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ICLR, 2022, Vol. 22, No. 2.

The Significance of the Ultimatum in International Law: The Responsibility of the Head of the USSR for the Events of January 1991 in Lithuania

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GRUODYTĖ, Edita; RUMŠAS, Mindaugas. The Significance of the Ultimatum in International Law: The Responsibility of the Head of the USSR for the Events of January 1991 in Lithuania. *International and Comparative Law Review*, 2022, vol. 22, no. 2, pp. 43–65. DOI: 10.2478/iclr-2022-0014

Summary: This article analyzed the significance of the ultimatum as a means of declaring aggression against another state in international law, and what influence it has in evaluating the actions of the head of USSR in the context of the events of January 13th 1991. The first part of the article analyzed the classical concept of ultimatum and its meaning in international law. Later, alternative forms of expression of ultimatum, which were formed in the 20th century, and practiced during international conflicts, and their assessment in international law, were analyzed. Finally, after refining the existing legal significance of the ultimatum, we analyzed the significance of the ultimatum against Lithuania issued by the head of the USSR on 10 January 1990, We also examined his further actions on 11–13 January 1991 in evaluating assumptions of his personal responsibility as head of USSR of the armed forces regarding the tragic events of January 13th 1991. As a result of the investigation, it was concluded that the ultimatum of the head of the USSR issued on January 10th, 1991, within the meaning of international law, had a direct connection in the assessment of the issue of criminal liability in relation to international crimes committed by the armed forces of the USSR. The aggressive foreign policy pursued by the head of the USSR in expressing it within a tacit ultimatum based on the try and see method, and subsequently international crimes against the Lithuanian state committed by military units, are considered the actual basis for the emergence of personal criminal liability of the head of the USSR for the events of January 13th, 1991 under international law.

Keywords: Ultimatum, international law; Lithuania, the events of January 13, USSR, 1991.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

1 Introduction

On the 10th of January, 1991, the former President of the Soviet Union, M. Gorbachev (hereinafter referred to as the Head of the USSR), appealed to the Supreme Council of the Republic of Lithuania to immediately restore the validity of the Constitutions of the USSR and the Lithuanian Soviet Socialist Republic (SSR) in Lithuania, and to cancel all previously adopted non-constitutional acts related to the restoration of Lithuania's independence proclaimed on the 11th of March, 1990.[1] The appeal notes that the Supreme Council of Lithuania was responsible for gross violations of the USSR Constitution, and, given other illegal acts, deemed this a situation which "required urgent measures to be taken".[2] It should be noted that, on the day after this ultimatum, the USSR military operation against the Republic of Lithuania began, and civilians were intentionally injured during the capture of strategic objects. Later, on 12–14 January, 1991, 14 civilians were killed during the storming of Lithuania. On January 14th, 1991, during a press conference, the head of the USSR noted that the military campaign in Vilnius was organized as part of a local initiative, and that he, as the commander of the armed forces, did not give any instructions to use military force in Vilnius.[3][4]

In the case of January 13, 1991,[5] the actions of the leader of the USSR (e.g., giving orders, initiation of military operation, and planning) were not proven or qualified. However, assessing the entire context, the question arises whether the ultimate appeal of the leader of the USSR to the leadership of the Republic of Lithuania, in the sense of international law, can be considered an act with a direct connection to the subsequent international crimes committed by the armed forces of the USSR[6]. It is thus unclear if, in this ultimatum was a factual basis for the criminal liability of the head of the USSR for war crimes and crimes against humanity [7] committed by the USSR Armed Forces on January 11–13th, 1991.

1 Office Of The Chief Archivist Of Lithuania. Address of the President of the USSR Mikhail Gorbachev to the Supreme Council of the Republic of Lithuania in 1991. January 10. [online]. Available at: <https://virtualios-parodos.archyvai.lt/lt/virtualios-parodos/34/30-sausio-ziemu-lvna/exh-206/lietuvos-ir-kaimyniniu-valstybiu-gyventoju-politiku-ivairiu-istaigu-ir-organizaciju-kreipimaisi-pranesimai-protestai-isreikstas-palaikymas/case-1038#slide3>.

2 Ibid.

3 ABC News Washington. 13 January 1991, 3:50. [online]. Available at: <https://www.youtube.com/watch?v=m1z291BGr68>

4 RUPŠYTĖ, Angonita, Defense of Freedom in 1991. [online]. Available at: <https://www.lrs.lt/sip/portal.show?p_r=37337&p_k=1>.

5 J. M. et al v. Lithuania. Court of Appeal of Lithuania. Judgment of 31 March 2021. Application no. 1A-34-1020/2021. [online]. Available at: <https://www.infolex.lt/tp/1981100>

6 O. M. et al v. Lithuania. Supreme Court of Lithuania. Judgment of 22 June 2022. Application no. 2K-7-39-1073/2022. [online]. Available at: <https://www.infolex.lt/tp/2092993>

7 Ibid.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

To respond to the set goal, the concept of an ultimatum and its significance in international law were first reviewed in this paper. Later, the development of the ultimatum in the 20th century was studied by analyzing specific examples of ultimatums during international conflicts. Finally, after refining the existing concept of ultimatums, the actions of the head of the USSR on January 11–13, 1991 were analyzed to assess the commander's actions and the assumptions of his personal responsibility. This analysis was also relevant in the context of Russia's war ongoing against Ukraine. The conclusions drawn from this article make it possible to assess the legal force of the Russian narrative in the classification of the aggressor's actions in calling the invasion of Ukraine a "special military operation" and thus avoiding the concept of "war" in its rhetoric.

The set goal was implemented with the help of appropriate legal methods:

- Using historical, comparative, document analysis, and analytical-critical methods, the concept of ultimatum in international law was analyzed in the context of the period under investigation;
- Jurisprudence and doctrine analysis methods analyzed the development and significance of the ultimatum in international relations;
- Historically, the legislature's intentions, document analysis, and teleological methods had analyzed the significance of the 10 January, 1991 ultimatum in international law to assess the behavior of the head of the USSR on January 11–13, 1991, and whether this forms the basis for its responsibility for the events of January 13, 1991.

