

# The Limits of International Legal Frameworks in Modern Warfare: The Russia-Ukraine Conflict and the Crisis of Enforcement

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## ABSTRACT

The resurgence of state-led aggression and hybrid warfare tactics in the Russia–Ukraine conflict has exposed critical weaknesses in the international legal system. This study investigates how current legal frameworks have failed to prevent unlawful uses of force and to ensure accountability for international crimes, particularly in asymmetric modern conflicts. The analysis adopts a doctrinal legal research approach, examining key instruments including the UN Charter, the Rome Statute, the Geneva Conventions, and relevant treaties. It evaluates structural limitations through case studies, legal principles, and enforcement gaps, especially in relation to the UN Security Council, the ICC, and non-state actors. Findings reveal systemic deficiencies in enforcement, the ineffectiveness of non-binding security guarantees, and the exploitation of legal ambiguities in cyber warfare, disinformation, and the use of private military contractors. These failures result in impunity for high-ranking perpetrators and undermine the authority of international law. The Russia–Ukraine war exemplifies a legal system that is normatively ambitious but operationally constrained. Urgent reform is necessary to strengthen enforcement mechanisms, clarify legal responsibilities in modern warfare, and shield judicial accountability from geopolitical interference.

**Keywords:** *International Law, Russia–Ukraine War, Use of Force, Accountability, International Criminal Court (ICC), Universal Jurisdiction, Hybrid Warfare, Private Military Contractors (PMCs), UN Security Council, Political Shielding*

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## I. INTRODUCTION

With origins tracing back to the 19th century<sup>1</sup> and a significantly reinforced role after World War II (1939-1945), international law serves as the primary legal framework for preventing war, regulating armed conflicts, and ensuring legal accountability.<sup>2</sup> The legitimate relationship between international law and armed conflict is expressed through the United Nations (UN) Charter, which explicitly prohibits the use of force.<sup>3</sup> At the same time, international organizations such as the North Atlantic Treaty Organization (NATO),<sup>4</sup> the European Union (EU),<sup>5</sup> and the Organization for Security and Co-operation in Europe (OSCE) contribute to conflict mediation.<sup>6</sup> The Geneva Conventions and International Humanitarian Law (IHL) establish guidelines for the protection of civilians,<sup>7<sup>8</sup></sup> the treatment of prisoners of war,<sup>9</sup> and the regulation of weapons of mass destruction.<sup>10 11</sup> Additionally, judicial bodies such as the International Criminal Court (ICC) and the International Court of Justice (ICJ), alongside international sanctions,<sup>12</sup> play a role in adjudicating war crimes and

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<sup>1</sup> International Committee of the Red Cross, 'The Origins of International Humanitarian Law' (7 August 2017) <https://blogs.icrc.org/ilot/2017/08/07/origins-international-humanitarian-law/> accessed 5 April 2025.

<sup>2</sup> United Nations, 'Preamble to the Charter of the United Nations' <https://www.un.org/en/about-us/un-charter/preamble> accessed 5 April 2025.

<sup>3</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) art 2(4).

<sup>4</sup> North Atlantic Treaty Organization, 'What is NATO?' <https://www.nato.int/nato-welcome/index.html> accessed 5 April 2025.

<sup>5</sup> European External Action Service, 'Conflict Prevention, Peace Building and Mediation' [https://www.eeas.europa.eu/eeas/conflict-prevention-peace-building-and-mediation\\_en](https://www.eeas.europa.eu/eeas/conflict-prevention-peace-building-and-mediation_en) accessed 5 April 2025.

<sup>6</sup> Organization for Security and Co-operation in Europe, 'The OSCE Approach to Mediation' <https://www.osce.org/secretariat/125136> accessed 5 April 2025.

<sup>7</sup> American Red Cross, 'Summary of the Geneva Conventions of 1949 and Their Additional Protocols' [https://www.redcross.org/content/dam/redcross/atg/PDF\\_s/International\\_Services/International\\_Humanitarian\\_Law/IHL\\_SummaryGenevaConv.pdf](https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf) accessed 5 April 2025.

<sup>8</sup> International Committee of the Red Cross, 'What Are the Rules of War and Why Do They Matter?' <https://www.icrc.org/en/document/ihl-rules-of-war-FAQ-Geneva-Conventions> accessed 5 April 2025.

<sup>9</sup> OHCHR, 'Geneva Convention Relative to the Protection of Civilian Persons in Time of War' <https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war> accessed 5 April 2025.

<sup>10</sup> Practical Guide to Humanitarian Law, 'Methods and Means of Warfare' <https://guide-humanitarian-law.org/content/article/3/methods-and-means-of-warfare/> accessed 5 April 2025.

<sup>11</sup> International Committee of the Red Cross, 'Weapons and Disarmament' <https://www.icrc.org/en/law-and-policy/weapons-and-disarmament> accessed 5 April 2025.

<sup>12</sup> David L Philips, *The International Criminal Court and Deterrence: A Report to the U.S. Department of State* (Stanford Law School, 2016) <https://law.stanford.edu/wp-content/uploads/2016/07/Philips-The-International-Criminal-Court-and-Deterrence-A-Report-to-the-U.S.-Department-of-State.pdf> accessed 5 April 2025.

deterring violations.<sup>13<sup>14</sup></sup>

Despite this well-established legal framework,<sup>15</sup> the effectiveness of international law remains contingent on the political will<sup>16</sup> and voluntary compliance of major powers,<sup>17</sup> thereby unintentionally abetting their use of force<sup>18</sup> and limiting the prosecution of international crimes.<sup>19</sup> The ongoing Russia-Ukraine war, which began in 2022,<sup>20</sup> serves as a stark demonstration of the inadequacies of international law in preventing war,<sup>21</sup> regulating modern armed conflicts,<sup>22</sup> and ensuring accountability for violations.<sup>23</sup> This essay argues that the failure of international law is evident in two primary aspects: first, its inability to prevent war and adapt to evolving conflicts due to weak enforcement mechanisms,<sup>24</sup> unfulfilled security agreements,<sup>25</sup> and legal loopholes exploited by modern warfare tactics,<sup>26</sup> second, its failure to ensure accountability and prosecuting perpetrators within the international legal system, as reflected in the lack of universal jurisdiction, the absence of independent enforcement mechanisms,<sup>27</sup> and the persistent political shielding of high-ranking officials and state leaders.<sup>28</sup> Ultimately, the Russia-Ukraine war underscores the pressing need for comprehensive reform in international law to strengthen its enforcement mechanisms and enhance its capacity to address contemporary conflicts, along with prosecuting perpetrators

<sup>13</sup> United Nations, 'The Role of the International Criminal Court in Ending Impunity and Establishing the Rule of Law' <https://www.un.org/en/chronicle/article/role-international-criminal-court-ending-impunity-and-establishing-rule-law> accessed 5 April 2025.

<sup>14</sup> International Court of Justice, 'Frequently Asked Questions' <https://www.icj-cij.org/frequently-asked-questions> accessed 5 April 2025.

<sup>15</sup> Fuad Zarbiyev, 'Judicial Activism in International Law—A Conceptual Framework for Analysis' (2012) 3(2) *Journal of International Dispute Settlement* 262.

<sup>16</sup> Martti Koskeniemi, 'The Politics of International Law' in *The Nature of International Law* (Routledge 2017) 356.

<sup>17</sup> Oona A Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' (2005) *The University of Chicago Law Review* 472.

<sup>18</sup> Oscar Schachter, 'The Lawful Resort to Unilateral Use of Force' (1984) 10 *Yale Journal of International Law* 294.

<sup>19</sup> Alexander KA Greenawalt, 'Justice Without Politics: Prosecutorial Discretion and the International Criminal Court' (2006) 39 *New York University Journal of International Law and Politics* 604.

<sup>20</sup> UK House of Commons Library, 'Russia-Ukraine War: Legal Issues' (Briefing Paper, CBP-9847, 2023) <https://commonslibrary.parliament.uk/research-briefings/cbp-9847/> accessed 5 April 2025.

<sup>21</sup> Michael J Kelly, 'The Role of International Law in the Russia-Ukraine War' (2023) 55 *Case Western Reserve Journal of International Law* 88.

<sup>22</sup> Saumya Garg, 'Role of International Law in Regulating Armed Conflicts in Ukraine and Russia' (2024) 8.

<sup>23</sup> Allison Weiner, 'The Russia-Ukraine Conflict: Obstacles to Accountability' (2023) 10(2) *Brandeis University Law Journal* 49–57.

<sup>24</sup> Anita Maria Nwotite, 'Mechanisms for the Enforcement of International Law – Strength and Downside' (2024) 15(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 53.

