Abstract

Purpose: The war crimes allegedly committed against the civilian population in Ukraine by Russian military forces has generated multiple detrimental outcomes. Due to these war crimes, Russia was suspended from the United Nations Human Rights Council (UNHRC) as of April 2022. Russia’s alleged war crimes currently are undergoing thorough investigations by the UNHRC’s Commission of Inquiry. The current humanitarian situation in war-devastated Ukraine has been somewhat under researched.

Method: This paper employs the Responsibility to Protect (R2P) theory to examine the present and future of potential application of R2P in Ukraine. Based on resources from the R2P and human rights related research by the US government, the UN and its agencies, scholars, and experts, this article analyzes the failure of Russia to observe the principle of distinction between civilians and combatants as required by the Geneva Conventions, war-affected citizens in Ukraine, as well as potential application of the Responsibility to Protect (R2P) and its implication that the international community has a duty to protect civilians against Russian aggressions.

Results: The paper finds that the potential application of R2P in Ukraine will likely face some operational challenges within the UNSC, the potential application of R2P seems feasible as it is both legitimate and justifiable action in accordance with the international law. The actual application of R2P should however carefully be considered since the nature of use of force often does more harm than good. The potential application of R2P might result in more harm to civilians if additional casualties are generated.

Conclusion: The international community should employ additional countermeasures such as added economic sanctions. Pressure should be brought to bear until Russia decides to refrain from war and negotiate a peace between Russia and Ukraine. The potential application of R2P in Ukraine should therefore be most carefully considered and maybe used as a last resort, to avoid and prevent a potential Third World War in coming months.

Keywords: The Responsibility to Protect (R2P), Humanitarian Law, Human Rights, Ukraine, Russia

1. Introduction

The Ukraine-Russian war, beginning in February 2022, is perhaps the largest European armed conflict since the Second World War. The Russian illegal aggression against Ukraine clearly is a substantial threat to the international peace and security, as well as to democracy. The Russian invasion of Ukraine has been deemed to be unjust, has violated the principle of distinction, undermined human right to life of Ukrainian civilian populations[1]. Indeed, Russian war crimes may have reach to the level of genocide as has been evidenced in the cities of Ukraine[2][3]. The first war crimes trial of Russian invasion was held in Ukraine[4]. Currently, the UNHRC is investigating the alleged crimes[5]. The US President, Joe Biden, stated, Russian President Putin is a “war criminal,” and that he should be subjected to a war crimes trial[6]. Russia has been suspended from the UNHRC for their war crimes and human rights violations in the Ukraine since April 2022[7].
There has been a number of recent studies done on the impact upon global economy of the Russian invasion of Ukraine. However, there has been less research done regarding the human rights, humanitarian situation in the war-devastated regions of Ukraine. This paper analyzes the current human rights situation in Ukraine, as well as the potential application of Responsibility to Protect (R2P) to the war in Ukraine.

2. The Responsibility to Protect (R2P) Theory and Practice

The evolution of the Responsibility to Protect (R2P) doctrine began with the Report of the International Commission on Intervention and State Responsibility (ICISS) of 2001 [8]. It endorsed humanitarian intervention, by explicitly stating that the international community should, “...take timely and decisive collective action for this purpose, through the Security Council, when peaceful means prove inadequate and national authorities are manifestly failing to do it” [9]. Simply put, the declaration on the Responsibility to Protect (R2P) can be interpreted as a collective duty to use force to intervene humanitarily or engage in humanitarian intervention when the targeted state (or human rights norm-violating state) is failing to protect its population [10]. Moreover, at the World Summit in 2005, the United Nations General Assembly adopted Resolution 60/1 in regards to the R2P, which included, “...clear and unambiguous acceptance by all governments of the collective international responsibility to protect population from genocide, war crimes, ethnic cleansing, and crimes against humanity” [11]. The UN Security Council in early 2006, the UNSC then adopted Resolution 1674 [12] which reasserted and reaffirmed paragraphs 138 and 139 from the World Summit Outcome Document of 2005, stated that, “Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity,” and commit to take collective actions through the UNSC, in accordance with the Charter, Charter VII to protect population in armed conflict situations [13]. In 2009, the UN General Assembly adopted Resolution A/63/L80 Rev.1, again embracing R2P , which was supported by 67 member states, including China while only seven member states rejected the resolution [14][15].

