

**PREVENTING THE EROSION OF THE LAW OF
ARMED CONFLICT: OUR MORAL OBLIGATION TO
UPHOLD AND APPLY THE LAW OF WAR AMIDST A
ROGUE STATE’S ACTIONS**

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INTRODUCTION

Lawyers will put an end to this war after the military and politicians. Exactly lawyers. Lawyers will ensure that all those guilty of terror are brought to justice and that all damages caused by Russia are compensated at the expense of the assets of the aggressor state itself.

-Ukraine President Volodymyr Zelenskyy¹

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1. *President Zelenskyy’s Address to International Bar Association*, PRESIDENTIAL OFF. OF UKR. (Oct. 31, 2022, 9:04 PM),

Recent events around the Russian invasion of Ukraine cultivated renewed discussion and perspectives about the Law of Armed Conflict. Russia's continued indiscriminate attacks and blatant disregard for the Law of Armed Conflict sparked concern around the world. The traditional body of laws and treaties that establish rules of war have provisions that very clearly govern roles and responsibilities of states engaged in armed conflict.² However, in the Russian invasion of Ukraine, Russia's actions raise questions about whether the Law of Armed Conflict will keep pace and remain effective on the modern battlefield and in a dynamic world. The moral obligation to continue to vigorously uphold and strengthen the Law of Armed Conflict matters and lies with the legal community.

Lawyers, by nature of their profession, have an obligation to uphold the rule of law. With respect to the current conflict, the legal community has a historic opportunity to play an active role in not only maintaining but strengthening the Law of Armed Conflict to ensure it remains both relevant and effective in current and future wars. The many ways in which the legal profession has mobilized to provide support to Ukraine have already proven critical in bolstering consensus for upholding the Law of Armed Conflict.

First, legal experts and organizations have proactively held public talks, hosted open discussions, and continued to leverage the media to educate the public on the Law of Armed Conflict and the harsh ramifications when a state fails to abide by these laws. Next, research institutes and organizations have taken on the mission to research, analyze and document Russia's specific violations of laws and customs. Finally, national security law experts continue to provide legal advice and assistance on the Law of Armed Conflict to Ukraine to demonstrate our commitment to their people in their struggle against Russian aggression.

I. EDUCATING THE PUBLIC ON THE LAW OF ARMED CONFLICT AND RUSSIA'S BLATANT VIOLATIONS

Russia boldly invaded Ukraine in February of 2022 and its tactics and methods were immediately characterized as improper attacks on populated areas that exposed civilians to unnecessary and

<http://www.president.gov.ua/en/videos/krapku-v-cij-vijini-pislya-vijskovih-pislya-politikiv-postavl-3533>.

2. *See e.g.* Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 75 U.N.T.S. 287.

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disproportionate harm.³ The Law of Armed Conflict, which encompasses the Law of War,⁴ International Humanitarian Law,⁵ and the Geneva Conventions⁶ became a topic of discussion literally overnight. Soon thereafter, news outlets sought out legal experts to talk about the Law of Armed Conflict, explain to the public basic principles of the law, how it evolved, and the need for compliance. Public discourse on The Law of Armed Conflict became relevant as people all over the world watched Russian atrocities on the nightly news. Accordingly, a renewed commitment to embracing why these laws matter began emanating through the legal community. Military lawyers dusted off references like *The Commander's Handbook on the Law of Land Warfare* and were called upon by tactical and strategic leaders to educate the uniformed force.⁷ National security scholars provided context to legal issues for daily updates by top news outlets.⁸ The world was now paying attention to the Law of Armed Conflict as Russia's complete disregard for these laws and rules resulted in horrific harm to the people of Ukraine.

