

The Domestic Implementation of International Humanitarian Law in Ukraine (updated)

Kyiv, Ukraine

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List of Abbreviations

CCW – Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons

CRC – Committee on the Rights of the Child

EU – European Union

GRC – Global Rights Compliance

HRMMU – Human Rights Monitoring Mission in Ukraine

ICC – International Criminal Court

ICRC – International Committee of the Red Cross

ICTY – International Criminal Tribunal for the former Yugoslavia

IDPs – Internally displaced persons

IHL – International humanitarian law

OPCW – Organisation for the Prohibition of Chemical Weapons

OSCE – Organization for Security and Co-operation in Europe

OPG – Office of the Prosecutor General

POW – Prisoner of war

SBU – Security Service of Ukraine

UK – United Kingdom

UNESCO – United Nations Educational, Scientific and Cultural Organization

USSR – Union of Soviet Socialist Republics

Executive Summary

This Report presents an updated version of the report published by Global Rights Compliance (“GRC”) in 2016. In the 2016 Report, Global Rights Compliance (“GRC”) conducted an analysis of legal measures aimed at identifying gaps and inconsistencies in the domestic implementation of international humanitarian law (“IHL”) in the Ukrainian legal system. The same methodology has been employed in this report, updated with relevant developments in the domestic implementation of IHL since 2016. The most notable is the adoption of the 2017 Military Instruction which repealed the 2004 Military Manual. This Report presents GRC’s findings and offers a detailed assessment on the degree of implementation.

It also endeavours to provide a working document for government officials, particularly those state bodies involved in achieving the objectives of the National Strategy on Human Rights (“Strategy”). Published on 25 August 2015 (with the Action Plan approved on 23 November 2015), the Strategy requires the Government of Ukraine to assess compliance of Ukrainian criminal law with IHL standards to identify the gaps and inconsistencies. Upon completion of this assessment, it notes that the Government should develop a draft law on amending the Criminal Code of Ukraine and other relevant legal measures. This report should aid the Government of Ukraine in achieving these important objectives.

After a brief introduction, this Report commences with a review of IHL and its general legal framework. After this primer, it will detail the infrastructure of the Ukrainian legal system. It will then describe the principal actors responsible for IHL enforcement and consider the domestic regime for the punishment of IHL violations.

The majority of the Report that follows considers whether IHL treaties and their national implementation requirements are given practical effect through legal measures or other modes of delivery or dissemination in the Ukrainian legal system. GRC’s analysis shows that Ukrainian legal measures incorporate some, but not all, of the main IHL requirements. Although this demonstrates commitment by the Government of Ukraine towards greater implementation of IHL, certain gaps and inconsistencies have been identified by GRC.

These include the following gaps and inconsistencies relating to:

- The requirements of dissemination, promotion and training on IHL;
- The legislative framework for the prosecution of war crimes and serious violations of IHL;
- Fundamental and judicial guarantees afforded to ‘protected persons’;
- Protections granted to sick and wounded combatants;

- Protections granted to POWs;
- Protections of civilian medical personnel;
- Steps to safeguard cultural property from the foreseeable effects of conflict;
- The protection of civil defence;
- The regulation of protected zones and localities; and
- Important gaps in the implementation of the treaties related to certain conventional weapons, such as the lack of prohibition of anti-personnel mines or the lack of regulations on explosive remnants of war.

The Report also assesses the compliance of Ukrainian criminal laws and procedures with the requirements of the Rome Statute. Significant gaps identified include the lack of reference to crimes against humanity and the specification of war crimes in the Criminal Code of Ukraine.

GRC is currently conducting a review of the practice of state bodies that are responsible for implementing IHL and their capacity to address violations of IHL in conformity with relevant international standards. This Report and the analysis of practice are essential to enable more effective implementation and enforcement of IHL in Ukraine.

Introduction

Since Ukraine proclaimed its independence in 1991, pro-western and pro-Russian political parties have been engaged in a continuous ideological struggle to define the country's identity and its future. Never has this divide been more evident (and divisive) than during events in what has become known as the Revolution of Dignity - colloquially termed "Euromaidan" - and the conflict that followed in eastern Ukraine.

During 2013, many Ukrainian citizens were becoming increasingly frustrated with their government's failure to implement the significant reforms promised after the 2004 Orange Revolution. The same year, investigations that shed light on rank corruption throughout government (principally by the ruling Party of Regions and then President Viktor Yanukovich) further fuelled this frustration and disillusion. The country's tolerance for its elected officials became further frayed in late 2013 when President Yanukovich suspended Ukraine's progress towards greater European integration by refusing to sign the European Union Association Agreement.¹ Instead, it took a \$ 15 billion loan from the Russian Federation, understood by some to be a bribe not to sign the EU agreement.² On account of this transaction, the signing and further execution of the Agreement was suspended. This led to many from the local population taking to the streets, gathering in Kyiv's Maidan Nezalezhnosti (Independence Square) to protest against the President and his party.

On 18 February 2014, the protesters at Maidan were attacked by pro-government forces, leading to numerous injuries and deaths. On 20 February 2014, these forces continued their operation, killing many protestors. According to the United Nations Human Rights Monitoring Mission in Ukraine ("HRMMU"),³ 90 people were killed during this three-day period alone, with reports alleging that this was mostly from sniper fire.⁴ From December

¹ Ian Traynor, Oksana Grytsenko, '[Ukraine suspends talks on EU trade pact as Putin wins tug of war](#)' *The Guardian* (UK, 21 November 2013).

² Damien McElroy, '[Ukraine receives half price gas and \\$15 billion to stick with Russia](#)' *The Telegraph* (London, 17 December 2013); '[Yanukovich denies taking any bribes from Russia](#)' *Ukrainska Pravda* (Kyiv, 9 December 2013); '[A 3 bln part of a Ukrainian debt owed to Russia will be restructured - Moody's](#)' *Rianovostiukraina* (Kyiv, 14 December 2015).

³ In March 2014, the Office of the United Nations High Commissioner for Human Rights deployed to Ukraine a Human Rights Monitoring Mission to evaluate and report on the human rights situation and to provide support to the Government of Ukraine in the promotion and protection of human rights. As part of its work, the Mission prepares monthly reports describing the human rights situation and makes recommendations. See '[UN Human Rights Monitoring Mission in Ukraine](#)' (UN Ukraine).

⁴ Office of the United Nations High Commissioner for Human Rights ("OHCHR"), '[Report on the Human Rights Situation in Ukraine](#)' (15 April 2014) para. 57. Those who died included 101

2013 to February 2014, 121 people were killed in total, either as a result of severe beating or gunshots.⁵ Shortly after, lacking a defence for such an attack, President Yanukovych fled the country.⁶

At the end of February 2014, following attacks on the Maidan protesters and the departure of the President, the autonomous region of Crimea became populated by unidentified armed men (since acknowledged to have been Russian military)⁷ who, in addition to occupying government buildings and acquiring *de facto* control of the region, arranged for a “referendum” on 16 March 2014 on the question of Crimean annexation to the Russian Federation. This referendum was contrary to the Ukrainian Constitution⁸ and its execution was allegedly riddled with electoral irregularities.⁹

The referendum results indicated that more than 95% of those participating in the referendum supported joining the Russian Federation.¹⁰ Accordingly, the “Treaty on Accession of the Republic of Crimea to the Russian Federation” was signed between the

Maidan protesters, 17 police officers, 2 members of the non-governmental organisation named “Oplot” and a Crimean Tatar.

⁵ *Ibid.*

⁶ [‘Ukraine Sentences Ex-President Yanukovych In Absentia To 13 Years In Prison’](#) *RFERL* (24 January 2019).

⁷ See e.g. [‘In the Crimea there is an armed invasion of Russia – Kunitsyn’](#) *The Ukrainska Pravda* (28 February 2014). See also [‘Putin acknowledges Russian military servicemen were in Crimea’](#) *Russia Times* (17 April 2014).

⁸ See [Constitution of Ukraine](#), Article 73, which provides that “[i]ssues on altering Ukraine’s territory shall be resolved exclusively through an *all-Ukrainian referendum*” (emphasis added); see also [Decision of the Constitutional Court of Ukraine](#) in the case referred to pursuant to the constitutional procedure by the Acting President of Ukraine, Head of the Verkhovna Rada of Ukraine and Ukrainian Parliament Commissioner for Human Rights regarding the conformity of the Decree of the Verkhovna Rada of the Autonomous Republic of Crimea on the All-Crimean Referendum with the Constitution of Ukraine (the case on a local referendum in the Autonomous Republic of Crimea) No.2-rp/2014 (14 March 2014).

⁹ The identified violations include: (i) additional voters lists; (ii) harassment and arbitrary detentions of those protesting the referendum; (iii) harassment and persecution of journalists trying to report violations; (iv) voting at home organised in an impromptu manner; (v) presence of military groups widely believed to be fully or in part composed of Russians. The referendum was initiated and conducted in gross violation of Ukrainian laws as Article 73 of the Constitution of Ukraine expressly provides that “Issues on altering Ukraine’s territory shall be resolved exclusively through an all-Ukrainian referendum.” Given the above, the UN General Assembly in its Resolution 68/262 declared that the referendum “had no validity”. For more details, see OHCHR, [‘Report on the Human Rights Situation in Ukraine’](#) (15 April 2014) para 6.

¹⁰ [‘97% of Crimean population voted for joining Russia’](#) *Tyzhden.ua* (Kyiv, 17 March 2014).

representatives of the parties on 18 March 2014 and promptly ratified by the Russian Federal Assembly.¹¹ International condemnation followed.¹²

Since February 2014, recurrent human rights violations have been reported in Crimea, including enforced disappearances, torture, restrictions on the freedom of expression, as well as the freedom of association.¹³ The Office of the Prosecutor of the International Criminal Court (“ICC”) holds a preliminary view that the war crimes (including wilful killing, torture, unlawful confinement, compelling protected persons to serve in the forces of a hostile Power, and forcible transfer of population) and crimes against humanity (including murder, deportation or forcible transfer of population, persecution and enforced disappearance) were committed in the context of the situation that led up to the occupation, and during the occupation of Crimea from 20 February 2014 onwards.¹⁴

Just after the events in Crimea, eastern Ukraine began to destabilise. In Donetsk and Luhansk oblasts, people began to protest against the “coup” in Kyiv and what they perceived to be discrimination against the Russian-speaking population in Ukraine.¹⁵ The protesters in the area also declared their desire to ally with Russia. In April 2014, conflict broke out between armed separatists in the east (allegedly supported by Russia) and the law enforcement agencies located in eastern Ukraine.

¹¹ The Treaty was ratified by the federal law of the Russian Federation of 21.03.2014 No. 36-ФЗ entitled “On Ratification of the Treaty Between the Russian Federation and the Republic of Crimea on Accession of the Republic of Crimea to the Russian Federation and the Formation of New Subjects in the Russian Federation” (“О ратификации Договора между Российской Федерацией и Республикой Крым о принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов”), adopted on the [349th \(extraordinary\) session of the Council of the Federation](#).

¹² For example, on 27 March 2014, the UN General Assembly adopted a resolution entitled “Territorial Integrity of Ukraine”. With 100 votes in support, 11 votes against and 58 abstentions, the resolution supported the territorial integrity of Ukraine and called on the state parties and international organisations neither to recognise any alterations in the territorial structure of Ukraine, nor to take any actions that could be interpreted as such recognition. See [UNGA Res 68/262](#) (1 April 2014) UN Doc. A/RES/68/262.

¹³ OHCHR, ‘[Report on the Human Rights Situation in Ukraine](#)’ (15 April 2014) paras. 6, 72, 83, 85; OHCHR, ‘[Report on the Human Rights Situation in Ukraine](#)’ (15 May 2014) paras. 5, 118, 127, 129, 137, 138, 142-144, 146, 148-154; OHCHR, ‘[Report on the Human Rights Situation in Ukraine](#)’ (17 August 2014) paras. 22, 159-163, 165, 167, 168; OHCHR, ‘[Report on the Human Rights Situation in Ukraine](#)’ (15 December 2014) paras. 27-31, 79, 80, 84, 85; OHCHR, ‘[Report on the Human Rights Situation in Ukraine](#)’ (16 May to 15 August 2015) paras. 20, 168, 176, 181, 182, 187; OHCHR, ‘[Report on the Human Rights Situation in Ukraine](#)’ (16 November 2018 to 15 February 2019) paras. 104, 109, 110; OHCHR, ‘[Report on the Human Rights Situation in Ukraine](#)’ (16 May to 15 August 2019) para. 109.

¹⁴ Office of the Prosecutor of the International Criminal Court, ‘[Report on Preliminary Examination Activities 2019](#)’ (5 December 2019) paras. 272, 273.

¹⁵ See e.g. ‘[Ukraine crisis: Timeline](#)’ BBC (13 November 2014).

On 11 May, pro-Russian separatists organised a ‘referendum’ on the sovereignty of the Donetsk and Lugansk regions, the results of which (89.07% and 96.20% respectively ‘in favour’ of independence) were allegedly falsified, did not satisfy basic democratic standards and violated the Constitution of Ukraine.¹⁶ Shortly thereafter, the locals declared the areas of Donetsk and Luhansk to be the “Donetsk People’s Republic” (“DPR”) and “Luhansk People’s Republic” (“LPR”), respectively.

The Ministry of Social Policy of Ukraine reported that, as of 3 August 2020, the number of internally displaced persons (“IDPs”) in Ukraine totalled 1,450,798.¹⁷

Concerning the armed conflict in eastern Ukraine, the Office of the Prosecutor of the ICC concluded that there is a reasonable basis to believe that in the non-international conflict between the Ukrainian Government and DPR and LPR war crimes were committed, including attacks against civilians and civilian objects, attacks against protected buildings, murder, torture, rape and other forms of sexual violence.¹⁸

Moreover, the Office of the Prosecutor of the ICC is of the view that direct military engagement between Ukrainian and Russian armed forces constitutes an international armed conflict that started on 14 July 2014 at the latest and involves the war crimes of unlawful confinement and intentionally launching attacks that resulted in harm to civilians and civilian objects that was clearly excessive in relation to the military advantage anticipated.¹⁹

Further, human rights organisations and activists have reported other numerous violations of IHL and international human rights law. The reported violations include:

- preventing access for humanitarian relief to civilians in need;
- using cultural property for military purposes and as venues where human rights abuses have taken place and/or as *ad hoc* detention centres;
- perfidy (deceiving the enemy by gaining their confidence and leading them to believe the person is entitled to protection under IHL with the intention of betraying

¹⁶ Agata Wierzbowska-Miazga, Tadeusz Iwański, Piotr Żochowski, [‘The Farce of the Referendum’ in Donbas](#) OSW (14 May 2014). As previously noted in relation to Crimea, Article 73 of the Constitution of Ukraine provides that “[i]ssues on altering Ukraine’s territory shall be resolved exclusively through an *all-Ukrainian referendum*” (emphasis added). See *supra*, fn. 8.

¹⁷ [‘1,450,798 internally displaced persons were registered’](#) Ministry of Social Policy of Ukraine (3 August 2020).

¹⁸ See *supra*, fn. 14, para. 279.

¹⁹ See *supra*, fn. 14, paras. 266, 280.

that confidence, *i.e.* by flying a white flag of truce and the attacking the enemy);

- use of booby-traps;
- pillage;
- violations of the rights to equality and non-discrimination; education; peaceful assembly; freedom of association; freedom of expression; freedom of thought, conscience and religion; enjoyment of just and favourable conditions of work; adequate standard of living; respect for private and family life; social security, and the right of minorities to use their own language.²⁰

Further, females often become subjects of abuse due to the increased violence in the zone of hostilities.²¹

From mid-April 2014 to mid-February 2020, the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) recorded approximately 41,000-44,000 casualties (13,000-13,200 fatalities and 29,000-31,000 injuries) suffered by the Armed Forces of Ukraine, civilians and members of armed groups in the conflict area in eastern Ukraine.²² By 31 July 2020, OHCHR recorded a total of 3,069 conflict-related civilian deaths.²³ Moreover, 298 persons were killed as a result of the Malaysia Airlines “MH17” incident in July 2014.²⁴

Since the conflict erupted, a number of attempts have been undertaken to negotiate an end to the hostilities, with the so-called “Minsk Agreements” the most prominent.²⁵ The first

²⁰ OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 February 2017); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 May 2017); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 August 2017); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 November 2017); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 February 2018); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 May 2018); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 August 2018); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 November 2018); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 February 2019); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 May 2019); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 August 2019); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 November 2019); OHCHR, [‘Report on the human rights situation in Ukraine’](#) (15 February 2020).

²¹ OHCHR [‘Report on the Human Rights Situation in Ukraine’](#) (16 September 2014) paras. 147-149; OHCHR [‘Report on the Human Rights Situation in Ukraine’](#) (1 December 2014 to 15 February 2015) para. 62.

²² OHCHR [‘Report on the human rights situation in Ukraine 16 November 2019 to 15 February 2020’](#) (12 March 2020) para. 31.

²³ OHCHR, [‘Report on the Human Rights Situation in Ukraine’](#) (16 February – 31 July 2020) para. 29.

²⁴ *Ibid.*

²⁵ [Protocol on the Results of Consultations of the Trilateral Contact Group](#) (Minsk, 5 September 2014).

Minsk Protocol was signed on 5 September 2014 by representatives from Ukraine, the Russian Federation, the DPR and LPR. The protocol provided for, *inter alia*, an immediate ceasefire, the release of all illegally detained persons, and the decentralisation of authority and monitoring functions of the Organization for Security and Co-operation in Europe (“OSCE”). Shortly after the signing of this protocol, the ceasefire was reportedly broken, most notably during heavy shelling of the city of Mariupol in January 2015.²⁶

Eventually, an additional package of measures was adopted in Minsk in February 2015. It stated that all requirements of the agreement must be satisfied by the end of 2015.²⁷ Disregard for this agreement began almost immediately and the fighting raged on.²⁸

Although on several occasions since 2016 the parties to the Trilateral Contact Group in Minsk (comprised of the representatives of the OSCE, Ukraine and the Russian Federation) recommitted to the “unlimited” ceasefire, the Ukrainian Armed Forces and the armed formations of the “Donetsk People’s Republic” and the “Luhansk People’s Republic” did not fully comply with it.²⁹ Reportedly, between 16 November 2019 and 15 February 2020, the number of ceasefire violations reached 56,521, which is lower than the number of 73,756 violations reported from 16 August to 15 November 2019.³⁰ Moreover, in 2019, the Ukrainian Armed Forces and the armed groups disengaged forces and hardware in three areas of Stanytsia Luhanska, Zolote and Petrivske, as foreseen in the framework agreement of the Trilateral Contact Group of September 2016.³¹ Nevertheless, as of September 2020, neither the Government of Ukraine nor the armed groups have come into full compliance with the terms of the Minsk agreements.

²⁶ As a result, at least 29 civilians were killed and about 97 were injured. This led to the United Nations declaring that the ceasefire had been violated. UNGA ‘[Statement attributable to the Spokesman for the Secretary-General on Ukraine](#)’ (New York, 24 January 2015).

²⁷ *Ibid.*

²⁸ ‘[The militants fired 112 strokes, hit Debaltseve 88 times in the course of one day of “silence”](#)’ *Ukrainska Pravda* (Kyiv, 16 February 2015).

²⁹ OHCHR ‘[Report on the human rights situation in Ukraine 16 November 2019 to 15 February 2020](#)’ (12 March 2020) para. 20.

³⁰ *Ibid.*, fn. 11.

³¹ [Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware](#) (Minsk, 21 September 2016); OSCE Special Monitoring Mission, ‘[Spot Report by OSCE Special Monitoring Mission to Ukraine \(SMM\): Receipt of notifications on completion of disengagement in Stanytsia Luhanska disengagement area](#)’ (Kyiv, 30 June 2019); OSCE Special Monitoring Mission, ‘[Receipt of Notifications on Completion of Withdrawal of Forces and Hardware in Zolote Disengagement Area](#)’ (Kyiv, 2 November 2019); OSCE Special Monitoring Mission, ‘[Spot Report by OSCE SMM: Receipt of Notification on Completion of Withdrawal of Forces and Hardware in Petrivske Disengagement Area](#)’ (Kyiv, 13 November 2019).

On 27 December 2017, simultaneous release of detainees took place under the “all for all” framework foreseen in the Minsk agreements.³² The Government of Ukraine released 233 individuals, whereas the armed groups released 74 persons.³³ Further, on 7 September 2019, a simultaneous release took place between Ukraine and the Russian Federation, when the two governments released 35 individuals each, including the 24 Ukrainian crew members seized during the 25 November 2018 incident near the Kerch Strait.³⁴ The next major simultaneous release of detainees occurred on 29 December 2019, following the Normandy Four summit of 9 December 2019.³⁵ During the handover, the Government of Ukraine released 141 detainees and the armed groups released 81 detainees.³⁶

In addition to attempts to bring about an end to the fighting between the warring factions, the Government of Ukraine has begun to seek accountability for crimes committed during the conflict, relying upon both international and domestic mechanisms. Concerning international efforts, the Government of Ukraine submitted two “Declarations” to the ICC, accepting its jurisdiction to investigate the crimes of genocide, crimes against humanity and war crimes committed in Ukraine during the recent conflict.

On 17 April 2014, it invited the ICC to investigate violations that allegedly occurred at Maidan between 21 November 2013 and 22 February 2014.³⁷ On 8 September 2015, the Government of Ukraine submitted a second request to the ICC, accepting the jurisdiction of the Court for the purpose of identifying, prosecuting and judging the perpetrators and accomplices of IHL violations committed on the territory of Ukraine from 20 February 2014 to the present.³⁸ In December 2020, the Office of the ICC Prosecutor announced the conclusion of the preliminary examination in the situation in Ukraine and concluded that

³² [Package of measures for the Implementation of the Minsk agreements](#) (Minsk, 12 February 2015) para. 6.

³³ OHCHR [‘Report on the human rights situation in Ukraine 16 November 2017 to 15 February 2018’](#) (19 March 2018) para. 56.

³⁴ OHCHR [‘Report on the human rights situation in Ukraine 16 August to 15 November 2019’](#) (12 December 2019) para. 9.

³⁵ OHCHR [‘Report on the human rights situation in Ukraine 16 November 2019 to 15 February 2020’](#) (12 March 2020) para. 55.

³⁶ *Ibid.*

³⁷ The Government of Ukraine lodged a [declaration](#) under Article 12(3) of the Rome Statute accepting the jurisdiction of the ICC over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014. This Declaration was made even though Ukraine is not member to the ICC. For a general description of the Government of Ukraine’s relationship with the ICC, see [here](#).

³⁸ See Declaration of the Verkhovna Rada of Ukraine [“On the recognition of the jurisdiction of the International Criminal Court by Ukraine over crimes against humanity and war crimes committed by senior officials of the Russian Federation and leaders of terrorist organizations “DNR” and “LNR”, which led to extremely grave consequences and mass murder of Ukrainian nationals”](#).

there is a reasonable basis to believe that a broad range of conduct constituting war crimes and crimes against humanity within the jurisdiction of the Court have been committed in the context of the situation in Ukraine. The next step will be to request authorisation from the Judges of the Pre-Trial Chamber of the Court to open investigations.³⁹

Concerning domestic efforts, a number of criminal proceedings have been initiated, as explained in GRC's report "The Enforcement of International Humanitarian Law in Ukraine".

These two ICC Declarations, the launch of domestic proceedings and the internationally brokered ceasefire appear to signal that this conflict may be reaching the accountability phase. In light of the crimes allegedly committed during the conflict, this is necessary; holding individuals to account is a critical ingredient to promote the healing of a nation after such a devastating conflict.

The need for the prosecution of IHL violations and its concomitant sense of 'closure' for the civilian population, however, does not begin or end at the door of the ICC. The ICC's mandate is premised on a principle of complementarity, which means that it will only act in relation to the most serious cases and when the state fails to fulfil its obligation to investigate and prosecute international crimes in a genuine manner. Alongside this deference to the sovereign right of a state to prosecute its own nationals, the ICC has limited prosecutorial and judicial resources and will only prosecute a handful who bear the greatest responsibility for crimes.⁴⁰ In short, this means that the Government of Ukraine will be responsible for prosecuting the overwhelming majority of those who violate IHL. Accordingly, it is crucially important for the Government of Ukraine to have the appropriate legal infrastructure in relation to this field of law to prosecute these crimes. This is the foundation for the purpose of this Report.

Objectives and Structure of the Report

This Report engages with the current legal landscape in Ukraine in relation to IHL in an effort to identify gaps in the ability of its legal system to enforce IHL and fairly prosecute those who have allegedly committed international crimes during the conflict. In light of

³⁹ To learn more about the nature of preliminary examinations at the ICC, see '[Policy Paper on Preliminary Examinations](#)' The Office of the Prosecutor, ICC (November 2013); Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine, 11 December 2020.

⁴⁰ Currently, the ICC is seized of 22 cases and eight situations under preliminary examination and 11 situations under investigation. See UNGA '[Report of the International Criminal Court Note by the Secretary-General](#)' (23 August 2019) 74th Session A/74/324; ICC, '[Situations and cases](#)'.

Ukraine's ratification of most IHL treaties,⁴¹ this Report places the majority of its emphasis on evaluating whether the Government of Ukraine has taken sufficient steps to adopt national legal measures (laws, regulations, decrees, resolutions and other binding measures) necessary to give full effect to rights and responsibilities demanded by IHL treaties.

This Report will begin by briefly reviewing the general framework of IHL, continuing with a description of the infrastructure of the Ukrainian legal system. It will then describe the principal actors responsible for IHL enforcement and consider the domestic regime for the punishment of IHL violations.

The majority of the Report that follows considers whether IHL treaties and their national implementation requirements are given practical effect through legal measures (or other modes of delivery or dissemination) in the Ukrainian legal system. The Report considers 19 core IHL subject-areas. Each section begins by identifying the relevant IHL treaties and their core provisions. After describing the obligations and requirements arising from the international treaty, each section considers whether any laws, regulations or any other Ukrainian legal measures that comply with the international standard exist.

⁴¹ Ukraine has not ratified Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002, signed by Ukraine on 20 January 2000) 2187 UNTS 90 ("Rome Statute"); Convention on Cluster Munitions (adopted 30 May 2008, entered into force 1 August 2010) 2688 UNTS 39; Arms Trade Treaty of 2 April 2013 (adopted 2 April 2013, entered into force 24 December 2014, signed by Ukraine on 23.09.2014) C.N.266.2013.

Part I

The Basics of International Humanitarian Law

IHL Primer

IHL regulates the status and protection of various categories of individuals and objects in armed conflict, as well as the means and methods of warfare. Henry Dunant, arguably the parent of contemporary IHL, developed the architecture for IHL after he witnessed the suffering of wounded and sick combatants following the battle of Solferino in 1859.⁴² Since then, IHL has evolved into a developed body of legal principles and rules that, at least in form, if not in practice, is respected by nearly every country in the world.

IHL applies during two types of conflicts: international and non-international armed conflict. The Geneva Conventions define international armed conflict in Article 2 (common to the four Geneva Conventions), providing that the Conventions apply to:

(...) all cases of declared war or of any other 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 Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Accordingly, an international armed conflict occurs where the armed forces of two or more states are fighting one another. This includes cases of occupation by one state.

Non-international armed conflicts are defined in Article 3 common to the four Geneva Conventions as an “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties”. This implies that one of the parties to the conflict is a non-governmental, non-state party.⁴³

The basic principles of IHL are quite straightforward, following the basic maxim that persons not participating (or no longer participating) in combat should be maximally protected and, in general, treated humanely. The same protection extends to objects possessed by these persons (as well as other objects that have no military purpose or are otherwise entitled to protection). The range of protected persons and objects has expanded with time. As of now, the Geneva Conventions protect:

⁴² ICRC, ‘[Persons protected under IHL](#)’ (ICRC, 29 October 2010); Henry Dunant, A Memory of Solferino (ICRC, 1986).

⁴³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (entered into force 7 December 1978) 1125 UNTS 609 (“Additional Protocol II”) Art. 1(2).

- Combatants in the field and at sea who have laid down their arms;⁴⁴
- Combatants who have become *hors de combat*, i.e. unable to carry out their military duties due to sickness or wounds;⁴⁵
- POWs, i.e. those combatants who have fallen under the authority of enemy forces;⁴⁶
- Civilians who do not participate in hostilities. There are both general protections afforded to all civilian persons⁴⁷ and specific regimes protecting women, children, the elderly and other protected persons.⁴⁸
- Protection of persons involved in particular fields, e.g. hospital staff, medical and religious personnel and humanitarian aid workers.⁴⁹

Certain civilian objects, given their importance or particular characteristics, may be singled out for enhanced protection, such as installations containing dangerous forces (e.g. dams, dykes, and nuclear facilities).⁵⁰ Certain types of cultural property are also protected due to their extraordinary nature and importance for a certain people or humankind as a whole.⁵¹

⁴⁴ See generally Geneva Convention on Wounded and Sick in Armed Forces in the Field (adopted, entered into force 21 October 1950) 75 UNTS 31 (“Geneva Convention I”); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted, entered into force 21 October 1950) 75 UNTS 85 (“Geneva Convention II”).

⁴⁵ See e.g. Geneva Conventions, Article 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (adopted, entered into force 7 December 1978) 1125 UNTS 3 (“Additional Protocol I”), Arts. 41(1), 85(3)(e); Additional Protocol II, Art. 4.

⁴⁶ Geneva Convention Relative to the Treatment of the Prisoners of War (adopted, entered into force 21 October 1950) 75 UNTS 135 (“Geneva Convention III”), Art. 4.

⁴⁷ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted, entered into force 21 October 1950) 75 UNTS 287 (“Geneva Convention IV”), Arts. 4, 13, 27.

⁴⁸ Additional Protocol I, Arts. 76-77.

⁴⁹ Geneva Convention I, Arts. 19-20, 24-27; Geneva Convention II, Arts. 36, 37; Geneva Convention III, Arts. 33, 35; Additional Protocol I, Arts. 15, 71; Additional Protocol II, Art. 9.

⁵⁰ Additional Protocol I, Art. 57.

⁵¹ Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 240 (“Hague Convention”).

Treaties Related to International Humanitarian Law

The core IHL treaties regulating armed conflict are as follows:

- The Geneva Conventions
 - Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
 - Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members 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.
- Additional Protocols to the Geneva Conventions
 - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts ("Additional Protocol I"); and
 - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts ("Additional Protocol II").
- Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict ("Hague Convention");
- Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1954; and
- Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999.

Geneva Convention I - the first of the four Conventions adopted in 1949 - seeks to protect wounded and sick soldiers on land, but also medical and religious personnel, medical units and medical transports. Geneva Convention II provides similar protections, but to soldiers at sea and to hospital ships. Geneva Convention III protects soldiers under the authority or control of opposition forces. Finally, Geneva Convention IV provides protection to civilians in times of war, including occupation.

In 1977, the two Additional Protocols listed above were adopted. They enhanced protection for victims of armed conflict. Additional Protocol I further regulated the means and methods of international armed conflicts. Additional Protocol II for the first time adopted protections relating entirely to non-international armed conflicts.

Lastly, Ukraine has ratified the Convention for the Protection of Cultural Property in the Event of Armed Conflict and both Protocols. The Convention obliges state parties to respect cultural property and to protect it from destruction, whereas its Protocols further provide protections of cultural property during international and non-international armed conflicts, including during occupation.

Customary International Humanitarian Law

What is Customary International Humanitarian Law?

Customary international humanitarian law also plays an important role in the regulation of armed conflict. The Statute of the International Court of Justice describes customary international law as “a general practice accepted as law”.⁵² The International Committee of the Red Cross (“ICRC”), notes that “[i]t is generally agreed that the existence of a rule of customary international law requires the presence of two elements, namely state practice (*usus*) and a belief that such practice is required, prohibited or allowed, depending on the nature of the rule, as a matter of law (*opinio juris sive necessitatis*)”.⁵³ The International Criminal Tribunal for the former Yugoslavia (“ICTY”) provides the following definition of customary international law in the seminal case of *Prosecutor v. Tadić*:

[p]rinciples and rules of humanitarian law reflect ‘elementary considerations of humanity’ widely recognized as the mandatory minimum for conduct in armed conflicts of any kind. No one can doubt the gravity of the acts at issue, nor the interest of the international community in their prohibition”.⁵⁴

The ICRC - the global authority on matters relating to the regulation of armed conflict - conducted a ten-year review of customary international humanitarian law.⁵⁵ While this body of law and its precise parameters are often the subject of fierce academic debate, a summary of the basic rules of customary international humanitarian law identified by ICRC can be found in Annex I.

⁵² [Statute of the International Court of Justice](#) (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993, Art. 38.

⁵³ See ICRC, ‘[Customary IHL, Introduction, Assessment of Customary International Law](#)’ (ICRC, 2005).

⁵⁴ *Ibid*, citing *Prosecutor v. Tadić* (Decision on the Defence Motion on Jurisdiction) ICTY-94-1 (10 August 1995) para. 129.

⁵⁵ For the definition and description of customary international humanitarian law, see [here](#).

Why is Customary International Humanitarian Law Important?

As noted, IHL regulates the behaviour of parties to both an international or non-international armed conflict. When compared to treaty rules applicable in international armed conflicts, those applicable in non-international armed conflicts are however “rudimentary”.⁵⁶ Indeed, these rules are limited to common Article 3 of the Geneva Conventions,⁵⁷ and Additional Protocol II (the latter adopted to expand the basic protection of common Article 3), and a limited number of other treaties that also apply during non-international armed conflict (such as the Weapons Treaties⁵⁸ or the Hague Convention). As observed by the ICRC,

‘[n]ot only are there fewer of these treaty rules, but they are also less detailed and, in the case of Additional Protocol II, their application is dependent on the specific situations (...)’⁵⁹ of conflicts between a State’s armed force and ‘dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol’.⁶⁰

In this context, customary international law has played a central role in filling the gaps. The ICRC ten-year review of customary international humanitarian law “provides evidence that many rules of customary international law apply in both international and non-international armed conflicts and shows the extent to which State practice has gone beyond existing treaty law and expanded the rules applicable to non-international armed conflicts.”⁶¹ Apart from the recognition of the customary nature of common Article 3⁶² and many provisions of Additional Protocol II (e.g. the prohibition of attacks on civilians, the obligation to respect and protect medical and religious personnel, medical units and transports, and the

⁵⁶ ICRC, ‘[Increasing Respect for Intentional Humanitarian Law in Non-International Armed Conflicts](#)’ (2008) 9.

⁵⁷ ICRC, ‘[Increasing Respect for Intentional Humanitarian Law in Non-International Armed Conflicts](#)’ (2008) 9.

⁵⁸ These will be further discussed *infra*, pp. 185-192.

⁵⁹ ICRC, ‘[Increasing Respect for Intentional Humanitarian Law in Non-International Armed Conflicts](#)’ (2008) 9. For example, Additional Protocol II contains only 15 substantive articles, whereas Additional Protocol I has more than 80. See ICRC, ‘[Introduction: Purpose of the Study](#)’ (ICRC, 2005), page xxxv.

⁶⁰ Additional Protocol II, Art. 1(1).

⁶¹ ICRC, ‘[Introduction: Purpose of the Study](#)’ (ICRC, 2005).

⁶² See *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)* (Jurisdiction and Admissibility) [1986] ICJ Rep 114, paras 218 and 219.

prohibition of starvation),⁶³ customary international law has also extended rules applicable during international armed conflict to non-international armed conflict (e.g. the distinction between civilian objects and military objectives and the prohibition of indiscriminate attacks and attacks in violation of the principle of proportionality).⁶⁴

As a consequence, states are bound by the treaties they have ratified but also by applicable customary international law. The same is true of armed groups that must also comply with the treaty rules and customary international law applicable to non-international armed conflicts.⁶⁵

The Rome Statute

On 25 November 2015, the President of Ukraine Petro Poroshenko submitted a draft law amending the Constitution of Ukraine to the Parliament.⁶⁶ On 2 June 2016, the Verkhovna Rada of Ukraine adopted the draft law amending Article 124 of the Constitution of Ukraine.⁶⁷ According to the amended Article 124 of the Constitution of Ukraine, “Ukraine may recognise the jurisdiction of the International Criminal Court based on the provisions of the Rome Statute”. The amendment entered into force on 30 June 2019.⁶⁸

Although the Government of Ukraine has not ratified the Rome Statute, it has accepted the jurisdiction of the ICC. Based on the two Declarations identified above,⁶⁹ the jurisdiction of the ICC in relation to its preliminary examination in Ukraine extends to events from 21 November 2013 for an indefinite period and includes prosecutions for any war crime, crime against humanity or genocide falling under the ICC’s governing law - the Rome Statute.

As a consequence of the Declarations and their jurisdictional trigger, Ukraine is now duty-bound to assist the ICC. Concerning the implementation of the Rome Statute, the principal obligations of Ukraine will arise in relation to the principles of cooperation and complementarity, which require:

⁶³ ICRC, ‘[Increasing Respect for Intentional Humanitarian Law in Non-International Armed Conflicts](#)’ (2008) 9; citing Jean-Marie Henckaerts, Louise Doswald-Beck (eds.), [Customary International Humanitarian Law](#), Volume I: Rules, (Cambridge University Press 2009).

⁶⁴ ICRC, ‘[Increasing Respect for Intentional Humanitarian Law in Non-International Armed Conflicts](#)’ (2008) 10.

⁶⁵ ICRC, ‘[Increasing Respect for Intentional Humanitarian Law in Non-International Armed Conflicts](#)’ (2008) 10.

⁶⁶ ‘[President submitted draft constitutional amendments on justice to the Parliament](#)’ (*Official Website of the Parliament of Ukraine*, 25 November 2016).

⁶⁷ Law of Ukraine “[On amendments to the Constitution of Ukraine \(in the field of judiciary\)](#)” No. 1401-VIII (2 June 2016).

⁶⁸ [Constitution of Ukraine](#), art. 124.

⁶⁹ See *supra*, pp. 13-14.

- The obligation to cooperate with the ICC under Part 9 of the Rome Statute and to adopt relevant cooperation legislation; and
- The principle of complementarity, which implies that the ICC may exercise jurisdiction over a situation only if the states that would have jurisdiction over it are “unwilling or unable” to genuinely carry out the investigation or prosecution. Ukraine does have a legal obligation to investigate and prosecute crimes falling within the jurisdiction of the ICC,⁷⁰ Therefore, if it wants to carry out the prosecutions and investigations at home rather than at the international level before the ICC, it should ensure that national legislation and procedures are in place to carry out investigations and prosecutions of conduct amounting to ICC crimes (including provisions on territorial jurisdiction, crimes, and relevant principles of criminal responsibility).

There are many ways in which the ICC and a state may cooperate in the investigation and prosecution of international crimes. These relate to ensuring that the ICC can conduct effective investigations in its jurisdictions, and that national courts and other authorities provide full cooperation in obtaining documents, locating and seizing assets of the accused, conducting searches and seizures of evidence, locating and protecting witnesses and arresting and surrendering persons accused of crimes by the Court. The Ministry of Justice of Ukraine submitted a draft bill to ensure effective cooperation with the ICC to the Parliament of Ukraine but the bill has not been adopted yet.⁷¹

⁷⁰ The Declarations submitted to the ICC do not impose a duty *per se* on Ukraine to prosecute genocide, crimes against humanity or war crimes domestically. However, international law does mandate that states must prosecute and investigate crimes falling under the ICC’s jurisdiction. Eminent jurist Theodor Meron suggests that, based on the Preamble of the Rome Statute, the Geneva Conventions and various other Conventions, there is a duty to investigate and prosecute crimes that fall within the jurisdiction of the ICC (Theodor Meron, *The Making of International Criminal Justice: A View from the Bench: Selected Speeches* (OUP, 2011) 173). This general principle of international law is reflected in the preamble of the Rome Statute which states it is the duty of every state to hold those accountable who have perpetrated a crime falling under the Rome Statute. The pre-existing duty emanates from basic principles of international law.

For example, Ukraine has a duty to prosecute genocide, acts of torture and war crimes. Ukraine is a party to the Geneva Conventions which impose a duty to prosecute grave breaches of IHL (Geneva Convention I, Art. 49; Geneva Convention II, Art. 50; Geneva Convention III, Art. 129; Geneva Convention IV, Art. 146). Among other instruments, Ukraine has ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and has ratified the Convention on the Prevention and Punishment of the Crime of Genocide. These two conventions impose an obligation to prosecute torture and genocide respectively.

⁷¹ To learn more, check the report on “Ukraine and the International Criminal Court” at www.globalrightscompliance.com.

GRC assesses these and other relevant provisions in its report “Ukraine and the International Criminal Court”. Here, GRC will limit its analysis to the Ukrainian legal measures relevant to conduct amounting to ICC crimes (including the jurisdiction *ratione loci* and *materiae* of Ukraine’s Court and an assessment of the bars to prosecution).

National Implementation Measures

Contained within IHL treaties are requirements for additional steps to be taken post-ratification, or after the treaty has become a binding part of national legislation. These are referred to as national, or domestic, implementation measures. According to the ICRC, the primary implementation requirements are as follows:

- To have the Conventions and Protocols translated into the national language(s);
- To disseminate knowledge of IHL widely within the armed forces and the general population;
- To repress all violations listed in the IHL treaties and, in particular, to adopt criminal legislation that punishes war crimes;
- To ensure that persons, property and places protected by the law are properly identified, marked and protected;
- To adopt measures to prevent the misuse of the Red Cross, the Red Crescent and other symbols and emblems provided for in the Conventions and Protocols;
- To ensure that protected persons enjoy judicial and other fundamental guarantees during armed conflict;
- To appoint and train persons qualified in IHL, in particular legal advisors within the armed forces;
- To provide for the establishment and/or regulation of:
 - National Red Cross and Red Crescent societies and other voluntary aid societies;
 - Civil defence organisations; and
 - A National Information Bureaux.
- To take account of IHL when selecting military objectives, when developing weapons and adopting military tactics; and
- To provide for the establishment of hospital zones, neutralised zones, and demilitarised zones.⁷²

⁷² ICRC, ‘[Implementing International Humanitarian Law: from Law to Action](#)’ (30 June 2002) 1.

The nature or form of the national implementation measures required and adopted varies depending upon the measure itself, as well as a particular state's legal framework, traditions, culture and preferences. As such, for many national implementation measures, the Government has a degree of flexibility concerning the means and methods of implementation. The most common measures in relation to IHL implementation include:

- The adoption of legislation;
- The adoption of regulations;
- The development of educational and training programmes;
- The recruitment and training of personnel;
- The production of identity cards and other documents;
- The establishment of special (protective) structures; and
- The introduction of (protective) planning and administrative procedures.⁷³

Annex II contains a summary of key articles prepared by the ICRC that require national implementation measures to be adopted.

IHL Infrastructure in Ukraine

To accurately assess whether Ukraine has IHL-compliant legal measures in place, we must first understand the nature of Ukraine's IHL legal system and the officials responsible for IHL enforcement. This context provides for an understanding of which mode of implementation (e.g. promotion such as training, enforcement such as criminalisation, etc.) in relation to which obligation is most appropriate for Ukraine and who is responsible for implementing it, allowing for a proper understanding of Ukraine's IHL system.

Ukraine's Legal System and its IHL Treaty Ratification Process

The force of international treaties and their place in the Ukrainian legal system is determined by the Constitution of Ukraine and the Law of Ukraine on International Treaties of Ukraine ("Law of Ukraine on Treaties").⁷⁴ Article 9 of the Constitution provides that international treaties, once in force,⁷⁵ shall be an integral part of the national legislation of

⁷³ ICRC, '[Implementing International Humanitarian Law: from Law to Action](#)' (30 June 2002) 2.

⁷⁴ [Law of Ukraine on the International Treaties of Ukraine](#) No.1906-IV (20 June 2004).

⁷⁵ Before voting of the Verkhovna Rada of Ukraine for ratification of a treaty, the President of Ukraine or the Cabinet of Ministers of Ukraine shall consider suggestions as to the ratification of international treaties and decide whether to put the issue of ratification of a treaty to the agenda of the Verkhovna Rada of Ukraine with initiative of ratifying the treaty. See Law of Ukraine on International Treaties of Ukraine, Art. 9. In order for the law on ratification to be passed, a minimum of 226 Members of Parliament shall vote in favour of its ratification. See Constitution of Ukraine, Art. 91; see also Regulations of the Verkhovna Rada of Ukraine, Art.

Ukraine.⁷⁶ Similarly, Article 19 of the Law of Ukraine on Treaties provides that international treaties consented to by the Verkhovna Rada of Ukraine (the Parliament of Ukraine) shall be binding, considered part of national legislation, and “applied in accordance with the procedure stipulated for in the national legislation”.

Concerning legal supremacy, once an international treaty is entered into force in accordance with the established procedure, the terms of the treaty prevail in the event of a conflict with currently existing national legislation. In other words, international law takes precedence over national law.⁷⁷

International treaties in force are registered in the Ministry of Foreign Affairs of Ukraine.⁷⁸ This ministry is responsible for the registration of international treaties with the Secretariat of the United Nations.⁷⁹ Effective treaties are also recorded in the Unified State Register of Regulations in accordance with established procedure.⁸⁰

Concerning international treaties ratified when Ukraine was part of the USSR, Ukraine adopted the law entitled “On State Succession of Ukraine”⁸¹ (“Law of Ukraine on Succession”) on 12 September 1991. The Law is neither detailed nor extraordinary in terms of its legal approach to the basic issues of state succession. It has two articles on state succession in respect of treaties. First, Article 6 provides that “Ukraine shall confirm its obligations under international treaties concluded by the Ukrainian Soviet Socialist Republic before Ukraine proclaimed its independence”. Second, Article 7 provides that “Ukraine shall be a successor of rights and obligations arising from international treaties of the USSR that do not contravene the Constitution of Ukraine and the interests of the Republic”. Concerning IHL, there does not appear to be any declarations that a certain provision in an IHL treaty contravenes the Constitution of Ukraine or threatens the interests

200. After this vote successfully occurs, the President of Ukraine signs and officially promulgates the law of Ukraine on ratification of the particular international treaty and the Chairman of the Verkhovna Rada of Ukraine signs the instrument of ratification with a visa from the Minister of Foreign Affairs of Ukraine if the exchange of instruments of ratification is provided for in the international treaty. See Regulations of the Verkhovna Rada of Ukraine, Art. 200, para. 4.

⁷⁶ Unless they conflict with the Constitution of Ukraine. Article 9 of the Constitution further provides that if international treaties conflict with the Constitution of Ukraine, relevant amendments to the Constitution of Ukraine must be introduced before the international treaty becomes binding.

⁷⁷ Article 9(2) of the Constitution of Ukraine. See also UNICEF, ‘[Assessing Compliance of National Legislation with International Human Rights Norms and Standards](#)’ (November 2008), p. 7.

⁷⁸ Law of Ukraine on Treaties, Art. 22(2).

⁷⁹ Law of Ukraine on Treaties, Art. 22(1).

⁸⁰ Law of Ukraine on Treaties, Art. 22(3).

⁸¹ [Law of Ukraine on Legal Succession of Ukraine](#): No. 1543-XII (12 September 1991).

of the Republic. Accordingly, treaties signed and ratified when Ukraine was part of the USSR remain in effect in Ukraine today.

Concerning “imperial” treaties (pre-Soviet treaties, when different regions of Ukraine were controlled by the Russian and Austro-Hungarian empires⁸²), Ukrainian legislation contains no explicit regulation; however, since these treaties were in force for the USSR, they can be seen to remain in force for Ukraine.⁸³ For the avoidance of doubt, the Ukrainian Government filed a special notification in 2015 with the Government of the Kingdom of the Netherlands, which serves as the depositary of the 1899 and 1907 Hague Conventions and Declarations, the most important pre-Soviet IHL sources.⁸⁴

In this notification, the Government of Ukraine noted that it considers itself bound by these international instruments since 24 August 1991, the date of independence for Ukraine. The Dutch Government has officially acknowledged receipt of the notification and promised to inform all state parties thereon. This information was provided to GRC during a meeting of the Interdepartmental Commission on the Implementation of International Humanitarian Law in Ukraine (“IHL Commission”).

IHL Treaties Ratified by the Government of Ukraine

A list of the IHL treaties ratified by the Verkhovna Rada of Ukraine can be found in Annex III. A list of treaties that were not ratified can be found in Annex IV. A list of reservations, declarations and other positions taken by the Government of Ukraine that limit the legal effect of IHL provisions can be found in Annex V.⁸⁵

⁸² Orest Subtelny, [Ukraine: A History](#) (4 edn, University of Toronto Press, 2009) 201 - 220.

⁸³ See Articles 6 and 7 of the Law of Ukraine on State Succession of Ukraine directly above, which provides that Ukraine is bound by the treaties that were in force for the USSR that do not contravene the Constitution of Ukraine.

⁸⁴ See it [here](#).

⁸⁵ A reservation is “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”. See Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, 8 I.L.M. 679 (Vienna Convention), Art. 2(1)(d).

Principal IHL Legislation and other Domestic Legal Measures

The principal legislation relevant to IHL in Ukraine includes the following:

- Constitution of Ukraine;⁸⁶
- Criminal Code of Ukraine;⁸⁷
- Code of Civil Defence of Ukraine;⁸⁸
- Law on Defence of Ukraine;⁸⁹
- Law on Armed Forces of Ukraine;⁹⁰
- Law on the Statute of Internal Service of the Armed Forces of Ukraine;⁹¹
- Law on the Disciplinary Statute of the Armed Forces of Ukraine;⁹²
- Law on Export, Import and Return of the Objects of Cultural Property;⁹³
- Law on Emblems of Red Cross, Red Crescent, Red Crystal in Ukraine;⁹⁴
- Law on the Ukrainian Red Cross Society;⁹⁵
- Law on the Amendments to Certain Legislative Acts of Ukraine (relating to the implementation of Additional Protocol III);⁹⁶
- Law on Securing Rights and Freedoms of Citizens and Legal Regime on the Temporary Occupied Territory of Ukraine;⁹⁷
- Law on Securing Rights and Freedoms of Internally Displaced Persons;⁹⁸

⁸⁶ [Constitution of Ukraine](#).

⁸⁷ [Criminal Code of Ukraine](#): Law of Ukraine No. 2341-III. (05 April 2001). ("Criminal Code of Ukraine").

⁸⁸ [Code of Civil Defence of Ukraine](#): Law of Ukraine No. 5403-VI (2 October 2012). ("Code of Civil Defence of Ukraine").

⁸⁹ [Law of Ukraine on Defence of Ukraine](#) No. 1706-VII (06 December 1991).

⁹⁰ [Law of Ukraine on Armed Forces of Ukraine](#) No. 1934-XII (06 December 1991). ("Law of Ukraine on Armed Forces of Ukraine").

⁹¹ [Law of Ukraine on the Statute of Internal Service of the Armed Forces of Ukraine](#) No. 548-XIV (24 March 1999). ("Law of Ukraine on the Statute of Internal Service of the Armed Forces of Ukraine").

⁹² [Law of Ukraine on the Disciplinary Statute of the Armed Forces of Ukraine](#) No. 551-XIV (24 March 1999). ("Law of Ukraine on the Disciplinary Statute of the Armed Forces of Ukraine").

⁹³ [Law of Ukraine on Export, Import and Return of the objects of Cultural Property](#) No. 1068-XIV (21 September 1999).

⁹⁴ [Law of Ukraine on Emblems of Red Cross, Red Crescent, Red Crystal in Ukraine](#) No. 862-XIV (08 July 1999). ("Law of Ukraine on Emblems").

⁹⁵ [Law of Ukraine on the Ukrainian Red Cross Society](#) No. 330-IV (28 November 2002). ("Law of Ukraine on the Ukrainian Red Cross Society").

⁹⁶ [Law of Ukraine on the Amendments to Certain Legislative Acts of Ukraine](#) No. 1675-VI (22 October 2009). ("Law of Ukraine on the Amendments to Certain Legislative Acts of Ukraine").

⁹⁷ [Law of Ukraine on Securing Rights and Freedoms of Citizens and Legal Regime on the Temporary Occupied Territory of Ukraine](#) No. 1207-VII (14 April 2014).

⁹⁸ [Law of Ukraine on Securing Rights and Freedoms of Internally Displaced Persons](#) No. 1706-VII (20 October 2014).

- Law on Peculiar Order of Local Self-Government in Certain Parts of Donetsk and Luhansk Regions (Oblasts);⁹⁹
- Law on Particular Aspects of Public Policy Aimed at Safeguarding the Sovereignty of Ukraine over the Temporarily Occupied Territory of the Donetsk and Luhansk Regions of Ukraine;¹⁰⁰ and
- Law on the Legal Status of Missing Persons.¹⁰¹

Annex V contains a brief description of each law.

Other legal measures part of the Ukrainian legal system relating to IHL include:

- Decree of the President of Ukraine on Decision of the National Security and Defence Council of 24 April 2009 on the Strategy for the International Peace-Making Activities of Ukraine;¹⁰²
- Resolution of the Cabinet of Ministers of Ukraine On the Establishment of the Interdepartmental Commission on the Application and Implementation of International Humanitarian Law in Ukraine;¹⁰³
- Resolution of the Cabinet of Ministers of Ukraine on Approving the Procedure to Produce, Issue and Register Identity Cards for Medical Personnel Using the Red Cross Emblem;¹⁰⁴
- Resolution of the Verkhovna Rada of Ukraine on the Recognition of Particular Districts, Cities, Towns and Villages of Donetsk and Luhansk Oblasts as Temporary Occupied Territories;¹⁰⁵

⁹⁹ [Law of Ukraine on Peculiar Order of Local Self-government in Certain Parts of Donetsk and Luhansk Regions \(Oblasts\)](#) No. 1680-VII (16 September 2014).

¹⁰⁰ Law of Ukraine “[On particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine](#)” No. 2268 (18 January 2018).

¹⁰¹ Law of Ukraine “[On the Legal Status of Missing Persons](#)” No. 2505-VIII (12 July 2018).

¹⁰² [On Decision of the National Security and Defence Council of 24 April 2009 on the Strategy for the International Peace-Making Activities of Ukraine](#): Decree of the President of Ukraine No. 435/2009 (15 June 2009).

¹⁰³ [On the establishment of the Interdepartmental Commission on the Application and Implementation of International Humanitarian Law in Ukraine](#): Resolution of the Cabinet of Ministers of Ukraine No. 329 (26 April 2017). (“Resolution of the Cabinet of Ministers of Ukraine on the Establishment of the IHL Commission”).

¹⁰⁴ [On Approving the Procedure to Produce, Issue and Register Identity Cards for Medical Personnel Using the Red Cross Emblem](#): Resolution of the Cabinet of Ministers of Ukraine No. 939 (12 June 2000). (“Resolution of the Cabinet of Ministers of Ukraine on Identity Cards for Medical Personnel”).

¹⁰⁵ [On the Recognition of Particular Districts, Cities, Towns and Villages of Donetsk and Luhansk Oblasts as Temporary Occupied Territories](#): Resolution of the Verkhovna Rada of Ukraine No. 254-VII (17 March 2015).

- Resolution of the Cabinet of Ministers of Ukraine on Approving the Order for Entering and Exiting from the Temporary Occupied Territory in Ukraine;¹⁰⁶
- Resolution of the Cabinet of Ministers of Ukraine on the Amendments to the Resolution of the Cabinet of Ministers of Ukraine of 12 June 2000 N 939;¹⁰⁷
- Order of the Ministry of Defence of Ukraine on Adopting the Regulation on the Military Clergy (Chaplain Service) in the Armed Forces of Ukraine;¹⁰⁸
- Order of the Ministry of Defence of Ukraine on Approving the Instruction on the Procedure for the Implementation of the Norms of International Humanitarian Law in the Armed Forces of Ukraine ("Military Instruction");¹⁰⁹
- Order of the Commander of the Ground Forces of the Armed Forces of Ukraine on the Field Manual of the Ground Forces of the Armed Forces of Ukraine ("Field Manual");¹¹⁰
- Code of Conduct of Military Personnel of the Armed Forces of Ukraine who are Participants in Hostilities (Annex 4 to the Order of the Minister of Defence of Ukraine);¹¹¹
- Code of Honour of an Officer of the Armed Forces of Ukraine;¹¹²
- Order of the Prosecutor General of Ukraine on Activities Regarding the Protection of the Rights and Freedoms of Children;¹¹³
- Order on Approving the Temporary Order of Control over Movement of Persons through the Contact Line within Donetsk and Luhansk Oblasts;¹¹⁴ and

¹⁰⁶ [On Approving the Order for Entering and Exiting from the Temporary Occupied Territory in Ukraine](#): Resolution of the Cabinet of Ministers of Ukraine No. 367 (4 June 2015).

¹⁰⁷ [On the Amendments to the Resolution of the Cabinet of Ministers of Ukraine](#): Resolution of the Cabinet of Ministers of Ukraine No. 339 (12 May 2010).

¹⁰⁸ [On Adopting the Regulation on the Military Clergy \(Chaplain Service\) in the Armed Forces of Ukraine](#): Order of the Ministry of Defence of Ukraine No. 685– (14 December 2016). ("Order of the Ministry of Defence of Ukraine on the Military Clergy").

¹⁰⁹ [On approval of the Instruction on the procedure for implementation of the norms of international humanitarian law in the Armed Forces of Ukraine](#): Order of the Ministry of Defence of Ukraine No. 164 (23 March 2017). ("Military Instruction").

¹¹⁰ [Field Manual of the Ground Forces of the Armed Forces of Ukraine \(Part II and III\)](#): Orders of the Commander of the Ground Forces of the Armed Forces of Ukraine No. 574 and 575 (29 December 2010). ("Field Manual").

¹¹¹ Military Instruction, Annex 4.

¹¹² [Code of Honour of an Officer of the Armed Forces of Ukraine](#): Order of the Ministry of Defence of Ukraine No. 412 (31 December 1999). - pp.10-11.

¹¹³ [On Organization of Activities of the Organs of the Prosecutor's Office regarding the Protection of the Rights and Freedoms of Children](#): Order of the Prosecutor General of Ukraine No. 16-gn (6 December 2014).

¹¹⁴ [Order on Approving the Temporary Order of Control over Movement of Persons through the Contact Line within Donetsk and Luhansk Oblasts](#) No. 222or (14 April 2017).

- Order of the President of Ukraine on Approving the Decision of the National Security and Defence Council ‘On a large-scale anti-terror operation in the Donetsk and Luhansk regions’.¹¹⁵

Annex VII contains a brief description of each legal measure.

