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Finland's Continuation War (1941-1944): War of Aggression or Defence? War of Alliance or Separate War? : Analyzed from the International - Especially Legal - Perspective: Suomen jatkosota (1941-1944): Hyökkäys- vai puolustussota? Liittolais- vai erillissota? : Analyysi kansainvälisestä - etenkin oikeudellisesta - näkökulmasta

Hannikainen, Lauri

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FINLAND'S CONTINUATION WAR (1941-1944): WAR OF AGGRESSION OR DEFENCE? WAR OF ALLIANCE OR SEPARATE WAR?

Analyzed from International, Especially International Legal Perspective

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Part 1 Introduction

1.1. Finland's First Two Decades of Independence

The first decades of Finland's independence were turbulent times.[1] The autonomous Grand Duchy of the Russian Empire declared its independence on 6 December 1917. The revolutionary Bolshevik regime of Russia gave its formal recognition to Finland's independence on 31 December - in the name peoples' right to self-determination. Recognitions were soon received from other Finland's neighbours and a number of other European States, such as Germany and France. In early 1918 a civil war broke out in Finland, when the Reds, representing lower classes, rebelled against the bourgeois White government. The Reds were inspired, encouraged and materially helped by the Bolshevik regime.[2]

The bloody civil war lasted until mid-May and resulted in the victory of the White side, with the help of military intervention by Germany, which took place upon invitation by the Whites. The Reds were severely punished and masses of Red prisoners died in the camps due to poor nourishment and epidemic diseases.[3]

Finland was not satisfied with its eastern boundary. It demanded sovereignty over the whole Karelia - even Eastern Karelia that had belonged to Russia for a long time. The Karelians belong to the

[1] Finland had been under the sovereignty of Sweden for many centuries and under the Russian Empire's sovereignty from 1809 until 1917.

[2] See Lauri Hannikainen, 'The Finnish Civil War 1918 and its Aftermath', in Lauri Hannikainen & Raija Hanski & Allan Rosas, *Implementing Humanitarian Law Applicable in Armed Conflicts – The Case of Finland*, (Dordrecht: Martinus Nijhoff Publishers, 1992), at 9-12; Jukka Kekkonen, *Kun aseet puhuvat*, (Helsinki: Art House, 2016), at 95-99.

[3] Kekkonen 2016 supra, at 41-174.

Finno-Ugric tribe. Finland considered itself as the mother country of Karelia. Finland organized military interventions to Eastern Karelia in 1918-19; however, they all were unsuccessful.[4]

The disagreements between Finland and Bolshevik Russia were settled by the Peace Treaty of Tartu (Dorpat) in 1920.[5] Finland had some freedom of choice on whether it would like to have sovereignty over a part of Eastern Karelia or over the Pechenga region in the north. Finland opted for Pechenga as this secured Finnish access to the Arctic Ocean. Eastern Karelia remained under Russia.[6] Russia gave, however, a unilateral declaration assuring that it would grant autonomy to Eastern Karelia.[7] This declaration was not a part of the Peace Treaty and was not strictly binding. The question about the potential threat of the vicinity of the border to the security of St Petersburg (Leningrad) was not on the table as an important matter.

In 1921 anti-Bolshevik forces in Eastern Karelia revolted against the Bolshevik power. Finnish fighters played a substantial role in the resulting armed conflict - one of the leading figures of the revolting forces was the Finnish Major Paavo Talvela. The revolt was supressed by the Bolsheviks.[8] The Finnish action violated the Tartu Peace Treaty.

Finland became a member at the League of Nations in 1921, whereas Russia (Soviet Union since 1922) remained outside. Finland attempted to bring the case of Eastern Karelia to the leading organs of the League and was to some degree successful but, ultimately, this effort failed. [9]

In the two neighbouring countries, their civil wars had ended differently. In Russia, the Bolsheviks were able to defeat the White forces, whereas in Finland the Whites were victorious. No surprise that the relations between these neighbouring countries remained cool, even somewhat hostile.

In the early 1930's, the Soviet Union wanted to strengthen its security with non-aggression treaties with its neigbouring States. Finland and the Soviet Union concluded their Non-aggression Treaty in 1932; its binding force was extended until 1945 in an additional Protocol in 1934.[10] If the parties were not able to settle their dispute through diplomatic negotiation, they had to submit the dispute

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[4] See Hannikainen, 1992, at 32-40, and Jussi Niinistö, *Heimosotien historia 1918-1922* (Helsinki: SKS, 2005),at 10-85 and 148-183.
[5] Treaty of Peace between Finland and Russia, 3 LNTS 5.
[6] See Jussi Niinistö, *Bobi Sivén, Karjalan puolesta* (Helsinki: SKS, 2001), at 149-165.
[7] Jorma Kallenautio, *Suomi katsoi eteensä – Itsenäisen Suomen ulkopolitiikka 1917*-1955 (Helsinki: Tammi, 1985), at 62-66.
[8] See Toivo Nygård, Suur-Suomi vai lähiheimolaisten auttaminen, (Otava: Helsinki, 1978), at 87, Niinistö 2005, at 246-261, and Helge Seppälä, *Suomi miehittäjänä 1941-1944* (Helsinki: SN-kirjat, 1989), at 13-14.
[9] Permanent Court of International Justice: *Finland v. Russia, Advisory Opinion on the Status of Eastern Carelia*, Advisory Opinion No. 5, 1923, www.worldcourts.com (visited on 19 February 2010).
[10] See Suomen Asetuskokoelman Sopimussarja 13/1932 and 58/1934. The original language of the treaty and of the protocol was French.

to international mediation in a specific mediation board. Under the Protocol, it was not permitted to denounce the treaty before 1945. The Soviet Union was accepted to the membership of the League of Nations in 1933. Notwithstanding the bilateral treaty the Finnish-Soviet relations were quite strained. In Moscow, Finland was regarded as one of the most anti-Soviet European States whose face was turned towards Germany, which after the takeover by the Nazis became the ideological arch enemy of the Soviet Union.[11] The atmosphere became very tense towards the end of the 1930's.

1.2. This Article

In this article I plan to analyse and draw conclusions regarding Finland's role in the Continuation War: the primary question is whether it was a war of aggression or of defence under international law. The related secondary question is whether it was a war of alliance with Germany or something less, for example, a war of co-belligerents in which both had their own separate goals and cooperated only to a limited extent – or was it simply Finland's separate war against the Soviet Union? In my legal analysis, I take a broad view and try to discuss all relevant factors in order to make the analysis rich and, hopefully, to be able to arrive at well-reasoned conclusions. I also discuss the treatment Finland received after the Continuation War from the victorious Allied powers.

Historians have examined extensively the Continuation War and the events preceding it, but no international legal analyses have been made for over 75 years. During the Continuation War, the Finnish government requested the leading Finnish expert of international law, Professor Rafael Erich, to write a legal analysis in support of Finland. I will naturally analyse Erich's report. Finnish historians have focused on analysing the question whether the Continuation War was a war of alliance or something less. I fully understand that historians do not want to become judges on what has happened, but limit their studies to finding out what has happened and how and why. To a limited degree, some historians have addressed some legal aspects of the present theme, but I have found no attempts to analyze the aggression/defence theme in legal terms.

My main method in this article is decidedly *normative,* primarily and as much as possible legal and secondarily moral. The reason for this choice can be found from the previous paragraph. If historians have written numerous studies about the Continuation War, but no international legal expert has endeavoured to examine objectively the questions formulated in the first paragraph of this section, isn't it reasonable that I choose the normative approach? Such a method is

[11] Kallenautio 1985, at 146-148.

commonplace in legal research: to analyse legal norms and to try to end up with a well-reasoned conclusion - in this case, to interpret whether Finland in the first months of the Continuation War violated the Kellogg-Briand Pact and was guilty of an aggressive war, or not. Since I am not a judge but a scholarly analyst, I prefer to examine the case in a broader international and political perspective.

Is the approach chosen here relevant more than seventy years after the Continuation War? Historians have examined this war extensively and engaged in a lively discussion. I want to enrich the picture by adding the perspective of normative international law in this discussion.

I start my legal analysis from the late autumn of 1939: since the Soviet Union violated grossly international law in the Winter War, was not Finland justified to resort to armed force and take back the territories lost at the end of the Winter War? Was not Finland justified to proceed even further to the East in the purpose to get reparation for the gross violation of its sovereignty and perhaps to secure better possibilities to defend itself against the Soviet Union?

In this article, I examine Finnish and foreign historians' writings about the Continuation War. Also the views of foreign non-academic experts, such as diplomats, are discussed. Since especially leading Western powers and Sweden followed closely the developments of the Continuation War and Finland's policies, it is advisable to include views of their representatives in this study.The legal analysis will of course resort to international instruments and writings of international legal experts..

Among my leading history sources, I mention the book 'Finland in World War II' (2012) in which 14 Finnish and one German younger generation of historians analyse Finland's role from different angles – however, not from legal angle. Regarding international law, besides certain conventions and treaties, my main source is Professor Ian Brownlie's excellent book 'International Law and the Use of Force by States', 1963. I resort also to a number of other legal experts but regret that none of them has analysed in any depth the Continuation War.

The analyses of contemporary historians have poorly penetrated to the conscience of the leadership of Finland and the public at large who continue to maintain very patriotic interpretations on Finland's role in the Continuation War – pointing to Finland's separate war from Germany.

This article goes on as follows: Part 2 discusses Finland's complicated way to the Continuation War, its warfare and difficult exit from the war, including the main provisions of the Paris Peace

Treaty. Part 3 contains the analysis, primarily legal analysis.The article ends with concluding observations.

Part 2 Finland's Way to the Continuation War, its Warfare and Exit from the War

2.1. The Winter War

Nazi Germany attacked Poland on 1 September 1939, starting World War II. A week before, Germany and the Soviet Union had concluded a non-aggression treaty – the so-called Molotov-Ribbentrop treaty - to the astonishment of other States. It had a secret protocol that defined the spheres of influence of the parties.[12] Pursuant to the protocol, the Soviet Union invaded the eastern part of Poland in later September. In the protocol, Finland fell within the sphere of influence of the Soviet Union. Notwithstanding the conclusion of the treaty, both parties knew that they were ideological arch enemies. They could not trust that the other party will honor the treaty.

Soon the Soviet Union approached Finland and proposed territorial changes. Finland should: 1) move the border westward in the Karelian isthmus (located between the Baltic Sea and Lake Ladoga), because the Soviet Union wanted to ensure the security of Leningrad; 2) cede a number of islands in the Baltic Sea; 3) cede a part of Pechenga; and 4) lease the town of Hanko and its surroundings in the southern coast of Finland to the Soviet Union for the establishment of a naval military base.

As compensation, Finland would get a territory from the western part of Eastern Karelia, twice the size of the area it was proposed to give up. Finland was ready to limited compromises - one being to transfer the border in the Karelian isthmus westward, but not as far as to lose the second biggest town of Finland, Vyborg. Hanko Finland refused to lease. The Finnish choices were understandable, because Vyborg was very important for Finland and the Soviet military presence near to Helsinki would be a threat to Finland's security and independence.

