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The War in Ukraine from a Human Security Perspective

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Abstract: This contribution enquires into the relevance of the human security perspective in the analysis of the humanitarian situation created by the Russian war of aggression against Ukraine. For this purpose, it will first characterize the war in Ukraine from an international legal perspective, and then introduce the main elements of the human security approach in order to apply it in a third step to the war in Ukraine. In this context the relevance of fact-finding on violations of International Humanitarian Law and human rights will be highlighted. The focus on vulnerabilities and a victim-oriented approach allows to better identify the threats to the security of people, in particular of vulnerable groups. The use of multilateral tools and the empowerment of civil society can help to provide assistance against the suffering and prepare for accountability for war crimes and human rights violations.

Keywords: human security, Ukraine, Russia, human rights, International Humanitarian Law, vulnerability, Moscow Mechanism, OSCE

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Introduction

On 24 February 2022 Russia started a war of aggression against Ukraine, which gained independence from Russia in 1991. Among the reasons given for the attack on Ukraine president Putin denied that Ukraine is a nation and therefore also its right to existence. In this context it is important to note some historical facts: because of the nuclear arms stationed in 1991 on Ukrainian territory it was the third largest nuclear power globally but decided to renounce to nuclear weapons which were consequently returned to the Russian Federation to be disabled. In return the Budapest Memorandum on security assurances in connection with Ukraine's accession to the treaty on non-proliferation of nuclear weapons signed in 1994 by Russia, the United States, the United Kingdom and Ukraine with reference to the Charter of Helsinki of 1975 guaranteed the independence, sovereignty and territorial integrity of Ukraine as well as the non-use of nuclear weapons against Ukraine except in the case of self-defense. This was reconfirmed in a treaty of friendship in 1997.² However, as generally known all three commitments were broken since the annexation of Crimea by Russia and its involvement in the war in Donbas in 2014 (Arel and Driscoll 2023) and in particular since the Russian invasion of 2022.

While the Russian annexation of Crimea in 2014 and its support to rebel movements in the Donbas since that time leading to an undeclared war, till 2021 already had taken the lives of more then 13.000 people among them more than 3000 civilians, the Russian invasion of Ukraine from February till January 2023 is estimated to have taken the lives or wounded more than 100.000 Ukrainian soldiers. For the first eleven months the United Nations Human Rights Monitoring Mission in Ukraine reported more than 18.000 civilian casualties, of them more than 7.000 killed.³ A recent US report estimated that around 200.000 Russian soldiers have been killed or wounded and the casualties on the Ukrainian side were also more than 100.000.⁴ About 15 Mio persons were displaced, of those some 5 Mio in the European Union. Whole cities like Hostomel, Mariupol or Bakhmut were largely destroyed.

 $^{^1\,}$ See the Memorandum at: https://treaties.un.org/doc/Publication/UNTS/Volume%203007/Part/volume-3007-I-52241.pdf

² See Treaty of Friendship, Cooperation and Partnership between Ukraine and the Russian Federation, at: https://treaties.un.org/Pages/showDetails.aspx?objid=08000002803e6fae&clang=_en

³ United Nations Human Rights Monitoring Mission in Ukraine, at: https://ukraine.un.org/sites/default/files/2023-01/Ukraine%20-%20civilian%20casualty%20update%20as%20of%2029%20January%202023%20ENG.pdf

⁴ See New York Times of February 2, 2022, at: https://www.nytimes.com/2023/02/02/us/politics/ukraine-russia-casualties.html

Russia has conducted an air campaign against mostly civilian infrastructure all over Ukraine, which already till October 2022 destroyed or damaged some 40 % of Ukraine's electricity, heating and water installations (Popik 2023), while the attacks were continued throughout the winter. These figures already give an impression of the human suffering caused by this war.

