

THE WAR IN UKRAINE AND THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW

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ABSTRACT

The outbreak of armed conflict automatically triggers the application of international humanitarian law (IHL), an instrument that offers protection to victims of armed conflict and creates obligations for belligerents in the theatres of war. IHL limits the impact of the use of brute force on civilians and civilian objects by imposing constraints on the conduct of war. On February 24, 2022, the Russian government ordered a ‘Special Military Operation,’ against Ukraine, allegedly to disarm and ‘denazify’ the latter as well as protect Russian-speaking minorities in the eastern region of the country. Ukraine, backed by some Western countries has put up a strong resistance, leading to bloody confrontations and a humanitarian nightmare. The parties have reportedly committed serious violations of IHL, such as direct and indiscriminate attacks against civilians and civilian property; mass killings; summary executions; sexual violence; and the use of banned weapons. This paper examines the application of the rules of IHL in the conflict amid reports of the prevalence of heinous crimes. The paper finds that both parties, primarily the Russian armed forces, have committed serious violations of IHL in circumstances that amount to war crimes and crimes against humanity. The paper recommends immediate cessation of hostilities; prompt investigation of all forms of violation of IHL; and the prosecution of individuals most responsible for egregious crimes in the conflict.

Keywords: Russia-Ukraine War, International Humanitarian Law, War Crimes, Geneva Conventions, Additional Protocol, Accountability.

INTRODUCTION

On February 24, 2022, Russian President Vladimir Putin sent troops of the Russian armed forces across the border into Ukraine in what he called a “*Special Military Operation*,” an action that has been described as aggression by several countries (Castillo & Keaten, 2022; Aljazeera, 2022a). Russian troops descended on Chernihiv, Kharkiv and Luhansk in the east and Odesa and Mariupol in the south. The Russian military operation was preceded by the signing of two decrees by President Putin on February 21 recognizing two regions of Ukraine as independent and submitting the same to parliament for ratification (Aljazeera, 2022b). On February 22, 2022, the upper chamber of the Russian

Parliament and the Federation Council gave a green light to President Putin to use the armed forces in Ukraine (Carey, 2022). Before the military deployment, Russia had 2014 annexed, Crimea, a territory internationally recognized as Ukrainian (Walker & Salem, 2014). Russia also offered military support to rebellious groups in the Donetsk and Luhansk regions in eastern Ukraine, purportedly aimed at protecting Russian-speaking minorities in the area whom President Putin said had been subjected to “*genocide*”. Since 2014, fighting had been raging between Ukrainian government forces and the Russian-backed armed groups, with significant

human casualties (Smith-Spark, 2014). In the ensuing tension, Russia started amassing thousands of troops along its border with Ukraine in 2021 (Harris & Sonne, 2021).

The incursion of Russian forces into Ukraine in February 2022 resulted in violent confrontations with Ukrainian forces, with a significant adverse impact on civilians, civilian property, and basic infrastructure (Pifer, 2022). The conflict was described as a colossal risk to peace and security in Europe after the cessation of the Cold War (Center for Strategic International Studies, 2022), and has been inundated with reports of grave violations of IHL (Office of the High Commissioner for Human Rights, 2022a). In particular, Russian forces have reportedly carried out direct attacks on civilians and indiscriminate strikes all over Ukrainian cities on civilian infrastructure and non-military targets, using different types of missiles and Iranian drones.

Pentagon officials say the strategy is designed to instill terror among the Ukraine population (Garamone, 2022). In the process, thousands of civilians have lost their lives or have been injured, according to reports by the UN Human Rights Monitoring Mission in Ukraine (HRMMU). The report issued by HRMMU covering the period from 24 February to 15 May 2022 outlines various violations of international humanitarian law (IHL) on the conduct of armed conflicts, in particular, the basic principles of distinction, proportionality, and precaution. Embodied in this report are accounts of unlawful killings in several Ukraine communities in Kyiv, Chernihiv, Kharkiv, and Sumy regions, among others. The occupying forces have been accused of various conflict-related sexual violence, enforced disappearance arbitrary arrests, and detention and torture, especially in areas of Ukraine controlled by Russia (Tondo, 2022a).

