
Pow Protections in Hybrid Warfare: The Failure of the Third Geneva Convention in Russia-Ukraine

Syed Auon Hussain¹, Dr. Asia Saif Alvi²

¹ Mphil scholar, Department of Political Science, University of Sargodha. Email:

syedaoun29@gmail.com

² Associate Professor/ Chairperson, Department of Political Science, University of Sargodha. Email:

asia.saif@uos.edu.pk

DOI: <https://doi.org/10.70670/sra.v4i2.2295>

Abstract

The Third Geneva Convention of 1949 (GC III) is one of the most fully ratified pieces of international humanitarian law (IHL), providing non-derogable protection for prisoners of war (POWs). However, the Russia-Ukraine war (2022-2026) has brought to light evidence, systematically and institutionally, that these protections have failed — not in a few instances, but in a systematic way. This article focuses on three mutually reinforcing dimensions of the Ukraine conflict that have failed to uphold the protection of POWs under the GC III: the lack of clarity around combatant status under 'hybrid warfare' in Ukraine, the systematic torture and inhuman and degrading treatment of Ukrainian POWs reported by several international monitoring mechanisms, and the deliberate denial of access to the ICRC in Ukraine which has exacerbated violations and hampered accountability. Based on an integrative review of peer-reviewed scholarship (2022-2026) and primary documents from the UN Human Rights Monitoring Mission in Ukraine, the OSCE Moscow Mechanism, and the UN Independent Commission of Inquiry, alongside new literature on the GC III jurisprudence, the article argues that the failure in Ukraine is not incidental but deliberate and structural, the result of hybrid warfare's exploitation of combatancy ambiguities, an institutional culture of legal disregard rooted in Soviet military tradition, and an enforcement architecture that is constitutionally incapable of compelling great-power compliance. A set of specific legal changes — such as broadening the definition of POW, expanding access to the ICRC, and strengthening the regime of command responsibility — is called for to restore GC III's protective role in the 'twenty first century armed conflict'.

Keywords: Prisoners of War, Third Geneva Convention, Hybrid Warfare, Russia-Ukraine, International Humanitarian Law, Combatant Status, Icrc, Torture, Command Responsibility, IHL Reform

Introduction

One of the earliest and most universally accepted commitments in international humanitarian law is the legal protections for POWs. The Third Geneva Convention of 1949, which has been ratified by 196 states, including both Russia and Ukraine, gives a detailed account of the rights of captured combatants, including humane treatment, protection from torture, independent monitoring by the International Committee of the Red Cross (ICRC), and the presumption of POW status in case of doubt (Medvid & Prokopchuk, 2025). These are not standards that are to be desired. They are legally binding, non-derogable obligations, and they are binding whether the conflict is legitimate, whether the opposing force is legitimate, and whether the military necessity is legitimate.

The Russia-Ukraine war has highlighted a full-scale failure of this legal regime. The UN Human Rights Monitoring Mission in Ukraine (UN HRMM), the OSCE Moscow Mechanism, the UN Independent International Commission of Inquiry on Ukraine (CICU) and various peer-reviewed scholarly studies have all collected evidence of a systematic pattern of torture, inhumane detention conditions, denial of POW status and obstruction of international monitoring in Russia's treatment of Ukrainian captives since the full-scale invasion on 24 February 2022 (Kapustnyk et al., 2024; Medvid & Prokopchuk, 2025; Volokhov et al., 2025). These are not isolated incidents which can be traced to the actions of one individual. The breadth of their use, the consistency of such use across detention facilities, and the consistency of use over four years of conflict suggest either institutional authorisation or, at least, institutional tolerance, which suggests command responsibility at the highest levels of the Russian military and political hierarchy (Siekiera, 2024; Kaluzhna & Shunevych, 2022).

Meanwhile, there are legal issues that go beyond compliance: Ukraine is faced with a structural problem on top of the failure of GC III, as the hybrid nature of the conflict has left legal grey areas as to whether captured Ukrainian fighters are 'non-combatant' or 'combatant', which Russia has been exploiting to deny POW protections to captured Ukrainian fighters. In GC III's classification scheme, a range of actors, from volunteer soldiers to foreign fighters (Ukrainian International Legion) to irregular combatants, all occupy contested spaces, allowing Russia to equate Ukrainian captives as criminals or terrorists, not as prisoners of war entitled to the protections of the convention (Khoirunnisa et al., 2025; Gunawan et al., 2023; Bosch, 2024).

In this article, the failures of Russia's actions are analyzed systematically and in the light of the fact that they are not only a failure of compliance on the part of Russia, which has refused to abide by rules that it has accepted, but a structural failure; the underlying architecture of GC III was created for a binary conflict model, and hybrid warfare has made it obsolete in key ways. The article then moves on to a brief review of the legal framework of GC III and of the related scholarship (Section 2). The methodology is provided in Section 3. In Section 4, the three-dimensional analysis of POW protection failure in Ukraine is presented. Section 5 looks at accountability mechanisms and their limitations. In Section 6, specific legal amendments are recommended. Section 7 concludes.

Literature Review and Theoretical Framework

The Legal Architecture of GC III

The Third Geneva Convention provides detailed protection for the POW. Its very essence is Article 13, which lays down the requirement for humane treatment at all times; Article 17, which forbids physical or mental torture and coercion; and Article 126, which provides the ICRC with the right to visit any place in which POWs are detained, to interview them without witnesses and to move freely from one place to another (Hosseinnejad & Askary, 2022). Article 5 establishes a presumption of POW status in the event of doubt, and that competent tribunals, rather than unilateral determination by the detaining power, are required to decide status (Salman et al., 2023).