The unanimous adoption of these resolutions is largely seen as an international effort to ensure the past failures in taking collective actions to protect civilians from horrific atrocities, particularly, in the cases of Rwanda and Bosnia, would never be repeated in the future [16]. Since then, over the past two decades, the international community particularly by using R2P, has successfully provided protection for the civilian population in Kenya, Sierra Leone, Liberia, Guinea, Cote d’Ivoire, Gambia, Kyrgyzstan, Libya, and partially succeeded in Congo, South Sudan, and Central African Republic [17][18][19][20]. However, there have been serious failures in taking prompt and adequate actions against mass human rights violations in Sudan, Sri Lanka, Yemen, and Myanmar, as well as Syria [17][21].

The case of Syria has been difficult. The relevant UNSC resolution was not passed. It failed to get full supports within the UNSC [52]. Major human rights norm violating countries, such as China and Russia [22], both of whom possess veto power in the Security Council and both of which are themselves major human rights violators voted against it. These facts makes it difficult to reach consensus on R2P in specific cases despite the best efforts of the western powers such as the US, UK, and France to take global responsibility to protect civilians against human rights violations and atrocities.

Although there is much more work to be done, efforts to consolidate R2P is, plainly in progress. In 2015, for instance, the Accountability, Coherence, and Transparency (ACT) group had been proposed the Code of Conduct in regards to the UNSC’s action against genocide, war crimes, and crimes against humanity, was later submitted to the UN Secretary General, and supported by over 100 member states as well. The Code of Conduct explicitly stated that state parties, “pledge in particular not to vote against a credible draft resolution before the Security Council on timely and decisive action to end the commission of genocide, crimes against humanity or war crimes, or to prevent such crimes” [23]. China and Russia, however, were once again absent in supporting this Code of Conduct. Although the
doctrine is not legally binding, the R2P doctrine is powerful one as it has appeared in more than 80 UNSC resolutions, 50 UNHRC resolutions, and 13 UNGA resolutions since its inception[24].

The Russian invasion of Ukraine since early 2022 is posing a substantial threat to the international peace and security. Russia’s invasion of Ukraine as well as its threats to neighboring countries such as Finland and Sweden, which are seeking NATO membership are in clear violation of international law. The primary charge for the initiation of a war is “crimes against the peace,” and is in clear violation of the UN Charter of 1945[25]. Russia has no rights to intervene or harm the sovereignty of other nations for any reason whatsoever.

Russia and Ukraine both agreed and signed to the Budapest Memorandum in 1994. By signing the Budapest Memorandum, Russia; in particular, agreed to “respect the independence and sovereignty and the existing borders of Ukraine,” and to “refrain from the threat or use of force” against Ukraine[26]. Furthermore, Russia has committed genocide, crimes against humanity, and war crimes in many areas of Ukraine, including Bucha. Russia should therefore, face international condemnation as well as appropriate punishments.

Camp et al.(2022) argue that the application of R2P to protect the Ukrainian civilian population from Russian aggression is justifiable and necessary[24]. The application of R2P to the situation in the Ukraine, however, faces operational challenges as reaching the consensus on R2P within the UNSC is highly unlikely due to both Russia and China’s vetos, which was the major challenge in terms of applying R2P to the cases of Myanmar and Syria in the past. The application of R2P in Ukraine will most likely be faced challenges as long as Russia and China has veto powers to oppose them within the UNSC. Consolidating the effectiveness of its R2P doctrine should therefore be continued to minimize the operational challenges. The UNSC member states should discuss the potential application of R2P by other means as the international community has the duty to protect civilian populations at risk.