<sup>25</sup> Andrew T Guzman, 'The Design of International Agreements' (2005) 16(4) *European Journal of International Law* 580.

<sup>26</sup> Morten M Fogt, 'Legal Challenges or "Gaps" by Countering Hybrid Warfare – Building Resilience in *Jus Ante Bellum*' (2021) 27 *Southwestern Journal of International Law* 31.

<sup>27</sup> Esra Craeghs, 'The Prosecution of Putin before the International Criminal Court' (2023) 4.

<sup>28</sup> Dapo Akande, 'International Law Immunities and the International Criminal Court' (2004) 98(3) *American Journal of International Law* 407–433.

of international crimes.<sup>29</sup> If the international legal system continues to operate under its current constraints, it risks further erosion of its authority and continued ineffectiveness in preventing and solving future conflicts.<sup>30</sup>

## II. The Failure of International Law in Preventing the Use of Force and Adapting to Contemporary Conflicts

The failure of international law to prevent war and adapt to contemporary conflicts is starkly illustrated by the Russia-Ukraine war, wherein weak enforcement mechanisms enabled Russia to invade Ukraine with limited repercussions.<sup>31</sup> The paralysis of the United Nations Security Council (UNSC), owing to Russia's veto power, obstructed any effective intervention or imposition of sanctions to curb the aggression,<sup>32</sup> while security agreements and treaties, such as the Budapest Memorandum, proved inadequate in safeguarding Ukraine, leaving it exposed to invasion.<sup>33</sup> Furthermore, the application of modern warfare tactics, including cyberattacks, hybrid warfare, and disinformation campaigns, has exploited legal loopholes, complicating the ability of international law to respond to these novel forms of aggression.<sup>34</sup> Consequently, these gaps within the international legal framework underscore the limitations of current legal structures in addressing the evolving nature of contemporary and asymmetrical warfare.<sup>35</sup>

### 2.1. Weak Enforcement Mechanisms and the Paralysis of Collective Security

Weak enforcement mechanisms, such as the UN Security Council's paralysis from Russia's veto power<sup>36</sup> and the ineffectiveness of deterrents like economic sanctions and diplomatic condemnation, enabled Russia to invade Ukraine without facing significant consequences.<sup>37</sup>

The paralysis of the UN Security Council, resulting from Russia's veto power as a permanent member, played a central role in enabling Russia to invade Ukraine without facing

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<sup>29</sup> Charles B Berebon, 'Reassessing Global Governance: Lessons from the Russia-Ukraine Conflict on Sovereignty, Security, and International Cooperation' (2024) 53–61.

<sup>30</sup> Abdulrasheed Abdulyakeen and Nurain Abayomi Mumuni, 'Russia-Ukraine War and the Imperatives of a New Global Order' (2024) 5(1) *Journal of Contemporary International Relations and Diplomacy* 133–135.

<sup>31</sup> Christian Marxsen, 'International Law in Crisis: Russia's Struggle for Recognition' (2015) 58 *German Yearbook of International Law* 27.

<sup>32</sup> Jennifer Trahan, 'Legal Issues Surrounding Veto Use and Aggression' (2023) 55 *Case Western Reserve Journal of International Law* 131.

<sup>33</sup> David S Yost, 'The Budapest Memorandum and Russia's Intervention in Ukraine' (2015) 91(3) *International Affairs* 510.

<sup>34</sup> Waseem Ahmad Qureshi, 'Information Warfare, International Law, and the Changing Battlefield' (2019) 43 *Fordham International Law Journal* 928.

<sup>35</sup> Mahshad Jafariandehkordi, 'The AI Battlefield: Legal Challenges of Autonomous Weapon Systems under International Humanitarian Law' (2024) 4.

<sup>36</sup> Blessing Nneka Iyase and Sheriff Folami Folarin, 'A Critique of Veto Power System in the United Nations Security Council' (2018) 11(2) *Acta Universitatis Danubius. Relationes Internationales* 115.

<sup>37</sup> Bettina Renz, 'Was the Russian Invasion of Ukraine a Failure of Western Deterrence?' (2023) 53(4) *The US Army War College Quarterly: Parameters* 17.

significant consequences.<sup>38</sup> According to Article 2(4) of the UN Charter, the use of force by one state against another is explicitly prohibited, a provision that Russia directly violated with its invasion of Ukraine.<sup>39</sup> This breach should have triggered an immediate response from the Security Council, which, under Article 24, is charged with maintaining international peace and security.<sup>40</sup> The Security Council is empowered to take decisive actions, such as imposing sanctions, authorizing military intervention, or employing other measures to address threats to peace.<sup>41</sup> However, Russia's ability to exercise its veto power under Article 27(3) of the UN Charter allows it to block any substantive resolution, effectively stalling the Council's ability to take action in response to its aggression.<sup>42</sup> Despite overwhelming international condemnation and urgent calls for intervention,<sup>43</sup> Russia's veto power prevented the adoption of any meaningful resolutions, paralyzing the Security Council and leaving the global order without a viable mechanism to prevent or halt the invasion.<sup>44</sup> This dysfunction within the UNSC underscores a fundamental flaw in the international legal system: the inability to enforce accountability or uphold its own foundational principles when confronted with the actions of a powerful state.<sup>45</sup>

International law also lacks effective deterrents due to its weak enforcement mechanisms in the Russia-Ukraine war.<sup>46</sup> Despite the imposition of economic sanctions by Western nations, including the United States,<sup>47</sup> European Union,<sup>48</sup> and United Kingdom,<sup>49</sup> along with

<sup>38</sup> E Ekpe Dickson and T Abumbe Gabriel, 'Russia Invasion of Ukraine, Veto Power and the Position of the United Nations Security Council (UNSC) in Conflict Prevention and Maintenance of International Peace and Security' (2024) 2(1) *Journal of Public Administration, Policy and Governance Research* 163.

<sup>39</sup> Oksana Baskakova, 'How Russia Violates International Law by Invading Ukraine' (2023) *Series of Legal Sciences* 359.

<sup>40</sup> Tim Murithi, 'The Failure of the United Nations Security Council in Creating the Framework Conditions for Mediation in the Russia-Ukraine Crisis' (2022) 44(1) *The Strategic Review for Southern Africa* 90–91.

<sup>41</sup> David D Caron, 'The Legitimacy of the Collective Authority of the Security Council' (1993) 87(4) *American Journal of International Law* 553.

<sup>42</sup> E Ekpe Dickson and T Abumbe Gabriel, 'Russia Invasion of Ukraine, Veto Power and the Position of the United Nations Security Council (UNSC) in Conflict Prevention and Maintenance of International Peace and Security' (2024) 2(1) *Journal of Public Administration, Policy and Governance Research* 166.

<sup>43</sup> UNGA, 'General Assembly Adopts Resolution Demanding Russian Federation Immediately Withdraw from Ukraine' (UN Press, 2 March 2022) <https://press.un.org/en/2022/ga12407.doc.htm> accessed 5 April 2025.

<sup>44</sup> Michael P Scharf, 'Power Shift: The Return of the Uniting for Peace Resolution' (2023) 55 *Case Western Reserve Journal of International Law* 12.

<sup>45</sup> Jordi Martinali, 'A Right to Impunity: Veto Power in the United Nations Security Council' (2024) 19.

<sup>46</sup> Cyriacus NN Ike, Cornel Chinedu U Udumaga and Ngozi N Osudibia, 'International Law and Its Challenges in the Russia-Ukraine War' (2024) 14(6) *African Journal of Social and Behavioural Sciences* 3700.

<sup>47</sup> US Department of State, 'Ukraine and Russia Sanctions' (Bureau of Economic and Business Affairs) <https://www.state.gov/division-for-counter-threat-finance-and-sanctions/ukraine-and-russia-sanctions> accessed 5 April 2025.

<sup>48</sup> European External Action Service (EEAS), 'EU Sanctions Against Russia' [https://www.eeas.europa.eu/eeas/eu-sanctions-against-russia\\_en?utm\\_source](https://www.eeas.europa.eu/eeas/eu-sanctions-against-russia_en?utm_source) accessed 5 April 2025.

