

## Violation Of Humanitarian Law In Armed Conflicts (The Situation In Occupation Of Ukraine And Izrael-Hamas Conflict)

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### Abstract

*Human security, the protection of people in armed conflicts has been and will remain a concern for humanity, institutions and international organizations. Since ancient times there have been attempts to exclude different categories of civilians from the effects of war, so in a way wanting to minimize the damage of war, humanity has tried to humanize war, by issuing some norms widely accepted by all influencing factors, national and international, to be implemented by the parties during armed conflicts. Precisely these issues are at the foundation of international humanitarian law, which aims to protect life and human security, defining the rules that must be implemented by the parties in conflict, as well as the consequences in cases of non-compliance with these established norms.*

*International human rights law and international humanitarian law share the goal of preserving the dignity and humanity of all. Over the years, the General Assembly, the Commission on Human Rights and, more recently, the Human Rights Council have considered that, in armed conflict, parties to the conflict have legally binding obligations concerning the rights of persons affected by the conflict. Although different in scope, international human rights law and international humanitarian law offer a series of protections to persons in armed conflict, whether civilians, persons who are no longer participating directly in hostilities or active participants in the conflict (OHCHR 2011).*

*Seen from this point of view, humanitarian law consists of international legal rules created by treaties or by custom, the specific purpose of which is the solution of humanitarian problems that appear directly in armed conflicts of an international or non-international character and which, for humanitarian reasons, limit the rights of the parties to the conflict to use the methods and means of their choice, or that protect persons and property that are or may be affected by the conflict (Meurant 1987).*

*The vision of the United Nations Development Program on human security defines the main directions: economic, food, health and environmental security, personal, group and political security. The general goal is to expand the concept of security, not only as territorial security from external aggression, or as protection of national interests in foreign policy, but in guaranteeing human security. The purpose of this paper is to highlight violations of international humanitarian legal acts during armed conflicts. Descriptive, comparative and statistical methods are the main methods used during the treatment of the work.*

*Russia's unprovoked invasion of Ukraine, the conflict between Israel and Hamas, are the current evidence and concern of international institutions and organizations for the violation of human security at regional and global level. The international factor, through international organizations and institutions, military organizations and diplomatic means, demand the cessation of conflicts, and in cases where this is impossible, the respect of the implementation of rules, treaties, conventions adopted with a humanitarian character for the protection of the civilian population, civil centers, and the guarantee of human security.*

**Keywords:** humanitarian, human security, armed conflict, protection.

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### **Overview of Humanitarian Law.**

Moreillon with international humanitarian law means the rules that each time had as their main goal to limit the negative effects of the war that broke out (Moreillon 1987). We find these international legal rules established by various international organizations and institutions in the form of conventions, treaties, agreements, etc. and that consist of the content of the parties to the conflict and how International Humanitarian Law affects the regulation of the limit of the use of violence during armed conflicts, of an international or non-international character, in order to spare "civilian" people indirectly engaged in hostilities, and to limit the effects of war (even on combatants) to the amount necessary for the purpose of war (Benedek and Nikolova 2003).

Authors of international law pay different attention to humanitarian law. The wide amplitude is made by authors who dedicate whole books to those who are silent about it. Greater space has been given to international humanitarian law in Luterpach's text, but also in some other texts such as those of Rousseau, Andrassy, Schwarzenberger, Verdross, Akehurst, etc. Some other authors elaborate international humanitarian law as a separate part but within a more general chapter dealing with the use of force by states or in relation to the resolution of international disputes. Finally, there are some authors, including some of the most well-known, who do not pay special attention to international humanitarian law and mainly talk only about a connection with the responsibility of individuals and war crimes. These views prevailed until the 19th century, when rules began to be adopted which prohibited some means of war, some methods of war, where some categories of persons and objects were protected, since unable to stop the existence of war as a method for resolving conflicts. Unfortunately, this topic is still relevant because, despite some limitations, war has not been excluded from international life, because internal wars, defensive wars or peace-making wars often take place. Most jurists have treated war as a natural right which originates from state sovereignty and which, according to the concept of just and unjust wars, has the character of a sanction in relations between states, since the international community has no institutions and mechanisms to dispense justice and ensure enforcement of decisions. In these conditions, the states have no other means but war as a last resort to try to realize their rights or the rights they assume belong to them. The efforts to stop war made before, however few and however unsuccessful up to our century in essence, should not be ignored. On the contrary, they have a deserved place in history. Among these, the efforts of the French Enlightenment have a particularly important place. Voltaire said in one of his writings: "I understand perfectly the right of peace; this right means keeping one's word to ensure that every man fully enjoys his natural rights; but I don't know what the right of war is. A codex for murder seems to me a very strange concept" (Voltaire 1741).

