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2022 RUSSIA-UKRAINE WAR WITH *JUS IN BELLO* DIMENSION WITHIN THE DISCUSSION OF HYBRID WAR, CONVENTIONAL WAR AND NUCLEAR WAR

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ABSTRACT

Russia's invasion of Ukraine, which has emerged as the biggest threat to international peace and security since the end of the Cold War, is the result of an aim that has spread over time. Also, on February 21, 2022, Putin recognized the eastern Ukrainian provinces of Donetsk and Luhansk as independent states, and in his statement on February 24, Putin justified the armed attack against Ukraine as a "special military operation" carried out in self-defence. However, the UN General Assembly described the attack in question as an act of aggression violating Article 2(4) of the UN Charter, that is, the prohibition on the use of force. However, the violations in question raise important questions and debates not only in terms of jus ad bellum, which regulates when it is right to start a war but also in terms of jus in bello (law of armed conflicts/humanitarian law). The purpose of this article

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is to analyse the Russia-Ukraine war in terms of jus in bello. The main questions to be answered within the scope of this article are "Is the armed conflict that started with Russia's attack on Ukraine being conducted under international armed conflicts? Do the parties respect the norms of international humanitarian law? Is it possible that states and individuals will be responsible when grave violations of international law on armed conflicts occur? Which court and/or tribunals in this regard –national courts, International Criminal Court, or a hybrid court?-will it be competent in this matter?

Keywords: Civilians, International Criminal Court, *jus in bello*, prisoners of war.

INTRODUCTION

On February 24, 2022, one of the largest military conflicts began among the states since the Second World War, that is, the Russian-Ukrainian War. This war was considered as a "military occupation" attempt from the perspective of Western countries; Russia presented it as a *"Special Military Operation/Peacekeeping Operation"*. Russia's action to invade Ukraine on February 24, 2022, violated the prohibition on the use of force in Article 2(4) of the UN Charter.[1] The invasion of Russia, which has been going on since February 24, has also led Ukraine to a humanitarian crisis in terms of international humanitarian law and international human rights law and led to the largest refugee crisis in Europe. More than 6 million people have become refugees in neighbouring countries such as Poland, Romania, Hungary, Moldova, and Slovakia; more than 7 million were in a situation of internal displacement and 12 million people have become in need of humanitarian assistance.[2] According to the United Nations High Commissioner for Human Rights, when conflicts began, from 24

[1] Oona A. Hathaway, "International Law Goes to War in Ukraine: The Legal Pushback to Russia's Invasion", ***Council on Foreign Relations***, March 15, 2022, https://www.foreignaffairs.com/articles/ukraine/2022-03-15/international-law-goes-war-ukraine, (Accessed: 18.03.2022)

[2] Diana Roy, "How Bad Is Ukraine's Humanitarian Crisis?", ***Council on Foreign Relations***, March 25, 2022, https://www.cfr.org/in-brief/ukraine-humanitarian-crisis-refugees-aid (Accessed: 25.03.2022); Anadolu Ajansı, "BM: Ukrayna'dan komşu ülkeler geçen mültecilerin sayısı 5 milyonu geçti", 2022, https://www.aa.com.tr/tr/dunya/bm-ukraynadan-komsu-ulkelere-gecen-multecilerin-sayisi-5-milyonu-gecti/2568303 (Accessed: 01.05.2022); Operational Data Portal, "***Ukraine Refugee Situations***", May 17, 2022, https://data2.unhcr.org/en/situations/ukraine, (Accessed: 25.03.2022)

February to 28 April, 2899 civilians were killed, including 210 children; 3235 civilians were injured.[3]

While the *jus ad bellum*, in which it is prohibited to apply force in the context of the Russian-Ukraine War, maintains its importance; These tragedies and dramas, which continued to live in Ukraine, have made the principles of humanitarian law to be applied in the war more important. Because this war, which was started unfairly, is being waged illegitimately. The main point of the *jus in bello* is that it applies to armed conflicts and the parties to the armed conflict must equally respect the *jus in bello*, regardless of whether the war is legitimate or not from the *jus ad bellum* viewpoint.[4] *Jus in bello* rules, which are an extension of the just war tradition, consists of the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1949 and the Additional Protocols of 1977, some arms conventions and customary international humanitarian law rules and general principles of law.

The Russian-Ukrainian War raises some important questions and discussions from the point of view of j*us in bello*. Is this war, which began with the attack of Russia, which has nuclear power, on Ukraine, which does not have nuclear power, being conducted by the international law on armed conflicts? How much do the parties respect the norms of international humanitarian law? What kind of

[3] Office of the High Commissioner for Human Rights-OHCHR, "***Number of civilian casualties in Ukraine during Russia's invasion verified by OHCHR as of April 28, 2022***", April 20, 2022, https://www.ohchr.org/en/news/2022/04/ukraine-civilian-casualty-update-20-april-2022 (Accessed: 19.05.2022)

[4] Brian Orend, "Jus Post Bellum", ***Journal of Social Philosophy***, 31(1), 2000, p. 118, 121

humanitarian law violations do the parties commit? Are serious violations of international law regarding armed conflicts, namely war crimes, crimes against humanity, crimes of aggression, and genocide being committed? Can it be that states and individuals are responsible for these violations? Will these violations be held to account and which court and/or courts – national courts, International Criminal Court (ICC), or a hybrid court? – will be competent in this matter? Or will there be no accountability for political reasons? This article aims to address these and similar questions that arise in the context of the Russia-Ukraine War and to analyse the impact of the Russia-Ukraine War on *jus in bello*. In this regard, the article will first focus on the issue of the nature of the Russian-Ukrainian armed conflicts that have been going on from 2014 to the present day. Secondly, the Russia-Ukraine war will be examined in terms of the basic principles of international humanitarian law. In this context, especially the principle of discrimination, the principle of proportionality, the principle of military necessity, and the principle of taking precautions will be emphasized. Finally, the article will focus on the issue of accountability of states and individuals.

I. NATURE of ARMED CONFLICTS: WAR or ARMED CONFLICT?

Two conditions determine the existence of an international armed conflict. The first condition is that the actors, which are parties to the conflict, must be "states". This condition is clearly stated in Common Article 2 of the Geneva Conventions of 1949, with the statement *"(...) 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 (...)". In Article 1(3) of Additional Protocol No. I of 1977, it refers to the same regulation. The second condition is that the conflict, again arising from Common Article 2 of the 1949 Conventions, is *"armed"*. The International Organization of the Red Cross (ICRC) states that neither duration nor intensity anchor plays a role in qualifying it as an international armed conflict in the interpretation of Additional Protocol I of 1977.[5] Although this view is not universally accepted, the International Criminal Tribunal for the former Yugoslavia (ICTY) accepts this approach. The "geographical" scope of international armed conflict is also relatively established in a reasonable form. International humanitarian law is applied in the territory of the state party to the conflict, in international waters (high seas), and in international airspace. Common Article 3 of the Geneva Conventions of 1949 defines a non-international armed conflict as *"not of an international character occurring in the territory of one of the High Contracting Parties"*(...). Neither the text of Common Article 3 nor the interpretation of this article describes what "a non-international armed conflict" is. This uncertainty has led to a broader interpretation of the application scope of the article. Article 1, which regulates the material application area of Additional Protocol No. II of 1977, defines non-international armed conflict in a "negative" way. Additional Protocol II sets a higher implementation threshold than Common

[5] Fatma Taşdemir, "21. Yüzyılda Uluslararası Nitelikte Olmayan Silahlı Çatışmaların Gri Bölgesi: Statü Tartışmaları", (Ed.) Fatma Taşdemir ve Gökhan Albayrak, ***Uluslararası İnsancıl Hukuk: Kavramlar, İlkeler ve Yeni Gelişmeler***, Adalet Yayınevi, Ankara, 2018, pp. 96-97

