

Annexe - The legal framework applicable to the armed conflict in Ukraine

Since the beginning of the Russian Federation's military attack in Ukraine, the two States have been involved in an international armed conflict against each other triggering the applicability of IHL.¹ The main IHL provisions applicable to conflicts of an international character, including belligerent occupation, are to be found in the Four Geneva Conventions of 1949² and their Additional Protocol I (AP I)³ to which both the Russian Federation and Ukraine are parties, as well as relevant rules of Customary IHL.⁴ Ukraine and the Russian Federation are both parties to several core human rights treaties setting forth IHRL norms that remain generally applicable in situations of armed conflict.

Applicable International Humanitarian Law

As set forth comprehensively in the first two Interim Reports,⁵ the primary IHL instruments applicable to the armed conflict in Ukraine are the Four Geneva Conventions,⁶ their Additional Protocol I, the 1907 Hague Regulations,⁷ and customary international law.⁸ In addition, the conflict is governed by several instruments relating to the use of weapons, including some that impose an absolute prohibition on some weapons.⁹ The prohibition of some other weapons or the limitation of their use has not reached a customary nature and the

¹ Since 2014, the Russian Federation has been occupying the Autonomous Republic of Crimea and the City of Sevastopol to which the IHL of occupation applies.

² Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked of Armed Forces at Sea; Convention (III) relative to the Treatment of Prisoners of War; and Convention (IV) relative to the Protection of Civilian Persons in Time of War.

³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

⁴ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume 1: Rules* (CUP 2005).

⁵ See “Interim Report”, ODIHR, 20 July 2022, at paras 30–32, and “Second Interim Report”, ODIHR, 14 December 2022, at paras 36-40.

⁶ These include those Geneva Conventions relative to the treatment of the wounded and sick armed forces in the field and at sea (GC I and GC II), the treatment of prisoners of war (GC III), and the protections afforded to the civilian population caught up in international armed conflicts including in occupied territories (GC IV).

⁷ 1907 Hague Convention IV with its annexed Regulations concerning the Laws and Customs of War on Land (Hague Regulations).

⁸ Customary international law binds all States regardless of their treaty commitments. The [Customary IHL database](#) contains the 161 rules of customary IHL identified in the ICRC's 2005 Study on Customary IHL and the complete collection of practice underlying that Study. See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume 1: Rules* (CUP 2005).

⁹ E.g., Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 10 April 1972; Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993.

lawfulness of their use depends on the ratification by States of specific conventions.¹⁰ ODIHR reports also deal in depth with matters falling under the framework of occupation law - a branch of IHL that regulates the partial or total occupation of a territory by a hostile party. Importantly, under occupation law, the occupying power does not acquire sovereignty over the occupied territory and is required to respect the existing laws and institutions of the occupied territory as far as possible. It is presumed that occupation will be temporary and that the occupying power shall preserve the *status quo ante* in the occupied territory. In this respect, the Russian Federation's purported annexation of parts of the territory of Ukraine does not relieve it of its responsibilities as an occupying power.¹¹ Provisions regulating occupation can be found in The Hague Regulations of 1907, the Fourth Geneva Convention of 1949 and Additional Protocol I of 1977. ODIHR considers the de facto authorities in those parts of Ukrainian territory that are currently under occupation by the Russian Federation to be under the overall control of the Russian Federation. This means that the administrations of these regions are involved in the same international armed conflict and are bound by the same IHL rules, and that the Russian Federation is responsible for their conduct under IHL. ODIHR considers the so-called 'annexation' of these and other territories under the Russian Federation occupation illegal and effecting no change to their status as Ukrainian territory under international law.