Recent scholarships have advanced knowledge of the scope of GC III. Hosseinnejad and Askary (2022) systematically examined the leniency obligation in Articles 82-108, which they found to be violated by Russia's treatment of Ukrainian POWs, including specific bans and the spirit of the convention. Articles 49-57, which are discussed by Balole and Van Steenberghe (2024), are a strengthened labour protection regime which also recognizes forced labour of Ukrainian captives in territory under Russian control as a separate grave breach. Lake and Trerise (2022) examine the philosophy of permissible interrogation under GC III and conclude that coercive interrogation techniques reported for the Ukrainian POWs are in violation of the bright-line provisions of the convention. Palomino (2022) takes a disability perspective on Article 30, and its application to wounded Ukrainian prisoners of war. This provides a strong doctrinal foundation to evaluate Russia's actions.

Hybrid Warfare and Combatant Status

The notion of hybrid warfare, which combines traditional military forces and armed groups with proxy forces, information warfare and legal challenges, has given rise to a significant body of scholarly work in the context of the Ukraine. Hybrid warfare is the continuation of ambiguity by other means, as defined by Mumford and Carlucci (2022): a strategy deliberately playing with the ambiguity of international law, such as the distinction between lawful combatants and unprivileged belligerents. In Libiseller's (2023) critical review of the academic application of 'hybrid warfare' as an analytical category, it points out that the concept needs to be used with care and a degree of critical awareness, but it can also be useful in the context of the Ukraine case. Muradov (2022) shows that hybrid strategies are a constant feature of Russia's operations in Ukraine and Georgia.

The combatant status implications of hybrid warfare have been specifically addressed in the Ukraine literature. Gunawan et al. (2023) study the IHL status of foreign fighters in the Ukrainian armed conflict, concluding that foreign fighters can be divided into three categories: volunteers, foreign nationals in the Ukrainian International Legion, and mercenaries, which have different IHL status implications under GC III and Additional Protocol I; Bosch (2024) examines the specific legal status of foreign fighters in the Ukrainian International Legion of Territorial Defence, arguing that they are entitled to combatant status and therefore POW protection if captured. Hasan and Haque (2023) examine the basic issue: whether the unlawful combatants are POWs or not and establish that it is not a question to be answered by the unilateral declaration of the detaining power, but by a competent tribunal in accordance with GC III's Article 5 presumption.

In a substantial 2024 article in *Access to Justice in Eastern Europe*, the combatant immunity doctrine in the context of the Russia-Ukraine conflict is explored and it is argued that it has restarted fundamental discussions on the doctrine's use in hybrid conflicts. The debates are relevant to the legal analysis in Section 4 of this article.

Documented Violations: The Institutional Record

There's a long history of mistreatment of POWs in Ukraine. Van Hout (2022) explored the oversight mechanisms currently in place to safeguard persons detained by Russia and in Russian controlled territories in the first few months of the war, highlighting serious gaps in access to oversight. The mental health impacts of the Ukrainian conflict POW detention are reported by Liebreinz et al. (2022) and evidence of psychological torture is reported in the same manner as systematic abuse. In the latest article in this literature, Zabyelina and Boriak (2026) discuss the phenomenon of 'carceral warfare' in the Russian-occupied territories of Ukraine and conclude that civilian internment has been transformed into a tool of population control, an area where the law between civilian internment and POW detentions has been blurred.

The legal status of POWs in Ukrainian criminal proceedings, as well as the right to exchange, is the subject of the analysis of Kaplina (2022), which showed that there are legal difficulties on the Ukrainian side that make it difficult to apply the provisions of GC III on exchange. In Baker et al. (2023), the authors explore the implications of Russia's hybrid warfare method for the protection of health and the overall framework of IHL, particularly in relation to the medical treatment of captured or wounded adversaries. To put the Ukraine pattern into perspective, Khorram-Manesh and Burkle (2022) conducted a systematic review of civilian victimization in conventional and hybrid warfare and found that civilian and POW abuse was significantly greater in hybrid warfare.

Theoretical Framework

In this article, two complementary theoretical frameworks are used. The first is the tradition of Just War Theory, which offers a moral language to supplement and enhance legal analysis, in which the conduct of

POWs is assessed. Restrictions on the use of torture of captives, on the treatment of captives, and on respecting the dignity of captured enemies are not just legal obligations; they are moral obligations which Just War theorists since Augustine to Walzer have recognized as some of the most basic of constraints on the conduct of war (Medvid & Prokopchuk, 2025). Russia's actions in Ukraine are not just in violation of the specific provisions of GC III; they are also in violation of these deeper moral commitments that were the basis of the convention.

The second framework is legal realism vs legal positivism, the fundamental question being whether international law limits great powers. In the IHL context, the Ukraine case is the most direct test of this question in modern times: While Russia has in principle ratified the Geneva Conventions, it has systematically ignored their most basic requirements and has not been held accountable by the law. The evidence suggests the legal realist thesis, that great powers will abide by international law when it suits their interests and defy it when it does not, is correct; the positivist counter-thesis, that the totality of the normative power of GC III still influences the limits of what Russia can claim and justify, is also supported (Vasyliev, 2025).