Article 3. Additional Protocol No. II does not cover all types of non-international armed conflicts; It includes classic civil wars.[6] When we look at the jurisprudence on the definition of armed conflict, the ICTY has defined non-international armed conflict as *"protracted armed violence between governmental authorities and organized armed groups or between such groups"*.[7] With this jurisprudence of the ICTY, known as the "Tadic Formula", "intensity" and the "organization" measure of the parties play a role in deciding the existence of an armed conflict. These criteria were adopted in Article 8(2)(f) of the 1998 Rome Statute of the ICC. In the relevant article, armed conflict is defined as *"Paragraph 2(e) … applies in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups"*.[8] Adopting a low threshold of intensity like the Tadic Formula, this definition also recognizes that internal armed conflict can occur both between government agencies and organized armed groups, and between these groups themselves. It is not difficult to determine the existence of an international armed conflict. The real problem is that a classic non-international armed conflict faces new categories of armed conflicts such as *"asymmetric transnational armed conflict"* or *"global non-international armed conflict"*. "Hybrid" armed conflicts are neither

[6] Fatma Taşdemir, "*21. Yüzyılda Uluslararası Nitelikte Olmayan Silahlı Çatışmaların Gri Bölgesi: Statü Tartışmaları*", p. 98

[7] Fatma Taşdemir, ***Uluslararası Nitelikte Olmayan Silahlı Çatışmalar Hukuku***, Adalet Yayınevi, Ankara, 2009, pp. 190-193

[8] David E. Graham, "Defining Non-International Armed Conflict: A Historically Difficult Task", (Eds.) Kenneth Watkin and Andrew J. Norris, ***Non-international Armed Conflict in the Twenty-first Century***, International Law Studies, (88), 2012, p. 44

international nor non-international, defined as hostilities in which a state's regular armed forces extraterritorially demonstrate their combat power against a transnational non-state actor, or as conflicts between a state and an armed non-state actor, or between armed non-state actors themselves on the territory of more than one state.[9] Although the methods and tactics used in previous periods were used in this period of new generation warfare, a new model emerged in which the distinction between civilian and military was eliminated on the battlefield, the distinction between peace and war became blurred, and non-state actors took over outside the countries, and guerrilla warfare was redefined according to modern concepts.[10]

Hybrid warfare, which has gained popularity as a result of the changing nature of warfare, as opposed to the concept of fourth-generation warfare, is defined as *"the combination of conventional and non-conventional organizations, equipment and methods in a unique environment to create a synergistic strategic effect."*[11] Hybrid warfare, unlike compound warfare, is generally defined as the use of a regular main armed force and operational doctrine together with irregular troops and its doctrine against an enemy at the same time.[12] NATO (*The*

[9] Fatma Taşdemir, "*21. Yüzyılda Uluslararası Nitelikte Olmayan Silahlı Çatışmaların Gri Bölgesi: Statü Tartışmaları*", pp. 98-99

[10] Kıvılcım Romya Bilgin ve Gülayşe Ülgen Türedi, "Carl Von Clausewitz", (Ed.) Erhan Büyükakıncı, ***Savaş Kuramları***, Adres Yayınları, Ankara, 2015, p. 154

[11] Graham Fairclough, "Tank, Fare ve Rekabetçi Pazar: Hibrit Savaşa Yeni Bir Bakış", (Ed.) Yücel Özel ve Ertan İnaltekin, ***Savaşın Değişen Modeli Hibrit Savaş***, (Çev.) Melih Arda Yazıcı, Milli Savunma Üniversitesi, İstanbul, 2018, p. 8

[12] Gültekin Yıldız, "Hibrit Savaş Ne Kadar Post-moderndir? Avrasya Askeri Tarihine Yeniden Bakış", (Ed.) Yücel Özel ve Ertan İnaltekin, ***Savaşın Değişen Modeli Hibrit Savaş***, (Çev.) Melih Arda Yazıcı, Milli Savunma Üniversitesi, İstanbul, 2018, p. 22

North Atlantic Treaty Organization) has stated that hybrid warfare is "based on the use of asymmetric tactics to seek out and exploit weaknesses with non-military means (such as political, information-based and economic intimidation and manipulation), supported by conventional and non-conventional military means".[13] Hybrid warfare is dominated by uncertainty: First, the actors of hybrid warfare are regular and irregular forces, terrorists, criminals, and other social groups; Secondly, the boundaries between combat vehicles have blurred; Finally, there is an ambiguity between physical and psychological, physical and virtual platforms, where technology is the driving force.[14] Thus, hybrid warfare is a form of struggle in which hostile actions are carried out by overt and covert means, such as economic, political, industrial, technological, commercial, information, energy, cyber sabotage, and espionage. However, the rules of international humanitarian law can be applied only to armed conflicts of an international or non-international character. Therefore, the armed conflicts in eastern Ukraine must fall into one of these categories.[15] To determine this issue, it would be helpful to examine the armed conflicts in eastern Ukraine in two periods, 2014-2022 and the period from 2022 to the present.

1) The Nature of the Russia-Ukraine Conflicts between the Period of 2014-2022: The Hybrid War Period

[13] Graham Fairclough, "*Tank, Fare ve Rekabetçi Pazar: Hibrit Savaşa Yeni Bir Bakış*", *"* p. 8

[14] Graham Fairclough, "*Tank, Fare ve Rekabetçi Pazar: Hibrit Savaşa Yeni Bir Bakış*", p. 8

[15] Agnieszka Szpak, "Legal Classification of the Armed Conflict in Ukraine in Light of International Humanitarian Law", ***Hungarian Journal of Legal Studies***, 58(3), 2017, p. 271

In 2014, two significant events took place in Ukraine. The first is the annexation of Crimea, which took place in the first half of 2014; the second is the armed conflicts in the east of Ukraine, which took place in the second half of 2014.

In 2013, after internal unrest in Ukraine spread to Crimea, in February 2014, Russia, which intervened militarily in Crimea, declared independence on March 16, 2014, in a controversial referendum and annexed Crimea on March 18, 2014.[16] A large part of the international community considered the case of making Crimea a part of the Russian Federation, which was legitimized based on the right to remedial secession as a last resort, as a clear violation of international law.[17] On March 27, 2014, the UN General Assembly adopted a resolution calling for the non-recognition of the results of the March 16 referendum on changing the autonomous status of the cities of Sevastopol and Crimea, invalidating the annexation of Russia and reaffirming the territorial integrity of Ukraine.[18] States such as the US, EU, Canada, and Australia have taken the path of coordinated imposition of economic sanctions to

[16] Thomas D. Grant, "Annexation of Crimea", ***American Journal of International Law***, 109(1), 2015, pp. 70-71

[17] Thomas D. Grant, "*Annexation of Crimea*", p. 77

[18] UN News, "***Backing Ukraine's Territorial Integrity, UN Assembly Declares Crimea Referendum Invalid***", 27 March 2014, https://news.un.org/en/story/2014/03/464812-backing-ukraines-territorial-integrity-un-assembly declares-crimea-referendum , (Accessed: 16.03.2022)

force Russia to change its policy on Crimea.[19] However, despite these measures, Russia did not back down on the annexation of Crimea. Russia has implemented a hybrid war concept in Crimea with its post-modern technological possibilities and capabilities. This ongoing candidacy of Russia, which is considered a *"concerned superpower candidate"*, has pushed it to be more innovative on the battlefield and to achieve rapid results with mixed methods.[20]

