



IRAN'S INVOLVEMENT IN RUSSIA'S MILITARY OPERATIONS IN UKRAINE: AN INTERNATIONAL LAW PERSPECTIVE

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ABSTRACT

The conflict between Russia and Ukraine has been dragged into political and legal fields in parallel with the battlefield, and the international community, including Iran, has been subsequently drawn into the situation. The controversial debates concerning Iran's role in supplying Russia with armed drones prior to and during Russia's Military Operations in Ukraine raise the question of Iran's international responsibility in the ongoing war. The provision of armed drones to Russia does not, in itself, constitute a violation of international law unless Iran knowingly and intentionally engaged in an internationally wrongful act. Evidence is not conclusive so far whether Iran's transfer of armed drones to Russia is a breach of international law. Besides, the use of the drones yielded military advantages to both sides: Russia could narrow down the impact of its attacks, respecting the principle of distinction, while Ukraine could target Iranian drones more easily than Russia's missiles, which is compatible with Iran's positive obligations under International Humanitarian Law (IHL).

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Table of Contents

Introduction

1. Recognizable International Obligations Regarding Arms Trade

2. Breach of International Obligations by Iran in Connection With Russia's Military Operations in Ukraine

Conclusion

Introduction

Having engaged in a prolonged conflict with its Western neighbors over the potential threats to its sovereignty because of the progressive deployment of the NATO Integrated Air and Missile Defence System (NATINAMDS)¹, the Russian Federation justified the commencement of what it calls “Special Military Operations” on February 24, 2022. Russia’s justifications is mainly based on individual self-defense and collective self-defense as well as the alleged humanitarian intervention² because of which invaded Ukraine’s territory.

The conflict between Russia and Ukraine unfolded on the battlefield and dragged into political and legal realms. Consequently, the international community has taken different positions regarding Russia’s so-called Special Military Operations in Ukraine, both politically and legally. While political steps have been taken through the United Nations General Assembly (UNGA), most notably, UNGA Resolution A/RES/ES-11/1,³ legal actions are mainly followed through the International Court of Justice’s Case concerning “Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation).” Russia’s “Military Operations”⁴ in Ukraine has also dragged other States into this conflict. The United States and the European Union have imposed a series of sanctions against the Russian Federation⁵, and Russia has threatened to shut off gas supply to Europe⁶,

1 . Jonathan Masters, ‘Why NATO Has Become a Flash Point with Russia in Ukraine’ (Council on Foreign Relations 20 January 2022), available at: <https://www.cfr.org/backgrounder/why-nato-has-become-flash-point-russia-ukraine> (accessed 13 January 2023). For NATO’s responses to Russia’s allegations, see ‘NATO-Russia relations: the facts’ (The North Atlantic Treaty Organization (NATO) 22 July 2022), available at: https://www.nato.int/cps/en/natohq/topics_111767.htm (accessed 13 January 2023).

2 . Kevin Jon Heller and Lena Trabucco, ‘The Legality of Weapons Transfers to Ukraine Under International Law’ (2022) 13(2) *JHLS* 1, 2.

3 . UNGA Res ES-11/1 (2022) GAOR 11th emergency special session. (Aggression against Ukraine)

4 . This title has been addressed by the International Court of Justice in its Order of 16 March 2022 in Case Concerning Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Request for the Indication of Provisional Measures (Order), ICJ, 16 March 2022. See: para. 81 of the Order. In this article the same title is mainly used.

5 . FACT SHEET: United States, G7 and EU Impose Severe and Immediate Costs on Russia (The White House 6 APRIL 2022), available at: <https://whitehouse.gov/briefing-room/statements-releases/2022/04/06/fact-sheet-united-states-g7-and-eu-impose-severe-and-immediate-costs-on-russia/> (accessed 13 January 2023)

6 . ‘Russia Threatens Oil and Gas Shut-Off as West Pursues Energy Price Caps’ (The Moscow Times 2 September 2022), avail



among other actions.¹ Additionally, It has been claimed that Russia's military is using Iranian armed drones, resulting in civilian casualties and infrastructure damages.² In her recent report to the UN Security Council on Non-Proliferation (UNSC, Implementation of Resolution 2231 (2015)), Under-Secretary-General, Rosemary A. Dicarolo repeated the claims of Ukraine, France, Germany, the United Kingdom, and the United States regarding Iran's involvement in Russia's Military Operations in Ukraine, highlighting its inconsistency with the relevant provisions of annex B of the UNSC resolution 2231.³ In its Resolution of 19 January 2023 titled "The EU response to the protests and executions in Iran," the European Parliament "calls for the expansion of restrictive measures in the light of the fact that the Islamic Republic of Iran continues to provide unmanned aerial vehicles and plans to provide surface-to-surface missiles to the Russian Federation for use against Ukraine; stresses that the Islamic Republic is contributing to war crimes in Ukraine, as these weapons are being used to target civilians and civilian infrastructure".⁴

The controversial debates around Iran's role in supplying Russia with armed drones before Russia's military operations in Ukraine raise two main questions that calls for examination under international law: 1) whether Iran bears international responsibility for supplying armed drones to Russia in the Ukraine situation, and 2) whether Iran bears responsibility for Russia's illegal conducts in violation of International Humanitarian Law (IHL)? According to the Lotus principle, what is not explicitly forbidden by international law is allowed for sovereign States⁵. Thus, Iran might not have violated international law by supplying armed drones to Russia unless it has explicitly engaged in an internationally wrongful act.

