

# *O REARRANJO DAS FORÇAS POLÍTICAS INTERNACIONAIS A PARTIR DA GUERRA NA UCRÂNIA – O FUTURO DO ESTADO DEMOCRÁTICO DE DIREITO*

*THE REARRANGEMENT OF INTERNATIONAL POLITICAL FORCES SINCE THE WAR  
IN UKRAINE - THE FUTURE OF THE DEMOCRATIC RULE OF LAW*

*LA REORGANIZACIÓN DE LAS FUERZAS POLÍTICAS INTERNACIONALES DESDE LA  
GUERRA DE UCRANIA - EL FUTURO DEL ESTADO DE DERECHO DEMOCRÁTICO*

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## **Resumo**

**Contextualização:** a proposta do texto consiste em fazer uma digressão histórica nos antecedentes da Guerra da Ucrânia e na construção do Estado Democrático de Direito no século XX, tendo em vista a relevância da contextualização histórica e institucional da Guerra.

**Objetivo:** o presente artigo tem por objetivo a análise do rearranjo das forças políticas internacionais a partir da Guerra na Ucrânia, com vistas a vislumbrar os desafios que o Estado Democrático de Direito enfrentará após a Guerra.

**Metodologia:** a metodologia utilizada foi a pesquisa bibliográfica da literatura sobre o tema e análise de notícias que tratam sobre a Guerra na Ucrânia.

**Resultado:** verificou-se que o Estado Democrático de Direito enfrentará relevantes desafios para a sua manutenção e desenvolvimento, tendo em vista o surgimento de o rearranjo

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das forças políticas internacionais.

**Palavras-chave:** Guerra-na-Ucrânia, Estado-Democrático-de-Direito, Guerra-Fria, Rússia, Democracia.

## Abstract

**Contextualization:** the purpose of the text is to make a historical digression into the background of the Ukraine War and the construction of the Democratic Rule of Law in the 20th century, in view of the relevance of the historical and institutional contextualization of the War.

**Objective:** the present article aims at analyzing the rearrangement of international political forces after the Ukrainian War, with a view to envisioning the challenges that the Democratic Rule of Law will face after the War.

**Methodology:** The methodology used was a bibliographic research of literature on the theme and an analysis of news reports about the War in Ukraine.

**Result:** It was found that the Democratic Rule of Law will face relevant challenges for its maintenance and development, given the emergence and rearrangement of international political forces.

**Keywords:** War in Ukraine, Democratic Rule of Law, Cold War, Russia, Democracy.

## Resumen

**Contextualización:** el propósito del texto es hacer una digresión histórica sobre los antecedentes de la Guerra de Ucrania y la construcción del Estado Democrático de Derecho en el siglo XX, en vista de la relevancia de la contextualización histórica e institucional de la Guerra.

**Objetivo:** el presente artículo pretende analizar la reordenación de las fuerzas políticas internacionales a partir de la Guerra de Ucrania, con el fin de vislumbrar los retos a los que se enfrentará el Estado Democrático de Derecho tras la Guerra.

**Metodología:** la metodología utilizada fue la investigación bibliográfica de la literatura sobre el tema y el análisis de las noticias que tratan de la Guerra en Ucrania.

**Resultado:** Se constató que el Estado Democrático de Derecho se enfrentará a retos relevantes para su mantenimiento y desarrollo, en vista de la aparición del reordenamiento de las fuerzas políticas internacionales.

**Palabras clave:** Guerra en Ucrania, Estado de Derecho Democrático, Guerra Fría, Rusia, Democracia.

## **INTRODUCTION**

This article aims to investigate what are the possible effects of the Ukraine War on the future of the Democratic Rule of Law. To this end, the political landscape prior to the Ukraine War was analyzed, with a view to pointing out the main international political aspects of the beginning of the 21st century and studying the constitutive elements of the global legal order. Particularly, it attempts to point out how the end of the Cold War and the formation of international blocs militated towards the formation of a global legal order based on, among other pillars, the democratization of nations and the institutionalization of rule of law in the developing and underdeveloped countries.

Subsequently, the main elements of these new democratic states of law, arising from internal and international political pressures, were presented. Here, I attempted to list the essential characteristics of these new states, to determine whether they are institutions based on real political and legal foundations or if merely formal shells without any legitimation or foundation in political and legal praxis.