In March 2014, pro-Russian demonstrators seized the building of the regional state administration in Donetsk and from there began military operations against Ukraine. Fighting between separatist units and the Ukrainian army spread throughout the Donbas, and in April 2014 the Donetsk People's Republic *(DPR-ДНР)* and Lugansk People's Republic *(LPR-ЛНР)* in Donbas unilaterally declared independence. In May 2014, pro-Russian separatists reorganized them into a confederation called the Federative Republics of Novorossiya.[21] On July 23, 2014, the ICRC characterized the armed conflict in eastern Ukraine as a non-international armed conflict.[22] In this process, the

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19 Emma Ashford, "Not-so-Smart Sanctions: The Failure of Western Restrictions against Russia", *Foreign Affairs*, 95(1), 2016, s. 115; NATO Review, "*Sanctions after Crimea: Have they worked*?", 13 July 2015, https://www.nato.int/docu/review/articles/2015/07/13/sanctions-after-crimea-have-they-worked/index.html, (Accessed: 28.03.2022)

20 Gültekin Yıldız, "*Hibrit Savaş Ne Kadar Post-moderndir? Avrasya Askeri Tarihine Yeniden Bakış*", p. 24

21 During this period, 27.4% of the people in Donetsk and 30.3% of the people in Luhansk wanted to leave Ukraine and unite with Russia. For detailed information, see Elise Giuliano, "The Origins of Separatism: Popular Grievances in Donetsk and Luhansk", ***PONARS Eurasia Policy Memo***, No.396, 2015, https://www.ponarseurasia.org/the-origins-of-separatism-popular-grievances-in-donetsk-and-luhansk/, (Accessed: 29.03.2022)

22 ICRC, "***Ukraine: ICRC Calls on All Sides to Respect International Humanitarian Law*"**, 2014, https://www.icrc.org/en/doc/resources/documents/news-release/2014/07-

separatists in the Donbas region could not separate the region from Ukraine. Thereupon, Russia sent irregular troops from Transnistria to the region and provided weapons, military equipment, financing, and training support to the separatists, and waged a "hybrid" war in the region in which conventional and unconventional tactics were used together. It has been claimed that approximately 9,000 Russian soldiers/little green men *(зелёные человечки)* и fought against Ukraine on the side of the separatists during this period.[23] This situation has sparked discussions about the nature of the ongoing-armed conflicts in eastern Ukraine. The question of whether Russian control over separatist units lies in the dimension of direct control has gained relevance. Russian planning and coordination of the separatists, as well as providing them with weapons, military equipment, financing, and training the separatists, subject to holistic control, due to the direct participation of Russian troops in armed conflicts, is argued that armed conflicts are becoming international.[24] Russia claimed that the "little green men" were not Russian soldiers. For this reason, it has become very difficult to determine the nature of the on-going armed conflicts in eastern Ukraine. However, according to the general opinion, in parallel with the non-international armed conflict in Ukraine during this period,

23-ukraine-kiev-call-respect-ihl-repatriate-bodies-malaysian-airlines.htm, (Accessed: 15.04.2022)

[23] Agnieszka Szpak, "*Legal Classification of the Armed Conflict in Ukraine in Light of International Humanitarian Law*", p. 275

[24] Agnieszka Szpak, "*Legal Classification of the Armed Conflict in Ukraine in Light of International Humanitarian Law*", p. 276

an armed conflict of an international character also continued.[25] Therefore, in the ongoing armed conflicts between the parties in this period, it is significant to apply the rules and principles such as the Hague law, Geneva law, and international customary humanitarian law, which regulate international armed conflicts.

2) The Nature of the Russian-Ukrainian Conflicts in the Period from February 24, 2022, to the Present

Referring to NATO's rapid eastward expansion and Ukraine's continuing demand for NATO membership since 2008, Russia took military action against Ukraine on February 24, 2022, alleging that it was exercising its *"right to self-defence"* under Art.51 of the UN Charter.[26] Russia also presented its action against Ukraine as the fulfillment of a *"peacekeeping mission"*.[27] Vassily Nebizia, the Russian Ambassador to the UN, made a statement that "*This is not a war, it is a military operation*". Ukraine's UN Ambassador Sergiy Kyslytsya stated that Russia has declared "war" and it is the UN Security Council's responsibility to stop it.[28] These different perspectives between the parties are very important in terms of international law. Because if this

[25] Agnieszka Szpak, "*Legal Classification of the Armed Conflict in Ukraine in Light of International Humanitarian Law*", p. 276

[26] John B. Bellinger, "How Russia's Invasion of Ukraine Violates International Law", ***Council on Foreign Relations (CFR)***, February 28, 2022, https://www.cfr.org/article/how-russias-invasion-ukraine-violates-international-law, (Accessed: 18.03.2022)

[27] Andrew Roth and Julian Borger, **"**Putin orders troops into eastern Ukraine on 'peacekeeping duties", **The Guardian,** 21 Feb 2022, https://www.theguardian.com/world/2022/feb/21/ukraine-putin-decide-recognition-breakaway-states-today, (Accessed: 15.04.2022)

[28] Cumhuriyet, "***Rusya'nın Ukrayna Operasyonu Başladı***", February 24, 2022, https://www.cumhuriyet.com.tr/dunya/canli--rusyanin-ukrayna-operasyonu-basladi-1910500 (Accessed: 15.04.2022)

operation is an exercise of the "right of self-defence" within the framework of article 51 of the UN Charter, then it is an act of using force in peacetime. If this is a war, as Ukraine advocates, then the international legal regime regulating wartime must be valid. It is essential to clarify the nature of the armed conflicts that have been going on since 24 February 2022 to determine the framework of international armed conflict law to be applied.

According to Common Article 2[29] of the Geneva Conventions of 1949, when one state resorts to armed force against another state, regardless of the intensity of hostilities or the cause of the armed conflict, an armed conflict of an international character arises. In addition, there is no need for an official declaration of war, as well as in the case of non-recognition of the state of war by one of the parties. In this case, it seems appropriate to classify the armed conflict between Russia and Ukraine as an armed conflict of an international character, although Russia does not recognize a state of war.[30] If we keep in mind that 313 armed conflicts have occurred since the Second World War, as

[29] *"This Convention, apart from provisions which must enter into force in peacetime, shall be enforceable in the event of war declared or any other armed conflict that has come into effect between two or more of the High Contracting Parties, even if a state of war is not recognized by either of them. The Convention shall also apply in cases of full or partial occupation of the territory of one of the High Contracting Parties, even if such occupation encounters no military resistance. Even if one of the states in conflict is not included in this Convention, the participating states will be bound by the Convention in their mutual relations. Moreover, if that state accepts and applies the provisions of the Convention, they will be bound by the Convention against it as well".*

[30] Cordula Droege, "Armed conflict in Ukraine: a recap of basic IHL rules", ***The Humanitarian Law & Policy***, March 17, 2022, https://blogs.icrc.org/law-and-policy/2022/03/17/armed-conflict-in-ukraine-a-recap-of-basic-ihl-rules/, (Accessed: 19.04.2022)

a result of which 92 million people have died worldwide, and most of these armed conflicts are armed conflicts against or between non-State armed actors,[31] we can say that the armed conflicts that have been going on since February 24, 2022, between Russia and Ukraine are today, an exceptional international armed conflict between States. The parties to this armed conflict have so far been limited to Russia and Ukraine. For example, the use of Belarusian territory by Russia to attack Ukraine does not make Belarus a party to the aforementioned-armed conflict. Similarly, NATO member states that supply Ukraine with arms and intelligence information are not parties to this international armed conflict. Since the Lugansk and Donetsk People's Republics are de facto under full Russian control, Russia will bear international responsibility for the actions of these units.[32]

Both Russia and Ukraine must comply with the rules of law governing international armed conflicts. The main framework of international humanitarian law binding Russia and Ukraine, to which both sovereign states are parties: i) Geneva Conventions of 12 August 1949;[33] ii) 1954 Convention for the Protection of Cultural Property and

[31] Monika Hlavkova, "Reconstructing the Civilian/Combatant Divide: A Fresh Look at Targeting in Non-International Armed Conflict", ***Journal of Conflict & Security Law***, 19(2), 2014, p. 252.