Methodology

The research method used is a qualitative and interpretive approach with a integrative review of peer-reviewed scholarship with emphasis on the latest period of 2022-2026 to reflect the latest developments in the Russia-Ukraine conflict and doctrinal works that form the basis of the analysis of the legal framework. The integrative review methodology, which is to systematically synthesize findings from several studies in various research traditions, is suitable for legal-political analysis of a recent and ongoing conflict in which empirical data is generated and evaluated. The war in Ukraine is analysed as a critical case study in the tradition of Flyvbjerg (2001), which was not chosen due to its representativeness, but for its exceptional analytical significance. Where it is needed - in a conventional interstate conflict between two treaty parties, one of which is a permanent member of the UN Security Council - it is failing to protect POWs, and the impact on the future of the POW protection regime is greatest.

The data sources include the following types: (1) peer-reviewed scholarly articles published in well-established international law, political science and humanitarian studies journals using the terms 'prisoners of war', 'Third Geneva Convention', 'hybrid warfare', 'Russia-Ukraine', 'combatant status', and 'ICRC' and Chosen from systematic searches in the databases via Google Scholar, HeinOnline and Scopus; (2) primary institutional records from the UN Human Rights Monitoring Mission in Ukraine, the OSCE Moscow Mechanism, the UN Independent Commission of Inquiry on Ukraine, and public statements by ICRC, and (3) doctrinal legal sources, such as the text of GC III, the 2020 ICRC updated Commentary on GC III, and the ICRC's Customary IHL Study. Only sources are included which are directly relevant to POW protections, hybrid warfare combatancy, and conflict between Russia and Ukraine.

The analysis is structured according to the three-dimensional failure of GC III in Ukraine outlined in the introduction: the failure to give the fighting force the status of combatant is analyzed first, followed by the failure to allow ICRC access, and finally the failure to document torture and abuse. Each dimension is explored first in institutional evidence and then in peer-reviewed scholarly analysis. The evidence base used for the accountability assessment in Section 5 is the same as the triangulated evidence that was used for the redress mechanisms available in the institutions.

Three-Dimensional Failure of GC III in Ukraine

Dimension One: Combatant Status Ambiguity in Hybrid Warfare

The first dimension of the failure of GC III in Ukraine is that hybrid warfare has created a legal limbo with regards to the status of combatants. According to Article 4 of the Third Geneva Convention, POW status is given to members of an armed force of a party to the conflict, members of militias or volunteer corps which are part of an armed force of a party to the conflict, and members of other militias or volunteer corps who

meet the following four conditions: (1) responsible command; (2) a distinctive emblem clearly visible at a distance; (3) carrying arms openly; and (4) acting in accordance with the laws of war. This was created for the more dichotomous nature of mid-20th century warfare, where the distinction between lawful combatant and civilian was easily discernible.

Hybrid warfare deliberately undermines and attacks these boundaries. The Russia-Ukraine conflict has seen the participation of not only the regular armed forces of both countries, but also: volunteer fighters from the territorial defence units of Ukraine; foreign nationals registered in the Ukrainian International Legion of Territorial Defence; mercenary forces representing the Russian state, principally the Wagner Group; irregular armed units whose command relationship with the Russian state has been intentionally obscured; and fighters whose civilian/combatant status has been deliberately confused, a distinction which is crucial to the classification regime under GC III (Khoirunnisa et al., 2025; Gunawan et al., 2023; Bosch, 2024). Russia has systematically taken advantage of these ambiguities, denying POW status to captured Ukrainian fighters under the presumption in favour of POW status under GC III and instead labeling captured Ukrainian fighters as "criminals", "terrorists" or "unlawful combatants" to be tried in Russian domestic courts.

There is a scholarly consensus that this is a legally wrong way to go. Salman et al. (2023) demonstrate that, when viewed in the context of the ICRC's 2020 revision of the Commentary, GC III's classification system does not set out to establish a presumption that a captured person is not a POW but rather requires a competent tribunal to decide. Russia's practice of unilaterally refusing to accredit POWs and proceedings without a tribunal is in breach of both GC III Article 5 and the customary norm found in ICRC's Customary IHL Study Rule 102 (Henckaerts & Doswald-Beck, 2005). The result is confirmed by Hasan and Haque (2023), who claim that the presumption in favour of POW status in Article 5 is a procedural obligation which is binding and a failure to meet this obligation constitutes an independent grave breach of the convention.

All of this makes it even harder on the foreign fighter dimension. Bosch (2024) offers the most comprehensive examination of the IHL status of fighters in the Ukrainian International Legion of Territorial Defence, which it concludes to be fulfilled when assessed properly, namely that the fighters operate under responsible command, carry arms openly and conduct operations in accordance with IHL. Russia's treatment of captured Legion members as unlawful combatants – and in some documented cases as mercenaries subject to criminal prosecution – contravenes both GC III and the Additional Protocol I definition of mercenaries, which has specific conditions that do not apply to many Legion members (Gunawan et al., 2023). The entry of the Access to Justice in Eastern Europe (2024) analysis has brought the debate on combatant immunity back into the spotlight, highlighting that Russia's interpretation of combatant status is not a legitimate legal one, but rather a strategic use of the ambiguity surrounding its definition, which was not foreseen by the drafters of GC III and is inadequately protected by its text.

