| Chapter 11 |

Perspectives of Certain Central and Eastern European States Related to International Criminal Law, International Humanitarian Law and International Refugee Law

Marcin Rau

ABSTRACT

This chapter investigates the uneasy relationship between universal international legal norms and the historically shaped realities of Central and Eastern Europe. Through a comparative analysis of selected states, it traces how International Criminal Law, International Humanitarian Law, and International Refugee Law are interpreted, resisted, or adapted in contexts marked by communist legacies, post-conflict transitions, and contemporary geopolitical crises. The discussion moves across three interconnected fields: cooperation with the ICTY in the former Yugoslavia, the legal qualification of communist-era violence in Poland and Hungary, and the divergent responses of Central European states to Ukrainian refugee flows after 2022. Despite formal commitments to international standards and EU frameworks, the chapter shows that legal practice remains deeply contingent on national narratives of victimhood, sovereignty, and historical responsibility. The comparison reveals striking contrasts: from reluctant engagement with war crimes accountability to selective humanitarian openness shaped by cultural proximity. Rather than depicting the region as norm-resistant, the chapter argues that Central and Eastern Europe illustrates a broader truth about international law itself – its effectiveness depends on social legitimacy and contextual resonance. By foregrounding these tensions, the chapter invites a more nuanced understanding of how international law functions beyond textbooks, in societies where law, memory, and politics remain inseparable.

KEYWORDS

international law in CEE, transitional justice, war crimes, communist crimes, humanitarian protection, post-communist states, Poland, Hungary, Ukrainian refugees, EU conditionality

1. Introduction

Chapters 1 through 11 of this publication have provided the reader with a robust theoretical foundation, outlining the historical processes and doctrinal debates that have

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led to the emergence of International Criminal Law (ICL) and International Humanitarian Law (IHL). These earlier sections detail the gradual evolution of legal norms in response to major geopolitical events, offering insights into the origins of the legal mechanisms and institutions that form the backbone of modern international justice systems. Yet they do something more as well: they underscore the intricate ways in which ideology, power structures, and political will have historically shaped our collective notion of accountability.

The final chapter – Chapter 12 – deviates in character from its predecessors by shifting the focus from foundational theory to pragmatic reality. It thus reveals a "clash" between the prescriptive letter of international law and the unique social, political, and historical realities of Central and Eastern European (CEE) countries. Why is this tension so pronounced in the CEE region? Montesquieu's principle of the "spirit of the law" offers a guiding perspective: the law should be adapted to the spirit of a given society. If law cannot be wholly universal in its application, then to what extent must it be recalibrated to align with specific historical legacies and contemporary exigencies? This question lies at the heart of the following analysis.

Certainly, the material discussed herein could fill the pages of another entire volume. Rather than serving as a comprehensive compendium, this chapter seeks primarily to illuminate the problems faced by CEE countries in operationalising ICL, IHL, IRL and their adjunct frameworks. It also aims to spur further inquiry, encouraging readers – whether practitioners, scholars, or students – to pursue additional literature and debate these pressing issues in more depth.[1] The examples, drawn from selected states in the region, are by no means exhaustive, yet they clearly convey the sociopolitical and historical underpinnings that define contemporary legal challenges.

1.1. Contextual Overview

The geopolitical and historical context of Central and Eastern Europe is pivotal to understanding the region's current engagement with ICL, IHL, and IRL. For decades, communist rule across much of the region shaped legal institutions and civil society, leaving a legacy of authoritarian structures that often stifled critical debate about war crimes, human rights, and political freedoms.[2] This legacy was subsequently compounded by the conflicts of the 1990s in the former Yugoslavia, which tested the efficacy of international criminal tribunals and highlighted the complexities of transitioning from command economies to liberal democracies.[3] In more recent years, the Russian-Ukrainian conflict has further strained these legal mechanisms, creating new waves of refugees, new challenges, and renewed debates over sovereignty and collective security.[4] Against this backdrop, CEE states find themselves balancing the

1 See: Fletcher and Ohlin, 2013; Pintsch and Rabinovych, 2025.
2 See: Stan and Nedelsky, 2015; Faix and Svaček, 2016.
3 Baker, 2014, p. 121.
4 Malanchuk, 2023, p. 245.

normative demands of international law with the persistent pull of national politics, historical memory, and populist sentiments. As this chapter will demonstrate, the interplay between such factors has led to dynamic, and often inconsistent, approaches to ICL, IHL, and IRL. While EU integration and international legal obligations encourage normative convergence, persistent political, social, and historical factors create significant divergence in their actual implementation and attitudes. These discrepancies illustrate why the law cannot remain merely an abstract ideal but must instead contend with the "spirit" of its social and cultural milieu – just as Montesquieu theorised centuries ago.

1.2. Research Questions

Central to exploring the nexus of law, history, and politics in CEE states are the following guiding research questions:

1. Does it show that certain states have unique approaches, or is there an overarching regional pattern? Despite similarities across CEE (such as post-communist transformations) can we still identify distinctive trajectories in legal reform and enforcement based on factors like ethnic composition, EU membership, or the degree of conflict exposure?
2. Which historical, social, or political factors most strongly influence each state's stance and implementation of international legal obligations? How do the respective national discourses on sovereignty, memory, and identity feed into debates on war crimes prosecutions, transitional justice, or refugee acceptance?
3. How have recent crises, especially the Russian-Ukrainian war, tested the limits of regional and international frameworks? In what ways do new waves of displacement, allegations of war crimes, and shifting alliances either reinforce or undermine the role of international legal standards within these countries?

To address these questions systematically, this chapter will proceed as follows:

- Section 2: ICL with Special Regard to the ICTY Examines how CEE states either directly involved in the 1990s Balkan conflicts or indirectly engaged through broader international obligations responded to the establishment and rulings of the ICTY.
- Section 3: IHL with Special Regard to War Crimes under Communist Regimes Explores how IHL applies to communist-era atrocities, using case studies from Poland, Hungary, and Czechoslovakia to illustrate the crucial distinction between war crimes and other human rights violations.
- Section 4: IRL with Special Regard to the Russian-Ukrainian Refugee Flows Addresses the humanitarian and legal challenges faced by CEE countries in managing unprecedented displacement flows. Special attention is paid to the interplay between EU-directed asylum standards and domestic political

narratives, sometimes more receptive to refugees from culturally or geographically proximate regions.

Such a chapter structure, it is hoped, will not merely inform, but also provoke further reflection on what it takes to adapt universal legal doctrines to the particular realities of individual states. After all, can any legal norm flourish if it is divorced from the spirit of the society it aims to regulate?

1.3. Methodology

The methodology adopted in this study combines a comparative approach with polemical engagement involving scholars from Central and Eastern Europe. Its primary focus lies on Poland, Hungary, and the former Yugoslav states, although the GDR (East Germany) periodically appears as a benchmark to sharpen our understanding of how historical context shapes contemporary choices. The decision to employ debate-like discussions with experts from these countries was intentional: the author sought to encourage readers to form their own opinions, not merely to memorise formal provisions. Since Chapters 1–11 already equip readers with a solid theoretical foundation, this segment narrows attention to the main discussion points in each state, enabling readers to compare legal theory with on-the-ground realities. Limited editorial space, rather than a lack of interest, explains why certain countries are omitted. By selectively focusing on pivotal cases, the study highlights shared legal aspirations and lingering societal tensions, while clarifying that no single blueprint for international law implementation can fully capture the region's diversity. Ultimately, this approach underscores that law is not just a matter of texts and codes – it is also an evolving dialogue shaped by local experiences, political pressures, and cultural values.