The international community, especially Western countries, has described the conduct of Russian forces as despicable and consequently imposed tough economic and diplomatic sanctions on Russia and senior officials of the administration (Northam, 2022). Russia has denied targeting civilians and claims its objective is to “*demilitarize and denazify*” Ukraine (Thomsen & Scarcella, 2022), and responded with its sanctions, targeting Western interests. Several months into the conflict, the end is not in sight. On 30 September in 2022, the Russian President escalated the crisis by signing a decree annexing four Ukrainian regions of Luhansk, Donetsk, Zaporizhzhia, and Kherson, after a referendum described by the international community as a sham. (Aljazeera, 2022c). This move has been denounced by Ukraine, Western countries, and the UN Secretary-General, as illegal, fake and representing a major intensification of the conflict (Ellyatt, 2022).

In times of armed conflict, IHL sets a limit to warfare by imposing certain obligations on parties (Lyck-Bowen, 2022): persons hors de combat and those who do not take a direct part in hostilities are entitled to respect and shall in all circumstances be protected and treated humanely; the wounded and sick shall be collected and cared for; captured combatants and civilians are entitled to respect, and shall be protected against all acts of violence; and parties shall at all times distinguish between the civilian population and combatants (Sassoli et al., 2006). The fundamental principles of IHL must be implemented by all parties to a conflict (Melzer, 2016). The applicable legal instruments are the four Geneva Conventions of 1949, and the Additional Protocols of 1977, which the High Contracting Parties have undertaken to implement (Sassoli et al., 2006). Parties must abide by the rules of IHL irrespective of who started the conflict and why (Lyck-Bowen, 2022). Russia and Ukraine are parties to the Geneva Conventions and are expected to respect the spirit, terms, and essence of the instruments they voluntarily subscribed to. This work examines the armed conflict in Ukraine in the context of IHL. It further interrogates allegations of egregious crimes, acts of impunity, and flagrant

defiance of international law. To stem further breaches of IHL, and ensure justice for the victims, the international community should ensure the unwavering implementation of the laws and customs of war, strengthen the machinery of accountability, and uphold the doctrine of individual criminal responsibility.

Conceptual of International Humanitarian Law

The law of armed conflict, also known as IHL, revolves around the claim that states have the right to resort to armed force under certain conditions (*jus ad Bellum*). Attempts to abolish war, as demonstrated in the Covenant of the League of Nations 1919 (Art. 10), the Kellogg-Briand Pact of 1928, and Article 2(4) of the UN Charter 1945 proved abortive. Since international law has not been able to prevent war, the trajectory has over the years been redirected toward limiting its effects. This is encapsulated in another doctrine, *jus in bello*, which regulates the conduct of warfare (Sassoli et al., 2006). The constraint on waging war is located within the spheres of the laws and customs of war as espoused in the Geneva and Hague laws (Kalshoven & Zegveld, 2011). The two branches of the law of armed conflict evolved from battlefield experiences, both deriving their names from the cities where they were adopted (Melzer, 2016). The Geneva law protects victims of armed conflicts, while The Hague law restricts the means and methods of warfare as well as creates rights and obligations of fighters during armed conflicts (Lyck-Bowen, 2022). Both laws converged in 1977 under the appellation “*international humanitarian law*.” IHL also known as the “*Law of armed conflict*” or “*Law of war*”, which expression may be used interchangeably, is a derivative of public international law, and its rules binding on all states (Pistilli, 2022; Lyck-Bowen, 2022; Sassoli et al., 2006; Gasser, 1993; Agarwal, 2010). It relates to the protection of human rights in situations of war or armed conflict (Buergethal, 2009), and is founded on the principle that human beings are entitled to certain minimum rights, protection, security, and respect – whether in peacetime or in time of armed conflict (Umozurike, 1993). Primarily, it is concerned with the protection of human beings in times of armed conflict, safeguarding their dignity in the extreme situation of war, and limiting the impacts of violence, whether internal or between states (Pistilli, 2022). The International Committee of the Red Cross postulates that IHL covenants to preserve a measure of humanity amidst conflict, with the guiding principle that even in war there are limits. These rules seek to protect people from the consequences of brute force (Gasser, 1993), and are extracted from treaties, customs, and judgments of international tribunals. It applies to all parties in a conflict irrespective of who initiated it (Pistilli, 2022).