The Finnish line was drawn by Foreign Minister Eljas Erkko, with the strong support of Prime Ministeri Paavo Cajander and many other leading politicians. Erkko believed that Finland should not adopt a compromising line, with the exception of limited concessions. When the negotiations came to a dead end in November (Finland interrupted them), Erkko was convinced that after an intermission the Soviet Union would be ready to continue negotiations even though it spiced its

[12] Secret Supplementary Protocols of the Molotov-Ribbentrop Non-Aggression Pact, September 1, 1939, quoted in History and Public Policy Program Digital Archive, Library of Congress of the United States, http://digitalarchive.wilsoncenter.org/document/1 10994.

demands with threats of military action.[13] To his surprise, the Soviet Union gave up the negotiations and launched an armed attack against Finland at the end of November and declared the creation of a puppet regime for Finland, composed of Finnish Communists.[14] This meant a threat that the Soviet leadership aimed at conquering Finland and making it a socialist country – either its close ally or a part of the Soviet Union.

After fierce fighting, the Soviet Union compelled Finland into signing a peace treaty in March 1940.[15] The Soviet Union did not occupy Finland and had to give up its support to the puppet regime. In the peace treaty Finland lost 10 per cent of its territory, including eastern parts of Finnish Karelia where a part of the most important industry of Finland was located. The border in the Karelian isthmus was moved westward (Finland lost Vyborg) and the Soviet Union built its naval base in the Hanko area. Diplomatic relations were soon resumed between the parties.

Finland had been the victim of a blatantly aggressive war, in violation of the Covenant of the League of Nations, the Tartu Peace Treaty and the bilateral Non-Aggression Treaty. The Finns defended their country stubbornly and successfully, but the opponent had so much more soldiers that ultimately the Finnish defence was not enough to continue fighting. Finland received quite much material and moral support internationally, and the League of Nations dismissed the Soviet Union from its membership.[16] A voluntary Swedish air squadron participated in the defence of northern Finland. Sweden did not declare itself neutral – non-belligerent though. Volunteers from many countries came to Finland to fight for its defence. The biggest group came from Sweden (8,000) - with the slogan: 'Finlands sak är vår'.[17]

Thus, in this Winter War the Soviet Union violated grossly international law. Even though it reached its goals, it lost an excessively big number of soldiers due to inefficient organization and maintenance. One Soviet officer was said to have stated bluntly that the Soviet Union occupied enough land to bury its dead. One may have understanding towards the Soviet Union's worry about

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[13] See Kallenautio 1985, at 178-187, and Henrik Meinander, "Finland and the Great Powers in World War II: Ideologies, Geopolitics, Diplomacy", in *Finland in World War II – History, Memory, Interpretations*, ed. by Tiina Kinnunen & Ville Kivimäki, (Brill: Leiden 2012), 49-91, this at 58-59. Professor Heikki Ylikangas in *Suomen historian solmukohdat* (WSOY: Helsinki 2007), at 254-264, considers that the Soviet territorial demands were rather modest – especially compared with the outcome of the Winter War. From abroad Finland was warned about the Soviet readiness to attack Finland.

[14] On the Winter War in general, see Pasi Tuunainen, "The Finnish Army at War: Operations and Soldiers, 1939-45", in *Finland in World War II – History, Memory, Interpretations*, ed. by Tiina Kinnunen & Ville Kivimäki, (Brill: Leiden 2012), at 140-151.

[15] Treaty of Peace between Finland and the Union of Soviet Socialist Republics, Finnish Treaty Series no. 3/1940.

[16] See Brownlie 1963, at 105-107.

[17] Ove Bring, *Neutralitetens uppgång och fall*, (Atlantis: Stockholm, 2008), at 197-201, and Swedish Airforce Museum, Vinterkriget: Den svenska hjälpen, a factsheet, 7 November 2017.

the security of Leningrad, but the way the Soviet Union behaved was arrogant and manifestly illegal.[18]

The Finnish foreign policy leadership made a political mistake by misevaluating the Soviet Union's next moves in November 1939. It should be noted that such leading personalities as the military hero Marshal C.G. Mannerheim, and the leader of the Finnish delegation at the 1920 Tartu negotiations J.K. Paasikivi - both future presidents of Finland – had supported a more compromising line for Finland in the negotiations.

Nearly all inhabitants from the territories lost by Finland to the Soviet Union – 420,000 - moved to Finland and had to be resettled. They lost their homes and property. It was a huge task for Finland to resettle such a big population.

2.2. The Inter-War Period: From Survival Worries to Greater Finland Dreams

Finland had barely avoided foreign occupation and had suffered a lot. Its prospects for the near future grew even dimmer in the spring 1940 when Germany occupied Denmark and Norway, and a few months later the Soviet Union, as a countermove[19], occupied and annexed the three Baltic States. Blatant violations of international law again. From Finland's foreign trade perspective, Germany then controlled the movement of ships in the Danish Straits. Thus, factually Finland's possibilities of foreign trade were restricted to trade with Sweden and Germany.

In the months following the peace treaty, the Soviet Union required from Finland the punctual observance of the terms of the treaty. During the summer of 1940, its demands increased beyond the terms of the treaty – it made threats also. Finland had ample reasons to suspect that the Soviet Union might plan for it the same fate as for the Baltic States.[20] Since it became clear that Finland could not rely on Sweden or Britain for any substantial military help, the only option to seek security from was Germany.

In August 1940, the Finnish leadership received a secret offer from Berlin. The German Army wanted to transfer troops to Northern Norway through Finland and offered in exchange to sell modern weaponry to Finland. The proposal was immediately accepted and led to a warm-up of

[18] See Anthony Upton, *Välirauha*, (Helsinki: Kirjayhtymä, 1965), at 20-25 (and 13-19 (), original title: Finland In Crisis 1940-1941).
[19] According to Kallenautio 1985, supra note XX, at 215, the Soviet Union was convinced that in near future it would end up to war against Germany. See also Anthony Beevor, *Toinen maailmansota*, (Helsinki: WSOY, 2012), at 17 (original title: The Second World War), and Ylikangas 2007, at 270.
[20] See Pekka Visuri, *Mannerheimin ja Rytin vaikeat valinnat*, (Jyväskylä: Docendo, 2013), p. 38.

Finnish-German relationship. The treaty on the transfer of German soldiers was concluded in September.[21]

In late autumn 1940, the parties to the Molotov-Ribbentrop Pact met in Berlin. After the meeting the Germans, informing the Finns about the secret protocol of the Molotov-Ribbentrop Pact, told that Foreign Minister Molotov had wanted to get Germany's confirmation that Finland continuously belonged to the sphere of influence of the Soviet Union. Molotov wanted to get consent – or at least non-expression of opposition – that the Soviet Union was entitled to solve the Finnish question in the way it wanted - even to invade Finland. However, Adolf Hitler had refused his consent to any occupation. [22] Whether this was fully correct information, is uncertain. According to Ylikangas, Molotov did not refer to the use of armed force but to solving the question of Finland in accordance with the pact.[23] Molotov's main concern may have been that Germany should not send its armed forces to Finland. Germany also informed Finland about the Barbarossa Plan, i.e. to commit a wholesale armed attack on the Soviet Union. By this information Germany wanted to open negotiations with the Finns about closer military cooperation.

Secret negotiations were conducted between the high military representatives of Germany and Finland during the first half of 1941. In late March, the Finnish leadership was informed that the offensive would probably begin on 22 June. According to contemporary historians, apparently in February-March but certainly at the latest in May 1941, the Finnish leadership decided to join Germany's attack against the Soviet Union, if it were to take place.[24] In his comprehensive study, Jokipii concludes that in March the Finnish leadership took the decisive step in its mind in favour of close cooperation with Germany. [25]

Decisive negotiations were conducted during May-June, the most important round took place in Helsinki between 3 and 6 June. Surprisingly few documents are available about the results of these negotiations between military men. In his biography on J.K. Paasikivi, Tuomo Polvinen writes that

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[21] Meinander 2012, supra, p. 68, and Upton, p. 193. The entry into force of the treaty took place with exchange of notes. President Ryti signed the treaty for Finland. The conclusion of the treaty alarmed the leaders of the Soviet Union who suspected – correctly – that it would be used as a pretext to station German soldiers to Finland.

[22] See Upton 1964-5, at 233-236 and 346; Vilhelm Assarsson, *Stalinin varjossa*, (Porvoo-Helsinki: WSOY 1963), at 50 (original title: I skuggan av Stalin); Wipert von Blücher, *Suomen kohtalonaikoja – Muistelmia vuosilta 1935*-44, (Porvoo-Helsinki:WSOY, 1951) at 214; Michael Jonas, *Kolmannen valtakunnan lähettiläs – Wipert von Blücher ja Suomi*, (Helsinki: Ajatus Kirjat, Gummerus Kustannus Oy, 2010), at 175 (original title: Wipert von Blücher und Finnland - Alternativpolitik und Diplomatie im 'Dritten Reich').

[23] Ylikangas 2007, at 278.

[24] Mauno Jokipii, *Jatkosodan synty – Tutkimus Saksan ja Suomen sotilaallisesta yhteistyöstä 1940-41* (Helsinki: Otava, 1987), at 622 and 634-637, and *Jatkosodan pikkujättiläinen*, ed. by Jari Leskinen & Antti Juutilainen, (Helsinki: WSOY, 2007), at 19 and 43.

[25] Jokipii 1987, at 636.

in the negotiations in May it was aggressive war, not defensive war, which was on the agenda. When Finland's chief negotiator, General Erik Heinrichs, returned to Finland he brought with a clearly formulated proposal for participation in aggressive war. The proposal was accepted by the inner circle of the Finnish leadership. When President Risto Ryti informed the cabinet about the danger of war and need of partial mobilization, he did not tell about the results of the negotiations with Germany.[26]

According to Meinander, in the spring and summer of 1941 Germany was strongly present in the public life of Finland. In April, a German industry exhibition was arranged in Helsinki during which the Nazi Swastika and Finnish flags flew together. Many German lecturers visited Finland and strengthened the belief of the Finns that Germany was the unchallenged master of Europe. Visions of the so-called Greater Finland, the old nationalist dream of expanding Finnish territory far eastwards into Russian Karelia, were no more just daydreams. Meinander goes on:

> Despite their Western sympathies, both President Ryti and Marshal Mannerheim were convinced in the spring of 1941 that Germany could beat the Soviet Union in a swift *Blitzkrieg*. In May 1941, President Ryti discreetly asked two scholars to write a scientifically formulated study, in which it was "proven" that Soviet Eastern Karelia belonged to Finland both for geographical and cultural reasons. One month later a leading Finnish historian received a similar request from the president, who also needed political and strategic arguments for such an expansion. Both books were written to persuade decision-makers in Berlin of the future territorial claims in the east, and they were consequently published in Germany.[27]

Indeed, the books mentioned did not hide the Finnish belief that a reorganization of borders would take place in Europe and that Finland wants to have a meaningful role in that process. Visuri informs that the books went along with the Nazi views about Lebensraum and racial relations, applying them to Finland's circumstances.[28] The books were translated to several languages. One of the books, written by Professor Jalmari Jaakkola, concluded that in the European reorganization of borders Finland and the Finno-Ugric people living in the Soviet Union shall be treated in a just way. Finland shall be entitled to fulfil its national and historic task of uniting all Finno-Ugric peoples in one State. Finland shall also be entitled to moral, legal and economic compensation for the barbaric aggressions that the Soviet Union took in 1939 and 1941. Thus, the Soviet Union shall cede to

[26] Tuomo Polvinen, *J.K. Paasikivi, Valtiomiehen elämäntyö 3, 1939-1944*, (Porvoo: WSOY, 1995) at 294-295.
[27] Meinander 2012, supra, at 70-71.
[28] Visuri 2013, supra, at 30.