[32] Wolfgang Benedek, Veronika Bílková and Marco Sassòli, ***Report of the OSCE Moscow Mechanism's mission of experts entitled 'Report On Violations of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022'***, Organization for Security and Co-operation in Europe, 13 April 2022

[33] The Geneva conventions of 12 August 1949 are:

1) Geneva Convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field" (I. Geneva Convention).

2) Geneva Convention "for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea" (II Geneva Convention).

Protocol No. I; ii) Additional Protocol No. I, 1977, relating to the Protection of Victims of International Armed Conflicts, supplementing and enhancing the 1949 Geneva Conventions;[34] iii) IV of 1907, which regulates the means and methods of war. The Hague Convention and Statutes; iv) International humanitarian and custom law (The ICRC has determined 161 rules. 158 of these rules apply to armed conflicts of an international character); v) International Arm Conventions[35] and vi)

3) Geneva Convention "relative to the Treatment of Prisoners of War" (III. Geneva Convention).

4) Convention "relative to the Protection of Civilian Persons in Time of War" (IV. Geneva Convention).

[34] International Committee of the Red Cross (ICRC), ***Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Treaties, States Parties and Commentaries***, https://ihl-databases.icrc.org/ihl/INTRO/470, (Accessed:19.04.2022)

[35] Some weapons conventions to which Ukraine and Russia are parties include:

1. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Geneva (10 October 1980). The 2nd and 4th Additional Protocols of this Convention have been amended.
2. The Additional Protocol envisages the prohibition of indiscriminate use of mines, booby traps, and other equipment, the protection of civilians from the effects of these weapons, the provision of information on mined areas, and the taking of necessary measures to protect officials of the UN and international organizations with humanitarian purposes. With the amendment made in the Additional Protocol in 1996, these regulations have been made to cover conflicts that are not international. The 4th Protocol of Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects prohibits the use of blinding laser weapons and the transfer of these weapons to state or non-state organizations. Hürriyet, "***Mayın, bubi tuzağı ve lazer silahına yasaklama***", Haziran 29, 2004, https://www.hurriyet.com.tr/gundem/mayin-bubi-tuzagi-ve-lazer-silahina-yasaklama-38619588, (Accessed: 01.05.2022)

The Convention has five protocols:

1. Protocol on Non-Detectable Fragments (Protocol I);

2. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), Geneva, as amended on 10 October 1980 or on the Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996 Protocol II as such;

3. Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), Geneva, 10 October 1980;

4. Protocol on Blinding Laser Weapons (Protocol IV), 13 October 1995;

5. Protocol on Explosive Remnants of War (Protocol V), 28 November 2003

- Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, (13 January 1993);

- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, (10 April 1972).

The restrictions and prohibitions that arise at the level of Customary International Law are as follows:

- *The use of poison or poisonous weapons is prohibited.*
- *The use of biological weapons is prohibited.*
- *It is forbidden to use chemical weapons.*
- *It is forbidden to use agents to combat social events as a method of warfare.*
- *The use of herbicides as a method of warfare, if these are: a) banned chemical weapons, b) banned biological weapons, c) accidental loss of life and injury to civilians, in a way that can be considered excessive compared to the concrete and directly expected military advantage, It is prohibited if it is of a nature to cause damage to civilian property or damage and loss in combination with them, and d) if it is of a nature to cause widespread and serious damage to the natural environment.*
- *It is forbidden to use bullets that open or flatten easily on the human body.*
- *The use of bullets that explode inside the human body for anti-personnel purposes is prohibited.*
- *It is forbidden to use weapons whose main effect is to injure parts of the human body with parts that cannot be detected by X-rays.*
- *When landmines are used, special precautions should be taken to minimize indiscriminate effects.*
- *A party to an armed conflict using landmines should record, as far as possible, the places where the mines are laid.*
- *After the actual cessation of hostilities, the party to the conflict using landmines should remove or otherwise neutralize or facilitate their removal so that the mines do not harm civilians.*
- *If incendiary weapons are used, special measures should be taken to prevent accidental casualties, injuries to civilians, damage to civilian property, and in any case to minimize them.*

International Human Rights Conventions and Conventions on Refugees/Asylum Seekers. To what extent do Russia and Ukraine comply with international humanitarian law following the conventions to which they are parties and the rules of customary humanitarian law to which they are bound?

THE 2022 RUSSIA-UKRAINE WAR in TERMS of the BASIC PRINCIPLES of INTERNATIONAL HUMANITARIAN LAW *(JUS IN BELLO)*

The purpose of international humanitarian law is to protect certain categories of persons after the start of armed conflicts. In this regard, the parties to the conflict are obliged to reduce the humanitarian difficulties and dramas caused by hostilities-combat, limit the choice of weapons, and provide protection to civilians and non-combatants who did not participate in the conflict. The parties to the ongoing Russian-Ukrainian war also grossly violate the basic norms and principles of international humanitarian law. It is necessary to take a closer and more detailed look at what the violations in question are.

1) Laws of war

Parties to an armed conflict under the law of war must respect fundamental principles when conducting their military operations. The

- *The use of incendiary weapons for anti-personnel purposes is prohibited unless it is practically impossible to use a less harmful weapon to exclude a person from combat.*
- *It is forbidden to use laser weapons specially designed to cause permanent blindness in persons whose only combat function or one of the combat functions is not improved.*

See, Jean-Marie Henckaerts ve Louise Doswald-Beck, ***Uluslararası İnsancıl Teamül (Örf-Adet) Hukuku Cilt 1: Kurallar***, (Çev.) A. Emre Öktem ve Diğerleri, Galatasaray Üniversitesi Hukuk Fakültesi Yayınları, İstanbul, 2005, pp. 279-327, Rule 72-86

most important of these principles are the principle of distinction, the principle of military necessity, the principle of proportionality, the principle of humanity, and the principle of precautions. All of these principles are codified in Additional Protocol I of 1977 and customary international law.

a) The principle of distinction

The principle of distinction is an international customary rule regulated by various international conventions.[36] Similarly, this characterization of the principle of distinction is contained in the case of *Prosecutor v. Tadic*[37] *and Prosecutor v Martic*.[38] On the other hand, the International Court of Justice, in its Advisory Opinion on Nuclear Weapons, defined the principle as *cardinal* and *intransgressible*.[39] The principle of distinction under Rule 1 of Customary International Humanitarian Law, prepared by the ICRC states: *"The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians"*.[40] In Article 48 of Additional Protocol No.