Limits to warfare: The Geneva and Hague laws The rules of IHL developed Geneva in deal with the protection of the victims of armed conflict by protecting persons who have fallen into enemy hands, among them the wounded and sick members of the armed forces in the field and at sea (Conventions I and II); prisoners of war (Convention III); and civilian persons in the hands of the enemy (Convention IV) (Sassoli et al., 2006; Kalshoven & Zegveld, 2011). Protected persons are “*those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals*” (GC IV, Art. 4). Civilians under the control of enemy forces must be respected, protected, and treated humanely, without any disadvantageous differentiation as to sex, race, nationality, religion, political opinions, or any other comparable yardstick (GC IV, Art. 27; Melzer, 2016; Sassoli et al., 2006). Persons not involved in the fighting are afforded certain guarantees and protection from the effects of war

(Melzer, 2016). Those rendered hors de combat are equally protected; they are to be collected and cared for ((Kalshoven & Zegveld, 2011; ICRC, Customary IHL – 47).

The Hague law lays down the means and methods of warfare based on the cardinal principle that “*The right of belligerents to adopt means of injuring the enemy is not Unlimited*” (Article 22 of the Hague Regulations; Sassoli et al., 2006). It prohibits or restricts the use of certain weapons, such as anti-personnel mines, cluster munitions, and chemical, biological and nuclear weapons, in armed conflict (Melzer, 2016). It also prohibits several methods of warfare such as perfidy, pillage, starvation, and denial of the quarter. The Hague law defines persons licensed to participate in acts of war, addresses the intricate issue of military objectives and the principles on the protection of the civilian population against the perils of warfare, as well as provides for the protection of cultural property in times of armed conflict (Melzer, 2016).

The Geneva and Hague systems, currently merged and designated IHL, impose an obligation on states to respect and ensure respect for the rules relating to the conduct of warfare (GCs I-IV Art. 1; Zwanenburg, 2022; Sassoli et al., 2006). IHL distinctly provides for the duties and responsibilities of commanders (API Art. 87), which include instructing the armed forces under their command (API Art 87[7]); ensure personnel under their command are acquainted with Geneva Conventions and Additional Protocols; prevent them from violating the Geneva Conventions and Additional Protocols; institute disciplinary and penal action against violators; and punish and report offenders (Melzer, 2016). In addition, commanders are obliged to act in any way possible to spare the civilian population and objects during attacks (API Art. 57).

The Ukraine War and the application of basic rules of IHL Lack of protection for civilians, civilian property, and infrastructure the War in Ukraine and all other wars around the globe are governed by basic rules of IHL, which cannot be derogated under any circumstances. IHL prohibits attacks against the civilian population and individual civilians, and the threat of violence is primarily aimed at spreading terror (API Art. 51[2]; Melzer, 2016). It also prohibits attacks against civilians by way of reprisals (API Art. 51[6]). Other prohibitions include attacks on medical units and personnel (GCI Art. 19, GCII Art. 23, GCIV Art. 18, API Art. 12); demilitarized or neutral zones and undefended places (GCIV Art. 15, API Art. 60); cultural objects and places of worship (API Art. 53); objects indispensable to the survival of the civilian population (API Art. 54[2]); the natural environment likely to prejudice the health or survival of the population (API Art. 55) and works and installations containing dangerous forces (API Art. 56). The protection and guarantees offered by IHL have not been respected by both sides of the conflict. Civilian property must be protected at all times as long as they are not involved in hostilities. This is, however, not the case as the conflict has been overwhelmed by gross disrespect for rules of engagement and reports of mass suffering, loss of thousands of lives, and displacement of more than 12 million people (Pistilli, 2022). The conflict is inundated with reports of wanton destruction of lives, cities, hospitals, schools, and residential houses (Office of the High Commissioner for Human Rights, 2022b). The toll from the war has been described by the UN as shocking in a report predicated on the findings of the Human Rights Monitoring Mission in Ukraine (HRMMU). The HRMMU has documented thousands of killings of civilians, wanton destruction of civilian infrastructure, arbitrary arrests and detention, enforced disappearance, torture, and sexual violence among other serious violations. The report includes unlawful killings, summary execution of civilians, ill-treatment of POWs and person hors de combat, and forced public stripping (Office of the High Commissioner for Human Rights, 2022c). Also contained in the report are hundreds of cases of arbitrary detention of representatives of local authorities, journalists, and civil society activists. While most of the

violations are perpetrated by Russian forces, Ukrainian armed forces have been implicated in some of them (Office of the High Commissioner for Human Rights, 2022d). Russian forces have exhibited an utter disdain for Ukrainian lives. Attacks on cities across Ukraine have killed thousands of civilians. The UN High Commissioner for Human Rights condemned those attacks, given their locations and timing, especially during rush hour (Office of the High Commissioner for Human Rights, 2022a). A convoy of civilian vehicles was attacked by Russian missiles in Zaporizhzhia in September, resulting in the death of more than 30 people, including children (Aljazeera, 2022d; Aljazeera, 2022e). Extrajudicial killings and summary executions are prevalent in the conflict with Russian troops reportedly targeting and firing randomly on civilians (Council of Europe, 2022; Amnesty International, 2022a).