This contribution will investigate whether the human security perspective can assist to better understand the threats to human persons, in particular those characterized by vulnerabilities. The main hypothesis is that the human security approach which has lost attention on the international level in recent years does indeed provide a better understanding of how people are affected by the war in Ukraine and how the need of ensuring their human dignity and empowering them can get better attention. As the human security perspective so far is largely absent from most scientific analyses of this war this contribution tries to close a gap. For this purpose, it will first characterize the war in Ukraine from an international legal perspective, and then introduce the main elements of the human security approach in order to apply it in a third step to the war in Ukraine. Finally, some tentative conclusions will be drawn.

1. Characterization of the War in Ukraine

As documented by several fact-finding missions in the context of OSCE and the United Nations, among them the one under my chairmanship in March 2022, 5 the Russian invasion resulted in numerous war crimes like the crime of aggression itself, systematic violations of International Humanitarian Law (IHL), crimes against humanity and genocidal acts like the deportation of parts of the population, among them many children, partly to remote areas of Russia. The main principles of IHL, namely the principles of distinction allowing only to attack military targets, the principle of proportionality requesting not to use unnecessary force or inadequate weapons to meet the military targets and the principle of precaution in order to avoid incidental loss of civilian life, injury of civilians and damage to civilian objects have been ignored. As a consequence, the loss of civilian lives and destruction of civilian objects go far beyond the military purposes and – in certain cases like

⁵ The first international report was produced by a panel of experts in the framework of the Moscow Mechanism of OSCE and presented to the OSCE Permanent Council on 5 April 2022, see OSCE, Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity in Ukraine since 24 February 2022, by Professors Wolfgang Benedek, Veronika Bílková and Marco Sassòli of 13 April 2022, at: https://www.osce.org/files/f/documents/f/a/515868.pdf

the attacks on civilian infrastructure, hospitals and schools or universities - have even become targets as well.

For example, the prohibition of the use of anti-personnel landmines by the Ottawa Convention of 1997⁶, of which only Ukraine is a party or of cluster ammunitions by a convention of 2008⁷ to which, both, Russia and Ukraine are not parties, the use of unprecise or incendiary weapons or of vacuum bombs in violation of the above-mentioned principles have created unnecessary suffering among the military and civilians.

As shown already by the first international fact-finding report under the Moscow Mechanism of OSCE presented to its Permanent Council in April 2022, to be confirmed by the second report of June 2022⁸ and the first preliminary report by the United Nations International Independent Commission of Inquiry on Ukraine of October 2022⁹ practically all rules of International Humanitarian Law have been ignored or violated by the Russian aggression, while there have also been a few violations from the Ukrainian side. In particular, there have been attacks on specially protected institutions, extrajudicial killings, torture and rape, mistreatment of prisoners of war and detainees, lack of respect for the dead, violations of the obligations of an occupying power, for example by the large-scale deportation of people, among them many women and children.¹⁰ The bombing of the Mariupol maternity hospital and theatre exemplify the manyfold direct attacks on civilians.¹¹

The violations of IHL are further aggravated by the violations of basic human rights, in particular in the occupied areas, which affected all basic civil and political human rights like life, liberty and security, fair trial, freedom of expression or assembly, but also the economic, social and cultural human rights like education, health, food and water. Vulnerable persons like

⁶ United Nations (1997), Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, see at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-5&chapter=26&clang=_en

⁷ United Nations (2008), International Convention prohibiting Cluster Ammunitions,

⁸ The second follow-up report with largely the same mandate by another group of experts was presented in June 2022, see OSCE, Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity committed in Ukraine (1 April – 25 June 2022), by Professors Veronika Bílková, Laura Guercio and Vasilka Sancin of 14 July 2022, at: https://www.osce.org/files/f/documents/3/e/522616.pdf

⁹ United Nations Independent International Commission of Inquiry on Ukraine, Report to General Assembly of 22 October 2022, General Assembly, Doc. A/77/533, at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/637/72/PDF/N2263772.pdf?OpenElement ¹⁰ See also Human Rights Watch, We Had No Choice, "Filtration" and the Crime of Forcibly Transferring Ukrainian Civilians to Russia, Report of 1 September 2022, at: https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians

¹¹ OSCE (note 5), 46-47.

the elderly, women, children or persons with disabilities were particularly affected as were LGBTI+ persons or members of minorities. Ukrainian mayors, journalists or civil society leaders in occupied areas were subject to special persecution.