Ukraine is also bound by customary international humanitarian law and must enact legislation consistent with these requirements. As previously noted, these principles relate to “elementary considerations of humanity” widely recognised as the mandatory minimum for conduct in armed conflicts of any kind.¹¹⁶ They are binding on all states, including Ukraine.¹¹⁷

Principal IHL Actors in Ukraine

Ministry of Defence

The main responsibility for the application of and adherence to the rules and principles of IHL in Ukraine lies within the Armed Forces of Ukraine, namely the Ministry of Defence of Ukraine and the General Staff of the Armed Forces of Ukraine. As noted above, the Ministry of Defence has adopted Order No. 164 of 23 March 2017 approving the Instruction on the Procedure for the Implementation of the Norms of International Humanitarian Law in the Armed Forces of Ukraine.¹¹⁸ This is the main legal measure that defines the application of IHL rules and principles by the Ukrainian military.

IHL Commission

The IHL Commission is the principal body in the governmental structure of Ukraine that is responsible for IHL implementation. The IHL Commission was established by resolution of

¹¹⁵ Order of the President of Ukraine “[On approval of the decision of the National Security and Defence Council ‘On a large-scale anti-terror operation in the Donetsk and Luhansk regions’ of 30 April 2018](#)” No. 116/2018 (30 April 2018).

¹¹⁶ See *supra*, p. 19.

¹¹⁷ See Dr. Jacob Kellenberger, President of the International Committee of the Red Cross, ‘Foreword’ in Jean-Marie Henckaerts, Louise Doswald-Beck (eds.), [Customary International Humanitarian Law](#), Volume I: Rules, (Cambridge University Press 2009) xv-xvii. The only exception to this rule is in the event that a state has openly and persistently objected to such a custom. See Dr. Abdul G. Koroma, Judge at the International Court of Justice, ‘Foreword’ in Jean-Marie Henckaerts, Louise Doswald-Beck (eds.), [Customary International Humanitarian Law](#), Volume I: Rules, (Cambridge University Press 2009) xviii-xix.

¹¹⁸ [On approval of the Instruction on the procedure for implementation of the norms of international humanitarian law in the Armed Forces of Ukraine](#): Order of the Ministry of Defence of Ukraine No. 164 (23 March 2017).

the Cabinet of Ministers.¹¹⁹ Pursuant to the resolution, it is the permanent coordinating organ with the aim of realising Ukraine's international legal obligations which arise from the Geneva Conventions, the Additional Protocols and other IHL treaties.¹²⁰ The IHL Commission is headed by the Minister for the Reintegration of the Temporarily Occupied Territories, who is responsible for the organisation of the IHL Commission's work.

Ukrainian Red Cross

The Ukrainian Red Cross Society is responsible for the dissemination of IHL knowledge within the population of Ukraine as well as assisting governmental bodies and organs of local self-government on this issue.¹²¹ They are also active in the provision of humanitarian assistance.

Ukrainian Prosecutor's Offices

The Office of the Prosecutor General of Ukraine ("OPG") is responsible for the prosecution of serious violations of IHL. From 2014 until 2019, the OPG and the Military Prosecutor's Office shared this responsibility,¹²² but the latter's jurisdiction in this subject-matter was abolished in 2019, and in 2020 it was renamed the specialised prosecutor's office in the military and defence spheres.¹²³

The OPG organises and coordinates the operations of all public prosecutor's offices in order to ensure the effectivity of prosecutions. The OPG is the highest public prosecution authority within the prosecution system of Ukraine. The Regional and Local Public Prosecutor's offices are subordinated to the OPG.

In September 2019, the Verkhovna Rada of Ukraine adopted a law on the reform of the prosecutor's office.¹²⁴ Pursuant to the law, one of the first steps of the prosecution reform is to test and interview all current prosecutors who wish to remain in office, to select those

¹¹⁹ Resolution of the Cabinet of Ministers of Ukraine on the Establishment of the IHL Commission.

¹²⁰ *Ibid*, Commission, para. 1.

¹²¹ Law of Ukraine on the Ukrainian Red Cross Society, Arts. 12(3), 35.

¹²² Law of Ukraine on the Prosecutor's Office No. 1697-VII [Online resource]. – 14 October 2014. – Accessed: <<http://zakon3.rada.gov.ua/laws/show/1697-18>> (last visited: 22 April 2016); On Particularities of Activities of the Military Prosecutor's Offices: Order of the Prosecutor General of Ukraine No. 12gn-1 [Online resource]. – 29 August 2014. – Accessed: <<http://document.ua/pro-osoblivosti-dijalnosti-viiskovih-prokuratur-doc203001.html>> (last visited: 22 April 2016).

¹²³ Law of Ukraine on amendments to some legislative acts of Ukraine on priority measures to reform the prosecutor's office No. 113-IX [Online resource]. – 19 September 2019, Art. 21; <https://zakon.rada.gov.ua/laws/show/v0066905-20#Text>.

¹²⁴ [Law of Ukraine on amendments to some legislative acts of Ukraine on priority measures to reform the prosecutor's office](#) No. 113-IX (19 September 2019).

who possess the necessary knowledge, skills and professional integrity. On 21 December 2019, as a part of the prosecution reform, the Prosecutor General's Office was renamed the Office of the Prosecutor General.¹²⁵

On 21 October 2019, the Department of supervision of criminal proceedings concerning the crimes committed during the armed conflict ("Department") was established in the OPG.¹²⁶ The Department consists of two separate units - one is tasked with the supervision of criminal proceedings concerning crimes committed in the temporarily occupied territories of Crimea and Donetsk and Luhansk regions, while the other performs analytical work.

The OPG and regional-level offices share the responsibility of prosecuting IHL violations and the OPG remains the main prosecuting body.

Annex IX contains a comprehensive list of all the entities responsible for implementing IHL in Ukraine, ranging from military, security and judicial authorities to administrative bodies that have responsibilities under IHL.

National Legislation for Prosecuting Alleged IHL Violations

Violations of IHL

IHL differentiates between two types of violations, namely "serious violations of IHL" and other "non-serious violations of IHL".

The term "serious violations of IHL" is an umbrella term which incorporates "grave breaches" of the Geneva Conventions and Additional Protocol I, as well as war crimes (such as the ones listed in the Rome Statute of the ICC) and other crimes of IHL according to customary international law.¹²⁷ Serious violations of IHL constitute war crimes.¹²⁸

Conduct which amounts to a serious violation of IHL is conduct which (i) endangers protected persons (such as civilians or POWs) or objects (such as infrastructure) or

¹²⁵ Order of the Prosecutor General of Ukraine "[On approval of the structure of the Office of the Prosecutor General](#)" No. 99-шц (21 December 2019).

¹²⁶ Order of the Prosecutor General of Ukraine "[On approval of the structure of the Office of the Prosecutor General](#)" No. 99-шц (21 December 2019).

¹²⁷ An approach commonly adopted: ICRC, '[What are "serious violations of international humanitarian law"? Explanatory Note](#)'.

¹²⁸ Jean-Marie Henckaerts and Louise Doswald-Beck (eds), [Customary International Humanitarian Law](#), Volume II, part 1 (Cambridge University Press 2005) 568.

breaches important values (such as recruiting child soldiers);¹²⁹ (ii) is committed “wilfully”, namely with an intention to carry out that conduct or being reckless as to the outcome of endangering protected persons or objects, or breaching important values.¹³⁰ This incorporates a number of provisions listed throughout the Conventions and Protocols which are addressed throughout this report. The term “serious violations of IHL” is used interchangeably with the term “war crime”.¹³¹

The distinction between the different types of serious violations of IHL is largely unimportant for the purpose of this report. As we will discuss in the following section, under customary international humanitarian law, states must extend the obligation to criminalise and prosecute to *all* serious violations of IHL, not only grave breaches of the Geneva Conventions and Protocol.

All the other violations of IHL will be characterised as “non-serious violations of IHL”. These violations do not qualify as war crimes.

Criminalisation of IHL Violations

The Geneva Conventions and Additional Protocol I oblige states to take steps to provide for the criminalisation and prosecution of certain violations of IHL, characterised as grave breaches or war crimes.¹³² However, since the promulgation of the Geneva Conventions and Additional Protocol I, customary international law has evolved and demanded that all serious violations of IHL (not merely grave breaches) be investigated and prosecuted.¹³³ To do so, states are therefore required to adopt effective penal sanctions (as opposed to mere regulatory and disciplinary sanctions).¹³⁴ Consistent with this evolution, international

¹²⁹ *Prosecutor v. Dusko Tadić* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) Case No. IT-94-1-AR/72 (2 October 1995) para. 94; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), [Customary International Humanitarian Law](#), Volume I: Rules (Cambridge University Press 2009) 569.

¹³⁰ Geneva Convention I, Arts. 12 and 50; Geneva Convention II, Arts. 12 and 51; Geneva Convention III, Art. 130; Geneva Convention IV, Art. 146; Additional Protocol I, Arts. 11(4), 85(3) and 85(4).

¹³¹ An approach commonly adopted: ICRC, [‘What are “serious violations of international humanitarian law”? Explanatory Note’](#).

¹³² Geneva Convention I, Art. 49; Geneva Convention II, Art. 50; Geneva Convention III, Art. 129; Geneva Convention IV, Art. 146.

¹³³ C. Harland, ‘Relevance for the National Implementation of International Humanitarian law’ in L. Maybee (eds.) [Custom as a Source of International Humanitarian Law](#) (ICRC AALCO 2006) 97.

¹³⁴ *Ibid.* See also A. Cassese, *International Criminal Law* (Oxford University Press 2013) 81.

tribunals have also held that serious violations of IHL other than grave breaches of the Geneva Conventions should also entail individual criminal responsibility.¹³⁵

In addition, the Conventions and Additional Protocol I impose on states the obligation to suppress all other violations of IHL.¹³⁶ As a result, states must take all measures necessary to suppress any breach.¹³⁷ Nevertheless, states are still afforded a broader discretion in how to address the second category of violations, namely non-serious violations of IHL. Military regulations, administrative orders and other regulatory measures could be sufficient, but states also have the option to adopt criminal sanctions. Furthermore, states can also decide to extend the category of war crimes in their national legislation by defining other non-serious violations of IHL as war crimes.

In addition, other international treaties, such as The Hague Convention and the Convention on Anti-personnel Mines expressly require states to investigate and prosecute persons alleged to have committed specific offences.¹³⁸

¹³⁵ See *Prosecutor v. Tadić* Case (Judgment) ICTY-94-1-A (15 July 1999) paras. 106-107; *Prosecutor v. Blaškić* (Judgment) ICTY-95-14-T (3 March 2000) para. 112; *Prosecutor v. Kordić and Čerkez* (Judgment) ICTY-95-14/2-T (26 February 2001) para. 120; *Prosecutor v. Furundžija* (Judgment) ICTY-95/17/1-T (10 December 1998) para. 109; *Prosecutor v. Delalić* (Judgment) ICTY-96-21-T (16 November 1998) para. 109; *Prosecutor v. Kunarac* (Judgment) ICTY-96-23-T (22 February 2001) para. 113; *Prosecutor v. Kvočka* (Judgment) ICTY-98-30/1-T (2 November 2001) para. 114; *Prosecutor v. Krnojelac* (Judgment) ICTY-97-25-T (15 March 2002) para. 115; *Prosecutor v. Vasiljević* (Judgment) ICTY-98-32-T (29 November 2002) para. 116; *Prosecutor v. Naletilić* (Judgment) ICTY-98-34-T (31 March 2003) para. 117; *Prosecutor v. Stakić* (Judgment) ICTY-97-24-T (31 July 2003) para. 118; *Prosecutor v. Galić* (Judgment and Opinion) ICTY-98-29-T (5 December 2003) para. 119; *Prosecutor v. Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) para. 103; *Prosecutor v. Musema* (Judgment) ICTR-96-13-A (27 January 2000) para. 105; *Prosecutor v. Musema* (Appeal Judgment) ICTR-96-13-A (16 November 2001) para. 105; *Prosecutor v. Rutaganda* (Judgment) ICTR-96-3-T (6 December 1999) para. 104; *Prosecutor v. Galić* (Judgment and Opinion) ICTY-98-29-T (5 December 2003) paras. 113–129.

¹³⁶ Geneva Convention I, Art. 49 (3); Geneva Convention II, Art. 50 (3); Geneva Convention III, Art. 129 (3); Geneva Convention IV, Art. 146 (3); Dieter Fleck, *Shortcomings of the Grave Breaches Regime* (2009) 7 J Int Criminal Justice 833-854, p. 834.

¹³⁷ Jean de Preux, *Geneva Convention relative to the Treatment of Prisoners of War: commentary*, Volume III (ICRC 1960) 624 – 625; Oscar Uhler, Henri Coursier (eds.), *Geneva Convention relative to the Treatment of Prisoners of War: Commentary*, Volume IV (ICRC, 1958) 594; Dieter Fleck, 'Shortcomings of the Grave Breaches Regime' (2009) 7 J Int Criminal Justice 833-854, 834.

¹³⁸ See for example: Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, Art. VI; Amended Protocol II to the Convention on Certain Conventional Weapons on the Use of Mines, Booby-Traps and Other Devices (adopted 3 May 1996, entered into force 3 December 1998) UN CCW/CONF.I/ 16, Art. 14; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, (adopted 18 September 1997, entered into force 1 March 1999) 2056 UNTS 211, Art. 9. All these offences will be discussed in this report.

To conclude, the extent of the obligation to repress will vary depending on whether the violation is characterised as a “non-serious violation of IHL” (obligation to adopt all necessary measures including regulatory and disciplinary sanctions) or a “serious violation of IHL” (obligation to adopt criminal sanctions).

How states create effective penal legislation or enforcement frameworks?

States seeking to bring their national practice into line with such requirements may choose between five options:

- The application of the existing military or ordinary domestic criminal law;
- Criminalisation in domestic law by a generic provision, such as those that allow prosecution for “a violation of the laws and customs of war”;
- The specific criminalisation of different types of conduct;
- Combining the first three options; and
- The direct application of international law by domestic courts.¹³⁹

Ukraine has chosen the fourth option. First, as described below,¹⁴⁰ it has relied on domestic criminal law to prosecute crimes committed during the current conflict in eastern Ukraine. Second, it relies on Article 438 of the Criminal Code of Ukraine, which generically provides for the criminal punishment of “violations of the laws and customs of warfare” which is applicable to the means of warfare prohibited by international law and encompasses international treaties *and* customary international law, or any other violations of the laws and customs of war recognised by international instruments ratified by Ukraine (not encompassing customary international law). Third, it criminalises specific crimes in Chapters XIX and XX of the Criminal Code of Ukraine, such as “Violence against Population in the Zone of Hostilities”¹⁴¹ and “Ill Treatment of Prisoners of War”.¹⁴²

This method of criminalisation presents the advantage of covering most serious violations of IHL, as well as also covering any future treaty amendments or new obligations arising in the event Ukraine becomes party to a new treaty (*i.e.* the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction).¹⁴³ Such an approach, however, may also present a number of obstacles to the effective criminalisation and prosecution, including a specific preclusion of penal

¹³⁹ See ICRC, [‘Methods of incorporating punishment into criminal law’](#) (31 October 2013).

¹⁴⁰ See *infra*, pp. 62-74.

¹⁴¹ Criminal Code of Ukraine, Art. 433.

¹⁴² Criminal Code of Ukraine, Art. 434. For more details, see *infra*, pp. 67-69.

¹⁴³ See ICRC, [‘Methods of incorporating punishment into criminal law’](#) (31 October 2013).

sanction arising directly from the evolution of customary international humanitarian law which has not yet been codified in a treaty ratified by Ukraine.¹⁴⁴ In summary, Article 438 only encompasses customary international law prohibitions with regard to the violations of the rules related to the means of warfare (“use of means of the warfare prohibited by international law”) (i.e., the use of certain prohibited weapons, such as anti-personnel mines, weapon of mass destructions, weapon the primary effect of which is to injure with fragments which cannot be detected by x-ray or mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering).¹⁴⁵ Article 438 does not encompass customary international law prohibitions regulating the methods of warfare (the way weapons are used and the general conduct of all those engaged in the armed conflict, such as the prohibition of attacking civilians). Only the serious violations of methods of warfare contained in international treaties ratified by Ukraine, such as the Geneva Conventions or the Hague Convention, appear to be covered by the express terms of Article 438 (“any other violations of rules and customs of the warfare recognised by international instruments consented to be binding by the Verkhovna Rada of Ukraine”).

Moreover, the Geneva Conventions appear to recognise the need for a more particularised approach for serious violations of IHL. Discussing the necessity to criminalise all breaches of the Geneva Conventions, the Pictet Commentary to the Geneva Conventions outlined the following:

“[a]ll” breaches of the Present Convention should be repressed by national legislation. At the very least, the Contracting Powers, having arranged for the repression of the various grave breaches and fixed and appropriate penalty for each, must include a general clause in their national legislative enactment, providing for the punishment of other breaches of the Convention.¹⁴⁶

In other words, “at the very least”, specific legislative responses and appropriate penalties are required to be attached to grave breaches. Only for the remaining breaches, is the ‘general clause’ approach appropriate.

More specifically, as will be discussed in this Report, in the circumstances of Ukraine’s overall IHL measures, this approach may, in certain instances, raise serious questions concerning the respect for the principle of legality and culpability. In sum, both principles rest upon ensuring that any conduct that leads to penal sanctions is particularised in a

¹⁴⁴ For more details, see *supra*, p. 19.

¹⁴⁵ This issue is discussed more broadly *infra* pp. 62-74.

¹⁴⁶ ICRC, [‘Commentary of Article 49 of Geneva Convention I’](#) (ICRC, 1958).

manner that is sufficiently clear, specific and certain so that the culpability at its core, and the proportionate sanction to be applied, is sufficiently foreseeable and accessible to those to whom it is to be applied.

The principle of legality (“*nullum crimen, nulla poena sine lege*”) is a core legal tenet and fundamental human rights principle which holds that no crime or punishment can exist without a valid legal ground.¹⁴⁷ This principle entails that

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.¹⁴⁸

The European Court of Human Rights has interpreted the principle of legality as embodying the principle that only the law can define a crime and prescribe a penalty.¹⁴⁹ In this regard, the law must not be ‘extensively construed to an accused’s detriment, nor can it be unclearly defined, meaning ‘the individual can know from the wording of the relevant provision and, if needs be, with the assistance of the court’s interpretation of it, what acts and omissions will make him liable’.¹⁵⁰ In other words, criminal liability for certain conduct should be sufficiently foreseeable and accessible at the time of its commission.¹⁵¹

In addition, the principle of culpability (“*nulla poena sine culpa*”) is a basic prerequisite for criminal liability in most societies.¹⁵² Culpability in criminal law is synonymous with moral blameworthiness,¹⁵³ and as such necessitates that the law is well defined so as to attribute criminal responsibility. The principle of culpability comprises two elements: (i) the requirement of criminal responsibility *per se*, i.e. the person should only be punished if they

¹⁴⁷ Universal Declaration of Human Rights GA Res 217(AIII), Art. 11; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art. 15; European Convention for the Protection of Human Rights and Fundamental Freedoms (opened for signature 4 November 1950) 213 UNTS 221, Art. 7.

¹⁴⁸ International Covenant on Civil and Political Rights, Art. 15.

¹⁴⁹ *Kokkinakis v. Greece* App No 14307/88 (ECtHR, 25 May 2003).

¹⁵⁰ *Ibid.*

¹⁵¹ B. Swart, ‘Modes of International Criminal Liability’ in A. Cassese (eds.), *The Oxford companion to International Criminal Justice*, (Oxford University Press 2009), 92.

¹⁵² S. Bock, ‘The Prerequisite of Personal Guilt and the Duty to Know the Law in the Light of Article 32 ICC Statute’ (2013) 9 Utrecht Law Review 184, 184.

¹⁵³ M. B. Berman, ‘Punishment and Culpability’ (2012) Ohio State journal of Criminal Law 411, 411.

are guilty of a crime; and (ii) the requirement of proportionality between the personal guilt and the punishment.¹⁵⁴

Moreover, a minimum degree of specificity enhances the effectiveness of the penal regime as a whole. Domestic judges, prosecutors and other domestic legal professionals must clarify and interpret domestic law in light of principles of international law with which they may not be familiar. This is a complex and challenging endeavour even when domestic legislation criminalising specific conduct is carefully and expressly particularised.

Accordingly, in instances relating to generalised provisions such as Article 438, there may be a high degree of uncertainty with regards to culpability, i.e. what conduct is intended to be criminalised and what penalty should be attached to that individual act and culpability.

Similar criticism may also be made of relying on domestic crimes within the Criminal Code as a method for the criminal enforcement for international crimes. Although they may not *per se* give rise to breaches of the principle of legality and culpability, they may give rise to avoidable problems of certainty, specificity and practical effectiveness. Moreover, although these provisions provide legal professionals such as judges and prosecutors with more familiar provisions and less demanding requirements, in many instances, they will fail to adequately reflect the totality of conduct or the seriousness of the IHL violation or crime.

In particular, by their nature, war crimes are some of the most heinous and serious crimes known to humankind.¹⁵⁵ As a rule, international standards offer a broader scope of protection and a larger basis for prosecutions than national 'ordinary crimes' legislation. In some cases, certain conduct/crimes will not exist in national legislation.¹⁵⁶ In many other cases, the penalties provided for by national law will not be appropriate in the context of armed conflicts, or with regards to the seriousness of the crime in question.¹⁵⁷

In sum, whilst ordinary crimes may in limited circumstances be appropriately used as viable alternatives to IHL crimes, in most instances they fail to capture the full extent of the relevant conduct inasmuch as they lack the relevant nexus to the conflict or wider contextual elements (e.g., in relation to a larger attack on civilians) and therefore fail to encapsulate the essence of the violation. For these reasons, this Report does not examine

¹⁵⁴ G. Werle and B. Burghardt, 'Establishing Degree of Responsibility: Modes of Participation in Article 25 of the ICC Statute', in E van Sliedregt and S Vasiliev (eds), *Pluralism in International Criminal Law*, (Oxford University Press 2014) 304.

¹⁵⁵ Julio Bacio Terracino, 'National Implementation of ICC Crimes: Impact on National Jurisdictions and the ICC' (2007) *Journal of International Criminal Justice* 431, 431.

¹⁵⁶ ICRC, '[Methods of incorporating punishment into criminal law](#)' (31 October 2013).

¹⁵⁷ ICRC, '[Methods of incorporating punishment into criminal law](#)' (31 October 2013).

the domestic crimes contained in the Criminal Code but assumes that in most instances they are not relevant to a meaningful assessment of the compliance of the Criminal Code with IHL requirements. However, Annex VIII of this Report provides a table identifying the relevant provisions of the Criminal Code of Ukraine that outline the domestic crimes that are most relevant to a consideration of the propriety of pursuing war crimes or the lesser corresponding domestic crime.

Therefore, as a general proposition, although Ukrainian legal measures provide the basis for a degree of IHL prosecution action, they require substantial modification to produce an effective IHL enforcement system based on the appropriate criminalisation of specific conduct. In the final analysis, the legality and effectiveness of Article 438 will be decided on a case-by-case basis, taking into account the specific circumstances of the conduct, specific crimes within the Criminal Code and any existing domestic crimes or other legal measures that may be relevant. However, even in the hands of skilful, knowledgeable legal professionals, Article 438, in its current formation (and when viewed within the context of the remaining provisions in the Criminal Code), is likely to create serious obstacles to effective prosecutions and the repression of relevant IHL violations. These issues and the capacity of the Criminal Code of Ukraine, in its current form, to adequately and effectively prosecute *specific* IHL violations will be further discussed below.¹⁵⁸

¹⁵⁸ See *infra*, pp. 62-74.

Part II

National Implementation Measures Enacted by Ukraine

The remainder of this Report considers the Government of Ukraine's compliance with its requirement under IHL to adopt national implementation measures that are necessary to ensure that IHL obligations are adequately promoted and enforceable at the domestic level. The purpose of this Report is not to suggest extensive recommendations. Instead, it will only identify deficiencies in the legal system that may often be remedied in a number of ways. Due to the wealth of approaches States may take in ensuring IHL compliance,¹⁵⁹ promoting a particular approach before conducting specific consultations with relevant stakeholders in the Government (e.g. the Office of the Prosecutor General) and the ICRC would be precipitous and may fail to take into account the particularities of the Ukrainian legal system.

However, this should not detract from the identified concerns detailed below. There are significant omissions in the domestic legal regime that need to be remedied to ensure that the Ukrainian Government is compliant with its international obligations.

Before considering the deficiencies in the Ukrainian legal system, it is fair to note that Ukraine is not unique in failing to comply with its IHL obligations. Indeed, few states have met their obligation to fully and effectively integrate IHL into their domestic legislation.¹⁶⁰

In sum, the sections below consider each of the most important topics that require national implementation measures under prevailing international standards. Following a brief recitation of this standard, the Report analyses, on a topic-by-topic basis, whether binding legal measures in Ukraine satisfy the IHL requirements.

¹⁵⁹ See ICRC, [‘ICRC Database on National Implementation of International Humanitarian Law’](#) (October 2014) 2.

¹⁶⁰ Beerli Christine, [‘Speech for ICRC Vice-President Beerli at XXXVI Round Table on Current Issues of International Humanitarian Law, “Respecting IHL: Challenges and Responses”’](#) (San Remo, 5-7 September 2013).

Translation and Transmission of Information

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Article 48
- Geneva Convention II, Article 49
- Geneva Convention III, Articles 41, 128
- Geneva Convention IV, Articles 99, 145
- Additional Protocol I, Article 84
- Hague Convention, Article 26
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Article 7
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Article 7
- Convention on the Rights of the Child, Article 44
- Optional Protocol on the Involvement of Children in Armed Conflict, Article 8

Communication with Other State Parties

Principal National Implementation Requirements

Geneva Conventions I-IV and Additional Protocol I require the Government of Ukraine to communicate official translations of the Conventions and Protocol and the laws and regulations they adopt to ensure implementation of their obligations pursuant to each treaty.¹⁶¹ The Government of Switzerland serves as the depositary for these official communications. The term “laws and regulations” should be understood as covering all legal measures issued by both the legislative and executive powers in charge of IHL implementation, including laws criminalising IHL breaches.¹⁶²

Article 26 of The Hague Convention requires that official translations of the Convention be provided to the Director-General of the United Nations Educational, Scientific and Cultural Organization (“UNESCO”). Further, it requires the Government of Ukraine, as a state party to the treaty, to report on the implementation of the Convention every four years.¹⁶³

¹⁶¹ Geneva Convention I, Art. 48; Geneva Convention II, Art. 49; Geneva Convention III, Art. 128; Geneva Convention IV, Art. 145; Additional Protocol I, Art. 84.

¹⁶² ICRC, [‘The Exchange of Information on National Measures to Implement International Humanitarian Law’](#) (31 December 2002) 1.

¹⁶³ Hague Convention, Art. 26.

Other IHL treaties provide for similar obligations. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction requires the Government of Ukraine to inform the Organisation for the Prohibition of Chemical Weapons (“OPCW”) of the legislative and administrative measures taken to implement its provisions.¹⁶⁴

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction requires the Government of Ukraine to submit an annual report to the Secretary-General of the United Nations on, among other requirements:

- National implementation measures;
- The stockpiles of anti-personnel mines;
- The destruction of anti-personnel mines; and
- The measures taken to provide an immediate and effective warning to the population.¹⁶⁵

Finally, the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict requires Ukraine to submit a report to the Committee on the Rights of the Child (“CRC”) providing information on the measures taken to implement the provisions of the Convention and Protocol every five years.¹⁶⁶

Primary Ukrainian Implementation Measures

Ukraine ratified the Geneva Conventions on 3 July 1954 as part of the USSR. It was not a requirement at that time to provide a Ukrainian translation to the Swiss Federal Council of the Government of Switzerland,¹⁶⁷ as the Russian text of the Geneva Conventions was considered official (thereby obviating the need to provide a translation).¹⁶⁸ Since 1991, however, Ukraine relies on Ukrainian as the country’s official language.¹⁶⁹ Therefore,

¹⁶⁴ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (adopted 13 January 1993, entered into force 24 April 1997) 1974 UNTS 45, Art. 7(5).

¹⁶⁵ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Art. 7.

¹⁶⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Art. 44; Optional Protocol to the Convention on the Involvement of Children in Armed Conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222, Art. 8.

¹⁶⁷ The Swiss Federal Council is the focal point for communication within the Government of Switzerland.

¹⁶⁸ See Geneva Convention I, Art. 55.

¹⁶⁹ Constitution of Ukraine, Art. 10.

communicating the Ukrainian texts of the Geneva Conventions and of the laws and regulations adopted by the Government of Ukraine has become necessary.

To date, the Government of Ukraine has not provided the Swiss Federal Council with official translations of the Geneva Conventions or any translated laws and regulations implementing the Conventions.¹⁷⁰

Concerning The Hague Convention, GRC is not aware that any official Ukrainian translation has been provided to the Director-General of UNESCO. Regarding the quadrennial reports, a report from Ukraine was received by the Director-General in 1995.¹⁷¹ GRC was unable to locate any subsequent reports.

According to the Presidential Decree titled “Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction”,¹⁷² the Ministry of Foreign Affairs, among others, is responsible for the implementation of the Convention and for the interdepartmental coordination of practical measures contained in the 2012-2021 Action Plan (“2012-2021 Action Plan”).¹⁷³

According to the 2012-2021 Action Plan, Ukraine shall provide the Technical Secretariat of OPCW with annual declarations.¹⁷⁴ The contents of these declarations is confidential but Ukraine has complied with the declaration’s obligations towards the OPCW.¹⁷⁵

Pursuant to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Ukraine also submits reports

¹⁷⁰ This was confirmed on 4 December 2015 in an email from Mr. Claude Schenker, Deputy Head of the Treaty Section, Federal Department of Foreign Affairs, Directorate of International Law, for the Government of Switzerland.

¹⁷¹ UNESCO ‘Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague 1954’ (December 1995) CLT-95/WS/13.

¹⁷² [On Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction](#): Decree of the President of Ukraine No. 1080/99 (26 August 1999).

¹⁷³ [2012-2021 Action Plan on the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction](#): Order of the President of Ukraine No. 673 (15 November 2012).

¹⁷⁴ 2012-2021 Action Plan, para. 1.

¹⁷⁵ OPCW ‘[Note by the Director-General of the OPCW: Status Report on Timely Submission by States Parties of Declarations under Article VI of the Chemical Weapons Convention for the period from 1 January to 31 December 2015](#)’ (14 January 2016) EC-81/DG.4. It was also confirmed by an email from the OPCW Media Office to GRC dated from 12 February 2016.

every year (called “transparency reports”¹⁷⁶). On 1 April 2020, Ukraine submitted its fifteenth Article 7 transparency report.¹⁷⁷

Finally, under the Convention on the Rights of the Child, Ukraine is required to provide periodic reports to the CRC every two years after entry into force of the Convention and every five years thereafter.¹⁷⁸ Ukraine submitted its first periodic report to the CRC in 1994.¹⁷⁹ Its last reports were submitted in 2008 (third and fourth periodic reports).¹⁸⁰ The initial report related to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (“Optional Protocol to the Convention on the Rights of the Child”) was sent to the Committee in 2008. Under the protocol, States are required to provide such reports in the same manner as the CRC.¹⁸¹ Since 2008, no further reports have been submitted.¹⁸²

¹⁷⁶ Transparency measures under the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction are provided for in Article 7 of this Convention. It stipulates that “each State Party to the Convention shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party on the national implementation measures referred to in Article 9 of the Convention and on the types, quantities and, if possible, lot numbers of all antipersonnel mines retained for training purposes. The information provided in accordance with this Article shall be updated by the States Parties annually, covering the last calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties”.

¹⁷⁷ UNOG ‘[Article 7 Report of Ukraine](#)’ (1 April 2020).

¹⁷⁸ Article 44 of the *Convention on the Rights of the Child* provides that States Parties “undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights (a) within two years of the entry into force of the Convention for the State Party concerned; (b) thereafter every five years”. See [Convention on the Rights of the Child](#) (entered into force 2 September 1990) Treaty Series 1577, Art.44.

¹⁷⁹ See [here](#).

¹⁸⁰ *Ibid*.

¹⁸¹ Article 8 of the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* states that Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report **every five years**. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Art.8.

¹⁸² *Ibid*.

Posting Conventions at Prisoner of War Camps and Internment Camps

Principal National Implementation Requirements

Article 41 of Geneva Convention III requires the posting of the Convention and its annexes in POW camps in the prisoner's native language in a location accessible to all POWs. Copies shall be supplied, upon request, to any POW who is incapable of accessing the posted copy. Regulations, orders, notices and publications of every kind relating to the conduct of POW shall also be posted and copies shall be handed to the prisoners' representative in a language they understand. Every order and command addressed to POWs individually must likewise be provided in a language which they understand.¹⁸³

Article 99 of Geneva Convention IV requires the posting of the text of the Convention inside the place of internment, in a language which the internees understand. It could also be provided to the Internee Committee.¹⁸⁴ Regulations, orders, notices and publications of every kind shall also be communicated to the internees and posted inside the places of internment in a language which they understand.¹⁸⁵

Primary Ukrainian National Implementation Measures

Ukrainian legal measures do not adequately cover these obligations.

The Military Instruction provides that the Administrative Office of the Brigade Reception Centre for POWs shall display the text of Geneva Convention III.¹⁸⁶ However, it fails to make any reference to the language requirements or any other requirements set out in Geneva Convention III (*i.e.* that the annexes shall also be displayed, that the posting should be at places where all may read them and that copies shall be supplied, on request, to POWs who cannot access the posted copy). In addition, there is no information available on the posting or distribution of regulations, orders, notices or publications relating to the conduct of POWs.

Legal measures addressing the posting of the Conventions and other documents at internment camps are not reflected in Ukrainian law or regulations.¹⁸⁷

¹⁸³ Geneva Convention III, Art. 41.

¹⁸⁴ Under the Geneva Conventions, an Internee Committee must be established at all places of internment. They are composed of elected internees responsible for representing internees before the detaining and protecting powers, the ICRC and other organisations which may assist them. Geneva Convention IV, Art. 102.

¹⁸⁵ Geneva Convention IV, Art. 99.

¹⁸⁶ Military Instruction, para. 2.14.15.

¹⁸⁷ For more details, see *infra*, p. 100.

Dissemination & Training of IHL Principles

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Article 47
- Geneva Convention II, Article 48
- Geneva Convention III, Articles 41, 127
- Geneva Convention IV, Articles 99, 144
- Additional Protocol I, Articles 80, 82, 83, 87
- Additional Protocol II, Article 19
- Additional Protocol III, Article 7
- Hague Convention, Articles 7, 25
- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, Article 6; and its Protocols:
 - Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (as amended on 3 May 1996), Article 14
 - Protocol (IV) on Blinding Laser Weapons, Article 2
- Convention on the Rights of the Child, Article 42
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Article 6

General Obligation

Key National Implementation Requirements

The key provisions concerning the responsibility to disseminate IHL principles is found throughout the core IHL treaties, including most Conventions and Additional Protocols.

It requires state parties to:

undertake, *in time of peace as in time of war*, to disseminate the text of the present Convention as widely as possible in [a State's] respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become

known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.¹⁸⁸

Geneva Convention III further establishes that any military or other authorities who in times of war are responsible for POWs must possess the text of the Convention and be specially instructed as to its provisions.¹⁸⁹ This requirement also applies to any civilian, military, police or other authorities that in time of war assume responsibilities in respect of protected persons.¹⁹⁰

Additional Protocol I supplements the above requirements to disseminate and provide training by, *inter alia*, mandating that legal advisors are made available to advise military commanders and instruct the armed forces on the Geneva Conventions and Protocols.¹⁹¹ It further imposes on the Government of Ukraine the obligation, in times of war or peace, to train qualified personnel to facilitate the application of the Conventions and Protocol (with the assistance of the national Red Cross (Red Crescent, Red Lion and Sun) Societies).¹⁹²

According to the ICRC:

these persons, who should be qualified in particular in the legal, military and medical fields and must be recruited and trained in peacetime in order to be operational in the event of conflict, could be assigned by the government authorities to the dissemination service.¹⁹³

Primary Ukrainian Implementation Measures

The ICRC's Advisory Service on IHL¹⁹⁴ has characterised the requirement to disseminate and provide training on IHL in terms of taking adequate steps to disseminate and train the

¹⁸⁸ See Geneva Convention I, Art. 47; Geneva Convention II, Art. 48; Geneva Convention III, Art. 127; Geneva Convention IV, Art. 144; Additional Protocol I, Art. 83; Additional Protocol II, Art. 19; Additional Protocol III, Art. 7; Hague Convention, Art. 25 (emphasis added). Each of these articles contain a similar requirement to disseminate and provide training on IHL principles.

¹⁸⁹ Geneva Convention III, Art. 127.

¹⁹⁰ Geneva Convention IV, Art. 144. The Geneva Conventions and Additional Protocols protect so-called 'protected persons'. This includes sick, wounded and shipwrecked persons not taking part in hostilities, POWs, civilians who because of a conflict or occupation are in the power of a party whose nationality they do not possess, medical and religious personnel, parlementaires, civil defence personnel, and personnel assigned to the protection of cultural property. For more details, see [ICRC Glossary, 'Protected persons'](#).

¹⁹¹ Additional Protocol I, Art. 82, 83(2).

¹⁹² Additional Protocol I, Art. 6(1); Hague Convention, Art. 7, 25.

¹⁹³ ICRC, ['The Obligation to Disseminate International Humanitarian Law'](#) (2003) 2.

¹⁹⁴ This service is a specialised structure of the ICRC that helps states in several ways. The primary aim of the Service is to facilitate the implementation of IHL domestically. It cooperates

following five groups: (i) armed forces; (ii) police and security forces; (iii) university students; (iv) public officials; and (v) the general public.¹⁹⁵ To assess whether Ukraine is fulfilling these IHL national implementation requirements, this section will consider dissemination and training requirements for each group in turn.

Armed Forces

The Government of Ukraine has endeavoured to disseminate IHL through training within the Armed Forces of Ukraine. The training programmes are largely provided for in the Military Instruction and the Field Manual of the Armed Forces of Ukraine. Further enquiries into the practice of the armed forces are necessary to discern whether the efforts to train soldiers are sufficient to ensure full IHL compliance.

To illustrate, the Military Instruction specifically provides that IHL rules should be disseminated in peacetime and during conflict through the training and education of military and civilian personnel of the Armed Forces of Ukraine.¹⁹⁶ This includes the following provision:

In performance of their duties, commanders and commanding officers shall be guided by the rules of international humanitarian law that oblige them:
In peacetime:
To organise and participate in the dissemination of knowledge about international humanitarian law amongst their subordinates;
To ensure learning the law of armed conflict within the process of training and education of servicemen [and women];
To bring it to the attention of the subordinates that grave breaches of international humanitarian law shall be criminally punished according to Ukrainian legislation; and
(...) to supervise training of medical personnel and military (civilian) members of legal service as to studying international humanitarian law (...)¹⁹⁷

with national governments, is involved in explanatory work and conducts capacity building activities. The Service also facilitates the exchange of information, especially on national implementation measures. Among other activities, the Advisory Services also prepares the well-known factsheets on IHL. These documents are not comprehensive academic research, but aim to be a simple, authoritative explanation of principal rules of IHL, thus making the latter understandable to everyone. ICRC, '[The ICRC Advisory Service on International Humanitarian Law](#)' (ICRC, 31 August 1997); See also ICRC, '[The ICRC Advisory services on international humanitarian law](#)' (ICRC, 1 January 2015).

¹⁹⁵ See ICRC, '[Guidelines for Assessing the Compatibility between National Law and Obligations under Treaties of International Humanitarian Law](#)' (March 2008) 4.

¹⁹⁶ Military Instruction, paras. 5.1.2, 5.1.3, 5.2.1.

¹⁹⁷ Military Instruction, para. 5.1.

In addition, operational command staff shall provide commanders of military units with the texts of the Geneva Conventions and its Additional Protocols.¹⁹⁸ The Military Instruction further adds that subordinates shall be given appropriate guidance related to the rules of conduct in hostilities.¹⁹⁹ Further, military chaplains receive IHL training coordinated by the military clergy.²⁰⁰

In addition, commanders are under the obligation to hire legal advisors (assistant unit commanders) responsible for answering any legal issues related to the application of the laws of war (IHL).²⁰¹ Legal advisors shall provide the commanders with the necessary advice concerning the application of the rules of IHL and rules of engagement, as well as provide the military personnel with relevant instructions.²⁰²

Apart from the Military Instruction, dissemination of IHL among the Armed Forces of Ukraine is regulated by the Orders of the Chief of the General Staff of the Armed Forces of Ukraine on the “Organisation of Training of the Military Servicemen of the Armed Forces of Ukraine on IHL Basics” and on “Subsequent Work Concerning the Study, Dissemination and Application of International Humanitarian Law in the Armed Forces of Ukraine”.²⁰³ Unfortunately, GRC could not access the orders as they are not available online.

Further, the Field Manual assigns specific responsibility to the Deputy Commander of Battalion (Squadron) on Educational Work who is in charge of ensuring compliance with IHL.²⁰⁴

On 22 February 2016, the Ministry of Defence, in cooperation with ICRC, prepared a handout (similar to ‘rules of engagement’ in other countries) for all soldiers in the Ukrainian military.²⁰⁵

¹⁹⁸ Military Instruction, para. 1.5.2.

¹⁹⁹ Military Instruction, para. 5.1.

²⁰⁰ Order of the Ministry of Defence of Ukraine on the Military Clergy, para. 5(2).

²⁰¹ Military Instruction, para. 1.5.3.

²⁰² Military Instruction, para. 1.6.1.

²⁰³ On Organisation of Training of the Military Servicemen of the Armed Forces of Ukraine on Basics of International Humanitarian Law: Order of the Chief of the General Staff of the Armed Forces of Ukraine No. 30 (11 March 1997); On Subsequent Work Concerning the Study, Dissemination and Application of International Humanitarian Law in the Armed Forces of Ukraine: Order of the Chief of the General Staff of the Armed Forces of Ukraine No. 90 (17 December 1999).

²⁰⁴ Field Manual, para. 60.

²⁰⁵ Ministry of Defence of Ukraine, [‘Handout card on compliance with the humanity norms during the armed conflict’](#) (Official website of the Ministry of Defence of Ukraine).

ВІЙСЬКОВОСЛУЖБОВЕЦЬ

при виконанні обов'язків військової служби та спеціальних (бойових) завдань

ПАМ'ЯТАЙ

Під час збройного конфлікту норми гуманності повинні дотримуватись навіть щодо ворога. Ці норми містяться у міжнародному гуманітарному праві (головним чином, у чотирьох Женевських Конвенціях та Додаткових Протоколах до них).

ЗАХИЩЕНІ ОСОБИ:

- Щоразу, коли дозволяє ситуація підбирай всіх поранених і хворих (у тому числі представників ворожої сторони) та піклуйся про них.
- Заборонено брати заручників або використовувати «живі щити».
- Заборонено застосовувати катування, тілесні покарання, каліцтво, глум над людською гідністю, колективні покарання та покарання без належного судового рішення.

ЗАХИЩЕНІ ОБ'ЄКТИ:

- Заборонено знищувати, виводити або доводити до непридатності об'єкти, необхідні для виживання цивільного населення.
- Заборонено грабувати майно цивільного населення.
- Заборонено завдавати масштабної, довготривалої та серйозної шкоди навколишньому природному середовищу.

ЗАХИСТ МЕДИЧНИХ МІСІЙ:

- Розпізнавальні емблеми Червоного Хреста повинні користуватись повагою за будь-яких обставин. Заборонено вчиняти будь-які дії, направлені на применшення поваги та захисту по відношенню до них.
- Медичні установи, персонал, обладнання та санітарно-транспортні засоби повинні користуватись повагою та захистом за будь-яких обставин.

ВЕДЕННЯ ВОЄННИХ ДІЙ:

- Цивільні об'єкти та цивільні особи не повинні бути об'єктами нападу.
- Необхідно вжити всіх можливих запобіжних заходів при визначенні того, чи є особа або об'єкт цивільними. У разі сумнівів слід вважати, що особа або об'єкт захищені від безпосереднього нападу.
- Невибіркові напади заборонені.
- Атаки, які ймовірно можуть спричинити випадкові втрати серед цивільного населення або шкоду цивільним об'єктам, не повинні бути надмірними по відношенню до очікуваної конкретної та безпосередньої воєнної переваги.
- Заборонено вбивати чи ранити комбатанта (особа зі складу збройних сил, яка бере участь у збройному конфлікті), який знаходиться під твоїм контролем, нездатний захистити себе або чітко висловив намір здатися.
- Необхідно вжити всіх можливих запобіжних заходів для захисту підконтрольного цивільного населення та цивільних об'єктів від наслідків нападів.

Недотримання будь-якої з перерахованих вище вимог може призвести до дисциплінарної або кримінальної відповідальності

У разі виникнення питань звертайтеся до юридичного радника командира військової частини.

Карта підготовлена Міністерством оборони України за сприяння Міжнародного Комітету Червоного Хреста

REMEMBER

In time of an armed conflict, norms of humanity shall be adhered to even toward the enemy. Such norms are part of international humanitarian law (predominantly the four Geneva Conventions and their Additional Protocols).

PROTECTED PERSONS

- Whenever possible, collect all the wounded and sick (including of the adversary) and take care of them.
- Taking of hostages and use of human shields are prohibited.
- Torture, corporal punishment, mutilation, outrages upon personal dignity as well as collective and summary punishments are prohibited.

PROTECTED OBJECTS

- It is prohibited to destroy, remove or render ineffective objects indispensable to the survival of the civilian population.
- It is prohibited to steal civilian property.
- It is prohibited to cause widespread, long-term and severe damage to the natural environment.

PROTECTION OF MEDICAL MISSIONS

- Distinctive emblems of the Red Cross shall be respected at all times. It is prohibited to commit acts to impair respect and protection for them.
- Medical institutions, personnel, equipment, and medical transports shall be respected and protected at all times.

CONDUCT OF HOSTILITIES:

- Civilian objects and civilians shall not be the object of attack.
- All possible precautions shall be taken in determining whether a person or an object is civilian. In case of doubt it shall be considered that a person or an object are protected against direct attack.
- Indiscriminate attacks are prohibited.
- Attacks that may be expected to cause incidental loss of civilian life or damage to civilian objects should not be excessive in relation to the concrete and direct military advantage anticipated.
- It is prohibited to kill or injure a combatant (a person who is a member of the Armed Forces and takes part to an armed conflict) who is under your control, incapable of defending himself or has clearly expressed the intention to surrender.
- All possible precautions shall be taken to protect the civilian population and civilian objects under your control against the effects of attacks.

Failure to comply with any of the above requirements may lead to disciplinary or criminal liability.

Should you have any inquiries, please contact the legal adviser to the commander of the military unit.

The card has been drafted by the Ministry of Defence of Ukraine with the assistance of the International Committee of the Red Cross.

In addition to these national implementation measures, IHL is part of educational programmes in all the military institutes and universities in Ukraine. To become an officer of the Armed Forces of Ukraine, students have to study IHL. For example, at the Military Institute of Taras Shevchenko National University of Kyiv, IHL is an obligatory course for both military students and ordinary students enrolled in the reserve officer programme. Similarly, military lawyers must also pass an IHL exam (military specialty 850300).²⁰⁶

Although the requirement for IHL dissemination among the Armed Forces of Ukraine appears to be laid out adequately in the various relevant implementing regulations, GRC was not able to analyse the nature of the trainings delivered or assess any curriculum. Therefore, it has not been possible to evaluate whether the dissemination of IHL is compliant with the requirements of the Conventions and Protocols that demand effective dissemination.

Police and Security Forces

Provision for the dissemination of IHL among the police and security forces²⁰⁷ is lacking in Ukraine.

Concerning the police forces, future officers do not follow any specific IHL module, but do receive limited IHL training in their compulsory “International Law” course during their training to become police officers.²⁰⁸

The National Guard is also a crucial part of the police and security forces in Ukraine. Formerly known as the Internal Armed Forces of Ukraine, the National Guard is a special police force regulated by the Law of Ukraine entitled “On the National Guard of Ukraine”.²⁰⁹

Having the right to participate in armed conflict, the National Guard took part in the hostilities in eastern Ukraine in the early months of the conflict in Donbas.²¹⁰ However, based on informal conversations with several government authorities, as well as our review of publicly available information, it appears that many members of the National Guard

²⁰⁶ State Examination Commission on Specialty 850300 (“Military Lawyer”) “Legal Work in the Armed Forces of Ukraine”, Topic 27 “Organization of Application of Norms of International Humanitarian Law by the Personnel of Armed Forces”.

²⁰⁷ The Security Services would include, for example, the Security Services of Ukraine (“SBU”), Foreign Intelligence Agency of Ukraine, Special Police of the Internal Affairs Ministry, and the State Border Service of Ukraine.

²⁰⁸ Program of the basic course entitled “International Law” for bachelor’s degree students of specialty “Law” of the National Academy of Internal Affairs.

²⁰⁹ [Law of Ukraine on National Guard of Ukraine](#) No. 876-VII (13 March 2014).

²¹⁰ See e.g. [‘Nearly 180 Ukrainian National Guard soldiers killed in Donbas since armed conflict began’](#) *Interfax Ukraine* (Ukraine, 15 January 2016).

received no official IHL training before embarking on their military engagement. The Military Manual provided for IHL trainings only for members of the Armed Forces of Ukraine. However, in March 2017, the Military Instruction was adopted providing for compulsory IHL training both for the National Guard and the Armed Forces.²¹¹

Moreover, several projects focused upon providing additional IHL trainings. For example, it was noted on Ukrainian Government websites that the ICRC organised some IHL trainings in 2015 for the National Guard.²¹² In addition, in 2015, the official newspaper of the National Guard of Ukraine “Ratnik” published a document entitled “Human Rights and International Humanitarian Law: Code of Conduct of Participants in Hostilities” on its website.²¹³ This document provides information on IHL, including outlining the key categories of persons covered by IHL (combatants, non-combatants, spies, mercenaries, and protected persons under IHL). It also contains a brief guide on the means and methods of warfare, as well as on the responsibility for IHL violations. Moreover, in February 2020, the National Guard reached an agreement with the ICRC to open a classroom for IHL trainings in the premises of the International Centre of the National Guard.²¹⁴

University Students

In Ukraine, IHL features as a module or as a component of international law programmes. It is seen in Ukraine as one of the classic courses falling within this specialty.²¹⁵ For instance, IHL is taught as a separate course at leading Ukrainian universities, including:

- The Institute of International Relations of Taras Shevchenko National University of Kyiv;
- Odessa Law Academy, The National University;
- Ivan Franko National University of Lviv; and
- Yaroslav Mudryi National Law University of Ukraine.

²¹¹ Military Instruction, paras 1.1.5; 5.

²¹² [‘The personnel of the National Guard of Ukraine took part in the seminar of the International Committee of the Red Cross’](#) (NGU, 15 July 2015).

²¹³ [‘Human Rights and International Humanitarian Law. Code of Conduct of Participant in Hostilities’](#) (2015).

²¹⁴ [‘The International Centre of the National Guard will be equipped with a classroom for the study of international humanitarian law’](#) (NGU, 15 February 2020).

²¹⁵ [On Approving and Enactment of the Components of Branch Standard of Higher Education for Field 0302 “International Relations”, Section 030202 “International Law”](#): Order of the Ministry of Education and Science of Ukraine No. 871 (1 July 2013).

At other universities, IHL is often not integrated as a separate course, but is included as part of the course entitled 'Public International Law'.

Students throughout the country can also participate in international competitions and moot courts related to IHL and international criminal law (*i.e.* the Fedor Martens IHL Competition in Russia or the Jean Pictet International Humanitarian Law Competition). Two lecturers in international law are also members of the IHL Commission and can share with their students the relevant activities of the IHL Commission and the most up-to-date IHL events in Ukraine.

In addition to these courses and moot courts, the ICRC has dedicated a significant amount of time working with university professors and students. They have also provided IHL literature and materials for university libraries. For example, the ICRC contributed to the creation of an IHL library at the Institute of International Relations of Taras Shevchenko National University of Kyiv. ICRC has also held many conferences and roundtables for both professors and students.

Finally, in 2015, members of the IHL Commission recommended to the Ukrainian Ministry of Education and Science to integrate IHL as a compulsory course for every law student in Ukraine.

Public Officials

The IHL Commission is in charge of providing IHL informational and methodological support to public authorities, local governments, as well as relevant agencies and organisations.²¹⁶ Further, it is responsible for facilitating the promotion and interpretation of IHL.²¹⁷

Although established in 2000, the IHL Commission was largely inactive until 2015. Between 2015 and 2018, the IHL Commission was more active, holding a number of meetings and more actively providing information to public authorities. In December 2018, the IHL Commission held its last meeting, where its members discussed the danger of mines to civilians and Ukraine's compliance with its obligations.²¹⁸ In June 2020, Oleksiy Reznikov, Deputy Prime-Minister of Ukraine and Minister of Reintegration of the

²¹⁶ Resolution of the Cabinet of Ministers of Ukraine on the Establishment of the IHL Commission, para. 3.

²¹⁷ *Ibid.*

²¹⁸ ['The Ministry of the Temporarily Occupied Territories of Ukraine hosted the third meeting of the interdepartmental commission on the application and implementation of international humanitarian law'](#) (22 December 2018).

Temporarily Occupied Territories, was appointed the Head of the IHL Commission.²¹⁹ The key tasks of the Commission include the preparation of proposals regarding implementation of IHL in Ukraine, monitoring the compliance with IHL rules, and spreading awareness of IHL rules and their obligatory nature among the public.²²⁰

General Public

The level of IHL knowledge within the general public is relatively low, especially within the media. Whilst Ukrainian civil society have received trainings on matters such as classification of armed conflicts and responsibility for war crimes,²²¹ specific IHL training for the media has been limited. Specifically, the dissemination of IHL among the media included the Justice Journalism training programme²²² and Internews Media programme with occasional IHL lectures.²²³ The former training programme was aimed at building participants' capacity on reporting on justice issues and the ongoing reforms, with a focus on court reporting, including one session on war crimes.²²⁴

To date, no significant initiatives by the Government of Ukraine to educate the general public on IHL have taken place. However, serious efforts have been made for the dissemination and training on IHL by the Ukrainian Red Cross Society which launched, in 2015, the Safer Access programme.²²⁵

²¹⁹ [‘The Government of Ukraine has appointed Oleksiy Reznikov Chairman of the Interdepartmental Commission on the Application and Implementation of IHL Standards in Ukraine’](#) (11 June 2020).

²²⁰ *Ibid.*

²²¹ For example, UHHRU organised [series of webinars on IHL and ICL matters](#). Moreover, the Ukrainian Red Cross Society often organises [trainings on the basic rules and principles of IHL](#), while the “Lawyer of Tomorrow” program with the support of the US Embassy in Ukraine conducted a [training on the “Russian aggression and IHL”](#).

²²² [‘Nine professionals improve their skills in Justice Journalism’](#) (8 July 2020).

²²³ An international media NGO based in Washington DC, received funding from USAID (the United States Agency for International Development) to implement the [‘Ukrainian Media Project’ between 2018 and 2023](#) (Internews). [‘IHL training with Maksym Tymochko in Henichesk \(photo\)’](#) (December 15, 2019).

²²⁴ [‘Nine professionals improve their skills in Justice Journalism’](#) (8 July 2020).

²²⁵ This programme is part of the [Safer Access Framework developed by ICRC](#) in cooperation with National Red Cross and Red Crescent Societies. The Safer Access Framework contains a set of actions and measures that can be taken by a National Society of the Red Cross or Red Crescent to prepare for and respond to context specific challenges and priorities to reduce and mitigate the risks that it may face in sensitive and insecure contexts and to earn the trust and acceptance of people and communities with humanitarian needs and of those who control or influence access to them. It is aimed at facilitating and securing the provision of humanitarian assistance by volunteers and activists who provide humanitarian assistance for people in the conflict zone. The Ukrainian Red Cross Society has also held trainings on the Fundamental Principles of the International Movement of the Red Cross and Red Crescent and conducted

IHL Dissemination in Relation to POWs and Internees

Key National Implementation Requirements

POWs must be apprised of their rights and responsibilities relating to their captivity under IHL.²²⁶ Similar provisions relate to civilian internees.²²⁷ Further, authorities in control of POWs or internees should have possession of the relevant Conventions, as well as receive training on the relevant IHL provisions that relate to their roles and responsibilities.²²⁸

Primary Ukrainian Implementation Measures

The existing legal measures insufficiently regulate the dissemination of IHL to POWs and internees. Concerning the dissemination of the Conventions and Protocols, the Military Instruction requires operational command staff to provide commanders of military units with the texts of the Geneva Conventions and Additional Protocols.²²⁹ However, there are no legal measures on dissemination or for providing specific training on the Conventions / Protocols to authorities in control of POWs or internees.

Dissemination of IHL in Relation to Cultural Property

Key National Implementation Requirements

Concerning cultural property, Ukraine is required to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of The Hague Convention and foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.²³⁰

In addition, it must establish specialist personnel within the armed forces whose purpose is to ensure respect for cultural property and to cooperate with the civilian authorities responsible for safeguarding it.²³¹

Finally, the Government of Ukraine must disseminate the text of the Convention and the domestic regulations for its execution as widely as possible (including the study thereof in programmes of military and, if possible, civilian training).²³²

seminars on the dissemination of IHL principles for its volunteers, employees and youth organizations throughout Ukraine.

²²⁶ Geneva Convention III, Art. 41.

²²⁷ Geneva Convention IV, Art. 99.

²²⁸ Geneva Convention III, Art. 127; Geneva Convention IV, Art. 99.

²²⁹ Military Instruction, para. 1.5.2.

²³⁰ Hague Convention, Art. 7(1).

²³¹ Hague Convention, Art. 7(2).

²³² Hague Convention, Art. 25.

Primary Ukrainian Implementation Measures

The Military Instruction identifies general guidelines and instructions that ensure respect for cultural property (*i.e.* prohibition of attacks against clearly identified cultural property, the prohibition of using cultural property for the accomplishment of military objectives, or the destruction of cultural property).²³³ However, there appears to be insufficient detail in certain respects, for example a separate section clearly identifying the protections set forth in the Hague Convention would be useful.

