

Red Cross War Status Opens Door to Prosecution for Ukraine Crimes

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Employees of a small private company sort items to be distributed to victims of the crisis in eastern Ukraine at a collection point in Krasnoyarsk, Russia.

The Red Cross has made a confidential legal assessment that Ukraine is officially in a war, Western diplomats and officials say, opening the door to possible war crimes prosecutions, including over the downing of Malaysia Airlines MH-17.

"Clearly it's an international conflict and therefore this is most probably a war crime," one Western diplomat in Geneva said.

The International Committee of the Red Cross, or ICRC, is the guardian of the Geneva Conventions setting down the rules of war, and as such is considered a reference in the United Nations deciding when violence has evolved into an armed conflict.

"Within the U.N. system, it's the ICRC that makes that determination. They are the gate keepers of international humanitarian law," said one U.N. source.

The ICRC has not made any public statement — seeking not to offend either Ukraine or Russia by calling it a civil war or a case of foreign aggression — but it has done so privately and informed the parties to the conflict, sources told Reuters.

"The qualification has been shared bilaterally and confidentially," ICRC spokeswoman Anastasia Isyuk told Reuters on Friday. "We do not discuss it publicly."

The designation as a war — either international or civil — changes the game legally, because it turns both sides into combatants with equal liability for war crimes, which have no statute of limitations and cannot be absolved by an amnesty.

Suspects may also be arrested abroad, since some countries apply "universal jurisdiction" to war crimes.

Without the designation, Ukrainian government forces would be responsible for protecting civilians and infrastructure under international human rights law, while separatists would only be liable under Ukraine's criminal laws.

"It changes their accountability on the international stage," said Andrew Clapham, director of the Geneva Academy of International Humanitarian Law and Human Rights. "This makes individuals more likely to be prosecuted for war crimes."

Dutch prosecutors have opened an investigation into the crash of Malaysia Airlines flight MH-17 on suspicion of murder, war crimes and intentionally downing an airliner, a spokesman said Monday.

Based on the Law on International Crimes, the Netherlands can prosecute any individual who committed a war crime against a Dutch citizen. The 298 people who were killed when the plane was downed over Ukraine included 193 Dutch citizens.

President Vladimir Putin said in May that the country had collapsed into civil war, while Ukraine regards the conflict as a war involving Russian aggression.

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