Finland beside those territories which it grabbed in the 1940 peace treaty also Eastern Karelia and the Kola peninsula. The exchange of populations shall also take place: Finland receives Finnish (Finno-Ugric) population from the Soviet Union and the Soviet Union receives the foreign (Russian) population from Finland. The vocabulary used by Jaakkola was openly nationalistic.[29]

In the course of the first months of 1941 the Soviet leadership became convinced that Germany's and Finland's relationship had become close. As a result, the Soviet Union changed its policy towards Finland more conciliatory. It made a number of proposals to that effect but did not receive any positive response. Finland, on the contrary, withdrew its ambassador, J.K. Paasikivi, from Moscow in May and did not appoint any new ambassador.[30]

In May-June 1941, a great number of German soldiers settled in northern Finland so that when Germany attacked the Soviet Union on 22 June, there were circa 200,000 German soldiers in northern Finland. It was agreed that the Finnish army units stationed in northern Finland were subordinated under the command of the regional German Supreme Commander. A number of joint military projects, foremostly mining operations, were taken especially in the Baltic Sea area. Finland granted six airfields for the use of the German Air Force.[31] Finland was ready to support Germany's war of aggression against the Soviet Union and to participate in it.

Nazi Germany attacked against the Soviet Union (to its surprise) on 22 June 1941 with aggressive purpose and massive force, starting the biggest war between two States ever, Operation Barbarossa. Adolf Hitler declared that Germany was fighting 'in Bunde' with Finland and Romania. At that time of the attack, Finland had already mobilized its armed forces which were better equipped than ever. However, Finland did not want to be labelled as Germany's aggressive ally and therefore held back its attack for a few weeks.[32] Finland did not give an official declaration of neutrality but a more informal one.[33] The Ambassador of the Soviet Union in Helsinki, Mr Pavel Orlov, gave on 22 June an interview to United Press that the Soviet Union wished that Finland would maintain peace with his country. The Soviet Union was ready to regard Finland as neutral as long as no military action was taken from the territory of Finland against his country.[34] That was a difficult requirement, because Germany used Finnish airfields in support of its bombing flights to the Soviet Union and at least two Finnish guerrilla troops had crossed the border in the north for bombing

[29] Jalmari Jaakkola, *Finlands östproblem*, (Helsingfors, Runar Schildts förlag, 1941), at 95-97.
[30] Paasikivi was considered by the Finnish leadership as too lenient towards the Soviet Union. See Upton 1965, at 320-324 and 331-333, and Visuri 2013, at 49.
[31] Jokipii 1987, at 355-475 and 640-644.
[32] Meinander 2012, at 69.
[33] Jokipii 1987, at 550 and 606.
[34] See Jokipii 1987, at 605-606.

purposes.[35] In Pechenga the German-Finnish police force occupied the Soviet consulate. [36] Colonel Keijo Mikola estimates that even though formally Finland was outside the war until 25 June, its military cooperation with Germany must be interpreted in practical terms as wartime cooperation. [37]

Three days after Operation Barbarossa had began (ie. on 25 June), the Soviet air force bombed a number of airfields in Finland, especially those which had been used by Germany in its bombings against the Soviet territory, and some other targets.[38] The Soviet leadership calculated that Finland had agreed to become an ally of Germany. [39] The joint military projects between Germany and Finland in June 1941, the great number of German soldiers in Finland and the subordination of Finnish forces in the northern half of Finland under the German command convinced the Soviets that it was advisable to bomb Finnish targets in self-defence without waiting the Finnish attack.

The Soviet attack gave Finland a handy ground to declare to the world and to its own people that Finland had been subjected again to an armed attack. The Finnish people were astonished and believed that Finland had been subjected to Soviet attack in a similar way as at the beginning of the Winter War. Negotiations and their results, as well as joint preparations with Germany, had been kept secret from publicity. Nor was the Parliament well informed about those.[40]

Sweden and Britain were fully aware of the game that Finland was playing.[41] They warned Finland: you may be entering a road where you may have to face unpleasant surprises. They proved to be right.

On 10 July, Finland attacked in full force over its eastern border. Compared with the size of its population Finland attacked with a large army – 470.000 soldiers. Over 100.000 other persons were connected to the Finnish military effort. In August, the number of soldiers rose to 520,000. Thus, about 16 % of the Finnish population participated directly in the Finnish war effort – according to Meinander it was a higher percentage than what any of the other belligerent States so far had in World War II. It appeared that Finland would be ready to go rather far to the east.[42] This was

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[35] Jokipii 1987, at 643-644, and Paavo Rantanen, *Suomi kaltevalla pinnalla,* (Jyväskylä: Atena, 2012), at 310.
[36] Visuri 2013, at 58.
[37] Keijo Mikola, " Vuosien 1940-1941 saksalais-suomalaisen yhteistoiminnan tarkoitusperien ja muotojen tarkastelua", *Tiede ja ase*, No. 25, 1967, at 143.
[38] Jokipii1987, at 603.
[39] Aleksander Warma, the ambassador of Estonia to Finland since 1939-1944, stated in his memoirs that after the outbreak of the war between Germany and the Soviet Union there was no doubt that Finland's active joining in the war of Germany would be a matter of a few days. Aleksander Warma, *Lähettiläänä Suomessa 1939-1944*, Helsinki: Otava, 1973) at 180.
[40] Jokipii, 353, 513, 620 and 624.
[41] Jokipii 1987, at 513, and Rantanen 2012, at 299.
[42] Meinander 2012, at 71.

proved by the orders given by Marshal Mannerheim, the Commander in Chief of the Finnish Armed Forces.

In an order on 29 June, Mannerheim stated to the soldiers that "I invite you to a holy war against the enemy of our nation. …… in order to create a safe future to Finland we proceed to a crusade together with the powerful military forces of Germany against our enemies." In the so-called Scabbard Order on 10 July, in connection with the Finnish attack Mannerheim stated that "The freedom of Karelia and a great Finland are glimmering in front of us in the enormous avalance of world historic events….. Your victory will liberate Karelia, your deeds will create a great and happy future for Finland."[43] According to Jokipii, this statement corresponded adequately the prevailing mood in the Finnish Military Headquarters.[44] President Ryti in his radio speech on 26 June accused in strong words the Soviet Union for its policy against Finland and its latest blatant attack. This time, however, Finland was not left alone in its defence but was doing it together with the military forces of the Third Reich.[45]

In northern Finland, the Finnish forces crossed openly the border on 1 July and from then on took joint military action with German forces.[46] Whereas in southern and central Finland the crossing of the border took place to the territories lost by Finland as a result of the Winter War, in the north the attack over the border took place to territories which for long had belonged to Russia.[47]

When the Finnish people recovered from the shock of the Soviet attack, they were strongly in favour of Finland's close relationship with Germany and even attack to the east. The bitterness caused by the Winter War and the 1940 peace agreement, the fear of, and hatred against, violent socialism and the Russians[48], and the possibility of conquering back the lost territories and creating a Greater Finland with the help of Germany were in the minds of most Finnish people. The belief that the Soviet Union could be decisively defeated grew high. In the autumn of 1941, the hopes for a Greater Finland seemed to become true and a kind of religious belief on Finland as a nation under the special protection of God spread among the people. The crusade against the mankind's common

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[434343] The texts of Mannerheim's military orders can be found in www.mannerheim.fi/pkaskyt/s_paiva.htm (visited on 19 February 2010; these military orders are in Finnish).
[44] Jokipii 1987, at 448.
[45] http://heninen.net/sopimus/ryti1941_f.htm (visited on 9 August 2017).
[46] Visuri 2013, at 58.
[47] Ville Kivimäki, "Rintamamiesten Suur-Suomi", in *Luvattu maa*, (Helsinki: Johny Kniga, 2014), ed. by Sari Näre & Jenni Kirves, at 265.
[48] It was common in Finland to call Russians with the derogatory name 'Russki' (ryssä). It was not uncommon that the bodies of dead Russian soldiers were called 'corpses' (ryssän raatoja) – as those of animals - instead of bodies, see Ville Kivimäki &Tuomas Tepora, "Meaningless Death of Regenerating Sacrifice? Violence and Social Cohesion in Wartime Finland", in *Finland in World War II – History, Memory, Interpretations*, ed. by Tiina Kinnunen & Ville Kivimäki, Brill: Leiden 2012, at 258.

enemy seemed to succeed.[49] The aggressive mood was particularly strong among the high military officers and clergy within the military.[50] The strong belief on success prevailed quite long, because the government imposed a strict censorship on the media.

2.3. The Reasoning behind Mannerheim's and Ryti's Choices

It is clear that Marshal Mannerheim, who continued to serve as the Commander in Chief, and President Ryti were the two persons who made the decisive war-related decisions in Finland - Mannerheim on the military side and Ryti on the political side. In addition to them, only three cabinet members belonged to the leading group that decided about relations with Germany and other important foreign policy matters.[51]

From the foregoing pages, the development of the thinking of Mannerheim and Ryti appears to be quite clear. In order to protect Finland's survival, it seemed to be the best solution to rely on Germany. When the negotiations with the Germans proceeded, Mannerheim and Ryti decided to join Finland to Germany's attack against the Soviet Union. They became convinced that Germany would defeat the Soviet Union in a decisive way, apparently in a short time.[52] The Germans promised that besides recovering back the territories lost as result of the Winter War, Finland could invade other territories east of Finland, especially Eastern Karelia. Thus, the Finns drafted several alternative designs about additional territories to be occupied. It appeared advisable to attack with full force as a co-belligerent of Germany towards the east.

However, there were also other possibilities in sight – unpleasant ones. The Finnish leadership had a reason to worry that Germany might – after all - make a deal with the Soviet Union and sacrifice Finland to the Soviets. Or the Soviets would attack Finland, for example the Åland Islands or Finland's southern coast or Pechenga in the north. Or Finland would end up to war on two fronts. It was in Finland's interest to tie itself so closely to Germany that it would not sacrifice Finland.[53]

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[49] Oula Silvennoinen, "Kumpujen yöhön", in *Luvattu maa*, (Helsinki: Johny Kniga, 2014), ed. by Sari Näre & Jenni Kirves, at 29-31 . See Upton 1965, at 368 and 379-380.
[50] Kivimäki 2014, at 267.
[51] The prime, foreign and defense ministers. During the first part of 1941 also the Finnish chief negotiator in the military negotiations, General Erik Heinrichs, participated in the inner circle's decision making.
[52] Jokipii 1987, at 542, 619-622, Ylikangas 2007, at 271, Jatkosodan pikkujättiläinen 2007, at 74, Visuri 2013, at 30, Upton, at 403.
[53] Hans Peter Krosby *Suomen valinta* 1941, (Helsinki: Kirjayhtymä, 1967), at 179, Jatkosodan pikkujättiläinen 2007, at 41 and 134, Rantanen 2012, at 290-292. Edwin Linkomies, Finland's Prime Minister in 1943-1944, wrote in his memoirs that Ryti wished that Germany would attack against the Soviet Union. Edwin Linkomies, *Vaikea aika*, (Helsinki: Otava,1970), at 86.

Why did Mannerheim and Ryti adopt the line advocated by the supporters of the Greater Finland ideology? They were fully aware of the fact that Finland's population was 3,7 million and the Soviet Union's population was 180 million. On what grounds did they think that even in the case of Germany's decisive victory the Russians would not come back later and accuse Finland for robbing Russian territories - taking military action to get them back? Did Mannerheim and Ryti calculate that Germany destroys the Soviet Union completely and divides it (and Russia) into several vassal States or colonies? I assume that they must have thought so.They pushed aside warnings expressed to them.