II. ANALYZING VIOLATIONS OF THE LAW OF ARMED CONFLICT IN UKRAINE

As the Russian invasion of Ukraine evolved quickly and dynamically, it became evident that the government of Ukraine was

3. See Press Release, Off. of the High Comm'r for Hum. Rts., UN Report Details Summary Executions of Civilians by Russian Troops in Northern Ukraine (Dec. 7, 2022) (available at [https://www.ohchr.org/en/press-releases/2022/12/un-report-details-summary-executions-civilians-russian-troops-north-ern#:~:text=KYIV%20\(7%20December%202022\)%20%E2%80%93,Ukraine%2C%20Matilda%20Bogner%20said%20today](https://www.ohchr.org/en/press-releases/2022/12/un-report-details-summary-executions-civilians-russian-troops-north-ern#:~:text=KYIV%20(7%20December%202022)%20%E2%80%93,Ukraine%2C%20Matilda%20Bogner%20said%20today)).

4. See OFF. OF GEN. COUNS. DEP'T OF DEF., *LAW OF WAR MANUAL* § 1.3.1–2 (2016) (explaining different definitions and terminology surrounding the Law of War, the Law of Armed Conflict, and International Humanitarian Law).

5. See generally INTER-PARLIAMENTARY UNION & INT'L COMM. OF THE RED CROSS, *INTERNATIONAL HUMANITARIAN LAW* (2016) (outlining that International Humanitarian law is a set of rules that seek to limit the effects of armed conflict. It protects people who are no longer participating in hostilities and restricts the means and methods of warfare).

6. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 2, Aug. 12, 1949, 75 UNTS 287.

7. DEP'T OF THE ARMY & DEP'T OF THE MARINE CORPS, *THE COMMANDER'S HANDBOOK ON THE LAW OF LAND WARFARE* (2019).

8. See generally *Russia-Ukraine War*, N.Y. TIMES, <https://www.nytimes.com/news-event/ukraine-russia> (last visited Mar. 23, 2023) (devoting an entire website section strictly to coverage of the Russia-Ukraine War); Claire Parker, *A Growing Movement Against Illegal War*, WASH. POST (Jul. 5, 2002, 12:00 AM), <https://www.washingtonpost.com/world/2022/07/05/russia-ukraine-war-crimes-aggression-international-law/>.

incapable of simultaneously defending its borders while also systematically documenting and categorizing evidence of possible war crimes or debating dilemmas about adherence to the Law of Armed Conflict. Several scholars⁹, institutes¹⁰ and organizations¹¹ mobilized to leverage their intellectual capital in direct assistance to this need. Research centers housed within military educational institutions were uniquely poised to mobilize resources to conduct research and convene a mix of operational warfighters and legal practitioners to help address these unchartered challenges. Whenever an unlawful or unexpected military action by Russia took place, many legal experts quickly united to analyze the applicability to of the law to the harmful or egregious activity at issue.

Take for example, The Stockton Center for International Law at the U.S. Naval War College. The Stockton Center “produces original research and analysis of both international law and military operations to educate and inform military leaders, national decision makers, and international law practitioners and scholars.”¹² The Stockton Center widely shares its research with the express purpose to help shape legal interpretations of actions such as the Russian invasion of Ukraine. In December of 2022, the 4th Annual Stockton Center Law of Armed Conflict Conference hosted “Russia-Ukraine: Full-Spectrum Conflict and International Law.”¹³ The conference focused on emerging dilemmas in international law occurring in Ukraine, brought together international organizations, academia, and government and military experts.¹⁴ Selected research from the event was published in

9. See Vanessa Marquette, *Military Considerations for War in Ukraine*, SYRACUSE UNIV. NEWS (Aug. 23, 2022), <http://news.syr.edu/blog/2022/08/23/military-considerations-for-war-in-ukraine/>.

10. See generally Daniel Franchini, *Ukraine Symposium—Seizure of Russian State Assets: State Immunity and Countermeasures*, LIEBER INST., WEST POINT (Mar. 8, 2023), <https://lieber.westpoint.edu/seizure-russian-state-assets-state-immunity-countermeasures/> (documenting actions on both sides of the conflict and discussing their compliance with the laws of war in a series of articles).

11. See generally *The Ukraine Crisis*, AM. RED CROSS, <https://www.red-cross.org/about-us/our-work/international-services/ukraine-crisis.html> (last visited Mar. 23, 2023).