In efforts to limit the suffering and damage caused by armed conflicts, International Humanitarian Law can be said to protect the "core" of human rights in these conflicts. The content of the "essence" of human rights is ensured to be consistent with the fundamental and legal guarantees provided by humanitarian law. Man's efforts to limit the brutalities of war are universal. Many cultures throughout history have tried to limit the use of force in order to reduce unnecessary suffering and limit destruction.

Of course, the reasonableness and sustainability of the concept of war as a sanction can easily be disputed because war does not guarantee that it can work as a sanction, since in no case does it ensure that only the guilty will suffer and it does not guarantee that the war will be won by the one who he is right, but he who is stronger. According to this reasoning, war cannot be a reaction against injustice if the side that has suffered injustice is weaker than the other. War is always and more often treated as a denial of the right, as the reign of force or as one of the most egregious actions of people to demonstrate their perfection. These were the reasons why demands have begun to be articulated much more clearly not only for avoiding the evils that war brings, but also for the prohibition of war as a whole (Lawrence 1875).

With the adoption of the Statute of the League of Nations, the Brian-Kellogg Pact and especially the Charter of the United Nations, the previous right of war (*ius ad bellum*) is

transformed into the right against war (*ius contra bellum*), reaching the fulfillment of a series of efforts by humanists to stop war as one of the greatest evils and gravest crimes. The fact that war is considered a forbidden means never means that it is excluded from international life. Based on this, any discussion that has as its starting point the denial of the need for the existence of rules of war and humanitarian rules does not solve the problem. Humanity has seemingly avoided world conflict, but local, regional conflicts, civil and liberation wars have increased a lot, which undoubtedly imposes not only the need for existence, but also the need to supplement and expand the rules of humanitarian law.

### **Violation of humanitarian law in occupation of Ukraine and Izrael-Hamas conflict**

Currently, Russia's unprovoked invasion of Ukraine, the conflict between Israel and Hamas, once again raises the concern of international organizations and institutions for the great losses caused to the civilian population and vulnerable groups, the violation of human security as a whole. These international organizations and institutions seek to stop the conflicts and if it is not possible to stop it, to enable the limitation of the war, the prevention and protection of the civilian population, the implementation of various rules, treaties, conventions with a humanitarian character to guarantee human security.

“The rules of international humanitarian law are set out in a series of conventions and protocols. The following instruments form the core of modern international humanitarian law:

The Hague Regulations respecting the Laws and Customs of War on Land;

The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;

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

The Geneva Convention (III) relative to the Treatment of Prisoners of War;

The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War;

The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I);

The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)”, (OHCRC 2011).

“The Hague Regulations are generally considered as corresponding to customary international law, binding on all States independently of their acceptance of them. The Geneva Conventions have attained universal ratification. Many of the provisions contained in the Geneva Conventions

and their Protocols are considered to be part of customary international law and applicable in any armed conflict (Henckaerts and Doswald-Beck 2005)”.