Attacks cut off supplies of electricity, gas, food, water, and other necessities, trapping many civilians in desperate conditions (Council of Europe, 2022). Attacks on the Serhiivka apartment block and beach resort represented another instance of Russia's complete disregard for Ukrainian civilians (Amnesty International, 2022b). People have been hit while queuing for bread and on playgrounds (Victor & Nechepurendo, 2022). Destruction of civilian infrastructure is a recurrent phenomenon in the conflict. One of the cardinal rules of IHL is that attacks should only be directed against military objectives, implying that civilian property and infrastructure must be spared at all times. This is not the situation in Ukraine, as Russian forces have increasingly struck civilian infrastructure as a war strategy. They have been bombarding energy facilities across Ukraine, reducing the electricity supply to many communities (Schifrin & Aranda, 2022). Russian attacks have intentionally been directed at residential buildings, theatres, shopping malls, and other facilities indispensable to the survival of the civilian population. Specific instances include an attack on a shopping mall at Kremenchuk in June 2022, which killed 18 people; an attack on an apartment block and beach hotel in Serhiivka, which killed 21 people; and an attack on two apartment buildings in Chasiv Yar on 9 July 2022, killing 48 people (Beaumont & Sabbagh 2022). Russian forces reduced the city of Sievierodonetsk to rubble (Tondo, 2022a). The Kerch Bridge linking Crimea to Russia was attacked and damaged allegedly by Ukraine. In response, Russia launched about 100 missiles at several Ukrainian cities on October 10 and 11, killing about 19 civilians and destroying homes, office buildings, and schools (Drezner, 2022).

Destruction of medical facilities is prohibited under IHL. Parties to an armed conflict are under obligation to respect and protect medical units and transport during the conduct of military operations. Medical facilities in Ukraine have not been spared the barbarity of the conflict, as a lot of them, have been destroyed by Russian firepower (Pistilli, 2022). As of on October 14, 2022 the World Health Organisation verified 620 attacks on Ukraine's healthcare facilities since February (Radio Free Europe/Radio Liberty, 2022). The relentless Russian strikes on health facilities have been variously described as a colossal tragedy (Reliefweb, 2022), a humanitarian disaster (Radwan, 2022), and a deliberate strategy of war (Shmigel, 2022; Reliefweb, 2022).

Often Russia claims the civilian facilities hit are storage for weapons, shelter for foreign fighters, and places converted to command stations (Victor & Nechepurendo, 2022). The civilian infrastructure used in war efforts may become a legitimate target for an attack. Forces from both sides have been using schools as their bases and have placed heavy military equipment in the vicinity of schools. These attacks are banned under IHL as they violate the principles on the conduct of hostilities (Office of the High Commissioner for Human Rights, 2022b). Intentionally using a method of warfare that deprives civilians of objects indispensable to their survival is a war crime (Art. 8[2][b][xxv] of ICC Statute).

Works and installations containing dangerous forces such as dams, dykes, and nuclear electrical generating stations are protected from attacks (API Art 56). They shall not be made the object of attacks, even where these objects are military objectives, if such attack may cause the release of dangerous forces. In the course of the conflict, Russian forces captured and occupied the Zaporizhzhia nuclear plant reputed to be the largest in Europe (May 2022).

There has been intermittent shelling of the plant by the belligerents, thus exposing it to a significant danger of damage and possible release of deadly substances (May 2022). The international community has urged both sides to refrain from further military activities in and around the plant.

