

The Russian Invasion of Ukraine through the Lens of International Humanitarian and Human Rights Law – an Exploratory Overview

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Russia's invasion of Ukraine has fundamentally changed the security architecture of Europe and shown that wars of aggression are not a thing of a bygone era but continue to be a possibility in the modern, nuclear world. Along with the repercussions for international relations, however, the war will also be sure to raise questions – theoretical and practical – in the realm of human rights and humanitarian assistance. Some of these questions, including legal repercussions, the treatment of refugees and the enforcement of human rights will be explored in this essay. These might serve as early indications of where trends in this field are headed as the world enters a new era.

Questions of Sovereignty and of
Definitions

Only four countries aside from Russia voted
“no” to condemning the Russian invasion of
Ukraine before the UNGA on March 3rd.²
The almost universal condemnation

stemmed from the international
community's concern over the violation of
the principle of sovereignty, evidenced by
the language of the resolution³.

While what exactly constitutes sovereignty
is sometimes considered up to debate (see,

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² Those countries were Syria, Eritrea, Belarus and North Korea.

“Aggression against Ukraine :” United Nations. United Nations. Accessed March 6, 2022. <https://digitallibrary.un.org/record/3959039?ln=en>.

³ Al Jazeera. “UN Resolution against Ukraine Invasion: Full Text.” Russia-Ukraine war News | Al Jazeera. Al Jazeera, March 3, 2022. <https://www.aljazeera.com/news/2022/3/3/unga-resolution-against-ukraine-invasion-full-text>.

for instance, Stephen Krasner's taking issue with this topic⁴), the idea that the international community is first and foremost made up of sovereign states and their representatives that have the authority to freely choose their path is one of the key principles of post-WWII international order.

It is also of fundamental importance to the way the international human rights regime has been structured. While the concept may out of necessity be an approximation, its real-world importance was once again emphasized by the international community's response to the Russian incursion of Ukraine – in 2022 and previously, in 2014.

The resolution passed by the UN General Assembly directly references several parts of the UN Charter of 1945, including and most relevantly to our case the provisions in article 2 (4):

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of

any State, or in any other manner inconsistent with the Purposes of the United Nations.”⁵

Russia, the General Assembly found, violates the UN Charter with its actions in Ukraine, specifically section 2 (4). This has even resulted in some (such as Ukraine's ambassador to the organization⁶) calling for Russia's removal from the United Nations, for the charter reserves membership only to those countries that uphold the UN's values.

Where exactly the line lies between international relations, international law and human rights is not entirely clear. International understanding and enforcement of human rights is directly tied to the way the concept of sovereignty is understood and implemented. Its current understanding restricts the extent to which states may infringe on internal affairs of other states in the name of human rights and by what means. For instance, sanctions in response to human rights abuses might be considered acceptable under the current international regime and have been employed numerous times, for instance by the U.S. against the government of Nicolás

⁴ Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, 1999), p. 67-71.

⁵ “Article 2(4).” Article 2(4) - United Nations, 1945. https://legal.un.org/repertory/art2/english/rep_supp7_vol1_art2_4.pdf.

⁶ “Ukraine's U.N. Ambassador Calls Russia's Veto into Question.” MSNBC. NBCUniversal News Group, February 24, 2022. <https://www.msnbc.com/opinion/msnbc-opinion/ukraine-s-u-n-ambassador-calls-russia-s-veto-question-n1289826>.

Maduro in Venezuela. However, unilateral military intervention is generally not considered permissible by the international community. In the post-WWII architecture, a mandate from the Security Council is generally seen as a precondition for legitimate use of military force abroad, including for human rights enforcement. There have been military interventions that flew in the face of this requirement, but so far, and again in 2022, the international community reacted vocally and with displeasure to such forays, strengthening or at least perpetuating the existing precedent.

Sovereignty and its interaction with human rights are guided by a mix of several types of international law per Shirley Scott's definition⁷.

At the most positivist end of the spectrum, there exist treaties, such as the UN Charter or the Geneva Convention of 1949 and its additional protocols I and III, which are all called upon in the UNGA's resolution of March 3rd. It is usually considered unambiguous evidence that a government has accepted a certain rule as they have signed onto it.