[36] Jean-Marie Henckaerts ve Louise Doswald-Beck, *"Uluslararası İnsancıl Teamül (Örf-Adet) Hukuku Cilt 1: Kurallar"*, p. 3, Rule 1; Thompson Chengeta, "Measuring Autonomous Weapon Systems against International Humanitarian Law Rules", ***Journal of Law of Cyber Warfare***, 5(1), 2016, p. 76

[37] *Prosecutor v. Dusko Tadic aka "Dule"* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction), IT-94-1, International Criminal Tribunal for the former Yugoslavia (ICTY), 2 October 1995, prg. 87

[38] *Prosecutor v. Milan Martic* (Judgment), IT-95-11-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 12 June 2007, prg. 10

[39] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, ICJ Reports 1996, p. 35, prg. 78, 79; Emily Crawford and Alison Pert, ***International Humanitarian Law*** (2nd Edition), Cambridge University Press, Cambridge, 2015, p. 35; Emanuel Gross, "The Third Player-Illegal Combatant", ***San Diego International Law Journal***, 17(2), 2016, p. 212

[40] Jonathan Crowe and Kylie Weston-Scheuber, ***Principles of International Humanitarian Law***, Edward Elgar, Cheltenham and Northampton, 2013, p. 71; Jean-

I, the principle of distinction is regulated as follows. *"In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."* Article 48 is based on the requirement to distinguish between civilians-combatants and civilian objects-military objects.[41] In other words, combatants and military objects can become legitimate targets of attack, civilians-civilian objects do not form a part of hostilities, and attacks against them are prohibited.[42] The principle of distinction imposes further limitations on the scope of attacks permitted under the principle of military necessity, as military attacks can never be made against civilians and civilian objects, regardless of whether they result in a military advantage.[43] However, in the modern period, dramatic changes are observed in the characteristics of wars. Of these changes, the *first* is the blurring of the line between civilian-combatant and civilian-military objects, spatial boundaries are crossed and a war begins to manifest itself everywhere. *Secondly*; the distinctive elements that the parties involved in the fighting should pay attention to become fuzzy with the modern period. *Thirdly*; armed conflicts enter a phase where it becomes impossible to distinguish, as

Marie Henckaerts ve Louise Doswald-Beck, *"Uluslararası İnsancıl Teamül (Örf-Adet) Hukuku Cilt 1: Kurallar"*, p. 3, Rule 1

[41] Jonathan Crowe and Kylie Weston-Scheuber, *"Principles of International Humanitarian Law"*, p. 54

[42] Emanuel Gross, *"The Third Player-Illegal Combatant",* p. 212

[43] Jonathan Crowe and Kylie Weston-Scheuber, *"Principles of International Humanitarian Law"*, p. 54

civilians are directly and/or indirectly involved/coerced directly into hostilities. On the other hand, the voluntary or forced use of civilians as human shields makes the principle of distinction practically impossible.

It is observed that both sides violate the "principle of distinction" in the ongoing armed conflicts between Russia and Ukraine. This is confirmed in the report of the Organization for Security and Cooperation in Europe (OSCE) on April 13, 2022, in which it examined possible violations of international human rights law and international humanitarian law in the Russia-Ukraine War. The report notes that both sides have violated humanitarian law, but Russia's violations are much larger in scope and size. The report says there is "credible evidence" that Russian forces deliberately violated human rights in Ukraine, that Russia directly targeted and damaged civilians, and tens of thousands of civilian objects such as residential buildings, schools, administrative buildings, police stations, medical buildings, water tanks, electrical systems, which have direct and indirect destructive results on civilians. In the report, 3881 civilian targets had been destroyed or damaged by March 30; Between February 24 and March 22, 2022, a total of 52 health buildings in Ukraine were demolished without any warning and time limit;[44] Until 26 March 2022, 1119 civilians were killed and 1790 civilians were injured; Sviatohirsk Cave Monastery (Sviatohirsk Lavra), where nearly a thousand refugees took shelter in the Donetsk region, was shot and cultural values were targeted, civilians waiting in bread lines were shot and ten people were

[44] According to Ukraine's claims, since the beginning of the war, Russia has hit 324 hospitals, 14 of which are children's hospitals. Milliyet, "***Rusya, Ukrayna'da 324 hastaneyi vurdu***", https://www.milliyet.com.tr/dunya/rusya-ukraynada-324-hastaneyi-vurdu-6738435, (Accessed: 20.04.2022)

killed, torture was carried out in a detention center in the Russian-controlled city of Kherson; It was stated that civilians were denied access to food and water.[45] In the aforementioned report, it was pointed out that the TV Tower in Kyiv was shot down on March 1, 2022, the TV tower shot down in Rivne on March 13, and the TV tower shot down in Vinnytsya on March 16 could become military targets if they are used for military purposes. In the report, it was pointed out that these figures are much higher because the exact information could not be obtained from the settlements of Izium, Mariupol, Volnovakha, Popasna, Rubizhne, and Trostianets, where the conflicts continue violently.[46]

b) The principle of proportionality

The principle of proportionality is an important principle that has taken its place in international humanitarian law, conventions, judicial decisions, military manuals, and state practices. The principle of proportionality prohibits attacks against civilians and civilian objects excessively to the envisaged military advantage.[47] The principle of proportionality constitutes a norm of customary international law applicable to both international and non-international armed conflicts.[48]

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[45] Nimah Quadri, "Putin faces mounting accusations of war crimes in Ukraine after Biden accused him of genocide", ***Fortune***, April 14, 2022, https://fortune.com/2022/04/13/russia-war-crimes-ukraine-osce-report/, (Accessed: 20.04.2022)

[46] Wolfgang Benedek, Veronika Bílková and Marco Sassòli, "*Report of the OSCE Moscow Mechanism's mission of experts entitled 'Report On Violations Of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022'"*, pp. 25-27

[47] Jonathan Crowe and Kylie Weston-Scheuber, *"Principles of International Humanitarian Law"*, p. 55

[48] Jean-Marie Henckaerts ve Louise Doswald-Beck, *"Uluslararası İnsancıl Teamül (Örf-Adet) Hukuku Cilt 1: Kurallar"*, p. 49; Enzo Cannizzaro, "Contextualizing

The principle of proportionality[49] focuses on whether a target can be targeted during an attack, rather than looking at whether the target is legitimate or not.[50] All parties to the armed conflict should take all possible measures to avoid disproportionate attacks. In this framework, the first convention specifically regulating the principle of proportionality is the Additional Protocol No. I of 1977.[51] In Article 51(5)(b) and Article 57 of Protocol No. I, the principle is regulated as follows:

"An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[52]

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proportionality: jus ad bellum and jus in bello in the Lebanese war", ***International Review of the Red Cross,*** 88(864), December 2006, p. 786; Yoram Dinstein, ***The Conduct of Hostilities under the Law of International Armed Conflict,*** Cambridge University Press, Cambridge, 2004, p. 120; Kenneth Watkin, "Assessing Proportionality: Moral Complexity And Legal Rules", ***Yearbook of International Humanitarian Law,*** (8), 2005, pp. 4-5; Laurent Gisel, ***The Principle of Proportionality in the Rules Governing the Conduct of Hostilities Under İnternational Humanitarian Law (İnternational Expert Meeting 22–23 June 2016 – Quebec),*** International Committee of the Red Cross and Social Sciences and Humanities Research Council of Canada, August 2018, p. 8; Michael N. Schmitt (Ed.), ***Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations: Prepared by the International Group of Experts at the Invitation of the NATO Cooperative Cyber Defence Centre of Excellence,*** Cambridge University Press, Cambridge, 2017, p. 471, Rule 113; Jeroen van den Boogaard, "Proportionality and Autonomous Weapons Systems", ***Journal of International Humanitarian Legal Studies,*** 6(2), 2015, p. 260

[49] Mike Guetlein, ***Lethal Autonomous Weapons — Ethical and Doctrinal Implications***, Naval War College, Newport, RI, 2005, p. 10

[50] Charlotte Lülf, "Modern Technologies and Targeting under International Humanitarian Law (IHL)", ***IFHV Working Paper***, 3(3), December 2013, p. 14

