



## New challenges, new responses

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OF STAND SPEAK RISE UP!

In the three decades since the end of the Cold War, war has been conducted more extensively by non-state actors than used to be the case. Of course, inter-state warfare between regular armed forces has not disappeared entirely, as the recent conflict between Azerbaijan and Armenia shows. However, to find one conducted on a large scale, one must go back to 1981-1988, with the war between Iraq and Iran. More prevalent have been major inter-state conflicts between armies with very unequal means, such as the Gulf War in 1991, and the US invasion of Iraq in 2003. **Much more numerous, however, have been conflicts featuring non-state actors, whether they are fighting states or other non-state actors.** The names of some of them will not be forgotten for many years, including Al Qaeda, Daech, Interahamwe, M23, etc. States themselves have sometimes conducted operations as if they too are not states in this strategic landscape. Sometimes this takes the form of pure mercenary activity. The Russian group Wagner is the most recent example. It is not for nothing that mercenaries were called "Affreux" (literally "the awful ones") when they were operating in Katanga in the 1960s. Sometimes they will be largely self-reliant militias doing the dirty work, whose reward, as with mercenaries, is loot and sexual violence. In recent years, examples include Kadyrovtsy in Chechnya and Arkan Tigers in Bosnia. These lethal, non-state groups (mercenaries and other henchmen) use assault rifles, machine guns, explosive devices and the like, but not the heavy weaponry (such as artillery, armour, combat aircraft) generally used by states and their regular armies.

Sexual violence in these conflicts was, and remains, widespread, driven by often mutually supporting motivations, including the desire for loot, revenge, domination, or even extermination. It could even play a significant economic role, as was the case with the enslavement of Yazidi women who were used by Daech for sexual and financial ends. Moreover, some of these wars seem never ending, as the situation in the African Great Lakes has shown for over twenty years. When they do end, as in Chechnya, the relative peace that follows is itself fraught with sexual violence. It is better not to be LGBTQ in Grozny.

### The end of the post-Cold War era

The so-called "post-Cold War era" ended, at the latest, with the Russian invasion of Ukraine on 24 February 2022. Russian dissatisfaction with the post-Cold War order has manifested itself in a major war. At the same time, China has achieved superpower status. There is a change of era, even if the new one has yet to be named. This translates into a worsening of wartime violence.

The first bad news is that the kind of warfare conducted in the post-Cold War era is not about to disappear. After all, the plague does not drive out cholera. This bad news is compounded by the fact that non-state actors and failed states now have the capacity to access means of lethal violence that were once the monopoly of industrialised countries. These wars will therefore be harsher than in the past, and this applies a priori

*« No consideration  
of age, gender or  
status seems to limit  
the sexual cruelty  
on display »*

to violence against people, including sexual violence. For example, in order to overcome the military means of Daech, the French had to use CAESAR guns in the siege of Mosul, the same systems that play a significant role against Russian forces in Ukraine.

Above all, with regard to sexual violence, the war in Ukraine represents a major and negative change. This was not inevitable. Great wars of the past (such as the Franco-Prussian War of 1870 or, to a large extent, the western front of the First World War) certainly saw soldiers slaughtered and immense destruction. They also featured their share of war crimes: the execution of hostages and partisans was commonplace. Around 5,000 civilians were killed by the Kaiser's armies in Belgium and France in the summer of 1914, not to mention the burning and bombardment of cities (Louvain, Reims). But for various reasons, sexual violence did not feature as it does in today's conflicts. Siege warfare (Paris, 1870) or trench warfare (1914-18) hardly lent itself to this. On the other hand, the Second World War saw a surge of sexual violence on almost all fronts. To just mention the behaviour of French troops, they sometimes left bitter memories in both Italy and Germany. The same can be said of the Germans or the Soviets. In addition to rape being a form of loot, sexual abuse was motivated by revenge (especially among the Soviets) and dehumanising hatred (especially among the Nazis).

The violence associated with the Russian invasion of Ukraine is a reminder of the last world war rather than the first. This conflict features the same ideological charge: for President Putin it is a war to "denazify" Ukraine. The invasion is also genocidal, with President Putin having explained in writing and orally that for him Ukraine has no people nor a state, and therefore is not a nation. To quote the Russian head of state, the authorities in Kyiv, and especially President Zelensky, are Nazis, Mafiosi, puppets of the Americans, drug addicts and homosexuals. The invader certainly claims that it is motivated by liberating occupied populations from this heavy yoke, and as soon as resistance is organised, the invader concludes this is to be expected from Nazis, and that they should be treated as such. A dehumanisation process is thus set in motion. Moreover, the ostentatious support of the Moscow Orthodox state church authorities gives a religious dimension to the matter.