Summarizing, already the first report found a consistent pattern of violations of IHL and human rights to be confirmed and complemented by the subsequent reports.

2. Elements of a Human Security Perspective

The human security perspective focuses on the security of the human person. Instead of state security and national security, people matter, which, however, does not have to be a contradiction in a democratic state. International relations and international law are to adopt a human-centered approach (Benedek 2014). The basic pillars are freedom from fear and freedom from want together with the dignity and empowerment of the human person, in particular vulnerable groups which are in the center of attention (Oberleitner 2022, Introduction and Oberleitner 2014). Threats to human security can be manifold: UNDP in 1994 distinguished seven main categories, UNESCO later many more (Benedek 2008). The report of the Independent Commission on Human Security of 2003 initiated by Japan entitled Human Security Now, Protecting and Empowering People (Commission on Human Security 2003) focused on violent conflicts and other threats like forced migration, poverty or health. Japan is still the main promoter of the concept of human security leading a group of friends of human security in the United Nations and supporting the United Nations Trust Fund for Human Security from which projects in the fields of violent conflicts, natural disasters and sustainable development are supported. In 2012 the United Nations General Assembly adopted a "common understanding" of human security which is to focus on wide-spread and cross-cutting threats to the survival of peoples, their livelihood and dignity. Addressing related vulnerabilities, the understanding emphasizes that the interlinkages between peace, development and human rights need to be taken into account. The principles of the UN Charter like respect for state sovereignty, territorial integrity and non-interference are to be respected.12

Generally, the human security approach intends to strengthen multilateral solutions through the United Nations and other international organizations, based on a multi-stakeholder approach partnering with civil society in

 $^{^{12}}$ United Nations, UN Doc. A/RES/66/290(2012) of 10 September 2012 on "Follow-up to paragraph 143 on human security of the World Summit Outcome".

particular, which should be empowered. By identifying and addressing root causes of security threats the prevention of conflicts should be promoted. Human security and human rights are closely intertwined (Benedek 2022) although different approaches as Gerd Oberleitner tried to show in his seminal article entitled "porcupines in love" (Oberleitner 2005). The concept of human security stands for a holistic, problem-oriented approach, which crosses disciplinary lines.

With regard to the application of the human security perspective on people caught in violent conflict as the human security report calls it, reference needs to be made to the UN Charter which outlawed war as a means to solve conflicts and established a system of collective security instead, which, unfortunately has its limitations. In order to protect people in violent conflicts the importance of International Humanitarian Law and Human Rights are emphasized without excluding the use of military force (Bradley 2022). The use of weapons which cause unnecessary suffering or victims are to be banned. For example, the Convention Banning Anti-Personnel Landmines of 1997 was a landmark of the human security approach driven by a broad multi-stakeholder coalition.

Particular attention has to be devoted to vulnerable groups as women and children. For people displaced by violent conflict, safe havens are to be made available. For the perpetrators of violations international accountability is to be provided. The International Criminal Court created in 2002 is a crucial institution in this respect.

3. Applying a Human Security Perspective to the War in Ukraine

By invading its neighbor, the Russian Federation committed a breach of the major principles and obligations of the United Nations, OSCE and international law in general. To the crime of aggression come massive violations of IHL and human rights, some of which constitute crimes against humanity defined as a "wide-spread and systematic attack directed against a civilian population". Consequently, not only the state security of Ukraine is at stake, but also human security, which in this extreme case largely coincides with national security. However, the human security perspective allows to put the spotlight on the threats towards civilians, in particular vulnerable groups. The laws of war, in particular the Fourth Geneva Convention of 1949, to which Russia and Ukraine are parties were made to

¹³ See the Statute of the International Criminal Court, Article 7.

limit the suffering and to protect civilians, in particular the weakest parts of society. The organization to oversee these conventions is the International Committee for the Red Cross. However, its work normally avoids publicity in order to get access to the people affected like Prisoners of War. Therefore, the ICRC is not reporting on the violations of IHL although it might have the best insights. As war times are usually characterized by contradicting information and propaganda, professional independent fact-finding is most important.