Protection of cultural property is one of the principal objectives of the law of armed conflict, as epitomized in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and Additional Protocol I (Art. 53). Cultural property largely consists of objects of great importance to the cultural heritage of every people, such as monuments, works of art, manuscripts, books, and scientific collections. It also includes buildings such as libraries, museums, and refuges that serve to preserve cultural property (Art. 1 of the Convention). The principle underlying the Convention is that cultural property must be spared as far as possible. Acts of hostility directed against historic monuments, works of art, or places of worship that constitute the cultural or spiritual heritage of people are prohibited. The law also prohibits their use in support of the military effort. Arising from the conflict in Ukraine, UNESCO has confirmed the devastation of 213 cultural sites in the country as of November 7, 2022 (Larcan, 2022). Since the commencement of the conflict on 24 February 2022, 92 religious sites, 16 museums, 77 buildings of historical religious or artistic importance, 18 monuments, and 10 libraries have been damaged (Larcan, 2023).

Humanitarian law offers protection from sexual violence and outrage upon the person. In the Ukraine war, there is a profusion of allegations of sexual violence, rape, gang rape, and forced nudity (Office of the High Commissioner for Human Rights, 2022c). The report by the Independent International Commission of Inquiry on Ukraine reveals horrifying accounts of rape in four regions – Kyiv, Chernihiv, Kharkiv, and Sumy – occupied by Russian forces (Macias, 2022). Rape by Russian soldiers is widespread and systematic leading to the suggestion that it is being used as a weapon in the conflict (Wamsley, 2022). Ample evidence of sexual violence was uncovered in the Kherson region after its liberation from Russian occupation, which UN investigators described as a “*weapon of war*” and a deliberate “*military strategy*” (Krever et al, 2022).

Forced transfer and enforced disappearance of civilians is a matter of grave concern. IHL prohibits the displacement or forcible transfer of the civilian population unless the security of the persons involved or imperative military reasons so demand. Civilians shall not be compelled to leave their own country for reasons connected with the conflict. There are accounts about the widespread practice of forcible transfer of Ukrainian citizens to non-government-controlled areas of Ukraine or the territory of the Russian Federation, using the filtration process (Amnesty International, 2022c; Council of Europe, 2022).

There are also reported cases of large-scale enforced disappearances and arbitrary detentions of Ukrainian civilians, mainly men, allegedly thrown into detention facilities run by Russian troops or their surrogates in areas controlled by them, before they were transferred to Russia and kept in dungeons (Gall, 2022).

IHL offers specific protection for persons deprived of their liberty, and it is prohibited to injure or kill an enemy who is surrendering or can no longer participate in hostilities (Lyck-

Bowen, 2022; Melzer, 2016). Prisoners of war (POW) are captured combatants, who are entitled to respect for their lives, dignity, personal rights, and physical and mental integrity (ICRC, 2010). They must be treated humanely and protected against all forms of violence (Amnesty International, 2022a). In the Ukraine war, the rights of POWs and other detainees have not been respected by both sides, as they are routinely tortured, humiliated, and subjected to inhumane and degrading treatment, especially during interrogation (Gall, 2022). Prisoners from both sides are coerced to make statements, apologies, and confessions (Office of the High Commissioner for Human Rights, 2022d). Human Rights Watch recorded cases of torture in Izium in Kharkiv region of Ukraine, while under Russian occupation. It said survivors were “*subjected to electric shock, water-boarding, severe beatings, threats at gunpoint, and being forced to hold stress positions for extended periods*” (Human Rights Watch, 2015; Human Rights Watch, 2022a). Disrespect for rules on means and methods of warfare Weapons and tactics of war are also regulated by IHL, the basic rule being that belligerents do not have unlimited means and methods of conducting military operations (Melzer, 2016; ICRC, 2011). Essentially, parties to an armed conflict must at all times distinguish between civilian persons and combatants as well as between civilian objects and military objectives (Sassoli et al., 2006). The civilian population as whole or individual civilians should not be attacked unless they directly participate in hostilities. Attacks should be restricted only to military objectives and must be per the proportionality principle (Maroonian, 2022). That means they should not be excessive concerning the concrete and direct military advantage anticipated (API, Art. 51[5][b]). In light of this principle, it is prohibited to launch an attack that is likely to cause incidental loss of civilian lives (API Arts. 57, 58). In determining whether the proportionality principle is being observed, the standard of measurement is always the contribution to the military purpose of the particular action as compared with other consequences such as the effect on civilians or civilian property. In carrying out military operations, parties must do everything possible to double-check that the targets are military objectives, and avoid, or at least keep to a minimum, the incidental harm to civilians and civilian property. A sufficient warning must be given of attacks that may affect the civilian population unless circumstances do not allow it.

