

**Weapons of War Used to Flatten Civilian Metropolitan Areas:
Analysis of the Russian Attacks Against Ukrainian Civilian Centers**

Michael M. Richards

Department of Political Science, University of Washington

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Jamie Mayerfeld and Cole Fairbairn

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February 24 was a day unlike any other for individuals living in Ukraine. At approximately 4 a.m. local time, Russian forces under the direction of Russian President Vladimir Putin crossed the border into Ukraine, starting a violent war and sparking global backlash.¹ Global criticism has focused on the Russian Federation's unprovoked actions and their blatant disregard for the human life of the civilian population of Ukraine. Russian troops have been accused of targeting apartment buildings, supermarkets, and hospitals.² In fact, on March 9, 2022, according to Ukraine, Russian forces blew up a Children's Hospital, wounding 17 people.³ Besides children's hospitals, Russia has also attacked civilian infrastructure, such as the Zaporizhzhia Nuclear Power Plant, frightening the International Atomic Energy Agency.⁴ A direct hit by an artillery shell could set off a chain of events that perhaps could not compare to Ukraine's last nuclear disaster – Chernobyl. In total, as of September 5, 2022, the United Nations estimates that 294 civilians have been killed in the conflict, with an additional 868 injured.⁵

The total invasion of Ukraine was a culmination of years of souring relations between Ukraine and Russia, starting with Ukraine's succession from Russia in 1918. Ukraine received international recognition through the Treaty of Brest-Litovsk; however, their independence was short-lived as the Soviet Union took control of Ukraine in 1921-1922. The Holodomor – famine

¹ Tim Lister, Tara John & Paul P. Murphy, *Here's what we know about how Russia's invasion of Ukraine unfolded*, CNN (Feb. 24, 2022), <https://www.cnn.com/2022/02/24/europe/ukraine-russia-attack-timeline-intl/index.html>.

² *Ukraine: Russian Strikes Killed Scores of Civilians in Chernihiv*, HUM. RTS. WATCH (June 10, 2022), <https://www.hrw.org/news/2022/06/10/ukraine-russian-strikes-killed-scores-civilians-chernihiv>.

³ Natalia Zinets, *Ukraine accuses Russia of genocide after bombing of children's hospital*, REUTERS (Mar. 9, 2022), <https://www.reuters.com/world/europe/russia-promises-silence-ukrainians-flee-battered-cities-2022-03-09/>.

⁴ Victor Jack, *Ukraine says second-largest nuclear plant hit by Russian attacks*, POLITICO (Sept. 19, 2022), <https://www.politico.eu/article/ukraines-second-largest-nuclear-plant-hit-by-russian-attacks-kyiv-says/>.

⁵ Office of the High Commissioner for Human Rights, *Ukraine: civilian casualty update 5 September 2022*, U.N. HUM. RTS. (Sept. 5, 2022), <https://www.ohchr.org/en/news/2022/09/ukraine-civilian-casualty-update-5-september-2022>.

in Ukrainian – marks the period of starvation for the country in 1932-1933 caused by Stalin's regime. Ukraine was then devastated from 1939 to 1944 by World War II as Nazi Germany invaded their land and the Soviet Army fought to seize back control. In 1991, Ukraine left the Soviet Union through an accord signed by Russia, Ukraine, and Belarus agreeing that the Soviet Union had been dissolved. Three years later, in 1993, to solidify its independence from Russian control, under the Budapest Memorandum, Ukraine agreed to hand over its nuclear arsenal. In exchange, Russia would respect its independence. Tensions between the two countries again flared up in 2014 when the people of Ukraine overthrew the sitting Russian-backed president and made moves to join the Western economy and the European Union. In retaliation, Russia invaded and annexed the Crimean Peninsula, killing an estimated 13,000 Ukrainian soldiers and civilians. The Minsk Accords, signed in 2014 and 2015, created a cease-fire that never solved the flaring emotions between the two countries but temporarily brought stability. This stability all ended, however, in 2019 when pro-Western Volodymyr Zelensky was elected as president and made moves to not only formally join the European Union but also join the North Atlantic Treaty Organization – a scenario in which Russia's President Putin could not accept and launched a full-scale invasion of Ukraine.⁶

