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**RUSSIAN AGGRESSION AGAINST UKRAINE
AND INTERNATIONAL HUMANITARIAN LAW**

**ROSYJSKA AGRESJA NA UKRAINĘ
A MIĘDZYNARODOWE PRAWO HUMANITARNE**

Abstract:

The research aim of this paper is to examine the Russian aggression against Ukraine and the ensuing international armed conflict between these states in the light of international humanitarian law. The images of the destroyed cities of Mariupol, Irpin and Kharkov as well as the killings of civilians in Bucha shock the conscience of mankind and raise the question of their legal classification. The author answers the following questions: Which rules of international humanitarian law are being violated by Russia? Do these violations reach the level of international crimes such as war crimes, crimes against humanity or possibly genocide?

Keywords: international armed conflict, international humanitarian law, principle of distinction, prohibited weapons, attacks against civilians.

Introduction and background

The ongoing international armed conflict between Ukraine and the Russian Federation began as early as 2014 with Russia illegally annexing the Crimea and supporting the separatist forces in Donetsk and Luhansk. It entered a new phase when Russian military forces attacked the territory of Ukraine on 24 February 2022. Before the 2022 aggression, the events in the Crimean Peninsula could clearly be classified as an occupation, while the armed conflict in eastern Ukraine was at least a non-international armed conflict. As a consequence, Article 3 common to the four Geneva Conventions on the protection of victims of war, Additional Protocol II to the Geneva and customary international

law were applicable in these cases.¹ However, convincing arguments might be found that even before 2022 the conflict had been internationalized due to the participation of Russian military forces (see Reeves and Wallace 2015, 364; Szpak 2022).

The reaction of international community to the Russian invasion against Ukraine was predominantly negative and condemning. The situation is still evolving but at the time of writing (November 2022) the international community responded in several ways. On 25 February 2022 the Committee of Ministers of the Council of Europe suspended Russia's membership in that organization. During its emergency special session, UN General Assembly deplored Russia's actions in a special resolution A/ES-11/L.1 (2022). Merely five States voted against (Russia, Belarus, Eritrea, North Korea and Syria), thirty five States (including China) abstained, and 141 voted in favor.² The emergency special session of the UN General Assembly had to be convened because the Security Council, the main UN body responsible for maintaining international peace and security, apparently could not play its part as it was blocked by the veto of a permanent member, the Russian Federation. The legal basis for such a session was the UN General Assembly resolution 377 (V) entitled *Uniting for Peace* (1950). It stipulates that when the UN Security Council is blocked by a veto of a permanent member and is unable to act in order to maintain international peace and security, the UN General Assembly shall consider the matter and may recommend UN member-states to take collective measures, involving – when required – the use of military force. All of this is undertaken to maintain or restore international peace and security. While not binding, UN General Assembly resolutions have political and moral as well as legal authority and may serve as legitimization of actions of states ready to oppose the Russian aggression. In November 2022, the Parliament of the European Union declared Russia “a state sponsor of terrorism”.

Another important step was Ukraine filing a case against Russia before the International Court of Justice on 26 February 2022, based on Russia's allegations that genocide had been taking place in Donbass. Ukraine is obviously denying that accusation and claiming that by manipulating the definition of genocide, the RF created an excuse for the attack. According to the *Convention on the Prevention and Punishment of*

¹ *Geneva Conventions*. 1949. <https://ihl-databases.icrc.org/ihl>.

² States siding with Russia apparently accept how the Russians justify the need for the so-called special operation. Their arguments extracted from *Russia in Global Affairs* includes a publication by Szul (2023). Editor's note.

the Crime of Genocide (1948), disputes between states-parties to the Convention and related to its interpretation or application, 'including those relating to the responsibility of a State for genocide [...], shall be submitted to the International Court of Justice at the request of any of the parties to the dispute' (Art. IX). Russia asserts that Ukraine is committing genocide while Ukraine – rightly so – rejects such allegations; hence there clearly is a dispute within the meaning of the Convention.