<sup>49</sup> UK Government, 'UK Sanctions Following Russia's Invasion of Ukraine' <https://www.gov.uk/government/collections/uk-sanctions-following-russias-invasion-of-ukraine> accessed 5 April 2025.

widespread diplomatic condemnation,<sup>50</sup> these measures proved inadequate in compelling Russia to cease its aggression.<sup>51</sup> The sanctions targeted certain sectors, such as finance and energy,<sup>52</sup> but lacked the comprehensiveness and severity necessary to force a significant shift in Russian behavior.<sup>53</sup> Moreover, the absence of a credible military or legal deterrent, such as direct military intervention by NATO<sup>54</sup> or stronger international legal action through the ICC,<sup>55</sup> allowed Russia to continue its invasion largely unimpeded.<sup>56</sup> Furthermore, NATO countries,<sup>57</sup> particularly the United States<sup>58</sup> and Germany,<sup>59</sup> were hesitant to directly engage in military combat with Russia during its invasion of Ukraine due to concerns that such an escalation could lead to a broader and more destructive conflict, especially given Russia's possession of nuclear weapons.<sup>60</sup> Allies and strategic partners such as China, Iran, and North Korea even enable Russia to circumvent international sanctions and reduce its geopolitical isolation through mechanisms such as economic cooperation, military collaboration, and diplomatic support,<sup>61</sup> illustrating the extent to which political alliances can shield a state from the legal consequences of its actions.<sup>62</sup> This reluctance or refusal to take stronger military actions exposed a significant flaw in the international legal system: it lacks effective mechanisms to compel nations, particularly powerful states, to take decisive and aggressive

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<sup>50</sup> UN News, 'UN Warns of Ongoing Humanitarian and Nuclear Threats in Ukraine Crisis' (7 February 2025) <https://news.un.org/en/story/2025/02/1160456> accessed 5 April 2025.

<sup>51</sup> I Timofeev, 'Sanctions on Russia: A New Chapter' (2022) 20(4) *Russia in Global Affairs* 103.

<sup>52</sup> Roxana Niknami, 'European Union Energy Sanctions Against Russian Federation and Its Impact on Their Trade System (2022–2024)' (2024) 17(1) *Central Eurasia Studies* 363.

<sup>53</sup> Constantinos Syropoulos and others, 'The Global Sanctions Data Base – Release 3: COVID-19, Russia, and Multilateral Sanctions' (2024) 32(1) *Review of International Economics* 22.

<sup>54</sup> Bryan A Frederick and others, *Pathways to Russian Escalation Against NATO from the Ukraine War*, vol 7 (RAND Corporation 2022) 3.

<sup>55</sup> Yvonne Dutton and Milena Sterio, 'The War in Ukraine and the Legitimacy of the International Criminal Court' (2022) 72 *American University Law Review* 827–828.

<sup>56</sup> UNSC, 'Security Council Reaffirms Need for Nuclear Disarmament, Urges Compliance with Non-Proliferation Treaty' (UN Press, 3 April 2023) <https://press.un.org/en/2023/sc15172.doc.htm> accessed 5 April 2025.

<sup>57</sup> Shannon Bugos, 'What the Russian Public Thinks About the Use of Nuclear Weapons' (Arms Control Association, October 2024) <https://www.armscontrol.org/act/2024-10/features/what-russian-public-thinks-about-use-nuclear-weapons> accessed 5 April 2025.

<sup>58</sup> Mark S Bell, 'The Russia-Ukraine War and Nuclear Weapons: Evaluating Familiar Insights' (2024) 7(2) *Journal for Peace and Nuclear Disarmament* 498.

<sup>59</sup> Nicole Zhang, 'Strategic Narratives Around Refugee Acceptance and Military Engagement: A Comparative Analysis of Responses to the Wars in Syria and Ukraine' (2023) 29.

<sup>60</sup> Suci Vajriyat and others, 'The Effect of the Russia-Ukraine Conflict on the Potential Use of Nuclear Weapons' (2022) 3(3) *Journal of Social Political Sciences* 250.

<sup>61</sup> New Geopolitics Research Network, 'How Are China, Russia, North Korea and Iran Working Against the West?' (New Geopolitics, 25 December 2024) <https://www.newgeopolitics.org/2024/12/25/how-are-china-russia-north-korea-and-iran-working-against-the-west/> accessed 7 April 2025.

<sup>62</sup> Christopher S Chivvis and Jack Keating, 'How Evil? Deconstructing the New Russia–China–Iran–North Korea Axis' (2024) 66 *Survival* 51.

action in response to acts of aggression.<sup>63</sup> As a result, despite Russia's clear violation of international law,<sup>64</sup> the fear of escalating the conflict into a wider war, potentially involving nuclear weapons, prevented states from enforcing meaningful consequences against Russia.<sup>65</sup> Accordingly, Russia faced minimal consequences,<sup>66</sup> and its invasion actions went largely unchecked due to the lack of coordinated and decisive actions from the international community,<sup>67</sup> revealing the weaknesses inherent in the current legal security architecture globally.<sup>68</sup>

## 2.2. The Failure of Security Guarantees and the Fragility of International Legal Commitments

Security agreements and treaties failed to protect Ukraine, as illustrated by the ineffectiveness of the 1994 Budapest Memorandum<sup>69</sup> and the 1997 Friendship Treaty, both of which lacked binding enforcement mechanisms and were ultimately violated without consequence.<sup>70</sup>

The failure of international law to prevent the unlawful use of force is starkly illustrated by Ukraine's experience following its denuclearization under the 1994 Budapest Memorandum.<sup>71</sup> In relinquishing what was then the third-largest nuclear arsenal in the world,<sup>72</sup> Ukraine received security assurances from Russia, the United States, and the United Kingdom to respect its sovereignty and territorial integrity.<sup>73</sup> However, these assurances were not legally binding and lacked enforcement mechanisms, as the Memorandum did not

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<sup>63</sup> Lela Totadze, *Prosecuting the Crime of Aggression in the Context of the Russian Military Aggression Against Ukraine: Between Law and Politics* (PhD thesis, Vilnius University 2025) 12.

<sup>64</sup> Sofia Cavandoli and Gary Wilson, 'Distorting Fundamental Norms of International Law to Resurrect the Soviet Union: The International Law Context of Russia's Invasion of Ukraine' (2022) 69 *Netherlands International Law Review* 393.

<sup>65</sup> Alexander K Bollfrass and Stephen Herzog, 'The War in Ukraine and Global Nuclear Order' (2023) 64 *Survival* 15.

<sup>66</sup> Elisabeth Mahase, 'Ukraine: Over 700 Recorded Attacks on Health Facilities and Workers in Year Since Russia Invasion' (2023) 380 *BMJ* 451.

<sup>67</sup> Charles B Berebon, 'Reassessing Global Governance: Lessons from the Russia-Ukraine Conflict on Sovereignty, Security, and International Cooperation' (2024) 60.

<sup>68</sup> Amaresh Patel and Rajshree Tiwari, 'Critical Analysis of International Law Failures in the Russian Invasion of Ukraine: Implications for Global Security' (2024) *Law & Safety* 51.

<sup>69</sup> Д. А. Івченко, 'Budapest Memorandum 1994—(Non) Guarantees for Ukraine. Будапештський меморандум 1994 р.—(Не) гарантії Україні' (2023) 321.

<sup>70</sup> Stephen Adi Odey and Samuel Akpan Bassey, 'Ukrainian Foreign Policy toward Russia Between 1991 and 2004: The Start of the Conflict' (2022) 8 *Journal of Liberty and International Affairs* 356.

<sup>71</sup> Alina Shymanska, 'Rethinking the Budapest Memorandum from the Perspective of Ukrainian-Russian Relations in the Post-Soviet Period' (2020) 14 *Central European Journal of International & Security Studies* 1.

<sup>72</sup> Journal on World Affairs, 'Relinquishing the Third Largest Nuclear Arsenal in the World: What Ukraine Teaches About Nuclear Proliferation' (28 August 2020) <https://journalonworldaffairs.org/2020/08/28/relinquishing-the-third-largest-nuclear-arsenal-in-the-world-what-ukraine-teaches-about-nuclear-proliferation/> accessed 7 April 2025.