In the latter half of this paper, I will give three policy recommendations revolving around the International Court of Justice (ICJ), the International Criminal Court (ICC), and the Security Council of the United Nations. I will recommend that the ICJ and ICC are expanded in operation and given more authority to prevent and prosecute hostile acts and human rights violations. I will also propose that the Security Council's veto vote be abolished and the abstention provision of article 27 of the United Nations Charter be upheld.

⁶ Matthew M. Bigg, *A history of the tensions between Ukraine and Russia*, N.Y. TIMES (Mar. 26, 2022), <https://www.nytimes.com/2022/03/26/world/europe/ukraine-russia-tensions-timeline.html>.

Human Rights in War

One of the first international conventions outlining and preserving human rights in a time of war was the Geneva Convention of 1864. The main objective of this convention sought to establish medical services and volunteers as neutral entities on the battlefield, thus outlawing them as a target for military operations. The original Geneva Convention was replaced with the Geneva Conventions of 1906, 1929, 1949, 1977, and 2005 which expanded the Convention's reach to wounded and sick soldiers, prisoners of war, and civilians.⁷ Of particular importance to my research is the Fourth Geneva Convention relative to the Protection of Civilian Persons in Times of War. This document protects civilians from murder, torture, and brutality.⁸ Bans discrimination based on race, nationality, or religion.⁹ Protects hospitals, children, mothers, the sick, and the wounded.¹⁰ Positive actions are also placed on the occupying force to supply the civilian population with adequate food and medical supplies.¹¹

Another important document is the Universal Declaration of Human Rights. The UDHR outlines civil, political, social, and economic rights that the UDHR's writers deemed inalienable for all humans.¹² Despite this document's great international importance and immense stature, it has little to no legal binding *per se*. Outside of customary international law, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic,

⁷ *Geneva Conventions and their additional protocols*, LEGAL INFO. INST. (June 10, 2019), https://www.law.cornell.edu/wex/geneva_conventions_and_their_additional_protocols; *The Geneva Conventions of 1949 and their Additional Protocols*, INT'L COMM. RED CROSS (Jan. 1, 2014), <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>.

⁸ Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 13, Aug. 12, 1949, INT'L COMM. RED CROSS, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>.

⁹ *Id.* at art. 32.

¹⁰ *Id.* at art. 14, 18.

¹¹ *Id.* at art. 55, 58.

¹² *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (Dec. 10, 1948), <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.

Social, and Cultural Rights (ICESCR) are the legally binding columniation of the UDHR.¹³ The ICCPR – as the name implies – grants civil and political rights, which for our purposes, we will be paying attention to the right to life.¹⁴ The ICESCR grants socio-economic and cultural rights, but for our purposes, we will be only looking at the right to adequate food, shelter, and access to medical aid.¹⁵ Similar to the UDHR is the European Convention on Human Rights. Unlike the other documents mentioned, the ECHR only offers membership to European counties and has a court to enforce the treaty – the European Court of Human Rights.¹⁶ Of the rights enumerated in the ECHR, we will only be evaluating the right to life.¹⁷

Human Rights Violations

Revisiting our aforementioned examples of targeting civilians, we know that in Russian President Putin’s Hitleresque tirade through Ukraine, he has been accused of intentionally targeting supermarkets, apartment buildings, children’s hospitals, and the Zaporizhzhia Nuclear Power Plant.¹⁸ The military strategy of *spare and fight* can be used to “justify” attacking civilians in a cost and benefits analysis. However, this strategy is seen as legally unsound.¹⁹ Targeting supermarkets can be seen as a violation of human rights due to the store’s role in society as the facility where food is distributed to its residents. The ICESCR and the Fourth Geneva Convention, to which both Russia and Ukraine are parties, protect the right to adequate food.²⁰ In March of

¹³ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 172; International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

¹⁴ International Covenant on Civil and Political Rights, *supra* note 13, at art. 6.