“Human Rights Watch states that all parties to the war seriously breached international laws governing war and caused many fatalities among civilians. HRW reported that no proof of intentional attacks on non-combatants by Georgian troops had been discovered. The South Ossetian parliament and several schools and nurseries were used as military posts by South Ossetian troops and volunteer militias and targeted by Georgian artillery fire (HRW 2009)”. “Russia is responsible for human rights violations, including loss of life, torture, disrespect of property and privacy occurring in Georgian breakaway regions of Abkhazia and South Ossetia as it had effective control of the territories after the 2008 Russo-Georgian war (European Court Of Human Rights 2021)”.

The front line of Russia's containment is currently Ukraine. In terms of their people's lives, Ukrainians are paying the greatest price for this. Russian aggression would still be a concern if Ukraine did not confront Russia. The ideology of a return to a "historical Russia," which has its roots in the historical, linguistic, and religious aspects of the regions of Eurasia that were formerly a part of the Russian Empire and later the Soviet Union, has been explicitly declared by Russian President Vladimir Putin. Furthermore, asserting that Estonia, Latvia, Lithuania, Poland, and Finland are all parts of "historical Russia," he has called for NATO to scale back its operations in those nations. Pushtimi

Frightening numbers of victims are clear evidence of the violation of human security in these regions and beyond. They are proof of non-compliance with obligations derived from conventions, treaties, and in general towards international humanitarian law. The innocent victims caused by these armed conflicts are the real evidence of the violation of international humanitarian laws, as among them we find unprotected domestic and foreign civilian populations of the conflict zone, journalists, personnel of international institutions and organizations and humanitarian organizations, engaged in helping the population affected by these conflicts.

The unprovoked invasion of Russia against Ukraine attracted the attention of the entire international factor, bringing to attention the fragility of world peace, and recomposing new geopolitical and geostrategic alliances. In an attempt to divert the attention of the international factor from the invasion of Ukraine, the alliance between Russia and Serbia caused a rekindling of the Serbia-Kosovo conflict. The purpose of the spread of this conflict was to create a new hearth of war and violence, a conflict in the Balkans based on Serbia's claims for not recognizing the Republic of Kosovo. The immediate and strong response of NATO, the USA and the EU, in support of the territorial defense of Kosovo, put an end to any attempt to escalate the conflict and old Serbian nostalgia.

The peace established after the Cold War showed its fragility with the emergence of regional conflicts between parties that were no longer controlled or under the influence of the two former world superpowers. Also in the global arena, we have a rapid transformation of the role of other countries with more weight in the international arena as a result of the increase in their nuclear arsenal, influencing the regional and wider military balances at the global level, both as direct threats and in support of other military countries or organizations. North Korea, Iran, China, etc. have rapidly increased military and nuclear capacities, becoming a regional and wider factor for new tensions or for human security. To a lesser extent, but not unimportant, we see tensions between the member countries and the military organizations themselves, such as those between Turkey and Greece due to disagreements on territorial issues between them. Both of these countries are members of NATO, an organization whose principles guarantee the protection of the member countries of the alliance from foreign aggression. This is a proof of the ambiguities and dilemmas of peace and territorial security at the regional and worldwide level, and further as a result of human security, which is a concern for the future, and a task for international institutions and organizations, the leadership of countries with influence in the international arena.

According to NATO's new Strategic Concept, adopted during the Madrid summit in 2022, "the Russian Federation poses the most significant and direct threat to Allies' security." The United States is the most influential and powerful member of NATO and therefore has the primary responsibility for ensuring the Allies' security through firm support for NATO (Wilson Center 2023).

As a result of the international response, international monitoring and law enforcement institutions conducted investigations and collected numerous evidence of war crimes in different regions of Ukraine, evidences that are real evidence of violations of international humanitarian laws.

Based on this evidence on March 17, 2023, Pre-Trial Chamber II of the International Criminal Court ("ICC" or "the Court") issued warrants of arrest for two individuals in the context of the situation in Ukraine: Mr Vladimir Vladimirovich Putin and Ms Maria Alekseyevna Lvova-Belova (ICC 2023).