In the third topic, I reviewed the considerations in the previous topics aiming at the political and legal contextualization of the Ukraine War. Considering, above all, the symbolism of the clash between a once political and economic power and a country in formation and construction, but with political and legal bases corroded by corruption and radical movements.

Finally, in the fourth topic, I considered the historical, political, and legal overview of the previous topics aiming to pointing out the risks, challenges, and impacts of the War in Ukraine for the maintenance of the international legal order based on the improvement of Democratic States under the Rule of Law.

## **THE POLITICAL LANDSCAPE BEFORE THE WAR**

In this topic, the intent is to point out how the global legal order was formed after the end of the Cold War, with special focus on the proliferation of Democratic Rule of Law States and the political integration of developed, developing and underdeveloped countries, in order to contextualize the pre-war global structure. Furthermore, I demonstrate how the global scenario, especially after the 2008 financial crisis and the coronavirus pandemic, created political and economic conditions for the Ukraine War.

The Cold War consisted of a political, economic, military, and legal phenomenon that dictated the way in which states were organized in the post-World War II period. According to Eric HOBBSBAWM, the 45 years between the end of World War II and the fall of the USSR did not consist of a homogeneous period, that is, politically and socially uniform and semantically unison<sup>2</sup>. In fact, it was a period divided in two halves, with the beginning of the 1970s being the turning point<sup>3</sup>. Nevertheless, the British author states that it is possible to establish a common denominator that marked the period, namely, “the constant confrontation of the two superpowers that emerged from World War II in the so-called “Cold War””<sup>4-5</sup>. The conflict between the two superpowers (United States and USSR) is marked, notably, by the conflict between two distinct worldviews: on one side, in the American view, the capitalist mode of production and the liberal experience represent the supreme of human economic and social organization, so that any threat to its existence must be repelled; on the other side, in the Soviet view, the planned mode of production and the socialist experience represent the next stage of the historical process, so that it is up to the USSR to lead the world towards communism. Of course, beyond the purely ideological issues, there were also real political issues, which permeated the major international conflicts and discussions during the Cold War. That is to say, even though the ideological background is of great importance to understand the Cold War, it is fundamental to emphasize that the *realpolitik* was the determining factor for the contrast between the United States and the USSR. After intense political and military conflicts, even if subtly instrumentalized by the two great powers, the Cold War ended with the US victory.

In this context, with the fall of the Berlin Wall in 1989 and the end of the USSR, the world could experience a period of relative lethargy among the great powers. According to HOBBSBAWM, the end of the Cold War marked the collapse of the international order, marked by intense conflicts between world powers<sup>6</sup>. That is to say, with the consecration of capitalism as the supposed winner of the ideological clash against socialism, the United States, the great representative of the capitalist order, enjoyed a certain calm, especially the absence of any relevant international actor that could threaten its economic, ideological, and military hegemony. HOBBSBAWM<sup>7</sup> points out that the 1990s were strongly marked by the absence of an international conjuncture that could govern the creation, determination, and officialization of the new emerging states. Thus,

<sup>2</sup> For the first time in two centuries, the world of the 1990s lacked any international system or  
2 HOBBSBAWM, Eric. *A Era dos Impérios*. Tradução: Sieni Maria Campos e Yolanda Steidel de Toledo. 30. ed.  
Rio de Janeiro: Paz&Terra, 2019. p. 223.

<sup>3</sup> *Ibid.* p. 223.

<sup>4</sup> In the original: “o constante confronto das duas superpotências que emergiram da Segunda Guerra mundial na chamada “Guerra Fria”.

<sup>5</sup> *Ibid.* p. 223.

<sup>6</sup> *Ibid.* p. 537.