¹⁵ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, at art. 6, 11.

¹⁶ European Convention on Human Rights and Fundamental Freedoms, Oct. 1, 1994, E.T.S. No. 005, <https://rm.coe.int/1680a2353d>.

¹⁷ *Id.* at art. 2.

¹⁸ *Ukraine: Russian Strikes Killed Scores of Civilians in Chernihiv*, *supra* note 2; Natalia Zinets, *supra* note 3; Victor Jack, *supra* note 4.

¹⁹ Yitzhak Benbaji, “The Lesser Evil Dilemma for” *Sparing Civilians*, 37 L. & PHIL. 243, 247-48, <https://www.jstor.org/stable/44980938>.

²⁰ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, at art. 11; Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, *supra* note 8, at art. 50, 55.

2022, Russia did bomb a supermarket, plunging the area of Kyiv in which this store serviced into an era of food insecurity.²¹ In an attempt to justify the bombing, Russia claimed that missiles were being stored inside the shopping mall; however, reportedly, no military equipment has been identified in the wreckage.²² Besides supermarkets, targeting apartment buildings can also be considered a violation of human rights as the ICESCR once again protects the right to an adequate dwelling.²³

The targeting of a children's hospital has been seen as particularly barbaric by onlookers, and for a good reason. The list of human rights and laws of war this action violates is lengthy, but for our purposes, targeting a civilian children's hospital violates the right to access medical aid granted by the ICESCR, violates the international protection of medical facilities and personally granted by the first and fourth Geneva Conventions, and is classified as both a crime against humanity and a war crime by the ICC.²⁴

By far, the most dangerous and closest the world has been to nuclear Armageddon since the Chernobyl nuclear disaster was when Russia targeted the Zaporizhzhia Nuclear Power Plant as a military objective. According to one research article, the initial fallout from a reactor meltdown due to a targeted attack would render in regions of Ukraine, Belarus, Moldova,

²¹ Pariesa Young, *Fears of food shortages after Russian attacks on grocery stores in Ukraine*, FRANCE 24 (Mar. 24., 2022), <https://observers.france24.com/en/europe/20220321-ukraine-kharkiv-kyiv-supermarkets-grocery-stores-russian-attacks-shortages>.

²² *Id.*; Guy Faulconbridge, *Russia says it hit Kyiv shopping center because it was storing rockets*, REUTERS (Conor Humphries ed., Mar. 21, 2022), <https://www.reuters.com/world/europe/russia-says-kyiv-shopping-centre-it-hit-was-storing-ukrainian-rockets-2022-03-21/>.

²³ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, at art. 11.

²⁴ *Id.* at art. 6; First Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, INT'L COMM. RED CROSS, Aug. 12, 1949, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>; Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, *supra* note 8, at art.23, 38, 50, 55, 56; Rome Statute of the International Criminal Court, Jul. 17, 1998, 2187 U.N.T.S. 3, art. 7, 8, <https://treaties.un.org/doc/Treaties/1998/07/19980717%2006-33%20PM/volume-2187-I-38544-English.pdf>.

Romania, and Turkey.²⁵ The Treaty on the Prohibition of Nuclear Weapons (TPNW) requires states never to take actions toward nuclear armament, which, if Russia were a member, would have been in clear violation.²⁶ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is similar to the TPNW in that they both work to stop nuclear Armageddon. However, the NPT has much more international buy-in, including Russia and Ukraine. This means that by attacking a nuclear power plant, Russia has violated the NPT, at least in spirit, by indirectly turning the power plant into a nuclear weapon.²⁷