2. CEE States and International Criminal Law With Special Regard to the ICTY

2.1. The Yugoslav Conflict: Causes, Course and Effects

At the very beginning of our considerations, it will be appropriate to briefly recall what took place in the Balkans in the 1990s, when the disintegration of the Socialist Federal Republic of Yugoslavia (SFRY) was precipitated by a confluence of political, economic, and ethnic tensions. After the death of Josip Broz Tito in 1980, the federal structure of Yugoslavia began to weaken due to competing nationalist aspirations among its republics – Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Macedonia (now North Macedonia), and Montenegro.[5] Economic disparities and debates over resource distribution exacerbated these emerging rifts. Additionally, the decline of

5 Baker, 2014, p. 8.

communism in Eastern Europe and the weakening grip of the Soviet Union created an international environment more permissive of secessionist movements.[6]

The interplay of these factors – economic crisis, the rise of nationalist politics, and the erosion of a centralised authority – drove the constituent republics toward declarations of independence. This, in turn, triggered a complex series of conflicts among various ethnic and national groups who contested territorial control and sovereignty.[7] In particular, the question of Serbian dominance and the push for a "Greater Serbia" under Slobodan Milošević's leadership fuelled the outbreak of violence in Croatia (1991–1995) and, most dramatically, in Bosnia and Herzegovina (1992–1995). The wars in the former Yugoslavia unfolded along multiple fronts. Slovenia experienced a relatively short, ten-day conflict (June–July 1991), while Croatia endured a protracted war resulting in widespread displacement and destruction (1991–1995). Bosnia and Herzegovina's multi-ethnic composition made it the epicentre of the bloodiest confrontations, including the siege of Sarajevo and the Srebrenica massacre (1995), which the International Court of Justice (ICJ) later deemed an act of genocide.[8] Throughout these wars, grave violations of international humanitarian law were reported: mass killings, ethnic cleansing, sexual violence, and the deliberate targeting of civilians. The involvement of external actors – whether in the form of economic sanctions, peacekeeping missions, or diplomatic interventions – complicated efforts to achieve a stable resolution.[9] The conflicts gradually ended through agreements such as the Dayton Peace Accords (1995) for Bosnia and Herzegovina, though tensions persisted well into the following decades. The wars in the Balkans caused extensive human suffering, resulting in hundreds of thousands of fatalities and the displacement of millions, with war crimes leaving lasting psychological wounds. In political terms, the dissolution of Yugoslavia led to the emergence of multiple independent states, each contending with democracy-building, economic reconstruction, and reconciliation efforts.[10] Legally, the atrocities committed reinvigorated global interest in criminal accountability, prompting the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) as a systematic response to gross breaches of international humanitarian law.

2.2. The International Criminal Tribunal for the Former Yugoslavia (ICTY)

The United Nations Security Council established the ICTY in 1993 through Resolution 827, responding to reports of egregious war crimes, crimes against humanity, and acts of genocide in the territory of the former Yugoslavia. The Tribunal's mandate was to prosecute individuals, regardless of their rank or affiliation, who bore the greatest responsibility for such crimes. Headquartered in The Hague, the ICTY was the first international war crimes tribunal since the Nuremberg and Tokyo trials in

6 Ibid., p. 38.
7 Baker, 2014, p. 22.
8 ICJ, *Bosnia and Herzegovina v. Serbia and Montenegro,* 2007.
9 Baker, 2014, p. 59.
10 Ibid., p. 89.

the aftermath of World War II. The ICTY had jurisdiction over events in the former Yugoslavia from 1991 onwards. Its main functions involved investigating war crimes, crimes against humanity, and genocide; conducting fair trials to ensure individual accountability; safeguarding witnesses and victims through specialised support measures; and contributing to broader reconciliation by shaping international criminal jurisprudence.[11] During its operation from 1993 to 2017, the ICTY indicted 161 individuals, including high-ranking military and political figures such as Slobodan Milošević, Radovan Karadžić, and Ratko Mladić.[12] By establishing precedents in the prosecution of crimes like genocide, systematic sexual violence, and ethnic cleansing, the ICTY contributed significantly to the evolution of international criminal jurisprudence.[13] However, its effectiveness has been the subject of debate. Critics argue that trials were lengthy and expensive, and that the ICTY struggled to gain consistent cooperation from local authorities in Serbia, Bosnia and Herzegovina, and Croatia – leading to delays and difficulties in witness protection.[14] Some local populations viewed the tribunal as biased or politically motivated, thereby limiting its impact on reconciliation.[15] On the other hand, proponents highlight its achievements in promoting the principle of individual criminal responsibility, inspiring the creation of the ICC, and contributing to the field's growing body of jurisprudence.[16] In sum, the ICTY's legacy is mixed but undeniably important. It demonstrated that international institutions could, in principle, hold powerful leaders accountable and cultivate a record of atrocities that might otherwise have been denied or forgotten.[17]

2.3. Focusing on Serbia and Croatia: Rationale for Case Selection

Why devote such attention to Serbia and Croatia, rather than the many other Central and Eastern European states affected by the wars in the former Yugoslavia? It is worth emphasising that these two countries played significant roles in the conflicts, making them prime examples of how the ICTY collided with domestic politics.[18] One cannot forget that both nations were compelled to confront intense scrutiny from The Hague – not simply because of legal or moral imperatives, but also under the looming pressure of conditionalities tied to eventual EU membership. Indeed, Orentlicher underscores that cooperation with the ICTY became a litmus test for broader European integration, forcing political elites in Belgrade and Zagreb to navigate fraught public sentiment, especially when extraditing prominent military figures once hailed as national heroes.[19]

11 Ibid., p. 100.
12 Ibid.
13 Ibid., p. 109.
14 Peskin, 2008, p. 213.
15 Ibid., p. 200.
16 Stojanovic, 2009, p. 47.
17 Hartmann, 2009, p. 67.
18 Stojanovic, 2009, pp. 211–212; Hartmann, 2009, p. 67.
19 Orentlicher, 2018, pp. 60–65.

Meanwhile, states such as Poland or Hungary perceived the tribunal as an instrument for stabilising the Balkans, with little direct impact on their judicial frameworks. Their legislative efforts chiefly revolved around aligning national codes with EU requirements, rather than undertaking prosecutions of their own. Serbia and Croatia, by contrast, were drawn into a complex interplay of external and internal pressures – balancing EU accession incentives against deep-rooted nationalist legacies.[20] As both countries (especially Croatia) moved closer to Europe, the tribunal's demands gained added weight, compelling them to develop institutional mechanisms for surrendering or prosecuting alleged war criminals. It also bears mentioning that the European Union, in the aftermath of the 1990s upheaval, emerged as the driving force behind political and economic rehabilitation in the Western Balkans.[21] In exchange for access to the single market, development funds, and greater diplomatic recognition, Serbia and Croatia accepted a set of stringent conditions, including robust cooperation with the ICTY. This conditionality mechanism proved potent: the EU withheld financial support and delayed accession talks when either state faltered on arrests or delayed reforms. For countries eager to avoid isolation – and to leverage the benefits of Europe's economic and political community – meeting these requirements became a strategic necessity as much as a moral one. Consequently, Serbia and Croatia emerged as exemplary case studies of how international criminal law shapes, and is shaped by, domestic transitions.

2.4. Internal Political Factors in Croatia and Serbia

The histories of Serbia and Croatia exemplify how cooperation with ICTY became inextricably tied to the broader process of European integration. Both countries initially stood at comparably early stages in their relationship with the EU yet diverged in their pace of ICTY cooperation due to a variety of domestic political, social, and historical pressures.[22] This section examines how EU conditionality influenced the policies of these two states, and how internal political dynamics either enabled or hindered progress.