[51] UK Military of Defence, ***The Joint Doctrine and Concepts Centre (JDCC): The Joint Service Manual of The Law of Armed Conflict***, Joint Service Publication 383, 2004, p. 25, prg. 2.6, 2.6.1

[52] ***12 Ağustos 1949 Tarihli Cenevre Sözleşmeleri ve Protokolleri (Cenevre Sözleşmeleri),*** Yayına Hazırlayanlar: Melike Batur Yamaner; Emre Öktem; Bleda

"An attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[53]

The content of the principle in the relevant articles prohibits attacks against civilians and civilian objects.[54] In addition, attacks on military targets are prohibited within the framework of the relevant articles if they cause excessive loss of life and property compared to the expected direct military advantage.[55] The principle of proportionality is included in Article 8(2)(b)(iv) of the Rome Statute of the ICC, and violation of this principle is considered a "war crime".[56] The proportionality principle requires a comparison of the expected tangible and direct military advantage with the death or injury of civilians and damage to civilian objects, or a combination thereof.[57] In case of a

Kurtdarcan; Mehmet C. Uzun, İstanbul: Galatasaray Üniversitesi Hukuk Fakültesi Yayınları No: 42, 2008, p. 213, Article 51(5)(b)

[53] ***12 Ağustos 1949 Tarihli Cenevre Sözleşmeleri ve Protokolleri (Cenevre Sözleşmeleri)***, p. 227, Article 57

[54] International Law Association (ILA) Study Group, "The Conduct of Hostilities and International Humanitarian Law: Challenges of 21st Century Warfare", ***International Law Studies***, (93), 2017, p. 351

[55] Daniel Thürer, ***International Humanitarian Law: Theory, Practice, Context***, Pocket Books of the Hague Academy of International Law//Les, Brill/ Martinus Nijhoff Publishers Publishing, Leiden, 2011, p. 78

[56] Laurent Gisel, *"The Principle of Proportionality in the Rules Governing the Conduct of Hostilities Under İnternational Humanitarian Law",* p. 8

[57] Nils Melzer, ***International Humanitarian Law: A Comprehensive Introduction***, International Committee of the Red Cross, Geneva, August 2016, p. 19; Laurent Gisel,

situation contrary to the principle of proportionality, the military commander should either cancel the attacks, suspend the attack or reschedule the attack.[58] The principle of distinction characterizes "what things can be attacked", while the principle of proportionality characterizes "what things can be attacked and how" within the scope of mandatory procedures.[59] The principle of proportionality is the most ambiguous of all the rules for the conduct of hostilities.[60] Furthermore, the principle of proportionality is one of the most complexes and misunderstood principles of international humanitarian law, both in terms of interpretation and application;[61] because the application of the principle in question by those on the battlefield and/or the real and reasonable assessment of the legality of an attack involves various difficulties.[62] The difficulty in applying the proportionality principle lies in the evaluation and comparison of non-measurable factors rather than the content of the principle.[63] In the context of the proportionality

"*The Principle of Proportionality in the Rules Governing the Conduct of Hostilities Under İnternational Humanitarian Law",* p. 9

[58] UK Military of Defence, "*The Joint Doctrine and Concepts Centre (JDCC): The Joint Service Manual of The Law of Armed Conflict"***,** p. 25, prg. 2.6.1; Neil Davison, "A Legal Perspective: Autonomous Weapon Systems under International Humanitarian Law", ***UNODA Occasional Papers***. (30), 2017, p. 7

[59] Thompson Chengeta, *"Measuring Autonomous Weapon Systems against International Humanitarian Law Rules",* p. 111

[60] Jeroen van den Boogaard, *"Proportionality and Autonomous Weapons Systems",* p. 260

[61] Michael N. Schmitt, "Autonomous Weapon Systems and International Humanitarian Law: A Reply to the Critics", ***Harvard National Security Journal Features***, 2013, p. 18

[62] Michael N. Schmitt, "International Humanitarian Law and the Conduct of Hostilities", (Eds.) Ben Saul and Dapo Akande, ***The Oxford Guide to International Humanitarian Law,*** Oxford University Press, Oxford, 2020, p. 153

[63] Süleyman Dost, "Uluslararası Hukukta Orantılılık İlkesi", ***Uyuşmazlık Mahkemesi Dergisi,*** 6(12), 2018, p. 366

principle, Russia's attacks on cities against military targets had negative effects on civilians. The fires that could not be extinguished, the cut-off of electricity, gas, water, and the disconnection of mobile phones had devastating effects on civilians.[64]

c) The principle of military necessity

The principle of military necessity, which is one of the most fundamental components of international humanitarian law, is a part of customary international law as well as is included in many international regulations.[65] Military necessity is simply the concept of legally using a definite type and degree of force essential to defeating the enemy. The basis of the concept is the criterion that no defense can be met in the event of unlawful acts, that is, a military necessity not only supports gaining a military advantage but also reveals the humanitarian requirements of the law.[66] The main purpose of conducting hostilities is to achieve definite political and military objectives. Therefore, the concept of military necessity supports the defeat of any of the warring parties but does not allow the destruction of the losing party. In other words, international humanitarian law recognizes that armed forces must use violence to defeat the enemy, but balances military necessity with the principle of humanity. Contrary to the stated situation,

[64] Wolfgang Benedek, Veronika Bílková and Marco Sassòli, "*Report of the OSCE Moscow Mechanism's mission of experts entitled 'Report On Violations Of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022'"*, p. 29

[65] Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (Eds**.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949***, Martinus Nijhoff Publishers, Geneva, 1987, p. 393, prg. 1389

[66] Viola Vincze, "Taming the Untameable: The Role of Military Necessity in Constraining Violence", ***ELTE Law Journal***, 2(1), 2016, p. 96

extremism of military actions in the conduct of hostilities causes a violation of military necessity. The violation in question constitutes a "*war crime"*.[67] Likewise, in the context of the principle of military necessity, in addition to Russia's numerous attacks on civilians and civilian objects throughout the war, the severe violations that Russia has committed in the former Russian-controlled areas have led to the international condemnation of Russia and the intensification of sanctions against Russia.[68]

d) The principle of precautions

The principle of precautions must be applied in armed conflicts. Because estimates of civilian deaths in armed conflicts are alarming: In 1988, approximately three million casualties were found out of the twenty-five armed conflicts continuing worldwide, with 4/5 of these casualties being civilians.[69] This dire picture points to the fact that no measures have been taken to protect civilians in armed conflicts.

The principle of precautions in attacks constitutes a norm of international customary law applicable to both international and non-international armed conflicts.[70] The purpose and object of the obligation

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[67] Viola Vincze, *"Taming the Untameable: The Role of Military Necessity in Constraining Violence",* p. 97

[68] Anthony Dworkin, "Laws against slaughter: The crimes that shape Russia's war on Ukraine", ***European Council on Foreign Relations***, 12 April 2022, https://ecfr.eu/article/laws-against-slaughter-the-crimes-that-shape-russias-war-on-ukraine/, (Accessed: 24.04.2022)

[69] Ian Henderson***, The Contemporary Law of Targeting: Military Objectives, Proportionality, and Precautions in Attack Under Additional Protocol I***, Martinus Nijhoff Publishers, Leiden, 2009, p. 158

