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WAR

Editors

Dr. Hanna Shelest
Dr. Mykola Kapitonenko

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Contacts:

website: <http://ukraine-analytica.org/>
e-mail: Ukraine_analytica@ukr.net
Facebook: <https://www.facebook.com/ukraineanalytica>
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THE RULES-BASED INTERNATIONAL ORDER AND THE GLOBAL DISCOURSE OF THE RUSSIAN-UKRAINIAN WAR

Dr Iryna Bohinska

Vasyl' Stus Donetsk National University

The global discourse over the current situation in Ukraine includes many definitions of it, such as a conflict, aggression, war, special military operation, etc. Is it within the power of the rules-based international order to get a controlled level of escalation in the conflict on the territory of Ukraine and to find a compromise in limited local framing – as the “Russian-Ukrainian War”? There were two attempts to find such a compromise. During the Orange Revolution in 2004 it was formulated on the basis of Ukrainian domestic legislation. After the Euromaidan and subsequent Russian intervention, the compromise was found based on international law. Ukraine has de facto lost some of its territories, but it has remained as a democratic state. The global discourse of the Russia-Ukraine war in the UN Security Council and the 11th Emergency Special Session of the UN General Assembly reveal the potential of the concept of a rules-based international order.

Perception of War and World Order

The current escalation of the conflict in and around Ukraine is not limited to the framework of the Russian-Ukrainian war or just to the problem of European security. Since 24th February, 2022, the voices of politicians and experts who link the conflict with issues of world order have become louder and clearer.

There are two designations of the ongoing conflict in the global discourse: as a “Special Military Operation”, the version insisted upon by the Russian Federation (RF), and as “aggression”, the name recorded in the United Nations General Assembly resolution on 2nd March 2022, which was supported by 140 member states.

The current situation is different from what happened in 2014. The annexation

of Crimea and the unleashing of the conflict in Donbas were not seen as part of an effort to form a completely new world order. On the contrary, efforts were made to artificially fragment and localise the conflict in “Eastern Ukraine”. This was possible for a few reasons. Firstly, Russia blocked unwanted resolutions in the UN Security Council, which created a situation of political and legal impunity for the aggressor, which had annexed part of the territory of a neighbouring state. Second, they sought to act in the conflict with Ukraine through proxies rather than directly. After Euromaidan, the Russian authorities intended to regain their lost influence over Ukrainian politics without sliding into a large-scale conflict with the direct involvement of the West. Third, although before 2022, Russian media and experts had been talking about the “West’s hybrid war against Russia”, the main efforts

of Russian propaganda were aimed at discursively marginalising the conflict as an “internal Ukrainian civil one”¹.

Quite different things are heard from the same Russian politicians now. For example, after talks with Ukrainian Foreign Minister D. Kuleba (March 10th, 2022, Antalya), Russian Foreign Minister Lavrov said: “we are not planning to attack other countries; we did not attack Ukraine either”². At a meeting (March 23rd 2022, Moscow) he explained to MGIMO students and professors: “what is happening in the world right now, of course, is not only and not so much about Ukraine, it is about attempts to form a new order”³. After his meeting with UN Secretary-General Guterres (April 26th, 2022, Moscow) S. Lavrov stressed: “the moment of truth” in international relations has arrived: “Will humankind live on the basis of the UN Charter?”⁴.

A similar situation with an emphasis on the global consequences of Russia’s war against Ukraine can be observed in the interpretations of the conflict by other politicians. The previously dominant narrative “Russian-Ukrainian war” in official

Ukrainian discourse is giving way to the broader theme of a “war for freedom”. In his address on March 24th 2022, exactly one month after Russia’s large-scale invasion of Ukraine started, President Zelenskyy pointed out that “Russia’s war is not only a war against Ukraine. It is much broader than that. Russia has started a war against freedom as such... It seeks to show that only brute and brutal force matters”⁵. U.S. President Biden, in his Warsaw Speech on March 26th, 2022, outlined his vision: “But we emerged anew in the great battle for freedom: a battle between democracy and autocracy, between liberty and repression, between a rules-based order and one governed by brute force”⁶.