Regarding the specialist personnel within the armed forces tasked with ensuring respect for cultural property, GRC is not familiar with any such personnel being part of the Armed Forces of Ukraine. Finally, although it appears that The Hague Convention is mentioned generally in ordinary IHL trainings,²³⁴ it remains unclear to what extent that training encompasses the protection of cultural property.

Dissemination of IHL in Relation to Weapons

Key National Implementation Requirements

The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its Protocols also requires the Government of Ukraine, in times of peace and conflict, to incorporate their study into programmes of military instruction, so that those instruments may become known to their armed forces.²³⁵

In addition, members of the armed forces should receive training on the employment of laser systems.²³⁶

Primary Ukrainian National Implementation Measures

GRC was not able to assess any curriculum or otherwise analyse the nature of the trainings delivered to the Armed Forces of Ukraine. Therefore, it has not been possible to evaluate

²³³ See *e.g.* Military Instruction, paras 1.2.30, 1.2.41, 2.3.1, 1.8.5.

²³⁴ Military Instruction, paras. 1.5.2; 5.1.

²³⁵ 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 (adopted 10 October 1980, entered into force 2 December 1983) 1342 UNTS 137, Art. 6. See also Protocol (II) to CCW on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 CCW Convention as amended on 3 May 1996), Art. 14 (3).

²³⁶ Protocol (IV) 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 on Blinding Laser Weapons (adopted 13 October 1995, entered into force 30 July 1998) 1380 UNTS 370, Art. 2.

whether the dissemination of IHL, in relation to the use of certain conventional weapons, is compliant with the demands of the Convention and its Protocols.

Although the use of laser weapons specifically designed (as their sole combat function or as one of their combat functions) to cause permanent blindness to unenhanced vision is prohibited in Ukraine,²³⁷ GRC is not aware of any training on the employment of laser systems in general.

Dissemination of IHL in Relation to Children

Key National Implementation Requirements

As a party to the Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children in Armed Conflict, the Government of Ukraine shall make the principles and provisions of those instruments widely known, by appropriate and active means, to adults and children alike.²³⁸

Primary Ukrainian Implementation Measures

Ukrainian legal measures related to children and armed conflict are scarce. However, on 3 February 2016, the Law of Ukraine on the Protection of Childhood,²³⁹ which provides for the general protection of children during an armed conflict, was amended by the Law of Ukraine on Amendments to Some Legislative Acts of Ukraine to Enhance the Social Protection of Children and Support Families with Children.²⁴⁰ The central body of the Ukrainian Administration in charge of the development and realisation of the state policy concerning the issues related to the family and children shall now ensure an extensive informational and explanatory work on the protection of children from participation in hostilities and armed conflicts. It must encourage society, associations and non-governmental organisations, as well as the mass media to carry out educational work among children, their parents, and other legal representatives.²⁴¹

²³⁷ Military Instruction, para. 1.3.2.

²³⁸ Convention on the Rights of the Child, Art. 42; Optional Protocol on the Involvement of Children in Armed Conflict, Art. 6(2).

²³⁹ [Law of Ukraine on the Protection of Childhood](#) No. 2402-III (26 April 2004). (“Law of Ukraine on the Protection of Childhood”).

²⁴⁰ [Law of Ukraine on Amendments to Some Legislative Acts of Ukraine to Enhance the Social Protection of Children and Support Families with Children](#) No. 936-VIII (26 January 2016). (“Law of Ukraine on Amendments to Some Legislative Acts of Ukraine to Enhance the Social Protection of Children and Support Families with Children”).

²⁴¹ Law of Ukraine on the Protection of Childhood, Art. 30.

Apart from these provisions, GRC found no provisions regulating the dissemination of such issues within the armed forces (*i.e.* in the Military Instruction). As noted, GRC was not able to assess any curriculum or otherwise analyse the nature of the trainings delivered to the Armed Forces of Ukraine.²⁴² Therefore, it has not been possible to evaluate whether the dissemination of IHL in relation to children is compliant with the demands of the Convention and its Protocol.

²⁴² See *supra*, p. 51.

IHL Violations

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Articles 49-54
- Geneva Convention II, Articles 50-53
- Geneva Convention III, Articles 129-132
- Geneva Convention IV, Articles 146-149
- Additional Protocol I, Articles 85-91
- International Convention against the Recruitment, Use, Financing and Training of Mercenaries, Articles 2-6

Repression of Serious Violations of IHL

Principal National Implementation Requirements

As identified above, IHL specifically obliges the Government of Ukraine to suppress serious violations of IHL, including “grave breaches” of the Geneva Conventions and Protocol.²⁴³

The Geneva Conventions and Protocol identify the following main obligations for the Government of Ukraine:

- To enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering of the commission of, any of the serious violations of IHL;
- To search for persons alleged to have committed, or to have ordered to be committed, such serious violations. Further, Ukraine must bring such persons, regardless of their nationality, before its own courts or hand them over for trial to another state party;²⁴⁴ and
- To assist other state parties in connection with criminal proceedings relating to serious violations. Additional Protocol I imposes obligations of mutual assistance in connection with criminal proceedings brought in respect of breaches of the Conventions or the Additional Protocol²⁴⁵ and to cooperate with other state parties concerning extradition matters. Ukraine must give due consideration to the request of the State in whose territory the alleged offence has occurred.²⁴⁶

²⁴³ See *supra*, pp. 32-34.

²⁴⁴ Geneva Convention I, Art. 49; Geneva Convention II, Art. 50; Geneva Convention III, Art. 129; Geneva Convention IV, Art. 146; Additional Protocol I, Art. 86.

²⁴⁵ Additional Protocol I, Art. 88(1).

²⁴⁶ Additional Protocol I, Art. 88(2).

The Geneva Conventions provide a comprehensive list of “grave breaches” of IHL:

- Wilful killing;²⁴⁷
- Torture or inhumane treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health;²⁴⁸
- Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;²⁴⁹
- Compelling a POW to serve in the forces of the hostile power, or wilfully depriving a POW of the rights of a fair and regular trial;²⁵⁰
- Unlawful deportation or transfer;²⁵¹
- Unlawful confinement of a protected person;²⁵² and
- Taking of hostages.²⁵³

Additional Protocol I provides for other grave breaches requiring the creation of effective penal sanctions:

- Seriously endangering, by any wilful and unjustified act or omission, the physical health, mental health or the integrity of persons who are in the power of the adverse Party (such as those who are interned, detained or otherwise deprived of liberty) as a result of an armed conflict.²⁵⁴ In particular, this includes a prohibition on physical mutilations, medical or scientific experiments, or the removal of tissue or organs for transplantation not indicated by the state of health of the person concerned or not consistent with generally accepted medical standards.²⁵⁵ These standards include a requirement that every individual be treated under similar medical circumstances, including in relation to persons who are nationals of the Party conducting the procedure and in no way deprived of liberty.²⁵⁶
- The following crimes, when committed wilfully and if they cause death or serious injury to body and health, should also be considered grave breaches of IHL:
 - Making the civilian population or individual civilians the object of attack;²⁵⁷

²⁴⁷ Geneva Convention I, Art. 50; Geneva Convention II, Art. 51; Geneva Convention III, Art. 130; Geneva Convention IV, Art. 147.

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ Geneva Convention III, Art. 130; Geneva Convention IV, Art. 147.

²⁵¹ Geneva Convention IV, Art. 147.

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ Additional Protocol I, Art. 11(1) and (4).

²⁵⁵ Additional Protocol I, Art. 11(2)-(3).

²⁵⁶ Additional Protocol I, Art. 11(1).

²⁵⁷ Additional Protocol I, Art. 85(3).

- Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;²⁵⁸
 - Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage civilian objects;²⁵⁹
 - Making non-defended localities and demilitarised zones the object of attack;²⁶⁰
 - Making a person the object of an attack in the knowledge that she or he is *hors de combat*; ²⁶¹ and
 - The perfidious use of the distinctive emblem of the Red Cross and Red Crescent or other protective signs. ²⁶²
- Further, grave breaches include the following, when committed wilfully and in violation of the Conventions and the Protocol:
 - The transfer by the occupying power of parts of its own civilian population into the territory it occupies;²⁶³
 - The deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; ²⁶⁴
 - Unjustifiable delay in the repatriation of POWs or civilians; ²⁶⁵
 - Practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;²⁶⁶
 - Attacking clearly-recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given, causing as a result extensive destruction thereof when such objects are not located in the immediate proximity of military objectives or used by the adverse party in support of its military effort; ²⁶⁷ and

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ Additional Protocol I, Art. 85(4).

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

- Depriving a person protected by the Conventions or by Protocol I of the rights of fair and regular trial.²⁶⁸

Primary Ukrainian Implementation Measures

As outlined above, primary implementation measures may be divided into three sections: (i) the enactment of penal legislation to address serious violations of IHL; (ii) the obligation to search for and prosecute persons, regardless of their nationality, alleged to have committed, or to have ordered to be committed, serious violations of IHL; and (iii) the enhancement of international cooperation regarding criminal proceedings for serious violations of IHL. These will be discussed below in relation to Ukrainian IHL measures.

Enactment of Penal Legislation on Serious Violations of IHL

In general, Ukrainian legal measures provide for the criminal repression of serious violations of IHL. However, as outlined above,²⁶⁹ states must do more than merely provide a basic legislative framework to promote such IHL enforcement – it must provide an “effective” regime for penal sanctions. It is unlikely that the Ukrainian approach meets this standard for four principal reasons: (i) Article 438 on IHL violations suffers, in and of itself, from a lack of specificity and may in practice lead to violations of the principles of legality and culpability; (ii) even when Article 438 is read in parallel with the Military Instruction, many serious violations of IHL are not identified or adequately particularised; (iii) Article 438’s associated penal sanctions are inadequate; and (iv) the other relevant provisions of the Criminal Code of Ukraine do not rectify the aforementioned accountability gaps nor provide an adequate sanctioning regime.

Article 438 Lacks Specificity

As noted in the Introduction, the Criminal Code of Ukraine adopted a generalised approach to the criminalisation of serious violations of IHL in Article 438.²⁷⁰ It provides:

Article 438. Violation of the Laws and Customs of War

1. Cruel treatment of prisoners of war or civilians, deportation of civilian population for forced labour, pillage of national treasures on occupied territories, use of means of warfare prohibited by international law, or any other violations of laws and customs of warfare recognised by international instruments consented to as binding by the Verkhovna Rada of Ukraine, and also giving an order to commit any such

²⁶⁸ *Ibid.*

²⁶⁹ *See supra*, pp. 35-39.

²⁷⁰ *Ibid.*

actions, - shall be punishable by imprisonment for a term of eight to twelve years.

2. The same acts accompanied with an intended murder, - shall be punishable by imprisonment for a term of ten to fifteen years, or life imprisonment.

As may be seen, this article makes a distinction between means and methods of war. While Article 438 generally criminalises the use of means of warfare through reference to any prohibition contained in international law (thereby encompassing both international treaties *and* customary international law), it takes a narrower approach to the other violations of the 'laws and customs of war', in other words, violations of methods of warfare. In the case of violations of methods of warfare, only those contained in international treaties ratified by Ukraine are included, and not those that are recognised by customary international law.

A literal reading of Article 438 suggests that it is not intended to incorporate all crimes or violations of the methods of warfare that are part of customary IHL, instead limiting itself to those enumerated in the treaties ratified by Ukraine, such as the Geneva Conventions and Additional Protocols, as well as other violations enforced by other treaties ratified by Ukraine, including The Hague Convention, its Protocol, and the Weapons Treaties.²⁷¹ As discussed,²⁷² customary international law has extended the scope of IHL and recognised common rules applicable to both international and non-international armed conflicts. An approach that does not provide for enforcement of *all* customary IHL violations may well leave an accountability gap, especially in the context of non-international conflict where the treaty rules are more rudimentary. Article 438 (or its equivalent in the event of amendment) should provide for inclusion of customary IHL violations in relation to all the violations of the laws and customs of war to ensure comprehensive criminal prohibition and penal sanction (i.e. means and methods of warfare).

Other than this initial concern with the apparent lack of criminalisation of all serious violations of IHL under customary international humanitarian law, Article 438 provides a range of bases for prosecution that, under certain specific circumstances, may allow effective criminal enforcement. However, as previously noted,²⁷³ Article 438 appears to be overly broad and insufficiently defined to respect the principle of legality and culpability in all instances and otherwise to ensure effective prosecutions.

²⁷¹ These will be further discussed *infra*, p. 142 (Hague Convention); p. 185 (Weapons Treaties; and p. 196 (Genocide Convention).

²⁷² See *supra*, p. 19.

²⁷³ See *supra*, pp. 35-39.

While it may be possible in many instances to use Article 438 alongside the associated international instruments (e.g. Geneva Conventions) to provide individuals with notice of the acts and omissions that make them liable for serious violations of IHL, this is a long way from certain or ideal.

Interpretation of Article 438 with the Military Instruction

When the Ukrainian Criminal Code is read alongside the more particularised descriptions contained within the Military Instruction, there is greater specificity as to the conduct that soldiers are prohibited under this article. The Military Instruction offers further clarification in the sense that it helps to identify which acts fall within Article 438.

Paragraphs 1.8.4-1.8.7 of the Military Instruction provide a list of serious violations of IHL that if committed by a soldier should attract criminal sanctions,²⁷⁴ i.e. the conduct that should be prosecuted pursuant to Article 438 or otherwise. It further identifies that non-serious violations of IHL do not entail criminal liability and shall be disciplined.²⁷⁵

Having a generic catch-all provision such as Article 438 with a clarifying Military Instruction is similar to the practice in several states. For example, the Swiss Military Penal Code, Article 10, broadly criminalises violations of “the requirements of international treaties on the conduct of hostilities and on the protection of persons and property” as well as “other recognised laws and customs of war”.²⁷⁶ In defining the conduct that falls within this provision, the Swiss Federal Council also refers to its Manual on the Laws and Customs of War (equivalent to the Military Instruction).²⁷⁷ Other countries have also taken this approach, including Moldova, the Czech Republic, Turkey, and Uzbekistan. The ICRC has recognised that this combined approach (with respect to members of the armed forces) may assist with helping to ensure effective prosecutions, including enhancing respect for the principles of legality and culpability.²⁷⁸

²⁷⁴ Instruction, paras 1.8.4-1.8.7.

²⁷⁵ Instruction, para. 1.8.8.

²⁷⁶ Swiss Military Penal Code, Art. 10.

²⁷⁷ ICRC, [‘National Measures to Repress Violations of International Humanitarian Law \(Civil Law Systems\): Report on the Meeting of Expert’](#) (1997) 203.

²⁷⁸ Domestic crimes may also play this role to a limited extent. Although not being an adequate replacement for crimes that adequately encompass and sanction IHL violations, they may at least provide some degree, albeit often limited, of insight into the elements intended by the drafters of Article 438. The Military Instruction gives an insight as to the types of crimes and their elements which should be prosecuted under Article 438 to correct the lack of specificity (i.e. murder, torture, rape).

However, in Ukraine, in order for the Military Instruction to play this ‘remedial’ or interpretative, supplementary role, it is required to be specific and offer a comprehensive and accurate list of all the serious violations of IHL subject to criminalisation.

In this regard, the following concerns arise:

- IHL violations, when identified correctly as serious in the Military Instruction and in need of penal sanction are mainly limited to grave breaches and do not include other serious violations of IHL. While conduct amounting to other serious violations is still prohibited in other parts the Military Instruction, they are erroneously considered as non-serious violations of IHL and only attract disciplinary sanctions. As discussed above, customary international humanitarian law now requires that certain conduct other than that falling within the grave breaches regime, should attract penal sanction.²⁷⁹
- The sections detailing conduct attracting disciplinary sanctions erroneously incorporate specific acts that amount to serious violations. The Military Instruction also fails to include some of the prohibited acts and conduct amounting to serious violations of IHL that are also omitted from the section detailing those that should attract disciplinary sanction.²⁸⁰

Due to these concerns, the Military Instruction has only limited value as an interpretative guide for Article 438, namely in instances where conduct is properly characterised as a grave breach/serious violation in need of criminalisation.

In conclusion, for the reasons stated, the Criminal Code of Ukraine, even when read purposively alongside the Military Instruction, fails to provide a coherent or comprehensive basis for effective penal sanction of all relevant IHL violations. It requires a number of modifications to include all serious violations of IHL and to provide an effective penal regime with appropriate sanctions for the range of prohibited conduct.

The Punishment Under Article 438 is Inadequate

Concerning punishment under the Criminal Code of Ukraine, Article 438 delineates a maximum sentence of 12 years for serious violations of IHL. Only in instances where the violation involves intentional murder may a sentence in excess of this limit be passed, up to life imprisonment. This penalty does not appear adequate to address the gravity of many

²⁷⁹ See *supra*, p. 32.

²⁸⁰ A detailed analysis of the prohibited acts missing can be found in the following sections.

IHL violations that, whilst not involving murder (e.g. many forms of sexual violence, systemic use of child soldiers, etc.) are still amongst the gravest.

The practice at the international courts and tribunals is to provide discretion to the judges of the respective courts to impose sentences up to a life sentence, if required. This ensures flexibility and proportionality in being able to mark the full range of gravity of war crimes, whether or not they involve loss of life.

For example, any person convicted of a crime referred to in Article 5 of the Rome Statute – the ICC’s governing law – may be sentenced to imprisonment to a maximum of 30 years,²⁸¹ or exceptionally a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.²⁸²

Domestic sentencing for these crimes largely differs from states to states. In Canada, if a person is convicted of a war crime that involves intentional killing, that individual must be sentenced to life imprisonment. For all other forms of war crimes, life imprisonment is included within the range of sentences.²⁸³ In England and Wales, the maximum sentence available to judges for war crimes is one of thirty years’ imprisonment, unless it involves murder under English criminal law, in which case it attracts a mandatory life sentence.²⁸⁴ In the United States of America, the maximum sentence available for war crimes is life imprisonment.²⁸⁵ The death penalty may also be imposed if the war crime causes the death of the victim(s).²⁸⁶ In France, war crimes may be sanctioned with a maximum sentence of life imprisonment.²⁸⁷

In contrast, in Spain, war crimes against individuals and objects are regulated by Articles 608-614 of the Criminal Code that provides for a maximum penalty of 15 years’ imprisonment.²⁸⁸ In Serbia, the sentences vary according to the types of crimes. For example, the sentence for torture and inhumane treatment of POWs ranges from a

²⁸¹ Rome Statute, Art. 77(1)(a).

²⁸² Rome Statute, Art. 77(1)(b).

²⁸³ Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24, s. 4(2).

²⁸⁴ International Criminal Court Act 2001 (UK), s. 53.

²⁸⁵ US Criminal Code (18 USC §2441).

²⁸⁶ US Criminal Code (18 USC §2441a). Silvia D’Ascoli, *Sentencing in International Criminal Law: The UN ad hoc Tribunal and Future Perspectives for the ICC* (Bloomsbury 2011) 2085.

²⁸⁷ French Criminal Code, Book IV Bis, Section 1.

²⁸⁸ Silvia D’Ascoli, *Sentencing in International Criminal Law: The UN ad hoc Tribunal and Future Perspectives for the ICC* (Bloomsbury 2011) 2084. See also Alicia Gil, ‘Bases para la persecución penal de crímenes internacionales en España’ in Eser, Sieber and Kreicker (eds), *National Prosecution of International Crimes* (Duncker and Humblot Humboldt 2005) Volume 5, 211-218.

minimum penalty of five years' imprisonment to life imprisonment in case of murder.²⁸⁹ Similarly, the German Code of Crimes against International Law provides that if a person caused the death of a person protected under IHL that individual must be sentenced to life imprisonment. For all other forms of war crimes, the maximum sentence is ten years' imprisonment.²⁹⁰

In sum, Ukraine's Article 438 and the maximum sanction for war crimes not involving murder is at variance with international standards. An appropriate maximum for war crimes would be in the region of 30 years to life imprisonment. Undoubtedly, twelve years imprisonment cannot represent an adequate sentence for each and every category of war crime.

Other IHL Measures in the Ukrainian Criminal Code are Inadequate

Other legal measures in the Ukrainian Criminal Code criminalise specific forms of IHL violations. According to the *lex specialis* principle, some of these more specific articles will be used instead of Article 438 to sanction certain conduct amounting to war crimes.

These specific crimes provide greater specificity and certainty to the prosecution of certain serious violations of IHL than Article 438 in its current form. These crimes include:

- Chapter XIX (19) entitled "Crimes Against the Established Order of the Military Service - (military crimes)" lists crimes prosecuted only in relation to members of the Armed Forces of Ukraine, the National Guard of Ukraine, the State Border Guard Service of Ukraine, the Security Service of Ukraine and other entities related to defence. These crimes include:
 - Article 432: "Marauding", defined as "[s]tealing things of the killed or wounded persons on the battlefield" (punishable by imprisonment for a term of three to ten years) – equivalent to the serious violation "despoliation of the wounded, sick, shipwrecked or dead";²⁹¹
 - Article 433: "Violence against Population in the Zone of Hostilities" (punishable by imprisonment for a term of three to eight years) – equivalent to several serious violations of IHL such as torture or inhuman treatment, including biological experiments; wilfully causing great suffering or serious injury to body or health; pillage or other taking of property contrary to

²⁸⁹ Criminal Code of Serbia, Art. 374

²⁹⁰ Code of Crimes against International Law of Germany, Sections 8-12.

²⁹¹ Despoliation of the wounded, sick, shipwrecked or dead is a serious violation of IHL under customary international humanitarian law. See ICRC, '[Definition of War Crimes – Rule 156](#)' (ICRC, 2009).

international humanitarian law; or destroying property not required by military necessity²⁹²; and

- Article 434: “Ill-Treatment of Prisoners of War” (punishable by imprisonment for a term up to three years) – equivalent to the grave breach of the Geneva Conventions of torture or inhuman treatment, including biological experiments.²⁹³
- Chapter XX (20) entitled “Crimes against Peace, Security of Humanity and International Order”. Relevant articles of the Criminal Code of Ukraine relating to repressing IHL violations other than grave breaches include:
 - Article 439 “Use of Weapons of Mass Destruction” (punishable by imprisonment for a term of eight to twelve years / by imprisonment for a term of eight to fifteen years or life imprisonment in case of death or any other grave consequences) – equivalent to the serious violation “using prohibited weapons”.²⁹⁴

Whilst these provisions contain a welcome degree of enhanced particularisation, some of these articles may suffer from the same sentencing problem as Article 438 insofar as the sanctioning regime may not be adequate to meet the gravity of the range of IHL violations. In many instances, this cannot be decided in the abstract. It will depend on the circumstances and how and when the provisions are used, namely how these offences are prosecuted and for which conduct. However, given the low maximum sanctions available, the maximum sentence permitted for each of the offences appear too low to meet IHL standards for appropriate punishment and effective repression of the range of prohibited conduct.

Obligation to Prosecute Serious Violations of International Humanitarian Law

International Requirements

In addition to establishing the obligation to repress serious violations of IHL, it is also necessary for the Government of Ukraine to search and prosecute individuals who have committed (or have ordered to be committed) such violations.

²⁹² Serious violations of IHL under the Geneva Conventions, customary international humanitarian law, and Article 8 of the Rome Statute.

²⁹³ Geneva Convention I, Art. 50; Geneva Convention II, Art. 51; Geneva Convention III, Art. 130; Geneva Convention IV, Art. 147.

²⁹⁴ Serious violation of IHL under customary international humanitarian law. See ICRC, ‘[Definition of War Crimes – Rule 156](#)’ (ICRC, 2009). Article 8 of the Rome Statute also expressly lists a range of prohibited weapons.

Bases for the exercise of jurisdiction should be sufficiently broad and effective to ensure that Ukraine brings such persons, regardless of their nationality, before its own courts or hands them over for trial to another state party for prosecution.²⁹⁵

The Government of Ukraine shall therefore ensure that it provides for the following bases of jurisdiction for serious violations of IHL:

- Territoriality principle: when the crime occurs on a state's territory;
- Nationality principle: when the crime is committed abroad by one of its nationals;
- Passive personality principle: when the crime occurs abroad against one of its nationals; or
- Protective principle: when the crime was committed abroad against the security or the interests of the State.

Grave breaches also require the exercise of universal jurisdiction. In general, the principle of universal jurisdiction is classically defined as “a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim”.²⁹⁶ It applies regardless of the perpetrator's residence or presence in the territory.

Universal jurisdiction can be implemented in a variety of forms and the precise mode often varies across states. With regard to the crimes falling under the principle of universal jurisdiction, some states have defined universal jurisdiction as applying to crimes for which international treaties impose the obligation to prosecute on such bases (e.g. grave breaches of the Geneva Conventions). Some states have also extended the scope of the principle of universal jurisdiction to other international crimes (e.g. crimes under the Rome Statute or the Genocide Convention).²⁹⁷

Finally, states have introduced obstacles to exercising universal jurisdiction. For example, it may be restricted to cases where the perpetrator (who is a non-national and committed a crime abroad) is a resident or is present in the state's territory at the time of the institution

²⁹⁵ Geneva Convention I, Art. 49; Geneva Convention II, Art. 50; Geneva Convention III, Art. 129; Geneva Convention IV, Art. 146; Additional Protocol I, Art. 86. For the Section on extradition, see pp. 73-74.

²⁹⁶ X. Philippe, [‘The Principles of Universal Jurisdiction and Complementarity: How do the Two Principles Intermesh?’](#) (30 June 2006) Vol 88 Number 862, 377 *citing to* K. C. Randall, ‘Universal Jurisdiction under International Law’ (1988) Texas Law Review No. 66, 785–8; International Law Association Committee on International Human Rights Law and Practice, ‘Final Report on the Exercise of universal jurisdiction in respect of gross human rights offences’ (2000) 2.

²⁹⁷ Amnesty International, ‘Universal Jurisdiction: a Preliminary Survey of Legislation Around the World – 2012 Update’ (2012) 9-10.

of the proceedings.²⁹⁸ To illustrate, the UK ICC Act provides for a restrictive form of universal jurisdiction over war crimes.²⁹⁹ Section 68 extends jurisdiction of UK courts to a person who “commits acts outside of the UK at a time when he is not a UK national, a UK resident or a person subject to UK service jurisdiction and who subsequently becomes resident in the UK”. Consequently, in order for the UK to have jurisdiction over war crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim, the perpetrator must be a resident of the UK, at least, at the time of the institution of proceedings.

Similarly, in the Netherlands, the International Crimes Act also provides for a limited universal jurisdiction regime, although broader than that of the UK. Section 2 provides that:

1. Without prejudice to the relevant provisions of the Criminal Code and the Code of Military Law, Dutch criminal law shall apply to:
 - a. anyone who commits any of the crimes defined in this Act outside the Netherlands, if the suspect is present in the Netherlands;
 - b. anyone who commits any of the crimes defined in this Act outside the Netherlands, if the crime is committed against a Dutch national;
 - c. a Dutch national who commits any of the crimes defined in this Act outside the Netherlands.

In contrast, the German Code of Crimes against International Law sets out universal jurisdiction over genocide, crimes against humanity and war crimes that, unlike the UK or the Netherlands, requires no legitimising link.³⁰⁰ Section 1 provides that:

The Act shall apply to all criminal offences against international law designated under this Act, to serious criminal offences designated therein even when the offence was committed abroad and bears no relation to Germany.

The Ukrainian Criminal Code and Jurisdiction

General

Article 438 of the Criminal Code of Ukraine allows for the prosecution of individuals who have committed or ordered to commit any violation of the use of means of warfare prohibited by international law (including international treaties and customary international

²⁹⁸ The International Centre for Criminal Law Reform and Criminal Justice Policy, ‘[International Criminal Court: Manual for the Ratification and Implementation of the Rome Statute](#)’ (March 2008) 71.

²⁹⁹ International Criminal Court Act 2001 (UK), sections 51 and 52.

³⁰⁰ Amnesty International, ‘Germany: End Impunity through Universal Jurisdiction’ (*No Safe Haven Series* 3, 16 October 2008) 13.

law) and violations of methods of war, including serious violations of IHL, set out in the treaties ratified by Ukraine.

Further, the Criminal Code appears to implement the various bases of jurisdiction into Ukrainian law. However, as will be discussed below, there are various concerns. The following are implemented:

- **Territorial principle:** Any individual who committed any crime (including any violation of the laws and methods of war) within its territory;³⁰¹
- **Nationality principle:** Any crime (including any violation of the laws and methods of war) committed outside of Ukraine by citizens of Ukraine or stateless persons permanently residing in Ukraine;³⁰²
- **Combination of the Passive Personality and Protective Principles:** Special grave offences committed by foreigners outside of Ukraine against the rights and freedoms of Ukrainian citizens or the interests of Ukraine;³⁰³ and
- **Universal jurisdiction:** Foreign nationals or stateless persons not residing permanently in Ukraine, who have committed criminal offenses outside Ukraine, shall be criminally liable in Ukraine under this Code in such cases as provided for by the international treaties.³⁰⁴

Concerns

Concerning the passive personality and protective principles, the Criminal Code of Ukraine does not define with sufficient clarity “special grave offenses against rights and freedoms of Ukrainian citizens or the interest of Ukraine”, failing to particularise which specific crimes fall under this category.³⁰⁵ One clarification can be found in Article 12 of the Criminal Code which defines a special grave offence as “an offense punishable by more than ten years of imprisonment or a life sentence”. Accordingly, while specific crimes are not clearly delineated, the passive personality and protective jurisdictional grant appears to be invoked in regard to particularly serious crimes.

³⁰¹ Criminal Code of Ukraine, Art. 6.

³⁰² Criminal Code of Ukraine, Art. 7 (unless otherwise provided by international treaties ratified by Ukraine).

³⁰³ Criminal Code of Ukraine, Art. 8.

³⁰⁴ Criminal Code of Ukraine, Art. 8.

³⁰⁵ See R. Babanly, A. Radzivil, ‘Extraterritorial jurisdiction of courts in criminal law’ (2014) *Journal of Civil and Criminal Justice* 59-65, 62-3.

Ukrainian commentators have argued that the application of the passive personality or protective principles is to be decided on a case-by-case basis.³⁰⁶ Generally, certain commentators have argued that this concept of “special grave offenses against rights and freedoms of Ukrainian citizens or the interest of Ukraine” should apply to various sections of the Criminal Code, including:

- Chapter I “Crimes against national security”;
- Chapter II “Crimes against life and health”;
- Chapter IX “Crimes against public safety”; and
- Chapter XX “Crimes against Peace, Human Security and International Law” (which contains Article 438, which encompasses serious violations of IHL).³⁰⁷

Universal Jurisdiction

As previously noted, Article 8 extends the jurisdiction of Ukrainian courts to offenses committed by foreign nationals outside the territory of Ukraine. Article 8 provides:

The operation of the law on criminal liability in regard to offenses committed by foreign nationals or stateless persons outside Ukraine.

Foreign nationals or stateless persons not residing permanently in Ukraine, who have committed criminal offenses outside Ukraine, shall be criminally liable in Ukraine under this Code in such cases as provided for by the international treaties, or if they have committed any of the special grave offenses against rights and freedoms of Ukrainian citizens or Ukraine as prescribed by this Code.

Similar to the German model, this article incorporates an unrestricted form of universal jurisdiction: it applies to offences committed abroad by a foreigner. Unlike the UK or the Netherlands, the Criminal Code does not set any limitations (*i.e.* requirement that the perpetrator be a resident or be present in the state's territory at the time of the institution of the proceedings). However, its scope is limited to cases when universal jurisdiction is

³⁰⁶ M.I. Melnyk, M.I. Khavroniuk, *Scientific Practical Comment to the Criminal Code of Ukraine* (4th edition 2007) 39 (Науково-Практичний Коментар Кримінального Кодексу УКРАЇНИ, 4-те видання, перероблене та доповнене, За редакцією М. І. Мельника, М. І. Хавронюка 2007, с.39).

³⁰⁷ R. Babanly, A. Radzivil, ‘Extraterritorial jurisdiction of courts in criminal law’ (2014) *Journal of Civil and Criminal Justice* 59-65, 62-3. See also V.V. Stashys and V.Ya. Tatsii, *Criminal Code of Ukraine: Theoretical and practical commentary* (Academy of Legal Sciences of Ukraine Yaroslav Mudryi National Law Academy of Ukraine, 2003) 28 (Академія правових наук України Національна юридична академія України імені Ярослава Мудрого Кримінальний Кодекс України: Науково-практичний коментар За загальною редакцією В.В.Сташиса, В.Я. Тація 2003, р.28).

provided for by an international treaty ratified by Ukraine. The Geneva Conventions and Additional Protocol I provide for universal jurisdiction over grave breaches.³⁰⁸ Accordingly Article 438, which encompasses all the grave breaches of the Geneva Conventions and Additional Protocol I, may be used pursuant to universal jurisdiction principles.³⁰⁹ However, it does not apply to other war crimes.

To conclude, universal jurisdiction in Ukraine has both limited and expansive features. It may only be asserted in relation to a very limited number of war crimes (grave breaches), but without any of the classical threshold ‘triggering’ limitations (e.g. suspect is resident in Ukraine). Despite these latter expansive aspects, it needs to be reformulated to ensure its applicability to a broader range of crimes, in particularly at least to all serious violations of IHL.

International Cooperation Regarding Criminal Proceedings for Serious Violations of IHL

The Government of Ukraine must assist other state parties in connection with criminal proceedings relating to serious violations³¹⁰ and cooperate with other state parties concerning extradition matters.³¹¹ National legislation can, however, limit the obligation to extradite.

The Code of Criminal Procedure delineates the international cooperation regime for criminal proceedings in Ukraine, including provision for mutual assistance and extradition.³¹² The Criminal Code further prohibits the extradition of citizens of Ukraine and stateless persons permanently residing in Ukraine, who have committed a criminal offense outside Ukraine.³¹³ This general framework would apply to any criminal proceedings brought in respect of serious violations of IHL.

³⁰⁸ Geneva Convention I, Art. 49; Geneva Convention II, Art. 50; Geneva Convention III, Art. 129; Geneva Convention IV, Art. 146; Additional Protocol I, Art. 86.

³⁰⁹ Universal jurisdiction is unlikely to apply to other IHL violations contained in the Geneva Conventions and Additional Protocols or other IHL instruments. Ukrainian courts will only exercise their jurisdiction relying on the other bases of jurisdiction.

³¹⁰ Additional Protocol I, Art. 88(1).

³¹¹ Additional Protocol I, Art. 88(2).

³¹² Code of Criminal Procedure of Ukraine, Section IX “International Cooperation I Criminal Proceedings”.

³¹³ Criminal Code of Ukraine, Art.10.

Repression of Non-serious Violations of IHL

Principal National Implementation Requirements

As discussed in the introduction,³¹⁴ IHL draws a distinction between serious violations of IHL that should be criminalised and other non-serious violations which can be repressed using any necessary measures.³¹⁵ The Government of Ukraine must take all measures necessary (*i.e.* military regulations, administrative orders and other regulatory measures, as well as disciplinary or even criminal sanctions) to suppress non-serious violations of IHL.³¹⁶

Primary Ukrainian Implementation Measures

As noted above, IHL requires states to repress non-serious violations of IHL. The adoption of military regulations with disciplinary sanctions are adequate measures to repress such breaches. In Ukraine, the Disciplinary Statute of the Armed Forces, read in combination with the Military Instruction and the Code of Administrative Offence, form the basis for such regulations and disciplinary measures. However, as will be discussed, they fail to cover some of the prohibitions demanded by IHL.

The Military Instruction provides that soldiers who commit IHL violations not entailing criminal responsibility under the Criminal Code of Ukraine shall be held disciplinarily responsible pursuant to the Code of Administrative Offences of Ukraine and the Statute of the Armed Forces of Ukraine (*i.e.* Disciplinary Statute of the Armed Forces).³¹⁷

In February 2015, the Code of Ukraine on Administrative Offences was supplemented with Chapter 13-B “Military Administrative Offences” that entered into force on 3 May 2015.³¹⁸ This Chapter contains a list of offences for which a soldier can be held liable. Although the

³¹⁴ See *supra*, pp. 32-34.

³¹⁵ *Ibid.*

³¹⁶ Geneva Convention I, Art. 49; Geneva Convention II, Art. 50; Geneva Convention III, Art. 129; Geneva Convention IV, Art. 146; J.S. Pictet (ed.), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field: commentary*, Volume I (ICRC, 1952) 358; Oscar Uhler, Henri Coursier (eds.), *Geneva Convention relative to the Treatment of Prisoners of War: commentary*, Volume IV (ICRC, 1958) 586.

³¹⁷ Military Instruction, para. 1.8.8. See also Law of Ukraine on the Disciplinary Statute of the Armed Forces of Ukraine, Art. 1 (1); [Code of Administrative Offences of Ukraine](#): Law of Ukraine No.8073-X (07 December 1984). (“Code of Administrative Offences of Ukraine”), Chapter 13-B “Military Administrative Offences”.

³¹⁸ [Law of Ukraine on Amending Some Legislative Acts of Ukraine concerning Strengthening the Responsibility of Soldiers, Commanders Granting Additional Rights and Imposing Duties in Times of Crisis](#) No. 158-VIII (05 February 2012).

Code does not expressly refer to IHL, some of the offences may include or amount to IHL violations.

They include:

- Abuse of power or position by a military official;³¹⁹
- The failure of military authorities to act;³²⁰
- Violation of rules of combat duty;³²¹ and
- Violation of rules on handling weapons and substances and objects of increased danger for the environment.³²²

Sanctions amount to a maximum of 10-day detention in a military disciplinary cell.³²³

If the Code of Administrative Offences does not cover an IHL violation, a soldier may still be liable under the Disciplinary Statute of the Armed Forces.³²⁴

To create an effective disciplinary regime, the Military Instruction needs to ensure that all non-serious violations of IHL are addressed and can be repressed. However, as noted,³²⁵ and will be further discussed throughout the Report, even though the Military Instruction lists most of the prohibitions contained in the Geneva Conventions and Additional Protocols, some of the prohibitions are missing.³²⁶ Moreover, as discussed below, in many instances, the Military Instruction fails to accurately distinguish between violations that are serious and require penal sanction, and those that require only disciplinary responses.³²⁷ As a consequence, the Military Instruction, when read alongside Article 438 of the Criminal Code, fails to provide the clarity to accurately, comprehensively, and fully enforce serious violations of IHL among the armed forces.

Superior Responsibility

Principal National Implementation Requirements

IHL also imposes on the Government of Ukraine the obligation to require its military commanders to prevent, suppress, and take action against those under their control who

³¹⁹ Code of Administrative Offences of Ukraine, Art. 172-13.

³²⁰ Code of Administrative Offences of Ukraine, Art. 172-16.

³²¹ Code of Administrative Offences of Ukraine, Art. 172-17.

³²² Code of Administrative Offences of Ukraine, Art. 172-19.

³²³ Code of Administrative Offences of Ukraine, Art. 172-13, 172-17, 172-16, 172-19.

³²⁴ Disciplinary Statute, Art. 45; Code of Administrative Offences, Art. 15.

³²⁵ See *supra*, p. 35.

³²⁶ These gaps will be identified where appropriate in the following sections.

³²⁷ See *supra*, p. 64.

commit grave breaches. Failure to follow this requirement results in criminal or disciplinary liability for a commanding officer for the acts of his or her subordinates.³²⁸

Primary Ukrainian Implementation Measures

The concept of ‘superior responsibility’ is recognised by Articles 425 and 426 of the Criminal Code of Ukraine. Article 426 of the Criminal Code addresses the element of wilful failure. It provides:

1. Wilful failure to prevent a crime committed by a subordinate, or failure of a military inquiry authorities to institute a criminal case against a subordinate offender, and also wilful failure of a military official to act in accordance with his/her official duties, if it caused any significant damage, - shall be punishable by a fine of 50 to 200 tax-free minimum incomes, or service restrictions for a term up to two years, or imprisonment for a term up to three years.
2. The same acts that caused any grave consequences, - shall be punishable by imprisonment for a term of three to seven years.
3. Any such acts as provided by paragraph 1 or 2 of this Article, if committed in state of martial law or in a battle, - shall be punishable by imprisonment for a term of seven to ten years.

Article 425 provides for neglect of duty in military service that may be sufficiently wide enough to impose criminal punishment for negligently failing to prevent or otherwise suppress a subordinate for serious violations of IHL.

It provides:

Article 425. Neglect of duty in military service

1. Neglect of duty in military service that caused any significant damage, - shall be punishable by a fine up to 100 times a tax-free minimum income, or service restrictions for a term up to two years, or imprisonment for a term up to three years.
2. The same act that caused any grave consequences, - shall be punishable by imprisonment for a term of three to seven years.
3. Any such acts as provided for by paragraph 1 or 2 of this Article, if committed in state of martial law or in a battle, -

³²⁸ Additional Protocol I, Art. 86, 87. Article 86 of Additional Protocol I establishes that even if a grave breach was committed by a subordinate, a superior officer is not absolved from penal or disciplinary responsibility if he knew, or had information which should have enabled him to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if he did not take all feasible measures within his power to prevent or repress the breach.

shall be punishable by imprisonment for a term of five to eight years.

Regarding disciplinary sanctions, the Code of Administrative Offences of Ukraine also provides for the responsibility for failure to stop subordinates from committing crimes, but limits it to 'wilful failure'. Article 172-16 states the following:

Wilful failure to take measures to stop crimes committed by subordinates, or failure to report the commission of a crime by a subordinate to the pre-trial investigation body, and any other wilful failure of a military official to comply with its duties -
Is punishable by up to ten days detention in a military disciplinary cell.

The Code of Administrative Offences also requires commanders to report and punish the commission of crimes by their subordinates.³²⁹ The Military Instruction also notes that a superior must "put an end to violations of international humanitarian law by the personnel and *if necessary to bring to responsibility those who committed such violations*".³³⁰ It further states:

The fact that a violation of the law of armed conflicts was committed by a subordinate person shall not relieve his/her commanders of disciplinary or criminal responsibility provided that they have been aware of the subordinate's intentions and failed to take all possible precautionary measures to prevent violations.³³¹

The Field Manual of the Armed Forces of Ukraine generally addresses the obligation of commanders to ensure awareness of IHL of their subordinates and to take measures to prevent any violation.³³² It adds that a commander must take disciplinary measures or take criminal action against persons who committed such violations.³³³

Depending upon the manner in which these provisions are interpreted and deployed, this regime may amount to the enactment of legislation that addresses a form of superior responsibility. First, if given an extremely expansive interpretation, Articles 425 and 426 may satisfy the requirements under IHL to punish superiors who knew (Article 426: wilful) or should have known (Article 425: neglect) that their subordinates were going to commit or had committed a crime and if the superiors did not take all necessary and reasonable

³²⁹ Criminal Code of Ukraine, Art. 426, 425; Code of Administrative Offences of Ukraine, Arts. 172-16.

³³⁰ Military Instruction, para. 1.5.1 (emphasis added).

³³¹ Military Instruction, para. 1.8.8; Field Manual, para. 556.

³³² Field Manual, para. 556.

³³³ Field Manual, para. 556.

measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible.³³⁴

However, the provisions appear to have been designed with insufficient regard to the international mode of responsibility known as superior responsibility. Of particular concern, is whether ‘wilful failure’ or ‘neglect of duty’ equates with the test of ‘reasonable and practical measures’ and whether liability arises as a result of any superior not taking actions within their material possibility (e.g. filing a report to their immediate superior), rather than merely as a result of failing to institute a criminal case against a subordinate offender.³³⁵

On one reading of Article 426, only “military inquiry authorities” have an obligation to take actions to punish the commission of crimes. Depending on how Articles 425 and 426 are interpreted, namely what falls within “duty in military service” and “wilful failure of a military official to act in accordance with his/her official duties” will determine whether the articles may assist in closing this apparent accountability gap. The Military Instruction provides a more compliant interpretation of Article 425 and 426 by listing as duties of a commander: the obligation to “put an end to violations of international humanitarian law by the personnel and *if necessary to bring to responsibility those who committed such violations*”.³³⁶

Further, given that these provisions might be applicable to the most serious IHL violations, punishment under these articles is insufficient to reflect the gravity of conduct that may require to be prosecuted.³³⁷

Although much will depend upon how these provisions are interpreted in practice, the disciplinary regime under Article 172-16 of the Code of Administrative Offences of Ukraine, appears to limit superior responsibility to only those failures that are “wilful failures”, thereby appearing to exclude those that arise from the result of neglect (*i.e.* that they should have known their subordinate would commit a crime). This would appear to rule out liability for failures to act on the basis of the constructive knowledge required by IHL and is therefore out of step with international standards.

In summary, although the manner in which superior responsibility has been promulgated lacks clarity and specificity, it *may* at its most expansive be sufficient to allow prosecutions pursuant to this mode of responsibility, as well as allowing a range of disciplinary actions for non-serious violations of a superior’s obligation to take reasonable and practical

³³⁴ Additional Protocol I, Art. 86. See also ICRC, ‘[Definition of War Crimes – Rule 156](#)’ (ICRC, 2009).

³³⁵ *Prosecutor v. Halilović* (Appeals Judgement) ICTY-01-48-A (16 October 2007) para. 63.

³³⁶ Military Instruction, para. 1.5.1 (emphasis added).

³³⁷ For more details, see *supra*, pp. 74-76.

measures to prevent and punish crime. However, there is a need for greater clarity and specificity. The sanctions available for criminal enforcement will prove inadequate for effective repression of all serious violations of IHL pursuant to this mode of liability.

Obedience to Superior Orders and Defence

Principal National Implementation Requirements

Although not an obligation stemming from the Geneva Conventions or the Additional Protocols, customary international law requires subordinates to disobey a manifestly unlawful order. Failing to do so will lead to international criminal responsibility if the subordinate knew that the act ordered was unlawful or should have known because of the manifestly unlawful nature of the act ordered.³³⁸

Primary Ukrainian Implementation Measures

Article 41(4) of the Criminal Code adequately covers the obligation of subordinates to disobey a manifestly unlawful order. Paragraph 5 adds that the subordinate will only be liable if he knew or should have known that the order was unlawful.

The Law of Ukraine on the Armed Forces of Ukraine reiterates a soldier's criminal responsibility for obeying an obviously unlawful order.³³⁹

Guarantees of a Fair Trial

Principal National Implementation Requirements

Ukraine is required to guarantee a fair trial to any person prosecuted for serious violations of IHL under international instruments relating to IHL.³⁴⁰ In other words, the accused persons shall benefit from the fundamental judicial safeguards of a proper trial and defence which include, for example, the principle of individual criminal responsibility or the principle of *nullum crimen, nulla poena sine lege* (no crime without a law, no punishment without a law).

³³⁸ ICRC, '[Obedience to Superior Orders – Rule 154](#)' and '[Defence of Superior Orders – Rule 155](#)'.

³³⁹ Law of Ukraine on the Armed Forces of Ukraine, Art. 1.

³⁴⁰ Geneva Convention I, Art. 49; Geneva Convention II, Art. 50; Geneva Convention III, Art. 129; Geneva Convention IV, Art. 146; Additional Protocol I, Art. 86.

Primary Ukrainian Implementation Measures

The Ukrainian legislation implementing these judicial guarantees will be discussed below.³⁴¹

Repression of the Use, Financing, and Training of Mercenaries

Principal National Implementation Requirements

The Convention against the Recruitment, Use, Financing and Training of Mercenaries imposes on the Government of Ukraine the obligation to criminalise:

- Recruiting, using, financing or training mercenaries (by any persons or the State);³⁴²
- Participation of a mercenary directly in hostilities or in a concerted act of violence;³⁴³
- Illegal activities of persons, groups and organisations that encourage, instigate, organise or engage in the perpetration of such offences.³⁴⁴

The Government of Ukraine shall also criminalise the attempt to commit such offences and complicity in these crimes.³⁴⁵

Primary Ukrainian National Implementation Measures

Ukrainian legal measures comply with the above requirements.³⁴⁶ The Criminal Code of Ukraine provides for the offence of:

recruiting, financing, supplying and training of mercenaries for the purpose of using them in an armed conflict, hostilities or acts of violence aimed at violently changing or overthrowing

³⁴¹ See *infra*, p. 84.

³⁴² International Convention against the Recruitment, Use, Financing and Training of Mercenaries (adopted 4 December 1989, entered into force 20 October 2001) 2163 UNTS 75, Art. 2, 5.

³⁴³ International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 4 December 1989, Art. 3.

³⁴⁴ International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 4 December 1989, Art. 6.

³⁴⁵ International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 4 December 1989, Art. 4.

³⁴⁶ The Government of Ukraine, however, has provided [a communication to the Secretary General of the United Nations](#), as the Depositary of the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989, indicating “that from 20 February 2014 and for the period of temporary occupation by the Russian Federation of a part of the territory of Ukraine... the application and implementation by Ukraine of the obligations under the above [Convention], as applied to the aforementioned occupied and uncontrolled territory of Ukraine, is limited and not guaranteed” in certain regions of Ukraine.

the constitutional order, seizure of power, obstruction of organs of state power or violation of territorial integrity, and also the use of mercenaries in armed conflicts, hostilities or violent actions.³⁴⁷

It also sets forth the offence of “participation in armed conflicts of other states for the purpose of pecuniary compensation”.³⁴⁸

Finally, the Criminal Code of Ukraine contains all the relevant modes of liability (principal and accomplice liability), as well as attempts to commit such offences.³⁴⁹

Repression of Violations of The Hague Convention and Protocol

This Point will be discussed below in the section entitled “Cultural Property”.³⁵⁰

Repression of the Use of Certain Weapons

This Point will be discussed below in the section entitled “Weapons Treaties”.³⁵¹

Protecting the Red Cross and Red Crescent Name and Emblem

This Point will be discussed below in the section entitled “Use / Misuse of Emblems and Symbols”.³⁵²

³⁴⁷ Criminal Code of Ukraine, Art. 447 (1).

³⁴⁸ Criminal Code of Ukraine, Art. 447 (2).

³⁴⁹ Criminal Code of Ukraine, Chapters IV and VI.

³⁵⁰ See *infra*, p. 142.

³⁵¹ See *infra*, p. 185.

³⁵² See *infra*, p. 162.

Fundamental and Judicial Guarantees: General

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Article 3
- Geneva Convention II, Article 3
- Geneva Convention III, Article 3
- Geneva Convention IV, Article 3
- Additional Protocol I, Articles 11, 75-76
- Additional Protocol II, Articles 4-7

Fundamental and Judicial Guarantees of Protected Persons during an International Armed Conflict

Principal National Implementation Requirements

Additional Protocol I reaffirms protections provided for in the Geneva Conventions (which will be discussed in the following sections on the fundamental guarantees of civilians, wounded and sick, POWs and children³⁵³) and expands them to any person who is under the control of a party to the conflict and who do not benefit from more favourable treatment under the Geneva Conventions in the context of an international armed conflict.³⁵⁴ It provides that such persons should be treated humanely without any adverse distinction. Each party shall respect the person, honour, convictions and religious practices of all such persons.³⁵⁵

Several acts shall be prohibited at any time and in any place, whether committed by civilian or by military agents:

- Violence to the life, health, or physical or mental well-being of persons such as:
 - Murder;
 - Torture;
 - Corporal punishment;
 - Mutilation.
- Outrages upon personal dignity (in particular humiliating and degrading treatment);

³⁵³ See *infra*, pp. 95-121.

³⁵⁴ The protection of Additional Protocol I applies to those who and “above all to those who cannot lay claim to application of the Conventions or to their application in full, taking into account the derogations provided for in Article 5 of the Fourth Convention”. ICRC, ‘[Commentary of Article 75 of Additional Protocol I](#)’ (ICRC, 1958).

³⁵⁵ Additional Protocol I, Art. 75(1).

- Taking of hostages;
- Collective punishment;³⁵⁶ and
- Enforced prostitution and any form of indecent assault.³⁵⁷

Some of these acts are considered as serious violations of IHL:

- Murder, torture, mutilation, and taking of hostages (grave breaches of the Geneva Conventions and Additional Protocol);³⁵⁸ and
- Outrages upon personal dignity, collective punishment, and committing sexual violence, in particular, enforced prostitution (war crimes under customary international humanitarian law).³⁵⁹

They should therefore be criminalised.³⁶⁰ Corporal punishment is not considered as a serious violation of IHL. As a non-serious violation of IHL, the Government of Ukraine has a broader margin of appreciation in choosing how to repress such conduct.

Primary Ukrainian Implementation Measures

The Constitution of Ukraine enshrines the fundamental principles of non-discrimination and humane treatment,³⁶¹ which provides for the respect of any individuals in any situation for their person, their honour, their religious convictions and practices.³⁶² The Military Instruction expands this principle to include a person's manners and customs.³⁶³

With regards to the criminalisation of serious violations of IHL, as discussed above,³⁶⁴ Article 438 (whilst lacking specificity) is broad enough to include the full range of these serious violations, including murder, torture, mutilation, taking of hostages, outrages upon personal dignity, collective punishment, and enforced prostitution and any form of indecent assault.

³⁵⁶ Additional Protocol I, Art. 75(2).

³⁵⁷ Additional Protocol I, Art. 75(2).

³⁵⁸ See *supra*, p. 60.

³⁵⁹ ICRC, '[Definition of War Crimes – Rule 156](#)' (ICRC, 2009).

³⁶⁰ For more details see *supra*, pp. 32-34 and 60-63. Wilful killing, torture, taking of hostages, outrages upon personal dignity, and committing sexual violence, in particular, enforced prostitution are also war crimes under the Rome Statute – Rome Statute Art. 8.

³⁶¹ Constitution of Ukraine, Arts. 21, 24, 28. See also Criminal Code of Ukraine, Art. 161.

³⁶² Constitution of Ukraine, Arts. 3, 11, 27, 28, 29, 32(1), 35, 51(3). For criminal proceedings, see Code of Criminal Procedure, Arts. 7(1)(1), 7(1)(3), 7(1)(4), 7(1)(8), 8, 10, 11, 15.

³⁶³ See e.g. Military Instruction, para. 1.4.11.

³⁶⁴ See *supra*, pp. 35-39 and 60-67.

In relation to military actors, the Military Instruction provides Article 438 with enhanced particularisation by expressly listing some of these acts as serious violations of IHL.³⁶⁵

- Wilful killing, torture and inhumane treatment;
- Wilfully causing great suffering or serious injury to body or health;
- Indiscriminatory attack when known that it would cause loss of life to civilians and damage to civilian objects;
- Attacks against dangerous installations or buildings if known that it would cause excessive loss of life to civilians or significant damage to civilian objects;
- Attacks of localities which are undefended or demilitarised zones;
- Unlawful attacks against cultural objects that are clearly distinguishable;
- Medical, biological, or scientific experiments on people;
- Inhuman treatment accompanied by outrages upon personal dignity, including apartheid, genocide and other practices based on racial discrimination;
- Taking hostages;
- Committing acts of terrorism;
- Unlawful deprivation of liberty (arrest);
- Declaring that no quarter will be given;
- Deportation or unlawful transfer of the population of the occupied territory (within or outside this territory);
- Transfer by the occupying power of parts of its own civilian population into the territory it occupies;
- Depriving of the right to a fair and regular trial;
- Unjustified delay in repatriation of prisoners of war or civilians;
- Compelling to serve in armed forces of the hostile power;
- Limiting access of population to food and water;
- Employment of prohibited weapons;
- Use of human shields; and
- Recruitment of children under the age of fifteen into the armed forces or using them to participate in hostilities.³⁶⁶

Nevertheless, the Military Instruction undermines Article 438's clarity and effectiveness in the following ways:

³⁶⁵ See *supra*, pp. 68-71.

³⁶⁶ Military Instruction, para. 1.8.5.

- Collective punishment is not expressly prohibited during international armed conflicts either as criminal or disciplinary offences;³⁶⁷ and
- Although recognising the special protection afforded to female civilians under IHL,³⁶⁸ enforced prostitution and any form of indecent assault are not classified as serious violations of IHL thereby placing such violations under the disciplinary regime.

To conclude, although Article 438 impliedly criminalises all the relevant conduct, its lack of specificity remains problematic. Moreover, although, as outlined, the Military Instruction provides a degree of specificity in relation to a range of prohibited acts, it erroneously labels other serious violations of IHL as non-serious and subject to the disciplinary (and not criminal) regime (enforced prostitution and any form of indecent assault) and even fails to expressly address collective punishment as a serious violation of IHL. As a result, the Military Instruction misleadingly appears to exclude this conduct from falling within the reach of Article 438 and its intended criminal sanction regime.

Further, regarding non-serious violations of IHL, the Military Instruction does not refer to corporal punishment and thus fails to provide for disciplinary sanctions for these violations.

Fundamental Guarantees for Women during an International Armed Conflict

Principal National Implementation Requirements

Additional Protocol I grants women special protection when their liberty has been restricted for reasons related to the armed conflict.³⁶⁹ For example, they shall be held in quarters separated from men (or if the female is part of a family unit, they shall be held in quarters with their family) and shall be under the immediate supervision of women.³⁷⁰ Pregnant women and mothers with dependent infants who are arrested, detained or interned for reasons related to armed conflict shall have their cases considered with the utmost priority.³⁷¹

Primary Ukrainian Implementation Measures

The Criminal Executive Code of Ukraine and the Code of Criminal Procedure of Ukraine provide specific protections for women and families during peacetime. However, these

³⁶⁷ However, all three are regulated under only non-international armed conflict. See Military Instruction, para. 1.4.8.

³⁶⁸ See Military Instruction, para. 2.15.2.

³⁶⁹ Additional Protocol I, Arts. 75(5), 76.

³⁷⁰ Additional Protocol I, Art. 75(5).

³⁷¹ Additional Protocol I, Art. 75(2).

provisions were not designed to apply during an armed conflict. Nonetheless, they remain relevant inasmuch as they may be called upon to implement IHL and provide useful guidance as to the correct approach.

In particular, the Criminal Executive Code of Ukraine provides for the separation of women from men during detention.³⁷² Further, the Code of Criminal Procedure provides that the deprivation of liberty of pregnant women or with a child under three years old may be deferred.³⁷³ It also provides that, during the execution of sentences, a criminal court should not only consider a female's case with the utmost priority (as under the international standard), but the judge ought to consider releasing pregnant women and women with children under three years old.³⁷⁴ In addition, the Criminal Code provides for the discharge on probation of pregnant women and women with children under seven years old in view of pregnancy, childbirth and until the child attains seven years of age, under certain circumstances.³⁷⁵

As per the Criminal Executive Code, persons that are sentenced to limitation of liberty may reside with their families in the territory of a correctional facility.³⁷⁶ If such persons do not violate the rules of serving a sentence during the first six months, they may reside with their families outside of the territory of a correctional facility.³⁷⁷ Women sentenced to deprivation of liberty may stay with their children under the age of three in the territory of a prison.³⁷⁸ Women who work diligently in their workplaces and obey the rules of criminal punishment may reside nearby a prison with their children under the age of three.³⁷⁹ GRC was unable to find any legislative provision requiring that women should be under the immediate supervision of women in this law or any other Ukrainian legal measure.

