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**Violations of International Humanitarian and Human
Rights Law, war crimes and crimes against humanity in
the current conflict in Ukraine**

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LIST OF ABBREVIATIONS

CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
LOAC	Law of Armen Conflict
LPR	Luhansk People's Republic
NATO	North Atlantic Treaty Organization
NSDC	National Security and Defense Council
OHCHR	United Nations Human Rights Office of the High Commissioner
OHCHR	United Nations Office of the High Commissioner for Human Rights
OPs	Optional Protocols
OSCE	Organization for Security and Co-operation in Europe

UDHR	Universal Declaration of Human Rights
UN	United Nations
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNCRC	UN Convention on the Rights of the Child
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council

INTRODUCTION

The basis of this study is the analysis of the violations of human rights that have been perpetrated until the present moment in the current Russia-Ukraine war. Specifically, different international legal tools for the accountability of these acts will be analysed and taken into consideration: International Humanitarian Law ('IHL'), International Human Rights Law ('IHRL'), and the role of the United Nations ('UN') in the conflict. Starting from a general overview of the relations between the countries involved in the conflict, the objective of this thesis is to analyse from a critical point of view these tools and the hypotheses that have been developed until now for the judgement of these crimes.

This topic encompasses several subjects that I had the opportunity to address during my course of study. Among these can be certainly included: human rights, security policies and the main features of different war scenario, and more generally the role of international organizations in these contexts. Moreover, in addition to the actuality of this conflict, the choice of this topic was made on the basis of personal interests and the desire to understand more thoroughly the causes and possible consequences of this war from the point of view of international law.

The thesis is divided in three main parts and five chapters. In the first chapter an overview of the situation and a detailed analysis of Ukraine and its historical background will be outlined. Particularly, the focus will be on the relations between Russia and Ukraine from 2013 and the role of the UN in the annexation of Crimea. The second part, composed by the second and third chapters, will address the legal framework of accountability for the violations of human rights during the conflict. More precisely, the second chapter will deal with the role of International Humanitarian Law and its reported violations during the war. Here the different subjects covered by IHL will be analysed, with great attention given to the use of explosive weapons and war crimes. Afterwards, a specific section concerning vulnerable categories, indiscriminate attacks against civilians, and war prisoners' treatment will be outlined. The third chapter will define the role of International Human Rights Law and focus on the violations of human rights toward vulnerable categories, namely women and children. Moreover, the documentation reported by UN Human Rights Monitoring Mission in Ukraine will be taken in account. The last part will then identify the position of the United Nations and its role in the Russia-Ukraine war. In this section, the fourth chapter will discuss about the main UN tools available for coping with the violations of human rights. The main parts of the chapter will focus on the Geneva Conventions and their breaches during the war; the United Nations Security Council ('UNSC') and

its criticisms concerning the veto power; the International Court of Justice ('ICJ') and the provisional measures order at the beginning of the war; the International Criminal Court ('ICC') and its judgement of the crime of aggression. Finally, the fifth chapter will deepen the hypothetical solutions for the judgements of these crimes and the main criticisms of the international system. In the end, some conclusion will be outlined about the main findings of the study and some possible answers to the initial research questions will be provided.

Concerning the methodology used to develop this study, the thesis combines a systematic review of scientific articles and official websites of governments and international organizations. This analysis has been carried out with a critical evaluation of the tools available to judge the violations of human rights that have been perpetrated. Moreover, qualitative, and quantitative analysis of daily updated data is used for the reporting of victims and abuses.

The aim of this study is therefore to provide a detailed analysis about the tools provided by International Humanitarian Law, International Human Rights Law and the UN system in assessing the human rights violations during the Russia's invasion of Ukraine. In this regard, I will try to answer the following research questions: What is the role of the UN in the conflict, and what are its limits? Are these legal means enough? What are the criticisms? What is the current hypothesis for the judgement of these crimes?

CHAPTER I

OVERVIEW OF THE SITUATION IN UKRAINE

The aim of this chapter is to briefly introduce the relations between Russia and Ukraine in order to better understand the causes that brought to the escalation of the current war in February 2022. To achieve this, I will firstly describe the context in Ukraine from a political and cultural point of view, focusing on the situation of Russian minorities in the country. It will follow an analysis of the war of 2014 and of the subsequent role of UN after the annexation of Crimea. This part will be useful to comprehend the causes of the present war and the escalation of the violence, outlined in the second paragraph. Finally, I will provide an overview of the violations of human rights and war crimes committed by the Russian Federation during the first months of the war, paying particular attention at episodes of violence occurred in March 2022.

1. General context of Ukraine and its relations with Russia

Since the beginning of the war in Ukraine, many hypotheses have been developed about the reasons that led Russian president Vladimir Putin to initiate a mass invasion of the country in February 2022. The general context that precedes this event is thus extremely complex and it is rooted in the history of the two countries; the situation is even more complicated if we think that the countries share a really interconnected border characterized by minorities.

Analysing the situation from an historical point of view, as a former Soviet Union country, Ukraine has been subjected to the political, social, and economic repression perpetrated by Soviet leaders, also known as “Sovietization”. Particularly, between 1931 and 1934, more than 3,9 million Ukrainians suffered from hunger due to policy implemented by the Soviet Communist Party, led by Joseph Stalin; this event is known as *Holodomor*, which derives from two Ukrainian words that mean hunger and extermination, respectively *holod* and *mor*. Overall, during these years the country had not the chance to develop economically and independently, that is why, starting from the 90s, it immediately tried to establish itself in the international order¹. Consequently, the collapse of the Soviet Union inevitably changed the situation in the country and its relations with the world. Ukraine was declared an independent democratic state in 1991 with 92 percent of votes in favour and elected Leonid Makarovych Kravchuk as first president of the country. Following this, several developments occurred in the relation with Russia,

¹ MARTZ (2022:10).

first because the country was putting a lot of pressure on the newly declared state to reconsider its decision of independence, even though Ukraine immediately emphasized the distance from the country with the dissolution of the Communist Party². On the other hand, after one week from the declaration of independence, the leaders of Ukraine, Russia and Belarus established the Commonwealth of Independent States ('CIS'). The aim of this regional intergovernmental organization was to enhance the cooperation among the signatory countries from a political, military, and economic point of view. In the present time, however, Ukraine is not part of it anymore since 2018, due to the annexation of Crimea by Russia and the war in Donbass³. Another important agreement between the two countries was the Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation, which was signed in 1997 and, among the other principles, established cooperation and the inviolability of the respective borders. Also in this case, Ukraine decided to not renew the pact after the beginning of the war in 2014⁴.

In general, Ukraine was widely viewed as the former Soviet republic having the best prospect of achieving economic development and integrating with the rest of Europe after the collapse of the Soviet Union. Although by the turn of the 20th century the Ukrainian economy was in a dire state, and social and political reforms had not succeeded in making Ukraine a fully European nation, the country made some significant progress since the beginning of the century. In fact, despite several controversial issues, it established regular contacts with its neighbours, strengthened its independence, expanded its state structure, and, from the European Union and NATO's point of view, took some major steps towards democratization, establishing itself as an upstanding member of the world community⁵.

At this point, it is important to try to understand the motives that led the Russian Federation to pressure the country right after its independence, which is also relevant to comprehend the present situation. Among these reasons, we can for sure analyse the economic one: Ukraine is an extremely rich country from the point of view of raw materials, especially oil and gas and it is thought to have considerable conventional and unconventional hydrocarbon reserves. In the country, hydrocarbon resources are concentrated in the Carpathian area in the westernmost, in the Dnieper-Donetsk region in the east and in the Black Sea-Sea of Azov region in the south. Around 90% of gas production and 80% of proven reserves are in the Dnieper-Donetsk region, which is also the epicentre of the war started in 2014⁶.

In addition to this, the Russian government led by President Vladimir Putin strongly emphasized the cultural affinity between the two countries, as in the

² OSCE (1992: 1).

³ RFE/RL (2018).

⁴ SOROKOWSKI (1996: 1).

⁵ SOROKOWSKI (1996: 2).

⁶ Ukraine Energy Profile, International Energy Agency (IEA), 2020.

eastern provinces of Ukraine, where the majority of the population is Russian speaker. In fact, the 2001 census showed that 8,334,100 people in Ukraine, corresponding to approximately 17.3% of the total population, ethnically identified themselves as Russians⁷. As it is possible to notice, the context in which the ongoing war erupted is extremely complex and needs to take in consideration several aspects.

After this brief overview, the following paragraphs will explain more deeply the political and societal situation of the country, which led to the escalation to the war in 2014, and then in 2022.

1.1 Political and societal features of the country

As anticipated above, since its independence Ukraine has always been a country marked by a complicated political situation, mainly due to its closeness to Russia. In fact, it is well known that despite the formal declaration of independence of the country, the two countries remained strictly connected to one another. However, after 1991 Ukraine strongly developed its political system and societal features⁸.

From the political point of view, state building was President Kravchuk's first priority right after independence. Moreover, government centralization, a welcoming nationality policy within an ethnically mixed state, and a potent national military force were the three pillars of Kravchuk's nation-building approach. According to the democratic president, independent Ukraine with a self-defence military would be the key to encouraging economic growth in a nation that had long been dominated by the Soviet Union: under his direction, Ukraine quickly built up its armed forces and the foundations for an independent state. Inclusionary citizenship, rather than based on ethnicity or language, was granted to the Ukrainian citizens. Official statements emphasised that Ukraine was a European rather than a Eurasian country, and a pro-Western foreign policy was put into place. Overall, the aim of these policies was the creation of a strong national sentiment within the country, which will emerge evidently in the Orange Revolution of 2004, and in the Maidan Revolution started in 2013⁹.

Ukraine is now considered by the Democracy Index 2022 a hybrid regime, which means that employs "elements of democracy but suffer from weaknesses that are more pronounced than in a "flawed democracy"¹⁰. This is the result of an unstable situation characterised by more repressive or less repressive policies in different areas of interests. An example of this has been

⁷ Report on the total number of actual population, State Statistics Committee of Ukraine, 2001, *About number and composition population of Ukraine by data All-Ukrainian Population Census*.

⁸ CHANDLER (1996: 573).

⁹ CHANDLER (1996: 574).

¹⁰ Democracy Index 2022 report, The Economist Intelligence Unit (EIU), 2022, *Democracy Index 2022 Frontline democracy and the battle for Ukraine*.

the adoption of laws and strategies respecting civil society, ethnic minorities, and human rights, followed by the imposition of sanctions and strict policies on Ukrainian citizens, businesses, and media in the eastern region of the country in 2014. These measures were put into practice by the National Security and Defense Council ('NSDC'), which, performing its consultative and coordination functions, gained more influence in the following years. Moreover, this turnover of different policies reflects the point of view of the several political figures who have become president through the beginning of this century. In fact, since the election of the first president the politics of the country have been more Western-oriented, as in the cases of president Yushchenko elected in 2005, and Petro Poroshenko elected in 2014, or more Russian-oriented, with president Yanukovich in 2010. In the first cases, the political agenda was focused on a closer approach to the European Union, with the aim of joining the organisation and, as the so-called European Union-Ukraine Association Agreement signed in 2014 affirms, establishing a free trade area among the countries, implementing the possibility for Ukrainian citizens to move without the need for a visa. On the other hand, the presidency started in 2010 focused on the establishment of a strong partnership with Russia, which was strengthened with an agreement consisting in a lowering of gas prices and an extending of the lease for the Russian navy to a Ukrainian Black Sea port¹¹.

In general, it can be said that Ukraine's Democracy Index score increased consistently over the five years following the 2014 Maidan demonstrations that toppled Yanukovich's government until the covid-19 pandemic in 2020. Similar to the Orange Revolution of 2004, the Maidan demonstrations sparked an anti-corruption and pro-reform movement. In fact, in 2004 millions of people came together in a peaceful protest to prevent the ruling class from rigging an election and seizing power in Ukraine. Election fraud was the triggering factor that led to the revolution. During the elections of the same year, Yanukovich, the preferred candidate of Ukraine's corrupt elite, was said to have defeated the rival by 2,5 percent when the official results were announced. However, some hours after it turned out the election commission radically increased the east's turnout figures¹².

Therefore, despite a more active civil society and a desire to bring the nation closer to the EU, progress was patchy and the oligarchic clan system's hold on political life appeared to be as strong as ever. After some years, the lack of development generated discontent among the population, which was manifested this time in the election of an outsider to the political context, Volodymyr Zelenskiy, rather than in the form of demonstrations. President Zelenskiy, a comedian but a lawyer by training, won the 2019 presidential election with 73 percent of the vote in the second round. Despite being well-liked, Zelenskiy battled against opposition's powerful interests to enact anti-corruption and other changes, which contributed to grow public discontent

¹¹ SCHMOLLINGER (2022).

¹² KARATNYCKY (2014: 36).

towards his government¹³. Until now, the public support to the president seems quite high, especially due to the current war and the role Zelenskiy is playing in it; according to the International Republican Institute's ('IRI') Center for Insights in Survey Research ('CISR') most recent public opinion poll in Ukraine, support for President Zelenskiy is really strong, and people have confidence that he will lead the country to win the war with Russia, and they will then join the European Union ('EU'). Overall, 94% of Ukrainians who were surveyed about President Zelenskiy expressed strong or moderate approval of his work¹⁴.

Analysing now the country's social context, the situation is even more complex due to the evident ethnic division in the country as a result of the presence of consistent Russian minorities in the country. In Ukraine, diverse regional identities intersected with opposing perspectives of international identification, such as with Russia or with Europe. These divisions corresponded to various language usage trends and opposing ideas of the proper language policy for the new state: Ukrainization against accepting Russian as a second language¹⁵. The region with the highest number of Russian speakers is Crimea, followed by the Donetsk Oblast, the Luhansk Oblast, the Kharkiv Oblast, the Dnipropetrovsk Oblast, and the Odessa Oblast. All these oblasts, i.e., regions or provinces, are located in the eastern-south part of Ukraine, on the border with Russia. This is the consequence of centuries-old settlements of many peoples that has produced a variety of competing and overlapping identities. That is why, since its independence, it has been challenging for the government to unify these varied peoples inside a single state. Also, in the post-Soviet era, a variety of identities that developed over the years have taken the form of ethno-regionalist groups. The main example of these are The People's Militia of the Donetsk People's Republic ('DPR') and People's Militia of the Luhansk People's Republic ('LPR'), also known as Russian Separatist Forces in Donbas, who are pro-Russian paramilitaries in the Donbas region in the eastern part of Ukraine, under overall control of the Russian Federation. These groups represent the core of the conflict started in 2014, which led also to the outbreak of the ongoing war¹⁶.

1.2 Background of the war in 2014: Ukraine and the ethno-nationalist component of Russia's regional policies

Considering what has been analysed above, Russian minorities in the eastern regions of Ukraine have been the triggering cause that led to the escalation of

¹³ Democracy Index 2022 report, The Economist Intelligence Unit (EIU), 2022, *Democracy Index 2022 Frontline democracy and the battle for Ukraine*.

¹⁴ CENTER FOR INSIGHT IN SURVEY RESEARCH (2022: 32).

¹⁵ RUTLAND (2023: 24).

¹⁶ Report on minorities in Ukraine, Minority Rights Group International, 2020, *World Directory of Minorities and Indigenous Peoples - Ukraine*.

the war in 2014; it can already be said that this event marked not only the tightening and also the break of relations between Russia and Ukraine, which clearly protracted until the present moment, but resulted also in a changing in the relations among Russia and the European Union. The historical roots of this revolution reside on a delicate balance made of negotiations between competing segments of Ukraine's political and economic elites during the first 23 years after independence. Unfortunately, the political crisis of 2013–14 upended this already fragile equilibrium¹⁷.

As already said, president Yanukovich's political programme was extremely Russia-oriented; this was confirmed in 2004, during his first run for the presidency, when Putin's Kremlin arranged an official trip to Ukraine to publicly support him. In 2010, after the scandal of the previous elections, Yanukovich and his eastern-based Party of Regions won, giving Russia what looked like a chance to bring the country into its orbit of influence¹⁸.

In fact, in November 2013, the signature of a trade agreement and a political association agreement between Ukraine and the EU was abruptly postponed at a summit in Lithuania, following negotiations between the prime ministers of Russia and Ukraine. This unexpected manoeuvre resulted in an immediate mobilization of the population that began to protest¹⁹. On the 30th of November 2013, hundreds of people reunited in Maidan square, but they were immediately beaten back by the Berkut, the Ukrainian riot police. After this first episode, more people started to protest and, on the 8th of December 2013, a million people marched in the city centre to demand the resignation of the government. In order to try to control the situation, the two presidents signed the Russian-Ukrainian action plan of the 17th of December 2013, which was an effort by Russian President Vladimir Putin to maintain its influence on the country. The plan involved Russia to commitment to purchase \$15 billions of Ukrainian Eurobonds, and the reduction of the price for Russian natural gas supplied to Ukraine to \$268 per 1,000 cubic meters²⁰. However, this act had the effect of increasing the desire of citizens for a new government, thus the initial protest became the so-called Euromaidan Revolution or Revolution of Dignity. Violence reached its peak between the 18th and 20th of February 2014 when more than a hundred people were killed by the riot police. At the end of February 2014 President Viktor Yanukovich was removed from office and escaped in Russia; the riot police Berkut was then removed and Petro Poroshenko was elected president²¹.

In this context, concerning the violation of human rights perpetrated during the protests, the fifth UN human rights monitoring report, released on August 29, outlined that the Prosecutor General's Office had opened 84 criminal

¹⁷ RUTLAND (2023: 24).

¹⁸ MANKOFF (2022: 7).

¹⁹ TRAYNOR, GRYTSENKO (2013).

²⁰ WALKER (2013).

²¹ SOBOLIEVA (2023).

proceedings against security force members accused of violating protesters' human rights during the Maidan revolution in Kyiv²².

Despite this change of governance, the situation was far from been stabilized. In fact, in retaliation to the removal of Yanukovich, Russia invaded and annexed Crimea in March 2014, instigating this way an uprising of violence by pro-Russian groups in the Donbass region. This led to a larger level of support for a new, civic national identity outside of the Russian sphere of influence throughout the rest of Ukraine and marked the beginning of the long-lasting conflict between the two countries. The same year, in order to stop the violence in the region, Ukraine, Russia and OSCE, with the mediation of France and Germany, signed the Minsk, Belarus, the so-called Minsk Protocol, with the then-leaders of the self-proclaimed Donetsk People's Republic and Luhansk People's Republic. The main points established by the agreement were: an immediate ceasefire among the parties and the monitoring of the situation by OSCE, improvement of the humanitarian situation and security in Donbass. However, the Protocol did not have the expected results, thus leading to the signing of the protocol Minsk II in 2015, arriving then at February 2022, when Russian President Vladimir Putin declared that these agreements no longer existed²³.

It can be affirmed at this point that this tumultuous background explains well the context in which the war of 2022 started, the motives that led Russia to invade the country, and the strong nationalism of Ukrainian people that has involved all the EU countries in the last year.

1.3 The annexation of Crimea and its recognition

In this already unstable situation, the annexation of Crimea by the Russian Federation has resulted in a further breakdown and tightening of relations between the two countries, and especially between the European Union and Russia. Moreover, the annexation of the region and the referenda that took place to establish Russian control over it have raised many questions and criticisms from countries and organizations have immediately condemned it. Putin has long asserted that Russians and Ukrainians are one people, and that because of their shared past, they should also share the same political control in the present. In fact, in 2008 Putin reportedly said, "Ukraine is not even a country", during a meeting with the then-president of the United States, George W. Bush. In March 2014, when he announced the annexation of Crimea to the Russian parliament Duma, he also referred to Russians and Ukrainians as one people. He has since returned to the subject in subsequent years, most notably in a 6,000-word article titled "On the historical unity of Russians and Ukrainians" that was published in July 2021²⁴.

²² World Report 2023, Human Rights Watch, 2023, *Ukraine Events of 2022*.

²³ VOLKER (2021).

²⁴ MANKOFF (2022: 1).

Precisely, on the 27th of February 2014, pro Russia groups overrun government buildings in Ukraine and raised the Russian flag. Thereafter, on 1 March the use of Russian military in Ukraine has been authorized by the Russian parliament, and the independence of the Republic of Crimea was declared. The most contested issue of these annexation has been the referendum held on the 16 March called “On the All-Crimean Referendum”, which asked: “(1) Do you support the reunification of Crimea with Russia as a subject of the Russian Federation? (2) Do you support the restoration of the Constitution of the Republic of Crimea of 1992 and the status of Crimea as a part of Ukraine?” The Russian Federation Presidential Council for Civil Society and Human Rights published then an analysis on its website stating that voting turnout ranged from as 30% to 50%, and that not more than 60% voters were in favour of annexation. However, the final results showed that the affirmative answer received 96.77% of the vote, with 83.1% of eligible voters participating²⁵.

Immediately after, a series of actions taken by different international and legal organizations condemned the referendum. The Constitutional Court of Ukraine stated that only an all-Ukrainian referendum could legally address a proposed change to Ukraine’s territory and that only the Ukrainian parliament has the power to convene such a referendum. Furthermore, the Venice Commission of the Council of Europe concurred that the referendum had violated the Ukrainian Constitution, and the Organization for Security and Co-operation in Europe supported this view too. Also, the right to self-determination is unquestionably recognized by international law, which also does not prohibit secession. However, the issue of whether the right to self-determination includes a right to secession, and also the conditions for this, it is more contentious²⁶. On the other hand, there is Russia’s view toward self-determination: on several textbooks redacted by Russian experts of international law is explicitly affirmed that “The principle of self-determination of peoples is a right, but not an obligation, and its realization can have many different variants and can be realized in different forms”²⁷.

However, as in the case of the Euromaidan revolution, it is also worth noticing to mention the violation of human rights that occurred during the war in Donbass since 2014. During the conflict, several international organizations, and non-governmental organizations such as Amnesty International, Human Rights Watch (‘HRW’), and the UN High Commissioner for Human Rights (‘OHCHR’) issued periodic reports on human rights violations committed by separatist and government forces in the region. These actors have reported that in the first few months of fighting and violence in Donbass more than five million civilians have been deprived of their basic human rights to education, health care, and housing, thus becoming Internal Displaced Persons (‘IDPs’). Moreover, on December 2014, the Human Rights Monitoring Mission in

²⁵ MORELLO, CONSTABLE (2014).

²⁶ GRANT (2015: 71).

²⁷ MEREZKHO (2015: 177).

Ukraine ('HRMMU') reported that at least 4,771 civilians had been killed and 10,360 had been injured in the conflict since it began in mid-April²⁸.

1.4 The role of the UN in the conflict and the United Nations General Assembly Resolution 68/262 about the “territorial integrity of Ukraine”

As expected, there are many contradictions concerning the recognition of the annexation of Crimea by the Russian Federation. In this context, the United Nations played a crucial role in the condemnation of Russian's acts in Crimea. Therefore, right after the invasion and annexation of the region, the United Nations declared the referendum invalid, after several attempts to encourage a diplomatic solution to the situation. Thus, regarding the Autonomous Republic of Crimea and the city of Sevastopol, the UN General Assembly ('UNGA') established a policy of non-recognition²⁹.

The first action to affirm this position has been taken by the UN Security Council, which held seven sessions to discuss the situation in Ukraine. At its eighth session, Russia, one of the 5 permanent members of the organization, stymied progress by voting against a draft resolution that would have urged nations not to recognize the results of the Crimean referendum. This already represented one of the main limits of the United Nations system, that has been at the centre of strong criticisms also in February 2022, when the same thing happened, and Russia posed the veto power to the resolution condemning the war³⁰.

On 27 March 2014 then, the territorial integrity of Ukraine was reaffirmed by the UN General Assembly in Resolution A/RES/68/262, which was titled “Territorial Integrity of Ukraine”. The resolution emphasized the illegitimacy of the “all-Crimean referendum”, which was held on the 16th of March by the Russian occupation authorities, and reaffirmed Ukraine's sovereignty within its internationally recognized borders. Additionally, in paragraph 6 of this document, the Assembly urged States, international organizations, and specialized agencies to abstain from any action or dealing that might be interpreted as recognizing any altered status of the Autonomous Republic of Crimea and the city of Sevastopol based on the referendum³¹.

Moreover, the Assembly resolution also mentioned the Ukraine's Accession to the Treaty on the Non-Proliferation of nuclear weapons, the 1997 Treaty on Friendship, Cooperation and Partnership between Ukraine and Russian, as well as other bilateral agreements between Ukraine and Russia, and

²⁸ World Report 2023, Human Rights Watch, 2023, *Ukraine Events of 2022*.

²⁹ UNITED NATIONS (2014a).

³⁰ UNITED NATIONS (2014b).

³¹ Resolution of the UN General Assembly, 27 March 2014, 68/262, *Territorial integrity of Ukraine*.

emphasized the importance of the UN Charter's call for the preservation of the unity and territorial integrity of all UN Member States³².

Despite the good intentions expressed in the United Nations General Assembly declaration, the document does not officially oblige the member countries of the organisation, which voluntarily decide to adhere to what has been decided.

After this historical background of Ukraine that is useful to comprehend the reasons that led to the invasion of the country by Russia in 2022, in the following paragraphs I will go into detail of the current situation; firstly, the focus will be on Russia's mobilization of forces started in 2021, and on the ethno-nationalistic component of Putin's speech before the war. It will then follow an explanation of the first measures that have been adopted by the United Nations and a first analysis of the violations of human rights and war crimes at the beginning of the conflict.

2. The escalation of the current conflict: causes and timeline

Hereafter there will be a timeline of the current conflict in Ukraine starting from the allocation of Russian troops on the borders with the country in 2021, which will be helpful through the analysis to keep track of the most important events occurred till the present moment.

Main occurrences in 2021: in January, due to raising hostilities, president Zelenskiy appealed to the United States' president Biden for joining NATO. Ukrainian president was then assured by Joe Biden that Ukraine's proposal to join the treaty was "in its own hands".

March and April 2021: Russia began to position its troops and military equipment on the border with Ukraine.

November 2021: over 100.000 military troops are stationed on the border in the east, at the north in Belarus, and at the south in Crimea. US company Maxar Technologies released new satellite images confirming these movements³³.

December 2021: Russia insistently asked for the withdrawal of NATO troops and weapons from eastern Europe and remarked the prohibition for Ukraine to ever join the treaty.

Beginning of 2022: NATO places forces on alert and strengthens eastern Europe with additional military equipment. At the same time US president

³² UNITED NATIONS (2014).

³³ AL JAZEERA AND NEWS AGENCIES (2022).

responded to Russia's demand remarking the "open doors" policy of the treaty.

Beginning of February 2022: despite the increasing concern that Russia could invade Ukraine, the US has announced the deployment of 3,000 additional troops to NATO members Poland and Romania. Washington and its allies have said they will not send troops to Ukraine but have threatened Russia with severe economic sanctions if it takes military action.

21 February: Putin exposed his essay "On the Historical Unity of Russians and Ukrainians" on the national TV, asserting that Ukraine is an integral part of Russia. He then sent peacekeeping forces into two breakaway regions of eastern Ukraine after recognizing their independence. Consequently, the US, the UK and their allies issued sanction on Russia's banks, assets, and parliament's members.

24 February: Russian president Vladimir Putin authorized what he called a "special military operation" in Ukraine, formally invading the country with missile and artillery attacks toward several Ukrainian cities, including the capitol Kyiv.

26 February: the EU and the other western powers implemented new sanctions against Russian banks and prevent their access to global systems of payment³⁴.

In the months immediately following the start of the war, a series of brutal violence committed by the Russian army have been registered, and they will be analysed in the following paragraphs.

2.1 Putin's essay "On the Historical Unity of Russians and Ukrainians"

A few days before starting the "special military operation", president Vladimir Putin exposed his 5,000 words essay titled "On the Historical Unity of Russians and Ukrainians", which published in July 2021 in Russian, English and Ukrainian.

In his speech, Russian president reiterate his frequently expressed belief that Russians and Ukrainians are one people, while blaming the current breakdown in bilateral relations on foreign plots and anti-Russian conspiracies.

Then, in one precise passage, he openly questions the legitimacy of Ukraine's borders, arguing that much of modern-day Ukraine occupies historically

³⁴ REUTERS (2022).

Russian lands, and continued by saying that “Russia was robbed.” In other words, he suggested a new annexation of Ukrainian territory, affirming “I am becoming increasingly convinced of this: Kyiv simply does not need Donbas.” Putin concluded his lengthy treatise by implying that Ukrainian statehood ultimately depends on Moscow’s approval, declaring, “I am confident that true sovereignty of Ukraine is only possible in partnership with Russia”³⁵.

The responses that followed the speech are various and are based on different interpretations; one is surely that in Putin’s essay we can see a justification for invading the country, which, in his view, have historical basis. In fact, especially at the beginning of the essay, the interrelation between Russia, Ukraine and Belarus is highlighted, and it is dated back to the Ancient Rus empire; in this passage Putin underlines how these three countries are in practice, one single entity with the same political, economic, and cultural structure

“But I will focus on the key, pivotal moments that are important for us to remember, both in Russia and Ukraine. Russians, Ukrainians, and Belarusians are all descendants of Ancient Rus, which was the largest state in Europe. Slavic and other tribes across the vast territory – from Ladoga, Novgorod, and Pskov to Kiev and Chernigov – were bound together by one language (which we now refer to as Old Russian), economic ties, the rule of the princes of the Rurik dynasty, and – after the baptism of Rus – the Orthodox faith. [...] The throne of Kiev held a dominant position in Ancient Rus. This had been the custom since the late 9th century. The Tale of Bygone Years captured for posterity the words of Oleg the Prophet about Kiev, “Let it be the mother of all Russian cities”³⁶.

More precisely, it seems quite clear that Russian president aspires to lead the country to be a great power again, thus the assimilation of Ukraine, the biggest post-Soviet Union country, perfectly fits in this view. Russian president has justified in this way the special military operation in the country, affirming that it is necessary in order to free the eastern regions from the genocide they have been victims of by the Ukrainian government. In addition, Putin accuses NATO and the European Union of manipulating Ukrainian national sentiment in order to isolate the country from Russia³⁷.

I believe this is an important point in order to connect the first part of Ukraine’s history with what is currently happening, and to understand what led Russia to take the decision to invade the country. Particularly, the continuity of Putin’s actions and words from 2014 to the current war is revealing to observe at how the situation is evolving in the contended eastern regions and in Crimea.

³⁵ DICKINSON (2021).

³⁶ Vladimir Putin essay “On the Historical Unity of Russians and Ukrainians”.

³⁷ RANKIN, WILLISHER, HARDING (2022)

2.2 Escalation of the conflict: mobilization of the armed forces and support from the international community

As just said, Putin's speech came shortly before the authorization for the armed invasion of Ukraine and the mobilization all its military equipment. On the other hand, Ukrainian army seemed not to be fully prepared to face the scale of such an attack. In fact, among the two countries there were some major disproportions in military equipment.

In the case of Russia, it is estimated that at the beginning of the war the country had 900,000 active military personnel, while the Ukrainian army instead had an estimated active military personnel of 196,600. Moreover, the disparity was greater concerning sea equipment, where Russia had ten times the number of navies. In comparison to Ukraine's two warships, Russia's navy had 74 warships and 51 submarines. Concerning land's personnel, the difference was not so massive: the Russian army had 280,000 soldiers, while Ukraine had 125,600. However, Ukraine had only 900,000 reserve personnel, as opposed to Russia's two million. In addition, soldier's equipment between the two sides was extremely unbalanced: Russians were significantly better endowed, as they had more than three times the artillery, six times the number of tanks, and nearly seven times the number of armoured vehicles than the Ukrainians. The situation was disproportionate as well in air-equipment: Russia had ten times the number of attack planes and helicopters and it had a significant advantage in long-range weaponry, with over 500 land-based ballistic missile launchers; in comparison, the Ukrainian army had available over 400 surface-to-air missile launchers capable of targeting aircraft³⁸.