The conduct of Russian forces so far has defied all laid-down conventional and customary rules of IHL. There are volumes of reports accusing Russian forces of failure to observe the cardinal requirements of distinction, proportionality, and precaution. Their forces have allegedly carried out intentional and indiscriminate attacks in areas with huge populations, and fired in all directions without aiming at a particular military objective (Amnesty International, 202b). They allegedly shot at fleeing civilians (Office of the High Commissioner for Human Rights, 2022a); launched indiscriminate attacks on cities and residential areas, destroying apartment blocks and killing civilians; and intentionally intensified attacks on civilian targets, including an attack on the crowded city center of Vinnytsia, resulting in the death of 23 civilians, among them three children (Beaumont & Sabbagh, 2022). Indiscriminate attacks do not distinguish between military objectives and civilian objects, which are supposed to be protected. Such attacks are prohibited by the law of armed conflict (API Art. 51; Rules 11, 12, and 13 of ICRC customary international humanitarian law study). Russian use of wide- impact of explosive weapons or unguided rockets in densely populated areas has compounded the problem of distinction (Council of Europe, 2022).

The use of banned weapons in conflict has been widely reported. As part of the regulatory ambit of IHL, parties to a conflict do not have the unlimited right to choose weapons of war. In that regard, it is prohibited to use weapons that are unselective and likely to cause

superfluous injury or unnecessary suffering. Under various international legal instruments, certain weapons are prohibited or restricted (Lyck-Bowen, 2022). They include anti-personnel mines (Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction [1977]); cluster munitions (Convention on Cluster Munitions [2008]); certain conventional weapons (Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects [1980]); chemical and biological weapons (the Chemical Weapons Convention [1993] and the Biological Weapons Convention [1972]); and nuclear weapons (Nuclear Non-Proliferation Treaty [1968]).

Concerning the weapon systems deployed in the war, Russia has been accused of using missiles that cannot be aimed precisely at their targets, among them unguided missiles, cluster bombs, and flechettes (Tondo, 2022b). Other banned or restricted weapons allegedly used by Russian forces include thermobaric weapons and hypersonic missiles (Williams & Kelly, 2022; Amnesty International, 2022c). The effects of these weapons cannot be limited to military targets only, without significant civilian casualties. This type of weapon was employed when Russian planes dropped heavy-duty FAB-250 bombs on several small towns and villages in the north of Kyiv, including Borodyanka (Tondo, 2022b). That caliber of weapon is devised to destroy military fortresses and bunkers and is not meant to be employed against a small town, which has no military objective. An imprecise weapon, the FAB-250 bomb killed dozens of people and caused colossal damage to residential apartments (Tondo, 2022b). A recurrent feature in the conflict has been the threat of the use of nuclear weapons (Borger, 2022). Whereas Russia has been accused of using banned weapons and tactics in the conflict, the real apprehension loomed when the Russian President said he might use nuclear weapons in Ukraine. The threat was first made on February 27, 2022, when he ordered the nuclear forces to be put on “*special combat readiness*” (Williams, 2022). He repeated this threat on September 21, 2022, which analysts linked to his losses and defeats on the battlefield (Williams, 2022). The use of such weapons is unacceptable under contemporary international law as they cannot fulfill IHL’s basic elements of distinction and proportionality (Legality of the Threat or Use of Nuclear Weapons Advisory Opinion of the ICJ, 8 July 1996; Bekker, 1996). On its part, Russia has accused Ukraine of contemplating the use of extemporaneous nuclear devices, also known as “*dirty bombs*” (Lendon, 2022). This assertion has been dismissed as hype and pretext by Russia to introduce nuclear weapons into the conflict (Gannon, 2022; Lendon, 2022).

While most of the violations are perpetrated by personnel of the Russian armed forces, Ukrainian forces have also been accused of exposing civilians to Russian attacks by locating military bases, command centers, and garrisons in peopled areas, schools, and hospitals (Amnesty International, 2022a). Launching attacks from populated areas have elicited Russian retaliations, which have caused significant civilian deaths and the destruction of infrastructure. Ukrainian force's employment of unlawful tactics, which expose civilians to, the dangers of Russian firepower, constitute a breach of IHL (Amnesty International, 2022b).

