

PROTECTING HUMAN RIGHTS AND UPHOLDING INTERNATIONAL HUMANITARIAN LAW AMID THE WAR IN UKRAINE

PROTECCIÓN DE LOS DERECHOS HUMANOS Y DEFENSA DEL DERECHO INTERNACIONAL
HUMANITARIO EN MEDIO DE LA GUERRA EN UCRANIA

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Abstract: When evaluating the relationship between humanitarian law that only involves armed conflicts and human rights that apply in peacetime and war, the main question is whether the protections provided to persons under the latter are less than those under the former. The paper explores the many facets of this issue, including the general interplay between humanitarian law and human rights law, the applicability of specific human rights in the context of armed conflicts, among more, using the example of the war in Ukraine. The methodological toolkit includes a systemic-structural approach, generalization, the method of scientific abstraction, and the method of logical and systemic analysis. The article has shown little evidence to support the preconceived notion that humanitarian law can supersede human rights law, since it is *lex specialis*. Likewise, it is demonstrated that human rights and humanitarian law norms disclose a comparable substance when humanitarian law protections are enforced as required by their content. In some situations, the protection provided by human rights legislation is equal to or greater than that provided by humanitarian principles; however, the inherent constraints of human rights treaty norms allow for considering humanitarian law's criteria for proportionality, humanity, and military necessity. Therefore, the International Criminal Court's (ICC) capabilities and potential to assess violations of international humanitarian law (IHL) during the war in Ukraine and the prospects for issuing binding decisions are assessed. Overall, the study asserts that the war in Ukraine can serve as an important precedent for the development of IHL and its implementing principles.

Keywords: International humanitarian law, Human rights, International Criminal Court, Prosecution, Crime of aggression.

Resumen: *Al evaluar la relación entre el derecho humanitario, que solo abarca los conflictos armados, y los derechos humanos aplicables en tiempos de paz y de guerra, la pregunta principal es si la protección que estos últimos otorgan a las personas es menor que la que otorga el primero. El artículo explora las múltiples facetas de esta cuestión, incluida la interacción general entre el derecho humanitario y el derecho de los derechos humanos, la aplicabilidad de derechos humanos específicos en el contexto de los conflictos armados, entre otros; para ello, se utiliza el ejemplo de la guerra en Ucrania. El conjunto de herramientas metodológicas incluye un enfoque sistémico-estructural, la generalización, el método de abstracción científica y el método de análisis*

*lógico y sistémico. El artículo ha presentado poca evidencia que respalde la idea preconcebida de que el derecho humanitario puede prevalecer sobre el derecho de los derechos humanos, dado que es *lex specialis*. Asimismo, las normas de derechos humanos y de derecho humanitario revelan una sustancia comparable cuando las protecciones del derecho humanitario se aplican según lo exige su contenido. En algunas situaciones, la protección que brinda la legislación de derechos humanos es igual o mayor que la que brindan los principios humanitarios; sin embargo, las limitaciones inherentes a las normas de los tratados de derechos humanos permiten considerar los criterios de proporcionalidad, humanidad y necesidad militar del derecho humanitario. Así, se evalúan las capacidades y el potencial de la Corte Penal Internacional para evaluar las violaciones del derecho internacional humanitario (DIH) durante la guerra en Ucrania y las perspectivas de adoptar decisiones vinculantes. En general, la investigación afirma que la guerra en Ucrania puede constituir un precedente importante para el desarrollo del DIH y sus principios de aplicación.*

Palabras clave: Derecho internacional humanitario, Derechos humanos, Corte Penal Internacional, Procesamiento, Crimen de agresión.

Summary. I. Introduction. I.1. Literature review. II. Methods. III. Results. IV. Discussion. V. Conclusion. References.

I. INTRODUCTION

Conventionally, IHL and international human rights law (IHRL) are two separate areas of law: one addresses the parties' behavior in an armed conflict, while the other deals with protecting individuals against oppressive authority. However, advancements in both national and international jurisprudence and practice have made it clear that these legal systems adhere to the same humanist principles of integrity and dignity and have significant practical overlap. The most common instances are in non-international armed conflicts (NIACs) or

occupation circumstances, where IHRL supplements IHL's protections (Droege, 2007).

Although it may provide more security for the person, the simultaneous execution of two bodies of law may also cause several issues. Due to the growing specialization of various areas of international law, different regimes may overlap, complement, or contradict one another.

At the same time, modern armed conflicts have exposed many problems and "grey areas" in the current international law. These include: the status of so-called "unlawful combatants"; the relationship between the norms of IHL and IHRL when verifying the legality of the use of force in armed conflicts; the qualification of "targeted killings"; the possibility of extraterritorial application of international human rights treaties; the relationship between the prohibition of the use of "human shields" and the principle of proportionality; and the legality of internment and legal guarantees.

In most cases, it is acknowledged that IHL does not supersede human rights legislation during armed conflicts; however, there is still much to learn about the specific implications of this new discovery. Specifically, the idea of military necessity continues to significantly impact IHL (Tomuschat, 2010).

In that sense, IHL and IHRL emerged as separate branches of international law, each with its principles, objectives and historical context; nevertheless, they share some common legal principles and overarching objectives (Figure 1). IHL has deep roots in the customs and laws of war. Its primary purpose is to regulate the conduct of states in international conflicts and to provide protection for those affected by hostilities. The Geneva Conventions, which form the basis of IHL, were developed with a focus on

treating combatants and non-combatants in war without directly integrating human rights discourse into their texts. This omission reflects the historical context in which these conventions were developed when the international legal community had not yet fully articulated the concept of human rights as a universal standard (Pashynna, 2024).

Figure 1
Correlation of IHRL and IHL

IHRL	IHL
Protection of individuals.	Protection of individuals.
Always applies.	Only in times of armed conflict.
Only binding on states.	Binding on states and non-state armed groups.
Derogation in emergencies.	No derogation.
Extraterritorial application controversial.	Extraterritorial application.
Compliance mechanisms.	Compliance mechanisms.