From the late 1990s onward, the EU exercised political conditionality – commonly referred to as the "carrot and stick" approach – by making full cooperation with the ICTY a prerequisite for advancing Stabilisation and Association Agreements (SAP), and eventual EU membership negotiations.[23] In both Serbia and Croatia, this conditionality manifested in concrete demands to arrest and extradite indicted war criminals, including high-profile figures such as Slobodan Milosević, Ante Gotovina, and Ratko Mladić. The EU repeatedly underscored that integration milestones would only be granted once specific, verifiable steps had been taken to meet the tribunal's

20 Stojanovic, 2009, pp. 98–101; Hartmann, 2009, pp. 69–74.
21 Orentlicher, 2018, p. 70.
22 Stojanovic, 2009, pp. 257–258.
23 Ibid., p. 257; Hartmann, 2009, p. 67.

requirements.[24] Although the EU's conditionality framework proved instrumental in spurring both Belgrade and Zagreb to act, the delayed nature of rewards sometimes weakened Brussels' leverage.[25] For instance, after Serbia extradited Milosević in 2001 – a momentous step catalysed by threatened cuts to financial aid from the United States – domestic expectations of immediate EU concessions went largely unmet.[26] This fed into a broader perception among Serbian elites that international demands were disproportionately burdensome and offered insufficient short-term benefits. Over time, such perceptions eroded trust in the EU's conditionality mechanism, creating a cycle of partial compliance followed by periods of domestic backlash.

Croatia's initial reluctance to cooperate with the ICTY was closely linked to the authoritarian legacy of President Franjo Tudman, whose nationalist rhetoric framed war crimes charges against Croatian generals as attempts to delegitimise Croatia's struggle for independence.[27] Following Tudman's death in 1999, successive centre-left governments – most notably under Prime Minister Ivica Račan – signalled greater openness toward the tribunal. In 2001, the Croatian Parliament passed a cooperation law, although it still faced considerable domestic resistance. The turning point arrived with the 2005 arrest of General Ante Gotovina in Spain, which had a direct and positive effect on Croatia's EU negotiations.[28] While many Croats initially regarded Gotovina's extradition as a national betrayal, the ensuing momentum for accession discussions quelled some domestic opposition, reinforcing the notion that EU membership held tangible advantages.[29] Serbia, in contrast, grappled with entrenched nationalist sentiment and influential veto players, such as the Serbian Radical Party, which portrayed extradition as a betrayal of national interests.[30] Immediately after the fall of Milošević, Prime Minister Zoran Dindić's reformist government sought closer ties with the West, including cooperation with the ICTY. Yet, Dindić's willingness to extradite Milošević in 2001 provoked acute political turbulence.[31] His assassination in 2003 dealt a severe blow to pro-European reforms, leading to subsequent slowdowns in Serbia's compliance with the tribunal.[32] Throughout these years, the security apparatus and certain political factions remained unreformed, allowing indicted figures like Ratko Mladić to evade capture.[33] In both Croatia and Serbia, cooperation with the ICTY was only as robust as the governing coalition's capacity to overcome internal fragmentation[34]. The existence of strong veto players – whether in parliament, the security services, or nationalist groups – could stall or dilute extradition policies. For

24 Orentlicher, 2018, p. 60.
25 Stojanovic, 2009, pp. 101, 126–127.
26 Orentlicher, 2018, pp. 64–65.
27 Stojanovic, 2009, pp. 211–212.
28 Hartmann, 2009, p. 70.
29 Stojanovic, 2009, pp. 257–258.
30 Ibid., pp. 101–112.
31 Orentlicher, 2018, pp. 63–65.
32 Stojanovic, 2009, pp. 112–124.
33 Orentlicher, 2018, pp. 69–70.
34 Stojanovic, 2009, pp. 112–124.

Croatia, the move from Tudman's presidency to Račan's coalition government made it possible to pass legislation supportive of the tribunal. Meanwhile, Serbia's oscillation between reformist and nationalist blocs, culminating in the political turmoil after Dindić's death, exemplified the fragility of pro-ICTY consensus.

For all the initial hostility toward ICTY cooperation, Croatia ultimately reaped the benefits of its compliance, racing toward EU membership by 2013.[35] Although nationalist rhetoric never entirely vanished from public discourse, successive governments – from Ivica Račan's administration onward – adeptly leveraged the EU's conditionality. By extraditing key war crimes suspects in defiance of local protests, Zagreb gained substantial international credibility, a currency that streamlined its accession negotiations and bolstered its image as a reform-minded actor on the European stage.

Serbia's path, on the other hand, has been noticeably more fraught.[36] While Belgrade did, in the end, hand over pivotal figures – most notably Ratko Mladić in 2011 – the unresolved status of Kosovo and lingering doubts about the rule of law continue to loom large. Critics argue that the EU's reluctance to enforce its standards consistently, especially during Serbia's bouts of political turbulence, has sown perceptions of a double standard.[37] Yet these intermittent concessions from Brussels did not obscure the essential driver of Serbian cooperation: a steadfast aspiration to join the EU, however long and convoluted that journey might prove.

2.5. A Summary of Direct Involvement

In both Serbia and Croatia, cooperation with the ICTY was intimately bound to the prospect of EU integration, reflecting the careful calibration of domestic politics and international pressures. EU conditionality – though occasionally inconsistent in its application – proved central to spurring progress, as states weighed the tangible benefits of EU accession against the political cost of surrendering war crimes suspects. Croatia, benefiting from a consolidated reformist bloc post-2000, managed to expedite its path to membership once General Gotovina was apprehended. Serbia, hindered by deeper internal divisions and nationalist factions, exhibited a more uneven compliance trajectory, with each extradition marking a contentious milestone on the road to EU candidacy. Yet can conditionality alone cement genuine reconciliation and the robust rule of law in a region still grappling with historical grievances? The record of these two countries suggests that while political pressures can compel states to comply with international norms, the roots of durable transformation lie in sustained institutional reforms and shifts in public discourse – processes that unfold over the long term.

35 Hartmann, 2009, p. 70.
36 Orentlicher, 2018, p. 70.
37 Hartmann, 2009, pp. 67, 74.

2.6. Comparison of Bosnia and Herzegovina, Montenegro, and Kosovo

It is worth noting that an expanded view of EU conditionality and ICTY cooperation encompasses Bosnia and Herzegovina, Montenegro, and Kosovo, revealing how these dynamics influenced each country's journey toward European integration.[38] In Bosnia and Herzegovina, the internally divided political framework resulted in variable levels of engagement with the Tribunal: The Federation of Bosnia and Herzegovina largely endorsed ICTY directives, whereas the Republika Srpska's persistent refusal to cooperate delayed progress in critical areas such as policing and governance. Even so, incremental steps – like apprehending specific war crimes suspects – ultimately opened the door to signing a Stabilisation and Association Agreement (SAA) in 2008. Montenegro, having separated from Serbia in 2006, found itself less burdened by major war crimes allegations but demonstrated readiness to fulfil EU expectations by supplying evidence and witnesses, culminating in its own SAA in 2007.[39] Kosovo, on the other hand, grappled with the complexities of disputed status, overshadowing any consistent collaboration with the ICTY.[40] Some might argue that although EU pressure did yield a measure of compliance, genuine progress also demanded profound structural reforms – especially in Bosnia – and occasional instances of conditionality "softening" for political convenience seemingly undermined the overall credibility of Brussels' approach.[41] One could agree that these nuances highlight both the effectiveness and the limitations of the EU's strategy in fostering accountability across the Balkans. These dynamics illustrate both the promise and the inherent constraints of the EU's strategy for promoting accountability in the region. If robust structural reforms continue and conditionality is applied in a transparent, consistent manner, the region may attain a more enduring alignment with international criminal justice standards.

2.7. Embedding ICL in Divided Societies

The application of international criminal law by the ICTY elicited markedly different reactions depending on whether the defendants belonged to an "in-group" or an "out-group." As Roman David points out, Croatian society tended to accept international prosecutions more readily when the accused were Serbs yet grew decidedly less supportive when local war heroes faced charges.[42] Is this not a testament to the potent interplay between national identity and justice, where notions of sovereignty and collective memory shape public attitudes toward international tribunals? Indeed, the 2005 arrest of General Ante Gotovina – celebrated by many Croats as a symbol

38 Hartmann, 2009, pp. 76–77.
39 Ibid., p. 76.
40 Ibid., p. 75.
41 Ibid., pp. 76–81.
42 David, 2014, p. 490.

of national defence – triggered widespread protests and accusations of betrayal.[43] A similar pattern emerged in Serbia, where figures such as Ratko Mladić were revered by certain segments of the public as protectors of national interests, thus complicating the process of securing societal acceptance of ICL principles.