As can be observed, “the conflict in Ukraine” in the discursive field refers to competing projects of international order – the rules-based international order, on the one hand, and the so-called world order based on international law, on the other hand. The first concept emerged from liberal peace theory. While the term rules-based order (RBO) may be technical, compared to the ideologized term “liberal order”, critics find it more ambitious. Obviously, the RBO goes beyond international law, with the UN

- 1 Что это было? Зачем нужна была война на Украине (What was it? Why was the war in Ukraine necessary). [https://www.lenta.ru/article/2014/12/25/ukraine], *Lenta*, December 25, 2014; В.Путин: гражданская война на Украине продолжается, несмотря на “минские договоренности”. (Putin: The civil war in Ukraine continues despite the “Minsk agreements”), UNN, November 5, 2014, [https://www.unn.com.ua/ru/news/1403580-v-putin-gromadyanska-viyna-v-ukrayini-prodovzhuyetsya-nezvazhayuchi-na-minski-domovlenosti].
- 2 Лавров заявил, что Россия не нападала на Украину (Lavrov said that Russia did not attack Ukraine). *Korrespondent*, March 10, 2022, [https://korrespondent.net/ukraine/politics/4455845-lavrov-zaiavyl-chto-rossiya-ne-napadala-na-ukraynu]
- 3 Лавров считает украинский кризис попыткой создать новый миропорядок (Lavrov considers the Ukrainian crisis is an attempt to create a new world order), *Kommersant*, March 23, 2022, [https://www.kommersant.ru/doc/5271215]
- 4 Гуттериш в Москве: Россия развязала войну против Украины, виновные должны быть наказаны (Guterres in Moscow: Russia unleashed a war against Ukraine, the guilty must be punished). *Gazeta.ua*, April 26, 2022, [https://gazeta.ua/ru/articles/politics/_gutterish-v-moskve-rossiya-razvyazala-voynu-protiv-ukrainy-vinovnyue-dolzhyt-byt-nakazany/1084651]
- 5 «Вони нічого не знають про нас, про українців»: повний текст звернення Зеленського рівно через місяць після вторгнення Росії («They know nothing about us, the Ukrainians»: full text of Zelenskyy’s appeal exactly a month after the invasion of Russia). *TSN*, March 23, 2022, [https://tsn.ua/politika/voni-nichogo-ne-znayut-pro-nas-pro-ukrayinciv-povniy-tekst-zvernennya-zelenskogo-u-misyachik-viyni-z-rf-2018206.html]
- 6 Remarks by President Biden on the United Efforts of the Free World to Support the People of Ukraine. [https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/26/remarks-by-president-biden-on-the-united-efforts-of-the-free-world-to-support-the-people-of-ukraine/]

Charter at its heart. U.S. diplomats often use the phrase “rules-based order”, with the view to strengthening it. They call it “a world in which might makes right and winners take all, and that would be a far more violent and unstable world for all us” as the alternative to such an order⁷.

And that describes what is happening in Ukraine right now in terms of Russian aggression. Russia really behaves as if there are no rules. Simultaneously, its representatives constantly talk about the need to comply with international law. Foreign Minister Lavrov repeatedly uses the rostrum of the General Assembly to deny any rules other than the UN Charter and UN Security Council resolutions. He has even suggested launching a new hashtag for social networks in support of the UN Charter #OurRulesUNCharter. A detailed criticism of the RBO is contained in his article “On Law, Rights and Rules”, in which the minister focuses on the fuzziness of the rules and their selective application by the West⁸. For the minister, the injustice of the RBO, which protects the interests of a narrow group of countries and does not consider the diversity of the modern world, seems obvious. In addition, Lavrov emphasises the instrumental role of the RBO, which, in his opinion, helps the West to restrain its competitors. The latter includes not only Russia but also China. In this case, the rule-

based world order is seen by the minister as an instrument for the restoration of a unipolar world⁹. Notably, criticism of the RBO concept by Russian officials increased markedly as the large-scale invasion of Ukraine approached, and it continues in the face of the conduct of the war.