<sup>73</sup> United Nations, 'Budapest Memorandum on Security Assurances (1994)' <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb> accessed 7 April 2025.

constitute a treaty under the 1969 Vienna Convention on the Law of Treaties (VCLT).<sup>74</sup> This legal deficiency became tragically apparent with Russia's annexation of Crimea in 2014 and its full-scale invasion in 2022, both of which flagrantly violated the spirit of the agreement.<sup>75</sup> While international responses - including UN General Assembly Resolution ES-11/1 (2022)<sup>76</sup> and a series of sanctions imposed by the European Union, the United States, the United Kingdom, Canada, Japan, Australia, and other allied states condemned the aggression,<sup>77</sup> they failed to generate the coercive impact necessary to alter Russia's conduct.<sup>78</sup> This case reveals a broader systemic shortcoming in international law: the inability of non-binding instruments and politically motivated responses to restrain powerful states, particularly when formal enforcement mechanisms, such as those under Chapter VII of the UN Charter, are rendered ineffective by vetoes or geopolitical deadlock, as mentioned.<sup>79</sup>

Beyond the Budapest Memorandum, the 1997 Treaty on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation further demonstrates the vulnerability of international legal commitments without robust enforcement and binding.<sup>80</sup> Article 2 of the Treaty committed both parties to respect each other's territorial integrity and recognize the inviolability of existing borders.<sup>81</sup> However, Russia's continued military intervention since 2014, such as the annexation of Crimea and the deployment of troops and military equipment in Eastern Ukraine,<sup>82</sup> culminating in Ukraine's suspension of the treaty in 2018, represents a direct breach of these obligations,<sup>83</sup> along with violated the fundamental principle of *pacta sunt servanda*<sup>84</sup> and the prohibition of the use of force under Article 2(4)

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<sup>74</sup> Jonathan Clough, 'A World of Difference: The Budapest Convention on Cybercrime and the Challenges of Harmonisation' (2014) 40 *Monash University Law Review* 710.

<sup>75</sup> Gustave Jules Erich Tausch, *Key Aspects to a Better Understanding of the Struggle of Ukraine in History* (2023) 37.

<sup>76</sup> United Nations General Assembly, 'Resolution ES-11/1' (2 March 2022) UN Doc A/RES/ES-11/1 <https://docs.un.org/en/A/RES/ES-11/1> accessed 7 April 2025.

<sup>77</sup> European External Action Service, 'EU Sanctions Against Russia' (EEAS) [https://www.eeas.europa.eu/eeas/eu-sanctions-against-russia\\_en](https://www.eeas.europa.eu/eeas/eu-sanctions-against-russia_en) accessed 7 April 2025.

<sup>78</sup> Amaechi Fidelis Nwador, Franklins A Sanubi and Esekumemu Victor Clark, 'Sanctions as Tool for Strategic Deterrence: An Assessment of Targeted Sanctions in Russia' (2023) 12 *PERSPEKTIF* 841.

<sup>79</sup> Amaresh Patel and Rajshree Tiwari, 'Critical Analysis of International Law Failures in the Russian Invasion of Ukraine: Implications for Global Security' (2024) *Law & Safety* 47.

<sup>80</sup> David G Buffa, 'A Proposed Remedy for the Dilemma of Innumerable Futures: Ukraine, Russia, and NATO Membership' (2010) 35 *Brooklyn Journal of International Law* 615.

<sup>81</sup> Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation (signed 31 May 1997, entered into force 1 April 1999) art 2.

<sup>82</sup> UN General Assembly, 'Territorial Integrity of Ukraine' (27 March 2014) UNGA Res 68/262 [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_res\\_68\\_262.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_68_262.pdf) accessed 9 April 2025.

<sup>83</sup> Patryk Labuda, 'Termination of the Treaty of Friendship Between Ukraine and Russia: Too Little, Too Late?' (Opinio Juris, 1 May 2019) <https://opiniojuris.org/2019/05/01/termination-of-the-treaty-of-friendship-between-ukraine-and-russia-too-little-too-late-%EF%BB%BF/> accessed 9 April 2025.

<sup>84</sup> Garagurbanly Rafat Rashad Ogly, 'Legal and Practical Aspects of Compliance with the Principle of *Pacta Sunt Servanda* in Modern Conditions' (2024) 3 *Civil Service and Personnel* 238.

of the UN Charter.<sup>85</sup> Similar violations are evident in Russia's disregard for the principles of the 1975 Helsinki Final Act<sup>86</sup> and its undermining of the Minsk Agreements (2014, 2015), which aimed to de-escalate conflict in the Donbas region.<sup>87</sup> Russia's support for separatist forces and recognition of self-declared republics blatantly contravenes its commitments to preserve Ukraine's territorial integrity.<sup>88</sup> These breaches underscore a recurring pattern in international law: the lack of *jus cogens* status<sup>89</sup> and enforceable compliance mechanisms within key agreements leaves them ill-equipped to prevent aggression by dominant actors.<sup>90</sup> Moreover, Russia's actions violate fundamental norms under the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), particularly Article 41, which prohibits states from recognizing any situation resulting from a serious breach of a peremptory norm.<sup>91</sup> Ukraine's case thus demands a critical reassessment of the international legal system's capacity to protect smaller states when conflicts occur,<sup>92</sup> highlighting that the legitimacy and efficacy of international law rest not only on normative values but also on the political will and institutional mechanisms that ensure their enforcement.<sup>93</sup>

### 2.3. Hybrid Warfare and the Legal Vacuum in Modern Conflict

The international legal system, particularly the frameworks governing the use of force and the conduct of armed conflict, was developed primarily in response to traditional, state-based warfare.<sup>94</sup> However, the nature of contemporary conflict has shifted significantly.<sup>95</sup> Modern warfare now involves hybrid threats such as non-state actors, cyber operations, and other unconventional tactics

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<sup>85</sup> Tamas Hoffmann, 'War or Peace?—International Legal Issues Concerning the Use of Force in the Russia–Ukraine Conflict' (2022) 63 *Hungarian Journal of Legal Studies* 226.

<sup>86</sup> Richard Schifter, 'Human Rights and the Helsinki Final Act: From USSR to Contemporary Russia' (2013) 1 *Journal of Global Policy and Governance* 200.

<sup>87</sup> Hugo Von Essen and Andreas Umland, 'Russia's Dictated Non-Peace in the Donbas 2014–2022: Why the Minsk Agreements Were Doomed to Fail' in *Russia's War of Aggression Against Ukraine* (Nomos Verlagsgesellschaft mbH & Co KG 2023) 106.

<sup>88</sup> Erika Harris, 'What Is the Role of Nationalism and Ethnicity in the Russia–Ukraine Crisis?' (2020) 72 *Europe-Asia Studies* 599.

<sup>89</sup> Mariana Alexandre Queirós Matos Macedo de Oliveira, *International Responsibility of States and Jus Cogens Norms: The Conflict Between Ukraine vs. Russian Federation* (PhD thesis, 2024) 4.

<sup>90</sup> Iryna Izarova, Yuliia Hartman and Silviu Nate, 'Mechanisms for the Compensation of War Damages: Toward a Fair Solution for Ukraine' (2024) 10 *International Comparative Jurisprudence* 45.

<sup>91</sup> Ilya Nuzov, 'National Ratification of an Internationally Wrongful Act: The Decision Validating Russia's Incorporation of Crimea: Constitutional Court of the Russian Federation Decision of 19 March 2014, No. 6-P' (2016) 12 *European Constitutional Law Review* 375.

<sup>92</sup> Atul Alexander, 'Crisis and General International Law: Lessons from the Russia–Ukraine Conflict' (2023) 21 *Indonesian Journal of International Law* 3.

<sup>93</sup> Oona A Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' (2005) *University of Chicago Law Review* 472.

<sup>94</sup> Emily Crawford, 'From Inter-State and Symmetric to Intra-State and Asymmetric: Changing Methods of Warfare and the Law of Armed Conflict in the 100 Years Since World War One' (2016) 17 *Yearbook of International Humanitarian Law* 106.

<sup>95</sup> Toni Haastrup, *Global Conflict Trends: Planning for the Future* (2024) 1.

that challenge the applicability and effectiveness of existing legal norms.<sup>96</sup> This evolution has exposed critical shortcomings in international law, as these modern tactics often exploit legal ambiguities and operate within undefined regulatory zones.<sup>97</sup>

Since the onset of the Russia-Ukraine conflict in 2022, Russia has increasingly relied on private military contractors (PMCs), such as the notorious Wagner Group, to carry out military operations, particularly in regions where the Kremlin seeks to avoid direct military involvement.<sup>98</sup> The Wagner Group, a private paramilitary organization, has been involved in various activities ranging from combat operations to covert missions, often in sensitive conflict zones like Ukraine, Syria, and Africa.<sup>99</sup> By using PMCs, Russia can pursue its strategic objectives without officially mobilizing its regular military forces, thereby circumventing political and diplomatic consequences that might arise from a formal declaration of war.<sup>100</sup> This tactic also allows Russia to maintain plausible deniability; the state can distance itself from any actions taken by PMCs, despite their close ties and potential directives from the Russian government.<sup>101</sup> By operating through these private entities, Russia effectively outsources warfare, which helps minimize both international scrutiny and domestic backlash while still pursuing its military and geopolitical goals.<sup>102</sup>

The deployment of private military contractors (PMCs) by Russia in its military operations underscores significant failures within international law, particularly concerning accountability, ambiguous legal terminology, and the lack of clear regulatory frameworks for non-state actors engaged in armed conflict.<sup>103</sup> Russia's use of PMCs, such as the Wagner Group, highlights the difficulty of holding states accountable for violations of international law, as international frameworks like Article 91 of Additional Protocol I to the Geneva Conventions impose responsibility on states to ensure their military forces comply with international humanitarian law (IHL), especially regarding the protection of civilians and prisoners of war.<sup>104</sup> However, this responsibility does not extend to non-state actors,

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<sup>96</sup> Ayodele A Otaiku, 'A Framework for Hybrid Warfare: Threats, Challenges and Solutions' (2018) 8 *Journal of Defense Management* 378.