Following treaties comes custom. Custom fills the role of international law if there is

no treaty, or if the treaty makes no sense, for instance by being outdated. It might be defined as "international practice of long standing that has been accepted as law," and the International Court of Justice, one of the UN's six principal organs, uses a definition quite similar to this and considers it a part of international law⁸. The interpretation of the UN Charter today might fall into a mix of these two categories, as over the decades, exceptions have come to be generally accepted.

Following this, we get into fuzzier territory: General principles accepted by civilized nations. This part of international law has strong naturalist undertones and so is intricately linked with human rights, which arguably has its origins in naturalist thought. It is based on the observation of human nature – such as the idea that humans have inherent and inalienable rights simply by being human. In the international realm, this part of the law might include the broadly agreed-upon idea of the use of force as a last resort, or that genocide is illegal even if the perpetrators have not directly agreed to any prohibition of it. *Erga omnes* – law binding on everybody, even if they have not agreed to it, falls under this category of law.

⁷ Shirley G. Scott, "International Law and the Use of Force," Ch.6 of Scott International Law in World Politics (Lynne Rienner).

⁸ "Statute of the International Court of Justice." Statute of the Court | International Court of Justice. Accessed March 13, 2022. <https://www.icj-cij.org/en/statute>.

International law, and human rights, in particular, are in a weird place straddling the more naturalist and more positivist ends of this spectrum, a practice that invariably results in room for interpretation and tensions.

The Russian government tried making use of these ambiguities in international law in its diplomatic and political messaging surrounding the invasion. Putin's two speeches in the week leading up to the invasion give us some idea of how the Russian government hoped to square the circle of international commitments, hoping not to be completely ostracized from the international community and justifying its war⁹.

One key point that the Russian president and state-run media emphasized was that Ukraine supposedly consisted of "Russian land" and was somehow an illegitimate country that was not worthy of sovereignty. The Russian messaging served to make clear that Moscow does not consider the Ukrainian state sovereign. This definition likely aimed at removing some of the barriers that come with invading a sovereign country.

⁹ Fisher, Max. "Word by Word and between the Lines: A Close Look at Putin's Speech." The New York Times. The New York Times, February 23, 2022. <https://www.nytimes.com/2022/02/23/world/europe/putin-speech-russia-ukraine.html>.

From a human rights perspective, however, it does not change much at all. The Universal Declaration of Human Rights mentions sovereignty only once, and that is to emphasize that all people, regardless of the status of the territory they find themselves in, are awarded the same rights and ought to receive the same protections.¹⁰ In clearer terms: In the eyes of the UN and so the international community, Russia needs to fully adhere to human rights practices in Ukraine, even if it considers the country illegitimate.

Putin also falsely brought up claims of alleged genocide¹¹ as justification for the military intervention. While there are no trustworthy reports of such things occurring in Ukraine, this likely was an attempt on Putin's part to place Russia's actions under the naturalist, *Erga omnes* end of the spectrum of international law rather than the positivist, treaty-based end, under which his actions are clearly unlawful and almost certainly would have required a mandate by the UNSC. Such a mandate, of course, would have been impossible to come by for Russia because of the falseness of the pretext on the one hand, and because of Western veto

¹⁰ "Universal Declaration of Human Rights." United Nations. United Nations. Accessed March 13, 2022. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹¹ Fisher, see above

powers on the Security Council that would have shut such an attempt down.

While Russia's actions might have been in gross violation of international law and norms, the language its government chose is remarkable. While combative and unapologetic, official messaging not only tried to somehow justify the country's actions within the realm of law but also invoked human rights concepts as justification or to score sympathy points. It emphasizes how integral and influential the relatively young ideas of human rights have become and even if the concepts were used in a shameful context, their repetition might serve to further strengthen the role they play in international affairs and the discourse surrounding them.