All of the aforementioned attacks, which have left an estimated 25 people and injured dozens more, are a violation of the right to life.²⁸ Violating this human right is particularly problematic as without your life, it prevents you from exercising all of your other human rights. In this way, it should come as no surprise that many international documents, such as the ICCPR and ECHR, protect the human right to life.²⁹ The Fourth Geneva Convention and the Rome Statute prohibit the targeting and indiscriminate killing of civilians, with the ICC classifying the act as both a crime against humanity and a war crime.³⁰

Policy Recommendations

Legislative solutions to these atrocious human rights abuses during a war can seem ineffective or counterintuitive. However, according to a 2009 address by the Head of the Legal

²⁵ Henry D. Sokolski, *Present Danger: Nuclear Power Plants in War*, 52 US ARMY WAR COLL. Q. 5, 7 (Oct. 2022), <https://press.armywarcollege.edu/cgi/viewcontent.cgi?article=3178&context=parameters>.

²⁶ Treaty on the Prohibition of Nuclear Weapons, art. 1, July 7, 2017, U.N.T.S., <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/56487/Part/I-56487-08000002804c2398.pdf> (volume number pending).

²⁷ Treaty on the Non-Proliferation of Nuclear Weapons, Mar. 5, 1970, 729 U.N.T.S. 161.

²⁸ Pariesa Young, *supra* note 21; *Russians barrage Ukrainian town after bridge explosion*, NPR (Oct. 9, 2022), <https://www.npr.org/2022/10/09/1127720804/russians-step-up-strikes-ukrainian-town-bridge-explosion-zaporizhzhia>; Natalia Zinets, *supra* note 3.

²⁹ International Covenant on Civil and Political Rights, *supra* note 13, at art. 6; European Convention on Human Rights and Fundamental Freedoms, *supra* note 16, at art. 2.

³⁰ Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, *supra* note 8, at art. 147; Rome Statute of the International Criminal Court, *supra* note 24, at art. 7, 8.

Division of the International Committee of the Red Cross, the Geneva convention, one of the abovementioned treaties, has been effective at saving and limiting the suffering of countless individuals during armed conflict.³¹

Following the failure and desolation of the League of Nations, the international community, in a bid to preserve peace and security, offer humanitarian assistance, protect human rights, and enforce international law, formed the United Nations (UN) on June 26, 1945.³² With respect to the humanitarian crisis in Ukraine, the Charter of the United Nations offers several essential articles which I would like to examine further. The charter states that nations with a dispute that endangers the continuation of peace must seek resolution through peaceful means.³³ When simple negotiation and compromise are impossible or unfeasible, the UN has created the International Court of Justice (ICJ), in which all UN members are *ipso facto* members and are bound by the court's rulings.³⁴ Here is where I introduce my first policy recommendation. The ICJ, in practice, does not operate as the international mediator it was meant to largely due to the Security Council – an issue I will cover in a moment. I propose that when nations are failing to resolve disputes peacefully, instead of waiting for them to decide to utilize the ICJ, the ICJ should be able to step in either by recommendation by the Security Council or by another org of the UN which follows possible threats to international peace and security. I believe that if this measure was not only in place (which it is as the Security Council and other parts of the UN can already refer cases) but also in practice, the conflict in Ukraine could have been avoided.

³¹ Knut Dörmann, *The Geneva Conventions Today*, INT'L COMM. RED CROSS (Sept. 7, 2009), <https://www.icrc.org/en/doc/resources/documents/statement/geneva-conventions-statement-090709.htm>.

³² U.N. Charter, pmbl., art. 1.

³³ *Id.* art. 33.

³⁴ *Id.* art. 92-94.

