) illuminating MALOPs; and (4) and increasing accountability. Finally, the **defensive stage** includes: (1) building legal resilience and a deterrent posture; (2) red teaming and war gaming; and (3) closing gaps, loopholes, and vulnerabilities.

### 3.1 Identify: Literacy, Intelligence, and Operationalising Legal Domains

The first act in the *identify* phase is to build MALOPs literacy. This includes spreading awareness of these activities and building the methodologies contained in my concept of MALOPs into the analysis and decision-making process unique to each organisation. As stated in my early research on this subject, 'understanding the nature of the problem and making diplomats, lawmakers, peacebuilders, politicians, commanders, and other government servants aware of the issue is the first and most important step of this process.'<sup>46</sup> The first question that a key decision-maker should ask after being notified of a pending international agreement, tribunal, or other critical instrument of public international law should be, 'In what way could the other side be employing MALOPs to seek an asymmetric or otherwise advantageous position?' This will never be achieved without first building literacy and a common understanding. The term lawfare failed to achieve normative significance over the past twenty-one years, and it is not widely accepted amongst government and policymaking organisations. It served as a very helpful bumper-sticker term, which is exactly what it was intended to do but does not enjoy a seat at the table when serious policy discussions are taking place. This must change moving forward, and this can be achieved through the concept of MALOPs.

The second act in defending against these activities is to build a MALOPs-specific intelligence portfolio. For example, Russian parliamentarian Sergey Mironov introduced draft Law 462741-6 on 28 February 2014. It offered the legal means to absorb the territory of another state. Seventeen days later, on 20 March, Crimea was absorbed by the Russian Federation. The exact legislation proposed by Mironov was not used, but an extrapolation of the draft legislation would have indicated that a major geopolitical movement was about to take place, and enhanced deterrent measures could have changed the course of history. This exact same scenario played out in 2022 with the Russian Communist proposal for the recognition of the so-called republics. It benefits the MALOPs practitioner to maintain a high subscribership to the international legal system because the constituents of this system can then be manipulated by the practitioner's duplicitous behaviour. This is precisely why both China and Russia so often cite 'universality' and the 'principles of international law' while simultaneously misapplying and misrepresenting them. This is also why the practitioner must always feign compliance, even if great theatrics are required to do so. These theatrics are exactly what the world witnessed in the weeks leading up to Russia's illegal invasion of Ukraine under the guise of peacekeeping, responsibility to protect, and a so-called special operation. This is good news for MALOPs defenders because the intrinsic need to perform theatrics and put forth faux legal arguments makes the behaviour a public endeavour that can be observed, tracked, correlated, and addressed publicly.

46 Fisher (n 1).

With respect to this study's focus on Russia and China as the principal MALOPs practitioners, it must be noted as a matter of academic integrity why other countries are not mentioned as well. Indeed, all states are guilty of misrepresenting or twisting legal domains to better suit their needs and interests in one form or another throughout history. The differentiator used in this research is the employment of MALOPs as doctrine or as part of a grand strategy with the additional objectives of revising or upending the legal principles themselves versus using MALOPs as a one-off means of political expediency. When China employs its doctrine of 'legal warfare' to illegally seize territory in the South China Sea, it not only damages the integrity of UNCLOS and the UN Charter, but it shapes the state of the art of public international law in China's likeness. If the United States were to negatively exploit international legal domains to achieve some political objective, then it might benefit the US in the short term, but the long-term damage makes this behaviour foolish and counterproductive.

The third act of the *identify* stage is to operationalise the legal domain and its defenders. It is not enough for legal counsel to offer black-letter legal analysis and advise leaders and policy-makers on how to remain compliant or caution them against activities that may create legal troubles or liabilities. Legal advisors must tread into new territory, and, in addition to the above, they must become operational by recognising the legal domain as not simply an instrument of power but as a source of power. In modern conflict, legal domains are both a weapon and a battlefield, both fought with and fought over. Until this is realised, naïve states will continue to be outwitted by unscrupulous actors seeking asymmetric advantages by manipulating the international legal system. Not only must MALOPs be taken seriously, but decision-makers must actively seek out MALOPs counsel when building strategies to counter this behaviour.