These numbers have changed through the course of the war because Ukraine has received and still receives several substantial supplies by NATO allies; overall, both countries have experienced great losses of military equipment and soldiers. Due to the scale of the war and the uncertainty of the situation, it is difficult to estimate the exact number of military deaths and damages to the equipment occurred. Approximately, as per the end of February 2023, it is computed by the Ministry of Defence of Ukraine that "nearly 143,000 Russian soldiers have been killed" and that "3,310 tanks and 6,545 armoured combat vehicles had been destroyed"³⁹. While Mykhailo Podolyak, an adviser to the Ukrainian president, reported in December 2022 that since the start of the war, approximately 13,000 Ukrainian soldiers died⁴⁰. Clearly, propaganda also plays an important role in these statistics, attempting to always show one side having the upper hand on the other and altering the number of losses.

Talking now about the escalation of the conflict, in the night of the 24th of February 2022, Russian forces started bombing major Ukrainian cities through air, sea and land, and from three different fronts. Russian troops

³⁸ DEVINE (2022).

³⁹ SIDDIQUI, ADUQA (2023b).

⁴⁰ AL JAZEERA AND NEWS AGENCIES (2022b).

entered the country passing the eastern border in Chernihiv, Kharkiv and Luhansk regions, and landing in the cities of Odessa and Mariupol; it is estimated that during this first offensive almost a hundred civilians have been killed.

Immediately after the attack, Ukrainian president Zelenskiy made an urgent national address, established the martial law, and announced a full military mobilization of all the men between 18 and 60 years old who cannot leave the country. The president also closed national air space and strongly criticised the West and NATO allies for having abandoned the country with insufficient equipment despite the clear danger represented by Russian troops on the border. Two days after the first attack, president Zelenskiy refused the US proposal to leave the country⁴¹.

Straight after, the international community mobilized in order to support the invaded country, through both material assistance and economic sanctions to Russia, aiming to isolate it from supply of equipment and raw materials. NATO called for an emergency meeting with chief Jens Stoltenberg who condemned this “reckless attack”, together with the US president Joe Biden who defined it an “unprovoked and unjustified attack by Russian military forces”.

Joseph Borrell, the European Union’s foreign policy chief, said Russia faces “unprecedented isolation” for its attack on Ukraine and will face the “harshest sanctions” the EU has ever imposed⁴². In fact, the EU started adopting different packages of sanctions against Russia until December 2022, each time adding new entities and individuals; at present moment, the country is subject to several measures oriented to weaken its economy. Among these, the most relevant are the ones concerning the prohibition of import and export of weapons, all sort of military equipment, and raw materials that may be used for military purpose⁴³.

Concerning the supply of military equipment, since the first attack, Ukraine has been equipped with advanced military equipment, especially tanks, combat vehicles, air defence, drones, missiles, and long-range rockets.

The United States are Ukraine’s largest military aid provider, having committed more than \$40 billion since the Biden administration began, followed by the UK with more than 5\$ billions of equipment, and the EU with more than 3\$ billion⁴⁴.

However, it is also important to take into consideration the effects that these weapons used by both the parties in conflict may have on civilians and analyse their negative impact.

⁴¹ Research briefing of the House of Commons, 1 April 2022, *Conflict in Ukraine: A timeline (2014 - present)*.

⁴² AL JAZEERA AND NEWS AGENCIES (2022c).

⁴³ European Commission Sanctions adopted following Russia’s military aggression against Ukraine, 2023, *Timeline: measures adopted in 2022-2023*.

⁴⁴ BROWN, HORTON, AHMEDZADE (2023).

3. Violations of human rights and war crimes in the first months of war

With the beginning of the war, a series of human rights violation and war crimes have been registered since the first months of the conflict. Among the violations of International Humanitarian Law and International Human Rights Law that have been registered, there are: indiscriminate and disproportionate bombing and shelling of civilian areas, including homes, healthcare and educational facilities; war crimes in the occupied areas, including torture, executions, sexual violence, and enforced disappearances. Moreover, on several occasions Russian forces impeded humanitarian corridors used for the delivering of aid to Ukrainian civilians. Particularly, from the 24th of February 2022 to January 2023, the HRMMU had confirmed at least 6,919 civilian deaths and more than 11,000 injuries; it is however likely that these numbers are even higher due to the difficulty of recovering bodies. As of this date, it is estimated that the war had displaced over 14 million civilians: 6,5 million are internally displaced in Ukraine, 5 million fled to European countries, and another 2,8 million went to Russia and Belarus, according to the UN Office for the Coordination of Humanitarian Affairs ('OCHA')⁴⁵.

3.1 First reaction from the UN toward Russia and the violation of the UN Charter

Just after Russia's invasion, United Nations Secretary General Antonio Guterres condemned Russia's actions and appealed for a diplomatic solution, which after two weeks have not been found. He stated: "In the name of humanity, bring your troops back to Russia, [...] In the name of humanity, do not allow a war to start in Europe which could be the worst war since the beginning of the century with consequences not only devastating for Ukraine, not only tragic for the Russian Federation but with an impact we cannot even foresee"⁴⁶.

Shortly after, the United Nations Security Council ('UNSC') called for an emergency special session, and on 25 February 2022 failed to adopt the draft resolution that should have ended the Ukrainian crisis and guaranteed withdraw the Russian army from the country. The main point of the resolution was that by invading Ukraine, Russia had violated Article 2, paragraph 4 of the Charter of the United Nations, which states an obligation to refrain from threatening or using force against the territorial integrity or political independence of any State. The draft, submitted by Albania and the United States, received support from 11 members, China, India, and the United Arab Emirates abstained, and was vetoed by the Russian Federation, who justified its decision stating that "the draft contravenes the interests of the Ukrainian

⁴⁵ World Report 2023, Human Rights Watch, 2023, *Ukraine Events of 2022*.

⁴⁶ AL JAZEERA AND NEWS AGENCIES (2022c).

people who have experienced a tragedy over the last eight years”⁴⁷. As it will also be explained later in this research, due to the veto power of Russia, the role of the UNSC is not out of criticisms, and it also represent a huge limit of the UN system in this regard.

As a consequence of unanimity not being reached by the Council, a few days after the United Nations General Assembly adopted the Resolution ES-11/1 with a total of 141 member states voting in favour. However, due to the non-mandatory of the Assembly Resolutions, at the end of March 2022 another decision had been adopted, reiterating the commitment of the organization to stop the aggression of Ukraine by the Russian Federation, and stating once again that the country must withdraw its troops⁴⁸. Obviously, these decisions did not lead to the expected result, thus calling into question again the role and decision-making power of the organisation.

Another step taken just after the beginning of the conflict regards the involvement of the International Criminal Court; even if Ukraine is not a party of the Rome Statue and cannot appeal directly to the Court, it accepts the Court’s jurisdiction over crimes committed under the Rome Statute occurring on its territory, in case the Court choose to exercise it. That is why, due to the perpetrated violations of human rights by the Russian army, the ICC Prosecutor, Karim A.A. Khan decided to open an investigation at the end of February 2022 to “exercise its jurisdiction and investigate any act of genocide, crime against humanity or war crime committed within Ukraine”⁴⁹.

3.2 Timeline of the main violations during the first months of the war in 2022

Considering the high number and the different nature of the violations of human rights and war crimes that have been perpetrated in the first months of the war, some are worth citing for the critics and public outrage that they have raised. Particularly, I will report the data collected by Human Rights Watch concerning these main attacks⁵⁰.

Russian forces carried out a series of attacks, including with cluster munitions, that damaged healthcare facilities across several regions, ignoring the special protection afforded to such facilities under international law. Among these attacks, it is well-known the attack to the maternity hospital in Mariupol. The World Health Organization reported more than 700 attacks on healthcare

⁴⁷ UNITED NATIONS SECURITY COUNCIL (2022).

⁴⁸ EUROPEAN UNION EXTERNAL ACTION (2022).

⁴⁹ OFFICE OF THE PROSECUTOR (2022).

⁵⁰ World Report 2023, Human Rights Watch, 2023, *Ukraine Events of 2022*.

facilities, personnel, and transportation vehicles since February 2022, killing and injuring more than 200 people⁵¹.

In early March, Russian forces killed at least 98 civilians and injured at least 123 others in eight attacks on Chernihiv, after effectively encircling the city; in the same month, an apartment complex has been destroyed by several unguided aerial bombs. Although there were Ukrainian military targets in the vicinity of some of these attacks, Human Rights Watch determined that at least four of the eight attacks were illegal⁵².

During the three-month siege of Mariupol, Russian forces used wide-area explosive weapons, razed the urban landscape, and killed and injured an unknown number of civilians. On March 16, Russian planes dropped bombs on Mariupol's Donetsk Regional Theatre, causing the roof and two main walls to collapse. Hundreds of civilians were sheltering in the theatre at the time of the attack, which also served as a distribution point for medicine, food, and water to civilians⁵³.

On June 27, Russian forces launched a missile that hit a busy shopping centre in Kremenchuk, Ukraine's central region. At least 16 civilians were killed, and dozens were injured in the attack. According to a regional official, over a thousand civilians have been killed in strikes in the Kharkivska region in the first months of the conflict⁵⁴; moreover, Human Rights Watch documented numerous illegal attacks in Kharkiv by Russian forces, including the use of explosive weapons with wide-area effects in densely populated residential neighbourhoods. On March 9, Russian forces dropped a large air-delivered munition on an apartment building in the city of Izium, killing 51 civilians, the majority of whom were sheltering in the basement⁵⁵.

Russian forces opened fire on civilian vehicles in several incidents, including targeted attacks on civilians fleeing hostilities, with no apparent effort made to determine whether the occupants were civilians or not. Human Rights Watch documented three separate incidents in the Kyivska and Chernihivska regions between late February and early March in which Russian forces fired on civilian vehicles, killing six civilians and injuring three⁵⁶.

⁵¹ HINNANT, CHERNOV, STEPANENKO (2023).

⁵² World Report 2023, Human Rights Watch, 2023, *Ukraine Events of 2022*.

⁵³ HINNANT, CHERNOV, STEPANENKO (2022).

⁵⁴ LEWIS (2022).

⁵⁵ World Report 2023, Human Rights Watch, 2023, *Ukraine Events of 2022*.

⁵⁶ *Ibidem*.

Moreover, numerous cases of sexual violence and gender-based violence ('GBV') committed by the Russian army have been reported, whose main target have usually been women and young girls. In addition, in November 2022 the United Nations Office of the High Commissioner for Human Rights identified cases of abuses against Prisoners of War ('POWs'), which included beatings, electric shocks, mock executions, tortures⁵⁷.

Overall, from the start of the Russia's armed attack on Ukraine on the 24th of February 2022, until the 12th of February 2023, OHCHR recorded 18,955 civilian casualties in the country: 7,199 killed and 11,756 injured⁵⁸.

As can be seen, numerous actions committed among these violences can be identified as violations of International Human Rights Law, or International Humanitarian Law, thus having different levels of accountability. The aim of the next two chapters will be to identify the subjects covered by both IHRL and IHL and which means are available to judge these crimes, with a critical analysis on their effectiveness.

⁵⁷ Report of OHCHR, 13 February 2023, *Ukraine: civilian casualty update*.

⁵⁸ *Ibidem*.

CHAPTER II

INTERNATIONAL HUMANITARIAN LAW (IHL)

The following chapter will introduce and explain in detail what International Humanitarian Law ('IHL') is and which subjects it covers. More precisely, the aim is to analyse this branch of law in relation to the current war in Ukraine, trying to understand if the legal tools it offers can be considered effective in passing judgement on the perpetrated violence. The chapter will begin with a brief introduction concerning the difference between IHL and International Human Rights Law ('IHRL'); a definition of the former will follow, with particular attention to the concepts of *jus in bello* and *jus ad bellum* and their applicability in the field of human rights. Afterwards, I will outline the subjects covered by IHL and the alleged violations committed by the parties involved in the conflict that are addressed by it. A particular focus will be done on the effects of the conflicts on vulnerable categories, specifically women and children.

1. The legal framework of accountability: International Humanitarian Law and International Human Rights Law

International humanitarian law has historical basis rooted in principles and customs of ancient civilizations and religions, for which warfare has always been a crucial issue. However, the universal codification of the principles of international humanitarian law started in the nineteenth century, when these rules became necessary to find a balance between humanitarian concerns and state military requirements. More precisely, two important figures during the last century played a pivotal role in the creation of this branch or law: Henry Dunant, a Swiss businessman, and Guillaume-Henri Dufour, a Swiss military officer. Dunant witnessed the grim aftermath of the battle of Solferino while traveling in Italy in 1859, and after returning to Geneva, he wrote a book called "A Memory of Solferino", which was published in 1862. General Dufour, immediately showed his support to Dunant's ideas, most notably by chairing the 1864 diplomatic conference that resulted in the adoption of the original Geneva Convention. After a few years they have been part of the committee that founded the International Committee of the Red Cross ('ICRC')⁵⁹.

As the international community grew, an increasing number of countries contributed to the development of those rules, and today, international humanitarian law is a universal body of law. Undoubtedly, the four 1949 Geneva Conventions represent a turning point in the affirmation of international humanitarian law, especially because almost every country in the

⁵⁹ ICRC (2017).

world has agreed to be bound by them. The Conventions have then been supported and supplemented by two additional protocols in 1977 relating to the protection of victims of armed conflicts, and other agreements concerning the protection of specific categories and the prohibition to deploy certain types of weapons⁶⁰.

Moreover, with the development of international law norms, another body of laws was gradually created: International Human Rights Law. Apparently, the essence of some of the rules in both branches is similar, if not identical, despite their very different formulations, as both aim to protect human lives, dignity, and health, and to prohibit torture and cruel treatment. In addition, both provide rules regarding the protection of specific categories, such as women and children. For this reason, a brief description of the differences among the two will follow, before going into detail of IHL and its application.

According to the ICRC, International Humanitarian Law can be defined as

“a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limits the rights of the parties to a conflict to use methods and means of warfare of their choice”⁶¹.

More precisely, IHL applies in times of armed conflict, whether international, when two or more parties are involved, or non-international, when government forces fight against armed insurgents or rebel groups fight among themselves. In these contexts, IHL addresses all the actors involved in the armed conflict, thus both state actors and non-state actors are bound by these rules. Most importantly, individuals are also bound by IHL, and can be held criminally responsible for grave breaches of the Geneva Conventions and Additional Protocol I, as well as other serious violations of the law and war crimes. Concerning civilians, IHL protects them through several conventions, such as ensuring the protection of the wounded and sick, prisoners of war, and other vulnerable categories; in addition, warring parties must always distinguish between combatants and non-combatants and between military and non-military targets⁶².

On the other hand, International Human Rights Law is defined by the United Nations Human Rights Office of the High Commissioner (‘OHCHR’) as the body of law which “governs the obligations of States towards citizens and other individuals within their jurisdiction. Human rights law enshrines the highest of human ideals, that every human being has a set of rights and freedoms”. Considering the broad subject covered by IHRL, its first characteristic is the universality of its norms, which apply at all times and aim

⁶⁰ ICRC (2004: 1).

⁶¹ *Ibidem*.

⁶² ICRC (2001: 2).

at respecting the Universal Declaration of Human Rights ('UDHR') that is considered to be the foundation of IHRL. The Declaration was adopted in 1948 and it represents a milestone in the development of binding treaties concerning the respect of human rights; it represents the universal recognition that basic rights and fundamental freedoms are inalienable and equally applicable to all human beings, and that everyone is born free and equal in dignity and rights. More precisely, IHRL is a set of international rules established by treaty or custom that individuals and groups can expect and claim from governments in terms of behaviour or benefits; this is possible when states, by becoming parties of a treaty, recognize and assume their duties and obligations in the protection of the rights laid down in each specific agreement. Numerous non-treaty-based principles and guidelines, i.e. "soft law", are also included in the body of international human rights standards. Overall, all these treaties and rules bind states' governments towards individuals. Additionally, as this subject is continuously evolving, human rights treaties have become more specialized towards the protection of specific categories of people who need special protection, such as women, children, persons with disabilities and indigenous populations⁶³.

Analysing now the major differences among the two bodies of law, it is possible to see that the most important ones concern the situation in which the two legal branches act: IHL governs a State's conduct during armed conflicts, while IHRL governs primarily a state's conduct towards its people in peacetime. Moreover, IHRL does not bind individuals and cannot judge them accountable for any crimes⁶⁴.

1.1 Definition of International Humanitarian Law and its role in the Russia-Ukraine conflict

Deepening now the analysis on IHL, it is necessary to give a more precise definition, and to highlight the different legal terminology used. Precisely, in accordance with what the ICRC says, IHL protects those who are not, or no longer, taking part in fighting, and has the authority to put restrictions on the means of warfare, particularly on the kind of weapons that can be used, and the methods of warfare, such as military tactics.

Regarding the treaties in which IHL is embodied, other than the 1949 Geneva Conventions, ones of the most important conventions are the Additional Protocols I and II of 1977 relating to the protection of victims of armed conflicts, which deal respectively with international and non-international armed conflicts. Precisely, they put additional boundaries on how the war can be conducted, in order to better protect civilians involved in conflicts⁶⁵.

⁶³ OHCHR (2011: 5).

⁶⁴ ICRC (2001: 2).

⁶⁵ ICRC (2009).

Other relevant agreements relate to the prohibition of the use of certain weapons and military tactics and the protection of certain categories of people and goods. Among these can be found:

- the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols;
- the 1972 Biological Weapons Convention, which forbids the development, manufacture, transfer, stockpiling, and use of biological and toxic weapons. It was the first multilateral treaty to prohibit an entire class of Weapons of Mass Destruction ('WMD')⁶⁶;
- the 1980 Conventional Weapons Convention and its five protocols; the main point here is the prohibition of indiscriminate weapons and weapons that could cause unnecessary suffering to civilians⁶⁷;
- the 1993 Chemical Weapons Convention, which aims at completely eliminating this category of weapons⁶⁸;
- the 1997 Ottawa Convention on anti-personnel mines;
- the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

All these categories will be extensively examined in the following paragraphs, where the different subjects covered by IHL will be analysed.

Regarding the definition of IHL, as just said above, International Humanitarian Law establishes how the parties involved in a conflict must act; that is why IHL is also known as the Law of Armed Conflict ('LOAC') or the law of war. This difference of terminology can be defined as the attempt of humanitarian-oriented groups and nongovernmental organizations to avoid phrases like "law of war" in favour of more pacific terms. This desire is consistent with recent efforts to limit the means of armed conflict, as the treaties prohibiting or restricting the use of antipersonnel land mines, cluster munitions, and other weapons cited above, and encouraging a more peaceful approach focused on human rights⁶⁹.

At this point, and considering the conflict here analysed, it is useful to define in which case it is possible to talk about "international conflict" based on LOAC. According to the common Article 2 of the 1949 Geneva Convention,

⁶⁶ United Nations Office of Disarmament Affairs, 10 April 1972, *Biological Weapons Convention*.

⁶⁷ ICRC (2021: 2).

⁶⁸ OPCW (2020).

⁶⁹ SOLIS (2010a: 23).

“[...] the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”⁷⁰. Thus, considering this definition, in case of international armed conflict, all four of the 1949 Geneva Conventions apply, plus it involves, for states that have ratified it, the 1977 Additional Protocol I. Particularly, the latter explicitly provides that “This Protocol [...] supplements the Geneva Conventions and shall apply in the situations referred to in Article 2 common to those Conventions”⁷¹.

As the definition of these concepts may seem very broad and confusing, I think it is also important to take into consideration the core principles of international humanitarian law, which I believe will be extremely useful throughout the analysis to be able to recognise which acts can and which cannot be classified as violations of IHL. The core fundamental principles of IHL are the following below.

- The principle of distinction between civilians and combatants, and between military and civilian objectives, implying that parties involved in a conflict should concentrate their operations just toward military objectives.
- The prohibition to attack those *hors de combat*, i.e., those combatants no longer able to engage in hostilities because of sickness or injury.
- The principle of humanity, which prohibits the infliction of unnecessary suffering to civilians.
- The principle of necessity, that only allows the use of force to the extent necessary to achieve the legitimate goal of a conflict, namely the complete or partial submission of the enemy as soon as possible with the least amount of life and resources expended.
- The principle of proportionality, which aims at limiting damages caused by military operations. More precisely, this principle prohibits attacks against military objectives which are expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof. Thus, the methods of warfare must not be disproportionate to the military advantage sought⁷².

Certainly, this is extremely relevant in respect of the Russia-Ukraine war, as many, if not all of these principles have been violated in different ways and

⁷⁰ Art. 2, Geneva Convention I.

⁷¹ SOLIS (2010b: 150).

⁷² ICRC (2015a).

by using different warfare means. Analysing all these violations will be the focus of paragraph two of this chapter.

1.2 The difference between *jus in bello* and *jus ad bellum*

Another important point to clarify in order to understand the field of operation of this branch of law, is the definition of the concepts of *jus in bello* and *jus ad bellum* and see how IHL falls only in the first one and not in the second.

Historically, IHL arose during a period when the use of force was a legal form of international relations, when states were not prohibited from waging war and had the right to declare war, i.e., in accordance with the criteria of *jus ad bellum*. If they resorted to hostilities, it did not seem illogical for international law to compel them to follow certain rules of war, i.e. *jus in bello*. Today, a peremptory rule of international law prohibits the use of force between states, thus *jus ad bellum* has changed into *jus contra bellum*⁷³. Individual and collective self-defence exceptions are permitted, based on the UN Security Council's resolutions and, arguably, the right of peoples to self-determination.

By definition, *jus ad bellum* refers to the circumstances that allow states to go to war or use armed force in general, thus governing the right to war. The prohibition of the use of force among states, as well as the exceptions to it, are the cornerstones of *jus ad bellum*, as outlined in the 1945 United Nations Charter. On the other hand, *jus in bello* governs the behaviour of parties involved in an armed conflict, thus it governs the way in which warfare is conducted. IHL is its synonym, and it seeks to reduce suffering in armed conflicts by, among other things, protecting and assisting all victims of armed conflict to the greatest extent possible.

As anticipated above, IHL applies to all belligerent parties, regardless of the reasons for the conflict or the legitimacy of the causes for which they fight. If this were not the case, enforcing the law would be impossible because each party would claim to be a victim of aggression. Furthermore, IHL is designed to protect victims of armed conflicts regardless of political affiliation. As a result, *jus in bello* is always considered distinct from *jus ad bellum*; thus, it is recognized that *jus ad bellum* norms cannot affect the validity of *jus in bello* norms⁷⁴.

1.3 *Jus in bello* and human rights

As in this chapter only International Humanitarian Law is taken into account, it is important to clarify the relation between *jus in bello* and human rights,

⁷³ Roos (2022).

⁷⁴ ICRC (2015b).

which should not be confused with the principles of International Human Rights Law.

Despite the distinction between international human rights law and international humanitarian law which implies that the former is applied during times of peace and the latter during times of armed conflict, modern international law recognizes that this definition needs a clarification. Indeed, the international community has widely recognized that, as human rights obligations stem from the recognition that they are inherent rights common to all human beings, and because these rights can be affected both in times of peace and in times of war, international human rights law continues in a sense to apply in situations of armed conflict. Most importantly, nothing in human rights treaties suggests that the human rights they protect apply also in situations of armed conflict where international humanitarian law is enacted. As a result, the two bodies of law, IHL and IHRL, are regarded as complementary sources of obligations in armed conflict situations.

This view is also confirmed by several comments of the Human Rights Committee, for instance No. 29 (2001) which affirms the non-derogation of human rights during a state of emergency, such as war⁷⁵. Furthermore, in its Resolution 9/9 named “Protection of the human rights of civilians in armed conflict”⁷⁶, the Human Rights Council acknowledges that human rights law and international humanitarian law are complementary and mutually reinforcing. The Council held that all human rights required equal protection and that the protection provided by human rights law continued in times of armed conflict. The Human Rights Council also reiterated that effective measures to guarantee and monitor the implementation of human rights in situations of armed conflict, including people under foreign occupation, should be taken, and that effective protection against violations of their human rights should be provided, in accordance with international human rights law and the applicability of international humanitarian law⁷⁷.

Overall, considering also the definition provided before of IHL, it can be said that it protects the core of human rights during armed conflict, as its aim is to protect the lives, health, and human dignity of civilians and combatants who are no longer involved in hostilities. Among the principles that are common to both IHL and IHRL regarding the protection of human rights, there are: the right to life, the prohibition of discrimination based on sex, race, or religion, the prohibition of slavery, torture, cruel and degrading treatment⁷⁸.

⁷⁵ International Covenant on Civil and Political Rights, 31 August 2001, CCPR/C/21/Rev.1/Add.11, *General Comment No. 29 States of Emergency (Article 4)*.

⁷⁶ Human Rights Council Ninth session, 9 October 2008, A/HRC/12/L.15, *Protection of the human rights of civilians in armed conflict*.

⁷⁷ UNITED NATIONS HUMAN RIGHTS OFFICER OF THE HIGH COMMISSIONER (2011: 6).

⁷⁸ AMERICAN RED CROSS (2011: 1).

1.4 Subjects covered by IHL

In this section the subjects covered by International Humanitarian Law will be analysed in detail, with the aim of identifying which actions committed by the parties involved in the ongoing Russia-Ukraine conflict can amount to violations of IHL. More precisely, it will be explained how this body of law defines the conduct of hostilities; what prohibitions on the use of explosive weapons are envisaged; how the immunity of hospitals and ambulances is defined; the definition and violation of the law of occupation; what are the guarantees that a party in a conflict must respect towards prisoners of war; what can be identified as war crimes. Most of the norms that cover all these topics are provided by the Geneva Conventions and their additional protocols; overall, the main point of all these is the humanitarian protection, which is the one I will try to emphasize through this work. All Geneva Conventions contain provisions that require State parties to care about all protected persons during an armed conflict. Geneva Convention I provide in details norms stating that State Parties must provide adequate care to injured and sick members of armed forces, including a sufficient level of food, water, shelter, and medical care, without any type of discrimination. Moreover, this same Convention also prohibits State parties from engaging in any type of medical experimentation, torture, or other degrading or humiliating treatment. The same treatment is expected for members of armed forces on the high seas and prisoners of war, according to Geneva Convention II and Geneva Convention III respectively. Then, Geneva Convention IV requires the parties involved in the conflict to take adequate measures to protect civilians from the impact of military operations and provide a heightened level of human treatment. As per people in the army, this treatment includes access to sufficient food, water, shelter, and medical care; however, in this case the Convention goes more into details, specifying that State parties must also permit civilians to engage in religious and other cultural practices⁷⁹.

Among all these subjects covered by IHL, I will focus on the protection of civilians and its implications during the Ukrainian conflict. Specifically, more attention will be dedicated to the explanation of war crimes and crimes against humanity, as per their complexity and their relevance in this analysis.

1.4.1 Conduction of hostilities: what and who is targeted

As previously said, the aim of International Humanitarian Law is to regulate the methods and means of warfare, and consequently, to find a balance between legitimate military action and humanitarian objectives.

⁷⁹ THE GLOBAL ACCOUNTABILITY NETWORK (2022: 24).

Firstly, some definitions for both parties and objects involved in a war are necessary. Methods of warfare are defined as the tactics or strategy used in hostilities against an enemy in times of conflict, while means of warfare are the weapons or weapon systems used by the parties involved in the conflict⁸⁰. Among the parties involved, combatants are individuals who are authorized to use force in armed conflict under international humanitarian law. In times of armed conflict, however, they are legitimate military targets. Nevertheless, unlike civilians, they may not face criminal charges for their participation in hostilities as long as their use of force is enacted according to the provisions of the law of armed conflict. It is thus this authorization to use armed force that distinguishes combatants from civilians, who therefore are granted protection from military operations, and certain categories of civilians are entitled to reinforced protection, i.e., vulnerable categories.

Finally, military objectives are objects that, by their nature, location, purpose, or use, contribute effectively to military action and whose total or partial destruction, capture, or neutralization provides a clear military advantage⁸¹. Precisely, this definition is of extreme relevance for the mechanism of protection of civilians during conflict; in fact, here are two cumulative aspects to take into account when talking about a military objective: the object's nature, location, purpose, or use must all effectively contribute to military action. As a result, the civilian or military nature of an object is determined by its impact on the course of the conflict. Secondly, the object's destruction, capture, or neutralization must demonstrate a specific military advantage. Consequently, attacks that result solely in unspecified or potential advantage are prohibited.

According to the law of armed conflicts, the only legitimate goal of war should be to weaken and overpower the opponent's military forces; however, this is not always the case, and armed conflicts have involved more and more civilians and civilian targets. That is why there is a strong need to limit the use of force in order to reduce the risks for people who are not part in the conflict, but also to avoid the indiscriminate destruction of the enemy⁸². Moreover, respect for military methods becomes more difficult when opposing armed forces' powers and means are significantly unbalanced, which was also the case at the beginning of the Russia-Ukraine conflict. This lack of balance can be observed in both international and non-international armed conflicts, particularly when the technological means employed by the parties differ significantly. Because of the imbalance of forces and the lack of symmetry in means, belligerents frequently avoid direct military confrontation. These methods directly erode the distinction between civilians

⁸⁰ MEDECINS SANS FRONTIERES (1998a).

⁸¹ MEDECINS SANS FRONTIERES (1998b).

⁸² *Ibidem*.

and combatants, as well as the selection of military objectives and methods of warfare.

As the concepts and methods of the war emphasized the weakening of the fundamental principle of distinguishing between civilians and combatants, legally ambiguous humanitarian law concepts have emerged, combining humanitarian law elements with those of law enforcement, and whose practical application is subject to discretion and arbitrariness. One of these concepts is the one of “double objective”, that is a target that has both military and civilian characteristics, whose legitimacy of an attack requires a prior assessment of the proportionality between military advantage and civilian collateral damage⁸³.

About this, the Hague Conventions of 1899 and 1907, as well as the 1949 Geneva Conventions and their 1977 Additional Protocols, established the fundamental rules, restrictions, and prohibitions governing the use of violence and various methods of warfare in international and non-international armed conflicts. Among the most important prohibited methods of warfare there are: perfidy, terror, starvation of civilians, indiscriminate attacks, attacks aimed at causing damage to the natural environment, attacks against works and installations containing dangerous forces, pillage of cultural objects and property, taking hostages, and the use of human shields or population movements to favour the conduct of hostilities. Additionally, according to IHL, commanders of the military operations must assure that members of the army under their control know the contents of these protocols and conventions, and they have the responsibility to avoid every means that could kill or cause damage to civilians⁸⁴.

The following paragraphs will explain more deeply the prohibitions imposed for the conduct of hostilities during armed conflicts; the first one regards the use of explosive weapons and which types are banned.

1.4.2 The use of explosive weapons and its limitations

In paragraph 1.1 I already mentioned the most important conventions which declare the prohibition of certain types of explosive weapons. In this section it will be laid out more clearly the reasons why these prohibitions are relevant and, specifically, it will focus on the effects caused by the use of explosive weapons in wide populated areas. This point is crucial because, as it will be clarified in paragraph 2, during the ongoing war in Ukraine there have been numerous attacks made on purpose on residential and densely populated areas.

⁸³ MEDECINS SANS FRONTIERES (1998a).

⁸⁴ MEDECINS SANS FRONTIERES (1998b).