Note. Taken from *International humanitarian law: rules, controversies, and solutions to problems arising in warfare*, by M. Sassòli, 2019, Edward Elgar Publishing.

However, the historical background, military tactics, and effects on civilians are all evolving throughout time. The conflict in Ukraine is a unique situation that calls for a fresh understanding of how IHL and human rights legislation apply. Serious questions concerning violations of the United Nations (UN) Charter, IHL, and the protection of civilians have been raised by the conflict, which began on February 24, 2022.

Therefore, by requiring parties to carry out specific duties, IHL restricts warfare during armed conflicts (Archibong, 2023). These duties include ensuring that those who are not directly involved in hostilities and those who are *hors de combat* are respected and treated humanely; gathering and caring for the sick and injured; ensuring that combatants and captured civilians are respected and shielded from all acts of violence; and ensuring that parties consistently distinguish between the civilian population and combatants.

Russia's incursion has shown the terrible human consequences that result when military objectives take precedence over humanitarian concerns and surpass moral agreement. In that sense, Russia's alleged war crimes have important ramifications: in addition to causing immense humanitarian hardship in Ukraine, they also raise doubts about the international community's commitment to maintaining standards of behavior during times of war.

In a world distinguished by countless armed conflicts that cause tremendous suffering, the respect, promotion, and strengthening of the Geneva Conventions are more relevant than ever. Furthermore, as today's political and international law experts emphasize, unresolved inter-state disputes have resulted in long-term occupation situations governed by the Fourth Geneva Convention and customary IHL, despite the fact that only a few (if any) occupying powers recognize the law of occupation as applicable to them (Bartels, 2020). Unless political solutions are found to address the root reasons of these extended occupations, they will continue to cause dispossession, bloodshed, and misery among civilian populations. Furthermore, many questions have been raised in recent and ongoing legal debates about whether the current IHL dichotomy, which categorizes armed conflicts as international

or non-international, is adequate to deal with new factual scenarios, and whether new conflict classifications are required.

The 1949 Geneva Conventions and Additional Protocol I (API) of 1977 are automatically applicable, since the war in Ukraine is deemed an "international armed conflict" [IAC] (Zwanenburg, 2022). Likewise, parties to the Geneva Conventions and API commit to upholding the agreements' provisions in all circumstances, as stated in these documents (GCs I-IV, article I; API, article I). As for the behavior of the Russian military, which is said to have committed the worst crimes throughout the conflict, also garners particular attention when it comes to the application of IHL.

Thus, the research on the relationship between IHL and IHRL concerning the war in Ukraine represents a highly relevant task and constitutes the aim of this article. The aim of this study was to develop, based on an analysis of the current norms of IHL and IHRL aimed at protecting human rights in armed conflicts, the practice of their application and scientific doctrine, a system of theoretical provisions describing the features of the joint application of these norms, as well as their relationship.

I.1. Literature review

IHRL and IHL are two different fields. IHL's history dates back to the 19th century, when Henri Dunant advocated for war victims (Arnold & Quenivet, 2008). Under the two Additional Protocols of 1977, it reached a surprisingly high level after continuously expanding and becoming more enriched. Regarding this, Antonio Cassese is a scholar and a prominent practitioner to whom the world community has delegated some of the most

important roles it has established in recent decades. He served as Chairman of the International Commission of Inquiry on Darfur from 2004 to 2005, President of the European Committee for the Prevention of Torture from 1989 to 1993, and President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) from 1993 to 1997. Most recently, in 2009, he was appointed President of the Special Tribunal for Lebanon. His job in carrying out these duties has always been to evaluate and implement the interaction between IHL and IHRL. He has been able to fully see the need to maintain the fundamental tenets of the whole system of contemporary international law: human life and human dignity.

Regarding the goals of IHL, academics contend that it is intended to provide a bare minimum of protection even in the face of the most catastrophic event in human history: war (Deland et al., 2020). Combatants are authorized to eliminate combatant components of the opposing camp during armed warfare; therefore, regarding the start of a conflict, someone stated clearly, with a fair amount of irony, that the hunting season will begin (Sriram et al., 2014). During an armed war, life is the most valuable resource humans possess; it is fundamentally imperiled (Sriram et al., 2014). In that sense, IHL aims to preserve what can be safeguarded despite the conflict of arms, despite this upsetting starting position.

Nonetheless, it is claimed in the literature that human rights are a product of the post-World War II era (Fleck, 2008). They resulted from the horrors carried out throughout that conflict, particularly by the German military, but also by the winning allies. Human rights were initially intended to protect against state interference; however, their scope has expanded over time to include many commitments to states to provide protection against private

interference as well as to generally ensure their effectiveness (also known as “positive” rights) (Winaldi & Setiyono, 2022).

According to Zumpani (2014), the right to life is at the top of the hierarchy of rights in all human rights accords, regional or worldwide. These customs have been developed for peaceful times. Governments have the authority to legally recognize a national emergency, allowing them to take actions that deviate from their agreed-upon responsibilities. However, article 4(2) of the International Covenant on Civil and Political Rights (ICCPR) prohibits any departure from the right to life. "Did the authors of the ICCPR totally wish to prohibit the killing of human beings during armed conflict?" is the obvious question the scientists pose. Sriram et al. (2014) state that they did not intend to do this; they maintained that, when there was a military conflict, the ICCPR did not apply. According to several voices heard throughout the past century, there is, in fact, a clear distinction between the rules of war and peace: they do not overlap or touch one another; only one of the two applies; none is combined (Sriram et al., 2014).