Article 2 of the "2009 Draft Articles on Responsibility of States for Internationally Wrongful Acts (the ARSIWA)," outlines the elements of an internationally wrongful act of a State, stating that "[t]here is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law, and (b) constitutes a breach of an international obligation of the State."⁶ Besides, in a more elaborated sense, under Chapter IV, titled "Responsibility of a State in Connection with the Act of Another State," the responsibility of third States or "derivative responsibility" has been noted. Therefore, to find the answers to the above questions, firstly, we will identify and evaluate the relevant international obligations that may have been breached during Russia's Military Operations in Ukraine.

able at: <https://www.themoscowtimes.com/2022/09/02/mikhail-gorbachev-theater-lover-a78702> (accessed 13 January 2023).

1 . For a comprehensive understanding of the effects of the Ukraine War on international legal order, see Ingrid (Wuerth) Brunk and Monica Hakimi, 'Russia, Ukraine, and the Future World Order' (2022) 116(4) AJIL 687, 694-697.

2 . Robin Wright, 'Iran Arms Russia in the War in Ukraine' (The New Yorker 5 November 2022), available at: <https://www.newyorker.com/news/daily-comment/iran-arms-russia-in-the-war-in-ukraine> (accessed 8 February 2023).

3 . Under-Secretary-General Rosemary A. Dicarolo's Remarks to the Security Council on Non-Proliferation (Implementation of Resolution 2231 (2015)), New York, 19 December 2022, UN Political and Peacebuilding Affairs, available at: <https://dppa.un.org/en/dicarolo-restoring-jcpoa-remains-crucial-to-assure-international-community-of-peaceful-nature-of> (accessed 14 January 2023).

4 . European Parliament resolution of 19 January 2023 on the EU response to the protests and executions in Iran (2023/2511(RSP)), P9_TA (2023) 0016, para. 23, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0016_EN.pdf (accessed 24 January 2023)

5 . PCIJ, The Case of the SS Lotus (France V. Turkey), Judgment, 7 September 1927, Collection of Judgments, Series A.-No. 70, p.20.

6 . International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, art. 2.



Secondly, a breach of an international obligation by Iran and the question of attribution with a focus on Iran's involvement in Russia's Military Operations in Ukraine would be examined.

It is important to note that this article focuses on the international legal aspects of arms trade between Russia and Iran and will not discuss the legality of Russia's so-called Special Military Operations in Ukraine, which has been dealing with properly so far.¹

1. Recognizable International Obligations Regarding Arms Trade

Regarding Russia's Military Operations in Ukraine, there exist General (already provided for) and Special (of a sui generis nature emerging due to the ongoing war in Ukraine) international obligations. Both kinds of these international obligations will be surveyed in the following.

1.1. General International Obligations

Although war is prohibited in the UN Charter², arms trade between States is not generally forbidden under modern international law. In its Judgment of 27 June 1986 in the case concerning "Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)," the ICJ dealt with this issue and concluded that:

*[...] in international law, there are no rules, other than those that may be accepted by the State concerned, by treaty or otherwise, whereby the level of armaments of a sovereign State can be limited, and this principle is valid for all States without exception.*³

As emphasized by ICJ, some international regulations prohibit or limit the use and trade of certain weapons and their related activities. For instance, the Treaty on Non-Proliferation of Nuclear Weapons (the NPT) provides that both nuclear-weapon and non-nuclear-weapon States undertake to prohibit transfer or reception of nuclear weapons or control over such weapons directly, or indirectly.⁴ Other treaties, such as the 1996 Amended Protocol II to the Convention on Certain Conventional Weapons (CCW)⁵, the 1997 Anti-Personnel Mine Ban Convention⁶, 1997 Chemical Weapons Convention (CWC)⁷, and the 2008 Convention on Cluster Munitions⁸ take a less or more similar approach to certain weapons and their related activities.

1 . In its volume 116 - Issue 4 (October 2022), the American Journal of International Law (AJIL) has published several articles reviewing the Ukraine War from different legal perspectives. There are other articles about the Ukraine War, some of which have been mentioned in this article.

2 . Article 2(4) of the UN Charter states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations."

3 . ICJ, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, 27 June 1986, ICJ Rep 1986, para. 269.

4 . Treaty on Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 729 UNTS 161 (NPT), article. 2, and article. 3.

5 . Article 3(3) provides: "It is prohibited in all circumstances to use any mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering."

6 . Article 1(1) provides: "Each State Party never undertakes under any circumstances: a) To use anti-personnel mines; b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines; c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention."

7 . Article 1(1) provides: "Each State Party to this Convention undertakes never under any circumstances: (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone; (b) To use chemical weapons; (c) To engage in any military preparations to use chemical weapons; (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention."