<sup>97</sup> Michael N Schmitt, 'Grey Zones in the International Law of Cyberspace' (2017) 42 *Yale Journal of International Law Online* 3.

<sup>98</sup> Molly Dunigan and Anthony Atler, *Will to Fight of Private Military Actors* (RAND Corporation 2023) 2–3.

<sup>99</sup> Candace Rondeaux, *Decoding the Wagner Group: Analyzing the Role of Private Military Security Contractors in Russian Proxy Warfare* (New America 2019) 6.

<sup>100</sup> Niklas M Rendboe, *Connecting the Dots of PMC Wagner: Strategic Actor or Mere Business Opportunity?* (University of Southern Denmark 2019) 32.

<sup>101</sup> Emmet Foley and Christian Kaunert, 'Russian Private Military and Ukraine: Hybrid Surrogate Warfare and Russian State Policy by Other Means' (2022) 16(3) *Central European Journal of International and Security Studies* 178.

<sup>102</sup> Mark Conway, 'An Examination into Russia's Use of Private Military Contractors as a Tool to Achieve Their Geopolitical Goals in Africa' (2025) 6(1) *Journal of Military History and Defence Studies* 93.

<sup>103</sup> Iurie Patricheev, 'Reshaping the Contours of State Responsibility for Employing Private Military Companies: A Case Study Analysis of Russia's Role in Wagner's Activities in Ukraine' (2024) SSRN <https://ssrn.com/abstract=5115992> 1.

<sup>104</sup> Tara Harper, *War, Decisions, и Действия: Analyzing Private Military Companies in American and Russian Contexts* (2023) 13.

including PMCs, enabling states to conduct military operations while distancing themselves from the actions of contractors.<sup>105</sup> This creates a jurisdictional gap, complicating the ability of international bodies such as the ICC to prosecute states for war crimes committed by non-state actors under their direction, resulting in the failure to deliver justice for victims.<sup>106</sup> In addition to the lack of accountability, the ambiguity of legal terminology further exacerbates the issue.<sup>107</sup> Instruments like the Geneva Conventions and their Additional Protocols do not offer clear definitions for terms such as "mercenary"<sup>108</sup> or "private military contractor",<sup>109</sup> leading to inconsistencies in the regulation of non-state combatants.<sup>110</sup> Although Article 47 of the International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries (1989) addresses mercenaries, it fails to provide adequate guidelines for regulating PMCs, leaving states with the discretion to exploit these ambiguities.<sup>111</sup> For instance, the Wagner Group is not officially recognized as a military entity, allowing Russia to deny responsibility for unlawful actions carried out by its contractors, such as war crimes or crimes against humanity.<sup>112</sup> This vagueness, coupled with inconsistent legal definitions, enables strategic exploitation of legal loopholes, further complicating efforts to enforce accountability.<sup>113</sup> Moreover, the absence of clear definitions and regulations concerning PMCs has contributed to the failure of international law in addressing the Russia-Ukraine war.<sup>114</sup> Despite existing treaties, such as the UN Mercenary Convention and protocols under the Geneva Conventions, the regulatory framework for PMCs remains underdeveloped, lacking a comprehensive, universally applicable mechanism to oversee their operations in armed conflicts.<sup>115</sup> Consequently, states like Russia can deploy PMCs as proxy forces,

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<sup>105</sup> Ahmad Khalil, Mohammad Bitar and S Anandha Krishna Raj, 'A New Era of Armed Conflict: The Role of State and Non-State Actors in Cyber Warfare with Special Reference to Russia-Ukraine War' (2024) 14(2) *TaTech Journal of European Studies* 60.

<sup>106</sup> William A Schabas, 'Punishment of Non-State Actors in Non-International Armed Conflict' (2002) 26 *Fordham International Law Journal* 910, 918.

<sup>107</sup> Andrew Mumford and Pascal Carlucci, 'Hybrid Warfare: The Continuation of Ambiguity by Other Means' (2023) 8(2) *European Journal of International Security* 198.

<sup>108</sup> Joana Abrisketa, *Blackwater: Mercenaries and International Law* (FRIDE 2012) 2; DR Ambarwati, *Hukum Humaniter Internasional Dalam Studi Hubungan Internasional* (Raja Grafindo Persada 2007).

<sup>109</sup> Ali Deif, 'Military Contractors and International Law' (2016) 3.

<sup>110</sup> M Cherif Bassiouni, 'The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors' (2007) 98 *Journal of Criminal Law and Criminology* 733.

<sup>111</sup> Christopher Kinsey, 'International Law and the Control of Mercenaries and Private Military Companies' (2003) 52 *Cultures & Conflits* 13.

<sup>112</sup> Habib Badawi and Mohammad Daaboul, 'The Wagner Group: Complex Web of Intrigue and Geopolitical Structure' (2024) 40(2) *The Arab Journal of Security Studies* 267.

<sup>113</sup> Sid B Maru, 'Cyberwar in the Seams: Russian Exploitation of International and Humanitarian Law in Offensive Cyber Operations' (2022) 4.

<sup>114</sup> Iurie Patricheev, 'Reshaping the Contours of State Responsibility for Employing Private Military Companies: A Case Study Analysis of Russia's Role in Wagner's Activities in Ukraine' (2024) SSRN <https://ssrn.com/abstract=5115992> 333.

<sup>115</sup> Katrīna Gailīte, 'Corporate Beneficiaries During Times of Armed Conflict' (2024) 11.

circumventing legal responsibility for violations of international law.<sup>116</sup> This regulatory gap underscores the failure of international law in response to the increasing role of non-state actors in modern warfare.<sup>117</sup> Without clear, enforceable standards for PMC operations, states can continue to exploit legal gray areas,<sup>118</sup> undermining the principle of accountability enshrined in instruments such as the International Court of Justice (ICJ) and ICC statutes,<sup>119</sup> thus perpetuating a system that allows violations of international law to persist with minimal legal repercussions.<sup>120</sup>

Moreover, cyber and information warfare played a major role in Russia's strategy, with cyberattacks on Ukraine's infrastructure and massive disinformation campaigns.<sup>121</sup> However, International law currently lacks effective mechanisms to regulate the growing threat of cyber warfare, as seen in Russia's strategic use of digital attacks during the Ukraine conflict.<sup>122</sup> Under Article 2(4) of the UN Charter, the use of force is prohibited, yet most cyber operations - such as disabling infrastructure or spreading malware - do not meet the traditional definition of force, allowing aggressors to act with impunity.<sup>123</sup> Similarly, International Humanitarian Law (IHL), designed for kinetic warfare, is ill-equipped to regulate the complexities of cyber conflict.<sup>124</sup> Core principles such as distinction and proportionality lack clear operational relevance when civilian harm is inflicted through code rather than conventional arms.<sup>125</sup> The Tallinn Manual on the International Law Applicable to Cyber Warfare (Tallinn Manual 2.0) provides expert commentary on how existing international laws could be interpreted in cyber contexts,<sup>126</sup> however, it is non-binding and

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<sup>116</sup> Catrina Doxsee, 'Putin's Proxies: Examining Russia's Use of Private Military Companies' (Testimony, House Oversight and Reform Subcommittee on National Security, 21 September 2022) Center for Strategic & International Studies [https://csis-website-prod.s3.amazonaws.com/s3fspublic/congressional\\_testimony/ts220921\\_Doxsee.pdf](https://csis-website-prod.s3.amazonaws.com/s3fspublic/congressional_testimony/ts220921_Doxsee.pdf) 8.

<sup>117</sup> Maddocks JH, *State Responsibility for International Law Violations Involving Non-State Actors in Armed Conflict* (PhD thesis, University of Reading 2022) 2.

<sup>118</sup> Schreier F and Caparini M, *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*, vol 6 (DCAF 2005) 2.

<sup>119</sup> McRae P, *Unaccountable Soldiers: Private Military Companies and the Law of Armed Conflict* (University of Ottawa 2012) 5.

