

The war in Ukraine and the laws of war

Attacks by Russian forces against Ukrainian civilians, schools, hospitals and non-military targets are war crimes under international law.



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For *The Straits Times*

Russia began a war against Ukraine on Feb 24. Since then, Russian bombs, missiles and artillery shells have killed Ukrainian civilians, destroyed schools, hospitals and many residential buildings. Several friends have asked me whether there is any international law which prohibits attacks against civilians and public infrastructure. Another asked whether there is any international law against the use of chemical, biological and tactical nuclear weapons. In this essay, I will try to answer these questions.

I want to begin by paying a tribute to a visionary Swiss man, Mr Henry Dunant. In 1859, there was a battle between France and its Italian ally on the one side and Austria on the other. The battle over the struggle for Italian unification was fought in Solferino and won by France and its Italian ally. When the war was over, many wounded soldiers were left to die on the battlefield.

Mr Dunant was appalled by what he saw. He wrote a book, entitled *A Memory Of Solferino*. The book, published in 1862, aroused the conscience of many of its readers. Mr Dunant and his friends founded the Red Cross in 1863 to help wounded soldiers in an impartial and neutral manner.

THE BEGINNING OF THE LAWS OF WAR

In 1864, the international community adopted the Geneva Convention which sought to protect wounded soldiers on the battlefield and established the neutrality of the medical personnel assisting such soldiers.

This was the beginning of the development of the laws of war, now known as International Humanitarian Law (IHL). The International Committee of the Red Cross, the Red Cross and Red Crescent Societies and Switzerland have made and continue to make enormous



A school building destroyed in an air strike in the town of Merfa, in Ukraine's Kharkiv region. This handout picture was released yesterday. Russia is accountable to the International Court of Justice, which has just ordered, in an interim judgment, that Russia immediately suspend its military operation in Ukraine. PHOTO: REUTERS

contributions to the noble objective of "humanising" warfare. In 1986, the 25th International Conference of Red Cross and Red Crescent movement adopted the fundamental principles of the movement. The seven principles are humanity, impartiality, independence, neutrality, voluntary service, unity and universality. It is inspiring to see the representatives of the Red Cross working in Ukraine in spite of the danger to their lives.

There have been many important developments in IHL since 1945. The UN Charter prohibiting the use of force except in self-defence or when authorised by the UN Security Council.

CRIMES AGAINST HUMANITY

The 1947 judgment of the Nuremberg Military Tribunal, formed by the four major allied powers – the United States, Great Britain, France and the Soviet Union – after World War II contained a new international crime: crimes against humanity. What is new is that individuals can be held responsible for breaches of international law. The principles of the judgment were approved by the UN General Assembly in 1948 by Resolution 177.

It is beyond dispute that war crime is part of international law. The attacks by Russian forces against civilians, schools and hospitals are war crimes.

In a war, it is legitimate to attack military targets. It is not legitimate to attack non-military targets.

BIOLOGICAL, CHEMICAL AND NUCLEAR WEAPONS

Russia has alleged that Ukraine is operating laboratories for making

biological weapons with US support, which the UN said it is not aware of. This raises the question whether the use of biological weapons is prohibited by international law. The answer is yes.

The UN adopted the Biological Weapons Convention in 1972. It came into force in 1975, prohibiting the use of biological weapons. Russia joined the convention in 1975 and is bound by it.

Fears have been raised that chemical weapons may be used against Ukraine. Is there any law prohibiting the use of chemical weapons? The answer is yes. In 1993, the UN adopted the Chemical Weapons Convention. It came into force in 1997. The convention is implemented by the Organisation for the Prohibition of Chemical Weapons (OPCW), based in the Hague, Netherlands. Russia became a party to the convention in 1997 and is therefore bound by it.

Russia is not a party to the 2017 Treaty on the Prohibition of Nuclear Weapons, which came into force in 2021. The treaty prohibits the threat or use of nuclear weapons.

In 1994, the UN General Assembly requested the International Court of Justice (ICJ) for an advisory opinion on the legality of the threat or use of nuclear weapons.

In its opinion given in 1996, the ICJ stated that there was no source of law, customary or treaty that explicitly prohibits the possession or even use of nuclear weapons. However, the court also stated that the use of nuclear weapons must be in conformity with the law on self-defence and the principles of

international humanitarian law. Since Ukraine is the victim of Russian aggression, the argument by Russia that it is acting in self-defence is obviously without merit. Therefore, it would be illegal for Russia to use tactical nuclear weapons against Ukraine. This could also be a violation of the principles of international humanitarian law, which prohibit the use of weapons which are indiscriminate, cause unnecessary suffering and serious damage to the environment.

LANDMARKS IN INTERNATIONAL HUMANITARIAN LAW

I would like to refer briefly to some landmarks in the development of international humanitarian law.

In 1948, the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide. Genocide is such a heinous crime that the convention has conferred on all parties to the convention the right to bring legal actions against any offending state. In pursuance of this rule, Gambia has initiated legal proceedings against Myanmar in the ICJ, alleging that the government of Myanmar is committing genocide against the

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Rohingya. The case is ongoing. In 1949, the UN adopted four conventions in Geneva. They are known as Geneva Conventions I, II, III and IV. The fourth convention protects civilians in times of war and is therefore relevant to the Ukraine war.

In 1998, the UN adopted a treaty in Rome establishing the International Criminal Court (ICC). Known as the Rome Statute of the ICC, the treaty came into force in 2002. The treaty is controversial and has only 123 parties.

The Rome Statute establishes four core international crimes: genocide, crimes against humanity, war crimes and the crime of aggression. There is no time limit for these crimes.

The court has jurisdiction over crimes only if they are committed in the territory of a state party or if they are committed by a national of a state party. Russia and Ukraine are not parties to the Rome Statute.

Although Ukraine is not a state party to the Rome Statute, it has exercised its prerogative to accept the court's jurisdiction over alleged crimes under the Rome Statute occurring on its territory, pursuant to Article 12(3) of the statute, dating from 2013 and including the current conflict in its territory.

On Feb 28, ICC prosecutor Karim Khan announced he would seek authorisation to open an investigation into the situation in Ukraine, on the basis of the office's earlier conclusions arising from its preliminary examination, and encompassing any new alleged crimes falling within the jurisdiction of the court. In early March, the ICC

prosecutor received a referral to the same effect from 41 state parties, and decided to proceed to open an investigation into the situation in Ukraine.

In accordance with the overall jurisdictional parameters conferred through these referrals, the scope of the situation encompasses any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person from Nov 21, 2013.

THE ICJ AND RUSSIA

The law is clear. Attacks against civilians, schools and hospitals are war crimes. Russia is a party to both the UN Biological Weapons Convention and the Chemical Weapons Convention. It is

therefore under a legal obligation not to use such weapons against Ukraine. Russia cannot legally use tactical nuclear weapons against Ukraine because such weapons can only be used in self-defence.

Can Russia be held accountable for its actions in Ukraine? Russia is accountable to the International Court of Justice, which has just ordered, in an interim judgment, that Russia immediately suspend its military operation in Ukraine. It is, of course, true that the court has no power to enforce its judgment. However, a country which defies a judgment of the court could be considered as a lawless rogue nation.

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