8 . Article 1(1) provides: "Each State Party undertakes never under any circumstances to: (a) Use cluster munitions; (b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions; (c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention."



Arms Trade Treaty (ATT) is a comprehensive treaty that prohibits or limits certain activities related to the trade of not only a group of weapons but conventional weapons in general. Articles 6 and 7 of the ATT, forming the core of the Treaty's regulations on transfer and export control regime¹, are particularly relevant to this article. Article 6 provides that:²

1. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular, arms embargoes.
2. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.
3. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 if it knows at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

Paragraphs 1 and 2 of Article 6 are among the widely recognized and fundamental rules of international law, while paragraph 3 is vague in terms of international responsibility. Firstly, it seems that paragraph 3 has an overlap with paragraphs 1 and 2; however, it might be helpful in case the Security Council is not able to act under Chapter VII of the UN Charter because of the Veto Power; secondly, the international law authority that determines the occurrence of those international crimes shall be specified. Thirdly, establishing knowledge could be challenging in the absence of any official legal declaration from responsible international authorities, such as the UNSC, ICJ, and International Criminal Court.

In the same vein, Article 7 of the ATT establishes a self-assessment mechanism through which the exporting State Party must, prior to authorization of the export of conventional arms, evaluate whether the exportation would contribute to or undermine peace and security or could be used to commit or facilitate a serious violation of international humanitarian law or international human rights law; an act constituting an offense under international conventions or relating to terrorism to which the exporting State is a Party; or an act constituting an offense under international conventions or protocols relating to transnational organized crime to which

velop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions; (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.”

1 . Andrew Clapham and others, *The Arms Trade Treaty: A Commentary* (first published 2016, Oxford University Press 2016) 246.

2 . Arms Trade Treaty (adopted 2 April 2013, entered into force 24 December 2014) 3013 UNTS 269 (ATT), article. 6.



the exporting State is a Party. The applicability of Article 7, the same as Article 6, needs to be clarified.¹

Along with international conventions and treaties, UNGA Resolution A/RES/2625(XXV), also known as the “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States under the Charter of the United Nations”, should be taken into account. It provides that:

*State parties to an international dispute and other states shall refrain from any action which may aggravate the situation to endanger the maintenance of international peace and security [...].*²

Finally, the Program on Humanitarian Policy and Conflict Research (HPCR) Manual on International Law Applicable to Air and Missile Warfare is a highly relevant legal material to this article. Though non-binding, it is a reliable source providing “the most up-to-date restatement of existing international law applicable to air and missile warfare, as elaborated by an international Group of Experts.”³ Paragraphs 5 and 6 of the Manual prohibit two categories of weapons based on 1) their methods or means of use and 2) certain models of weapons. In the first category (paragraph 5), which is based on the fundamental principle that “in any armed conflict, the right of the Belligerent Parties to choose methods or means of warfare is not unlimited”:

- a. [...] it is prohibited to conduct air or missile combat operations which employ weapons that (i) cannot be directed at a specific lawful target and therefore are of a nature to strike lawful targets and civilians or civilian objects without distinction; or (ii) the effects of which cannot be limited as required by the law of international armed conflict and which therefore are of a nature to strike lawful targets and civilians or civilian objects without distinction;
- b. [...] it is prohibited to conduct air or missile combat operations that employ weapons that are calculated, or of a nature, to cause unnecessary suffering or superfluous injury to combatants.⁴

In the second category (paragraph 6), certain weapons are prohibited in air or missile combat operations, including:

- a. Biological, including bacteriological, weapons.
- b. Chemical weapons.
- c. Laser weapons are specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is, to the naked eye or the eye with corrective eyesight devices.

1 . See Public International Law & Policy Group, The Arms Trade Treaty: Key Principles Limiting Trade to Human Rights Violating States (Legal Memorandum), July 2015, p. 46; Andrea Edoardo Varisco, Giovanna Maletta and Lucile Robin, Taking Stock of the Arms Trade Treaty - Achievements, Challenges, and Ways Forward (first published 2021, SIPRI 2021) 52.

2 . UNGA Res 2625 (1970) GAOR 25th Session Supp 18 preamble. (Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations)

3 . HPCR Manual on International Law Applicable to Air and Missile Warfare, Program on Humanitarian Policy and Conflict Research at Harvard University, 15 May 2009, p. iii.

4 . Ibid, para. 2(2).



- d. Poison, poisoned substances, and poisoned weapons.
- e. Small arms projectiles calculated, or of nature, to cause an explosion on impact with or within the human body.
- f. Weapons, the primary effect of which is to injure by fragments in the human body, escape detection by x-ray.

To conclude, it is clear that general international obligations on the transfer of arms took an exclusive and exceptional approach based on “methods or means of use” and “certain types of weapons.”

1.2. Special International Obligations

Given the circumstances of an international conflict, special international obligations could be temporarily and exclusively established by certain international entities, including the UNSC and the ICJ, to maintain international peace and security.