Dimension Two: Systematic Torture and Inhumane Treatment

The second aspect of the failure of the third pillar of GC is the systematic torture and inhumane treatment of Ukrainian POWs, which was recorded with institutional specificity and by various independent monitoring bodies. The prohibition on torture in GC III Article 17 and Common Article 3, which are reinforced by ICL Article 7 of the International Covenant on Civil and Political Rights and by the absolute prohibition in customary IHL Rule 90, are one of the most non-derogable norms in all of international law (Medvid & Prokopchuk, 2025; Kapustnyk et al., 2024). Ukraine is thus one of the most legally relevant IHL failures in the present day, given that abuses of this absolute prohibition have been documented.

Systematic and corroborated institutional record. Since the beginning of the full-scale invasion, the UN Human Rights Monitoring Mission in Ukraine (UN HRMM) has reported a systematic and escalating pattern of treatment of Ukrainian POWs in Russian detention, such as electric shock to genitals and extremities, asphyxiation (including by bag, gas mask, and chemical substances), severe and repeated

beatings with fists, boots, and implements, mock executions, sexual violence against men and women, prolonged solitary confinement in conditions designed to cause severe psychological suffering, food and water deprivation, and denial of medical care for battlefield wounds (UN HRMM, 2023, 2024). In March 2023, the UN Independent International Commission of Inquiry on Ukraine (CICU) reported in its findings that there were reasonable grounds for believing Russian forces had committed the war crime of torture against Ukrainian POWs in several Russian detention centres. The OSCE Moscow Mechanism report of April 2022 confirmed this trend at the earliest time documented when large numbers of Ukrainian fighters were first captured, and the maltreatment had been ongoing from the start of the systematic capturing of Ukrainian fighters.

These documented violations have been analyzed and discussed by scholars, who have corroborated the legal description. Liebreinz et al. (2022) examine the impact of detention conditions documented in Ukraine upon the mental health of Ukrainian POWs and find the psychological effects suffered by Ukrainian POWs are of the severity required to constitute intentional infliction of severe mental suffering for the purpose of obtaining information or for the purpose of punishing the captive as defined by both GC III and the UN Convention Against Torture. Lake and Trerise (2022) set out to prove that the interrogation methods that have been documented against Ukrainian POWs are in breach of GC III, that there are no exceptions to GC III's bright-line rules for interrogation for military necessity, counterterrorism, or characterization of captives as unlawful combatants.

An understanding of these violations in a systematic, not episodic, sense comes from the Soviet and Russian military tradition. The mistreatment of prisoners is a recurring issue in Russian military practice in Afghanistan, Chechnya and Syria, and as Kramer reports, is part of an institutional culture that sees the humane treatment of captured enemies as a liability, not a legal obligation. From a historical-institutional perspective, this abuse is not the result of the behavior of rogue soldiers, but a longstanding practice within the organization that is seen in Russian military conflicts for decades (Vasyliiev, 2025). The conclusion of the command responsibility aspects of this is dealt with in Section 5.

The mental health dimension of POW detention in Ukraine outlined by Liebreinz et al. (2022), and later by Liebreinz et al. (2023) in their evaluation of the mental health impact of the conflict on at-risk groups, is another form of harm which GC III's drafters had anticipated but that the convention's enforcement mechanisms are not well suited to address. The psychological degradation caused by prolonged isolation, sensory deprivation and repeated mock executions may be more difficult to establish with forensic evidence than physical injuries, but is still considered torture under international law, and is a separate type of grave breach.

Dimension Three: Denial of ICRC Access

The third dimension of the failure of GC III is something that, in some ways, is the most legally relevant, namely Russia's systematic denial of access to the ICRC to Ukrainian POWs in Russian controlled detention facilities. Art. 126 of GC III authorizes the ICRC to access all places where POWs are detained, to conduct confidential and without-witness interviews with POWs, and to travel between places of detention. Such rights do not depend on the consent of the power of detention, cannot be limited by the exception of military necessity and cannot be abridged for any reason. The monitoring role of the ICRC is at the heart of the protective role of the convention in GC III: it is the keyway in which the convention's requirements are independently monitored and violations reported to the international community.

Since 2022, when the mass internment of POWs began, Russia has been committing a series of breaches of Article 126. In particular, the ICRC has repeatedly complained that the Russian authorities have denied it access to Ukrainian POWs in Russian-controlled territory, have not notified it of the capture, and have refused to interview captives before witnesses — all actions required by GC III without restriction (Kapustnyk et al., 2024; Volokhov et al., 2025). The UN HRMM's documentation also recognizes that the evidence that the international community can access is only partial due to the lack of independent access:

the violations recorded from the testimony of released prisoners, intercepted communications, and forensic evidence each tell only part of the story of what would be recorded by comprehensive monitoring.

There are two aspects to the legal importance of ICRC access denial. First, the denial of access constitutes an independent violation of GC III and not just a cover for substantive violations. The denial of access by Russia to ICRC to oversee the situation of persons detained in Russian controlled territories is a structural violation of the protective regime whose purpose is to prevent the very abuses it is denied access to, writes Van Hout (2022). Second, the systematic denial of ICRC access is not a mere byproduct of the detention policy, but a central element of it; it is deliberate, designed to prevent systematic abuse from being brought to the attention of the international community, and to convince Ukrainian detainees and the Ukrainian population that the rights they have been guaranteed by international law are not enforced. (Zabyelina and Boriak (2026) demonstrate this in their analysis of carceral warfare in the territories occupied by Russia in Ukraine.)

