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. The main IHL provisions applicable to conflicts of an international character, including belligerent occupation, are to be found in the Four Geneva Conventions of 1949 and their Additional Protocol I (AP I) to which both the Russian Federation and Ukraine are parties, as well as relevant rules of Customary IHL. 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 Ukraine Monitoring Initiative (UMI) Interim Reports, the primary IHL instruments applicable to the armed conflict in Ukraine are the Four Geneva Conventions, their Additional Protocol I, the 1907 Hague Regulations, and customary international law. 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. The prohibition of some other weapons or the limitation of their use has not

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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.
6 These include those Geneva Conventions relevant 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).
reached a customary nature and the lawfulness of their use depends on the ratification by States of specific conventions.\(^{10}\)

This report deals 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 violations are attributed.\(^{14}\) In line with the general rules on the responsibility of States for internationally wrongful acts,\(^{15}\) the responsible State is under the obligation to cease the violation, to offer


\(^{11}\) GC IV, art. 47.

\(^{12}\) Rule 139 CIHL.

\(^{13}\) Rule 140 CIHL.

\(^{14}\) Rule 149 CIHL.

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.\textsuperscript{16}

\textit{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.\textsuperscript{17} Both Ukraine and the Russian Federation are parties to the core UN human rights treaties,\textsuperscript{18} which bind them in their own territory as well as in territories over which they exercise jurisdiction or effective control.\textsuperscript{19}

In times of public emergency that threaten 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 said emergency.\textsuperscript{20} The government of Ukraine imposed martial law throughout the entire period covered by this report,\textsuperscript{21} and has notified the United Nations Secretary-General of the

\textsuperscript{16} Rule 150 CIHL.
\textsuperscript{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), \textless https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies\textgreater. Ukraine remains a party to the European Convention on Human Rights (ECHR) \textless https://www.echr.coe.int/documents/d/echr/convention_eng\textgreater, 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.
\textsuperscript{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.
\textsuperscript{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. Most recently, on 2 May 2023, the Ukrainian Parliament adopted Law of Ukraine, No. 3057-IX ‘On Approval of the Decree of the President of
derogation from some of its human rights obligations,\textsuperscript{22} in accordance with article 4 of the ICCPR and article 15 of the ECHR, for 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.

Ukraine On the Extension of Martial Law in Ukraine', granting the request of President Zelenskyy to extend martial law once again for a period of 90 days until 31 July 2023.

\textsuperscript{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 ECHR, see Notes verbales No. 4132/28-110-17625 and No. 4132/28-110-17626 of 1 March 2022, <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=en>. 