Compounding these tensions was a pervasive neglect of war crimes prosecution by local courts in the Western Balkans prior to the ICTY's establishment. Hartmann underscores the reluctance of national judiciaries – often hamstrung by political interference and limited judicial independence – to pursue cases involving serious breaches of international humanitarian law.[44] Serbia, for instance, witnessed the ascendancy of nationalist governments that effectively stifled efforts to bring war criminals to trial, creating an atmosphere of impunity. In Bosnia and Herzegovina, the Republika Srpska repeatedly declined to apprehend individuals indicted by the ICTY, citing insufficient political will and institutional capacity. Can meaningful progress in post-conflict accountability truly be expected when domestic courts remain subject to such constraints? One of the ICTY's responses to these shortcomings was to transfer lower-profile cases to national jurisdictions, accompanied by the creation of specialised war crimes chambers within domestic judicial frameworks. Bosnia and Herzegovina's War Crimes Chamber, for example, was entrusted with applying ICL standards in proceedings referred by The Hague, thereby illustrating the potential for greater local ownership of war crimes trials.[45] Yet this laudable initiative encountered its share of hurdles: many judges and prosecutors lacked direct experience with international law; courts were beset by funding shortfalls; and political pressures persisted, threatening the impartiality and timeliness of judicial processes. Are such obstacles not in fact, a reminder that embedding ICL principles in post-conflict societies demands more than mere institutional tinkering? Unless political elites and civil society leaders cultivate a genuine commitment to accountability and reconciliation, even the most robust legal mechanisms risk falling short.

Taken together, these experiences underscore the formidable challenges of fostering genuine justice in deeply divided societies. On the one hand, the ICTY succeeded in demonstrating that high-level perpetrators could be held to account before an international forum. On the other hand, its efforts also highlight the limitations of international mandates, lack of local support, and robust national reforms. Moving forward, the region's most pressing task may well be to consolidate these specialised war crimes chambers, deepen legal expertise, and kindle broader societal support for the principle that no individual, no matter how venerated, stands above the rule of law.

43 In December 2005, after four years in hiding, he was apprehended in the Canary Islands. Gotovina was sentenced to 24 years in jail on April 15, 2011, after being found guilty on 8 of the 9 counts in the indictment. On 16 November 2012, Gotovina's convictions were overturned by an appeals panel at the ICTY and he was released from custody.

44 Hartmann 2009, p. 78.

45 Ibid., p. 79.

3. Central and Eastern European States and International Humanitarian Law (IHL) With Special Regard to Crimes under Communist Regimes

3.1. Theoretical Outline: Defining the Legal Battlefield

How should international law classify the vast spectrum of atrocities committed by, and under communist regimes in Central and Eastern Europe? Were the mass deportations, political show trials, and brutal suppression of dissent exclusively matters of domestic tyranny, governed only by the nascent standards of human rights law? Answering this question is not merely an academic exercise – it is fundamental to correctly identifying the nature of the crimes committed and the legal responsibility of their perpetrators. The essential legal framework for this inquiry is International Humanitarian Law, a term used interchangeably in academic literature with the "law of armed conflict" or, more traditionally in military circles, the "laws of war".[46] This body of rules is built upon a foundational distinction that separates the justification for conflict from the conduct within it. IHL is concerned not with why wars are fought – the domain of *ius ad bellum* (the law on the use of force) – but exclusively with how they are fought. This is the realm of *ius in bello* (the law in war), which applies equally to all parties in a conflict, regardless of which side initiated hostilities or whether their cause is considered just.[47] At its core, IHL has a dual humanitarian mandate:

1. Protecting persons who are not, or are no longer, directly participating in the hostilities, such as civilians, medical personnel, and prisoners of war.[48]
2. Restricting the means and methods of warfare, such as prohibiting weapons that cause superfluous injury and forbidding tactics that do not distinguish between military and civilian targets.[49]

To illustrate the profound implications of this distinction, this chapter will frame its analysis around two starkly different historical events, each of which tests the boundaries and application of IHL in the context of communist state violence. The first is a paradigm case of a war crime: the Katyn Massacre of 1940. In that year, the Soviet NKVD executed approximately 22 000 captured Polish military officers.[50] Committed within the clear context of an ongoing international armed conflict (the Second World War), this act was a flagrant violation of the laws of war applicable at the time, specifically the 1929 Geneva Convention Relative to the Treatment of Prisoners

46 Fleck, 2021, pp. 13–16.
47 Dinstein, 2016, pp. 5–7.
48 Fleck, 2021, pp. 701–703.
49 See: Additional Protocol I to the Geneva Conventions, 1977, art. 35 (Basic rules) and art. 51 (Protection of the civilian population).
50 Cienciala, Lebedeva and Materski, 2007, pp. 219–240.

of War, which unequivocally protected captured soldiers from violence and murder.[51] The status of the victims as prisoners of war and the timing of the massacre during an interstate war leave no doubt as to its classification as a war crime. The second case, the Hungarian Uprising of 1956, presents a far more complex legal puzzle. What began as a revolt against the communist government escalated dramatically with the armed intervention of the Soviet Army, leading to intense street fighting in Budapest and widespread bloodshed.[52] By contrasting the unambiguous war crime of Katyn with the legally contentious case of the Hungarian Uprising, this chapter will demonstrate how the presence or absence of an armed conflict fundamentally alters the legal analysis of state atrocities. It is this critical determination that dictates whether an act of brutality is a violation of human rights, a crime against humanity, or a war crime.

3.2. The Temporal Scope of IHL: A Critical Distinction From Human Rights Law

Before delving into the specific cases of Central and Eastern Europe, it is essential to establish a foundational legal distinction concerning the applicability of IHL. In legal terms it possesses a specific *temporal scope*: it applies exclusively during an armed conflict. This principle, while seemingly straightforward, carries profound theoretical and practical consequences that are central to the analysis of state-sponsored atrocities. The relationship between IHL and IHRL is best understood through the principle of *lex specialis derogat legi generali* – the special law overrides the general law. IHRL applies at all times, in peace and in war, but during an armed conflict, IHL serves as the more specific set of rules governing the conduct of hostilities and the protection of victims.

This distinction has two immediate implications for our analysis. Firstly it clarifies that not every violation of human rights during a period of violence constitutes a violation of IHL. Secondly and more critically, it establishes that war crimes, which are serious violations of IHL, can only be committed when there is a sufficient nexus to an armed conflict. In the absence of such a conflict, an act, no matter how cruel, cannot be legally classified as a war crime. A practical example illustrates this critical divide: If an authoritarian state's security forces violently suppress a peaceful civilian demonstration, resulting in hundreds of deaths, this act constitutes a flagrant violation of fundamental human rights – most notably the right to life, freedom of assembly, and freedom of expression. If this attack is part of a widespread or systematic policy directed against a civilian population, it may also qualify as a crime against humanity. However, it does not constitute a war crime. The crucial element of an armed conflict is missing. The state is not engaged in hostilities against an organised armed group but is suppressing internal dissent. Such atrocities fall

51 Convention relative to the Treatment of Prisoners of War, 27 July 1929, art. 2. This article stipulated: 'Prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence...'.
52 Kramer, 1998, pp. 163–170.

squarely within the purview of IHRL and the international criminal law concerning crimes against humanity, which explicitly delinks it from the requirement of an armed conflict.[53] Conversely, once the threshold of an armed conflict is crossed, IHL applies to all parties involved, including non-state actors. This is a cornerstone of modern IHL, applicable to both international armed conflicts (IACs) between states and non-international armed conflicts (NIACs) within a state. In a civil war between a government and a rebel group for instance, both sides are bound by the fundamental rules of IHL, such as the prohibition of torture and the humane treatment of captured persons. While enforcement remains a significant challenge, the legal obligation is unequivocal. The determination of what constitutes an armed conflict, particularly a NIAC, is therefore paramount. Contemporary international law has moved away from the need for a formal declaration of war, focusing instead on the factual reality of the situation. A NIAC is generally understood to exist when there is protracted armed violence between governmental authorities and organised armed groups, or between such groups within a state.[54] The jurisprudence of international tribunals has established two key criteria for this assessment: a minimum level of intensity of the violence and a minimum degree of organisation of the non-state party.[55] This threshold distinguishes an armed conflict from mere internal disturbances, riots, or isolated acts of banditry.

