

Implementation Of International Humanitarian Law In The Russia-Ukraine Conflict

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Abstract – It has been more than a year since Russia launched a military operation against Ukraine in February 2022. Civilians, mostly in Ukraine as the operation take place in the country, have been very vulnerable to the conflict, as shown by the high number of civilian fatalities and the great suffering the civilians have to endure due to the Russia-Ukraine conflict. Such condition raises a question how the international humanitarian law is being implemented during the conflict and this article tries to explain that. Using qualitative method, the article finds out that due to the enormous civilian fatalities and sufferings, experts of international relation concludes that Russia has violated the international humanitarian law and should be held accountable for war crimes. Realism theory, however, helps to explain why Russia has been performing military operation in Ukraine and will not likely to stop in the near future because it sees itself defending its national interests and as long as it still has the capability and capacity to do so, despite the abundant civilian victims.

Keywords – International Humanitarian Law, Russia-Ukraine conflict, Security, National Interests.

I. INTRODUCTION

A. Background

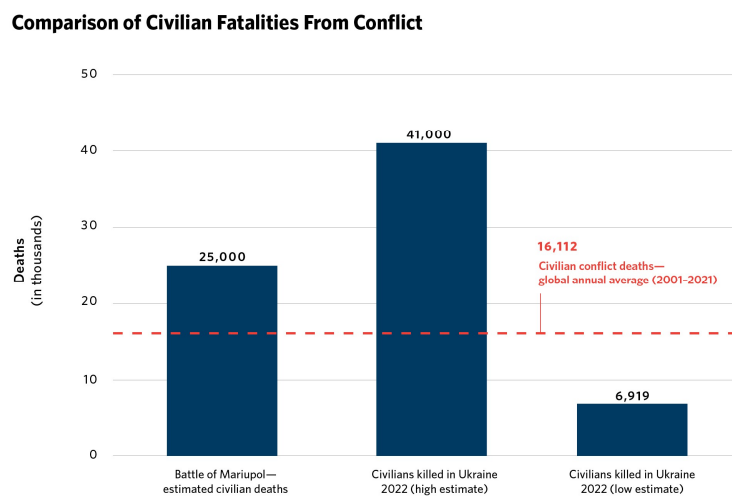
On 24 February 2022, Russia launched a military operation against Ukraine and to date, it is still happening. The two countries have experienced tensions for a long period. Geopolitically, Ukraine consists of pro-Europeans on the west and pro-Russia on the east. Russia and Ukraine were once part of the Soviet Union, but after the Soviet Union collapsed, Ukraine declared its country's independence on August 24, 1991. Both of them established diplomatic relations on 14 February 1992. Over time, their bilateral relations fluctuate, including in the political field, such as the change in leadership, which brought Ukraine closer to the West, resulting in the reduction of Russia's influence.

On 21 February 2022, Russia's President, Vladimir Putin announced Donetsk (DPR) and Luhansk (LRP), two regions against the Ukrainian Government, as independent states, emphasizing the need for peacekeeping. On 24 February 2022, he announced a military operation in Ukraine. He said that Donbass, pro-Russian militia region in eastern Ukraine, requested assistance from Russia so Russia complied. More than a year after, Russia's military operation is still on-going as Ukraine fought vigorously. Battle tanks from the US, Britain and Germany are now being supplied and the President of Ukraine, Volodymyr Zelenskyy, visited London, Paris and Brussels in early February 2023 to request fighter jets be sent as well, although the allies still have reservations about the request (Kingsley and Sommerland, 2023).

AP News reported that 200,000 Russian and 100,000 Ukrainian troops who got wounded or killed (Keaten, 2023) during the Russia-Ukraine conflict. With that high number of deaths and injuries of the military forces, the world is curious how the conflict has impacted the civilians. In a press statement released on 13 December 2022, the United Nations Secretary General,

António Guterres, called the war in Ukraine as a relentless humanitarian nightmare and civilians are paying a heavy price. He informed that every major Ukrainian power plant and electricity transmission system had suffered damage due to Russian bombing. At that time, million consumers, including families, businesses, hospitals and schools, were without electricity, and millions were cut off from water and heat. The severe destruction to homes, livelihoods and critical infrastructure were going take years to rebuild (United Nations, 2022).

