End the War, Stop the War Crimes

We are appalled and saddened by the suffering and devastation caused by Russia’s illegal invasion of Ukraine. News of atrocities committed by Russian forces adds to the outrage and sorrow. It is imperative, above all, to end the war. So long as the war continues, both sides must comply with international law governing the conduct of hostilities and refrain from such acts as the willful killing of civilians or injuring prisoners of war, which constitute war crimes and human rights abuses. Also in accordance with that law, they must refrain from use, and threat of use, of nuclear, chemical, and biological arms. Those imperatives apply to all wars, including those that persist in Yemen, Ethiopia, Syria, and elsewhere.

Summary

- Russia’s invasion is an aggressive war in violation of the United Nations Charter, as recognized by the UN General Assembly and the International Court of Justice. Russia is therefore obligated to cease military operations and withdraw its forces from Ukraine.

- In any settlement, Ukraine’s sovereignty and territorial integrity should be preserved in accordance with the UN Charter.

- The US role in ending the war can be crucial. The United States should do all within its power to help bring the war to a close rapidly in order to limit suffering; to eliminate risks that the conflict will widen and escalate, possibly to nuclear war; and to limit the negative global economic and food security repercussions.

- Based on credible reports, Russian forces have carried out brutal direct attacks on civilians and also on civilian objects such as apartment buildings, schools, hospitals, and train stations, as well as made indiscriminate and disproportionate attacks using explosives with wide-ranging effects in urban areas. Such actions violate international

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1 This is the second LCNP statement on this subject. The first, Russia’s Invasion of Ukraine: An Illegal War of Aggression, was released on 25 February, the day after the invasion.
humanitarian law (IHL) governing the conduct of warfare. It is imperative that Russian and Ukrainian forces comply with IHL, above all to limit suffering and devastation, and also, importantly, to make possible a sustainable peace.

- A “limited” use of one or more nuclear weapons would violate IHL and constitute a war crime. It need hardly be said that a large-scale exchange of nuclear weapons, with explosions potentially in Europe, the United States, and Russia, would be a catastrophe beyond history whose sheer madness, immorality, and illegality would be manifest.

- President Putin has raised the possibility of Russian resort to nuclear weapons should the United States and NATO states intervene militarily in the war in Ukraine. Threats of this kind are illegal because they promise the commission of an illegal act—here, the use of nuclear weapons—should certain conditions be met.

- The US government has warned that Russia may resort to chemical weapons. The legal situation is unambiguous: As a party to the 1993 Chemical Weapons Convention, Russia must “never under any circumstances” use such weapons.

- As required by international law, all states must refrain from both use and threat of use of nuclear, chemical, or biological weapons. Further threats or steps in the direction of using illegal weapons are an affront to humanity, risk widening and escalating the war, and severely jeopardize any prospects for ending the war soon.

Analysis

I. End the War

Russia’s invasion is an aggressive war in violation of the United Nations Charter, as recognized by the UN General Assembly⁴ and the International Court of Justice.⁵ Russia is therefore obligated to cease military operations, as the Assembly and Court demanded, and withdraw its forces from Ukraine, as the Assembly demanded. Russia has refused to acknowledge that obligation and continues to wage war, with one apparent aim being the annexation or control of parts of eastern and southern Ukraine. Consequently, as a matter of necessity, Ukraine, in consultation with the United States and other states, is pursuing negotiations with Russia on terms under which the war can be ended. Both parties should agree to and abide by an immediate cease-fire to enable negotiation of a settlement.

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⁴ A/ES-11/L.1, adopted 2 March 2022. The General Assembly adopted the resolution under a “Uniting for Peace” procedure based on a referral from the Security Council. The referral, not subject to a veto, was made in the wake of a Russian veto of a draft Security Council resolution on 25 February 2022 condemning the Russian invasion of Ukraine as aggression in violation of the UN Charter.

⁵ Order, 16 March 2022.
Turkey has hosted negotiations between Russia and Ukraine. Leaders of other states have made several publicly known efforts to facilitate ending the war, too. Difficulties and obstructions in these various processes must not stop the resort to peaceful means for ending the war. The UN Secretary-General has offered his good offices and might be able to play a prominent role as go-between. Moreover, mediation, conciliation, arbitration, and other methods set out in Chapter VI of the UN Charter can further assist the parties to the conflict, particularly with regard to recurring roadblocks in the negotiations.