When the ICJ's rulings are not being honored, the Security Council has the responsibility to provide punishment to persuade compliance with the ruling.³⁵ It is also the Security Council's responsibility to maintain international peace and security while also upholding the other purposes of the UN, which would include offering humanitarian assistance, protecting human rights, and enforcing international law.³⁶ The Security Council is comprised of eleven members, five of which are permanent.³⁷ These permanent members – which include France, the United Kingdom, the United States, Canada, China, and the Soviet Union (now only recognized as Russia) – have a “veto” vote on the council requiring unanimous agreement between the five permanent members to pass a resolution.³⁸ Permanent members of the Security Council under Article 27 are required to abstain from votes in which they are a party; however, this provision has largely been ignored and is voluntary.³⁹ An international forum to discuss peace and security cannot operate when international rivals primarily responsible for causing the most disruptions in said peace and security can veto any measure at their sole discretion. This power is why I propose that while I take no position on having permanent members on the Security Council or the power the Security Council wields over international affairs, the veto vote of the permanent members should be abolished, and states party to a dispute must abstain from a vote. It becomes hard to despise, especially when analyzing the Security Council's votes around the invasion, that if the veto vote was done away with, the deterrence of the international peacekeeping forces would have deterred Russia from invading Ukraine.

³⁵ *Id.* art 94.

³⁶ *Id.* pmbl., art. 23.

³⁷ *Id.* art. 23.

³⁸ *Id.* art. 23, 27.

³⁹ *Id.* art. 27; John Chappell & Emma Svoboda, *Must Russia Abstain on Security Council Votes Regarding the Ukraine Crisis?*, LAWFARE (Feb. 11, 2022), <https://www.lawfareblog.com/must-russia-abstain-security-council-votes-regarding-ukraine-crisis>.

The last organization in which to propose an amendment is the International Criminal Court (ICC). The Rome Statute of the International Criminal Court clearly defines genocide, crimes against humanity, war crimes, and the crime of aggression as internationally recognized criminal offenses.⁴⁰ Unlike a traditional court that we might see in the United States, alleged violations must be referred to the ICC for investigation either by a nation party to the Rome Treaty or through the court exercising its jurisdictional powers to investigate a suspected violation within the borders of a member nation.⁴¹ Another way cases can be brought before the court is through a petition by the UN's Security Council.⁴² However – as I talk about extensively in another paper I wrote, *The International Criminal Court's Role in Preventing War Crimes*⁴³, the ICC is limited in power but being a court of last resort is not an issue so long as nations prosecute violators of international law. The real issue is that the ICC can only look into crimes that member nations commit or happen inside the borders of member nations.⁴⁴ Some exceptions have been made to this rule, such as in Ukraine. Both Ukraine nor Russia are not members of the ICC. However, Ukraine has still successfully petitioned the ICC to move forward with an investigation of war crimes anyway.⁴⁵ I would propose that the ICC take a more prominent role in prosecuting instances of international law. This would entail the ICC having jurisdiction in all nations and, after issuing an arrest warrant, calling on the Security Council to aid in apprehending defendants. While this policy change would not have an immediate effect in incidents such as Ukraine, it would pose significant consequences to the perpetrators and pose a deterrence to further international human rights violations.

⁴⁰ Rome Statute of the International Criminal Court, *supra* note 24, at art. 5.

⁴¹ *Id.* art. 13-15.

⁴² *Id.* art. 13.

⁴³ See. Michael M. Richards, *The International Criminal Court's Role in Preventing War Crimes* (Jun. 7, 2022) (unpublished manuscript) (on file with author), <https://macrichards.com/works/The%20International%20Criminal%20Court%E2%80%99s%20Role%20in%20Preventing%20War%20Crimes.pdf>.

⁴⁴ Rome Statute of the International Criminal Court, *supra* note 24, at art. 5.

⁴⁵ *Ukraine*, INT'L CRIM. CT. (Mar. 2, 2022), <https://www.icc-cpi.int/ukraine>.

Conclusion

Given the unprecedented news coverage of this invasion and the minute-by-minute imagery of people suffering, it is nearly impossible to argue that our current system has failed. Hospitals are being bombed, and people are starving. Despite clear international treaties that both Ukraine and Russia are parties to, these human rights violations continue to take place due to a systematically flawed enforcement mechanism. I believe that foregoing the veto vote and upholding the abstention provision to the UN's Security Council, expanding the authority of the ICC and the ICJ, would significantly improve international compliance with human rights treaties and decrease overall violations.