

Contents

Foreword	17
Acknowledgements	27
Introduction	29
Abbreviations	33
Chapter 1. Role of Values, Identity and Human Rights in the Context of Armed Conflicts and Emergencies	37
1.1. Polysemy of Human Dignity in the System of Legal Principles	37
1.1.1. Context	37
1.1.2. Kant's Concept of Dignity as the Basis for the Hierarchical and Dynamic Character of Dignity in the System of Legal Principles	39
1.1.3. Dignity as an Axiom of Law: The Hierarchical Dimension ..	42
1.1.4. Dignity in the Evolution of Jurisprudence: The Dynamic Aspect	45
1.1.5. The Gap Between Hierarchical and Dynamic Aspects of Dignity as a Characteristic of Democracy	47
1.1.6. Interim findings	50
1.2. The Complexity of the Value-Based Approach in Legal Interpretation	52
1.2.1. The Necessity of (Re)considering the Value-Based Approach in Legal Interpretation	52
1.2.2. The Variety of Methods of Legal Interpretation and Their Interplay	53
1.2.3. The Content of the Value-Based Approach in Legal Interpretation	54
1.2.4. The (Im)possibility of Resolving a Conflict of Values	56
1.2.5. The Value-Based Approach in European Jurisprudence	58
1.2.6. The Role of the Judge Regarding the Value-Based Interpretation of the Law	60

- 1.2.7. The Application of the Value-Based Approach in Legal Interpretation and Political Regimes 62
 - 1.2.8. The Application of the Value-Based Approach in Times of Crisis 66
 - 1.2.9. Interim findings 67
- 1.3. The War Against Freedom of Conscience 69
 - 1.3.1. Freedom of Conscience and Its Contemporary Relevance ... 69
 - 1.3.2. Freedom of Conscience and Its Development 72
 - 1.3.3. Freedom of Conscience and Its Relation to Freedom of Thought and Freedom of Religion 75
 - 1.3.4. The Right to Freedom of Conscience and Legal Regulation 76
 - 1.3.5. Case Law on the Right to Freedom of Conscience 77
 - 1.3.6. Freedom of Conscience in the Context of Russia’s War of Aggression Against Ukraine 79
 - 1.3.7. Interim findings 86
- 1.4. Perspectives on Ukrainian Constitutional Aspirations Regarding European Identity After the War of Aggression 87
 - 1.4.1. The 2019 Constitutional Amendments Introducing Ukraine’s European Identity 87
 - 1.4.2. Constitutional Safeguards and the Despicable Proposition to End the War of aggression 95
 - 1.4.3. A European Perspective for Ukraine After the War of Aggression: Steps Taken and Future Insights 98
 - 1.4.4. Interim findings 104

Chapter 2. Challenges for International Law Field in the Context of Armed Conflicts and Emergencies 107

- 2.1. Understanding the Function of the Prohibition of the Use Force and Its Impact on Seeking Peace 107
 - 2.1.1. The System 107
 - 2.1.2. Old Legal Thought 108
 - 2.1.3. Courses of Action of the International Community after Russia’s Invasion of Ukraine 112
 - 2.1.4. New Legal Thought 118

2.1.5. Interim findings	124
2.2. Battlefield Ukraine: Russia's War of Aggression Against Ukraine and Selected Issues of International Humanitarian Law	125
2.2.1. Context	125
2.2.2. The Qualification of the Conflict: Nomen est Omen	126
2.2.3. Crimea and the Hybrid War in the Donbas	127
2.2.4. Full-Scale Invasion	130
2.2.5. The Status of Persons Involved in the Conflict	131
2.2.6. Armed Forces	131
2.2.7. The International Legion	131
2.2.8. Territorial Defence Forces (Teroborona) and levée en masse	133
2.2.9. Rogue Forces	134
2.2.10. An Assessment of the Status of the Wagner Private Military Company	135
2.2.11. The Treatment of Prisoners of War	139
2.2.12. Interim findings	141
2.3. The Problem of Genocidal Intent: A Historical Perspective for Ukraine	141
2.3.1. State Responsibility vs Individual Responsibility	141
2.3.2. The Challenging Concept of Genocidal Intent: The Role of a Motive	144
2.3.3. A Lithuanian Strategy to Prove Soviet Genocidal Intent	147
2.3.4. Proving Russian Genocidal Intent in Ukraine	152
2.3.5. Interim findings	156
2.4. A Jurisdictional Challenge in the Coastal State Rights Dispute: Sovereignty Issues over Crimea	157
2.4.1. The Factual Background of the Coastal State Rights Dispute	157
2.4.2. The Settlement of the Sovereignty Dispute over Crimea Within the UNCLOS Dispute Settlement Procedure	163
2.4.3. Removing the Judicial Challenge of a Sovereign Dispute Outside of UNCLOS	165