The UN estimated that at least 6,919 civilians were killed in Ukraine between February 2022 and January 2023, but higher number was possible because the data only included verified deaths. Estimates of civilian fatalities from Ukrainian government sources ranged between 33,000 and 41,000 civilians killed, and the battle over Mariupol lead to the highest toll of an estimated 25,000 civilian deaths (Feldstein and Kot, 2023). Meanwhile, the global annual average of civilian conflict deaths for the period of 2001 to 2021 is 16,112 (See Figure 1.). In other words, the estimated civilian fatalities during the Russia-Ukraine conflict are far higher than the average of civilian conflict deaths for the last twenty years. Furthermore, there were 13.5 million Ukrainians who were driven from their homes and 17.6 million others experiencing various humanitarian needs. It is also notable that the UN estimated that 456 children was among the civilian deaths, and there were also 1,921 estimated civilian deaths that were not known whether they belong to men, women, children, or elderly (Keaten, 2023).



Source: Data aggregated from wire and Ukrainian news reports and government documents. Accessed January 25, 2023.

Figure 1. Comparison of Civilian Fatalities from Conflict

Source: Carnegie Endowment for International Peace

B. Problem Statement

International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict. It is part of international law, which is the body of rules governing relations between states, contained in agreements in customary rules, considered by the states as legally binding. International humanitarian law applies to armed conflicts but does not regulate whether a state may actually use force because his is governed by a distinct part of international law set out in the United Nations Charter (ICRC, 2004).

Ideally, any conflict, including the Russia-Ukraine conflict, should refer to the international humanitarian law. However, the high scale of destruction of the Russia-Ukraine conflict that leads to the estimated high number of civilian deaths, raises a question, how is the international humanitarian law implemented during the Russia-Ukraine conflict?

C. Purpose of the Study

This article aims to explain the implementation of the international humanitarian law in the Russia-Ukraine Conflict.

D. Conceptual and Theoretical Framework

- *International Humanitarian Law*

As previously mentioned, ICRC explains that international humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It covers two areas, namely the protection of those who are not, or no longer, taking part in fighting; and the restrictions on the means of warfare, in particular weapons and the methods of warfare, such as military tactics.

According to ICRC, “Measures must be taken to ensure respect for international humanitarian law. States have an obligation to teach its rules to their armed forces and the general public. They must prevent violations or punish them if these nevertheless occur. In particular, they must enact laws to punish the most serious violations of the Geneva Conventions and Additional Protocols, which are regarded as war crimes.

- *Realism*

The theoretical framework used in this article is realism. It works based on four assumptions. First, states as the principle actors in international relations. Individuals and organisations exist but their power is limited. Second, the state is a unitary actor. Guided by national interests, especially during wars, a state speaks and acts with one voice. Third, decision-makers are rational actors who make their decisions based on the pursuit of the national interests. In other words, taking actions that would weaken the state or make it vulnerable is irrational. Fourth, states live in a context of anarchy, in the absence of anyone being in charge internationally. A state owns police forces, militaries, courts, etc. In an emergency, they are the ones who are expected to respond first. Internationally, established hierarchy is unclear, therefore, states can ultimately only rely on themselves (Antunes and Camisao, 2018).

The realism view was strengthened by Hans Morgenthau in the aftermath of the World War II. His concern was to clarify the relationship between interests and morality in international politics, and his work drew heavily on the insights of historical figures such as Thucydides and Machiavelli. In contrast to more optimistically minded idealists who expected international tensions to be resolved through open negotiations marked by goodwill, Morgenthau’s approach emphasised power over morality. Every political action is directed towards keeping, increasing or demonstrating power. He believed that policies based on morality or idealism can lead to weakness, even destruction or domination of a state by a competitor.

E. Research Methodology

The article uses the qualitative method, by most performing library research to analysis the issue being raised. In particular, this study uses a more in-depth case study approach provided in the literature such as journals, reports from the United Nations and other related international organizations, online media, etc., which are considered helpful for the writer to do the research. Through this modest study, the writer intends to perform an analysis that help answer the questions raised in the problem statement.