Overall, it is recognized that modern armed conflicts are increasingly being fought in densely populated areas, which is also caused by the non-distinction of civil and military objectives, as said above. Moreover, the urbanization of warfare is exacerbated by the fact that some belligerents avoid open combat by intermingling with civilians and even launching attacks from populated areas. Whether intentional or unintentional, or imposed by an adversary, such proximity endangers civilians by drawing hostilities into populated areas.

According to the ICRC it is estimated that urban warfare affects approximately 50 million people worldwide⁸⁵.

In fact, from a humanitarian perspective, explosive weapons in populated areas are the main cause of civilian harm. The repercussion that these weapons can have on people are several and include physical injuries and death, long-term disabilities, and mental distresses. Furthermore, civilians suffer the impact of attacks made with these weapons as in most of the cases civilian residential building, critical infrastructures, such as hospital, energy providers, water and food supply, are the main targets. The primary consequence of this is surely the displacement of people forced to flee their homes, secondly, the environmental impact that can result extremely relevant, as the pollution caused by explosions and debris can cause permanent damage to the surrounding environment, also leading to dramatic sanitary conditions.

Clearly, together with the way these weapons are used, and the object targeted, it is the way in which they are designed is crucial. By definition, explosive weapons are intended to deliver a munition with a high explosive payload to a target, such as a rocket, a bomb, or a missile, or other projectile; usually, the damages are caused by blast, fragmentation, and heat⁸⁶.

For the reasons explained above, it is easily comprehensible why several rules for the prohibition of these weapons have been developed. Among the IHL norms that have been established, Additional Protocol I to the Geneva Conventions sets out the prohibition against indiscriminate attacks, the prohibition against area bombardment, the prohibition against disproportionate attacks, and the obligation to take precautions. Parallely, specific conventions prohibiting certain weapons have been drafted through the years.

Regarding the prohibition against indiscriminate attacks, Additional Protocol I, Article 51(4) of Customary International Humanitarian Law by the ICRC affirms that indiscriminate attacks are those:

- which are not directed at a specific military objective;
- which employ a method or means of combat which cannot be directed at a specific military objective;

⁸⁵ ICRC (2022 : 17).

⁸⁶ ICRC (2022: 65).

- which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law.

Consequently, in these cases there is a strike military objectives and civilians or civilian objects without distinction⁸⁷.

Secondly, Additional Protocol I, Article 51(5)(a) concerning the prohibition against area bombardment defines that it is prohibited to launch a bombardment attack using any method or means that treats a number of clearly separated and distinct military objectives located in a city, town, village, or other area containing a similar concentration of civilians or civilian objects as a single military objective. In this definition, the concept of “clearly separated and distinct” attack is controversial and not clear. An attempt was made during the drafting of the 1977 Additional Protocols to add a more precise phrase stating that the distance should be sufficiently large to see the military objective separately; however, consensus was not reached about this. Thus, even if the prohibition on area bombardment is not violated, other IHL rules must be abided by because the military objectives cannot be considered clearly separated and distinct under the circumstances. For example, even if several military objectives located within a populated area are so close together that they cannot be attacked separately, an attack against them would be prohibited if it could be expected to result in excessive civilian casualties or damage to civilian objects in violation of the rule of proportionality, for example, due to the weapon’s wide area effects⁸⁸.

The following Additional Protocol I, Article 51(5)(b) concerning the prohibition against disproportionate attack affirms that it is prohibited to launch an attack that may be expected to result in incidental civilian casualties, civilian injury, civilian property damage, or a combination of these, which would be excessive in relation to the concrete and direct military advantage anticipated. This is also known as “the principle of proportionality” and implies that, before carrying an attack, parties in a conflict must do everything possible to assess if an attack will be disproportionate. It is also specified that this evaluation should be done by a trained and experienced military officer who has enough information to be able to take the right decision⁸⁹.

Finally, Additional Protocol I, Article 57(1) establishes the obligation to take precautions, which means that for the overall duration of the armed conflict, States must always spare the civilian population and objectives from any attacks. The requirement to exercise constant caution extends to all aspects of military operational training, planning, and mission execution, and is interpreted by some as requiring soldiers to be trained and directed to

⁸⁷ ICRC (2022: 88).

⁸⁸ ICRC (2022: 94).

⁸⁹ ICRC (2022: 96).

instinctively strive to reduce civilian risk in all situations. More precisely, the general rule follows the principle that the greater the risk to the civilian population in any given military operation, the highest level of care required, especially when operations are conducted in urban areas⁹⁰.

1.4.3 Immunity of hospitals and ambulances

As previously said, the purpose of the Geneva Conventions is to protect each individual who is impacted by an armed conflict or occupation, and additionally they also provide specific protections to specific categories of people who may be at risk in these situations. Among these, Geneva Convention I provides protections for sick or wounded members of armed forces, while Geneva Convention II seeks to protect sick and injured members of the armed forces who are at sea during an armed conflict. Then, Geneva Convention III provides protections for prisoners of war, and Geneva Convention IV provides broad protections for any person who is not protected under any other of the Geneva Conventions⁹¹.

In addition to the protection of civilians and soldiers, each of the four Geneva Conventions contains several provisions for the protection of hospitals, *ad hoc* medical facilities, medical personnel, and medical transport equipment. Firstly, Articles 19-37 of Geneva Convention I prohibit parties involved in the conflict from targeting, bombing, destroying, or otherwise attacking all kinds of medical facilities, medical transports, and medical personnel that is present on the field to provide medical care to wounded and sick members of armed forces. The same general protections are provided by Geneva Convention II, referring precisely to hospital ships and other medical assistance provided to sick and wounded soldiers on the high seas.

Thirdly, an important prohibition provided by Geneva Convention IV regards attacks carried out against civilian hospitals. According to Article 18 of this Convention, civilian hospitals and medical facilities, particularly maternity hospitals, “may in no circumstances be the object of attack” and “at all times be respected and protected by the Parties to the conflict”. On the other hand, Article 19 enumerates the only circumstance in which civilian medical facilities can lawfully be the target of an armed attack, stating that civilian hospitals which are used to “commit, outside their humanitarian duties, acts harmful to the enemy” can be a target. However, even when a civilian hospital is considered to have a qualifying harmful conduct, a state party must first provide a warning to the civilian hospital before stripping it of its protection⁹².

⁹⁰ ICRC (2022: 102).

⁹¹ THE GLOBAL ACCOUNTABILITY NETWORK (2022: 23).

⁹² THE GLOBAL ACCOUNTABILITY NETWORK (2022: 24).

1.4.4 Law of occupation

According to Article 42 of the 1907 Hague Regulations, a territory is considered “occupied” when it is placed under the authority of a hostile army; moreover, the territory is formally considered occupied when the established authority is able to exercise its power.

Subsequently the four Geneva Conventions of 1949 in their common Article 2, state that their norms apply to any territory occupied during international hostilities, also in situations where the occupation of state territory meets with no armed resistance. In addition, artt. 27-34 and 47-78 of the Fourth Geneva Convention regulate respectively the “Provisions common to the Territories of the Parties to the Conflict and to Occupied Territories”, and the civilians rights that must be respected under the section “Occupied territories”. However, it is up to the UNSC, under the rules of the UN Charter, to decide about the legality of an occupation⁹³.

After these first regulations about the topic, this subject evolved during the last decades, particularly for what concerns the respect of human rights when a territory is occupied. In fact, contemporary international humanitarian law has clarified the rights and duties of the forces who occupy a certain territory, and most importantly, it has defined the rights of the population part of the occupied territory, and the rules for administering such territory.

These rules have been confirmed by several recent international court decisions which state that the forces which have occupied a territory are obliged to comply with the rules on the application and respect of human rights laid down in international humanitarian law. These decisions thus confirm that the application of IHL in these situations is complementary to the human rights conventions. In addition, also the European Court of Human Rights (‘ECtHR’) has issued notable judgments on European countries’ violations of the European Convention on Human Rights (‘ECHR’). One of these judgements concerns the intervention of European countries in Iraq and military occupations of the country⁹⁴. Particularly, one of the most relevant judgements in this context is *Hassan v. United Kingdom*⁹⁵, held by the ECtHR in 2014 in relation to the acts of the United Kingdom in Iraq in 2003. Tarek Hassan, an Iraqi national, was arrested by British forces while he was in his brother’s house, an Al-Quds General, armed with an AK-47 machine gun. Hassan was then detained at a British-controlled section of the US-operated Camp Bucca in Iraq on suspicion of being a suspected combatant or a civilian posing a security risk. Both UK and US authorities interrogated Hassan; he was released from Camp Bucca after both authorities quickly determined that he was a non-combatant who did not constitute a security risk. His body, which had signs of torture and execution, was discovered months later, many

⁹³ ICRC (2004b).

⁹⁴ MEDECINS SANS FRONTIERES (2022).

⁹⁵ Judgement of the European Court of Human Rights, 16 September 2014, App. 29750/09, *Hassam v. United Kingdom*.

miles distant from Camp Bucca, in a region not under British authority. The United Kingdom contended that Hassan did not come under British jurisdiction since Camp Bucca was under US authority rather than effective British control. However, the Grand Chamber of the ECtHR ruled that Hassan was under the authority and control of the United Kingdom, and so subject to its jurisdiction, from the time he was arrested until he was released. The United Kingdom contended that the right to liberty entrenched in Article 5 of the ECHR⁹⁶ did not apply during an active phase of an international armed conflict when IHL dominates in place of ECHR human rights legislation. Because Hassan was apprehended and initially detained as a suspected combatant, the UK argued that Article 5 ECHR was either displaced by IHL as *lex specialis* or modified to incorporate or allow for the capture and detention of actual or suspected combatants in accordance with the Geneva Conventions. As a consequence, this would imply that the United Kingdom committed no violations in relation to Hassan's capture and detention. The Grand Chamber refused to accept that the scope of Article 5(1)(c)⁹⁷ extended to situations of security internment in an international armed conflict. The Court observed that it was not customary for ECHR's contracting parties to deviate from their commitments under Article 5 in order to hold people under the Third and Fourth Geneva Conventions during international armed conflicts. The Court's majority ruled that, even in situations of international armed conflict, the ECHR's safeguards continue to apply, albeit interpreted against the backdrop of IHL provisions. Therefore, the case raised the issue of extraterritoriality, the right to liberty and security in times of armed conflict, and the link between international humanitarian law and human rights law. The Court ruled in its judgment of 16 September 2014, that because the safeguards provided by IHL and the European Convention on Human Rights coexist in times of armed conflict, the grounds of permitted deprivation of liberty found in both bodies of law should, to the greatest extent possible, be accommodated and applied concurrently. The most important implication of this judgement is that, for the first time, the ECHR interpreted how IHL and IHL should coexist in a way that appears to prioritize some aspects of human rights law⁹⁸. Another case of the ECtHR regarding human rights during an occupation in armed conflicts, is *Cyprus v. Turkey*⁹⁹, held in 2001. The background of the case concerns the human rights situation in Northern Cyprus since the beginning of the military operation of Turkey in the region in 1974. The Court found several violations of the ECHR by Turkey on the Greek-Cypriot population. Particularly the Court ruled that there have been

⁹⁶ Art. 5, ECHR, Right to liberty and security.

⁹⁷ "[...] the lawful arrest or detention of a person for the purpose of bringing him before the competent legal authority on reasonable suspicion of committing an offence or when it is reasonably considered necessary to prevent him from committing an offence". Art. 5(1)(c), ECHR.

⁹⁸ WEBBER (2015).

⁹⁹ Judgement of the European Court of Human Rights, 10 May 2001, Ap. 25781/94, *Cyprus v. Turkey*.

continuing violation of Article 5, the right to liberty and security, violation of Article 8¹⁰⁰, right to respect for private and family life, home and correspondence, violation of Article 1 of Protocol No. 1, protection of property, and violations of Article 13, right to an effective remedy. In regards to the Turkey-Cyprus issue, another case has also been treated by the ECtHR, namely *Varnava and others v. Turkey*¹⁰¹. The applicants referred that 9 men disappeared after being detained by the Turkish military forces. The case reached the Grand Chamber in 2009, and the Court found violations of Artt. 2, 3, and 5 of the ECHR.

It can therefore be affirmed that according to humanitarian law, occupation is a form of international armed conflict that is governed by the four Geneva Conventions and Additional Protocol I, which state the obligations to which the parties involved are subjected. In general, the occupying power's basic obligations under IHL are to maintain law and order as well as public life in the occupied territory. For the most part, the occupying power must adhere to the laws already in effect in that territory. Particularly, the Fourth Geneva Convention establishes the main rules applicable in case of occupation; the most important ones are listed below.

- The occupant does not acquire sovereignty over the territory.
- Occupation is only temporary, and the rights of the occupant are limited to the extent of that period.
- The occupying power must respect the laws in force in the occupied territory, unless they constitute a threat to its security or an obstacle to the application of the international law of occupation.
- The occupying power must take measures to restore and ensure, as far as possible, public order and safety.
- To the fullest extent of the means available to it, the occupying power must ensure sufficient hygiene and public health standards, as well as the provision of food and medical care to the population under occupation.

¹⁰⁰ "1. life, his home and his correspondence.

Everyone has the right to respect for his private and family

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". Art. 8, ECHR.

¹⁰¹ Judgement of the European Court of Human Rights, 10 September 2009, App. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, *Varnava and Others v. Turkey*.

- The population in occupied territory cannot be forced to enlist in the occupier's armed forces.
- Collective or individual forcible transfers of population from and within the occupied territory are prohibited.
- Collective punishment is prohibited.
- Transfers of the civilian population of the occupying power into the occupied territory, regardless of whether forcible or voluntary, are prohibited.
- The confiscation of private property by the occupant is prohibited.
- The taking of hostages is prohibited.
- The destruction or seizure of enemy property is prohibited, unless absolutely required by military necessity during the conduct of hostilities.
- Cultural property must be respected.
- People accused of criminal offences shall be provided with proceedings respecting internationally recognized judicial guarantees.
- Personnel of the International Red Cross and Red Crescent Movement must be allowed to carry out their humanitarian activities. The ICRC must be given access to all protected persons, wherever they are, whether or not they are deprived of their liberty¹⁰².

A clarification is also needed to distinguish occupied territories from invaded territories. If the occupying forces fail to establish or exercise authority over a territory for a variety of reasons, including hostile acts committed against them by combatants from the occupied territory, humanitarian law will rather consider these areas as invaded territories. In other words, they are regarded as battlefields, and the rules that govern them are general armed conflict rules¹⁰³.

¹⁰² Geneva Convention IV (1949: 179-194).

¹⁰³ MEDECINS SANS FRONTIERES (1998d).

1.4.5 The treatment of prisoners of war (PoWs)

IHL defines a prisoner of war as a combatant who falls into the hands of the enemy during an international armed conflict; prisoners of war ('PoWs') are protected by IHL in the same way, whether they are combatants or civilians. This is explained also in the ICRC Commentary on the Geneva Conventions, where it is stated that "nobody in enemy hands can be outside the law".

The treatment of prisoners of war is specifically regulated by the Third Geneva Convention of 1949; there can be found a more precise definition of POWs under Article 4, which lists several categories that can be identified as prisoners of war. Among these there are the members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps, people who accompany the armed forces without actually being part of it, members of crews, pilots and the crews of civil aircraft, and also inhabitants of a non-occupied territory who, under the threat of an invading army, spontaneously take up arms to resist¹⁰⁴.

Furthermore, Additional Protocol I of 1977 broadened the definition of a prisoner of war in Artt. 43-44 taking into consideration also armed groups that do not formally belong to regular armed forces, as well as those who take part in the conflict, including civilians.

According to the protocol, the armed forces of a party to a conflict include all organized armed forces, groups, and units that are under a command that is accountable to that party for the conduct of its subordinates, even if that party is represented by a government or an authority that is not recognized by an opposing party¹⁰⁵.

Most importantly, the status of prisoner of war, according to the 1977 Additional Protocol I, is linked with objective criteria based on direct participation in the conflict, rather than legal criteria based on formal membership in armed forces. As a result, both combatants and civilians directly involved in a conflict can claim prisoner-of-war status and the protection that comes with it; a person who participates in hostilities and falls under the control of an opposing party is presumed to be a prisoner of war.

If there is any doubt as to whether any such person is entitled to this status, art. 45(1) of Additional Protocol I establishes that he or she shall retain such status and thus be protected by the Third Convention and this Protocol until his status is determined by a competent tribunal.

As a result, since the 1977 Additional Protocols, the category of "illegal combatants" used to deny some combatants the status or protection afforded to prisoners has no legal basis in humanitarian law¹⁰⁶.

¹⁰⁴ GENEVA CONVENTION III (1949: 92-94).

¹⁰⁵ Additional Protocol I.

¹⁰⁶ *Ibidem*.

1.4.6 War crimes, Crimes against humanity and Genocide

In this paragraph the definition of war crimes, crimes against humanity and genocide will be delineated and analysed. This part is extremely important as in the current Russia-Ukraine war several actions have been committed that can fall within these categories; as it will be said, the classification is not always obvious and unanimous, that is why I will try to delineate clear and effective definitions. The main source used to gain information about these specific crimes is the status of the International Criminal Court ('ICC')¹⁰⁷, which define all of them as the court has the jurisdiction on these crimes.

Starting from the definition of war crimes, Article 8 of the Rome Statute provides a definition of what conduct constitutes a war crime; in the first place, to be considered a war crime, a specific act must be committed during a time of either international or non-international armed conflict.

More precisely, the statute states that "The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes"¹⁰⁸.

For the purpose of this Statute, "war crimes" means:

"(a) Grave breaches of the Geneva Conventions of the 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention [...]"¹⁰⁹.

This category of branches include wilful killing, torture, or inhuman treatment, wilfully causing great suffering, extensive destruction of property, depriving prisoners of war rights, unlawful deportation, or transfer of individuals, and the taking of hostages¹¹⁰.

The most important element to take into consideration for the accountability of these crimes is that war crimes are committed by individuals, thus they imply individual criminal responsibility.

The second section of Article 8 details then various other violations of international humanitarian and human rights law, including, but not limited to, launching intentional or indiscriminate attacks against civilian populations, targeting civilian infrastructure or religious, cultural, medical, or educational institutions, subjecting individuals to unnecessary medical experimentation, and employing various types of inhuman weapons or projectiles. To effectively hold someone accountable for a war crime, the prosecutor must prove that the person directed or participated in its perpetration.

The scenarios just explained are developed clearly in Article 8 (2)(e)(iv), concerning the specific case of war crime conducted by attacking protected objects, which will be relevant for the analysis of the crimes perpetrated by

¹⁰⁷ Rome Statute of the ICC.

¹⁰⁸ Art. 8, Rome Statute.

¹⁰⁹ Art. 8(a), Rome Statute.

¹¹⁰ ICC (1998: 4-5).

the Russian army that comprehend several of these objectives. Here the statute defines that:

“(1) The perpetrator directed an attack; (2) The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives; (3) The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack; (4) The conduct took place in the context of and was associated with an armed conflict, and that he was aware of the existence of the armed conflict”¹¹¹.

As to crimes against humanity, Article 7 of the Rome Statute details the cases in which the prosecutor can identify and charge someone with a crime against humanity. Precisely, a crime against humanity is defined as any of the listed acts which are part of a “widespread or systematic attack directed against any civilian population, with knowledge of the attack”. In order to successfully charge an individual with a crime against humanity under Article 7, the Prosecutor must be able to establish that the offense was committed as part of a “widespread or systematic attack directed against a civilian population”, and that the perpetrator knew that such an attack was or intended to be part of a widespread or systematic offensive directed against a civilian population. Among the crimes against humanity that fall within the jurisdiction of the ICC there is murder, extermination, enslavement, forced deportation, imprisonment, torture, rape and other sex crimes, persecution, enforced disappearance, apartheid, and other inhuman acts “of a similar character”. In addition, the second paragraph of Article 7 of the Rome Statute provides further clarification on the types of conducts that fall within the scope of crimes against humanity. For instance, it precises that the concept of attacks directed against any civilian population entail “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”¹¹².

Finally, the definition of genocide is delineated in Article 6 of the Rome Statute and includes all the acts committed with the intent to “destroy, in whole or in part, a national, ethnical, racial or religious group”. These acts include killing members of a group, causing serious bodily or mental harm to members of a group, deliberately inflicting on a group condition of life conceived to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within a group, forcibly transferring children of a group to another¹¹³. Moreover, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide precises in art. 1 and

¹¹¹ THE GLOBAL ACCOUNTABILITY NETWORK (2022: 27-28).

¹¹² THE GLOBAL ACCOUNTABILITY NETWORK (2022: 26).

¹¹³ ICC (1998: 3).

art. 3 that the prohibition on genocide must be strictly enforced at all times, whether in times of peace or war, and it also punishes any conspiracy, direct and public incitement, attempt, or complicity in committing genocide¹¹⁴.

2. Alleged violations of IHL in the Russia-Ukraine conflict to date

Having now reviewed the area within IHL operates, it is possible to affirm what alleged violations of IHL have been committed in this war so far. Particular attention will be given to the impact of the war on civilians, but also Prisoners of War ('PoWs').

For the analysis of the crimes committed from the beginning of the war, until July 2022, the information and data reported by the Office for Democratic Institutions and Human Rights of OSCE will be taken in account, specifically those provided by the report named "Report on violations of International Humanitarian and Human rights Law, War crimes and crimes against humanity committed in Ukraine (April-25 June 2022)"¹¹⁵. In fact, at the beginning of March 2022, Ukraine supported by 45 participating States invoked the OSCE Moscow Mechanism of the human dimension, which calls for the formation of a mission of three experts to conduct an investigation. The aim of the mission is to track and report IHL and IHRL violations committed by the parties involved in the conflict, with the collaboration of local organizations and NGOs¹¹⁶.

Alongside the information drawn from this report, data tracked by international organizations and non-governmental organizations will be analysed; particularly, the UN Office for the Coordination of Humanitarian Affairs ('OCHA') information concerning the protection of civilians and the violations perpetrated on them will represent an important source.

2.1 The targeting of civilians

In the following paragraphs, the main violations of IHL committed by the Russian army in the war in Ukraine will be reported, taking into consideration the legal basis explained above. Due to the large amount of information and its imprecision, it is not always possible to be sure about the data reported; therefore, it will be object of analysis only the information and numbers indicated by official sources, particularly the specialized agencies of the United Nations system.

¹¹⁴ CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (1948: 1).

¹¹⁵ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

¹¹⁶ *Ibidem*.

The first aspect I want to analyse, for its importance and relevance in this study, is the targeting of civilians during this armed conflict, and the effects of it on the Ukrainian population.

Right after the beginning of the attacks, civilians started to flee from Ukraine to escape the war and take refuge in the neighbouring countries. According to the data collected from the 24 February 2022 and updated the 7 March 2023 by the United Nations High Commissioner for Refugees ('UNHCR'), 8,108,448 million Ukrainian refugees have been recorded across Europe, and among these, 4,890,639 million people have acquired temporary protection or similar national protection schemes in Europe. In accordance with the data, the majority of people with temporary protection arrived in Poland, followed by Czech Republic, Bulgaria, Slovakia and Romania. The organization also precises that 90% of these people are women and children, as men under 60 years old cannot leave the country due to the martial law. In addition, UNHCR also recorded more than 2 million people who fled from Ukraine to Russia or Belarus¹¹⁷.

Despite the dangerous situation, most of the citizens decided to remain in the country, or to move from the eastern regions to the western ones, particularly Lviv. The main response on the behalf of EU to the refugee emergency was to establish a plan of financial aid for refugees and simplified the legal procedures to receive temporary protection in the hosting countries.

However, since the first day of armed operations, in parallel to the massive movement of people outside the country, numerous civilian casualties have been registered. UN Office of the High Commissioner for Human Rights ('OHCHR') reported that from the 24 February 2022 to the 12 March 2023 21,965 civilian casualties occurred in Ukraine; more precisely, 8,231 civilians have been killed and 13,734 injured. March 2022 is the period in which more casualties have been registered; in that month almost 4,000 civilians have been killed and 3,000 have been injured. The majority of these casualties have been caused by explosive weapons with wide area effect and explosive remnants of war and mines. However, the organization believes the actual figures are much higher, as information from some locations that suffered intense hostilities were delayed, and many reports are still awaiting confirmation. This includes Mariupol, in the Donetsk region, Lysychansk, Popasna, and Sievierodonetsk, in the Luhansk region, where numerous civilian casualties have been reported¹¹⁸. Among the most brutal attacks against civilians that have been recorded until the present moment, there is the bombing of a theatre used to shelter civilians in Mariupol, killing at least 300 civilians and injuring an unknown number, occurred on the 16 March 2022. Before this, on the 28 February 2022, Russian military forces used indiscriminate cluster munitions against multiple civilian residences in Kharkiv, killing and injuring an

¹¹⁷ Ukraine refugee situation, 2023, UNHCR, *Operational data portal Ukraine refugee situation*.

¹¹⁸ OHCHR (2023a: 1-3).

unknown number of civilians, and damaging civilian properties¹¹⁹. Surely, what caused the most stir was the massacre in Bucha, a town northwest of Kyiv where it was estimated that more than 400 civilians were wilfully killed in March 2022, when it was under the control of the Russian armed forces. As soon as the city came under the control of Ukrainian forces, clear signs of massacre, torture, and violence against civilians emerged. It has been reported that dead bodies were found on the streets, and according to mayor Anatoly Fedoruk, about 280 people, men, women, and children, had been buried in a mass grave. Numerous bodies were found with their hands tied and killed with firearms *en masse*, following actual executions¹²⁰.

Analysing this in the light of what have been explained above, it is clear that these civilian casualties represent the result of the violation of one of the main principles of IHL, namely the principle of distinction between civilian and military objectives. Particularly, it is a violation of Additional Protocol I of Geneva Conventions concerning the protection of civilian victims of war. Moreover, if we look at the case of Bucha, wilful and indiscriminate killing, torture, enforced disappearances, and inhumane treatment of captured combatants and civilians in custody are all prohibited under international law. Anyone who orders or intentionally commits such acts, or who aids and abets them, is guilty of war crimes. As a matter of command responsibility, commanders of forces who knew or had reason to know about such crimes but did not attempt to stop them or punish those responsible are criminally liable for war crimes¹²¹.

Despite the controversy, it is still unclear how these war crimes can be judged; however, it is crucial that the Ukrainian government preserves all the evidence and presents indispensable evidence for the accountability of these crimes. One suggested solution could be Ukraine's ratification of the International Criminal Court treaty so to become allow the exercise of the jurisdiction of the court.

2.1.1 Cases of Conflict-Related Sexual Violence (CRSV)

As in every conflict and humanitarian emergencies, there are some categories of civilians who are more targeted than others. In this paragraph I want to analyse the impact on the Russia-Ukraine war on women and the cases of Conflict-Related Sexual Violence ('CRSV') perpetrated by the Russian army. According to the Center for Civilians in Conflict, CRSV is a form of sexual gender-based violence directed at an individual or a group based on their sex or gender. Rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, forced marriage, and any other form of sexual violence that is

¹¹⁹ THE GLOBAL ACCOUNTABILITY NETWORK (2022: 35).

¹²⁰ MIROVALEV (2022).

¹²¹ HUMAN RIGHTS WATCH (2022).

directly or indirectly related to a conflict are all examples of CRSV. This form of violence is brutal, premeditated, and designed to punish and humiliate individuals and communities. It is frequently committed in the context of abuses against civilian populations who are likely to be targeted because of their perceived or actual belonging in an ethnic and religious minority, political or gender identity, sexual orientation. Due to the current conflict, Ukraine is among the countries where CRSV is endemic. Due to structural inequalities, women and girls are disproportionately targeted by CRSV; men and boys, as well as members of sexual and gender minorities, can also be victims of CRSV. Moreover, specific vulnerable categories such as Internally Displaced Persons, migrants, detainees, people with disabilities, and specific ethnic and minority groups are also more exposed to the risk of sexual violence in conflict than others.

Among the consequences of CRSV, there are severe physical and psychological trauma, infection from sexually-transmissible diseases, and death. In addition to this, victims may face stigma and rejection from their communities and families¹²². This is why, also in the case of Ukraine here analysed, it is difficult to identify victims, especially among refugees¹²³.

Concerning the legal accountability of these actions, as anticipated in paragraph 1.4.6, Article 7 of the Rome Statute establishing ICC, states that rape and other sexual crimes are considered crimes against humanity when widespread and systematic. In addition, Article 8 of the Rome Statute also define these as war crimes, thus individuals can be charged¹²⁴. In addition, the UN Security Council adopted in 2008 the Resolution 1820 which addresses these forms of violence during conflicts, and it states that rape and other forms of sexual violence used as a “tactic of war” can be considered a war crime, a crime against humanity, or an act of genocide. In this regard, the International Criminal Tribunal for the former Yugoslavia (‘ICTY’) and the International Criminal Tribunal for Rwanda (‘ICTR’) were the first tribunals to explicitly include CRSV crimes in their Statutes¹²⁵.

Since the beginning of the Russia’s invasion of Ukraine the 24 February 2022, cases of sexual violence used as war weapon have been recorded by IOs, State officials and NGOs.

According to a report issued by OHCHR concerning the human rights violations in the country since February, by 15 May 2022, 108 allegations of CRSV against women, girls, men, and boys in the regions of Chernihiv, Dnipro, Donetsk, Kharkiv, Kyiv, Kherson, Luhansk, Mykolaiv, Vinnytsia, Zaporizhzhia, Zhytomyr, perpetrated by the Russian army have been identified. Among these, there were 78 rape allegations, including gang rape, 7 attempted rape allegations, 15 forced public stripping allegations, and 8

¹²² KOVAC (2022).

¹²³ MANNEL (2022).

¹²⁴ ICC (1998: 3-6).

¹²⁵ KOVAC (2022).

other forms of sexual violence allegations, including sexualized torture, unwanted sexual touching, and threats of sexual violence. However, in nine cases, perpetrators have also been identified as soldiers from the ranks of Ukrainian armed forces¹²⁶.

Moreover, according to the Independent International Commission of Inquiry on Ukraine established at the beginning of March 2022 with the adoption of Resolution 49/1¹²⁷, victims of CRSV range in age from four to more than eighty years old. In the cases verified by the commission and through the testimony recorded, perpetrators raped women and girls in their homes or kidnapped and raped them in abandoned buildings. In the majority of cases, these acts amounted to torture and cruel or inhumane treatment of the victims and relatives who were forced to witness them. The period analysed by the commission range from late February until the end of March. However, as reported by the commission, cases involving sexual and gender-based violence are difficult to investigate. Victims face difficulties reporting such violations, and due to the current security situation and forced displacement, victims are having difficulty gaining timely access to appropriate healthcare, psychological support services, and law enforcement offices. It is also not always possible to prove the existence of rape and the full extent of the victims' trauma forensically. Because of a lack of resources, families' requests that the *post-mortem* examination not be performed, or the condition of the remains, autopsy reports frequently focus on the immediate cause of death rather than the entirety of the trauma suffered by the victims. This becomes also complicated for the accountability of these crimes, as the identification of the perpetrators is not possible in the majority of cases. That is why it is widely assumed that the actual number of victims is much higher, and that many cases of rape and sexual violence go unreported¹²⁸.

Other relevant information is also reported by OSCE Office for Democratic Institutions and Human Rights ('ODIHR') in the report made by the experts established by the Moscow mechanism¹²⁹. During their first mission, which analysed the violations occurred in February and March 2022, experts noted that the outbreak of the conflict had indeed brought about an increase in gender-based violence.

In particular, the report of the mission highlights the risks and consequences on women who have been subjected to rape or other forms of sexual abuse, such as face a high risk of forced pregnancy, sexually transmitted infections, internal physical injuries, and mental problems. Women who became pregnant as a result of a rape may also face difficulties obtaining an abortion, due to the

¹²⁶ OHCHR (2022: 33).