<sup>120</sup> Aladekomo A, 'Russian Aggression Against Ukraine, Sovereignty and International Law' (2022) *Sovereignty and International Law* 19.

<sup>121</sup> Giles K, 'Russian Cyber and Information Warfare in Practice' (Chatham House, December 2023) 10.

<sup>122</sup> Azubuike CF, 'Cyber Security and International Conflicts: An Analysis of State-Sponsored Cyber Attacks' (2023) 8(3) *Nnamdi Azikiwe Journal of Political Science* 110.

<sup>123</sup> Asada M, 'The War in Ukraine under International Law: Its Use of Force and Armed Conflict Aspects' (2024) 26(1–2) *International Community Law Review* 34.

<sup>124</sup> Shahaf S, 'Mind the Gap(s)—The Need to Resolve Uncertainties in the International Law of Cyber Warfare' (2022) 63 *Virginia Journal of International Law* 223.

<sup>125</sup> Goździewicz W, 'Targeting in the Russian-Ukrainian War: The Crossroads of Legal and Technical Aspects' (2024) 106 *Acta Universitatis Lodziensis. Folia Iuridica* 50.

<sup>126</sup> CCDCOE, 'Tallinn Manual on the International Law Applicable to Cyber Operations' <https://ccdcoe.org/research/tallinn-manual/> accessed 14 April 2025.

lacks legal enforcement, limiting its influence in holding states accountable for cyber aggression.<sup>127</sup>

The international law's legal vacuum is equally stark in the realm of information warfare.<sup>128</sup> There is no binding international treaty explicitly prohibiting or regulating state-sponsored or implemented disinformation<sup>129</sup> despite its proven ability to destabilize institutions, incite unrest, and manipulate global perceptions.<sup>130</sup> For instance, Deepfake videos falsely portraying Ukrainian President Volodymyr Zelenskyy surrendering circulated widely online in 2022,<sup>131</sup> undermining confidence and Ukraine's internal cohesion;<sup>132</sup> or Russia's promotion of false narratives claiming Ukraine was developing biological weapons in U.S.-backed labs was intended to justify military aggression,<sup>133</sup> truly sowing distrust internationally.<sup>134</sup> This normative vacuum is further exacerbated by national legislation, such as Russia's 2022 "fake news" laws, which criminalize dissent and provide a legal shield for disinformation campaigns that extend well beyond domestic borders.<sup>135</sup> Such legislation not only contravenes fundamental rights enshrined in instruments like the International Covenant on Civil and Political Rights (ICCPR), particularly Article 19 on freedom of expression,<sup>136</sup> but also serves as a tool for cross-border psychological operations.<sup>137</sup> Thus, the absence of clear global norms<sup>138</sup> and enforcement mechanisms<sup>139</sup> for disinformation campaigns enables state actors to wage psychological warfare without facing legal

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<sup>127</sup> Sang M, 'Legal Regulation of Cyber Warfare: Reviewing the Contribution of the Tallinn Manual to the Advancement of International Law' (2015) 16.

<sup>128</sup> Denning DER, *Information Warfare and Security*, vol 4 (Addison-Wesley 1999) 1.

<sup>129</sup> Pielemeier J, 'Disentangling Disinformation: What Makes Regulating Disinformation So Difficult?' (2020) *Utah Law Review* 938.

<sup>130</sup> Fadiran OA, 'Fake News on Social Media and Its Implication on National Security' (2024) 3.

<sup>131</sup> Mohan S and Wadhwa S, 'Deepfakes and Shallow Laws: Regulating Distorted Narratives in the Political Cyberspace' (2024) 19(2) *Indian Journal of Law and Technology* 91.

<sup>132</sup> Helmus TC and Holynska K, 'Ukrainian Resistance to Russian Disinformation' (2024) 5.

<sup>133</sup> Gerard P and others, 'Modeling Information Narrative Detection and Evolution on Telegram during the Russia-Ukraine War' (2024) *arXiv preprint arXiv:2409.07684* 6.

<sup>134</sup> Leitenberg M, 'False Allegations of Biological-Weapons Use from Putin's Russia' (2020) 27(4–6) *The Nonproliferation Review* 438.

<sup>135</sup> Sussman G, 'Propaganda, Political Economy, and Empire: The Russia-Ukraine Conflict' in *Russiagate Revisited: The Aftermath of a Hoax* (Springer 2023) 109.

<sup>136</sup> Riekkinen M, *Freedom of Expression and the Law in Russia: Asymmetrical Information* (Taylor & Francis 2025) 8.

<sup>137</sup> Snegovaya M, 'Putin's Information Warfare in Ukraine' (2015) *Russia Report* 1, 15.

<sup>138</sup> Lahmann H, 'Information Operations and the Question of Illegitimate Interference under International Law' (2020) 53(2) *Israel Law Review* 191.

<sup>139</sup> Leiser MR, 'Regulating Computational Propaganda: Lessons from International Law' (2019) 8(2) *Cambridge International Law Journal* 223.

repercussions.<sup>140</sup> These regulatory shortcomings regarding cyber and information highlight the failure of international law in addressing the realities of current modern hybrid warfare.<sup>141</sup>

To sum up, the Russia-Ukraine war serves as a stark and compelling indictment of the inability of international law to effectively prevent the use of force or adapt to the complexities of modern conflict.<sup>142</sup> Despite the normative clarity of the UN Charter, particularly Article 2(4), which prohibits aggression, enforcement has been undermined by the structural paralysis of the UN Security Council, where veto power, notably exercised by Russia, renders collective action ineffective.<sup>143</sup> Traditional deterrents such as economic sanctions and diplomatic condemnation have proven insufficient in modifying the aggressor's behavior.<sup>144</sup> Similarly, security assurances and multilateral treaties have demonstrably failed to safeguard Ukraine's sovereignty, revealing the fragility of legal guarantees in the absence of binding, enforceable obligations.<sup>145</sup> Furthermore, international humanitarian law remains ill-equipped to regulate emerging dimensions of warfare, including the legal responsibilities of private military contractors, as well as the near-total absence of binding legal instruments governing cyber and information warfare.<sup>146</sup> These deficiencies expose a broader failure of the international legal order to evolve in tandem with contemporary armed threats.<sup>147</sup> The Ukraine-Russia conflict underscores that international law, while normatively ambitious,<sup>148</sup> is operationally constrained and strategically outpaced, raising urgent questions about its application in addressing 21st-century geopolitical realities.<sup>149</sup>

### III. The Failure of International Law in Ensuring Accountability and Prosecuting Perpetrators of International Crimes

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<sup>140</sup> Ezema PO, 'Humanitarian Law and Protection of Victims of Armed Conflicts: Israel-Hamas and Russia-Ukraine Wars in Perspective' (2025) 8(1) *Chukwuemeka Odumegwu Ojukwu University Law Journal* 134.

<sup>141</sup> Khan ZF, 'Cyber Warfare and International Security: A New Geopolitical Frontier' (2025) 3(2) *The Critical Review of Social Sciences Studies* 518.

<sup>142</sup> Alvi ZM and Haider S, 'Humanitarian Dilemmas Arising From Major Power Confrontations: With Special Focus on Russia-Ukraine Conflict' (2024) 3 *International Journal of Emerging Knowledge Studies* 111.

<sup>143</sup> Erameh NI et al, 'In the Shadow of Empire: Putin's Expansionism, Russia-Ukraine Conflict and the Limitation of United Nations Security Council Veto Power' (2023) *African Journal of Peace and Conflict Studies* 26.

<sup>144</sup> Moret E et al, 'The New Deterrent?: International Sanctions Against Russia Over the Ukraine Crisis: Impacts, Costs and Further Action' (2016) 8.

<sup>145</sup> Cafruny A et al, 'Ukraine, Multipolarity and the Crisis of Grand Strategies' (2023) 25(1) *Journal of Balkan and Near Eastern Studies* 18.

<sup>146</sup> Svanberg LK, 'RIP R2P - And Yet It Moves: It Is Premature to Declare the Responsibility to Protect Dead - No, It Needs CPR in the Dark Ages of the 2020s!' (2024) 21 *SCJ International Law & Business* 1.

<sup>147</sup> Kelly MJ, 'The Role of International Law in the Russia-Ukraine War' (2023) 55 *Case Western Reserve Journal of International Law* 77.

<sup>148</sup> Steinhardt RG, 'The Role of International Law as a Canon of Domestic Statutory Construction' (1990) 43 *Vanderbilt Law Review* 1123.

<sup>149</sup> Bukhari SRH et al, 'Ukraine and Russia: A Historical Analysis of Geopolitical Dynamics, National Identity, and Conflict Escalation Leading to the Present-Day Crisis' (2024) 12(2) *Kurdish Studies* 5804.