II. DISCUSSION

A. International Humanitarian Law Violations

There are countless examples of violations of international humanitarian law. War casualties are increasingly suffered by civilians. There are also important examples of how international humanitarian law has made changes in the protection of civilians, prisoners, the sick and wounded, and in restricting the use of brutal weapons. Given that this body of law applies during times of extreme violence, implementing the law will always be a matter of great difficulty (ICRC, 2004).

The Russia-Ukraine conflict mostly happens at the soil of Ukraine, therefore, most of suffering civilians are Ukrainians. Human Rights Watch (2023) listed the following atrocities endured by the Ukrainian civilians:

- a) Russia has carried out indiscriminate attacks on civilian areas and repeatedly targeted energy infrastructure, leaving millions of civilians without electricity, running water or heating as temperatures plummet in winter.

- b) Ukrainian detainees reported beatings, electric shocks, mock executions, waterboarding, and other forms of torture. Russian soldiers imprisoned people in basements, pits, boiler rooms, and factories in deplorable conditions.
- c) Russian forces have carried out disproportionate and indiscriminate bombing and shelling of civilian areas. These attacks destroyed and caused extensive damage to homes, businesses, schools, medical facilities and other facilities. More than 2,700 educational institutions were damaged and more than 300 were beyond repair. These attacks hit numerous hospitals, including at least one of his children's hospitals in Chernihiv, a maternity hospital in Kharkov and a maternity ward in Vilnius. As of October, the World Health Organization confirmed that at least 200 people had died in more than 700 attacks against medical facilities, personnel and vehicles.
- d) Antipersonnel landmines are used extensively in Ukraine. Russian forces also targeted civilians in vehicles attempting to flee hostilities, without making apparent attempt to identify whether the occupants are civilians.

Despite focusing on Russia as the main perpetrator of human rights violation during the Russia-Ukraine conflict, Human Rights Watch also mentioned that information about Ukrainian forces violating the laws of war by mistreatment and apparent summary executions of prisoners of war also emerged (Mednick, 2022).

Armed conflict situations make civilians more vulnerable to attack, as illustrated by the Russia and Ukraine conflict, where civilians continue to bear the brunt of the battle on the front lines. Blatant violations of basic principles of the international humanitarian law characterize the conflict. This situation is of grave concern given that the international humanitarian law is designed to protect those not actively involved in armed conflict, especially civilians. They are increasingly being targeted directly in the conflict. Parties to the conflict have little respect for the basic principles of the international humanitarian law that promote the protection of civilians (Nwotite, 2022).

Anita Nwotite explained that according to the international humanitarian law, Individuals who do not pose a threat to hostile military operations should be saved. However, this is only possible if the parties can clearly distinguish between lawful and unlawful targets and carry out direct attacks accordingly. This is reflected in the principle of discrimination, which limits attacks to combatants and military targets. However, just identifying lawful targets is not enough. It is also important that attacks are proportional, even when military targets are involved, and that the parties take the necessary steps to minimize accidental loss of civilian life and property. These are expressed in the principles of proportionality and precaution. It follows, therefore, that the duty to protect civilians is largely dependent on respect for the principles of distinction, proportionality and precaution. She emphasizes that, "the violators of these basic principles in the Russia-Ukraine conflict must be held individually criminally liable for their acts amounting to the violation of the international humanitarian law."

Similar perspective is presented by E.N. Domloboy Nasution and Zamzami Raudia. They conclude that the Russian-Ukrainian conflict is an armed conflict known as an international armed conflict, which is regulated under the international humanitarian law, aimed at protecting civilians from unnecessary suffering. Due to the fact that most of the victims of armed conflicts in Ukraine are civilians, such as children, women and the elderly, Russia has committed numerous violations, which can be categorized as war crimes. But so far, there has been no firm action to hold Russia accountable for war crimes (Nasution and Raudia, 2022).

B. Russia's Point of View

One of the possible reasons why Russia has not been determined as committing war crimes is that the country has the veto rights. The war in Ukraine has led diplomats, UN officials, and experts to ask if the United Nations will reform by making changes to the Security Council, to avoid the sort of deadlock happening concerning the Russia-Ukraine conflict. Russia has used its veto right on a few occasions regarding issues on Ukraine, and it not certain whether the Council can keep up the "business as usual" actions with the long war in Ukraine. Nevertheless, because powerful member states genuinely believe veto serves their interest, reforms may bring more harm than good (Gowan, 2022).