The Military Instruction similarly provides for the separation of men and women during captivity.³⁸⁰ However, the Military Instruction fails to address most of the international requirements:

- That families should be held in family units;

³⁷² [Criminal Executive Code of Ukraine](#): Law of Ukraine № 1129-IV (11 July 2003). Arts. 51(1), 92(1).

³⁷³ Code of Criminal Procedure of Ukraine, Art. 536.

³⁷⁴ *Ibid.*

³⁷⁵ Criminal Code of Ukraine, Art. 79. *See also*, Art. 83 (Discharge from punishment for pregnant women and women with children under three years of age).

³⁷⁶ Criminal Executive Code of Ukraine, Art. 59(8).

³⁷⁷ *Ibid.*, Art. 59(7).

³⁷⁸ *Ibid.*, Art. 141(1).

³⁷⁹ *Ibid.*, Art. 142(1).

³⁸⁰ Military Instruction, para. 2.14.15.

- That women shall be under the immediate supervision of women; and
- That pregnant women and mothers with dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority.

Judicial Guarantees of Protected Persons during an International Armed Conflict

Principal National Implementation Requirements

Article 75 of Additional Protocol I provides that any person arrested, detained or interned shall benefit from judicial guarantees. Such person shall be informed promptly, in a language he or she understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such person shall be released with the minimum delay possible and, in any event, as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.³⁸¹ In addition, such protected person shall benefit from further guarantees, as provided in the Geneva Conventions and Additional Protocol I:

- The procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against her or him and shall afford the accused before and during his trial all necessary rights and means of defence;
- No one shall be convicted of an offence except on the basis of individual penal responsibility;
- No one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed. If, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
- Anyone charged with an offence is presumed innocent until proved guilty according to law;
- Anyone charged with an offence shall have the right to be tried in his presence;
- No one shall be compelled to testify against himself or to confess guilt;

³⁸¹ Additional Protocol I, Art. 75(3).

- Anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- No one shall be prosecuted or punished by the same party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;
- Anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and
- A convicted person shall be advised of his judicial and other remedies and of the time limits within which they may be exercised.³⁸²

Depriving a person protected by the Conventions or by Additional Protocol I of the rights of a fair and regular trial is considered as a grave breach of Additional Protocol I.³⁸³ Any violation should therefore be criminalised.

Primary Ukrainian Implementation Measures

The protections that ensure a fair trial and other judicial guarantees are adequately addressed in the Constitution, Criminal Code and Code of Criminal Procedure of Ukraine, which set the general standards of a fair trial applicable to any court proceedings, including those taking place in relation to an alleged violation of Article 438 or any other IHL-related provisions:

- The right to be informed promptly, in a language he understands, of the reasons why these measures have been taken;³⁸⁴
- The right to be released as soon as the circumstances justifying the arrest, detention or internment have ceased to exist;³⁸⁵
- The right to be informed without delay of the charges against him and to benefit from the rights and means of defence;³⁸⁶
- The principle of individual penal responsibility;³⁸⁷
- The principle of non-retroactivity of the penal law;³⁸⁸

³⁸² Geneva Convention IV, Art. 33; Additional Protocol I, Art. 75(4).

³⁸³ Additional Protocol I, Art. 85(4)(e). It is also a war crime pursuant to Article 8 of the Rome Statute.

³⁸⁴ Constitution of Ukraine, Art. 29; Criminal Code of Ukraine, Art. 29.

³⁸⁵ Criminal Code of Ukraine, Art. 202.

³⁸⁶ Criminal Code of Ukraine, Art. 42(3).

³⁸⁷ Constitution of Ukraine, Art. 61.

³⁸⁸ Criminal Code of Ukraine, Art. 5.

- The presumption of innocence;³⁸⁹
- The right to be present during the trial;³⁹⁰
- The right against self-incrimination;³⁹¹
- The right to examine witnesses;³⁹²
- The principle of double jeopardy;³⁹³
- The right to a public judgement;³⁹⁴ and
- The right be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.³⁹⁵

The protections enumerated above would appear to be adequate.

As discussed above,³⁹⁶ Article 438 encompasses all serious violations of IHL, including depriving a person of the rights of fair and regular trial. This article, however, lacks particularity and is unlikely to provide the degree of certainty and specificity that is the basis for ‘effective’ penal sanctions, as required under IHL.

However, in relation to military actors, the Military Instruction offers a degree of clarity by providing additional particularisation in relation to the violation of the rights of fair and regular trial.³⁹⁷ Paragraph 1.8.5 characterises the “deprivation of the rights to fair and regular trial” as a serious violation of IHL. As a consequence, the Military Instruction may offer sufficient insight into the prohibited conduct to enable effective prosecutions of members of the armed forces which is based on the principle of legality and culpability.

Fundamental Guarantees during a Non-International Armed Conflict

Principal National Implementation Requirements

Common Article 3(1) to the Geneva Conventions and Article 4(1) of Additional Protocol II set forth the fundamental guarantee of humane treatment for those taking no active part in hostilities in the context of a non-international armed conflict, prohibiting adverse distinction based on “race, colour, religion or faith, sex, birth or wealth, or any other similar criteria” (*i.e.* the principle of non-discrimination).

³⁸⁹ Constitution of Ukraine, Art. 62; Code of Criminal Procedure of Ukraine, Art. 17.

³⁹⁰ Code of Criminal Procedure of Ukraine, Art. 412.

³⁹¹ Criminal Code of Ukraine, Art. 18.

³⁹² Criminal Code of Ukraine, Art. 42(4).

³⁹³ Constitution of Ukraine, Art. 61; Criminal Code of Ukraine, Arts. 7(1)(12), 19.

³⁹⁴ Criminal Code of Ukraine, Arts. 7(1)(20), 27(1), (7).

³⁹⁵ Constitution of Ukraine, Art. 57(1); Criminal Code of Ukraine, Arts. 7(1)(13), 20.

³⁹⁶ See *supra*, pp. 35-40 and 63-67.

³⁹⁷ See *supra*, pp. 63-67.

Specific prohibitions include:

- Violence to life and person, in particular murder, mutilation, cruel treatment and torture;
- Collective punishments;
- Taking of hostages;
- Acts of terrorism; and
- Outrages upon personal dignity, in particular humiliating and degrading treatment and rape.³⁹⁸

Additional Protocol II also prohibits an order that there shall be no survivors (that there 'shall be no quarter left') during a particular military engagement.³⁹⁹

All these acts are considered as serious violations of IHL under customary IHL and therefore should be criminalised.⁴⁰⁰

Finally, Common Article 3 also provides that those who are wounded or sick should be collected and cared for.⁴⁰¹ This prohibition does not require criminal sanction.

Primary Ukrainian Implementation Measures

As noted,⁴⁰² the fundamental principles of humane treatment and non-discrimination are both enshrined in the Constitution of Ukraine, which applies in all circumstances, including non-international armed conflict.⁴⁰³

Regarding violence to life and person, the Criminal Code contains an article specifically addressing civilians: Article 433 of the Criminal Code of Ukraine, entitled "Violence against population in an operational zone", criminalises acts of violence against the population in a conflict zone.⁴⁰⁴ This article may be broad enough to cover all of the violence to life and person committed against civilians. For all other cases, as discussed above,⁴⁰⁵ Article 438 of the Criminal Code encompasses all serious violations and therefore encompasses the above-mentioned violations. Article 438 nonetheless lacks particularity and may not

³⁹⁸ Geneva Conventions I-IV, Art. 3(1); Additional Protocol II, Art. 4(2).

³⁹⁹ Additional Protocol II, Art. 4(1).

⁴⁰⁰ See ICRC, '[Definition of War Crimes – Rule 156](#)' (ICRC, 2009). Violence to life and person, in particular murder, mutilation, cruel treatment and torture, taking of hostages, and outrages upon personal dignity, in particular humiliating and degrading treatment and rape are also war crimes pursuant to Article 8 of the Rome Statute.

⁴⁰¹ Geneva Conventions I-IV, Art. 3(2).

⁴⁰² See *supra*, p. 84.

⁴⁰³ Constitution of Ukraine, Arts. 21, 24, 28. See also Criminal Code of Ukraine, Art. 161.

⁴⁰⁴ Criminal Code of Ukraine, Art. 433.

⁴⁰⁵ See *supra*, pp. 35-39 and 64-67.

provide the degree of certainty and specificity essential for the effective prosecution of IHL violations.

However, in relation to military actors, the Military Instruction offers a degree of clarity by providing additional particularisation in relation to a range of prohibited conduct (violence to life and person, in particular murder, mutilation, cruel treatment and torture, collective punishments, taking of hostages, acts of terrorism, and outrages upon personal dignity, in particular humiliating and degrading treatment and rape).⁴⁰⁶

Fundamental and Judicial Guarantees of Individuals Deprived of Their Liberty during a Non-International Armed Conflict

Principal National Implementation Requirements

Judicial guarantees should be granted to individuals deprived of their liberty for reasons relating to the armed conflict. Additional Protocol II provides:

- That the wounded and the sick shall be respected and protected. They shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones;
- That persons deprived of their liberty for reasons related to the armed conflict shall be provided with:
 - Food and drinking water;
 - Appropriate safeguards with regards to health and hygiene;
 - Protection against the rigours of the climate; and
 - Protection from the dangers of the armed conflict.
- That they shall be allowed to receive individual or collective relief;
- That they shall be allowed to practice their religion and, if requested and appropriate, to receive spiritual assistance from persons performing religious functions, such as chaplains; and
- That they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.⁴⁰⁷

⁴⁰⁶ Military Manual Instruction, para. 1.4.8.

⁴⁰⁷ Additional Protocol II, Arts. 5(1), 7.

Violations of these requirements are not considered serious violations of IHL. As non-serious violations of IHL, they are not required to be criminalised and may be repressed by disciplinary measures and sanctions.

Further, Additional Protocol II also provides for the conditions of internment or detention, such as the separation of men and women, the right to send letters and cards, and the right to medical examinations.⁴⁰⁸ It also provides that necessary measures to ensure the safety of persons released shall be taken.⁴⁰⁹

Finally, Additional Protocol II sets out fundamental guarantees related to the prosecution and punishment of criminal offences related to an armed conflict.⁴¹⁰ These requirements have already been discussed in the Section related to international armed conflict.⁴¹¹

Primary Ukrainian Implementation Measures

Concerning the protection of persons deprived of their liberty during a non-international armed conflict, the Military Instruction provides for humane treatment of such persons and covers the protection of the wounded, sick and shipwrecked and timely medical assistance to them.⁴¹²

Finally, there is no special provision in Ukrainian legal measures addressing Article 5(2) - (4) of Additional Protocol II, which relate to conditions for civilians interned or otherwise detained during a non-international armed conflict but paragraph 2.14.1 of the Military Instruction extends general protection and guarantees provided in the Instruction to persons whose liberty is restricted in connection with a conflict of the non-international character.

⁴⁰⁸ Additional Protocol II, Art. 5(2).

⁴⁰⁹ Additional Protocol II, Art. 5(4).

⁴¹⁰ Additional Protocol II, Art. 6. These requirements are similar to those set in Article 75 of Additional Protocol I.

⁴¹¹ See *supra*, p. 83.

⁴¹² Military Instruction, paras. 2.14.1 and 2.14.2.

Fundamental and Judicial Guarantees: Civilians

Relevant Provisions in Core IHL Treaties

- Geneva Convention IV, Articles 5, 27-35, 43, 64-78, 99-100, 117-126
- Additional Protocol I, Articles 11, 75-76

Fundamental Guarantees

Principal National Implementation Requirements

Geneva Convention IV ensures that civilians are entitled to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.⁴¹³ They should be treated humanely without any adverse distinction, and shall be protected especially against all acts or threats of violence and against insults and “public curiosity” (*i.e.* public humiliation or propaganda).⁴¹⁴

Civilians should be allowed to make applications for assistance to protecting powers and relief organisations such as the ICRC or Ukrainian Red Cross Society.⁴¹⁵

Finally, civilians should not be used as a human shield.⁴¹⁶ Any violation of this prohibition constitutes a serious violation of IHL under customary IHL.⁴¹⁷

Primary Ukrainian Implementation Measures

As noted above in relation to Article 75 of Additional Protocol I,⁴¹⁸ Ukrainian legal measures, and more specifically the Constitution of Ukraine, provide for the respect of any individuals in any situation for their person, their honour, their family rights, their religious convictions and practices, and their manners and customs.⁴¹⁹

⁴¹³ Respect for the human person implies respect for “manners” (in the sense of individual behaviour) and “customs” (meaning the usages of a particular society). ICRC, [‘Commentary of Article 27 of Geneva Convention IV’](#) (ICRC, 1958).

⁴¹⁴ Geneva Convention IV, Art. 27.

⁴¹⁵ Geneva Convention IV, Art. 30.

⁴¹⁶ Geneva Convention IV, Art. 28.

⁴¹⁷ Serious violations of IHL under customary international humanitarian law and Article 8 of the Rome Statute. See ICRC, [‘Definition of War Crimes – Rule 156’](#) (ICRC, 2009).

⁴¹⁸ See *supra*, p. 83.

⁴¹⁹ Constitution of Ukraine, Arts. 3, 11, 27, 28, 29, 32(1), 35, 51(3). For criminal proceedings, see Code of Criminal Procedure, Arts. 7(1)(1), 7(1)(3), 7(1)(4), 7(1)(8), 8, 10, 11, 15.

Respect for civilians by the armed forces is extended in the Military Instruction to include a person's family rights, manners and customs.⁴²⁰ Further, the fundamental principles of non-discrimination and humane treatment are enshrined in the Constitution of Ukraine.⁴²¹

Concerning the right to approach protecting powers and relief organisations for assistance, national implementation measures do not sufficiently make clear the degree to which this right extends. While the Law of Ukraine on the Ukrainian Red Cross⁴²² and the Military Instruction⁴²³ make clear that the ICRC (and other groups, such as the Ukrainian Red Cross Society) have the right to provide assistance, it should provide greater specificity to illustrate the right extended in Article 30 of Geneva Convention IV.

Finally, IHL requires the criminalisation of the use of a human shield. As previously noted,⁴²⁴ Article 438 of the Criminal Code of Ukraine generally criminalises any serious violations of IHL and should therefore encompass such crimes. However, this article lacks particularity and depending upon the circumstances is unlikely to provide the degree of certainty and specificity essential for the effective prosecution of these specific IHL violations.

Derogations

Principal National Implementation Requirements

Geneva Convention IV allows for the Government of Ukraine to derogate from its protection obligations under strict conditions. For example, it is permitted to deny the guarantees of a protected person to an individual suspected of or engaged in activities hostile to the security of the State.⁴²⁵ In occupied territories, a detained spy or saboteur, or a person under suspicion for activity hostile to the security of the occupying power can also be denied rights of communication with the outside world under the Convention. Article 5 further sets out the fundamental principles of humane treatment and fair trial that the said persons should be granted.⁴²⁶

⁴²⁰ See e.g. Military Instruction, para. 2.20.6.

⁴²¹ Constitution of Ukraine, Arts. 21, 24, 28. See also Criminal Code of Ukraine, Art. 161.

⁴²² Law of Ukraine on the Ukrainian Red Cross Society, Art. 9.

⁴²³ Military Instruction, para. 1.5.1.

⁴²⁴ See *supra*, pp. 35-39 and 64-67.

⁴²⁵ Geneva Convention IV, Art. 5(1).

⁴²⁶ Geneva Convention IV, Art. 5(2).

Primary Ukrainian Implementation Measures

The Military Instruction expressly refers to the option of derogating from some of the provisions of Geneva Convention IV. Article 2.11.1. states that:

Victims of armed conflicts, medical and religious personnel of the enemy shall be respected and protected by international humanitarian law if they refrain from any hostile actions against armed forces.⁴²⁷

Concerning occupied territories, the Military Instruction provides that spies are unlawful participants in an armed conflict.⁴²⁸ However, it only refers to spies as members of the opposition armed forces and not as civilians protected under Geneva Convention IV. It also does not refer to saboteurs or persons under definite suspicion of activity hostile to the security of the occupying power.⁴²⁹ Accordingly, the Military Instruction does not sufficiently address legitimate derogations related to occupied territories.

It also fails to outline that regardless of the derogations, the persons shall still be treated humanely and be granted the fundamental rights laid out in Article 5 of Geneva Convention IV, such as fair trial rights. These rights are non-derogable – they cannot be suspended during an armed conflict and are covered for all, including spies.⁴³⁰

Status and Treatment of Civilians

Principal National Implementation Requirements

Geneva Convention IV further prohibits the following acts against civilians:

- Murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person and any other measures of brutality;⁴³¹
- Pillage;⁴³²
- Taking hostages;⁴³³
- Physical or moral coercion against protected persons;⁴³⁴ and

⁴²⁷ Military Instruction, para. 2.11.1.

⁴²⁸ Military Instruction, para. 1.2.61.

⁴²⁹ Military Instruction, para. 1.2.61.

⁴³⁰ For more details on the rights to a fair trial see *supra*, p. 80.

⁴³¹ Geneva Convention IV, Art. 32.

⁴³² Geneva Convention IV, Art. 33.

⁴³³ Geneva Convention IV, Art. 34.

⁴³⁴ Geneva Convention IV, Art. 31.

- Reprisals against protected persons and their property.⁴³⁵

Some of these acts are considered as serious violations of IHL, either as grave breaches of the Geneva Conventions and Additional Protocol (*i.e.* wilful killing, torture or inhuman treatment, mutilation, medical or scientific experiments, and taking of hostages)⁴³⁶ or as war crimes under customary international humanitarian law (*i.e.* pillage),⁴³⁷ and should therefore be criminalised.⁴³⁸

Corporal punishment, physical or moral coercion against protected persons and reprisal are not considered as serious violations of IHL *per se*.

Primary Ukrainian Implementation Measures

Article 433 of the Criminal Code of Ukraine, entitled “Violence against population in an operational zone”, criminalises acts of violence, unlawful destruction or the taking of property under the pretext of military necessity, as well as brigandism committed against the population in a conflict zone.⁴³⁹ This article may be broad enough to cover all of the above-specified conduct. The Military Instruction, in relation to conduct by members of the armed forces, offers greater clarity by listing most of the above as serious violations of IHL necessitating criminal punishment, namely:

- Wilful killing, torture and inhumane treatment, as well as medical, biological or scientific experiments on human beings;⁴⁴⁰
- Pillage of settlements or localities,⁴⁴¹ and
- The taking of hostages.⁴⁴²

However, the Military Instruction fails to label mutilation as a serious violation of IHL that ought to be criminalised in relation to international armed conflict. This would appear to contradict Article 433 or 438 insofar as one or both were intended to criminalise this conduct.

⁴³⁵ Geneva Convention IV, Art. 33.

⁴³⁶ Geneva Convention I, Art. 50; Geneva Convention II, Art. 51; Geneva Convention III, Art. 130; Geneva Convention IV, Art. 147.

⁴³⁷ See ICRC, [‘Definition of War Crimes – Rule 156’](#) (ICRC, 2009).

⁴³⁸ All these acts are war crimes under Article 8 of the Rome Statute.

⁴³⁹ Criminal Code of Ukraine, Art. 433.

⁴⁴⁰ Military Instruction, para. 1.8.5.

⁴⁴¹ Military Instruction, para. 1.8.6.

⁴⁴² Military Instruction, para. 1.8.5. See *also* para. 2.20 (in occupied territories).

Finally, although the Military Instruction fails to label corporal punishment as attracting either a disciplinary or criminal sanction, it correctly lists the following as non-serious violations of IHL attracting disciplinary sanctions:

- Reprisals against civilians and other protected persons are prohibited by the Military Instruction;⁴⁴³ and
- The civilian population of an adverse party may not be forced to give information, personally or on behalf of third parties.⁴⁴⁴ Although this provision addresses the Convention's prohibition against physical or moral coercion, it only partially covers it: its scope is narrower in that it only applies to coercion to give information (and not coercion in general).

Fundamental Guarantees of Women

Principal National Implementation Requirements

IHL specifically emphasises the protection of women, in particular against rape, enforced prostitution, or any form of indecent assault.⁴⁴⁵ As noted above,⁴⁴⁶ committing sexual violence, in particular rape and enforced prostitution, amount to a serious violation of IHL under customary IHL.

Primary Ukrainian Implementation Measures

As discussed above,⁴⁴⁷ Article 438 encompasses all serious violations of IHL, including rape, enforced prostitution and any form of indecent assault. This article however lacks particularity and is unlikely to provide the degree of certainty and specificity that forms the basis for effective prosecutions of this range of prohibited conduct.

The Military Instruction fails to provide any greater clarity in relation to crimes committed by the armed forces.⁴⁴⁸ On the contrary, as noted, the Military Instruction fails to classify rape, enforced prostitution and any other indecent assault as serious violations of IHL.⁴⁴⁹ In order to ensure effective prosecutions pursuant to Article 438, they should be characterised as a serious violation of IHL and Article 438 should be read together with the new characterisations.

⁴⁴³ Military Instruction, para. 1.2.56.

⁴⁴⁴ Military Instruction, para. 3.1.4.

⁴⁴⁵ Geneva Convention IV, Art. 27.

⁴⁴⁶ See *supra*, p. 84.

⁴⁴⁷ See *supra*, pp. 35-39 and 64-67.

⁴⁴⁸ See *supra*, pp. 65-67.

⁴⁴⁹ Military Instruction, para. 1.8.5.

Fundamental and Judicial Guarantees: Civilians in Enemy Territory and Internment

Principal National Implementation Requirements

Geneva Convention IV addresses the right of civilians in enemy territory to leave unless security reasons forbid it.⁴⁵⁰ The transfer by the occupying power of parts of its own civilian population into the territory it occupies and the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory is a grave breach of Additional Protocol I.⁴⁵¹

Further, Geneva Convention IV provides that internment is lawful during an armed conflict⁴⁵² providing it follows the specific rules in Geneva Convention IV.

Internment is defined as:

the deprivation of liberty of a person that has been initiated / ordered by the executive branch – not the judiciary – without criminal charges being brought against the internee (...) Internment is a security measure that a State may apply concurrently with assigned residence in time of armed conflict (...).⁴⁵³

More particularly, Article 43 provides that the internment shall be reviewed “by an appropriate court or administrative board designated by the Detaining Power”.⁴⁵⁴

Geneva Convention IV further regulates the administrative and disciplinary treatment of internees in relation to camp administration.⁴⁵⁵ It also establishes the general disciplinary regime that should be in place in internment camps, which must be consistent with IHL principles.⁴⁵⁶

Finally, Geneva Convention IV lays down the regime for establishing the law applicable to penal and disciplinary sanctions in relation to when an internee allegedly contravenes the law.⁴⁵⁷

⁴⁵⁰ Geneva Convention IV, Art. 35.

⁴⁵¹ Additional Protocol I, Art. 85(4). Such conducts are also war crimes under Article 8 of the Rome Statute.

⁴⁵² ICRC, ‘[Internment in Armed Conflict: Basic Rules and Challenges](#)’ (25 November 2014).

⁴⁵³ See [ICRC Glossary, ‘Civilian Internees’](#).

⁴⁵⁴ Geneva Convention IV, Art. 43.

⁴⁵⁵ Geneva Convention IV, Art. 99.

⁴⁵⁶ Geneva Convention IV, Art. 100.

⁴⁵⁷ Geneva Convention IV, Arts. 117-118.

Primary Ukrainian National Implementation Measures

As discussed,⁴⁵⁸ Article 438 of the Criminal Code of Ukraine generally criminalises any serious violations of IHL contained within the Geneva Conventions and Additional Protocols and should therefore encompass the transfer by the occupying power of parts of its own civilian population into the territory it occupies or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory. However, this article lacks particularity and is unlikely to provide the degree of certainty and specificity essential for the effective prosecution of these IHL violations.

In this instance this lack of specificity may be remedied by the Military Instruction in relation to crimes committed by the armed forces.⁴⁵⁹ It lists this conduct as a serious violation of IHL.⁴⁶⁰ As a consequence, the Military Instruction may offer sufficient particularisation of the prohibited conduct to enable effective prosecutions that respect the principle of legality and culpability.

Regarding internment, the relevant provisions have not been incorporated into the Ukrainian legislation.

On 12 May 2015, the Verkhovna Rada of Ukraine adopted the new Law of Ukraine on the Legal Regime of Martial Law.⁴⁶¹ This law establishes measures that can be taken in the event that martial law has been declared in Ukraine.⁴⁶² Article 8 of the Law provides that where the martial law regime has been declared, the military command together with the military administrations can adopt measures on the internment and forcible settlement of nationals of foreign states which threaten to attack or use aggression against Ukraine.⁴⁶³

On 22 July 2015, the Cabinet of Ministers of Ukraine adopted the “Resolution on Approval of Typical Plan on Implementing Measures to Ensure the Legal Regime of Martial Law in Ukraine or in its Particular Areas”.⁴⁶⁴ This Plan establishes, among others, the content of the measures and conditions related to the martial law regime, and the entities responsible for implementing and enforcing the measures. Paragraph 23 of the Plan addresses

⁴⁵⁸ See *supra*, pp. 35-39 and 64-67.

⁴⁵⁹ See *supra*, pp. 65-67.

⁴⁶⁰ Military Instruction, para. 1.8.5.

⁴⁶¹ [On the Legal Regime of Martial Law](#): Law of Ukraine No. 389-VIII (12 May 2015).

⁴⁶² Article 1 of the Law defines that martial law as a special legal regime, introduced in Ukraine or in some areas, in the event of armed aggression or threat of aggression, danger to the state independence, or its territorial integrity.

⁴⁶³ Law of Ukraine ‘On the Legal Regime of Martial Law’, Art. 8(2)(23).

⁴⁶⁴ [On Approval of Typical Plan on Implementing Measures to Ensure the Legal Regime of Martial Law in Ukraine or in its Particular Areas](#): Resolution of the Cabinet of Ministers of Ukraine No. 544 (22 July 2015).

internment and forcible settlement. It provides that internment lasts from the introduction of the martial law regime until its end.

Apart from these isolated references, Ukrainian law does not regulate the regime of internment. Accordingly, Ukrainian law, and particularly the Law of Ukraine on the Legal Regime of Martial Law, is in breach of Geneva Convention IV, as its generic, sparse referencing is insufficient to meet the specific, detailed requirements set out in Geneva Convention IV.

Finally, it should be noted that the definition of internment in the Military Instruction as “the compulsory settlement to special places of civilians belonging to a belligerent party who found themselves in enemy territory in connection with a war or an international armed conflict” may not be compliant with IHL standards.⁴⁶⁵ As noted, internment should not be used as a compulsory settlement but as an exceptional mean of deprivation of liberty of a person only if the security of the detaining power makes it absolutely necessary.

Fundamental and Judicial Guarantees: Population of Occupied Territories

Principal National Implementation Requirements

In occupied territories, penal legislation in force must be respected by the occupying power unless public order or security reasons require the adoption of new legislation.⁴⁶⁶ New penal provisions, however, shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language.⁴⁶⁷

The occupying power may try the accused before its own military courts,⁴⁶⁸ but no sentence may be pronounced without a regular trial.⁴⁶⁹ Further, the detention and imprisonment sentence shall be served in the occupied country and the convicted person shall be handed over to the State previously occupying the territory once the occupation ends.⁴⁷⁰

Finally, the occupying power may, for imperative reasons of security, intern certain persons or subject them to assigned residence.⁴⁷¹

⁴⁶⁵ Military Instruction, para. 1.2.28.

⁴⁶⁶ Geneva Convention IV, Art. 64.

⁴⁶⁷ Geneva Convention IV, Art. 65.

⁴⁶⁸ Geneva Convention IV, Arts. 66-75.

⁴⁶⁹ Geneva Convention IV, Art. 71.

⁴⁷⁰ Geneva Convention IV, Arts. 76-77.

⁴⁷¹ Geneva Convention IV, Art. 78.

Primary Ukrainian Implementation Measures

The Military Instruction requires the Armed Forces of Ukraine located in an occupied territory to respect the laws in force in said territory and to take all measures to ensure public order and security.⁴⁷²

The Military Instruction also provides that the occupying power may enact legal acts providing criminal responsibility to ensure:

- Performance of its duties concerning the protection of the civilian population;
- Proper administration over the occupied territory; and
- The security of its citizens.⁴⁷³

While the Military Instruction establishes that the new penal provisions shall be published in the language spoken by the local population,⁴⁷⁴ it fails to specify that the laws shall not come into force before they have been published and brought to the knowledge of the inhabitants.

Apart from the above-mentioned issues, Ukrainian legislation does not provide any further details regarding penal procedure in occupied territories.

⁴⁷² Military Instruction, para. 2.20.2.

⁴⁷³ Military Instruction, para. 2.20.4.

⁴⁷⁴ *Ibid.*

Fundamental Guarantees: Wounded and Sick

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Article 12
- Geneva Convention II, Article 12

Fundamental Guarantees for Wounded and Sick Combatants

Principal National Implementation Requirements

During international armed conflicts, Geneva Conventions I and II require the Government of Ukraine to protect and respect members of the armed forces who are wounded or sick.⁴⁷⁵ Articles 12 of both Conventions apply to both Ukraine's wounded and sick personnel as well as the wounded, sick and shipwrecked of the adverse party (for example, POWs).⁴⁷⁶ It requires humane treatment and care without adverse distinction founded on sex, race, nationality, religion, political opinions, or other similar criteria.⁴⁷⁷

Ukraine is required to prohibit any attempts upon their lives, or violence to their persons in particular. They shall not be murdered or exterminated, subjected to torture, or to biological experiments. Further, they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.⁴⁷⁸

Some of these acts require the adoption of criminal sanctions as they amount to grave breaches of IHL (*i.e.* murder, torture, and biological experiments).

Further guarantees include the requirement that only urgent medical reasons will allow proper basis for prioritising the order of treatment to be administered.⁴⁷⁹ No preference can be given on the basis of being part of a certain military unit or army of a given country. Concerning female combatants, the Geneva Conventions provide (albeit generically) that females should be treated with all due consideration to their gender.⁴⁸⁰ Finally, if the wounded or sick have to be abandoned to the enemy, part of the medical personnel and

⁴⁷⁵ Geneva Conventions I-II, Art. 12(1).

⁴⁷⁶ ICRC, '[Commentary of Article 12 of Geneva Convention I](#)' (ICRC, 2016).

⁴⁷⁷ Geneva Conventions I-II, Art. 12(2).

⁴⁷⁸ *Ibid.*

⁴⁷⁹ Geneva Conventions I-II, Art. 12(3).

⁴⁸⁰ Geneva Conventions I-II, Art. 12(4). In other words, "parties to an armed conflict must ensure that their protection and care takes into account their specific needs with regard to hygiene, ante- and post-natal care and gynaecological and reproductive health, including physiological factors that may heighten the risk of anaemia and mineral deficiencies." ICRC, '[Commentary of Article 12 of Geneva Convention I](#)' (ICRC, 2016).

material should be left with them to assist in their care.⁴⁸¹ Violations of these fundamental and judicial guarantees do not amount to a serious violation of IHL. Disciplinary sanctions are therefore adequate to repress any misconduct.

Primary Ukrainian National Implementation Measures

As noted,⁴⁸² the fundamental principles of non-discrimination and humane treatment are enshrined in the Constitution of Ukraine and therefore apply at all time, including to wounded and sick of the armed forces.⁴⁸³

Regarding the conduct amounting to serious violations of IHL, Article 434 specifically criminalises the ill-treatment of wounded and sick POWs as a military crime, as well as the negligent performance of duty in respect of wounded and sick by persons required to provide medical treatment and care to them. However, as noted, such acts may not be adequately sanctioned and much will depend upon how this provision is invoked in practice.⁴⁸⁴

As discussed above,⁴⁸⁵ the penalty – maximum three years' imprisonment – may prove to be insufficient for every violation of Article 434.

Regarding the other IHL requirements, the Military Instruction addresses the protection of wounded and sick in two separate Sections - one generally dedicated to wounded and sick and another dedicated to POWs (including wounded and sick POWs).⁴⁸⁶

The Section generally dedicated to the wounded and sick fails to address most of the above-mentioned requirements,⁴⁸⁷ but requires that military commanders search and collect wounded and sick belonging to all sides of a conflict, provide timely medical assistance and those commanders who are forced to abandon wounded or sick must, as far as the situation permits, leave with them a part of their medical personnel and material to care for them.⁴⁸⁸ The Military Instruction also fails to cover most of the requirements related to wounded and sick in the POWs Section, but provides that medical assistance should be provided to POWs, primarily by medical personnel among themselves and with

⁴⁸¹ Geneva Conventions I and II, Art. 12(5).

⁴⁸² *See supra*, p. 84.

⁴⁸³ Constitution of Ukraine, Arts. 21, 24, 28. *See also* Criminal Code of Ukraine, Art. 161.

⁴⁸⁴ *See supra*, pp. 67-68.

⁴⁸⁵ *Ibid.*

⁴⁸⁶ Military Instruction, Sections 2.12, 2.14.

⁴⁸⁷ Military Instruction, Section 2.12.

⁴⁸⁸ Military Instruction, para. 2.12.2.

trophy medicaments; POWs should be medically examined at least once per month and evacuated to military hospitals if the need arises .⁴⁸⁹

In brief, the Military Instruction fails to mention:

- That it shall be generally prohibited to attempt to take the life of the wounded and sick, or perpetrate violence against them. In particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments, wilfully left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.⁴⁹⁰ Although, as noted, any violation of these prohibitions falls under the scope of Article 438, the Military Instruction will ensure greater clarity and thus greater protection of the wounded and sick combatants if these prohibitions are also expressly provided for in the Sections related to the wounded and sick;
- That only medical reasons shall influence the order of treatment to be administered; and
- That women shall be treated with all consideration due to their sex.

⁴⁸⁹ Military Instruction, para. 2.14.2.

⁴⁹⁰ The Military Instruction also contains the prohibition of violence, intimidation or insult against POWs (Military Instruction, para. 2.14.2).

Fundamental and Judicial Guarantees: Prisoners of War

Relevant Provisions in Core IHL Treaties

- Geneva Convention III, Articles 5, 13-17, 82-90, 95-108, 129
- Additional Protocol I, Article 44

Fundamental Guarantees of POWs

Principal National Implementation Requirements

Geneva Convention III provides that POWs are entitled to humane treatment at all times.

IHL requires the prohibition and criminalisation of the physical mutilation or medical / scientific experiments of any kind which are not justified by the medical, dental or hospital needs of the POW.⁴⁹¹

In addition, the Government of Ukraine must repress other violations of IHL not amounting to serious violations of IHL but requiring, at a minimum, the adoption of disciplinary sanctions. More particularly, it should ensure the protection of POWs in relation to situations where they are particularly vulnerable, such as protection from acts of intimidation, insult and from being made an object of “public curiosity”.⁴⁹² Reprisal measures by the detaining power are also non-serious violations and should be subject to disciplinary sanctions.⁴⁹³

In particular, the Government of Ukraine must grant women POWs special protections (including, for example, early repatriation for pregnant women)⁴⁹⁴ with due consideration to their sex and must in all cases grant them treatment as favourable as that granted to men.⁴⁹⁵

The Government of Ukraine is also under a duty to ‘respect’ POWs. This includes the requirement that POWs, in general, shall maintain their civil capacities.⁴⁹⁶ They are entitled to free medical care⁴⁹⁷ and equality of treatment without any adverse distinction.⁴⁹⁸

⁴⁹¹ Additional Protocol I Art. 11. These conducts are also war crimes under the Rome Statute, Art. 8.

⁴⁹² Geneva Convention III, Art. 13.

⁴⁹³ *Ibid.*

⁴⁹⁴ ICRC, ‘[Commentary of Article 14 of Geneva Convention III](#)’ (ICRC, 1958).

⁴⁹⁵ Geneva Convention III, Art. 14.

⁴⁹⁶ Geneva Convention III, Art. 14(3).

⁴⁹⁷ Geneva Convention III, Art. 15.

⁴⁹⁸ Geneva Convention III, Art. 16.

Primary Ukrainian National Implementation Measures

The Constitution of Ukraine provides for the fundamental principle of humane treatment, which applies to POWs.⁴⁹⁹

Article 434 specifically criminalises the ill-treatment of POW as a military crime. However, as noted, such acts may not be adequately sanctioned (punishable by maximum three-year imprisonment).⁵⁰⁰ Alternatively, Article 438 (which applies to both civilians and members of the military) is also relevant, as it provides that the ill-treatment of a POW, contrary to the provisions of the Conventions, is punishable by a term of eight to twelve years in prison. Depending upon the way in which this provision is used in practice and the factual circumstances of the alleged violations, this may or may not be sufficient for effective repression through prosecution.

The Military Instruction offers further clarity to the protections offered to POWs by Article 434 and the more general Article 438 by listing medical, biological or scientific experiments on human beings as serious violations of IHL.⁵⁰¹ However, the Military Instruction fails to refer to the prohibition on physical mutilation of POWs. The Military Instruction also fails to provide that female POWs are entitled to special protection.

Regarding non-serious violations of IHL more generally, the main protections for POWs can be found in Section 2.14 of the Military Instruction.⁵⁰² Principal protections include:

- A prohibition on any acts of violence, intimidation or insult against them;⁵⁰³ and
- A prohibition on any acts of reprisals against them.⁵⁰⁴

It should be also noted that the section specifically dedicated to the protection of POWs in the Military Instruction does not cover the specific prohibition of physical mutilation or medical / scientific experiments of any kind which are not justified by the medical, dental or hospital needs of the POW and the protection against subjecting a POW to being made a “public curiosity” by opposing forces. Greater specification in the Military Instruction will ensure more effective enforcement and therefore more adequate protection of POWs during armed conflicts.

⁴⁹⁹ See *supra*, p. 84.

⁵⁰⁰ See *supra*, pp. 67-68.

⁵⁰¹ Military Instruction, para. 1.8.5.

⁵⁰² The Military Instruction provides a definition for a POW in paragraph 1.2.8 of the Military Instruction. See *also* Field Manual, para. 553.

⁵⁰³ Military Instruction, para. 2.14.2.

⁵⁰⁴ Military Instruction, para. 1.2.56.

Finally, the Military Instruction notes that POWs retain their civil capacities while in detention but fails to clarify the nature and scope of these rights.⁵⁰⁵ It also notes that wounded and sick POWs are entitled to timely medical assistance but fails to specifically provide that they are entitled to free medical care.⁵⁰⁶ Concerning equality of treatment, although the Constitution of Ukraine provides for the general principle of equality of treatment⁵⁰⁷, the Military Instruction does not specifically provide that POWs are entitled to treatment without adverse distinction. The Military Instruction would profit from greater precision on the equality of treatment provided to POWs and by providing a clear list of the criteria that cannot form a basis for discrimination against POWs.

Status of POWs

Principal National Implementation Requirements

The status of POWs is addressed in Article 44 of Additional Protocol I.

Additional Protocol I establishes the status of combatants and POWs. Combatants (including the sick, wounded or shipwrecked) take on the status of POW when they fall into the power of the enemy. This status applies whether the combatant / POW fails to comply with IHL requirements themselves.

Combatants can lose their POW status (in the event they are captured) in very limited circumstances. This includes when a combatant fails to distinguish himself from the civilian population. Combatants are obliged to distinguish themselves by means of a uniform or some other distinctive sign, at least while they are engaged in an attack or in a military operation preparatory to an attack. If they fail to distinguish themselves from the civilian population, they can be deprived of their combatant and POW status.⁵⁰⁸

In exceptional situations owing to the nature of hostilities (*i.e.* during wars of national liberation), they can distinguish themselves as combatants by openly carrying arms. Failure to take these steps will forfeit their right to be a POW in the event of capture. They shall, nevertheless, be given other protections equivalent in all respects to those accorded to POWs.⁵⁰⁹

⁵⁰⁵ Military Instruction, para. 2.14.12.

⁵⁰⁶ Military Instruction, paras. 2.14.2, 2.14.5; see *also* Field Manual, para. 553.

⁵⁰⁷ Constitution of Ukraine, Arts. 21, 24.

⁵⁰⁸ Additional Protocol I, Art. 44. This Article provides that combatants can distinguish themselves from the civilian population by wearing a uniform, some distinctive sign, or in limited circumstances, openly carrying arms.

⁵⁰⁹ Additional Protocol I, Art. 44(4).

Finally, if a combatant is captured by the adverse party while not engaged in an attack or in a military operation preparatory to an attack, he shall not be denied his status of combatant and POW by virtue of his prior activities.⁵¹⁰

Primary Ukrainian Implementation Measures

Ukrainian legal measures partially comply with Additional Protocol I.

The Military Instruction provides that if an adverse party captures a combatant, he or she shall be entitled to POW status.⁵¹¹ Further, it provides that combatants are obliged to distinguish themselves from the civilian population while engaged in a military attack (or in a military operation preparatory to an attack), at least by carrying their arms openly.⁵¹²

The Military Instruction does not address, however, all the requirements and provisions provided in Article 44 of Additional Protocol I, namely that:

- A combatant keeps his combatant and POW status even if he fails to respect IHL;
- If a combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly;
- Failure to do so will forfeit their right to be a POW in the event of capture. They shall, nevertheless, be given protections equivalent in all respects to those afforded to POWs; and
- If a combatant is captured by the adverse party while not engaged in an attack or in a military operation preparatory to an attack, he or she shall not be denied the status of combatant or POW by virtue of their prior activities.

More details on these POW status issues will ensure a greater compliance with IHL standards.

Other Treatment Afforded to POWs

Principal National Implementation Requirements

There are a number of other protections provided by Additional Protocol I and Geneva Convention III with regard to the treatment of POWs. For example, any person who participates in hostilities and is captured must be presumed to be a POW until such a time that a competent body can rebut this presumption.⁵¹³ Article 5 of Additional Protocol I also

⁵¹⁰ Additional Protocol I, Art. 44(5).

⁵¹¹ Military Instruction, para. 1.2.8.

⁵¹² *Ibid.*

⁵¹³ Geneva Convention III, Art. 5; Additional Protocol I, Art. 45.

provides for the duration of the POW status, which starts from the time POWs fall into the power of the enemy and until their final release or repatriation.

Further, upon being questioned, POWs are required to only give their surname and first name, rank, date of birth, and army, regimental, personal or serial number (or failing this, equivalent information).⁵¹⁴ They shall be questioned in a language they understand and provided with identity cards.⁵¹⁵

Finally, POWs are entitled to be free from physical and mental torture applied to obtain information.⁵¹⁶

Primary Ukrainian Implementation Measures

Ukrainian legal measures fail to sufficiently provide for these aspects of the treatment afforded POWs under Geneva Convention III and Additional Protocol I.

First, they do not provide for the presumption of POW status. Further, although the Military Instruction appropriately establishes that the protection of POWs becomes effective immediately upon capture,⁵¹⁷ it fails to address the duration of the status, namely when the protection ends. While it is reasonable to infer that the status lasts until final release or repatriation, it would be useful to include this in the Military Instruction.

The Military Instruction successfully regulates the questioning of POWs, including the type of information that may be requested,⁵¹⁸ the identity card of potential POWs,⁵¹⁹ and the interrogation of POWs in a language they understand.⁵²⁰

Finally, the Military Instruction appears to provide effective particularisation of Article 434 as concerns the prohibition against torturing POWs.⁵²¹ If a member of the armed forces employs the use of torture against a POW, he will be criminally liable under Article 434 of the Criminal Code of Ukraine.

⁵¹⁴ Geneva Convention III, Art. 17.

⁵¹⁵ *Ibid.*

⁵¹⁶ *Ibid.*

⁵¹⁷ Military Instruction, para. 2.14.12.

⁵¹⁸ Military Instruction, paras. 2.14.14, 3.1.5; see *also* Field Manual, para. 553.

⁵¹⁹ Military Instruction, para. 2.14.15, Annex 5.

⁵²⁰ Military Instruction, para. 2.14.4.

⁵²¹ Military Instruction, paras. 3.1.5(2), 2.14.4.

Penal and Disciplinary Sanctions for POWs

Principal National Implementation Requirements

Geneva Convention III addresses penal and disciplinary sanctions for POWs. It provides that a POW shall be subject to the laws, regulations and orders in force in the armed forces of the detaining power.⁵²² It also governs the choice of disciplinary or judicial proceedings, the competent court for ruling on the POW's rights, the prosecution of offences committed before capture, the types of penalties and their execution, and the application of the principle "*non bis in idem*".⁵²³

Concerning disciplinary sanctions, Geneva Convention III specifies the following:⁵²⁴

- The form and the maximum duration of punishment;⁵²⁵
- The procedure regarding confinement awaiting trial;⁵²⁶
- That disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers;⁵²⁷
- The rights of defence, such as the right to call witnesses and to have an interpreter;⁵²⁸ and
- The premises for the execution of the sentence and essential safeguards, such as the right not be deprived of the prerogatives attached to his rank or the right to exercise and to stay in the open air for at least two hours daily.⁵²⁹

Concerning criminal sanctions, the Convention provides the following protections:⁵³⁰

- General principles
 - The principle of legality, which requires that no POWs may be tried or sentenced for an act which is not forbidden by the law of the detaining power or by international law in force at the time the said act was committed, must be respected;⁵³¹

⁵²² Geneva Convention III, Art. 82.

⁵²³ Geneva Convention III, Arts. 82-88.

⁵²⁴ Geneva Convention III, Arts. 89-90, 95-98.

⁵²⁵ Geneva Convention III, Arts. 89-90.

⁵²⁶ Geneva Convention III, Art. 95.

⁵²⁷ Geneva Convention III, Art. 98.

⁵²⁸ *Ibid.*

⁵²⁹ *Ibid.*

⁵³⁰ Geneva Convention III, Arts. 99-108.

⁵³¹ Geneva Convention III, Art. 99(1).

- A prohibition involving the moral or physical coercion of a POW in order to induce him to confess guilt of the act of which he is accused;⁵³² and
- The right to counsel.⁵³³
- The similar treatment of POWs and members of the armed forces of the detaining power in court and in procedural matters;⁵³⁴
- Concerning the regime of confinement awaiting trial, protections include that:
 - Judicial investigations relating to a POW must be conducted as rapidly as circumstances permit;
 - Any trial must take place as soon as possible; and
 - Any period spent by a POW in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.⁵³⁵
- That notification of proceedings be provided by the detaining power to the protecting power;⁵³⁶
- Providing the rights and means of defence. For example, a POW shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice; to the calling of witnesses; and, if he deems necessary, to the services of a competent interpreter;⁵³⁷
- The right to appeal;⁵³⁸
- The notification of the judgement and sentence by the detaining power to the protecting power;⁵³⁹ and
- The execution of the sentence.⁵⁴⁰

Wilfully depriving a POW of the right to a fair and regular trial is a serious violation of IHL.⁵⁴¹

⁵³² Geneva Convention III, Art. 99(2).

⁵³³ Geneva Convention III, Art. 99(3).

⁵³⁴ Geneva Convention III, Art. 102.

⁵³⁵ Geneva Convention III, Art. 103.

⁵³⁶ Geneva Convention III, Art. 104.

⁵³⁷ Geneva Convention III, Art. 105(1).

⁵³⁸ Geneva Convention III, Art. 106.

⁵³⁹ Geneva Convention III, Art. 107.

⁵⁴⁰ Geneva Convention III, Art. 108.

⁵⁴¹ See ICRC, '[Definition of War Crimes – Rule 156](#)' (ICRC, 2009). It is also a war crime under the Rome Statute, Art. 8. The issue of repression has already been addressed, see *supra*, p. 80.

Primary Ukrainian National Implementation Measures

In general, Ukrainian legal measures do not regulate the penal and disciplinary sanctioning of POWs. The Military Instruction only contains a few provisions governing the sanctioning of POWs. For example, the Military Instruction notes that a POW shall be subject to the laws, regulations and orders in force in the armed forces of the detaining power.⁵⁴² Further, both the Military Instruction and Criminal Code of Ukraine provide for respect of the “*non bis in idem*” principle.⁵⁴³

However, Ukrainian legal measures fail to mention the choice of disciplinary or judicial proceedings, the competent court for ruling on the POWs’ rights, the prosecution of offences committed before capture, and the types of penalties and their execution.

Regarding disciplinary sanctions, the Military Instruction establishes the various forms of punishment laid out in Geneva Convention III.⁵⁴⁴ It also describes the competent authorities to order disciplinary punishment.⁵⁴⁵

Apart from these provisions, Ukrainian legal measures do not provide for many of the IHL requirements, including:

- The procedure regarding confinement awaiting trial;
- The rights of defence, such as the right to call witnesses and to have an interpreter; and
- The premises for the execution of the sentence and essential safeguards, such as the right not be deprived of the prerogatives attached to his rank or the right to exercise and to stay in the open air for at least two hours daily.

The Constitution of Ukraine contains nonetheless fundamental judicial guarantees that would apply to POWs (*i.e.* the right to be promptly informed of the reasons why measures have been taken; the presumption of innocence, the right to be advised)⁵⁴⁶ However, it does not address the specific requirements associated with the status of POWs.

Regarding criminal sanctions, the Criminal Code of Ukraine imposes criminal liability on a POW in three circumstances:

⁵⁴² Military Instruction, para. 2.14.3; see also Field Manual, para. 553.

⁵⁴³ Criminal Code of Ukraine, Art. 2(3); see also Military Manual, para. 2.14.3.

⁵⁴⁴ Military Instruction, para 2.14.22.

⁵⁴⁵ *Ibid.*

⁵⁴⁶ See *supra*, p. 83.

- Voluntary participation of a POW in any works of military importance or any other activities that may be detrimental to Ukraine or its allies, where it involves no elements of high treason;
- Violence or cruelty of a senior POW in respect of other POWs; and
- Actions taken by a POW to the detriment of other POWs for selfish motives or to win indulgent treatment of the enemy.⁵⁴⁷

Although the main judicial guarantees are provided for in the Constitution of Ukraine, the Criminal Code and the Code of Criminal Procedure,⁵⁴⁸ these instruments do not address the specific requirements associated with the status of POWs. Other implementation measures are therefore inadequately specified and do not provide for a comprehensive implementation regime to regulate the criminal sanctioning of a POWs (e.g. conditions for validity of sentence, the regime of confinement awaiting trial, the notification of proceedings, the rights and means of defence, the right to appeal, the notification of the judgement and sentence and the execution of penalties, the execution of the sentence...).

⁵⁴⁷ Criminal Code of Ukraine, Art. 431.

⁵⁴⁸ See *supra*, p. 83.

Fundamental Guarantees: Protection of Children

Relevant Provisions in Core IHL Treaties

- Additional Protocol I, Article 77
- Additional Protocol II, Article 4
- Convention on the Rights of the Child, Articles 38-39
- Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict, Articles 1-3, 6

Fundamental Guarantees of Children during International Armed Conflict

Principal National Implementation Requirements

Additional Protocol I, the Convention of the Rights of the Child (“CRC”) and its Optional Protocol provide for the protection of children during armed conflict. Article 38 of the CRC provides:

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

The Optional Protocol to the Convention on the Rights of the Child increases the age of children to 18 years, whether in relation to participating in hostilities or being recruited into the armed forces.⁵⁴⁹ Under customary IHL, conscripting or enlisting children under the age of 15 into armed forces, or using them to participate actively in hostilities is considered as a serious violation of IHL and therefore should be criminalised.⁵⁵⁰

⁵⁴⁹ Optional Protocol on the Involvement of Children in Armed Conflict, Arts. 1-3.

⁵⁵⁰ See ICRC, ‘[Definition of War Crimes – Rule 156](#)’ (ICRC, 2009). It is also a war crime under the Rome Statute, Art. 8.

In addition, the Additional Protocol adds that if, in exceptional cases, children who have not attained the age of 15 years take a direct part in hostilities and fall into the power of an adverse party, they shall continue to benefit from special protection due to their status as a child, whether or not they are POWs.⁵⁵¹

Finally, if arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units.⁵⁵²

Primary Ukrainian Implementation Measures

Article 438 is sufficiently broad to allow for the prosecution of those responsible for conscription and use of children during armed conflict as a violation of the laws and customs of war.⁵⁵³ As previously noted, however, this general approach to criminalisation lacks particularity and may not provide the degree of certainty and specificity that is the basis for effective prosecutions of these specific crimes.

Assistance in this regard may be derived from several legal measures: the Law of Ukraine on the Protection of Childhood and the Law of Ukraine on Military Conscription and Military Service. Article 30 of the Law of Ukraine on the Protection of Childhood, as amended in February 2016, addresses the prohibition of the participation of children (including the recruitment, financing, material supply, and training) in hostilities and armed conflicts. It further establishes that the state shall take all necessary measures in order to prevent the recruitment and use of children in hostilities and armed conflicts, as well as to detect the recruitment of children and to release them from the military service.

It further states that any person in breach of this prohibition shall be held criminally responsible as prescribed by law. The law also establishes the compulsory or obligatory recruitment of children during an armed conflict as one of the worst forms of child labour.⁵⁵⁴

Further clarity may be derived from the Law of Ukraine on Military Conscription and Military Service that sets the age of recruitment into the armed forces at 18 years old.⁵⁵⁵ Further, a person can only be enlisted for military service after reaching 18.⁵⁵⁶

⁵⁵¹ Additional Protocol I, Art. 77(3).

⁵⁵² Additional Protocol I, Art. 77(4).

⁵⁵³ Criminal Code of Ukraine, Art. 438.

⁵⁵⁴ Law of Ukraine on the Protection of Childhood, Art. 21.

⁵⁵⁵ [Law of Ukraine on the Military Conscription and Military Service](#) No. 2232-XII (25 March 1992), Art. 15. ("Law of Ukraine on the Military Conscription and Military Service").

⁵⁵⁶ Law of Ukraine on the Military Conscription and Military Service, Art. 20.

As is evident, there are several Ukrainian legal measures that seek to regulate the use of children during armed conflict. These legal provisions would appear to provide additional specificity to Article 438 of the Criminal Code of Ukraine. However, when read together, Ukrainian legal measures fail to provide sufficient detail of the prohibited conduct and the nature of the penal sanction. In particular, although the provisions suggest that the use of child soldiers and their forced conscription are prohibited, the provisions fail to elaborate on the nature of the serious IHL violation arising from the conscription and use (without compulsion or obligation) that must be addressed by penal sanction.

One issue requires particular attention with regards to the compliance of Ukrainian legislation with the Additional Protocol to the Convention on the Rights of the Child. The Law of Ukraine on Military Conscription and Military Service, which was amended in 2011, now allows the enlistment of persons between 17 and 21 years old who have completed general secondary education, including those who will attain the age of 17 years in the year of starting the military service. Although such recruitment does not amount to a serious violation of IHL, the provision is in obvious breach of the Optional Protocol to Convention on the Rights of the Child.

Regarding the special protection of children during an armed conflict, as noted, the Law of Ukraine on the Protection of Childhood provides for the general protection of the child during an armed conflict. The amendments establish specific protections to children suffering from hostilities or armed conflicts, such as the specific obligations of social services.⁵⁵⁷ In addition, the State shall use all the necessary and possible measures in order to search for and return to Ukraine children who were illegally transferred outside of Ukraine because of the circumstances related to hostilities or armed conflicts.⁵⁵⁸ New Article 30-1 addresses the protection of children who are in the zone of hostilities and armed conflicts, and children who suffered thereof. It reads as follows:

The state shall take all measures required to ensure protection of children in the area of hostilities and armed conflicts as well as those affected by hostilities and armed conflicts, care for them and their reunion with their family members, including search for such children, their release from captivity, and return to Ukraine when they have been illegally taken abroad. In the event that a person's age is uncertain and there are reasons to believe that such person is a child, he or she shall be afforded protection as provided by this Article until his or her age is verified.

⁵⁵⁷ Law of Ukraine on the Protection of Childhood, Art. 23-1.

⁵⁵⁸ Law of Ukraine on the Protection of Childhood, Art. 32(2).

All actions of the state related to protecting children in the area of hostilities and armed conflicts as well as those affected by hostilities and armed conflicts shall be in conformity with international humanitarian law.

Local executive and self-government authorities shall, first and foremost, resettle children who are in the area of hostilities and armed conflicts, or are exposed to such risk, to the safe areas. Children shall be resettled with their parents or legal representatives or, provided that such persons have consented to such resettlement, unaccompanied or accompanied by other persons.

The central executive authority in charge of the development and implementation of the state family and child care policy shall take measures aimed at the child's reunion with his or her family. The central executive authority in charge of the development and implementation of the state policy for protecting rights and freedoms of a person and citizen shall take measures aimed at locating the family members of the child, assist in search carried out by the family members, non-governmental, charitable, volunteer, and humanitarian organisations and foundations engaged in the family reunion activities.

The central executive authority in charge of the development and implementation of the state family and child care policy, the central executive authority in charge of the development and implementation of the state education and science policy, and the central executive authority in charge of the development and implementation of the state health care policy shall provide environment for medical rehabilitation, psychological adjustment, and educational remedy as well as social reintegration of children affected by hostilities and armed conflicts.

The status of a child affected by hostilities and armed conflicts shall be granted by the Custody and Guardianship Agency at the place where the child is registered as an IDP. The procedure for granting the status of a child affected by hostilities and armed conflicts shall be established by the Cabinet of Ministers of Ukraine.”

However, the legal measures fail to address the following:

- If, in exceptional cases, children who have not attained the age of 15 years take a direct part in hostilities and fall into the power of an adverse party, they shall continue to benefit from the special protection due to their status as a child, whether or not they are POWs; and
- If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults.

Fundamental Guarantees of Children during Non-International Armed Conflict

Principal National Implementation Requirements

The obligations stemming from the Convention on the Rights of the Child, its Additional Protocol, and customary international law detailed above also apply during non-international armed conflict.⁵⁵⁹

Article 4(3) of Additional Protocol II covers the fundamental guarantees provided to children during a non-international armed conflict. For example, the Protocol provides that children are entitled to an education (including religious and moral education) in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care. Further, all appropriate steps shall be taken to facilitate the reunion of families temporarily separated.⁵⁶⁰

Primary Ukrainian Implementation Measures

Ukrainian legislation applies to both international and non-international armed conflicts. As noted above, when read together, Ukrainian legal measures fail to provide sufficient detail of the prohibited conduct and the nature of the penal sanction.