For its part, the Ukrainian government has also appealed to similar concepts in its messaging surrounding the conflict. Human rights ideas are a powerful tool to shape public opinion – and the public whose opinion has so been shaped ought to be more likely to place value in securing these rights.

On a separate note, it is also important to take stock that even leaving aside violations of the laws of war and potential human rights violations that might come about in occupied territories, the mere fact of a Russian invasion of Ukraine is a human rights violation under the modern human rights regime.

The right to self-determination has increasingly found entrance into human rights discourse – even tacitly embraced by countries like Israel¹² – and was codified in international law, making a significant appearance in the 1993 Vienna Declaration.¹³ Tying peoples' right to self-determination to international human rights law means "regime change" is not just a violation of sovereignty and international custom, but also a human rights violation that can be legally prosecuted.

Russia's actions, with the intent of overturning a sovereign country's democratically elected government, determining its future in Russia's interest, and perhaps even intending to permanently alter its territorial integrity are in clear

¹² "Self-Determination Integral to Basic Human Rights, Fundamental Freedoms, Third Committee Told as It Concludes General Discussion | Meetings Coverage and Press Releases." United Nations. United Nations. Accessed March 13, 2022. <https://www.un.org/press/en/2013/gashc4085.doc.htm#:~:text=The%20right%20to%20self%2>

determination,discrimination%2C%20xenophobia%20and%20related%20intolerance.

¹³ "Vienna Declaration and Programme of Action." OHCHR. Accessed March 13, 2022. <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>.

violation of international law, including human rights legislation.

Questions of Enforcement

Russia's armed forces have a very poor track record when it comes to respect for human rights in times of conflict. The war in Chechnya, the largest land war in Europe since World War Two up until the Russian invasion of Ukraine, served as one example: By 2009, the European Court of Human Rights had issued 115 judgments indicting Russia on human rights violations in the conflict¹⁴. Russia has been accused of violations of the laws governing war in its support to the Assad regime in Syria and of war crimes in the war in Georgia as well, among other cases.¹⁵

Of particular concern in the past has been Russia's indiscriminate destruction of civilian areas and targeting of protected

objects such as schools and hospitals. For instance, during the Second Chechen War, Russia used indiscriminate bombardment to level the regional capital of Grozny, making it the "most destroyed city on earth," as per the UN.¹⁶

Since the beginning of the invasion on February 24th, Russia has already engaged in familiar patterns of war crimes and human rights abuses in Ukraine¹⁷.

Russia, like all other countries in the world, is a party to all four Geneva conventions. It additionally continues to bind itself by the optional protocol II (Putin withdrew Russia from the first additional protocol by executive order in 2019¹⁸).

While the first three Geneva conventions deal with combatants, the 1949 fourth Geneva convention handles the protection of civilians and the provision of humanitarian aid in warzones, declared or undeclared, as well as occupied territory. It

¹⁴ "Who Will Tell Me What Happened to My Son?" Human Rights Watch, April 29, 2015. <https://www.hrw.org/report/2009/09/27/who-will-tell-me-what-happened-my-son/russias-implementation-european-court-human>.

¹⁵ "Russia Committed War Crimes in Syria, Finds UN Report." The Guardian. Guardian News and Media, March 2, 2020. <https://www.theguardian.com/world/2020/mar/02/russia-committed-war-crimes-in-syria-finds-un-report>.

¹⁶ "Programmes | from Our Own Correspondent | Scars Remain amid Chechen Revival." BBC News. BBC, March 3, 2007.

http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/6414603.stm.

¹⁷ "Putin May Be Committing War Crimes, but Do the Allegations Have Any Teeth?" CBS News. CBS Interactive, March 11, 2022. <https://www.cbsnews.com/news/ukraine-russia-vladimir-putin-war-crimes/>.