It is also necessary to view the Russia-Ukraine conflict from the perspective of Russia. The conflict is not merely an act of aggression toward the sovereignty and territorial integrity of Ukraine. To Russia, it is the way it defends its security from the threats of NATO. Ukraine is a mean for NATO to extend its power and influence over the eastern Europe. Russia is the one whose security is under jeopardy. Russia sees itself in an emergency situation, and according to the theory of realism, in an emergency, states are the ones who are expected to respond first. Internationally, established hierarchy is unclear, therefore, states

can ultimately only rely on themselves (Antunes and Camisao, 2018). Accordingly, Russia launched a military operation against Ukraine.

Under realism perspective, Hans Morgenthau clarified the relationship between interests and morality in international relations. In contrast to idealists who expected international tensions to be resolved through negotiations based on goodwill, realists emphasize power over morality. Policies based on morality or idealism can lead to weakness, even destruction or domination of a state by a competitor. Russia acts upon this, not only it is driven by power, namely to continue to be the most powerful state in the eastern Europe as a legacy of the Soviet Union, Russia perceives that it is necessary to initiate the aggression before it is destroyed and dominated by its enemies.

Sandrina Antunes and Isabel Camisao wrote that referring to realism, “rulers obey the ‘ethics of responsibility’ rather than the conventional religious morality that guides the average citizen – that is, they should be good when they can, but they must also be willing to use violence when necessary to guarantee the survival of the state.” This perspective helps explain why the President of Russia, Vladimir Putin, made the decision to attack Ukraine and continued to do so even after more than a year, the scale of destruction has been massive not only for Ukraine but for Russia as well. Again, looking at the decision from the realism point of view, it is possible that he sees the civilian fatalities of the sufferings they endure as only the side effect of he protecting survival of Russia as a state.

Russian leaders have watched with grave concerns as the North Atlantic Treaty Organization (NATO) nearly doubled its membership since the end of the Cold War (See Figure 2.). To Russia, NATO is an instrument for western countries to fight Russia. Russian leaders have long been wary of the eastward expansion of NATO, particularly to former Warsaw Pact states and ex-Soviet republics in the late 1990s (the Czech Republic, Hungary, and Poland) and early 2000s (Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia). Russia’s concerns grew in the late 2000s as NATO stated intention to welcome to the alliance Georgia and Ukraine in the future. Russia drew a red line as it considered Ukraine as a pillar of pillar of the Soviet Union with strong historic ties to Russia (Masters, 2022). Vladimir Putin expressed his displeasure by saying that NATO’s expansion had been a serious provocation that reduces the level of mutual trust. In the summer after the 2008 Bucharest NATO summit, where NATO declared its intention to recognize Georgia and Ukraine, Russia invaded Georgia. Six years later, as Kyiv geared up to have closer economic partnership with the European Union, another West organization, Russia invaded Ukraine and annexed Crimea. The current Russia-Ukraine conflict is the result of these series of event

The abovementioned paragraphs do not serve the purpose of undermining the fact that there have been numerous evidences of violations against the international humanitarian law in the Russia-Ukraine conflict. There have been discussions about how the international community can respond to Russia's crime of aggression. As the situation worsened with Russian indiscriminate bombing, it became clear that not only crimes of aggression were being committed, but also crimes of genocide, crimes against humanity, and war crimes. Prosecutors at the International Criminal Court (ICC) have launched an investigation into the situation in Ukraine because they reasonably believe Russia has committed and continues to commit crimes against humanity and war crimes. on 2 March 2022, the chief prosecutor of ICC, Karim Khan, opened an investigation into "all past and present allegations of war crimes, crimes against humanity or genocide" during the Ukraine war. It had "reasonable grounds to believe that international crimes were being committed." The investigation has received supports from thirty-nine countries; however, the court finds itself in a difficult position (Adamu, 2023).