Mr Vladimir Vladimirovich Putin, born on 7 October 1952, President of the Russian Federation, is allegedly responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute). The crimes were allegedly committed in Ukrainian occupied territory at least from 24 February 2022. There are reasonable grounds to believe that Mr Putin bears individual criminal responsibility for the aforementioned crimes, (i) for having committed the acts directly, jointly with others and/or through others (article 25(3)(a) of the Rome Statute), and (ii) for his failure to exercise control properly over civilian and military subordinates

who committed the acts, or allowed for their commission, and who were under his effective authority and control, pursuant to superior responsibility (article 28(b) of the Rome Statute) (ICC 2023). In fact, the sending of Russian President Vladimir Putin to international justice is currently very unlikely to happen, since he is the current president of a country with more influence in the international factor, but issued warrants of arrest of the International Criminal Court ("ICC" or "the Court") is a clear demonstration of international institutions in the implementation of legislation on war crimes and crimes against humanity. The real value of this process on the part of an institution with international weight, aims to give an institutional response of the international factor to anyone who has violated or violated international humanitarian legislation, to isolate as much as possible those responsible for war crimes from the international scene and international decision-making, and at the most favorable moment to send the responsible persons to international justice. The activity of these institutions and organizations engaged in the prevention and punishment of war crimes has shown that beyond the current artificial barriers, those responsible for war crimes sooner or later will be brought to justice.

While the entire international factor was involved directly or not in the Russia-Ukraine conflict, another dormant conflict erupted: the one between Israel and Palestine. In an overview of the old Israel-Palestine conflict, we see an escalation of violence and innocent victims on both sides. Gaza is controlled by Hamas, an Islamist militant group; it has been under an Israeli blockade since Hamas seized control in 2007, one so stringent that human rights groups liken the situation to an "open-air prison" (HRC 2006). Currently, Israel is at war with Hamas-a conflict following a horrific rampage on October 7, 2023, in which militants from Hamas and Palestinian Islamic Jihad, another extremist group, launched attacks that killed more than 1,400 Israelis and took more than 240 hostage. Israel has responded with widespread bombardment of the Gaza Strip and a ground incursion, killing and injuring tens of thousands of Palestinians (HRC 2006). More than 200 people, Israelis and non-Israelis, babies, women and the elderly, civilians and soldiers - were taken captive by Hamas terrorists on October 7th and taken by force to Gaza (Joby, Shira 2023).

The terrorist attack of October 7 by Hamas against the defenseless Israeli civilian population was a living proof of the war philosophy of the terrorist organizations, which break every international legal norm, treaty, agreement, or international convention. The terrorist attack of October 7 caused a strong reaction of the international factor in support of the Israeli people and the State of Israel. For many experts in international humanitarian law, the attack contained all the elements of genocide according to the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG 1951). Immediately in the following days, there followed a multitude of visits by the leaders of Western countries to Israel, as well as military and financial support from the USA in aid of the State of Israel. It is worth mentioning that this anger towards the terrorist organization HAMAS was also caused by the fact that among the victims or hostages there were also many foreign citizens, such as Americans, English, etc. The terrorist attack of October 7 brought the Israeli state's commitment to a large-scale military attack in the Gaza Strip, with the aim of eliminating HAMAS, every cell and every military arsenal of it. However, according to the information of the intelligence services, the strategy of HAMAS is the organization and concealment between the civilian population and the residences or institutions in the function of the civilian population. Also in the Gaza Strip, Hamas operates and has bases installed in a very sophisticated and hidden underground network of tunnels in areas inhabited by the civilian population, including schools or health service centers such as hospitals. For this purpose, the Israeli army called on the Palestinian population in the north of the Gaza Strip to leave this territory, as otherwise they will be identified as collaborators of the terrorist group HAMAS. According to the evaluations of many international organizations, including the UN or Amnesty International, such a movement within the required time frame is impossible and risks causing a humanitarian crisis. Declaring an entire city or a region so large and with such a dense population as a military target could cause a violation of international law. The number of people killed in Gaza is nearing the 9,000 mark amid mounting concerns over the aftermath of Israeli airstrikes on a densely-populated refugee

camp near Gaza City, while a key hospital has stopped operations and UN humanitarian workers are unable to deliver aid to the north as the ground war intensifies. According to the Hamas-run Ministry of Health, 8,805 Palestinians have been killed since 7 October, including at least 3,648 children and 2,187 women, and some 22,240 have been injured, UN humanitarian coordination affairs office OCHA said (UN 2023).