### 3.2 Disrupt: Integrated Strategic Litigation, Litigator's Dilemma, Illumination, Accountability

To disrupt a MALOPs campaign is to create sufficient non-linear dilemmas, impose sufficient risk, and create enough pressure that the practitioner is disincentivised from continuing the behaviour. This is achieved through a combination of several techniques, the first of which is *Integrated Strategic Litigation*. The European Center for Constitutional and Human Rights defines Strategic Litigation as a technique that

aims to bring about broad societal changes beyond the scope of the individual case at hand. It aims to use legal means to tackle injustices that have not been adequately addressed in law or politics...successful strategic litigation brings about lasting political, economic or social changes and develops the existing law. Public outreach materials accompanying the case can help to explain the context of the proceedings.

As this research has made clear, the legal case is typically secondary to the information victory. It is for these reasons that a victim of MALOPs must not only conduct strategic litigation but *integrated strategic litigation*. The additional qualifier is necessary because minor seams in a government's approach to countering MALOPs are not only disadvantageous, but inconsistencies can do more harm than good as the MALOPs practitioner is able to exploit these seams to further their own legal manipulation.

For example, Ukraine's then-President Poroshenko, government officials, and the international community demanded that the 24 Ukrainian sailors seized during the 2018 Kerch Strait incident be treated not as criminals but as prisoners of war. Simultaneously and during Ukraine's ITLOS request for relief several months later, the Ministry of Justice claimed that the sailors were illegally detained while executing an innocent passage aboard

ships with military immunity under UNCLOS. This may seem harmless, but the damage done to Ukraine's MALOPs defence as a result of these inconsistencies was considerable. To claim that the sailors were prisoners of war is to acknowledge that the two countries are at war and that international humanitarian law applies to the situation. In this case, the Ukrainian sailors were legal targets and were foolish to be sailing anywhere near Russian-claimed waters or the Kerch Strait. To claim that the sailors were conducting an innocent passage of Russia's territorial waters was another catch-22 because that claim legitimises Russia's ownership of Crimea by acknowledging its 12-mile territorial waters. These inconsistent public messaging campaigns bolstered Russia's legitimacy shaping efforts surrounding its aggression against Ukraine. Poroshenko should have instead taken an integrated approach by consulting specialists, the Ministry of Justice, the Legal Department of the Ministry of Defense, and the National Security and Defense Council to develop a single concerted approach to the management of the legal domain and public engagement through integrated strategic litigation. The security services of Ukraine could have also played a role by employing counter-disinformation efforts and combatting Russian propaganda using a unified voice. This unified approach could have also included international voices. Both Russia and Ukraine called for UNSC meetings over the incident. The Russian-sponsored proposal to label the incident a border violation by the Ukrainian Navy did not pass, with four in favour, seven against, and four abstaining. These numbers show just how much malign influence Russia has over the process. Furthermore, the inconsistencies noted within the Ukrainian government also existed internationally. The US Ambassador to the UN claimed that Russia must respect the navigational rights and freedoms of Ukraine and all states. Later, the UN High Commissioner classified the Ukrainians as prisoners of war. The differences in these two positions blur the same seam between *war* (prisoners of war) and *peace* (navigational rights and freedoms) that Russia operates in so comfortably.

*Combatting the litigator's dilemma* is another way to disrupt MALOPs. A major difficulty when countering MALOPs, both in and out of the courtroom, is the intrinsic need for litigators to present a fully developed body of evidence. This is necessary for many reasons, first and foremost, to uphold the integrity of the practice of law altogether. The unscrupulous MALOPs practitioner, however, is only concerned with shaping legitimacy and only requires a sliver of truth, if even that, to fabricate an information operations campaign in support of a particular MALOP. The challenge of understanding this threat and strategising around it can be referred to as the litigator's dilemma, which is the balance between addressing MALOPs at the speed of relevance and the need to build thorough legal arguments for submission to formal tribunals and courts. While the scrupulous litigator is conducting research and building a reputable case, for example, like Ukraine spending nearly five months building and submitting a request for ITLOS relief under the auspices of UNCLOS following the Kerch Strait incident, the MALOPs practitioner is already moving on to develop the next faux- or quasi- legal argument. Russia's counterclaim that ITLOS lacked jurisdiction due to military activities under UNCLOS Art. 298 was not likely developed over the course of several months but rather established before the tribunal even began. An adept MALOPs practitioner would have had this claim ready as the Malign Legal Operation was designed, even prior to the Kerch incident itself.