NATO's Expanding Membership

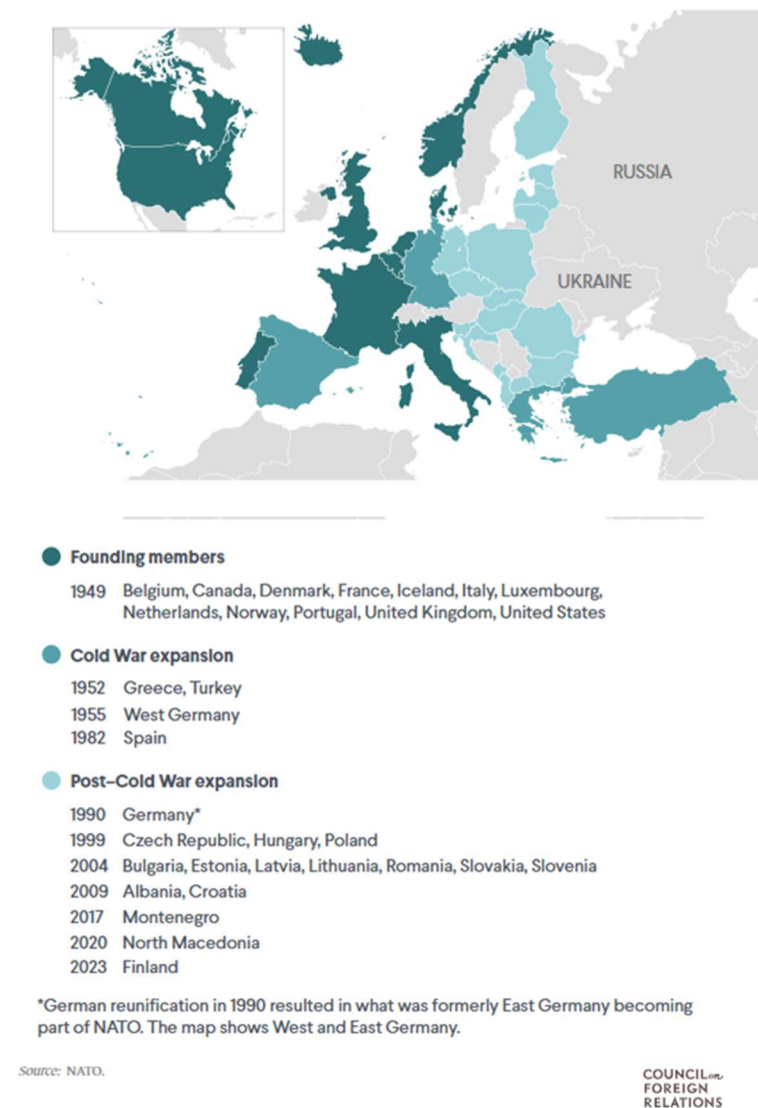


Figure 2. NATO's Expanding Membership

Source: NATO

III. CONCLUSION

The international humanitarian law is an established set of rules to limit the effects of armed conflict that covers two areas, namely the protection of those who are not taking part in fighting, which can be referred to as civilians; and the restrictions on the means of warfare to avoid brutal and massive destructions. Violators of these rules can be categorized as perpetrators of war crimes. There are experts of international relations, through their analysis, who conclude that, due to a huge number of civilian fatalities and of civilians deeply suffering during the Russia-Ukraine conflict, it is embedded with massive violations of the international humanitarian law. Because the Russia-Ukraine conflict, especially the one that began in February 2022, mostly occur on the soil of Ukraine, the accusation of war crimes is mostly targeted toward Russia. However, more than a year after, with

there has been no clear legal incrimination for the country possibly due to its existence as one of the most powerful countries in the world as indicated by its veto rights in the UN Security Council.

It helps to understand the decision of Russia to perform military operation in Ukraine despite the huge scale of destruction that have been experienced by both Russia and Ukraine by seeing the action from the point of view of realism. Russian leaders are aware that the number of civilian fatalities is concerning as well as the sufferings that have to be endured by the living civilians, therefore their decisions and actions have been perceived as violations of the international humanitarian law. Nevertheless, according to realism, leaders, when necessary, must be willing to use violence to guarantee the survival of the state. To Russia, their actions in the conflict is necessary to protect their security as they were threatened by NATO vis-a-vis Ukraine, regardless how much endangering to the civilians. In other words, as long as Russia still holds on to that view, and Russia believes that it still have the capacity to carry on with the operation, the conflict is going to persist and the number of international humanitarian law violations will continue to increase.

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