The implications of ICRC access denial are also evident for the accountability analysis in Section 5. Access denial makes it impossible to comprehensively document POW conditions in Russian detention, which is a direct result of the access denial and makes it impossible to have a full and comprehensive evidentiary record with which to pursue individual criminal prosecutions before the ICC. Russia seems to have decided the loss or concealment of evidence will be a fair price for the strategic benefits of being able to detain without independent monitoring — a conclusion that reflects the current accountability landscape in which great powers are free of such oversight (Siekiera, 2024).

Table 1: Three Dimensions of GC III Failure in Ukraine

Dimension	Legal Violation	Institutional Evidence	Key Scholarship
Combatant Status Ambiguity	GC III Art. 4 & 5; failure to convene competent tribunal; denial of POW presumption	OSCE Moscow Mechanism 2022; CICU 2023; scholarly consensus	Salman et al. (2023); Gunawan et al. (2023); Bosch (2024); Hasan & Haque (2023)
Systematic Torture & Inhumane Treatment	GC III Arts. 13, 17; Common Art. 3; Customary IHL Rule 90; absolute prohibition on torture	UN HRMM quarterly reports 2022-2024; CICU March 2023; OSCE April 2022	Medvid & Prokopchuk (2025); Liebreinz et al. (2022); Lake & Trerise (2022); Kramer (2025)
Denial of ICRC Access	GC III Art. 126; right of visit and interview; notification of capture (Art. 70)	Repeated ICRC public statements 2022-2026; UN HRMM access reports	Van Hout (2022); Zabyelina & Boriak (2026); Kapustnyk et al. (2024)

Accountability Mechanisms and Their Limitations
The International Criminal Court

Since Ukraine has accepted ICC jurisdiction, the International Criminal Court has jurisdiction over war crimes on Ukrainian territory since 2014. In March 2023, the ICC issued warrants of arrest for President Putin and Presidential Commissioner for Children's Rights Maria Lvova-Belova for the unlawful deportation of Ukrainian children, marking a powerful jurisdictional extension that enabled the ICC to step

into, and address crimes committed by Russian state actors in Ukraine. But the ICC is severely constrained in its ability to deal with POW-specific violations. Specific identification of the culprits responsible for the torture of POWs, the gathering of concrete evidence of their acts or their knowledge and subsequent failure to act to prevent their subordinates' acts, and the possibility of bringing them before the court — none of these is attainable without ICRC access to detention facilities, reliable evidence from witnesses, and the capacity to enforce against a non-party state (Siekiera, 2024; Kaluzhna & Shunevych, 2022).

The most promising is command responsibility, the doctrine that the military and political superiors of the POWs are criminally responsible for the crimes if they knew or had reason to know of them and they failed to prevent or punish them. The widespread, systematic and persistent pattern of torture at several detention facilities strongly indicates a pattern of institutional authorization or at least institutional tolerance that would support command responsibility findings against senior Russian military commanders (Kapustnyk et al., 2024; Nazarenko et al., 2023). But the evidence needed to prove command responsibility, the internal communications, command orders, after-action reports, is the kind of evidence that is not available from open scholarly sources and is just what Russia's denial of access to monitoring is meant to stop being assembled (Siekiera, 2024).

The UN Security Council

The veto has paralysed the UN Security Council's ability to act in response to POW violations in Ukraine. As a permanent member, Russia has vetoed all Security Council resolutions aimed at accountability, or for the ICC to investigate aggression-related crimes. The most basic accountability gap in the international legal order is the inability of the Security Council to hold a P5 member accountable for violations of IHL, due to the veto system in the UN Charter which was established in 1945 (Freedman, 2023). The Uniting for Peace procedure has been applied within the General Assembly context; however General Assembly resolutions are not legally binding and do not require accountability actions in the face of a vetoing power.

Universal Jurisdiction

A mechanism of accountability for IHL violations in domestic courts in Ukraine that is most practically used and developed is that of universal jurisdiction proceedings in third state domestic courts. Germany, France, Sweden and other countries that have broad universal jurisdiction laws have opened investigations into war crimes in Ukraine, including war crimes against POWs. The most comprehensive framework for such proceedings is the German Code of Crimes Against International Law (VStGB), which lays down absolute universal jurisdiction for war crimes, meaning that there is no territorial or nationality connection. Strobel (2024) offers the most recent, in-depth analysis of the possibilities for litigating and enforcing IHL before German courts and looks at public interest litigation as a means of access to justice in an armed conflict. But the practical limitations on universal jurisdiction proceedings -- the suspect has to be on national territory in most countries, evidence has to be collected and stored and proceeding has to withstand political and diplomatic pressure -- make them a less viable near-term accountability mechanism for high-level Russian perpetrators (Kaluzhna & Shunevych, 2022; Siekiera, 2024).

As such, the accountability structure in place for POWs in Ukraine is insufficient for the number of violations recorded. This shortcoming is not incidental; it is designed to ensure the freedom of action of great powers, as reflected in the structures of the international legal order, including the Security Council veto, the limits of the ICC's parties and the practical limits of universal jurisdiction. An effort to fix this impunity is not possible without an effort to fix the protection failures that this article has documented.