¹²⁷ Resolution adopted by the Human Rights Council, 7 March 2022, A/HRC/RES/49/1, *Situation of human rights in Ukraine stemming from the Russian aggression*.

¹²⁸ INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY IN UKRAINE (2022: 14).

¹²⁹ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

level of destruction of medical facilities in Ukraine as well as strict anti-abortion laws in some of the countries of refuge, particularly Poland.

An example of this has been reported by the Commissioner for Human Rights Denisova who said that 25 girls aged 14-24 were kept in a basement in Bucha and gang-raped, as a result of which nine became pregnant¹³⁰.

In addition, the mission noted that women and girls make up the majority of refugees and internally displaced people. For this, when they are on the move or in temporary shelters, they are more vulnerable to gender-based violence, including rape and other forms of sexual abuse, as well as human trafficking. Pramila Patten, the UN Special Representative on Sexual Violence in Conflict, stated in June 2022 that Ukraine's humanitarian crisis was gradually turning into a trafficking crisis. This statement was also supported by Gillian Triggs, UNHCR's Assistant High Commissioner for Protection, who had already warned two months earlier that refugees fleeing Ukraine would face "the risks of predators and criminal networks who may attempt to exploit their vulnerability or lure them with promises of free transport, accommodation, employment, or other forms of assistance". In fact, there have been reports of women and girls receiving shelter in exchange for sexual services in the neighbouring countries of Ukraine. For this, on 3 May 2022 the Framework for Cooperation between the Government of Ukraine and the United Nations on the Prevention and Response to Conflict-Related Sexual Violence was signed in Kyiv. The Framework is based on Ukraine's National Action Plan for implementing UN Security Council Resolution 1325 on Women, Peace, and Security¹³¹, which aims at preventing and punishing rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, and any other form of comparable gravity perpetrated against women, men, girls, or boys that is directly or indirectly linked to a conflict. However, the text is rather general, and it does not take into consideration how the crimes perpetrated against women and girls can be judged¹³².

2.2 Indiscriminate use of explosive weapons

In the following paragraph, strictly related to the first one, I will analyse the violations of IHL concerning the use of explosive weapons and the targeting of protected objectives. Overall, from the beginning of the war until 29 March 2022, the organization Action on Armed Violence traced that, 14,471 casualties occurred in the country due to the use of explosive weapons, across 2,443 incidents; among these, 12,141 were civilian casualties¹³³.

¹³⁰ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

¹³¹ Resolution of the UN Security Council, 31 October 2000, S/RES/1325, *Resolution on women and peace and security*.

¹³² Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

¹³³ AOV (2022).

In the graph below created by the UN Human Rights Monitoring Mission in Ukraine (‘HRMMU’) it is possible to see the huge number of civilian casualties occurred for the use of different types of explosive weapons¹³⁴.

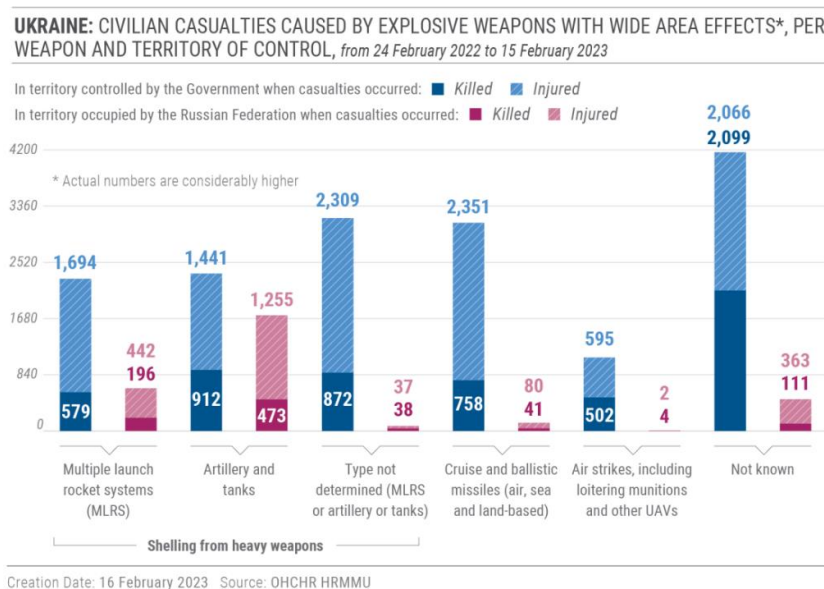


Figure 1: Data from the OHCHR and HRMMU report “Civilian casualties in Ukraine from 24 February 2022 to 15 February 2023”¹³⁵.

Since the 24th of February, the overwhelming majority of civilian deaths in Ukraine that OHCHR has documented were caused by the use of explosive weapons in populated areas, such as heavy artillery shelling, including the use of multiple launch rocket systems (‘MLRS’), missile attacks, and airstrikes. Cluster munitions can be carried by some of these weaponries, including MLRS, missiles, and air bombs. OHCHR has been collecting several information confirming that these weapons have been used by Russian armed forces and affiliated armed groups as well as, to a lesser degree, by Ukrainian armed forces. In particular, most of the attacks were done using cluster munitions in populated areas, which represent a violation of the prohibition of indiscriminate attacks. The degree of civilian casualties and the degree of damage to civilian infrastructure in each case reported by OHCHR also point to numerous failures to take constant care to protect the civilian population, civilians, and civilian objects during military operations, as well as to take all practical precautions during an attack.

On the 24th of February 2022, Russian military forces attacked a hospital in government controlled Vuhledar with cluster bombs, leaving four civilians

¹³⁴ Report of the OHCHR and HRMMU, 24 March 2023, *On the human rights situation in Ukraine 1 August 2022-31 January 2023*.

¹³⁵ *Ibidem*.

dead and ten others injured. In Mykolaiv, in March 2022, a cluster munitions detonation resulted in the deaths of 9 civilians. The same happened the 24th of March 2022, when as a result of a cluster munition assault by Russian armed forces on the humanitarian aid distribution centre in Kharkiv, 8 civilians were killed, and 15 were injured. Clearly, each of these attacks in the first few weeks of war sparked worries about indiscriminate or intentional attacks on civilians or civilian-related items.

Additionally, there have been instances where Ukrainian forces have used cluster munitions in populated regions, which have led to civilian casualties. For instance, on the 22nd of March 2022, a missile carrying a cluster munitions warhead was intercepted in the Donetsk region. OHCHR is worried about the use of Tochka-U missiles carrying cluster munitions in hostilities being carried out by the Russian Federation. These inaccurate, 15–120 km range missiles can carry warheads with 50 cluster submunitions, and they pose a danger to civilian lives. In fact, at least 10 strikes by Russian military forces and 25 attacks by Ukrainian military forces have been identified and confirmed. The missiles carried submunitions that struck populated regions in at least 20 instances, and in ten of such incidents have led to at least 279 civilian casualties¹³⁶.

2.2.1 The use of human shields

Concerning the use of explosive weapons, another violation of IHL that have been recorded is the setting up of positions inside or close to civilian areas, and the use of human shields during hostilities, by both Russian armed forces and affiliated armed groups as well as Ukrainian armed forces. In the majority of cases, both parties acted without taking the necessary precautions to protect any present civilians, as required by International Humanitarian Law. Moreover, about the use of human shields, OHCHR reported that, parties involved in the conflict attempted to make certain locations or areas immune from military operations by using the presence or movement of the civilian population. This is another clear violation of IHL and Article 28 of Geneva Convention IV and Article 51(7) of Additional Protocol I expressly forbids the use of human shields.

There are no reliable numbers on these cases, but OHCHR reports the case of a care house in a village in the Luhansk region, which has been emblematic in this regard. At the beginning of March 2022, when active hostilities drew nearer to the care house, its management repeatedly requested local authorities to evacuate the residents. This was reportedly impossible as Ukrainian armed forces had allegedly mined the surrounding area and blocked roads. On the 7th of March, soldiers from Ukrainian armed forces entered the care house, where older persons and residents with disabilities and staff were located, as it had strategic value due to its proximity to an important road. On the 9th of March, soldiers from Russian affiliated armed groups, who were approaching from

¹³⁶ OHCHR (2022: 11).

the opposite direction, engaged in an exchange of fire with soldiers from Ukrainian armed forces, although it remains unclear which side opened fire first. During this first exchange of fire, no staff or patients were injured. On the 11th of March, 71 patients with disabilities and 15 staff, along with soldiers from Ukrainian armed forces, remained in the care house with no access to water or electricity. That morning, soldiers from Russian affiliated armed groups attacked the care house with heavy weapons, with patients and staff still inside. A fire started and spread across the care house while fighting was ongoing. Some staff and patients fled the care house and ran into the forest, until they were met five kilometres away by Russian affiliated armed groups, who provided them with assistance. According to various accounts, at least 22 patients survived the attack, but the exact number of persons killed remains unknown¹³⁷.

2.2.2 Siege of cities

Since 24 February, several Ukrainian cities have been either fully or partially besieged by Russian armed forces and affiliated armed groups for varying periods of time. The direct impact of these sieges has been devastating. Some cities, like Chernihiv, while subject to extensive shelling, did not experience street fighting, while others, like Mariupol, experienced significant levels of it. For the majority of besieged towns and cities, civilians were not able to leave safely and were exposed to increased risks of being targeted or subjected to an indiscriminate attack while engaging in any type of movement. Particularly, the continuous use of explosive weapons prevents people from accessing to shelter, food, water, sanitation, and medical care. Moreover, the need of shelling from attacks frequently prevented or delayed emergency rescue operations, putting the lives of civilians who had been hurt in attacks in peril. Overall, residents of besieged areas perished due to a lack of access to medical care as well as the stress the hostilities placed on their health, in addition to the deaths and injuries brought on by the hostilities.

However, concerning the legal point of view, as long as they are conducted in accordance with all applicable IHL regulations and have a military aim as their primary goal, sieges are not expressly prohibited under IHL. Therefore, their effects must differentiate between combatants and civilians, and any strategy that denies civilians access to necessities for their survival like food, water, and medication is forbidden. The besieging party may be required to agree to humanitarian relief efforts or to permit the civilian population to leave the besieged area in order to meet with these requirements. The besieged party must make every effort to keep civilians, and civilian objects under their control away from military objectives. They must also try to keep military objectives away from heavily populated areas. In addition to violating international humanitarian law, imposing sieges may interfere with the exercise of other rights, such as the right to life, the prohibition against cruel,

¹³⁷ OHCHR (2022: 13).

inhuman, or degrading treatment, the right to freedom of movement, the right to an adequate standard of living, and the right to essential primary health care, including medicines¹³⁸.

The most evident example of siege of cities has been the city of Mariupol, in the south of the Donetsk Oblast which will be explain below.

2.2.3 The case of Mariupol

From the very beginning of the Russian invasion, Mariupol has been at the core of hostilities, due to its strategic position on the Azon Sea and the presence of huge reserves of raw materials, namely iron and steel. As a result of the city being under the siege of Russian military forces and affiliated armed groups starting on March, until May 2022, residents were only able to flee through humanitarian corridors that Ukraine and the Russian Federation occasionally agreed upon beginning in mid-March. Residents were relocated either to territory under the control of the government or to territory under the control of armed organizations with ties to Russia, and occasionally even further towards the Russian Federation. In addition, humanitarian organizations were unable to negotiate with the combatants during this time to get assistance to the city's inhabitants.

Since the beginning, the UN has expressed its concern for the situation in the city; in June, it reported that 1300 civilians have been killed during the occupation of the city, but the actual number is surely thousands higher. Moreover, it has been estimated that 90% of residential buildings in the city have been destroyed or damaged¹³⁹.

The most striking example of the use of explosive weapons in the city, is the attack that occurred on the 16 March 2022 against the Drama Theatre, which had the word "Children" prominently marked on the ground and hundreds of civilians hiding inside. The place was purposely struck by a powerful explosive Russian air bomb. This attack was one of the deadliest and resulted in a large number of fatalities. Additionally, by April, fighting had damaged every important healthcare facility¹⁴⁰.

2.2.4 Indiscriminate attacks to hospitals and protected objectives

As already anticipated in the previous paragraph, the principle of distinction between military and civilian objectives has been respected on several occasions, thus violating the main principle of IHL. Particularly, hospitals have become one of the main targets of Russian attacks, together with residential building and critical facilities, such as nuclear power station and energy providers.

¹³⁸ OHCHR (2022: 14).

¹³⁹ KREVER (2022).

¹⁴⁰ OHCHR (2022: 15).

According to the data and testimony reported by Médecins Sans Frontières the conflict in Ukraine is being fought with an outrageous lack of care to differentiate and protect civilians. In fact, the organization transported almost 700 patients to hospitals in safer regions of the nation by train from war-torn eastern regions between the end of March and June 2022, due to several attacks perpetrated against military facilities. Elderly and young patients with blast wounds, traumatic amputations, shrapnel wounds, and gunshot wounds made up more than 40% of the war wounded carried by MSF's medical train. This exhibits a disregard for civilian protection, which is a serious violation of international humanitarian law. The organization also reported that on several occasions, medical personnels have been intimidated, detected, and mistreated by military forces.¹⁴¹

Overall, since the Russian invasion in late February, there have been 292 attacks that damaged or destroyed 218 hospitals and clinics, 181 attacks on other health infrastructure, like pharmacies, and 65 attacks on ambulances¹⁴². Concerning medical personnel, 86 attacks on healthcare workers have been targeted by attacks, with 62 killed and 52 injured. According to a WHO representative in Ukraine, two-thirds of all attacks on healthcare facilities globally occurred in Ukraine alone in 2022¹⁴³.

In the light of what have been affirmed, it is clear violation of all Geneva Conventions, which prohibit the attack with any means to every kind of hospitals, medical facilities, medical personnel, and ambulances.

In the same way, the attacks against nuclear power stations and cultural heritage sites represent violations of the Geneva Conventions as well.

About the first category, the most relevant example is the occupation by Russian forces of the nuclear power facility of Zaporizhzhia in southern Ukraine, which is the biggest in Europe. In fact, the plant can generate 6,000 megawatts of electricity when operating at maximum capacity. As a consequence, numerous risks are posed by the Russian army's seizure of nuclear power plant, including radiation leaks, energy shortages, loss of security and revenue, and industrial spying; in fact, at the beginning of March 2022 Russian forces attacked the plant several times with explosive weapons, posing serious threats. The Zaporizhzhia nuclear power plant is extremely important not only for its power, as it has six reactors, but also because it houses the only training facility in Ukraine as well as storage facilities for radioactive and used nuclear fuel¹⁴⁴.

On the other hand, concerning the targeting of cultural heritage sites, the United Nations Educational, Scientific and Cultural Organization (UNESCO) reported on the 22 March 2023, that since the 24 February 2022 248 sites in

¹⁴¹ MEDESINS SANS FRONTIERES (2022).

¹⁴² MAHASE (2023: 1).

¹⁴³ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

¹⁴⁴ PROKIP (2022).

Ukraine have been damaged or destroyed due to the use of explosive weapons. More precisely, 107 religious' sites, 21 museums, 89 buildings of historical and artistic interest, 19 monuments, 12 libraries have been targeted¹⁴⁵. For this, in February 2023, the UN called for an end to Ukraine's deliberate destruction and harm of places, organizations, and items with cultural, historical, and religious significance. The organization expressed its profound concern over the ongoing denigration of Ukrainian history and identity as a pretext for war and hatred. The experts also highlighted that Russian Federation attacks on Ukrainian language, culture, and history can be considered as an effort to obliterate Ukrainian identity¹⁴⁶.

2.3 The delivery of humanitarian assistance and humanitarian corridors

However, the occupation of Mariupol, and more precisely of the Azovstal metal plant there located, has also become a symbol of Ukrainian resistance to the war. In fact, for weeks Ukrainian soldiers, hundreds of civilians, many of whom were Azovstal workers and their families, have taken refuge in the underground areas of the plant until May 2022, which has a system of bunkers and tunnels from the Soviet period.

The OSCE Mission was able to gather evidence showing that humanitarian corridors continue to be a significant issue in the ongoing conflict. Since Russia invaded Ukraine, humanitarian corridors have been essential for delivering food and medicine, enabling residents to flee from cities and towns where fierce fighting has broken out. Despite their critical importance for civilians, the agreements establishing humanitarian corridors have not always been respected¹⁴⁷. In fact, the opening of seven humanitarian corridors was declared by the Deputy Prime Minister of Ukraine on the 5 April 2022, in order to evacuate civilians from a number of hard-hit areas, including the southern port towns of Mariupol and Berdyansk. The number of the predetermined humanitarian routes increased to ten a few days later, on the 9 April 2022. Until the end of negotiations enabling them to travel to Zaporizhzhia, representatives of the International Committee of the Red Cross were also denied entry to Manhush, about 20 kilometres west of Mariupol¹⁴⁸. In fact, in the case of Mariupol, at the end of April 2022 A new surge of civilian deaths were reported in eastern Ukraine amid a flurry of diplomatic activity in Moscow and Germany as Russian forces increased their bombing of important targets and failed in providing safe passage once again for women

¹⁴⁵ UNESCO (2023).

¹⁴⁶ OHCHR (2023b).

¹⁴⁷ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

¹⁴⁸ REHIMOV (2022).

and children. This news was also confirmed by Petro Andryushchenko, an advisor to the mayor of Mariupol¹⁴⁹.

On another occasion, it has also been recorded that Russian shelling have made more difficult for humanitarian organizations to evacuate civilians. On the 12 June 2022, Russian troops destroyed the bridge over a river leading to the Ukrainian-controlled city of Lysychansk. Despite this, Ukraine made an attempt to evacuate its citizens from the city of Severodonetsk. However, after a few days Russian troops shelled Lysychansk, thus making the evacuation of civilians from Severodonetsk even more challenging. Concerns about a lack of water and sanitation are raised as UN Humanitarian Affairs recalled, and there are still about 12,000 people trapped inside the city¹⁵⁰.

Other two examples of attacks on humanitarian corridors that happened in March are Irpin, and Lyman. In Irpin, the 6 March 2022, Russian military forces fired indiscriminately at a civilian evacuation route, unlawfully killing four civilians. A few days after in Lyman, Russian military forces performed an airstrike which indiscriminately struck a civilian evacuation train, killing one civilian and injuring one civilian¹⁵¹.

Overall, Russian soldiers have been accused of blocking buses in violation of cease-fire agreements meant to allow humanitarian aid and people into and out of occupied areas in Ukraine's eastern Luhansk and southern Zaporizhzhia regions. On the other side, Moscow has always accused Ukraine of interfering with humanitarian corridors, an accusation that Ukraine has rejected¹⁵².

2.4 Infringement of the principles of the law of occupation

As stated by the four Geneva Convention of 1949, when a territory is defined as “occupied”, all the principles defined by International Humanitarian Law must be respected by the occupying power, particularly human rights of people present in the occupied areas must not be violated. However, this has not being the case of some territories that have been occupied by Russia in the ongoing war in Ukraine.

Since the beginning of the hostilities, Russia has made a distinction between areas that are a part of the Ukrainian Luhansk and Donetsk regions and other recently occupied territories in terms of administration, property that is located there, and applicable law. In other recently occupied areas, Russia has also established “Komendaturas”, a type of civil administration by the occupying

¹⁴⁹ BOFFEY, TONDO (2022).

¹⁵⁰ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

¹⁵¹ THE GLOBAL ACCOUNTABILITY NETWORK (2022: 38).

¹⁵² Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

forces with the goal of adopting and enforcing only laws deemed essential to protect the security of its forces or to maintain law and order, which is, in theory, not prohibited by IHL. In addition, collected data suggest that in the new regions occupied by Russian forces, a process of creating a “people’s republics” lifestyle, including practices like conferring Russian citizenship, is under way. However, as soon as Russia seizes control of those areas in Ukraine’s Luhansk and Donetsk regions, IHL is violated as they are subject to the governance, laws, and institutions of the respective republics.

According to local media reports, in some cases Russian passports are being forced upon Ukrainians in the recently occupied areas by paying or torturing them. For this, OSCE Mission discovered during its visit to Ukraine that getting a Russian passport is necessary for Ukrainians to safeguard their life and property, which clearly represent a threat for people fundamental rights of liberty and life. The same process has also been recorded in the regions of Kherson and Zaporizhzhia¹⁵³.

Another issue that has often been registered in occupied territories, is the one of force disappearances. While the full scope of enforced disappearances in Ukraine is currently unclear, the information that is currently available suggests that Russian forces have routinely kidnapped active and outspoken political activists, journalists, and community leaders. There is proof that numerous mayors have been detained, arrested, or kidnapped, thus denying these people freedom against their will. In these situation, Russian forces have sometimes exchanged captured Russian troops for the release of some of the victims on the condition that they agree to be filmed making a pro-Russian statement. 204 cases of alleged enforced disappearances were reported by the United Nations Human Rights Monitoring Mission in Ukraine, comprising 169 men, 34 women, and a boy. These were noted between 24 February and 10 May 2022, and most of them were attributed to the Russian military and its allies. Moreover, government representatives and experts alike concur that the real number is almost likely much higher. Nobody knows how much higher the number is, but since Russia’s invasion, Ukraine’s national police has received over 9,000 reports of missing people, and the country’s officials have recorded nearly 800 cases of enforced disappearances¹⁵⁴.

Nevertheless, the most evident violations of IHL perpetrated by Russian forces in occupied territories have involved civilians; in fact, several summary executions, torture, and other abuses have been recorded from late February to March 2022, when they controlled a large portion of the Kyiv and Chernihiv regions in northeaster Ukraine. Following Russia’s withdrawal from the region, 900 civilian bodies were found, according to a report from the Kyiv regional police force in April 2022.

¹⁵³ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

¹⁵⁴ WORLD ORGANIZATION AGAINST TORTURE (2022).

On the 19 May 2022, videos of Russian troops forcing a group of bystanders to the ground and leading them away were published by The New York Times. The videos, which support eyewitness reports, depict the murdered men in Russian custody just before they are put to death. The expedition went to the Bucha site where the mass graves were found during its trip to Ukraine. There is a photo display inside the church next to the site of the mass graves that shows some of the events surrounding the bodies' removal¹⁵⁵.

Finally, Iryna Vereschuk, the deputy prime minister of Ukraine, estimated that since the start of the conflict, 45,000 Ukrainian citizens had been forcibly deported. Tens of thousands of civilians are allegedly being transported by the armed forces of the Russian Federation, the two so-called People's Republics, and the so-called Donetsk People's Republic, which Moscow recognizes as an independent State, before being deported to Russia, according to the Ukrainian government and humanitarian organizations¹⁵⁶.

2.5 The treatment of prisoners of war in the Russia-Ukraine war

Finally, I will now analyse the treatment of prisoners of war by both parts involved in the conflict. Indeed, since February 2022, it has been confirmed that both Ukrainian and Russian armies have detained PoWs and also, that both applied torture and ill-treatment on them. Videos on social media and messaging apps show soldiers from both sides being apprehended, humiliated, and forced to reveal their names and other personal information, including their home addresses and parents' names. However, determine the exact number of prisoners of war present in the war territory as both parties always tend to exaggerate the number of people they treat as prisoners.

For instance, when Ukrainian POWs left the massive Azovstal steel plant in Mariupol in May 2022, after a weeks-long battle with Russian siege forces, Russia claimed to have captured nearly 2,500 Ukrainian soldiers from the steel plant, though some media sources claim more than 1,700¹⁵⁷. About this, President Zelenskyy stated in June 2022, that prisoners from the Azovstal steel plant in Mariupol could be detained in the eastern Ukrainian regions of Donetsk and Luhansk. According to media reports, officials in the so-called Donetsk People's Republic have discussed putting some of the Azovstal defenders on trial in Ukraine for alleged human rights violations¹⁵⁸. On the Russian side, Leonid Slutsky, chairman of the Duma Committee on International Affairs and a member of Russia's negotiating team in talks with Kyiv, has proposed putting Azov Battalion members on trial¹⁵⁹.

¹⁵⁵ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

¹⁵⁶ MACKINTOSH, OCHMAN, MEZZOFIORE, POLGLASE, REBANE, YOOLL (2022).

¹⁵⁷ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

¹⁵⁸ THE GLOBAL ACCOUNTABILITY NETWORK (2022).

¹⁵⁹ AMNESTY INTERNATIONAL (2022).

However, according to IHL, prisoners of war cannot be punished simply for participating in an armed conflict, but they can be punished if they commit war crimes. In such cases, they have the right to an orderly and fair trial in a court of law. According to Geneva Convention III, “a prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war” and “in no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105”¹⁶⁰.

This also concerns the case of three Ukrainian Armed Forces members, and Moroccan member Brahim Saadoun, who in June 2022 were found to be mercenaries and sentenced to death by firing squad following a farce trial by the so-called Donetsk People’s Republic’s Supreme Court. The two British men were apprehended in Mariupol in April 2022. Because the defendants were classified as prisoners of war under IHL and were not charged with war crimes, the sentence was deemed illegal. According to media reports, the two British soldiers appear to have been integrated into the Ukrainian armed forces, serving in the Marines after being in Ukraine for several years. This would imply that they meet the definition of a person entitled to POW status under the Third Geneva Convention of 1949 and the First Additional Protocol of 1977. Concerning both these events, the Office of the United Nations High Commissioner for Human Rights condemned the death penalty and the trial in June 2022, stating that “such trials against prisoners of war turn into a war crime”, and emphasizing that all of the defendants were members of Ukraine’s armed forces and thus should not have been considered mercenaries. Nevertheless, it is also worth noting that Russia has never ratified Protocol 13 to the European Convention for the Protection of Human Rights (ECHR), which prohibits the death penalty. Furthermore, Russia ceased to be a member of the Council of Europe in March 2022, implying that it no longer abides by the ECHR, despite the fact that the Convention is still in effect for six months¹⁶¹.

Another violation of IHL that international organizations and non-governmental organizations have identified, has been reported on Russian media, and it represents another proof of mistreatment that POWs have received. Apparently, Russian soldiers recorded Ukrainian soldiers stationed in Mariupol calling them “neo-Nazis”, raising serious concerns about their fate as PoWs. Russia’s defence ministry also allegedly released videos of Ukrainian Azov fighters being treated in the Russian-controlled town of Novoazovsk following their surrender at the besieged Azovstal steelworks. In

¹⁶⁰ Art. 84, Geneva Convention III.

¹⁶¹ DW (2022).

one of the videos, a soldier stated that he was being treated “normally”, but it is impossible to tell whether the soldier was speaking freely¹⁶².

On the other side, the OSCE mission also examined videos circulating on social media since 27 March 2022, showing Ukrainian soldiers inflicting wounds on and executing Russian prisoners of war. A video of Ukrainian soldiers from the Georgian Legion executing captured Russian soldiers was posted on Telegram at the beginning of April 2022, showing a wounded Russian soldier lying on the ground after being shot twice by a Ukrainian soldier. Three dead Russian soldiers were shown lying next to the soldier, including one with a head wound and his hands tied behind his back. The video, which the New York Times and Reuters confirmed, appeared to have been captured on a road north of Dmytrivka, about 12 kilometres south of Bucha¹⁶³.

Furthermore, the commander of the Georgian Legion, Mamouka Mamoulashvili, stated in an interview with the Vozdukh YouTube channel that his unit “will no longer take Russian military prisoners”. As a justification for this violation of the Geneva Conventions governing the treatment of prisoners of war, he said he was acting in response to the Bucha massacre. The head of the Russian investigative committee charged Mamoulashvili with violating the rules of warfare against Russian military personnel on the 7 April 2022.

Moreover, another case of Ukrainian violence on Russian soldiers has been confirmed by media outlets confirmed on 13 May 2022, which reported a video shot in Mala Rohan, southeast of Kharkiv, and posted on Telegram in March 2022, showing Ukrainian soldiers torturing Russian prisoners by shooting them in the knees. Several captured soldiers are shown lying on the ground, with many of them bleeding from leg wounds and being questioned by their captors. Three prisoners are brought out of a vehicle and shot in the legs with a rifle at one point. The kidnappers’ accents and uniforms are similar to those of Ukrainians from the country's east. Independent journalist investigations later confirmed the location of the incident and revealed that volunteers from Ukraine’s Slobozhanshchyna battalion were present at the time.

The video elicited an immediate response from the UN Human Rights Monitoring Mission in Ukraine, who stated that it was very concerned and urged Russia and Ukraine to launch investigations into alleged ill-treatment of prisoners on both sides, reminding the two countries that they are both obligated to treat POWs humanely and ensure they are not exposed to public curiosity and are treated with dignity.

Despite the Ukrainian armed forces chief’s statement that Russians had created fake videos to discredit Ukraine’s defence forces, the adviser to the

¹⁶² SAUER (2022).

¹⁶³ GRYNSZPAN, VINCENT (2022).

Head of the President's Office of Ukraine said the case is being taken very seriously and will be investigated immediately because it would be an unacceptable behaviour. An investigation will also be launched, according to the chairman of the Russian Federation's investigative committee.

The mission learned about the military forces' compliance with the IHL program, which included specific trainings, during its visit to Ukraine. The mission was also assured that each reported case would be investigated and, if there was evidence of potential violations, brought to judgment¹⁶⁴.

In conclusion, in these last paragraphs I showed and analysed the main violations of International Humanitarian Law that have been perpetrated during the ongoing Russia-Ukraine war. As it was possible to assert, in numerous occasions IHL have been purposely violated and the number of victims resulted from these violations are uncertain due to the difficult situation.

Taking now into consideration all affirmed above, in the next chapters I will define how these crimes can be judge, and if the existing legal tools are sufficient in the context of this war.

¹⁶⁴ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

CHAPTER III

INTERNATIONAL HUMAN RIGHTS LAW (IHRL)

In the following chapter the subjects covered by International Human Rights Law ('IHRL') will be analyzed and its violations in relations to the current Russian invasion of Ukraine provided with definition. First of all, an overview of the treaties and agreements that are part of this branch of law will be laid out, and the analysis will focus especially on the Universal Declaration of Human Rights. Afterwards, I will outline the violations and abuses of IHRL in the Russia-Ukraine war, taking into consideration the determining contribution of the UN Human Rights Monitoring Mission in Ukraine ('HRMMU') and the United Nations Human Rights Office for the High Commissioner ('OHCHR') in documenting these occurrences. Overall, the study will focus on the effects of the war on vulnerable categories and on the human rights situation in Russian-occupied areas.

1. Definition of IHRL: treaties, agreements, customary international law

As defined in chapter 2, International Human Rights Law is the branch of law entitled to control and judge States' responsibility for actions committed against their citizens and other people; the basic principle of IHRL is that every human being has a set of rights and freedoms that must be respected by everyone and in every situation¹⁶⁵. As previously said, according to the ICRC, IHRL is a collection of international regulations established by treaty or custom that individuals and groups expect to be observed by governments. In addition to this, the collection of international human rights norms also includes a number of non-treaty-based principles and guidelines, namely "soft law"¹⁶⁶.

Since 1945 and due to the atrocities committed during WWII, numerous international human rights treaties and other laws have been passed, giving the body of universally recognized human rights legal status. In addition, at the regional, national, and international level, different measures have been adopted through the years to protect these rights. At the regional level, specific instruments have been enacted reflecting the region's unique human rights issues and offering specialized safeguards. At the national level, most of States have enacted constitutions and other laws that explicitly safeguard

¹⁶⁵ SUN (2023: 492).

¹⁶⁶ ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW – INTERNATIONAL COMMITTEE OF THE RED CROSS (2023: 1).

fundamental human rights. Finally, other legal instruments, such as declarations, guidelines, and principles issued at the international level, contribute to the understanding, application, and development of international human rights law. In addition to this, it is important to remember that the development of the rule of law at the national and international levels is necessary for human rights enforcement¹⁶⁷.

