

Assessing War Crimes Accountability Through Just War Theory: A Comparative Legal Analysis of the Russia-Ukraine Conflict

Yan Qiao^{1,a,*}

¹*University of Southampton, University Rd, Southampton, UK*

a. Yq3g22@soton.ac.uk

**corresponding author*

Abstract: With the great power games and the continued escalation of the Russia-Ukraine conflict, the international community has paid great attention to the issue of war crimes, prompting the war crimes accountability mechanism to become an important topic in the field of international law. This new type of war crimes accountability mechanism is an intertwining of the theory of just war and the applicability of international law, reflecting the complex global scrutiny of legal responsibility and moral constraints in conflicts under the current complex geopolitical factors. Against this backdrop, the International Criminal Court (ICC), national courts, and relevant institutions are attempting to build an effective accountability network to pursue war crimes through legal means. How to assess the accountability mechanism for war crimes through the just war theory and how the applicability of international law affects the justice of war will become an important factor in promoting universal adherence to international law and upholding the justice of war.

Keywords: Just war theory, accountability mechanisms, war crimes, legal framework.

1. Introduction

Given the complexities of contemporary international affairs, just war theory is gaining prominence as a framework for assessing the mechanisms of accountability for war crimes. Rooted in medieval ethical reflection, it aims to provide a double standard of morality and law for the conduct of war by precisely defining the justification premise of war - the justification of the reason for going to war (*jus ad bellum*) and the moral-legal boundaries in the conduct of war (*jus in bello*). Particularly with the continuing escalation of the Russian-Ukrainian conflict, the international community's attention to war crimes has reached an unprecedented level, especially the brutal atrocities against civilians and the flagrant violations of international humanitarian law. Against this backdrop, states are compelled to react swiftly and establish effective accountability mechanisms to ensure the legality and morality of the conduct of war. Therefore, this paper will examine how accountability mechanisms for war crimes can be assessed through just war theory and how the applicability of international law affects the justness of war. It is also hoped that through the analysis of selected cases and comparative studies, it will aim to provide the international community with efficient strategies and insights into the maintenance of justice and the promotion of the peaceful resolution of conflicts, thereby strengthening the applicability of international law and the stability of global peace.

2. Overview and Extension of Just War Theory

Just war theory, as an important yardstick for assessing the legality and moral constraints of war, has profoundly influenced the international community's consideration of the Russian-Ukrainian conflict. It not only examines the legality of waging war (*jus in bello*) to ensure that it is based on a just and lawful purpose, but also analyses the moral and legal constraints on the means of war (*jus in bello*) to ensure that the conduct of war is in accordance with international law and ethical norms [1]. In the complex context of the Russian-Ukrainian conflict, just war theory is particularly important and central to defining war crimes and ensuring that accountability mechanisms are fair and effective.

However, it is noteworthy that just war theory is not a single system but is intertwined with multiple conceptions of morality and justice. This has led to inevitable differences in interpretation and application, especially on such a sensitive issue as the Russian-Ukrainian conflict. Therefore, when applying just war theory, it is necessary to recognize its importance for the maintenance of international order and moral norms, but also to clearly see the limits of its applicability and avoid simplifying it into a single standard.

2.1. Justification for War

In the Russian-Ukrainian conflict, both sides actively invoke their respective theories of justice and international rules to justify their positions. The Russians and the Ukrainians have each emphasized ideas such as territorial integrity and national self-determination as key underpinnings of the legitimacy of the war, but the validity of these arguments is not self-evident, and they need to be subjected to strict scrutiny under the norms of international law and international relations. There is a clear consensus in the modern international community that any action of war must be conducted in strict compliance with the international legal framework, respect for human rights and adherence to humanitarian principles. To ensure that the conduct of war is both legally and morally correct, this section will explore the issue of just war. Therefore, this section will explore the legitimacy dimension of just war theory by analyzing in detail the legal limits of the right of self-defense, the inviolability of national sovereignty, and the concrete practice of the principles of international law in the Russo-Ukrainian conflict. Through this discussion, we aim to gain a fuller understanding of the motives and potential consequences of the actions of both parties to the conflict, to make a more accurate assessment of the justice of the conflict and to provide solid theoretical support and guidance for the peaceful settlement of disputes.

Under the conflict between Ukraine and Russia, attention needs to be paid to the claims of both sides and their legal basis. The Ukrainian side strongly supports the exercise of the right of self-defense by Article 51 of the Charter of the United Nations. This clause allows states to exercise their right of defense in the event of an armed attack, either individually or collectively, to restore and maintain international peace and security [2]. Furthermore, Ukraine stresses that its military response is a legitimate act of defense of the country against external aggression and preservation of its territorial integrity to keep sovereign independence. By the theory of justice, such a response is not only a firm commitment of the Ukrainian government to national security but is also in line with the general understanding of the right to self-defense in international law. These factors provide a sufficient basis for what together constitute the international legitimacy of Ukraine's actions.