As for Weiß & Zimmermann (2022), they discuss how IHL and IHRL interact during an ongoing armed conflict. Ukrainian researcher Pashynna (2024) also argues that the problem of the interaction of IHL and IHRL lies in their different historical origins, evolution, and application. IHL undoubtedly applies to international and NIACs, regulating the behavior of states and armed groups. At the same time, IHRL is recognized as the basis of law in peacetime but also applies in periods of conflict.

Regarding this, Pashynna (2024) writes that one of the key problems is the possibility of states deviating from their human rights obligations during emergencies, particularly armed conflicts, which IHRL regulates. While IHL operates unconditionally during IAC, IHRL allows states to temporarily violate some human rights under certain conditions. This raises questions about the balance between the need to ensure national security and respect for human rights, especially in the context of contemporary conflicts such as the war in Ukraine, where both legal regimes overlap and interact, creating a complex legal landscape.

As for the complementarist view, which advocates the simultaneous application of both legal norms, proposes a legal symbiosis where IHL and IHL can form a more cohesive network of human rights protection in the volatile context of war. However, practical challenges emerge when laws conflict, making it necessary to rely on principles like *lex specialis* to determine which rule should take precedence. In international law, the *lex specialis* principle is a recognized interpretation guideline. It is based on a Roman concept of interpretation, which states that a rule would supersede a more general rule in circumstances where it is precisely controlled (*lex specialis derogat leges generalis*).

According to Ėapustnyk et al. (2024), several Ukrainian scholars believe that the war in Ukraine has revealed specific issues with implementing IHL in contemporary armed conflicts. The authors claim that the term *hybrid war* is not defined in the IHL regulations, and that the current scenario does not fit this description. The position of civilians, who are assured protection from the effects of war, is not fully regulated by international law.

Likewise, Cohen & Zlotogorski (2021) emphasize in their monographic work that the idea of proportionality is a cornerstone of IHL. Almost all governments participating in armed conflicts understand that it is illegal to undertake an assault that is expected to produce incidental harm to civilians that outweighs the direct military gain anticipated by the attack. This ban is stated in military manuals, taught in professional courses, and is widely considered as nearly axiomatic. However, the actual meaning of this idea is unclear. Almost every subject is debatable, from the most fundamental question of how to reconcile civilian injury and military benefit to the potential responsibility to use precise but expensive weaponry.

The author Lucia Wirthova (2023), from Comenius University in Bratislava, takes a somewhat bold stance, stating that IHL does not represent the realities of battle today. At the same time, she notes that the international community's consensus serves as the foundation for any future developments, with the situation in Ukraine potentially becoming a historic case.

In the same line, Tomuschat (2010) examines explicitly the topic of IHL and IHRL in the context of the International Court of Justice's (ICJ) case law. He claims that, when the ICJ was required to provide its advisory opinion on nuclear weapons in 1996, the matter took on significant significance. Some nations argued that because nuclear weapons cannot be used to strike a military target with the necessary accuracy, they must be illegal. It was argued that they violated the right to life because of their widespread, indiscriminate impact. Other states protested, citing the long-standing theory that IHL governs all issues that arise during an armed conflict.

Facing this, the ICJ was forced to reply to these two opposing viewpoints. First, it said that the ICCPR was still in effect during the conflict. Also, the theory of *lex specialis* –which maintains that the law that governs armed conflict rather than the ICCPR’s provisions is the only method to decide whether a specific death, brought on by the use of a specific weapon in combat, qualifies as an arbitrary deprivation of life in violation of article 6 of the ICCPR– is somewhat contradicted by this (ICJ, 1996).

In that sense, there is an apparent lack of clarity regarding the meaning the ICJ ascribed to those terms. One may argue that the ICJ supported the idea of the two disciplines being wholly separated. However, it is reasonable to contend that the ICJ emphasized that the IHL norms must be read and interpreted with article 6 ICCPR. Given that the first reading would have essentially eliminated the opening language on the continuity of human rights during times of war, the second reading is even more logical (Quintin, 2020).

Moreover, the traditional moral defense of the proportionality concept of IHL and the collateral harm that this standard allows during times of conflict is contested by Trumbull (2023). This author states that strikes inflicting predictable injury on "innocent" civilians cannot be justified under the Doctrine of Double Effect. This moral theory forms the basis of the proportionality criterion: to lose a right to life, one must take a morally significant action. Therefore, only when it comes to “non-innocent” people can collateral harm to civilians be ethically justifiable.

According to the aforementioned, the IHL concept of proportionality is ethically wrong, because it allows for predictable injury to both innocent and non-innocent people in certain situations. However, Trumbull (2023) asserts

that the proportionality concept should not be disregarded entirely. Notwithstanding its moral failings, it advances a more general humanitarian goal by restricting the reach of conflict. The concept aids explicitly in protecting the broad yet brittle definition of “civilian” under the current IHL, as well as the associated principle of distinction, which forbids assaults against civilians. Even while civilians in armed conflicts are only moderately protected by the proportionality principle, this protection is still better than the total war paradigm that prevailed for most of the 20th century. However, responsible governments should be aware that assaults that are deemed legal under the IHL concept of proportionality are not always ethically acceptable. As a result, these nations ought to take extra precautions to prevent unintentional injury to innocent people.

The increasing digitization and use of artificial intelligence in armed conflicts raise significant challenges for IHL, particularly concerning the legal and ethical implications of emerging misinformation and decision-making technologies (Szpak, 2024). Any new military technology must, at a minimum, comply with existing IHL norms. However, the specific characteristics of these technologies, the contexts in which they are expected to be deployed, and their foreseeable humanitarian impact raise concerns about whether current legal frameworks are adequate or require clarification or expansion.

The integration of AI into armed conflict presents both opportunities and challenges for IHL. On one hand, AI may enhance compliance with IHL by improving decision-making and accuracy. On the other, it introduces complex legal and ethical dilemmas.