2 The significance of the ultimatum in international law

The concept of the ultimatum in positive international law was first mentioned in 1907 in the Hague III Convention on the Commencement of Hostilities (the Hague Convention). Article 1 of the Convention states that hostilities between themselves must not commence without previous and explicit warning, in the form either of a declaration of war, giving reasons, or an ultimatum with conditional declaration of war.[8] As Hugo Grotius pointed out, the introduction of an official declaration, an ultimatum, or the state of war, in accordance with national law, begins the classical legal state of war.[9] In practice, when an ultimatum introduces a legal state of war, the further sequence of actions depends largely on the state that received the ultimatum, whose leadership, in this case, has two choices: 1) to accept the ultimatum, or 2) to reject it. Since the war was formally introduced, war was supposed to be equally formally abolished.[10]

8 Article 1 of Convention (III) relative to the Opening of Hostilities of 18 October 1907. The Hague. [online]. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iii-1907/article-1> Accessed: 11.07.2022.

9 GROTIUS, Hugo. The Law Of War And Peace. Lonang Institute, 2005, p. 414. [online]. Available at: <https://lonang.com/wp-content/download/Grotius-LawOfWarAndPeace.pdf>.

10 ŽILINSKAS, Justinas, The Concept Of Armed Conflict In International Humanitarian

Therefore, the adoption of an ultimatum formed the basis for the end of a military conflict that had not yet begun. Indeed, its rejection or non-acceptance, on the basis for the second state of war, marked the actual beginning of the war.[11] Thus, in accordance with the provisions of the Hague III Convention, the initiation of war without prior and clear warning presupposed its (war) injustice and illegality as a phenomenon. However, this treatment of *legitimate warfare* with an ultimatum after the Hague Convention has changed radically.

The 1928 Paris Treaty Providing for the Renunciation of War as an Instrument of National Policy (hereinafter referred to as the Paris Pact) was the first international legal act to denounce aggressive warfare and disclaim it an instrument of national politics in international relations.[12] A war started correctly (i.e., in accordance with the established procedures) in international relations (as it was understood in the Hague Convention) therefore cannot in itself be considered a legitimate act. The Paris Pact was considered part of general customary international law, which meant that its provisions were valid for the entire international community.[13] [14]

The 1933 London Convention was the first piece of legislation written in an attempt to shape the concept of aggression.[15] According to the definition established in this legal act (the initiator of which was the USSR), the aggressor, among other alternative conditions, was recognized as the state to first declare war on another state.[16] This threat fundamentally establishes and specifies the provision of the Paris Pact on the meaning of war as an illegal act, and further extends the scope of this concept. In other words, the declaration of war, which can be carried out with the publication of an ultimatum, is considered an act of aggression that violates the norms of international law.

Law And The Problems Of Its Application In Modern Armed Conflicts, *Jurisprudence*, 2008, vol. 2, no. 104, p. 93. [online]. Available at: <https://ojs.mruni.eu/ojs/jurisprudence/article/view/2625>.

11 Ibid.

12 Paris Treaty Providing for the Renunciation of War as an Instrument of National Policy of August 27 1928. Paris. [online]. Available at: < https://mjp.univ-perp.fr/traites/1928briand-kellogg.htm> Accessed: 12.07.2022.

13 ŽALIMAS, Dainius, Soviet Aggression Against Lithuania In 1940: Groundless Attempts To Justify It From The Point Of View Of International Law. *Jurisprudence*, 2003, vol. 46, no. 38, p. 15. [online]. Available at: <https://etalpykla.lituanistikadb.lt/object/LT-LDB-0001:J.04~2003~1367182218802/J.04~2003~1367182218802.pdf>.

14 DOLZER Rudolf, HOLLWEG Robert, LAWRENCE Peter, STEVEN Less, MACALISTER-SMITH Peter. Encyklopedia Of Public International Law, *Elsevier Science Publishers B.V*, 1987, p. 408. [online]. Available at: <https://books-library.net/files/books-library.online-02262152Dz8X7.pdf>.

15 KATUOKA, Saulius. The Concept Of Aggression In International Law. *Jurisprudence*, 2006, vol. 10, no. 88, p. 17. [online]. Available at: <https://repository.mruni.eu/bitstream/handle/007/12523/2807-5944-1-SM.pdf?sequence=1&isAllowed=y>.

16 Ibid.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

It is normal for international regulation during the inter-war period to have a direct impact on the legal significance of the ultimatum as a means to declare war. The ultimatum was no longer considered a document justifying the legitimacy and correctness of the armed conflict that had been initiated. However, the history of the 20th century shows us that, in some states, the ultimatum remained a practical tool for conducting a predatory foreign policy. Th Anschluss of Austria,[17] Munich Agreement,[18] ultimatum of Germany against Lithuania on the region of Klaipeda,[19] and the USSR ultimatum to Lithuania regarding the introduction of troops into the territory of Lithuania,[20] are all historic examples of where the ultimatum demands and threats of a state pursuing a predatory foreign policy became a tool of forcing the leadership of the state to make decisions in favor of the aggressor. The goal was to then carry out a policy of appeasement. to satisfy demands, and to accept a so-called peaceful occupation, thus avoiding the realization of a possible second – i.e., an actual or material – state of war.

However, it is noteworthy that none of the aforementioned historical acts of aggression were carried out under an ultimatum as understood within the meaning of the Hague Convention. In these cases, the leaders of the aggressors implemented the predatory policy through alternative "quieter" forms of threat. For example, in the case of Germany's ultimatum to Lithuania, the demand to surrender the Klaipeda region and the threats to use force were made to the Minister of Foreign Affairs of Lithuania orally, without specifying any deadline or providing this statement in writing.[21] In the Munich agreement, western states agreed to the annexation of the Sudetenland to Germany, thus seeking to avoid war with a growing and aggressive Germany. This later became a symbol of the policy of appeasement in international law.[22] Therefore, it cannot be said that aggressor states who pursued a predatory foreign policy in the middle of the 20th century ignored the provisions of the Paris Pact and the London Convention. In the context of Russia's war against Ukraine, it may be argued that attempts to

17 ŽALIMAS, Dainius, USSR Occupation Compensation Law In The Context Of International Law Norms. *Jurisprudence*, 2006, vol. 10, no. 88, p. 23. [online]. Available at: <https://etalpykla.lituanistikadb.lt/object/LT-LDB-0001:J.04~2006~1367154974919/J.04~2006~1367154974919.pdf>.

18 ABARIUS Laimonas and et al. Universal Lithuanian Encyclopedia. *Science And Encyclopedia Publishing Center*. [online]. Available at: <https://www.vle.lt/straipsnis/miuncheno-susitarimas/>.

19 EIDINTAS, Alfonsas, ŽALYS, Vytautas, SEEN, Erich Alfred, TUSKENIS, Edvardas, ed. Lithuania In European Politics: The Years Of The First Republic, 1918–1940. St. Martin's Press, New York, 1999, p. 158.