This legal framework is essential for re-evaluating historical events in Central and Eastern Europe under communist rule. The armed resistance against nascent communist authorities in states like Poland – personified by the so-called "Cursed Soldiers" (pol. *Żołnierze Wyklęci*) presents a compelling case study. From an IHL perspective, this struggle could arguably be classified as a non-international armed conflict, given the organisation of the partisan units and the intensity of hostilities over a prolonged period. If this classification is accepted, then the foundational rules of IHL, particularly Common Article 3 of the Geneva Conventions, would have applied. Consequently, acts such as the summary execution of a captured partisan by state security forces would constitute a war crime – a grave breach of the prohibition against 'the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court'.

However, the communist regimes systematically rejected this legal framework. A recurring pattern across the region was the deliberate political and legal classification of armed opponents not as combatants in a conflict, but as "bandits", "terrorists" or "criminals"[56]. This was a calculated strategy to deny them any protection under the Geneva Conventions and to legitimise their liquidation under the guise of domestic law enforcement. By framing organised resistance as simple criminality, the state sought to strip its actions of any international legal scrutiny related to the laws of war.

53 Fleck, 2021, pp. 147–150.
54 Ibid., pp. 1213–1215.
55 *Prosecutor v. Tadić*, 1995, para. 70.
56 Clapham, 2014, pp. 493–495.

Therefore, a modern legal analysis of this period must contend with the stark divergence between the state's official narrative and potential reality, as defined by IHL.[57] The critical distinction between a peacetime atrocity and a wartime crime is thus not merely an academic exercise. It is the central question in the legal and historical reckoning with the crimes of Europe's communist regimes.

3.3. Peacetime Repression vs. Wartime Crimes: A Legal Classification

After 1945, the states of Central and Eastern Europe fell under the dominion of communist regimes that frequently dealt with any opposition with ruthless efficiency. A crucial question thus arises for our analysis is: can the systematic repression carried out by these regimes be classified as war crimes? From a strictly legal standpoint, the answer is generally negative. As previously established, the application of IHL is contingent upon the existence of an armed conflict. However the majority of political repressions during this era, occurred under conditions of formal peace. This means that acts such as political executions, the torture of prisoners of conscience, or the violent suppression of peaceful protests, while constituting grave violations of human rights, do not fall within the purview of IHL and are therefore not war crimes. The following examples will serve to illuminate this critical distinction.

3.3.1. The "Quiet War" on the Inner-German Border

The German Democratic Republic provides a compelling case study of state-sponsored crimes committed in the absence of an armed conflict. The regime's brutality was most visibly embodied in its security service *Stasi* but also in the infamous "shoot to kill" (*Schiessbefehl*) policy along the border that divided the nation, which resulted in the deaths of hundreds of citizens attempting to flee.[58] Following Germany's reunification, it became one of the few post-communist states to successfully prosecute former regime officials.

The trials of GDR officials, from border guards to the last East German leader, Egon Krenz, were not conducted under the laws of war.[59] There was no armed conflict – the violence was exclusively one-sided, directed by the state against its own unarmed civilian population. Consequently, the German courts anchored their legal reasoning in international human rights law.[60] They determined that the GDR's domestic laws, which permitted such lethal force, were in gross violation of fundamental human rights (principally the right to life) and were therefore void. This reasoning was famously upheld by the European Court of Human Rights, which rejected the defendants' plea that they were merely following national law.[61] As Faix and Svaček

57 Fleck, 2021, pp. 301–303.
58 Faix and Svaček, 2016, pp. 31–35.
59 Szanajda, 2013, p. 240.
60 Ibid., pp. 241–274.
61 ECHR, *Streletz, Kessler and Krenz v. Germany,* 2001. The Court held that the GDR's state practice was a 'flagrant violation of the human rights' and the prosecution did not contravene Article 7 of the European Convention on Human Rights (no punishment without law).

note, the German judiciary effectively argued that any adherence to national laws which blatantly violate universal human rights standards does not grant immunity from criminal responsibility.[62] The acts were thus prosecuted as domestic crimes (homicide) interpreted through the lens of IHRL, and in some analyses could be classified as crimes against humanity due to their systematic nature as part of a state policy to attack a civilian population.[63] The legal framework of IHL was, quite simply, irrelevant.

3.3.2. The 1968 Invasion of Czechoslovakia: An Armed Conflict by Any Other Name

From the quiet war on the German border, we turn to a more overt act of aggression: the 1968 Warsaw Pact invasion of Czechoslovakia. Officially framed as "fraternal assistance" it was in fact, the armed invasion and occupation of a sovereign state – an act constituting an international armed conflict under IHL.[64] Though armed resistance by the Czechoslovak army was minimal, confrontations occurred, and over one hundred civilians were killed by the invading forces.

Did the actions of the interventionist troops constitute war crimes? The moment the invasion began, the entirety of IHL, including the four Geneva Conventions of 1949, became applicable. The principle of distinction, a cornerstone of IHL, prohibits attacks directed against civilians. Therefore, any deliberate shooting of unarmed protestors would undoubtedly constitute a war crime. The legal terrain however, is complicated by doctrinal debates on the threshold for prosecution. The Geneva Conventions establish a special category of the most serious violations, termed "grave breaches" which trigger universal jurisdiction and an obligation to prosecute.[65] A key criterion for many of these breaches is that they are committed on a "large scale" or as part of a plan or policy. The civilian casualties in Czechoslovakia, while tragic, were relatively limited compared to traditional warfare, and the violence was arguably more a result of individual excesses than a systematic policy of extermination.

Here, it is vital to distinguish between state responsibility and individual criminal responsibility. As Ariel Zemach argues in his seminal work on the law of occupation, the illegality of an occupation (a matter of state responsibility for violating *ius ad bellum*) does not automatically render every soldier on the ground criminally liable for war crimes.[66] David Hughes similarly contends that a separate analysis of specific acts is required to establish individual culpability under *ius in bello*.[67] In practice, no member of the invading forces was ever held criminally accountable on an international level. It was only after 1989 that Czech and Slovak historians and lawyers could

62 Faix and Svaček, 2016, pp. 31–35.
63 Ibid., p. 34.
64 See: Commentary on the First Geneva Convention, 2016, paras. 238–245. The commentary on Common Article 2 confirms that IHL applies in any case of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.
65 Henckaerts, 2021, pp. 604–607.
66 Zemach, 2015, pp. 313–350.
67 Hughes, 2020, pp. 1087–1103.

openly classify these acts as crimes violating the laws of war, but by then the political and legal obstacles to prosecution were immense.

3.3.3. Poland: Martial Law as a State of Emergency, Not a State of War

In post-war Poland, the closest the nation came to a widespread internal conflict was the imposition of Martial Law in 1981–1983, when the communist regime deployed the army against the "Solidarity" (*Solidarność*) movement. However despite the military's presence, the situation did not transform into a non-international armed conflict (NIAC). For an NIAC to exist, there must be a sufficient degree of both intensity of violence and organisation of the non-state party[68]. The *Solidarność* movement was overwhelmingly non-violent, and its resistance was characterised by strikes and protests, not by armed struggle. Consequently, the regime's most brutal acts during this period, such as the killing of nine protesting miners during the "pacification" of the *Wujek Coal Mine,* cannot be legally classified as war crimes. They were crimes committed in peacetime, later defined under Polish domestic law as "communist crimes" and, by their nature, as crimes against humanity, constituting a widespread attack on a civilian population for political reasons.[69] The Polish legislator explicitly equated the non-applicability of the statute of limitations for communist crimes with that for war crimes and crimes against humanity, yet this does not merge their legal definitions.[70] Most communist repressions in Poland and elsewhere elude the definition of war crimes precisely because they were instruments of internal control in the absence of a battlefield. While they are undoubtedly international crimes, they belong to a different legal category.