Reform Proposals

Inclusive POW Status Criteria for Hybrid Warfare

The most pressing doctrinal changes needed to resolve the GC III structural issue in hybrid warfare is the clarification and expansion of the POW status criteria in Article 4. The existing system, which was

developed for the bilateral state vs state conflict of 1949, is not suitable to deal with the diversity of armed groups involved in hybrid conflict, such as volunteer territorial defence forces, foreign fighters in organized groups, and irregular combatants, whose command structures are intentionally disguised by the state using them. The reform that is needed is not the abolition of the separation between lawful combatants and civilians, which is fundamental to IHL, but to clarify that the Article 5 presumption would apply to all categories of fighter, whether or not it was clear that they were captured, and that the competent tribunal procedure must be followed — not discretionary — for anyone who claimed or may be entitled to be a POW (Khoirunnisa et al., 2025; Medvid & Prokopchuk, 2025).

It could be clarified in the context of hybrid warfare that (1) foreign fighters who join a state's organized military units are entitled to the Article 5 presumption; (2) the mercenary exclusion under Article 47 of Additional Protocol I would only be applicable where the specific conditions of that article are individually assessed and established by a competent tribunal; and (3) the tribunal procedure of Article 5 is subject to independent monitoring and that it cannot be carried out solely by the detaining power without external control. These clarifications would not necessitate reopening GC III itself, which is a politically unfeasible process, but could be done via an additional protocol or authoritative ICRC guidance document on top of the updated Commentary from 2020.

Mandatory ICRC Access Protocols with Enforcement Mechanisms

Denial of the ICRC's access in Ukraine is the most serious structural deficiency in GC III's protective regime. There is no automatic consequence for denial, nor international institutional response, nor escalation procedure in Article 126, which establishes the right of access. The reform needed is to establish automatic enforcement mechanisms, with no need for a Security Council authorization which a veto power may veto in the event of ICRC access being denied (Balole & Van Steenberghe, 2024; Kapustnyk et al., 2024).

Possible enforcement mechanisms include: (1) automatic referral to the UN General Assembly under the Uniting for Peace procedure when access is denied for more than a specified period, that would lead to emergency sessions and development of collective responses; (2) treaty-based sanctions mechanism that would activate automatically if the ICRC confirms the denial of access, without Security Council authorizations; and (3) establishment of an independent body within the UN human rights architecture to monitor POWs with access rights that if denied, would trigger escalating institutional response, similar in structure to the UN Subcommittee on the Prevention of Torture. While these mechanisms might not resolve the core issue of great-power impunity, the enhanced political and reputational liability for access denial and institutional pressure from the current architecture would be beneficial.

Strengthening Command Responsibility

The systematic nature of POW abuse in Ukraine – which has been reported on several cases at various facilities over several years – demands an enhanced command responsibility system that does not rely on evidence of specific orders that are not available when monitoring access is denied. The doctrine of command responsibility under Article 28 of the Rome Statute already applies to cases where the commander knew or should have known about war crimes and did not prevent or punish them; but its applicability in situations of systematic concealment calls for procedural innovations. Among these: (1) the establishment of an independent expert mechanism with a mandate from the UN to document patterns of POW abuse and establish findings on command responsibility on the basis of these patterns, akin to the UN Commission of Inquiry model, but with a specific mandate and referral authority for command responsibility for systematic POW abuse, without requiring direct evidence of individual commanders committing specific acts; and (2) the elaboration of reparations mechanisms for returned POWs that are not dependent on a prior criminal conviction of the perpetrators of their torture (Teplyashin et al., 2024; Kaplina, 2022).

Conclusion

In recent years, the Third Geneva Convention's protective regime for prisoners of war have been tested, with institutional specificity and scholarly support, and it has been proven that when a great military power decides to systematically ignore it, the architecture of enforcement of the Convention of the 1920s cannot force it. The three aspects of failure examined in this article – combatant status manipulation, systematic torture and inhumane treatment, and deliberate denial of ICRC access – are not separate issues but part of a coordinated approach to the abuse of detention, which takes advantage of the structural flaws of GC III's hybrid warfare shortcomings, its enforcement gap, and its monitoring framework's reliance on cooperation with detaining powers.

It's not just a behavioural failure – it's also a structural failure. Russia's actions in Ukraine follow a pattern of POW abuse found in its operations in Afghanistan, Chechnya, Georgia and Syria, and are deeply engrained in the military culture of the Soviet era, with likely implications that diplomatic engagement or moral suasion will not suffice to change the Russian military's culture (Kramer, 2025; Vasylyev, 2025). The need to address this failure rests on both the specific legal changes that are proposed in Section 6, and on the general project of enhancing international accountability mechanisms to give systematic non-compliance real political and legal consequences.

The consequences of this disaster are not limited to the immediate humanitarian crisis for Ukrainian captives — which is profound and real — but are far greater. The core principle of IHL—that even in war there are rules that apply to all, even the most powerful parties, is challenged when GC III is unable to protect prisoners in a more traditional interstate conflict between two treaty parties, one of which is a permanent member of the Security Council. The changes that are suggested in this article are not revolutionary. The proportionate responses are to a documented structural failure for which a remedy is available within the framework of international humanitarian law, if the political will to seek the remedy exists. The failure has been proven and the need for a response has been made urgent by the Ukraine conflict. Whether the international legal community will take advantage of this evidence to create a more comprehensive POW protection system, or whether the next great power conflict will do the work for them.