3. The Human Rights Consequences During the Russian Invasion of Ukraine

Upon the Russian invasion of Ukraine in early 2022, the International Court of Justice, in a provisional measure on Ukraine V. Russia case, requires Russia to suspend military actions against Ukraine immediately[27]. Despite this important ruling by the ICJ, Russia’s military actions against Ukraine continue, resulting in vast casualties, and loss of lives for both sides.

What is more problematic is that Russian military forces have allegedly targeted civilian population in Ukraine, particularly in Bucha, Irpin, and Mariupol. Plainly, if the allegations prove to be true, the intentional targeting of civilians constitutes a war crime. An OHCHR report indicated that, as the <figure 1> below indicates, from February to May 2022, more than 4,100 civilians had been killed, and up to 4,900 injured, both of which consisted of men, women, and children[28]. Furthermore, over 8 million civilians had been displaced; over 6.5 million people had fled to neighboring nations. The refugee flow is currently on the rise. More than 40 percent of the total population in the conflict-affected areas such as Luhanska, Chernihivska, Khersonska, and Donetska etc. as well as the displaced populations are subject to food insecurity, are unable to access basic health and other essential services[29]. The UN Deputy Emergency Relief Coordinator, Joyce Msuya said in a recent UNSC meeting on the current situation in Ukraine that, “…this war continues on its destructive path. The intense fighting is causing immense human suffering. Civilians- particularly women and children-are paying the heaviest price”[30].
In a city of Mariupol, for instance, there have been over 600 people evacuated from Azovstal steel plant since Russian military forces took over the place. Whether there are additional civilians still there is largely unknown. Those people, if any, who were left behind are suspected to be in dire straits with no basic necessities such as electricity, water, and food\[^{31}][^{32}\]. The remaining civilian populations in Kharkiv, and up to 10,000 civilians in Izum are also facing grim circumstances as 80 percent of both cities have been destroyed by Russian military forces\[^{33}][^{34}\]. There have been more than 280,000 vulnerable civilians under Russian’s forcible occupation of Kherson since March 2022\[^{34}][^{35}\]. About 70,000 civilians still remaining in the city of Melitopol are also at risk where Russian military forces have reportedly intercepted food and medicine in the region\[^{36}\].

Allegedly, the gravest instances of genocide, and other war crimes have been evidenced in the cities such as Kyiv, Chernihiv, and the Sumy Oblasts, including Bucha, Irpin, and Mariupol. In many villages in these regions, Ukrainian authorities continue to find countless civilian bodies; both buried and not burned\[^{37}\]. In addition, there has been a significant damage to critical infrastructure such as transportation, health facilities and residential infrastructures. As a result, the human right to life of the most vulnerable, and conflict-affected civilian population in Ukraine have been undermined.