¹⁸ David M. Crane, opinion contributor. "Russia's Snub of Geneva Convention Protocol Sets Dangerous Precedent." The Hill. The Hill, October 20, 2019. <https://thehill.com/opinion/international/466531-russias-snub-of-geneva-convention-protocol-sets-dangerous-precedent>.

is thus directly applicable to the situation on hand, where Russia is waging a land assault that gravely impacts the civilian population of Ukraine, with the apparent aim of occupying at least vast swathes of territory – something it has already started laying the political groundwork for.¹⁹

One of the key provisions of this convention states:

*Nations must “enact any legislation necessary to provide effective penal sanctions for persons committing or ordering to be committed any of the grave breaches (violations)” of the Conventions.*²⁰

This raises again and in a new context old questions about enforcement. It seems unlikely that Russia will bring its own perpetrators of war crimes to justice, as the country has yet to acknowledge any wrongdoing and doing so would likely not be a wise move politically, internally or externally.

This leads us back to the old debate about universal jurisdiction – should other countries be able to persecute Russian

decision-makers for war crimes they oversaw or will have overseen in Ukraine if Russia itself is unwilling?

Several possible solutions come to mind.

In the past, The United Nations might have tried to institute a tribunal, as it has done in select cases such as following the Yugoslav wars. Such a tribunal would have the immense advantage of having the UNSC’s backing, perhaps the strongest source of international legitimacy. Simultaneously, however, such a tribunal would likely not take place because of the Russian Federation’s veto on the council.

One possible course today would be that the International Criminal Court investigates war crimes in Ukraine. The UN has largely delegated the activities of ad-hoc tribunals to the ICC, which was established under the Rome Statute in 2002.²¹ This is somewhat complicated by neither Ukraine nor Russia being a state party to the statute – Russia withdrew its signature, and Ukraine has signed, but not ratified.

¹⁹ Dzhanova, Yelena. “Russia Introduced a New Mayor in a Captured Ukrainian City after Abducting Its Elected Mayor.” Business Insider. Business Insider, March 13, 2022. <https://www.businessinsider.com/russia-installs-new-mayor-melitopol-captured-ukraine-city-kidnapped-2022-3>.

²⁰ “Summary of the Geneva Conventions of 1949 and Their ...” The Red Cross. Accessed March 14, 2022.

https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf.

²¹ “Courts & Tribunals - UN Documentation.” United Nations. United Nations. Accessed March 13, 2022. <https://research.un.org/en/docs/law/courts>.

On February 28th, the court nonetheless decided to open an investigation into the situation in Ukraine, noting the questions of jurisdiction but pointing out that the Ukrainian government had released two statements announcing that it would be accepting the ICC's jurisdiction over crimes having taken place on Ukrainian territory since the 21st of November 2013, and, per the second declaration, with an open end. Prosecutor Karim A.A. Khan QC thus decided to open an investigation despite Ukraine being outside the formal structures of the ICC and thus not being able to directly delegate authority through regular procedures. The proceedings have been fast-tracked due to the high number of member states' requests to investigate the situation in Ukraine.²²

There are still a couple of pitfalls with the potential for ICC action on Ukraine. Perhaps the most significant is that the ICC requires defendants to be present at the proceedings – it does not try in absentia²³. Further, cases over crimes of aggression can only be

prosecuted against leaders of states that are ICC members – which Russia is not – or when the UNSC gives them the authority to do so – which Russia would veto²⁴.

However, Jennifer Trahan has suggested that both the problem of the ICC's presence requirement and the limits due to types of crimes committed might be circumvented by having proceedings take place in the national courts of countries that both permit universal jurisdiction and have laws against things such as wars of aggression²⁵. Trahan counts around 20 such countries, notably including Ukraine itself. Kyiv has used this legal framework to persecute and indict former president Yanukovich and two Russians for “complicity in launching a war of aggression against Ukraine.”²⁶

Ultimately, and especially as civilian casualties mount and Russian methods become increasingly violent, the case for universal jurisdiction might be a strong one.

The other major international court is the International Court of Justice. As it is an

²² Person. “War Crimes Court Prosecutor Opens Ukraine Investigation.” Reuters. Thomson Reuters, March 3, 2022. <https://www.reuters.com/world/europe/war-crimes-court-prosecutor-opens-ukraine-investigation-statement-2022-03-02/>.