In addition to established international regulations, in some instances, the UNSC has imposed arms embargoes under Chapter VII of the UN Charter. For example, the UNSC, in Resolution 713 (1991), mandates that: [...] under Chapter VII of the Charter of the United Nations, that all States shall, for the purposes of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Council decides otherwise following consultation between the Secretary-General and the Government of Yugoslavia;¹

Somalia (Resolution 733 since January 1992), Côte d'Ivoire (Resolution 1572 since November 2004), Democratic People's Republic of Korea (Resolution 1718 since October 2006), Eritrea (Resolution 1907 since December 2009), Libya (Resolution 1970 since February 2011), Yemen (Resolution 2216 since April 2015), are other examples of UNSC's arms embargoes.

Regarding Russia's Military Operations in Ukraine, there is, and probably will be, no binding Resolution under Chapter VII of the UN Charter due to Russia's Veto Power. Furthermore, the UN General Assembly, in its Resolution of March 18, 2022, entitled “Aggression against Ukraine”, “[d]eplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter”², “[c]ondemns all violations of international humanitarian law and violations and abuses of human rights, and calls upon all Parties to respect the relevant provisions of international humanitarian law strictly.”³ It further “[d]emands that all parties fully comply with their obligations under international humanitarian law to spare the civilian population, and civilian objects, refraining from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, and respecting and protecting humanitarian personnel and consignments used for humanitarian relief operations.”⁴

1 . UNSC Res 713 (1991) UNSCOR 3009th meeting, para. 6. (Socialist Federal Republic of Yugoslavia)

2 . UNGA Res ES-11/1 (2022) GAOR 11th emergency special session, para.2. (Aggression against Ukraine)

3 . Ibid, para. 11.

4 . Ibid, para. 12.



Giving a title to a UNGA Resolution (such as Uniting for Peace) does not make it special or equal/identical to a UNSC-Chapter-VII Resolution; the UNGA's so-called "Uniting for Peace" Resolution cannot, technically and legally, alter the nature of a UNGA's Resolution and go beyond a recommendation¹ to the UN member States.² However, it can reflect the international community's ethical, phantom judgment and concern towards the ongoing situation in Ukraine. Thus, UNGA Resolutions or even recommendations by the UNSC cannot *ipso facto* constitute an international obligation, as confirmed by the ICJ in the Corfu Channel case.³

The maintenance of international peace and security under Chapter VII of the UN Charter is the *primary* responsibility of the UNSC.⁴ However, the recognition of "threats to the peace", "breaches of the peace" and "acts of aggression" as the prerequisite for taking measures to maintain international peace and security is the *exclusive* responsibility of the UNSC.⁵

It is worth mentioning that the United States has initiated and led the Uniting for Peace Resolution against the Russian Federation in the UNGA.⁶ However, it has undermined the utility of the same Resolution to condemn Israel and recommend sanctions against it in 1967, 1980, 1982, and 1997.⁷

Probably, the only legally-binding material that can be invoked as a criterion in Russia's Military Operations in Ukraine so far is 2022 Order of the ICJ in its recent Case (Ukraine v. Russian Federation). The Order contains several crucial considerations. The ICJ as the principal judicial organ of the United Nations "reaffirms that its "orders on provisional measures under Article 41 [of the Statute] have binding effect" [...] and thus create international legal obligations for any Party to whom the provisional measures are addressed."⁸ The operative part of the Order determined two general obligations; firstly, it orders that:

*The Russian Federation must, pending the final decision in the case, suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine. [...] the Russian Federation must also ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of these military operations.*⁹

Secondly, with a broader approach, the Court deems it necessary to indicate an additional measure directed to both Parties and aimed at ensuring the non-aggravation of the dispute.¹⁰ Despite these obligations arising from the operative part of the Order, the Court declares that it

1 . ICJ, Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, 20 July 1962, ICJ Rep 1962, p.165.

2 . Florian Kriener, 'Can the United Nations General Assembly Authorize a No-fly-Zone over Ukraine?' (Opinio Juris 15 April 2022), available at: <https://opiniojuris.org/2022/04/15/can-the-united-nations-general-assembly-authorize-a-no-fly-zone-over-ukraine/> (accessed 13 January 2023).

3 . ICJ, Corfu Channel case, Preliminary Objection, Judgment, 25 March 1948, ICJ Rep 1948, p.22.

4 . Charter of The United Nations (adopted 26 June 1945, entered into force 24 October 1945), article. 24(1).

5 . Ibid., article. 39.

6 . Michael P. Scharf, 'Power Shift: The Return of the Uniting for Peace Resolution' (2023) 55 Case W. Res. J. Int'l L 1, 26.

7 . Ibid, 14.

8 . ICJ, Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Request for the Indication of Provisional Measures, Order, 16 March 2022, para. 84.

9 . Ibid, para. 81.

10 . Ibid, para. 82.