<sup>7</sup> *Ibid.* pp. 537-538.

structure at all. The very fact that dozens of territorial states emerged after 1989 without any independent mechanism for determining their borders - without even third parties accepted as impartial enough to serve as general mediators - speaks for itself. Where was the consortium of great powers that previously established, or at least ratified, contested borders? Where were the victors of World War I overseeing the new drawing of the map of Europe and the world, fixing a boundary line here, insisting on a plebiscite there? (Where, indeed, were those international working conferences so familiar to diplomats of the past, so different from the brief summit conferences for public relations purposes and photo shoots that now took their place?)<sup>8</sup>

The scenario detailed above changed at the beginning of the 21st century, because the world entered the new millennium under the aegis of a supposedly stable global order, strongly driven by the political, legal and economic structure that won the Cold War. As a consequence, the states that emerged from the intense conflicts that took place in the 20th century were influenced by this global structure, which is why much of the world, especially the West, was built on a rationalist and democratic viewpoint. That is to say, the countries that were part, at the beginning of the 21st century, of the great capitalist international alliance were constituted, as a form of government, in democracies and, in relation to the organization of the State, they largely respected the Rule of Law structure. The recognition of the borders and legitimacy of the new countries was the responsibility of the United Nations Organization, an international organism that benefited from the advance of capitalism and the North American hegemony. Added to this is the strengthening of the European Union, which, in this century, sought to capture the former Soviet republics and expand its dominance in Europe. In this aspect, FERRAZ JR elucidates

With the globalization of the economy, especially in terms of access to electronic means of communication, it is necessary to take care that the hegemony of functional societies over statist societies and the consequent recognition of the importance of the Rule of Law in economic growth and structural transformation, that is, in development, does not obscure the inclusion/exclusion schemes. In other words, since it is not possible to ignore the differences in conditions of participation in wealth, culture, and social access, either domestically or internationally, the importance given to the Rule of Law must not become a camouflaged means of exclusion or

<sup>8</sup> *Ibid.* pp. 537-538. In the original: “pela primeira vez em dois séculos, faltava inteiramente ao mundo da década de 1990 qualquer sistema ou estrutura internacional. O fato mesmo de terem surgido, depois de 1989, dezenas de Estados territoriais sem qualquer mecanismo independente para determinar suas fronteiras – sem sequer terceiras partes aceitas como suficientemente imparciais para servir de mediadoras gerais – já fala por si. Onde estava o consórcio de grandes potências que antes estabelecia, ou pelo menos ratificava, fronteiras contestadas? Onde estavam os vencedores da Primeira Guerra Mundial que supervisionavam o novo desenho do mapa da Europa e do mundo, fixando uma linha de fronteira aqui, insistindo num plebiscito ali? (Onde, na verdade, estavam aquelas conferências internacionais de trabalho tão conhecidas dos diplomatas do passado, tão diferentes das breves conferências de cúpula para fins de relações públicas e sessões de fotos que agora tomavam o seu lugar?)”

an instrument to conceal exclusions.<sup>9</sup>

In short, at the beginning of the 21st century we have a scenario of relative international stability and great economic and technological development, fostered by the North American hegemony. This scenario lasted until 2008, when the mortgage and derivatives bubble burst in the United States and generated enormous economic and social repercussions in the rest of the world. According to Thomas PIKETTY<sup>10</sup>, the 2008 financial crisis was caused, from a macroeconomic point of view, by the increase in inequality that occurred in the United States. That is, according to the French author, although the world was experiencing, at the beginning of the 21st century, a moment of relative international stability, a silent phenomenon, but as harmful as any war, was spreading in developed countries: the significant increase in social and economic inequality. Thus, the 2008 financial crisis was a natural consequence of this increase:

The reason is simple: the rise in inequality has resulted in a near stagnation of the purchasing power of the popular and middle classes in the United States. This could only result in the growing indebtedness of the less well-off families, especially considering that access to credit became increasingly easier and the lack of regulation of banks and financial intermediation institutions, less and less scrupulous, eager for good returns from the huge financial savings injected into the system by the wealthiest.<sup>11</sup>

After the financial crisis, what we saw was the dismantling of the state structure in developed countries, with the consequent decrease in the quality of life of first world citizens. In the same sense, the democratic form of government previously built was strongly shaken, because, with the fall in quality of life and the increase in middle class dissatisfaction, governments began to suffer legitimacy problems, and new political agents, considered outsiders gained strength, with anti-system and counter-hegemonic discourse.

In the transition from the 2010s to the 2020s, the world experienced another major political and social upheaval, whose consequences cannot yet be fully delimited. It is the coronavirus pandemic, an event that will mark the directions that the world will take in the coming years.