Implementation of IHL in the Conflict

Implementation in this respect has been defined as “*the series of procedures and mechanisms by which action can be taken to obtain compliance with the law*”. Implementation is the cornerstone or hallmark of humanitarian law. Gasser aptly observes that “*Humanitarian law must stand the test of practical implementation, otherwise it is meaningless*” (Gasser, 1993). The

measures adopted for implementation depend on whether the armed conflict is international or non-international, as there are different standards and requirements for both. International armed conflicts involve States and the measures of implementation under the Conventions and Protocols are clear (API Art 80; Melzer, 2016). These include respect for the law (*pacta sunt servanda*); dissemination of the Conventions and Protocols; special instruction for civilian and military authorities; training of personnel; appointment of legal advisers in the armed forces; and criminal responsibility for violators of the law, among others (Reliefweb, 2022; Melzer, 2016).

The war in Ukraine is adjudged an ‘international armed conflict’ which automatically triggers the application of the four Geneva Conventions of 1949 and Additional Protocol I of 1977 (Zwanenburg, 2022). As encapsulated in these instruments, parties to the Geneva Conventions and Additional Protocol I undertake to respect and ensure respect for the instruments in all circumstances (GCs I-IV, Art. I; API, Art. I). Respect for the law is critical to the maintenance of international public order all states must uphold (Melzer, 2016). Several provisions of the treaties requiring states to respect IHL have also acquired the status of customary international law (Rules 139 – 144). Russia and Ukraine are parties to the 1949 Geneva Conventions and the Additional Protocols of 1977 (Human Rights Watch, 2022b). The Union of Soviet Socialist Republics (USSR), the predecessor to Russia, ratified the Geneva Conventions in 1954. The Supreme Council of the USSR ratified Additional Protocol I related to the protection of victims of international armed conflicts in 1989. However, in 2019 Russian President Vladimir Putin revoked the recognition accorded Additional Protocol I. (Thomsen & Scarcella, 2022; Soldatkin & Williams, 2019). On its part, Ukraine signed the Geneva Conventions in 1949 and ratified the instruments in 1954.

Concerning the implementation of IHL, the conduct of the Russian armed forces attracts special attention, as they are said to be responsible for the worst atrocities in the war. Apart from the international legal instruments, the defunct USSR developed a Military Manual (1990) on Instructions on the Application of the Rules of International Humanitarian Law by the Armed Forces of the USSR. The Russian government in 2001 developed Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation. The Russian Federation’s Regulations on the Application of IHL (2001) states:

- 171. International humanitarian law shall be trained both in peacetime and in times of war as part of servicemen’s training and education. International humanitarian law training shall be integrated in combat (commanders’) training curricula...
- 172. International humanitarian law training aims to prepare servicemen to discharge their duty in a complex situation in compliance with international humanitarian law (ICRC, Customary IHL – 142).

The contents of the Manuals and Regulations are reinforced in several other national instruments, including the Russian Federation’s Order on the Publication of the Geneva Conventions and Protocols (1990), and the Internal Service Regulations of the Armed Forces of the Russian Federation (2007) (ICRC, Customary IHL – 142). There is no doubt that Russia and Ukraine have dedicated themselves to international and national laws regarding respect for IHL. Though both sides have violated the rules in many respects, the conduct of Russian armed forces is sordid and a complete erosion of the spirit of the law. Whereas the international community cannot prevent Russia and Ukraine from engaging in armed confrontations, as they are entitled to do so under traditional international law (*jus ad bellum*), it should pressure them to abide by the rules of engagement (*jus in bello*). Both sides must promptly and effectively investigate all alleged violations and effectively control and instruct their forces to stop further violations.

Those in a command need to provide clear instructions to combatants and take utmost care to spare civilians and their property. Compliance with IHL can also be promoted by the inclusion of legal advisers in the military; corrective and punitive actions; and fact-finding operations. In the event of persistent violations, the international community must set in motion a mechanism for holding individuals accountable for egregious crimes committed in that country.

CONCLUSION

The armed conflict in Ukraine has decimated thousands of lives and utterly destroyed much of civilian property and infrastructure. The war has reached a stalemate, with huge human and material losses in both Russia and Ukraine. Governments are under clear treaty obligations to take appropriate steps to ensure the protection of civilians under international humanitarian law or, when they have failed to prevent violations, investigate, punish and redress human rights abuse. It is a necessity to reinforce the doctrine of individual criminal responsibility requiring that those responsible for violations of international norms are held accountable, through the active strengthening and rebuilding of national legal systems; through the resolutions of the UN Security Council and other international institutions; and through the International Criminal Court and special tribunals.

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