12. *About the Stockton Center*, STOCKTON CTR. FOR THE STUDY OF INT’L LAW, <https://usnwc.edu/Research-and-Wargaming/Research-Centers/Stockton-Center-for-International-Law> (last visited Mar. 23, 2023).

13. *4th Annual Stockton Center Law of Armed Conflict Conference (Russia-Ukraine)*, STOCKTON CTR. FOR THE STUDY OF INT’L LAW, <https://usnwc.edu/News-and-Events/4th-Annual-Stockton-Center-Law-of-Armed-Conflict-Conference-Russia-Ukraine> (last visited Mar. 23, 2023).

14. See *id.*

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International Law Studies for wide dissemination and use.¹⁵ Other centers and institutes have convened similar conferences that continue to analyze current issues and inform our collective legal analysis of these issues.¹⁶ These efforts have resulted in not only research, but also innovative real-world analysis and solutions to challenges on the ground such as the intersection of the Law of Armed Conflict's rule of surrender with Ukraine's drone-facilitated surrender program.¹⁷

III. LEVERAGING NATIONAL SECURITY EXPERTISE AS ASSISTANCE

Finally, while direct support like monetary aid¹⁸, military equipment¹⁹, and humanitarian assistance²⁰ continues to funnel into

15. See *id.*; “*International Law Studies (ILS)* is a professionally edited and peer-reviewed journal. First published in 1895, it is the oldest international law periodical in the United States. *ILS* provides a forum for international law scholars and practitioners to publish articles that contribute to the development and broader understanding of the relationship between international security and international law. Particular emphasis is placed on maritime security law; the law of the sea, air, and outer space; the law governing the use force; the law of armed conflict; international human rights law in armed conflict; international cyber law and general public international law as it pertains to military strategy, policy and operations. The journal is renowned for publishing articles that impact the practice of States and upon which legal policy makers, government legal advisers, military attorneys and scholars dealing with international security law regularly rely.” *About International Law Studies*, INT’L LAW STUD. U.S. NAVAL WAR COLL., <https://digital-commons.usnwc.edu/ils/about.html> (last visited Mar. 23, 2023).

16. See generally *Workshop on Making and Shaping the Law of Armed Conflict*, THE LIEBER INST. WEST POINT, <https://lieber.westpoint.edu/event/workshop-on-making-and-shaping-the-law-of-armed-conflict/> (last visited Mar. 23, 2023). The workshop focused on the forces, factors, and actors that make and shape the ever-developing law of armed conflict. The workshop examined the roles of governments, militaries, NGOs, and non-state actors in interpreting and applying LOAC/IHL. Further, the workshop looked at the ways and settings in which the various actors interpret and apply LOAC/IHL: academia, training/pedagogical, and “real-world.” The workshop sought to consider the forces and circumstances behind, or in some cases beyond, the factors and actors which all converge to mold and morph LOAC/IHL.

17. See William Casey Biggerstaff & Caitlin Chiaramonte, *Ukraine Symposium—The Legal and Practical Challenges of Surrendering to Drones*, LIEBER INST. WEST POINT (Feb. 8, 2023), <https://lieber.westpoint.edu/legal-practical-challenges-surrender-drones/>.

18. COREY WELT, CONG. RSCH. SERV., IF12040, U.S. SECURITY ASSISTANCE TO UKRAINE (2023). Since the start of the 2022 war, the U.S. has committed more than \$27.1 billion in security assistance to Ukraine.

19. See U.S. DEP’T OF DEF., BIDEN ADMINISTRATION ANNOUNCES ADDITIONAL SECURITY ASSISTANCE FOR UKRAINE (2023). President Biden recently announced additional assistance valued at \$425 million including substantial equipment to provide air defense capabilities, armored infantry vehicles, Javelin anti-tank missiles, artillery ammunition and conventional and long range rockets. *Id.*

20. See Press Release, U.S. Agency of Int’l Dev., The United States Announces Additional Humanitarian Assistance to Ukraine (May 5, 2022) (available at