In the case of the war in Ukraine, several fact-finding missions were established like those under the Moscow mechanism of OSCE already referred to above.14 The Moscow Mechanism has been agreed already in 1991 and allows to establish a fact-finding mission on the request of the country, where the investigation takes place consisting of a mission of three experts, which have to produce a report within only three weeks. This can be supported by other interested participating states of OSCE which in this case numbered 46 out of 57. There is no need for a consensus as in most other matters in OSCE. The mission is fully independent and even OSCE or more specifically the Office on Democratic Institutions and Human Rights (ODIHR), which services the mission provide only technical support. Among the sources, civil society organizations play a major role because they are on the ground, collect information and can connect the mission to persons to be interviewed (Benedek 2021). However, the expert missions also benefitted from the work of the Human Rights Monitoring Mission of the UN Human Rights Council which is on the ground since 2014.¹⁵

Of particular importance for our report were also international human rights NGOs like Amnesty International and Human Rights Watch and, in particular, investigative NGOs like "Bellingcat", which have a special analytical expertise (Higgins 2021). It might not be possible to investigate most of the alleged violations, but at least some major ones, whereas the information from various sources may allow to identify a pattern of the facts. Accordingly, already after the first weeks it became clear that in spite of the Russian assurances not to target civilians or civilian institutions, this indeed happened in a systematic way. In the mean-time, these findings unfortunately have been confirmed many times. As our mandate was to review alleged violations of IHL and human rights this meant also that we had a human security focus in our approach. Accordingly, the report speaks about violations of the rules of war with a particular concern for the rules on

¹⁴ See at notes 5 and 8.

¹⁵ See UN Human Rights Monitoring Mission in Ukraine, at: https://www.ohchr.org/en/countries/ukraine/our-presence

the protection of civilians and civilian institutions. Special attention is given to vulnerable groups as identified above.

Children in armed conflict have become a particular concern of the United Nations by the Security Council since many years. Indeed, the UN Security Council has made the protection of children in violent conflict one of its key concerns by adopting pertinent resolutions since 1999.16 More recently, SC-Res. 2427 (2018) provided for a framework for mainstreaming protection, rights, well-being and empowerment of children throughout the conflict cycle. In July of 2022 the Security Council held an open debate on children in armed conflict where it was announced that on the initiative of the Secretary-General Ukraine was listed as a country of concern triggering a daily monitoring of gross violations against children in Ukraine by the UN bodies.¹⁷ On the human rights side, the convention on the rights of the child also calls for the protection of children in armed conflict. UN experts drew attention to the alarming situation of children with disabilities in Ukraine. 18 The UN Independent International Commission of Inquiry of Human Rights in Ukraine in its preliminary report of October 2022 found that children have become the victims of the full spectrum of violations, including indiscriminate attacks, torture, and rape, suffering the predictable psychological consequences.¹⁹ In a press statement of December 2022 the Commission expressly stated that it followed a victim-centered approach to its work²⁰ which corresponds to a human security approach. Among those violations are also the deportation of large numbers of children by the Russian authorities to Russia and the adoption of some of those Ukrainian children by Russian parents which is also the topic of a recent report of Amnesty International on forcible transfers of people from the occupied areas to Russia, which does constitute a war crime.21

¹⁶ For an overview of the activities of the Security Council to protect children in armed conflict see Office of the Special Representative of the Secretary-General for Children in Armed Conflict, Children and Armed Conflict, at: https://childrenandarmedconflict.un.org/about/

¹⁷ The UN Monitoring and Reporting Mechanism has been established by the Security Council in 2005 to monitor six major violations of the rights of children, see at: https://childrenandarmedconflict.un.org/tools-for-action/monitoring-and-reporting/

¹⁸ See OHCHR, Ukraine: UN Experts sound alarm on situation of children with disabilities at: https://www.ohchr.org/en/press-releases/2022/08/ukraine-un-experts-sound-alarm-situation-children-disabilities

¹⁹ See United Nations Independent International Commission of Inquiry on Ukraine (note 9)