The variety and abjectness of the sexual violence suffered by the occupied civilian population and sometimes by Ukrainian prisoners of war will not be detailed here. It defies comprehension, even though the conditions under which the data were collected guarantee their authenticity. The eloquent testimonies that appear elsewhere in this publication are proof of this. Suffice it to note here that neither the age, nor the sex, nor the status of the tortured persons constitutes a bulwark against the exactions of their torturers.

To say that all this is serious would be an understatement.

But there is more. The Ukrainian war is the first, but not necessarily the last, of its kind. For one thing, the neo-imperial project that has brought Russian forces to the gates of Kyiv is not limited to Ukraine. President Putin's statements in this regard are precise and repetitive. On the other hand, Russian strategic revisionism has its emulators, and some may be tempted to follow equally violent paths. It is not an insult to anyone to say that not all of Turkey's neighbours are reassured by Ankara's policy, or to note that many Taiwanese do not want to end up like the Uyghurs. In each of these cases - and there may be others - full-scale war is an option. **The success or failure of Russian violence in Ukraine will have an impact on whether and when other large-scale warlike ventures are undertaken.**

### Suppress and prevent

All war is misfortune. As we have seen, the invasion of Ukraine is no exception to this reality, with countless crimes committed against civilians and prisoners of war. However, it must also be noted that this violence, and in particular sexual violence, has often been rapidly brought to the attention of the world and widely publicised in the media. The revolution in information technology also favours the quick dissemination of data, thus making it possible to combat this violence and, if necessary, to punish the perpetrators and their accomplices. Moreover, and this is unusual enough to be highlighted, from the very first weeks of the war, international investigative and judicial resources were mobilised. On 17 March 2022, the International

Criminal Court opened an investigation, sending a team of 42 experts to the scene. It should be remembered that the jurisdiction of the ICC includes war crimes, crimes against humanity, genocide and wars of aggression. It is worth noting that this is a far cry from the caricature that the ICC is an institution that is essentially focused on the problems of the Global South, particularly in Africa.

As soon as the atrocities - including sexual atrocities - committed against the populations subjected to the Russian occupation in Bucha were revealed at the beginning of April 2022, some states made forensic investigation teams available to the Ukrainian and international authorities. For example, France sent skilled teams and genetic analysis technology to the area.

President Zelensky called for the creation of a specialised international jurisdiction, to be created on the initiative of the EU or the ICC. Indeed, the precedents of the International Criminal Tribunal for the former Yugoslavia and the Criminal Tribunal for Rwanda could serve as a model here. Of course, a Russian veto could prevent the Security Council from taking the initiative, but other politically legitimate bodies (such as the Council of Europe) could take the lead.

This rapid activation of international justice in Ukraine is not the result of selective indignation which mobilised more quickly because the victims are European. The fact is that it was following another Russian war in Ukraine, that of 2014, that international bodies had already been called upon to intervene. After the outbreak of armed hostilities in the Ukrainian region of Donbass the war never quite ceased until the attempted invasion of all Ukrainian territory almost eight years later. Between 2014 and 2022, some 14,000 people were killed in fighting between government forces in Kyiv and separatists from the Russian-backed "republics" of Donetsk and Luhansk. 1.4 million people were displaced, and nearly 1 million refugees left Ukraine. Sides recognised that atrocities were committed, including the destruction of a Malaysian airliner with all 298 passengers. Under these circumstances, investigations of various kinds were initiated. The UN High Commissioner for Human Rights reported 17 rapes in 2017. A UN human rights monitoring mission was set up in Ukraine (UNHRMMU) which reported in 2020 on more than 600 cases of ill-treatment and illegal killings. This mission was still in place when Russia began its "special military operation" on 24 February 2022. The ICC had already started a preliminary examination in 2014 on "alleged crimes committed since 21 November 2013" (thus also including events related to the Maidan Uprising). The transition to the ICC investigation procedure in March 2022 was therefore natural.

Putting pressure on the perpetrators of atrocities, including sexual atrocities, could thus be achieved through the establishment of specialised jurisdictions. These could include international bodies on the model of the ICTY and the ICTR, or mixed institutions (with international and national elements) such as those that existed for Cambodia or Sierra Leone. Not to mention the ICC itself, and let us not forget the Ukrainian courts which are already active. There will be choices to be

made from this wide range of instruments. But no matter what channels are chosen to deliver justice, legal pressure will only serve a partial purpose if it is not also seen widely to have deterrent qualities. **Repression is necessary, but everyone agrees that prevention is a higher ambition. Repression can and must contribute to prevent a return to atrocities being committed.**