Another important international organ that took action is the International Criminal Court (ICC). On 28 February 2022, the ICC Prosecutor, Karim Khan opened an investigation into the situation in Ukraine. Even though Ukraine did not ratify the ICC Statute, it has twice declared its acceptance of the ICC's jurisdiction with reference to crimes under the ICC Statute that might have been committed on its territory in case that the Court decided to exercise such jurisdiction.³ The first of these declarations related to crimes allegedly committed on Ukrainian territory within the timeframe of 21 November 2013-22 February 2014, while the second one open-endedly extended the previous declaration to include crimes allegedly committed in the entire Ukrainian territory from 20 February 2014. In order to accelerate the investigation, the ICC Prosecutor invited state parties to refer the situation of Ukraine to the Office of the Prosecutor (otherwise the Prosecutor would need an authorization to proceed from the Pre-trial Chamber, which would delay the start of the investigation). In an unprecedented move, on 2 March thirty-nine states-parties to the ICC Statute referred the situation in Ukraine to the ICC. This decision implies that there is reasonable basis to claim that at least war crimes are being committed in Ukraine by Russian troops. Thus, as clearly visible, Russia not only violated the prohibition on the use of force but also the rules on the conduct of armed conflicts, including war crimes. With the development of the conflict, even at this stage it is also reasonable to argue that Russian violations in Ukraine have already reached the level of crimes against humanity. The European Court of Human Rights' decision on interim measures in a case brought by Ukraine against the Russian Federation also testifies to breaches of international humanitarian law applicable to armed conflicts. The Court ordered Russia to refrain from military attacks against civilians and civilian objects, including emergency vehicles, residential premises and

³ International Criminal Court Statute. 1998. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

other specially protected civilian objects such as hospitals and schools, and to ensure the safety of medical facilities, personnel and emergency vehicles in the territories attacked or besieged by Russian armed forces (Szpak 2022).

On 4 March the UN Human Rights Council decided to set up an independent international commission of inquiry to investigate all alleged violations of human rights during the Russia's aggression against Ukraine. In this way, the Council supplemented the ICC investigation by providing useful findings. In addition, in April 2022 Russia was suspended from the UN Human Rights Council.⁴ It also has to be mentioned that the United States and likeminded nations as well as the European Union as a whole imposed sanctions on Russia. These include the EU's and the US freezing the assets of the Russian Central Bank, of multiple companies (among them the VTB bank), and of numerous individuals. Russian financial institutions were also banned from the SWIFT system. President Putin is among those sanctioned, along with the members of Russia's Security Council.

The research aim of this paper is to examine the Russian aggression against Ukraine and the ensuing international armed conflict between the Russian Federation and Ukraine in the light of international humanitarian law. The images of the destroyed cities of Mariupol, Irpin and Kharkov as well as the killings of civilians in Bucha have shocked the conscience of mankind and raised the question of their legal classification.⁵ Which rules of international humanitarian law are being violated by Russia? Do these violations reach the level of international crimes such as war crimes, of crimes against humanity or possibly of genocide? The author will attempt to answer these research questions. The primary research method is the formal-dogmatic one, focusing on the analysis of legal texts and subsequent qualification of the facts in light of the applicable law. These legal acts include first and foremost Geneva Conventions (1949) and their Additional Protocol I on the Protection of Victims of International Armed Conflicts (1977),⁶ to which both Russia and Ukraine are parties.

⁴ <https://www.ejiltalk.org/russia-and-the-un-human-rights-council-a-step-in-the-right-direction/>.

⁵ It seems relevant here to include the total loss of life suffered by Ukraine since February 2022, as well as the number of people forced to emigrate (see Perepelytsia 2023). Editor's note.

⁶ <https://ihl-databases.icrc.org/ihl/INTRO/470>.