“Despite the protection that should be provided to all children by international law, during the first month of this war, there have been devastating reports of acts that are forbidden by international humanitarian law, including maiming, injury, abduction, forcible displacement, deprivation of medical care, food, and water. According to article 38 of the Convention on the Rights of the Child, States have an obligation to respect and ensure respect for the rules of international humanitarian law, and to take all feasible measures to ensure the protection and care of children affected by armed conflict (OHCHR 2023)”.

### **Conclusion**

The implementation of the international humanitarian law is a necessity for the establishment of some standards that the parties in the conflict must adhere to. It has been accepted by all researchers and legislators of international humanitarian law, international humanitarian organizations and institutions, political or military, that war should be avoided in any case as a solution to various disagreements, but if it is not possible to avoid it, limit its damage to the civilian population, civilian facilities, and even to combatants to the extent of achieving the goal.

In a perspective of international humanitarian law, the situation in Ukraine showed how difficult it is to implement it in practice. Russia is one of the permanent member states of the Security Council of the United Nations and a state with great global influence both economically and militarily. Paradoxically, in contradiction with the historical and institutional weight of such an act in the dome of international institutions, there is an international arrest warrant for the president of Russia for suspected war crimes.

The unprecedented attack on October 7, 2023 by HAMAS, designated as a terrorist organization by Western countries and more broadly, against the Israeli population, contains possible clear evidence of the violation of international humanitarian law, which should be described as war crimes, and for which those responsible should be brought to international justice. “These acts constitute gross violation of international law, and, in particular, of international criminal law,” declared the document, signed by academic figures and legal authorities in Israel and abroad (Timeofisrael 2023).

International humanitarian law experts call the attack on the Israeli population on October 7, 2023 by HAMAS genocide according to the Convention on the Prevention and Punishment of the Crime of Genocide.

On the other hand, the attack of the Israeli army in the Gaza Strip, the calls for the displacement of the civilian population within an impossible period to guarantee the safety of the civilian population, the air attacks on civilian centers, hospitals, as well as the large number of victims in different categories of the civilian population have caused a worldwide reaction to the violation of international humanitarian law. This reaction was demonstrated in the squares of many world capitals with protests in defense of the innocent civilian population, and in the demands for humanitarian corridors and temporary cessation of hostilities, to enable the removal of civilians from the hostilities.

A UN Commission to the Israel–Palestine conflict stated that there is “clear evidence that war crimes may have been committed in the latest explosion of violence in Israel and Gaza, and all those who have violated international law and targeted civilians must be held accountable (UNOHC 2023).

According to UN Commission experts, both parties to the conflict are in breach of the norms established by the Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute of the International Criminal Court.

From the above analysis, it is worth noting that during the Russian conflict against Ukraine, the international factor reacted strongly and quickly in support of Ukraine, supporting Ukraine financially and militarily to face one of the biggest superpowers in the world.

This reaction was aimed at preventing the Russian advance in other countries of the region, which were once part of the Russian domain during the Cold War.

But in comparison, in the cases of the Russia-Georgia and Israel-HAMAS conflicts, the reaction of the international factor was very slow, allowing the escalation of the conflict, and further increasing the balance of war crimes against civilians, vulnerable people, cities, residential centers, kindergartens, schools and even health service centers, hospitals, etc. The international factor in the cases of the Russia-Georgia and Israel-HAMAS conflicts, reacted more late, and in some cases forced as a result of the reaction to the massive citizen protests in many squares around the world, so the consequences of the conflicts were heavy for the population. innocent civilians.

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