With regards to children affected by non-international armed conflicts, the Military Instruction mirrors the protections enunciated in Article 4(3) of Additional Protocol II.⁵⁶¹

Finally, one last issue not directly related to IHL but relevant to the compliance of Ukrainian legislation with the Additional Protocol to the Convention on the Rights of the Child, needs to be discussed. Paragraph 1.4.9 of the Military Instruction fails to comply with the Optional Protocol to the Convention on the Rights of the Child, as it limits the prohibition on the recruitment of children in the hostilities to those under the age of 15 years old.⁵⁶² As noted above, the prohibition should apply to all children under 18 years old.

⁵⁵⁹ Conscripting or enlisting children under the age of 15 into armed forces, or using them to participate actively in hostilities is also considered as a serious violation of IHL during non-international armed conflict pursuant to customary IHL and Article 8 of the Rome Statute.

⁵⁶⁰ Additional Protocol II, Art. 4(3).

⁵⁶¹ Military Instruction, para. 1.4.9.

⁵⁶² Military Instruction, para. 1.4.9.

Medical and Religious Personnel

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Articles 40, 41
- Geneva Convention II, Article 42
- Geneva Convention IV, Article 20
- Additional Protocol I, Articles 15-16, 18
- Additional Protocol II, Articles 10, 12

Medical Personnel of the Armed Forces and Other Personnel Assisting the Forces

Principal National Implementation Requirements

The principal national implementation requirements for medical personnel of the armed forces (at land or sea), and the personnel of aid societies and societies of neutral countries who may be employed by the armed forces and providing medical assistance, include:

- That military medical personnel wear, on their left arm, a water-resistant armlet bearing the distinctive emblem, stamped by the military authority;
- Wearing an identity disc;
- Carrying a water-resistant, pocket-sized, special identity card, issued and stamped by the military authority which must:
 - Bear the distinctive emblem;
 - Be worded in the national language;
 - Mention the first name, surname, date of birth, rank and service number of the individual;
 - State in what capacity he or she is entitled to the protection of Geneva Convention I;
 - Bear the photograph of the owner;
 - Contain the individual's signature, fingerprints or both;
 - Be embossed with the stamp of the military authority;
 - Be uniform throughout the same armed forces; and

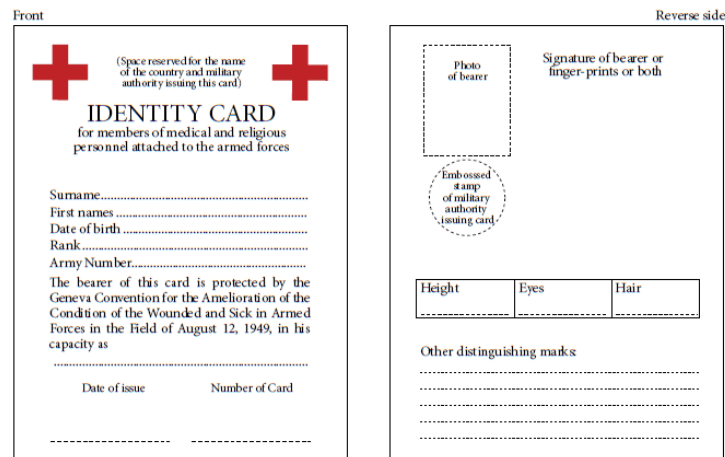


Figure 1: Model of identity card for members of medical and religious personnel attached to the armed forces- Annex II of Geneva Convention I

- Be made in duplicate, one for the user and one for the home country.⁵⁶³

- That the parties must inform each other, at the outbreak of hostilities, of the model they are using;⁵⁶⁴ and
- That there is an absolute prohibition on depriving someone of this insignia, his or her armlet or identity card.⁵⁶⁵

There are also specific requirements related to auxiliary medical personnel. Auxiliary medical personnel are members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick.⁵⁶⁶

Principal national implementation requirements for this group are found in Geneva Convention I and provide the following:

- They must wear a white armlet bearing in its centre the distinctive sign in miniature. The armlet shall be issued and stamped by the issuing authority.⁵⁶⁷

⁵⁶³ Geneva Convention I, Art. 40; Geneva Convention II, Art. 42.

⁵⁶⁴ *Ibid.*

⁵⁶⁵ *Ibid.*

⁵⁶⁶ Geneva Convention I, Art. 25.

⁵⁶⁷ Geneva Convention I, Art. 41.

- Military identity documents shall specify what special training they have received, the temporary character of the duties with which they are engaged and their authority for wearing the armlet.⁵⁶⁸

Primary Ukrainian Implementation Measures

Ukrainian legal measures cover the identification of medical personnel of the armed forces and the personnel of the Ukrainian Red Cross Society who may be employed by the armed forces.⁵⁶⁹ They, however, do not refer to societies of neutral countries.

Concerning the armlet, the Law of Ukraine on Emblems establishes that medical personnel shall wear armlets bearing the emblem of the Red Cross issued in accordance with the requirements of the Geneva Conventions and Additional Protocol 1. The Ministry of Defence of Ukraine issues these armlets.⁵⁷⁰

The Law further adds that medical personnel shall also carry an identity card bearing the distinctive emblem. In addition, the Military Instruction and its Annex 2 adequately supplement the law by defining the identification documents necessary for medical personnel (identity card and disc).⁵⁷¹ More particularly, Annex 2 states that the identification of medical personnel should be performed using identity cards and discs.⁵⁷² Finally, in the event that the identity card is unusable or lost, the holder shall obtain a duplicate.⁵⁷³

Annex 2 lists all the requirements for the identity card provided for in the Geneva Conventions.⁵⁷⁴ Further, the template provided for in Figure (1)(a) of Annex 2 (and indicated below) largely complies with the Conventions, consequently ensuring uniformity throughout the armed forces.

⁵⁶⁸ *Ibid.*

⁵⁶⁹ Law of Ukraine on Emblems, Arts. 4, 6; Military Instruction, para. 1.4.10, Annex 2.

⁵⁷⁰ Law of Ukraine on Emblems, Arts. 4(3), 6(2).


⁵⁷¹ Military Instruction, paras 1.4.10; 6.5; Annex 2.

⁵⁷² Military Instruction, Annex 2.


⁵⁷³ Military Instruction, Annex 2.

⁵⁷⁴ Annex 2 states that the identity card shall contain the surname, name, military rank, service number, date of birth, photograph of the owner, signature, fingerprint or both, the distinctive emblem, the stamp of the military authority, entitlement to the protection of Geneva Convention I, as well as that it shall be made in duplicate.

Лицьовий бік



УКРАЇНА
Міністерство оборони України
ПОСВІДЧЕННЯ ОСОБИ
члена медичного персоналу
Збройних Сил України



Прізвище _____

Ім'я та по батькові _____

Дата народження _____

Військове звання _____

Військовий номер _____

Власник цього посвідчення перебуває під покровительством
Женевських конвенцій від 12 серпня 1949 року як _____

Дата видачі _____ Посвідчення № _____

« » 20__ року

Зворотний бік

Фотокартка
власника
(30x40 мм)
МП

Підпис власника
посвідчення
або відбиток
великого пальця
правої руки,
або і те, й інше

Зріст	Очі	Волося

Інші особливі прикмети: _____

Мал. 1.а. Зразок посвідчення члена медичного персоналу
Збройних Сил України

Figure 2: Model of Identity Card for Members of Medical Personnel of the Armed Forces of Ukraine - Instruction, Annex 2, Figure (1)(a).

The Cabinet of Ministers of Ukraine Resolution of 12 June 2000, № 939, regulates the procedure of issue and registration of identity cards.⁵⁷⁵

The Military Instruction fails to provide that “[p]arties must inform each other, at the outbreak of hostilities, of the model they are using”.⁵⁷⁶ Failing to do so could have significant consequences on the mobility and safety of medical personnel.

Finally, the legal measures described above do not distinguish between auxiliary and permanent personnel of its armed forces. The regime described above therefore applies to both categories.

⁵⁷⁵ Resolution of the Cabinet of Ministers of Ukraine on Identity Cards for Medical Personnel.

⁵⁷⁶ See Geneva Convention I, Art. 40; Geneva Convention II, Art. 42.

Civilian Medical Personnel

Principal National Implementation Requirements

Civilian medical personnel, including personnel who are engaged in the operation and administration of civilian hospitals, must be respected and protected.⁵⁷⁷ The management of each hospital must at all times have an up-to-date list of such personnel and be able to provide it to the competent national or occupying authorities.⁵⁷⁸

Every assistance shall be afforded to civilian medical personnel in areas where their services are disrupted due to combat. They must have access to any place where their services are essential, subject to standard supervisory and safety measures.⁵⁷⁹

In addition, the occupying power must:

- Allow “every assistance” to civilian medical personnel to perform their humanitarian functions;
- Not demand priority treatment for any person, other than on medical grounds; and
- Not require civilian medical personnel to perform activities incompatible with their mission.⁵⁸⁰

Finally, the identification of persons engaged in the operation and administration of civilian hospitals is governed by IHL. They shall carry an identity card and wear an armlet on the left arm, issued by the Government of Ukraine and bearing the emblem.⁵⁸¹ During occupation, civilian medical personnel shall also be recognisable by the distinctive emblem and an identity card certifying their status.⁵⁸²

⁵⁷⁷ Geneva Convention IV, Art. 20; Additional Protocol I, Art. 15.

⁵⁷⁸ Geneva Convention IV, Art. 20.

⁵⁷⁹ Additional Protocol I, Arts. 15(2), 15(4).

⁵⁸⁰ Additional Protocol I, Art. 15(3).

⁵⁸¹ Geneva Convention IV, Art. 20.

⁵⁸² Additional Protocol I, Art. 18(3).

Front	Reverse side															
<div style="text-align: center;"> <small>(space reserved for the name of the country and authority issuing this card)</small> IDENTITY CARD <small>for PERMANENT civilian medical personnel</small> <small>TEMPORARY religious</small> </div> <p>Name.....</p> <p>Date of birth (or age)</p> <p>Identity No. (if any)</p> <p><small>The holder of this card is protected by the Geneva Conventions of 12 August 1949 and by the Protocol Additional to Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) in his capacity as</small></p> <p>.....</p> <p>Date of issue No. of card.....</p> <p style="text-align: right;">Signature of issuing authority</p> <p>Date of expiry</p>	<table border="1"> <tr> <td>Height.....</td> <td>Eyes.....</td> <td>Hair.....</td> </tr> <tr> <td colspan="3">Other distinguishing marks or information:</td> </tr> <tr> <td colspan="3">.....</td> </tr> <tr> <td colspan="3" style="text-align: center;">PHOTO OF HOLDER</td> </tr> <tr> <td colspan="2">Stamp</td> <td>Signature of bearer or thumbprint or both</td> </tr> </table>	Height.....	Eyes.....	Hair.....	Other distinguishing marks or information:					PHOTO OF HOLDER			Stamp		Signature of bearer or thumbprint or both
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Figure 3: Model of Identity Card for Civilian and Religious Medical Personnel - Annex I of Additional Protocol I

Primary Ukrainian National Implementation Measures

Although Ukrainian legal measures adequately provide for the identification of civilian medical personnel, they fail to ensure their overall protection. Paragraphs 1.2.31 of the Military Instruction defines “medical personnel” as follows:

- 1.2.31. “Medical personnel” (both military and civilian) means members of medical units assigned (permanently or temporarily):
- for exclusively medical purposes – namely the search for, evacuation, transportation and medical assistance to the wounded, sick and shipwrecked (aircraft crash) and for the prevention of disease or for maintenance of medical units and work on sanitary transport.

Paragraph 1.2.32 defines “medical units” to which medical personnel is assigned as “medical military or civilian establishments, units and institutions organised for the provision of medical assistance of the armed forces”.⁵⁸³ The Military Instruction requires the military to respect and protect medical personnel of a hostile party and prohibits attacks against such personnel unless the latter commit hostile acts.⁵⁸⁴ Further, the Military Instruction stipulates that medical personnel cannot be captured, but can be detained if POWs require its medical assistance.⁵⁸⁵ If captured, medical personnel enjoys same protection as POWs.⁵⁸⁶ Medical personnel cannot be engaged in the work that is unrelated to their medical duties.⁵⁸⁷

⁵⁸³ Military Instruction, para. 1.2.32.

⁵⁸⁴ Military Instruction, para. 2.16.1.

⁵⁸⁵ Military Instruction, para. 2.16.2.

⁵⁸⁶ *Ibid.*

⁵⁸⁷ Military Instruction, para. 2.16.3.

Regarding the identification of civilian medical personnel (including persons engaged in the operation and administration of civilian hospitals), the Law of Ukraine on Emblems states that they shall wear armlets and carry identity cards bearing the emblem of the Red Cross and a photograph issued in accordance with the requirements of the Geneva Conventions and Additional Protocol I.⁵⁸⁸ In addition, Annex 2 specifically refers to the distinction of civilian medical personnel and provides a template identity card in Figure (1)(b).⁵⁸⁹ However, the template does not specify the date of expiry as provided for in Chapter II of Annex I of Additional Protocol I.

Лицьовий бік

<div style="display: inline-block; text-align: center;"> УКРАЇНА Міністерство охорони здоров'я України ПОСВІДЧЕННЯ ОСОБИ члена цивільного медичного персоналу </div>	
Прізвище _____	
Ім'я та по батькові _____	
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Дійсне до «__» ____ 20__ року	Підпис Міністра охорони здоров'я України

Зворотний бік

Зріст	Очі	Волосся
Інші особливі прикмети: _____		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <div style="border: 1px solid black; width: 60px; height: 60px; margin: 0 auto; text-align: center; vertical-align: middle;"> Фотокартка власника МП </div> </div> <div style="width: 50%;"> Підпис власника посвідчення або відбиток великого пальця правої руки, або і те, й інше </div> </div>		

Мал. 1.б. Зразок посвідчення члена цивільного медичного персоналу

*Figure 4: Model of Identity Card for
Members of Civilian Medical Personnel -
Military Instruction, Annex 2, Figure (1)(b).*

General Protection of Medical Duties

Principal National Implementation Requirements

Those carrying out medical activities shall not be compelled to:

⁵⁸⁸ Law of Ukraine on Emblems, Art. 5.

⁵⁸⁹ Military Instruction, Annex 2.

- Perform acts or to carry out work contrary to medical ethics, or other medical rules designed for the benefit of the wounded and sick;⁵⁹⁰
- Refrain from performing acts or from carrying out work required by those rules and provisions;⁵⁹¹ or
- Give to anyone belonging to an adverse party or to their own party (except as required by law) information concerning the wounded and sick who are, or who have been under their care, if the information could prove harmful to the patients concerned or to their families.⁵⁹²

Primary Ukrainian National Implementation Measures

Ukrainian legal measures do not address the general protection of medical duties during armed conflict.

Religious Personnel

Principal National Implementation Requirements

Under IHL, civilian and military religious personnel shall be respected and protected in all circumstances.⁵⁹³ Civilian religious personnel benefit from the same regime of protection and identification as medical personnel.⁵⁹⁴

Primary Ukrainian Implementation Measures

Ukrainian legal measures partially cover the protection of civilian and military religious personnel.

The Military Instruction provides for the protection and respect of religious personnel.⁵⁹⁵ In accordance with Additional Protocol I, the Military Instruction always refers to the protection of medical and religious personnel together, thus ensuring a similar protection and identification regime. Accordingly, the comments made in the subsections related to medical personnel (above) apply to religious personnel.⁵⁹⁶

Nevertheless, although Annex 2 of the Military Instruction states that identity cards shall be issued for religious personnel, it should be noted that the template contained in Annex

⁵⁹⁰ Additional Protocol I, Art. 16(1).

⁵⁹¹ Additional Protocol I, Art. 16(2).

⁵⁹² Additional Protocol I, Art. 16(3).

⁵⁹³ Geneva Convention I, Art. 24; Additional Protocol I, Art. 15(5).

⁵⁹⁴ Additional Protocol I, Art. 15(5).

⁵⁹⁵ Military Instruction, paras 1.2.45, 1.4.13, 2.11.1.

⁵⁹⁶ See *supra*, pp. 127-128.

2 does not refer to religious personnel. However, paragraph 6.4 of the Military Instruction includes provision of identity cards for religious personnel.⁵⁹⁷ Moreover, the Law of Ukraine on Emblems only refers to religious personnel in relation to the marking of religious personnel of foreign organisations, belonging to the International Red Cross and Red Crescent Movement during their official mission in Ukraine.⁵⁹⁸

Non-International Armed Conflicts

Principal National Implementation Requirements

In relation to non-international armed conflict, persons engaged in medical activities:

- Shall not be punished for carrying out their duties, so long as they are compatible with medical ethics, no matter who they are caring for;⁵⁹⁹
- Shall not be compelled to perform acts or carry out work contrary to medical ethics or other rules designed for the benefit of the wounded / sick;⁶⁰⁰
- Respect the right to privacy with regards to information acquired while providing medical services;⁶⁰¹
- Shall face no penalty for refusing or otherwise failing to disclose information relating to those under their care, so long as it is in conformity with national law;⁶⁰² and
- The distinctive emblem of the Red Cross or Red Crescent on a white ground shall be displayed and shall not be used improperly.⁶⁰³

Primary Ukrainian Implementation Measures

Ukrainian implementation measures applicable to non-international armed conflict only provide that medical personnel shall be respected and protected, with the military responsible to assist them in the performance of their duties.⁶⁰⁴

However, the requirements set forth in Additional Protocol II require more extensive consideration, including that persons engaged in medical activities:

⁵⁹⁷ Military Instruction, para. 6.4.

⁵⁹⁸ Law of Ukraine on Emblems, Art. 12.

⁵⁹⁹ Additional Protocol II, Art. 10(1).

⁶⁰⁰ Additional Protocol II, Art. 10(2).

⁶⁰¹ Additional Protocol II, Art. 10(3).

⁶⁰² Additional Protocol II, Art. 10(4).

⁶⁰³ Additional Protocol II, Art. 12.

⁶⁰⁴ Military Instruction, para. 1.4.13,.

- Shall not be punished for carrying out their duties (so long as they do so in an ethical manner);
- Shall not perform acts contrary to medical ethics;
- Shall be afforded respect for the right to privacy for information acquired while providing medical services; and
- Cannot be compelled to divulge confidential information about patient care.⁶⁰⁵

Regarding the identification of medical personnel during a non-international armed conflict, the Law of Ukraine on Emblems does not draw any distinction between international and non-international armed conflicts. The identification regime detailed above is therefore applicable to non-international armed conflicts.⁶⁰⁶ Finally, the Military Instruction also addresses the identification of medical personnel during a non-international armed conflict.⁶⁰⁷

Repression of Attacks against Medical or Religious personnel during International and Non-international Armed Conflicts

Principal National Implementation Requirements

As discussed, the Geneva Conventions and Additional Protocols require the protection of any medical and religious personnel.⁶⁰⁸ Although they do not characterise any violation of this protection as a grave breach, customary international humanitarian law now recognises that attacks against medical or religious personnel are serious violations of IHL⁶⁰⁹ and therefore should be criminalised.

Primary Ukrainian Implementation Measures

As discussed above,⁶¹⁰ Article 438 of the Criminal Code encompasses all serious violations of IHL contained within IHL instruments ratified by Ukraine and therefore encompasses the above-mentioned violations. However, Article 438 lacks particularity and is unlikely to provide the degree of certainty and specificity essential for the effective prosecution of IHL violations.

⁶⁰⁵ See Additional Protocol II, Art. 10.

⁶⁰⁶ See *supra*, pp. 127-128.

⁶⁰⁷ Military Instruction, para. 1.2.57 (also applicable during non-international armed conflict – see para. 1.4.13).

⁶⁰⁸ Geneva Convention I, Arts. 24-26; Geneva Convention II, Art.36; Geneva Convention III, Art. 20; Additional Protocol I, Art. 15; Additional Protocol II, Art. 9.

⁶⁰⁹ See ICRC, '[Definition of War Crimes – Rule 156](#)' (ICRC, 2009). Article 8 of the Rome Statute also considers such attacks as war crimes during international and non-international conflicts.

⁶¹⁰ See *supra*, pp. 35-39 and 64-67.

Nevertheless, in relation to military actors, the Military Instruction offers a degree of clarity by providing additional particularisation and clarity regarding what conduct amounts to a criminal or disciplinary offence.⁶¹¹ Paragraph 1.8.5 contains serious violations of IHL that may attract criminal sanctions in Ukraine and adequately lists “attacks against persons protected by international humanitarian law” which include medical and religious personnel.⁶¹²

Despite this additional guidance, the Military Instruction fails to include personnel of societies of neutral countries in the definition of medical personnel or protected persons. This failure undermines the capacity of the Military Instruction to provide a clear particularisation of the full range of serious violations of IHL that ought to be criminalised pursuant to Article 438.

⁶¹¹ See *supra*, pp. 65-67.

⁶¹² Military Instruction, para. 1.2.45.

Medical Transports and Facilities

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Articles 19, 36, 39, 42-43
- Geneva Convention II, Articles 22, 24-27, 38-39
- Geneva Convention IV, Articles 18, 21-22
- Additional Protocol I, Articles 12, 18, 21-23
- Additional Protocol II, Article 12

Medical Units

Key National Implementation Requirements

Geneva Convention I provides for the protection of military medical units, both fixed and mobile. The protection was later extended to civilian medical units by Article 12 of Additional Protocol I.⁶¹³ Medical units cannot be attacked, but should at all times be respected and protected. If they fall into the hands of an adverse party, their personnel shall be free to pursue their duties unless the capturing power has ensured the necessary care of the wounded and sick. In addition, both civilian and military medical units shall be situated in such a manner that attacks against military objectives cannot imperil their safety. Neither shall they be used in an attempt to shield military objectives from attack.⁶¹⁴

The Government of Ukraine shall notify the adverse parties of the location of its medical units.⁶¹⁵ Medical vehicles shall be respected and protected in the same way as mobile medical units.⁶¹⁶

Primary Ukrainian Implementation Measures

Ukrainian implementation measures are lacking in relation to the protection of civilian medical units. The Military Instruction provides for the protection of “medical units”, they are defined as medical military and civilian establishments, units and institutions organised for the provision of medical assistance to the armed forces.⁶¹⁷ The definition of medical units further specifies that the same protection applies to mobile and fixed units.

⁶¹³ Geneva Convention I, Art. 19; Additional Protocol I, Art. 12.

⁶¹⁴ Geneva Convention I, Art. 19; Additional Protocol I, Art. 12(4).

⁶¹⁵ Additional Protocol I, Art. 12(3).

⁶¹⁶ Additional Protocol I, Art. 21.

⁶¹⁷ Military Instruction, paras. 1.2.32, 2.18; see also Field Manual, para. 550.

Similarly, the Military Instruction does not address several issues set out in Geneva Convention I and Additional Protocol I, including:

- The relevant protection due when units fall into the hands of an adverse party;
- That the responsible authorities shall ensure that medical units should be situated in such a manner that attacks against military objectives cannot imperil their safety;
- That medical units shall not be used in an attempt to shield military objectives from attack; and
- The location of the medical units.

Land and Sea Transport in a Convoy of Civilians

Principal National Implementation Requirements

Geneva Convention IV specifically requires that convoys of vehicles or hospital trains on land or specially provided vessels at sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.⁶¹⁸

Primary Ukrainian Implementation Measures

Ukrainian implementation measures do not fully comply with the above-mentioned international standards. The Military Instruction defines such transport as “the conveyance by land, water or air of the wounded, sick, shipwrecked, medical personnel, religious personnel, medical equipment or medical supplies”.⁶¹⁹ Although the Military Instruction directly addresses such convoys, it fails to include the transport of the infirm and maternity cases, as well as to provide for the required protection and respect.

Military Medical Aircraft

Principal National Implementation Requirements

Military medical aircraft shall be protected and respected while flying at heights, times and on routes specifically agreed upon between the belligerents concerned.⁶²⁰ Geneva Convention I further sets out the requirement on summons (request/order) to land that parties to a conflict should respect. Medical aircraft shall obey every summons to land. In the event of a forced landing, the aircraft with its occupants may continue its flight after examination. In the event of an involuntary landing in enemy or enemy-occupied territory,

⁶¹⁸ Geneva Convention IV, Art. 21.

⁶¹⁹ Military Instruction, para. 2.18.1.

⁶²⁰ Geneva Convention I, Art. 36; Geneva Convention II, Art. 39; Geneva Convention IV, Art. 22.

the wounded and sick, as well as the crew of the aircraft shall be considered prisoners of war.⁶²¹

Primary Ukrainian Implementation Measures

Ukrainian legal measures do not fully cover the required protection of military medical aircraft.

The Military Instruction successfully provides for the protection of military medical aircraft;⁶²² however it lacks detail regarding a summons to land. While it addresses the cases where a medical aircraft can be summoned to land, it does not establish that the aircraft with its occupants may continue its flight after examination.⁶²³ Finally, the Military Instruction adequately covers involuntary landing in enemy-occupied territory.⁶²⁴

Various Hospital Ships

Principal National Implementation Requirements

Geneva Convention II requires the Government of Ukraine to establish a regime of notification and protection for:

- Military hospital ships;
- Hospital ships utilised by National Red Cross Societies;
- Hospital ships of officially recognised relief societies or private persons;
- Hospital ships utilised by national Red Cross societies, officially recognised relief societies, or private persons of neutral countries; and
- Fixed coastal installations used exclusively by small craft employed for coastal rescue operations.⁶²⁵

This protection was extended to ships used for civilian wounded, sick or shipwrecked persons by Article 22 of Additional Protocol I. Article 22 further states that “such civilians shall not, however, be subject to surrender to any party which is not their own, or to capture at sea. If they find themselves in the power of a party to the conflict other than their own they shall be covered by the Fourth Convention and by this Protocol”.⁶²⁶

⁶²¹ *Ibid.*

⁶²² Military Instruction, paras. 2.18.4, 4.2.3, 4.2.4.

⁶²³ Military Instruction, para. 2.18.4.

⁶²⁴ *Ibid.*

⁶²⁵ Geneva Convention II, Arts. 22, 24-27.

⁶²⁶ Additional Protocol I, Art. 22(1).

In addition, the protection of these hospital ships shall apply to hospital ships of any tonnage and to their lifeboats, as provided for in Article 26 of Geneva Convention II.

Finally, the Government of Ukraine shall also adopt regulations regarding ships used for the conveyance of medical equipment.⁶²⁷

Primary Ukrainian National Implementation Measures

Ukrainian legal measures fail to adequately cover the protection of certain hospital ships.

The Military Instruction adequately protects military hospital ships,⁶²⁸ hospital ships utilised by National Red Cross Societies and those used by officially recognised relief societies or private persons.⁶²⁹

However, it is silent on the protection of hospital ships related to neutral countries. While the Military Instruction provides that small craft employed for coastal rescue operations shall not be the object of an attack,⁶³⁰ it does not specifically establish that they shall be respected and protected, nor does it set the related conditions provided for in Articles 22 and 24 of Geneva Convention II, and Article 22(3) of Additional Protocol I.

Regarding ships for civilian use, the above-mentioned omissions related to protection also apply to civilian vessels when they carry civilian wounded, sick and shipwrecked, as the Military Instruction does not make any difference between civilian or military wounded, sick and shipwrecked. It also outlines that the protection of hospital ships shall apply to ships of any tonnage and to their lifeboats, as provided for in Article 26 of Geneva Convention II.⁶³¹ The Military Instruction, however, does not contain the specific requirements set forth in Article 22(1) of Additional Protocol I, which provides:

[s]uch civilians shall not, however, be subject to surrender to any Party which is not their own, or to capture at sea. If they find themselves in the power of a Party to the conflict other than their own they shall be covered by the Fourth Convention and by this Protocol.

Finally, the Government of Ukraine has not passed any legal measures regarding ships used for the conveyance of medical equipment.

⁶²⁷ Geneva Convention II, Art. 38.

⁶²⁸ Military Instruction, paras. 2.18.3, 4.1.4.1.

⁶²⁹ Military Instruction, para. 4.1.4.2.

⁶³⁰ Military Instruction, para. 4.6.22.

⁶³¹ Military Instruction, para. 4.6.22.

Civilian Hospitals

Principal National Implementation Requirements

Geneva Convention IV provides for the protection and respect of hospitals and imposes the obligation to issue certificates indicating the presence of civilian hospitals.⁶³² In view of the dangers to which hospitals may be exposed by being close to military objectives, it is also recommended that such hospitals be situated as far as possible from such objectives.⁶³³

Primary Ukrainian Implementation Measures

Generally, civilian hospitals are adequately protected under Ukrainian legal measures.⁶³⁴ However, the Military Instruction fails to require the issuance of certificates indicating the presence of such hospitals.

Further, the Military Instruction does not specifically provide that it is recommended for hospitals to be situated as far as possible from military objectives.

Identification of Medical Units and Transports

Principal National Implementation Requirements

The Geneva Conventions extensively regulate the identification of medical units and transports. Geneva Conventions I and II require that the emblem shall be displayed on the flags, armlets and on all equipment employed in the military medical service.⁶³⁵ Additional Protocol I further addresses the principle that medical units and transports shall be identified by distinctive emblem and/or other signal pursuant to Chapter III of Annex I to the Protocol.⁶³⁶

Geneva Convention I also requires the Government of Ukraine to identify medical units and establishments, as well as medical units belonging to neutral countries.⁶³⁷

Military medical aircraft shall bear, clearly marked, the distinctive emblem together with their national colours, on their lower, upper and lateral surfaces.⁶³⁸

⁶³² Geneva Convention IV, Art. 18.

⁶³³ *Ibid.*

⁶³⁴ Military Instruction, paras. 1.2.32, 1.2.41, 2.6.17.

⁶³⁵ Geneva Convention I, Art. 39; Geneva Convention II, Art. 41.

⁶³⁶ Additional Protocol I, Art. 18(1), 18(5).

⁶³⁷ Geneva Convention I, Arts. 42, 43.

⁶³⁸ Geneva Convention I, Art. 36; Geneva Convention II, Art. 39; Geneva Convention I, Art. 22.

Geneva Convention II also establishes a regime of marking hospital ships and small crafts which should be as follows:

- All exterior surfaces shall be white; and
- One or more dark red crosses, as large as possible, shall be painted and displayed on each side of the hull and on the horizontal surfaces, so placed as to afford the greatest possible visibility from the sea and from the air.⁶³⁹

Geneva Convention IV requires the marking of civilian hospitals.⁶⁴⁰ It also imposes the obligation to ensure that convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be marked, with the consent of the state, by a distinctive emblem of civilian hospitals.⁶⁴¹

Finally, Additional Protocol II imposes on the Government of Ukraine the obligation to establish during non-international armed conflict the respect and use of the distinctive emblem of the Red Cross by medical units and on medical transports.⁶⁴²

Primary Ukrainian Implementation Measures

Ukrainian implementation measures partially address the identification of medical units and transports.⁶⁴³

The Law of Ukraine on Emblems provides that all medical units shall paint the emblem of the Red Cross, Red Crescent, or Red Crystal on the flags, buildings, facilities and supplies of mobile medical units, armlets, clothes and headwear of the medical personnel, thus complying with Article 39 of Geneva Convention I and Article 41 of Geneva Convention II.⁶⁴⁴

In addition, the Military Instruction adequately regulates the use of the emblems and signals for medical units and medical transports,⁶⁴⁵ including the requirements of Chapter III of Annex I of Additional Protocol I. Ukrainian legal measures only regulate the size of the marking of medical units and establishments.⁶⁴⁶ There are no laws or regulations for medical units belonging to neutral countries.

⁶³⁹ Geneva Convention II, Art. 43.

⁶⁴⁰ Geneva Convention IV, Art. 18.

⁶⁴¹ Geneva Convention IV, Art. 21.

⁶⁴² Additional Protocol II, Art. 12.

⁶⁴³ Law of Ukraine on Emblems, Art. 2.

⁶⁴⁴ Law of Ukraine on Emblems, Art. 9.

⁶⁴⁵ Military Instruction, para. 1.2.32, Annex 2.

⁶⁴⁶ Military Instruction, Annex 7.

Concerning military medical aircraft, the law adequately establishes that the emblem of the Red Cross, used as a protective sign, shall be painted together with the national colours on the upper and lower surfaces of the wings and side surfaces of the fuselage. The law also allows for other protective signs agreed by the belligerents to be used for marking.⁶⁴⁷

Regarding the marking of hospital ships and small crafts, although the law sets a regime similar to that of Geneva Convention II,⁶⁴⁸ it fails to provide for the requirements set out in Article 43 of Geneva Convention II, particularly that all exterior surfaces shall be white or that one or more dark red crosses, as large as possible, shall be painted and displayed on each side of the hull and on the horizontal surfaces.

The law also adequately regulates the use of the emblem of the Red Cross by civilian hospitals.⁶⁴⁹

With regard to convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, the law sets out an obligation to use the emblem of the Red Cross.⁶⁵⁰

Finally, as noted above, the Law of Ukraine on Emblems applies to both international and non-international conflicts.⁶⁵¹ Accordingly, the respect and use of the distinctive emblem of the Red Cross by medical units, and on medical transports is adequately provided for in Ukrainian law.

Identification of Religious Transports

Principal National Implementation Requirements

Pursuant to Additional Protocol I, religious transports must be identifiable.⁶⁵²

Primary Ukrainian Implementation Measures

There are no Ukrainian laws or regulations that provide for the identification (and protection) of religious transports.

⁶⁴⁷ Law of Ukraine on Emblems, Art. 9.

⁶⁴⁸ *Ibid.*

⁶⁴⁹ Law of Ukraine on Emblems, Art. 5.

⁶⁵⁰ Law of Ukraine on Emblems, Art. 4.

⁶⁵¹ See *supra*, p. 138.

⁶⁵² Additional Protocol I, Art. 18.

Repression of Attacks against Medical Units and Transports

Principal National Implementation Requirements

As discussed, the Geneva Conventions and Additional Protocols require the protection of any medical units and transports.⁶⁵³ Although they do not characterise any violation of this protection as a grave breach, customary international humanitarian law now recognises that attacks against medical units and transports are serious violations of IHL⁶⁵⁴ and should be criminalised.

Primary Ukrainian Implementation Measures

As discussed above,⁶⁵⁵ Article 438 of the Criminal Code encompasses all serious violations of IHL contained within IHL instruments ratified by Ukraine and therefore encompasses the above-mentioned violations. However, Article 438 lacks particularity and may not provide the degree of certainty and specificity essential for the effective prosecution of these IHL violations.

Moreover, in relation to military actors, the Military Instruction fails to provide sufficient or accurate specification concerning conduct amounting to criminal or disciplinary offences.⁶⁵⁶ Paragraph 1.8.5 (containing the serious violations of IHL that should attract criminal sanctions) fails to list attacks against objects protected by international humanitarian law that include medical and religious objects.⁶⁵⁷ As previously discussed throughout this section, although the Military Instruction provides for the protection of certain medical units and transports, violations only attract disciplinary sanctions.

In addition, as discussed throughout this section, the Military Instruction fails to adequately address the protection of all medical units and transports (e.g. lack of protection of vessels societies of neutral countries, and hospital ships related to neutral countries). Such failure undermines the capacity of the Military Instruction to provide a clear particularisation of the full range of serious violations of IHL that ought to subject to criminal enforcement pursuant to the broad terms of Article 438.

⁶⁵³ Geneva Convention I, Arts. 19, 36, 39, 42-43; Geneva Convention II, Arts. 22, 24-27, 38-39; Geneva Convention IV, Arts. 18, 21-22; Additional Protocol I, Arts. 12, 18, 21-23; and Additional Protocol II, Art. 12.

⁶⁵⁴ See ICRC, '[Definition of War Crimes – Rule 156](#)' (ICRC, 2009). Article 8 of the Rome Statute also considers such attacks as war crimes during international and non-international conflicts.

⁶⁵⁵ See *supra*, pp. 35-39 and 64-67.

⁶⁵⁶ See *supra*, pp. 65-67.

⁶⁵⁷ Military Instruction, para. 1.2.41.

Cultural Property

Relevant Provisions in IHL Treaties

- Additional Protocol I, Article 53
- Additional Protocol II, Article 16
- Hague Convention, Articles 3, 6, 10, 12, 28

Protection of Cultural Property

Principal National Implementation Requirements

It is prohibited to commit acts of hostility during both international and non-international armed conflict against the following types of objects:

- Historic monuments;
- Works of art; and
- Places of worship that constitute the cultural or spiritual heritage of peoples.⁶⁵⁸

It is also prohibited to use such objects in support of a military effort, or to make them the object of reprisals.⁶⁵⁹

Accordingly, and in clear demonstration that the protection against cultural property is accorded the highest relevance, the Government of Ukraine is required to initiate legal measures in times of peace to safeguard cultural property against the foreseeable effects of armed conflict.⁶⁶⁰

Preparatory safeguarding steps to be taken in times of peace include:

- Preparing inventories of objects that fall under the category of cultural property;
- Planning measures for emergencies such as fire or collapse;
- Preparing for the removal of cultural property;
- Preparing the protection of property which cannot be moved to a safer location; and
- Designating authorities responsible for safeguarding cultural property.⁶⁶¹

⁶⁵⁸ Additional Protocol I, Art. 53; Additional Protocol II, Art. 16.

⁶⁵⁹ *Ibid.*

⁶⁶⁰ Hague Convention, Art. 3.

⁶⁶¹ Hague Protocol, Art. 5.

Primary Ukrainian National Implementation Measures

The Military Instruction defines cultural property as “objects of great importance to the cultural heritage of people that play an important role in their spiritual life (such as monuments of architecture and history; works of art; religious or secular monuments; archaeological sites; museums; libraries; archives; and theatres)”.⁶⁶² Paragraph 1.3.1 of the Military Instruction provides:

In times of hostilities it is prohibited to...destroy cultural property, historical sites, places of religion, objects constituting cultural or spiritual heritage of the people; it is also prohibited to use such objects for military advantage.

Further, the Military Instruction adequately states that cultural property may not be used for military purposes⁶⁶³ and prohibits reprisals against cultural property.⁶⁶⁴

In addition, the Military Instruction specifically prohibits attacks on cultural property⁶⁶⁵ and characterises it as a serious violation of IHL.⁶⁶⁶ The State Register of the National Cultural Heritage carries out the registration of cultural property in Ukraine.⁶⁶⁷

However, while the current legal measures provide an accurate definition and protection of cultural property, they fall short in setting out what specific steps shall be taken to safeguard cultural property from the foreseeable effects of conflict, as described above.

⁶⁶² Military Instruction, para. 1.2.30. This provision applies during international and non-international armed conflicts.

⁶⁶³ *Ibid.*

⁶⁶⁴ Military Instruction, para. 1.2.56. This provision applies during international and non-international armed conflicts.

⁶⁶⁵ Military Instruction, para. 1.2.41. This provision applies during international and non-international armed conflicts.

⁶⁶⁶ Military Instruction, para. 1.8.5.

⁶⁶⁷ [On the Approval of the Regulations on the State Register of the National Cultural Heritage](#): Decree of the Cabinet of Ministers of Ukraine No. 466 (12 August 1992).

Emblems for Cultural Property

Principal National Implementation Requirements

Emblems are used in IHL to identify protected objects and persons. In this case, cultural property must be marked with the distinctive emblem,⁶⁶⁸ taking the form of a shield, pointed below, per saltire, blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).⁶⁶⁹ The symbol should look as follows:

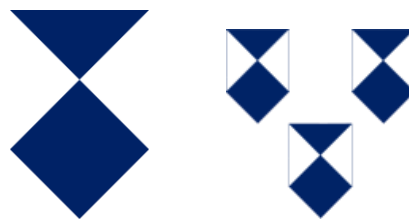


Figure 5: Distinctive Emblem of Cultural Property

Primary Ukrainian National Implementation Measures

The Military Instruction provides that objects of cultural property shall be distinguished with the abovementioned emblems established by the Hague Convention.⁶⁷⁰ One symbol is used when cultural property is not under special protection, whereas three symbols indicate immovable cultural objects that are under special protection.⁶⁷¹ The Military Instruction further states that to identify cultural property the symbol provided by the Roerich Pact may be used – see below.⁶⁷²



⁶⁶⁸ Hague Convention, Art. 6.

⁶⁶⁹ Hague Convention, Art. 16.

⁶⁷⁰ Military Instruction, para. 6.12.

⁶⁷¹ *Ibid.*

⁶⁷² *Ibid.*; Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact), 167 L.N.T.S. 289, entered into force Aug. 26, 1935, Art. 3.

Transport under Special Protection

Principal National Implementation Requirements

The transport of cultural property takes place under special protection and international supervision.⁶⁷³ No party to the Geneva and 1954 Hague Conventions can direct hostility against such a transport vehicle.⁶⁷⁴

Primary Ukrainian National Implementation Measures

Paragraph 4.6.16 of the Military Instruction provides that: “[t]he following classes of enemy vessels are exempt from attack [...] vessels engaged in transporting cultural property under special protection”.⁶⁷⁵ Although there is no specific provision that addresses the transport of cultural property on land, the Military Instruction provides that the abovementioned three symbols of cultural property may also indicate the transport of cultural property under special protection and international supervision.⁶⁷⁶

Repression of Breaches of The Hague Convention

Principal National Implementation Requirements

The Hague Convention addresses the obligation to prosecute and impose penal or disciplinary sanctions for breach of its provisions.⁶⁷⁷ The offences include the theft, pillage or misappropriation of cultural property and any acts of vandalism directed against it.⁶⁷⁸ These offences are, however, not considered as serious violations of IHL.

Additional Protocol I classifies attacks against clearly recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given, causing, as a result, extensive destruction thereof when such objects are not located in the immediate proximity of military objectives or used by the adverse party in support of its military effort, as a serious violation of IHL.⁶⁷⁹ Such conduct should therefore be criminalised.

⁶⁷³ Hague Convention, Art. 12.

⁶⁷⁴ *Ibid.*

⁶⁷⁵ Military Instruction, para. 4.6.16.

⁶⁷⁶ Military Instruction, para. 6.12.

⁶⁷⁷ Hague Convention, Art. 28.

⁶⁷⁸ *Ibid.*

⁶⁷⁹ Additional Protocol I, Arts. 11, 85.

Primary Ukrainian National Implementation Measures

Regarding the obligation to prosecute and impose penal or disciplinary sanctions for breaches of The Hague Convention, several articles under the Criminal Code contain crimes related to cultural property. They include the illegal annihilation, destruction or damage to cultural heritage objects or parts thereof,⁶⁸⁰ the misappropriation of objects of special historic, scientific, artistic or cultural value,⁶⁸¹ the smuggling, and illegal movement of historic and cultural objects,⁶⁸² as well as pillage of national treasures on occupied territories.⁶⁸³ In addition, the Military Instruction expressly prohibits other acts related to cultural property that entail disciplinary sanctions if they do not fall within the scope of the above-mentioned serious violations of IHL:

- The destruction of cultural property, historical sites, places of religion and objects constituting cultural or spiritual heritage of the people;⁶⁸⁴
- Reprisals against objects enjoying special protection which includes cultural property;⁶⁸⁵ and
- It is prohibited to attack as a single objective, several clearly separated and distinct military objectives located in a city, village or other area where persons and objects protected by IHL (including cultural property) are situated.⁶⁸⁶

Regarding serious violations of IHL, Article 438 of the Criminal Code of Ukraine establishes the criminal responsibility of those who have used methods of warfare prohibited by international instruments. However, as discussed, this all-encompassing provision may lack the specificity and certainty to be the basis for effective prosecutions of these offences.

Although the Military Instruction offers greater particularisation of Article 438 by listing the relevant acts as serious violations of IHL:

- The unlawful attack against clearly identifiable cultural property;⁶⁸⁷ and
- The prohibition of using cultural property to gain military advantage.⁶⁸⁸

⁶⁸⁰ Criminal Code of Ukraine, Art. 298.

⁶⁸¹ Criminal Code of Ukraine, Art. 193.

⁶⁸² Criminal Code of Ukraine, Art. 201.

⁶⁸³ Criminal Code of Ukraine, Art. 438.

⁶⁸⁴ Military Instruction, para. 1.3.1.

⁶⁸⁵ Military Instruction, para. 1.2.56.

⁶⁸⁶ Military Instruction, para. 2.10.2.

⁶⁸⁷ Military Instruction, para. 1.8.5.

⁶⁸⁸ Military Instruction, para. 1.2.30.

To conclude, the Criminal Code and the Military Instruction address the obligation to prosecute and impose penal or disciplinary sanctions for breach of the Hague Convention. In addition, the Military Instruction provides a clear particularisation of the serious violations of IHL that ought to be criminalised according Additional Protocol I. In this regard, this particularisation provides useful assistance to allow the Criminal Code to be used to prosecute these offenses as serious violations of IHL.

Dangerous Forces

Relevant Provisions in Core IHL Treaties

- Additional Protocol I, Article 56
- Additional Protocol II, Article 15

Special Protection

Principal National Implementation Requirements

Additional Protocols I and II outline the IHL requirements concerning dangerous forces:

- Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. This protection applies during both international and non-international armed conflicts.⁶⁸⁹
- Other military objectives located at or in the vicinity of these works or installations shall not be made the object of attack if such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population.⁶⁹⁰ Nevertheless, installations erected for the sole purpose of defending the protected works or installations from attack are permissible and can only be made the object of attack under limited circumstances.⁶⁹¹

⁶⁸⁹ Additional Protocol I, Art. 56(1); Additional Protocol II, Art. 15.

⁶⁹⁰ Additional Protocol I, Art. 56(1).

⁶⁹¹ Additional Protocol I, Art. 56(5).

- This special protection against attack ceases in certain circumstances.

Article 56(2) distinguishes between the various works and installations:

- a) for a dam or a dyke only if it is used for other than its normal function and in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;
- b) for a nuclear electrical generating station only if it provides electric power in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;
- c) for other military objectives located at or in the vicinity of these works or installations only if they are used in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support.⁶⁹²

- In these circumstances, all practical precautions shall be taken to avoid the release of the dangerous forces. The 'permission' to attack dangerous forces should be very strictly construed;⁶⁹³ and
- Parties to the conflict are urged to conclude further agreements to provide additional protection to objects containing dangerous forces.⁶⁹⁴

Primary Ukrainian National Implementation Measures

Ukrainian legal measures generally incorporate the prohibitions related to dangerous forces in an effective manner.

The Military Instruction provides for most of the requirements concerning dangerous forces:

- It identifies objects of particular danger (works or installations containing dangerous forces) the destruction of which may cause the release of dangerous forces and cause severe losses among the civilian population. The objects include dams, dykes and nuclear electrical generating stations;⁶⁹⁵
- It expressly prohibits any attack being launched on an object containing dangerous forces during both international and non-international armed conflict;⁶⁹⁶ and
- It provides that placing forces in the vicinity of protected objects that include dangerous forces should be avoided.⁶⁹⁷

⁶⁹² Additional Protocol I, Art. 56(2).

⁶⁹³ Additional Protocol I, Art. 56(3).

⁶⁹⁴ Additional Protocol I, Art. 56(6).

⁶⁹⁵ Military Instruction, para. 1.2.46.

⁶⁹⁶ Military Instruction, para. 1.2.46; see *also* Field Manual, para. 550.

⁶⁹⁷ Military Instruction, para. 2.8.2.

Nevertheless, the Military Instruction does not specifically regulate attacks on installations erected for the sole purpose of defending the protected works or installations from an attack as set forth in Article 56(5) of Additional Protocol I (which identifies that such installations shall not be the object of an attack provided that they are used for solely defensive purposes).

The Military Instruction identifies when the protection afforded to such installations is lost:

An object of particular danger loses its protection (status) (Article 56 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977) if:
A change in its normal function mode results in regular, significant and direct support of the enemy's actions; and
Such attack is the only feasible way to terminate such support.⁶⁹⁸

The Military Instruction, however, fails to detail the exceptions contained in Additional Protocol which breaks down the exception in relation to particular installations, such as a dam or a nuclear electrical plant. If an installation is attacked, the Military Instruction mirrors the requirement in Additional Protocol I to “take all practical and precautionary measures to prevent the release of dangerous forces”.⁶⁹⁹

GRC is not aware of any agreement signed during the current armed conflict by the Government of Ukraine and the adverse party to provide additional protection for objects containing dangerous forces.

Prohibition of Reprisals

Principal National Implementation Requirements

Additional Protocol I imposes an obligation to prohibit reprisals against works and installations containing dangerous forces.⁷⁰⁰

Primary Ukrainian Implementation Measures

The prohibition of reprisals is adequately reflected in the Military Instruction.⁷⁰¹

⁶⁹⁸ Military Instruction, para. 1.2.46.

⁶⁹⁹ *Ibid.*

⁷⁰⁰ Additional Protocol I, Art. 56(4).

⁷⁰¹ Military Instruction, para. 1.2.56.

Distinctive Emblem

Principal National Implementation Requirements

Additional Protocol I requires the use of the distinctive sign on works and installations containing dangerous forces.⁷⁰² Nonetheless, the absence of such marking in no way relieves the parties to the conflict of their obligations detailed above.⁷⁰³



*Figure 6: International Special Sign
for Works and Installations
Containing Dangerous Forces –
Additional Protocol I*

Primary Ukrainian Implementation Measures

Although the Military Instruction includes the relevant sign,⁷⁰⁴ it does not mention that the absence of such marking in no way relieves any party to the conflict of its obligations detailed above.

Repression of Attacks against Dangerous Forces

Principal National Implementation Requirements

“Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive incidental loss of civilian life, injury to civilians or damage to civilian objects” is considered a grave breach of Additional Protocol I⁷⁰⁵ and should therefore be criminalised.

Primary Ukrainian Implementation Measures

As discussed above,⁷⁰⁶ Article 438 of the Criminal Code encompasses all serious violations of IHL and therefore covers the above-mentioned violations. However, Article 438 lacks

⁷⁰² Additional Protocol I, Art. 56(7).

⁷⁰³ Military Manual, para. 1.2.52.

⁷⁰⁴ Military Instruction, para. 6.13.

⁷⁰⁵ See Additional Protocol I, Art. 85(3)(c).

⁷⁰⁶ See *supra*, pp. 35-39 and 64-67.

particularity and may not provide the degree of certainty and specificity essential for the effective prosecution of IHL violations.

Nevertheless, in relation to military actors, the Military Instruction offers a degree of clarity by providing additional particularisation regarding what conducts amounts to a criminal or disciplinary offence.⁷⁰⁷ Paragraph 1.8.5 containing all the serious violations of IHL that may attract criminal sanctions adequately lists “launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive incidental loss of civilian life, injury to civilians or damage to civilian objects.”

⁷⁰⁷ See *supra*, pp. 65-67.

Identity Cards and Capture and Internment Cards

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Articles 27, 40, 41 and Annex II
- Geneva Convention II, Article 42 and Annex
- Geneva Convention III, Articles 17, 70 and Annex IV
- Geneva Convention IV, Articles 20, 106 and Annex III
- Additional Protocol I, Articles 18, 66-67, 78-79 and Annexes I & II

During an armed conflict, it is essential to be able to identify protected persons⁷⁰⁸ and combatants. IHL establishes identification measures that include identity, capture and internment cards. Such identification will prevent disappearances and facilitate the tracing of missing persons.⁷⁰⁹

Identity Cards for Societies of Neutral Countries

Principal National Implementation Requirements

Pursuant to Geneva Convention I, a society of a neutral country can lend the assistance of its medical personnel and units if it is authorised by its own government and one of the parties to the conflict.⁷¹⁰ The members of the personnel must receive identity cards before leaving the neutral country to which they belong.⁷¹¹

Primary Ukrainian National Implementation Measures

Legal measures addressing this matter are not reflected in Ukrainian law or regulations.

⁷⁰⁸ As noted, the Geneva Conventions and Additional Protocols protect sick, wounded and shipwrecked persons not taking part in hostilities, POWs, civilians who because of a conflict or occupation are in the power of a Party whose nationality they do not possess, medical and religious personnel, parlementaires, civil defence personnel, and personnel assigned to the protection of cultural property. For more details, see [ICRC Glossary, 'Protected persons'](#).

⁷⁰⁹ Please note that Articles 27, 40, 41 of Geneva Convention I, Article 42 of Geneva Convention II, Article 20 of Geneva Convention IV and Article 18 of Additional Protocol I have already been covered in the section entitled "Medical and Religious Personnel". See *supra* p. 127. Further, Article 17 of Geneva Convention III has already been discussed in the Section entitled "Fundamental and Judicial Guarantees: Prisoners of War". See *supra*, p. 107. The following section will only discuss the provisions concerning identification which have not yet been analysed and require domestic implementation.

⁷¹⁰ A society is an organisation recognised by its government whose staff search for, collect, transport or treat the wounded and sick, and assist POWs. See [ICRC Glossary, 'Humanitarian Organisations'](#).

⁷¹¹ Geneva Convention I, Art. 27.

Identity Cards for Members of Civil Defence⁷¹²

Principal National Implementation Requirements

Parties shall endeavour to adopt and implement methods and procedures which will make it possible to recognise civil defence personnel, buildings and ‘matériel’ on which the international distinctive sign of civil defence is displayed, as well as shelters provided for the civilian population.⁷¹³ In occupied territories and in areas where fighting is taking place or is likely to take place, civil defence personnel should be recognisable by the international distinctive sign of civil defence which consists of an equilateral blue triangle on an orange background and by an identity card certifying their status.⁷¹⁴

Further, Article 69 of Additional Protocol I also requires that the identification of civil defence medical and religious personnel, medical units and medical transports follows the requirement of the identification of medical and religious personnel, medical units and medical transports.⁷¹⁵





Front	Reverse side												
<div style="text-align: center;">  <p>(space reserved for the name of the country and authority issuing this card)</p> <p>IDENTITY CARD</p> <p>du personnel de la protection civile</p> <p>Name.....</p> <p>Date of birth (or age).....</p> <p>Identity No. (if any).....</p> <p>The holder of this card is protected by the Geneva Conventions of 12 August 1949 and by the Protocol Additional to Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) in his capacity as</p> <p>Date of issue..... No. of card.....</p> <p>Signature of issuing authority</p> <p>Date of expiry.....</p> </div>	<table border="1"> <tr> <td>Height.....</td> <td>Eyes.....</td> <td>Hair.....</td> </tr> <tr> <td colspan="3">Other distinguishing marks or information:</td> </tr> <tr> <td colspan="3" style="height: 100px; text-align: center; vertical-align: middle;">  <p>PHOTO OF HOLDER</p> </td> </tr> <tr> <td colspan="2">Stamp</td> <td>Signature of bearer or thumbprint or both</td> </tr> </table>	Height.....	Eyes.....	Hair.....	Other distinguishing marks or information:			 <p>PHOTO OF HOLDER</p>			Stamp		Signature of bearer or thumbprint or both
Height.....	Eyes.....	Hair.....											
Other distinguishing marks or information:													
 <p>PHOTO OF HOLDER</p>													
Stamp		Signature of bearer or thumbprint or both											

Figure 7: Model of Identity Card and Distinctive Emblem for Civil Defence Personnel, Additional Protocol I, Annex I

⁷¹² Additional Protocol I, Article 62 defines civil defence as: “the performance of some or all of the undermentioned humanitarian tasks intended to protect the civilian population against the dangers, and to help it to recover from the immediate effects, of hostilities or disasters and also to provide the conditions necessary for its survival.” For more details see *infra*, p. 169.

⁷¹³ Additional Protocol I, Art. 66(1), (2).

⁷¹⁴ Additional Protocol I, Art. 66(4), Annex I, Chapter V.

⁷¹⁵ Additional Protocol I, Arts. 18, 66(9).

Parties should supervise the use of the international distinctive sign of civil defence as a protective device and must prevent and repress any misuse.⁷¹⁶

Finally, members of the armed forces and military units assigned to civil defence organisations must be protected and respected.⁷¹⁷

Primary Ukrainian National Implementation Measures

Ukrainian legal measures generally comply with these requirements.

The Military Instruction refers specifically to the use of the distinctive emblem for civil defence⁷¹⁸ and provides a model of the distinctive emblem of civil defence, as well as its identity card.⁷¹⁹ Pursuant to Annex 2 of the Military Instruction, the international distinctive sign of civil defence is an equilateral blue triangle on an orange background. However, the identification of shelters is not covered.



Figure 8: International Distinctive Sign of Civil Defence - Military Instruction, Annex 2, Figure

5

Мал. 5. Міжнародний розпізнавальний знак цивільної оборони

⁷¹⁶ Additional Protocol I, Art. 66(8).

⁷¹⁷ Additional Protocol I, Art. 67.

⁷¹⁸ Military Instruction, paras 1.2.50; 6.11, see also Field Manual, para. 550.

⁷¹⁹ Military Instruction, para. 6.11; Annex 2.

Лицьовий бік



(місце для назви держави та влади,
якими видано дане посвідчення особи)



ПОСВІДЧЕННЯ ОСОБИ
для персоналу цивільної оборони

Прізвище _____

Дата народження (або вік) _____

Особистий номер (якщо він є) _____

Власник цього посвідчення перебуває під покровительством Женевських конвенцій від 12 серпня 1949 року та Додаткового протоколу до Женевських конвенцій від 12 серпня 1949 року, який стосується захисту жертв міжнародних збройних конфліктів (Протокол I), як _____

Дата видачі _____ № посвідчення _____

Підпис влади, яка
видала посвідчення _____

Дійсне до _____

Зворотний бік

Зріст	Очі	Волосся

Інші особливі прикмети або дані: _____

наявність зброї _____



Фото
власника
посвідчення

Печатка

Підпис власника
посвідчення
або відбиток великого
пальця правої руки,
або і те, й інше

Мал. 2. Зразок посвідчення особи для персоналу цивільної оборони

*Figure 9: Model of Identity Card for Civil
Defence Personnel - Instruction, Annex 2,
Figure 2*

In addition, medical and religious personnel, medical units and transports of civil defence shall be distinguished using a procedure similar to that for civilian medical and religious personnel units and medical transports.⁷²⁰

The Code of Civil Defence of Ukraine also provides for the use of the distinctive emblem:

Ordinary servicemen and commanders of the civil defence service shall be provided with the uniform and respective distinctive emblems that shall be funded by the State Budget of Ukraine...⁷²¹

⁷²⁰ Military Instruction, para. 6.11; Annex 2.

⁷²¹ Code of Civil Defence of Ukraine, Art. 111.