2.4. Finland in the Continuation War

After the Finnish Army crossed the existing border on 10 July, it conquered quite rapidly the territories lost in the 1940 peace treaty. This was done in early September, and without delay the Finnish Army continued its attack eastwards. On 1 October 1941, the Finnish forces occupied the capital of Eastern Karelia, Petrozavodsk (Äänislinna), and by December Finland had occupied all of Eastern Karelia with the exception of certain territories in the north. Then the Finns stopped their attack and did not attempt to occupy any further areas.[54]

The Finnish army was a valuable addition to the German attack to the east. Germany drafted 3,7 million soldiers to its attack. The third participant in the attack against the Soviet Union, Romania, sent at the beginning only 150,000 soldiers. The German leaders respected the quality of the Finnish military forces' action. This respect could be seen in the discussions and cooperation between the two States in 1941-1944.

When the Finnish army reached the border of 1939, Britain and the United States demanded Finland not to proceed further. Finland wanted to maintain decent relations with these States, but it did not comply with their demands. Then it clumsily terminated its diplomatic relations with Britain.[55] Anyway, Finland emphasized to the West that its warfare and goals were separate from those of Germany – it fought a separate war.

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[54] On the Continuation War in general, see Tuunainen 2012, supra note , at 153-169, and Meinander 2012, supra note, at 71-76.

[55] J.H. Magill, *Tasavalta tulikokeessa*, (Mikkeli: Weilin & Göös, 1981), at 93, and Jatkosodan pikkujättiläinen 2007, at 126.

The Swedish ambassador in Helsinki, Mr Westman, was so openly critical about Finland's war policy that the Finnish government requested the Swedish government to call Westman back and to send a new ambassador to Helsinki.[56]

One cannot say that the Western States would have believed Finnish assurances, but yet they adopted a 'wait and see' attitude. However, when Finland was going to invade nearly the whole Eastern Karelia and signed the Anti-Komintern Pact with Germany, Italy and Japan in late November[57], Britain declared war on Finland in its Independence Day 6 December.

On the same Independence Day, the Finnish Parliament declared its decision to return the territories lost during Winter War under the sovereignty of Finland. Mannerheim was not happy about that decision, because he thought that the border should not be so near Leningrad.[58]

One day later, on 7 December, the Japanese attacked Pearl Harbour and a few days later Germany declared war on the United States. The Finnish leaders' worries even increased because the United States' accession to war increased significantly the strength of the group of States fighting against Germany – the Allies. The United States continued, however, to maintain diplomatic relations with Finland.

During 1941, Finland was successful in its warfare but yet it lost more men than in the Winter War. The Soviet army appeared to be stronger than in 1939-40. Germany, on the other hand, was not as successful in its attack as was expected. The war was not a Blitzkrieg but would be lasting longer and might not even end in victory. Mannerheim and Ryti had to admit that their evaluation about the forthcoming war had not been correct. Finland had drafted virtually all men between the ages of 19,5 and 45 to the war effort exactly at the harvest time. The outcome was that the crop was smaller than usually. The need to release men from the army for the purposes of the labour market became imperative. Besides, Finland was very dependent on Germany for food and military equipment.[59]

The Finns had also other worries. Meinander describes some of them as follows:

> During the winter of 1941-42, Marshal Mannerheim … received alarming reports about how the Germans had gravely missed their chance to win over the population of the conquered areas in the Soviet Union by treating them with horrific brutality. This

[56] Markku Reimaa, *Pohjoismaisia yhteyksiä Saksan vallan varjossa 1940-1944*, (Jyväskylä: Docendo, 2015), at 157-159.
[57] Finland's accession to the Anti-Komintern Pact was interpreted internationally as general acceptance of the policies of Germany, Italy and Japan. About Finland's accession to the Pact, see Jonas 2010, at 221-228.
[58] See Visuri 2013, at 71.
[59] Ylikangas 2007, at 297, Upton 1965, at 349-350, and Jatkosodan pikkujättiläinen 2007 , at 154.

> not only destroyed the credibility of the anti-communist arguments in the Nazi propaganda but also cast a shadow on their Finnish brother-in arms, who had emphasized that they, too, fought a war against communism and for the freedom of the Karelian people.[60]

Jonas decribes the fading of Finland's expectations:

> The heightened Finnish expectations towards Germany and a swift victory in the east cooled early on. After the Soviet Union failed to collapse as projected and survived the winter of 1941-42 greatly strained, though nonetheless basically intact, Helsinki's military-political leadership adjusted their projections accordingly. Mannerheim's early and "boundless pessimism", surfacing from late 1941 onwards, transpired even to the German side and led the way to a whole series of increasingly gloomy perceptions on the part of the Finnish government and the country's better informed public. Helsinki's deepening scepticism and the risk that their essential ally in the northeast could break ranks left Berlin anxious…..[61]

The Finnish leadership decided that it was advisable to limit Finland's future participation in war. Finland refused to participate by active military means in the strangulation of Leningrad and cutting of Murmansk railway.[62] Finland had exceeded its capabilities and had to diminish the size of its army. Participation in the strangulation of Leningrad would result in big losses. Germany tried to put pressure on Finland but when Finland did not yield, Germany gave up challenging the Finnish decision.

The period from the beginning of 1942 until the spring of 1944 can be characterized as stationary warfare in the front between Finland and the Soviet Union. Only sporadic fighting took place. In the course of this period, the position of Germany got weaker - the decisive blow was the failure of the German forces in Stalingrad at the beginning of 1943. The Finnish leadership drew the conclusion that Germany would lose the war and that Finland would have difficult times ahead. It was advisable to be ready to pull away from the war at a suitable time, if the terms of an armistice were decent. However, Finland continued its occupation of Eastern Karelia because it was regarded as an

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[60] Meinander 2012, at 74. See also Assarsson 1963, at 90.
[61] Jonas 2012, at 120-121. See also Henrik O. Lunde, *Finlands val 1941-1944 – Samarbetet med Hitler-Tyskland,* ((Sweden: Fischer & Co, 2014), at 194, (original title: Finland's War of Choice:The Troubled German-Finnish Coalition in WW II, 2011).
[62] Lunde 2014, at 196-197.

asset for Finland in its defence, and perhaps it could be beneficial for Finland in the peace negotiations.

In any case, it was clear that Finland had to prepare for a war of defence, if it could not accomplish a peace agreement. The Finns knew that it would be difficult to withdraw from the war for a number of reasons, one of the leading reasons being Finland's heavy dependence on Germany. In March 1944 secret negotiations for armistice were arranged in Moscow. The Finnish negotiator, J.K. Paasikivi, returned with a proposal which the Finnish government rejected. Paasikivi was furious and argued that Finland would not receive better terms later.[63] It appears that Paasikivi was right.

In June1944, the Soviet armed forces attacked Finland with full force through the Karelian isthmus. Finland had to pull its forces rapidly from Eastern Karelia. The Soviet attack threatened to be so strong that the Finnish defence might collapse. Finland had to agree with Germany not to make a separate peace with the Soviet Union in order to receive much needed aid from Germany. Finland was successful in choosing the form of the agreement. Namely, President Ryti made the agreement in his own name with Foreign Minister Ribbentrop: as long as he is in power, Finland will not make a separate agreement with the Soviets.[64] Germany was satisfied with this pledge and continued to provide Finland with food and military aid, including anti-tank weapons and air support which together with a German infantry division proved to be essential for the Finnish fighting capacity and spirit.[65] After brave fighting, the Finns were able to prevent Soviet breakthrough. Then the Soviet leadership decided to transfer a part of its forces from the Finnish front to Central Europe.[66]

In September 1944, the Finnish leadership found it advisable to agree to the peace terms demanded by the Soviet Union. Ryti withdrew from the presidency and was succeeded by Mannerheim. Finland considered that it no more was bound by the agreement concluded by Ryti in his own name.[67] The terms of the peace were quite harsh.

Understandably, the Germans were furious about the 'betrayal' of Finland, but the Finns replied that all State leaders' primary obligation was to secure the survival of their country.[68] The German

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[63] Tarkka, 1977, at 50-51.
[64] Markku Jokisipilä, *Aseveljiä vai liittolaisia? Suomi, Hitlerin Saksan liittosopimusvaatimukset ja Rytin-Ribbentropin sopimus*, (Helsinki: Suomalaisen Kirjallisuuden Seura, 2004), at 261-367, Visuri 2013, at 248-258, and Jonas 2010, at 359-377.
[65] See Meinander 2012, at 81, and Jokisipilä 2004, at 379-381.
[66] See Meinander 2012, supra note , at 82-83, and Tuunainen 2012, at 159-167.
[67] Jokisipilä 2004, at 414-419.
[68] Blücher 1951, at 416-417.

forces withdrew towards the north and burnt in revenge most of the dwellings of Lapland in their way to northern Norway.

Under the terms of the Armistice Agreement, Finland was to lose Pechenga and to lease to the Soviet Union a military base on the Finnish south coast near to Helsinki.[69] Finland also had to disarm the German military forces in Finland and to hand over their personnel to the Soviet Union as prisoners of war. Very soon after the Agreement was signed in September 1944, the Allies sent its Control Commission to Finland to inspect that Finland faithfully obeyed the terms of the Agreement. The Soviets had a leading role in it. The Commission left Finland in 1947.[70]

The 1947 Peace Treaty of Paris with Finland added many other obligations on Finland. The other parties of the Treaty were all those Allied States that had been at war against Finland (even if formally only).[71] The Treaty set many restrictions on Finland's armed forces (Arts. 13-22) and ordered Finland to deliver machines and other articles worth of 300,000 million US dollars as compensation to the Soviet Union (Art. 23). Finland also had to hand over to the Soviet Union all German-owned property (Art. 26) and to dissolve all fascist and military-type organisations which had conducted hostile propaganda against the Soviet Union or other Allied States (Art. 8).

2.5. Finland's Occupation of Eastern (Soviet) Karelia, 1941-1944

I have previously written a scholarly article on the occupant's behavior in Eastern Karelia and here I explain the main points of the article.[72] Already in July 1941, Mannerheim issued non-public military orders on the establishment of provisional military administration of Eastern Karelia and on the placement of the Russian population in concentration camps (they were not extermination camps). Eastern Karelia had the size of over 170 000 square kilometres, i.e. half of the size of the present-day Finland.

Finland's expressed reasons for its occupation of Easter Karelia were, first, to save the Karelian people from extinction under the harsh Soviet leadership and, second, to secure to Finland a more easier defensible border against its aggressive neighbour.

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[69] Finnish Treaty Series 4/1944. The parties were the Soviet Union, Britain and Finland.
[70] See Roy Allison, *Finland's Relations with the Soviet Union 1944-84,* (London: The MacMillan Press LTD, 1985) at 129-132; Pekka Visuri, *Suomi suurvaltojen puristuksessa 1944-1947,* (Jyväskylä: Docendo, 2015), at 89-94.
[71] UNTS No 53 (1948).
[72] Lauri Hannikainen, "Military Occupation of Eastern Karelia by Finland in 1941-1944: was international law pushed aside?", in *Searching for a 'Principle of Humanity' in International Humanitarian Law*, ed. by K.M. Larsen, C.G. Cooper and G. Nystuen, (Cambridge: Cambridge University Press, 2013), at 183-205.