The ongoing Russia-Ukraine conflict has laid bare the profound structural deficiencies of the international legal system in ensuring accountability and prosecuting perpetrators of international crimes.<sup>150</sup> Despite mounting evidence of war crimes and crimes against humanity, efforts to hold individual perpetrators accountable have been largely ineffective.<sup>151</sup> This failure is rooted in two fundamental issues: the absence of universal jurisdiction and enforcement power,<sup>152</sup> and the political shielding of high-ranking officials or state leaders.<sup>153</sup> Russia's non-recognition of international legal bodies like the ICC, combined with geopolitical protection of key actors, has allowed alleged offenders to act with impunity.<sup>154</sup>

### **3.1. The Absence of Universal Jurisdiction and the Weakness of Enforcement Mechanisms**

One of the most critical legal obstacles to ensuring accountability and prosecuting perpetrators of international crimes lies in the absence of universal jurisdiction<sup>155</sup> and the lack of an independent enforcement mechanism within the existing international legal framework.<sup>156</sup> Although the principle of universal jurisdiction permits states to prosecute certain core international crimes such as genocide,<sup>157</sup> war crimes, and crimes against humanity<sup>158</sup> regardless of where they were committed or the nationality of the perpetrator or victim, its application remains inconsistent, politically sensitive, and largely discretionary.<sup>159</sup> Notably, no binding multilateral treaty imposes a universal obligation on all states to exercise such jurisdiction.<sup>160</sup> Instruments like the Geneva Conventions of 1949 and Additional Protocol I (1977) do require states to prosecute or extradite individuals suspected of grave

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<sup>150</sup> Varga R, 'The Russian-Ukrainian War: The Possibilities of Ensuring Accountability' (2024) 64(4) *Hungarian Journal of Legal Studies* 580.

<sup>151</sup> Karpus T, 'Ukraine's Quest for Justice: Accountability for Atrocities Committed in the Russia-Ukraine War' (2023) 51.

<sup>152</sup> Colangelo AJ, 'The Legal Limits of Universal Jurisdiction' in *Globalization and Common Responsibilities of States* (Routledge 2017) 162.

<sup>153</sup> Gislain MUTABAZI, *Legal Analysis on the Investigation and Prosecution of State Officials with Immunity under International Criminal Law* (Diss, ULK 2024) 20.

<sup>154</sup> Hafetz J, 'International Criminal Law and the Role of Narrative in the War in Ukraine' (2024) 36 *Pace International Law Review* 395.

<sup>155</sup> Colangelo AJ, 'The Legal Limits of Universal Jurisdiction' in *Globalization and Common Responsibilities of States* (Routledge 2017) 157.

<sup>156</sup> Stopchinski R, 'Enforcement Mechanisms for International Standards of Judicial Independence: The Role of Government and Private Actors' (2019) 26(2) *Indiana Journal of Global Legal Studies* 677.

<sup>157</sup> *Convention on the Prevention and Punishment of the Crime of Genocide* 9 December 1948, Art I.

<sup>158</sup> *Rome Statute of the International Criminal Court* 17 July 1998, Arts 5-8.

<sup>159</sup> Burger ES and Holland M, 'Law as Politics: The Russian Procuracy and Its Investigative Committee' (2008) 2 *Columbia Journal of European Law* 144.

<sup>160</sup> Colangelo AJ, 'The Legal Limits of Universal Jurisdiction' in *Globalization and Common Responsibilities of States* (Routledge 2017) 166.

breaches,<sup>161</sup><sup>162</sup><sup>163</sup><sup>164</sup> but these obligations are limited in scope and rely heavily on national implementation.<sup>165</sup> Many states have yet to incorporate universal jurisdiction into their domestic legal systems, resulting in significant enforcement gaps and inconsistent practice.<sup>166</sup>

### ***3.2. Institutional Limitations of the International Criminal Court and the Role of Non-Cooperation***

The International Criminal Court, established under the Rome Statute of 1998, suffers from severe institutional limitations.<sup>167</sup> The Court lacks its own police force and cannot independently arrest suspects or compel state cooperation.<sup>168</sup> The Rome Statute imposes only a general obligation on States Parties to "cooperate fully with the Court,"<sup>169</sup> while setting out procedures for transmitting cooperation requests, including arrest and surrender.<sup>170</sup> However, these provisions lack coercive mechanisms to enforce compliance or penalize refusal.<sup>171</sup> Although the Rome Statute allows the Court to refer cases of non-compliance to the Assembly of States Parties or the UN Security Council,<sup>172</sup> this mechanism is often ineffective due to geopolitical deadlock, particularly when the accused individuals are nationals of powerful non-State Parties such as Russia.<sup>173</sup> Russia's non-ratification of the Rome Statute and formal withdrawal of its signature in 2016 exempts it from any legal obligation to cooperate with the ICC under treaty law.<sup>174</sup> As a result, accountability becomes contingent on political will rather than legal obligation, allowing alleged perpetrators, particularly those in protected or non-cooperative jurisdictions, to evade justice.<sup>175</sup> This normative and practical deficiency not only erodes deterrence but also undermines the

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<sup>161</sup> *Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* 12 August 1949, Art 49.

<sup>162</sup> *Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* 12 August 1949, Art 50.

<sup>163</sup> *Geneva Convention III Relative to the Treatment of Prisoners of War* 12 August 1949, Art 129.

<sup>164</sup> *Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War* 12 August 1949, Art 146.

<sup>165</sup> Meron T, 'The Geneva Conventions as Customary Law' (1987) 81(2) *American Journal of International Law* 351.

<sup>166</sup> Bassiouni MC, 'Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice' (2001) 42 *Virginia Journal of International Law* 89.

<sup>167</sup> Goldsmith J, 'The Self-Defeating International Criminal Court' (2003) 70 *University of Chicago Law Review* 101.

<sup>168</sup> Hughes G, 'Agreements for Cooperation in Criminal Cases' (1992) 45 *Vanderbilt Law Review* 7.

<sup>169</sup> *Rome Statute of the International Criminal Court* 17 July 1998, Art 86.

<sup>170</sup> *Rome Statute of the International Criminal Court* 17 July 1998, Arts 87-89.

<sup>171</sup> Ssenyonjo M, 'State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia' (2018) 29(1) *Criminal Law Forum* 70.

<sup>172</sup> *Rome Statute of the International Criminal Court* 17 July 1998, Art 87(7).

<sup>173</sup> Topor L, 'Sovereignty, Power, International Security and a Lack of International Law' in *Cyber Sovereignty: International Security, Mass Communication, and the Future of the Internet* (Springer Nature Switzerland 2024) 67.

<sup>174</sup> Zhu Z, 'Study on the Relationship Between Russia and the International Criminal Court' (2024) 4 *Commentary and Critique* 2.

<sup>175</sup> Rached DH, 'The Concept(s) of Accountability: Form in Search of Substance' (2016) 29(2) *Leiden Journal of International Law* 325.

legitimacy, authority, and coherence of international criminal law and international law more broadly.<sup>176</sup>

### **3.3. Political Shielding, Sovereign Immunity, and the Erosion of Accountability**

The prosecution of international crimes is frequently obstructed by political shielding, whereby states protect high-ranking officials, often those most responsible for serious violations of international law, from legal accountability.<sup>177</sup> Despite the principle of individual criminal responsibility codified in the Rome Statute<sup>178</sup> and the rejection of official capacity as a bar to prosecution,<sup>179</sup> which states that the Statute shall apply "equally to all persons without any distinction based on official capacity," enforcement remains subject to geopolitical manipulation.<sup>180</sup> Russian political and military elites, such as President Vladimir Putin and high-ranking officials, accused of genocide, war crimes, or crimes against humanity, are often shielded by the Russian state, which refuses to cooperate with international legal mechanisms.<sup>181</sup> Under the Rome Statute, a requested state may refuse to surrender a person to the ICC if it would require the state to act inconsistently with its obligations under international agreements that grant immunity to officials.<sup>182</sup> Therefore, this provision is often invoked to protect sitting heads of state or senior officials, despite the Statute's intention to remove such immunities.<sup>183</sup>

Further compounding this issue is the political use of veto power within the UNSC under the UN Charter, which requires the affirmative votes of all five permanent members (P5) for substantive decisions.<sup>184</sup> In situations where the ICC's jurisdiction must be triggered via Article 13(b) of the Rome Statute, through UNSC referral, powerful states such as Russia can and have exercised their veto to block investigations and prosecutions of their allies or themselves.<sup>185</sup> This politicization not only undermines the impartiality and universality of

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<sup>176</sup> Danner AM, 'Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court' (2003) 97(3) *American Journal of International Law* 533.