The author Odon (2022) analyzed the development of international law in relation to the intersection between IHL and IHRL, focusing on their mutual applicability in situations of armed conflict. The study examined the jurisprudence of international human rights courts, particularly the European and Inter-American tribunals, in addressing contemporary crises arising during armed conflict. It argued for a renewed interpretation and application of international law to address modern challenges while maintaining established moral obligations. By analyzing recent case law and its underlying reasoning, Odon (2022) offered a perspective that aligns international legal development with globalization and supports the formation of a more resilient legal framework. The work approached legal and ethical dilemmas, especially those concerning the targeting of civilians, by integrating IHL with IHRL in a comprehensive manner.

A central example in these discussions is the ongoing armed conflict in Ukraine. The effectiveness of IHL in safeguarding civilians during warfare has been widely debated in relation to this conflict, particularly given its complex geopolitical background and high civilian casualties. The Russian-Ukrainian war thus serves as a critical case study for evaluating the application and limitations of IHL and IHRL in modern warfare.

II. METHODS

The object of the study was the system of international legal relations concerning the determination of status, regulatory principles, and the grounds for holding individuals accountable for violations of IHL. The subject of the study were the international legal principles and norms of IHL and IHRL as they relate to contemporary armed conflicts.

A general scientific methodological approach was applied to define the scope of the research, clarify key concepts, and identify the central theoretical aspects of the topic. The general scientific methods employed included the systemic-structural approach, generalization, scientific abstraction, and logical-systemic analysis. A distinctive feature of the study was the integration of both inductive and deductive methods: induction was used to establish the relationship between IHL and IHRL at the level of specific norms, while deduction enabled the incorporation of these norms into a unified theoretical and legal framework of subjective public rights. The study also applied special methods, including historical-legal, comparative legal, and formal-logical analysis.

III. RESULTS

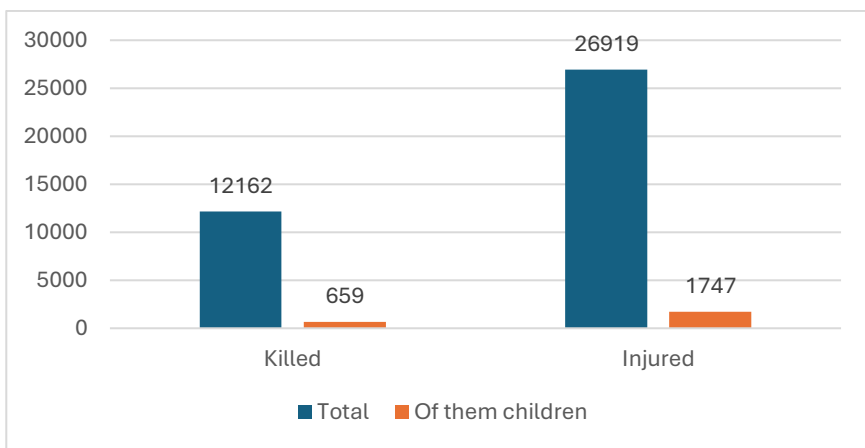
Between February 2022 and January 2023, the UN determined that at least 6919 people were murdered in Ukraine; however, since the data only included confirmed deaths, the actual number may have been higher. According to Ukrainian official sources, the number of civilian casualties ranged from 33 000 to 41 000, with the struggle for Mariupol accounting for the most significant number at an estimated 25 000 (Feldstein & Kot, 2023). In the meantime, 16 112 civilians died in conflicts worldwide on average per year between 2001 and 2021.

To put it another way, the anticipated number of civilian casualties during the Russia-Ukraine conflict is significantly greater than the average for the previous 20 years. Moreover, 17.6 million Ukrainians needed humanitarian assistance, and 13.5 million were forced from their homes. Figure 2 shows the

total number of civilian deaths in Ukraine during Russia's invasion, as confirmed by Office of the United Nations High Commissioner for Human Rights (OHCHR), between February 24, 2022, and October 31, 2024 (Statista Research Department, 2024).

Figure 2

Number of civilian casualties in Ukraine during Russia's invasion verified by OHCHR from February 24, 2022, to October 31, 2024



Note. Taken from *Number of civilian casualties in Ukraine during Russia's invasion verified by OHCHR from February 24, 2022, to October 31, 2024*, by Statista Research Department, 2024, <https://www.statista.com/statistics/1293492/ukraine-war-casualties/>

IHL refers to a set of rules designed to reduce the humanitarian impact of armed conflicts. It restricts the use of certain weapons and methods of warfare and protects individuals who are not, or are no longer, participating in hostilities. Also known as the law of armed conflict or the law of war, IHL is grounded in customary international law and treaties recognized as legally binding by states. It forms part of international law, which governs relations between states. Although the use of force by states is addressed in a separate

branch of international law outlined in the UN Charter, IHL specifically applies once armed conflict occurs, regardless of the legality of the initial use of force. Therefore, any war, including the conflict between Russia and Ukraine, must be governed by IHL. However, given the scale of destruction and the high number of civilian casualties, the practical application of IHL in the context of this war raises serious concerns (Masri et al., 2024).

As demonstrated by the Russia-Ukraine conflict, civilians remain the most affected population along the front lines. The war has been marked by serious violations of core IHL norms. Since IHL is intended primarily to protect civilians and others not directly involved in hostilities, the repeated targeting of civilians in this conflict is deeply troubling. According to Nwotite (2022), the fundamental principles of IHL designed to ensure civilian protection are not being respected by the parties to the conflict.

In 2024, the Office for Democratic Institutions and Human Rights (ODIHR) released the Fifth Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine. Covering the period from December 1, 2023, to May 31, 2024, the report documents an escalation of coordinated and large-scale attacks by Russian forces on major Ukrainian cities, including areas far from the frontline. These operations led to an increase in civilian casualties and significant destruction of civilian property, including essential energy infrastructure. Both sides of the conflict continued to endure shelling and multiple-launch rocket system (MLRS) attacks, with conditions particularly severe in the northeastern Kharkiv region after Russian ground forces initiated an operation on May 10, 2024.

