

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

Introduction

International humanitarian law (“IHL”), also known as the “law of armed conflict”, is the body of international law that regulates situations of armed conflict. As a country currently affected by armed conflict, Ukraine must take positive measures to ensure that it complies with its international obligations under IHL. To assess Ukraine’s efforts to implement IHL, Global Rights Compliance (“GRC”) researched Ukraine’s domestic law and produced the report, “[The Domestic Implementation of International Humanitarian Law in Ukraine](#)” in 2016, which was updated in 2021. This “***quick sheet***” provides an accessible introduction and summary of the background, objectives, and structure of the Report and highlights several of its most important conclusions.

The Report’s Objectives (pp. 14-15)¹

The Report analyses Ukraine’s legal system to identify gaps in its ability to enforce IHL and fairly prosecute those who have allegedly committed international crimes during the conflict in order to assist Ukrainian government officials in effectively implementing IHL in the future.

Background to the Ukrainian Conflict (pp. 7-14)

Since the events surrounding the late 2013 and early 2014 “Revolution of Dignity” – where over 100 protesters and security personnel were killed – Ukraine has been deeply affected by armed conflict. At the end of February 2014, the Crimean Peninsula was occupied by unidentified armed men ([since acknowledged](#) to have been Russian military) who gained control over the area – to widespread international condemnation. Shortly after, eastern Ukraine also began to destabilise. In the regions of Donetsk and Luhansk, conflict broke out between armed separatists and law enforcement agencies. Thereafter, protracted armed conflict ensued and continues to the present day along largely static frontlines. Although efforts by the international community have been partially successful in reducing the intensity of the fighting, there is no clear end to the conflict in sight.

¹ Corresponding page numbers in the Report are indicated throughout the ***quick sheet***.

What is International Humanitarian Law? (pp. 16-24)

IHL is a wide-ranging collection of law that creates both positive and negative obligations for states and, in some cases, armed groups. The basic principles of IHL are quite straightforward, following the basic maxim that persons not participating (or no longer participating) in combat should be protected and, in general, treated humanely. The same protection extends to objects possessed by these persons and other objects that have no military purpose or are otherwise entitled to protection. In addition, IHL prohibits the use of any [means or methods of warfare](#) that are indiscriminate or will cause ‘unnecessary suffering’ or ‘superfluous injury’.

IHL is found in various international treaties which bind states that have ratified them (a process whereby a state formally expresses their intention to be bound by a treaty’s contents).² Core IHL treaties include, among others, the Four Geneva Conventions of 1949, their Additional Protocols, and the Hague Convention of 1954 for the Protection of Cultural Property. Large areas of IHL also form part of customary international law, which binds all states (and armed groups, where relevant).³

Ukraine and International Humanitarian Law (pp. 40-195)

Ukraine has ratified most IHL-related treaties, including the Four Geneva Conventions, each of their three Additional Protocols, and the Anti-Personnel Mine Ban Convention. However, Ukraine has *not* ratified several relevant treaties, such as the Convention on Cluster Munitions or the Arms Trade Treaty.⁴ Importantly, ratified IHL treaties and applicable customary IHL oblige states to take positive actions to fulfil their obligations. For example, several treaty provisions, such as Article 47 of the First Geneva Convention, require that knowledge of IHL is spread widely throughout a state’s armed forces and general population. Such positive obligations can be implemented in different ways depending on a particular country’s domestic legal and factual context. Therefore, the Report analyses Ukraine’s attempts to implement its IHL obligations domestically – for example, through means such as the creation of laws, the training of personnel, or the use and respect for distinctive emblems for protected persons and objects.

A relevant positive obligation in the Ukrainian context – which the Report examines (pp. 59-73) – is the requirement for states to investigate and prosecute those that have committed serious violations of IHL within a conflict.⁵ Serious violations of IHL – be they ‘grave breaches’ of the Geneva Conventions or ‘[war crimes](#)’ as established by treaty or customary law – as with other international crimes, are those acts or omissions that are considered so shocking that the entire international community – including Ukraine – has an interest in their prosecution.⁶

² For a collection of IHL treaties, see the [ICRC’s database](#).

³ Likewise, see the ICRC’s [customary international humanitarian law study](#).

⁴ For a comprehensive list of IHL-related treaties Ukraine has ratified, see Annexes III and IV in the Report.

⁵ For example, [Rule 158](#) in the ICRC’s customary international humanitarian law study.

⁶ Other international crimes, such as crimes against humanity, are also addressed in the Report by analogy.

Selected Conclusions (summarised at pp. 5-6)

The Report concludes that Ukraine has already taken many positive steps to implement its IHL obligations. The analysis shows that Ukrainian legal measures incorporate some, but not all, of the main IHL requirements. Although this demonstrates a commitment by the Government of Ukraine towards greater implementation of IHL, certain gaps and inconsistencies are identified. These relate, among others, to:

- The requirement to disseminate, promote and train IHL (pp. 46-58);
- The legislative framework for the prosecution of war crimes and serious violations of IHL (pp. 59-73);
- Fundamental and judicial guarantees afforded to ‘protected persons’ (pp. 82-92);
- Protections granted to sick and wounded combatants, Prisoners of War, and civilian medical personnel (pp. 102-113; 123-125);
- Steps to safeguard cultural property from the foreseeable effects of conflict (pp. 138-143); and
- Notable 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 (pp. 181-187).

The Report also assesses the compliance of Ukrainian criminal laws and procedures with the requirements of the Rome Statute of the International Criminal Court. Significant gaps identified include the lack of reference to crimes against humanity and the specification of war crimes in the Criminal Code of Ukraine (pp. 188-195).

Current Developments

Since the publication of this Report, Ukraine has implemented some of its recommendations, including through the creation of a [Bill](#) to effectively criminalise war crimes and crimes against humanity in domestic Ukrainian law.

For up-to-date information and resources about the situation in Ukraine regarding the prosecution of such crimes, see the MATRA-Ukraine Project website: www.asser.nl/MATRA-Ukraine/.