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<sup>9</sup> FERRAZ JR, Tércio Sampaio. *Op. Cit.* pp. 314-315. In the original: “Com a globalização da economia, sobretudo em termos de acesso aos meios eletrônicos de comunicação, é preciso cuidar para que a *hegemonia* das sociedades funcionais sobre as sociedades estamentais e o conseqüente reconhecimento da importância do Estado de Direito no crescimento econômico e na transformação estrutural, isto é, no desenvolvimento, não venha a *escamotear* os esquemas de inclusão/exclusão. Ou seja, não sendo possível ignorar as diferenças de condições de participação na riqueza, na cultura, no acesso social, quer no plano interno, quer no plano internacional, é preciso que a importância conferida ao Estado de Direito não venha a ser um meio camuflado de exclusão ou um instrumento de escamoteação das exclusões.”

Considering that the world is still experiencing the pandemic and yet to be determined what the consequences of almost two years with low industrial and financial production and millions of deaths will be, it is unreasonable to make any considerations about the political and legal conjuncture that will emerge after this period. However, in analysis of the events that have already occurred, especially the United States presidential elections in 2020 and the return to strength of the European Union, it seems quite consistent to point out that the radical wave that flooded the Western world after 2008 may be passing, so that radical and extremist political regimes will diminish more and more.

Thus, on February 24, 2022, “day one” of the Ukraine War, the world was in metamorphosis, since it was not yet known what the political, economic and social consequences of the coronavirus pandemic would be, as well as whether the radical and extremist wave, which took over politics after 2008, had already run out of steam

## **2. THE CONSTRUCTION OF THE DEMOCRATIC RULE OF LAW IN THE 20TH CENTURY**

After making a brief overview of the political context before the Ukrainian War, this topic will try to point out how the Democratic Rule of Law was built in the 20th century. Now, we speak of a 20th century construction because we start from the premise that the current Democratic Rule of Law is different from the one that emerged after the great revolutions of the 18th century. Naturally, the influence of the political regimes that emerged at the end of the 18th century and in the 19th century in the formation of the current Democratic Rule of Law is not denied, nor could it be. However, it is stressed that the current form of this State is diverse and has undergone major changes in the twentieth century, especially if we consider the post-World War II period.

Before we go specifically into the construction of this Democratic State of Law, it should be noted that historical narratives are constructed from subjective perceptions of each observer. Which is why an interpretation that claims to be historical, i.e., that considers historical elements, needs to keep in mind that the “past sense” perceived by the interpreter in the present is different from the genuine “past sense”. According to STOLLEIS, the construction of the historical sense of certain events is accomplished by means of a linguistic discourse, so “it must be referred to a reality outside the text.” Thus

Only in language can history resurface as a spiritual construction, for the world we experience and conceive is linguistically constructed. When we formulate a historical situation, we create it as a self-contained abbreviation of information and interpretations. It exists only as language

and only through it can it be communicated. The writing of history never supposes, therefore, a direct access to a reality that exists “behind” language. It is appropriation through language of messages that can be transmitted (only) through language. By no longer talking about the past, it disappears. Behind, there remain meaningless stones and incomprehensible signs. Through naming - through baptism, when the theological parallelism does not bring new confusions - they become alive and cognizable.<sup>12</sup>

One can see, therefore, that the construction of the historiographical discourse is guided by the need to appreciate issues other than those expressly stated in the text that one intends to analyze. In other words, the search for the best interpretation - to use legal jargon - should consider the context in which the producer of a particular object under study (book, academic article, newspaper article, etc.) finds himself. This is due to the fact that the semantics of linguistic signs change in time, space and, above all, in the context in which the issuer of the language finds himself<sup>13</sup>.

Considering the brief historiographical introduction above, it should be noted that the Democratic Rule of Law has its origin in the liberal revolutions of the eighteenth century<sup>14</sup>. It is worth noting, however, that first came to light the Rule of Law, not necessarily democratic yet, and after 1870 is that “it became increasingly clear that the democratization of state politics was entirely inevitable”<sup>15</sup>. In the first moment, when the Rule of Law was still spoken of, the main transformation of institutions was the substitution of a State overly captured by the noble and religious elites for a bureaucratic and meritocratic State, whose foundation consists of a human rationality, and no longer in the metaphysical-religious worldview of Catholicism<sup>16</sup>. According to FERRAZ JR