²⁶ See the statement of the UN Independent International Mission of Inquiry of Human Rights in Ukraine of 2 December 2022, at: https://www.ohchr.org/en/statements/2022/12/statement-end-un-independent-international-commission-inquiry-ukraines-visit

²¹ Amnesty International, Report of 10 November 2022, Ukraine: Russia's unlawful transfer of civilians a war crime and likely a crime against humanity, at: https://www.amnesty.org/

Regarding the protection of women in armed conflict the UN Security Council has also adopted important resolutions like the one on gender-related violence (UN SC-Res. 1960 (2010)) which provides for an accountability system for conflict-related sexual violence or SC Res. 2122 (2013), dealing with humanitarian aid to ensure access to sexual and reproductive health services, for examples to address pregnancies resulting from rape. For example, the UN Team of Experts on the Rule of Law and Sexual Violence in Conflict is also active in Ukraine.

Another group in need of special protection are journalists and the media. The United Nations, OSCE and the Council of Europe have adopted special protection measures to improve the safety of journalists and media workers in conflict zones. The international fact-finding reports however show that this group remains at risk and sometimes is even deliberately targeted.

In view of the fact that in the case of the Russian aggression the Security Council could not fulfil its function against one of its permanent members, the UN General Assembly was requested to deal with the matter in an emergency special session which resulted in several key resolutions of the General Assembly like the one of 24 March 2022 on humanitarian consequences of the aggression against Ukraine demanding that "civilians, including humanitarian personnel, journalists and persons in vulnerable situations, including women and children, be fully protected" as well as calling for respect for and protection of the medical and humanitarian personnel and of civilian infrastructure critical to the delivery of essential services.²² The United Nations also played a major role in negotiating a deal on allowing for food exports, thus contributing to global food security.

In December 2022, the Nobel peace prize was awarded to the civil society of Belarus, Russia and Ukraine as represented by Ales Bialiatski from the human rights organization "Viasna", Belarus, imprisoned since July 2021, the human rights NGO "Memorial", banned in Russia since December 2021 and the Ukrainian human rights organization "Center for Civil Liberties". As the reasoning says those organizations have made outstanding efforts to document war crimes, human rights abuses and abuses of power in their respective countries.²³ In my reports under the Moscow Mechanism of OSCE on Chechnya in 2018, on Belarus in 2020 and Ukraine in 2022 I have closely worked with most of these organizations and learned to appreciate their important and delicate work. The Nobel Peace Prize can be considered as

en/latest/news/2022/11/ukraine-russias-unlawful-transfer-of-civilians-a-war-crime-and-likely-a-crime-against-humanity-new-report/

²² General Assembly, 11th Emergency Session, GA Res. ES 11/2 of 24 March 2022, at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/301/67/PDF/N2230167.pdf?OpenElement ²³ See The Nobel Peace Prize, at: https://www.nobelprize.org/prizes/peace/2022/summary/

an important empowerment of the work of civil society suffering from repression and war conditions.

On similar lines the Sakharov-prize for freedom of thought of the European Parliament of 2022 was awarded to the brave people of Ukraine as represented by their president, elected leaders and civil society, mentioning specifically medical evacuation units or the Yellow Ribbon civil resistance movement in the occupied territories.²⁴ The ceremony took place on 14th December 2022 in Strasbourg. Regarding the Council of Europe, the Parliamentary Assembly has awarded its Vaclav Havel Human Rights Prize for outstanding civil society action in support of human rights to the Russian opposition leader and journalist Vladimir Kara-Murza, founder of the Russian Anti-War Committee, who has been imprisoned in April 2022 by the Russian regime.²⁵ By emphasizing the role of civil society, in particular human rights defenders as well as civil society or journalists²⁶ as the most important non-state actors again a human security perspective becomes visible. In this case the security of the state defending itself against an illegal aggression and of the people shouldering the burden of the defense are almost identical, while the focus is different as it mainly concerns the humanitarian dimension of the war.