The next and perhaps most important step in disrupting a particular MALOPs is *illumination*, or the act of shining a public light on the behaviour to display its underlying malicious intent. This technique is often an effective method to build literacy as well. For example, the Ukrainian Navy established in 2019 that the previously discussed Kerch Strait Incident was planned in advance.<sup>47</sup>

47 Patrick Tucker, 'Russia Launched Cyber Attacks Against Ukraine Before Ship Seizures, Firm Says' (*DefenseOne*, 2018) <<https://www.defenseone.com/technology/2018/12/russia-launched-cyber-attacks-against-ukraine-ship-seizures-firm-says/153375/>> accessed 15 December 2018.

Evidence also exists, according to the Contact Point Cell of the Ukrainian Naval Forces, that localized control over the electromagnetic spectrum was present during the incident to include possible communications jamming and spoofing of the Automatic Vessel Identification System (AIS) in the area of the Strait. These reports of both cyber and electromagnetic interference are evidence that this incident was planned in advance, discrediting the legal disinformation employed against the Ukrainian Navy.<sup>48</sup>

Additionally, *Bellingcat* reported that global positioning system (GPS) data showed that the Ukrainian ships were actually outside of 12 nautical miles from the illegally seized territory following a 12-hour chase to the south of the strait. In fact, the Ukrainian ships were attempting to return to Odesa when they were finally seized.<sup>49</sup> These facts dramatically changed the narrative and indeed, the legitimacy of Russia's claims, but they were mostly unknown to the general public. An integrated strategic litigation campaign could have amplified these points through political, media, and other channels to illuminate Russia's legitimacy shaping and disinformation.

The final tool for MALOPs defenders to disrupt these legal manipulations is *increased accountability*. This may seem obvious, but MALOPs frequently occur with no accountability. The practitioner offers sufficient plausible deniability or faux-justification for political leaders, even those in adversary nations, to turn a blind eye to the behaviour as a matter of political expediency. An objective of information warfare is to sew political division and distrust amongst the general public of an adversary nation so that political leaders are afraid to take bold action against malign behaviour for fear of inciting additional domestic unrest. Those who study Soviet and Russian Reflexive Control Theory would recognise this as what Russian Colonel Komov called strategic 'paralysis' in 1997.<sup>50</sup> A previous example of MALOPs cited Russia's repeated exploitation of the Montreux Convention, Art. 12, to rotate submarines between the Black Sea and combat duties off the coast of Syria under the guise of emergency repairs. It is possible for the international community to address this issue, yet Russia continues the abuse, and no attempts are made. One must remember, after all, that the legal victory is of less importance than the informational victory. Bringing attention to the malfeasance is itself a victory.

[T]he treaty allows for the revision of Article 12 given that it is initiated with agreement from at least two high-contracting parties to the treaty. In this example, verbiage could be included indicating that submarines undergoing repair must sail directly for their intended point of dry dock and the conduct of combat or purely military operations during this process will result in violation of the treaty. *Even if it is not politically possible to close this loophole, it should not preclude affected parties from attempting to remedy this abuse.*<sup>51</sup>

Even if efforts to hold the MALOPs practitioner accountable are unrealistic or unsuccessful, the public diplomacy benefits would be substantial as it brings awareness, literacy, and illumination to the situation. A lawyer or legal team may unilaterally dismiss the benefits of a *public diplomacy victory*; however, an *integrated strategic litigation* team would immediately value the benefits, even if the legal case is unsuccessful.