Also, IHRL includes measures demand that governments to execute its requirements, whether immediately or gradually. They must enact a variety of legislative, administrative, judicial, and other measures that may be required to give effect to the treaties' rights. This may entail implementing criminal laws to criminalize and suppress conducts banned by IHRL treaties, as well as providing a remedy for the violation of specified rights in domestic courts and ensuring that this remedy is effective¹⁶⁸.

Concerning its application, as human rights are intrinsic entitlements that everyone has as a result of being humans, IHRL applies at all times, including and especially during times of armed conflict. Certain IHRL accords also allow governments to waive some rights in times of national emergency that endangers the nation's life. Derogations, however, must be proportional to the situation at hand, must not be implemented on a discriminatory basis, and must not violate other international law standards, including IHL rules¹⁶⁹. Moreover, as to the universal nature of human rights, the most significant distinction between international humanitarian law and international human rights law is that the former establishes the type of protection a person is granted based on the category in which the person belongs, while under the latter all human beings benefit from all human rights, thus not considering the distinction between civilians and combatants as explicitly states by international humanitarian law¹⁷⁰.

It's important to notice that the application of IHRL can often be interrelated with the application of IHL; in fact, it was probably not expected at the time the Universal Declaration has been stipulated that human rights would apply in armed conflict settings, at least not in international armed conflict scenarios. Nonetheless, even if there is an obvious resemblance to war in the disputes over the Universal Declaration, it was intended for times of peace, as peace was the goal of the United Nations. On the other hand, member States of the UN gradually recognized the importance of human rights in armed conflict. In practice, already in 1953 in the context of the Korean conflict, the General Assembly mentioned human rights¹⁷¹. Also following the Soviet invasion of

¹⁶⁷ ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW – INTERNATIONAL COMMITTEE OF THE RED CROSS (2023: 2).

¹⁶⁸ *Ibidem*.

¹⁶⁹ *Ibidem*.

¹⁷⁰ OHCHR (2011: 20).

¹⁷¹ Resolution of the UN General Assembly, 1953, A_RES_804(VIII), *Question of atrocities committed by the North Korean and Chinese Communist forces against United Nations prisoners of war in Korea*.

Hungary in 1956, the Security Council urged the Soviet Union and Hungary's authorities to "respect the Hungarian people's enjoyment of fundamental human rights and freedoms"¹⁷². Or again, in 1967, the United Nations Security Council declared that "essential and inalienable human rights should be respected even during the vicissitudes of war" in relation to the regions conquered by Israel following the Six Day War¹⁷³. These represent clear examples of the link between the two branches of law, which is even more evident in several newer international treaties and instruments. Some of these are the 1989 Convention on the Rights of the Child, the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, and, most recently, the Convention on the Rights of Persons with Disabilities¹⁷⁴.

On the other side, in contrast to IHL, individuals do not have particular obligations under IHRL treaties, but IHRL does provide for individual criminal liability and for violations that may constitute international crimes, such as genocide, crimes against humanity, and torture. These offences are also subject to international law¹⁷⁵.

In relation to the supervisory mechanism of IHRL norms, it is composed of organizations established by the United Nations Charter or the major IHRL treaties. The UN Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights are the primary UN Charter-based organs. Over the last two decades, the Commission has also introduced special procedures, such as theme or country-specific special rapporteurs and working groups tasked with monitoring and reporting on human rights circumstances within their mandates. The Office of the High Commissioner for Human Rights, which has main responsibility for the overall protection and promotion of human rights, plays an important role. The Office aims to improve the effectiveness of the UN's human rights machinery, increase UN system-wide human rights implementation and coordination, build national, regional, and international capacity to promote and protect human rights, and disseminate human rights texts and information. Also, the main IHRL accords call for the formation of committees of independent experts to oversee their implementation. In addition, according to certain protocols and agreements, States must submit period reports about human rights situation in their territory. A committee then analyze the reports and question the reporting States. There could also be a subcommittee or individual researcher who conduct a detailed study in some instances. The final purpose of a committee

¹⁷² Resolution of the UN General Assembly, 1956, 1132 (XI), *Establishment of the UN Special Committee on the problem of Hungary*.

¹⁷³ TOMEH (1974).

¹⁷⁴ DROEGE (2007: 313-317).

¹⁷⁵ ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW – INTERNATIONAL COMMITTEE OF THE RED CROSS (2023: 3).

report is to highlight any contradictions between the activities of the reporting States and the provisions of the treaty or the applicable law¹⁷⁶.

1.1 The Universal Declaration of Human Rights and the following human rights treaties

Firstly, it is important to remark that both Russia and Ukraine have signed and adopted all the declarations, conventions, and additional protocols that will be explained in the following paragraphs. Consequently, both countries are bound by the principles affirmed in all these documents and therefore are obligated to uphold their statements to protect and respects the human rights.

Among the declarations and agreements that represent the legal basis of IHRL, the Universal Declaration of Human Rights is surely the first and most relevant one. After its adoption, several treaties concerning human rights were approved and recognized by States. The main treaties adopted are the Convention on Genocide (1948), the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966), the Convention against Racial Discrimination (1965), the Convention on Discrimination Against Women (1979), the Convention against Torture (1984) and the Convention on the Rights of the Child (1989).

The Universal Declaration of Human Rights is an important turning point in the history of human rights. The Declaration, drafted by representatives from all regions of the world with diverse legal and cultural backgrounds, was proclaimed by the United Nations General Assembly in Paris on 10 December 1948, with the Resolution 217 A. The UDHR made a significant step forward by asserting that all human beings are free and equal, regardless of race, creed, or religion. For the first time, a global pact prioritized human beings over power politics¹⁷⁷.

The declaration is composed of 30 articles, each of them covering a different subject. The first three articles represent the very basic rights of all human beings, and they state as follow

“Article 1: We are all born free. We all have our own thoughts and ideas and we should all be treated the same way.

Article 2: The rights in the UDHR belong to everyone, no matter who we are, where we’re from, or whatever we believe.

¹⁷⁶ SUN (2023: 493).

¹⁷⁷ Resolution of the UN General Assembly, 10 December 1948, 217 A, *Universal Declaration of Human Rights*.

Article 3: We all have the right to life, and to live in freedom and safety”¹⁷⁸.

Then, as mentioned earlier, the declaration is not clear about the application of these rights during armed conflicts. However, the following rights are particularly relevant and need to be taken into consideration for the current analysis, as they are significant in relation to the violations committed in the war in Ukraine.

“Article 5: No one has the right to inflict torture, or to subject anyone else to cruel or inhuman treatment.

Article 6: We should all have the same level of legal protection whoever we are, and wherever in the world we are.

Article 7: The law is the same for everyone, and must treat us all equally.

Article 8: We should all have the right to legal support if we are treated unfairly.

Article 9: Nobody should be arrested, put in prison, or sent away from our country unless there is good reason to do so.

Article 10: Everyone accused of a crime has the right to a fair and public trial, and those that try us should be independent and not influenced by others.

[...]

Article 14: If we are at risk of harm we have the right to go to another country to seek protection.

[...]

Article 28: We all have the right to live in a peaceful and orderly society so that these rights and freedoms can be protected, and these rights can be enjoyed in all other countries around the world.

[...]

Article 30: No government, group or individual should act in a way that would destroy the rights and freedoms of the Universal Declaration of Human Rights”¹⁷⁹.

Finally, Article 25 represented an innovation for that time, as it addresses a wide range of issues, including the right to adequate food, water, sanitation, clothing, housing, and medical care, as well as social protection for vulnerable categories, like people with disability, elderly people, giving special attention to mothers and children. This effort to ensure the protection of rights of specific groups of people will be even more evident in the years following the declaration, giving human rights treaties a much more focused and detailed framing¹⁸⁰.

¹⁷⁸ Artt. 1-3, Resolution of the UN General Assembly, 10 December 1948, 217 A, *Universal Declaration of Human Rights*.

¹⁷⁹ Artt. 5-10, 14, 28, 30, Resolution of the UN General Assembly, 10 December 1948, 217 A, *Universal Declaration of Human Rights*.

¹⁸⁰ OHCHR (2018).

“Article 25: We all have the right to enough food, clothing, housing and healthcare for ourselves and our families. We should have access to support if we are out of work, ill, elderly, disabled, widowed, or can’t earn a living for reasons outside of our control. An expectant mother and her baby should both receive extra care and support. All children should have the same rights when they are born”¹⁸¹.

The second most important convention on human rights, adopted in 1948 with the General Assembly Resolution 260 A (III), is the Convention on the Prevention and Punishment of the Crime of Genocide, which codified and defined for the first time the crime of genocide, also known as the Genocide Convention. Moreover, in Article 1 it is stated that “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish”¹⁸², thus underlining the application of this convention during armed conflicts. Successively, as it is possible to see in the text reported below, Articles 2 and 3 define respectively, what is categorized as crime of genocide, and which acts are punishable under this crime¹⁸³.

“Art. 2. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group”.

“Art. 3. The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide”.

Overall, the Convention’s definition of genocide has been widely embraced at both national and international levels, and most importantly, it has been included in the International Criminal Court’s Rome Statute of 1998.

¹⁸¹ Art. 25, Resolution of the UN General Assembly, 10 December 1948, 217 A, *Universal Declaration of Human Rights*.

¹⁸² Art. 1, Convention on the Prevention and Punishment of the Crime of Genocide.

¹⁸³ Resolution of the UN General Assembly, 9 December 1948, 260 A (III), *Convention on the Prevention and Punishment of the Crime of Genocide*.

More importantly, the Convention imposes on State Parties the obligation to take measures to prevent and punish genocide, such as enacting relevant legislation and punishing perpetrators, “whether they are constitutionally responsible rulers, public officials, or private individuals”, as stated in Article 4. This commitment, together with the prohibition to commit genocide, has been recognized as standards of international customary law and hence enforceable on all States, regardless of whether they have ratified the Genocide Convention. Furthermore, fundamental for this analysis is also Article 6 of the convention regarding the adjudication of this crime. In fact, the article states that “Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction”¹⁸⁴.

Following these two important conventions, the International Covenant on Civil and Political Rights (‘ICCPR’) and the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’) of 1966 represent further milestones of human rights law.

ICCPR is a multilateral convention that urges governments to respect individuals’ civil and political rights, and it is divided in six parts, each of them covering a different right: the right to life, freedom of religion, freedom of expression, freedom of assembly, electoral rights, and the right to due process and a fair trial. The covenant was adopted in 1966 by the General Assembly’s resolution 2200A (XXI), however it formally entered into force ten years later. Among the rights covered by the covenant that can be considered the most relevant to the present work, there are: the ban on torture, the prohibition of slavery, the right to personal liberty and security, the right to a humane treating during detention, and the freedom of movement¹⁸⁵. In addition, parties to the Covenant may join any or both Covenants’ two Optional Protocols which entered into force in 1976 and 1991.

The first Optional Protocol establishes a procedure for the Human Rights Committee to receive and assess complaints from individuals alleging violations of their human rights.

The Protocol, as its name implies, is not mandatory; nonetheless, once a State party to the Covenant also becomes a party to the Protocol, any person subject to the jurisdiction of the State party may file a written complaint with the

¹⁸⁴ Art. 6, Convention on the Prevention and Punishment of the Crime of Genocide.

¹⁸⁵ Resolution of the UN General Assembly, 16 December 1966, 2200 A (XXI), *International Covenant on Civil and Political Rights*.

Human Rights Committee. In fact, Article 28 of the ICCPR¹⁸⁶ established a Human Rights Committee, comprised of eighteen members, with specific functions, such as reporting violations, evaluating individual allegations of violations of one of such rights, to issue general comments on the interpretation of the articles under Article 40. Furthermore, according to Article 41 the committee may also receive a notification from one State, concerning another State party that is not fulfilling its obligations¹⁸⁷. Afterwards, the Second Optional Protocol entered into force, which abolishes the death penalty¹⁸⁸.

The ICCPR was thus created with the intention of having legal power, in the sense that countries that sign and ratify the treaty must then comply with its terms and will be held accountable for violations of those rights.

On the other hand, ICESCR establishes the legal framework for protecting and preserving the most fundamental economic, social, and cultural rights, such as the right to work in just and favorable conditions, social protection, an adequate standard of living, the highest attainable standards of physical and mental health, education, and cultural freedom. More precisely, the majority of the rights included in the ICESCR are concerned with tackling Violence Against Women ('VAW'). Moreover, in 2009 an additional protocol was adopted, establishing mechanisms for bringing violations of the rights established in the covenant before the UN Committee on Economic, Social and Cultural Rights. Precisely, it sets up an individual complaint's mechanism, an inter-state complaint mechanism and an inquiry procedure¹⁸⁹.

As said before, both these human rights treaties represent a turning point in the codification of legal principles binding States to respect and protect specific rights. However, as I will explain in the following paragraphs, not all the principles codified here are applicable during armed conflicts.

Following, in 1979 was adopted the Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW') and entered into force in 1981. The main purpose of the convention is to bring to light all the subjects and ways in which women are denied equality with men. The text of the

¹⁸⁶ "1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity".
Art. 28, ICCPR.

¹⁸⁷ SEHGAL (2020).

¹⁸⁸ Resolution of the UN General Assembly, 15 December 1948, 44/128, *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*.

¹⁸⁹ RICHARD (2017).

convention defines equality as a fundamental human right and explains how to attain it. In doing so, the Convention sets not only a worldwide bill of rights for women, but also a roadmap for countries to follow to ensure the respect of those rights.

The Convention specifically notes in its preamble that “extensive discrimination against women continues to exist”, emphasizing that such discrimination “violates the principles of equality of rights and respect for human dignity”. Discrimination is described in Article 1 as “any distinction, exclusion, or restriction made on the basis of sex [...] in the political, economic, social, cultural, civil, or any other field”. The Convention affirms in Article 3 the principle of equality by requiring States parties to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on an equal basis with men”. Overall, the equality agenda is detailed in fourteen additional articles and establishes three main principles: non-discrimination, State obligation and substantive equality. In its approach, women’s legal position, as well as their reproductive rights, attract the most emphasis are discussed in depth through the text¹⁹⁰.

Concerning the application of this convention during conflicts, at its 47th session in 2010, the Committee on the Elimination of Discrimination Against Women decided to adopt a general recommendation on women in conflict prevention, conflict, and post-conflict situations, in accordance with Article 21 of the Convention on the Elimination of All Forms of Discrimination Against Women which states that

“The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties”¹⁹¹.

During the session, the committee reiterate the importance of protecting women’s human rights

“at all times, advancing substantive gender equality before, during and after conflict and ensuring that women’s diverse experiences are fully integrated into all peacebuilding, peacemaking, and reconstruction processes are important objectives of the Convention”. Most importantly, it clearly states that State parties are obliged to continue applying the principles affirmed in the convention during conflict or States of

¹⁹⁰ Resolution of the UN General Assembly, 18 December 1979, 34/180, *Convention on the Elimination of All Forms of Discrimination against Women*.

¹⁹¹ Art. 21, Resolution of the UN General Assembly, 18 December 1979, 34/180, *Convention on the Elimination of All Forms of Discrimination against Women*.

emergency “without discrimination between citizens and non-citizens within their territory or effective control, even if not situated within the territory of the State party”¹⁹².

If we contextualize this statement in the light of the Russian-Ukraine war, there are evidence that the Russian Federation, who signed the convention, violated several of these principles.

The Convention against Torture (‘CAT’) was adopted in 1984 with the resolution 39/46. The prohibition of torture is also mentioned in the UDHR and in the ICCPR. However, the Convention is the most comprehensive international codification of principles and procedures concerning the prohibition of torture. It establishes the most widely accepted definition of torture at the international level in Article 1 para. 1¹⁹³, requires States to take all necessary legislative, administrative, judicial, and other appropriate measures to prevent acts of torture, as stated in Article 2 paras. 1-3¹⁹⁴, and specifies a number of additional steps that States must take to adequately prevent, prohibit, and redress torture and ensure non-recurrence¹⁹⁵. The Convention’s goal is thus to prevent and eliminate the use of torture and other cruel, inhuman, or degrading treatment or punishment, as well as to establish accountability for torture acts¹⁹⁶.

One of the most essential features of the Convention is article 5, which defines the notion of universal jurisdiction, sometimes known as extraterritoriality. By ratifying the Convention, States acknowledge that all countries have a

¹⁹² General Recommendation of the Committee on the Elimination of Discrimination against Women, 10 October 2010, CEDAW/C/2010/47/GC.2, *On the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*.

¹⁹³ “For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”. Art. 1 para. 1, Resolution of the UN General Assembly, 10 December 1984, 39/46, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

¹⁹⁴ “I. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

II. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

III. An order from a superior officer or a public authority may not be invoked as a justification of torture”. Art. 2 para. 1-3, Resolution of the UN General Assembly 10 December 1984, 39/46, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

¹⁹⁵ REDRESS (2018: 7).

¹⁹⁶ Resolution of the UN General Assembly, 10 December 1984, 39/46, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

commitment to ensure that criminals are brought to justice, whether by extradition or prosecution. The goal of universal jurisdiction is to hold torturers accountable and to eliminate any chance for torturers to enjoy immunity because the State where the crimes were committed is unwilling or unable to conduct an effective investigation or prosecution. Where two countries do not have an extradition treaty, the Convention may be utilized as a legal foundation for extradition of an alleged perpetrator. The adjustment of this type of universal jurisdiction into local law is critical to ensuring that alleged torturers can be held accountable anywhere in the globe. It also improves victims' chances of obtaining justice if they have been denied justice in the courts of the country where the torture occurred¹⁹⁷.

Therefore, this convention is extremely important as represent a detailed legal tool that can be used both in armed conflicts and in peaceful situations.

Finally, one of the latest conventions has been adopted is the UN Convention on the Rights of the Child ('UNCRC') of 1989. The convention establishes an international legal framework binding contracting parties to protect and respect children's human rights, defined by the convention as human beings below the age of 18 with specific needs and human rights. It is based on four primary principles: non-discrimination, best interests of the children, the right to survival and development, and the views of the child¹⁹⁸.

In 2002 an additional protocol to the convention entered into force, aiming to enhance the protection of children during armed conflicts. States are bound by the protocol to "take all feasible measures" to guarantee that members of their armed services under the age of 18 do not directly participate in hostilities. They must also raise the minimum age for voluntary enlistment into the armed forces from 15 to 18. However, the protocol reminds again States that children under the age of 18 are entitled to special protection, and that any voluntary recruitment under the age of 18 must include adequate safeguards. The most relevant part of the protocol is the establishment of a legal framework enabling the Committee on the Rights of the Child to consider complaints about violations of a child's rights. Children from ratifying nations can use the Protocol to seek justice if the national legal system is unable to provide a remedy for the infringement. In addition, the Committee can hear complaints against any State that has ratified the protocol from children, groups of children, or their representatives. If States accept this mechanism, the Committee can also initiate investigations into significant or systematic violations of children's rights, and States can file complaints against each other¹⁹⁹.

¹⁹⁷ REDRESS (2018: 14).

¹⁹⁸ Keynote address of Ms. Christine Beerli, ICRC vice-president, 14th Bruges colloquium – October 17 and 18, 2013, *Vulnerabilities in armed conflicts*.

¹⁹⁹ Resolution of the UN General Assembly, 25 May 2000, A/RES/54/263, *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*.

In the ongoing war in Ukraine, the Committee on the Rights of the Child demanded that the Russian Federation immediately ceases its aggression and military actions against Ukraine, and that it upholds its obligations under the Convention, as espoused by the United Nations Secretary-General, to enforce the United Nations Charter in order to protect children's rights to the greatest extent possible and as a top priority²⁰⁰.

In addition to these conventions, resolutions adopted by the General Assembly, the Security Council, and the Human Rights Council, as well as case law by treaty bodies and reports of human rights special procedures, declarations, guiding principles, and other soft law instruments, contribute to clarifying and providing principled guidance on human rights norms and standards, even if they do not contain legally binding obligations *per se*. In fact, international human rights law is not limited to the rights stated in treaties, but also includes rights and liberties that form part of customary international law, which binds all States, including those that are not signatories to a specific treaty; one example of this is the rights enshrined in the Universal Declaration of Human Rights which are universally acknowledged to have this quality. Furthermore, some rights are recognized as having a special status as peremptory standards of customary international law, which means that no derogation is permissible under any circumstances and that they take precedence over other international duties. As represented in the International Law Commission's draft articles on State responsibility, the bans on torture, slavery, genocide, racial discrimination, and crimes against humanity, as well as the right to self-determination, are universally accepted as peremptory norms. Similarly, the Human Rights Committee has stated that sections in the International Covenant on Civil and Political Rights that embody customary international law cannot be subject to derogation. Among these there are Article 6, stating the right to life, Article 7 about the prohibition of torture or cruel, inhuman, or degrading punishment, and Article 15, stating the principle of legality in the field of criminal law²⁰¹.

Overall, the basis of this is that, under IHRL States are obliged to respect, protect and fulfil all these principles and norms.

Concerning the first obligation to respect, States are required to abstain from taking any measures that would prevent individuals from accessing a given right.

Then, States must prevent, investigate, punish, and ensure remedy for human rights breaches committed by third parties, such as private persons, or other non-state actors, as part of their commitment to protect.

²⁰⁰ RELIEF WEB (2022).

²⁰¹ OHCHR (2011: 9-12).

Finally, regarding the obligation to fulfill, States must take all the legislative, administrative, budgetary, judicial actions necessary to let people fully enjoy their rights²⁰².

1.2 The application of IHRL during armed conflicts

Considering the similarities of subjects covered by IHRL and IHL, it is necessary to specify under which conditions IHRL apply during armed conflicts, and what are the legal tools available for judging its violations.

One of the first problems arising from the application of IHRL in armed conflicts is the principle of territoriality. Generally, it was asserted that the State should respect, preserve, and fulfill the human rights only of people within its borders because they are directly under its authority. As a result, international human rights law was thought to be primarily territorial. This was also affirmed by Article 2 of the International Covenant on Civil and Political Rights which affirms that “each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant”²⁰³. On the other hand, modern conflicts have recently led to the recognition of the extraterritoriality of the application of human rights. In fact, the Human Rights Committee stated that a State party “must respect and ensure the rights enshrined in the Covenant to anyone within that State Party’s power or effective control, even if not located within the State Party’s territory”. According to the Committee, rights must be available to all individuals who are on the territory of or subject to the authority of the State. Furthermore, it has stated that the principle of extraterritoriality “also applies to those within the power or effective control of a State party’s forces acting outside its territory”. In addition, the International Court of Justice agreed with this conclusion, ruling that “the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory”. This position has clearly been confirmed by the Committee against Torture which has pointed out that “the State party should recognize and ensure that the Convention applies at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction”²⁰⁴.

Regarding now the concurrent application of IHRL and IHL during wars, conflicts among legal norms are not recurrent, as they usually interpret a principle in the same manner. For instance, when people find themselves in

²⁰² OHCHR (2011: 16-18).

²⁰³ Art. 2, Resolution of the UN General Assembly, 16 December 1966, 2200 A (XXI), *International Covenant on Civil and Political Rights*.

²⁰⁴ OHCHR (2011: 42-43).

the power of the enemy in the context of hostilities, both bodies of law aim at providing protection to them and often provide a similar response to specific situations. However, when international human rights law and international humanitarian law provide opposing solutions to violations one solution to these controversies is the mechanism based on the principle of *lex specialis derogat legi generali*, which states that when there is a conflict between two legal rules that apply to the same situation, the more specific law prevails over the more general rule²⁰⁵. The determination of which regulation will take precedence is based on an evaluation of the circumstances and the specific protection provided by the applicable rules. In fact, as the International Law Commission's Study Group properly states, the principle of *lex specialis* "does not admit of automatic application"²⁰⁶. This is not possible, because it is not always clear which norm provides the most specific regulation to apply in a given situation; for this, each specific circumstance will necessitate a thorough examination.

Secondly, many human rights breaches that occur during armed conflict are not the direct outcome of hostilities and should be addressed through the application of domestic law and IHRL. A party to the conflict, for example, may participate in abuses that are unconnected to the conflict and to which international human rights law applies since they are not covered by international humanitarian law²⁰⁷.

One of the criteria that could be used to determine which body of law should be applied to a specific situation is the one of effective control, stating that the more effective the control over persons or territory, the more human rights law would provide the proper reference framework. It has thus been suggested that in the context of armed conflict, the more stable the situation, the more the human rights paradigm would be applicable, whereas, the less stability and effective control, the more the international humanitarian law paradigm would be applicable to supplement human rights law. As a result, rather than focusing merely on the existence of a dispute, the analysis of certain violations should prioritize stability and effective control. In this context, there can be also more complex situation, for example when effective control over individuals does not correspond with the effective control over an area. However, this does not imply that human rights principles can be neglected. This means that, as previously explains, States have must respect the principles and obligations derived from IHRL toward all individuals within their territory and all individuals subject to their jurisdiction²⁰⁸.

Among the areas that create conflict between the two legal branches, there is the use of deadly force against people. While it is generally accepted under international humanitarian law that enemy combatants may be targeted in an international armed conflict, regardless of whether they pose an immediate

²⁰⁵ BORELLI (2015: 1).

²⁰⁶ OHCHR (2011: 55).

²⁰⁷ *Ibidem*.

²⁰⁸ BORELLI (2015: 18).

threat to human life, international human rights law restricts the use of deadly force in such situations. In other words, the use of lethal force is limited by the circumstances, not by the individual. This means that when military personnel conduct law enforcement duties, they are governed by international human rights law regulations for the use of deadly force. In terms of the level of force to be used against enemy fighters, international humanitarian law is widely regarded as the *lex specialis* for combatants in international armed conflicts. However, the topic is far more contentious when it comes to fighters in non-international military conflicts. A common example of a conflict between the two branches is a member of an insurgent armed organization with a continued fighting function who is discovered engaging in personal activities outside the fighting zone. According to some, international humanitarian law allows the government to shoot and kill this person, while under international human rights law the person must be arrested, and a moderate use of force must be used. In this scenario, international human rights law should be considered the *lex specialis*, taking into account the level of government control over the location of the killing²⁰⁹.

I believe all this background is essential to understand the complexity arising in the establishment of the accountability for violations of human rights. This aspect will be particularly relevant in the next chapter in the analysis of the several legal organs responsible for these judgements.

1.3 The International Court of Justice and human rights

It is important to highlight that in the context of human rights violation, the International Court of Justice, the main judicial organ of the United Nations, also plays an important role.

The International Court of Justice's jurisprudence, which the Court's Statute recognizes as a secondary way for determining legal standards, is increasingly referring to States' human rights commitments in instances of armed conflict. These judgements have clarified concerns such as the continued application of international human rights law in times of armed conflict. Therefore, even though the ICJ is not a human rights court and cannot receive complaints by individuals, some of the court's judgements played a significant role in the human rights jurisprudence. More precisely, the court contributes to the integration of human rights law in international law through interpretation and development of norms relevant to human rights²¹⁰.

However, the contribution to the jurisprudence of human rights is bound by certain preconditions. Firstly, one way to allow the court to exercise its power on certain matters, is that both parties involved in a dispute accepted the jurisdiction of the court under Article 36(2) of its statute. However, the

²⁰⁹ OHCHR (2011: 64-68).

²¹⁰ CRAWFORD, KEENE (2017: 938).

acceptance of the court's jurisdiction could not be enough, as there may be some reservations within a treaty precluding the application of the court's law. On the other hand, another mechanism that could allow the court to make judgements about human rights, is the presence of an arbitrational clause within human rights treaties, which is not common. In fact, among these declarations, just the genocide Convention allows the direct access for States to the jurisdiction of the court. In addition to these legal problems, there may also be political reasons that preclude States to submit a claim to the court. Therefore, some States are often reluctant to bring a case concerning human rights before the court if they or their citizens are not directly involved in it²¹¹.

Nevertheless, despite the complicate legal framework, as I will explain in the next chapter, the ICJ is playing an important role in the war in Ukraine, particularly concerning the judgement of the crime of genocide.

2. Alleged violations and abuses of Human Rights Law in the Russia-Ukraine conflict

In the following paragraphs I will report the violations of International Human Rights Law committed by the parties involved in the current Russia-Ukraine conflict. I will analyze with particular attention the impact of the war on the rights of vulnerable categories of the population, and on the human rights situation in Russian-occupied countries. Afterwards, it will be possible to evaluate which of these actions represent a violation of IHRL, based on the principles of the conventions and customary law just explained.

2.1 The role of the UN Human Rights Monitoring Mission in Ukraine in documenting violations of international human rights law

One of the most reliable sources of information concerning the violations of IHRL in Ukraine in the present moment, is the UN Human Rights Monitoring Mission in Ukraine ('HRMMU').

The UN Human Rights Monitoring Mission in Ukraine monitors, publishes reports, and promotes the country's human rights situation in order to improve access to justice and hold abusers accountable. The Mission was established in 2014 when Ivan Imonovi, UN Assistant Secretary-General for Human Rights, announced the immediate deployment of a UN human rights monitoring team throughout Ukraine to assist in establishing the facts surrounding human rights breaches²¹². Following the Russian Federation's aggression on Ukraine, the Mission has been completely focused on

²¹¹ CRAWFORD, KEENE (2017: 936-937).

²¹² RELIEFWEB (2014).

monitoring the impact of the attack on the human rights situation in Ukraine. Due to conflicts, HRMMU has shifted some of its operations and is currently present in Uzhhorod, Kyiv, Odesa, Dnipro, and Donetsk, as well as making regular visits to other locations throughout the country. The Mission continues also to monitor the human rights situation in Crimea from afar. Every day, human rights officers interact with victims and witnesses of human rights crimes all around the nation, including in area controlled by Russia’s Armed Forces and allied armed groups, as well as in Crimea. Since the beginning of the conflict on the 24th of February 2022, the mission submitted more the 30 reports about the violations of human rights in the country. Overall, the mission estimates that from February 2022 until February 2023 more than 21,000 civilian casualties occurred in the country. As it is possible to see in the graph below redacted by the mission, the majority of casualties happened at the beginning of the conflict, particularly in March, when civilians killed were more than the ones injured²¹³.

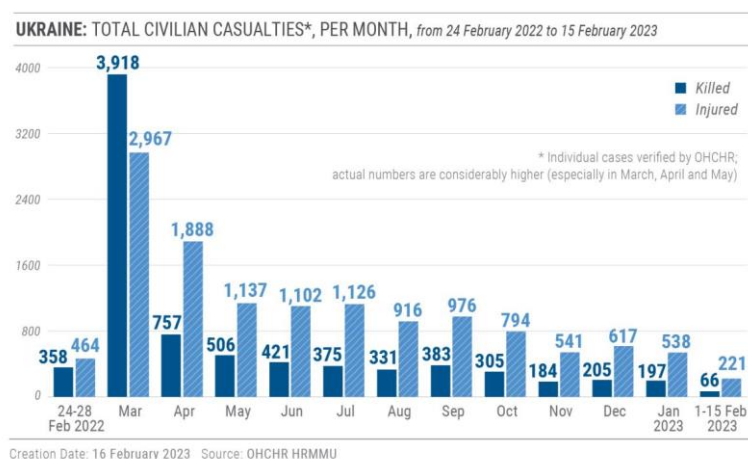


Figure 1: Data from the OHCHR and HRMMU report “Civilian casualties in Ukraine from 24 February 2022 to 15 February 2023”²¹⁴.

Particularly, the mission is important from a legal point of view: HRMMU has contributed to the commencement of investigations and other redress-seeking processes through direct intervention and has offered legal advice and analyzed numerous draft legislation, including those on missing persons and the protection and compensation of civilian victims of armed conflict, including housing, land, and property rights. Over 800 people harmed by grave conflict-related human rights violations have also gotten legal assistance with the help of HRMMU²¹⁵.