Rule of Law is both a historical phenomenon (the so-called Liberal Rule of Law) and a structural occurrence. Rule of Law has to do with legal codification of power. First, it means that the power of politically organized coercion in central instances is made available to the private agent who is in a position protected by law. Secondly, it means that political power itself is subject to the law, so that the power can only avail itself of its means of coercion when jointly authorized. It is, finally, that the authorizing right itself can only be created, changed, or recognized by the conditions posed by the legal system itself.<sup>17</sup>

Nevertheless, as mentioned above, after World War II, the Democratic Rule of Law underwent major changes, especially considering the reconstruction of Europe and Japan  
17 FERRAZ JR, Tércio Sampaio. *Op. Cit.* pp. 311-312. In the original: “*Estado de Direito é, ao mesmo tempo, um fenômeno histórico (o chamado Estado de Direito Liberal) e uma ocorrência estrutural. Estado de Direito tem a ver com codificação jurídica do poder. Em primeiro lugar, significa que o poder de coação politicamente organizada em instâncias centrais é posto à disposição do agente privado que se encontra numa posição protegida pelo direito. Em segundo lugar, significa que o poder político, ele próprio, está submetido ao direito, de tal modo que o poder só possa valer-se de seus meios de coação quando juntamente autorizado. É, ao final, que o próprio direito autorizante só pode ser criado, mudado ou reconhecido pelas condições postas pelo próprio sistema jurídico.*”



and the reorganization of the world topography:

The immediate post-war period was basically occupied with rebuilding the material base of the nations directly involved in the conflict. This task was practically finished by 1950, when the great surge of economic expansion began, first with the German miracle, then with Japan's growth and, above all, with the birth of American hegemony. It is in this context that the term development becomes emblematic. However, very soon, the accelerated pace of production of goods, their accumulation and the problems of their distribution, as well as the enormous multiplication and interweaving of the threads of the "world economy", give rise to a complicated asymmetry between the material and the symbolic spheres of life.<sup>18</sup>

In other words, the formation of the Democratic State of Law in the 20th century is a symbolic portrait of the intense transformations that the notion of State has undergone throughout history. As BOBBIO points out "the history of European (and now not only European) states is a continuous process of decomposition and recomposition, and therefore of binding and unbinding of legal boundaries"<sup>19</sup>. According to the Italian author, who is also a contemporary of the period under study,

The formation of independent and national states from the last century to today, first in the United States of America, then in Latin America, then in Europe and finally in Third World countries through the process of decolonization, occurs sometimes through the decomposition of larger states and sometimes through the recomposition of small states. But always the recomposition tends to reinforce the internal limits and the decomposition to loosen the external limits. The current tendency to form larger and larger states or constellations of states (the so-called superpowers) entails an increase in the outer limits of the states that are absorbed into the larger area (the satellite states) and a decrease in the outer limits of the superstate. In the case where the formation of the universal state would be reached, it would have only internal and

18 FERRAZ JR, Tércio Sampaio. *Op. Cit.* p. 310. In the original: "O imediato pós-guerra ocupou-se, basicamente, com a reconstrução da base material das nações diretamente envolvidas no conflito. Esta tarefa estava praticamente terminada por volta de 1950, quando tem início o grande surto de expansão econômica, primeiro com o milagre alemão, depois com o crescimento do Japão e, em tudo, com o nascimento da hegemonia norte-americana. É nesse contexto que o termo desenvolvimento torna-se emblemático. Contudo, bem cedo, o ritmo acelerado de produção de bens, sua acumulação e os problemas de sua distribuição, bem como a enorme multiplicação e entrelaçamento dos fios da "economia mundializada", dão origem a uma complicada assimetria entre a esfera material e a esfera simbólica da vida."

19 BOBBIO, Norberto. *Estado, Governo e Sociedade* – Para uma teoria geral da política. Tradução: Marco Aurélio Nogueira. 1. ed. Rio de Janeiro: Paz&Terra, 2012. pp. 103-104. In the original: "a história dos Estados europeus (e agora não só europeus) é um contínuo processo de decomposição e recomposição, e portanto de vinculações e desvinculações de limites jurídicos"

no longer external limits.<sup>20</sup>

This 20th century Democratic Rule of Law has its roots in the Weimar Constitution and the Mexican Constitution of 1917, both of whose contents determined the guidelines of the constitutional fundamental rights that were built by 20th century constitutions. This was because the positivist/legalist formula that governed the political structure in previous centuries had been exhausted, so that the people, especially the middle class and the poorer population, demanded new forms of protection of certain second-generation fundamental rights. Thus, we went from a negative State, whose interference in economic and social life was low, to a positive State, whose interference in economic and social life was high, with a view to reducing inequalities and increasing people's quality of life.