²³ Falk, Thomas O. “Is Putin Likely to Face the ICC over Russia's Actions in Ukraine?” ICC News | Al Jazeera. Al Jazeera, March 7, 2022. <https://www.aljazeera.com/news/2022/3/7/is-putin-likely-to-face-the-icc-over-russias-actions-in-ukraine>.

²⁴ “A Reminder of the Importance of the Crime of Aggression: Considering the Situation of Russia and Ukraine.” *Opinio Juris*, February 5, 2022. <http://opiniojuris.org/2022/02/04/a-reminder-of-the-importance-of-the-crime-of-aggression-considering-the-situation-of-russia-and-ukraine/>.

²⁵ Likewise.

²⁶ Likewise.

organ of the UN, all UN member states are effectively parties to it. It serves the purpose of resolving legal disputes between states.

Ukraine brought a case against Russia before the ICJ on February 26th, in addition to an ongoing case related to the Russian annexation of Crimea that was filed in 2019.

The 2022 lawsuit comes with two arguments. In the first, Ukraine refutes Russian claims of genocide in the eastern Luhansk and Donetsk oblasts, the unsubstantiated claims that Putin had used as part of his justification for the “special military operation” in Ukraine.²⁷ The second argument accuses Russia of having planned “acts of genocide” as per the second article of the Genocide Convention.²⁸

Both Russia and Ukraine have signed and ratified the Genocide Convention, article two of which defines genocide as intending to

*“destroy, in whole or in part, a national, ethnical, racial or religious group.”*²⁹

This includes, in the convention’s definition, “killing members of the group” and “causing serious bodily or mental harm,”³⁰ two

²⁷ “ICJ Genocide Case - Application Instituting Proceedings Final.” Accessed March 14, 2022. <https://www.icj-cij.org/public/files/case-related/182/182-20220227-APP-01-00-EN.pdf>.

²⁸ Likewise

²⁹ “Convention on the Prevention and ... - United Nations.” Accessed March 14, 2022.

actions that Russia has verifiably undertaken in Ukraine. The burden here, however, will likely lie in proving that this was indeed with the “intent to destroy ... a national ... group,” and that it was, as per Ukraine’s claim, premediated.

The relative vagueness of the Genocide Convention might make it easy to make the case plausible but could also conceivably undermine its effectiveness if it can be pointed to as classifying actions as genocide which by common understanding would not be considered such. It seems that Ukraine’s first argument has a much higher chance of success, although even if the court fully comes down on Ukraine’s side, it is questionable how much real-world utility a verdict reaffirming that Russia lacks legal basis for its military operation would hold. Near-universal condemnation, referencing many of the same laws and rules that the court would likely refer to, has so far not resulted in any signs of Russia halting its invasion.

Largely operating outside the cobweb that is international law, some of the earliest actors to react to Russia’s aggression in Ukraine

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

³⁰ Likewise

weren't national governments, but private corporations. Hundreds of corporations have suspended or restricted operations in Russia and Belarus³¹, including many that are not directly affected or targeted by Western sanctions and would legally be able to continue operating there.

This phenomenon suggests that Halliday and Schaffner's 2015 observation holds weight that international relations and international law must be looked at not just through the lens of states and their interactions, but that there is a plethora of other actors who play significant roles³².

Surely, the reaction of the private sector being one of the costliest consequences of Putin's decision to invade Ukraine raises a whole host of questions about human rights enforcement and the ethics and procedures surrounding it. While the cause might be a righteous one, there are sticking points when it comes to whom these actions truly impact – is it the Russian people, or the Russian leadership, or both? One might also question the extrajudicial nature of these actions, as well as the motivations – is the

right thing for the wrong reason still the right thing? These are not questions that I possess the answer to, nor is there enough space in this piece of writing to discuss them – but regardless, I consider it important to pose them.