48 Fisher (n 1).

49 Michael Cruickshank, 'Investigating The Kerch Strait Incident - Bellingcat' (*bellingcat*, 2018) <<https://www.bellingcat.com/news/uk-and-europe/2018/11/30/investigating-the-kerch-strait-incident/>> accessed 14 December 2018.

50 Timothy L Thomas, 'Russia's Reflexive Control Theory and the Military' (2004) 17 *Journal of Slavic Military Studies* 237 <[https://www.rit.edu/~w-cmmc/literature/Thomas\\_2004.pdf](https://www.rit.edu/~w-cmmc/literature/Thomas_2004.pdf)> accessed 28 November 2021.

51 Fisher (n 1).

### 3.3 Defend: Legal Resilience and Deterrence, Red Teams and War Games, Closing Gaps

With a MALOPs campaign successfully identified and disrupted, MALOPs defenders can set about shoring up their legal systems to offer a proper defence. Sari first introduced the notion of *legal resilience* as a measure to combat what this author defines as MALOPs – ‘Legal resilience is concerned with the resistance of legal systems to change and their capacity to adapt in response to disturbances. In essence, the aim of legal resilience theory is to understand how legal systems cope with internal and external shock.’<sup>52</sup> There are no prescribed actions or qualifiers for a legal system to be classified as legally resilient, but it is built upon a commitment to the rule of law and the defence of its spirit and intent. Legal resilience is an operationalised mindset and guide for decision-making so that legal decisions are developed with resilience in mind.

Legal resilience highlights the contribution that international law can make to render societies more resilient against hybrid and gray zone threats *and* that the international rule of law itself must be strengthened to withstand the kind of subversion associated with these concepts. The legal resilience perspective thus offers diverse stakeholders a common framework for analysis and a shared set of objectives to guide them in countering the legal challenges arising in the current strategic environment.<sup>53</sup>

For comparison, China has no concept of legal resilience in its published doctrine of legal warfare; however, it does utilise legal binding and legal protection, suggesting that they do employ the legal domain defensively in addition to offensively. The result of a legally resilient system is credible legal deterrence. ‘Legal Resilience projects a desired posture, which discourages the opponent from using *Lawfare* partially or totally. The mere understanding by the opponent that a robust Legal Resilience guards the “legal front” will make *Lawfare* meaningless or at least a non-primary option in Gray Zone environments.’<sup>54</sup>

The next critical step in establishing a MALOPs defence is to execute legal red teaming and including the legal domain in war games. Specifically, *red teaming should be executed* as often as possible.

This process involves the creation of independent teams within an organization with the goal of thinking and acting like the adversary in order to identify what legal gaps, loopholes, and mechanisms are ripe for exploitation. This includes the manipulation of specific cultural and societal norms within disinformation campaigns against a legal position or the rule of law.<sup>55</sup>

MALOPs red teaming is the emulation of a potential adversary’s malign legal capabilities against a target. MALOPs red teams operate to highlight an adversary’s ability to: (1) identify vulnerabilities of the target’s legal or informational posture; (2) expose legal lacunae or loopholes for exploitation; (3) positively shape the adversary’s legitimacy while degrading that of the target; (4) evaluate the target’s susceptibility to legal containment; and (5) justify the abdication of legal obligations. In doing so, legal red teams seek to: (1) build legal resilience

52 Aurel Sari, ‘Legal Resilience in an Era of Gray Zone Conflicts and Hybrid Threats’ [2019] SSRN Electronic Journal.

53 Ibid.

54 AB Munoz Mosquera, N Chalanouli, ‘Decoding Gray Zone Environments. Legal Resilience’ Presented to the University of Exeter – ‘Legal Resilience in an Era of Hybrid Threats’.

55 Fisher (n 1).

and a posture of legal deterrence; (2) support MALOPs literacy, intelligence, illumination, and accountability; and (3) foster the development of integrated strategic litigation approaches and best practices. According to a 2008 report by the US Defense Science Board on 'Capability Surprise', red teaming is the process by which red teams produce useful output for consumption by decision- and policy-makers.