“can only decide on Ukraine’s claims if the case proceeds to the merits.”¹ Besides, the Court declined Ukraine’s request for a provisional measure directing Russia to “provide a report to the Court on measures taken to implement the Court’s Order on Provisional Measures one week after such Order and then on a regular basis to be fixed by the Court” given the circumstances of the case.²

Regarding the Order, two critical points should be noted: firstly, the Court selectively references certain parts of the UNGA Resolution A/RES/ES-11/1 of March 2, 2022: The Court takes note of Resolution A/RES/ES-11/1 of 2 March 2022 of the General Assembly of the United Nations, which, inter alia, “[e]xpress[es] grave concern at reports of attacks on civilian facilities such as residences, schools and hospitals, and of civilian casualties, including women, older persons, persons with disabilities, and children,” “[r]ecogniz[es] that the military operations of the Russian Federation inside the sovereign territory of Ukraine are on a scale that the international community has not seen in Europe in decades and that urgent action is needed to save this generation from the scourge of war,” “[c]ondemn[s] the decision of the Russian Federation to increase the readiness of its nuclear forces” and “[e]xpress[es] grave concern at the deteriorating humanitarian situation in and around Ukraine, with an increasing number of internally displaced persons and refugees in need of humanitarian assistance.”³

Even though the Decisions of the Court, including Judgments and Orders, “[have] no binding force except between the parties and in respect of [a] particular case,”⁴ the legal effects of the Court’s Decision, even its Advisory Opinions, concerning the international community are undeniable. The Court must have astutely selected those parts of the UNGA Resolution and considered them reliable facts based on which it could assess whether or not “Risk of Irreparable Prejudice and Urgency” was confirmable.

The Court endorsed those paragraphs of the UNGA Resolution and gave them legal weight. Hence, as of March 16, 2022, in which the Order has been delivered by the Court, supplying Russia with arms might be a *de jure* violation of international humanitarian law since the Court, through the endorsement of the UNGA Resolution, took on the inhumane situation in Ukraine arising from Russia’s Military Operations. The effect of this act of the Court is called by Öberg the causative effect of factual determinations, according to which “in the eyes of the determining body, a certain fact did or did not happen.”⁵ As “the principal judicial organ of the United Nations,”⁶ the ICJ’s factual determinations of the UNGA Resolution have transformed the nature of the Resolution from *de facto* to *de jure*.

1 . Ibid, para. 76.

2 . Ibid, para. 83.

3 . Ibid.

4 . Statute of The International Court of Justice (24 October 1945), article. 59. Also see ICJ, LaGrand (Germany v. United States of America), Merits, Judgment, ICJ Rep 2001, para. 109.

5 Statute of The International Court of Justice (24 October 1945), article. 59. Also see ICJ, LaGrand (Germany v. United States of America), Merits, Judgment, ICJ Re

6p 2001, para. 109.

ited Nations, op. cit., article. 92.



2. Breach of International Obligations by Iran in Connection With Russia's Military Operations in Ukraine

Breach of an international obligation by Iran could happen directly or indirectly. Focusing on Iran's involvement in Russia's Military Operations in Ukraine, in this part direct and indirect breaches of international obligations by Iran in connection with Russia's Military Operations in Ukraine will be analyzed.

2.1. Direct Breach of International Obligations by Iran

The majority of international conventions and treaties regulating arms trade among States, including the Anti-Personnel Mine Ban Convention, Chemical Weapons Convention, Convention on Cluster Munitions, etc., are unrelated to the subject matter of this article. Regarding the utilization of Iranian drones in Russia's Military Operations in Ukraine, in the absence of special conventions and treaties as well as binding documents dealing with "Unmanned Aerial Vehicle" or "Missiles", only international legal instruments emanating general obligations will be reviewed since special international obligations do not apply in this particular case. Arms Trade Treaty (ATT) consists of the most general international obligations regarding controlling and limiting arms trade¹; however, neither Russia nor Iran is a State Party or Signatory to the ATT. As a result, these two States could not be held accountable unless it is argued that the provisions of the ATT, particularly Articles 6 and 7, have become a part of customary international law and States' practice.²

There are two solid reasons for undermining this assumption. Firstly, customary international law is formed when there is a "constant and uniform practice of States and other subjects of international law in or impinging upon their international legal relations, in circumstances which give rise to a legitimate expectation of similar conduct in the future."³ Quite the contrary, according to the latest Stockholm International Peace Research Institute (SIPRI)'s research on international arms transfers, volumes of arms transfers and international sales indicate how eager Powers are to preserve this lucrative market⁴ and how reluctant they are to abide by the obligations arising from the ATT. Secondly, since the transfer of weapons is derived from the fundamental principle of sovereignty in international law, according to which "a State could generally control all activities within its territory over which it has sovereignty",⁵ those States who do not accept obligations under customary or codified international law, including the ATT, cannot be held accountable. Therefore, Russia and Iran are not obligated to apply the provisions of the ATT. Notwithstanding the achievements of the ATT and the value it has, there

1 . Marlitt Brandes, "All's Well That Ends Well" or "Much Ado About Nothing"?: A Commentary on the Arms Trade Treaty' (2013) 5(2) GOJIL 399, 401.

2 . ICJ, Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia), Preliminary Objections, Judgment, ICJ Rep 2016, para. 33.

3 . International Law Association, Statement of Principles Applicable to the Formation of General Customary International Law, 2000, para. 1(i).

4 . International arms transfers - The trend in international transfers of major arms, 1982–2021 (SIPRI), available at: <https://www.sipri.org/research/armament-and-disarmament/arms-and-military-expenditure/international-arms-transfers> (accessed 13 January 2023).