This paradigm shift came, universally, after the two World Wars, especially after the first one, a time when the constitutions of countries assume a fundamental and sovereign role in the political regime<sup>21</sup>, imposing on the rulers the duty of observance to the fundamental rights of citizens.

Therefore, the democratic rule of law built in the twentieth century can be characterized by the sovereignty of the constitution and respect for fundamental rights, as well as by the strict observance of legal rules and procedures described in normative texts, in order to limit the state action based on arbitrariness and tyranny.

### 3. THE CONTEXT OF THE WAR

On February 24, 2022, Russian troops, who were already lining the borders, invaded Ukraine. The invasion was marked by land, air, and sea attacks, all violently directed at Ukrainian territory. The reason for the invasion, according to Russian official sources, was Ukraine's attempt to join the North Atlantic Treaty Organization ("NATO"), a military cooperation organization formed by Western countries, whose objective was, during the Cold War, to confront the Warsaw Pact, an organization of military cooperation among the

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<sup>20</sup> *Ibid.* In the original: "A formação de Estados independentes e nacionais do século passado a hoje, primeiro nos Estados Unidos da América, depois na América Latina, depois na Europa e finalmente nos países de Terceiro Mundo através do processo de descolonização, ocorre ora por decomposição de Estados maiores ora pela recomposição de Estados pequenos. Mas sempre a recomposição tende a reforçar os limites internos e a decomposição a afrouxar os limites externos. A tendência atual para a formação de Estados ou de constelações de Estados cada vez maiores (as assim chamadas super-potências) comporta um aumento dos limites externos dos Estados que são absorvidos na área maior (os Estados satélites) e uma diminuição dos limites externos do superestado. No caso em que se chegasse à formação do Estado universal, este teria apenas limites internos e não mais externos."

<sup>21</sup> TAVARES, André Ramos. *Op. Cit.* pp. 59-60.

socialist republics, led by the USSR.

However, Russia, after several rumors that Ukraine would try to join NATO, understood that the installation of a NATO military base in Ukrainian territory would represent a serious affront to Russian sovereignty and would put at risk Russia's political and cultural hegemony in Eastern Europe.

It can be seen, however, that the motivations that led the Russian army to invade Ukrainian territory go back to the Cold War. After all, both NATO and the Warsaw Pact were political and military instruments used by the two Great Powers (the United States and the USSR, respectively) in the domination of other countries. In other words, Europe today is experiencing a direct consequence of unresolved conflicts at the end of the Cold War, something similar to what preceded the Second World War.

Considering that the War broke out at a time when China can assume global economic leadership, India has proved to be a rising power, and Russia seeks to regain its position as a major international power, the context of the War can be understood as a new moment of reconfiguration of the roles played by international organizations and non-Western states. This is because the population of Western countries began to contest the legitimacy and problem-solving capacity of international organizations (a subject that will also be addressed below), generating great instability in these organizations. Add to this the challenges that occurred during the coronavirus pandemic, which shook the already shaky structure of the UN and its agencies, especially the World Health Organization ("WHO"), which became the target of attacks by governments, notably Donald Trump<sup>22</sup>. In the same vein, the contestation by rising powers (China, India and Russia) gives rise to growing insecurity in relation to the existing mechanisms of international law to control the countries' military impulses.

Besides being a direct consequence of unresolved conflicts during the Cold War period, the Ukraine War is also a direct consequence of this new global order, which is dominated by non-Western international actors and enjoys a unique economic, population, geographical and political condition. After all: (i) both China and India and Russia have experienced an economic boom during the new millennium, suffering little during the 2008 financial crisis, (ii) all three countries have large populations, with China and India having over a billion people on their territories; (iii) all three countries, also, have favored geographical conditions relative to other international political actors, in that they are located in places that are either easily accessible by sea, or easily accessible by land; (iv) finally, the three countries also have favored political conditions for the elaboration of military and social policies in comparison to developed countries, since they are authoritarian countries, so that there is little change

<sup>22</sup> TRUMP anuncia que iniciou retirada formal dos EUA da OMS. G1, São Paulo, 07 de jun. de 2020. Disponível em: <https://g1.globo.com/mundo/noticia/2020/07/07/trump-vai-retirar-formalmente-os-eua-da-oms-diz-agencia.ghtml>. Acesso em: 30 de abr. de 2020.

of rulers and the population has no instruments to contest the decisions of politicians.