In the award of the Nobel peace prize and other distinctions mentioned before the close relationship between human security and human rights once again plays an important role. Human security is a wider concept than human rights and it is also more based on policies than on human rights law. But human rights are an indispensable element of human security as can be seen also from the reports produced in the context of the Moscow Mechanism of OSCE and the United Nations Human Rights Council.

Furthermore, a proper human security perspective is also concerned with peace-building after the war (Simangan 2022). The growing Ukrainian nationalism as different from patriotism which attacks the Russian culture and language is not helpful for a future reconciliation and may support the Russian allegations of discrimination of Russians in Ukraine which were not justified before the war.

Part of the peacebuilding process in the context of human security has to be to provide justice to the victims and accountability of perpetrators. The

 $^{^{24}}$ See European Parliament, Press Room, at: https://www.europarl.europa.eu/news/en/press-room/20221017IPR43706/the-ukrainian-people-awarded-the-european-parliament-s-2022-sakharov-prize

²⁵ Council of Europe, Newsroom, at: https://www.coe.int/en/web/portal/-/2022-vaclav-havel-prize-awarded-to-imprisoned-russian-opposition-leader-vladimir-kara-mur-1

 $^{^{26}}$ Horsley, William, Safety of Journalists, Guidebook, $3^{\rm rd}$ edition, OSCE, Office of the Representative of the Freedom of the Media, 2020, at: https://www.osce.org/files/f/documents/7/7/469758.pdf

decision to create an International Criminal Court by the Rome conference in 1998 which led to its establishment in The Hague in 2002 was a major achievement in this direction. Based on two declarations by Ukraine and the referral of 43 state parties, the ICC is investigating war crimes in Ukraine. However, it can only address the tip of the iceberg in view of the fact that the general prosecutor of Ukraine by February 1st, 2023 had already registered more than 65.000 cases of alleged war crimes.²⁷ Therefore, Eurojust and the EU Genocide Network of investigators and prosecutors, which also deals with war crimes and crimes against humanity can play an important role in support of Ukraine in this endeavor.²⁸ Based on the universality principle several national jurisdictions of other states are also collecting evidence to bring war criminals to their courts in order to prevent situations of impunity. There are also efforts to establish a special court in particular on the crime of aggression, which cannot be persecuted by the ICC because of the lack of the necessary Russian declaration (Vasiliev 2023).

4. Some conclusions

While the concept of human security has lost some of its attractiveness in the last 20 years due to a resovereignization in international relations which also resulted in a backlash for human rights and multilateralism altogether, it is still of value for the analysis of threats to the human person and for showing ways how to deal with those on a priority basis. The war in Ukraine also provides an example for a new increase of the relevance of the concept. A human security perspective allows to better understand and address the related humanitarian challenges. Still, we see hesitations in the use of the concept by international organizations like OSCE, which prefers to speak of "comprehensive security" while the "human dimension" is one important pillar of its work. But this is due to some of its participating states which follow a sovereignty-oriented approach.

The fact that a major publishing house has found it interesting to produce a research handbook on international law and human security which has just appeared²⁹ can also be taken as confirmation that there is renewed interest in the human security perspective. There are also several new publications

²⁷ See CNBC, Russia has committed more than 65.000 war crimes in Ukraine, General Prosecutor says, at:https://www.cnbc.com/2023/02/01/ukraine-russia-war-65000-warcrimes-committed-prosecutor-general-says.html

²⁸ See for the EU Genocide Network in the framework of Eurojust at: https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network

²⁹ Oberleitner, G. (2022) (ed.), Research Handbook on International Law and Human Security, Edward Elgar.

which deal with various aspects of human security (McClean 2021, Carter 2021, UNDP 2022). Also, for the recent and hopefully overcome Covid-19 pandemic the human security approach has been useful in addressing the problems of international health security (Benedek 2022, 175, Forman 2022, 339).

One main merit of the human security perspective remains that it reminds all actors that the final purpose of all activities in the field of security is to benefit the human person. This should be a main criterion in decisions on the objectives and means of security policies and be strengthened by international agreements limiting the use of force, strengthening respect for human rights or providing for basic services allowing the human person to live in dignity.

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