



The Legal Framework Applicable to the Armed Conflict in Ukraine

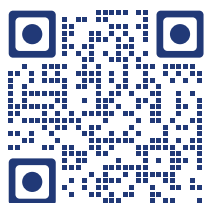
Ukraine Monitoring Initiative Methodology

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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

- 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, 12 August 1949; Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked of Armed Forces at Sea, 12 August 1949; Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949; and Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949.
- 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 Convention (IV) with its annexed Regulations concerning the Laws and Customs of War on Land, 18 October 1907 (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, 13 January 1993.

weapons or the limitation of their use has not reached a customary nature and the 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 wrongful acts,¹⁵ the responsible State is under the obligation to cease the violation,

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, 10 October 1980 (CCW), and its related protocols: Protocol I on Non-Detectable Fragments, 10 October 1980 (CCW Protocol I); Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, 10 October 1980 (CCW Protocol II); Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons, 10 October 1980 (CCW Protocol III); Protocol IV on Blinding Laser Weapons, 13 October 1995 (CCW Protocol IV); and Protocol V on Explosive Remnants of War, 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, 30 May 2008.

11 GC IV, art. 47.

12 CIHL, Rule 139.

13 CIHL, Rule 140.

14 CIHL, Rule 149.

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.

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 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.

¹⁶ CIHL, Rule 150.

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, 16 December 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (ICESCR) with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990 (CMW) and, for the Russian Federation, the International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006 (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, 21 December 1965 (CERD), the Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979 (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984 (CAT), the Convention on the Rights of the Child, 20 November 1989 (CRC), and the Convention on the Rights of Persons with Disabilities, 13 December 2006 (CRPD). Ukraine remains a party to the European Convention on Human Rights, 4 November 1950 (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; Articles 1 – 3 of the Additional Protocol to the ECHR; and Article 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 2023, <<https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=en>>.

Ukraine Monitoring Initiative Methodology

ODIHR developed its human rights monitoring methodology, in line with the Manual on Human Rights Monitoring by the Office of the UN High Commissioner for Human Rights (OHCHR),¹ for the purposes of, and circumstances faced by, the Ukraine Monitoring Initiative.

ODIHR adopts a trauma-informed approach. Monitors conducting interviews are highly skilled and experienced interviewers. In addition, prior to deployment they all undertake ODIHR's training on trauma-informed interviewing, ensuring that all interactions with witnesses and survivors of human rights violations remain guided by the principles of “do no harm” and informed consent, and that they are aware of the risks of re-traumatization. In doing so, ODIHR's monitors create a safe space where the interviewee can share an uninterrupted account of their experience, as they recall it.

Guided by these principles, ODIHR does not interview children. It also seeks, to the extent possible, to avoid interviewing individuals who have previously provided their testimony to other organizations. ODIHR has sought to identify and reach out to the most relevant interviewees. Hence, prior to deploying monitors, ODIHR conducts scoping visits, speaking to IDPs and refugees who have sought safety outside Ukraine, humanitarian workers, human rights defenders, CSO activists and representatives of relevant authorities on the ground. The findings of these visits enable ODIHR to offer survivors and witnesses referrals to support service providers as needed. ODIHR has made the details of its training available in the form of an e-learning course² aimed at human rights defenders in civil society who are conducting human rights monitoring. The course is available in English, Russian and Ukrainian.

Prior to, during and after deployment, monitors and members of the broader monitoring team can rely on the support of a psychologist.

Before deploying monitors in Ukraine, ODIHR conducts detailed Security Risk Assessments for all relevant locations to ensure the safety of interviewees and the ODIHR monitoring team. Deployments strictly adhere to the security

1 [Manual on Human Rights Monitoring, Revised Edition](https://www.ohchr.org/en/publications/policy-and-methodological-publications/manual-human-rights-monitoring-revised-edition), Office of the UN High Commissioner for Human Rights, 1 January 2011, <<https://www.ohchr.org/en/publications/policy-and-methodological-publications/manual-human-rights-monitoring-revised-edition>>.

2 See e-learning course on [Trauma-Informed Interviewing: Skills and Techniques for monitors](https://freedomlab.io/courses/trauma-informed-interviewing-skills-and-techniques-for-monitors/), 13 January 2023, <<https://freedomlab.io/courses/trauma-informed-interviewing-skills-and-techniques-for-monitors/>>.

protocol developed as part of the Security Risk Assessments. All monitors deployed to Ukraine have undergone appropriate Hostile Environments Awareness Training (HEAT).

ODIHR's monitoring is not limited to interviews. It collects information from various sources, including in-person interviews, desk research, and open-source investigation techniques to verify digital evidence. The latter includes obtaining publicly available text, images, audio and video content published on various platforms (e.g., websites, social media, video streaming platforms) by Ukrainian, Russian and other international sources, as well as retrieving data from open Applications Programming Interface and deep web information sources. The verification of information is performed with the use of open-source analysis tools and is tailored to the purpose of ODIHR's monitoring.

In addition, ODIHR collects information from relevant intergovernmental organizations (IGOs), non-governmental organizations (NGOs) and civil society in various forms, including by holding in-person meetings in Ukraine and other countries, or at events organized by the OSCE and ODIHR. ODIHR has also sought information from the authorities of Ukraine and the Russian Federation in particular, and their respective National Human Rights Institutions. Representatives of both countries have sent information to ODIHR that is referenced in the reports.

With respect to allegations regarding potential violations of the rules on the conduct of hostilities by the parties to the conflict, ODIHR collects information through extensive desk research, including using open-source investigation techniques to verify digital evidence. The facts and circumstances of attacks that happen in the Ukraine-controlled territories are based on verified information, which is then corroborated by several independent sources that are assessed as credible and reliable. These include official statements by local and national officials, law enforcement agencies, emergency services, independent media, official records, reports from NGOs and international organizations, as well as private posts on social media, and other relevant sources. As happens with attacks that take place in the Ukraine-controlled territories, efforts are made to verify and analyse attacks that occur in the territories under occupation. However, due to lack of access to those areas and limited available sources of information, ODIHR is not always able to verify every case independently. As such, information is obtained from reports of the de facto authorities in territories that are under occupation by the Russian Federation, as well as from media outlets of those de facto authorities, Russian state media and communications from the Russian Federation. This is then corroborated by available digital evidence from other open sources, including social media.

In the course of the UMI's monitoring and reporting activities, ODIHR has made an effort to co-ordinate its work and exchange information and its experience

with other entities involved in monitoring and documenting the situation, including intergovernmental organizations, the Independent International Commission of Inquiry on Ukraine, as well as local and international non-governmental organizations.