The Refugee Crisis

The conflict in Ukraine has spawned what is quickly shaping up to be the largest refugee crisis Europe has had to face since the end of the Second World War.³³

In some ways, the crisis has some striking similarities with the Yugoslav wars, which sparked the last major intra-European wave of refugees. The military operation in Ukraine is based on ideological and heavily nationalist pretenses, with the reasoning provided by President Putin building on a deeply flawed and heavily emotional understanding of history. The war against Ukraine, as outlined above, is a war primarily against the self-determination of the Ukrainian people. The focus on competing concepts of nationhood and

³¹ The New York Times. "Here Are Some of the Companies That Have Pledged to Stop Business in Russia." The New York Times. The New York Times, March 9, 2022. <https://www.nytimes.com/article/russia-invasion-companies.html>.

³² Terence C. Halliday and Gregory Shaffer, "Transnational Legal Orders," in Halliday and Shaffer eds. *Transnational Legal Orders* (Cambridge University Press, 2015).

³³ "As 1.3 Million People Flee, Ukraine's Refugee Crisis Is Only Just Beginning." The Guardian. Guardian News and Media, March 5, 2022. <https://www.theguardian.com/global-development/2022/mar/05/ukrainians-head-west-as-un-warns-refugee-crisis-is-only-just-beginning>.

nationalities, where the social boundaries between the nations lie, and ideological fearmongering (“Ukrainian Nazis”) are frighteningly reminiscent of some of the messaging coming out of Yugoslavia after Milosevic unleashed the forces of nationalism in the former union.

Some of the military facts on the ground are also similar. The all-out ground war is something Europe hasn’t seen since the days of the Yugoslav and Chechen wars, and the sieging of cities, cutting them off from the rest of the country and trapping their civilian populations while shelling them³⁴, brings back bad memories of Sarajevo.

On the opening day of the war, strikes were directed mostly at military targets but Russia has since pivoted significantly, bringing civilian objects and civilians themselves not just into the crossfire, but

making them targets. Several attempts at humanitarian ceasefires were broken by Russia, usually by shelling.³⁵ The country has verifiably dispatched death squads along civilian evacuation routes, tasked with firing upon cars and striking terror into the population.³⁶ And Russia has targeted at least nine hospitals, including infamously a maternity ward.³⁷ All of these constitute war crimes under treaties that all countries, including Russia and Ukraine, are parties to – civilians are non-combatants and must be protected, and civilian targets are off-limits, with medical facilities enjoying an extra level of protection³⁸.

These circumstances make pertinent many of the points Charli Carpenter discussed in her piece critiquing humanitarian organizations’ procedures for evacuating civilians in Yugoslavia³⁹. Ukraine has barred

³⁴ FRANCE 24. “As It Happened: Russia Forces Encircle Kyiv and Continue Mariupol Siege.” France 24. France 24, March 12, 2022. <https://www.france24.com/en/europe/20220311-live-russia-expands-its-offensive-to-western-ukraine>.

³⁵ “Ukraine-Russia War Updates: Shelling amid Mariupol Cease-Fire Halts Evacuations.” NBCNews.com. NBCUniversal News Group, March 6, 2022. <https://www.nbcnews.com/news/world/ukraine-russia-war-updates-temporary-cease-fire-mariupol-russia-says-rcna18831>.

³⁶ Ramsay, Stuart. “Sky News Team's Harrowing Account of Their Violent Ambush in Ukraine This Week.” Sky News. Sky, March 5, 2022. <https://news.sky.com/story/sky-news-teams-harrowing-account-of-their-violent-ambush-in-ukraine-this-week-12557585>.

³⁷ Kelly, Meg, Elyse Samuels, and Karly Domb Sadof. “Russian Attacks Hit at Least 9 Ukrainian Medical Facilities, Visual Evidence Shows.” The Washington Post. WP Company, March 14, 2022. <https://www.washingtonpost.com/world/2022/03/12/ukraine-hospital-attacks-video/>.

³⁸ “Practice Relating to Rule 28. Medical Units.” Customary IHL - Practice Relating to Rule 28. Medical Units. Accessed March 14, 2022. https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v2_rul_rule28.