20 ABARIUS Laimonas and et al. Universal Lithuanian Encyclopedia. *Science And Encyclopedia Publishing Center*. [online]. Available at: <https://www.vle.lt/straipsnis/sovietu-sajungos-ultimatumas-lietuvai/>.

21 GERUTIS, Albertas. Lithuania: 700 Years. New York: Manyland Books, 1984, pp. 247–249.

22 ABARIUS, Laimonas et al, op. cit. [online]. Available at: <https://www.vle.lt/straipsnis/miuncheno-susitarimas/>.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

avoid violation of the provisions of international positive law by formal measures remain in practice to this day.

Since February 24th, 2022, when the invasion of Ukraine was launched, the Russian leadership has avoided the concept of war in its communications, calling these actions a "special military operation". One of the reasons for such rhetoric is the possible desire to formally avoid a violation of the norms of international law which regulates the law of war.[23] In the opinion of the authors of the present article, even with a formal assessment of Russia's behavior in relation to Ukraine, the actions of the aggressor cannot be viewed in any other way than war, which is largely consistent with the concept of war enshrined in the Hague Convention. The public announcement by the Russian leader about the launch of a "special military operation" against Ukraine on February 24th, 2022, both in content and form, was considered a public warning about the launching of military actions against another state. As mentioned above, in Article I of the Hague Convention, an early warning (or declaration) about the initiated military actions is considered one of the alternative forms based on which the classical (first) legal state of war can be introduced.[24] Since the order of the Head of Russia to carry out military actions was implemented on the same day, based on the concept of H. Grotius, the second (actual) state of war was introduced in this manner. Thus, this course and form of action presupposed the conclusion that the "special military operation" against Ukraine from the start of the aggression on 24 February, 2022 corresponded to the concept of war within the definitions proposed by the Hague Convention.

Thus, changes in the concept of war inspired by the abovementioned legislation in international practice forced the leaders of aggressor states to search for other forms of how, formally, without violating the norms of international law, to carry out aggressive acts and achieve the goals of a predatory policy. It is clear that this practice of tacit aggression, which was formed in international politics, bought about changes in the conceptualization of ultimatum in international law. For this reason, this article also discussed how the forms of ultimatums are fixed in jurisprudence and the practice of international law.

3 Forms of ultimatum

As noted above, in the Hague Convention, an ultimatum is understood as a categorical demand that prevents further disputes or contradictions, by which a conditional threat is made to another state. In the event of failure to comply with the requirements of the ultimatum at the appointed time, the immediate

23 URMAN Aleksandra, MAKHORTYKH Mykola. My War Is Your Special Operation: Engagement With Pro- And Anti- Regime Framing Of The War In Ukraine On Russian Social Media. *OSF Preprints*, 2022, doi:10.31219/osf.io/67snk, pp. 1–2. [online]. Available at: <https://osf.io/67snk/>.

24 See chapter 1.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

use of force or repression results.[25] In law science, an ultimatum consists of three components: a requirement; the time limit for the realization of the requirement or the pressure to comply with the requirements expeditiously; and a threat penalty for non-compliance with a requirement that is credible and strong enough to convince the opponent.[26] In the sense of the Hague Convention, this can be called a "formula" that "formalizes" the beginning of a military conflict that has not yet actually begun. Meanwhile, before the Second World War, the statement of the ultimatum as an extreme coercive diplomatic strategy by states aggressors aimed to avoid a violation of the norms of the Paris Pact and the London Convention, and thus took on alternative forms. This section aimed o discuss only those forms relevant in the context of this article.

3.1 Try-and-see method

The try-and-see method is used when a threatening state, against the backdrop of tensions, takes an ominous step in one moment in cross-border relations, makes specific demands, and, without imposing a time limit, waits for the reaction of its opponent before making additional threats.[27] As the scientist Alexander George pointed out, the threat made under the try-and-see method differs from the classical ultimatum in that all three components of the ultimatum are realized gradually. Before the threat, a clear demand is made to the opponent against the backdrop of an increased threat. However, the decision to take additional involuntary actions is postponed until it becomes clear whether the actions already performed before that time had a sufficient coercive effect on the opponent.[28] Essentially, the try-and-see method at the initial stage is focused on the use of soft coercion. The aim is to increase coercive pressure in an attempt to force the opponent to take certain actions or fulfill requirements. If the require-

25 VADAPALAS, Vilenas. International Law. Eugrimas, 2006, p. 490. [online]. Available at: <https://books.google.lt/books?id=_5Go6q0saE8C&pg=PA490&lpg=PA490&dq=kas%20yra%20ultimatumas%20tarptautin%C4%97je%20teis%C4%97je&source=bl&ots=c9Hdnmx-9M&sig=ACfU3U3zfcDHpQYTO8L5DuSw3ys-6cKyBw&hl=lt&sa=X&ved=2ahUKEwjFpNWuqvL2AhXEhP0HHRTQBecQ6AF6BAgfEAM&fbclid=IwAR1S1CDJ3PAp3ba_uLP5JYVwZXCBvdVu-iOGL0szJPRqw07Q_LUE3QoxGvk#v=onepage&q=ultimatumas&f=false>.

26 GEORGE, Alexander, SIMONS, Wiliam. The Limits Of Coercive Diplomacy, Westview Pres, Boulder, San Francisco, Oxford, 1994, p. 18. [online]. Available at: <https://core.ac.uk/download/pdf/76458223.pdf>.

27 MANSOOR, Tooba, HUSSAIN, Nazir. The Us Coercive Diplomacy And North Korea's Nuclear Challenge, *Journal of Contemporary Studies*, 2017, p. 19. [online]. Available at: <https://jcs.ndu.edu.pk/site/article/view/61>.

28 GEORGE, Alexander, op. cit. p. 18. Also LEVY, Jack. Deterrence and Coercive Diplomacy: The Contributions of Alexander Georg. Political Psychology, Vol. 29, No. 4, 2008, p. 540. [online]. Available at: <https://web.archive.org/web/20110720040305/http://fas-polisci.rutgers.edu/levy/Levy%20-%20Deterrence%20%26%20Coercive%20Diplomacy.pdf>.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

ments are not met within a limited period of time, more attention is paid to the greater threats and their actual use.[29]

An example of the try-and-see method in legal science is the hostile bilateral relations between Russia and Ukraine, when, during the gas dispute of 2006–2009, Russia demanded to pay Ukraine's debts for gas at regular prices (based on the level of the European gas market, which was approximately $230–$260). Among these demands, Ukraine had to take responsibility for the disappearance of gas, which had been exported to western European countries. Russia threatened to reduce gas supplies to Ukraine by up to 20%. Ukraine did not accept all these demands. Instead, it strengthened ties with Western states, including the North Atlantic Trade Organization (NATO) and European Union. The position of Ukraine inspired a Russian ultimatum, which demanded payment for gas imports at regular prices, and an extension of the presence of the Russian Black Sea Fleet in Sevastopol and Crimea. The Ukrainian leadership rejected the ultimatum, which presupposed a gradual increase in threat level and the realization of economic sanctions imposed by Russia against Ukraine. This was followed by the military conflict in the Donbass region of Ukraine and the annexation of Crimea in 2014, and, in 2022, war against Ukraine.