Russian violations of the basic principles of international humanitarian law

The basic principles of international humanitarian law are those of distinction, proportionality, military necessity and humanitarian treatment. What will be of direct relevance to this article are in particular the principles of distinction and proportionality. The principle of distinction requires that belligerents always distinguish between civilians and civilian objects on the one hand and combatants and military objectives on the other. Accordingly, any attacks can only be directed against the latter (Art. 48 of Additional Protocol I). In line with the principle of proportionality, those who plan an attack should refrain from launching an attack on a legitimate military target that could cause incidental loss of human life of civilians, injury to civilians, damage to civilian property, or such total loss and damage the extent of which would be excessive compared to the concrete and expected direct military advantage. In other words, when it is expected that an attack will cause incidental losses to civilian human life, injuries to civilians or damage to civilian property, or a combination of such losses and damages the magnitude of which would be excessive in relation to the concrete and direct military advantage expected, such an attack should be stopped or discontinued (Art. 57 of Additional Protocol I). As to the principle of proportionality, even when an attack is directed against a legitimate military objective it may still amount to a war crime if the attacker knew that such an attack would result in excessive civilian casualties – excessive when compared to the expected military advantage. This does not mean that every attack causing extensive death or injuries to civilians or damage or destruction to civilian objects is prohibited and may constitute a war crime because when the anticipated military advantage from such an attack is sufficiently large or substantial, such an attack is legal. As Sean Watts and Hiroshi Nasu illustrate, *'civilian harm may not be considered excessive, for example, if a high value military objective (such as weapons and radar stations) located in the vicinity was the ultimate target. Rather, it has to be established that the attack was expected to cause disproportionate harm to civilian lives and civilian objects weighed against the military advantage anticipated from it'*.⁷

In the context of the armed conflict in Ukraine it is important to stress that indiscriminate attacks are prohibited (this is a direct

⁷ <https://lieber.westpoint.edu/war-crimes-primer-ukraine-russia-conflict/>.

consequence of the principle of distinction). According to rule 12 of the ICRC Study (2005) *'indiscriminate attacks are those: (a) which are not directed at a specific military objective; (b) which employ a method or means of combat which cannot be directed at a specific military objective; or (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction. Overall, to determine whether an attack violated this prohibition, it is essential to answer such questions as: what was the target of the attack? what military advantage was anticipated to be gained from the attack? what civilian casualties and/or damage to civilian objects were expected from the attack? were the latter was expected to be excessive in relation to the former? (Customary..., 2005).*

In Ukraine numerous allegations of war crimes focus on indiscriminate attacks, with video footage of dead bodies and injured civilians, and damaged or destroyed civilian buildings. Such allegations were made, for instance, with reference to the air strikes on the preschool in Okhtyrka, the maternity and children's hospital in Mariupol, the small public square in Chernihiv and the residential district in Sumy. There have been reports that on 3 April 2022 appalling crimes were perpetrated in Irpin and Bucha, with media showing the pictures of dead Ukrainian civilians lying on the streets of Bucha. According to Anatolii Fedoruk, the mayor of Bucha, close to 300 residents were killed.

Aforementioned Watts and Nasu argue that assuming that the attack is directed against a legitimate military objective, from its indiscriminate nature one may still infer that the attack was in fact directed against civilians. In this line of reasoning, allegations can be placed that war crimes were committed as a result of the usage of blast weapons, such as thermobaric weapons and cluster munitions.⁸ Thermobaric weapons can potentially *'generate casualties that overwhelm military medical systems, to say nothing of their potential to inflict civilian harm'* (Montazzoli, 2022). International humanitarian law regulations on the means of warfare (in other words weapons) prohibit the use of weapons that, by nature, cannot discriminate. This principle reflects customary international law and as such is binding on both Russia and Ukraine. The legal status of the prohibition of indiscriminate

⁸ <https://www.reuters.com/world/europe/ukraines-ambassador-us-says-russia-used-vacuum-bomb-monday-2022-02-28/>.

attacks is the same and hence, binds both parties to the conflict. The mechanism of thermobaric weapon (sometimes called a vacuum bomb) consists of sucking in oxygen from the nearby air in order to produce a high-temperature explosion, typically resulting in a blast wave that lasts significantly longer than a conventional explosive. Its another characteristic feature is that it can vaporize human bodies. Even though formally thermobaric weapons are not prohibited as such, their use in populated areas is prohibited as it almost certainly violates the principle of distinction and proportionality.