In any settlement, Ukraine's sovereignty and territorial integrity should be preserved in accordance with the UN Charter. Respect for the independence, sovereignty, and existing borders (then including Crimea) of Ukraine had also been promised by the 1994 Budapest Memorandum. In that document, Russia, the United States, and the United Kingdom extended security assurances to Ukraine in connection with its relinquishment of Soviet-era nuclear weapons and accession to the Nuclear Non-Proliferation Treaty. Russia annexed Crimea in 2014. Preserving territorial integrity would imply, at a minimum, maintenance of Ukraine’s boundaries prior to the 2022 invasion. Negotiations should aim to end the war immediately and to urgently resolve the overarching disputes concerning the governance of the Donbas region and the status of Crimea. A long-term consultative and negotiating mechanism could be put in place to resolve time-intensive or recurring issues and to help maintain peace and human security.

Ukraine appears ready to forswear any possibility of joining NATO, so long as some form of guaranteed neutrality can be established, but seeks to join the European Union. A demilitarized zone on both sides of the border between Ukraine and Russia may decrease the potential for conflict.

The US role in ending the war can be crucial. The United States should do all within its power to help bring the war to a close rapidly in order to limit suffering; to eliminate risks that the conflict will widen and escalate, possibly to nuclear war; and to limit the negative global economic and food security repercussions. This implies that the United States and other states must be ready to lift war-related sanctions in connection with a settlement. It also implies that they must be prepared to accept and support some form of neutrality for Ukraine should Ukraine choose that. A reordering of European-Russian security arrangements may be necessary as well.

A broader reason for determined efforts to end the war is the need to work toward restoring a relationship with Russia enabling cooperation on nuclear arms control and disarmament, climate protection, public health, and other vital matters of global concern. US energy in helping bring the war to a close is also appropriate in view of the political responsibility of the United States, together with NATO, since the late 1990s in helping to create the conditions for a crisis by taking

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such actions as precipitously withdrawing from the Anti-Ballistic Missile Treaty in 2003, subsequently establishing missile defense facilities in Romania and Poland, and opening the door to Ukraine’s membership in NATO in 2008.

II. Comply with International Humanitarian Law

Conventional Military Operations

Based on credible reports,\(^5\) Russian forces have carried out brutal direct attacks on civilians and also on civilian objects such as apartment buildings, schools, hospitals, and train stations, and have additionally made indiscriminate and disproportionate attacks using explosives with wide-ranging effects in urban areas. Such actions violate international humanitarian law (IHL) governing the conduct of warfare. Violations of IHL by Ukrainian forces, if on a less widespread scale, have been reported as well, notably against prisoners of war and supporters of Russia. Russia and Ukraine must end and prevent violations of IHL and have in particular the responsibility to investigate and prosecute war crimes committed by their armed forces, including those committed by civilian and military leaders or accomplices. It is imperative that Russian and Ukrainian forces comply with IHL, above all to limit suffering and devastation, and also, importantly, to make possible a sustainable peace.

In its resolution adopted on March 24,\(^6\) the General Assembly demanded that Russian and Ukrainian forces comply with IHL, “in particular the principles of distinction and proportionality and the obligation to take all feasible precautions to avoid and in any event minimize harm to civilians and damage to civilian objects.” Under the principle of distinction, deliberate attacks on civilians and civilian objects, as well as indiscriminate attacks, are prohibited. Under the principle of proportionality, it is prohibited to launch attacks when the anticipated damage and injury to civilians and civilian objects, and to the environment, is excessive in relation to the anticipated military advantage. Among other points, the Assembly affirmed that “sieges, the purpose of which is to starve the civilian populations, are a violation of [IHL].”

The Office of the Prosecutor of the International Criminal Court (ICC) is conducting investigations in preparation for possible trials, as is the Office of the Prosecutor General of Ukraine. Russia has similarly conveyed that it is undertaking investigations. Investigations are also proceeding under the auspices of international and regional organizations and have begun as

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\(^5\) See materials collected at Ukraine War and Disarmament Resources, including Written Testimony by Bonnie Docherty, Senior Researcher, Arms Division, Human Rights Watch, House Foreign Affairs Committee Subcommittee on Europe, Energy, the Environment and Cyber, posted 16 March 2022.

\(^6\) Humanitarian consequences of the aggression against Ukraine, A/ES-11/L.2
well in third states whose courts may be able to pursue criminal prosecutions under the principle of universal jurisdiction over crimes of concern to the international community as a whole.