When the Finns arrived at Eastern Karelia, there were only 85,000-87,000 inhabitants there, mostly women, children under 15 and elderly. It was the idea of the Finns to place non-Finno-Ugric population in camps in order to transfer them later to the German-occupied territories of Russia. The Finno-Ugric population was given a better treatment than the ethnic 'aliens'. It was a disappointment to the occupant that it had no common language with many local Finno-Ugric persons.

The Finnish occupant did not succeed in closing all 'aliens' in camps but only about a half (up to 22,000). It failed severely in camp administration in 1941-42. The camps were overcrowded and nourishment and medical care were inadequate.The mortality rate was at least 18 %, perhaps even 25 %. The main causes for the high mortality were epidemics, over crowdedness, hunger and hard work.

I concluded in the article that Finland violated the 1907 Hague Regulations Respecting the Laws and Customs of War on Land. Finland's treatment of 'alien' persons was unworthy of a democratic State. Fortunately, Finland did not transfer the 'alien' population to German-occupied territories.

2.6. Some (non-legal) Concluding Observations Concerning Part II

As in the autumn of 1939, in 1941 the Finnish leadership made a problematic evaluation about the war scene. They overestimated the capability of Germany to defeat the Soviet Union. Many experts in other countries shared this view. However, the Finns belonged to those who took forceful action in that belief. Already in the course of autumn 1941 the Finnish leaders had to admit that at least partially they had been wrong. In the beginning of 1943 they had to admit that they had been fundamentally wrong.

When the Finnish army crossed the borders in July-August 1941, it did that with maximum force. Finland was ready to occupy foreign territory. However, in the course of the autumn it became clear that Finland had exceeded its capabilities and had to diminish the size of its army. Its policy had lead to shortage of food. Finland had suffered a lot during Winter War and after this war it had to resettle over 400,000 persons from the territories lost to the Soviet Union. In the summer of 1941 Finland's food situation was fairly good, but not so good as to enable virtually all men between the ages of 19,5 and 45 to be drafted to the military for the harvest period. The harvest succeeded only

partially - the outcome was shortage of food, which hit hard especially persons confined in camps where thousands of inmates died as result of hunger and epidemic diseases.[73]

In the defensive war in 1944 Finland was barely able to retain its independence. The Finnish soldiers fought bravely and with success.

Part 3 Legal Analysis (in a Broad Sense)

3.1. How Did International Law Regulate the Inter-State Use of Armed Force Prior to World War II?

Before World War I, international law granted a broad right to resort to war if a State considered that another State had violated its rights and did not agree to compensation. The leading term in State relations was 'balance of power', a term of power politics that had next to no connection to law.[74] When the League of Nations was established in 1919, its Covenant set substantial limitations to its members to resort to inter-State war but did not prohibit it altogether. If member States were not able to settle their dispute by peaceful means, they had no right to resort to war but were obligated to submit the dispute to the League's dispute settlement procedures. If the League was not able to solve the dispute, a party was not unequivocally prohibited from resorting to war, but it had to wait for three months, before it could do that. If the League Council reached a unanimous report on the dispute, then the member had no right to resort to war. If a member violated the explained provisions, the Council was to recommend appropriate measures to the parties – the League's sanctions were not excluded.[75]

It was soon realized that the League's partial ban of war would not work in practice. In 1928, a short treaty was concluded by the name of General Treaty for the Renunciation of War, generally called the Kellogg-Briand Pact. The Pact condemned recourse to war for the solution of international controversies and as an instrument of national policy. The settlement of conflicts of whatever nature shall never be sought except by pacific means.[76] This was all – the Pact said nothing about what should be done, if a State party violated the Pact, or about the right to withdraw from it. The simple idea was that States shall not resort to a war of aggression, whereas wars of

[73] Blücher 1951, at 260-261.
[74] See Ian Brownlie, *International Law and the Use of Force by States*, (Oxford: The Clarendon Press, 1963), at 3-50.
[75] The Covenant is reprinted, for example, in *Blackstone's Internal Legal Documents*, 7th ed. edited by Malcolm D. Evans (Oxford: Oxford University Press, 2005) , at 1-7.
[76] 94 LNTS, at 57.

defence were not prohibited.[77] The Pact received a handsome number of ratifications. Only four States from Latin America refrained from ratifying the Pact due to the reason that it was too vague as it said nothing about what to do if a State party resorted to a war of aggression. Like many other States, these four States ratified the 1933 Anti-War Treaty of Non-Aggression and Conciliation (Anti-War Pact). Besides condemning wars of aggression, it stipulated that no territorial acquisitions which were obtained by force of arms would be recognized by the parties. The provisions of the Kellogg-Briand Pact and Anti-War Pact were referred to in numerous other international treaties and other instruments.[78] It was clear that the new prohibition was not just one rule among other new rules of international law but a rule of primary importance.

After the entry into force of the Kellogg-Briand Pact, no State denounced it or denied its obligatoriness.[79] When a given State violated the Pact, the League of Nations and/or States reacted against the violation. As regards the Soviet Union, on various occasions it reaffirmed the obligatory force of the Pact.[80]

There is in the Preamble of the Pact one sentence, however, that should be commented upon. It reads as follows: "any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty". That meant at least that the aggressor State was denied the right to the fruits of its aggression, e.g. occupation of a foreign territory. There were opinions according to which a State's resort to aggressive war released other States from obligations towards that State and permitted other States to withdraw from the Pact.[81] The practice of States after the Pact's entry into force made it clear, however, that they were for a different interpretation. No State withdrew from the Pact or spoke in favour of having been released from the Pact's obligations. If other States had reacted to Germany's aggressions by denouncing the Pact or by declaring that they were no more bound by the Pact towards Germany, the Pact would soon have collapsed as a significant treaty. They did not do so.

Finland could have developed after the Winter War the interpretation that it was no more obligated towards the Soviet Union under the Pact and could even resort to war against it, but it did not do so.

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[77] About the legality of defensive war, see Brownlie 1963, at 235-250. Inside its own territory a State has always had a sovereign right to use armed force against a foreign trespasser.
[78] About the Covenant, the Kellogg-Briand Pact and Anti-War Pact as well as other instruments and State practice, see Brownlie 1963, p. 51-111.
[79] Brownlie 1963, at 80 and 83.
[80] See Brownlie 1963, at 76,78 and 104.
[81] See L. Oppenheim, International Law – A Treatise, Vol. II – Disputes, War and Neutrality, Sixth Ed., ed. by H. Lauterpact (Longmans: London 1946), at 157, and Hans Wehberg, The Outlawry of War (Carnegie Endowment for International Peace: Washington, 1931), at 87-88.

It knew that this kind of interpretation had not won any significant support in the international community.

One may *conclude* that when World War II broke out, all existing States had expressed their legal consent to the prohibition of aggressive war. In the international community led by the League of Nations, the Kellogg-Briand Pact's outlawry of wars of aggression was comprehensive in character.[82] Reservations for self-defence did not weaken the Pact.[83] Brownlie argues that beside their treaty obligation(s) all existing States had the obligation to refrain from aggressive war on the basis of customary international law.[84] In fact, the Pact was meant to have even a wider scope – to outlaw all resort to war that was not defensive.

As regards the right of self-defence, Friman concludes that in the interwar era States used the term 'defence' in its natural meaning, namely as a response to imminent or actual violence.[85] The League's bodies rejected arguments for wider self-defence.[86] As regards humanitarian armed intervention, it is true that the Pact did not prohibit small-scale interventions short of war. One could argue that a State's large-scale humanitarian intervention was not prohibited due to its noble, non-selfish purpose – to protect a persecuted group or one in mortal danger in another State. However, Ronzitti concludes that in the era of the League and the Pact, States practically never tried to justify the use of force by referring to humanitarian intervention.[87]

What did it mean that a State had ratified the Kellogg-Briand Pact, or any other treaty? It meant that this State was bound by the treaty and obligated to respect it in good faith. The State had no choice to decide whether to respect the treaty or not.[88] However, keeping in mind that the Kellogg-Briand Pact was very short and categorical, did the new prohibition have a sufficiently definite content for reliable interpretation? One can answer that whereas it is commonplace that the spheres of rules of law are somewhat ambiguous, this may have been to some extent true also with the prohibition of

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[82] Wehberg 1931, at 81, and K. Skubiszewski, Use of Force by States. Collective Security. Law of War and Neutrality, in Manual of Public International Law, ed. by Max Sörensen (St Martins Press: New York, 1968), at 744.
[83] Some States made dubious reservations to the Kellogg-Briand Pact but they did not create any major problems during World War II.
[84] Brownlie 1963, 110-111.
[85] Johanna Friman, Revisiting the Concept of Defence in the Jus ad Bellum, (Hart: Oxford, 2017), at 28. In support, see J.L Brierly, The Law of Nations (Clarendon Press: Oxford, 1955), at 316.
[86] See Stephen C. Neff, War and the Law of Nations, (Cambridge University Press, 2008), at303-307.
[87] Natalino Ronzitti, Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity, (Martinus Nijhoff, Dordrecht, 1985) at 91. See also Katariina Simonen, The State versus the Individual – The Unresolved Dilemma of Humanitarian Intervention (Martinus Nijhoff Publishers: Leiden, 2011), at 6; Simon Chesterman, Just War or Just Peace? Humanitarian Intervention and International Law (Oxford University Press, 2001) at 43; Antonio Cassese, *International Law,* Second Ed. (Oxford University Press 2005), at 299.
[88] Lord McNair, The Law of Treaties (Clarendon Press: Oxford, 1961), at Ch. XXX.

aggression, but there is much definite within that norm.[89] The most undisputed cases of 'war of aggression' were the use of armed force on a large scale and in an aggressive purpose, such as to grab a territory from another State, to occupy a State in the purpose of controlling it, or to set into power a government favourable to the occupying power.

In 1933, two conventions for the definition of aggression were concluded. Altogether, 12 States became parties to them. In one of them both Finland and the Soviet Union were parties. It contained a list of different forms of aggression, such as invasion of foreign territory and attack by land, naval or air forces. The aggressor was that State which was first to resort to force. No aggression could be justified by the internal condition of a State, including alleged defects in its administration or due to revolutions, counter-revolutions or civil war.[90] However, the 'first resort' formula received criticism as it totally condemned anticipatory self-defence and, thus, "could become a trap for the innocent".[91] This may have been the reason why the two conventions did not receive more ratifications.[92]

However, there was a period during World War II (1940-1942), when the prohibition of aggressive war was so mercilessly violated by especially Germany but also some other States – the Soviet Union being a leading State in that list – that one could reasonably doubt the sanctity of the prohibition of aggressive war. The Finnish Continuation War began during that period. After that period, the victorious Allied Powers confirmed, however, that the prohibition had been in force all the time.

When in the aftermath of World War II international military tribunals were established for prosecuting the German and Japanese political and military leaders, one of the three categories of international crimes listed in their statutes was crimes against peace. In the Charter of the International Military Tribunal in Nuremberg Article 6 (a) reads as follows:

> **Crimes against peace**: namely planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

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[89] Brownlie 1963, at 91 and 111, and Oppenheim 1946, at 158-159 and 161.
[90] The Conventions were signed on 3 and 4 July 1933, LNTS No. 3391 and No. 3414. See Brownlie 1963, at 347 and 247-48.
[91] Stanimir Alexandrov, Self-Defense Against the Use of Force in International Law (Kluwer Law International: The Hague, 1996) at 73.
[92] Ahmed Rifaat, International Aggression, (Almqvist & Wiksell International: Stockholm, 1979), at 90-91.