In this sense, ODIHR monitoring found that Russian forces continued to use wide-area explosive weapons in densely populated urban areas, resulting in numerous civilian deaths and widespread damage to civilian infrastructure. Airstrikes, missiles, and loitering munitions frequently struck civilian targets located far from active combat zones, while shelling and MLRS attacks were concentrated near high-intensity conflict areas. These actions reflect a persistent disregard by the Russian government for IHL principles of proportionality and distinction. Likewise, ODIHR reported a significant increase in coordinated missile and loitering munition attacks on Ukrainian-controlled areas in December and January.

On December 29, 2023, one of the largest assaults since the full-scale invasion began on February 24, 2022, was launched. Over 160 drones and missiles targeted cities such as Kyiv, Kharkiv, Dnipro, Zaporizhzhia, Odesa, and Lviv, as well as other towns in the Dnipropetrovsk, Sumy, Cherkasy, and Kyiv regions. According to data verified by the OHCHR, the 18-hour assault resulted in at least 21 civilian deaths and 85 injuries, including five children. The Russian Federation attributed the civilian casualties to Ukraine's air defense systems and claimed its intended targets were Ukrainian military assets. Similar attacks continued in January 2024, with OHCHR reporting a notable increase in civilian deaths, particularly among children, compared to previous months. Residential buildings, schools, and healthcare facilities were among the civilian objects damaged.

Simultaneously, OHCHR reported that Ukrainian forces repeatedly attacked Russian fuel infrastructure using long-range weapons, causing temporary disruptions in fuel production. Therefore, while “dual-use objects” – which serve both military and civilian functions– can be lawful military targets,

such attacks may still violate IHL if they fail to meet the principle of proportionality, which requires consideration of potential indirect effects of the attack.

In that sense, the practical application of IHL IHRL during armed conflicts faces numerous challenges. These include ensuring compliance by all parties, adapting to the evolving nature of warfare, and identifying effective enforcement mechanisms. One major obstacle is the problem of negative reciprocity, where the violation of IHL by one party leads the opposing party to also disregard the law. Additionally, the use of advanced technologies and the involvement of new actors, such as private military companies, require IHL to be updated to reflect contemporary conflict dynamics. States may struggle to implement IHL effectively due to limited resources, insufficient preparedness, or an overreliance on technologies that reduce direct human oversight. A lack of political will, especially in the absence of international pressure or accountability mechanisms, further undermines the effective enforcement of IHL and HRL.

As for Nwotite (2022), he emphasized that IHL is designed to protect individuals who do not pose a threat to military operations. This protection depends on the ability of parties to distinguish between lawful and unlawful targets and to carry out attacks accordingly. The principle of distinction limits attacks to combatants and military objectives. However, merely choosing lawful targets is not sufficient. Even when attacking military objectives, parties must ensure that operations are proportionate and that all necessary precautions are taken to avoid or minimize incidental harm to civilians and civilian objects. These obligations are reflected in the principles of precaution and

proportionality. Thus, strict adherence to distinction, proportionality, and precaution is essential to fulfilling the duty to protect civilians. Nwotite (2022) further stressed the importance of prosecuting individuals responsible for violations of these principles in the context of the Russia-Ukraine conflict.

In the same way, Nasution and Raudia (2022) shared a similar perspective, concluding that the Russia-Ukraine conflict qualifies as an IAC and falls under the scope of IHL, which aims to prevent unnecessary human suffering. They noted that women, children, and the elderly constitute the majority of victims in the Ukrainian context and identified specific atrocities committed by Russia as war crimes. However, they also observed that no decisive steps have yet been taken to hold Russia accountable for these actions.

The central purpose of IHL is the protection of persons. It prohibits attacks on civilians and civilian property unless they are directly involved in hostilities. IHL also protects those who are hors de combat, including wounded, sick, or shipwrecked military personnel, prisoners of war, and civilians under the control of a party to the conflict. It forbids violence or threats of violence aimed primarily at instilling terror in the civilian population. Nonetheless, as Ou (2023) pointed out, gaps and ambiguities persist within IHL. For example, there is debate over what types of environmental damage are deemed unacceptable, and the definition of a "civilizable" environmental component remains unclear. Often, environmental harm is treated as "collateral damage", complicating the application of the proportionality principle.

The enforcement of IHL in the Russia-Ukraine conflict is both complex and multifaceted. One of the most prominent outcomes has been the recognition of Russia's violations of international law. The invasion has displaced millions

of Ukrainians, triggering a humanitarian and political crisis. Finally, direct violations of IHL include the intentional killing of civilians, particularly women and children, and attacks on civilian infrastructure.

Among the most serious breaches of IHL are attacks on civilian infrastructure, such as the seizure of the Chornobyl nuclear facility and the assault on the Zaporizhzhia nuclear power plant, Europe's largest. These actions not only endanger nearby populations but also pose long-term risks to future generations' health and safety.

Therefore, deliberate attacks on civilian facilities and the killing of civilians constitute clear violations of IHL. The law requires strict distinction between civilians and combatants, as well as between civilian objects and military targets, throughout the course of armed conflict. Attacks that cause excessive harm to civilians or civilian property relative to the expected military advantage violate the proportionality principle. In its military operations in Ukraine, the Russian armed forces appear to have breached both principles (Gunawan et al., 2023).

Likewise, Gill (2016) analyzes how IHL classifies the armed conflict in Syria. The author emphasizes that IHL recognizes two distinct categories of armed conflict, each governed by its own legal framework. An IAC involves two or more states and is regulated by customary IHL norms and any relevant treaties to which the parties are bound. Gill aligns with the widely accepted interpretation that the threshold for identifying an IAC is minimal, commonly referred to as the "first shot theory". According to this view, an conflict begins when one state uses force against the armed forces of another state, or occupies

part or all of its territory, regardless of the other state's response. This theory implies that even minor hostilities between states can trigger the application of IHL. However, not all provisions apply automatically in every situation; for example, the rules on the treatment of prisoners of war only take effect once prisoners have been captured, and the rules on occupation only apply once a territory is under effective control (Gill, 2016). This reflects the factual limits of the situation, not a limitation in the applicability of IHL itself.