In stark contrast, Russia claims to maintain the security and stability of communities in eastern Ukraine and to counter NATO threats, but it lacks enough substantial basis in international law and theories. Just war requires that it be based on legitimate authorization and adhere to strict moral and legal standards, which Russia's actions fail to meet in many respects. Specifically, Russia has violated the international principle of using force without authorization from the UN Security Council. Besides, there are many of Russian actions that went beyond what was reasonable, violated the principle of

proportionality. These military actions caused casualties and property damage to innocent civilians, seriously undermining its moral legitimacy and legal standing [3]. Therefore, it is difficult for Russia's military actions to gain wide acceptance and support from the perspective of the legitimacy of waging war. Therefore, international law and academic doctrine, as the cornerstones for measuring the legitimacy of conflicts, are particularly critical in judging such behavior. Not only does it highlight the authority and applicability of international law, but it also reflects the importance of the legitimate grounds for war

2.2. The Means of Justice

In analyzing the rationality of the means of war in the Russian-Ukrainian conflict, it mainly focusses on two key dimensions: legality and morality [1]. Legitimacy requires a clear basis of justice and legal authorization for war actions, while morality emphasizes strict adherence to international humanitarian principles in conflict, especially the protection of innocent civilians from harm. Specifically, the parties to a conflict need to ensure that their actions are both within the legal framework and under ethical norms and the framework of international law. Such as the Geneva Conventions, to preserve the legitimacy of the conduct of war and reduce the number of inadvertent injuries and harm to civilians [4].

However, Russia's behavior has frequently violated this moral and legal line. UN reports show that Russia's bombing campaigns in Mariupol, Kiev and elsewhere have resulted in a large number of civilian casualties, especially the deaths of innocent children [5]. This is a grave violation of the fundamental principles of the Geneva Conventions on the protection of civilians from the effects of armed conflict and a moral failing in the conduct of war [4]. According to the report, since from 3 July 2022 to 5 July 2022, more than 10,000 civilians have been killed or injured because of the war throughout Ukraine, including 335 children among the 4,889 victims [5]. Which seriously violates the bottom-line requirements of the Geneva Conventions.

On the other hand, while Ukraine's position on self-defense is unwavering, certain aspects of its military operations are subject to strict moral scrutiny. Human Rights Watch reports that the Ukrainian military has not fully complied with international humanitarian law in its treatment of POWs and mixed civilian volunteers, such as mistreatment of POWs and inhumane treatment, as well as the blurring of the line between combatant and civilian status [6]. This significantly increases the risks faced by civilians in the conflict and weakens the moral case for going to war.

In the context of the dialectic of war, despite the differences in the just claims of Russia and Ukraine - Ukraine defends sovereignty and the security of its citizens, while Russia pursues geopolitical goals - neither side can avoid the moral responsibility for the conduct of war. Just means of war are not only a defense of the legitimacy of war, but also a profound practice of international law and humanitarianism. Therefore, both Russia and Ukraine need to revisit and strengthen the moral self-discipline of the conduct of war in the current conflict. And ensure that every military operation is conducted with respect for life and the protection of innocence, thus truly reflecting the justice of war.

2.3. The Extension of Just War Theory

From the perspective of just war theory, the Russo-Ukrainian war has sparked widespread controversy over both the causes and means of justice, and this theory provides an important theoretical framework for assessing conflicts and ensuring the legitimacy and justice of war. However, as modern conflict forms continue to evolve, just war theory faces new challenges, such as cyber warfare and the rise of non-state actors. Which blurs the boundaries of traditional war ethics. In the context of the Russian-Ukrainian conflict, the legality and ethical boundaries of cyber-attacks, as an

emerging means of warfare, have become an urgent issue. Just war theory requires that acts of war must be able to distinguish between combatants and civilians and minimize harm to innocent civilians. However, cyber-attacks are often border-crossing and difficult to trace, and their direct and indirect consequences may widely affect civilian life, including the destruction of infrastructure and the disclosure of personal information. These make the application of just war theory in cyberspace complex and difficult. In addition, the international community has had in-depth discussions about the legitimacy of external intervention in the face of the humanitarian crisis triggered by the Russia-Ukraine war. The military support of Western countries to Ukraine is regarded as a legitimate act of confronting aggression and upholding justice, which to a certain extent reflects the extended application of just war theory in the field of civil war and humanitarian intervention. However, such intervention may also create disputes over the rights of sovereign states, international law and the stability of the international order. Therefore, to better cope with potential crises in the future, the academic community needs to explore new theories of justice to meet the support of the framework of international law.