In relation specifically to Ukraine, one can highlight that the country that emerged from the end of the USSR has undergone intense political and social transformations, especially if one considers that the country has been marked by several separatist and ultra-nationalist movements, in addition to major corruption scandals that have eroded the structure of Ukrainian institutions. In this regard, Ukraine is strongly marked by the existence of several separatist regions, which militate for their independence or their annexation to Russia, as these are regions whose population is predominantly Russian. It is curious to point out that these two phenomena - the institutional corrosion of Ukraine and the existence of separatist pro-Russian regions - are intertwined, since the absence of a strong and legitimate state to impose its will generates the possibility of popular insurrections that aim at the creation of a new state or the annexation of a certain region to a stronger state.

Therefore, one can speak of three main reasons for the Ukrainian War: (i) the existence of unresolved Cold War conflicts, (ii) the existence of a new global order, nuanced by non-Western political actors, and (iii) Ukraine's institutional corrosion.

#### **4. THE POSSIBLE WAR EFFECTS OF THE CURRENT DEMOCRATIC ARRANGEMENT**

Even before the Ukrainian War it was possible to glimpse strong changes in the current democratic arrangement, especially because of the pandemic and the loss of steam of the radical and extremist wave after the 2008 financial crisis, as mentioned above. The very notion of globalization will be strongly affected by these three fundamental political and social events.

It is important to say that the world has not even witnessed true social and institutional stability in globalization. According to STOLLEIS, classical state functions were already shifting and being handed over to other political actors. What is more, these political actors had not even demonstrated, and in the context of the Ukraine War showed strong deficiencies, sufficient strength to replace the state order built after World War II:

That said, everything will depend on how decisively the balance is struck between local, regional, national and transnational functions, as well as between the corresponding competencies and institutions. This balance, which, in view of the multiplicity of components, will always remain precarious, is a task that concerns all legal disciplines. The scope of this phenomenon extends from private law theory, through administrative law understood in a new way, to constitutional theory and international law. In this respect, it is often a matter of free spheres and obligations created by society's self-development, but it is also a matter of factual protection and legal

protection. Not only does the legitimacy of the modern state depend on its respecting and protecting human rights, but also the credibility of those institutions that are to take the place of the state in the future in the context of globalization. For if they do not fulfill the protective tasks on behalf of which the modern state was created at the beginning of the Modern Age, these institutions will not be worthy of acceptance, and thus not be financed in solidarity by those involved and affected by them. But above all, they will not obtain the legitimacy through “recognition” that is indispensable to their functioning. This is why the protection of human and citizen rights is inextricably linked to the great project of transferring the democratic processes of formation of the State's will to “supra-state spheres. In this way, those mechanisms that have proven to be effective must achieve greater breadth and involve an ever-increasing number of actors.<sup>23</sup>

Against this background, it can be predicted that the world, especially the West, and the major international organizations will go through another period of trial. The Ukraine War can be understood as a first stage in an intense process of reconfiguration of the international political constellation, since it does not consist of an isolated and passing event but marks the beginning of a new phase in the international political structure.

According to Márcio Ricardo Staffen:

National, supranational, and international institutions should not be viewed solely as the organs of a complete joint federation as designed for the models of national States. However, the powers conferred on national, supranational, international, and transnational authorities are so closely interconnected because of globalization and the interconnected functioning of the institutions that the legitimacy of the exercise of national public authorities can only be verified in this *multilevel* context.