[70] Jean-Marie Henckaerts ve Louise Doswald-Beck, *"Uluslararası İnsancıl Teamül (Örf-Adet) Hukuku Cilt 1: Kurallar"*, p. 55; Isabel Robinson and Ellen Nohle, "Proportionality and Precautions in Attack: The Reverberating Effects of Using Explosive Weapons in Populated Areas", ***International Review of the Red Cross,*** 98(1), 2016, p. 110

to take measures during the attack are to ensure the protection of civilians and civilian objects against the effects of hostilities.[71] The principle of precautions is regulated in Article 57 of Protocol No. 1 to the 1949 Geneva Conventions. These obligations are *"obligations for attacks, also known as active measures".* This obligation categorizes the rules that must be followed while planning and carrying out the attack. Within the framework of this obligation, i) verify that the target is legitimate under humanitarian law; ii) In the event of an attack, the civilian population should be warned; iii) if the attack violates humanitarian law, it should be canceled or suspended; and v) means and methods of warfare under international humanitarian law should be chosen. Neglecting the obligation to take action does not in itself constitute a war crime, but it does constitute evidence of the existence of the principle of proportionality, which constitutes a war crime, and the intention to attack civilians and civilian objects.[72] In the context of the principle of precautions, Russia should not use heavy weapons in dense settlements. The use of such weapons in dense settlements makes it impossible to respect the obligation to take precautions.

e) Methods of warfare

In international humanitarian law, all means and methods cannot be used during armed conflicts. In particular, excessively painful

[71] U. C. Jha, "Lethal Autonomous Weapon Systems and International Humanitarian Law", ***ISIL Year Book of International Humanitarian and Refugee Law***, 16(1), 2016-2017, p. 122

[72] Wolfgang Benedek, Veronika Bílková and Marco Sassòli, "*Report of the OSCE Moscow Mechanism's mission of experts entitled 'Report On Violations Of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022'"*, pp. 30-31

and indiscriminate weapons are prohibited. The Treaty on the Prohibition of Nuclear Weapons prohibits the use of nuclear weapons and other nuclear explosives. Russia, like other major nuclear powers, has not yet ratified the Treaty and is opposed to the convention becoming customary law. On the other hand, Russia is not a party to the Convention on Cluster Munitions. Russia's use of cluster munitions and vacuum bombs constitute war crimes. The targeting and seizure of buildings by Russia, which is a nuclear power, is also considered a war crime.[73] In addition, cyber warfare is not regulated by the Geneva Conventions, but basic principles of international humanitarian law must be applied in cyber warfare. Indeed, it is clear that cyberattacks must be targeted at military objects, and be distinct and proportionate.[74]

2) Protected Persons: Civilians, Non-Combatants and Prisoners of War

a) Civilians, Civil Objects

International law makes a fundamental distinction between "*combatants*" and "*civilians*" between those who participate in or are affected by an international armed conflict. Combatants are individuals who belong to the armed forces of one of the conflicting parties but are not medical personnel or religious officials. They have the right to participate directly in hostilities. Therefore, when they act following humanitarian law, they cannot be subject to judicial/criminal

[73] Stephen P. Mulligan, ***The Law of War and the Russian Invasion of Ukraine,*** Congressional Research Service, 16 March 2022, p. 3,

[74] Human Rights Watch, "***Russia, Ukraine & International Law: On Occupation, Armed Conflict and Human Rights***", February 23, 2022, https://www.hrw.org/news/2022/02/23/russia-ukraine-international-law-occupation-armed-conflict-and-human-rights , (Accessed: 24.04.2022)

prosecution just because they participate in hostilities. Combatants can only be prosecuted for violating humanitarian law, especially for committing war crimes. This rule of law is called *"combatant immunity"*.[75]

Additional Protocol No. I of 1977 adopted an exclusive definition without an overarching definition of civilian and defined all who were not combatants as "*civilians*". In fact, according to Article 50[76] of Protocol No. I, civilians are persons who do not fall under the categories of persons referred to in Convention No. III in Article 4 (A) (1), (2), (3), and (6) and Article 43 the relevant Protocol. According to the Interpretation of Additional Protocol No. I, Article 50, with this regulation, to qualify as a prisoner of war seems to be synonymous with being a combatant.[77] If there is any doubt as to whether a person is a civilian or a combatant, the party to the conflict must consider the person as a civilian. Combatants are also required to distinguish themselves from civilians by clearly carrying their weapons and bearing distinctive markings.

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[75] Fatma Taşdemir, "*21. Yüzyılda Uluslararası Nitelikte Olmayan Silahlı Çatışmaların Gri Bölgesi: Statü Tartışmaları*", p. 95

[76] Article 50 of the Additional Protocol No. I of 1977, titled "Definition of Civilians and Civilian Population", reads as follows:

"1) Civilian is any person who does not fall into the categories of persons referred to in article 4 (A) (1), (2), (3), and (6) of the Third Convention and Article 43 of this Protocol. In case of doubts as to whether a person is a civilian or not, that person will be considered a civilian. 2) The civilian population consists of all civilians. 3) The presence of people who do not comply with the definition of civilian among the civilian population does not spoil the civilian character of the people."

[77] Hans-Peter Gasser et al, ***Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949***, ICRC, Geneva, 1987, p. 515

Civilians and civilian objects cannot be the target of the attack. Attacks against them are prohibited. Parties to an armed conflict must distinguish between civilians and combatants and between civilian and military targets. There are two exceptions to this rule. These exceptions occur if i) civilians become combatants and ii) a civilian target becomes a military target.

International humanitarian law prohibits civilians from participating in hostilities. Under Article 51(3) of Protocol No. I, civilians are protected from attacks as long as they do not participate in hostilities. If they join the hostilities, they become legitimate military targets. Likewise, those in this category cannot benefit from combatant immunity for acts of war and may be prosecuted for any acts that amount to a war crime.[78] In this context, since the beginning of the war on February 24, 2022, the Ukrainian authorities have encouraged everyone between the ages of 18-60 to fight against Russian forces. Their participation in the Ukrainian armed forces is legal under humanitarian law. Distributing weapons to civilians, and if they use these weapons, they become a military target of Russia. The Ukrainian authorities' invitation to find weapons and make Molotov cocktails prevented these people from benefiting from the status of prisoners of war as *"levee en masse"*. Such a call is inappropriate under international humanitarian law. Therefore, it causes these people to lose their protection without gaining combatant status.[79]

[78] Fatma Taşdemir, "*21. Yüzyılda Uluslararası Nitelikte Olmayan Silahlı Çatışmaların Gri Bölgesi: Statü Tartışmaları*", pp. 95-96

[79] Wolfgang Benedek, Veronika Bílková and Marco Sassòli, "*Report of the OSCE Moscow Mechanism's mission of experts entitled 'Report On Violations Of*

Russia's attacks that directly target civilians constitute a "war crime". Use of cluster munitions, vacuum bombs against civilians; besieging and starving cities to force civilians to surrender; using civilians as "human shields", attacking humanitarian corridors; capturing civilians, including journalists, and their ill-treatment amounting to torture constitutes a war crime. In this context, it was observed that Russia committed war crimes against civilians in Bucha; It was determined that 300 civilians were killed.[80] Amnesty International, on the other hand, reported that Russia executed unarmed civilians extrajudicially in the Kyiv region.[81]

b) Prisoners of War

When combatants are captured, they become prisoners of war and are protected under the Geneva Convention No. III of 1949. Prisoners of war must be treated humanely. In the armed conflicts in Ukraine, it has been observed that both Russia and Ukraine have

International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022'", pp. 34-35

[80] David J. Scheffer, "Can Russia Be Held Accountable for War Crimes in Ukraine?", ***Council on Foreign Relations***, April 4, 2022, https://www.cfr.org/article/can-russia-be-held-accountable-war-crimes-ukraine, (Accessed: 24.04.2022); Wolfgang Benedek, Veronika Bílková and Marco Sassòli, "*Report of the OSCE Moscow Mechanism's mission of experts entitled 'Report On Violations Of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022'"*, pp. 15-18

[81] Amnesty International, "*Ukraine: Russian forces extrajudicially executing civilians in apparent war crimes – new testimony*", April 7, 2022, https://www.amnesty.org/en/latest/news/2022/04/ukraine-russian-forces-extrajudicially-executing-civilians-in-apparent-war-crimes-new-testimony/, (Accessed: 24.04.2022)

committed ill-treatment of prisoners of war.[82] It has been observed that Ukraine has seen prisoners of war as criminals from the very beginning; exposed them during a press release, and violated the Geneva Convention III through incidents such as shooting a captured Russian soldier in the FOOT.