Russia is also accused of using cluster munitions in an illegal way. Although Russia is not a state-party to the 2008 *Convention on Cluster Munitions*⁹ (and neither is Ukraine), again their use in populated areas is prohibited. For example, on the morning of 25 February 2022 Russia used cluster munitions to hit a preschool in north-eastern Ukraine while civilians were hiding inside. As a result, three of them, including a child, were killed and another child was wounded. It seems that the attack was carried out by the Russian army operating in the vicinity. Amnesty International has verified that a 220mm Uragan rocket dropped cluster munitions on the Sonechko nursery and kindergarten in the town of Okhtyrka in Sumy Oblast, where local people were seeking safety. Accordingly, and rightly so, Amnesty International concluded that this attack may constitute a war crime.¹⁰ As such, this strike breached the prohibition on indiscriminate attacks; it harmed a school which as a civilian object requires protection. On 28 February 2022 Russian soldiers used cluster munitions also in at least three residential districts in Kharkiv. Human Rights Watch obtained testimonies from two witnesses who were interviewed separately, and they both said that they had not known of any Ukrainian military activity in the area in Kharkiv prior to the attack. A map available online shows that the location of the impact of one of the rockets was approximately 400 metres from a site labeled as 'military'. Satellite images of that place from 20 February showed a small compound with ca. 20 military vehicles in its vicinity, surrounded by residential areas. Thus even if the function of this object was military, the prohibition on indiscriminate attacks has been violated by the use of cluster munitions. Considering the indiscriminate nature of such weapons and the foreseeable results of deploying them in civilian

⁹ <https://www.clusterconvention.org/>.

¹⁰ <https://www.amnesty.org/en/latest/news/2022/02/ukraine-cluster-munitions-kill-child-and-two-other-civilians-taking-shelter-at-a-preschool/>.

areas, their use such as the one documented in Kharkiv might be considered as a war crime.¹¹

With respect to cluster munitions, the following rules are applicable to the armed conflict in Ukraine:

1. International law do not envisage a prohibition on the use of cluster munitions as such, so the Russian Federation and Ukraine are not prevented from its use.

2. If a particular type of cluster munition is designed so that it cannot target a specific military objective or that its effects cannot be restricted to a specific military objective and, as a result, it may strike military targets and civilian objects and civilians alike (without distinction), it is prohibited.

3. If a sufficient quantity of the individual submunitions fail to explode and are left in or on the ground posing a risk and/or causing civilian death or injury such that the their use can appropriately be described as indiscriminate, such a weapon would be prohibited as it would be contrary to the prohibition of the indiscriminate weapons.

4. Even if a specific type of cluster munition is not indiscriminate by nature, still its use in particular situations may violate the prohibition on indiscriminate attacks. Before reaching such a conclusion, a careful examination of targeting law is necessary. The numerous factors that must be taken into account include the data available to the attacking commander prior to the decision on attack, the efforts made by that commander to attain additional relevant information, the anticipated injury to civilians and damage to civilian objects (so called 'collateral damage'), the expected military gain accruing from the attack, the precautionary steps taken by the attacking commander, and the precautions taken by the enemy against the effects of attacks (Boothby 2022).

Other allegations refer to the indiscriminate use of booby-traps. In his speech President Zelensky accused Russian forces of setting up booby-traps as they retreated. He claimed that *'they are mining all this territory. Mining houses, equipment, even the bodies of killed people'*. The allegations turned out to be true. According to the Ukraine's emergency services, only in a single day 1,500 explosives were found in the village of Dmytrivka. In the meantime, in Bucha Ukrainian soldiers had to use cables to pull bodies from the street as they were afraid that they might

¹¹ <https://www.hrw.org/news/2022/03/04/ukraine-cluster-munitions-launched-kharkiv-neighborhoods>.

explode. So and as is clear, Russia has been accused of indiscriminate use of the booby-traps (Schmitt 2022a). Using booby-traps with the intent to harm civilians should be classified as a direct attack on civilians, while using them without regard whether they will kill or hurt combatants or civilians constitutes an indiscriminate attack (ICRC 2005, rules 1, 11). Such actions amount to a war crime, for which those responsible should be prosecuted. Michael Schmitt (2022a) rightly argues that *'although early accounts are insufficiently granular to determine whether the Russian forces intended the booby-traps to be activated by civilians, their use in a population center before the entry of Ukrainian troops and emplacement where civilians are likely to be located, such as houses and near civilian bodies, makes violation of the indiscriminate attack prohibition highly likely'*.