References

- Access to Justice in Eastern Europe. (2024). Combatant immunity and the Russian-Ukrainian war: Reopening the debate on a longstanding doctrine. *Access to Justice in Eastern Europe*. <https://doi.org/10.33327/ajee-18-7.4-a000113>
- Baker, M., Baker, J., & Burkle, F. (2023). Russia's hybrid warfare in Ukraine threatens both healthcare and health protections provided by international law. *Annals of Global Health*, 89. <https://doi.org/10.5334/aogh.4022>
- Balole, C. V., & Van Steenberghe, R. (2024). Enhanced labour protection for prisoners of war. *International Review of the Red Cross*, 106, 565–584. <https://doi.org/10.1017/s1816383124000237>
- Bosch, S. (2024). Exploring the international humanitarian law status of foreign fighters in the Ukrainian International Legion of Territorial Defence. *Potchefstroom Electronic Law Journal*. <https://doi.org/10.17159/1727-3781/2024/v27i0a14600>
- Davies, P. H. J. (2024). Counterintelligence and escalation from hybrid to total war in the Russo-Ukrainian conflict 2014–2024. *Intelligence and National Security*, 39, 496–514. <https://doi.org/10.1080/02684527.2024.2329419>
- Droege, C. (2025). International humanitarian law and peace: A brief overview. *International Review of the Red Cross*. <https://doi.org/10.1017/s1816383125000062>
- Flyvbjerg, B. (2001). *Making social science matter: Why social inquiry fails and how it can succeed again*. Cambridge University Press.

- Freedman, L. (2023). Humanitarian challenges of great power conflict: Signs from Ukraine. *Daedalus*, 152, 40–51. https://doi.org/10.1162/daed_a_01991
- Gunawan, Y., Wibowo, G. A., & Arumbinang, M. H. (2023). Foreign fighters in the Ukrainian armed conflict: An international humanitarian law perspective. *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*. <https://doi.org/10.24090/volksgeist.v6i2.9315>
- Hasan, M., & Haque, M. I. (2023). Should unlawful combatants be considered as prisoners of war when captured? *Journal of Law and Legal Reform*. <https://doi.org/10.15294/jllr.v4i1.64276>
- Henckaerts, J.-M., & Doswald-Beck, L. (2005). *Customary international humanitarian law: Volume I — Rules*. Cambridge University Press & ICRC. <https://doi.org/10.1017/CBO9780511804700>
- Hosseinnejad, K., & Askary, P. (2022). The obligation to exercise "leniency" in penal and disciplinary measures against prisoners of war in light of the ICRC updated Commentary on the Third Geneva Convention. *International Review of the Red Cross*, 104, 1121–1147. <https://doi.org/10.1017/s1816383122000157>
- Kaluzhna, O., & Shunevych, K. (2022). Liability mechanisms for war crimes committed as a result of Russia's invasion of Ukraine in February 2022: Types, chronicle of the first steps, and problems. *Access to Justice in Eastern Europe*. <https://doi.org/10.33327/ajee-18-5.2-n000324>
- Kaplina, O. (2022). Prisoner of war: Special status in the criminal proceedings of Ukraine and the right to exchange. *Access to Justice in Eastern Europe*. <https://doi.org/10.33327/ajee-18-5.4-a000438>
- Kapustnyk, V., Kryvenko, O., Andrushchenko, I., Lisovol, O., & Shablysty, V. (2024). Challenges in applying international humanitarian law in contemporary armed conflicts: The case of Russia's war against Ukraine. *Revista Amazonia Investiga*. <https://doi.org/10.34069/ai/2024.82.10.30>
- Keil, A. (2026). Review of: Humanitarian protection for prisoners of war and refugees in the long aftermath of the First World War, by Francesca Piana. *History*. <https://doi.org/10.1111/1468-229x.70103>
- Khoirunnisa, K., Matthew, B., Jubaidi, D., & Nugroho, A. Y. (2025). The Ukraine-Russia conflict: An international humanitarian law review of the involvement of foreign fighters. *Social Sciences & Humanities Open*. <https://doi.org/10.1016/j.ssaho.2025.101340>
- Khorram-Manesh, A., & Burkle, F. (2022). Civilian population victimization: A systematic review comparing humanitarian and health outcomes in conventional and hybrid warfare. *Disaster Medicine and Public Health Preparedness*, 17. <https://doi.org/10.1017/dmp.2022.96>
- Kramer, M. (2025). The Soviet legacy and Moscow's disregard of international humanitarian law — The wellsprings of Russian war crimes in Ukraine. *The Journal of Slavic Military Studies*, 38, 1–38. <https://doi.org/10.1080/13518046.2025.2463168>
- Lake, N., & Trerise, J. (2022). Coercion, interrogation, and prisoners of war. *Journal of Military Ethics*, 21, 151–161. <https://doi.org/10.1080/15027570.2022.2114643>
- Lederman, Z. (2025). International humanitarian law and the immunity of hospitals in Gaza. *Bioethics*, 40, 12–20. <https://doi.org/10.1111/bioe.13433>
- Libiseller, C. (2023). "Hybrid warfare" as an academic fashion. *Journal of Strategic Studies*, 46, 858–880. <https://doi.org/10.1080/01402390.2023.2177987>
- Liebrezn, M., Bhugra, D., Buadze, A., Schleifer, R., Smith, A., & Van Voren, R. (2022). Mental health and welfare of prisoners of war and people living in detention in the Ukrainian conflict. *The Lancet Psychiatry*. [https://doi.org/10.1016/s2215-0366\(22\)00106-7](https://doi.org/10.1016/s2215-0366(22)00106-7)
- Liebrezn, M., Buadze, A., Smith, A., & Schleifer, R. (2023). The Russo-Ukrainian war in 2023: Towards a renewed emphasis on the mental health of at-risk groups and forensic-psychiatric considerations. *Forensic Science International: Mind and Law*. <https://doi.org/10.1016/j.fsml.2023.100115>
- Medvid, L., & Prokopchuk, P. (2025). Analysis of international treaties and regulatory acts of Ukraine governing the treatment of prisoners of war. *Analytical and Comparative Jurisprudence*. <https://doi.org/10.24144/2788-6018.2025.02.186>