3.2 Tacit ultimatum

An alternative form of ultimatum, which is also relevant in the context of this article, is a tacit ultimatum, which is largely based on the principles of the try-and-see method. Although the tacit ultimatum also does not clearly set a deadline for the fulfilment of requirements, it is characterized by a sense of urgency, i.e., pressure from the aggressor to fulfill the requirements immediately. There are cases when the aggressor does not indicate in the claim the specific consequences in the case of rejection of the ultimatum. Such an appeal is however also considered a tacit ultimatum.[30] Since there are many formal similarities between the try-and-see and tacit forms of ultimatum, according to Alexander George, in practice, situations are possible where a particular case can possess features of both forms.[31]

One practical example lies in Hitler's strategy to encroach on the interests of France and Great Britain in the 1930s over Rhineland disputes. Hitler made several demands, each of which was based on a tacit ultimatum and indirect threats of force. Each requirement was aimed at achieving his goals, trying to avoid an unwanted war at that time creating tension, and taking advantage of

29 MANSOOR, Tooba, op. cit. p. 19.

30 IRIQAT, Dalal. Coercive Diplomacy: Camp David 2000, *Dirasat*, Human and Social Sciences, Volume 49, No. 1, 2022, p. 631. [online]. Available at: <https://www.researchgate.net/profile/Dalal-Iriqat/publication/358105135_Coercive_Diplomacy_Camp_David_2000_From_Clinton_to_Trump/links/61f0274c5779d35951d2f6d7/Coercive-Diplomacy-Camp-David-2000-From-Clinton-to-Trump.pdf>.

31 GEORGE, Alexander, op. cit. p. 19.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

the perceived threat of war on the behalf of the enemy. The requirements were specific and clear: each of them strictly limited the actions of the addressees in order to reduce their motivation to resist.[32] These actions correspond to the principles of the try-and-see method: the requirement was made without specifying a clear threat or time limit; however, the wording of the text implicitly allowed the addressee to perceive an escalation in the severity of the potential threat, which in turn is anticipated to affect the decision of the addressee state whether or not to adopt the ultimatum.[33]

Analogies can also be drawn to the events of the 1940s, during which time the USSR occupied Lithuania. Following the ultimatum of June 14, 1940, the Soviet Union openly increased hostile pressure on the Republic of Lithuania. A note was provided regarding the alleged abduction of Soviet rednecks, and unfounded accusations were provided of forming an anti-Soviet military alliance with Latvia and Estonia. The Soviet Union's military forces were also concentrated on the borders of the Baltic states.[34]

Due to these events, on June 14, 1940, demands were provided against Lithuania to:

- Extradite high officials of the Republic of Lithuania to the USSR court as the culprits of the alleged provocations against the crews of the USSR army;
- Form a new government acceptable to the Kremlin; and
- Allow for the dislocation of an unlimited contingent of the Soviet Army into the territory of Lithuania, and its deployment in the most important strategical centers of the Republic of Lithuania.[35]

The tacit ultimatum, which was based on the try-and-see method, did not directly contain a conditional threat of possible consequences of failure to comply with the requirements. However, the content of the requirements, the critical political position of the former Lithuanian government, and the predatory foreign policy pursued by the Soviet Union all signaled clear consequences. In other words, it was clear that the USSR state military units would be introduced into the territory of Lithuania in any event.[36]

3.3 Evaluation of forms of ultimatum in jurisprudence

One of the main reasons for the emergence of the abovementioned forms of the ultimatum lies in the desire of the aggressor state to not formally violate the

32 GEORGE, Alexander, op. cit. pp. 18–19.
33 By analogy: LEVY, Jack, op. cit. p. 540.
34 ŽALIMAS, Dainius, op. cit. p. 14. [online]. Available at: <https://etalpykla.lituanistikadb.lt/object/LT-LDB-0001:J.04~2003~1367182218802/J.04~2003~1367182218802.pdf>.
35 Ibid.
36 Ibid.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

international legal norms in force at that time (i.e., before the adoption of the United Nations Charter of 1945), which prohibited aggressive warfare. However, based on an exclusively formal interpretation of the provision of the Paris Pact, S. Chernichenko justified the aggression carried out by the USSR against the Lithuanian state in the 1940s, and argued that there was no violation of international law. According to S. Chernichenko, in the demands provided by the USSR government on the 14th of June, 1940 against Lithuania, no formal direct threat were issued. In othe words, since there was no ultimatum, there was no classical legal state of war, which presupposes that there was also no violation of the Paris Pact[37]. From a political and moral point of view, Chernichenko saw the demands of the USSR government as interfering in the internal affairs of the Baltic states, and not as a declaration of the state of war or actual warfare:

> *„If we regard the annexation as the incorporation of the Baltic states into the Soviet Union, it was not the result of an aggressive war or a treaty forced by force. The policy of Stalin and his entourage can be viewed negatively from the point of view of morality, but the incorporation of Latvia, Lithuania and Estonia into the composition of the USSR did not contradict the international law which existed at that time (1940s). Thus, the Baltic states rightfully belonged to the USSR, and present-day Lithuania, Latvia and Estonia are new subjects of international law, which formed after the collapse of the USSR, and not the continuation of the states that existed before the 1940s".*[38]

However, the authors of this article do not agree with the views and conclusions of S. Chernichenko. Such an argument, based on an exceptionally narrow interpretation of the law, must be seen as an attempt to formally avoid the admission of violating the Paris Pact and the London Convention. As Prof. D. Žalimas points out, opposing the position of S. Chernichenko, the aspiration of states enshrined in the Paris Pact to establish permanent peaceful and friendly relations with each other by abandoning war as a national policy measure, is impossible if war were understood only as a declared war, because it would justify the so-called covert use of force. [39] It is wrong, in essence, to treat the use of military force differently from threats with ultimatums, because *„these are closely interrelated acts of the same nature, both of which imply coercion*. "[40]

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37 ŽALIMAS, Dainius, op. cit. pp. 15–16. [online]. Available at: <https://etalpykla.lituanistikadb.lt/object/LT-LDB-0001:J.04~2003~1367182218802/J.04~2003~1367182218802.pdf>.