²¹³ Report of the OHCHR and the HRMMU, 24 March 2023, *On the human rights situation in Ukraine 1 August 2022-31 January 2023*.

²¹⁴ Report on civilian casualties in Ukraine, OHCHR and HRMMU, 21 February 2023.

²¹⁵ Report on the human rights situation in Ukraine, OHCHR and HRMMU, 24 March 2023.

The mission thus represents a strong and reliable source for the collection of information useful the judgement of the crimes committed in Ukraine. On the case of violations of IHRL, the mission issued three reports detailing the human rights situation in the country since the beginning of the war, focusing on the context on Russian-occupied territories. For this, I will used these documents for the analysis of the next paragraphs, concentrated on the impact of the war on vulnerable categories.

2.2 The impact of the war on vulnerable group’s rights: women, children, elderly people, disable people

As in every armed conflict and humanitarian emergencies, there are some categories of people who are more affected than other.

According to UN OHCHR a vulnerable group is a population that has certain characteristics that make it more at risk than others living in project-targeted areas. Vulnerable groups include the children and adolescents, women and girls, persons with disabilities, migrants, refugees, and asylum-seekers, LGBTI persons and older persons²¹⁶. In the following paragraphs I will analyze each of them in the context of the Russia-Ukraine war and report the repercussion of the conflict on their rights.

2.2.1 Women

The first category of individuals who have been affected by the current conflict in Ukraine is women.

As previously said, according to IHRL women must not be subjected to any form of discrimination or violence as affirmed in the UN Convention on the Elimination of All Forms of Discrimination Against Women, to which both Ukraine and Russia are State parties. Additionally, as explicitly stated in UN Security Council Resolution 1325 on women and peace and security, there is an increased need to protect women and girls in times of armed conflict, particularly to “take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict”²¹⁷. Consequently, a violation of these principles implies consequences from a legal point of view.

There have been several violations of women’s rights in the Russia-Ukraine war, which I will report as follow.

The two OSCE missions established through the Moscow Mechanism, which cover from the beginning of the conflict until June 2022, reported that, especially during the first mission, the cases of gender-based

²¹⁶ Keynote address of Ms. Christine Beerli, ICRC vice-president, 14th Bruges colloquium – October 17 and 18, 2013, *Vulnerabilities in armed conflicts*.

²¹⁷ Resolution of the UN Security Council, 31 October 2000, S/RES/1325, *Resolution on women and peace and security*, para. 10.

violence had increased substantially through the months. The mission issued numerous reports from and about women being raped or otherwise sexually mistreated by members of the Russian armed forces, particularly in the newly captured territory²¹⁸. As it is possible to see, this represents a case concerning both a violation of IHL, as previously discussed in chapter 2, and of CEDAW Convention under IHRL. In fact, in order to strengthen the principles affirmed in the convention, in 2017 the CEDAW Committee updated General Recommendation No. 19 on gender-based violence against women²¹⁹ with the General Recommendation No. 35. The first recommendation expands the application of the convention on gender-based violence, drawing the attention on the important role of the Committee and other international human rights mechanisms, as well as national, regional, and international legal tools. General Recommendation No. 35²²⁰ is a turning point for the protection of women because it acknowledges that the prohibition of gender-based violence has become a norm of international customary law; it broadens the definition of violence to include violations of sexual and reproductive health rights; and it emphasizes the importance of changing social norms and stereotypes that support violence²²¹. Thus, considering the conflict analyzed and the information collected, there has been a clear violation of these principles by the Russian army.

These cases have also been confirmed by the information published by HRMMU in collaboration with OHCHR. In the report is stated that sexual violence was utilized as a form of torture or ill-treatment in the majority of cases involving deprivation of liberty. Rape, electrocution, burning, forced nudity, forcing someone to watch or conduct sexual violence against another person sexual violence threats directed at victims, or their loved ones were all part of it. The mission also reported that sexual abuses were not only intended on women, but also on male PoWs, and sometimes against civilian men detained in jail²²².

2.2.2 Children

Considering now another important vulnerable category, I will address the human rights' violations to the detriment of children.

According to the 1989 UN Convention on the Rights of the Child ('CRC') and its Optional Protocols ('OPs') children are defined as human beings under the

²¹⁸ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On Violations Of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022*.

²¹⁹ Recommendation of the Committee on the Elimination of Discrimination against Women General Recommendation, A/47/38, 1992, *Violence against women*.

²²⁰ General Recommendation of the Committee on the Elimination of Discrimination against Women, 26 July 2017, CEDAW/C/GC/35, *On gender-based violence against women, updating general recommendation No. 19 (1992)*.

²²¹ *Ibidem*.

²²² Report on civilian casualties in Ukraine, OHCHR and HRMMU, 21 February 2023.

age of 18 who, unless legal majority is attained earlier, are under the protection of general human rights instruments. Both Ukraine and the Russian Federation have ratified the CRC and the OPs on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. Pursuant to Article 38 of the CRC, States are obliged to respect international norms concerning armed conflicts which are relevant for the protection of children. It is also relevant that the protection of children in armed conflict has been one of the focuses of the UN Security Council, its special Working Group on Children and Armed Conflict and the Special Representative of the UN Secretary General for Children and Armed Conflict, and OSCE thus underlining the importance given to the issue²²³.

Both the first and second OSCE missions concluded that the Ukrainian conflict has had a significant influence on the lives and well-being of children. According to facts presented during the United Nations Security Council meeting on the 12th of May 2022, about 7,5 million children in Ukraine are suffering as a result of the conflict²²⁴. Overall, the mission discovered four major impacts that the conflict is having on this category.

Firstly, children are still direct victims of the violence. In June 2022 UNICEF stated that on average, more than two children are murdered and more than four are injured in Ukraine each day, usually in attacks utilizing explosive weapons in populous areas²²⁵. More precisely, according to the Office of the Prosecutor General of Ukraine, there would be 948 child war victims by the 24th of June 2022, with 338 killed and 610 injured and more than 130 gone missing children at the time of recording²²⁶. These figures may possibly be incomplete, as the count continues in areas of open fighting as well as temporarily occupied or freed territories. According to local authorities, 31 youths under the age of 18 were murdered and 19 were injured in Bucha alone. The chief prosecutor of the Bucha region also stated that “all children were killed or injured deliberately, because Russian soldiers shot on purpose at evacuating cars with the signs “CHILDREN”, and they deliberately shot at civilian homes”. Furthermore, the Russian armed forces are believed to utilize children as human shields. An example of this is that despite their proximity to the war, children in Volnovakha were allegedly forced by the Russian military to return to their classes at the local school on April 2022²²⁷.

Secondly, throughout the conflict, children have been subjected to various sorts of violence and abuse. Sexual violence against minors, including rape, has been widely reported, yet the scope of this violence is difficult to measure due to the sensitive nature of assaults. A testimony of this is what happened

²²³ Resolution of the UN General Assembly, 25 May 2000, A/RES/54/263, *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*.

²²⁴ Security Council meeting, 12 May 2022, SC/14889, *War in Ukraine Presenting ‘Child Protection, Child Rights Crisis, Senior United Nations Official Tells Security Council*.

²²⁵ UNITED NATIONS (2022c).

²²⁶ VANIYAN (2022).

²²⁷ WILSON (2022).

in April 2022, when a Russian soldier posted a video on Twitter in which he announced that he was making a “ferocious video” before sexually abusing a one-year-old baby²²⁸. After this, in May 2022 the Chernihiv Regional Prosecutor’s Office recognized two Russian armed forces members who tried to rape a 16-year-old girl and tortured the girl’s older brother with the assistance of other soldiers. The mission desires to emphasize that all of these instances, whether they are the result of a premeditated plan or not, must be thoroughly examined and those responsible brought to justice²²⁹.

Thirdly, children represent the vast majority of civilians who were forced to leave their homes due to the violence. That is why, after collecting numerous information, OSCE calls for appropriate safeguards to be put into practice to protect this category.

Approximately, more than 12 million Ukrainian people left the country since the beginning of the conflict. This massive movement of people consequently generated higher risks for children as they are the most vulnerable, especially if they relocate without the support of their families. Children moving within Ukraine or across the borders have faced several threats, including human trafficking and exploitation, child labor, forced recruitment, and gender-based abuse²³⁰.

Concerning this, on the 8th of April 2022, the Commissioner for Human Rights Liudmyla Denisova urged foreign organizations such as UNICEF to intervene, stating that approximately more than 121,000 children had been forcibly deported to Russia; according to the commissioner, the Russian Federation was planning to bring all these children within the country for adoption with Russian families, thus giving the children Russian citizenship²³¹. The Council of Europe also condemned Russian actions toward children, highlighting its concern for children in care institutions in Russian occupied territories, and those children whose parents or legal responsible in Ukraine have been killed. The Council reported that reuniting Ukrainian children who have been transferred to Russia and separated from their families is an extremely difficult task, primarily because of the lack of a unique system for reconnecting children with their relatives and legal guardians. Furthermore, international organizations and human rights monitoring mechanisms currently do not have proper access to these children in the Russian Federation due to the Russian authorities’ hesitation and refusal to offer such access and participate in aiding their repatriation. Individual child returns are organized on a case-by-case basis by different international and national civil actors on the territory, including several Ukrainian State authorities, Ukrainian and Russian human rights campaigners, volunteers, and other members of civil society. This strategy frequently requires that

²²⁸ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

²²⁹ *Ibidem*.

²³⁰ *Ibidem*.

²³¹ RUBRYKA (2022).

children’s parents and guardians embark on dangerous and costly travels via Russian or Russian-occupied territory. In addition, it is extremely difficult to obtain credible general numbers on the number of Ukrainian children deported to Russia, particularly those of unaccompanied minors or those in orphanages or care institutions²³². However, all these episodes highlight how Russian forces are taken advantage of the children’s vulnerability and are for this violating their human rights, forcibly removing them from their families, giving them citizenship without any consent. This is clearly stated by Article 8 of the Convention on the Rights of the Child, that States must “respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognized by law, without unlawful interference”²³³.

Fourthly, children in Ukraine suffer as a result of the disruption of certain important services caused by the conflict in some parts of the nation, such as food, water, and electricity supply, health care, and education. According to a media report focusing on the situation in the L’viv region, which has one of the largest populations of IDPs, there is a shortage of medical supplies and health care staff, as well as difficulties for displaced children to continue their pre-war education or to access psychosocial assistance²³⁴.

Nevertheless, one of the most affected children’s right due to the war, is the right of education. According to the Ukrainian Ministry of Education and Science, almost 2,000 schools had been damaged or destroyed by shelling and bombing from June until December 2022²³⁵. Furthermore, many of these school buildings were employed as shelters, centers for collecting humanitarian goods, or even military outposts, and for this reason, some of them became the target of armed attacks. For instance, in April 2022, a school in Chernihiv, which was utilized as a shelter and had the inscription “CHILDREN” written in large strong letters on the windows, was allegedly hit, killing nine people, including a 13-year-old kid. While teaching in all sorts of educational facilities in most parts of Ukraine was interrupted following the beginning of the conflict, it has been at least partially restarted in most regions of the country since mid-March 2022. However, another issue is the scarcity of teachers in some locations, particularly in the eastern regions, thus preventing kids of this basic service. Finally, children living in territory effectively controlled by the Russian Federation, such as Crimea, are subjected to enormous indoctrination and military-style education. Also, it has been reported that the Russian military cancelled school holidays in the seized city of Mariupol to prepare children for the shift to the Russian curriculum²³⁶.

²³² COUNCIL OF EUROPE (2023).

²³³ Art. 8, UNGA Resolution 44/25, 20 November 1989, *Convention on the Rights of the Child*.

²³⁴ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

²³⁵ CAFFREY (2023).

²³⁶ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

2.2.3 Elderly people

Older people, usually categorized as those over the age of 60, accounts for roughly one-quarter of the population of Ukraine, and in some areas, such as the Donetsk and Luhansk regions, their proportion might exceed 30%. This category of people is protected by general human rights agreements like the Universal Declaration of Human Rights, ICCPR, and ICESCR. In addition, in 2013 the Human Rights Council established an “Independent Expert on the enjoyment of all human rights by older persons” whose aim is to put international instruments concerning older people into action and to find best practices for the promotion and protection of older people’s rights, as well as gaps in existing legislation implementation²³⁷.

According to the OSCE mission, older people have been disproportionately affected by the current conflict in Ukraine, both as direct victims, as they have been killed or injured inadvertently or on purpose, and as indirect victims, thus bearing the negative consequences of the general disruption caused by the conflict, such as being denied access to food, clean water, medical care, or heating²³⁸.

This statement was also confirmed in June 2022 by OHCHR, the United Nations Population Fund (‘UNFPA’), the WHO Regional Office for Europe (‘WHO/EUROPE’), and HelpAge International who issued a joint statement in which they noted that while “everyone living in Ukraine has felt the impact of this war, [...] in a country where one in every four people is over 60, the impact on older persons, including those with disabilities, has been dramatic”²³⁹. In fact, as also stated by the Commissioner for Human Rights Denisova, one of the greatest problems affecting the elderly population is that, if they don’t have the resources to travel safely, they are forced to live in the occupation or in the besieged cities, where often they do not have access to basic services, food, heating, medicine. In fact, a far bigger number of elderly Ukrainians have become indirect victims of the ongoing conflict. According to several sources, older people are often those who stay behind, either because they are unable to leave their homes, for example, due to poor health, a lack of social ties, or a lack of digital literacy, or, more commonly, because they are reluctant to do so. Special rescue operations have been arranged by State officials and, very often, families or non-governmental organizations to get those elderly people who want to relocate to safety²⁴⁰. Besides, these people experience also severe mental health consequences due to the forced separation from the rest of the family and prolonged social

²³⁷ Resolution of the Human Rights Council, 4 October 2019, A/HRC/RES/42/12, *The human rights of older persons*.

²³⁸ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

²³⁹ WHO (2022).

²⁴⁰ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

isolation. As all the other vulnerable categories explained here, older people who have left their place of regular habitation and become either internally displaced or refugees are vulnerable different forms of violence. Most crucially, OSCE reminds in its report that under IHRL States commit to respecting and ensuring the human rights of all people within their jurisdiction, including those residing on territory under the effective control of the State, whether exerted directly or through non-state proxies. The territorial State retains a residual obligation, first to seek full re-establishment of its jurisdiction, and second, to preserve the human rights of its inhabitants to the greatest extent practicable. In the case of the current Russia-Ukraine war clearly some of these principles have not been respected, especially in Russian occupied territories²⁴¹. Although not all civilian casualties among older people constitute violations of IHRL or IHL, it is crucial to investigate each occurrence to see whether the criteria established by international law were followed.

2.2.4 Disabled people

Looking now at the last category of vulnerable people, at the beginning of the conflict it has been reported that in Ukraine there are approximately 2,700,000 persons with disabilities at risk of being targets of attacks²⁴². According to the Declaration of the Rights of Disabled Persons, a disabled person is defined in article 1 as “any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities”²⁴³. Under this declaration they are thus entitled to particular protection under IHRL, and both Ukraine and Russia signed it. In article 11 the declaration affirms that State parties must “take [...] all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict”²⁴⁴. The UN Security Council Resolution 2475 of 2019, on the Protection of Persons with Disabilities in Conflict also reaffirms and expands on this commitment. The resolution, among other things, asks all States to protect people with disabilities, as well as other civilians, from violence and abuses such as killing, torture, and rape, to allow and facilitate safe, timely, and unhindered humanitarian access to such people, to provide them with sustainable, timely, appropriate, inclusive, and accessible assistance, and to take all appropriate measures to eliminate discrimination and marginalization on the basis of disability²⁴⁵.

²⁴¹ *Ibidem*.

²⁴² OHCHR (2022).

²⁴³ Art. 1, Declaration of the Rights of Disabled Persons.

²⁴⁴ Art. 11, Declaration of the Rights of Disabled Persons.

²⁴⁵ Resolution of the UN Security Council, 20 June 2019, S/RES/2475, *Ground-Breaking Text on Protection of Persons with Disabilities in Conflict*.

Having now clear this principle, in April 2022, the UN Committee on the Rights of Persons with Disabilities, expressed its concern about the situation of disabled people in the conflict in Ukraine. In this statement, the Committee noted the significant effects the conflict had on people with disabilities and urged the Russian Federation to immediately end hostilities and observe and respect the principles of international human rights and humanitarian law in addition to fully upholding its obligations under the UN Declaration²⁴⁶.

In areas where active hostilities were occurring, people with disabilities, like older people, were frequently left behind or they could not leave their homes, frequently for reasons related to their disability, or because they were unable to understand the situation, again frequently related to their disability. There are persistent reports that numerous people with disabilities are trapped or abandoned in their homes, residential care facilities, and orphanages, without access to life-sustaining medications, oxygen supplies, food, water, sanitation, support for daily living, and other basic facilities. A further observation made by the Committee was that few people with disabilities are reported to be internally displaced or to have reached Ukraine's borders, indicating that many of them have not been able to flee to safety²⁴⁷. This is also a consequence of the fact that many of these people are also unable or unwilling to seek shelter in critical situations like as air attacks. Said inability is primarily due to physical impairments and the inaccessibility to various places, such as bunkers, subway stations, or underground shelters.

In this context, it appears that people with intellectual and psychosocial disabilities, despite constituting fewer than one-tenth of the people with disabilities in Ukraine, are overrepresented in long-term care institutions across the country. According to the UN Human Rights Monitoring Mission in Ukraine's briefing report on this category of persons with disabilities, given on the 1st of February 2022, a considerable number of such people are denied legal capacity. Therefore, the mission wishes to emphasize such people's increased vulnerability, as well as the State's obligation to exercise control over the territory where they live, to protect them from any acts of violence, and to ensure that they have access to all basic commodities.

2.3 Repression of human rights in Russian-occupied territories

It can be deduced from what has just been said above, that the majority of violations of IHRL that have been recorded by different entities, have been committed by the Russian army in Russian occupied territories.

According to the law of armed conflicts, as stated in chapter 2, the occupation of a territory as a consequence of an international military conflict is a scenario

²⁴⁶ EUROPEAN PARLIAMENT RESEARCH SERVICE (2022).

²⁴⁷ Report of the OSCE, 13 April 2022, ODIHR.GAL/26/22/Rev.1, *On violations of IHR and IHL in Ukraine*.

that does not affect the legal status of the occupied region or deprive the occupying State of sovereignty. The annexation of occupied territory during a conflict is illegal and must not deprive protected persons of their rights under Geneva Convention IV and the legislation of the occupying country must continue to apply in the occupied territory.

In the case of territories occupied by the Russian Federation in the Eastern part of Ukraine, from the 23rd of September to the 27th of September 2022, Russian authorities in Donetsk, Luhansk, Kherson, and Zaporizhzhia held referenda on joining the Russian Federation in these regions. Lately at the end of September, the Russian President signed the “Treaties on the Accession of the Donetsk People’s Republic, the Lugansk People’s Republic, the Zaporozhye Region, and the Kherson Region to the Russian Federation”²⁴⁸, formally annexing the territories, and applying Russian legislation on them, displacing the existing legal system. Further, on the 29th of October 2022, President Putin signed a decree imposing martial law in these Russian Federation-occupied areas. The order allows for a wide range of actions to be applied in case of necessity, including curfews, property seizures, detention, and limits on freedom of movement, freedom of association, and political party and other public association activities²⁴⁹. All these measures clearly limit a number of IHRL-guaranteed human rights.

Regarding the violations of human rights that have been perpetrated in these territories, there are violations of the right of life, security, and freedom of people. The right to life has been constantly violated due to purposely killing of civilians directly by the armed forces using explosive weapons; in some cases, people have always been brutally tortured before being killed²⁵⁰. This is strictly connected with the right of security, because people are constantly in danger of becoming the target of attacks or to be victims of violence by the Russian army, especially in the case of women, who often become victims of sexual violence. With this comes also the violation of the rights of freedom. In fact, since the beginning of the conflict, HRMMU and OHCHR reported more than 600 cases of arbitrary detention and force disappearance of Ukrainian civilians by the Russian army. Some of these people have not yet been found, or they’ve been found dead far from the place of disappearance. Detainees who have been released reported to the organizations that Russian forces perpetrated torture and ill-treatment on them, depriving them of freedom of movement and basic needs, like food, heat, and drinkable water. Considering the cases of force disappearance, the mission recorded 177 cases only in the Kherson and Kharkiv regions²⁵¹; determining the exact number of

²⁴⁸ THE STATE DUMA (2022).

²⁴⁹ Report of the OHCHR and HRMMU, 24 March 2023, *On the human rights situation in Ukraine 1 August 2022-31 January 2023*.

²⁵⁰ *Ibidem*.

²⁵¹ Report of the OHCHR and HRMMU, 24 March 2023, *On the human rights situation in Ukraine 1 August 2022-31 January 2023*.

people of the overall territory remain quite difficult due to the lack of recording of these cases. In addition to this, there have been several cases in which civilians have been relocated without their consent from Ukrainian territories to the Russian Federations. This is especially the case of children as I explained above.

Considering now the economic and social rights, as a result of continuous shelling and restrict freedom of movement, in Russian-occupied territories people have restrict access to banks and cash to cover their living expenses. Also, in the case of elderly people, they do not have access to their pensions which are administrated under the Ukrainian government. This is also a consequences of the Russian Federation's treaties of accession of occupied regions of Ukraine adopted in September because they stated that, under Russian law, all Ukrainian citizens and stateless persons permanently residing in these regions would be recognized as citizens of the Russian Federation, with the exception of those who failed to take the citizenship or formally rejected Russian citizenship within one month of the treaties entering into force. Thus, people who refuse or cannot formally become Russian citizens, could not have access to any type of social services in those territories.

On the side of social rights, the biggest problem is the access to medicines and medical facilities, as a huge number of them have been destroyed or converted in military hospitals, so there have been cases of older people dying because they could not manage to access these services²⁵².

Finally, there have often been reported violations of the rights of opinion, expression, and association. Citizens who advocated for Ukraine in public or on social media, as well as citizens linked with Ukrainian political parties, were systematically threatened, arbitrarily imprisoned and detained, tortured, and ill-treated. Specifically in Crimea, Russian authorities continued to pursue individuals for public actions directed at discrediting and obstructing the Russian military troops; for this, around 210 prosecutions have been recorded as of 31 January 2023²⁵³.

3. Accountability for these violations and challenges in the application of IHRL norms

When it comes to the accountability of these crimes, the situation is still more difficult and uncertain, as it is not clear which kind of mechanisms better fit for the prosecution of the violations. On a global scale, the international community agree that the Russian Federation “must bear the legal

²⁵² Report of the OHCHR and HRMMU, 24 March 2023, *On the human rights situation in Ukraine 1 August 2022-31 January 2023*.

²⁵³ *Ibidem*.

consequences of its internationally wrongful acts against Ukraine, including providing reparation for the injury and any damage caused by such acts”, as stated by the United Nations General Assembly in its resolution of the 14th of November 2022²⁵⁴. In this occasion, the Assembly also acknowledged the necessity for an international framework for compensation and an international “Register of Damage”. The goal of this Register would be to document evidence and claims for damage, loss, or injury to all natural and legal individuals involved, as well as the State of Ukraine, and it would also encourage and organize evidence collection. While the type and form of the compensation system as a whole remain unclear, the importance of establishing the Register is widely acknowledged by the international community in order to secure evidence and prioritize the victim-centered approach by allowing victims to seek redress in a timely manner²⁵⁵.

This statement has also been shared by the Council of Europe, which drafted an Action Plan for Ukraine “Resilience, Recovery, and Reconstruction” 2023-2026. In this plan it is stated that the Council will provide expert assistance to Ukrainian authorities in their efforts to ensure accountability and full reparation for damage, loss, or injury caused by Russian Federation violations of international law in and against Ukraine. The Council also suggests that a mechanism that could be created for the judgement of violations of human rights is a special tribunal, which could be established in different ways. One of this could be a multilateral agreement signed between Ukraine and other interested States following the precedents of the Nuremberg International Military Tribunal; another option listed by the Council is the sign of an agreement between Ukraine and an international organization, namely the UN; a third option could be a hybrid tribunal based on Ukrainian law and endorsed by the UNGA²⁵⁶.

All these hypothesis and contradictions derive also from some general challenges in the application of IHRL norms, because of the lack of effective enforcement. One of this, regards the discrepancy between States’ agreements and actual practices, which results in superficial commitments to human rights laws by rights-violating governments, which in most of the cases regards repressive governments. In fact, usually social constraints to conform are frequently the most significant factors that induce these regimes to embrace human rights treaties. Improving respect for human rights frequently necessitates government officials relinquishing some of the authorities and advantages that they rely on to administer their State. As a result, when rulers worry that their powers may be limited, the execution of human rights laws

²⁵⁴ Resolution of the UN General Assembly, 14 November 2022, A/RES/ES-11/5, *Furtherance of remedy and reparation for aggression against Ukraine*.

²⁵⁵ Resolution of the UN General Assembly, “*Furtherance of remedy and reparation for aggression against Ukraine*”.

²⁵⁶ Action Plan of the Council of Europe, 14 December 2022, CM/Del/Dec(2022)1452/2.4, “*Resilience, Recovery and Reconstruction*” 2023-2026.

becomes impossible²⁵⁷. Moreover, not all the rules and principles included under IHRL set obligations on State parties but are guidelines that States should follow.

In the light of what has been said in the last two chapters, the legal framework of accountability for the crimes committed in this war is extremely complex and not clear in the present moment. However, as I just anticipated at the beginning of paragraph 3, the legal tools that can be put into practice are diverse and different proposals for new instruments have been developed. All these mechanisms and hypothetical instruments will be explained in the following chapter.

²⁵⁷ SUN (2023: 494-495).

CHAPTER IV

THE ROLE OF THE UN AND THE LEGAL TOOLS AVAILABLE FOR THE JUDGEMENT OF THE CRIMES COMMITTED IN UKRAINE

After having analyzed the violations of IHL and IHRL in the two previous chapters, in this chapter I will review the legal tools available for the judgement of the human rights violations and war crimes committed, and the role that the United Nations is playing in the Russia-Ukraine conflict. In the first part of the chapter, I will reiterate the main principles and fundamentals of the Geneva Conventions and I will analyze if there are existing legal instruments in case of their violations. Then, I will highlight the measures taken by the UN since the conflict started. Particularly, I will report the United Nations Security Council ('UNSC') resolutions that have been adopted on this, and its limits. In the last two paragraphs I will explain the jurisdiction of the International Court of Justice ('ICJ') and the application of Article 41 of the Rome Statute, and the jurisdiction of the International Criminal Court ('ICC'), specifically in relation to the judgement of the crime of aggression. In each paragraph I will make references to chapters 2 and 3 to highlight when the acts committed by the parties involved in the conflict correspond to an effective legal violation under the mechanism I am going to explain.

1. Geneva Conventions

In chapter 2 I already mentioned the four Geneva Conventions ('GC') and their Additional Protocols as some of the main sources of International Humanitarian Law. More precisely, concerning the content of the conventions and the protocols, the first Geneva Convention protects the wounded and sick soldiers during war, the second Geneva Convention protects the wounded, sick and shipwrecked military personnel at sea during war, the third Geneva Convention concerns the protection of POWs, and the fourth Geneva Convention protects civilians during armed conflicts, including the ones who found themselves in occupied territories. Then, Additional Protocol I was drafted in 1977 aiming to enhance the protection of victims during international conflicts; the same subject is covered by Additional Protocol II, in the context of non-international armed conflicts. Finally, in 2005 Additional

Protocol III was signed leading to the adoption of a further distinctive emblem, the Red Crystal, in support of the work of the Red Cross²⁵⁸.

These conventions and protocols represent the main international legal tools for understand if violations of IHRL and IHL have been committed during armed conflicts, and for this, they are extremely relevant for the identification and adjudication of war crimes.

Under the category of war crimes are identified the most serious violations of the Geneva Conventions named as “grave breaches”. Both the Geneva Conventions and the Additional Protocols define what are considered as war crimes, based on the specific rights each of them specifically protects²⁵⁹.

In GC I, Article 50 defines war crimes as “wilful killing, torture or inhuman treatment [...] wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”²⁶⁰, if these acts are committed against people protected by the convention.

In GC II, war crimes are defined in the same way as in GC I, such as: “wilful killing, torture or inhuman treatment [...] wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”²⁶¹ according to Article 51.

In GC III, the first part of Article 130 is the same as per the two previous conventions, while the last part specifies the obligation to give POWs a fair trial: “wilful killing, torture or inhuman treatment [...] compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention”²⁶².

Article 147 of GC IV, after the same premise of the other articles, outlines the main principle of IHL, namely the necessity for parties involved in the conflict to distinguish between civilian and military objectives. In fact, the article states the prohibition of

“[...] unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully

²⁵⁸ ICRC (2014).

²⁵⁹ ICRC (2004a).

²⁶⁰ Art. 50, Geneva Convention I.

²⁶¹ Art. 51, Geneva Convention II.

²⁶² Art. 130, Geneva Convention III.

depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”²⁶³.

Looking at Additional Protocol I, Article 11 defines grave breaches against civilians as

“Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol”²⁶⁴.

This definition is then completed by Article 85 of the same protocol, which adds that are also considered as grave breaches: the targeting of civilian population, both groups and individuals; the launch of indiscriminate attacks against the civilian population and objects with “the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects”; the attack non-defended localities and demilitarized zones; the transfer “by the occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory”; the practice of racial discrimination, apartheid and inhuman treatment; the attack to historical, artistic, cultural and religious monuments and heritage²⁶⁵.

Having clarified what acts can be defined as war crimes, the issue is to identify how these violations can be judged. The Geneva Conventions establish a jurisdictional process when these violations occur, which is stated in each convention. All the conventions outline the principle that State parties should take all the necessary measures required to ensure appropriate penal sanctions for those who commit or order the commission of some of the grave breaches explained above. In these circumstances, the State has the duty to judge the persons accused before its own national courts, regardless of the persons nationality. Respectively, Article 46 of GC I, Article 50 of GC II, Article 129 of GC III, and Article 146 of GC IV affirm that

“The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

²⁶³ Art. 147, Geneva Convention IV.

²⁶⁴ Art. 11, Additional Protocol I.

²⁶⁵ Art. 85, Additional Protocol I.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949²⁶⁶.

What is stated in these articles is the constitution of the principle of “universal jurisdiction”, which was codified with the Geneva Convention to fill the gaps created by international law mechanisms. The basic principle of universal jurisdiction is that it empowers States to pursue the perpetrators of grave breaches, even if the States have no ties to the accused, the victims or the acts committed, thus, a person accused of a serious violation of humanitarian law can be tried in any court in any country, if this specific country agrees with this doctrine²⁶⁷. Historically, the development of universal jurisdiction has been seen as fundamental because the principles of international law, as per their nature, limit the application of domestic jurisdiction toward the adjudication of war crimes and crimes against humanity. The problem concerning these violations is also that it is usually difficult or impossible to prosecute them in the country where they have been perpetrated. A solution to this was the creation of the International Criminal Court which is the main judicial organ entitled for the judgement of these crimes. However, as I will explain in the following paragraphs, the court’s jurisdiction is affected by several limitations. That is why the exercise of universal jurisdiction is an effective international remedy available today for punishing these grave branches. It has been integrated into a number of international treaties, most importantly the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, according to which a victim of torture may make a complaint in any domestic court of a foreign country if the alleged perpetrator is present on territory under that country’s jurisdiction and the State in question has adjusted the provisions of the Convention into its domestic legislation²⁶⁸.