5 . Chris McGrath, 'Principles of sovereignty under international law' (Lecture in International Regulatory Frameworks for Climate Change and Environmental Management (ENVM7124), Environmental Law Australia 10 December 2018), available at: http://envlaw.com.au/wp-content/uploads/handout_sovereignty.pdf (accessed 27 January 2023).

is a long way to go for this treaty to form and establish a comprehensive regulatory mechanism among its member States, which cannot come along in such a short time.¹

The 2009 HPCR Manual is a non-binding instrument that mirrors some universally accepted principles and rules in other binding documents, such as the 1949 Geneva Conventions. It adds nothing to the existing legal literature but rather codifies them into one document.

On the other hand, there is an enriched literature about Iran's arms trade limitations in the UN resolutions. In fact, "Iran has been the subject of numerous rounds of UN sanctions for its weapons program, and a basis under international law to prevent its ballistic missile program has predated the Joint Comprehensive Plan of Action (the JCPOA)²for decades."³ Nevertheless, after the JCPOA was approved, the UN Security Council lifted the sanctions imposed in Resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010), and 2224 (2015) through Resolution 2231.

In the case of Iran, UNSC Resolution 2231⁴ endorsed the JCPOA and lifted previous rounds of sanctions, which is the key in determining whether Iran has breached an international obligation. The Resolution has two annexes: "Annex A: Joint Comprehensive Plan of Action (JCPOA), Vienna, 14 July 2015" and "Annex B: Statement". Paragraph 3 of Annex B states:

Iran is called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology, until the date eight years after the JCPOA Adoption Day or until the date on which the IAEA submits a report confirming the Broader Conclusion, whichever is earlier.

Iran is forbidden "to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons [...]." The Pentagon acknowledged that it "could not confirm news reports that Russia has asked Iran for ballistic missiles and other capabilities [...]"⁵ consequently, "*Contra rationem*, there is no limitation or prohibition for Iran to establish ballistic missiles programs designed to be capable of delivering non-nuclear weapons."⁶

On the one hand, the UN ban on Iran's transfer of conventional weapons and ballistic missiles ended on October 18, 2020,⁷ and Russia, on the other hand, is not a ban-territory-to-transfer-arms country; arms trade between Iran and Russia did not breach any international obligation so far.

Iran has not been taking direct action in Russia's Military Operations in Ukraine so far. On the contrary, "Iran's position of active neutrality *vis-à-vis* the war in Ukraine" has been reaf-

1 . Andrea Edoardo Varisco, Giovanna Maletta and Lucile Robin, Taking Stock of the Arms Trade Treaty - Achievements, Challenges, and Ways Forward (first published 2021, SIPRI 2021) 52.

2 . Joint Comprehensive Plan of Action (JCPOA), 14 July 2015.

3 . Alireza Ranjbar, 'Iran's Ballistic Missile Program from an International Law Perspective' (JURIST – Legal News and Commentary 31 December 2017), available at: <https://www.jurist.org/commentary/2017/12/alireza-ranjbar-iran-ballistic-missile/> (accessed 13 January 2023).

4 . UNSC Res 2231 (2015) UNSCOR 7488th meeting. (Non-proliferation)

5 . Jim Garamone, 'Russia's Reliance on Iran, Sign of Putin's Isolation' (US Department of Defense 1 November 2022), available at: <https://www.defense.gov/News/News-Stories/Article/Article/3206808/russias-reliance-on-iran-sign-of-putins-isolation/> (accessed 13 January 2023).

6 . Alireza Ranjbar, op.cit.

7 . UNSC Res 2231 (2015) UNSCOR 7488th meeting, Annex B, paragraph 6(b). (Non-proliferation)



firmed by Iran's Ministry of Foreign Affairs.¹ Nevertheless, Iranian Foreign Minister Hossein Amirabdollahian admitted that "a few drones had been delivered to Russia before Moscow's troops crossed the border with Ukraine in late February."²

The act of supplying Russia with conventional arms, allegedly done by Iran during the Ukraine War, should be magnified from time perspective. From October 18, 2020, the date of termination of the UN ban on Iran's transfer of weapons, to March 16, 2022, the date of the ICJ's Order, there are no general or special international obligations forbidding the transfer of conventional weapons, including drones, between Russia and Iran. It should be noted that the ICJ's Order of March 16, 2022 is a turning point since it endorsed the UNGA Resolution of 18 March 2022 and confirmed the inhumane situation in Ukraine arising from Russia's Military Operations and the possibility of violation of IHL by Russia. So, the remaining question is whether or not Iran has indirectly breached an international obligation regarding IHL by supplying Russia with arms.

2.2. Indirect Breach of International Obligations by Iran

An indirect breach of an international obligation is either a "negative" or a "positive" obligation. Negative obligations are addressed in Article 16 of the ARSIWA:

A State that aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State. According to article 16 of the ARSIWA, *contra rationem*, Iran should not aid or assist Russia if it knows that Russia has committed an internationally wrongful act. Commentary No. 3 after article 16 provides three clauses as follows:

First, the relevant State organ or agency providing aid or assistance must be aware of the circumstances making the conduct of the assisted State internationally wrongful; secondly, the aid or assistance must be given to facilitate the commission of that act, and must actually do so; and thirdly, the completed act must be such that it would have been wrongful had it been committed by the assisting State itself.