- Mumford, A., & Carlucci, P. (2022). Hybrid warfare: The continuation of ambiguity by other means. *European Journal of International Security*, 8, 192–206. <https://doi.org/10.1017/eis.2022.19>
- Muradov, I. (2022). The Russian hybrid warfare: The cases of Ukraine and Georgia. *Defence Studies*, 22, 168–191. <https://doi.org/10.1080/14702436.2022.2030714>
- Nazarenko, P., Baieva, L., & Semeniuk-Prybaten, A. (2023). Criminal responsibility for war crimes in the context of armed aggression against Ukraine. *Economics. Finances. Law*. <https://doi.org/10.37634/efp.2023.7.1>
- Organization for Security and Co-operation in Europe. (2022). *Report under the Moscow Mechanism on alleged violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine*. OSCE Office for Democratic Institutions and Human Rights. <https://www.osce.org/odihr/515868>
- Orzeszyna, K. (2023). Convergence of international humanitarian law and international human rights law in armed conflicts. *Studia Iuridica Lublinensia*. <https://doi.org/10.17951/sil.2023.32.3.237-252>
- Palomino, P. D. C. (2022). A new understanding of disability in international humanitarian law: Reinterpretation of Article 30 of Geneva Convention III. *International Review of the Red Cross*, 104, 1429–1454. <https://doi.org/10.1017/s1816383122000169>
- Salman, H., Ismail, S. M., & Nordin, R. (2023). Prisoners of war: Classification and legal protection under international humanitarian law. *UUM Journal of Legal Studies*. <https://doi.org/10.32890/uumjls2023.14.2.11>
- Siekiera, J. (2024). International humanitarian law and the war in Ukraine — Russian aggression and the legal-political possibilities of punishing the perpetrators. *Kwartalnik Prawa Międzynarodowego*. <https://doi.org/10.5604/01.3001.0054.4272>
- Strobel, V. (2024). Litigating and enforcing international humanitarian law before German courts: Public interest litigation via individual rights as a vehicle for access to justice in situations of armed conflict. *Netherlands International Law Review*, 71, 483–510. <https://doi.org/10.1007/s40802-024-00270-8>
- Teplyashin, P., Skiba, A., & Maloletkina, N. (2024). Corrective action for prisoners of war: International legal, penal and other regulation. *Vestnik of Saint Petersburg University: Law*. <https://doi.org/10.21638/spbu14.2024.207>
- Tshuma, D. (2024). African customs and traditions and the indigenization of international humanitarian law in armed conflict. *International Review of the Red Cross*, 106, 639–658. <https://doi.org/10.1017/s1816383124000298>
- UN Human Rights Monitoring Mission in Ukraine. (2023). *Report on the human rights situation in Ukraine: 1 February–31 July 2023*. United Nations Human Rights Monitoring Mission in Ukraine. <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine>
- UN Human Rights Monitoring Mission in Ukraine. (2024). *Report on the human rights situation in Ukraine: 1 August 2023–31 January 2024*. United Nations Human Rights Monitoring Mission in Ukraine. <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine>
- United Nations Human Rights Council. (2023). *Report of the Independent International Commission of Inquiry on Ukraine (A/HRC/52/62)*. United Nations. <https://www.ohchr.org/en/hr-bodies/hrc/iiciukraine/index>
- Van Hout, M. (2022). Ensuring oversight and protection of life, health and well-being of all detained by the Russian Federation and in Russian controlled territories of Ukraine. *Public Health*, 213, 68–70. <https://doi.org/10.1016/j.puhe.2022.10.001>
- Vasyliiev, O. (2025). Adaptation of international humanitarian law to the challenges of hybrid warfare under martial law: The case of the Russian-Ukrainian war. *Analytical and Comparative Jurisprudence*. <https://doi.org/10.24144/2788-6018.2025.01.139>

- Volokhov, O., Khomenko, O., Lysak, O., Onishchenko, N., & Savka, O. (2025). Contemporary armed conflicts in Ukraine as a challenge for IHL: Cases, prospects and paradigms. *Revista de Cercetare si Interventie Sociala*. <https://doi.org/10.33788/rcis.90.10>
- Zabyelina, Y., & Boriak, V. (2026). War behind bars: Civilian prisoners and carceral warfare in Russia-occupied Ukrainian territories. *The British Journal of Criminology*. <https://doi.org/10.1093/bjc/azag018>