²⁶⁶ “Penal sanctions I. General observations”, article 46 of GC I, article 50 of GC II, article 129 of GC III, and article 146 of GC IV.

²⁶⁷ MEDECINS SANS FRONTIERES (1998a).

²⁶⁸ *Ibidem*.

1.1 Breaches of the Conventions by the parties involved in the conflict in Ukraine

Considering chapter 2, many of the acts I listed can be considered violations of the Geneva Conventions and additional protocols. First of all, the wilful killing of civilians, torture and other forms of violence and humiliation, represent violations of Geneva Convention IV. As I said in paragraph 2 of chapter 2, there have been recorded more than 20,000 civilian casualties due to continues shelling by the Russian forces, and evident signs of torture have been confirmed²⁶⁹. Regarding then violence on civilians, sexual violence use as a weapon of war is also a violation of Article 27 of Geneva Convention IV²⁷⁰; until the present moment proves and testimonies of rape have been collected by the OHCHR and the HRMMU, which reported overall more than 100 verified cases. Another violation of Convention IV is the use of human shields, as it has been reported in the case of the care house in a village in the Luhansk region, which was the target of an attack by the Russian army; concerning this, there is also evidence of the use of human shields by the Ukrainian army during the occupation of the Azovstal plant²⁷¹. Together with the violence against civilians, March 2022 recorded the highest number of indiscriminate attacks against civilian infrastructures and objects, which is a violation of Additional Protocol I, and the case of the theatre in Mariupol is an example of this. Finally, enough evidence has been collected confirming that both parties involved in conflict violated Geneva Convention III by committing torture against POWs²⁷².

Then, as I reported in chapter 3, the force deportation of people, particularly all children bought in Russia without their consent, represent violations of Geneva Convention IV.

Concerning the application of international jurisdiction in Ukraine, it is important to report that Ukraine is among the countries that have included universal jurisdiction in their criminal codes. In fact, Part 1 of Article 8 of Ukraine's penal code states that "foreigners or stateless persons who do not permanently reside in Ukraine and commit criminal offences outside its borders are subject to liability in Ukraine under this Code in cases stipulated by international treaties"²⁷³. In the context of the ongoing war, the prosecutor general's office already has a record of around 41,000 reported war crimes in

²⁶⁹ Report of the OHCHR and the HRMMU, 24 March 2023, *On the human rights situation in Ukraine 1 August 2022-31 January 2023*.

²⁷⁰ "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault." Art. 27, Geneva Convention IV.

²⁷¹ SCHMITT (2022).

²⁷² Report of the OHCHR and HRMMU, 21 February 2023, *Civilian casualties in Ukraine from 24 February 2022 to 15 February 2023*.

²⁷³ IWPR (2022).

Ukraine. However, not all can be prosecuted by Ukraine because they are not all listed in the Geneva Conventions²⁷⁴. In fact, these include acts that are not yet criminalized in the penal code, such as using people as human shields, sexual violence as a separate crime, crimes against cultural objects, and crimes against humanitarian missions such as shelling evacuation buses. As a result, it is difficult for Ukraine to prosecute all war crimes under the existing standard of universal criminal jurisdiction at the country's criminal law. During Petro Poroshenko's presidency, a bill was proposed that would extend universal criminal jurisdiction to the crimes of aggression, crimes against humanity, war crimes, and genocide; it was declared null after the election of a new parliament. A new bill was then proposed in 2019 with the aim of expanding the jurisdiction over war crimes, with the restriction that universal criminal jurisdiction over war crimes could only be established when the persons accused were on Ukrainian territory. That is, Ukraine could only initiate criminal actions against foreigners or stateless persons present on its territory²⁷⁵.

On the other hand, since the beginning of the war four countries, namely Estonia, Germany, Latvia, and Lithuania, have launched universal jurisdiction investigations into war crimes, while Norway, Poland, Slovakia, Spain, Sweden, and Switzerland have all stated their desire to launch similar inquiries²⁷⁶. For this, Ukrainian nationals can submit criminal complaints in many countries under the universal jurisdiction principle²⁷⁷.

Overall, Ukrainian authorities have expressed their willingness to assist all international efforts to seek justice, and it is evident there is a strong international political will to pursue justice for the country. However, despite these concrete efforts, no real judicial proceedings have been put in place by these States until now, and the application of universal jurisdiction in Ukraine seems too weak for the judgement of all those war crimes and crimes against humanity²⁷⁸.

2. United Nations Security Council

The United Nations Security Council is one of the principal organs of the United Nations System and its main purpose of to maintain international peace and security. Among other things, it is also in charge of recommending to the General Assembly the admission of a new member, recommending a person

²⁷⁴ *Ibidem*.

²⁷⁵ *Ibidem*.

²⁷⁶ IWPR (2022).

²⁷⁷ NEISTAT (2022).

²⁷⁸ IWPR (2022).

during the elections of the new Secretary-General, and approving changes to the UN Charter. Most importantly, the Security Council is the only organ of the UN entitled to issue binding resolutions, meaning that all member States must comply with its decisions. This power is extremely important when the binding decisions concern the authorization to military operations and the imposition of sanctions²⁷⁹.

The Council is composed of 15 members: 10 are elected every two years on a regional basis, while 5 represent the permanent members, namely China, the United States, the United Kingdom, France, and the Russian Federation. These five members has the power to veto any resolution of the Security Council, thus blocking the discussion on any matter²⁸⁰. Moreover, the presidency of the organ rotates on a monthly basis among its members.

The mandate of the Security Council is defined by the UN Charter, and it is based on the principle of “collective security” and maintenance of international peace and security stated in Article 1 of the Charter. The purpose of this system is to solve disputes between States through international peaceful mechanisms. However, if it is not possible, the Charter established that the UNSC is authorized to use armed force to manage threats endangering international security²⁸¹.

There are basically two mechanisms that the Security Council could apply according to the gravity of the situation into consideration.

Chapter VI of the UN Charter sets out the “Peaceful settlement mechanism” from article 33 to article 38. According to these articles, in the first stage of prevention regulated by Article 33, the UN Security Council has the role to assist the peaceful resolution of conflicts among the parties involved. Here, States must seek peaceful solutions to their disputes, whether through dialogue, investigation, mediation, conciliation, or arbitration or any other peaceful means. However, according to Article 34, “the Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security”²⁸². This is possible as any member can refer any dispute of the nature affirmed in the previous article to the Council. It is also possible for States not members of the UN, if they accept beforehand the pacific settlement mechanism. In every circumstance and at any stage of the dispute, the Council may suggest appropriate procedures or measures of

²⁷⁹ Chapter V, UN Charter.

²⁸⁰ Art. 23, UN Charter.

²⁸¹ “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations”. Art. 42, UN Charter.

²⁸² Art. 34, Chapter VI of UN Charter.

adjustment. It may suggest in particular that States refer legal conflicts to the International Court of Justice. If then the continuation of the dispute is likely to pose a threat to international peace and security, States must refer their disagreements to the Security Council. If all parties to a disagreement wish so, the Council may also review a matter and provide recommendations. Generally, acts of aggression and armed attacks, according to the International Court of Justice, could justify the lawful use of self-defence. Other sorts of threats to international security, on the other hand, cannot justify the use of armed force and must be presented before the UN Security Council²⁸³.

The second mechanism that could be put into practice by the Council is regulated by Chapter VII and concerns the “responses to breaches of peace and acts of aggression”. In these cases, if all preventive measures fail in circumstances of threats to the peace, breaches of the peace, and acts of aggression, the Security Council may resort to more harsh measures such as sanctions, including military ones. In this, the Council is responsible for determining the existence of a “threat to international peace and security”. It investigates each issue that is brought to it and determines if the public international order is in danger, as stated in article 39²⁸⁴. The reasons given by the Council differ depending on the situation. For instance, the Council may decide to take interim measures mandatory for all States. The Council may also impose diplomatic or economic sanctions to ensure that its decisions are abided by. In fact, Article 40 establishes that

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”²⁸⁵

Most importantly, according to this mechanism, if the Council believes that such efforts are ineffective, it may resort to using international armed troops to restore order²⁸⁶. Despite being paralyzed throughout the Cold War, the United Nations Security Council has authorized the use of international armed force on many occasions since the early 1990s. When approving military

²⁸³ MEDECINS SANS FRONTIERES (1998c).

²⁸⁴ “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”. Art. 39, Chapter VII of UN Charter.

²⁸⁵ Art. 40, Chapter VII of UN Charter.

²⁸⁶ “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations”. Art. 41, Chapter VII of UN Charter.

interventions, the Security Council passed resolutions emphasizing that grave breaches of human rights could endanger international peace and security. This has been the case of Iraq in 1991, Bosnia in 1994, and Rwanda in 1998. Within the framework of its mandate to protect international peace and security, the Security Council, acting under Chapter VII of the UN Charter, has also imposed on States the jurisdiction of International Criminal Tribunals tasked with prosecuting those responsible for war crimes, crimes against humanity, and genocide committed on their territory. For instance, this has been the case of the *ad hoc* International Criminal Tribunals for the former Yugoslavia and Rwanda²⁸⁷.

2.1 UN Security Council Resolution and the limit given by Russia veto power

Regarding the intervention of the Security Council in the war in Ukraine, on the 25th of February 2022 the Council held a first emergency meeting to deal with the situation. The agenda item of the meeting was “Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council” and the intent was to adopt the draft resolution S/2022/155. The content of the resolution was the condemnation of the Russian special military operation in Ukraine declared in February 2022. The draft resolution recalls the parties’ obligation to implement the Minsk agreements, including a comprehensive ceasefire as decided in 2014. The Council recalls then the sovereignty and territorial integrity of Ukraine and its borders and affirms in strong terms that the Russian Federation must immediately stop its aggression against the country²⁸⁸.

Despite the severe terms and fierce condemnation of the invasion, the resolution did not enter into force as Russia vetoed the decision, thus blocking all possible actions that the Security Council could implement.

The same happened with the next resolutions concerning the situation in Ukraine which were drafted by the Council. Considering the outcome of the first meeting held just after the beginning of the special operation in the country, the Security Council called for the 11th emergency special session of the UN General Assembly on the subject of the 2022 Russian invasion of Ukraine. On this occasion, Albania and the United States introduced Resolution 2623 which was adopted by the Council on the 27 February 2022. However, Russia voted against, and China, India, and the United Arab Emirates abstained; it was not possible to veto this decision as it was a procedural resolution. In any case, this resolution is relevant because it was the 13th time that the “United for Peace” resolution adopted in November 1950 has been invoked. This formed resolution affirmed that, when the UNSC lacks

²⁸⁷ MEDECINS SANS FRONTIERES (1998c).

²⁸⁸ Resolution of the UN Security Council, 25 February 2022, S/2022/155, paras. 1-4.

unanimity among its permanent members, the issue should immediately be submitted to the General Assembly, which may make appropriate recommendations to the member States for collective actions, including the use of armed force if necessary²⁸⁹.

Lately, the Russian Federation vetoed the Resolution 5/2022/720 drafted in September concerning the “Maintenance of peace and security in Ukraine”. The content of the resolution reaffirmed the integrity of the borders of Ukraine and condemned the Russian territorial occupation of the eastern regions of the country as illegal, as well as the referenda indicted in the regions of Luhansk, Donetsk, Kherson and Zaporizhzhia²⁹⁰.

2.2 Criticism of inaction by the Security Council and General Assembly Resolution 76-262

On these occasions the Security Council demonstrated its inability to address the situation in Ukraine and to pursue its primary commitment to maintain international peace and security. Also, the structure of the organ showed its limits: despite the continuous armed attacks against Ukraine and the occupation of parts of the country, the monthly rotation of the presidency of the organ has been respected, thus in April 2023 Russia chaired the meetings held by the Council in that month²⁹¹.

Concerning then the use of the veto power, the United Nations General Assembly approved the Resolution A/76/L.52 dated 20 April 2022 for the “Strengthening of the United Nations system”. The resolution states that the General Assembly should have held a debate concerning the situations in which the veto power of the permanent members is used in the Council resolutions, and for this, it encourages the Council to submit a report about the use of the veto power to the General Assembly²⁹².

It appears that the content of the resolution is quite weak and does not mention any possible change in the structure of the system or any exceptional measures that could be used in certain emergency situations.

The unilateral opposition to the Council has contributed to growing criticism of the UN’s purported irrelevance on the world stage. Today, the UN has been increasingly influenced by geopolitical rivalry and indecision, which could represent a contradiction with its mandate established to develop global collaboration for the common good and consensual laws guiding international behaviour in order to pre-empt and reduce interstate crises. In pursuit of

²⁸⁹ Resolution of the UN Security Council, 27 February 2022, S/RES/2623.

²⁹⁰ Resolution of the UN Security Council, 20 September 2022 S/2022/720, paras. 2-4.

²⁹¹ BORGER (2022).

²⁹² Resolution of the UN General Assembly, 20 April 2022, A/76/L.52, paras. 1-4.

national interests, Russia is distorting international rules and sowing conflict on the Security Council²⁹³.

2.3 Possible changes of UNSC structure to solve the veto power problem

The war in Ukraine has thus raised doubts about the work, structure and commitments of the Security Council, which is not able to judge the violations of IHRL and IHL committed during the conflict, nor can force Russia to withdraw its troops. More generally, due to its structural design, the Council is unable to deal with and find a solution to international peace and security concerns for the case here analyzed.

On the other hand, the international community started questioning on how this system could be changed. In November 2022 the General Assembly concluded its last meeting regarding the reform of the Security Council, reaffirming the need to change the structure of the 15 members, and to modify the application of the veto power, restricting it to some situations. This statement found the approval of the majority of the member States there present, which suggested the establishment of more strict rules binding permanent members as to the use of veto power²⁹⁴.

Generally, its structure is considered unfair and consequently, some have called for a fundamental revision of it, that could occur in different ways, either with an expansion of the permanent membership, or through the formal procedure for rewriting the Charter stated in Article 109²⁹⁵. Nevertheless, these changes seem quite unlikely since they will require a great political will and agreement between the permanent members, who should then renounce or change some terms and conditions of their *status quo*²⁹⁶.

²⁹³ MAGIRD, SHALOMOV (2022).

²⁹⁴ UNITED NATIONS (2022a).

²⁹⁵ “1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council”. Art. 109, para. 1-3, UN Charter.

²⁹⁶ SAYLAN, DUNTON (2023).

Despite this, there have been several reforms of the council's structure in the past, and the General Assembly affirmed its will to continue the discussion on this topic, particularly considering the ongoing war in Ukraine.

3. The International Court of Justice

Together with the Security Council, another fundamental organ of the United Nations is the International Court of Justice, established in 1945 by the UN Charter. The court is composed of 15 judges who are elected for a term of 9 years by the UN General Assembly and the Security Council²⁹⁷. The ICJ's has two main functions. The first one is to hear the contentious cases, which are legal disputes between States submitted to the court. The second one is to submit advisory proceedings, which are requests submitted to the court by the United Nations organs or specialized agencies for advisory opinions on legal questions. For the purpose of this research, I will go more into the details of the first mechanism.

States only may be parties to contentious cases, as long as they are members of the UN, or they acceded to the statute of the ICJ, or they have accepted the jurisdiction of the court under certain conditions, as assessed in Article 36²⁹⁸ of the statute. In the case of Russia and Ukraine, neither of the countries officially accepted the jurisdiction of the court under Article 36. Therefore, as I will explain more clearly below, the competence of the court to adjudicate

²⁹⁷ Art. 13, Statute of the ICJ.

²⁹⁸ "1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court". Art. 36, Statute of the ICJ.

violations in the current war in Ukraine derives from the Genocide Convention, which has been ratified by both countries.

States do not have permanent representatives at the Court, but they are represented by an agent when they are parties to a case before the Court. They usually contact the Registrar, the administrative body of the court, through their Foreign Minister, or an ambassador.

Proceedings for contentious cases can be initiated in two ways:

- Through the notice of a special agreement, namely a bilateral document that can be lodged with the Court by any or both the States parties to the proceedings. A special agreement must specify the issue of the dispute as well as the parties involved.
- By way of a unilateral application, which is lodged by an applicant State against a respondent State. In addition to the name of the party bringing the claim and the subject of the dispute, the applicant State must, as briefly as possible, indicate on what basis, either a treaty or a declaration of acceptance of compulsory jurisdiction, it claims that the Court has jurisdiction, and must state the facts and grounds on which its claim is based²⁹⁹.

Finally, the Court's proceedings begin on the date in which the Registrar receipt the special agreement or application.

Then, according to Article 43, the procedure consists of both a written and an oral part. In the first written part the parties file and exchange pleadings giving a full account of the points of fact and law on which each party relies. This is followed by an oral phase, which consists of public hearings at which agents and lawyers address the Court³⁰⁰.

Most importantly, the ICJ is entitled to order provisional measures for certain situations, which means temporary remedy issued under special circumstances. This power is regulated by Art 41 of the statute of the court, which states in paragraph 1 that "The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party"³⁰¹. The party seeking provisional measures must clearly identify the rights in question that should be preserved by the measure. Such rights must be related to the specific dispute, must exist at the time of the request, and cannot be hypothetical.

²⁹⁹ Art. 40, Statute of the ICJ.

³⁰⁰ Art. 43, Statute of the ICJ.

³⁰¹ Art. 41 para. 1, Statute of the ICJ.

Paragraph 2 affirms that “Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council”³⁰².

3.1 The jurisdiction of the Court in the conflict and Ukraine’s appeal in February 2022

Considering the judicial mechanism of the ICJ just explained the role of the court has been central since the conflict in Ukraine started. In fact, two days after the Russian Federation invaded the country, Ukraine filled an application to the Registrar of the court on the 26th of February 2022. As said before, since neither of the countries have accepted the jurisdiction of the court, the claim brought by Ukraine was based on the interpretation, fulfilment, and application of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; more precisely, Ukraine claimed that Russia falsely stated that a genocide was taking place in the eastern regions of the country and used it as an excuse for invading the country. The application was based on Article 9 of the Genocide Convention which affirms that disputes among States parties to the convention concerning its application, must be referred to the International Court of Justice³⁰³. According to the information available, the present case reflects an issue that can be judged by the ICJ. The parties disagree on whether genocide, as defined by Article 2 of the Genocide Convention, has occurred or is occurring in Ukraine’s Luhansk and Donetsk oblasts; the dispute regards also on whether, as a result of Russia’s unilateral declaration that genocide is taking place, Russia has any legal basis to conduct military action in and against Ukraine to prevent and punish genocide under Article 1 of the Genocide Convention; finally, it was not clear whether Russia may take such unilateral military steps under Article 8 of the Genocide Convention, which states that Contracting Parties may request “the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide”, and Russia is not acting in a manner permitted by the Charter of the United Nations. Indeed, in the application submitted, it is stated in paragraph 2³⁰⁴ and then in section III “Facts”, that

³⁰² Art. 41 para. 2, Statute of the ICJ.

³⁰³ “Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute”. Art. 9, Genocide Convention.

³⁰⁴ “This Application concerns a dispute between Ukraine and the Russian Federation relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention” or “Convention”). As Ukraine further explains below, the Russian Federation has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and on that basis recognized the so-called “Donetsk People’s Republic” and “Luhansk People’s Republic,” and then declared

“the Russian Federation and persons within Russia have systematically supplied illegal armed groups, including the Donetsk People’s Republic (“DPR”) and the Luhansk People’s Republic (“LPR”), with heavy weaponry, money, personnel, and training. With active Russian support, these illegal armed groups comprised of pro-Russian Ukrainians and Russian nationals emerged in the Donbas region of eastern Ukraine, spanning the Donetsk and Luhansk oblasts. In March and April 2014, these illegal armed groups occupied public and administration buildings in Donetsk and Luhansk”³⁰⁵.

Ukraine added at paragraph 21 that there is no factual basis confirming the commission of the crime of genocide in the *Oblasts* of Luhansk and Donetsk, and that Russia has provided no evidence to back up its claim. It is also said that this statement is supported by OHCHR’s reports on the human rights situation in Ukraine which make no mention of genocide. As a result, the parties’ disagreement concerns the interpretation, application, or fulfilment of the Genocide Convention; thus, the Court should recognize its authority on a *prima facie* basis in order to indicate temporary measures³⁰⁶. However, Russia did not attend the first Court hearing, which took place on the 7th of March 2022. Russia argues that the ICJ lacks jurisdiction in a letter to the Court dated 5 March 2022, citing two main points: first, that the Genocide Convention governs neither the use of force between States nor the recognition of States, so the subject of Ukraine’s claim and request falls outside the Convention; secondly, the military operation was not legally based on the Genocide Convention, but on Article 51 of the UN Charter, on exercising the right of self-defence in the event of armed attack, and customary international law. Russia claims that references to genocide in the President’s statement announcing the military operation do not give a sufficient basis to establish that the Convention was invoked or that a conflict exists under it³⁰⁷.

Afterwards, the ICJ ordered the Russian Federation to immediately cease the military operation on the 16th of March 2022. The Court claimed that at that point in the proceedings, there was no proof supporting Russia’s charges of

and implemented a “special military operation” against Ukraine with the express purpose of preventing and punishing purported acts of genocide that have no basis in fact. On the basis of this false allegation, Russia is now engaged in a military invasion of Ukraine involving grave and widespread violations of the human rights of the Ukrainian people”. Para. 2, Application Instituting Proceedings filed in the Registry of the Court, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation).

³⁰⁵ Para. 13, Application to the ICJ, 26 February 2022, General List. No. 182, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

³⁰⁶ Para. 11, Application to the ICJ, 26 February 2022, General List. No. 182, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

³⁰⁷ EUROPEAN PARLIAMENT (2022: 1).

genocide on Ukrainian soil. Furthermore, it raised reservations about the potential of a Contracting Party to the Convention using unilateral force against another State to prevent or punish alleged genocide. As a result, it affirmed Ukraine's right not to be subjected to a military action by the Russian Federation³⁰⁸.

In this way, the country asked the Court to use all necessary measures to force Russia to stop its military operation, in accordance with Article 74 of the court's statute. In the same statement, Ukraine emphasized the urgency of the situation requesting the court to hold a hearing about the topic a few days after. At the end of its oral statement issued on the 7th of March 2022, Ukraine listed the provisional measures that the ICJ should have implemented if it had accepted the case. Ukraine's request was articulated in four main points, stating that the Russian Federation should suspend immediately its military operation in the country and withdraw all its military units within the country; then, it asked that the country should not take any other action to worsen the situation and that Russia should provide a report to the ICJ with the measures implemented to respect the Court's provisional measures³⁰⁹.

3.2 Provisional measures ordered by the ICJ on March 2022: Art. 41 of the ICJ Statute

Therefore, after Ukraine submitted the application to the court, the ICJ decided to issue provisional measures, as established by Article 41 of its statute on the 16th of March 2022. Contrary to Russia's assertion, the Court's considers that there is sufficient evidence for Ukraine to invoke the compromissory clause in Article 9 of the Genocide Convention³¹⁰, which

³⁰⁸ LANZA (2022: 431).

³⁰⁹ "(a) The Russian Federation shall immediately suspend the military operations commenced on 24 February 2022 that have as their stated purpose and objective the prevention and punishment of a claimed genocide in the Luhansk and Donetsk oblasts of Ukraine.

(b) The Russian Federation shall immediately ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, take no steps in furtherance of the military operations which have as their stated purpose and objective preventing or punishing Ukraine for committing genocide.

(c) The Russian Federation shall refrain from any action and shall provide assurances that no action is taken that may aggravate or extend the dispute that is the subject of this Application or render this dispute more difficult to resolve.

(d) The Russian Federation shall provide a report to the Court on measures taken to implement the Court's Order on Provisional Measures one week after such order and then on a regular basis to be fixed by the Court". Para. 14, Application to the ICJ, 26 February 2022, General List. No. 182, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

³¹⁰ "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the

gives the ICJ jurisdiction over disputes arising under the Convention. Some of the Court's noteworthy arguments in support of its preliminary decision are as follows: in discharging its duty to prevent genocide, every State may only act within the limits permitted by international law; secondly, the Court is not in possession of evidence substantiating the Russian Federation's genocide allegations; finally, the Court is doubtful that the Convention authorizes unilateral use of force in another State's territory³¹¹.

As a result, the Court issued the procedure and announced its decision to order three provisional measures, the first adopted by 13 out of 15 members, and last one adopted unanimously. The first one states that "The Russian Federation shall immediately suspend the military operations that it commenced on the 24th of February 2022 in the territory of Ukraine"; the second one "The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point (1) above"; the third one affirms that "Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve"³¹². The Court is avoiding creating a "way off" by which Russia could say that no military operations are being conducted that have as their stated purpose and objective the prevention of genocide.

The first two provisional measures were rejected by judges from China and Russia. In their declaration, which is annexed to the Court's conclusions, they essentially support the Russian interpretation that the ICJ lacks jurisdiction because the issues at hand concern the State recognition and the use of force in international law, both of which are not covered by the Genocide Convention. However, both voted in favour of the third measure. Afterwards, on the 17th of March 2022 the Russian government declared, through Kremlin spokesperson Dmitry Peskov, that Russia could not "take this decision into account"³¹³. In this way the measures are more complicated to implement since the ICJ lack enforcement procedures, thus UN State Parties can take the matter to the Security Council, where Russia's veto power would prevent any enforcement measures from being implemented. More precisely, Russian judge Kirill Gevorgian justified his decision by stating that it was "evident that the dispute that Ukraine seeks to bring before the Court, in reality, relates to the use of force by the Russian Federation on Ukrainian territory. However,

International Court of Justice at the request of any of the parties to the dispute". Art. 9, Genocide Convention.

³¹¹ EUROPEAN PARLIAMENT (2022).

³¹² Para. 86, "V. CONCLUSION AND MEASURES TO BE ADOPTED", Application to the ICJ, 26 February 2022, General List. No. 182, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

³¹³ ANSA (2022).

neither is the use of force regulated by the Genocide Convention nor does the use of force in itself constitute an act of genocide”³¹⁴.

On the other hand, Chinese judge Hanqin Xue affirmed that he shares “the call that the military operations in Ukraine should immediately be brought to an end so as to restore peace in the country as well as in the region”, however he added that “the measures that the Russian Federation is solely required to take will not contribute to the resolution of the crisis in Ukraine. The Court, in my view, should be cautious in entertaining the request submitted by Ukraine and avoid prejudgment on the merits of the case”³¹⁵.

Overall, the decision is considered a “near total” victory for Ukraine, while non-respect of the decision is expected to cause further reputational harm to Russia. Although the decision does not rebut all Russia’s stated grounds for invasion, it marks an important step towards proving the illegality of the war under international law. The blocking by Russia of the UN Security Council’s attempt to condemn the invasion, meanwhile reveals the limitations of the UN system, and thus of the ICJ as well.

It is suggested that Russia’s rationale for the genocide-related war is based on an inappropriate interpretation of the notion of humanitarian assistance. The “responsibility to protect” philosophy, created in response to atrocities committed in Rwanda and the former Yugoslavia in the 1990s, is central to this. At the 2005 high-level UN World Summit, UN member States pledged to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity through appropriate diplomatic, humanitarian, and other peaceful means, and, if these fail, through collective action endorsed by the Security Council, in accordance with Chapter VII of the UN Charter³¹⁶.

The ICJ judgement has a significant impact in that there is “no rule in international law automatically giving one State the right to invade another State to stop a genocide”. To make this point clear, it has been underlined that the language used by the court is often direct³¹⁷: for instance, in paragraph 75 of its order the court emphasizes its disappointment at Russia’s military operation in Ukraine and underlines the humanitarian consequences for the civilian population³¹⁸. Or again in paragraph 18 the ICJ affirms its profound

³¹⁴ Para. 5, Declaration of vice-president Gevorgian of the ICJ.

³¹⁵ Para. 1, Declaration of judge Xue of the ICJ.

³¹⁶ EUROPEAN PARLIAMENT (2022:2).

³¹⁷ MILANOVIC (2022).

³¹⁸ “The Court considers that the civilian population affected by the present conflict is extremely vulnerable. The “special military operation” being conducted by the Russian Federation has resulted in numerous civilian deaths and injuries. It has also caused significant material damage, including the destruction of buildings and infrastructure. Attacks are ongoing and are creating increasingly difficult living conditions for the civilian population. Many persons have no access to the most basic foodstuffs, potable water, electricity, essential medicines or heating. A very large number of people are attempting to flee from the most affected cities under extremely insecure conditions”. Para. 75, Order of the ICJ, 16 March 2022, General List. No. 182,

concern “about the use of force by the Russian Federation in Ukraine, which raises very serious issues of international law”³¹⁹.

Despite the decisive action of the ICJ, there are several criticisms of its structure and functioning, in particular its inevitable dependence on the United Nations system, which makes any action more complicated considering the veto power that Russia holds within the Security Council. In addition, another criticism refers to the mandatory acceptance of its authority, which is seen as a significant constraint on ICJ jurisdiction; in fact, the ICJ cannot hear a dispute between States unless each of them recognizes its authority. Additionally, another point is that ICJ rulings are final, binding, and often not appealable, which means they influence the legal rights and duties of the governments concerned in the dispute indefinitely³²⁰.

For this reason, other judicial channels, including the International Criminal Court and the establishment of a special tribunal on the crime of aggression, are now being active or explored as means of holding the Russian leadership accountable for war-related crimes. In the following last paragraphs I will consider the jurisdiction of the ICC concerning the war.

4. The International Criminal Court

Looking now at the last legal tool here considered for the adjudication of the war crimes and crime against humanity committed in Ukraine, I will analyze the mandate and functioning of the International Criminal Court.

The ICC, also known as “the Court” is a permanent international court established in 1998 by a conference of 160 States who adopted the statute of the court, namely the so-called “Rome Statute”. The Court has been established after the end of the Cold War and its creation has been influenced particularly by the crimes committed in Yugoslavia and Rwanda. The State Parties who have recognized its statute are represented within the ICC by the Assembly of State Parties; the aim of the Assembly is to set the general policies of the court and review its activities during a meeting held once a

Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation).

³¹⁹ “The Court is profoundly concerned about the use of force by the Russian Federation in Ukraine, which raises very serious issues of international law. The Court is mindful of the purposes and principles of the United Nations Charter and of its own responsibilities in the maintenance of international peace and security as well as in the peaceful settlement of disputes under the Charter and the Statute of the Court. It deems it necessary to emphasize that all States must act in conformity with their obligations under the United Nations Charter and other rules of international law, including international humanitarian law”. Para. 18, Order of the ICJ, 16 March 2022, General List. No. 182, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.

³²⁰ MILANOVIC (2022).

year. Until the present moment the Statute of the court has been accepted by over 160 countries³²¹.

The overall purpose of the Court is to investigate, prosecute, and try individuals, accused of committing crimes against humanity, war crimes, and the crime of aggression³²². This is what differentiates the most the ICC from the other organs and courts explained before, particularly from the ICJ which is in charge of disputes between States, not individuals. Also, its most important feature is its independence from other organizations, first of all the UN.

As per this purpose, the aim of the Court is not to replace national criminal justice systems, but to complement their work by prosecuting individuals when the national system is not able or willing to do it. However, the basis of this system remains that States have the main responsibility to try the perpetrators of these crimes³²³.