Red teams can fulfill various roles: playing the adversary, inventing plausible threats, challenging assumptions, serving as devil's advocate, and offering alternative approaches. Red teaming is especially important in today's security environment. Nimble adversaries, with access to global technology markets, are very difficult targets for intelligence.<sup>56</sup>

*War gaming* consists of 'a simulated battle or campaign to test military concepts and usually conducted in conferences by officers acting as the opposing staffs.' These activities are critical to successful military operations and to imagining the incredible range and scope of possibilities once hostilities initiate. While one can never totally predict how an armed conflict will play out, significant advantages can be developed by conducting scenario-based war games to identify previously unknown capability, resource shortfalls, or strategic advantages to be leveraged. The difference between red teaming and war gaming is subtle but important. A red team looks for vulnerabilities and weaknesses by thinking like the adversary, while a war game employs both a red team and a so-called blue team (friendly forces) in order to test or exercise a specific scenario. There should be no question as to how beneficial legal war gaming can be when attempting to build a defence to ongoing MALOPs and legitimacy shaping.

The final and most difficult step is to *secure the legal frontier* by addressing known gaps, vulnerabilities, and loopholes. This step, like legal resilience, is both a perspective and an enduring task. In order to close loopholes and legal gaps, all participants must be MALOPs-literate, and each person involved in international negotiations, diplomacy, and statecraft must serve as their own red team. Care must be applied to international negotiations or when considering unexplored legal territory because the status quo and precedents created by these decisions will have lasting effects on individual or national security, especially if other parties have malicious intent or seek legal containment. As previously discussed, however, these legal vulnerabilities are often deliberate as a matter of political pragmatism. It is critically important to remember the reasons behind political pragmatism or a particular aversion to the practice of public international law. These things should be maintained in institutional memory so that, following political change or renewal, the reasons for a pragmatic approach towards legal domains are not leveraged by the other side. George Keenan, an American diplomat, knew this well. 'Moscow has no abstract devotion to United Nations Organization ideals. Its attitude to that organization will remain essentially pragmatic and tactical.'<sup>57</sup> Keenan, the victim of numerous unkept international agreements, fully understood the challenge presented by MALOPs. Lauri Mälksoo would argue that this is due to the underlying 'competing universalistic ideological basis' between the two powers. Or, from the perspective of this research, one side executes MALOPs due to a fundamental disagreement with the present international status quo (and who it most benefits). To reiterate an earlier Mälksoo quote,

Western scholarship on Soviet approaches to international law has to some extent failed because it has taken Soviet declarations about international law too easily at their face value. The official rhetoric about international law can also have

56 Defense Science Board, 'Capability Surprise Volume I: Main Report' (2009) <[http://www.projectwhitehorse.com/pdfs/Ed9/4.Capability Surprise Vol I DSB-2009.pdf](http://www.projectwhitehorse.com/pdfs/Ed9/4.Capability%20Surprise%20Vol%20I%20DSB-2009.pdf)> accessed 2 January 2022.

57 George Kennan, 'The Long Telegram' (*The National Security Archive*, 1946).

deceptive qualities when the purpose may be to mislead the other or to trump him with his own weapon.<sup>58</sup>

Another prime example of increased accountability comes from the days leading up to both Russia's full invasion in February 2022 and also Russia's faux referendums in September 2022. The tool of illumination was used repeatedly by Ukraine, the US, the UK, Canada, France, the Baltics, and countless other nations to highlight Russia's MALOPs in advance of Russia's behaviour, thereby discrediting Putin and robbing him of the initiative. As discussed previously, control over a narrative is the first step in controlling the perceived legitimacy and eventually the socially accepted legality of a situation. Getting ahead of the MALOPs practitioner is a wildly effective way to slow, or halt, a particular MALOPs campaign. With respect to the referendums, illumination coupled with Ukraine's successful counter-offensive resulted in the referendums being postponed many times. Ultimately, the staged votes were conducted while Russian forces were simultaneously retreating from the territories they purported to own. Other accountability techniques are sanctions, the clever posturing of military forces, and of course the use of military force when executed in a just, proportional, and legal way.