Importantly, commentary No. 2 makes a distinction between "the act of assisting State" and "the act of assisted State": The assisting State will only be responsible if its conduct has caused or contributed to the internationally wrongful act. Thus, in cases where that internationally wrongful act would have occurred in any event, the responsibility of the assisting State will not extend to compensating for the act itself.

Accumulation of commentaries No. 2 and No. 3 leads us to an important conclusion: the assisting State should have "knowledge" about the commission of an internationally wrongful act that the assisted State has done, and its assistance should be a wrongful act in its nature. Since March 16, 2022, the date the ICJ delivered its Order, providing Russia with arms and

1 . 'Iran's Foreign Ministry spokesman reacts to comments by Ukrainian foreign minister' (Islamic Republic of Iran's Ministry of Foreign Affairs 04 November 2022), available at: <https://en.mfa.gov.ir/portal/newsview/698706> (accessed 13 January 2023).

2 . Gian Volpicelli, 'Iran admits providing drones to Russia but denies involvement in Ukraine' (POLITICO 5 November 2022), available at: <https://www.politico.eu/article/iran-russia-drone-war-ukraine-hossein-amirabdollahian/> (accessed 13 January 2023).

weapons by Iran would constitute a breach of an international obligation and bring about Iran's international responsibility unless Iran argues and proves that its assistance has been done in compliance with its obligations under international law in general and international humanitarian law in particular so that the nature of its assistance could not be considered as a wrongful act.

Along with negative obligations, there are perceivable positive obligations for Iran concerning Russia's Military Operations in Ukraine to be considered, particularly from the IHL perspective.

According to the Common Article 1 to the four 1949 Geneva Conventions (the 1949 GCs), "[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." Not only does this provision establish a negative obligation, meaning member States shall "neither encourage, nor aid or assist" in a conflict, but it also contains a positive obligation, which means they shall "do everything reasonably in their power to prevent and bring such violations to an end,"¹ as it is reflected in rule 144 of Customary International Humanitarian Law:

States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law.

Since "the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives,"² third parties have the same obligations as the parties to the conflict in respecting and ensuring respect for IHL. It also should be stressed that "[t]he High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so."³ One of the results of article 1 is that "in the event of a Power failing to fulfill its obligations, the other Contracting Parties (neutral, allied or enemy) may, and should, endeavor to bring it back to an attitude of respect for the Convention."⁴ Therefore, Iran has willingly or unwillingly assisted Russia in minimizing the collateral damages of its attacks by providing Russia with "precision-guided munition." Compared to Russian missiles, Iranian drones, which belong to the "precision-guided munition" category, are more precise and compatible with International Humanitarian Law (IHL), especially when it comes to the "principle of distinction." Needless to mention, Iranian drones are more targetable objects than Russia's missiles so that Ukraine Air Force has shot them down during the War.⁵ Consequently, Iranian drones brought military advantages to both

1 . 2016 Commentary of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949), International Humanitarian Law Databases, International Committee of the Red Cross (ICRC), 2016, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD> (accessed 13 January 2023).

2 . Protocol Additional to the Geneva Conventions of 12 August 1949, and the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, article. 48.

3 . Ibid, article 86(1).

4 . Jean Pictet, Commentary on the Geneva Conventions I of 1949 (first published 1952, ICRC 1952) 26.

5 . AFP, 'Ukraine Shoots Down 45 Drones: Air Force' (Kyiv Post – Ukraine's Global Voice 01 January 2023), available at: <https://www.kyivpost.com/post/6319> (accessed 13 January 2023).



sides: Russia could narrow down the impact of its attacks, respecting the principle of distinction, while Ukraine could target Iranian drones more easily than Russia's missiles.

However, there would be a conflict between third parties' negative and positive obligations. For instance, what if Russia uses Iranian drones without respecting the IHL? Sassòli answered this question proficiently twenty years ago:

Violations of international humanitarian law are often committed with weapons provided by third States. As long as those particular weapons are prohibited, a State providing them is not responsible for violations of international humanitarian law committed by the receiving State with such weapons. However, once it knows that the receiving State systematically commits violations of international humanitarian law with certain weapons, the aiding State has to deny further transfers thereof, even if those weapons could also be used lawfully.¹

Emphasizing the importance of the "systematic violations of IHL" test, he highlighted the importance of "knowledge" as another test:

Indeed, once the violations are known, ongoing assistance is necessary to facilitate further violations. Such a strict standard may be different from the ILC in its Commentary. However, it is supported by the special obligation, under international humanitarian law, of the third State, not only not to assist in violations but also to "ensure respect" for the rules of international humanitarian law by all other States. A State providing assistance, knowing that the latter is used for violations, is certainly not complying with that specific obligation.²

In Sassòli's view, then, two criteria minimize the scope of the positive obligation of third states: the sending State's "knowledge" of "systematic violations of IHL" by the receiving State, both of which are subjective in case there is no authority to announce violation of IHL. It is hard and complicated, if not impossible, for Iran to detect and collect detailed information on whether Russia has used Iranian drones with the aim of systematic violations of IHL or not.