In an ad-hoc declaration made in 2015 under article 12(3) of the Rome Statute of the International Criminal Court, Ukraine has accepted the ICC’s complementary jurisdiction over acts committed on its territory since 20 February 2014, and annexed a resolution of its parliament that focused especially on war crimes and crimes against humanity by senior officials of Russia and leaders of terrorist forces. The International Criminal Court is able to exercise its jurisdiction only when states, which have primary criminal jurisdiction, are unable or unwilling to proceed. In accordance with Part 9 of the Rome Statute, Ukraine has committed itself to cooperation with the ICC. This does not preclude national prosecutions, such as under an arrangement to divide responsibility with the ICC.

LCNP emphasizes that the rights of the defense and the human rights of accused persons and victims must be fully respected in all criminal law proceedings, no matter where they are held.

Nuclear Weapons

Nuclear weapons cannot be used in compliance with the fundamental international humanitarian law principles of distinction, proportionality, and precaution. The basic incompatibility of use of nuclear arms with the principle of distinction is a central point of the 1996 Advisory Opinion of the International Court of Justice. Incompatibility with all three principles was affirmed by the Red Cross/Red Crescent in a 2011 resolution, which “finds it difficult to envisage how any use of nuclear weapons could be compatible” with IHL, and is reflected in the 2017 Treaty on the Prohibition of Nuclear Weapons.

Other rules of IHL of particular relevance to nuclear weapons are those specifically regulating damage to the environment and reprisals. Protocol I to the Geneva Conventions, Art. 55, prohibits the use of methods or means of warfare which are intended to or may be expected to cause widespread, long-term, and severe damage to the natural environment. Russia is a party to Protocol I. A response to an illegal attack may be justified as a “reprisal” aimed at deterring

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7 The declaration of September 8, 2015 was preceded by a more time-limited declaration made on April 9, 2014.

8 For example, national processes may not be possible due to the personal immunity of alleged perpetrators while in high office.


10 Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 95 (July 8).

11 Council of Delegates of the International Red Cross and Red Crescent Movement, Resolution 1, 26 November 2011, Geneva.

further such attacks. It is one claimed basis for the doctrine of retaliatory nuclear deterrence. However, any reprisal must meet basic requirements of necessity and proportionality. Further, under Protocol I, Arts. 51 and 52, a reprisal must not be directed against civilian populations and objects. The prohibition of such reprisals is now generally recognized as customary international law binding all states, not only Russia and other parties to Protocol I but also the United States and other non-parties.\(^{13}\)

Considering all of the above rules, and taking into account as well the role in international law of “elementary considerations of humanity”\(^{14}\) and the “dictates of the public conscience,”\(^{15}\) a “limited” use of one or more nuclear weapons would violate IHL and constitute a war crime. It need hardly be said that a large-scale exchange of nuclear weapons, with explosions potentially in Europe, the United States, and Russia, would be a catastrophe beyond history whose sheer madness, immorality, and illegality would be manifest.

Nonetheless, President Putin has raised the possibility of Russian resort to nuclear weapons should the United States and NATO states intervene militarily in the war in Ukraine. On the day of the invasion, February 24, Putin said: “[F]or those who may be tempted to interfere in these developments from the outside, … they must know that Russia will respond immediately, and the consequences will be such as you have never seen in your entire history.”\(^{16}\) This is a legally cognizable threat, both credible and specific in form.\(^{17}\) It expresses a readiness to resort to force should addressee states “interfere” in Russian military operations in Ukraine. Moreover, especially when combined with invocations at other times of Russia’s nuclear weapons capabilities, “consequences … such as you have never seen” is meant to be understood as a reference to use of nuclear weapons.

Specific and credible threats like Putin’s statement are clearly illegal because they signal the intent to commit an illegal act—here the use of nuclear weapons—should certain conditions be met. In its Advisory Opinion, the International Court of Justice observed: “If

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\(^{14}\) Legality of the Threat or Use of Nuclear Weapons, supra, ¶ 79.

\(^{15}\) Part of the Martens Clause, most recently codified in Protocol I to the Geneva Conventions, Art. 1(2). See Legality of the Threat or Use of Nuclear Weapons, supra, ¶ 78.


\(^{17}\) On the legal concept of threat, see Ariana Smith, Post-1996 Scholarly Interpretations of the Legal Status of Threat of Force (December 2018).
an envisaged use of weapons would not meet the requirements of humanitarian law, a threat to engage in such use would also be contrary to that law.”