Even when the use of the booby-traps is supposed to target combatants and as such would be legal, the principle of proportionality prohibits their use if there are expectations that their use may cause incidental harm to civilians which would be excessive compared to the anticipated military advantage from their use against combatants or others legally attacked, such as civilians taking direct participation in hostilities. Moreover, even if an attack which utilizes a booby-trap would not breach the proportionality principle, the party to the conflict considering its use must evaluate whether there are other feasible weapons or tactics (means and methods of warfare) to achieve the same effect that would be gained by the use the booby-trap but which would place civilians at less risk (*Customary...*, op.cit. rule 14, 15).

International humanitarian law prohibits the use of numerous means and methods of warfare, this prohibition being designed to protect combatants. Among the prohibited weapons are those that cause superfluous injury or unnecessary suffering to combatants. This prohibition also applies to booby-traps containing glass shards or contaminated objects aimed at aggravating injuries. Such acts constitute war crimes. International humanitarian law also prohibits perfidious killing or wounding the enemy. 'Perfidy' here means killing or wounding by inviting the enemy's good faith and certainty that the object, location, or person in question are protected according to international humanitarian law. One may give the example of killing Ukrainian soldiers with booby-trapped dead civilians – civilians are protected under international humanitarian law, as are dead bodies (*Customary...*, 2005, rule 70, 65, 113). Perfidy also may amount to a war crime.

The principle of distinction has also been breached when Russian forces targeted hospitals that should be respected and protected from attack (Art. 19 of the Geneva Convention I). According to the WHO Surveillance System for Attacks on Health, as of 10 April 2022 there have been 602 attacks with the use of heavy weapons resulting in 94 deaths¹². This conduct amounts to a war crime, and the perpetrators of the attack should be held criminally responsible.

Much of what has already been said leads to another conclusion. By now no one would deny that Russian armed forces directly attack civilians, also with the aim to terrorize the civilian population, and engage in indiscriminate attacks in violation of international humanitarian law. Art. 51 (2) of Additional Protocol I prohibits '*acts or threats of violence the primary purpose of which is to spread terror among the civilian population*'. Such acts clearly constitute war crimes according to International Criminal Tribunal for the former Yugoslavia (ICTY), Galić case of 2003, par. 91-98, 100, 133.¹³ If a few months ago this might have been not so clear, recent events definitely testify to that conclusion. On 15 and 23 November 2022 Russia mounted air attacks against Ukraine's power infrastructure, 100 and 70 missile/drone strong respectively. Various Ukrainian cities, including Kyiv, were left without electricity. Basic services could not work without power and water supply. The results were that nearly all thermal and hydroelectric power plants sustained damage. Power generating stations may qualify as military targets if they are providing electricity in support of the enemy's military operations, and this is Russian justification for their attacks. Still, the Russian attacks on Ukrainian cities as a whole have become so widespread that the only possible conclusion is that such attacks are indiscriminate. It is simply impossible that all the attacked elements of critical infrastructure are military objectives. Hence, Russian justification is false (Schmitt 2022c).

Michael N. Schmitt (2022c) rightly argues, citing the US Mission to the United Nations, that '*the attacks have gone on for so long, are so widespread, and are so intense, that it is difficult to attribute any purpose to them other than terrorizing the civilian population*'. In the same vein the US Ambassador to the UN stated at the emergency session of the Security Council, '*Putin's motive could not be more clear and more coldblooded. He is clearly – clearly – weaponizing winter to inflict immense*

¹² <https://extranet.who.int/ssa/Index.aspx>.

¹³ <https://www.icty.org/x/cases/galic/tjug/en/gal-tj031205e.pdf>.

suffering on the Ukrainian people. He has decided if he can't seize Ukraine by force, he will freeze the country into submission'.