## 4 CONCLUSION

This research considered the current global crisis brought about by the Russian Federation's illegal war of aggression and crimes against the Ukrainian people. Tens of thousands of Ukrainians have been killed by Russia's aggression since 2014, with millions of civilians displaced and a rapidly expanding list of atrocities against non-combatants. This analysis was conducted by applying the concept of MALOPs to the current situation to develop an understanding of why the invasion was predictable, why the draft legislation on the recognition of the so-called Donetsk and Luhansk Republics was absolute confirmation that war was imminent, and how other states can begin to protect themselves from MALOPs in the future. This research also established the incredible role of information operations on the modern physical and legal battlefields and the criticality of the legal preparation of the battlefield for modern conflict. In doing so, this article established the following:

1. MALOPs were employed by the Russian Federation in the months leading up to its recognition of the so-called Donetsk and Luhansk People's Republics as independent republics and, ultimately, MALOPs provided the purported basis for Russia's aggression and invasion of Ukraine;
2. MALOPs are a principal tool of the Russian Federation in pursuit of its geopolitical objectives, and no legitimate claim exists to justify the so-called Special Operation or any act of aggression against Ukraine.
3. Applying a Counter-MALOPs toolkit to the example of Russia's invasion offers future state victims of MALOPs an opportunity to defend against similar strategies.

This author created the theory of MALOPs in 2019 to provide an appropriate vernacular for the description, identification, and response to modern legal exploitation. Great care

58 Mälksoo (n 17). ISBN:"9780191789625";abstract:"This paper points to the intimate relationship between international legal writing and history. It typifies modes of engagement with history in international law in order to contrast, rather impressionistically, a traditional approach with a set of present-day critiques. It proposes that the distinction between professional historiography and legal work proper is in some way misleading: while there are significant differences in terms of their respective objectives and styles, legal work inevitably requires a positioned engagement with the past, thus producing (or contributing to the production of

must be taken to not become a MALOPs practitioner in the pursuit of justice or in response to this behaviour. The damage done to the rule of law and international norms through manipulation of the law in ways other than intended is equally destructive when they are well-intentioned as when they are malign. As Sari cautioned, ‘Law-abiding states must therefore mediate between both challenges: they cannot afford to counter lawfare, hybrid and gray zone challenges harmful to their national interests with identical means without chipping away at the international rule of law’.<sup>59</sup> Ultimately, Ukraine refused to succumb to Russia’s Minsk Trap between 2014 and 2022 but is now enduring the Russian consequence for refusing to capitulate. Ultimately, no counter-MALOPs toolkit can stop outright aggression if that is the concerted aim of the MALOPs practitioner. However, Ukraine’s refusal to capitulate forced the Rules-Based International Order, buttressed by public international law, to exercise itself in defence of its founding principles and the UN Charter. On 14 July 2022, President Zelenskyy took part in a conference in The Hague.

[R]ight now, it depends on our joint efforts whether humanity will have such an instrument as international law. Will humanity live in chaos and constant violence from those who believe that force solves everything and that aggression allows us to disguise any wishes of tyrants as law? The aggressor must lose both on the battlefield and at the level of meaning so that the war becomes a heavy loss primarily for the aggressor, not the victims.<sup>60</sup>

His words demonstrate a full understanding of MALOPs and the behaviour that this theory aims to describe. In the end, according to Zelenskyy, the ultimate objective is to ‘save international law itself’.<sup>61</sup>

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<sup>59</sup> Sari (n 52).

<sup>60</sup> Volodymyr Zelenskyy, ‘Telegram: Contact @V\_Zelenskiy\_official’ (*Official Telegram Channel*, 14 July 2022) <[https://t.me/V\\_Zelenskiy\\_official/2534](https://t.me/V_Zelenskiy_official/2534)> accessed 16 July 2022.

<sup>61</sup> Ibid.



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