All parties to the conflict have the obligation to respect and ensure respect for IHL by their armed forces and other persons or groups acting in fact on its instructions or under their direction or control.¹² This obligation is in no way linked or conditioned upon reciprocity.¹³ Violations of IHL entail responsibility of the party to the conflict to which such violation are attributed.¹⁴ In line with the general rules on the responsibility of States for internationally

¹⁰ Both Ukraine and the Russian Federation are parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Geneva, 10 October 1980 (CCW), and related CCW Protocol on Non-Detectable Fragments (Protocol I), Geneva, 10 October 1980 (CCW Protocol I), CCW Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), 13 October 1995 (CCW Protocol IV), and CCW Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, Geneva, 10 October 1980 (CCW Protocol II), CCW Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), Geneva, 10 October 1980 (CCW Protocol III), and CCW Protocol on Explosive Remnants of War (Protocol V), 28 November 2003 (CCW Protocol V). Ukraine, but not the Russian Federation, is a party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997. Neither Ukraine nor the Russian Federation are parties to the widely ratified Convention on Cluster Munitions.

¹¹ GC IV, art. 47.

¹² Rule 139 CIHL.

¹³ Rule 140 CIHL.

¹⁴ Rule 149 CIHL.

wrongful acts,¹⁵ the responsible State is under the obligation to cease the violation, to offer appropriate assurances and guarantees of its non-repetition, if circumstances so require, and to provide reparation for the injury caused by the internationally wrongful act.¹⁶

Applicable International Human Rights Law

As set forth comprehensively in the first two Interim Reports, IHRL also continues to apply in situations of armed conflict, including occupation, functioning in parallel to IHL.¹⁷ Both Ukraine and the Russian Federation are parties to the core UN human rights treaties,¹⁸ which bind them in their own territory as well as in territories over which they exercise jurisdiction or effective control.¹⁹

In times of public emergency threatening the life of the nation, including armed conflicts, some human rights treaties allow for the suspension of certain human rights obligations of State parties, within strict parameters and for the time necessary to overcome such emergency;²⁰ the government of Ukraine imposed martial law from 24 February 2022,²¹ and has notified the United Nations Secretary-General of the derogation from some of its human rights obligations,²² in accordance with article 4 of the ICCPR and article 15 of the ECHR, for

¹⁵ *Draft articles on Responsibility of States for internationally wrongful acts*, in UN Doc. A/56/10, *Report of the International Law Commission on the work of its Fifty-third session*, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10, November 2001, pp. 43-59.

¹⁶ Rule 150 CIHL.

¹⁷ See “Interim Report” ODIHR, 20 July 2022, at paras 33–34; and “Second Interim Report”, ODIHR, 14 December 2022, at paras 38-39.

¹⁸ These include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) and, for the Russian Federation, the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED). In addition to the ICCPR and ICESCR, the core UN human rights treaties include the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). Ukraine remains a party to the European Convention on Human Rights (ECHR), however, as a result of the Russian Federation’s expulsion from the Council of Europe, it has not been bound by the ECHR in the period since 16 September 2022.

¹⁹ See, among others, International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, paras 111-112; CCPR/C/21/Rev.1/Add. 13, para.10; CCPR/C/GC/36, para. 63; CCPR/C/120/D/2285/2013, para. 6.5; E/C.12/GC/24, para. 10. For a more detailed analysis of the human rights standards applicable in Ukraine, see *Moscow Mechanism Report*, at pp 49-53.

²⁰ There are certain human rights from which States can never derogate, these include the right to life (except for deaths resulting from lawful acts of war), and the right to be free from torture and inhuman and degrading treatment and punishment.

²¹ Martial law was introduced on 24 February 2022 pursuant to Decree No. 64/2022 “On the Introduction of Martial Law in Ukraine” and was extended on several occasions since.

²² The derogations decided by the Ukrainian government concern a broad range of human rights, namely those granted by Articles 3, 8(3), 9, 12, 13, 17, 19, 20, 21, 22, 24, 25, 26 and 27 of the ICCPR; Articles 4 (3), 8, 9, 10, 11, 13, 14,16 of the ECHR; arts. 1- 3 of the Additional Protocol to the ECHR; and art. 2 of Protocol No. 4 to the

the duration of the martial law. The Russian Federation has not notified the United Nations Secretary-General or ODIHR of any derogations from any human rights treaty, therefore, all the human rights instruments to which it is a party remain in force.