In contrast, another interpretation holds that an IAC only arises when one state uses force against another in a sustained confrontation or when their armed forces are engaged in prolonged hostilities. Under this view, minor incidents do not constitute an armed conflict. The lower-threshold theory is generally considered more persuasive because the higher threshold risks creating a legal gap where no IHL rules apply (Akande, 2012).

In the context of the armed conflict in Ukraine, particularly following the Russian Federation's full-scale invasion on February 24, 2022, the involvement of the Wagner Private Military Company (PMC) raises several complex IHL questions:

- Do Wagner PMC members qualify as mercenaries under international law?
- Under the Hague Convention IV (HC IV), the Third Geneva Convention III, and API, can Wagner PMC be considered part of the Russian Federation's armed forces?
- Are Wagner fighters entitled to combatant privilege and prisoner of war status as recognized combatants?

- Does their classification as members of an organization politically labeled as criminal or terrorist affect their entitlement to these protections?

Two treaties ratified by Ukraine –that is, the API (also ratified by the Russian Federation), and the UN Mercenary Convention– provide definitions of the term *mercenary* that can be relevant for this discussion in particular. According to article 47 of the API, an individual who satisfies each of the following cumulative requirements may be classified as a mercenary. Consequently, a mercenary is defined as an individual who:

- Is specifically enlisted, either domestically or elsewhere, to participate in military conflicts.
- Really participates directly in the fighting.
- Is primarily driven to participate in the fighting by the desire for personal benefit and, in reality, is promised material compensation by or on behalf of a party to the conflict that is significantly higher than that promised or paid to combatants with comparable ranks and roles in that party's armed forces.
- Does not reside in an area under the authority of one of the conflict's parties or be a national of one of those parties.
- Does not serve in one of the conflicting parties' military forces.
- Has not been dispatched on official duty as a member of the armed forces of a state that is not a party to the war.

According to this article's first section, if someone is identified as a mercenary, they are not eligible for the status of a combatant –and hence cannot benefit from combatant privilege– or a prisoner of war. The aforementioned UN Convention provides a comparable description by listing certain attributes; and, with a few slight variations, it is also evident in the note to article 447 of the Criminal Code of Ukraine (CCU), which makes mercenarism a crime.

Only Wagner PMC members who meet the first two conditions listed above can be excluded from the classification of "mercenary" under IHL, since most members do not satisfy all the criteria. The most evident inconsistency lies in the fact that the majority of Wagner personnel are Russian citizens, that is, nationals of a "party to the conflict". This disqualifies most Wagner members from being legally recognized as "mercenaries" under IHL.

In this context, Ukraine might have legal grounds to prosecute Wagner PMC members for participating in military actions in conflicts where Russia is not officially involved. However, as noted by representatives of the UN Working Group on Mercenaries, even regarding Wagner's activities in Syria or African states, there is often a lack of sufficient evidence to definitively label the group's members as mercenaries. This includes uncertainties surrounding their compensation or whether their involvement was at the request of the host governments.

Nevertheless, Wagner personnel could still face prosecution in Ukraine as mercenaries for their actions in the Central African Republic (CAR), provided it can be demonstrated that they participated in the armed conflict there and meet the criteria outlined in API and the UN Mercenary Convention. Under article 47 of API, they would retain combatant privilege for their actions

in Ukraine and would not be classified as mercenaries for those actions. In the same way, article 3 of the UN Convention, which prohibits participation in armed conflict as a mercenary, may serve as a legal basis for Ukraine to prosecute Wagner members for involvement in conflicts outside the scope of the Russia-Ukraine war.

The second category of armed conflict under IHL is the NIAC, which involves at least one non-state actor, typically an organized armed group (OAG). The threshold for NIAC is higher than for IAC: the groups involved must be sufficiently organized to conduct sustained operations, and the violence must exceed the level of internal disturbances, isolated incidents, or terrorist acts. A NIAC may become internationalized, and thereby fall under IAC rules, if an OAG operates under the direction or control of a foreign state, or if that state provides substantial military support to the group in opposition to another state's armed forces. Although the precise degree of control required remains contested, the prevailing view is that a conflict becomes internationalized when a state exercises "overall control" over the OAG (Corn, 2006).

According to Gill (2016), various factors must be evaluated to determine whether a conflict, such as the one in Syria, is international or non-international, and whether it comprises one or multiple conflicts. In Syria, numerous armed groups are engaged, each with varying degrees of organization and differing objectives. By early 2012, the intensity of hostilities and the structured nature of opposition forces indicated the threshold for a multi-party, NIAC had been met. The Syrian government and allied militias represent one side, while the primary opposition groups are divided into two informal coalitions (one Islamist, the other more secular) that together form the mainstream opposition.

However, and despite occasional local disputes, these groups are united in their objective of overthrowing the Syrian government and generally operate in coordination. Whether viewed as a single coalition or separate factions, they constitute the opposing party to the Syrian government and its affiliated forces.

The key implication is that the applicable IHL regime depends on whether a conflict is classified as international or non-international. Although the legal distinctions between IAC and NIAC have narrowed over the past two decades, important differences persist, particularly in areas such as the legal status of armed groups and their members, the regulation of weapons, and the targeting of specific objectives. Nonetheless, the rules on targeting under both regimes are largely similar. Therefore, in practical terms, the classification of a conflict as either IAC or NIAC may not significantly affect the assessment of whether an attack is indiscriminate or disproportionate.