It seems that the knowledge of systematic violations of IHL could not be established unless Ukraine helps Iran with concrete documents to understand how Russia misused Iranian drones and violated IHL. If Ukraine has any information about misusing of Iranian drones by Russia, it must share the information and relevant documents not only with Iran but also with respective organizations such as the United Nations and the International Committee of the Red Cross (ICRC) to review the documents. Otherwise, Iran would not be responsible for Russia's act in Ukraine.

Conclusion

There are a variety of technical and legal considerations and a need for more evidence regarding Iran's involvement in Russia's Military Operations in Ukraine. Alleging States *must* provide Iran and the United Nations with concrete facts and explain how Iran's obligations under international

1 . Marco Sassòli, 'State responsibility for violations of international humanitarian law' (2002) 84(846) IRRC 401, 413.

2 . Ibid.

law have been violated. What is claimed by the US authorities,¹ concerning Iran's obligations under the JCPOA, plainly shows how anecdotally and politically, and not legally, their allegations are. The United States endeavors to politicalize international law, particularly international responsibility, and extend Iran's international responsibility to Russia's Military Operations in Ukraine, which Iran has condemned from the beginning, are primitive by international law standards and far from the rule of international law, which works based on facts and legal principles. It clearly aligns with the United States lawfare policy in pursuit of its "[...] strategy of using—or misusing—law as a substitute for traditional military means to achieve an operational objective."²

Furthermore, Iran's good faith and due diligence in resolving the difficulties with Ukraine, including a mutual meeting to go into Russia's use of Iranian drones,³ showed Iran's seriousness about not getting involved in Russia's Military Operations. Fishing in troubled waters, the United States has been trying to distort the truth about Iran's role in Russia's Military Operations in Ukraine as a supporter of Russia, a sponsor of War, and a threat to international peace and security while the United States is the main cause and beneficiary of the war.⁴

Even if this presumption be accepted that Iran provides the Russia with "precision-guided munition", it does not proof any breach of international Law obligations by Iran since the use of the drones yielded military advantages to both sides: Russia could narrow down the impact of its attacks, respecting the principle of distinction, while Ukraine could target Iranian drones more easily than Russia's missiles, which is compatible with Iran's positive obligations under IHL.

Considering the bigger picture, Iran is not the problem of the War in Ukraine. The big and main problem is the malfunctioning of the UNSC rather than Iran's alleged involvement in Russia's Military Operations. The function of the UNSC has been called into question because of the Veto power of the Security Council's Permanent Members. If the United States and European Permanent Members of the Security Council (France and the United Kingdom) were genuinely concerned about the situation in Ukraine and similar situations, they should consider amending the Charter of the United Nations and reconsider the Veto's function. Otherwise, their concerns regarding the War in Ukraine are political leverages against Russia and Iran.

1 . See for examples: David Vergun, 'General Says Iranian Drones, Troops Operating in Ukraine' (U.S. Department of Defense 20 October 2022), available at: <https://www.defense.gov/News/News-Stories/Article/Article/3195380/general-says-iranian-drones-troops-operating-in-ukraine/>; Jim Garamone, 'Russia's Reliance on Iran, Sign of Putin's Isolation' (U.S. Department of Defense 01 November 2022), available at: <https://www.defense.gov/News/News-Stories/Article/Article/3206808/russias-reliance-on-iran-sign-of-putins-isolation/> (accessed 18 February 2023).

2 . Charles J. Dunlap Jr., 'Lawfare Today: A Perspective' (2008) 3(1) YJIA 146, 146.

3 . 'Iranian, Ukrainian Experts Meet to Discuss Russia's Use of Iranian Drones' (The Kyiv Independent 22 November 2022), available at: <https://kyivindependent.com/news-feed/iranian-ukrainian-experts-meet-to-discuss-russias-use-of-iranian-drones> (accessed 20 February 2023).

4 . For more information see: Anthony H. Cordesman, 'United States Aid to Ukraine: An Investment Whose Benefits Greatly Exceed its Cost' (Center for Strategic & International Studies (CSIS) 21 November 2022), available at: <https://www.csis.org/analysis/united-states-aid-ukraine-investment-whose-benefits-greatly-exceed-its-cost>; 'US economy is reaping benefits from the Ukraine crisis' (Global Times 03 March 2022), available at: <https://www.globaltimes.cn/page/202203/1253787.shtml>; 'What does the Ukraine crisis mean for the US?' (Economist Intelligence 12 April 2022), available at: <https://www.eiu.com/n/what-does-the-ukraine-crisis-mean-for-the-us/>; 'Revisiting U.S. Grand Strategy After Ukraine' (Foreign Policy 2 September 2022), available at: <https://foreignpolicy.com/2022/09/02/us-grand-strategy-ukraine-russia-china-geopolitics-superpower-conflict/> (accessed 26 January 2023).



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