3.4. The Katyń Massacre: A Textbook War Crime

For international readers, the Katyń massacre of 1940 serves as a clear and tragic example of a major war crime. It is not just a painful chapter in Polish history but also a case study that demonstrates the fundamental purpose of IHL. The crime was not a spontaneous act of battlefield violence. It was the calculated, state-organised murder of thousands of protected persons, planned and executed far from the front lines. The legal context is essential to understanding why Katyń was a war crime. When the Soviet Union invaded Poland on 17th September 1939, an international armed conflict began between the two states. According to the laws of war, the Polish soldiers captured by the Red Army were prisoners of war (POWs).[71] This status granted them specific protections under international law. The most fundamental of these protections is the absolute prohibition against killing or harming captured enemy soldiers. Once a soldier is captured, they are considered "outside the fight" (*hors de combat*) and must be treated humanely.[72]

68 *Prosecutor v. Tadić*, 1995, para. 70.
69 Lachowski, 2022, p. 156.
70 Ibid., p. 145.
71 Henckaerts, 2005, p. 451.
72 Ibid., p. 164.

A key legal point is that these rules were binding on the Soviet Union, even though it had not signed the 1929 Geneva Convention on Prisoners of War. The core principles of humane treatment for captives were not just based on that specific treaty. They were already widely recognised as part of customary international law. These are unwritten rules that are binding on all states because they reflect the established and accepted practice of nations in wartime.[73] Therefore, the Soviet Union had a clear legal duty to protect the Polish prisoners it held. No state could simply opt out of the basic obligation to treat prisoners humanely. Instead of upholding this duty, the Soviet leadership made a deliberate decision to violate it. In March 1940, the highest level of the Soviet government (*Politburo*) approved a secret order from the NKVD to execute nearly 22,000 Polish nationals. The majority of the victims were the captured military officers held in camps at Kozelsk, Starobelsk, and Ostashkov.[74] They were systematically transported to execution sites like the Katyń Forest and murdered with a shot to the back of the head. This was a direct and total breach of their protected status as prisoners of war. In summary, the Katyń massacre is a textbook example of a war crime for several clear reasons:

1. It occurred during an international armed conflict between Poland and the USSR.
2. The victims were protected persons under international law, primarily prisoners of war.
3. The act itself – the wilful killing of these prisoners – is one of the most serious possible violations of the laws of war.

The event underscores the central purpose of IHL: to place limits on wartime conduct and to protect the defenceless, especially those who have been captured. The calculated nature of the Katyń crime serves as a permanent reminder of why these laws exist and why their violation constitutes one of the gravest offenses in international law.

The legacy of this war crime has been shaped by a decades-long struggle for truth against a backdrop of systematic denial. For half a century, the Soviet Union falsely blamed Nazi Germany for the massacre. This official lie was only retracted in 1990 when Soviet leader Mikhail Gorbachev publicly acknowledged NKVD responsibility and released key documents proving it.[75] However, this admission did not lead to full legal accountability. The subsequent Russian investigation was terminated in 2004 without classifying the event as a war crime.[76] In response, Polish institutions, particularly the Institute of National Remembrance (IPN), have conducted their own legal and historical inquiries, unequivocally defining the massacre as a war crime.[77] The victims' families continued this fight for justice, taking their case to the European Court of Human Rights. In the landmark *Janowiec and Others v. Russia* case, while the

73 Ibid., p. 163.
74 Cienciala, Lebedeva and Materski, 2007, p. 148.
75 Ibid., p. 253.
76 Institute of National Remembrance, 2020, p. 32.
77 Ibid.

Court could not judge the 1940 events directly, it found modern Russia responsible for failing to provide the families with adequate information about the fate of their relatives.[78] This legal and diplomatic struggle reflects the consensus in Polish historiography, which views the Katyń massacre not only as a national tragedy but as a foundational example of a war crime committed against the Polish nation.[79] Ultimately, the enduring battle over the legal classification and memory of Katyń underscores the profound importance of IHL. Insisting on the term war crime is not just a historical debate – it is an affirmation that the rules protecting the defenceless in wartime are universal, non-negotiable, and their violation demands truth and accountability, no matter how much time has passed.

3.5. The 1956 Hungarian Uprising: An International Armed Conflict and the Pursuit of Justice

The Hungarian Uprising of 23rd October 1956 began as a nationwide revolt against the country's Soviet-imposed communist government, rapidly transforming from student demonstrations into a widespread armed struggle for national sovereignty.[80] The decisive moment, both historically and legally, arrived on 4th November 1956, when the Soviet Red Army launched a massive military intervention to crush the revolution. This act is fundamental to the situation's analysis under IHL, as it unequivocally triggered an IAC. At the time, both Hungary and the USSR were High Contracting Parties to the 1949 Geneva Conventions.[81] Common Article 2 of the Conventions states that they apply to 'any armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them'. The Soviet cross-border invasion fits this definition precisely, meaning the conduct of Soviet forces fell squarely under the discipline of the Geneva Conventions, particularly the Fourth Convention on the protection of civilians.[82]

Within this legal framework, one of IHL's most fundamental rules is the principle of distinction, which obligates parties to a conflict to distinguish at all times, between combatants and civilians and to direct attacks only against military objectives. The record of Soviet units and their aligned Hungarian militias reveals repeated and flagrant violations of this principle. Eyewitness accounts and later investigations documented intentional attacks on unarmed civilians, which constitute clear war crimes. Mass shootings of demonstrators at Salgótarján and near Budapest's Nyugati railway station in December 1956, which killed dozens, lacked any conceivable military necessity and served instead as acts of terror against the civilian population.[83]

78 ECHR, *Janowiec and Others v. Russia*, 2013.
79 Davies, 2005, pp. 448–450.
80 Granville, 2004, p. 37.
81 ICRC Treaties Database, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 1949.
82 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949, 75 UNTS 287, art. 2.
83 Molnár, 2001, pp. 317–321.

Furthermore, the reprisals that followed the uprising's suppression fall into the category of "grave breaches" enumerated in Article 147 of the Fourth Geneva Convention. These most serious war crimes include the wilful killing, torture, inhuman treatment, and wilfully depriving a protected person of the right to a fair and regular trial.[84] The post-conflict crackdown fits these legal categories with troubling precision. Thousands were detained and tortured, while hundreds were convicted in show trials devoid of due process.[85] The secret trial and execution in 1958 of Prime Minister Imre Nagy and Defence Minister Pál Maléter was a blatant violation of fair trial rights and a chilling example of such a grave breach.[86]

For decades, the perpetrators of these crimes enjoyed total impunity. Only after the fall of communism did a narrow path to accountability open, best illustrated by the case of Béla Biszku. A central figure in the post-1956 repression, Biszku was a member of the Soviet-installed committee that authorised the use of live fire against demonstrators and later served as Minister of the Interior, overseeing the security apparatus responsible for the brutal reprisals.[87] A 2011 Hungarian law, dubbed "Lex Biszku" removed the statute of limitations for war crimes, making his prosecution possible.[88] His trial in 2014 was the first and only time such a high-ranking communist official in Hungary faced charges for these events. The case, however, exposed the profound challenges of transitional justice. While the indictment itself was a landmark victory for accountability, the immense evidentiary burden of linking high-level orders to specific killings decades later proved formidable. Ultimately, the conviction was softened on appeal, underscoring how faded memories and degraded archives can frustrate justice even when the political will to pursue it exists.[89]

In conclusion, the 1956 Hungarian Uprising is best understood in legal terms as an international armed conflict initiated by the Soviet invasion. While the fighting on the ground had complex features, this classification activates the full protective regime of the Geneva Conventions. The intentional killing of civilians and the systematic denial of fair trials to political opponents were not merely acts of political repression; they were war crimes. The difficult pursuit of justice in the Biszku case does not diminish this legal reality. Rather, it demonstrates why applying IHL to such historical events is essential. It is the necessary legal tool to resist the euphemisms of authoritarian regimes and to affirm that the principle of humanity is not optional – it binds all parties, at all times, during an armed conflict.