As can be observed, “the conflict in Ukraine” in the discursive field refers to competing projects of international order - the rules-based international order, on the one hand, and the so-called world order based on international law, on the other hand

The “Russian view” of the world order leaves little room for Ukraine as a political actor. Complemented by rhetoric about the current Ukrainian government as a puppet of the West, it undermines the intentions of those who think that an end to the war with Russia can be negotiated, i.e., resolved diplomatically. Russian President Putin has so far refused to meet Ukrainian President Zelenskyy. For Putin, a personal meeting would mean “legitimization” of the “anti-Russia” project and refusal to perceive Ukraine as “an instrument for suppressing Russian independence”¹⁰. That’s why an

7 Secretary Antony J. Blinken, National Security Advisor Jake Sullivan, Chinese Director Yang and State Councilor Wang at the Top of Their Meeting. State Department, March 18, 2021, [https://www.state.gov/secretary-antony-j-blinken-national-security-advisor-jake-sullivan-chinese-director-of-the-office-of-the-central-commission-for-foreign-affairs-yang-jiechi-and-chinese-state-councilor-wang-yi-at-th]

8 Лавров: концепция порядка, основанного на правилах, затрагивает полномочия ООН (Lavrov: the rules-based order concept affects the UN authority). TASS, September 29, 2019, [https://tass.ru/politika/6906987?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com]; Лавров С. О праве, правах и правилах (Lavrov S. About Law, Rights and Rules). Russia in Global Affairs, June 28, 2021, [https://globalaffairs.ru/articles/o-prave-pravah-i-pravilah/]

9 Лавров: Запад и сейчас вмешивается в дела Украины, мешая переговорам с Россией (Lavrov: Even now the West interferes in Ukraine’s affairs, preventing negotiations with Russia). RG.ru, March 23, 2022, [https://rg.ru/2022/03/23/sergej-lavrov-vystupil-v-mgimo.html]

10 Лавров назвал Украину инструментом подавления российской самостоятельности (Lavrov called Ukraine a tool for suppressing Russian independence). RG.ru, March 23, 2022, [https://rg.ru/2022/03/23/lavrov-nazval-ukrainu-instrumentom-podavleniia-rossijskoj-samostoiatelnosti.html]

important precondition for the search for a compromise, as well as the very possibility of a diplomatic approach to the settlement, is the recognition by Putin of Zelenskyy as the legitimate president of Ukraine. Without it, the possibilities of diplomacy are sharply reduced, and military means remain the obvious alternative. This conclusion is not a surprise, given the current (third) phase of the conflict, which (the conflict) has been going on for almost 20 years.

Conflict Phases

Russian-Ukrainian bilateral relations have not been free from problems since the collapse of the USSR. In the 1990s and early 2000s, the parties tried to keep all the nuances secret (as much as possible). Under the guise of a formal “strategic partnership”, periodic gas wars ended with the signing of new gas agreements. However, as the resource of a post-Soviet identity was exhausted in Russian-Ukrainian relations, and different politicians came to power in Ukraine, while electoral cycles in the RF were not accompanied by new faces in politics, a conflict was inevitable.

The first phase of the conflict involved the recognition of the 2004 presidential election results in Ukraine. During the presidential race, Russia supported Yanukovich, the leader of the Party of Regions. The other candidate for the presidency, Yushchenko was perceived as a pro-Western politician. Based on the results of the two rounds of elections, the Central Election Commission announced that Yanukovich had won, which caused a mass wave of protests in Kyiv. Yushchenko’s supporters claimed serious violations in the electoral process and falsification of the voting results. The Orange Revolution in 2004 ended in a compromise and did not go beyond the “crisis in Ukraine” in which the problem of the transition of power was resolved with the participation of foreign mediators. The Constitutional law of December 8th, 2004,

provided for the weakening of the institution of the presidency, and redistribution of his powers between the government and the parliament. The independence of the judicial branch was strengthened.

Even though Ukraine’s transition from a presidential-parliamentary to a parliamentary-presidential republic was not easy, the internal political crisis did not turn into an international conflict. The major outcome of the crisis in 2004 was the prospect of Ukraine’s gradual transformation into a European democracy. Even Yanukovich’s accession to power in 2010, with his obvious refusal to seek NATO membership, did not close the door to European integration for Ukraine. Negotiations on signing the Association Agreement with the EU began over time. At the final stage of preparation of the document, the Russian Federation proposed a trilateral negotiation format on the possible consequences of signing the Association Agreement for Ukraine. It seemed to be simultaneous with the intention of the Customs Union countries (Russia, Belarus, and Kazakhstan) to close their free trade regime if Ukraine signed the Association Agreement with the EU. The Ukrainian government’s decision to suspend preparations for association with the EU (although explained by tactical considerations and the desire to restore normal relations with Russia) triggered a political crisis in Ukraine.