This scenario calls for a new criterion for the legitimacy of authority, which imposes the need for national and global horizontal and vertical alignment. Problems of the legitimacy of one

<sup>23</sup> STOLLEIS, Michael. *Op. Cit.* pp. 251-252. In the original: “Posto isso, tudo dependerá do modo decisivo como será feito o equilíbrio entre funções locais, regionais, nacionais e transnacionais, bem como entre as competências e instituições correspondentes. Esse equilíbrio, que, diante da multiplicidade de componentes, permanecerá sempre precário, é uma tarefa que concerne a todas as disciplinas jurídicas. A abrangência deste fenômeno estende-se desde a teoria do direito privado, passando por um direito administrativo compreendido de uma nova maneira, chegando até a teoria da Constituição e o direito internacional. Frequentemente está-se nesse aspecto diante de âmbitos livres e vinculações criadas pelo autodesenvolvimento da sociedade, mas trata-se também de proteção fática e de proteção jurídica. Não só a legitimação do Estado moderno depende de que ele respeite e proteja os direitos humanos, mas também a credibilidade daquelas instituições que deverão ocupar o lugar do Estado no futuro no contexto da globalização. É que se elas não cumprirem as tarefas de proteção em nome das quais o Estado moderno foi criado no início da Idade Moderna, essas instituições não serão dignas de aceitação, não sendo assim financiadas solidariamente pelos envolvidos e afetados por elas. Mas, sobretudo, elas não obterão a legitimidade por meio do “reconhecimento”, indispensável ao seu funcionamento. Por isso, à proteção dos direitos do homem e do cidadão está indissolúvelmente associado o grande projeto da transposição dos processos democráticos de formação da vontade do Estado para “âmbitos supraestatais”. Desse modo, aqueles mecanismos que se mostraram eficazes deverão alcançar uma maior amplitude e envolver um número cada vez maior de atores.”

authority, endowed with public authority, negatively affect the decisions of other authorities.<sup>24</sup>

It is fundamental to take into account not only the war in Ukraine, but the entire international political context that permeates it, in order to verify what will be the impacts on the formation of the Democratic Rule of Law. Now, this entire political, economic and social framework will put the very existence of the Democratic Rule of Law in check, to the extent that the rise of new actors whose government regime is authoritarian and there is a great chance of destabilization of countries that were the European block, due to the reflections of the War.

That is to say, the rearrangement of international political forces after the war in Ukraine is tinged with the breakdown of the hegemony of the United States and international organizations, and the rise of non-Western political forces, which have little respect for the rule of law. Thus, the future of the Democratic Rule of Law looks bleak.

## CONCLUSIONS

In summary, I found, that the pre-war political landscape was marked by the rise, stagnation, and fall of the global liberal capitalist regime, dominated by the United States and international control bodies. The vertigo of this domination was a consequence of internal crisis (2008 financial crisis and radical and extremist political wave) and external crisis (coronavirus pandemic).

Next, the formation of the Democratic Rule of Law in the century was analyzed, whose roots were the Weimar Constitution and the Mexican Constitution of 1917. Also, it was verified that the positivist/legalist formula had been exhausted, reason why new forms of protection of certain fundamental rights started to be demanded by the people. It was also verified that this paradigm shift came after the two World Wars, in order to impose the observance of fundamental rights on the rulers. In this context, it was pointed out that the Democratic State of Law built in the 20th century is characterized by the sovereignty of the constitution and by the respect for fundamental rights, as well as by the strict observance of the legal rules and procedures described in the normative texts.

The previous topics were discussed in order to build the international political context of the Ukrainian War, in an attempt to identify the reasons that led to the invasion of Ukrainian

<sup>24</sup> STAFFEN, MÁRCIO RICARDO. On the Authority of Transnational Law. *Estud. Socio-Juríd*, Bogotá, v. 23, n. 1, p. 465-482, June 2021. Available from <[http://www.scielo.org.co/scielo.php?script=sci\\_arttext&pid=S0124-05792021000100465&lng=en&nrm=iso](http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0124-05792021000100465&lng=en&nrm=iso)>. access on 30 Aug. 2022. Epub June 01, 2022. <https://doi.org/10.12804/revistas.urosario.edu.co/sociojuridicos/a.8175>.

territory. Thus, it was verified that they are: (i) the existence of unresolved Cold War conflicts, (ii) the existence of a new global order, nuanced by non-Western political actors, and (iii) the institutional corrosion of Ukraine.

Finally, we sought to point out what will be the consequences of the war in Ukraine for the democratic rule of law, pointing to a rearrangement of international political forces marked by the prevalence of non-Western countries, the corrosion of the structure of independent international organizations and the deconstruction of various political and social dogmas that founded the current global order.

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