The Nuremberg Charter was enacted and entered into force in 1945[93] and was meant to apply to German war criminals - individuals. However, the Tribunal itself made it plain that it regarded the Charter as expression of international law as of 1939 and war of aggression as the supreme international crime, since it contained within itself the accumulated evil of the whole.[94] It referred specifically to the Kellogg-Briand Pact as the leading source of the prohibition of aggressive war. The crime of aggressive war was applied only to major war criminals.

The historians writing about the Continuation War have only very seldom used the term 'aggressive war' but have often analyzed, whether Finland acted in alliance with Germany – 'alliance' being the key word. The alliance choice would point to co-responsibility for participation in a war of aggression.[95]

What was meant by the notion of 'alliance'? In the era prior to the creation of the League of Nations, it was quite common that States created alliances by treaties for defence or aggression purposes. The existence of the alliance was clear if it had been created by a treaty. However, if no treaty or a comparable joint declaration was made, how to find out whether there was an alliance or not? Then one had to draw a conclusion on the intensity of their cooperation - such factors as whether the States had identifiable common goals in their warfare; how much common fighting operations they had; how much they helped each other. One concrete sign pointing to an alliance was if the States had created joint military structures, such as placing their armed forces under the command of a single commander.

3.2. The 1947 Paris Peace Treaty and Finland's Use of Armed Force

The 1947 Paris Peace Treaty stated in its preamble that Finland participated as an ally of Hitlerite Germany in the war against the Soviet Union, United Kingdom and other Allied States and that Finland had to bear its share of responsibility for this war. The Treaty did not say specifically that Finland resorted to a war of aggression, but reference to alliance with Germany and the whole tone of the Treaty setting punitive-type obligations on Finland permit logically the conclusion that Finland was considered as having participated in a war of aggression. One may argue that

[93] UNTS, Vol. 82, at 279.
[94] *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945 – 1 October 1946*, Volume I, (Nuremberg, 1947) at 186.
[95] Nor does the Paris Peace Treaty use the words of Article 6 (a). The Treaty is discussed in more detail in Part 3 below.

statements in the preambles have only limited legal significance, but in this Treaty the statement on Finland's responsibility forms the basis of its articles with many definite legal obligations.

In strict legal analysis one could conclude that there is no need for any extensive analysis here any more, since the Peace Treaty is valid under international law and obligatory on Finland. Finland has not tried to propose re-evaluation of its role in the Continuation War to the parties of the Peace Treaty. After the end of Cold War, many articles have lost their significance but not all. The Treaty remains in force.

In the post-Cold War era Finnish leaders have disregarded the statement in the preamble and have emphasized that Finland was conducting its own separate defensive war against the aggressive Soviet Union.[96] The same view is shared by the majority of the Finnish people. On the other hand, the majority of contemporary Finnish history professors consider that Finland was fighting against the Soviet Union in alliance with Germany.[97] All in all, in contemporary discussion the Peace Treaty is on sidelines. Therefore, I find it advisable to write this article.

3.3. Only a Quick Look at Criminal Law

I do not analyse in this article the criminal trial of Finnish leaders' war guilt but limit myself just to describing it shortly.The Allied Powers had decided that criminal trials had to be arranged for all 'satellites' of Germany. The Allies seemed to recognize that the Finnish leaders were no major war criminals but tried to safeguard the independence of their country. Then, unfortunately, they became so carried away by the expected superiority of Germany that they joined Finland in Germany's war of aggression.

General Andrei Zdanov, the Chief of the Allied Control Commission, said that Finland received a favourable treatment in three respects: 1) no death penalties were demanded, 2) only the members of a small central circle were to be indicted, and 3) Finland was permitted to arrange the trial itself.

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[96] See Tiina Kinnnen & Markku Jokisipilä, , "Shifting Images of "Our Wars": Finnish Memory Culture of World War II", in *Finland in World War II – History, Memory, Interpretations*, ed. by Tiina Kinnunen & Ville Kivimäki, (Brill: Leiden 2012), at 455-467. They explain the views of Presidents Tarja Halonen and Martti Ahtisaari (later Nobel Peace Prize laureate) and of ex-Prime Minister Paavo Lipponen. In 2005, President Halonen gave a deliberately concise portrayal of Finland's role in World War II to a prestigious audience in Paris without saying a word about Finland's cooperation with Hitler or the offensive warfare of the Continuation War.
Also ex-President Mauno Koivisto released Finland from any responsibility by stating that all war-related decisions made by Finland's leaders during World War II were right. See Jatkosodan pikkujättiläinen 2007, at 42. (tai Koiviston kirja joka minulla on)

[97] See Helsingin Sanomat (newspaper), on 19 October 2008.

Tarkka's assessment is that Finland succeeded in choosing the least bad alternative.[98] When the Commission and the new Finnish government negotiated about the trial to be arranged, the Commission made it known that the Finns themselves could make preparations for the trial and arrange the trial before a national court. This would happen under the supervision of the Commission.[99]

The tone of the crime categories formulated by the Finns was in passive terms: permitting things to take place and not actively seeking peace.[100] Definitely, there was no reference to the crime of aggressive war. Since there were no military leaders among the accused, tactically a big part of responsibility could be pushed on the shoulders of military leaders.

In the trial the national court was to decide on the guilt ex-President Ryti, six ministers and Finland's ambassador to Germany.[101] It was an openly political trial. Marshal Mannerheim was not among the accused, because the Soviet Union calculated that he would be more valuable by assuring the Finnish people that realism dictated need to consent to the terms of the Armistice Agreement and to consent to a more Soviet-friendly foreign policy.[102]

The trial resulted in seven prison sentences between 8 and 2 years. However, the Control Commission was dissatisfied and demanded more severe sentences. The court had to raise them – to between 10 (Ryti) and 2 years.[103]

I draw one conclusion for my analysis below: the Allies did not regard Finnish leaders to bear *criminal* responsibility for participation in aggressive war. If not leaders, hardly the Finnish State either.

3.4. Legal Analysis of Finland's Arguments

3.4.1. **The Soviet Danger**

Finland:

[98] Tarkka 1977, at 184 and 245.
[99] Tuomo Polvinen, Jaltasta Pariisin rauhaan, (WSOY: Porvoo 1981), at 131-140.
[100] Tarkka 1977, at 181-182.
[101] Immi Tallgren 2014, at 516-527, and Jukka Tarkka, *Hirmuinen asia – Sotasyyllisyys ja historian taito*, (Helsinki: WSOY, 2009), at 167-301.
[102] Visuri 2013, at 277-278; Jonas, 2010, at 417.
[103] Tarkka, at 212-220.

Finland's first argument is not a legal one but is important for understanding its policy. Even after the Winter War the Soviet Union behaved aggressively towards Finland and might well start a new war in order to invade the whole Finland. Finland decided to do its utmost to have powerful support against the Soviet Union. Germany was very powerful in Europe and Finland was dependent on Germany in economic terms. Finland was not Nazi-minded and knew that Germany had behaved aggressively, but Finland felt that Germany was the best available choice in its search for security. Finland did not engage in any warfare of destruction but respected the law of war.

Finland was between two dictatorships, the Stalinist Soviet Union and Nazi Germany. It knew what had happened to Poland which had refused to ally with either of those powers: they invaded it and divided it between themselves. [104] Finland succeeded in creating a cooperative relationship with Germany, but in the first half of 1941 it had no certainty about how Germany's relations with the Soviet Union would develop – a war or some deal between those two strong powers, possibly affecting Finland's independence. In its uncertainty Finland decided to follow Germany in order to improve its chances not to be left alone against the Soviet Union. True, Finland also wished that with the help of Germany it could correct the injustice of the Winter War by acquiring the territories lost back and get compensation for the injustices and hardships caused by the Soviet Union to it. In addition, it was important to have a safer border with the Soviet Union – the border of three isthmuses.

According to Krosby, Germany was the best choice, because if Finland had decided to avoid allying with neither Germany nor the Soviet Union, it would have drawn to the war anyway. Germany was the only realistic choice.[105]

Analysis:

It is true that Finland was in a difficult position in the vicinity of two disctatorships. However, it knew that reliance on Germany could involve dangers and that as a small State it had to deliberate carefully its policy moves.

3.4.2. Finland's Relationship with Germany

[104] A.J.P. Taylor, *The Origins of the Second World War*, (Greenwich: Fawcett Publications,1961), at 190.
[105] Krosby 1967, at 232-237.

Finland:

Finland was not an ally of Germany but the relationship of these two States was based on looser cooperation. There did not exist any treaty on alliance. The two States took a number of joint operations, but their goals were different. Germany gave material help to Finland but that neither created any alliance nor made Finland a satellite of Germany. Finland had its own limited goals and warded off Germany's proposals for military action beyond Eastern Karelia. It refused to participate in the strangulation of Leningrad and in the efforts to cut the Murmansk railway. Finland had it difficult to withdraw from the war after it had reached its goals, because Germany would have reacted by forcible means.[106]

Analysis:

a) Secret Negotiations

German-Finnish negotiations and preparations for attack were conducted in secrecy. From 1941, there were no treaties or memorandums of understanding made public to outsiders. One of Finland's main legal arguments in support of its separate war was that there was no alliance treaty between itself and Germany. According to Visuri, in their mutual correspondence Hitler and Ryti confirmed the results of the military negotiations without specifying the contents of these results. Visuri takes this correspondence as proof of the existence of extremely secret inter-State treaties without caring for the national constitutional law.[107] It is quite logical that if two States plan to engage in a gross violation of international law, they agree about it with an informal secret agreement.

b) Weighty Proof of an Alliance

The cooperation of the two States was so close that it speaks for an alliance whose purpose was to attack the Soviet Union. The strongest cases of proof (most of them have been reported above) were the following:

- The number of German soldiers in Finland prior to Germany's attack of 22 June reached as high as 200,000.

[106] Meinander 2012, at 75.
[107] Visuri 2013, at 52 and 55-56.

- Finland's armed forces locating in Northern Finland were subordinated under the command of the German commander in chief. This meant that Finnish forces there were part of the German attack against the Soviet Union – in the north the attack began on I July. This matter in itself alone serves as weighty proof of the creation of an alliance between the two States. Admittedly, however, in military terms the role of this unified northern army remained quite limited.

- Elsewhere in Finland the German armed forces were subordinated under the command of Marshal Mannerheim.

- The Germans and Finns were in agreement about the direction of Finland's attack to the Soviet territory. According to Polvinen, the Germans wanted to tell the Finns when they should attack and to what direction. Thus, Mannerheim received on 9 July the announcement from the Germans that the attack should begin during the following day. He was dissatisfied with the late date of the announcement. However, the Finnish forces were re-grouped rapidly and Finland began its attack on 10 July as proposed by the Germans.[108]

- When Finland attacked on 10 July, it attacked with maximum force – even exceeding its capabilities as could be seen in late 1941 and 1942. Finland invaded a substantial area of a foreign territory and if Germany had been as successful in its attack as Finland expected, Finland did not exclude even more invasion. By exceeding its actual capabilities Finland made itself in material terms even more dependent on Germany. According to Jokisipilä, Finland received a lot of versatile material help from Germany – without this help Finland's backbone would have broken.[109] One may conclude that Finland was heavily dependent on Germany for food and other materials, especially military equipment.[110]

- Finland gave certain airfields to the use of the German Air Force.

- In the maritime areas cooperative measures were taken.