2.4.4. Interim findings	171
Chapter 3. Challenges for Specific Fields of Law in the Context of Armed Conflicts and Emergencies	173
3.1. The Right of the Accused to Be Informed as a Condition for the Legality of Criminal Proceedings in absentia in the Context of War Crimes and Crimes Against Humanity	173
3.1.1. Criminal Trials <i>in absentia</i> : Is This Still Relevant?	173
3.1.2. The Right of the Accused Person to Be Present at the Trial: The Premise of Fair Criminal Proceedings	176
3.1.3. Proper Notification of the Accused Person – A Condition for the Legality of Criminal Proceedings <i>in absentia</i>	181
3.1.4. The Legal Consequences of Failure to Inform the Accused of the Criminal Proceedings Against Them	187
3.1.5. Interim findings	193
3.2. Should Ecocide Be an International Crime?	195
3.2.1. Background	195
3.2.2. The Concept of Ecocide	197
3.2.3. The Path Towards International Law Recognising Ecocide as an International Crime	198
3.2.4. Ecocide as a Crime of the State	201
3.2.5. Interim findings	203
3.3. Lay Participation in Ukrainian Court Proceedings During Russia's War of Aggression: Constitutional Aspects	204
3.3.1. Context	204
3.3.2. The Model for the Participation of Lay Judges in the Administration of Justice in Ukraine	206
3.3.3. The Participation of Lay Judges in the Administration of Justice in Ukraine During Russia's War of Aggression ...	211
3.3.4. Interim findings	226
3.4. Organising Elections During Wartime: The Case of Ukraine	228
3.4.1. The Context of Elections Taking Place in Ukraine	228
3.4.2. The Implementation of the Principle of Regular Elections ...	229

3.4.3.	The Impact of Martial Law on Elections	233
3.4.4.	The Influence of the War of Aggression on the Organisation of Elections in Ukraine in 2023–2024	236
3.4.5.	Cases in Which Elections Can Be Held	238
3.4.6.	The Announcement of Elections After the End of Martial Law	239
3.4.7.	The Extension of the Mandate	243
3.4.8.	The Organisation of Elections in Occupied and De- occupied Territories	246
3.4.9.	The Importance of Securing Elections During the Application of Martial Law	248
3.4.10.	Interim findings	249
3.5.	The Administrative Procedure Act in Ukraine: Recent Development, Challenges, and Solutions	249
3.5.1.	The Concept of an Administrative Procedure	249
3.5.2.	The Historical Context of the Law of Ukraine on Administrative Procedure	251
3.5.3.	The Law of Ukraine on Administrative Procedure: Analysis of Key Provisions	252
3.5.4.	Administrative Proceedings Under the Law on Administrative Procedure	256
3.5.5.	The New Administrative Procedure: Possible Challenges and Solutions	270
3.5.6.	Interim findings	272
3.6.	Ensuring and Protecting Human Rights in Healthcare in Times of War: The Ukrainian Experience	274
3.6.1.	The Context	274
3.6.2.	The Right to Life and the Right to Personal Integrity in the Context of Human Rights in Healthcare	274
3.6.3.	Ensuring the Resilience of the Healthcare System as a Prerequisite for Protecting Human Rights in Healthcare ...	276
3.6.4.	Patients and Healthcare Professionals’ Rights in Times of War: A Few Considerations	281
3.6.5.	Interim findings	285

3.7. Business and Human Rights in the Recovery Agenda for Ukraine	286
3.7.1. Social Expectations of Corporate Responsibility and Respect for Human Rights	286
3.7.2. The Solidarity Approach to Rethinking the Business and Human Rights Framework	288
3.7.3. Business as a Human Rights Duty Bearer	290
3.7.4. The Human Rights Obligations of Business: The Vertical Dimension	293
3.7.5. Requesting the Legitimacy of Corporate Actors	296
3.7.6. Heightened Human Rights Due Diligence	298
3.7.7. Interim findings	301
3.8. The Role of Cyber Defence and the Problems It Faces in the Context of Aggression	302
3.8.1. The Concept of Cybersecurity in the Conditions of War Within the Geopolitical Processes of Today	302
3.8.2. Modern Concepts of the 'fourth branch of government' and Its Impact on the Global Social and Political Climate, Legal Control and the Regulation of the Virtual World	303
3.8.3. Interim findings	319
3.9. Legislative Challenges in Neighbouring Countries as a Consequence of the War of Aggression Against Ukraine: The Example of Poland	320
3.9.1. General Remarks	320
3.9.2. The Substantive Scope of New Regulations	321
3.9.3. Procedural Aspects of Enacted Laws	325
3.9.4. The Impact of the War of Aggression on Political Interactions in the Legislative Process	329
3.9.5. The Quality and Stability of the Laws Enacted under the Circumstances of the War of Aggression	331
3.9.6. Interim findings	334
Conclusions	337

Summary

355

Bibliography

367

List of Tables

449

List of Figures

451

Notes on Contributors

453

Index

457