Other allegations against Russia comprise attacking journalists – who are, like other civilians, protected under international humanitarian law;¹⁴ attacking installations that contain dangerous forces, such as nuclear electrical generating stations (for more details see Dannenbaum 2022); and allegations of murder, rape and torture. This conduct constitutes specific grave breaches of international humanitarian law, subject to criminal prosecution not only of the individual soldiers but also including the chain of command that planned or was otherwise responsible for the conduct of their troops (Sanders 2022). Human Rights Watch has documented a number of instances of Russian army committing international humanitarian law violations against civilians in the occupied parts of Chernihiv, Kharkiv, and Kyiv regions. Among these, Human Rights Watch listed a case of multi-time rape; two cases of illegal execution: one of six men and the second one of one man; and other cases of threats and unlawful violence against civilian persons between 27 February and 14 March 2022. Russian soldiers also took part in looting civilian property, including even clothing, food and firewood.¹⁵ All those who participated in such violations are responsible for war crimes. According to international humanitarian law, it is prohibited to willfully kill, rape and commit other sexual violence, to torture, and treat in an inhumane way captured combatants and civilians (Arts. 130 and 147 of Geneva Conventions III and IV respectively; rape is not expressly enumerated but may be classified as torture). Pillage or looting are also prohibited (Art. 33 (2) of the Geneva Convention IV). Not only those directly committing such acts but also those giving orders, or those aiding and abetting such acts, are responsible for war crimes. Commanders of troops who knew or had reason to know about crimes committed by their subordinates but did nothing to stop them or punish persons responsible for them should be criminally liable for war crimes on the basis of command responsibility (see footnote 13 for more details).

To sum up, in April 2022 the Organization for Security and Co-operation in Europe (OSCE) issued its important *Report on violations of international humanitarian and human rights law, war crimes and crimes*

¹⁴ <https://www.bbc.com/news/uk-60627841>.

¹⁵ <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>.

against humanity committed in Ukraine since 24 February 2022. The conclusion of the Report was the following: while under the present circumstances a detailed assessment of most allegations of IHL violations and the identification of war crimes and crimes against humanity concerning particular incidents has not been possible, the Mission found clear patterns of IHL violations by the Russian forces on many of the issues investigated. This concerns in particular their conduct of hostilities. It is not conceivable that so many civilians would have been killed and injured and so many civilian objects, including houses, hospitals, cultural property, schools, multi-story residential buildings, administrative buildings, penitentiary institutions, police stations, water stations and electricity systems would have been damaged or destroyed if Russia had respected its IHL obligations in terms of distinction, proportionality and precautions in conducting hostilities in Ukraine.¹⁶

Concluding remarks – what next?

As to the classification of Russian conduct in Ukraine, the conclusion is that many of Russian acts could be classified as grave breaches of the Geneva Conventions of 1949, in other words as war crimes. Grave breaches give rise to crucial legal obligations for States Parties to the Conventions and Additional Protocol I: all state-parties to those treaties, no matter whether they are belligerents or neutral states, are required to envisage criminal sanctions for grave breaches in their national legislation. Moreover, they must search for and bring before their courts or extradite persons responsible for such acts (Art. 49/50/129/146 of the Geneva Convention I/II/III/IV respectively).

At this stage one may add that Russian conduct amounts also to crimes against humanity as they include such acts as murder, deportation (for more details, see Schmitt 2022b), torture or rape on condition that such acts are committed as part of a widespread or systematic attack against any civilian population (e.g. Art. 7 of the ICC Statute 1998, see footnote 2). Taking into account the scale of Russian attacks against civilians and multiple illegal acts committed within its framework, the author is of the opinion that Russian soldiers, commanders and decision-makers are committing crimes against humanity (Maynard 2022).