The feature of this crisis was the greater involvement of external actors. The failure of EU mediation between the government and the opposition in late February of 2014 opened the prospect of a large-scale civil conflict. But the unexpected flight from power by President Yanukovich, against the backdrop of the Euromaidan events, was used by Russia to annex Crimea. After the Euromaidan victory, the Kremlin refused to recognise the legitimacy of the new Ukrainian government, which was the reason for its failure to comply with

the Budapest Memorandum of 1994. The Kremlin agreed to OSCE involvement in the Trilateral Contact Group. However, this did not affect the state of Russian-Ukrainian relations after 2014. The Minsk agreements were interpreted differently by the parties, and the Minsk negotiation process failed to make progress in resolving the conflict.

In the next years, the media, experts, and official political discourse used different words and phrases to describe the conflict: Ukrainian crisis, simmering conflict, military aggression, war, etc. The narrative of the main actors was more polarised, in that descriptions of “Russia’s war against Ukraine” were contrasted with those of a “civil conflict”. The war of narrative was waged in the desire to carefully package one’s own vision under the wrapper of a problem relevant to the participant, and to quickly legitimise it through the adoption of laws, decrees, regulations, and resolutions at various levels of government.

War of Narratives

The war of narratives was possible because the actual violation of Ukraine’s territorial integrity was not assessed legally, on the basis of international law, from the very beginning. Globalisation and the universalisation of the discourse of “Russia’s war against Ukraine” depended on whether the aggressor state could be held accountable for violating international law, and for its selective use and manipulative interpretation. From the RBO perspective, it was not beneficial to develop this discourse exclusively in the propaganda field without obvious results in the form of resolutions adopted by international organisations and international court decisions. The UN could have played a more decisive role in this.

An attempt to adopt a resolution in the UN Security Council (UNSC) in March of 2014, which condemned the Crimean referendum as illegitimate, was blocked by Russia. For the aggressor country, permanent UNSC member status was an advantage that could be used to influence the course of the conflict, the process of resolution, and promotion of the idea that the war was “just”. In this sense, the conflict in Donbas was predetermined by the annexation of Crimea. Impunity, resulting from the inability of the UNSC to maintain international peace and security, enabled the continuation of the conflict. The UNSC was unable to resolve the conflict in the de-escalation phase, which opened with the signing of the compromise Minsk Agreements in 2014-2015. It is important to emphasise that the UNSC permanent members managed to reach consensus only on Resolution 2202 (2015), which approved the “Package of Measures for the Implementation of the Minsk Agreements”. A few days before the meeting on February 17th, 2015, the document, known as Minsk-2, was agreed in the Normandy Format. The negotiations in the Belarusian capital took place against the backdrop of ongoing hostilities and the threat of the encirclement of Ukrainian armed forces near Debaltseve. The ceasefire, which had been agreed upon the day before, had not yet been observed when the draft resolution was being discussed at the United Nations¹¹.

The approval of Resolution 2202 (2015) resulted in a contradictory situation. On the one hand, the UNSC declared full respect for Ukraine’s sovereignty, independence, and territorial integrity and legitimised a peaceful solution to the conflict. On the other hand, the resolution did not mention the state that had unleashed the conflict. Therefore, Russia was left without any obligations within the

11 Unanimously Adopting Resolution 2202 (2015), Security Council Calls on Parties to Implement Accords Aimed at Peaceful Settlement in Eastern Ukraine. United Nations, 2015, [https://www.un.org/press/en/2015/sc11785.doc.htm]

framework of the settlement but retained its ability to influence the peace process. On every occasion, its representatives rejected any options for resolving the conflict that would reduce Russian influence and insisted on “no alternative to Minsk-2”, referring to Resolution 2202 (2015).