[108] Tuomo Polvinen, *Barbarossasta Teheraniin*, (Porvoo: WSOY, 1979), at 15-16.
[109] Jokisipilä 2007, at 162. In support of this view, see Ylikangas 2007, at 297. See also Jonas 2010, at 231-232 and 206-207. According to him, Finland's complete dependence on German help took steam away from Finland's claim concerning a separate war.
[110] Jatkosodan pikkujättiläinen 2007, at 145, and Upton 1965, at 349-350.

- Upon the request of Germany, Finland in the early months of 1941 established the so-called SS-batallion for volunteers to join. The battalion participated in anti-Soviet war in the ranks of the German army outside Finland.[111]
- In November 1941, Finland joined the Anti-Komintern Pact that had been created by Germany, Japan and Italy against international communist movement and the Soviet Union.
- Finland recognized without delay the new satellite States which Germany created in occupied territories.[112]
- President Ryti made the agreement in his own name with Foreign Minister Ribbentrop: as long as he is in power, Finland will not make a separate agreement with the Soviets. This meant the admission that the relations of the two States were close, indeed.
- The Finns surrendered to the Germans over two thousand Soviet prisoners of war and the Germans surrendered to the Finns an about equal number of Finno-Ugric prisoners of war.[113]

The Allies were of the opinion that Finland, Hungary and Romania were Germany's allies, even satellites. To Finland they gave a bit better status than to the two other allies.[114]

Among historian,s Jonas writes that Finland's inclusion in Operation Barbarossa leaves virtually no doubt that the German-Finnish attack against the Soviet Union was at the very least a joint military venture with the shared purpose of conducting a war of aggression. Preparations for war between Germany and Finland were more intensive than between Germany and its other allies.[115] Kivimäki and Lunde think that the idea of Finland's separate war against the Soviet Union comes close the absurdity.[116] Jokipii is of the opinion that the cooperation between Germany and Finland in 1941 was so close that it is not possible to speak of Finland's separate war against the Soviet Union but intensive co-belligerency which fulfilled the criteria of an alliance – without a formal treaty.[117] Jokisipilä writes that if the relationship of Finland and Germany had to be described by one word, it

[111] Mauno Jokipii, *Hitlerin Saksa ja sen vapaaehtoisliikkeet*, (Helsinki: Suomalaisen Kirjallisuuden Seura, 2002), at 176-257.
[112] Jonas 2010, at 2I6.
[113] Oula Silvennoinen, Limits of Intentionality – Soviet Prisoners of War and Civilian Internees in Finnish Custody, in *Finland in World War II – History, Memory, Interpretations*, ed. by Tiina Kinnunen & Ville Kivimäki, (Brill: Leiden 2012), at 513-514.
[114] Jokipii 1987, at 626-628 and 652, and Visuri 2013, at 25. The Nuremberg Tribunal in 1946 (supra note 21, at 214) estimated that Germany drew Hungary, Rumania and Finland into war against the Soviet Union.
[115] Jonas 2012, at 112-113, and Jonas 2010, at 207..
[116] Kivimäki 2013, at 6, and Lunde 2014, at 390.
[117] Jokipii 1987, at 355-516, 548-550 and 612-628. Visuri (2013) is of the same opinion, supra note X , at 22-25 and 55-56.

is difficult to use any other word than alliance, taking into consideration the degree of Finland's dependence on Germany and the intensiveness of their cooperation. He points out, however, that Finland was not a satellite of Germany but had its own goals and interests.[118]

One may conclude that the evidence of Finland's close relationship with Germany speaks for an alliance.

3.4.3. Did the Soviet Union Start Aggressive War on 25 July?

Finland

Finland was subjected to an armed attack by the Soviet Union on 25 June 1941 (and in the following days). The message of the 1933 Convention for Definition of Aggression was clear: the first to use armed force is the aggressor. It was the Soviet Union which – as in 1939 - started the war.

Analysis:

When Germany started its massive attack against the Soviet Union on 22 June, Adolf Hitler stated in the radio proclamation to the German people that an attack unprecedented in history in its extent and size had begun. He went on that German forces stood in common front with the Finnish and Romanian forces against the Bolshevic Soviet Union for safeguarding Europe.[119] Romania joined the attack immediately. Should the Soviet leaders who knew a lot about German-Finnish cooperation suspect that Hitler was exaggerating Finland's role? Hardly so.[120]

Hitler's declaration in itself could serve as a sufficient reason for the Soviet Union to take military measures against Finland. The German attack on the Soviet Union was massive and threatened the existence of the Soviet Union – a matter of life or death. It is the inherent right of every State to defend itself against an attack endangering its existence. For Finland to avoid Soviet attack it would have been important to 1) contest Hitler's declaration 2) declare neutrality according to its law, 3) emphasize to the Soviets that the German forces in Finland were meant only for Finland's defensive purposes, and 4) assure that no military action would be taken across the border. The Soviet

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[118] Markku Jokisipilä, " "Kappas vaan, saksalaisia!" Keskustelu Suomen jatkosodan 1941-1944 luonteesta", in *Sodan totuudet*, ed. by Markku Jokisipilä, (Helsinki: Ajatus Kirjat, Gummerus Kustannus Oy, 2007), at 173.
[119] See https://research.calvin.edu/german-propaganda-archive/hitler4.htm - visited on 22 November 2018; and Visuri 2013, at 53-55.
[120] In his radio speech to the Finnish people on 26 June Ryti confirmed that Finland was fighting together with the Germzn army.

ambassador offered such a possibility to Finland, but Finland could not give any convincing answer.

How about the criterion of the 1933 Convention – the decisive role of the first use of armed force? As was reported above, Finland took prior to 25 June small scale military action and had given airfields for German use against the Soviet Union. In this case that was sufficient to constitute first use of armed force.

I conclude that the Soviet Union had weighty reasons to argue that it had the right to use armed force in self-defence against Finland starting on 25 June. [121] Finland was playing a double game.

3.4.4. Did Finland Have the Right to Invade the Territories Lost in the Winter War?

Finland:

At the beginning of the Continuation War Finland had the right to take back those territories which the Soviet Union grabbed in 1940 as a result of its war of aggression. The Preamble of the Kellogg-Briand Pact denied from the aggressor the benefits furnished by the Pact. In the circumstances of World War II, Finland had no chance to get justice with orderly peaceful means. Finland's takeover was definitely non-aggressive in character - it restored justice. No State protested against Finland's takeover.

Analysis:

The Kellogg-Briand Pact permitted recourse to war only in self-defence against imminent or actual violence. Since nearly 1 ½ years had passed from the 1940 Peace Treaty, Finland could not appeal to self-defence for its military re-occupation of the lost territories. It should have waited and raised this matter into discussion in the settlement of World War II.

[121] I share this view with Jonas 2012, at 113. See also Varma 1973, at 180

Finland certainly could refer to moral justification to re-occupy the lost territories but it its legal arguments were not sufficient.

3.4.5. Did Finland Have the Right to Occupy Eastern (Soviet) Karelia – and Ultimately to Annex it?

Finland:

The Soviet Union had pursued anti-Karelian policy in Eastern Karelia, the traditional territory of the Karelians. Particularly years 1935-1938 of the Great Terror were horrifying. Ethnic minorities were then persecuted as they were regarded as unreliable in comparison with the Russians. Eastern Karelia was severely affected – many Karelians were executed or imprisoned in labour camps.

Professor Rafael Erich, who was the leading Finnish expert of international law, submitted in November 1941 to the Finnish government (upon its request) his memorandum in which he presented legal arguments in favour of Finland's right to occupy Eastern Karelia and ultimately to take it away from the Soviet Union. The Soviet Union had illegally grabbed a part of Finland's territory to itself – and was even afterwards pursuing an aggressive policy.

Erich went on that the Soviet Union had disregarded its obligations under the Tartu Peace Treaty concerning Eastern Karelia. Whereas in 1920 the Finno-Ugric Karelians formed the majority of the population of the Eastern Karelia, in 1941 they formed only a minority as the result of changes of administrative borders, transfer of other nationalities - primarily Russians – to, and compulsory transfer of Karelians away from, the territory. In the Tartu Peace Treaty Soviet Russia obligated itself to recognize the right of national self-determination to the Karelian population in the form of territorial autonomy (Articles 10 and 11). In addition, in Tartu it gave a unilateral declaration specifying the contents of the territorial autonomy. In Erich's view, the Soviet government had completely disregarded its obligations and prevented any meaningful autonomy from the Karelians.[122]

In conclusion, in Erich's view Finland had the right to demand indemnity from the Soviet Union as result of the violations suffered by it in accordance with the general international legal principles. Because of the harsh policy of the Soviet Union of denying any meaningful territorial autonomy from the Karelians and of reducing the Karelians, who had a strong ethnic bond with the Finns, to

[122] The Statement (in Finnish) by Rafael Erich on 26 November 1941, Horellin kokoelma PK 1350/5, SA. See Laine 1982, pp 56-58.

minority position in their own territory, a suitable compensation would be the annexation of Eastern Karelia to Finland. In Finland their rights would be respected and the Finnish nation would reach its unity and its natural borders.[123]

Analysis:

The basic starting point was that Eastern Karelia had for several centuries been under the sovereignty of Russia, having both Karelian and Russian populations.

In the Tartu negotiations the outcome was that Eastern Karelia remained under the sovereignty of Russia, but the Peace Treaty referred to its right of internal self-determination (i.e. territorial autonomy). Whereas Soviet Russia recognized this status, it did not recognize to Finland any right to act as the supervisor of the Karelian cause. However, in 1921 Soviet Russia agreed to a procedure according to which Finland could pose questions before a Finnish-Soviet mixed committee to the Soviets who had to give answers.[124] The Finns were unhappy with this compromise.

Finland kept actively up the cause of the Karelian population on the international arena and nationally. The Soviet side warded off Finland's efforts to get the League of Nations to take a stand on Eastern Karelia. The Soviets accused in strong words Finland for participation in the Karelian uprising in1921 – violating the sovereignty of the Soviet State and the Tartu Peace Treaty.

Soviet Russia established the Karelian Labour Community in 1920 to realize the territorial autonomy of Eastern Karelia. In 1923 it was developed to the Karelian Autonomous Socialist Soviet Republic, an autonomous unit in the Russian Socialist Soviet Republic. The structure and political orientation of the Soviet State was very different from that of Finland in whose view the administration in Eastern Karelia did not fulfil the requirements for a genuine autonomy. Notwithstanding the accusations of the Finnish government, the leadership of Soviet Karelia - Finnish communists who had fled from Finland at the end of the 1918 Civil War – took efforts, according to Churchill and Nygård, to protect the interests of the Karelian population.[125] When in the mid-1930's the political atmosphere internationally and in the Soviet Union developed tense, the Finnish leadership in Eastern Karelia was accused of discriminating against the Russian

[123] Erich 1941, see especially at 62-64 and 11-12.
[124] Nygård 1978, at 86-87.
[125] Stacy Churchill, *Itä-Karjalan kohtalo 1917-1922*, (Porvoo-Helsinki: WSOY, 1970), at 193, and Nygård 1978, at 86.

inhabitants.[126] Finnish leaders were replaced by Russian leaders and the Russian language was lifted to the leading position. The years of 'Great Terror' (1935-1938) were very hard in the Soviet Union – for both Russians and ethnic minorities.

Already in the 1920's the Soviet leadership decided to increase the number of Russian inhabitants in Eastern Karelia, because it suspected that Finland would continue to have imperialist designs in mind. Population transfers diminished the number of Karelians.