In addition, a Resolution of the Cabinet of Ministers, adopted in 2018, establishes the procedure for approving the description and templates of the distinctive signs of civil defence personnel and units.⁷²²

The repression of the misuse of the emblem will be discussed below.⁷²³ It is worth noting that the misuse of the international distinctive emblems of civil defence is prohibited in the Military Instruction.⁷²⁴

Regarding military civil defence personnel, this issue is not addressed under Ukrainian law and therefore does not mirror the protections contained in Additional Protocol I.

Evacuation of Children

Principal National Implementation Requirements

Parties to the conflict shall establish an identification card (with a photograph) for each child evacuated from a particular area. The respective parties shall send the card to the Central Tracing Agency of the ICRC.⁷²⁵ Each card must bear, whenever possible, and whenever it involves no risk of harm to the child, the information defined in Article 78 of Additional Protocol I.

Primary Ukrainian Implementation Measures

Legal measures addressing the creation of an identification card for children are not reflected in Ukrainian law or regulations.

Journalists

Principal National Implementation Requirements

Journalists engaged in dangerous professional missions in areas of armed conflict may be provided by the government with an identity card similar to the model in Annex II of Additional Protocol I.⁷²⁶

⁷²² [On Approving the description and samples of uniforms and the corresponding insignia of persons of ordinary and chief structure of civil defence bodies and rules on providing with uniforms](#): Resolution of the Cabinet of Ministers No.81 (14 February 2018).

⁷²³ See *infra*, p. 164.

⁷²⁴ Military Instruction, para. 1.3.1.

⁷²⁵ Additional Protocol I, Art. 78.

⁷²⁶ Additional Protocol I, Art. 79(3), Annex II.

[illegible]

Figure 10: Model of an Identity Card for Journalist – Additional Protocol I, Annex II

Primary Ukrainian National Implementation Measures

These requirements are not reflected in Ukrainian law or regulations.

Capture and Internment Cards

Principal National Implementation Requirements

Pursuant to Geneva Convention III, the Government of Ukraine shall enable every POW to write a card to his family and to the Central Prisoners of War Agency, immediately upon capture, or not more than one week after arrival at a camp (even if it is a transit camp) likewise in case of sickness or transfer to the hospital or another camp. A model of the capture card is provided in Annex IV.⁷²⁷

⁷²⁷ Geneva Convention III, Art. 70, Annex IV.

Similarly, Geneva Convention IV imposes on the Government of Ukraine the obligation to enable internees to send an internment card and provides a model in its Annex III.⁷²⁸

B. CAPTURE CARD
(see Article 70)

1. Front	<div style="display: flex; justify-content: space-between; align-items: center;"> <u>PRISONER OF WAR MAIL</u> Postage free </div> <div style="text-align: center; margin-top: 10px;">CAPTURE CARD FOR PRISONER OF WAR</div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 50%; padding: 5px; vertical-align: top;"> <p style="text-align: center; margin: 0;">IMPORTANT</p> <p style="font-size: 0.8em; margin: 0;">This card must be completed by each prisoner immediately after being taken prisoner and each time his address is changed (by reason of transfer to a hospital or to another camp).</p> <p style="font-size: 0.8em; margin: 0;">This card is distinct from the special card which each prisoner is allowed to send to his relatives.</p> </td> <td style="width: 50%; padding: 5px; vertical-align: top;"> <p style="text-align: center; margin: 0;">CENTRAL PRISONERS OF WAR AGENCY</p> <p style="text-align: center; margin: 0;">International Committee of the Red Cross</p> <p style="text-align: center; margin: 0;">GENEVA (Switzerland)</p> </td> </tr> </table>	<p style="text-align: center; margin: 0;">IMPORTANT</p> <p style="font-size: 0.8em; margin: 0;">This card must be completed by each prisoner immediately after being taken prisoner and each time his address is changed (by reason of transfer to a hospital or to another camp).</p> <p style="font-size: 0.8em; margin: 0;">This card is distinct from the special card which each prisoner is allowed to send to his relatives.</p>	<p style="text-align: center; margin: 0;">CENTRAL PRISONERS OF WAR AGENCY</p> <p style="text-align: center; margin: 0;">International Committee of the Red Cross</p> <p style="text-align: center; margin: 0;">GENEVA (Switzerland)</p>																		
<p style="text-align: center; margin: 0;">IMPORTANT</p> <p style="font-size: 0.8em; margin: 0;">This card must be completed by each prisoner immediately after being taken prisoner and each time his address is changed (by reason of transfer to a hospital or to another camp).</p> <p style="font-size: 0.8em; margin: 0;">This card is distinct from the special card which each prisoner is allowed to send to his relatives.</p>	<p style="text-align: center; margin: 0;">CENTRAL PRISONERS OF WAR AGENCY</p> <p style="text-align: center; margin: 0;">International Committee of the Red Cross</p> <p style="text-align: center; margin: 0;">GENEVA (Switzerland)</p>																				
2. Reverse side	<p style="font-size: 0.8em; margin: 0;">Write legibly and in block letters</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="border-bottom: 1px solid black;">1. Power on which the prisoner depends</td> </tr> <tr> <td style="width: 33%; border-bottom: 1px solid black;">2. Name</td> <td style="width: 33%; border-bottom: 1px solid black;">3. First names (in full)</td> </tr> <tr> <td style="width: 33%; border-bottom: 1px solid black;">4. First name of father</td> <td style="width: 33%; border-bottom: 1px solid black;">5. Date of birth.....</td> </tr> <tr> <td style="width: 33%; border-bottom: 1px solid black;">6. Place of birth</td> <td style="width: 33%; border-bottom: 1px solid black;">7. Rank.....</td> </tr> <tr> <td style="width: 33%; border-bottom: 1px solid black;">8. Service number.....</td> <td style="width: 33%; border-bottom: 1px solid black;">9. Address of next of kin.....</td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">*10. Taken prisoner on: (or) Coming from (Camp No., hospital, etc.)</td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">*11. a) Good health—b) Not wounded—c) Recovered—d) Convalescent— e) Sick—f) Slightly wounded—g) Seriously wounded.</td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">12. My present address is: Prisoner No</td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">Name of camp</td> </tr> <tr> <td style="width: 33%; border-bottom: 1px solid black;">13. Date</td> <td style="width: 33%; border-bottom: 1px solid black;">14. Signature</td> </tr> </table> <p style="font-size: 0.7em; margin-top: 5px;">* Strike out what is not applicable—Do not add any remarks— See explanations overleaf.</p>	1. Power on which the prisoner depends		2. Name	3. First names (in full)	4. First name of father	5. Date of birth.....	6. Place of birth	7. Rank.....	8. Service number.....	9. Address of next of kin.....	*10. Taken prisoner on: (or) Coming from (Camp No., hospital, etc.)		*11. a) Good health—b) Not wounded—c) Recovered—d) Convalescent— e) Sick—f) Slightly wounded—g) Seriously wounded.		12. My present address is: Prisoner No		Name of camp		13. Date	14. Signature
1. Power on which the prisoner depends																					
2. Name	3. First names (in full)																				
4. First name of father	5. Date of birth.....																				
6. Place of birth	7. Rank.....																				
8. Service number.....	9. Address of next of kin.....																				
*10. Taken prisoner on: (or) Coming from (Camp No., hospital, etc.)																					
*11. a) Good health—b) Not wounded—c) Recovered—d) Convalescent— e) Sick—f) Slightly wounded—g) Seriously wounded.																					
12. My present address is: Prisoner No																					
Name of camp																					
13. Date	14. Signature																				

Figure 11: Model of a Capture Card - Geneva Convention III, Annex IV

⁷²⁸ Geneva Convention IV, Art. 106, Annex III.

I. INTERNMENT CARD

1. Front	CIVILIAN INTERNEE MAIL		Postage free
	POST CARD		
2. Reverse side	<p>IMPORTANT</p> <p>This card must be completed by each internee immediately on being interned and each time his address is altered by reason of transfer to another place of internment or to a hospital.</p> <p>This card is not the same as the special card which each internee is allowed to send to his relatives.</p>		<p>CENTRAL INFORMATION AGENCY FOR PROTECTED PERSONS</p> <p>International Committee of the Red Cross</p> <p>GENEVA (Switzerland)</p>
	<p>Write legibly and in block letters — 1. Nationality.....</p> <p>2. Surname..... 3. First names (in full)..... 4. First name of father.....</p> <p>5. Date of birth..... 6. Place of birth.....</p> <p>7. Occupation.....</p> <p>8. Address before detention.....</p> <p>9. Address of next of kin.....</p> <p>10. Interned on: *.....</p> <p>(or)</p> <p>Coming from (hospital, etc.) on:.....</p> <p>11. State of health *.....</p> <p>12. Present address.....</p> <p>13. Date..... 14. Signature.....</p> <p>* Strike out what is not applicable—Do not add any remarks—See explanations overleaf.</p>		

Figure 12: Model of an Internment Card - Geneva Convention IV, Annex III

Primary Ukrainian National Implementation Measures

Лицьовий бік	
Писати розбірливо і прописними буквами	Держава, до збройних сил якої належить військовополонений
2. Прізвище	3. Ім'я (повністю)
4. По батькові	
5. Дата народження	6. Місце народження
7. Військове звання	
8. Особистий номер	
9. Адреса сім'ї	
10. Взятий у полон: (або) Прибув із (табору №, госпіталью і т.п.)	
11. а) здоровий б) не поранений с) одужав д) видужує е) хворий f) легке поранення g) тяжке поранення	
12. Моя адреса на даний час: номер полоненого	
Позначення табору	
13. Дата	14. Підпис
*Непотрібне викреслити. До вказаного нічого не додавати. Дивись пояснення на зворотному боці.	
Зворотний бік	
Пошта для військовополонених безкоштовно. Картка-повідомлення про взяття в полон	
ДО ВІДОМА	До Центрального Агентства у справах військовополонених
Ця картка повинна бути заповнена кожним військовополоненим негайно після взяття його в полон і кожного разу, коли військовополонений змінює свою адресу в результаті направлення його в госпіталь або інший табір.	Міжнародний Комітет Червоного Хреста
Дійсна картка не має відношення до спеціальної картки, яку військовополоненому дозволяється надіслати своїй сім'ї.	ЖЕНЕВА (ШВЕЙЦАРІЯ)

Figure 13: Model of a Capture Card - Military Instruction, Annex V

Ukrainian legal measures fully cover the creation and distribution of capture cards. The Military Instruction provides that no later than seven days after capture (arrival at a brigade reception centre) every POW shall be allowed to write and send a capture card, both to his family and to the Central Prisoners of War Agency.⁷²⁹ Annex 5 to the Military Instruction reproduces the capture card set forth in Geneva Convention III.⁷³⁰

However, with regard to the issuance of internment cards, Ukrainian legal measures fail to address these requirements.

⁷²⁹ Military Instruction, para. 2.14.15.

⁷³⁰ Military Instruction, Annex 5. Under Article 123 of Geneva Convention III, a Central Prisoners of War Information Agency shall be created in a neutral country which is in charge of collecting all the information it may obtain through official or private channels respecting POWs, and of transmitting it as rapidly as possible to the country of origin of the POW or to the power on which they depend.

Use / Misuse of Emblems and Symbols

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Articles 44, 53-54
- Geneva Convention II, Articles 44-45
- Additional Protocol I, Articles 18, 37-38, 66, 85 and Annex I
- Additional Protocol II, Article 12
- Additional Protocol III, Articles 2, 6-7
- Hague Convention, Articles 6, 10, 12, 17

IHL strictly regulates the use and protection of the emblems. They define the individuals and services allowed to use the emblems and what their permitted uses are.⁷³¹

Emblems

Principal National Implementation Requirements

The Geneva Conventions recognise the Red Cross, the Red Crescent and the Red Lion and Sun emblems.⁷³² Additional Protocol III recognises an additional distinctive emblem – the Red Crystal – that enjoys equal status to the other distinctive emblems of the Geneva Conventions.⁷³³



Fig. 2: Distinctive emblems in red on a white ground

⁷³¹ Article 18 (concerning the identification of religious personnel, medical units and transports) and Article 66 (relating to the identification of civil defence) of Additional Protocol I as well as Annex I have already been discussed in the Section titled “Medical and Religious Personnel”. See *supra*, p. 127. Article 12 of Additional Protocol II has also been analysed in the Sections “Medical and Religious Personnel” and “Medical Transports and Facilities”. See *supra*, p. 133.

⁷³² Geneva Convention I, Art. 38; Geneva Convention II, Art. 41. The Islamic Republic of Iran (at the time Persia) originally claimed the right to use the Red Lion and Sun at the 1899 Hague Conference. However, Iran waived its right on 4 September 1980. This emblem has not been used since.

⁷³³ Additional Protocol III, Art. 2.

Figure 14: Distinctive Emblems of the Red Cross, Red Crescent, Red Lion and Red Crystal – Geneva Conventions I-II; Additional Protocol III

Primary Ukrainian National Implementation Measures

In 1999, the Verkhovna Rada of Ukraine adopted the Law of Ukraine on Emblems that adequately refers to the Red Cross and Red Crescent.⁷³⁴ On 22 October 2009, Ukraine ratified Additional Protocol III.⁷³⁵ On the same day, the Verkhovna Rada adopted the Law of Ukraine on the Amendments to Certain Legislative Acts of Ukraine that amended both Articles 435 and 445 of the Criminal Code of Ukraine.⁷³⁶ It also amended the Law of Ukraine on Emblems to include the Red Crystal in the list of the protected emblems.⁷³⁷

Although the Military Instruction does not show the distinctive emblems, it provides that they should be used to indicate medical and religious personnel, and medical transport and facilities.⁷³⁸ It further states that the distinctive emblems should be applied to a flat surface or to flags that are visible from all possible directions and from as long a distance as possible.⁷³⁹

Restrictions in the Use of Emblem

Principal National Implementation Requirements

Article 44 of Geneva Convention I requires the Parties to distinguish between the protective and indicative use of the emblem and outlines the general rules governing both uses. The limits they impose on the lawful use of the emblem must therefore be respected.

Primary Ukrainian Implementation Measures

The Law of Ukraine on Emblems adequately sets the general rules for the use of the emblems.⁷⁴⁰

⁷³⁴ Law of Ukraine on Emblems, Arts. 2, 4-17.

⁷³⁵ The instrument of ratification was received by the depositary, the Swiss Federal Council, on 19 January 2010.

⁷³⁶ Law of Ukraine on the Amendments to Certain Legislative Acts of Ukraine, Art. I.

⁷³⁷ *Ibid.*

⁷³⁸ Military Instruction, para. 6.10.

⁷³⁹ *Ibid.*

⁷⁴⁰ Law of Ukraine on Emblems, Arts. 2, 4-17.

Misuse of the Emblem

Principal National Implementation Requirements

The Government of Ukraine is required to prohibit the improper use of the distinctive emblem of the Red Cross, Red Crescent or of other emblems, signs or signals provided for in the Conventions and Additional Protocols. It is also prohibited to deliberately misuse other internationally recognised protective emblems, signs or signals in an armed conflict, including the flag of truce and the protective emblem of cultural property.⁷⁴¹ Ukraine is also under the obligation to adopt provisions prohibiting the use of the distinctive emblem of the United Nations, except as authorised to do so by the UN itself.⁷⁴²

Additional Protocol I also prohibits the perfidious use of the distinctive emblem of the Red Cross, Red Crescent or of other protective signs and lists such conduct as a grave breach of the Geneva Conventions and Additional Protocol I.⁷⁴³ Such conduct should therefore be criminalised.

Finally, Additional Protocol III further adds that the provisions of the Geneva Conventions and Additional Protocols governing prevention and the repression of misuse of the distinctive emblems shall apply equally to the Red Crystal.⁷⁴⁴

Primary Ukrainian National Implementation Measures

In general, Ukrainian legal measures fully regulate the use and misuse of the Red Cross, Red Crescent and Red Crystal emblems. The Law of Ukraine on Emblems prohibits the use of the emblems in violation of the provisions of the law and regulations⁷⁴⁵ and further establishes that any person violating its provisions shall be criminally liable under the laws of Ukraine.⁷⁴⁶ Accordingly, the Criminal Code of Ukraine criminalises the illegal use or misuse of the Red Cross, Red Crescent and Red Crystal emblems.⁷⁴⁷

⁷⁴¹ Additional Protocol I, Art. 38(1); Geneva Convention I, Arts. 53, 54; Geneva Convention II, Art. 45.

⁷⁴² Additional Protocol I, Art. 38(2).

⁷⁴³ Additional Protocol I, Arts. 37, 85. Article 8 of the Rome Statute also characterises the improper use of the distinctive emblems as a war crime.

⁷⁴⁴ Additional Protocol III, Art. 6.

⁷⁴⁵ Law of Ukraine on Emblems, Art. 15.

⁷⁴⁶ Law of Ukraine on Emblems, Art. 17.

⁷⁴⁷ Criminal Code of Ukraine, Arts. 435, 445. Article 435 (“Unlawful use or misuse of the Red Cross, Red Crescent, Red Crystal symbols”): “Carrying the Red Cross, Red Crescent and Red Crystal symbols in an operational zone by persons not entitled to do so, and also misuse of flags or signs of the Red Cross and Red Crescent and Red Crystal or the colours attributed to medical vehicles in state of martial law, - shall be punishable by imprisonment for a term up to

In addition, the Military Instruction adequately prohibits the misuse of the distinctive emblem of the Red Cross or Red Crescent, international distinctive emblems of civil defence or distinctive emblems of cultural property, international special signs of particularly dangerous objects, the white flag of truce, other internationally recognised emblems and symbols, and the unlawful use of the distinctive emblem of the United Nations.⁷⁴⁸

However, concerning the serious violation of IHL, the Criminal Code does not expressly refer to the perfidious use of the emblems. Article 445 which criminalises the illegal use of the emblems may be broad enough to cover such conduct. This is particularly the case with regards to military actors. The Military Instruction offers a degree of clarity to allow Article 445 to be employed to prosecute the perfidious use of the emblems: paragraph 1.8.7 contains a list of serious violations of IHL that attract criminal sanctions and lists the “perfidious use of distinctive emblems (insignia or signals) of persons and objects protected by the laws of war”.

two years.” Article 445 (“Illegal use of symbols of Red Cross, Red Crescent, Red Crystal”): “Illegal use of symbols of Red Cross and Red Crescent, Red Crystal other than in cases provided for by this Code, - shall be punishable by a fine up to 50 tax-free minimum incomes, or arrest for a term up to six month.”

⁷⁴⁸ Military Instruction, para. 1.3.1; see also Field Manual, para. 551.

Organisations

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Article 26
- Geneva Convention III, Articles 122-124, 112 and Annex II
- Geneva Convention IV, Articles 63, 136-141
- Additional Protocol I, Articles 61-67, 81
- Additional Protocol II, Article 18

National Societies

Principal National Implementation Requirements

Additional Protocol I requires the Government of Ukraine to grant the ICRC and the Ukrainian Red Cross Society all facilities within its power to enable it to provide protection and assistance to victims of armed conflict.⁷⁴⁹ In addition, the Government of Ukraine shall facilitate the assistance of other interested Red Cross societies⁷⁵⁰ and shall make similar facilities available to other duly authorised humanitarian organisations.⁷⁵¹

Geneva Convention IV addresses National Red Cross Societies (such as the Ukrainian Red Cross Society) in occupied territories. It provides for the continuation of their activities and the prohibition of the occupying power of the territory to change the personnel or structure of these societies.⁷⁵² The same principles also apply to the activities and personnel of special organisations of a non-military character which ensure the living conditions of the civilian population by the maintenance of the essential public utility services through the distribution of relief and by the organisation of rescues.⁷⁵³

Geneva Convention I requires the Government of Ukraine to grant the medical personnel of voluntary relief societies (groups assisting the medical service of the armed forces) the same level of immunity as that of the medical personnel of the armed forces.⁷⁵⁴

During a non-international armed conflict, the Government of Ukraine must allow humanitarian activities for the purpose of assisting victims regardless of where they are

⁷⁴⁹ Additional Protocol I, Arts. 81(1), 81(2).

⁷⁵⁰ Additional Protocol I, Art. 81(3).

⁷⁵¹ Additional Protocol I, Art. 81(4).

⁷⁵² Geneva Convention IV, Art. 63.

⁷⁵³ Geneva Convention IV, Art. 63(2).

⁷⁵⁴ Geneva Convention I, Art. 26.

located and assuring them the protection to which they are entitled.⁷⁵⁵ The Government shall also allow the civilian population to offer to collect and care for the wounded, sick and shipwrecked.⁷⁵⁶ In addition, international humanitarian assistance for the civilian population shall be undertaken in cases where it “is suffering undue hardship owing to a lack of the supplies essential for its survival”.⁷⁵⁷

Finally, customary international humanitarian law considers “making persons or objects involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations the object of attack, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law” a serious violation of IHL.⁷⁵⁸ Such conduct should therefore be criminalised.

Primary Ukrainian Implementation Measures

Ukrainian law contains most of the national implementation requirements set forth by the Geneva Conventions and Additional Protocol I.

The Law of Ukraine on the Ukrainian Red Cross Society states that Ukraine, as a party to the Geneva Conventions, supports the humanitarian activities of the International Red Cross.⁷⁵⁹ It further establishes that “Ukraine shall ensure the legal rights and interests of the [National] Society, its bodies, local organisations and the members of the Society”.⁷⁶⁰

Under the law, the Ukrainian Red Cross Society assists the state in providing medical and humanitarian aid in times of armed conflict and peacetime, takes part in providing international aid in cases of disasters and emergency situations, and provides medical and social assistance to the most vulnerable populations.⁷⁶¹ Finally, under the law the state shall also support the Society, its bodies and local organisations in performing their statutory tasks and their humanitarian and charitable activities.⁷⁶²

However, neither the law of Ukraine nor the Military Instruction addresses the issue of National Red Cross Societies and the protection of them and their activities in occupied territories.

⁷⁵⁵ Additional Protocol II, Art. 18(1).

⁷⁵⁶ Additional Protocol II, Art. 18(1).

⁷⁵⁷ Additional Protocol II, Art. 18(2).

⁷⁵⁸ Both during international and non-international armed conflicts. See ICRC, [‘Definition of War Crimes – Rule 156’](#) (ICRC, 2009). It is also a war crime under Article 8 of the Rome Statute.

⁷⁵⁹ Law of Ukraine on the Ukrainian Red Cross Society, Art. 14.

⁷⁶⁰ Law of Ukraine on the Ukrainian Red Cross Society, Art. 13.

⁷⁶¹ Law of Ukraine on the Ukrainian Red Cross Society, Art. 1.

⁷⁶² Law of Ukraine on the Ukrainian Red Cross Society, Art.14.

Regarding the medical personnel of voluntary relief societies which have undertaken to assist the medical service of the armed forces, although the Military Instruction addresses the protection of personnel participating in humanitarian actions in paragraph 1.2.45, it does not grant them the same immunity as the medical personnel of the armed forces.

Concerning non-international armed conflicts, the Law of Ukraine on the Ukrainian Red Cross Society applies in both types of conflicts. The Military Instruction further provides that:

Non-governmental organisations shall be allowed to perform their functions as to the victims of armed conflicts. Upon consent of the state party they shall be allowed to perform humanitarian operations to provide relief for the civilian population.⁷⁶³

Finally, IHL requires the criminalisation of the attacks against humanitarian personnel. As discussed,⁷⁶⁴ Article 438 of the Criminal Code of Ukraine generally criminalises any serious violations of IHL and should therefore encompass such crime. However, this article lacks particularity and may not provide the degree of certainty and specificity essential for the effective prosecution of IHL violations.

However, the Military Instruction provides the required additional clarity, in relation to crimes committed by the armed forces, by listing the attack against personnel participating in humanitarian actions as a serious violation of IHL.⁷⁶⁵

⁷⁶³ Military Instruction, para. 1.4.14.

⁷⁶⁴ See *supra*, pp. 35-39 and 64-67.

⁷⁶⁵ Military Instruction, paras. 1.8.5, 1.2.45. For more details see *supra* pp. 65-67.

Civil Defence

Principal National Implementation Requirements

Civil defence is defined in Additional Protocol I, Article 61 as:

(...) the performance of some or all of the undermentioned humanitarian tasks intended to protect the civilian population against the dangers, and to help it to recover from the immediate effects, of hostilities or disasters and also to provide the conditions necessary for its survival. These tasks are:

- warning;
- evacuation;
- management of shelters;
- management of blackout measures;
- rescue;
- medical services, including first aid, and religious assistance;
- firefighting;
- detection and marking of danger areas;
- decontamination and similar protective measures;
- provision of emergency accommodation and supplies;
- emergency assistance in the restoration and maintenance of order in distressed areas;
- emergency repair of indispensable public utilities;
- emergency disposal of the dead;
- assistance in the preservation of objects essential for survival;
- complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organization.

Article 63 of Geneva Convention IV grants civil defence organisations and their personnel the same right to pursue their activities as the National Red Cross and Red Crescent Societies during times of occupation. Additional Protocol I further establishes the obligations of states during occupation, adding that civilian civil defence organisations shall receive from the authorities the facilities necessary for the performance of their tasks.⁷⁶⁶

Additional Protocol I expands the protection for civil defence organisations to cover all situations of international armed conflict.⁷⁶⁷

The Government of Ukraine shall ensure that civilian civil defence organisations and their personnel (including civilians who respond to an appeal from the competent authorities and perform civil defence tasks under their control) are respected and protected and are

⁷⁶⁶ Additional Protocol I, Art. 63(1).

⁷⁶⁷ Additional Protocol I, Art. 61(a).

entitled to perform their civil defence tasks except in cases of imperative military necessity.⁷⁶⁸

Article 65(1) of Additional Protocol I imposes on the Government of Ukraine the obligation to respect the protection to which civilian civil defence organisations, their personnel, buildings, shelters and “matériel” are entitled. The protection ceases only where they commit, or are used to commit, acts harmful to the adverse party.

Additional Protocol I also extends the above-mentioned regime to the personnel and “matériel” of civilian civil defence organisations of neutral or other states not parties to the conflict which perform civil defence tasks.⁷⁶⁹

Additional Protocol I also provides for the obligation to use measures of identification and addresses the protection of members of the armed forces and military units assigned to civil defence organisations.⁷⁷⁰

Primary Ukrainian Implementation Measures

Paragraph 1.2.50 of the Military Instruction defines “civil defence personnel” and lists the primary tasks of the civil defence. However, the list fails to address several important tasks, including “decontamination and similar protective measures”; “assistance in the preservation of objects essential for survival”; and “complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organization”, as set forth in Article 61 of Additional Protocol I (and referenced above). The Military Instruction further states that civil defence organisations are entitled to perform their civil defence tasks except in case of imperative military necessity.⁷⁷¹

The Military Instruction also addresses the protection of civilian civil defence organisations and their personnel during international armed conflict,⁷⁷² but largely fails to regulate civil defence units in times of occupation.

It does not specify that the protection also applies to civilians who, although not members of civilian civil defence organisations, respond to an appeal from the competent authorities and perform civil defence tasks under their control.

⁷⁶⁸ Additional Protocol I, Arts. 62(1), 62(2).

⁷⁶⁹ Additional Protocol I, Art. 64(1).

⁷⁷⁰ Additional Protocol I, Arts. 66, 67. Such obligation has already been discussed above. See *supra*, pp. 155-157.

⁷⁷¹ Military Instruction, para. 2.1.10.

⁷⁷² Military Instruction, para. 1.2.45, 2.2.4, 2.1.10.

It also fails to address the circumstances where civil defence organisations may lose their protection - a necessary consideration to ensure effective regulation.

Finally, Ukrainian legal measures do not address personnel and the “matériel” of civilian civil defence organisations of neutral or other States not Party to the conflict.

Information Bureaux

Principal National Implementation Requirements

National Information Bureaux shall be established in order to collect information related to protected persons.

A National Information Bureau must be established with respect to POWs “upon the outbreak of a conflict and in all cases of occupation”.⁷⁷³ Geneva Convention III addresses the Bureau’s relationship with the Central Prisoners of War Information Agency.⁷⁷⁴ The Bureau shall, among other tasks, receive from relevant departments certain information regarding transfers, releases, repatriations, escapes, admissions to the hospital, and deaths of POWs and shall regularly receive information regarding the state of health of POWs who are seriously ill or seriously wounded.⁷⁷⁵ It shall immediately forward such information to the powers concerned, through the intermediary of the protecting powers and likewise of the Central Prisoners of War Information Agency.⁷⁷⁶

In addition, Geneva Convention IV addresses the obligation of the Government of Ukraine to establish an official Information Bureau responsible for receiving and transmitting information in respect of the protected persons who are in its power.⁷⁷⁷

Primary Ukrainian Implementation Measures

Legal measures addressing the establishment of such information bureau are not reflected in Ukrainian law or regulations.

⁷⁷³ Geneva Convention III, Art. 122(1).

⁷⁷⁴ Geneva Convention III, Arts. 122-124.

⁷⁷⁵ Geneva Convention III, Art. 122(5).

⁷⁷⁶ Geneva Convention III, Art. 122(3).

⁷⁷⁷ Geneva Convention IV, Arts. 136-141.

Mixed Medical Commissions

Principal National Implementation Requirements

Geneva Convention III requires States to appoint Mixed Medical Commissions upon the outbreak of hostilities in charge of examining sick and wounded POWs, and for making all appropriate decisions regarding their medical care.

The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the regulations annexed to the Convention.⁷⁷⁸ They must be composed of three members, two of whom shall belong to a neutral country, the third being appointed by the detaining power.⁷⁷⁹ They shall examine all the POWs entitled to an examination⁷⁸⁰ and shall propose repatriation, rejection, or reference to a later examination. The decisions made by the Mixed Medical Commissions shall be communicated, during the month following their visit, to the detaining power, the protecting power and the ICRC, as well as to the POW examined.⁷⁸¹

Primary Ukrainian Implementation Measures

Legal measures addressing the establishment of Mixed Medical Commissions are not reflected in Ukrainian law or regulations. Neither is GRC familiar with Mixed Medical Commissions having been established in an *ad hoc* manner during the recent conflict.

⁷⁷⁸ Geneva Convention III, Art. 112, Annex II.

⁷⁷⁹ Geneva Convention III, Annex II, Art. 1.

⁷⁸⁰ For the list of POWs entitled to examination by Mixed Medical Commissions, see Article 113 of Geneva Convention III.

⁷⁸¹ Geneva Convention III, Annex II, Art. 10-11.

Military Planning

Relevant Provisions in Core IHL Treaties

- Additional Protocol I, Articles 36, 57-58

IHL must be taken into account when selecting military objectives, developing and adopting weapons and considering military tactics.

New Weapons and New Means or Methods of Warfare

Principal National Implementation Requirements

Article 36 of Additional Protocol I requires the Government of Ukraine to determine whether the employment of new weapons, means or methods of warfare that it studies, develops, acquires or adopts would, in some or all circumstances, be prohibited by international law.⁷⁸²

The ICRC recommends that states – such as the Government of Ukraine – establish a review mechanism to assess whether the employment of new weapons, means or methods of warfare is prohibited under international law. There are a number of steps which warrant consideration when establishing such a mechanism, including:

- Determining which national authority is responsible for the review;
- Who should participate in the review process;
- The stages of the procurement process at which reviews should occur; and
- The procedures relating to decision-making and recordkeeping.⁷⁸³

Primary Ukrainian National Implementation Measures

There are no legal measures addressing the establishment of such a review mechanism for the employment of new weapons and means or methods of warfare.

⁷⁸² Additional Protocol I, Art. 36.

⁷⁸³ For more details see ICRC, '[A Guide to the Legal Review of New Weapons and Methods of Warfare: Methods to Implement Article 36 of Additional Protocol I of 1977](#)' (January 2006).

Precautionary Measures

Principal National Implementation Requirements

Additional Protocol I addresses the precautions that must be taken in advance of and during an attack.⁷⁸⁴ In the conduct of military operations, on land, at sea or in the air, constant care must be taken to spare the civilian population, individual civilians and civilian objects.⁷⁸⁵ The precautions include:

- Placing an obligation on those who plan or decide upon an attack to:
 - Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection;⁷⁸⁶
 - Take all feasible precautions when choosing the means and methods of attack with a view to avoiding, and in any event to minimising, the incidental loss of civilian life, injury to civilians and damage to civilian objects;⁷⁸⁷ and
 - Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.⁷⁸⁸
- Setting out the circumstances in which an attack should be cancelled, for example if it becomes apparent that the objective is not a military one or is subject to special protection, or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects;⁷⁸⁹
- Requiring the use of effective advance warning before a military operation is launched;⁷⁹⁰
- When a choice is possible between several military objectives for obtaining a similar military advantage, the objective chosen should be the one that is least likely to endanger civilian lives and objects;⁷⁹¹
- That the parties to the conflict take precautions against the effect of attacks:

⁷⁸⁴ Additional Protocol I, Art. 57.

⁷⁸⁵ Additional Protocol I, Art. 57(1); Additional Protocol I, Art. 57(4).

⁷⁸⁶ Additional Protocol I, Art. 57(2).

⁷⁸⁷ *Ibid.*

⁷⁸⁸ *Ibid.*

⁷⁸⁹ *Ibid.*

⁷⁹⁰ *Ibid.*

⁷⁹¹ Additional Protocol I, Art. 57(3).

- Removing the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives;⁷⁹²
- Avoid locating military objectives within or near densely populated areas, such as cities or villages;⁷⁹³ and
- Taking necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.⁷⁹⁴

Any violations of these rules could lead to serious violations of IHL, including:

- Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;⁷⁹⁵
- Making the civilian population or individual civilians the object of attack;⁷⁹⁶
- Making a person the object of an attack in the knowledge that she or he is *hors de combat*;⁷⁹⁷ and
- Extensive destruction or appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.⁷⁹⁸

Primary Ukrainian Implementation Measures

Ukrainian legal measures cover extensively the general obligation of the Armed Forces of Ukraine and the National Guard to take all precautionary measures to avoid, if possible, or to minimise the losses of civilian lives or damage to civilian objects.⁷⁹⁹

The Military Instruction also establishes adequately the obligations of those who plan or decide on an attack to:

- Do everything feasible to verify that the objectives to be attacked are military objectives and that it is not prohibited to attack them;⁸⁰⁰

⁷⁹² Additional Protocol I, Art. 58.

⁷⁹³ *Ibid.*

⁷⁹⁴ *Ibid.*

⁷⁹⁵ Additional Protocol I, Art. 85(3).

⁷⁹⁶ Additional Protocol I, Art. 85(3). It is also a war crime under Article 8 of the Rome Statute.

⁷⁹⁷ *Ibid.*

⁷⁹⁸ Geneva Convention I, Art. 50; Geneva Convention II, Art. 51; Geneva Convention III, Art. 130; Geneva Convention IV, Art. 147. It is also a war crime under Article 8 of the Rome Statute.

⁷⁹⁹ Military Instruction, para. 2.1.2. See *also* paras. 2.2.3, 2.3.1.2, 2.3.2.1, 2.3.2.3, 2.3.3.2, 2.3.3.3, 2.3.5.1, 2.4.1.

⁸⁰⁰ Military Instruction, paras. 2.1.7, 2.3.1.1, 2.3.5.

- Choose means and methods of attacks with a view to avoiding, and in any event to minimising, excessive loss of civilian lives, injury to civilians and damage to civilian objects;⁸⁰¹ and
- Refrain from deciding to launch an attack which may be expected to cause excessive loss of civilian lives, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.⁸⁰²

The Military Instruction also adequately addresses the obligation to use effective advance warning⁸⁰³ and the selection between military objectives.⁸⁰⁴

The Military Instruction also covers the following precaution:

An attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause excessive loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.⁸⁰⁵

Moreover, with regards to the effects of attacks, the Military Instruction covers the removal of the civilian population and objects,⁸⁰⁶ the location of military objectives within or near densely populated areas,⁸⁰⁷ and the adoption of other necessary precautions to protect civilian populations.⁸⁰⁸

Finally, regarding the serious violations of IHL, there are many different ways in which these provisions could be violated and amount to serious violations of IHL that need to attract criminal sanction.

However, as with many of these specific offences, they will need to be prosecuted using Article 438 that generally criminalises any serious violations of IHL and should encompass this type of conduct. However, as discussed,⁸⁰⁹ this article lacks particularity and may not

⁸⁰¹ Military Instruction, paras. 2.3.1.2, 2.3.2.1, 2.3.2.3, 2.3.3, 2.3.5, 2.4.2.

⁸⁰² Military Instruction, paras. 2.1.2, 2.1.7, 2.3.1.2, 2.3.2.1, 2.3.2.3, 2.3.3, 2.3.5, 2.4.2.

⁸⁰³ Military Instruction, paras. 2.3.2, 2.3.3.

⁸⁰⁴ Military Instruction, paras. 2.3.2, 2.3.4, 2.4.2.

⁸⁰⁵ Additional Protocol I, Art. 57(2)(b); Military Instruction, para. 1.4.2.

⁸⁰⁶ Military Instruction, paras. 2.2.7, 2.3.2.2, 2.3.6.

⁸⁰⁷ Military Instruction, para. 2.3.2.1.

⁸⁰⁸ Military Instruction, para. 2.3.1.2.

⁸⁰⁹ See *supra*, pp. 35-39 and 64-67.

provide the degree of certainty and specificity essential for the effective prosecution of the full range of IHL violations that are encompassed by these broad terms.

However, the Military Instruction provides a degree of clarity in relation to these crimes committed by the armed forces, by listing in its Paragraphs 1.8.5 and 1.8.6 the following conduct as being serious violations of IHL.⁸¹⁰

- Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- Attacks against persons protected by international humanitarian law; and
- Extensive destruction and appropriation of property if they are not justified by military necessity.

These prohibitions do not descend to the particulars of which conduct might actually fall to be prosecuted pursuant to Article 438, e.g. by identifying the category of persons protected by international humanitarian law. In this regard, both Article 438 and the Military Instruction may benefit from greater particularisation that would enable the underlying prohibited conduct to be identified.

⁸¹⁰ See *supra*, pp. 65-67.

Protected Zones and Localities

Relevant Provisions in Core IHL Treaties

- Geneva Convention I, Article 23 and Annex I
- Geneva Convention IV, Articles 14, 15
- Additional Protocol I, Articles 59-60 and Annex I

IHL requires the establishment of hospital zones and localities to protect the wounded and sick and the establishment of ‘neutralized zones’ to shelter protected persons. In addition, an area can be declared unilaterally as a ‘non-defended locality’ and demilitarized zones can be established by written agreements.

Hospital Zones and Localities

Principal National Implementation Requirements

Under Geneva Convention I, the Government of Ukraine may establish hospital zones and localities,⁸¹¹ whether in time of peace or after the outbreak of hostilities, in territory under their control in an effort to protect the wounded and sick.⁸¹² Upon the outbreak of and during the course of hostilities, it may conclude agreements with other parties to the conflict on the mutual recognition of these hospital zones and localities they have created.⁸¹³ Annex I to Geneva Convention I provides a Draft Agreement which Ukraine may use as a model when establishing and recognising the zones.⁸¹⁴ The Draft Agreement sets the obligations of States in relation to hospital zones and localities.

Primary Ukrainian Implementation Measures

The Military Instruction covers the establishment of hospital zones and localities. In paragraph 1.2.14, it provides:

Hospital and safety zones (localities) may be established by concluding an agreement between the parties to an

⁸¹¹ “‘Locality’ should be taken to mean a specific place of limited area, in which there are generally buildings. The term ‘zone’ is used to describe a relatively large stretch of countryside and may include one or more localities”. See ICRC, [‘Commentary of Article 23 of Geneva Convention I’](#) (ICRC, 1958).

⁸¹² Geneva Convention I, Art. 23 (1); Geneva Convention IV, Art. 14(1).

⁸¹³ *Ibid.*

⁸¹⁴ Geneva Convention I, Art. 23 (2) and Annex I; Geneva Convention IV, Art. 14(2).

international or non-international armed conflict directly or through an impartial humanitarian organisation outside the armed conflict zone, exclusively with the aim to protect the wounded and sick as well as the personnel in charge of establishing such zones (localities), their control and providing care to the persons to be placed therein.
Hospital and safety zones (localities) shall not be object of attacks.

GRC is not familiar with any hospital zones and localities having been established, either in times of peace or war. In addition, in relation to the current conflict in the East, it does not appear that any such document has been concluded between the parties.

Neutralized Zones

Principal National Implementation Requirements

Geneva Convention IV recommends that states collaborate with the other parties to the conflict to form written agreements establishing neutralized zones to shelter protected persons without distinction.⁸¹⁵

Primary Ukrainian Implementation Measures

Legal measures addressing the establishment of such zones are not reflected in Ukrainian law or regulations. GRC has not been made aware of the establishment of any neutralized zones during the recent conflict.

Non-Defended Localities

Principal National Implementation Requirements

Non-defended localities are inhabited places near or in a zone where armed forces are in contact, and which are open for occupation by the adverse party. Attacks on non-defended localities are prohibited.⁸¹⁶ Attacks against non-defended localities are grave breaches of Additional Protocol I.⁸¹⁷ They should therefore be criminalised.

The adverse party can occupy such localities without using any force. This, of course, is common sense, as an attack on a locality that is not defended is no longer necessary from a military perspective. Such practice is mainly used to protect civilians and cultural

⁸¹⁵ Geneva Convention IV, Art. 15.

⁸¹⁶ Additional Protocol I, Art. 59(1).

⁸¹⁷ Additional Protocol I, Art. 85.

property. Accordingly, an attack on such an area would be a disproportionate attack on civilians and civilian objects and would constitute a war crime.

Either party to the conflict can establish unilaterally a non-defended locality. To be legitimately established as a non-defended locality, it must fulfil the following conditions:

- All combatants, mobile weapons and mobile military equipment must have been evacuated;
- No hostile use shall be made of fixed military installations or establishments;
- No acts of hostility shall be committed by the authorities or by the population; and
- No activities in support of military operations shall be undertaken.⁸¹⁸

The presence in this locality of specially protected persons or of police forces retained for the sole purpose of maintaining law and order would not be contrary to the conditions set out above.⁸¹⁹

Additional Protocol I sets out how the unilateral declaration should be drafted; in particular, the Protocol identifies that it should define and describe, as precisely as possible, the borders of the non-defended locality.⁸²⁰ The recipient of the declaration must acknowledge its receipt and shall treat the locality as a non-defended locality unless the conditions laid down above are not in fact fulfilled, in which case it must inform the party making the declaration immediately.⁸²¹

If the locality ceases to fulfil these conditions, it may not qualify as a non-defended locality; however, it shall continue to enjoy the protection provided by the other provisions of the Additional Protocol and the other rules of international law applicable in armed conflict.⁸²² Parties can also agree on the establishment of non-defended localities even if such localities do not fulfil the conditions.⁸²³

Although there is no distinctive sign identified by Additional Protocol I, a non-defended locality shall be marked by such signs as may be agreed upon by the parties to the conflict, which shall be displayed where they are clearly visible, especially on its perimeter and borders and on highways.⁸²⁴

⁸¹⁸ Additional Protocol I, Art. 59(2).

⁸¹⁹ Additional Protocol I, Art. 59(3).

⁸²⁰ Additional Protocol I, Art. 59(4).

⁸²¹ *Ibid.*

⁸²² Additional Protocol I, Art. 59(7).

⁸²³ Additional Protocol I, Art. 59(5).

⁸²⁴ Additional Protocol I, Art. 59(6).

Primary Ukrainian Implementation Measures

Ukrainian legal measures establish a general framework for declaring non-defended localities. The Military Instruction defines non-defended localities correctly as being any locality or inhabited place near or in a zone where the armed forces are in contact that is open for occupation by an adverse party.⁸²⁵

As discussed, Article 438 encompasses all serious violations, including the prohibition on attacking non-defended localities. This article however lacks particularity and may not provide the degree of certainty and specificity that is the basis for effective prosecutions.

However, the Military Instruction provides greater clarity in relation to these crimes when committed by the armed forces by prohibiting attacks against, or hostilities within, non-defended localities and characterising such attacks as a serious violation of IHL.⁸²⁶

Regarding the establishment of such zones, the Military Instruction also recognises that non-defended localities may be established by a unilateral declaration addressed to the adverse party.⁸²⁷ It further provides that all military objectives must be evacuated from a non-defended locality and acts of hostility in these localities are prohibited.⁸²⁸

The Military Instruction does not address the following:

- That no hostile use shall be made of fixed military installations or establishments;
- That no activities in support of military operations shall be undertaken in such localities;
- That the presence of specially protected persons and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions;
- That the unilateral declaration shall define and describe, as precisely as possible, the limits of the non-defended locality;
- That the Party to the conflict to which the declaration is addressed shall treat the locality as a non-defended locality unless the conditions are not in fact fulfilled, in which event it shall immediately inform the Party making the declaration,
- That even if the conditions are not fulfilled, the locality shall continue to enjoy the protection provided by the other provisions of Additional Protocol I and the other rules of international law applicable in armed conflict;

⁸²⁵ Military Instruction, para. 1.2.34.

⁸²⁶ Military Instruction, paras. 1.2.34, 1.8.5. See also Field Manual, para. 550.

⁸²⁷ Military Instruction, para. 1.2.34.

⁸²⁸ *Ibid.*

- The possibility to conclude bilateral agreements between the parties to the conflict concerning the establishment of non-defended localities; and
- The marking of the locality.

Demilitarized Zones

Principal National Implementation Requirements

Additional Protocol I imposes on the parties to a conflict the obligation to prohibit the extension of its military operations to zones on which it has conferred by agreement the status of a demilitarized zone.⁸²⁹ Attacks on demilitarized zones are grave breaches of Additional Protocol I.⁸³⁰ They should therefore be criminalised.

The Protocol establishes the procedure for concluding bilateral agreements⁸³¹ and defines the requisite conditions of such zones, including that:

- All combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;
- No hostile use shall be made of fixed military installations or establishments;
- No acts of hostility shall be committed by the authorities or by the population; and
- Any activity linked to the military effort must have ceased.⁸³²

The presence, in this zone, of persons specially protected and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions laid down above.⁸³³ The Protocol sets out that the zone shall not be used for purposes related to the conduct of military operations and its status shall not be revoked unilaterally.⁸³⁴ Further, the Protocol addresses the loss of the protection in the event a party to the conflict breaches the agreement.⁸³⁵

Finally, like non-defended localities, a demilitarized zone shall be marked by signs as may be agreed upon with the other party to the conflict which shall be displayed where they are clearly visible, especially on its perimeter and borders and on highways.⁸³⁶

⁸²⁹ Additional Protocol I, Art. 60(1).

⁸³⁰ Additional Protocol I, Art. 85.

⁸³¹ Additional Protocol I, Art. 60(2).

⁸³² Additional Protocol I, Art. 60(3).

⁸³³ Additional Protocol I, Art. 60(4).

⁸³⁴ Additional Protocol I, Art. 60(6).

⁸³⁵ Additional Protocol I, Art. 60(7).

⁸³⁶ Additional Protocol I, Art. 60(5).

Primary Ukrainian Implementation Measures

Ukrainian legal measures provide similar coverage to demilitarized zones as non-defended localities.

As discussed, Article 438 encompasses all serious violations, including the prohibition on attacking demilitarized zones. This article, however, lacks particularity and may not provide the degree of certainty and specificity that is the basis for effective prosecutions.

However, similar to non-defended localities, the Military Instruction provides sufficient clarity, in relation to these crimes when committed by the armed forces, by prohibiting attacks against, or hostilities within, demilitarized zones and characterising such attacks as serious violations of IHL.⁸³⁷

Regarding the bilateral agreement, the Military Instruction covers the need to conclude a bilateral agreement between parties to the conflict.⁸³⁸ The Instruction, however, does not cover the form and procedure of such agreements.

Further, demilitarized zones are defined correctly in the Military Instruction as being zones from which all combatants, as well as weapons and military equipment, have been evacuated. No acts of hostility shall be committed by the authorities or by the population of the zone.⁸³⁹

The Military Instruction does not contain sufficient details and/or fails to address the following issues:

- Similar to non-defended localities, the Military Instruction fails to provide that no hostile use shall be made of fixed military installations or establishments;
- It also does not cover the condition that any activity linked to the military effort must have ceased and that the presence, in this zone, of persons specially protected, and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions;
- The prohibition on using the zone for purposes related to the conduct of military operations or the option to unilaterally revoke its status; and
- The loss of the protection of the zone in case a party to the conflict breaches the agreement.

⁸³⁷ Military Instruction, paras. 1.2.15, 1.8.5. See also Field Manual, para. 550.

⁸³⁸ Military Manual, para. 1.2.15.

⁸³⁹ Military Manual, para. 1.2.15.

Further, the Military Instruction provides for the marking of demilitarized zones by signs agreed to by both parties.⁸⁴⁰ It does not provide any details on the required marking.

⁸⁴⁰ *Ibid.*

Weapons Treaties

Relevant Provisions in Core IHL Treaties

- Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Article IV
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Articles I, VII
- Protocols 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 (“CCW”):
 - Protocol (I) to CCW on Non-Detectable Fragments
 - Protocol (II) to CCW on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996, Article 14
 - Protocol (III) to CCW on Prohibitions or Restrictions on the Use of Incendiary Weapons, Article 2
 - Protocol (IV) to CCW on Blinding Laser Weapons, Article 1
 - Protocol (V) to CCW on Explosive Remnants of War, Articles 3-6, 8
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Article 1

IHL prohibits or restricts the use of certain types of weapons, such as weapons of mass destruction and conventional weapons.

Regulating the Use of Weapons of Mass Destruction

Principal National Implementation Requirements

Since 1925, the Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare has prohibited the use of such weapons and methods of warfare.⁸⁴¹

⁸⁴¹ Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (adopted 17 June 1925, entered into force 8 February 1928) 1108 UNTS 151.

Further, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction requires the Government of Ukraine to take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the following weapons of mass destruction within its territory, under its jurisdiction or under its control anywhere:

- Microbial or other biological agents or toxins (whatever their origin or method of production) of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; and
- Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.⁸⁴²

Pursuant to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, the Government of Ukraine must adopt legal measures, including penal legislation:

- Prohibiting individuals under its jurisdiction from undertaking any of the following activities;⁸⁴³
- Prohibiting any of the following activities undertaken anywhere by natural persons possessing its nationality;⁸⁴⁴ and
- Prohibiting in any place under its control any of the following activities.⁸⁴⁵

The prohibited acts include:

- Developing, producing, otherwise acquiring, stockpiling or retaining chemical weapons or transfer, directly or indirectly, chemical weapons to anyone;
- Using chemical weapons; and
- Engaging in any military preparations to use chemical weapons.⁸⁴⁶

The Government of Ukraine must destroy chemical weapons it owns or possesses, that are located in any place under its jurisdiction or control, or that it abandoned on the territory

⁸⁴² Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (adopted 10 April 1972, entered into force 25 March 1975 1015 UNTS 163), Art. IV.

⁸⁴³ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Art. VII(1)(a).

⁸⁴⁴ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Art. VII(1)(c).

⁸⁴⁵ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Art. VII(1)(b).

⁸⁴⁶ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Art. I(1)(c).

of another state party.⁸⁴⁷ It must also destroy any chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control.⁸⁴⁸

Finally, the Government of Ukraine is prohibited from using riot control agents (*i.e.* tear gas and other gases) as a method of warfare.⁸⁴⁹

Primary Ukrainian National Implementation Measures

The Criminal Code of Ukraine criminalises generally the use of weapons of mass destruction prohibited by international instruments.⁸⁵⁰ It also criminalises the development, production, acquisition, stockpiling, distribution or transportation of weapons of mass destruction.⁸⁵¹ These provisions cover all the weapons of mass destruction regulated in the above treaties generally.

However, the Government of Ukraine has not implemented adequately the specific requirements of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, which regulates any prohibited activities undertaken by natural persons possessing its nationality.⁸⁵² Although it governs the jurisdiction of Ukrainian courts over any offence committed anywhere by Ukrainian natural persons in any place under Ukraine's control adequately,⁸⁵³ the Criminal Code of Ukraine fails to provide for the criminal responsibility of legal persons who commit violations of Articles 439 or 440 of the Criminal Code of Ukraine.⁸⁵⁴

Regarding chemical weapons more specifically, GRC was unable to find any information on the possession and destruction of chemical weapons owned or possessed by the Government of Ukraine.

⁸⁴⁷ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Art. I(2), (3).

⁸⁴⁸ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Art. I(4).

⁸⁴⁹ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Art. I(5).

⁸⁵⁰ Criminal Code of Ukraine, Art. 439.

⁸⁵¹ Criminal Code of Ukraine, Art. 440.

⁸⁵² Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Art. VII(1)(c).

⁸⁵³ For more details, see *supra*, p. 71.

⁸⁵⁴ See Criminal Code of Ukraine, Art. 96(3).

Regulating the Use of Certain Conventional Weapons

Principal National Implementation Requirements

The Protocols 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 contain a series of requirements that the Government of Ukraine must implement:

- The prohibition on using any weapon the primary effect of which is to injure with fragments which cannot be detected by x-ray;⁸⁵⁵ and
- Prohibitions or restrictions on the use of mines, booby-traps and other devices, as well as criminal sanctions against persons who wilfully kill or cause serious injury to civilians in the prohibited manner.⁸⁵⁶ The prohibitions include:
 - Using any mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering;⁸⁵⁷
 - Using remotely-delivered mines other than anti-personnel mines, unless, to the extent feasible, they are equipped with an effective self-destruction or self-neutralisation mechanism and have a back-up self-deactivation feature, which is designed so that the mine will no longer function as a mine when the mine no longer serves the military purpose for which it was placed in position;⁸⁵⁸ and
 - Using booby-traps or other devices in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.⁸⁵⁹

In addition, the Government of Ukraine ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction in 2005, committing to take all appropriate legal, administrative and other measures,

⁸⁵⁵ Protocol (I) to CCW on Non-Detectable Fragments (adopted 10 October 1980, entered into force 2 December 1983) 1342 UNTS 171.

⁸⁵⁶ Protocol (II) to CCW on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 CCW Convention as amended on 3 May 1996), Arts. 3-10, 14(2).

⁸⁵⁷ Protocol (II) to CCW on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 CCW Convention as amended on 3 May 1996), Art. 3(3).

⁸⁵⁸ Protocol (II) to CCW on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 CCW Convention as amended on 3 May 1996), Art. 6(3).

⁸⁵⁹ Protocol (II) to CCW on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 CCW Convention as amended on 3 May 1996), Art. 7(2).

including the imposition of penal sanctions, to prevent and suppress the following activities undertaken by persons or on territory under its jurisdiction or control:

- The use of anti-personnel mines;
- The development, production, otherwise acquisition, stockpiling, retention or transfer to anyone, directly or indirectly, of anti-personnel mines; and
- The assistance, encouragement or inducement, in any way, of anyone to engage in any prohibited activity.⁸⁶⁰

The Government of Ukraine is also under an obligation to destroy stockpiled anti-personnel mines.⁸⁶¹

The Government of Ukraine must also:

- Prohibit or restrict the use of incendiary weapons;⁸⁶²
- Prohibit the employment of laser weapons specifically designed to cause permanent blindness to unenhanced vision;⁸⁶³
- Address various obligations related to remnants of war, such as the obligation to clear, remove or destroy explosive remnants of war;⁸⁶⁴
- Record, retain and transmit information on the use of explosive ordnance or abandonment of explosive ordnance;⁸⁶⁵ and
- The obligation to protect the civilian population and humanitarian missions and organisations from the potential dangers of explosive remnants of war.⁸⁶⁶

The use of prohibited weapons is considered a serious violation of IHL under customary international humanitarian law.⁸⁶⁷

Primary Ukrainian Implementation Measures

Article 438 encompasses all serious violations, including the use of means of warfare prohibited by international law (weapons). As noted, this article lacks particularity and may

⁸⁶⁰ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Arts. 1-9.

⁸⁶¹ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Art. 4.

⁸⁶² Protocol (III) to CCW on Prohibitions or Restrictions on the Use of Incendiary Weapons, (adopted 10 October 1980, entered into force 2 December 1983) 1342 UNTS 137, Art. 2.

⁸⁶³ Protocol (IV) to CCW on Blinding Laser Weapons, Art. 1.

⁸⁶⁴ Protocol (V) to CCW on Explosive Remnants of War 5 adopted 28 November 2003, entered into force 12 November 2006) 2399 UNTS 100, Arts. 3-6 and 8.

⁸⁶⁵ *Ibid.*

⁸⁶⁶ *Ibid.*

⁸⁶⁷ See ICRC, '[Definition of War Crimes – Rule 156](#)' (ICRC, 2009).

not provide the degree of certainty and specificity that is the basis underlying the principle of legality.

The Military Instruction fails to provide greater clarity, in relation to these crimes committed by the armed forces. It does not classify the use of the prohibited weapons as a serious violation of IHL which thereby places any violation under the disciplinary regime. The Military Instruction fails to correctly label some other prohibitive conduct:

- The Military Instruction provides that the use of any weapon, whose effect is to injure with fragments that escape detection by x-ray is prohibited during an armed conflict.⁸⁶⁸ The Military Instruction also contains most of the required protections regulating the use of mines, booby-traps and other devices.⁸⁶⁹ Violation of such prohibitions is however not considered to be a serious violation of IHL. The Military Instruction also fails to address the following requirements:
 - The prohibition of the use of any mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering;
 - The prohibition on the use of remotely-delivered mines other than anti-personnel mines, unless, to the extent feasible, they are equipped with an effective self-destruction or self-neutralisation mechanism and have a back-up self-deactivation feature; and
 - The prohibition to use booby-traps or other devices in the form of apparently harmless portable objects which are designed and constructed specifically to contain explosive material.
- In addition, the Military Instruction does not implement fully the Government of Ukraine's legal obligations on anti-personnel mines arising from the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. Specifically, although Ukraine has undertaken the destruction of its stockpile,⁸⁷⁰ the Military Instruction still regulates (rather than prohibits) the use of anti-personnel mines. In sum, the criminalisation of the use of anti-personnel is not adequate as the Military Instruction fails to provide enough clarification to Article 434 on its prohibition.

⁸⁶⁸ Military Instruction, para. 1.3.2.

⁸⁶⁹ Military Instruction, paras. 1.3.2, 3.4.3, 3.4.2-3.4.4, Annex 3. For provisions related to identification, see para. 6.15; Annex 8.

⁸⁷⁰ UNOG, '[Article 7 Report of Ukraine](#)' (UNOG, 1 April 2020).