84 Fleck, 2021.
85 Granville, 2004, pp. 152–154.
86 Hoffmann, 2022, p. 47.
87 Ibid., p. 48.
88 Hoffmann, 2022.
89 Ibid., p. 50.

4. Central and Eastern European States and International Refugee Law (IRL) With Special Regard to Refugee Flows Brought About by the Russian-Ukrainian War

4.1. Theoretical Outline and Criteria for Grouping

How does the EU structure its refugee policy, and why do member states respond so differently to sudden mass influxes of people in need of international protection? At the legal core lies a complex framework of asylum directives, including the Qualification Directive (2011/95/EU) and the Asylum Procedures Directive (2013/32/EU). These instruments aim to harmonise standards across the Union, but they leave ample room for national discretion. One particularly notable piece of legislation is Council Directive 2001/55/EC on Temporary Protection, crafted to offer immediate, short-term safeguards to persons fleeing large-scale conflicts. Although it existed for more than two decades, this directive's real-world activation came only in 2022, in response to the war in Ukraine. In 2015, millions of refugees – predominantly from Syria – arrived in Europe, testing the EU's capacity for solidarity. Several CEE states, including Hungary and Poland, strongly opposed the proposed relocation scheme, a mechanism intended to distribute asylum seekers more evenly within the EU. Despite unprecedented numbers at Europe's borders, the Temporary Protection Directive (2001/55/EC) was never invoked. Could this have prevented the disarray and political rifts that emerged across member states? Critics suggest it might have at least provided a structured approach to burden-sharing. Instead, national governments often hardened their stances, implementing *ad hoc* border controls or rejecting mandatory quotas outright.

4.2. Context of the 2022 Russian-Ukrainian War

When Russia invaded Ukraine in early 2022, millions of Ukrainians fled westward, seeking refuge in neighbouring countries such as Poland, Slovakia, Hungary, and beyond.[90] In a stark departure from 2015, the EU unanimously decided to activate the Temporary Protection Directive, granting immediate and simplified procedures for residence, social benefits, and access to the labour market.[91] This decision marked a dramatic shift in collective EU policy, yet it has also prompted accusations of double standards – why was this mechanism not deployed for refugees from conflict zones outside Europe?

90 The author points out that at the time of writing this chapter, the Ukrainian-Russian conflict was still ongoing. Despite the utmost care, some facts (although outlined in a broad perspective) may have changed. Therefore, the reader is advised to read it with reflection.
91 Ineli-Ciger, 2023, p. 78.

4.2.1. Criteria for Grouping

For clarity, this chapter will focus on how select EU states in the region approached Ukrainian arrivals in 2022, highlighting the disparities in their strategic responses:

1. Germany – Widely regarded as experienced in large-scale integration following the 2015 crisis, Germany has developed extensive support structures, including language training and social housing programs.
2. Poland – It opened its borders to the largest numbers of Ukrainian refugees in 2022, yet critics point to a lack of longer-term planning or robust integration policies. Will Poland's initial humanitarian stance translate into meaningful, sustained measures for these newcomers?
3. Hungary – Not traditionally a primary destination for migrants, Hungary's position remains cautious. Though it admitted significant numbers of Ukrainians, its historical reluctance toward EU-wide burden-sharing and refugees from non-European conflict zones suggests a reactive rather than proactive approach.
4. Other CEE Countries – Smaller states in Central and Eastern Europe also welcomed fleeing Ukrainians, but most served more as transit corridors than final destinations. Their cautious policies reflect limited resources and political ambivalence about long-term integration.

This varied spectrum of responses influences refugee decisions about where to settle. Migrants naturally weigh factors such as language proximity, job opportunities, welfare provisions, and social acceptance. In doing so, they may bypass countries that lack robust support systems in favour of those offering clearer integration pathways. Such patterns confirm that EU law alone cannot guarantee uniform outcomes; national politics, institutional preparedness, and public opinion all shape the actual reception of people in flight from war.

4.3. Attitudes and Legal Frameworks in Selected EU States: Germany, Poland, Hungary and Others

What truly shapes a country's approach to incoming refugees? Are legal frameworks enough to ensure uniform protection, or do national politics, social perceptions, and resource constraints ultimately dictate the outcomes? These questions lie at the heart of contemporary EU asylum debates, particularly as Europe confronts the largest displacement on its soil since the Second World War. It is worth noting that Dražanová and Geddes highlight a persistent imbalance in how states handle refugee populations from different regions.[92] On one side, Ukrainians benefit from comparatively favourable treatment, while on the other, non-European asylum seekers frequently face stricter controls and limited access to support. This duality underscores the importance of a more cohesive and rights-based solidarity that transcends purely national interests. Equally significant is the call for institutionalised relocation

92 Dražanová and Geddes, 2023, p. 141.

mechanisms, which could prevent the abrupt political upheavals that often arise in moments of crisis. One cannot ignore the legal complexities surrounding many Ukrainian refugees, who do not always meet the 1951 Geneva Convention definition of persecution. Is this narrow interpretation still appropriate for conflicts of the 21st century? Malanchuk contends that the Temporary Protection Directive (TPD) of 2001 fills a crucial gap by granting immediate access to the labour market, education, and healthcare.[93] However, the extent of its actual implementation varies tremendously across Europe.

There is no doubt that Poland's legislative response garnered particular praise because the Polish government swiftly established a simplified registration system, flexible employment options, and special measures to accommodate Ukrainian healthcare professionals.[94] Such agility prevented procedural bottlenecks and reflected a pragmatic understanding of on-the-ground realities. Nonetheless, it should be stressed that Poland's long-term integration frameworks remain underdeveloped, prompting concerns about future social cohesion.

Attention should also be given to Germany, which relies on §24 *Aufenthaltsgesetz*[95] to operationalize the TPD.[96] This legal foundation grants Ukrainian refugees broad protective status, although it restricts their mobility within the country. Germany's approach, honed through its 2015 experiences, often appears well-organised but can be perceived as overly rigid. Even so, Lazarenko and Rabinovych emphasise Germany's emphasis on structured integration pathways – language classes, vocational training, and immediate access to the labour market – which many argue provides a more comprehensive footing for long-term settlement.[97]

4.4. The Polish and German Approaches in Contrast

Poland and Germany represent contrasting models of crisis management. In Poland, a spontaneous influx of 2.8 million Ukrainians in the initial weeks of the war challenged local infrastructures yet also revealed remarkable societal mobilisation.[98] Authorities offered provisional accommodation and financial assistance but did not embed these measures within a wider strategy for integration. Lazarenko and Rabinovych underscore Poland's efficiency in the earliest phases of the crisis but caution that limited budgets and escalating costs of collective accommodation may eventually strain social support systems.[99] Germany, by comparison, applied its established legal frameworks with methodical precision. It is evident that while German regulations can be stringent, they frequently deliver consistent coverage, including robust

93 Malanchuk, 2023, pp. 233–234.
94 Ibid., pp. 238–239.
95 Residence Act (*Aufenthaltsgesetz – AufenthG*), Germany.
96 Malanchuk, 2023, p. 239.
97 Lazarenko and Rabinovych, 2025, pp. 102–105.
98 Dražanová and Geddes, 2023, p. 140.
99 Lazarenko and Rabinovych, 2025, p. 110.

language and job-placement programs.[100] Critics do voice concerns about bureaucratic hurdles and the possibility of fostering dependency on social benefits, yet the consistency of these policies often outweighs sporadic inefficiencies.[101]

4.5. Hungary's Ambivalent Position

Hungary's stance toward the ongoing crisis involving Ukrainian refugees reflects both adaptability and caution. Although the government officially adopted the Temporary Protection Directive (TPD) for Ukrainians, reservations persist regarding broader migrant influxes, particularly those originating from regions outside Europe. One explanation for this guarded approach lies in the country's relatively limited historical experience with large-scale immigration, as well as an emphasis on cultural continuity. In the specific context of Ukrainian arrivals, individuals of Hungarian ancestry from Zakarpattia often receive targeted support, including financial aid and educational programs, given the longstanding view in Hungarian society that it holds a special obligation to assist its "brothers" in the region.[102] This perspective, which resonates with the current administration's policy framework, does not negate Hungary's overall willingness to provide humanitarian assistance: during the initial months of the war, both government-led and grassroots efforts demonstrated solidarity and mobilised significant resources for Ukrainians seeking refuge. Nonetheless, there have been indications that, over time, the public's readiness to sustain these efforts may have diminished, partly due to concerns about resource allocation and perceived "refugee fatigue".[103] For some Ukrainians, these shifts prompted either a return home or onward movement to other EU destinations. Even so, it is important to recognise that Hungary's multifaceted response – rooted in historical ties, domestic priorities, and broader European commitments – continues to evolve as the situation unfolds.