According to international law, the State had an exclusive right to decide its own political and economic systems, including the constitutional order, unless it had international conventional obligations restricting this right. The Soviet Union was a federal State whose smaller parts had broader or more limited rights of autonomy.[127]

As regards the possible legitimacy of external armed humanitarian intervention, among the basic preconditions one was that a population or a part of it in a given country were in great and immediate danger for their life, and another was that the intervening State(s) had to limit its intervention solely to saving or protecting the lives of the persons in danger. In the late summer 1941, the situation was as follows: Germany had started a massive aggressive war against the Soviet Union and its attack progressed well. In the territories occupied by it, the local populations were in mortal danger. Eastern Karelia was outside the German attack. According to the joint German-Finnish plan, Finland was to occupy Eastern Karelia. [128] When the Finnish occupant arrived at Eastern Karelia, it realized that the Soviet Union had evacuated a great majority of the inhabitants away. Those remaining were elderly, children and mothers. They were not in any great danger but were better off than civilians in many other regions of the Soviet Union. The Finnish military administration treated local Russians and other 'aliens' in Eastern Karelia very harshly. One may conclude that 1) the preconditions for an armed humanitarian intervention did not appear to exist in Eastern Karelia and 2) the Finnish occupant treated a big part of the local population in an inhumane way.

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[126] Arvo Ylärakkola, *Edvard Gylling – Itä-Karjalan suomalinen rakentaja*, (Helsinki: Otava, 1976), at 281-288, and Nygård 1978, at 221-222. .

[127] The two 1933 Conventions for the Definition of Aggression stipulated that no aggression could be justified by the internal condition of a State, including alleged defects in its administration or due to revolutions, counter-revolutions or civil war - LNTS No. 3391 and No. 3414. One of these conventions bound both Finland and the Soviet Union.

[128] Brownlie 1963, at 338, writes that humanitarian intervention was in the nature of a police measure whose result could not be the change of sovereignty over the territory concerned.

Finland argued for its right to occupy Eastern Karelia in order to get indemnity for the hardships caused by the Soviet Union to Finland in the Winter War and to protect Karelians from harsh Communist rule. The annexation of Eastern Karelia had been the Finnish goal since Finland's independence of 1917. The statements and activities of Mannerheim and Ryti in 1941 were very outspoken. Germany's massive aggression against the Soviet Union made it easy for Finland to invade Eastern Karelia. [129]

From the perspective of the Kellogg-Briand Pact it is impossible to accept Finland's occupation war as legal. It served as an instrument of Finland's national policy. Finland should raise the question of indemnity at the end of the war in Europe when peace settlements were due.

One may conclude that Finland did not have the right to occupy and annex Eastern Karelia.

3.4.6. Concluding: Did Finland Participate in a War of Aggression?

On the basis of foregoing, Finland participated in Germany's war of aggression against the Soviet Union. Finland's guilt, in the opinion of the Allied Powers, did not amount to criminal guilt for aggressive war but less as analyzed above. Finland's participatory role meant that Finland was in alliance with Germany. Finland's aggressive role was limited to the second half of 1941. Then Finland attacked with a maximum army in accordance with the wishes of Germany, invaded Eastern Karelia and was of great help to Germany in the northern front. After that time Finland's role turned gradually to defensive war and looser alliance with Germany.

It is not correct to characterize Finland's role in the Continuation War as separate war or as defensive war only. If someone were of the opinion that the best term to call the Finnish-German co-operation would be co-belligerency, that does not mean that Finland was not guilty of aggressive war.

3.4.7. Was Finland Treated too Harshly in the Settlement of the Continuation War?

[129] Jonas (2010, at 203) writes critically that the ideological motive for a crusade against Bolshevism concealed only partially the most evident features of a war of invasion whose end goal was the Greater Finland that included Soviet Karelia.

Finland:

Finland was treated unreasonably harshly in the Paris Peace Treaty. It lost even more territory, had to pay a high sum of war reparation, many restrictions were set on its armed forces and it had to convict its leading politicians. The Soviet Union kept all those territories that it grabbed from Finland in the 1940 peace treaty, and acquired even more.

Analysis: Was the Paris Peace Treaty Just and Reasonable? If not….

Aggravating factors:

First, Finland participated in the German-led aggressive war against the Soviet Union. It was convinced that Germany would decisively defeat the Soviet Union and take power in Europe. The distress of the Soviet Union offered to Finland a suitable moment to realize the dream of creating the Greater Finland by occupying Eastern (Soviet) Karelia.

Second, Germany's war against the Soviet Union was not just a 'normal' armed contention between the armies but it was also a war of destruction and extermination. Finland did not participate in the war of destruction but helped it indirectly by keeping its forces in Eastern Karelia and near to Leningrad. The Finnish leaders had to understand that Europe led and terrorized by the Nazis would be a horror continent. [130]

Third, the Finnish occupant treated harshly the Russian civilians in Eastern Karelia.

Mitigating factors:

First, the Soviet Union had treated Finland in a grossly illegal and unjust way. Second, Finland's aggressive role was limited to the second half of 1941 only. In 1942-1944, it took mainly only defensive action. Thus, in the war against the Soviet Union Finland's role was limited. Third, Finland did not participate in the strangulation of Leningrad or in military efforts to cut the Murmansk railway. Fourth, since the leaders of the Soviet Union were not brought to justice for the aggressive war against Finland, why were Finland and the Finnish leaders penalized?

Concluding analysis:

[130] Tuomo Polvinen writes that in the anarchical circumstances of World War II the States regarded the safeguarding of their own interests as the highest principle. See Tuomo Polvinen, *Suomi suurvaltojen politiikassa 1941-1944*, (Porvoo: WSOY, 1964), at 282.

Finland's participation in Germany's war of aggressions was considered to have been such a bad sin that in the eyes of the Allies Finland lost the right to demand compensation for the wrongs committed by the Soviet Union in the Winter War. According to Tarkka, in the opinion of the Western Allies Finland learned a healthy lesson without suffering heavy consequences.[131]

After Finland's acceptance of the Armistice Agreement, it assumed that in the final peace settlement it could try to get through some relief for the terms of peace. In the 1946 Paris Peace Conference Finland asked for reduction of the amount of war reparations and for redrawing the border around Vyborg, but the Soviet Union rejected them decisively and was able to prevent their acceptance. The leading Western Powers had many disagreements with the Soviet Union and concentrated on those important for political interests. They considered that Finland had to manage in bilateral negotiations with the Soviet Union.[132]

What was positive for Finland in the existing circumstances was that it could organize the criminal trial of its war-time leaders before a national court. The prison penalties were from 10 years to 2 years. The eight prisoners were confined in a Finnish prison and Finland had a wide possibility to decide on their release. The outcome was that none of them sat in prison more than three years.[133]

In spite of the relatively mild trial of the Finnish leaders, it can well be argued in light of the many obligations imposed on Finland in the Paris Peace Treaty that Finland was treated too harshly. After all, the sins of the Finns were in the circumstances of World War II of rather limited scope.

Concluding Observations on Finland's Role in the Continuation War

Finland was subjected to a war of aggression by the Soviet Union in 1939 and lost a part of its territory. After this Winter War, it sought protection from Germany against the Soviet Union and decided to rely on Germany. After Germany attacked against the Soviet Union, Finland reoccupied the territories lost in the Winter War. The Finnish forces did not stop at the old border but attacked to the Eastern (Soviet) Karelia and occupied it with a wish eventually to annex it. By that measure, Finland joined as Germany's ally in its war of aggression against the Soviet Union in violation of

[131] Tarkka 1977, at 63.
[132] See Tuomo Polvinen, *Jaltasta Pariisin Rauhaan – Suomi kansainvälisessä politiikassa 3, 1945-1947*, (Porvoo: WSOY, 1981), at 183-244.
[133] Tarkka 2009, at 263-279 and 293-301.

international law. In their strong reliance on Germany, the Finnish leaders made some very questionable decisions without listening to the warnings of Britain, the United States and Sweden about possible negative consequences. One may say that Finland became the victim of its own ambitions. The leadership had to know about the sinister plans of Germany to make Operation Barbarossa a war of destruction and extermination.

When Finland attacked over the border against the Soviet Union in July 1941 (the harvest time), it did that with maximum armed force, actually exceeding its capabilities. The outcome was a famine with sad results in the following months and a high degree of dependency on Germany for material help. This dependency complicated later Finland's possibilities to withdraw from the war.

The Finnish leaders had to recognize soon that they had overestimated the military strength of Germany and, indeed, underestimated the strength of the Soviet Union. Germany lost the war and so did Finland. After heroic fighting Finland avoided military occupation and was able to maintain its independence. Finland's military performance was commendable: there were in the war in Europe only three belligerent States whose capital was not occupied: London, Moscow and Helsinki.

After the Continuation War, Finland's fate was in the hands of the Allied Powers. The 1947 Paris Peace Treaty stated in the preamble that Finland participated as an ally of Germany in the war against the Soviet Union and other Allied States and bore its share of responsibility for that war. The terms of peace were harsh. Finland lost again the territories retaken in 1941 and even some more territories. It had to pay war reparations to the Soviet Union and was subjected to many restrictions, especially concerning its military forces. In addition, Finland had to lease a naval base near to Helsinki (Porkkala) for 50 years to the Soviet Union and to prosecute and penalize a small number of its high political leaders in a national trial under the control of the Allied Control Commission.

Finland had to pay quite dearly for the problematic decisions of its leaders. As a small State it should have refrained from invading Eastern Karelia. Apparently Germany would have complied with the Finnish choice not to proceed further to the east, because objectively Finland had suffered a lot in the Winter War and it had to resettle the population of 420,000 inhabitants of the territories lost to the Soviet Union. Hitler was of the opinion that after the Winter War Finland was quite weak.[134]

[134] Jatkosodan pikkujättiläinen 2007, at 134.

Small States have to deliberate very cautiously the consequences of their foreign policy decisions. Poweful States can escape at least partially the negative consequences of their erroneous decisions, whereas small States may suffer much more, perhaps even fatally.[135] Ziemke concludes well that Finland, on one hand, fell into a war between two superpowers and, on the other hand, became the victim of its own ambitions.[136]

The most important thing for Finland was, however, that it was able to maintain its independence – even if somewhat limited de facto – and its democratic system. Notwithstanding, the Finns were left dissatisfied with the harsh treatment of their country in the peace process after the Continuation War. No sanctions had been directed against the Soviet Union that had attacked Finland and forced it to surrender territories to it. Nothing much could be done to that, however, since the leading Western powers participated actively in the peace settlement of 1944-47 and were satisfied with the treatment of Finland.

After World War II, European nations concentrated on rebuilding their countries – the life had to go on. Finland had to listen carefully to the views of the Soviet Union and had internal political difficulties, but altogether it fared well. It paid duly the war reparations, was able already in 1952 to organize the Summer Olympic Games, and received back from the Soviet Union already in 1956 the Porkkala naval base. Porkkala's return was of great importance, because it was located near to Helsinki and formed a real threat to Finland's independence. Finland began to develop to a modern European welfare State.

[135] See Jatkosodan pikkujättiläinen 2007, at 33 and Polvinen 1995, at 312.
[136] Earl Ziemke, *The German Northern Theater of Operations 1940-1945*, (United States Department of the Army: Washington 1959), at 203-204. Jokipii's view is similar to that of Ziemke, see Jokisipilä, 2007, at 171. See also Magill 1981, at 87.