It has been alleged by various media services, NGO’s and agencies of the UN that Russian military forces have been intentionally targeted Ukrainian infrastructures. As <Figure 2> below indicates, up to 180 medical facilities, 230 educational facilities were damaged by Russian military forces from February to May 2022\[^{28}\]. During this period, 34 places of worship were destroyed, and 40 damaged by Russian military forces as well, which indicated in the <Figure 3> below\[^{28}\]. Furthermore, as of the mid-August, the WHO’s data indicates that approximately 662 health related facilities have been attacked, resulting 195 civilian deaths and 285 civilian casualties in Ukraine so far\[^{38}\].
The UN and its related agencies, along with neighboring nations have undertaken to provide humanitarian assistance to those conflict-affected civilian populations in Ukraine. UNICEF, for instance, has assisted 2,080,362 people in urgent need, to get access to basic health services, 2,134,335 people to get clean water, 612,744 children to get mental health supports[39]. Humanitarian efforts, however, have been significantly challenged by the continuation of Russian aggression and the destruction of critical facilities. The humanitarian response capacity for conflict-affected civilian populations in urgent need within the Ukraine has thus been degraded[29]. Under these circumstances, there is greater danger of potential outbreaks of various infectious diseases, including the COVID-19, which may put additional members of the civilian population at risk[40]. Indeed, the outbreak of COVID-19 pandemic has been the existential threats to human rights and security for citizens in many parts of the world[41][42][43][44][45][53].
Whether Russian forces have committed genocide, other crimes against humanity and war crimes are currently are under investigation by the UNHRC. The UN General Assembly adopted the UNHRC’s draft resolution on “Situation of Human Rights in Ukraine Stemming from the Russian Aggression” in March 2022[46]. The resolution strongly urges Russia to “…immediately end its human rights violations and abuses and violations of international humanitarian law in Ukraine, calls for the strict observance of all human rights and fundamental freedoms, and for the protection of civilians and critical civilian infrastructure in Ukraine,” as well as “swift and verifiable withdrawal of Russian Federation troops and Russian-backed armed groups from the entire territory of Ukraine”[46]. More importantly, the resolution established an independent international commission of inquiry for the prompt investigation of all cases of human rights abuses and violations of humanitarian law by Russia [46]. Moreover, as of April 2022, the UNHRC suspended Russia from that human rights body for alleged war crimes in Ukraine[47][51]. Ninety three member states voted in favor of the suspension[47]. The suspension of Russia was remarkable in so far as it was only second time in the UNHRC’s history that a state member was suspended. The first suspension was of Libya in 2011[47][54][55]. The US Secretary of State, Anthony Blinken, had strongly condemned Russia’s war crimes in Ukraine. He stated, “By suspending Russia from the UN Human Rights Council, countries around the world chose to hold Moscow to account today for gross and systematic violations of human rights in its premeditated, unprovoked, and unjustified war of choice against Ukraine”[48].

4. Conclusions and Some Implications

Russia Has allegedly failed to abide by both the international humanitarian law, and international human rights law. Russia has been undermined Ukraine’s sovereign decision-makings[61], and refused to recognize Ukraine as an independent state[62]. Russia’s ambitious plan to invade Ukraine is also reportedly failing as they are facing strong resistance from the Ukrainians with the support of the international community. The current Russian aggression against Ukraine is in other words, an outcome of failure of deterrence strategy of the west[56][57][58][59][60].

As previously stated, although the potential application of R2P in Ukraine will likely face some operational challenges within the UNSC, the potential application of R2P seems feasible as it is both legitimate and justifiable action in accordance with the international law. The actual application of R2P should however carefully be considered since the nature of use of force- often does more harm than good. The Ukrainian people, and not the advancement of the Western geopolitical interests, should be the primary concern. The Ukrainian civilian population has suffered extensively at the hands of Russian armed forces. The potential application of R2P might result in more harm to civilians if additional casualties are generated. Realistically speaking, the best possible option for the international community would be to maintain military aid to Ukrainian military forces so that they can continue to defend themselves from Russian authoritarianism. The US have perhaps been the most active provider of various security assistance programs to Ukraine since 2014[49][63][64]. The Biden administration has announced multiple rounds of military aid to Ukraine since early 2022. During only the month of June 2022, the military aid package to Ukraine exceeded up to 1,000 million dollars[50]. The latest military aid package to Ukraine comprised 550 million dollars[49]. Other European nations have also actively provided military aid.

At the same time, the international community should employ additional countermeasures such as added economic sanctions. Pressure should be brought to bear until Russia decides to refrain from war and negotiate a peace between Russia and Ukraine. The most stringent sanctions should be imposed against Russia as retaliation for Moscow’s hostile behaviors. The potential application of R2P in Ukraine should therefore be most carefully considered and maybe used as a last resort, to avoid and prevent a potential Third World War in coming months.
5. References

5.1. Journal articles


### 5.2. Additional references


6. Appendix

6.1. Author’s contribution

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