38 KRIŠČIŪNAS, Edvardas. Ch. Laurinavičius And A. Nikžentaitis Suggest: "In 1940 August 3 Consider The Date As The Conditional End Of The Occupation Of Lithuania And The Baltic States", *Istorija*, Nr. 72, 2008, 74 p. [online]. Available at: <https://etalpykla.lituanistikadb.lt/object/LT-LDB-0001:J.04~2008~1367165646159/J.04~2008~1367165646159.pdf>.

39 ŽALIMAS, Dainius, op. cit. pp. 15–16. [online]. Available at: <https://etalpykla.lituanistikadb.lt/object/LT-LDB-0001:J.04~2003~1367182218802/J.04~2003~1367182218802.pdf>.

40 ŽALIMAS, Dainius. Legal And Political Issues On The Continuity Of The Republic Of Lithuania. *Lithuanian Foreign Policy Review.* No. 4, 1999, pp. 108–109.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

These aspects suggest that all the above mentioned cases (i.e., Russian demands on Ukraine for gas, Hitler's demands for the Land of the Rhine, and the USSR's demands of June 14th, 1940 against Lithuania) were carried out on the basis of the try-and-see method and /or a tacit ultimatum. If the aggressor of an ultimatum does not provide clarification on the proposed threat of war, but openly demonstrates an aggressive foreign policy, actively mobilize troops at the other state's border, and provides unreasonable accusations to another state, it often raises political tensions, both locally and abroad. These developments allow the addressee to understand the gradually increasing level of potential threat and possible negative consequences of not adhering to the stipulations of the ultimatum. The implementation of an aggressive foreign policy of this degree is now considered a direct threat of war in order to force the victim state to satisfy the demands of the aggressor state. These changes qualify as the introduction of the classical legal state of warfare, which is a violation of international law on the basis of the Paris Pact and the London Convention.

In addition to the abovementioned legal acts, the legal rules formed by international tribunals had a major influence on the formation of the law of war, including determining the legal significance of an aggressive foreign policy. For this reason, the aim of the next chapter was to analyze how the aggressive foreign policy pursued by representatives of the state leadership in the practice of international tribunals can be evaluated from a legal standpoint.

4 Legal assessment of aggressive foreign policy in the law of international tribunals

After the Second World War, the Nuremberg Tribunal, through its decisions in international law, established the category of "crimes against peace". In the science of law, it is recognized as the prototypical crime of aggression.[41] P. Kūris noted that, in the verdict of the Nuremberg Tribunal, aggression was assessed as the ultimate crime against humanity.[42] Without a clear act of aggression, preparatory actions and threats to commit aggression also fell to the scope of the crime of aggression (i.e., crimes against peace) formed by the Nuremberg Tribunal.[43] This provision was soon enshrined in Article 2 of the Charter of the United Nations after the Nuremberg process. This article declares that states shall refrain from threatening and using force both against the territorial integrity or political independence of others and in any other ways, which are incompatible with the objectives of the United Nations.[44]

41 BERGSMO, Morten, LING, Yan ed. State Sovereignty And International Criminal Law. Beijing, Torkel Opsahl Academic EPublisher, 2012, p. 23. [online]. Available at: <https://www.fichl.org/fileadmin/fichl/documents/FICHL_15_Web.pdf>.

42 KŪRIS, Pranas. Problems Of Responsibility In International Law. Vilnius State V. Kapsukas University, 1970, p. 62.

43 Encyclopedia Of Public International Law. North-Holland Publishing Co, Vol. 5, 1992, p. 59.

44 Charter Of The United Nations And Statute Of The International Court Of Justice, 1945, article 2. [online]. Available at: <https://www.un.org/en/about-us/un-charter/chapter-1>.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

Returning to the practice formed by the Nuremberg Tribunal, in the context of this article it is relevant to mention *The High Command* case, in which 14 high-ranking officers of the German army were acquitted for crimes against peace and conspiracy to commit crimes against peace. In this case, the Nuremberg Military Tribunal formed a rule on who can commit the crime of aggression:

> *"When men make a policy that is criminal under international law, they are criminally responsible for so doing. This is the logical and inescapable conclusion. The acts of commanders and staff officers below the policy level, in planning campaigns, preparing means for carrying them out, moving against a country on orders and fighting a war after it has been instituted, do not constitute the planning, preparation, initiation, and waging of war or the initiation of invasion that international law denounces as criminal."*[45]

As Kevin Jon Heller observed, the Nuremberg Tribunal did not establish a specific „*political level*" that would be sufficient to determine *de jure* whether the element of „*control or leadership*" of the state's political or military actions have to be fixed in a person's position.[46]:

> *„ It is not a person's rank or status, but his power to shape or influence the policy of his State, which is the relevant issue for determining his criminality under the charge of Crimes against Peace."*[47]

However, the Nuremberg Tribunal in the *Wilhelm von Leeb* case formed a political-level standard of criminal liability of a person for crimes against peace, and established the basic conditions for its application:

- The person knows that aggressive military actions are foreseen or are being carried out; and
- Knowing these plans or ongoing actions, a person has the opportunity to form or influence the policy (encouragement, obstruction or prevention) on which basis of these actions are initiated / carried out. [48]

The International Criminal Tribunal for Yugoslavia in *the Delalic* case, interpreting "had reason to know" standard of the individual formed by the Nuremberg Tribunal, which later were enshrined in positive international law ("had information on the basis of which it could draw a conclusion"),[49] noted:

45 Wilhelm von Leeb et al. v. The United States of America. US Military Tribunal Nuremberg, Judgment of 27 October 1948, p. 24. [online]. Available at: <http://werle.rewi.hu-berlin.de/High%20Command%20Case.pdf>.

46 HELLER, Jon Kevin. Retreat From Nuremberg: The Leadership Requirement In The Crime Of Aggression. *The European Journal of International Law,* Vol. 18 no. 3, 2007, p. 486. [online]. Available at: <https://academic.oup.com/ejil/article/18/3/477/363585?login=false>.

47 *Wilhelm von Leeb et al. v. The United States of America*, op. cit. p. 23.