The Russia-Ukraine conflict highlights the urgent need for more effective enforcement of IHL. Despite widespread violations, the international community has struggled to hold perpetrators accountable and prevent further abuses. This underscores the necessity of reforms to enhance civilian protection and ensure the consistent application of IHL during armed conflict.

One key issue is the violation of the principle of distinction, a core element of IHL. This principle requires parties to a conflict to distinguish at all times between combatants and civilians, as well as between military objectives and civilian objects. Disregard for this principle can result in the use of indiscriminate force, which is explicitly prohibited under IHL. Moreover, actions that violate IHL may simultaneously be classified as war crimes and crimes against humanity under IHRL and IHL. This overlap can create legal

tensions, as certain acts carried out during military operations may constitute crimes against humanity even if they appear permissible under IHL.

The civilian suffering in Mariupol, paralleling the devastation previously seen in Aleppo, Raqqa, Tripoli, and Mosul, should prompt states to reexamine how they implement the principle of distinction, particularly regarding the use of heavy weapons. For years, the International Committee of the Red Cross (ICRC) and other organizations have called for stricter adherence to these rules in urban warfare. The continuing use of explosive weapons in populated areas raises serious concerns about how states interpret the prohibition on indiscriminate attacks. It is difficult to reconcile the use of cluster munitions, large bombs, unguided artillery, mortars, and multi-barrel rocket launchers in cities with the requirement to distinguish between civilian and military targets and to minimize harm to civilians, as mandated by IHL. In response, the ICRC has urged all states to avoid using high-explosive weapons in urban areas unless strict precautions are taken to reduce the risk to civilians.

Therefore, in the current situation in Ukraine, parties to the conflict should take three urgent steps to uphold the principles of distinction, proportionality, and precaution: first, they should avoid utilizing weapons that are insufficient for populous regions and cause so much misery. Second, if necessary, civilians should be allowed to leave besieged or encircled areas through cease-fire agreements, humanitarian safe passage, or other forms of agreements, with special consideration given to groups at risk, such as the wounded and sick, people with disabilities, the elderly, children, and pregnant women. Third, parties should try to avoid placing military objectives and fighting from locations in or near highly populated areas.

IV. DISCUSSION

While the relationship between IHL and IHRL is typically described as one between general and specialized law, with humanitarian law serving as the *lex specialis*, it is still helpful to examine the complementarity paradigm.

IHRL and IHL can influence and reinforce each other due to their shared foundations in similar values and principles. This relationship is referred to as complementarity; under this approach, interpretation is guided by article 31(3)(c) of the Vienna Convention on the Law of Treaties, which allows for the consideration of any “relevant rule of international law applicable in the relations between the parties” when interpreting a treaty. This provision reflects the idea that international law forms a coherent legal system (Quintin, 2020). From this viewpoint, IHRL and IHL coexist harmoniously, allowing mutual interpretation across the two bodies of law.

Given the above, if the principle of *lex specialis* is understood not merely as a method for resolving normative conflicts but as a tool for interpreting norms more precisely, it aligns with the complementarity approach. In this sense, it mirrors article 31(3)(c) of the Vienna Convention, which promotes the interpretation of treaties in the context of other relevant legal norms.

Moreover, there is broad consensus that both IHRL and IHL may apply simultaneously in situations of armed conflict. Each legal framework offers standards for assessing state behavior, and often the areas regulated by one are also covered by the other. Despite the formal or procedural limitations faced by national and international bodies, they are generally expected, at least implicitly, to consider both legal frameworks in order to reach conclusions that are consistent with international law. This suggests that the level of protection

offered by IHRL is not fundamentally inferior to that of IHL, although how this interplay functions regarding specific rights remains uncertain.

One area where this interaction is especially evident is in the prohibition of torture. The interpretation and application of this prohibition require consideration of both legal regimes. The ICTY examined this intersection in several cases, including *Furundzija*, *Delalic*, and *Kunarac*, to clarify the content of the prohibition of torture as it relates to the crimes under its jurisdiction. In *Furundzija*, the Tribunal acknowledged that although international law prohibits torture in armed conflict, it does not clearly define the prohibition. Therefore, it relied on definitions found in IHRL (Orakhelashvili, 2008).

To interpret the prohibition of torture as part of war crimes under the ICTY Statute –and as part of IHL, especially under common article 3 of the 1949 Geneva Conventions–, a detailed examination of relevant human rights instruments is necessary. The *Delalic* case exemplifies this approach, where IHRL was used to clarify humanitarian law provisions. In both *Delalic* and *Furundzija*, the ICTY confirmed that the 1984 UN Convention against Torture, along with the 1985 Inter-American Convention against Torture and the 1975 UN Declaration against Torture, contributed to a definition that reflected customary international law (Orakhelashvili, 2008). Unlike earlier instruments, these do not classify torture simply as an aggravated form of cruel treatment.

In that order of ideas, the ICTY in *Delalic* developed the following definition of torture's components in order to prosecute torture as a breach of international humanitarian law under articles 2 and 3 of its statute (Sassòli, 2019):

(i) An act or inaction must result in excruciating bodily or mental anguish or suffering.

(ii) Inflicted purposefully.

(iii) As well as for reasons like getting information or a confession from the victim or a third party, punishing the victim or a third party for an act they have committed or are suspected of committing, intimidating or coercing the victim or a third party, or for any other reason based on discrimination of any kind.

(iv) With the act or omission being carried out by, at the request of, or with approval or compliance from an official or other someone functioning in an official capacity.

This definition is similar to that of article 1 of the 1984 Convention. Following an emphasis on the distinctions between the goals of international criminal law and IHRL, the Tribunal in Kunarac affirmed that the definition of the Torture Convention can serve as an interpretive tool, and it stated that it can only be applied *mutatis mutandis* to international criminal proceedings.