3. Accountability Mechanism for War Crimes

As mentioned above, the theory of justice is closely related to the accountability of war crimes. And now, with the escalation of the war situation, it is urgent to build a fair and transparent accountability mechanism. First, it is unequivocally clear that allegations of war crimes in the context of any conflict need to be adjudicated through a rigorous and transparent international legal process, which is the cornerstone of upholding international justice and the rule of law. However, the operation of this mechanism is not straightforward, it involves complex geopolitical issues, diplomatic relations, international legal frameworks, and differing national understandings of the definition and implementation of war crimes. To help design accountability mechanisms for the Russian-Ukrainian conflict, it can be drawn from side-by-side comparisons of historical events such as the Syrian Civil War and the wars in the former Yugoslavia.

3.1. The Construction and Challenge

In exploring the issue of accountability for war crimes, countries will differ in the definition of war crimes and the application of standards, subject to their own circumstances. The diversity of these differences' cuts across the boundaries between domestic and international law, common law and statute law. Therefore, this subsection aims to confront the complex challenges posed by these legal differences, as well as the common issues underlying them, to advance accountability mechanisms for war crimes.

As the cornerstones of international law, the Geneva Conventions and the Rome Statute jointly constitute a legal framework for safeguarding human rights and upholding international rule of law and justice. However, despite these universal international norms at the international level, the way in which States are held accountable for war crimes is not the same. The common law system, with its flexible mechanisms of case law and judicial interpretation, can endeavour to adapt to new forms of war crimes [7]. However, such dynamic adjustments may be accompanied by the risk of vague definitions and reduced legal predictability, which may lead to differences in the outcome of different cases. In contrast, statutory law systems draw clear legal boundaries for war crimes through exhaustive legal provisions, such as the International Criminal Code (ICC), which clearly provides a specific definition of war crimes. However, its inherent rigidity may also limit the law's ability to be flexible and adaptive in a rapidly changing war environment [7].

This diversity of differences in accountability mechanisms is reflected not only between international standards and domestic implementation, but also in the convergence and conflict

between domestic and international law. For example, in the context of the Ukrainian conflict, Ukraine sought to integrate domestic and international law by amending the Ukrainian State Criminal Code in order to provide more effective accountability for war crimes [8]. However, in the process, Ukraine is bound to face difficulties in the interpretation and application of complex legal provisions. The extreme nature of the battlefield environment and the persistence of cyber conflicts further aggravate the difficulty of collecting and preserving evidence. These factors greatly affect the effectiveness of the legal process and the uncertainty of accountability. Thus, there was a need to strike a balance between legal flexibility and certainty in exploring accountability mechanisms for war crimes, and States were encouraged to continue their efforts to improve their domestic legal systems.

In analysing the common challenges, political factors and the complexity of applying the law play a major part. From the perspective of international relations, the balance of national interests and the game of geopolitics often affect the stance and attitude of various countries on the issue of war crimes. This status quo not only weakens the universal authority and binding force of international law, but also makes the process of accountability for war crimes extremely difficult and complicated. At the same time, the complexity of the application of law also makes it difficult for countries to find a balance between domestic law and international law. For instance, the United States has adopted a "zero tolerance" policy when dealing with immigration, especially illegal family immigration, which has forced many children to be taken away from their parents [9]. From the perspective of the International Convention on the Rights of the Child, it clearly violates the right to family reunification and the choice of the best interests of the child [10].

To address these challenges, the International Criminal Court, with its broad jurisdiction, will play an indispensable role in ensuring accountability for transnational war crimes. However, the complexity of the procedure and the lack of resources will directly increase more time and cost of the already complex trial process. Therefore, ensuring procedural justice, enhancing transparency, and safeguarding the rights and interests of the accused are at the core of establishing an effective accountability system. What's more, At the same time, strengthening transnational judicial cooperation and using technological innovation to promote judicial efficiency can also maintain the effectiveness of the International Court of Justice in its cross-regional work.

3.2. Comparison of Accountability Mechanisms

At present, the process of accountability for the Russian-Ukrainian war is fraught with difficulties, and although the International Criminal Court has opened a war crimes investigation and has evidence of war crimes allegations against Ukrainian and Russian forces, there is no clear and concrete legal framework for prosecution. A close analysis of this dilemma reveals that the root cause of the Russian-Ukrainian war itself is the lack of a clear legal definition, coupled with the fierce geopolitical confrontation and deep differences in the international community, which together hinder the effective functioning of the accountability system. This highlights the limitations of existing accountability mechanisms and calls for new approaches to avoid the same mistakes as in Syria. Ensure the integrity, impartiality, independence and effectiveness of future war crimes legal processes and frameworks.