- Regarding incendiary weapons, the Military Instruction adequately provides for their prohibition and reproduces verbatim the requirements of Protocol III to CCW on Prohibitions or Restrictions on the Use of Incendiary Weapons in Annex 4.⁸⁷¹
- Ukrainian legal measures adequately prohibit the use of laser weapons specifically designed to cause permanent blindness to unenhanced vision.⁸⁷²

Nevertheless, the Military Instruction addresses the requirements related to Protocol (IV) to CCW on Explosive Remnants of War.⁸⁷³ Specifically, paragraph 3.4.4 provides that after the cessation of hostilities and in order to reduce the risks posed by explosive remnants of war, the following measures should be taken in the affected areas:

- survey and assess the threat posed by explosive remnants of war;
- assess and prioritise needs and practicability in terms of marking and clearance, removal or destruction;
- mark and clear, remove or destroy explosive remnants of war; and
- mobilise resources to carry out these activities.⁸⁷⁴

To conclude, the criminalisation of the use of prohibited weapons is not sufficiently defined in the Criminal Code of Ukraine. This lack of specificity is however not corrected by the Military Instruction which does not identify the use of prohibited weapons as a serious violation of IHL and fails to incorporate a number of specific prohibitions.

⁸⁷¹ Military Instruction, para. 1.3.2, Annex 3.

⁸⁷² Military Instruction, para. 1.3.2.

⁸⁷³ Military Instruction, para. 3.4.4.

⁸⁷⁴ *Ibid.*

Rome Statute of the International Criminal Court

Relevant Provisions

- Rome Statute, Articles 6-8, 25-29 and Part IX

At present, the principal obligations of Ukraine under the Rome Statute of the ICC arise in relation to two major areas: complementarity and cooperation.

The principle of “complementarity” reflects the fact that the ICC is a court of last resort. The ICC may exercise jurisdiction over a situation only if the State that would have jurisdiction over a situation is “unwilling or unable genuinely to carry out the investigation or prosecution”.⁸⁷⁵ To this effect, the Government of Ukraine must ensure that its criminal courts are capable of exercising jurisdiction properly over the criminal conduct potentially constituting one of the crimes in the Rome Statute if it wishes to prosecute domestically, rather than having suspects tried before the ICC.⁸⁷⁶

The Rome Statute also requires the Government of Ukraine to ensure that it is able to cooperate with the Court fully⁸⁷⁷ and to adopt laws to this effect where necessary.⁸⁷⁸ The ICC relies mainly on the cooperation of national institutions and officials for essential tasks such as gathering evidence, handling of witnesses, protection of victims and the detention and transfer of indictees.⁸⁷⁹ This requirement will not be discussed in detail in this Report as it imposes on Ukraine the need to adopt legislation specifically aimed at establishing a cooperation regime with the ICC, even if there may be some domestic legislation in place that may facilitate cooperation on specific issues.

⁸⁷⁵ UNGA, *Rome Statute of the International Criminal Court* (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, Art. 17.

⁸⁷⁶ The International Centre for Criminal Law Reform and Criminal Justice Policy, ‘[International Criminal Court: Manual for the Ratification and Implementation of the Rome Statute](#)’ (March 2008) 70.

⁸⁷⁷ Rome Statute, Art. 86.

⁸⁷⁸ Rome Statute, Art. 88.

⁸⁷⁹ Rome Statute, Arts. 86-102.

ICC Crimes

Principal National Implementation Requirements

In order to adequately implement the Rome Statute, Ukrainian courts must be able to exercise their national jurisdiction over the crimes set forth in the Rome Statute adequately, namely genocide, crimes against humanity and war crimes.⁸⁸⁰

Genocide is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.⁸⁸¹

The following crimes can amount to a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population involving the multiple commission of the acts below pursuant to or in furtherance of a state or organisation policy to commit such an attack, with knowledge of the attack:

- Murder;
- Extermination;
- Enslavement;
- Deportation or forcible transfer of population;
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- Torture;
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law;
- Enforced disappearance of persons;
- The crime of apartheid; and

⁸⁸⁰ Rome Statute, Arts. 6-8.

⁸⁸¹ Rome Statute, Art. 6.

- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.⁸⁸²

Under the Rome Statute, war crimes are:

- Grave breaches of the Geneva Conventions, namely, acts against persons or property protected under the provisions of the relevant Geneva Convention which include:
 - Wilful killing;
 - Torture or inhuman treatment, including biological experiments; or
 - Wilfully causing great suffering, or serious injury to body or health.⁸⁸³
- Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, acts which include:
 - Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; or
 - Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.⁸⁸⁴
- In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause which include:
 - Violence to life and person, in particular murder, mutilation, cruel treatment and torture;
 - Committing outrages upon personal dignity, in particular humiliating and degrading treatment; or

⁸⁸² Rome Statute, Art. 7.

⁸⁸³ Rome Statute, Art. 8(2)(a).

⁸⁸⁴ Rome Statute, Art. 8(2)(b).

- Taking of hostages.⁸⁸⁵
- Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, acts which include:
 - Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; or
 - Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.⁸⁸⁶

Primary Ukrainian Implementation Measures

The Government of Ukraine ratified the Convention on the Prevention and Punishment of the Crime of Genocide in 1954. As a consequence, the Criminal Code of Ukraine already contains the offence of genocide and of public incitement to commit genocide.⁸⁸⁷

The definition of genocide complies generally with Article 2 of the Genocide Convention and Article 6 of the Rome Statute. Nevertheless, the Criminal Code of Ukraine fails to address “causing serious mental harm to members of the group”.

Although crimes against humanity are crimes under customary international law and the Rome Statute,⁸⁸⁸ the Criminal Code of Ukraine does not criminalise crimes against humanity.

Concerning war crimes, and as previously discussed, the Criminal Code of Ukraine does not contain a comprehensive list of war crimes.⁸⁸⁹ As argued throughout this Report, while reference to the laws and methods of wars in Article 438 may be sufficient in theory, the better approach may be to expressly identify a comprehensive list of acts which may

⁸⁸⁵ Rome Statute, Art. 8(2)(c).

⁸⁸⁶ Rome Statute, Art. 8(2)(e).

⁸⁸⁷ Criminal Code of Ukraine, Art. 442.

⁸⁸⁸ *Prosecutor v. Tadić* (Decision on the Defence Motion on Jurisdiction) ICTY-94-1 (10 August 1995) para. 4.

⁸⁸⁹ See *supra*, pp. 35-39.

constitute war crimes, including those listed in the Geneva Conventions and Protocols, customary international law and the Rome Statute.

The introduction of such a list of war crimes would enable better compliance with international standards and also assist with providing the necessary specificity and certainty that would guide domestic investigators and prosecutors in framing investigations and prosecutions that respect the principle of legality and culpability and form the basis for effective criminal sanction.

Bases of Jurisdiction

Principal National Implementation Requirements

As discussed,⁸⁹⁰ the ICC's mandate is premised on a principle of complementarity, which means that it will only act when the state fails to fulfil its obligation to investigate and prosecute international crimes in a genuine manner. As a consequence if the Government of Ukraine endeavours to ensure that it maintains jurisdiction over criminal prosecutions, it must ensure that legislation and procedures facilitating such investigations and prosecutions are in place, and more particularly that its law providing for the bases of jurisdiction encompasses the scope of the ICC's jurisdiction.

The ICC has jurisdiction over persons: (i) who commit an ICC crime on the territory of a state party to the Rome Statute or a state (like Ukraine) that has made a declaration under article 12(3) accepting the jurisdiction of the ICC (territoriality principle); or (ii) are nationals of a state party or of a state that has made a declaration under article 12(3) (nationality principle).⁸⁹¹ Accordingly, at a minimum, domestic legislation should allow domestic courts to exercise jurisdiction over ICC crimes occurring within its territory, as well as extraterritorial jurisdiction over its nationals committing such crimes abroad.⁸⁹²

However, the Rome Statute does not impose the introduction of the concept of universal jurisdiction over ICC crimes, as its jurisdiction is limited by the territory and nationality principles. Many States have nonetheless opted for such integration in their domestic legislation. As discussed above,⁸⁹³ universal jurisdiction would permit prosecution of crimes irrespective of who committed them or where they occur. It can take various forms,

⁸⁹⁰ See *supra*, p. 193.

⁸⁹¹ Rome Statute, Arts. 12(2), (3).

⁸⁹² The International Centre for Criminal Law Reform and Criminal Justice Policy, '[International Criminal Court: Manual for the Ratification and Implementation of the Rome Statute](#)' (March 2008) 70.

⁸⁹³ See *supra*, p. 71.

including universal jurisdiction limited to cases where it is provided for in binding international instruments.⁸⁹⁴

Primary Ukrainian Implementation Measures

As discussed above,⁸⁹⁵ the Criminal Code of Ukraine appears to adequately implement the various bases of jurisdiction in criminal proceedings into Ukraine's law. Articles 6 and 7 of the Criminal Code of Ukraine allow Ukrainian courts to exercise jurisdiction over any crimes, including war crimes⁸⁹⁶ and genocide,⁸⁹⁷ occurring within its territory or committed by its citizens outside Ukraine. As noted,⁸⁹⁸ Ukraine has not incorporated crimes against humanity in its Criminal Code. As they currently stand, these articles would also apply to crimes against humanity, should Ukraine incorporate this crime into its Criminal Code.

As also discussed above,⁸⁹⁹ Article 8 sets out the jurisdiction of Ukrainian courts for special grave offences committed abroad by a foreigner which involve Ukraine, either because they infringe the rights and freedoms of its citizens or Ukraine's interest. Although this Article does not clearly define the concept of "special grave offenses against rights and freedoms of Ukrainian citizens or the interest of Ukraine",⁹⁰⁰ it appears to apply to serious grave offences contained in Chapter XX (20) (including genocide and war crimes, both classified as special grave offences).

Finally, Article 8 also extends the jurisdiction of Ukrainian courts to offences committed by foreign nationals outside Ukraine when it is provided for by an international treaty ratified by Ukraine.⁹⁰¹ As discussed, although this form of universal jurisdiction is rather expansive, in the sense that it does not set out any restrictions (such as the limitations to cases where the perpetrator is a resident or is present in the state's territory at the time of the institution of the proceedings), its scope is limited to grave breaches of the Geneva Conventions and Additional Protocols. It does not include other war crimes or genocide due to the fact that international treaties do not require universal jurisdiction for such crimes. Universal jurisdiction would also not apply to crimes against humanity since no international treaty requires universal jurisdiction for such crimes.

⁸⁹⁴ *Ibid.*

⁸⁹⁵ *See supra*, p. 73.

⁸⁹⁶ Criminal Code of Ukraine, Art. 438.

⁸⁹⁷ Criminal Code of Ukraine, Art. 442.

⁸⁹⁸ *See supra*, p. 204.

⁸⁹⁹ *See supra*, pp. 73.

⁹⁰⁰ *Ibid.*

⁹⁰¹ Criminal Code of Ukraine, Art. 8.

Modes of Liability

Principal National Implementation Requirements

The Government of Ukraine must ensure that its national legislation includes the ways in which individual criminal responsibility can be attributed to an individual for crimes falling under the Rome Statute.⁹⁰² Failing to do so may prevent the Ukrainian legal system from being able to effectively prosecute and investigate individuals who may be responsible for committing (or being otherwise involved in the commission of) the crimes described in the Statute.

Under Article 25(3) of the Rome Statute, a person is responsible for a crime falling under the Rome Statute based on two types of liability:

- Principal liability: perpetration and co-perpetration (direct and indirect);
- Accessorial liability: ordering, soliciting, inducing, aiding and abetting or otherwise assisting in the commission of crimes and complicity (contribution to the commission of a crime committed by a group acting with a common purpose).

In addition, Article 28 of the Rome Statute imposes criminal responsibility on military commanders (as well as other non-military superiors) for failure to prevent or repress the commission of ICC crimes by their subordinates.

Primary Ukrainian Implementation Measures

As noted above, the underlying principle of individual criminal responsibility is provided for in the Constitution of Ukraine.⁹⁰³

The modes of liability are incorporated in the legislation of Ukraine adequately. The Criminal Code of Ukraine provides for principal and accessorial liability in Chapters IV and VI. More particularly, Article 27 of the Code sets forth the main modes of liability listed in the Rome Statute:

- Principal liability: perpetration and co-perpetration (direct and indirect);⁹⁰⁴ and
- Accessorial liability: organiser, abettor and accessory.⁹⁰⁵

⁹⁰² The International Centre for Criminal Law Reform and Criminal Justice Policy, '[International Criminal Court: Manual for the Ratification and Implementation of the Rome Statute](#)' (March 2008) 84.

⁹⁰³ Constitution of Ukraine, Art. 61.

⁹⁰⁴ Criminal Code of Ukraine, Art. 27(2).

⁹⁰⁵ Criminal Code of Ukraine, Art. 27(3)-(5).

Articles 14-16 of the Criminal Code also establish the criminal liability for attempting to commit an offence.

Superior responsibility has already been discussed above.⁹⁰⁶

Elimination of Bars to Prosecution

Principal National Implementation Requirements

The Government of Ukraine must ensure that its legislation is consistent with Article 29 of the Rome Statute, which provides that the ICC crimes shall not be subject to any statute of limitations – which would bar prosecution after a certain period of time has elapsed.

The Government of Ukraine has ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity which imposes an obligation to adopt any legislative or other measures necessary to ensure that statutory or other limitations do not apply to the prosecution and punishment of war crimes and crimes against humanity.

Further, Article 27 of the Rome Statute requires States to suppress any immunity for heads of state and other officials.

Primary Ukrainian National Implementation Measures

Pursuant to Article 49(5) of the Criminal Code of Ukraine, statutes of limitation do not apply to the crimes of:

- Planning, preparing and waging an aggressive war;⁹⁰⁷
- Committing violations of rules of warfare;⁹⁰⁸
- The use of weapons of mass destruction;⁹⁰⁹
- Genocide.⁹¹⁰

This list will have to be expanded to cover all Rome Statute crimes (*i.e.* crime against humanity) once they are introduced into the Code.

⁹⁰⁶ See *supra*, p. 76.

⁹⁰⁷ Criminal Code of Ukraine, Art. 437.

⁹⁰⁸ Criminal Code of Ukraine, Art. 438.

⁹⁰⁹ Criminal Code of Ukraine, Art. 439.

⁹¹⁰ Criminal Code of Ukraine, Art. 442(1).

ANNEX I

List of Customary Rules of IHL

This list is a replication of an annex in J.M. Henckaerts report entitled 'Study on Customary International Humanitarian Law'.⁹¹¹

The abbreviation IAC refers to customary rules applicable in international armed conflicts and the abbreviation NIAC to customary rules applicable in non-international armed conflicts.

The Principle of Distinction

Distinction between Civilians and Combatants

Rule 1. The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians. [IAC/NIAC]

Rule 2. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. [IAC/NIAC]

Rule 3. All members of the armed forces of a party to the conflict are combatants, except medical and religious personnel. [IAC]

Rule 4. The armed forces of a party to the conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates. [IAC]

Rule 5. Civilians are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians. [IAC/NIAC]

⁹¹¹ J.-M. Henckaerts, "Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict" (2005) 87:857 Int'l Rev. Red Cross, 175 < www.icrc.org/eng/resources/documents/misc/customary-law-rules-291008.html > accessed 22 April 2016.

Rule 6. Civilians are protected against attack, unless and for such time as they take a direct part in hostilities. [IAC/NIAC]

Distinction between Civilian Objects and Military Objectives

Rule 7. The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects. [IAC/NIAC]

Rule 8. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. [IAC/NIAC]

Rule 9. Civilian objects are all objects that are not military objectives. [IAC/NIAC]

Rule 10. Civilian objects are protected against attack, unless and for such time as they are military objectives. [IAC/NIAC]

Indiscriminate Attacks

Rule 11. Indiscriminate attacks are prohibited. [IAC/NIAC]

Rule 12. Indiscriminate attacks are those: (a) which are not directed at a specific military objective; (b) which employ a method or means of combat which cannot be directed at a specific military objective; or (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction. [IAC/NIAC]

Rule 13. Attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are prohibited. [IAC/NIAC]

Proportionality in Attack

Rule 14. Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited. [IAC/NIAC]

Precautions in Attack

Rule 15. In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. [IAC/NIAC]

Rule 16. Each party to the conflict must do everything feasible to verify that targets are military objectives. [IAC/NIAC]

Rule 17. Each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects. [IAC/NIAC]

Rule 18. Each party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. [IAC/NIAC]

Rule 19. Each party to the conflict must do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. [IAC/NIAC]

Rule 20. Each party to the conflict must give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit. [IAC/NIAC]

Rule 21. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects. [IAC/arguably NIAC]

Precautions against the Effects of Attacks

Rule 22. The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks. [IAC/NIAC]

Rule 23. Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas. [IAC/arguably NIAC]

Rule 24. Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives. [IAC/arguably NIAC]

Specifically Protected Persons and Objects

Medical and Religious Personnel and Objects

Rule 25. Medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy. [IAC/NIAC]

Rule 26. Punishing a person for performing medical duties compatible with medical ethics or compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited. [IAC/NIAC]

Rule 27. Religious personnel exclusively assigned to religious duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy. [IAC/NIAC]

Rule 28. Medical units exclusively assigned to medical purposes must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy. [IAC/NIAC]

Rule 29. Medical transports assigned exclusively to medical transportation must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy. [IAC/NIAC]

Rule 30. Attacks directed against medical and religious personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited. [IAC/NIAC]

Humanitarian Relief Personnel and Objects

Rule 31. Humanitarian relief personnel must be respected and protected. [IAC/NIAC]

Rule 32. Objects used for humanitarian relief operations must be respected and protected. [IAC/NIAC]

Personnel and Objects Involved in a Peacekeeping Mission

Rule 33. Directing an attack against personnel and objects involved in a peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law, is prohibited. [IAC/NIAC]

Journalists

Rule 34. Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities. [IAC/NIAC]

Protected Zones

Rule 35. Directing an attack against a zone established to shelter the wounded, the sick and civilians from the effects of hostilities is prohibited. [IAC/NIAC]

Rule 36. Directing an attack against a demilitarized zone agreed upon between the parties to the conflict is prohibited. [IAC/NIAC]

Rule 37. Directing an attack against a non-defended locality is prohibited. [IAC/NIAC]

Cultural Property

Rule 38. Each party to the conflict must respect cultural property:

A. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives.

B. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity. [IAC/NIAC]

Rule 39. The use of property of great importance to the cultural heritage of every people for purposes which are likely to expose it to destruction or damage is prohibited, unless imperatively required by military necessity. [IAC/NIAC]

Rule 40. Each party to the conflict must protect cultural property:

A. All seizure of or destruction or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited.

B. Any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited. [IAC/NIAC]

Rule 41. The occupying power must prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities of the occupied territory. [IAC]

Works and Installations Containing Dangerous Forces

Rule 42. Particular care must be taken if works and installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, and other installations located at or in their vicinity are attacked, in order to avoid the release of dangerous forces and consequent severe losses among the civilian population. [IAC/NIAC]

The Natural Environment

Rule 43. The general principles on the conduct of hostilities apply to the natural environment:

- A. No part of the natural environment may be attacked, unless it is a military objective.
- B. Destruction of any part of the natural environment is prohibited, unless required by imperative military necessity.
- C. Launching an attack against a military objective which may be expected to cause incidental damage to the environment which would be excessive in relation to the concrete and direct military advantage anticipated is prohibited. [IAC/NIAC]

Rule 44. Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions. [IAC/ arguably NIAC]

Rule 45. The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon. [IAC/arguably NIAC]

Specific Methods of Warfare

Denial of Quarter

Rule 46. Ordering that no quarter will be given, threatening an adversary therewith or conducting hostilities on this basis is prohibited. [IAC/NIAC]

Rule 47. Attacking persons who are recognized as hors de combat is prohibited.

A person hors de combat is:

- (a) anyone who is in the power of an adverse party;
- (b) anyone who is defenseless because of unconsciousness, shipwreck, wounds or sickness; or
- (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape. [IAC/NIAC]

Rule 48. Making persons parachuting from an aircraft in distress the object of attack during their descent is prohibited. [IAC/NIAC]

Destruction and Seizure of Property

Rule 49. The parties to the conflict may seize military equipment belonging to an adverse party as war booty. [IAC]

Rule 50. The destruction or seizure of the property of an adversary is prohibited, unless required by imperative military necessity. [IAC/NIAC]

Rule 51. In occupied territory:

- (a) movable public property that can be used for military operations may be confiscated;
- (b) immovable public property must be administered according to the rule of usufruct; and
- (c) private property must be respected and may not be confiscated; except where destruction or seizure of such property is required by imperative military necessity. [IAC]

Rule 52. Pillage is prohibited. [IAC/NIAC]

Starvation and Access to Humanitarian Relief

Rule 53. The use of starvation of the civilian population as a method of warfare is prohibited. [IAC/NIAC]

Rule 54. Attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population is prohibited. [IAC/NIAC]

Rule 55. The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control. [IAC/NIAC]

Rule 56. The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted. [IAC/NIAC]

Deception

Rule 57. Ruses of war are not prohibited as long as they do not infringe a rule of international humanitarian law. [IAC/NIAC]

Rule 58. The improper use of the white flag of truce is prohibited. [IAC/NIAC]

Rule 59. The improper use of the distinctive emblems of the Geneva Conventions is prohibited. [IAC/NIAC]

Rule 60. The use of the United Nations emblem and uniform is prohibited, except as authorized by the organization. [IAC/NIAC]

Rule 61. The improper use of other internationally recognized emblems is prohibited. [IAC/NIAC]

Rule 62. Improper use of the flags or military emblems, insignia or uniforms of the adversary is prohibited. [IAC/arguably NIAC]

Rule 63. Use of the flags or military emblems, insignia or uniforms of neutral or other States not party to the conflict is prohibited. [IAC/arguably NIAC]

Rule 64. Concluding an agreement to suspend combat with the intention of attacking by surprise the enemy relying on that agreement is prohibited. [IAC/NIAC]

Rule 65. Killing, injuring or capturing an adversary by resort to perfidy is prohibited. [IAC/NIAC]

Communication with the Enemy

Rule 66. Commanders may enter into non-hostile contact through any means of communication. Such contact must be based on good faith. [IAC/NIAC]

Rule 67. Parlementaires are inviolable. [IAC/NIAC]

Rule 68. Commanders may take the necessary precautions to prevent the presence of a parlementaire from being prejudicial. [IAC/NIAC]

Rule 69. Parlementaires taking advantage of their privileged position to commit an act contrary to international law and detrimental to the adversary lose their inviolability. [IAC/NIAC]

Weapons

General Principles on the Use of Weapons

Rule 70. The use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is prohibited. [IAC/NIAC]

Rule 71. The use of weapons which are by nature indiscriminate is prohibited. [IAC/NIAC]

Poison and Poisoned Weapons

Rule 72. The use of poison or poisoned weapons is prohibited. [IAC/NIAC]

Biological Weapons

Rule 73. The use of biological weapons is prohibited. [IAC/NIAC]

Chemical Weapons

Rule 74. The use of chemical weapons is prohibited. [IAC/NIAC]

Rule 75. The use of riot-control agents as a method of warfare is prohibited. [IAC/NIAC]

Rule 76. The use of herbicides as a method of warfare is prohibited if they:

- (a) are of a nature to be prohibited chemical weapons;
- (b) are of a nature to be prohibited biological weapons;
- (c) are aimed at vegetation that is not a military objective;
- (d) would cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which may be expected to be excessive in relation to the concrete and direct military advantage anticipated; or
- (e) would cause widespread, long-term and severe damage to the natural environment. [IAC/NIAC]

Expanding Bullets

Rule 77. The use of bullets which expand or flatten easily in the human body is prohibited. [IAC/NIAC]

Exploding Bullets

Rule 78. The anti-personnel use of bullets which explode within the human body is prohibited. [IAC/NIAC]

Weapons Primarily Injuring by Non-Detectable Fragments

Rule 79. The use of weapons the primary effect of which is to injure by fragments which are not detectable by X-rays in the human body is prohibited. [IAC/NIAC]

Booby-traps

Rule 80. The use of booby-traps which are in any way attached to or associated with objects or persons entitled to special protection under international humanitarian law or with objects that are likely to attract civilians is prohibited. [IAC/NIAC]

Landmines

Rule 81. When landmines are used, particular care must be taken to minimize their indiscriminate effects. [IAC/NIAC]

Rule 82. A party to the conflict using landmines must record their placement, as far as possible. [IAC/arguably NIAC]

Rule 83. At the end of active hostilities, a party to the conflict which has used landmines must remove or otherwise render them harmless to civilians, or facilitate their removal. [IAC/NIAC]

Incendiary Weapons

Rule 84. If incendiary weapons are used, particular care must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. [IAC/NIAC]

Rule 85. The anti-personnel use of incendiary weapons is prohibited, unless it is not feasible to use a less harmful weapon to render a person hors de combat. [IAC/NIAC]

Blinding Laser Weapons

Rule 86. The use of laser weapons that are specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision is prohibited. [IAC/NIAC]

Treatment of Civilians and Persons Hors de Combat

Fundamental Guarantees

Rule 87. Civilians and persons hors de combat must be treated humanely. [IAC/NIAC]

Rule 88. Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited. [IAC/NIAC]

Rule 89. Murder is prohibited. [IAC/NIAC]

Rule 90. Torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited. [IAC/NIAC]

Rule 91. Corporal punishment is prohibited. [IAC/NIAC]

Rule 92. Mutilation, medical or scientific experiments or any other medical procedure not indicated by the state of health of the person concerned and not consistent with generally accepted medical standards are prohibited. [IAC/NIAC]

Rule 93. Rape and other forms of sexual violence are prohibited. [IAC/NIAC]

Rule 94. Slavery and the slave trade in all their forms are prohibited. [IAC/NIAC]

Rule 95. Uncompensated or abusive forced labour is prohibited. [IAC/NIAC]

Rule 96. The taking of hostages is prohibited. [IAC/NIAC]

Rule 97. The use of human shields is prohibited. [IAC/NIAC]

Rule 98. Enforced disappearance is prohibited. [IAC/NIAC]

Rule 99. Arbitrary deprivation of liberty is prohibited. [IAC/NIAC]

Rule 100. No one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees. [IAC/NIAC]

Rule 101. No one may be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time it was committed; nor may a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. [IAC/NIAC]

Rule 102. No one may be convicted of an offence except on the basis of individual criminal responsibility. [IAC/NIAC]

Rule 103. Collective punishments are prohibited. [IAC/NIAC]

Rule 104. The convictions and religious practices of civilians and persons hors de combat must be respected. [IAC/NIAC]

Rule 105. Family life must be respected as far as possible. [IAC/NIAC]

Combatants and Prisoner-of-War Status

Rule 106. Combatants must distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. If they fail to do so, they do not have the right to prisoner-of-war status. [IAC]

Rule 107. Combatants who are captured while engaged in espionage do not have the right to prisoner-of-war status. They may not be convicted or sentenced without previous trial. [IAC]

Rule 108. Mercenaries, as defined in Additional Protocol I, do not have the right to combatant or prisoner-of-war status. They may not be convicted or sentenced without previous trial. [IAC]

The Wounded, Sick and Shipwrecked

Rule 109. Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the wounded, sick and shipwrecked without adverse distinction. [IAC/NIAC]

Rule 110. The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones. [IAC/NIAC]

Rule 111. Each party to the conflict must take all possible measures to protect the wounded, sick and shipwrecked against ill-treatment and against pillage of their personal property. [IAC/NIAC]

The Dead

Rule 112. Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction. [IAC/NIAC]

Rule 113. Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited. [IAC/NIAC]

Rule 114. Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them. [IAC]

Rule 115. The dead must be disposed of in a respectful manner and their graves respected and properly maintained. [IAC/NIAC]

Rule 116. With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves. [IAC/NIAC]

Missing Persons

Rule 117. Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate. [IAC/NIAC]

Persons Deprived of Their Liberty

Rule 118. Persons deprived of their liberty must be provided with adequate food, water, clothing, shelter and medical attention. [IAC/NIAC]

Rule 119. Women who are deprived of their liberty must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women. [IAC/NIAC]

Rule 120. Children who are deprived of their liberty must be held in quarters separate from those of adults, except where families are accommodated as family units. [IAC/NIAC]

Rule 121. Persons deprived of their liberty must be held in premises which are removed from the combat zone and which safeguard their health and hygiene. [IAC/NIAC]

Rule 122. Pillage of the personal belongings of persons deprived of their liberty is prohibited. [IAC/NIAC]

Rule 123. The personal details of persons deprived of their liberty must be recorded. [IAC/NIAC]

Rule 124.

A. In international armed conflicts, the ICRC must be granted regular access to all persons deprived of their liberty in order to verify the conditions of their detention and to restore contacts between those persons and their families. [IAC]

B. In non-international armed conflicts, the ICRC may offer its services to the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict in order to verify the conditions of their detention and to restore contacts between those persons and their families. [NIAC]

Rule 125. Persons deprived of their liberty must be allowed to correspond with their families, subject to reasonable conditions relating to frequency and the need for censorship by the authorities. [IAC/NIAC]

Rule 126. Civilian internees and persons deprived of their liberty in connection with a non-international armed conflict must be allowed to receive visitors, especially near relatives, to the degree practicable. [NIAC]

Rule 127. The personal convictions and religious practices of persons deprived of their liberty must be respected. [IAC/NIAC]

Rule 128.

A. Prisoners of war must be released and repatriated without delay after the cessation of active hostilities. [IAC]

B. Civilian internees must be released as soon as the reasons which necessitated internment no longer exist, but at the latest as soon as possible after the close of active hostilities. [IAC]

C. Persons deprived of their liberty in relation to a non-international armed conflict must be released as soon as the reasons for the deprivation of their liberty cease to exist. [NIAC]

The persons referred to may continue to be deprived of their liberty if penal proceedings are pending against them or if they are serving a sentence lawfully imposed.

Displacement and Displaced Persons

Rule 129.

A. Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand. [IAC]

B. Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand. [NIAC]

Rule 130. States may not deport or transfer parts of their own civilian population into a territory they occupy. [IAC]

Rule 131. In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated. [IAC/NIAC]

Rule 132. Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist. [IAC/NIAC]

Rule 133. The property rights of displaced persons must be respected. [IAC/NIAC]

Other Persons Afforded Specific Protection

Rule 134. The specific protection, health and assistance needs of women affected by armed conflict must be respected. [IAC/NIAC]

Rule 135. Children affected by armed conflict are entitled to special respect and protection. [IAC/NIAC]

Rule 136. Children must not be recruited into armed forces or armed groups. [IAC/NIAC]

Rule 137. Children must not be allowed to take part in hostilities. [IAC/NIAC]

Rule 138. The elderly, disabled and infirm affected by armed conflict are entitled to special respect and protection. [IAC/NIAC]

Implementation

Compliance with International Humanitarian Law

Rule 139. Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control. [IAC/NIAC]

Rule 140. The obligation to respect and ensure respect for international humanitarian law does not depend on reciprocity. [IAC/NIAC]

Rule 141. Each State must make legal advisers available, when necessary, to advise military commanders at the appropriate level on the application of international humanitarian law. [IAC/NIAC]

Rule 142. States and parties to the conflict must provide instruction in international humanitarian law to their armed forces. [IAC/NIAC]

Rule 143. States must encourage the teaching of international humanitarian law to the civilian population. [IAC/NIAC]

Enforcement of International Humanitarian Law

Rule 144. States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law. [IAC/NIAC]

Rule 145. Where not prohibited by international law, belligerent reprisals are subject to stringent conditions. [IAC]

Rule 146. Belligerent reprisals against persons protected by the Geneva Conventions are prohibited. [IAC]

Rule 147. Reprisals against objects protected under the Geneva Conventions and Hague Convention for the Protection of Cultural Property are prohibited. [IAC]

Rule 148. Parties to non-international armed conflicts do not have the right to resort to belligerent reprisals. Other countermeasures against persons who do not or who have ceased to take a direct part in hostilities are prohibited. [NIAC]

Responsibility and Reparation

Rule 149. A State is responsible for violations of international humanitarian law attributable to it, including:

- (a) violations committed by its organs, including its armed forces;
- (b) violations committed by persons or entities it empowered to exercise elements of governmental authority;
- (c) violations committed by persons or groups acting in fact on its instructions, or under its direction or control; and
- (d) violations committed by private persons or groups which it acknowledges and adopts as its own conduct. [IAC/NIAC]

Rule 150. A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused. [IAC/NIAC]

Individual Responsibility

Rule 151. Individuals are criminally responsible for war crimes they commit. [IAC/NIAC]

Rule 152. Commanders and other superiors are criminally responsible for war crimes committed pursuant to their orders. [IAC/NIAC]

Rule 153. Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible. [IAC/NIAC]

Rule 154. Every combatant has a duty to disobey a manifestly unlawful order. [IAC/NIAC]

Rule 155. Obeying a superior order does not relieve a subordinate of criminal responsibility if the subordinate knew that the act ordered was unlawful or should have known because of the manifestly unlawful nature of the act ordered. [IAC/NIAC]

War Crimes

Rule 156. Serious violations of international humanitarian law constitute war crimes. [IAC/NIAC]

Rule 157. States have the right to vest universal jurisdiction in their national courts over war crimes. [IAC/NIAC]

Rule 158. States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects. [IAC/NIAC]

Rule 159. At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes. [NIAC]

Rule 160. Statutes of limitation may not apply to war crimes. [IAC/NIAC]

Rule 161. States must make every effort to cooperate, to the extent possible, with each other in order to facilitate the investigation of war crimes and the prosecution of the suspects. [IAC/NIAC]

ANNEX II

Key articles requiring the adoption of IHL national implementation measures

Key articles requiring the adoption of IHL national implementation measures

	1949 Geneva Conventions				1977 Protocols		1954 Hague Conv.	1999 Protocol
	First	Second	Third	Fourth	I	II		
Translation	48	49	41, 128	99, 145	84		26	37
Dissemination & training	47	48	41, 127	99, 144	80, 82-83, 87	19	7, 25	30
Violations								
General provisions	49-54	50-53	129-132	146-149	85-91		28	15-21
War crimes	49-50	50-51	129-130	146-147	11, 85-90			
Compensation					91			
Protection								
Fundamental guarantees		3, 12	3, 13-17	3, 27-34	11, 75-77	4-5, 7		
Judicial and disciplinary guarantees; rights of prisoners and detainees	3	3	3, 5, 17, 82-90, 95-108, 129	3, 5, 31-35, 43, 64-78, 99-100, 117-126	44-45, 75	6		
Medicinal and religious personnel	40, 41	42		20	15-16, 18	10, 12		
Medicinal transports and facilities	19, 36, 39, 42-43	22, 24-27, 38-39, 41, 43		18, 21-22	12, 18, 21-23	12		
Cultural property					53	16	3, 6, 10, 12	5
Dangerous forces					56	15		
Identity cards	27, 40, 41, Annex II	42, Annex	17, Annex IV	20	18, 66-67, 78-79, Annexes I&II			
Capture and internment cards			70, Annex IV	106, Annex III				
Use/misuse of emblems and symbols	144, 53-54	44-45			18, 37-38, 66, 85, Annex I	12	6, 10, 12, 17	
Experts and advisers								
Qualified persons					6		7, 25	
Legal advisers					82			
Organizations								
National Societies	26			63	81	18		
Civil defence				63	61-67			
Information bureaux			122-124	136-141				
Mixed medical commissions			112, Annex II					
Military planning								
Weapons/tactics					36			
Military sites					57-58			8
Protected zones and localities	23, Annex I			14, 15	59-60, Annex I			

Figure 15: This table was extracted from the ICRC Factsheet: “Implementing International Humanitarian Law: from Law to Action” (2002) <<https://www.icrc.org/en/document/implementing-international-humanitarian-law-law-action>> accessed 6 February 2016.

ANNEX III

IHL Treaties Ratified by Ukraine

Name of the treaty	Signed	Ratified	Effective date	Description of the Treaty
Hague Conference of 1899				
Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land of 29.07.1899.		29.05.2015		<p>In accordance with the Convention, parties to a conflict must issue instructions to their land forces, which shall be in conformity with the 'Regulations concerning the Laws and Customs of War on Land' annexed to the Convention.</p> <p>This Convention was replaced by Hague Convention (IV) of 1907.</p>
Hague Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864 of 29.07.1899		29.05.2015		<p>The Convention includes provisions relating to the treatment of hospital ships and the protection of the wounded and sick on-board hospital ships.</p> <p>This Convention was replaced by Hague Convention (X) of 1907.</p>

Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land of 18.10.1907	(18.10.1907 – signed by Russian empire)	29.05.2015	29.05.2015	The Convention includes a number of rules and customs relating to conducting war on land. The Annex includes provisions concerning the status of combatants and the protection of wounded and sick and prisoners of war which were partly reaffirmed and developed by the two Additional Protocols to the Geneva Conventions.
Hague Declaration (IV,2) concerning Asphyxiating Gases of 29.07.1899		29.05.2015	29.05.2015	In accordance with the Declaration, state parties must abstain from using projectiles which facilitate the diffusion of asphyxiating or deleterious gases. This prohibition is now contained in the Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 17.06.1925.
Hague Declaration (IV,3) concerning Expanding Bullets of 29.07.1899		29.05.2015	29.05.2015	The Declaration outlines that state parties must abstain from the use of bullets which expand or flatten easily in the human body.
Hague Convention (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 18.10.1907.		29.05.2015	29.05.2015	The Convention includes provisions relating to the treatment of hospital ships and the protection of the wounded and sick on-board hospital ships. This Convention was replaced by Geneva Convention II.
Hague Convention (VI) relating to the Status of Enemy Merchant		29.05.2015	29.05.2015	The Convention regulates the treatment of merchant ships of the belligerent Powers in the enemy ports and states that merchant ships

Ships at the Outbreak of Hostilities of 18.10.1907.				belonging to one of the belligerent Powers should be allowed to depart an enemy port freely.
Hague Convention (VII) relating to the Conversion of Merchant Ships into War-Ships of 18.10.1907.		29.05.2015	29.05.2015	The Convention includes the rules relating to when a merchant ship may be converted into war-ship.
Hague Convention (IX) concerning Bombardment by Naval Forces in Time of War of 18.10.1907.		29.05.2015	29.05.2015	The Convention forbids the bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings. Only the destruction of military works or establishments which could be utilised for the needs of the hostile fleet or army, is allowed. Furthermore, any bombardment may be commenced only after a due notice.
Hague Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War of 18.10.1907.		29.05.2015	29.05.2015	The Convention regulates the relations between neutral states and belligerent powers during wars at sea. It requires the sovereignty of neutral states to be respected and forbids any violations to be committed by belligerent war-ships in the waters of neutral states and using neutral ports for any military operations.
Hague Conference of 1907				
Hague Convention (V) respecting the Rights and Duties of Neutral		29.05.2015	29.05.2015	The Convention protects neutral powers and provides that the territory of neutral powers is inviolable. Belligerents are forbidden to move troops or supplies across the territory of a neutral power, to

Powers and Persons in Case of War on Land.				erect apparatus on the territory of a neutral power for military purposes.
Geneva Conventions of 12.08.1949				
Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12.08.1949	12.12.1949	03.07.1954	03.01.1955	The Convention protects soldiers as well as medical and religious personnel who are <i>hors de combat</i> .
Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12.08.1949	12.12.1949	03.07.1954	03.01.1955	The Convention includes provisions concerning the protection, treatment and status of the wounded, sick and shipwrecked.
Geneva Convention (III) relative to the Treatment of Prisoners of War of 12.08.1949	12.12.1949	03.07.1954	03.01.1955	The Convention includes provisions concerning the protection, treatment, status and rights of prisoners of war.
Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12.08.1949	12.12.1949	03.07.1954	03.01.1955	The Convention establishes the status of civilians and internees in times of war. It provides for their protection either in occupied territories, or in the territory of armed conflicts.
Protocols Additional to the Geneva Conventions of 12.08.1949				

Protocol Additional (I) to the Geneva Conventions of 12.08.1949, and relating to the Protection of Victims of International Armed Conflicts of 08.06.1977	12.12.1977	18.08.1989	25.07.1990	The Protocol includes provisions relating to the protection and status of wounded, sick and shipwrecked combatants, prisoners of war and civilians.
Protocol Additional (II) to the Geneva Conventions of 12.08.1949, and relating to the Protection of Victims of Non-International Armed Conflicts of 08.06.1977	12.12.1977	18.08.1989	25.07.1990	The Protocol includes provisions relating to the protection of the victims of non-international armed conflicts.
Protocol Additional (III) to the Geneva Conventions of 12.08.1949, and relating to the Adoption of an Additional Distinctive Emblem of 08.12.2005	23.06.2006	22.10.2009	19.07.2010	The Protocol creates the additional distinctive emblem - the Red Crystal.
Cultural property				
Hague Convention for the Protection of Cultural Property in	14.05.1954	04.01.1957	06.02.1957	The Convention obliges state parties to respect cultural property and to protect it from destruction. Similarly, parties are obliged to prohibit and prevent any form of theft, pillage, misappropriation or vandalism

the Event of Armed Conflict of 14.05.1954				against cultural property. The Convention also provides the distinctive emblem to be used to identify cultural property.
Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict of 14.05.1954	14.05.1954		06.02.1957	Subject to the Protocol each state party is obliged to prevent the exportation of cultural property from a territory occupied by it during an armed conflict. State parties must take custody of any cultural property imported into its territory from an occupied territory and return it to competent authorities when hostilities end.
Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 26 March 1999		30.06.2020	30.06.2020	In accordance with the Protocol, cultural property of greatest importance can be placed under enhanced protection. The Protocol applies equally to international and non-international armed conflicts.
Rights of the Child				
Convention on the Rights of the Child of 20.11.1989	21.02.1990	27.02.1991	28.08.1991	The Convention sets out the civil, political, economic, social, health and cultural rights of children. It particularly prohibits the conscription of children under the age of 15.
Optional Protocol to the Convention on the Rights of the Child on the Involvement of	07.09.2000	23.06.2004	11.07.2005	The Optional Protocol prohibits the conscription of children under the age of 18 and exempts volunteers under the age of 18 from taking a direct participation in hostilities.

Children in Armed Conflict of 25.05.2000				
Weapons of Mass Destruction				
Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 17.06.1925			07.08.2003	The Geneva Protocol prohibits the use of asphyxiating or poisonous gases, and any analogous liquids, materials or devices. State parties to the protocol must also extend this prohibition to bacteriological methods of warfare.
Treaty on the Non-Proliferation of Nuclear Weapons of 01.07.1968	01.07.1968	16.11.1994	05.12.1994	The Treaty aims to prevent the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and general and complete disarmament.
Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 10.04.1972.	10.04.1972	21.02.1975	26.03.1975	The Convention bans the development, production and stockpiling of an entire category of weapons of mass destruction.

Paris Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 13.01.1993	13.01.1993	16.10.1998	16.10.1998	The Convention prohibits the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties.
Conventional Weapons				
Geneva 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 of 10.10.1980 (as amended on 21.12.2001)	10.04.1981	23.06.1982 (amendment on ratified on 15.06.2004)	23.06.1982 (amendment entered into force on 29.06.2005)	The Convention is an umbrella convention, covering five protocols. The Convention provides that states which express their consent to be bound by at least two of the protocols to the Convention may be bound by the Convention as a whole.
Protocol (I) to the Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons on Non-Detectable Fragments of 10.10.1980	10.04.1981		23.06.1982	Pursuant to the Protocol, it is prohibited to use any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays

Protocol (II) to the Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (as amended on 3 May 1996)	10.04.1981	15.12.1999	23.06.1982 (the amendments entered into force on 15.12.1999)	The Protocol contains prohibitions and restrictions relating to the use of mines, booby-traps and other devices.
Protocol (III) to the Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons on Prohibitions or Restrictions on the Use of Incendiary Weapons of 10.10.1980.	10.04.1981		23.06.1982	The Protocol prohibits attacks on civilian populations and objects with incendiary weapons.
Protocol (IV) to the Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons on Blinding Laser Weapons of 13.10.1995	13.10.1995	17.01.2002	28.05.2003	The Protocol prohibits the use and transfer of laser weapons designed to cause permanent blindness.

Protocol (V) to the Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons on Explosive Remnants of War of 28.11.2003			17.05.2005	The Protocol requires the clearance of unexploded ordnance, such as unexploded bombs and abandoned explosive weapons. After the end of an armed conflict, state parties which used explosives are obliged to assist with their clearance.
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 18.09.1997	24.02.1999	18.05.2005	27.12.2005	The Convention binds state parties to destroy any anti-personnel weapons it possesses within 4 years after becoming a party to the Convention.
Other Treaties				
Convention on the Prevention and Punishment of the Crime of Genocide of 09.12.1948	16.12.1949	15.11.1954	15.11.1954	The Convention defines genocide as any of a series of acts committed with the intent to destroy in whole, or in part a national, ethnical, racial or religious group.
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 26.11.1968	14.01.1969	25.03.1969	19.06.1969	The Convention provides that no statutory limitations should be applied to war, crimes against humanity or genocide.

European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes. Strasbourg of 25.01.1974	24.01.2006	30.07.2008	31.10.2008	The aim of the Convention is to ensure that the punishment of crimes against humanity and the most serious violations of the laws and customs of war is not barred by statutory limitations.
Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques of 10.12.1976	18.05.1977	13.06.1978	13.06.1978	The Convention obliges parties not to engage in the hostile use of environmental modification techniques which could cause widespread, long-lasting or severe effects to another state party.
International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 04.12.1989	21.09.1990	14.07.1993	13.09.1993	The Convention prohibits states to recruit, use, finance or train mercenaries and requires them to criminalise anyone who does.
International Convention for the Protection of all Persons from Enforced Disappearance, 20 December 2006	17.06.2015	14.08.2015	14.08.2015	The Convention requires states to investigate acts of enforced disappearance and to bring those responsible to justice.

ANNEX IV

IHL Treaties Not Ratified by Ukraine

Name of the treaty	Signed	Ratified	Effective date	Description of the Treaty
Rome Statute of the International Criminal Court of 17 July 1998	20.01.2000			The Rome Statute establishes the International Criminal Court. It contains the court's function, jurisdiction and structure. More particularly, it sets forth four international crimes - genocide, crimes against humanity, war crimes, and the crime of aggression.
Convention on Cluster Munitions, 30 May 2008				The Convention prohibits the use, production, transfer and stockpiling of cluster munitions.
Arms Trade Treaty of 2 April 2013	23.09.2014			The Treaty regulates the international trade of conventional weapons and obliges states parties to monitor arms exports and ensure that weapons do not cross existing arms embargoes or end up being used for human rights abuses including terrorism.

ANNEX V

Ukraine's reservations to IHL treaties

Name of the treaty	Reservations
Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land of 29.07.1899.	N/A
Hague Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864 of 29.07.1899	N/A
Hague Convention (IV) respecting the Laws and Customs of War on Land and	N/A

its annex: Regulations concerning the Laws and Customs of War on Land of 18.10.1907	
Hague Declaration (IV,2) concerning Asphyxiating Gases of 29.07.1899	N/A
Hague Declaration (IV,3) concerning Expanding Bullets of 29.07.1899	N/A
Hague Convention (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 18.10.1907.	N/A
Hague Convention (VI) relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities of 18.10.1907.	N/A

Hague Convention (VII) relating to the Conversion of Merchant Ships into War-Ships of 18.10.1907.	N/A
Hague Convention (IX) concerning Bombardment by Naval Forces in Time of War of 18.10.1907.	N/A
Hague Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War of 18.10.1907.	N/A
Hague Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land.	N/A

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12.08.1949	Reservations of the Ukrainian SSR have been lifted. ⁹¹²
Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12.08.1949	Reservations of the Ukrainian SSR have been lifted. ⁹¹³
Geneva Convention (III) relative to the Treatment of Prisoners of War of 12.08.1949	Reservations of the Ukrainian SSR have been lifted. ⁹¹⁴
Geneva Convention (IV) relative to the Protection of	Reservations of the Ukrainian SSR have been lifted. ⁹¹⁵

⁹¹² <http://zakon2.rada.gov.ua/laws/show/3413-15>

⁹¹³ *Ibid.*

⁹¹⁴ *Ibid.*

⁹¹⁵ *Ibid.*

Civilian Persons in Time of War of 12.08.1949	
Protocol Additional (I) to the Geneva Conventions of 12.08.1949, and relating to the Protection of Victims of International Armed Conflicts of 08.06.1977	Declaration to Art. 90. ⁹¹⁶
Protocol Additional (II) to the Geneva Conventions of 12.08.1949, and relating to the Protection of Victims of Non-International Armed Conflicts of 08.06.1977	N/A
Protocol Additional (III) to the Geneva Conventions of 12.08.1949, and relating to the Adoption of an Additional	N/A

⁹¹⁶ No detail available.

Distinctive Emblem of 08.12.2005	
Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14.05.1954	N/A
Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict of 14.05.1954	N/A
Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 26 March 1999	N/A
Convention on the Rights of the Child of 20.11.1989	N/A
Optional Protocol to the Convention on the Rights of the Child on the Involvement of	N/A

Children in Armed Conflict of 25.05.2000	
Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 17.06.1925	N/A
Treaty on the Non-Proliferation of Nuclear Weapons of 01.07.1968	<p>Declaration</p> <p>“1. The provisions of the Treaty do not fully capture the unique situation that has arisen as a result of the collapse of the nuclear power – the Soviet Union.</p> <p>...</p> <p>3. The presence of nuclear weapons in the territory of Ukraine until their complete elimination, and related work on its content, service and disposal is not contrary to the provisions of Articles 1 and 2 of the Treaty.</p> <p>4. The threat or use of force against the territorial integrity and inviolability of the borders or political independence of Ukraine by any nuclear power, as well as the use of economic pressure aimed at subordinating its own</p>

	interpretation of the implementation by Ukraine of the rights inherent to the sovereignty of Ukraine will be treated as exceptional circumstances which jeopardized its best interests. ... ⁹¹⁷
Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 10.04.1972.	N/A
Paris Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 13.01.1993	N/A
Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed Excessively	N/A

⁹¹⁷ Link to Russian text: <http://disarmament.un.org/treaties/a/npt/ukraine/acc/moscow>

Injurious or to Have Indiscriminate Effects of 10.10.1980	
Amendment article 1 of 21.12.2001 of Geneva 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 of 10.10.1980	N/A
Protocol (I) to the Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons on Non-Detectable Fragments of 10.10.1980	N/A
Protocol (II) to the Geneva Convention on Prohibitions or Restrictions on the Use of	Declaration made on 15 December 1999:

Certain Conventional Weapons on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (as amended on 3 May 1996)	Ukraine declares that it shall defer implementation of the provisions of subparagraphs 3 (a) and (b) of the technical annex for a period of nine years from the date on which this Protocol enters into force. ⁹¹⁸
Protocol (III) to the Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons on Prohibitions or Restrictions on the Use of Incendiary Weapons of 10.10.1980.	N/A
Protocol (IV) to the Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons on Blinding Laser Weapons of 13.10.1995	N/A

⁹¹⁸ www.icrc.org/applic/ihl/ihl.nsf/Notification.xsp?action=openDocument&documentId=FC482844FB42E772412568640030499A

Protocol (V) to the Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons on Explosive Remnants of War of 28.11.2003	N/A
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 18.09.1997	N/A
Convention on the Prevention and Punishment of the Crime of Genocide of 09.12.1948	The Ukrainian SSR declared that it is not in agreement with Article XII of the Convention and held that all the provisions of the Convention should extend to Non-Self-Governing Territories.
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 26.11.1968	<p>Declaration made upon ratification:</p> <p>The Ukrainian Soviet Socialist Republic declares that the provisions of Articles V and VII of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which prevents certain</p>

	States from signing the Convention or acceding to it, are contrary to the principle of the sovereign equality of States. ⁹¹⁹
European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes. Strasbourg of 25.01.1974	N/A
Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques of 10.12.1976	N/A
International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 04.12.1989	On 20 October 2015, the Government of Ukraine made a communication to the Secretary-General of the United Nations stating that some parts of the sovereign territory of Ukraine are currently not under its control. ⁹²⁰
International Convention for the Protection of all Persons from	N/A

⁹¹⁹ www.icrc.org/applic/ihl/ihl.nsf/Notification.xsp?action=openDocument&documentId=8D2EAE1D30B5E400C1256402003FA90A

⁹²⁰ <https://treaties.un.org/doc/Publication/CN/2015/CN.614.2015-Eng.pdf>

Enforced Disappearance of 20 December 2006	
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ANNEX VI

IHL-Related Legislation of Ukraine

Short name of the legislation	Citation of the legislation	Description
Constitution of Ukraine	Constitution of Ukraine: Law of Ukraine of 28.06.1996 No. 254к/96-BP	<p>Article 9 sets out that international treaties in force in Ukraine shall be an integral part of the national legislation of Ukraine.</p> <p>Article 18 outlines that the foreign policy of Ukraine shall be aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial co-operation with members of the international community in compliance with the generally acknowledged principles and norms of international law.</p>
Criminal Code of Ukraine	Criminal Code of Ukraine of 05.04.2001 N 2341-III	<p>Military Crimes (Offences Committed by Soldiers)</p> <p>Article 426. "Omissions of military authorities".</p> <p>Article 430. "Voluntary rendering oneself prisoner of war".</p> <p>Article 431. "Criminal actions of a prisoner of war".</p>

		<p>Article 432. "Marauding".</p> <p>Article 433. "Violence against population in the zone of hostilities".</p> <p>Article 434. "Ill treatment of prisoners of war".</p> <p>Article 435. "Unlawful use or misuse of the Red Cross, Red Crescent, Red Crystal symbols".</p> <p>Crimes against Peace, Security of Mankind and International Legal Order</p> <p>Article 436. "Propaganda of war".</p> <p>Article 437. "Planning, preparation and waging of an aggressive war".</p> <p>Article 438. "Violations of laws and customs of warfare"</p> <p>Article 439. "Use of weapons of mass destruction".</p> <p>Article 440. "Development, production, purchasing, storage, distribution or transportation of weapons of mass destruction".</p> <p>Article 441. "Ecocide".</p> <p>Article 442. "Genocide".</p> <p>Article 445. "Illegal use of Emblems of Red Cross, Red Crescent, Red Crystal".</p> <p>Article 447. "Mercenaries".</p>
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Code on Administrative Offenses	Code of Ukraine on Administrative Offenses of 07.12.1984 N 8073-X	This Code in 2015 was supplemented by Chapter 13-B "Military Administrative Offenses".
Code of Civil Defence	Code of Civil Defence of Ukraine of 02.10.2012 N 5403-VI	<p>The Code regulates the protection of population, territories, the environment and property from emergencies and measures that need to be taken to deal with emergencies and their consequences.</p> <p>The Code classifies war as a type of emergency. It also provides for the evacuation of cultural objects and objects of material value in case of a threat or occurrence of such an emergency, provided that there is time for such an evacuation.</p>
Law on Defence	Law of Ukraine on Defence of Ukraine" of 06.12.1991 N 1932-XII	<p>The law regulates the defence of Ukraine, the powers and functions of State bodies, the military administrative organs, local State administrations, local self-government bodies, obligations of institutions, organisations and public officials of Ukraine in the sphere of defence.</p> <p>The law provides that the legal ground for the defence of the State is the Constitution of Ukraine, this Law of Ukraine, in addition to other legal acts of Ukraine and relevant international treaties, to which consent has been given by the Verkhovna Rada of Ukraine.</p>

Law on Armed Forces of Ukraine	Law of Ukraine on Armed Forces of Ukraine” of 06.12.1991 N 1934-XII	<p>The law generally regulates the functions, composition, organisation and activities of the Armed Forces of Ukraine.</p> <p>The law provides that extraordinary circumstances, orders or instructions of superior officers cannot justify any illegal acts against civilians, their property and the environment. In addition, military personnel shall bear responsibility in accordance with the law for the execution of manifestly illegal instructions or orders.</p>
Law on the Statute of Internal Service of the Armed Forces of Ukraine	Law of Ukraine on the Statute of internal service of the Armed Forces of Ukraine” of 24.03.1999 N 548-XIV	<p>The law establishes the statute of the Internal Service of the Armed Forces of Ukraine which sets the general rights and obligations of the military personnel of the Armed Forces of Ukraine, their interrelations, the obligations of military officials, the internal regulations of military units and divisions.</p> <p>The law provides that members of the armed forces are obliged to know and firmly adhere to norms of IHL.</p> <p>During an armed conflict, legal advisers of regiment commanders shall advise their superiors regarding the compliance with the norms of IHL and rules governing the use of force.</p>
Law of Ukraine On the Disciplinary Statute of	Law of Ukraine on the Disciplinary Statute of the Armed Forces of Ukraine” of 24.03.1999 No. 551	The law envisages the essence of military discipline, the types of disciplinary penalties, the rights of commanders and the related procedure.

the Armed Forces of Ukraine		<p>This law is applicable to all military personnel of the Armed Forces of Ukraine irrespective of their rank, official positions and merits for, <i>inter alia</i>, violations of the Military Manual.</p> <p>This law is also applicable to the State Border Guard Service of Ukraine, Security Service of Ukraine, National Guard of Ukraine and other military formations established under the laws of Ukraine. In addition, it also applies to the State Special Transport Service and the State Service of Special Communication and Protection of Information of Ukraine.</p>
Law on Export, Import and Return of the objects of Cultural Property	Law of Ukraine on bringing out, bringing in and return of the cultural values” of 21.09.1999 N 1068-XIV	The law provides that cultural property evacuated from the territory of Ukraine in times of war and armed conflict shall be returned.
Law on Emblems of Red Cross, Red Crescent, Red Crystal	Law of Ukraine on Emblems of Red Cross, Red Crescent, Red Crystal in Ukraine” of 08.07.1999 N 862-IV	The law deals with the use and respect of protective emblems (Red Cross, Red Crescent, Red Crystal) in Ukraine.
Law on the Ukrainian Red Cross Society	Law of Ukraine on the Ukrainian Red Cross” of 28.11.2002 N 330-IV	The law establishes the Ukrainian Red Cross Society (Tovarystvo Chervonogo Khresta Ukrayiny) as the only National Red Cross Society in Ukraine.