On the other hand, the legal ramifications of Russia's military action extend beyond violating UN Charter, article 2.4. There is growing evidence that it and its representatives are also committing war crimes, maybe even genocide, and violating IHL and criminal law. The following are the most grave charges that raise the possibility that Russia is violating international law:

- There is mounting evidence that Russian armed personnel have been attacking civilian targets, including protected objects like hospitals, without discrimination.

- Growing allegations backed by unconfirmed images and video evidence indicate that Russian military personnel have been deploying cluster bombs and explosive weapons with significant area impacts, which are prohibited in the majority of nations. When employed in populous regions, such weapons are recognized to be one of the leading causes of civilian deaths.
- The purported murders and torture of Ukrainian residents around the nation. Additional evidence that the Russian invasion has resulted in numerous civilian fatalities comes from recently released satellite data from the beleaguered Ukrainian port city of Mariupol, which displays numerous mass burial sites.
- There have been several claims that Russian armed personnel have been directly attacking evacuation centers, such as train stations in Central and Eastern Ukraine, and preventing civilians from fleeing to safety. According to reports, one such attack on Kramatorsk's central rail station left 50 people dead and 100 injured.
- A rising number of complaints of sexual assault and abuse experienced by Ukrainian women and girls have led to accusations that Russia has used the threat of rape as a weapon of war.

The UN or the European Court for Human Rights (ECHR) may be the first organizations one can turn to for answers when an illegal military attack happens and innocent human suffering ensues. But, in this case, these institutions have no authority.

Russia's veto power is a key factor that may explain why it has not been found guilty of war crimes. The war in Ukraine has led scholars, diplomats, and UN officials to question whether the UN should reform the Security Council to prevent the kind of deadlock currently seen in the Russia-Ukraine conflict. Russia has repeatedly used its veto regarding matters related to Ukraine, raising doubts about whether the Council can continue to function "business as usual" during a prolonged conflict. However, Gowan (2022) argued that reform efforts could be counterproductive, as powerful states believe that veto power protects their national interests.

Although both Russia and Ukraine are state parties to the European Convention on Human Rights, making them subject to the jurisdiction of the ECHR, the ECHR has limited ability to impose meaningful penalties on Russia. The Council of Europe responded swiftly by suspending Russia's right to representation and approving temporary measures to restrict Russian actions in Ukrainian territory.

The question then arises: where can justice be effectively pursued? Initially, the ICC lacked jurisdiction to charge Russia with violations of international law, as Russia is not a party to the Rome Statute, the treaty that established the ICC in 2002. However, this has changed. The ICC now has jurisdiction in two ways: first, through Ukraine's acceptance of ICC jurisdiction and ratification of the Rome Statute; and second, through article 13 of the Rome Statute, which allows state parties to refer alleged crimes to the Court (Lankevysh et al., 2024). Prompted by public pressure, 39 states parties referred the situation to the ICC, enabling prosecutor Karim Khan to launch an investigation into the violence in Ukraine on March 2, 2022.

It is important to note that while the ICC can prosecute war crimes, crimes against humanity, and genocide, it cannot prosecute crimes of aggression committed by non-state parties. A 2018 amendment to article 15 of the Rome Statute prohibits the ICC from exercising jurisdiction over acts of aggression committed by states that have not ratified the treaty.

To address this gap, a coalition of political and legal leaders has called for the creation of a Special Tribunal to prosecute the crime of aggression against Ukraine. Although the aim is commendable, the feasibility of this initiative remains uncertain due to practical and jurisdictional challenges, and there are concerns about whether it can be implemented swiftly. In addition, “geopolitical expediency” in the current international climate may further obstruct the establishment of such a tribunal.

International law aims to promote global peace, protect human rights, and hold governments accountable for violations. However, in practice, its application and effectiveness often depend on the dynamics of international relations. As Almohawes (2025) observed, these dynamics significantly affect enforcement. The international community has struggled to hold the Syrian government accountable for human rights abuses, largely because of strong support from Russia. Similarly, the effectiveness of international law in addressing Russia’s violation of Ukraine’s sovereignty and territorial integrity is in serious doubt. Almohawes (2025) argued that external support has allowed aggressors to continue despite legal constraints. In both Syria and Ukraine, international relations have shaped how international law is applied, although the outcomes differ.

In that sense, Russia, China and Iran have consistently supported the Assad regime in Syria with military, economic, and political backing, using their influence, particularly within the UN Security Council, to block foreign intervention. This demonstrates how geopolitical interests can paralyze international legal mechanisms. In Ukraine, a more unified international response has produced legal actions against Russia, including military aid and economic sanctions. However, these measures have had limited success due to Russia's geopolitical influence, especially in the areas of energy and military power. China's refusal to explicitly condemn or vote against Russia's invasion in the Security Council has further complicated international efforts. Accordingly, it is essential to analyze the challenges of adapting IHL to modern realities, such as hybrid warfare, the rising role of non-state actors, technological developments, and the politicization of international justice.

V. CONCLUSION

A clear illustration of the advantages and disadvantages of IHL is the war between Russia and Ukraine. The fighting has exacerbated severe violations of IHL and IHRL. However, the international community's response was delayed because of concerns about a catastrophic war escalation, highlighting the challenges of implementing IHL in the presence of superpowers.

In that sense, IHL must evolve alongside the changing nature of warfare to remain effective. These changes include the development of new military tactics and technologies, environmental transformations such as increasing urbanization, and shifts in related legal frameworks like international human rights law. A current challenge lies in the apparent inability of states to reach

consensus on IHL issues. Despite this, achieving universal agreement should remain a central objective in shaping IHL, as it is intended to reflect universal principles and apply to all armed conflicts, regardless of where or between whom they occur.

Nevertheless, certain urgent challenges posed by contemporary armed conflicts may require new legal instruments. If the ambiguities in existing treaty law cannot be resolved through shared interpretation or customary practice, these issues risk remaining unaddressed. The war in Ukraine may serve as a critical precedent for the development of IHL and its application principles, especially in response to modern military strategies and their impact on civilian populations.

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