

The war in Ukraine: challenges and opportunities for International Humanitarian Law (IHL)

Summary of a presentation made by Marco Sassòli, professor of international law at the University of Geneva, at the 41st Annual Course of the International Association of Law Libraries, Geneva, 10 October 2023

Two quotes

Challenges

Washington Post, 25 March 2023

“Ukraine’s Foreign Ministry expressed frustration at U.N. human rights monitors after they reported that both Kyiv and Moscow had committed rights violations against civilians and prisoners of war. Ukraine considers “it unacceptable to place responsibility on the victim of aggression,” the ministry said Friday in a statement.”

Opportunities

4 March 2022 (Reuters) - Russia is using cluster bombs in Ukraine, NATO Secretary-General Jens Stoltenberg said on Friday.

"We have seen the use of cluster bombs and we have seen reports of use of other types of weapons which would be in violation of international law," he told reporters in Brussels.

Challenges

- The separation between *jus ad bellum* (prohibition of aggression) and *jus in bello* (*humanitarian rules to be respected by both parties*) is nearly impossible to accept
 - Difficulty to accept the neutrality of humanitarian action
- Indifference towards Ukrainian violations: prisoners of war
- Increased impression that IHL is always violated
- Misunderstanding of IHL
 - Every destroyed house, every killed civilian is a violation of IHL
 - Amnesty International Report on lack of passive precautions by Ukrainian forces
 - War crimes and violations of IHL
- Perception of double standards in the Global South

Evidence for substantive shortcomings of IHL

- Lack of implementation mechanisms
- Absence of transparency obligations
- Nuclear power stations
- The missing and the dead, AI and social media
- The law of blockade

Opportunities

- More humanitarian interpretations adopted by Western States towards Russia
 - Explosive weapons with a wide area effect
 - Cluster munitions
- Russia, a major obstacle to developing new implementation mechanisms has been isolated
- Unprecedented willingness of Western States to ensure respect
 - Creation of a reparation mechanism and register
 - Commission of enquiry by the UN Human Rights Council
- Unprecedented fight against impunity by:
 - Ukraine
 - Third States under universal jurisdiction
 - The International Criminal Court (ICC)