4.6. Synthesis

A number of additional EU member states complement this picture. Spain, for instance, permits flexible mobility but offers less generous financial assistance, thereby encouraging further movement to countries with better support systems.[104] France and Italy, similarly, have transposed the TPD into national law, but their implementation is often reactionary, lacking the level of organisational structure found in Germany or even Poland. One might ask: Does this reflect limited resources, divergent political cultures, or both? The question points to a reality in which the TPD alone cannot deliver uniform refugee protection. Indeed, many Ukrainians ultimately base their migration decisions on each state's specific combination of legal rights,

100 Malanchuk, 2023, p. 240.
101 Lazarenko and Rabinovych, 2025, p. 105.
102 Nagy, 2023, p. 148.
103 Ibid., p. 154.
104 Malanchuk, 2023, p. 240.

material support, and social acceptance.[105] Evidently, the EU's first-ever activation of the Temporary Protection Directive stands as a milestone of collective will, though its on-the-ground outcomes vastly differ. Poland championed a rapid legislative response but has yet to articulate comprehensive integration strategies. Germany, more versed in large-scale migration, offers a clearer path to long-term inclusion at the cost of certain mobility constraints. Hungary continues to fulfil its formal commitments toward Ukrainian refugees while pursuing a more cautious migration policy in relation to other groups. Meanwhile, numerous EU states oscillate between humanitarian gestures and practical limitations, prompting refugees to engage in secondary migration in search of better conditions.

Perhaps the central takeaway is that despite the newfound reliance on TPD provisions, a patchwork of historical legacies, legal frameworks, and societal attitudes continues to dictate how individuals fleeing war are received. It is difficult to deny that deeper harmonisation – both in law and in practice – remains an elusive goal. Ultimately, whether the EU can extend this spirit of solidarity beyond the Ukrainian case may well define the future shape of its asylum system and its commitment to equitable treatment for all refugees.

5. Conclusions

Throughout the preceding sections, this chapter has illustrated how Central and Eastern European countries – despite their shared legacies of communist rule, EU aspirations, and proximity to regional conflicts – have followed contrasting trajectories in their engagement with international criminal law, international humanitarian law, and international refugee law. On one level, certain points of convergence are clear: the historical experiences of authoritarianism and war has fostered an awareness of the need for accountability; membership or candidacy for EU accession has presented a catalyst for legal reforms; and the Russian-Ukrainian conflict underscored the humanitarian imperative for unified crisis response. Yet these broad parallels have scarcely yielded uniform practices, as revealed in the stark differences among the former Yugoslav states in coping with ICTY mandates, the varying degrees of reckoning with communist-era crimes, and the heterogeneous reception policies for Ukrainian refugees in 2022.

One might ask how well these observations respond to the guiding research questions. When viewed through the lens of ICL – especially the work of the ICTY – countries directly entangled in the Balkans' 1990s wars were inevitably compelled to undertake more extensive prosecutions and reforms. However, their readiness to comply varied according to domestic political shifts, pressure for EU accession, and public sentiment shaped by nationalist narratives. In other words, where strong reformist coalitions emerged, we saw greater alignment with international standards; where nationalist

105 Dražanová and Geddes, 2023, p. 141.

or post-communist elites retained power, implementation lagged. Moving to IHL, the prosecution of communist crimes is fraught with challenges. Poland confronts Russia's refusal to classify Katyń as a war crime. Hungary faces the passage of time, making trials like Biszku's largely symbolic due to evidentiary issues. Meanwhile, the Czech and Slovak cases highlight interpretive hurdles in defining isolated acts during the 1968 invasion as systematic war crimes, complicating accountability. Finally with regard to IRL and the recent inflow of Ukrainian refugees, CEE nations have displayed a patchwork of policy innovations and improvisations, from Poland's open doors and rapid legislation to Hungary's more guarded stance. Although the EU's Temporary Protection Directive offered a semblance of collective resolve, each state's domestic priorities, financial resources, and social attitudes ultimately determined the scope and quality of assistance.

Taken together, these patterns suggest that where historical wounds are deep or ethnic tensions remain unresolved, progress on international legal commitments may stall, no matter how robustly the EU encourages harmonisation. At the same time, it would be unfair to dismiss the tangible achievements that have been realised whenever political leaders and civil society organisations embraced shared responsibilities. The willingness of post-war Croatia and Serbia to hand over key indicted figures, albeit under international pressure, has illustrated that concerted efforts can meet ICL obligations. Similarly, Poland's dramatic admission of millions of Ukrainian refugees, in tandem with an array of legal adaptations, highlights how acute crises can galvanise humanitarian instincts – even when long-term integration frameworks lag behind. Meanwhile, states that have adopted a more measured approach to migration, including Hungary, illustrate the delicate balance between safeguarding national interests and upholding the broader principle of European solidarity, with legitimate domestic considerations often informing their stance.

This chapter argues that the differences noted across ICL/ICTY, IHL/communist crimes, and IRL/refugee flows reflect the interplay of historical legacies, political will, and institutional capacity. While all these countries are bound by a common regional identity and have participated in various international bodies, the degree to which external norms permeate domestic practice still depends on local contingencies.

It would be easy to criticise the EU for its institutional flaws and inconsistent enforcement of solidarity. Is the Union a "perfect" organisation? Certainly not. But one cannot ignore that, for all its imperfections, Europe remains the destination of choice for those fleeing war, violence, and repression. The enthusiastic drive of Balkan nations to join this shared project attests to the EU's power of attraction; and in the face of crises, there is indeed potential to achieve far more by working together. How else can one explain why refugees from Ukraine look to Poland, Germany, or the Czech Republic first, rather than risking longer, more perilous journeys elsewhere? Naturally, a united Europe requires better leadership and respect for national interests – yet it must also preserve a sense of collective identity. When Europe stands firm and avoids the divisions of the past, it emerges stronger and safer. A robust EU can channel the principles of ICL, IHL, and IRL far more effectively than any single country acting alone. However, implementing these principles in practice is no easy feat when states cling to old resentments or resist deeper cooperation. Hence, the primary lesson of this chapter is that crises – whether sparked by armed conflict or large-scale displacement – reveal both the weaknesses and the latent strengths of the European project. Is it truly feasible to rely on individual states' *ad hoc* responses in the long run? Perhaps not. Genuine progress arises through dialogue, education, and respect – as states that trust one another can coordinate, pool resources, and share burdens more equitably.

Finally, it bears repeating that the EU is not some impersonal "them". Rather, it is an evolving community of "us", shaped by the interplay of diverse national voices. To see it in this light is to acknowledge that citizens, governments, and institutions each hold agency in forming the Union's policies. Indeed, once we realise that we ourselves are Europe, the impetus to refine its laws and structures feels all the more urgent – and the potential for meaningful, collective achievements becomes that much greater.

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