The return of geopolitics does not mean that the decisive point of the current phase of the conflict will take place on the battlefield. The issue of the aggressor’s responsibility for abusing the status of a permanent member of the UNSC remains relevant

There is a contradiction between the concepts of RBO and order based on international law. Whereas Resolution 2202 (2015) reflects the narrow approach promoted by the Russian Federation to understand international law as a system with the UN at its centre and Security Council resolutions having the force of higher-order law, the RBO broad approach also involves systems independent from the UN, consisting of decisions and agreements reached outside the UNSC framework. In this case, the RBO covers the resolutions on Crimea and Ukraine adopted in the General Assembly (GA), the OSCE, and the Council of Europe; the decisions of international courts (for example, the decision of the International Maritime Tribunal on the Kerch incident, which the RF refused to implement). The UNGA adopted 11 resolutions in the context of the

international response to the annexation of Crimea. The latest, adopted on December 16, 2021, defines Crimea and Sevastopol as temporarily occupied territories of Ukraine. This means that the problem of the return of the Crimean Peninsula is recognised as unresolved and remains on the UN agenda. The RBO was projected into the Council of Europe when, in April 2014, the Russian delegation was deprived of the right to vote in the PACE. The OSCE PA adopted a resolution “Restoration of Ukraine’s Sovereignty and Territorial Integrity” in August 2017, with wording that did not match the Russian propaganda stance¹². An important factor which the RBO strengthens is the idea of a democratic, European Ukraine. The “special military operation” announced by the Russian president on February 24th, 2022, is in fact a new phase of the Russian-Ukrainian war. Disguising the war with the term “special military operation” looks like an attempt by the Russian authorities to avoid responsibility for war crimes in Ukraine.

The return of geopolitics does not mean that the decisive point of the current phase of the conflict will take place on the battlefield. The issue of the aggressor’s responsibility for abusing the status of a permanent member of the UNSC remains relevant. A step towards the strengthening of the RBO is the call for the 11th UNGA Emergency special session after the Russian representative blocked a resolution in the UNSC on February 25th, 2022. It condemned the Russian aggression against Ukraine¹³. The UNGA has already approved three resolutions on Ukraine, laying out a common approach to resolving the conflict

12 В. Шрамович, *Как ОБСЕ признала «российские гибридные силы» на Донбассе*. (Vyacheslav Shramovich, How the OSCE recognized «Russian hybrid forces» in Donbass), BBC, July 10, 2017, [https://www.bbc.com/ukrainian/features-russian-40554241]

13 Россия наложила вето на резолюцию Совета Безопасности, осуждающую ее действия на территории Украины (Russia vetoed a Security Council resolution condemning its actions in Ukraine), United Nations, February 25, 2022, [https://news.un.org/ru/story/2022/02/1418872]

in the future¹⁴. These steps have made it possible to restrain Russia's efforts to distort the concept of peacekeeping, and qualified its actions on the territory of Ukraine as a violation of the UN Charter.

Today, the UN remains the platform for discussing the problems of conflict management and resolution. Three humanitarian operations to evacuate civilians from Mariupol and the besieged Azovstal factory have already been conducted under the auspices of the organisation. After a trip to Moscow and Kyiv, Secretary-General António Guterres offered to mediate a peace settlement. Although there is no mention of mediation in the text of the UNSC statement of May 7th, 2022, all permanent members expressed support for efforts to find a peaceful solution. Multilateral diplomacy (as a characteristic feature of the RBO) resists unilateral attempts to solve "the Ukrainian crisis".

In addition, the Russian Federation has refused to execute the UN International Criminal Court ruling of March 16th, 2022 on the cessation of hostilities in Ukraine. Of course, this does not mean the cessation of court hearings or the search for new tools to bring perpetrators of crimes to justice. Already, 43 states have filed allegations of violations of the laws of war in Ukraine.

The protracted conflict between Russia and Ukraine since the early 2000s cannot be resolved on a bilateral level. It may seem that the grounds for the conflict were created by territorial claims related to the consequences of the collapse of the USSR.

For example, back in 2003, Russia attempted to seize the Ukrainian island of Tuzla. The construction of a dam in the straits crossing over to Tuzla was seen as a direct threat to Ukraine's territorial integrity. However, the roots of the conflict are deep in history and its solution cannot be found within the framework of the idea of one world order as a special case.