Finally, there is a question of the possibility of Russia committing genocide. In accordance with Art. 2 of the Genocide Convention (1948),

¹⁶ <https://www.osce.org/odihr/515868>.

genocide means 'any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.'¹⁷ This definition is a complex one and needs an interpretation, in particular with reference to the notion of an intent to destroy a group as such. It is very difficult to prove that the perpetrator acted with this special intent (*dolus specialis* in Latin). The term 'genocide' is often misused by politicians, who regard massive killings as genocide. However, massive killings without meeting the condition of special intent are extermination (a crime against humanity) and not genocide. To conclude that genocide was committed, it is necessary to document both the evidence of special intent (in other words specific attitude of the perpetrator) and the pattern of violence inflicted as well as linkage between them. As to specific intent, there is increasing evidence of genocidal ideology being adopted amongst the political elite of Russia. From the very beginning, in his historically erroneous speech with arguments justifying the aggression against Ukraine, President Putin actually denied Ukraine's existence as an independent nation-state.¹⁸ Another moment that was relevant, namely that of 3 April 2022, was when the Russian state-owned news agency RIA Novosti distributed an article calling for large-scale killings of the Ukrainian people. The reason given was that they were all really Nazis. Moreover, and this has to be stressed, 'denazification,' according to the author of the article, 'is inevitably also De-Ukrainization'. And this clearly fits genocidal ideology or, in other words, the special intent. Similar kind of justifications may be found in the Holocaust, the Armenian Genocide or the Rwandan Genocide.

According to Jonathan L. Maynard (2022), *'the growth of such genocidal rhetoric is alarming in the extreme, especially given broader historical legacies of Russian and Soviet violence in Ukraine. But it does not itself provide direct evidence of policymaking or military planning. We cannot just point to military forces committing atrocities, then point to*

¹⁷ <https://ihl-databases.icrc.org/ihl/INTRO/357>.

¹⁸ <https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine>.

extremist government rhetoric, and straightforwardly conclude that these are two sides of a unified operation. Government rhetoric might be largely a means for mobilising public support, for trying to pressure the opposing side to capitulate, or for some other purpose and audience, with quite different motives or intentions actually guiding violence 'on the ground.' We know that Russian forces have committed atrocities, but we cannot reliably estimate their exact scale. We have alarming signs of possible planning for civilian massacres, including initial reports of the Russian army moving mobile crematoria into Ukraine, but many details remain unconfirmed. We know practically nothing about the actual orders behind specific killings of civilians and are only starting to get a sense of how organized and systematic the violence has been.'

As a consequence, taking into account all the available data, currently it is impossible to confirm or disconfirm with full certainty that the Russian government is committing genocide in Ukraine. Yet the risk of various atrocities reaching the level of genocide is escalating and each day brings more evidence of genocide.¹⁹ An increase in genocidal rhetoric present in government-accepted media is evident. The above risk is exacerbated by the lack of major military advances of Russian army. The predictions are that more proof of Russian brutality against civilians will come as the Ukrainians regain the control of areas formerly occupied or where hostilities have been taking place. In the end the evidence may be found that will show that genocide has already been committed, or that the situation is escalating and reaching the level of genocide. Moreover, Russia is forcibly transferring thousands of Ukrainian children to its territory where such children are adopted and become Russian citizens. The exact number is unknown. Such conduct – if committed with a required intent – may constitute the last act enumerated in the genocide definition, and definitely is a war crime of unlawful deportation (Art. 147 of IV Geneva Convention, 1949). Russian authorities expressed as their goal replacement of children's attachment to Ukraine with a love for Russia.²⁰ Hence, the evidence of genocide is mounting with each new day.

¹⁹ <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/>.

²⁰ <https://www.nytimes.com/2022/10/22/world/europe/ukraine-children-russia-adoptions.html>.

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Streszczenie:

Artykuł prezentuje wyniki badań nad rosyjską agresją na Ukrainę i wynikającym z niej międzynarodowym konfliktem zbrojnym między tymi państwami w świetle międzynarodowego prawa humanitarnego. Obrazy zniszczonych miast takich jak Mariupol, Irpień i Charków, a także mordy na ludności cywilnej w Buczy wstrząsnęły sumieniem ludzkości i rodzą pytanie o ich kwalifikację prawną. Autorzy odpowiadają na następujące pytania: Jakie zasady międzynarodowego prawa humanitarnego zostały naruszone przez Rosję? Czy naruszenia te osiągają poziom zbrodni wojennych, zbrodni przeciwko ludzkości lub ewentualnie ludobójstwa?

Słowa kluczowe: międzynarodowy konflikt zbrojny, międzynarodowe prawo humanitarne, zasada rozróżnienia, zakazana broń, ataki na ludność cywilną.