48 Ibid, p. 22.

49 Protocol Additional To The Geneva Conventions Of 12 August 1949, And Relating To The

> *"<...> the superior is not relieved of criminal responsibility for the acts of his subordinates "if he knew or had reason to know that the subordinate was about to commit such acts, or had done so <...> it does not absolve the superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances of the time, that he was committing or going to commit such a breach<...>"*[50]

In detailing the concept of the "had reason to know" standard, international jurisprudence has clarified the fact that:

> *"<...> the documents which came to the headquarters, the statements of international organizations, the media and other sources of information contained data (not necessarily substantiated) indicating a certain danger or even the slightest likelihood that the crimes were being committed. Each commander has a duty to control his subordinates, and the proper implementation of this duty requires heed. If the commander intentionally does not do anything (does not fulfill his duties), for example, pretends not to know anything or does not really know by being extremely careless, although circumstances suggest that he has reason to know, then he should face criminal liability."*[51]

These rules, formulated in the practice of international tribunals, form the basis for arguing that the head of state may be held criminally liable for aggression committed by state military forces if:

- The head of state forms an aggressive foreign policy and for this reason, aggressive military actions are carried out; and
- Information about potentially planned and /or ongoing aggressive actions reaches the administration of head of state.[52]

Thus, on the basis of that, in international law, the threat of the use of force against another state qualifies as an act of aggression, the execution of which is also possible expressing a tacit ultimatum or claims based on the try-and-see method, which is directly related to the formation of an aggressive policy, in the

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Protection Of Victims Of International Armed Conflicts (Protocol I), 8 June 1977, article 86. [online]. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-86?activeTab=undefined>.

50 Delalic et al v. Prosecutor, International Tribunal For The Prosecution Of Persons Responsible For Serious Violations Of International Humanitarian Law Committed In The Territory Of The Former Yugoslavia, judgement of 16 November 1998, p. 276. [online]. Available at: <https://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf>.

51 ŽILINSKAS, Justinas, MAROZAS, Tomas. The Mens Rea Element Of Commanders' Responsibility In Customary International Law And The Rome Statute. *Jurisprudence*, 2011, vol. 18, no. 4, p. 1531. [online]. Available at: <https://core.ac.uk/download/pdf/197257858.pdf>.

52 Wilhelm von Leeb et al. v. The United States of America, op. cit. pp. 23–24.

context of the January 13, 1991 case, a more detailed investigation is needed to determine whether the specific facts in the period 1990–1991 satisfy the signs of criminal liability of the head of state for the crime of aggression enshrined in the practice of international law. For this reason, the next chapter examined whether the actions of the then-head of the USSR in relation to Lithuania in 1990–1991 can be considered an act of aggression, and whether this can be classified as an integral part of the international crimes committed by the USSR military forces on January 13, 1991.

5 Evaluation of the actions of the head of the USSR in the context of the events of January 13, 1991

The January 13, 1991 case does not contain officially confirmed and publicly available data indicating the active actions of the head of the USSR whereby he may have contributed to the international crimes committed by the USSR Armed Forces on January 11–13th, 1991.[53] In 2016, the Prosecutor General's Office of the Republic of Lithuania refused to open a pre-trial investigation into the criminal liability of the head of the USSR on the basis that: "*the existing data [in the January 13 case] do not allow to conclude that M. Gorbachev knew about the plan to commit criminal actions by the USSR Armed Forces*"[54]. However, since the position of the Soviet Union and its leader on the issue of Lithuania's independence was based on fierce rhetoric, the question arises whether, considering the behavior of the head of the USSR before the events of January 13, 1991, there are no visible signs of a crime of aggression, for which the existing data available today would have been sufficient to prove.

5.1 Legal assessment of the foreign policy in relation to Lithuania formed by the head of the USSR

A few days after Lithuania's restoration of independence on March 11th, 1990, the leadership of the Soviet Union adopted a resolution declaring the Act of Restoration of Lithuania's Independence illegal – on this basis, the head of the USSR demanded the Lithuanian leadership: "*to declare that the act of restoration of Lithuania's independence is revoked within 2 days*".[55] After the Supreme Council of Lithuania refused to implement the aforementioned demand, from March 23,

53 RUPŠYTĖ, Angonita. Defense of Freedom in 1991. [online]. Available at: <https://www.lrs.lt/sip/portal.show?p_r=37337&p_k=1>.

54 BNS. Prosecutors Convinced The Court That There Is No Reason To Take Additional Steps Regarding M. Gorbachev, 2016. [online]. Available at: <https://www.lrt.lt/naujienos/lietuvoje/2/147520/prokurorai-itikino-teisma-kad-imtis-papildomu-veiksmu-del-m-gorbaciovo-nera-pagrindo>.

55 Bernardinai.lt. One Of The Organizers Of The March 11 Act, Prof. V. Sinkevičius: Independence Is A Miracle That Must Be Protected, 2022. [online]. Available at: <https://www.bernardinai.lt/vienas-is-kovo-11-osios-akto-rengeju-prof-v-sinkevicius-nepriklausomybe-tai-stebuklas-kuri-reikia-saugoti/>.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

1990, units of the USSR army began occupying state buildings, and an attempt was made to occupy the Press Palace.[56] On March 31, 1990, the head of the USSR again demanded that Lithuania cancel the act of restoration of independence within 3 days, and further strengthened his demand by activating the movement of USSR troops in Lithuania.[57] On April 13, 1990, the head of the USSR issued a clear ultimatum to Lithuania, which demanded that the adopted laws be revoked and the situation that existed on 10 March, 1990 be restored within 2 days. Otherwise, it was threatened to stop supplying production from abroad to Lithuania that is sold in the foreign market in freely convertible currency.[58] That being said, Lithuania did not accept the ultimatum. The planned coercive measures were implemented, and an economic blockade was issued, which suspended the supply of raw materials (primarily oil) to Lithuania.[59] Moreover, in those days, planes of the USSR army landed at Vilnius airport, bringing 50 paratroopers of the Pskov division, a group of high-ranking military personnel of the Soviet army and officers of the KGB special purpose group "Alfa", who later took an active part in the events on the night of January 12–13th, 1990. In the context of the economic blockade that came into force, the pro-Russian organization "Jedinstvo" actively began to operate in the public life of Lithuania, which implemented the function of the fifth column in Lithuania and operated until the events of January 13, 1991. Although the blockade continued for 75 days, the same pressure continued throughout that year.[60]

A sharp intensification of the pressure on Lithuania was fixed in the first few days of January, 1991. The movement of the USSR military forces intensified, the entrances to Vilnius were closed, the city bridges were blocked, and state buildings were occupied. The work of the Ministries and Institutions of National Defense was forcibly stopped, more Soviet paratroopers were brought to Lithuania, the supporters of the pro-Soviet organization "Jedinstvo" actively started organizing protest rallies, and the palace of the Supreme Council was stormed.[61] On January 10, 1991, the head of the USSR issued an appeal to the Supreme Council of Lithuania, which demanded the immediate restoration of the validity of the Constitution of the USSR and the cancellation of all previously adopted "unconstitutional acts". The appeal emphasized that the complicated economic and political situation that had arisen was caused by rough violations and devia-

56 ČEPAITIS, Virgilijus. Did The USSR Intended To Negotiate With Lithuania In 1990? *Kultūros barai,* No. 10, 2010, p. 73. [online]. Available at: <https://docs.google.com/viewer?url=http://www.kulturosbarai.lt/uploads/news/id22/KB_2010_10_pdf.pdf>.