For Ukraine, it would be undesirable to supplant it with the discourse of world order, as well as to localise it as a particular case in international relations. This means that the settlement of the conflict between Russia and Ukraine should be designed within the framework of the rules-based order strengthening and/or abandoning yet another attempt to combine the approaches of different models of world order

The current phase of escalation in the conflict between Ukraine and Russia has revealed the essential problem in finding a normative basis for world order. Both the RBO and the narrower international law-based world order approaches do not exclude the role of the UN. The opposition of the RBO to international law is not just a manipulation. Choosing one conceptual approach would mean weakening the other, while compromise involves mutual concessions and is temporary in nature.

14 Resolution ES-11/1. *Aggression against Ukraine*. United Nations, March 2, 2022, [<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/293/36/PDF/N2229336.pdf?OpenElement>]; Resolution ES-11/2. *Humanitarian consequences of the aggression against Ukraine*. United Nations, March 24, 2022, [<https://documents-dds-ny.un.org/doc/UNDOC/LTD/N22/294/07/PDF/N2229407.pdf?OpenElement>]; Resolution ES-11/3. *Suspension of the rights of membership of the Russian Federation in the Human Rights Council*. United Nations, April 7, 2022 [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_es-11_3.pdf]

In the context of Russia's war against Ukraine, the initiatives coming from Ukrainian negotiators are aimed at finding a compromise solution. They can be seen as the diplomats' attempts to create two documents simultaneously – a multilateral treaty on security guarantees for Ukraine (to avoid a new war with Russia in the future) and a separate bilateral agreement between Russia and Ukraine. In the latter case, it is still unclear whether the parties will accept discussion of a cease-fire agreement as creating the conditions for normal work on a basic document on security guarantees.

After negotiations in Istanbul on March 29th, 2022, the Russian representative unexpectedly declared a significant reduction in military activity in the Kyiv and Chernihiv regions, while the head of the Ukrainian delegation Davyd Arahamia confirmed that security guarantees for Ukraine would temporarily not apply to the occupied Crimea and the non-controlled ORDLO. The absence of new rounds of negotiations amid ongoing hostilities speaks volumes about the difficulties diplomats have encountered in trying to combine the two approaches to resolving the conflict and finding a compromise acceptable to both parties.

Meanwhile, the UN GA special session on April 7th approved Resolution ES-11/3, suspending Russia's membership of the Human Rights Council. That was another step towards isolating Russia from the RBO. The resolution was adopted by 93 votes to 24, with 58 abstentions. Compared to the two previous resolutions on Ukraine, adopted by the special session on March 2nd and March 24th, 2022, the number of votes "in favour" was down by almost 50. The debate and voting results on the resolution show that the issue of human rights in solving international problems has not yet found support among half of the UN member states.

The global consequences of the Russian-Ukrainian war are already shaping the global discourse on the conflict. For Ukraine, it would be undesirable to supplant it with the discourse of world order, as well as to localise it as a particular case in international relations. This means that the settlement of the conflict between Russia and Ukraine should be designed within the framework of the rules-based order strengthening and/or abandoning yet another attempt to combine the approaches of different models of world order. The experience of settlement based on UN international law has already shown its limitations. The new phase of conflict escalation once again demonstrates the lack of existing norms of international law, which allow for situations of substitution, manipulation, and double interpretation. The existing system of norms must likely be supplemented by rules and procedures aimed at eliminating such situations. If the Russian Federation can emerge from the de facto war against Ukraine unpunished, it will reinforce the assumption that the "rules-based order" is just a mirage.

*Iryna Bohinska, Ph.D., Associate Professor at the Department of International Relations and Foreign Policy at Vasyl' Stus Donetsk National University. Being the author of more than 40 academic and analytical publications, she focuses on international relations, international communications, negotiations, conflict resolution, mediation, and the foreign policy of the Russian Federation. Her latest publications are *Mediation in the grey zone*, *Memory conflicts in international relations*, *The academic discourse of the world order as a foreign political resource (case of the Russian concept of multipolarity)*, *The "Ukrainian Issue" in Russian identity policy*, *"Concept «Democracy» in Russian official discourse as an indicator of the relations of the RF with the West*.*

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