III. RESPONSIBILITY OF STATES AND CRIMINAL LIABILITY OF INDIVIDUALS

Individuals who play a significant role in wartime must be held accountable for their actions. There are two main categories of war crimes. The first is war crimes committed within the framework of *jus ad bellum*, which concerns *"planning, preparing, initiating and conducting"* war of aggression. The crime of aggression or aggression is, in Walzer's words, '*the only crime that a state can commit against another state.'* [83] The responsibility for committing such a crime falls on the shoulders of the political leader(s) of the aggressor regime. The second one is *jus in bello* crimes and what these crimes are has been discussed in detail above. The primary responsibility for these crimes falls on the shoulders of the soldiers, officers, and commanders who actively participate in the mission.[84] On the other hand, unlike *jus ad bellum* war crimes, *jus in bello* war crimes can be committed by all parties to the conflict.

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[82] Alexander Smith, " UN urges investigations into videos of alleged POW abuse by Russia and Ukraine", ***NBC News***, March 29, 2022, https://www.nbcnews.com/news/world/un-urges-investigation-alleged-prisoner-war-abuse-videos-russia-ukrain-rcna21947, (Accessed 24. 04.2022)

[83] Michael Walzer, ***Haklı Savaş Haksız Savaş***, Alfa Yayıncılık, İstanbul, 2017, p. 91

[84] Brian Orend, ***Morality of War***, Broadview Press, Petersborough, 2006, p. 177

2022 russia-ukraine war with *jus in bello* dimension within the discussion of hybrid war, conventional war and nuclear war

In the war between Russia and Ukraine, which has been going on since February 24, 2022, the parties have committed international crimes. These crimes fall into the categories of aggression, war crimes, crimes against humanity, and genocide. Regardless of who uses force legitimately from the point of view of *jus ad bellum*, Russia and Ukraine must be held accountable as a state for international crimes committed. In particular, Russia's attack on Ukraine constitutes a *"crime of aggression"* in terms of international criminal law. Russian President Putin is seen as ethically responsible for crimes committed by western countries. It is claimed that Russia has committed a large number of war crimes in Ukraine, with more than four thousand of these crimes. It is also alleged that Russia has committed large-scale and systematic crimes against humanity and has made the policy of spreading terror among the civilian population part of its military campaign. It is even argued that Russia can be considered guilty of genocide due to the destruction of Ukrainian national identity as a result of the murder of that Ukrainian part that uses the Ukrainian language.[85] Individuals will be criminally responsible for committing, planning, ordering, and not preventing these crimes. The most effective way of functioning the individual criminal responsibility mechanism is the International Criminal Court (ICC). However, neither Ukraine nor Russia is a party to the ICC. Despite not being a party, Ukraine made the first notification that it accepted the jurisdiction of the ICC for international crimes committed between 21 November 2013 and 22 February 2014. Then,

[85] Anthony Dworkin, "***Laws against slaughter: The crimes that shape Russia's war on Ukraine***".

the second notification was made due to international crimes committed since February 20, 2014. The Chief Prosecutor of the ICC processed Ukraine's application and initiated a preliminary investigation.[86] The ICC has declared that it will investigate both sides for war crimes and crimes against humanity, and will show *"zero tolerance"*, especially for sexual crimes, gender-based crimes, and crimes against children.[87] In addition, the UN Human Rights Council, which suspended Russia's membership, established an independent international commission of inquiry to identify future violations.[88] Since the ICC's mandate is complementary, these crimes may also be prosecuted by national states. In fact, for the first time, Ukraine has started legal proceedings. Ukraine sentenced 21-year-old tank commander Vadim Shishimarin to life imprisonment for the February 28 murder of 68-year-old Oleksandr Shelipov in the village of Chupahivka in northeastern Ukraine. The Ukrainian Prosecutor General's Office, led by Iryna Venicetova, stated that since the beginning of the war there have been approximately

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86 International Criminal Court (ICC), "***Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I have decided to proceed with opening an investigation***", 28 February 2022, https://www.icc-cpi.int/Pages/item.aspx?name=20220228-prosecutor-statement-ukraine, (Accessed: 25.03.2022)

87 Anthony Deutsch and Stephen Farrell, "ICC insists on 'zero tolerance' of crimes against children in Ukraine", *U.S. News*, March 16, 2022 https://www.usnews.com/news/world/articles/2022-03-16/icc-prosecutor-khan-visits-ukraine-holds-virtual-meeting-with-president-zelenskiy, (Accessed: 25.03.2022)

88 UN News, "*Human Rights Council to establish Commission of Inquiry on Ukraine*", 4 March 2022, https://news.un.org/en/story/2022/03/1113292, (Accessed: 25.03.2022)

10,700 criminal records.[89] In addition, third countries may prosecute individuals for international crimes committed under universal jurisdiction. The issue of the responsibility of the states and the criminal responsibility of individuals will become more significant and will be discussed among the parties, especially after the end of the war.

CONCLUSION

The ongoing Russia-Ukraine War is controversial in terms of *jus ad bellum*. Russia's attack on Ukraine on February 24, 2022, gravely violated the prohibition on the use of force in Article 2(4) of the UN Charter. This violation constitutes a *"crime of aggression"*. The international community condemned Russia for starting an *"aggressive"* war and did not consider legitimate the legal arguments put forward by Russia, such as self-defence, intervention by invitation, preventing genocide, and fighting Nazism. The vast majority of the international community has chosen to support Ukraine explicitly and implicitly. The fact that Russia, as a member of the UN Security Council, has grossly violated the prohibition on the use of force in Article 2(4) has not weakened the forbidding power, vice versa, it has reaffirmed the existence of the prohibition and even strengthened the ban.

The Russia-Ukraine War continues in *jus in bello*, in gross violation of international law. Currently, the parties to the armed conflict commit international crimes of universal nature such as war

[89] "Ukraine Prosecutors ready to launch first war crimes trials of Russia Conflict", ***The Guardian***, https://www.theguardian.com/world/2022/may/11/ukraine-prosecutors-ready-launch-first-war-crimes-russia-conflict, (Accessed:29.05.2022).

crimes, crimes against humanity, genocide, and *jus in bello* norms are violated in the most severe way. However, as in every war and armed conflict, the parties in this war must meet the criteria of *jus in bello* and respect humanitarian law, regardless of *jus ad bellum*. Russia, which has been subjected to intense criticism on this issue, needs to be more proportional in its war and avoid direct and deliberate violations of humanitarian law against civilians. Even though Ukraine is waging a legitimate defensive war, he has to abide by the rules of *jus in bello*. Otherwise he may fall into the illegitimate situation in the eyes of the international community.

The violations of humanitarian law and injustices that took place in the Russia-Ukraine war must be addressed. Because protecting the personality and dignity of the people who have been wronged and aggrieved will be an indicator of respect for the rule of law as well as a duty. In this context, the international community, especially the ICC and international non-governmental organizations operating in the field of human rights and humanitarian law, have highly significant duties in determining, voicing, prosecuting, and following the process of universal crimes. On the other hand, the international community must research and strive to achieve the goals of peace and justice simultaneously to find an ethical "exit strategy" from this war

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