57 Ibid.

58 Ibid.

59 Ibid. pp. 73–75.

60 ABARIUS Laimonas and et al. Universal Lithuanian Encyclopedia. *Science And Encyclopedia Publishing Center*. [online]. Available at: <https://www.vle.lt/straipsnis/ekonomine-blokada/>.

61 LRS.lt. The Most Important Events Of The Restoration Of The State From 11.03.1990–25.10.1992. [online]. Available at: <https://www.lrs.lt/datos/kovo11/ivykiai.htm>.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

tions of the Constitution of the USSR. [62] The appeal did not indicate a clear threat of what specific actions should be taken in the event that the demands be rejected. Nevertheless, the abstract phrases emphasized that:

> *"<...> the situation basically finds itself at an impasse. The need to find a way out of the situation requires urgent measures. <...> People are demanding the restoration of constitutional order, reliable guarantees of security, and normal living conditions. Having lost faith in the policies pursued by the current leadership, they demand to introduce of a presidential rule."*[63]

The Supreme Council of the Republic of Lithuania, in answering the ultimatum issued by the head of the USSR, stated that it had neither the right nor the mandate of the electorate to renounce the sovereignty of the Republic of Lithuania.[64] The next day, movement of the USSR armed forces was activated: on January 11, 1991, the Press Palace was occupied, and, on the night of January 12–13th, 1991, the TV tower and the buildings of the Lithuanian National Radio and Television were stormed.[65] During these events, 13 civilians were killed, 821 were seriously injured, and approximately 80 were shelled and illegally detained.[66]

Looking at the sequence of circumstances described above in a systematic fashion, the behavior of the head of the Soviet Union during 1990–1991 is largely consistent with the aggressive foreign policy action scheme against Ukraine, which was launched by Russia in 2006, as described in the previous chapter. In both cases, the pressure of the aggressor was initiated by causing economic difficulties for the opponent. In 1990, the ultimatum of the head of the USSR on the cancellation of the restoration of independence and the subsequent introduction of the economic blockade, with all the ensuing consequences, can only be seen as an attempt to intimidate the Lithuanian leadership and society, thus forcing the cancellation of the restoration of independence. Such actions are largely in line with the principles of the try-and-see method: against the background of geopolitical tensions, in one moment, a threatening step is taken in interstate relations (i.e., an economic blockade is issued). The reaction of the opponent (Lithuania) before making additional threats is then expected, and it is analyzed whether actions performed will likely have a sufficient coercive effect on the

62 Address of the President of the USSR Mikhail Gorbachev to the Supreme Council of the Republic of Lithuania in 1991. January 10.

63 Ibid.

64 Office Of The Chief Archivist Of Lithuania. Statement Of The Supreme Council Of The Republic Of Lithuania In 1991 January 11. [online]. Available at: <https://virtualios-parodos.archyvai.lt/lt/virtualios-parodos/34/30-sausio-ziemu-lvna/exh-206/lietuvos-respublikos-auksciausiosios-tarybos-priimti-dokumentai-pareiskimai-kreipimaisi/case-1037#slide6?>.

65 O. M. et al v. Lithuania.

66 Ibid.

opponent. Lithuania survived the economic blockade: on July 1st, 1990, the economic blockade was lifted, after the Soviet Union recognized that, in addition to Lithuania, this economic sanction was also harmful to itsel.[67] Given that the aggressor's demands were not further implemented, following the principles of the try-and-see method, the pressure from the aggressor's side escalated.

The next step was the appeal of the head of the USSR to the Supreme Council on January 10th, 1991, which, in its form, corresponded to the features of a tacit ultimatum. This appeal did not clearly set a deadline for the fulfillment of the demands; nevertheless, it conveyed a clear sense of urgency. Although it did not specify a clear threat, the ultimatum indicated the obligation to comply with demands immediately. The whole background of pressure and the wording of the text indirectly signaled a gradually increasing threat level. The next day, after Lithuania's rejection of the demands of the ultimatum, on January 11–13th, 1991, the coercive measures hidden under abstract phrases of a tacit ultimatum, as a consequence of the rejection of demands, were implemented. A military operation of the USSR against Lithuania was carried out, during which civilians were intentionally injured by seizing strategic objects of the Republic of Lithuania. On January 12–13th, 1991, 13 civilians were killed during the storming of Lithuania. In the case of January 13th, 1991, these actions of the USRS military forces were classified by Lithuanian courts as aggression, war crimes, and crimes against humanity. Thus, based on this analysis of the facts and the practice of international law, it must be concluded that the behavior of the head of the USSR in relation to Lithuania during 1990–1991 meets the standards for the formation of an aggressive foreign policy. The demands of April 13th, 1990, which led to the introduction of an economic blockade in Lithuania, formed the basis for treating them as an ultimatum based on the try-and-see method within the meaning of international law. The ultimatum of January 10th, 1991, after which crimes against humanity and war crimes were committed, corresponded to the signs of a tacit ultimatum. However, as mentioned in the previous chapter, to appeal criminal liability of the head of state, the second provision is the knowledge of the head about possible or ongoing aggressive military actions. For this reason, in the context of this article, it was necessary to assess whether, within the meaning of international law, the head of the USSR was properly informed about plans to commit violations of international law by its military forces.

67 SIAURUSEVIČIUS, Audrius, MILDAŽYTĖ, Edita. The Year Of Our Freedom – 1990. LRT, 2017, 1:47:15. [online]. Available at: <https://www.lrt.lt/mediateka/irasas/1013664629/musu-laisves-metai>.