³⁹ R. Charli Carpenter, “Women and Children First: Gender, Norms, and Humanitarian Evacuation in the Balkans 1991-95,” International Organization 57(4), 2003.

men of fighting age – 18 through 60 – from leaving the country.⁴⁰ This will likely make them particular targets for Russian violence, even those who have remained but are not combatants. If humanitarian organizations involved in current and potential future evacuations of besieged cities were to adhere to their self-set principles of prioritizing limited resources for those most vulnerable, then the facts on the ground would support the first group of evacuees to include said non-combatant yet fighting-age men.

De facto, however, a situation like the one that Carpenter criticized in Yugoslavia seems more likely. The international community still largely adheres to the unsubstantiated model that women and children are automatically and inherently the groups most at risk, as reflected by the February 21 speech of the UK's ambassador to the UN before the UNSC:

“The humanitarian impact will be terrible ... We know that women and children will suffer most.”⁴¹

⁴⁰ Harlan, Chico. “In a War of Terrible Choices, These Are the Fighting-Age Men Who Left Ukraine.” *The Washington Post*. WP Company, March 9, 2022. <https://www.washingtonpost.com/world/2022/03/09/ukraine-men-leave/>.

⁴¹ “‘War, Death and Destruction’: U.N. Security Council Members Slam Russia's Ukraine Escalation.” *POLITICO*. Accessed March 14, 2022.

Cases can surely be made for this interpretation if the aid community decides that it does, in fact, hope to prioritize these groups no matter what. It is undeniable that both women and children are severely impacted by war and impacted in ways that are unique to their particular identities.

However, as Carpenter pointed out, this rhetoric is as of now incompatible with the international humanitarian community's own guidelines and mostly serves as pathos.⁴² These tensions will tragically once again become relevant as the Russian troops in Ukraine increasingly target civilians, a regrettable trend already seen. Internal unclarity might make the allocation of already limited resources more difficult and contentious than they could otherwise be.

The early days of this major new refugee crisis on the European continent so far call into question some of Thomas Gammeltoft-Hansen's concerns over the “outsourcing” of refugee affairs and migration control.⁴³

Perhaps simply because the European Union and its eastern member states are so close to the crisis, as they border Ukraine, or

<https://www.politico.com/news/2022/02/21/un-security-council-russia-ukraine-escalation-00010485>.

⁴² Carpenter, see above.

⁴³ Thomas Gammeltoft-Hansen. *Access to asylum: International refugee law and the globalisation of migration control*, Cambridge University Press, 2011, pp.11-43.

perhaps because for now, the crisis is still young and the “shock factor” has not worn off, there appear not to have been any major initiatives to prevent Ukrainians from reaching Poland, Hungary, or Romania or pre-processing them in Ukraine.

Part of the story may well also be that the refugees this time around are white and European, as opposed to brown and Middle Eastern or Black and African in 2015 and since – or at Poland’s border with Belarus just two months ago⁴⁴. Even within this very crisis, an unapologetically racist episode resulted in Black people being barred from crossing the Ukrainian-Polish border for apparently no other reason than their skin color.⁴⁵

International human rights law prohibits discrimination including and especially based on physical characteristics like skin color, and the EU has its own set of strong rules on this topic.

⁴⁴ “In Limbo: The Refugees Left on the Belarusian-Polish Border – a Photo Essay.” The Guardian. Guardian News and Media, February 8, 2022. <https://www.theguardian.com/global-development/2022/feb/08/in-limbo-refugees-left-on-belarusian-polish-border-eu-frontier-photo-essay#:~:text=According%20to%20data%20from%20Grupa,the%20Polish%20city%20of%20Bi%C5%82ystok>.

⁴⁵ CHEBIL, Mehdi. “Pushed Back Because We’re Black’: Africans Stranded at Ukraine-Poland Border.” France 24. France 24, February 28, 2022. <https://www.france24.com/en/europe/202202>

Yet racism has repeatedly colored the approach to the crisis in Ukraine, painting it as somehow “worse” than atrocities committed against people who are not white or European. CBS correspondent Charlie D’Agata, for instance, came under fire for his reporting from Kyiv when he said:

“You know, this is a relatively civilized, relatively European ... city where you wouldn’t expect that.”⁴⁶

There are many more instances of similar messaging surrounding the crisis.