Ukraine, other less visible forms of assistance through legal channels have proven to be just as helpful.²¹ As with any conflict, the ability to advise and assist military and civilian leadership can be critical in helping shape a country's response to an unanticipated prolonged attack. Legal experts around the world have rallied to support diplomatic work in Ukraine. Programs like the American Bar Association's (ABA) Rule of Law Initiative have put this idea into action.²² The ABA's Ukraine Response Project has mobilized lawyers interested in working directly through networks on the ground in Ukraine to collect evidence of atrocity and war crimes as the invasion unfolds.²³ The U.S. Attorney General has met with the Ukrainian counterpart, the Prosecutor General, to collaborate to hold individuals responsible for war crimes through a War Crimes Accountability Team.²⁴ Law schools similarly rallied experts around this effort. Pennsylvania State University's Dickinson Law hosted several senior Ukrainian prosecutors and provided formal training in law of war crimes and other international crimes.²⁵ Our own Syracuse Law Review hosted a widely attended two-day symposium called "Lessons Learned: Perspectives on Law and Policy from the War in Ukraine" in fall of 2022 garnering experts on International Law, the Law of Armed Conflict, intelligence and sanctions.²⁶ This continued discourse and assistance is critical to

<https://www.usaid.gov/news-information/press-releases/may-5-2022-united-states-announces-additional-humanitarian-assistance-ukraine>).

21. See *As the U.S. Continues Its Support of Ukraine, Here Are Some Considerations*, U.S. GOV'T ACCOUNTABILITY OFF. (Sept. 8, 2022), <https://www.gao.gov/blog/u.s.-continues-its-support-ukraine-here-are-some-considerations>. This assistance is often called "Democracy Assistance" and includes "work aimed at strengthening human rights, independent media and the rule of law."

22. See *Rule of Law Initiative*, AM. BAR. ASS'N, https://www.americanbar.org/advocacy/rule_of_law/ (last visited Mar. 23, 2023).

23. See *Ukraine Response Project*, AM. BAR. ASS'N, https://www.americanbar.org/advocacy/rule_of_law/ukraine-response/ (last visited Mar. 23, 2023).

24. See Press Release, U.S. Dep't of Just., U.S. Attorney General and Ukrainian Prosecutor General Met to Strengthen Joint Efforts to Hold Accountable Perpetrators of War Crimes and Other Atrocities Committed in Ukraine (Sept. 20, 2022), <https://www.justice.gov/opa/pr/us-attorney-general-and-ukrainian-prosecutor-general-met-strengthen-joint-efforts-hold>.

25. See Dermot Groome, *Several Senior Ukrainian Prosecutors Complete International Criminal Law Course at Dickinson Law*, PENN STATE UNIV. (Nov. 2022), <https://dickinsonlaw.psu.edu/several-senior-ukrainian-prosecutors-complete-international-criminal-law-course-dickinson-law>.

26. See *Law Review Symposium, "Lessons Learned: Perspectives on the War in Ukraine"*, SYRACUSE UNIV. COLL. OF LAW (Sept. 13, 2022), <https://lawreview.syr.edu/2022-symposium-lessons-learned-perspectives-on-law-and-policy-from-the-war-in-ukraine/>.

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helping Ukraine navigate these uncharted challenges while reinforcing to all states the importance in upholding the law.

CONCLUSION

The legal community has a moral obligation to continue to leverage all these various opportunities and resources to advance the Rule of Law and prevent the erosion of the Law of Armed Conflict. Law matters, especially now in the wake of a rogue wartime opponent who refuses to adhere to it. As Ukrainian President Volodymyr Zelenskyy articulated in his opening speech to the International Bar Association in 2022, “together we can prove that the law is effective and that the law works, that every war crime will be investigated, and every war criminal will be brought to justice.”²⁷

27. *President Zelenskyy’s Address to International Bar Association*, PRESIDENTIAL OFF. OF UKR. (Oct. 31, 2022, 9:04 PM), <http://www.president.gov.ua/en/videos/krapku-v-cij-vijini-pislya-vijskovih-pislya-politikiv-postavl-3533>.