<sup>177</sup> Akande D and Shah S, 'Immunities of State Officials, International Crimes, and Foreign Domestic Courts' in *Challenges in International Human Rights Law* (Routledge 2017) 840.

<sup>178</sup> *Rome Statute of the International Criminal Court* 17 July 1998, Art 25.

<sup>179</sup> *Rome Statute of the International Criminal Court* 17 July 1998, Art 27(1).

<sup>180</sup> Youvan DC, 'Challenges in Prosecuting Politically Powerful States for Genocide: A Comparative Analysis of ICC and ICJ Jurisprudence' (2024) 17.

<sup>181</sup> Oksamytyna K, 'Imperialism, Supremacy, and the Russian Invasion of Ukraine' (2023) 44(4) *Contemporary Security Policy* 501.

<sup>182</sup> *Rome Statute of the International Criminal Court* 17 July 1998, Art 98(1).

<sup>183</sup> Iverson JM, 'The Continuing Functions of Article 98 of the Rome Statute' (2012) 4 *Goettingen Journal of International Law* 145.

<sup>184</sup> UN Charter, art 27(3).

<sup>185</sup> Fremuth ML and Stavrou K, 'The Future We Want?: Reflections on the Exercise of the United Nations Security Council Members' Veto Powers towards the International Criminal Court' (2022) 25(1) *Max Planck Yearbook of United Nations Law Online* 170.

international criminal justice<sup>186</sup> but also reinforces a culture of impunity for those at the highest levels of power.<sup>187</sup> Consequently, despite normative frameworks designed to ensure accountability, political shielding continues to create a de facto immunity for senior perpetrators of international crimes, thereby weakening the authority of international legal institutions and eroding trust in the rule of international law at the global level.<sup>188</sup>

The Russia-Ukraine war has laid bare the structural failures of international law in holding perpetrators of international crimes accountable.<sup>189</sup> Chief among these is the absence of universal jurisdiction and an independent enforcement mechanism, which leaves justice dependent on often unwilling state cooperation.<sup>190</sup> The ICC, constrained by its reliance on member states for arrests and enforcement, lacks the authority to act decisively.<sup>191</sup> This legal impotence is exacerbated by political shielding, as powerful states protect high-ranking offenders through sovereign immunity claims or Article 98 of the Rome Statute legal loopholes.<sup>192</sup> The politicized use of permanent members' veto power within the UN Security Council further obstructs accountability.<sup>193</sup> Together, these legal and political deficiencies entrench impunity and expose the international justice system's inability to respond effectively to grave violations committed during armed conflict.<sup>194</sup>

#### IV. CONCLUSION

Accordingly, the Russia-Ukraine war, ongoing since 2022, starkly illustrates the structural and functional deficiencies of international law in addressing contemporary armed conflicts.<sup>195</sup> It reveals a dual failure: first, the incapacity of international legal norms to prevent the use of force and respond effectively to the evolving nature of warfare,<sup>196</sup> owing

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<sup>186</sup> Trahan J, 'Why the Veto Power Is Not Unlimited: A Response to Critiques of, and Questions About, Existing Legal Limits to the Veto Power in the Face of Atrocity Crimes' (2022) 54 *Case Western Reserve Journal of International Law* 111.

<sup>187</sup> Igonoh JA, 'United Nations Security Council, Human Rights and State Impunity: Redefining the Concept of Human Right in the 21st Century' (2024) 240.

<sup>188</sup> Andrews JT and Montinola GR, 'Veto Players and the Rule of Law in Emerging Democracies' (2004) 37(1) *Comparative Political Studies* 72.

<sup>189</sup> Perry FV, 'The Russian Invasion of Ukraine and the Tottering Principles of International Law: Russia's Assault on World Norms' (2022) 40 *Wisconsin International Law Journal* 334.

<sup>190</sup> Jervis R, 'Cooperation under the Security Dilemma' (1978) 30(2) *World Politics* 179.

<sup>191</sup> Gegout C, 'The International Criminal Court: Limits, Potential and Conditions for the Promotion of Justice and Peace' (2013) 34(5) *Third World Quarterly* 801.

<sup>192</sup> Ambos K, *Rome Statute of the International Criminal Court* (CH Beck 2021) 21.

<sup>193</sup> Webb P, 'Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria' (2014) 19(3) *Journal of Conflict and Security Law* 474.

<sup>194</sup> Adamu ANV, 'The Applicability of Humanitarian Intervention and the Responsibility to Protect During Armed Conflicts: Russia-Ukraine War in Focus' (2023) 2(1) *American Journal of Law and Political Science* 9.

<sup>195</sup> Kalmkova O, 'Ukraine, Russia, and International Law: Occupation, Armed Conflict and Human Rights' (2022) 2(2) *Law, Business and Sustainability Herald* 5.

<sup>196</sup> Sivakumaran S, 'Re-envisioning the International Law of Internal Armed Conflict' (2011) 22(1) *European Journal of International Law* 258.

to the absence of robust enforcement mechanisms,<sup>197</sup> the erosion of binding security guarantees,<sup>198</sup> and the exploitation of legal ambiguities by state actors;<sup>199</sup> and second, the persistent ineffectiveness of the international legal system in ensuring accountability and prosecuting perpetrators of international crimes,<sup>200</sup> as evidenced by limited jurisdictional reach,<sup>201</sup> the lack of autonomous enforcement capabilities,<sup>202</sup> and the political immunity of high-ranking officials.<sup>203</sup> This conflict underscores an urgent imperative: international law must undergo comprehensive reform to reinforce its enforcement architecture,<sup>204</sup> enhance its adaptability to modern conflict dynamics,<sup>205</sup> and ensure that mechanisms for accountability are insulated from political interference.<sup>206</sup> Without such reforms, international law risks further erosion of its legitimacy and relevance<sup>207</sup> in the face of contemporary geopolitical realities against the backdrop of a rising incidence and intensity of armed conflicts worldwide.<sup>208</sup>

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<sup>197</sup> Izarova I, Hartman Y and Nate S, 'Mechanisms for the Compensation of War Damages: Toward a Fair Solution for Ukraine' (2024) 10(1) *International Comparative Jurisprudence* 31.

<sup>198</sup> Lippert WE, 'How Conventional Arms Control Failures Caused the Russo-Ukraine War' (2024) 40(1) *Defense & Security Analysis* 152.

<sup>199</sup> Sotula O, 'The Evolution of Modern Warfare Through the Prism of the Russian-Ukrainian Conflict: A Comprehensive Analysis' (2024) 106 *Acta Universitatis Lodzienensis. Folia Iuridica* 9.

<sup>200</sup> Williams A, 'Ukraine and the Investigation of Systemic War Crimes: Learning from the UK's Investigative Failures in the Iraq and Afghanistan Wars' in *The Russian-Ukrainian Conflict and War Crimes* (Routledge 2024) 299.

<sup>201</sup> Heeney M, 'Legal Shortcomings in the Prosecution of War Crimes: The Case for Continued Use of Ad Hoc Tribunals in Upholding International Law' (2024) 39.

<sup>202</sup> Sotula O, 'The Evolution of Modern Warfare Through the Prism of the Russian-Ukrainian Conflict: A Comprehensive Analysis' (2024) 106 *Acta Universitatis Lodzienensis. Folia Iuridica* 9.

<sup>203</sup> Trykhlib K, 'Constitutional Order and the Rule of Law in a Time of War in Ukraine' (2024) 24(1) *International & Comparative Law Review/Mezzinárodní a Srovnávací Právní Revue* 246.

<sup>204</sup> Pantaleo L and Siddi M, 'The EU 30+ Should Overhaul Its Rule of Law Toolkit to Meet the Challenges of Further Enlargement' (2024) 10 *TEPSA European Council Experts' Debrief* 11.

<sup>205</sup> Kharitonova NI, 'The Nature of Contemporary Conflicts and Prospects for Adapting Collective Security Systems: A Triadic Approach' (2025) 25(1) *Vestnik RUDN. International Relations* 27.

<sup>206</sup> Modaber AA and Sediq AF, 'The Legal Position of Accountability in the International Law System' (2024) 3(12) *Modern Science and Research* 241.

<sup>207</sup> Patel A and Tiwari R, 'Critical Analysis of International Law Failures in the Russian Invasion of Ukraine: Implications for Global Security' (2024) *Law & Safety* 48.

<sup>208</sup> Saliternik M and Agon SS, 'Proactive International Law' (2023) 75 *University of Cincinnati Law Review* 685.

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