5.2 Compliance with the position of the head of the USSR on January 11–13th, 1991 with the "had reason to know" standard

For the assessment of the compliance of the position of the head of the USSR with the "had reason to know" standard, the following facts on January 11–13 1991 are relevant:

- On January 11th, 1991, after the Lithuanian leadership rejected the tacit ultimatum of the head of the USSR, the so-called "Congress of Lithuanian Democratic Forces" sent an ultimatum to the Lithuanian leaders, which, on behalf of the leadership of the Soviet Union, demanded that the Lithuanian leadership "*agree with the demands of the President of the USSR and immediately restore on the territory of Lithuania the Constitution of the USSR and the Constitution of the Lithuanian SSR*" by 15:00 that day. The expected consequences of rejecting the ultimatum were the establishment of a national rescue committee, which would "*take care of the future of the LSSR*."[68] [69] At 15:00 on the same day, it was publicly announced about the establishment of the "*Committee for the Rescue of the Lithuanian SSR" in Lithuania*, which aimed to "*take into its own hands all power in the Republic*"[70]. Later, in the case of January 13th, 1991, the leaders and activists of this committee were found guilty of establishing an anti-state organization. There were public calls for violence aimed at violating the sovereignty of the Republic of Lithuania, which was complicit in the USSR Forces in carrying out military aggression;[71]
- On January 11th, 1991, the U.S. Senate adopted a resolution calling on the head of the USSR to refrain from using force in Lithuania, Latvia, and Estonia;
- When the aggression of the USSR began on 11 January, 1991, protests were lodged to the official leadership of the Soviet Union by Australia, Japan, Canada, Sweden, Poland, Czechoslovakia, Vatican, the United Kingdom, France, the European Community, and the NATO;[72]
- On January 12th, 1991, U.S. Senator Alfonse D'Amato publicly warned the head of the USSR that the use of force in the Baltic states threatened good relations between the states;[73]

68 LANDSBERGIS, Vytautas. 1991 01 13 LRT Archival Videos From The Studio. [online]. Available at: <https://www.youtube.com/watch?v=kJuh4pPPGhs>.

69 In the case of January 13th, 991, the court recognized that, under this committee, which was established in 1991, the founders and representatives (members of the Lithuanian Communist Party) incited the relevant political and military structures to commit aggression. See at: O. M. et al v. Lithuania. Supreme Court of Lithuania.

70 Ibid.

71 Ibid.

72 RUPŠYTĖ, Angonita, op. cit. [online]. Available at: <https://www.lrs.lt/sip/portal.show?p_r=37333&p_k=1>.

73 Ibid.

Published by Palacký University Olomouc, Czech Republic, 2022.
ISSN (print): 1213-8770; ISSN (online): 2464-6601

- On January 12th, 1991, the People's Deputies of the USSR proposed to the Supreme Council of the Soviet Union to adopt a resolution on the events in Lithuania. The initiators, at their suggestion, drew the attention of the Council leadership to the situation in the state, that there is a protest against the interference of military forces in complex socio-political processes, and aggression against the legitimate Government. Resolution not adopted;
- On January 12–13th, 1991, when the USSR armed forces committed international crimes, representatives of the Lithuanian leadership tried to contact the head of the USSR to inform him about the ongoing aggression, which led to people being killed and mutilated. The Kremlin administration refused to connect the head of Lithuania Vytautas Landsbergis with the head of the USSR by phone on the grounds that "the president is sleeping." Nevertheless, at the time of the events, all relevant information was submitted to the presidential secretariat. Other representatives of the USSR authorities were also directly informed about the events.[74]

This chronology of actions shows that, at the stages of preparation and execution of aggression on January 11–13th, 1991, the head of the USSR and his administration, both by public and private contacts, received significant information signaling a possible threat of aggression, and then its execution. In the opinion of the authors of this article, these data, both in their content and form of presentation, correspond to the signs of the "had reason to know" standard enshrined in international law. The head of the USSR, according to the above-mentioned rule enshrined in the Delalic case, had reason to be aware of possible and subsequent criminal actions by USSR Military Forces, i.e., he had such information that could at least warn of crimes committed by subordinates. The information received on the night of January 12–13th, 1991 in the administration of the head of the USSR, based on the precedent set in the Delalic case, is also considered proper information of the head, regardless of whether *de facto* these data were transferred personally to the head or not.

Thus, based on what was presented above in this section, it follows that:

- The demands and threats of the head of the USSR on 13 April, 1990 regarding the imposition of an economic blockade within the meaning of international law are to be considered an ultimatum based Try-and-see method;

74 LANDSBERGIS, Vytautas. 1991 01 13 LRT Archival Videos From The Studio; also BIČKAUSKAS, Egidijus, SIAURUSEVIČIUS, Audrius, MILDAŽYTĖ, Edita. The Year Of Our Freedom – 1991. LRT, 2017, 1:51:38. [online]. Available at: <https://www.lrt.lt/mediateka/irasas/31174/musu-laisves-metai-1991-1-d>.

- On January 10, 1991, the appeal of the head of the USSR, after which crimes against humanity and war crimes were committed, qualifies as a tacit ultimatum;
- Such actions are to be seen as the part of the formation of aggressive policies;
- The position of the head of the USSR on January 11–13th, 1991, meets the "had reason to know" standard.

6 Conclusions

In summary, the ultimatum issued by the head of the USSR on January 10th, 1991, within the meaning of international law, has a direct connection in assessing the issue of criminal liability of the head of the USSR regarding international crimes committed by the USSR Armed Forces. All the necessary factual and legal conditions exist to support this statement:

- Against the backdrop of formed political and economic tensions, the ultimatum of 10 January, 1991 is regarded as a tacit ultimatum based on the try-and-see method;
- The statement of this ultimatum in international law is systematically classified as a threat to use force against another state in order to force the Lithuanian leadership to meet the demands of the aggressor, i.e., to cancel the legislation on the restoration of the independence of the Republic of Lithuania; and
- The factual position of the head of the USSR on January 11–13, 1991, satisfies the "had reason to know" standard enshrined in international law.

All these aspects make it possible to state that the aggressive foreign policy pursued by the head of the USSR in expressing a tacit ultimatum. Committing international crimes through military structures against the Lithuanian state further support the factual basis for criminal liability of the head of the USSR for the events of January 13th, 1991. This forms the basis to disagree with the conclusions of the Prosecutor General's Office of the Republic of Lithuania that the current and known data of the January 13th, 1991 case today do not allow to draw a conclusion on the existence of liability of the head of the USSR. This act is regarded as an integral part of the international crimes committed by the USSR military forces on 11–13 January 1991, consistent with the infliction of aggression.[75]

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75 Act VIII-1968 of 2000, Criminal Code Of The Republic Of Lithuania, Art. 110.

ABC News Washington, 13 January 1991, 3:50, [online]. Available at: <https://www.youtube.com/watch?v=m1z291BGr68>.

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