Compared to Syria's accountability machine, the accountability machine of the war in the former Its success stems above all from a high degree of judicial independence, which effectively renders it free from political interference. The ICTY's success has also benefited from the strong support and cooperation of the international community [11]. The United Nations and its Member States have not only provided the Tribunal with the necessary financial and legal framework but have also shown unprecedented solidarity in prosecuting and extraditing criminals. More importantly, the ICTY's work has gone beyond a single case. The international criminal justice system has been reinvigorated by

clarifying the legal definitions of war crimes and crimes against humanity, all through the ICTY's independent investigative arm. The Office collects evidence and testimony in an impartial and effective manner and ensures that every aspect of the accountability mechanism is sound and reliable.

However, compared to the other two post-war accountability mechanisms, the Russian-Ukrainian war today covers a much wider range of issues, and its complexity goes far beyond the boundaries of a single legal framework. It requires the joint efforts of more international organizations, such as Interpol, the International Court of Justice, etc., to address a wider and more complex range of responsible subjects, including war crimes at the individual, organizational and even national levels. In addition, it is not only influenced by both domestic and international law but is also heavily constrained by the global and multidimensional nature of the conflict itself. However, it is indisputable that the accountability mechanism of the current Russian-Ukrainian war can still be learnt from the experience of the accountability mechanism after the war in the former Yugoslavia. For example, the "hybrid court" model advocated by Dickinson can also be used in the process of establishing accountability mechanisms. This model skilfully combines the strengths of international and national judicial systems, legal frameworks and staffing [12]. Such hybrid courts can often fill judicial gaps where the International Court of Justice (ICJ) and the International Criminal Court (ICC) are unable to handle all cases due to jurisdictional and logistical issues. In the context of the Russia-Ukraine war, hybrid tribunals could be a viable and effective strategy to advance accountability and justice for war crimes, ensuring that war crimes are properly prosecuted and punished by combining the authority of international judicial standards with the familiarity of domestic judicial resources.

4. Conclusions

In conclusion, the just war theory and the accountability mechanism for war crimes are closely related and together they provide a solid foundation for the legality and morality of war. The former sets the moral threshold for waging war, while the latter clarifies the legal and moral responsibilities in war and defends the common values and order of the international community. However, in complex situations such as the Russian-Ukrainian conflict, the definition of justice is often contested due to different historical, cultural and political backgrounds. For this reason, a more cautious and multidimensional perspective is required when assessing the legitimacy of war. A deeper understanding of the interplay between the two should therefore be developed to strengthen the authority of international law and ensure its uniform global application. Faced with the new challenges of cyber warfare and non-state actors, the international community needs to deepen the study of just war theory. Exploring the accountability mechanism of the Russia-Ukraine conflict, it is necessary to reconstruct a new legal framework and accountability system and optimise the trial process to enhance the independence and effectiveness of the international judiciary. At the same time, it is hoped that countries will look beyond their own interests to achieve effective accountability for war crimes.

References

- [1] Lazar, S. (2017). *Just war theory: Revisionists versus traditionalists*. *Annual Review of Political Science*, 20(1), 37-54.
- [2] Akram, H. (2021). *United Nations vs. Humanity*. *FAU Undergraduate Law Journal*, 87-100.
- [3] D. Brown, G. (2003). *Proportionality and Just War*. *Journal of Military Ethics*, 2(3), 171-185.
- [4] Clapham, A., Gaeta, P., Sassòli, M., & van der Heijden, I. (Eds.). (2015). *The 1949 Geneva conventions: a commentary*. Oxford University Press.
- [5] Krauzman, M. D. N. (2022). *The challenges raised by the application of International Humanitarian Law to information warfare*.

- [6] *Khorrām-Manesh, A., Goniewicz, K., & Burkle Jr, F. M. (2023). Social and healthcare impacts of the russian-led hybrid war in Ukraine—a conflict with unique global consequences. Disaster medicine and public health preparedness, 17, e432.*
- [7] *Merrill, T. W. (1985). The Common Law Powers of Federal Courts. The University of Chicago Law Review, 52(1), 1-72.*
- [8] *Mack, A. (2005). Human security report 2005: War and peace in the 21st century. Die Friedens-Warte, 80(1/2), 177-191.*
- [9] *Monico, C., Rotabi, K. S., & Lee, J. (2019). Forced child–family separations in the southwestern US border under the “zero-tolerance” policy: Preventing human rights violations and child abduction into adoption (part 1). Journal of Human Rights and Social Work, 4, 164-179.*
- [10] *Foot R. (2020). The Syrian Crisis. In Oxford University Press eBooks, 163–190.*
- [11] *Zahar, A., & Sluiter, G. (Eds.). (2011). The legacy of the International Criminal Tribunal for the former Yugoslavia. Oxford University Press.*
- [12] *Allais, S. (2010). The implementation and impact of National Qualifications Frameworks: Report of a study in 16 countries (Vol. 3). Geneva: ILO.*