Concerning its structure, the Court is composed by four organs: the Presidency, the Chambers, the Office of the Prosecutor, and the Registry. The Presidency consists of the President and two Vice-Presidents, and it is in charge of the administration of the Court, except the Office of the Prosecutor; the Chambers are composed by 18 judges which are assigned to the Pre-Trial Chambers, the Trial Chambers, and the Appeals Chamber. The Office of the Prosecutor is an independent organ of the ICC: its mandate is to receive and analyze information on alleged crimes within the ICC's jurisdiction, to analyze situations referred to it in order to determine whether there is a reasonable basis to initiate an investigation into a crime of genocide, crimes against humanity, war crimes, or the crime of aggression, and to prosecute the perpetrators of these crimes. Since the mandate of the Office is broad, it is split in three different divisions: the Investigation Division, which is responsible for conducting investigations, including acquiring and reviewing evidence, questioning suspects as well as victims and witnesses; the Prosecution Division, whose main responsibility is litigating cases before the various Chambers of the Court; and the Jurisdiction, Complementarity and Cooperation Division, which works in cooperation with the Investigation Division for the assessment of information received and situations referred to the Court, and for the determination of the admissibility of cases to the Court.

Finally, the Registry assists the Court in conducting fair and impartial trials. The Registry's primary duty is to offer administrative and operational support to the Chambers and the Prosecutor's Office. It also aids the Registrar's activities in the areas of defense, protection, communication, and security³²⁴.

Regarding now the crimes that fall within the jurisdiction of the ICC, part 2 of the Rome statute, "Jurisdiction, admissibility and applicable law" defines

³²¹ ICC (2020: 9).

³²² Art. 1, Rome Statute.

³²³ ICC (2020: 11).

³²⁴ ICC (2020: 17-21).

the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. Article 6 defines genocide as every act aiming at purposely destroying a group of people, both physically and culturally³²⁵. Article 7 defines then the crimes against humanity and identify a list of all the actions that can be classified as such; among them there are murder, enslavement, force deportation and disappearance of people, all the forms of sexual violence and enslavement, and the crime of apartheid³²⁶. Then, Article 8 defines war crimes as “Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention” and list then in paragraph (a)³²⁷; in paragraph (b) it adds “Other serious violations of the laws and

³²⁵ “For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group”. Art. 6, Rome Statute.

³²⁶ “1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”. Art. 7 (1), Rome Statute.

³²⁷ “(i) Wilful killing;

- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages”. Art. 8(i)-(viii), Rome Statute.

customs applicable in international armed conflict, within the established framework of international law”³²⁸.

I will analyze the crimes of aggression and relevant jurisdiction in the current Russia-Ukraine war in the following paragraph, highlining particularly the limits of the Court’s authority on these crimes.

Overall, considering now what I have reported in chapters 2 and 3, and all the findings concerning the crimes committed in the conflict, it seems that the Court is the one that can better judge these violations.

Nonetheless, the ICC establishes some preconditions for the exercise of its jurisdiction in Article 12 of its statute. There it is stated that the Court may exercise its jurisdiction after a State has become a party to its statute, or when a State is not party: “if the acceptance of a State which is not a Party to this Statute is required under paragraph 2³²⁹, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question”³³⁰. After the acceptance of its jurisdiction, a State Party “may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes”, as defined in article 14(1). The situation to which the article refers is that “in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14”³³¹ or in which “one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations”³³². Once the situation has been reported, the Prosecutor analyzes the information at hand to verify if a violation exists and for this, he or she may request additional information from the State Party or other UN agencies or NGOs. If it is established that a breach has occurred, the Prosecutor submits a request for investigation to the Pre-Trial Chamber³³³.

³²⁸ Art. 8(b), Rome Statute.

³²⁹ “2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national”. Para. 2, Art. 12, Rome Statute.

³³⁰ Para. 3, Art. 12, Rome Statute.

³³¹ Art. 13 (a), Rome Statute.

³³² Art. 13 (b), Rome Statute.

³³³ “1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations,

Concerning the case here analyzed, Ukraine is not a State Party to the Rome Statute, but it has twice exercised its prerogatives under article 12(3) of the Statute to accept the Court's jurisdiction over alleged crimes under the Rome Statute committed on its territory. The initial declaration submitted by the Ukrainian government acknowledged ICC jurisdiction over suspected crimes committed on Ukrainian territory between the 21st of November 2013 and the 22nd of February 2014. The second statement extended this period indefinitely to include continuing alleged offenses perpetrated throughout Ukraine beginning on the 20th of February 2014³³⁴.

Considering the current war perpetrated in the country, on the 28th of February 2022, the ICC Prosecutor announced that he would seek permission to initiate an investigation into the situation in Ukraine, based on the Office's earlier conclusions arising from its preliminary investigation and encompassing any new alleged crimes falling within the Court's jurisdiction³³⁵.

Afterwards, on the 2nd of March 2022, the Prosecutor declared that he has opened an investigation into the Situation in Ukraine based on the recommendations received. In accordance with the overall jurisdictional parameters conferred by these referrals, the scope of the situation includes any past and present allegations of war crimes, crimes against humanity, or genocide committed on any part of Ukrainian territory by any person since the 21st of November 2013³³⁶.

Subsequently, on the 17th of March 2023, the ICC Pre-Trial Chamber II issued arrest warrants for two individuals in connection with the situation in Ukraine: Vladimir Vladimirovich Putin, President of the Russian Federation, and Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the President's Office of the Russian Federation. Pre-Trial Chamber II determined that there are reasonable grounds to believe that both suspects are responsible for the war crimes of unlawful deportation of population, particularly children, and unlawful transfer of population from occupied areas of Ukraine to the

intergovernmental or non- governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case". Paras. 1-4, Art. 15, Rome Statute.

³³⁴ HUMAN RIGHTS WATCH (2022).

³³⁵ ICC (2022a).

³³⁶ ICC (2022b).

Russian Federation, to the detriment of Ukrainian children, based on the Prosecution's applications of the 22nd of February 2023³³⁷.

4.1 The role of the ICC on the judgement of the crime of aggression in Ukraine: Art. 8 of the Rome Statute and its limits

Article 8 *bis* of the Rome Statute defines the crime of aggression in paragraphs 1-2 as the “planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations”³³⁸. Regarding the conditions under which the ICC may prosecute the crime of aggression, the Security Council, acting under Chapter VII of the United Nations Charter, could refer a scenario in which an act of aggression appears to have occurred to the Court, regardless of whether it involves State Parties or non-State Parties. In the absence of a UN Security Council referral, the Prosecutor may commence an inquiry on her own initiative or at the request of a State Party. The Prosecutor must first determine whether the Security Council has determined that the State in question committed an act of aggression. If no such determination is reached within six months of the Prosecutor's communication of the circumstances to the UNSC, the Prosecutor may still proceed with the investigation, provided that the Pre-Trial Division has permitted the investigation's start. However, the difference between the other crimes under the jurisdiction of the ICC and the crime of aggression is that the Court cannot exercise its jurisdiction over the latter committed by a national of a non-member State³³⁹.

Clearly, given the structure of the Court regarding the prosecution of the crime of aggression, the difficulties of application in this specific case of Ukraine are different, and a debate about this is still going on. In fact, the first main problem of the procedure is that, in the absence of a Security Council referral, which, in the current context, can be discounted due to the Russian veto, the ICC is unable to exercise jurisdiction over an aggression crime involving a non-State Party as either aggressor or victim, as a result of a vast non-State Party carve out. It has been proposed that the Rome Statute be changed to

³³⁷ ICC (2023).

³³⁸ “For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations [...]”. Paras. 1-2, Art. 8 *bis*, Rome Statute.

³³⁹ Art. 15 *bis*, Rome Statute.

allow the General Assembly to activate the ICC's authority in order to circumvent the veto. However, under UN Charter Articles 10, 11, 12, and 14, the Assembly's powers are limited to making recommendations: thus, the Assembly lacks the capacity to take coercive or enforcing action, which is the sole prerogative of the Security Council³⁴⁰. A possible solution could be to change the Rome Statute to remove at least some of the jurisdictional constraints that are specific to aggression. Indeed, ICC States Parties have already agreed to revisit the aggression modifications seven years following the Court's exercise of jurisdiction, so in 2025³⁴¹. In other words, the ICC is not a viable alternative for prosecuting aggression crimes perpetrated against Ukraine.

4.2 The ICC and the judgement of war crimes

As previously said, the ICC initiated an investigation into the situation in Ukraine in March 2022 concerning the war crimes and crimes against humanity committed in the country. In addition, as it is stated in the Rome Statute, victims can refer a petition to the Court about violations of their rights and also be granted reparations if erroneously indicted during an investigation by the Prosecutor. Victims can refer to the Court in a variety of ways: firstly, any individual, group, or State may transmit information to the Prosecutor's Office about any alleged crimes that comes under the Court's jurisdiction; secondly, whoever may have been victim of war crimes, crimes against humanity, or genocide in Ukraine may also refer to the Court in order to be recognized as victim³⁴².

Then, a turning point in the prosecution of major crimes in Ukraine is surely the issuing of warrants on the 17th of March 2023, since the pronouncement turned Lvova-Belova and Putin into ICC suspects and fugitives from international criminal justice. The ICC's decision has been seen as strongly political, whose main message is that even the most powerful must be held accountable for their crimes, and for this it is expected to have a high reputational cost for Putin. In the same month it has also been reported that the Court should have judged another case concerning indiscriminate attacks by the Russian military on the Ukrainian civilian infrastructure; however, until the present moment no official information is available on the status and details of this second case, and it is not clear yet if the Court has already, or will collect, enough evidence to support the incrimination for the crime of genocide³⁴³.

³⁴⁰ MCDUGALL (2023: 9-10).

³⁴¹ Resolution of the ICC, 11 June 2010, RC/Res.6, *The Crime of Aggression*, p. 1 para 4.

³⁴² Information for victims – Ukraine, ICC.

³⁴³ VASILIEV (2023).

On the other hand, article 98(1)³⁴⁴ of the Rome Statute forbids the Court to proceed with a surrender request that would require the requested State to act inconsistently with its international law obligations, such as Putin's personal immunity, unless the Court first obtains the cooperation of the third State for the waiver of the immunity. However, in its 2019 judgment in Jordan referral regarding Al Bashir³⁴⁵, the ICC Appeal Chamber held that States Parties may not invoke foreign Head of State immunity under customary international law as a ground to refuse an ICC request for arrest and surrender because such immunities pose no bar to the exercise of the ICC's jurisdiction while States Parties are obligated to assist the Court therein³⁴⁶. Thus, in the perspective of the ICC and according to its appellate jurisprudence, a request for Putin's arrest and surrender would not be inconsistent with States Parties' duty to respect international law immunities *vis-à-vis* other States and must thus be carried out in accordance with the Statute. As a result, it could be probable that cooperative requests for Putin's arrest and surrender will be forwarded to States Parties, putting Putin and Lvova-Belova in danger of arrest abroad.

In conclusion, in this chapter I wanted to analyze the role of the main international legal bodies having jurisdiction over war crimes and human rights violations, which could then judge the violations committed and ongoing in Ukrainian territory. In general, as I have already said, each of the mechanisms that I have explained presents problems that do not allow for an efficient application of a judgment mechanism. First of all, the presence of Russia as a permanent member of the United Nations Security Council is a major obstacle to the approval of any measures by the body to stop the ongoing conflict. Secondly, in order to implement several of these measures, it would be appropriate to revise the statutes of these bodies; these processes are normally very long and require a high degree of participation and cooperation between Member States, which may be lacking for several reasons, particularly political reasons.

There are therefore several hypotheses of how crimes currently committed could be tried, including an international court or a hybrid court. In the fifth and last chapter I will therefore illustrate these hypotheses trying to identify

³⁴⁴ "1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender". Art. 98, Rome Statute.

³⁴⁵ Judgement of the ICC, 6 May 2019, ICC-02/05-01/09-397, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*.

³⁴⁶ ICC (2019).

which one could be the most reliable, if present, and I will briefly draw some conclusions.

CHAPTER V

HYPOTHESIS OF RESOLUTION AND CRITICISMS OF THE INTERNATIONAL LEGAL SYSTEM

After the analysis of the violations of IHRL and IHL in the ongoing conflict in Ukraine, and of the legal tools currently available for the judgement of these violations, in this final chapter I will outline the possibility that have been developed until now to ensure the accountability for the crimes committed. I will begin by emphasizing the support expressed by the international community, especially the United Nations and the European Union, for the establishment of a legal system suited to the violations committed in the conflict. I will then go on to list the hypothetical solutions that have been put forward in this regard, including an international court or a hybrid court. Finally, I will draw the conclusions of the analysis by highlighting the main critical points of the current international legal system.

1. The hypothesis for the judgement of IHL and IHRL violations in the Russia-Ukraine war

Soon after the Russian Federation's aggression against Ukraine, the European Union has shown its support to the country, particularly with economic sanctions to Russia³⁴⁷, but also encouraging the investigations of the crimes committed and the creation of a fair legal system that can adapt to the situation at issue. As part of the EU's global commitment to combat impunity for international crimes, in June 2022 the European Commission established a new project under its Foreign Policy Instrument to strengthen the ICC capacities for the investigation of war crimes during conflict³⁴⁸. On the same matter, the European Parliament issued a resolution in May 2022 concerning the fight against the impunity of war crimes committed during the war. In the Resolution, the European Parliament condemned the violence committed by the Russian forces in the country and the use of sexual violence as a weapon of war. It then expressed its support to the investigation initiated by the ICC Prosecutor and it called

“on the EU institutions, in particular the Commission, to support the creation without delay of an appropriate legal basis, with the support of established multilateral forums such as the UN and the Council of Europe, to allow for the setting up of a special

³⁴⁷ ARCHICK (2023).

³⁴⁸ Press release of the European Commission, 8 June 2022, *Russian war crimes in Ukraine: EU supports the International Criminal Court investigation with €7.25 million*.

international tribunal for the punishment of the crime of aggression committed against Ukraine by the political leaders and military commanders of Russia and its allies³⁴⁹.

Again, in March 2023, President von der Leyen stated that “Russia must be held accountable for these horrific crimes” and that “there needs to be a dedicated tribunal to prosecute Russia's crime of aggression”³⁵⁰. Together with the European Parliament, the European Union Agency for Criminal Cooperation has made critical steps in support of the judicial reaction to alleged core international crimes nearly a year after the conflict in Ukraine began. The judicial agency launched the Core International Crimes Evidence Database (‘CICED’) whose main purpose is to save, retain, and analyze evidence of major international crimes. Eurojust also announced the creation of a new International Centre for the Prosecution of the Crime of Aggression Against Ukraine (‘ICPA’) that will assist and improve investigations into the crime of aggression by acquiring important evidence³⁵¹.

Probably the institution that had influenced the most this situation is the Council of Europe, which immediately condemned the act of aggression as a serious violation of the Russian Federation’s obligations under Article 3 of the Council of Europe’s Statute³⁵², and right after the invasion announced the decision to end Russian Federation’s membership to the Council³⁵³. The Organization’s structure is well-equipped to play an important role in establishing an accountability system for alleged crimes and human rights violations committed during this war, including awarding full recompense for any damage, loss, or injury suffered. In order to provide full support to the country on this matter, after the withdrawal of the Russian Federation from the Council of Europe, the Organization adopted the plan “Priority Adjustments to the Council of Europe Action Plan for Ukraine 2018-2022” (CM(2022)89) in May 2022³⁵⁴ approved by the Committee of Ministers and implemented throughout that year. Among the supporting measures established by the plan there are: strategic legal expert advice to the Office of the Prosecutor General through the Council of Europe Expert Advisory Group regarding the application of international humanitarian law in the process of

³⁴⁹ Resolution of the European Parliament, 19 May 2022, 2022/2655(RSP), *The fight against impunity for war crimes in Ukraine*.

³⁵⁰ Statement of the European Commission, 4 March 2023, *Statement by President von der Leyen on the establishment of the International Centre for the Prosecution of Crimes of Aggression against Ukraine*.

³⁵¹ EUROJUST (2023).

³⁵² “Every Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I”. Art. 3, The Statute of the Council of Europe, 5 May 1949.

³⁵³ Resolution of the Committee of Ministers, 16 March 2022, CM/Res(2022)2, *Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe*.

³⁵⁴ Committee of Ministers of the Council of Europe, 20 May 2022, CM(2022)89-final, *Priority adjustments to the Council of Europe Action Plan for Ukraine 2018-2022*.

investigating war-related human rights violations in Ukraine, legal and policy expert advice on access to justice in times of war, and technical assistance to investigation and prosecution authorities.

In the same way, as already outlined, the UN and its agencies immediately supported Ukraine; however, since the structure of the UNSC did not allow for an effective measure to halt Russian military operation in the country, the organization's effectiveness has received several criticisms³⁵⁵. On the other hand, concerning the reparation for the crime of aggression against Ukraine, the UN General Assembly adopted a resolution on the 14th of November 2022 that states in paragraphs 2 to 4 that the UNGA

“2. Recognizes that the Russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the Charter of the United Nations, as well as any violations of international humanitarian law and international human rights law, and that it must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts;

3. Recognizes also the need for the establishment, in cooperation with Ukraine, of an international mechanism for reparation for damage, loss or injury, and arising from the internationally wrongful acts of the Russian Federation in or against Ukraine;

4. Recommends the creation by Member States, in cooperation with Ukraine, of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of the Russian Federation in or against Ukraine, as well as to promote and coordinate evidence-gathering; [...]"³⁵⁶.

In the following paragraphs I will then report what solutions can be adopted for the adjudication of the crime of aggression, war crimes and violations of human rights in Ukraine; namely I will consider the ICC, a special tribunal and a hybrid tribunal.

1.1 The prosecution by the ICC

In chapter 4 I highlighted the strengths and weaknesses of ICC jurisdiction, especially concerning the crime of aggression. Despite this, the Court has been seen as one of the most practical solutions for the prosecution of Russian aggression. In fact, on the one hand the Office of the Prosecutor has already committed significant resources to investigating other crimes committed in Ukraine since 2014 when the country accepted the Court jurisdiction³⁵⁷, thus

³⁵⁵ SEMLER (2022).

³⁵⁶ Resolution of the United Nations General Assembly, A/RES/ES-11/5, 14 November 2022, *Furtherance of remedy and reparation for aggression against Ukraine*, Paras. 2-4.

³⁵⁷ HUMAN RIGHTS WATCH (2022).

extending the investigation to include aggression would save the international community the time and effort required to establish a new court. However, the most essential advantage of ICC prosecution would be symbolic because it would avoid the impression of “selective justice”, since a court established solely to prosecute Russian aggression would be viewed as illegitimate by a significant number of States, particularly those in the Global South who are routinely subjected to the unlawful use of force. An ICC prosecution would not totally solve the selectivity problem, linked to the court’s claims to universality, but it would give the Court the legal authority to prosecute future aggressions³⁵⁸.

On the other hand, the main issue remains that, in the absence of a Security Council referral, which Russia will almost certainly veto, the ICC lacks jurisdiction over Russia’s aggression. The crime of aggression is subject to a different jurisdictional regime than the other international crimes: whereas the Court has jurisdiction over war crimes, crimes against humanity, and genocide committed by a non-State party on the territory of a State party, non-member State are completely excluded from the crime of aggression³⁵⁹, and Russia has not accepted the jurisdiction of the Court under the Rome Statute.

In theory, governments may give the ICC jurisdiction over Russia’s aggression by deleting the provision in the Rome Statute that excludes non-member State in Article 15bis (5). However, it’s not likely that such a modification will occur, especially because it presupposes a consensus that should involve all Member States³⁶⁰.

Overall, despite the complexity of the system and its contradictions, the ICC is still considered a valuable solution for the judging of the crime of aggression.

1.2 The creation of a Special Tribunal

Another option could be the establishment of an *ad hoc* special international tribunal to prosecute and punish the perpetrators of the crime of aggression against Ukraine. The need for the constitution of this mechanism was perceived by proponents of such project due to the lack of possibilities for prosecuting Russian perpetrators of aggression before the International Criminal Court. The options proposed for the establishment of a special tribunal are all ultimately treaty based. It has been suggested, for instance, that a special tribunal could be established through a multilateral agreement between Ukraine and other interested States, following the precedents of the Nuremberg International Military Tribunal or the International Military

³⁵⁸ HELLER (2022: 6).

³⁵⁹ Art. 15bis (5), Rome Statute.

³⁶⁰ HELLER (2022: 6).

Tribunal for the Far East. This is a possibility under international law since Ukraine has the sovereign right to delegate the exercise of its jurisdiction for the crime of aggression under its national criminal code to a treaty-based tribunal³⁶¹.

However, a treaty-based tribunal created by a group of interested States could also raise some concerns, such as the issue of personal and functional immunity, and as per the ICC, the issue of selectivity.

Concerning the first issue, the question concerns the possibility for Head of State, Government, and Minister of Foreign Affairs, to enjoy personal immunity from the jurisdiction of other States. In the *Arrest Warrant* decision, the International Court of Justice clearly stated that “certain holders of high-ranking office in a State, such as the Head of State, Head of Government, and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal”³⁶². Therefore, if the special tribunal adopts this position, it will not be able to prosecute President Putin and the Minister of foreign affairs Lavrov. By contrast, the Rapporteur of the Council of Europe expressly states that “heads of state and other government officials from non-parties to the treaty could not rely on immunities vis-à-vis such an international tribunal”³⁶³. However, the general problem remains that there is still not enough practice to establish a general rule of customary international law that precludes or not the application of immunity on head of State in international tribunals³⁶⁴. The same problem also occurs for functional immunity, which applies to all government officials. It is generally accepted that functional immunity does not extend to international crimes such as genocide, crimes against humanity, war crimes, and torture³⁶⁵. Most academics argue that functional immunity does not apply to the crime of aggression, but not actual conclusion on the issue is possible for now³⁶⁶.

The second issue raised by the creation of a special tribunal is the one of selectivity, as I anticipated concerning the ICC jurisdiction. Thus, the problem would be the creation of a tribunal for this specific crime of aggression against Ukraine while the war is still ongoing, while there are still other crimes of aggression that need to be judged, for example the invasion of Iraq in 2003³⁶⁷. Furthermore, the problem of selectivity would also regard the choice of which

³⁶¹ Information Documents of the Council of Europe, 31 January 2023, SG/Inf(2023)7, *Accountability for human rights violations as a result of the aggression of the Russian Federation against Ukraine: role of the international community, including the Council of Europe*.

³⁶² Judgement of the ICJ, 14 February 2002, *Arrest warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*.

³⁶³ Report of the Council of Europe, 26 April 2022, Doc. 15510, *The Russian Federation’s aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes*.

³⁶⁴ HELLER (2022: 10).

³⁶⁵ AKANDE, SHAH (2011: 821).

³⁶⁶ HELLER (2022: 10).

³⁶⁷ HELLER (2022: 13).

States should hold the special tribunal, that would hypothetically include the most influential States of the international community, thus risking creating the same dynamic of power intrinsic in the structure of Security Council³⁶⁸.

Another possibility also suggested by the Council of Europe³⁶⁹ is the constitution of a special tribunal through an agreement between Ukraine and the United Nations, more precisely with the General Assembly's approval. The suggestion is that General Assembly may give its endorsement to a treaty negotiated by a group of States including Ukraine, for the creation of this tribunal. The Parliamentary Assembly of the Council of Europe has also accepted this option in Resolution 2436, which was adopted in April 2022³⁷⁰. However, the problem of a special tribunal established with the General Assembly's approval would remain the same of the other option just explained above: there would still be the selective problem, given that no such tribunal was ever proposed for other cases, and also, considering the contradictions of the UN system, the ICC jurisdiction would still be preferable³⁷¹.

1.3 A hybrid tribunal with the creation of a “High Ukrainian Chamber for Aggression”

The third possible option suggested for the prosecution is a hybrid tribunal. Although no single definition exists, hybrid tribunals are typically regarded as “courts of mixed composition and jurisdiction, encompassing both national and international aspects, usually operating within the jurisdiction where the crimes occurred”³⁷². An example of this is the Extraordinary Chambers in the Courts of Cambodia, which was integrated into the Cambodia's court system and prosecuted international crimes with foreign judges and prosecutors³⁷³.

In the light of Russian aggression, an option could be that of an agreement between Ukraine and the Council of Europe to establish a High Ukrainian Chamber for Aggression (‘HUCA’), which should be a specialized Chamber within the Ukrainian legal system with jurisdiction over aggression. Ukraine would have primary responsibility for HUCA's functioning, but the Chamber would be comprised of both Ukrainian and non-Ukrainian judges and prosecutors and would be supported by the Council of Europe, both financially

³⁶⁸ HELLER (2022: 13).

³⁶⁹ Information Documents of the Council of Europe, 31 January 2023, SG/Inf(2023)7, *Accountability for human rights violations as a result of the aggression of the Russian Federation against Ukraine: role of the international community, including the Council of Europe*.

³⁷⁰ Resolution of the Parliamentary Assembly of the Council of Europe, 28 April 2022, 2436, *The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes*.

³⁷¹ HELLER (2022: 15).

³⁷² OHCHR (2008: 1).

³⁷³ AINLEY, KERSTEN (2019: 102).

and through capacity-building programs. Procedurally, Ukraine would request that the Council of Ministers recommend, in accordance with Article 15(a) of the Council of Europe Statute, that members adopt a common policy in support of a HUCA³⁷⁴.

In addition, a High Ukrainian Chamber for Aggression supported and guided by the Council of Europe would probably encounter the approval of the majority of Member States, since the membership of the Council has demonstrated a considerably greater commitment to accountability for the crime of aggression than the membership of any other international body, like the ICC. A High Ukrainian Chamber for Aggression would have substantial practical advantages over a special tribunal since it would build on Ukraine's existing judicial system, avoiding the need to establish a new tribunal, and also taking advantage of the expertise of States part of the Council. However, as previously said, the problem of personal immunity remains. On the other hand, as regards the obstacle of jurisdiction *ratione temporis* of the court created *ex post*, the rules already envisaged for the Court of Nuremberg and for ad hoc courts could be applied.

Any international or national court established to prosecute the individuals responsible for the invasion of Ukraine is likely to conclude that Russian authorities do not have functional immunity for the aggression³⁷⁵; however, it is difficult to understand how a hybrid tribunal, such as a HUCA, could avoid the issue of personal immunity, given that the enabling statute would not be binding on suspects such as Putin and Lavrov. In this case, a HUCA would thus need to be adequately supported by the General Assembly in order to even claim the ability to disregard personal immunity³⁷⁶, but it is not clear if this support could be effective or not³⁷⁷.

1.4 Domestic prosecution

Finally, the last possible solution could be domestic prosecution within the Ukrainian national jurisdiction or elsewhere.

Article 437 of Ukraine's Criminal Code, which is loosely based on the customary definition of aggression, states that "planning, preparation, or waging of an aggressive war or armed conflict, or conspiring for any such purposes, shall be punishable by imprisonment for a term of seven to twelve

³⁷⁴ HELLER (2022: 17).

³⁷⁵ An explanation that has been given to justify this position is that customary international law makes an exception to personal immunity that only applies for international courts; the ICTY Trial Chamber took this stance in the *Miloevic case*.

³⁷⁶ In this case it is also relevant the judgement *In Re Pinochet* by the House of Lords on the 17th of December 1998. Here the House of Lords ruled in the second judgment that since Britain and Chile had adopted the United Nations Convention Against Torture, Pinochet could no longer claim immunity for torture; thus, Pinochet could not claim immunity for torture for acts committed since 1988, when the UK adopted the convention. Most importantly, it is also ruled that Pinochet might be extradited to Spain on torture and conspiracy to commit torture allegations.

³⁷⁷ HELLER (2022: 18-19).

years” and that “conducting an aggressive war or aggressive military operations [...] shall be punishable by imprisonment for a term of ten to fifteen years”³⁷⁸. Although Ukraine can claim the moral and legal right to pass judgement about the Russian aggression, the wisdom of such trials is called into doubt. Since 2014, Ukraine has invoked Article 437 at least twice: in a previous case two Russian soldiers were found guilty of violating the article by invading Ukraine and taking part in hostilities in the Luhansk region³⁷⁹. From the standpoint of international law, their convictions present some problems, firstly that the act for which the troops were convicted, namely “conducting an aggressive war” is unusual, since every international definition of aggression limits participation in the crime to planning, preparing, initiating, or waging an act of aggression. Secondly, the convictions are impossible to reconcile with the idea that aggression is a leadership crime, thus the two low-ranking soldiers who participate in a criminal act of aggression in this case do not satisfy this requirement³⁸⁰. To solve these issues, Ukrainian parliament could align the Criminal Code with the international definition of aggression, and explicitly incorporating a leadership requirement into Art. 437(1)³⁸¹.

On the other hand, there could also be the option of prosecuting the crime of aggression in a foreign country. Lithuania and Poland for example, have both stated that they are looking into Russia’s criminal act of aggression against Ukraine; nevertheless, despite the effort of these countries, the problem of immunity still persists and need a solution³⁸².

³⁷⁸ Criminal Code of Ukraine, Art. 437(1).

³⁷⁹ SAYAPIN (2018: 1094).

³⁸⁰ *Ibidem*.

³⁸¹ HELLER (2022: 22).

³⁸² HELLER (2022: 23).

CONCLUSION

The purpose of this study was to report and analyse, through the information available so far, human rights violations and war crimes committed so far during the conflict in Ukraine beginning on 24 February 2022 and still ongoing.

In Chapter 2 and 3 I wanted to list the present instruments, conventions, statutes, charters, and protocols, stating which actions are considered violations and which are not, and in Chapter 2, which are the rules that the parties must respect during a conflict. In the second part of each of the respective chapters I then reported what actions committed during the conflict could be identified as IHL violations or IHRL violations.

Having therefore clarified the characteristics of these actions, in chapter 4 I analysed the main international bodies that could exercise their jurisdictions on these crimes; in particular, I wish to highlight hereinafter the weaknesses of each system and the reasons why up to now, none of these instruments has proved to be specifically suitable for this task.

Considering now what I have outlined in this final chapter, any discussion of accountability for Russia's actions against Ukraine must recognize that no Russian political or military leader is likely to face punishment in the short term; a Russian leader who meets aggression's leadership requirement is unlikely to fall into hostile hands unless the current government is replaced by one with very different international priorities.

In theory, the most international alternative is to broaden the ICC's jurisdiction to cover Russia's aggression against Ukraine, which could represent the most legitimate and cost-effective option. Unfortunately, the ICC alternative is also the least likely, as it is unlikely that State parties would change the Rome Statute to remove the exclusion of non-member State from the crime of aggression. Domestic alternatives also present pros and cons. Ukrainian prosecutions would be cost-effective because the country has a functioning justice system, and they would almost be seen as legitimate as long as Ukrainian parliament aligned the definition of aggression with international standards. However, Ukrainian trials would be confined to Russian leaders who do not have personal immunity, thus Putin and Lavrov would have to face charges abroad. The same concerns domestic remedies in foreign juridical systems such as Lithuania and Poland.

It seems that, insofar as the world community want to prosecute Putin and Lavrov, the only viable choice is an *ad hoc* tribunal. The most legitimate options would be a Special Tribunal established by agreement between Ukraine and the UN and supported by the General Assembly, or a hybrid tribunal based in Ukraine and supported by the Council of Europe. What is

important to remember is that to be able to overcome the problem of personal immunity, any tribunal would require General Assembly approval.

In conclusion, the context in which this conflict has developed and the consequences it entails are obviously very complex. Regarding the need for an adequate legal mechanism to deal with the lack of accountability of these crimes, it is made even more complicated by the fact that the conflict is still ongoing and there are no clear forecasts on what the solution could be from a diplomatic point of view. Moreover, as I have mentioned many times, propaganda in this war is playing a fundamental role, often making the search for reliable sources very complicated. This also has an impact on the investigation process, since it is not clear what violations have occurred, what are the result of propaganda, and who has committed certain acts; linked to this is also the question of the judging of the violations committed by the Ukrainian armed forces, which until now have not been taken into account. In any case, the solution will not be immediate and will require careful mediation by the international community, which will in any case have to face the fact that the Russian Federation remains a world superpower and will have a lot of influence in whatever maneuver will be carried out.

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