Unfortunately, taking them into account is an important part to understanding the European policies in reaction to the war in Ukraine and the refugees fleeing from it.

Many EU countries’ visa requirements have temporarily been lifted for people coming from Ukraine,⁴⁷ quite contrary to the pushbacks taking place in the

[8-pushed-back-because-we-re-black-africans-stranded-at-ukraine-poland-border](#).

⁴⁶ Limbong, Andrew. “Why Ukrainians Are Being Treated Differently than Refugees from Other Countries.” NPR. NPR, February 28, 2022. <https://www.npr.org/2022/02/28/1083580981/why-ukrainians-are-being-treated-differently-than-refugees-from-other-countries>.

⁴⁷ “Ukrainian Nationals Can Travel Visa-Free to 90 World Countries.” SchengenVisaInfo.com, March 8, 2022. <https://www.schengenvisa.info.com/news/ukrainian-nationals-can-travel-visa-free-to-90-world-countries/>.

Mediterranean,⁴⁸ the fences around Melilla and Ceuta,⁴⁹ and the deal signed with Turkey⁵⁰ to prevent migrants from reaching the European continent in response to the last decade's waves of refugees.

Poland has even started rebuilding disused rail lines coming from Ukraine to help future arrivals – after having already taken in more than 1.5 million Ukrainians.⁵¹ The governments of notoriously xenophobic and nationalist Hungary, as well as the more liberal government of Romania, have also expended considerable effort in welcoming Ukrainians fleeing across their respective borders.

Closing words

The war in Ukraine has precipitated the largest humanitarian crisis on the European continent at least since the collapse of

Yugoslavia and perhaps World War Two. As such, it will present an unforeseen and unpredictable challenge to human rights and humanitarian assistance, perhaps fundamentally impacting the norms, laws and understandings surrounding them as well as the practices, applications and organizations in these fields.

Additionally, this war of aggression and the resulting seismic shifts in international relations will certainly have long-lasting effects on global politics and international affairs. February 24th appears to have marked the end of the post-Cold-War world order and opened a new era of great power competition in which autocracies rival liberal democracies.⁵²

With it, much of human rights will be up for reinterpretation and renegotiation. The Ukrainian crisis may give us an early

⁴⁸ “EU: New Evidence of Systematic Unlawful Pushbacks and Violence at Borders.” Amnesty International, October 7, 2021. <https://www.amnesty.org/en/latest/news/2021/10/eu-new-evidence-of-systematic-unlawful-pushbacks-and-violence-at-borders/>.

⁴⁹ Edwards, Sam, Vittoria Elliott, Zuha Siddiqui, and Naubet Bisenov and Meaghan Tobin. “The High-Tech 'Makeover' of Europe's Deadly Border with Africa.” Rest of World, May 26, 2021. <https://restofworld.org/2021/replacing-razor-wire-with-surveillance-technology-in-melilla/>.

⁵⁰ Terry, Kyilah. “The EU-Turkey Deal, Five Years on: A Frayed and Controversial but Enduring Blueprint.” migrationpolicy.org, April 8, 2021. <https://www.migrationpolicy.org/article/eu-turkey-deal-five-years->

[on#:~:text=In%20March%202016%2C%20the%20European,number%20of%20asylum%20seeker%20arrivals.](#)

⁵¹ Wood, Patrick, and Ben de la Cruz. “Poland Rebuilds Abandoned Rail Tracks to Ukraine to Help Refugees Fleeing the War.” NPR. NPR, March 13, 2022. <https://www.npr.org/sections/pictureshow/2022/03/13/1086032747/russia-ukraine-poland-refugees-train-rail-tracks>.

⁵² “Expert on Ukraine: 'We've Awoken Today to a New World Order'.” Expert on Ukraine: 'We've awoken today to a new world order' - Northwestern Now. Accessed March 6, 2022. <https://news.northwestern.edu/stories/2022/02/expert-on-ukraine-weve-awoken-today-to-a-new-world-order/&fj=1>.

indication of where trends are going, and
will likely set long-lasting precedents.