In the context of the invasion of Ukraine, Putin’s threat is illegal in a second way. It is an element of the unlawful invasion, the use of force against the territorial integrity and independence of a state in violation of Article 2(4) of the UN Charter. The threat seeks to shield unlawful Russian conventional military operations by deterring US and NATO states from a direct military intervention to assist in Ukraine’s lawful self-defense pursuant to Article 51 of the Charter. Such an intervention would be lawful if requested by Ukraine.

Subsequent explanations of Russia’s position regarding nuclear weapons by other Russian officials have been less specific to the Ukraine context than Putin’s remarks. In a March 26 interview, Dmitry Medvedev, Deputy Chairman of the Russian Security Council and former President, said that Russia is entitled to use nuclear weapons when attacked by nuclear weapons; when critical infrastructure for nuclear weapons is attacked; and “when an act of aggression is committed against Russia and its allies, which jeopardized the existence of the country itself, even without the use of nuclear weapons, that is, with the use of conventional weapons.” This explanation does not indicate that Russia would use nuclear weapons in Ukraine to avert a military loss, or that it would do so in response to a US/NATO military intervention restricted to defending Ukraine or humanitarian corridors. However, especially in view of how Putin has referred to possible resort to nuclear arms, as well as Putin’s view that Ukraine really is part of Russia, the explanation is hardly reassuring. Moreover, Medvedev’s remarks underline once again the incredible perils to the world posed by massive Russian as well as US reliance on nuclear arms, including the option of first use.

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18. *Legality of the Threat or Use of Nuclear Weapons, supra,* ¶ 78. At ¶ 67, the Court stated that “it does not intend to pronounce here upon the practice known as the ‘policy of deterrence’.” Our view concerning both specific threats and ongoing, general reliance on nuclear weapons is set out in the 2011 [Vancouver Declaration](#): “Threat as well as use of nuclear weapons is barred by law. As the ICJ made clear, it is unlawful to threaten an attack if the attack itself would be unlawful. This rule renders unlawful two types of threat: specific signals of intent to use nuclear weapons if demands, whether lawful or not, are not met; and general policies (‘deterrence’) declaring a readiness to resort to nuclear weapons when vital interests are at stake. The two types come together in standing doctrines and capabilities of nuclear attack, preemptive or responsive, in rapid reaction to an imminent or actual nuclear attack.”


20. The general Russian position regarding nuclear weapons, in particular its refusal to rule out their first use when the existence of Russia is at stake, is similar to the US position. Since the 1950s, the United States has refused to rule out the first use of nuclear weapons when vital interests are at stake. Reportedly, the Biden administration in its completed but not publicly released Nuclear Posture Review returns to a version of the doctrine as stated by the Obama administration, that the “fundamental purpose” of the US nuclear arsenal is to deter the use of nuclear weapons by other states. This, however, does not categorically exclude use of nuclear weapons in response to a non-nuclear attack.
Chemical and Biological Weapons

The US government has warned that Russia may resort to chemical weapons. The legal situation is unambiguous: As a party to the 1993 Chemical Weapons Convention, Russia must “never under any circumstances” use such weapons. Almost all states, including the United States and Ukraine, are parties to the Convention and are therefore prohibited from using chemical weapons in response to a chemical attack.

Clarifying remarks of President Biden, National Security Advisor Jake Sullivan has stated that the United States would “respond accordingly” to any chemical attack and would not use chemical weapons. An April 7 statement of the G7 foreign ministers declared that any Russian threat or use of chemical, biological, or nuclear weapons would “result in severe consequences.” A fundamental concern here is that while the United States and NATO have so far scrupulously refrained from becoming directly engaged in military action against Russia, these statements do not rule out such engagement in response to a chemical attack.

The 1972 Biological Weapons Convention is a short agreement that predates the Chemical Weapons Convention by two decades. It prohibits possession of biological weapons but does not specifically address their use. Nonetheless, like the Chemical Weapons Convention, the Biological Weapons Convention is understood, in combination with the 1925 Geneva Gas Protocol, to prohibit the use of biological weapons in any circumstance.

As required by international law, all states must refrain from both use and threats of use of nuclear, chemical, or biological weapons. Further threats or steps in the direction of using illegal weapons are an affront to humanity, risk widening and escalating the war, and severely jeopardize any prospects for ending the war soon.

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22 G7 Foreign Ministers’ Statement on Russia’s War of Aggression Against Ukraine, 7 April 2022.