

## **Violation of the right to life**

In 2018, the UN Human Rights Committee issued General Comment 36, which stated that “*all killings pursuant to an act of aggression violate ipso facto the right to life.*” The Committee’s unequivocal statement confirmed that human rights law fills an accountability gap that exists under international humanitarian law and opened the door to a unique opportunity for the families of all those killed as a result of an act of aggression by a state in their pursuit of justice.

The joint complaint argues that:

- Russia is responsible for the Vinnytsia missile attack;
- The attack was committed in the context of Russia’s aggression against Ukraine;
- The attack caused numerous deaths and threatened the lives of many more;
- Therefore, Russia has violated the right to life of all those killed in the attack.

The complaint describes the circumstances of the strike, based on field and open-source investigation, and contains an extensive legal analysis showing that the Vinnytsia attack falls within the scope of General Comment 36. It is accompanied by expert opinions from leading scholars including Professor Dapo Akande of Oxford University.

## **Impact**

The joint communication requests that the Human Rights Committee affirm the norm against aggression and bring justice for families of the victims of the Vinnytsia attack by determining that Russia’s actions during this unlawful attack violated the right to life of those killed in the attack. We hope that renewed attention to the norm against aggression will advance the efforts to hold high-ranking Russian officials accountable for this crime.

Additionally, the communication requests that Russia safeguard all information relating to the Vinnytsia missile strike on July 14, 2022 and conduct a prompt, impartial, and independent investigation into the missile strike to enable the prosecution of those responsible.

The implications of a decision in favor of the Vinnytsia families would be momentous. Beyond the Vinnytsia attack, the families of all people killed by Russian aggression in Ukraine would be entitled to reparations from Russia should the Committee accept the arguments in the joint complaint.

## **Human rights protection in armed conflict**

The complaint reinforces an important paradigm shift that the Human Rights Committee began in General Comment 36 to strengthen human rights protection in armed conflict.

Many prominent scholars consider international humanitarian law (IHL) to be an imperfect term for the laws of war. They prefer drier language like “law governing the conduct of hostilities,” which reflects the underlying compromise between military necessity and humanitarian considerations that underpins most rules of IHL.

The prohibition of disproportionate attacks against civilians, and the formulation of the violation of this prohibition as an international crime, clearly reflect this compromise. For example, under the Rome Statute of the International Criminal Court, the prosecution must prove that harm to civilians

“clearly exceeded” military benefit. Earlier, at the International Criminal Tribunal for Yugoslavia, prosecutors struggled to prove that attacks were disproportionate even when many civilians were killed.

Moreover, the IHL principle of belligerent equality means that all rules apply uniformly to parties to a conflict, regardless of how the conflict started. In other words, IHL does not recognize that one party to a conflict may be an aggressor and the other acting within its right to self-defense.

As a result, under IHL civilian victims would in many cases be referred to as “collateral damage” and no right of action or remedy would be available to them for the harm they suffered.

In the context of Russia’s invasion of Ukraine, which was unlawful from its inception, justice demands that all victims of the invasion be given a remedy. International human rights law provides a way to do that.

By confirming in General Comment 36 that all killings pursuant to an act of aggression violate the right to life, the Human Rights Committee showed a way forward for victims. All that remains is for the Committee to apply its own legal reasoning to the facts of the Vinnytsia missile attack – offering justice for the families of the victims and setting a precedent that could apply to thousands killed in aggressive wars.