Law on Implementation of Additional Protocol III	Law of Ukraine on the amendments to certain legislation acts of Ukraine” of 22.10.2009 N 1675-VI	The law is dedicated to making certain amendments to Ukrainian legislation resulting from Ukraine’s ratification of the Additional Protocol III and the use of the “emblem of the Third Protocol” (Red Crystal emblem).
Law on Securing Rights and Freedoms on the Temporary Occupied Territory of Ukraine	Law of Ukraine on securing rights and freedoms of citizens and legal regime on the temporary occupied territory of Ukraine” of 15.04.2014 N 1207-VII	<p>The law governs rights and freedoms of citizens and the legal regime in the Autonomous Republic of Crimea and the city of Sebastopol which are designated as temporarily occupied territories of Ukraine.</p> <p>The law provides for the protection of human and citizens’ rights and freedoms and cultural heritage in the temporarily occupied territories, the guarantee of the property rights and property laws in temporarily occupied territories. It also guarantees the rights and freedoms of citizens of Ukraine who moved out from temporarily occupied territories of Ukraine.</p>
Law on Local Self-Government in Certain Parts of Donetsk and Luhansk Oblasts	Law of Ukraine on peculiar order of local self-government in certain parts of Donetsk and Luhansk oblasts” of 16.09.2014 N 1680-VII	The law regulates local self-government in parts of Donetsk and Luhansk oblasts which are controlled by the separatist organised armed groups. This law also provides for amnesty for participants in hostilities in the territory of the Donetsk and Luhansk oblasts. This law is part of the Minsk agreement.

Law on Internally Displaced Persons	Law of Ukraine on securing rights and freedoms of internally displaced persons” of 20.10.2014 N 1706-XII	The law governs rights and freedoms of internally displaced persons within the territory of Ukraine as a result of an armed conflict, temporary occupation or mass violation of human rights.
Law on Particular Aspects of Public Policy Aimed at Safeguarding the Sovereignty of Ukraine over the Temporarily Occupied Territory of the Donetsk and Luhansk Regions of Ukraine	Law of Ukraine on particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine of 18 January 2018 No. 2268	The law provides a new framework to re-establish control over certain areas of Donetsk and Luhansk regions. It stipulates that the Russian Federation has conducted an armed aggression against Ukraine, which resulted in the temporary occupation of parts of its territory. Pursuant to the Law, the operation on the countering armed aggression is entrusted with the military - the Joint Operative Headquarters of the Armed Forces of Ukraine.
Law on the Legal Status of Missing Persons	Law of Ukraine on the Legal Status of Missing Persons of 12 July 2018 No. 2505-VIII	The law regulates the legal status of missing persons (including those who went missing in the armed conflict zone) and provides for the identification and registration, search and social protection of such persons and their relatives.

ANNEX VII

Other Legal Measures of Ukraine that are IHL-Related

Legal Measures	Reference	Description
Decree of the President of Ukraine on Strategy for the International Peace-making Activities of Ukraine	Decree of the President of Ukraine on decision of the National Security and Defence Council of 24 April 2009 on Strategy for the international peace-making activities of Ukraine” of 15.06.2009 N 435/2009	The Decree provides what training should be provided to Ukrainian peacekeepers to ensure they can execute their obligations to the highest international standards. This includes language training as well as IHL training.
Resolution of the Verkhovna Rada of Ukraine on the Recognition of Certain Parts of Donetsk and Luhansk Oblasts as Temporary Occupied Territories	Resolution of the Verkhovna Rada of Ukraine on the recognition of particular districts, cities, towns and villages of Donetsk and Luhansk oblasts as temporary occupied territories” of 17.03.2015 N 254-VIII	The Resolution declares particular districts, cities, towns and villages in Donetsk and Luhansk as ‘temporary occupied territories’.
Resolution of the Cabinet of Ministers of Ukraine on Entering and Exiting the	Resolution of the Cabinet of Ministers of Ukraine of 04.06.2015 N 367 on the approving	The Resolution provides the rules relating to entering a temporary occupied territory (specifically the Autonomous

Temporary Occupied Territory of Ukraine (with amendments)	<p>of the Order for entering to the temporary occupied territory of Ukraine and leaving it”</p> <p>and</p> <p>Resolution of the Cabinet of Ministers of Ukraine of 16.09.2015 N 722 on amendments to the Order for entering to the temporary occupied territory of Ukraine and leaving it”</p>	Republic of Crimea and the city of Sebastopol) and leaving a temporary occupied territory.
Resolution of the Cabinet of Ministers of Ukraine on Amendments to Resolution N 939	Resolution of the Cabinet of Ministers of Ukraine of 12.05.2010 N 339 on the amendments to the Resolution of the Cabinet of Ministers of Ukraine of 12.06.2000 N 939”	The Resolution makes certain amendments to the Resolution of the Cabinet of Ministers of Ukraine of 12.06.2000 N 939 on approving the procedure to produce, issue and register identity cards for medical personnel using the red cross emblem” by adding the Red Crystal emblem.
Military Instruction	Order of the Ministry of Defence of Ukraine of 23.03.2017 N 164 “On approval of the Instruction on the procedure for implementation	The Military Instruction is the main document regulating the application of IHL within the Armed Forces of Ukraine and the National Guard.

	of the norms of international humanitarian law in the Armed Forces of Ukraine”	
Resolution on the establishment of the Interdepartmental Commission on the Application and Implementation of International Humanitarian Law in Ukraine	Resolution of the Cabinet of Ministers of Ukraine of 26.04.2017 N 329 on the establishment of the Interdepartmental Commission on the Application and Implementation of International Humanitarian Law in Ukraine	<p>The Resolution established the Interdepartmental Commission on the Application and Implementation of International Humanitarian Law in Ukraine.</p> <p>The composition of the Commission was provided in the Annex to the mentioned Resolution.</p>
Resolution of the Cabinet of Ministers of Ukraine on Procedure of Producing Identity Cards with Red Cross Emblem for Medical Personnel	Resolution of the Cabinet of Ministers of Ukraine of 12.06.2000 N 939 on approving the procedure to produce, issue and register identity cards for medical personnel using the red cross emblem”	The Resolution relates to the procedure of producing, issuing and registering identity cards for medical personnel using the Red Cross emblem.
Order of the Ministry of Defence of Ukraine on Regulation on the Military Clergy (Chaplain Service)	Order of the Ministry of Defence of Ukraine N 685 of 14.12.2016 on adoption of Regulation on the military clergy (chaplain service) in the Armed Forces of Ukraine	The Order approves the regulation of the activities, rights and duties of military chaplains stating that all of their duties must be guided by the Constitution of Ukraine, the laws of Ukraine and the principles of IHL.

		The Order also provides that military chaplains must actively study IHL and should be punished should they commit violations.
Field Manual of the Ground Forces of the Armed Forces of Ukraine	Field Manual of the Ground Forces of the Armed Forces of Ukraine, Parts II and III (Approved by the Orders of the Commander of the Ground Forces of the Armed Forces of Ukraine of 29 December 2010 No. 574 and No. 575).	<p>The Field Manual sets out the duties of commanders, especially in relation to the application of IHL. The Field Manual also regulates the activities of Ukrainian soldiers involved in international peacekeeping operations.</p> <p>Part 3 of the Field Manual includes a section dedicated to the IHL obligations which must be adhered to when engaging in armed conflict.</p>
Code of Conduct	Code of conduct of military personnel of the Armed Forces of Ukraine – participant of hostilities (Annex 6 to the Order of the Minister of Defence of Ukraine)	The Code addresses the principle that military personnel must adhere to the norms of IHL at all times, listing what conduct is acceptable and setting prohibitions accordingly.
Code of Honour	Code of honour of the officer of the Armed Forces of Ukraine (Approved by the Order of the Minister of Defence of Ukraine of 31.12.1999 No. 412)	The Code sets the main moral responsibilities of officers of the Armed Forces of Ukraine: loyalty and allegiance to the Motherland, honour and honesty, discipline, respect for promises, chivalry, care for subordinates, etc. The

		preamble specifies that IHL is among the basic standards of this Code.
Order of the Prosecutor General of Ukraine on Activities Regarding the Protection of the Rights and Freedoms of Children	Order of the Prosecutor General of Ukraine of 06.12.2014 N 16gn on Organization of Activities of the Organs of the Prosecutor's Office regarding the Protection of the Rights and Freedoms of Children"	The Order provides that special care and protection must be afforded to children living in difficult circumstances, particularly orphaned children, disabled children, and children evacuated from occupied territories during hostilities.
Order on Approving the Temporary Order of Control over Movement of Persons through the Contact Line within Donetsk and Luhansk Oblasts	Order on Approving the Temporary Order of Control over Movement of Persons through the Contact Line within Donetsk and Luhansk Oblasts of 14 April 2017 No. 222or (prepared by the Security Service of Ukraine)	The Order establishes rules for crossing the conflict 'contact line' which exists between government forces and separatist forces in Donetsk and Luhansk.

ANNEX VIII

Relevant Articles of the Criminal Code

War Crimes	Relevant Military and International Crimes (Criminal Code)	Ordinary Crimes (Criminal Code)
Grave Breaches of the Geneva Conventions		
Wilful killing	Article 438. Violations of laws and customs of warfare	Article 115. Murder Article 118. Murder in excess of necessary defense or in excess of measures necessary to apprehend an offender

<p>Torture or inhumane treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health</p>	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p> <p>Article 434. Ill treatment of prisoners of war</p>	<p>Article 121. Intended grievous bodily injury</p> <p>Article 122. Intended bodily injury of medium gravity</p> <p>Article 124. Intended grievous bodily injury inflicted in excess of necessary defense or in excess of measures necessary to apprehend an offender</p> <p>Article 126. Battery and torture</p> <p>Article 127. Torture</p> <p>Article 142. Illegal experimentation on a human being</p> <p>Article 143. Violation of procedures prescribed by law with regard to human organs or tissue</p>
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Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly	Article 438. Violations of laws and customs of warfare Article 433. Violence against population in an operational zone	
Compelling a POW to serve in the forces of the hostile power, or wilfully depriving a POW of the rights of a fair and regular trial	Article 438. Violations of laws and customs of warfare	
Unlawful deportation or transfer	Article 438. Violations of laws and customs of warfare	
Unlawful confinement of a protected person	Article 438. Violations of laws and customs of warfare	
Taking of hostages	Article 438. Violations of laws and customs of warfare	Article 147. Hostage taking

Grave Breaches of Additional Protocol I		
<p>Seriously endangering, by any wilful and unjustified act or omission, the physical health, mental health or the integrity of persons who are in the power of the adverse Party (such as those who are interned, detained or otherwise deprived of liberty) as a result of an armed conflict. In particular, this includes a prohibition on physical mutilations, medical or scientific experiments, or the removal of tissue or organs for transplantation not indicated by the state of health of the person concerned or not consistent with generally accepted medical standards</p>	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 434. Ill treatment of prisoners of war</p>	<p>Article 121. Intended grievous bodily injury</p> <p>Article 122. Intended bodily injury of medium gravity</p> <p>Article 124. Intended grievous bodily injury inflicted in excess of necessary defense or in excess of measures necessary to apprehend an offender</p> <p>Article 126. Battery and torture</p> <p>Article 127. Torture</p> <p>Article 142. Illegal experimentation on a human being</p> <p>Article 143. Violation of procedures prescribed by law with regard to human organs or tissue</p>

Making the civilian population or individual civilians the object of attack	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p>	
Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p>	
Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage civilian objects	Article 438. Violations of laws and customs of warfare	

Making non-defended localities and demilitarised zones the object of attack	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p>	
Making a person the object of an attack in the knowledge that she or he is <i>hors de combat</i>	Article 438. Violations of laws and customs of warfare	
The perfidious use of the distinctive emblem of the Red Cross and Red Crescent or other protective signs	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 445. Illegal use of symbols of Red Cross, Red Crescent, Red Crystal</p>	
The transfer by the occupying power of parts of its own civilian population into the territory it occupies	Article 438. Violations of laws and customs of warfare	

The deportation or transfer of all or parts of the population of the occupied territory within or outside this territory	Article 438. Violations of laws and customs of warfare	
Unjustifiable delay in the repatriation of POWs or civilians	Article 438. Violations of laws and customs of warfare	
Practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination	Article 438. Violations of laws and customs of warfare	<p>Article 121. Intended grievous bodily injury</p> <p>Article 122. Intended bodily injury of medium gravity</p> <p>Article 126. Battery and torture</p> <p>Article 161. Violation of citizens' equality based on their race, nationality or religious preferences</p>

<p>Attacking clearly-recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given, causing as a result extensive destruction thereof when such objects are not located in the immediate proximity of military objectives or used by the adverse party in support of its military effort</p>	<p>Article 438. Violations of laws and customs of warfare</p>	<p>Article 298. Illegal conduct search works on the project of archaeological heritage, extermination, destruction or damage to cultural heritage objects</p>
<p>Depriving a person protected by the Conventions or by Protocol I of the rights of fair and regular trial</p>	<p>Article 438. Violations of laws and customs of warfare</p>	
<p>Other serious violations of international humanitarian law committed during an international armed conflict</p>		

<p>Committing outrages upon personal dignity, in particular, humiliating or degrading treatment and desecration of the dead</p>	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p> <p>Article 434. Ill treatment of prisoners of war</p>	<p>Article 121. Intended grievous bodily injury</p> <p>Article 122. Intended bodily injury of medium gravity</p> <p>Article 124. Intended grievous bodily injury inflicted in excess of necessary defense or in excess of measures necessary to apprehend an offender</p> <p>Article 126. Battery and torture</p> <p>Article 127. Torture</p> <p>Article 142. Illegal experimentation on a human being</p> <p>Article 143. Violation of procedures prescribed by law with regard to human organs or tissue</p>
<p>Enforced sterilization</p>	<p>Article 438. Violations of laws and customs of warfare</p>	

Compelling the nationals of the adverse party to take part in military operations against their own party	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p>	
Killing or wounding a combatant who has surrendered or is otherwise hors de combat	<p>Article 438. Violations of laws and customs of warfare</p>	<p>Article 115. Murder</p> <p>Article 118. Murder in excess of necessary defense or in excess of measures necessary to apprehend an offender</p> <p>Article 119. Negligent homicide</p>
Declaring that no quarter will be given	<p>Article 438. Violations of laws and customs of warfare</p>	

Making improper use of distinctive emblems indicating protected status, resulting in death or serious personal injury	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 435. Unlawful use or misuse of the Red Cross, Red Crescent, Red Crystal symbols</p> <p>Article 445. Illegal use of symbols of Red Cross, Red Crescent, Red Crystal</p>	
Making improper use of the flag, the military insignia or uniform of the enemy resulting in death or serious personal injury	Article 438. Violations of laws and customs of warfare	
Killing or wounding an adversary by resort to perfidy	Article 438. Violations of laws and customs of warfare	Article 115. Murder
Making medical or religious personnel, medical units or medical transports the object of attack	Article 438. Violations of laws and customs of warfare	

Pillage or other taking of property contrary to international humanitarian law	Article 438. Violations of laws and customs of warfare	Article 185. Theft Article 186. Robbery
Destroying property not required by military necessity	Article 438. Violations of laws and customs of warfare Article 433. Violence against population in an operational zone	
Making civilian objects, that is, objects that are not military objectives, the object of attack	Article 438. Violations of laws and customs of warfare Article 433. Violence against population in an operational zone	
Using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including by impeding relief supplies	Article 438. Violations of laws and customs of warfare Article 433. Violence against population in an operational zone	

Making persons or objects involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations the object of attack, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law	Article 438. Violations of laws and customs of warfare	
Launching an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct military advantage anticipated	Article 438. Violations of laws and customs of warfare Article 441. Ecocide	
Using prohibited weapons	Article 438. Violations of laws and customs of warfare Article 439. Use of weapons of mass destruction	

Using human shields	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p>	
Conscripting or enlisting children under the age of 15 into armed forces, or using them to participate actively in hostilities	Article 438. Violations of laws and customs of warfare	
Committing sexual violence, in particular rape, sexual slavery, enforced prostitution and enforced pregnancy	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p>	<p>Article 152. Rape</p> <p>Article 153. Violent unnatural gratification of sexual desire</p> <p>Article 154. Compulsion to sexual intercourse</p> <p>Article 155. Sexual intercourse with a sexually immature person</p>

		<p>Article 156. Debauchery of minors</p> <p>Article 302. Creating or running brothels and trading in prostitution</p> <p>Article 303. Pimping or engaging person in employment prostitution</p>
Slavery and deportation to slave labour	<p>N/A</p> <p>(this war crime is a serious violation of IHL under customary international which is not covered by Article 438).</p>	

<p>Attacking or ill-treating a parlementaire or bearer of a flag of truce</p>	<p>Article 438. Violations of laws and customs of warfare</p>	<p>Article 121. Intended grievous bodily injury</p> <p>Article 122. Intended bodily injury of medium gravity</p> <p>Article 124. Intended grievous bodily injury inflicted in excess of necessary defense or in excess of measures necessary to apprehend an offender</p> <p>Article 126. Battery and torture</p> <p>Article 127. Torture</p>
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Serious violations of common Article 3 of the Geneva Conventions		
Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p> <p>Article 434. Ill treatment of prisoners of war</p>	<p>Article 119. Negligent homicide</p> <p>Article 121. Intended grievous bodily injury</p> <p>Article 122. Intended bodily injury of medium gravity</p> <p>Article 124. Intended grievous bodily injury inflicted in excess of necessary defense or in excess of measures necessary to apprehend an offender</p> <p>Article 126. Battery and torture</p> <p>Article 127. Torture</p>

Committing outrages upon personal dignity, in particular humiliating and degrading treatment	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p> <p>Article 434. Ill treatment of prisoners of war</p>	<p>Article 121. Intended grievous bodily injury</p> <p>Article 122. Intended bodily injury of medium gravity</p> <p>Article 124. Intended grievous bodily injury inflicted in excess of necessary defense or in excess of measures necessary to apprehend an offender</p> <p>Article 126. Battery and torture</p> <p>Article 127. Torture</p>
Taking of hostages	<p>Article 438. Violations of laws and customs of warfare</p>	<p>Article 146. Illegal confinement or abduction of a person</p> <p>Article 147. Hostage taking</p>
The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court,	<p>Article 438. Violations of laws and customs of warfare</p>	

affording all judicial guarantees which are generally recognized as indispensable		
Other serious violations of international humanitarian law committed during a non-international armed conflict		
Making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attack	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p>	
Pillage	Article 438. Violations of laws and customs of warfare	<p>Article 185. Theft</p> <p>Article 186. Robbery</p>

<p>Committing sexual violence, in particular, rape, sexual slavery, enforced prostitution, enforced sterilization and enforced pregnancy</p>	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p>	<p>Article 152. Rape</p> <p>Article 153. Violent unnatural gratification of sexual desire</p> <p>Article 154. Compulsion to sexual intercourse</p> <p>Article 155. Sexual intercourse with a sexually immature person</p> <p>Article 156. Debauchery of minors</p> <p>Article 302. Creating or running brothels and trading in prostitution</p> <p>Article 303. Pimping or engaging person in employment prostitution</p>
<p>Ordering the displacement of the civilian population for reasons related to the conflict and not required for the security of the civilians involved or imperative military necessity</p>	<p>Article 438. Violations of laws and customs of warfare</p>	

Subjecting persons in the power of the adversary to medical or scientific experiments of any kind not necessary for the health of the persons concerned and seriously endangering their health	<p>Article 438. Violations of laws and customs of warfare</p> <p>Article 433. Violence against population in an operational zone</p> <p>Article 434. Ill treatment of prisoners of war</p>	Article 142. Illegal experimentation on a human being
Declaring that no quarter will be given	Article 438. Violations of laws and customs of warfare	
Making medical or religious personnel or objects the object of attack	Article 438. Violations of laws and customs of warfare	
Conscripting or enlisting children under the age of 15 into the armed forces or groups, or using them to participate actively in hostilities	Article 438. Violations of laws and customs of warfare	

Making religious or cultural objects the object of attack, provided that they are not military objectives	Article 438. Violations of laws and customs of warfare	Article 298. Illegal conduct search works on the project of archaeological heritage, extermination, destruction or damage to cultural heritage objects
Seizing property of the adverse party not required by military necessity	N/A (this war crime is a serious violation of IHL under customary international which is not covered by Article 438).	
Making persons or objects involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations the object of attack, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law	Article 438. Violations of laws and customs of warfare	

Killing or wounding an adversary by resort to perfidy	<p>N/A</p> <p>(this war crime is a serious violation of IHL under customary international which is not covered by Article 438).</p>	<p>Article 115. Murder</p> <p>Article 118. Murder in excess of necessary defense or in excess of measures necessary to apprehend an offender</p>
Making persons or objects involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations the object of attack, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law	Article 438. Violations of laws and customs of warfare	

ANNEX IX

Relevant Legal Entities in Ukraine

Entity	Enabling Legislation and other Legal Acts	Legislation relating to IHL (Laws of Ukraine)	Other Legal Measures
Ministry of Defence of Ukraine	<ul style="list-style-type: none"> - Law of Ukraine on Armed Forces of Ukraine (Articles 3, 6, 10) - Law of Ukraine on Defence of Ukraine (Article 10) - Decree of the President of Ukraine on the Regulation on Ministry of Defence of Ukraine and on the Regulation on the General Staff of the Armed Forces of Ukraine. Regulation on the Ministry of Defence of Ukraine. 	<ul style="list-style-type: none"> - Law of Ukraine on Armed Forces of Ukraine (Article 1, paragraphs 7 and 8). - Law of Ukraine on the Statute of internal service of the Armed Forces of Ukraine (Paragraph 15 of Part I Chapter 1 on Duties, rights and responsibility of military personnel; Assistant of the Commander of regiment on legal work (legal adviser of the regiment) of the chapter 2 on General duties of commanders (superiors). - Law of Ukraine on the fight against terrorism. - Law of Ukraine on particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine. 	<ul style="list-style-type: none"> - Order of the Ministry of Defence of Ukraine of 23.03.2017 N 164 “On approval of the Instruction on the procedure for implementation of the norms of international humanitarian law in the Armed Forces of Ukraine” (Instruction). - Order of the Ministry of Defence of Ukraine N 685 of 14.12.2016 on adoption of Regulation on the military clergy (chaplain service) in the Armed Forces of Ukraine. - Order of the Ministry of Defence of Ukraine, Ministry of Healthcare of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine and National Academy of Medical Sciences of Ukraine on Creation of

			<p>the Military-Civil Coordination Centre of Medical Assistance.</p> <ul style="list-style-type: none"> - Order of the Ministry of Defence of Ukraine, Ministry of Finance of Ukraine, Ministry of Infrastructure of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Healthcare of Ukraine, Ministry of Economic Development and Trade of Ukraine, Ministry of Ecology and Natural Resources of Ukraine, Security Service of Ukraine, Administration of the State Border Guard Service of Ukraine on the Approval of the Catalogue of Possibilities of Ukraine in the Field of Support of International Peacekeeping Operations and Trainings. - Code of conduct of military personnel of the Armed Forces of Ukraine – participant of hostilities (Annex 4 to the Order of the Minister of Defence of Ukraine). - Code of honour of the officer of the Armed Forces of Ukraine (Preamble).
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General Staff of the Armed Forces of Ukraine	<ul style="list-style-type: none"> - Law of Ukraine on Armed Forces of Ukraine (Articles 3, 6, 7, 8, 10). - Law of Ukraine on Defence of Ukraine (Article 11). - Decree of the President of Ukraine on the Regulation on Ministry of Defence of Ukraine and on the Regulation on the General Staff of the Armed Forces of Ukraine. Regulation on the General Staff of the Armed Forces of Ukraine. 	<ul style="list-style-type: none"> - Law of Ukraine on Armed Forces of Ukraine (Article 1, paragraphs 7 and 8). - Law of Ukraine on the Statute of internal service of the Armed Forces of Ukraine (Paragraph 15 of Part I Chapter 1 on Duties, rights and responsibility of military personnel; Paragraph Assistant of the Commander of regiment on legal work (legal adviser of the regiment) of the chapter 2 on General duties of commanders (superiors). - Law of Ukraine on the fight against terrorism. - Law of Ukraine on particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine 	<ul style="list-style-type: none"> - Order of the Ministry of Defence of Ukraine of 23.03.2017 N 164 "On approval of the Instruction on the procedure for implementation of the norms of international humanitarian law in the Armed Forces of Ukraine" (Instruction). - Code of conduct of military personnel of the Armed Forces of Ukraine – participant of hostilities (Annex 4 to the Order of the Minister of Defence of Ukraine). - Code of honour of the officer of the Armed Forces of Ukraine (Preamble). - Field Manual (Training Regulations) of the Ground Forces of Ukraine (enacted by the Order of the Commander of the Ground Forces of Ukraine)
Verkhovna Rada of Ukraine	<ul style="list-style-type: none"> - Constitution of Ukraine (Articles 75 - 101). - Law of Ukraine on the Rules of the Verkhovna Rada of Ukraine. 	<ul style="list-style-type: none"> - Constitution of Ukraine (Articles 9, 18). - Criminal Code of Ukraine (Articles 426, 430 - 442, 445, 447). 	<ul style="list-style-type: none"> - Resolution of the Verkhovna Rada of Ukraine (Parliament) on the recognition of particular districts, cities, towns and villages of Donetsk and Luhansk regions (oblasts) as

	<ul style="list-style-type: none"> - Law of Ukraine on the Status of the Member of the Parliament of Ukraine. - Law of Ukraine on the Committees of the Verkhovna Rada of Ukraine. 	<ul style="list-style-type: none"> - Law of Ukraine on symbols of the Red Cross, Red Crescent, Red Crystal in Ukraine. - Law of Ukraine on the Ukrainian Red Cross. - Law of Ukraine on the amendments to certain legislative acts of Ukraine (concerning implementation of Additional Protocol III). - Law of Ukraine on securing rights and freedoms of citizens and legal regime on the temporary occupied territory of Ukraine (Preamble, Articles 3 - 5, 11, 12, 18). - Law of Ukraine on Armed Forces of Ukraine (Article 1, paragraphs 7 and 8). - Law of Ukraine on the Statute of internal service of the Armed Forces of Ukraine (Paragraph 15 of Part I Chapter 1 "Duties, rights and responsibility of military personnel"; Paragraph "Assistant of the Commander of regiment on legal work (legal adviser of the regiment)" of the chapter 2 "General duties of commanders (superiors)"). - Code of civil defence of Ukraine (Article 5, Article 33, paragraph 14). 	<ul style="list-style-type: none"> - temporary occupied territories" of 17.03.2015 N 254-VIII. - Resolution of the Verkhovna Rada of Ukraine of 04.02.2015 N 145-VIII on the Declaration of the Verkhovna Rada of Ukraine on recognition by Ukraine of the jurisdiction of the International Criminal Court as to the commitment of the crimes against humanity and war crimes by the highest officials of the Russian Federation and leaders of the terrorist organizations "DPR" and "LPR" which led to extremely severe consequences and massive killings of Ukrainian citizens. - Declaration of the Verkhovna Rada of Ukraine to the International Criminal Court as to the recognition by Ukraine of the jurisdiction of the International Criminal Court as to the commitment of the crimes against humanity by the highest official of the State which lead to extremely severe consequences and massive killings of Ukrainian citizens during the peaceful protest actions from 21
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		<ul style="list-style-type: none"> - Law of Ukraine on National Guard of Ukraine. - Law of Ukraine on bringing out, bringing in and return of the cultural values (Article 4). - Law of Ukraine on the fight against terrorism. - Law of Ukraine on the peculiar order of local self-government in separate districts of Donetsk and Luhansk oblasts. - Law of Ukraine on the legal regime of martial law. - Law of Ukraine on securing rights and freedoms of internally displaced persons. - Law of Ukraine on temporary measures adopted for the period of conducting the antiterrorist operation. - Law of Ukraine on defence of Ukraine. - Law of Ukraine on the Legal Status of Missing Persons. - Law of Ukraine on particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine. 	<p>November 2013 to 22 February 2014 of 25.02.2014 N 790-VII.</p>
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<p>Cabinet Ministers Ukraine</p>	<p>of of</p> <ul style="list-style-type: none"> - Constitution of Ukraine (Articles 113 - 120). - Law of Ukraine on the Cabinet of Ministers of Ukraine. - Regulation of the Cabinet of Ministers of Ukraine of 18.07.2007 N 950 on approving of the Rules of the Cabinet of Ministers of Ukraine. Rules of the Cabinet of Ministers of Ukraine. 	<ul style="list-style-type: none"> - Law of Ukraine on defence of Ukraine (Article 9, paragraph 18). 	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 12.06.2000 N 939 on approving the procedure to produce, issue and register identity cards for medical personnel using the red cross emblem. - Resolution of the Cabinet of Ministers of Ukraine of 12.05.2010 No. 339 on the amendments to the Resolution of the Cabinet of Ministers of Ukraine of 12.06.2000 N 939 (concerning the procedure to produce, issue and register identity cards for medical personnel using the red cross emblem). - Resolution of the Cabinet of Ministers of Ukraine of 26.04.2017 N 329 on the establishment of the Interdepartmental Commission on the Application and Implementation of International Humanitarian Law in Ukraine. - Resolution of the Cabinet of Ministers of Ukraine of 04.06.2015 N 367 on the approving of the Order for entering to the temporary occupied territory of Ukraine and leaving it.
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<p>Ministry of the Internal Affairs (Police)</p>	<ul style="list-style-type: none"> - Law of Ukraine on police (the application of this law was be seized on 07.11.2015). - Law of Ukraine on national police (was enacted on 07.11.2015). - Law of Ukraine on general structure and size of staff of the Ministry of Interior Affairs of Ukraine. - Decree of the President of Ukraine on approval of the Regulation on Ministry of Internal Affairs of Ukraine. - Resolution of the Cabinet of Ministers of Ukraine on approval of the Regulation on Ministry of Internal Affairs of Ukraine. 	<ul style="list-style-type: none"> - Law of Ukraine on police (the application of this law was be seized on 07.11.2015) (Article 12 on shoot on site in the region where the antiterrorist operation is conducted; Article 15 on the right of policemen to use firearms in the region where the antiterrorist operation is conducted). - Law of Ukraine on national police (was enacted on 07.11.2015) (Article 97 on the one-time monetary aid in case of death or loss of labour capacity of a policeman due to participation in the antiterrorist operation). - Law of Ukraine on participation of Ukraine in the international operations on maintenance of peace and security. - Law of Ukraine on the fight against terrorism. 	<ul style="list-style-type: none"> - Order of the Ministry of the Internal Affairs, Prosecutor General's Office of Ukraine, Security Service of Ukraine of 26.08.2014 No. 872/88/537 on approving the Instruction on the order of preventive detention in the region of conducting antiterrorist operation of persons involved in terrorist activity and of special regime of prejudicial inquiry under the conditions of martial law, state of emergency or in the region where the antiterrorist operation is conducted. - Order of the Ministry of Defence of Ukraine, Ministry of Healthcare of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine and National Academy of Medical Sciences of Ukraine on Creation of the Military-Civil Coordination Centre of Medical Assistance. - Order of the Ministry of Defence of Ukraine, Ministry of Finance of Ukraine, Ministry of Infrastructure of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Healthcare of Ukraine, Ministry of Economic
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			Development and Trade of Ukraine, Ministry of Ecology and Natural Resources of Ukraine, Security Service of Ukraine, Administration of the State Border Guard Service of Ukraine on the Approval of the Catalogue of Possibilities of Ukraine in the Field of Support of International Peacekeeping Operations and Trainings.
National Guard of Ukraine	<ul style="list-style-type: none"> - Law of Ukraine on the National Guard of Ukraine. - Law of Ukraine on police (the application of this law will be seized on 07.11.2015) - Law of Ukraine on national police (will be enacted on 07.11.2015) 	- Law of Ukraine on the National Guard of Ukraine.	- Order of the Ministry of Defence of Ukraine of 23.03.2017 N 164 "On approval of the Instruction on the procedure for implementation of the norms of international humanitarian law in the Armed Forces of Ukraine" (Instruction).
Office of the Prosecutor General of Ukraine	<ul style="list-style-type: none"> - Constitution of Ukraine (Articles 121 - 123). - Law of Ukraine on Prosecutor's Office of Ukraine. - Law of Ukraine on amendments to some legislative acts of Ukraine on priority measures to reform the 	- Law of Ukraine on the fight against terrorism.	- Order of the Ministry of the Internal Affairs, Prosecutor General's Office of Ukraine, Security Service of Ukraine of 26.08.2014 No. 872/88/537 on approving the Instruction on the order of preventive detention in the region of conducting antiterrorist operation of persons

	prosecutor's office No. 113-IX of 19 September 2019		<p>involved in terrorist activity and of special regime of prejudicial inquiry under the conditions of martial law, state of emergency or in the region where the antiterrorist operation is conducted.</p> <ul style="list-style-type: none"> - Order of the Prosecutor General of Ukraine on Organization of Activities of Organs of Prosecutor's Offices regarding the Protection of Rights and Freedoms of Children (Article 4.1). - Order of the Prosecutor General of Ukraine on Particularities of Organisation of Activities of Organs of Prosecutor's Offices as regards the Temporary Occupation of the Territory of Crimean Peninsula. - Order of the Prosecutor General of Ukraine on Particularities of Activities of Military Prosecutor's Offices. - Order of the Prosecutor General of Ukraine on approval of the structure of the Office of the Prosecutor General.
Specialised Prosecutor's	- Constitution of Ukraine (Articles 121 - 123).	- Law of Ukraine on Prosecutor's Office of Ukraine.	- Order of the Office of the Prosecutor General of Ukraine on Particularities

Office in the Military and Defence Spheres	<ul style="list-style-type: none"> - Law of Ukraine on Prosecutor's Office of Ukraine. - Law of Ukraine on amendments to some legislative acts of Ukraine on priority measures to reform the prosecutor's office No. 113-IX of 19 September 2019. 		of Ensuring the Start of Functioning of Specialised Prosecutor's Offices in the Military and Defence Spheres.
Security Service of Ukraine	<ul style="list-style-type: none"> - Law of Ukraine on the Security Service of Ukraine. - Law of Ukraine on general structure and size of staff of the Security Service of Ukraine. 	<ul style="list-style-type: none"> - Law of Ukraine on the fight against Terrorism. - Law of Ukraine on particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine. 	<ul style="list-style-type: none"> - Decree of the President of Ukraine on the Issues of Security Service of Ukraine of 27.12.2005 No. 1860/2005 (comprising the Organizational structure of the Security Service of Ukraine). - Decree of the President of Ukraine of 14.04.1999 No.379/99 on the Regulation on Antiterrorist Centre and its coordination groups under the regional bodies of the Security Service of Ukraine. - Decree of the President of Ukraine of 23.06.2015 No. 379 on amendments to the Decree of the President of Ukraine of 14.04.1999 No. 379 (concerning the nomination and dismissal of the Head of the

			<p>Antiterrorist Centre from among deputies of the Head of the Security Service of Ukraine by the President of Ukraine).</p> <ul style="list-style-type: none"> - Order on Approving the Temporary Order of Control over Movement of Persons through the Contact Line within Donetsk and Luhansk Oblasts. - Order of the Head of the Security Service of Ukraine on the Establishment of the United Centre on coordination of search, release persons who were unlawfully deprived of liberty, hostages and locating the missing persons in the region of conducting the antiterrorist operation. - Order of the Ministry of Defence of Ukraine, Ministry of Healthcare of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine and National Academy of Medical Sciences of Ukraine on Creation of the Military-Civil Coordination Centre of Medical Assistance. - Order of the Central Administration of the Security Service of Ukraine on Approval of Amendments to the
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			<p>Instruction on Organisation of Medical Support in the Security Service of Ukraine.</p> <ul style="list-style-type: none"> - Order of the Central Administration of the Security Service of Ukraine on Approval of the Regulation on the Commission on the Issues of Examination of the Materials regarding the Recognition of Persons as Participants of Hostilities at the Security Service of Ukraine. - Order of the Ministry of the Internal Affairs, Prosecutor General's Office of Ukraine, Security Service of Ukraine of 26.08.2014 No. 872/88/537 on approving the Instruction on the order of preventive detention in the region of conducting antiterrorist operation of persons involved in terrorist activity and of special regime of prejudicial inquiry under the conditions of martial law, state of emergency or in the region where the antiterrorist operation is conducted. - Order of the Ministry of Defence of Ukraine, Ministry of Finance of Ukraine, Ministry of Infrastructure of
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			Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Healthcare of Ukraine, Ministry of Economic Development and Trade of Ukraine, Ministry of Ecology and Natural Resources of Ukraine, Security Service of Ukraine, Administration of the State Border Guard Service of Ukraine on the Approval of the Catalogue of Possibilities of Ukraine in the Field of Support of International Peacekeeping Operations and Trainings.
State Border Guard Service of Ukraine	<ul style="list-style-type: none"> - Law of Ukraine on the State Border Guard Service of Ukraine. - Law of Ukraine on the State Border of Ukraine. - Decree of the President of Ukraine on the Approval of the Regulation on the Administration of the State Border Guard Service of Ukraine. 	<ul style="list-style-type: none"> - Law of Ukraine on the State Border Guard Service of Ukraine. 	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine on the Approval of the Order of Entry to and Exit from the Temporary Occupied Territory of Ukraine of 04.06.2015 No. 367. - Resolution of the Cabinet of Ministers of Ukraine on amendments to the Order of Entry to and Exit from the Temporary Occupied Territory of Ukraine of 16.09.2015 No. 722. - Order on Approving the Temporary Order of Control over Movement of Persons through the Contact Line

			<p>within Donetsk and Luhansk Oblasts (prepared by the Security Service of Ukraine).</p> <ul style="list-style-type: none"> - Order of the Ministry of Defence of Ukraine, Ministry of Finance of Ukraine, Ministry of Infrastructure of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Healthcare of Ukraine, Ministry of Economic Development and Trade of Ukraine, Ministry of Ecology and Natural Resources of Ukraine, Security Service of Ukraine, Administration of the State Border Guard Service of Ukraine on the Approval of the Catalogue of Possibilities of Ukraine in the Field of Support of International Peacekeeping Operations and Trainings.
President of Ukraine	- Constitution of Ukraine (Art.102-112).	Law of Ukraine on particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine	<ul style="list-style-type: none"> - Decree of the President of Ukraine on Certain Issues of Exercise of Regulatory Functions in the Field of National Security and Defence. - Decree of the President of Ukraine on the Issues of Security Service of Ukraine of 27.12.2005 No. 1860/2005 (comprising the

			<p>Organizational structure of the Security Service of Ukraine).</p> <ul style="list-style-type: none"> - Decree of the President of Ukraine of 14.04.1999 No.379/99 on the Regulation on Antiterrorist Centre and its coordination groups under the regional bodies of the Security Service of Ukraine. - Decree of the President of Ukraine of 23.06.2015 No. 379 on amendments to the Decree of the President of Ukraine of 14.04.1999 No. 379 (concerning the nomination and dismissal of the Head of the Antiterrorist Centre from among deputies of the Head of the Security Service of Ukraine by the President of Ukraine). - Decree of the President of Ukraine on decision of the National Security and Defence Council of 24 April 2009 on Strategy for the international peace-making activities of Ukraine” of 15.06.2009 N 435/2009. - Decree of the President of Ukraine on establishment of Military and Civil Administrations.
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			<ul style="list-style-type: none"> - Decree of the President of Ukraine on the decision of the National Security and Defence Council of Ukraine of 20 July 2015 On state of realization of measures as to the protection of property rights and interests of the State of Ukraine in relation to the temporary occupation of the part of the territory of Ukraine. - Decree of the President of Ukraine on the decision of the National Security and Defence Council of Ukraine of 12 March 2015 on state of overcoming of negative consequences which appeared because of the loss of material repository of the secret information on temporary occupied territory of Ukraine, in the area of conducting antiterrorist operation in Donetsk and Luhansk oblasts. - Decree of the President of Ukraine on the decision of the National Security and Defence Council of 12 March 2015 on additional measures as to the peaceful regulation, normalization of situation and strengthening security in certain
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			<p>districts of Donetsk and Luhansk oblasts.</p> <ul style="list-style-type: none"> - Decree of the President of Ukraine On decision of the National Security and Defence Council of 18 February 2015 on address to the United Nations and the European Union as to the peacekeeping and security mission on the territory of Ukraine. - Decree of the President of Ukraine on decision of the National Security and Defence Council of 6 May 2015 on Strategy of National Security of Ukraine. - Decree of the President of Ukraine on decision of the National Security and Defence Council of 2 September 2015 on application of personal special economic and other restrictive measures (sanctions). - Decree of the President of Ukraine On decision of the National Security and Defence Council of 2 September 2015 On new edition of the War Doctrine of Ukraine. - Order of the President of Ukraine on approval of the decision of the National Security and Defense
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			Council 'On a large-scale anti-terror operation in the Donetsk and Luhansk regions' of 30 April 2018.
Ministry of Justice of Ukraine	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 2 July, 2014 No. 228 on approval of the Regulation of the Ministry of Justice of Ukraine. 		<ul style="list-style-type: none"> - Order of the Ministry of Justice of Ukraine of 13.03.2015 No. 357/5 on approval of the List of posts of the personnel of the State Criminal Executive Service of Ukraine that are engaged by the Antiterrorist Centre under the Security Service of Ukraine for exercising measures as to prevention and termination of crimes of terrorist nature on the objects of the State Criminal Executive Service of Ukraine. - Order of the Ministry of Justice of Ukraine of 24.12.2014 No. 2164/5 on the approval of Regulation on commission of the State Penitentiary Service of Ukraine on issues of accessing materials on the recognition as participants in hostilities of the personnel of the State Criminal Executive Service of Ukraine.

Interdepartmental Commission on the Application and Implementation of International Humanitarian Law in Ukraine	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 26.04.2017 N 329 on the establishment of the Interdepartmental Commission on the Application and Implementation of International Humanitarian Law in Ukraine. 		
State Penitentiary Service of Ukraine	<ul style="list-style-type: none"> - Decree of the President of Ukraine of 06.04.2011 No. 394/2011 on approval of Regulation of the State Penitentiary Service of Ukraine. - Resolution of the Cabinet of Ministers of Ukraine of 02.07.2014 No. 225 on approval of the Regulation on the State Penitentiary Service of Ukraine. 	<ul style="list-style-type: none"> - Criminal Executive Code of Ukraine. 	<ul style="list-style-type: none"> - Order of the Ministry of Justice of Ukraine of 13.03.2015 No. 357/5 on approval of the List of posts of the personnel of the State Criminal Executive Service of Ukraine that are engaged by the Antiterrorist Centre under the Security Service of Ukraine for exercising measures as to prevention and termination of crimes of terrorist nature on the objects of the State Criminal Executive Service of Ukraine. - Order of the Ministry of Justice of Ukraine of 24.12.2014 No. 2164/5 on the approval of Regulation on commission of the State Penitentiary Service of Ukraine on issues of

			accessing materials on the recognition as participants in hostilities of the personnel of the State Criminal Executive Service of Ukraine.
Donetsk Regional State Military and Civil Administration	<ul style="list-style-type: none"> - Constitution of Ukraine (art. 7, 132-133, 140-146). - Law of Ukraine on Military and Civil Administration (till 27.02.2016) - Decree of the President of Ukraine on the establishment of military and civil administrations. 	<ul style="list-style-type: none"> - Law on Ukraine on Local State Administrations (Articles 23, 25(1) (11), 25(1) (12), 27). 	<ul style="list-style-type: none"> - Order on the organization of work of the emergency response in the Donetsk region. - Order of the Cabinet of Ministers of Ukraine on setting the mode of high alert and emergency. - Order of the Cabinet of Ministers of Ukraine on the allocation of funds for the purchase of essential goods for the population living in areas of the antiterrorist operation in the Donetsk and Lugansk regions. - Order on social protection of citizens who are forced to move out of the cities and regions of the antiterrorist operation. - Order on the regional territorial subsystem of the unified state system of civil protection. - Presidential Decree on the decision of the National Security and Defence Council of Ukraine from 12 March

			<p>2015 On the state overcome of the negative effects caused by the loss of material carriers of classified information in the temporarily occupied territory of Ukraine, in the area of antiterrorist operation in the Donetsk and Lugansk Regions.</p> <ul style="list-style-type: none"> - Temporary order of control for moving of people, means of transport and cargo (goods) through the contact line in Donetsk and Luhansk oblasts (regions) (prepared by the Security Service of Ukraine).
Luhansk Regional State Military and Civil Administration	<ul style="list-style-type: none"> - Constitution of Ukraine (art. 7, 132-133, 140-146). - Law of Ukraine on Military and Civil Administration (till 27.02.2016). - Decree of the President of Ukraine on the establishment of military and civil administrations. 	<ul style="list-style-type: none"> - Law on Ukraine on Local State Administrations (Articles 23, 25(1) (11), 25(1) (12), 27). 	<ul style="list-style-type: none"> - Order on organization of interaction of civil protection in the Luhansk Region. - Order on approval of the plan of civil defence measures in Luhansk Region for 2015. - Order on the creation of a special commission of the regional emergency response in the Luhansk Region. - Presidential Decree on the decision of the National Security and Defence Council of Ukraine from 12 March 2015 on the state overcome of the

			<p>negative effects caused by the loss of material carriers of classified information in the temporarily occupied territory of Ukraine, in the area of antiterrorist operation in the Donetsk and Lugansk Regions.</p> <ul style="list-style-type: none"> - Order on approval in a new version of the regulation on the Administration of Emergencies in Luhansk Regional State Administration, job instructions of the head of department and his deputies. - Order on approval of the plan of civil defence measures in Luhansk Region for 2014”. - Order of the Cabinet of Ministers of Ukraine on setting the mode of high alert and emergency. - Order of the Cabinet of Ministers of Ukraine On the allocation of funds for the purchase of essential goods for the population living in areas of the antiterrorist operation in the Donetsk and Lugansk regions. - Order on measures to limit traffic to separate territories. - Order on Approving the Temporary Order of Control over Movement of
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			Persons through the Contact Line within Donetsk and Luhansk Oblasts (prepared by the Security Service of Ukraine).
Mission of the President of Ukraine to the Autonomous Republic of Crimea	<ul style="list-style-type: none"> - Constitution of Ukraine (Article 139). - Constitution of the Autonomous Republic of Crimea. - Law of Ukraine on the Mission of the President of Ukraine to the Autonomous Republic of Crimea. - Executive Order of the President of Ukraine on the urgent measures to restore the activity of the Mission of the President of Ukraine in Crimea. - Decree of the President of Ukraine on the urgent issue of the Mission of the President of Ukraine in Crimea. 	<ul style="list-style-type: none"> - Law of Ukraine on the establishment of the free economic zone "Crimea" and on peculiarities of exercising economic activities on the temporary occupied territory of Ukraine. - Law of Ukraine on the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine. 	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine on the Approval of the Order of Entry to and Exit from the Temporary Occupied Territory of Ukraine of 04.06.2015 No. 367. - Resolution of the Cabinet of Ministers of Ukraine on amendments to the Order of Entry to and Exit from the Temporary Occupied Territory of Ukraine of 16.09.2015 No. 722.
State Service of Ukraine on the Autonomous Republic of	<ul style="list-style-type: none"> - Law of Ukraine on the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine (paragraph 5 part II) 	<ul style="list-style-type: none"> - Law of Ukraine on the establishment of the free economic zone "Crimea" and on peculiarities of exercising economic activities on the temporary occupied territory of Ukraine. 	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine on the Approval of the Order of Entry to and Exit from the Temporary Occupied Territory of Ukraine of 04.06.2015 No. 367.

Crimea and the city of Sebastopol	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine on the establishment of the State Service of Ukraine on the Autonomous Republic of Crimea and the city of Sebastopol and internally displaced persons. - Resolution of the Cabinet of Ministers on renaming of the State Service of Ukraine on the Autonomous Republic of Crimea, Sevastopol and temporarily displaced persons. 		<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine on amendments to the Order of Entry to and Exit from the Temporary Occupied Territory of Ukraine of 16.09.2015 No. 722.
Ministry for Foreign Affairs of Ukraine	<ul style="list-style-type: none"> - Decree of the President of Ukraine on the Regulation of the Ministry for Foreign Affairs of Ukraine. 	<ul style="list-style-type: none"> - Law of Ukraine on the procedure for deploying units of the Armed Forces of Ukraine to other states. 	
The Ukrainian Parliament Commissioner for the Human Rights (Ombudsman)	<ul style="list-style-type: none"> - Constitution of Ukraine (art. 55, 85(17), 101). - Law of Ukraine on the Ukrainian Parliament Commissioner for the Human Rights. 	<ul style="list-style-type: none"> - Law of Ukraine on democratic and civil control over military organization and law enforcement agencies (Article 11(6)). 	

Constitutional Court of Ukraine	<ul style="list-style-type: none"> - Constitution of Ukraine (Chapter XII, Articles 147-153). - Law of Ukraine on the Constitutional Court of Ukraine. 		<ul style="list-style-type: none"> - Opinion of the Constitutional Court of Ukraine on the conformity of the Rome Statute of the International Criminal Court with the Constitution of Ukraine of 11 July 2001.
Ministry of Culture of Ukraine	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 03.09.2014 No. 495 on approving of the Regulation on the Ministry of Culture of Ukraine. 	<ul style="list-style-type: none"> - Law of Ukraine On bringing out, bringing in and return of the cultural values (Article 4). 	
State Emergency Service of Ukraine	<ul style="list-style-type: none"> - Code of civil defence of Ukraine - Decree of the President of Ukraine on several questions of the State Emergency Service of Ukraine of 16.01.2013 No. 20/2013. Regulation on the State Emergency Service of Ukraine. 	<ul style="list-style-type: none"> - Code of Civil Defence of Ukraine (Article 5, Article 33, paragraph 14). 	<ul style="list-style-type: none"> - Order of the Special Emergency Service of Ukraine № 466 of 09.09.2015 on the peculiarities of the remuneration paid to the workers engaged in the antiterrorist operation. - Order of the Cabinet of Ministers of 11 June 2004 No. 588-p on the Social Security of citizens of Ukraine who moved from the temporarily occupied territory and the area of the antiterrorist operation.

Ministry for Veterans Affairs	<ul style="list-style-type: none"> - The Law of Ukraine on the status of the veterans of war, guarantees of their social protection. - Resolution of the Cabinet of Ministers of Ukraine of 27 December 2018 N 1175 Provision on the Ministry for Veterans Affairs of Ukraine. 		<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 20 August 2014 N 413 on the approval of the Order for granting the status of participant of hostilities to persons who defended the independence, sovereignty and territorial integrity of Ukraine and took direct participation in the antiterrorist operation and securing its execution.
Ukrainian Red Cross	<ul style="list-style-type: none"> - Law of Ukraine on the Ukrainian Red Cross. - Decree of the President of Ukraine on the Ukrainian Red Cross. 	<ul style="list-style-type: none"> - Law of Ukraine on the symbols of Red Cross, Red Crescent, Red Crystal in Ukraine. 	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 02.10.2003 N 1545 on establishing the limit of compensation of expenses of the tracing service of the National Society of Red Cross of Ukraine for services provided by enterprises of communication, and the compensation procedure. - Statute of the Ukrainian Red Cross.
Ministry of Education and Science of Ukraine	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 16.10.2014 N 630 on the approving of the Regulation on Ministry of Education and Science of Ukraine. 		<ul style="list-style-type: none"> - Order of Ministry of Education and Science of Ukraine on security measures in educational institutions of 06.01.2015 N 2. - Order of Ministry of Education and Science of Ukraine on organizing of

			education in secondary educational institutions on temporary occupied territory in the Autonomous Republic of Crimea, Sevastopol and in the places of conduction of anti-terrorist operation in Donetsk and Luhansk oblasts of 14.10.2014 N 1/9-535.
Ministry of Reintegration of Temporarily Occupied Territories and internally displaced persons	<ul style="list-style-type: none"> - Law of Ukraine on the Cabinet of Ministers of Ukraine. - Resolution of the Cabinet of Ministers of Ukraine of 8 June 2016 N 376 'Some issues regarding the Ministry of Temporarily Occupied Territories'. - Resolution of the Cabinet of Ministers of Ukraine of 5 April 2014 N 85 'Some issues of approval of the maximum number of employees of the staff and territorial bodies of central executive bodies, other state bodies'. 	<ul style="list-style-type: none"> - Law of Ukraine on particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine of 18 January 2018. - Law of Ukraine on the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine. - Law of Ukraine on the legal status of missing persons of 12 July 2018. 	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine on approval of the Procedure for entry into and exit from the temporarily occupied territory of Ukraine'. - Resolution of the Cabinet of Ministers of Ukraine on approval of the plan of measures aimed at implementing some principles of state domestic policy regarding the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol. Resolution of the Cabinet of Ministers of Ukraine on approval of the action plan aimed at implementing some principles of state domestic policy in certain districts of Donetsk and Luhansk regions, where public authorities

			<p>temporarily do not exercise their powers.</p> <ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine on approval of the procedure for entry into and exit from the temporarily occupied territory of Ukraine. - Resolution of the Cabinet of Ministers of Ukraine of 1 March 2017 N 99 on approval of the procedure for movement of goods to or from the area of the anti-terrorist operation. - Resolution of the Cabinet of Ministers of Ukraine of 26 April 2017 N 329 on the establishment of the Interdepartmental Commission on the Application and Implementation of International Humanitarian Law in Ukraine.
State Migration Service of Ukraine	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 20.08.2014 N 360 on the approving of the Regulation on State Migration Service of Ukraine. 	<ul style="list-style-type: none"> - Law of Ukraine On securing rights and freedoms of internally displaced persons. 	<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 04.06.2014 № 289 on the approving of the order of execution of documents that confirm the citizenship of Ukraine, identification of an individual or their special status, for individuals who

	<ul style="list-style-type: none"> - Regulations of State Migration Service of Ukraine. 		<p>live in the temporarily occupied territory of Ukraine.</p> <ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 01.10.2014 № 509 on record of internally displaced individuals. - Resolution of the Cabinet of Ministers of Ukraine of 04.03.2015 N 79 On several questions of filling out and distribution of certificate on placing for record of a person who is being displaced from the temporary occupied territory of Ukraine and from the region of antiterrorist operation. - Order of the Cabinet of Ministers of Ukraine of 11.06.2014 № 588-p on questions of social protection of citizens of Ukraine who are displaced from the temporarily occupied territory and the regions of anti-terrorist operation. - Order of the Ministry of Internal Affairs of 26.09.2014 N 997 on approval of the example and the Order of distribution of certificate which certifies the place of residents of the citizens of Ukraine who reside
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			on temporarily occupied territory of Ukraine or moved from it and of the example of written application.
Ministry of Social Policy of Ukraine	<ul style="list-style-type: none"> - Code of Labour Laws of Ukraine of 10.12.1971 № 322-VIII. - Resolution of the Cabinet of Ministers of Ukraine of 17.06.2015 N 423 on the approving of the Regulation on Ministry of Social Policy of Ukraine. 		<ul style="list-style-type: none"> - Resolution of the Cabinet of Ministers of Ukraine of 04.06.2015 No. 356 on approving the Order of securing activity of foster homes, family-type children's home which moved from the temporary occupied territory of Ukraine or region of conducting antiterrorist operation. - Order of Ministry of Social Policy of Ukraine of 29.12.2014 № 1100 on approving of a model example of a volunteer certificate. - Letter of Ministry of Social Policy of Ukraine of 17.08.2015 № 12443/0/14-15/13 on labour remuneration in the zone of anti-terrorist operation". - Letter of Ministry of Social Policy of Ukraine of 18.03.2015 N 69/06/186-15 on dismissal reasons of the employees on the initiative of the owner or the empowered organ in connection with the need of

			<p>undertaking measures during the mobilization for the special period.</p> <ul style="list-style-type: none"> - Letter of Ministry of Social Policy of Ukraine of 06.05.2015 N515/13/84-15 on the order of compensation of the average salary from the budget to the mobilized. - Letter of Ministry of Social Policy of Ukraine of 26.05.2015 N612/13/84-15 on guarantees to individuals, recruited for military service. - Letter of Ministry of Social Policy of Ukraine of 07.05.2015 N 525/13/84-15 on compensation of the average salary to enterprises that is paid to the employees, recruited for military service during the mobilization for the special period. - Letter of Ministry of Social Policy of Ukraine of 22.05.2015 N 7551/0/14-15/13 on obtaining the compensation of the expenses by the mobilized employees. - Letter of Ministry of Social Policy of Ukraine of 10.06.2015 N 231/06/186-15 on employees, recruited for military service.
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			<ul style="list-style-type: none"> - Letter of Ministry of Social Policy of Ukraine of 16.06.2015 N 325/13/155-15 on the payment of the compensation of average salary to the mobilized employees, who used to work for individual entrepreneurs. - Letter of Ministry of Social Policy of Ukraine of 22.06.2015 N 802/13/84-15 on consideration of the period of mobilization and the average salary during the calculation of vacation pay. - Letter of Ministry of Social Policy of Ukraine of 14.05.2015 N 2433/1/10-15/06 on the delays of payments during dismissals in case of force-majeure. - Order of Ministry of Social Policy of Ukraine of 27.03.2015 № 341 on approving of the plan of activities of the Ministry of Social Policy of Ukraine for the year 2015.
National Security and Defence Council of Ukraine	<ul style="list-style-type: none"> - Constitution of Ukraine (Article 107). - Law of Ukraine on National Security and defence Council of Ukraine. 		<ul style="list-style-type: none"> - Decree of the President of Ukraine on the decision of the National Security and Defence Council of Ukraine of 6 May 2015 On Strategy of national security of Ukraine of 26.05.2015 N

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			<p>because of the loss of material repository of the secret information on temporary occupied territory of Ukraine, in the area of conducting antiterrorist operation in Donetsk and Luhansk oblasts of 30.03.2015 N 184/2015.</p> <ul style="list-style-type: none"> - Decree of the President of Ukraine on the decision of the National Security and Defence Council of 12 March 2015 On additional measures as to the peaceful regulation, normalization of situation and strengthening security in certain districts of Donetsk and Luhansk oblasts of 18.03.2015 N 149/2015. - Decree of the President of Ukraine on the decision of the National Security and Defence Council of 18 February 2015 on the address to the United Nations and the European Union as to the peacekeeping and security mission on the territory of Ukraine of 02.03.2015 N 116/2015. - Decree of the President of Ukraine on the decision of the National Security and Defence Council of 2 September 2015 on the application of
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			<p>personal special economic and other restrictive measures (sanctions) of 16.09.2015 N 549/2015.</p> <ul style="list-style-type: none"> - Order of the President of Ukraine on approval of the decision of the National Security and Defense Council 'On a large-scale anti-terror operation in the Donetsk and Luhansk regions' of 30 April 2018.
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