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## NOTE VERBALE

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) presents its compliments to the Delegations of OSCE participating States and, in accordance with paragraph 7 of the 1991 Moscow Document, has the honour to herewith transmit the observations of the mission of experts established under the Moscow Mechanism, invoked by 45 OSCE participating States following bilateral consultations with Ukraine, together with a description of action Ukraine has taken or intends to take upon it.

ODIHR avails itself of this opportunity to renew to the Delegations of the OSCE participating States the assurances of its highest consideration.

Warsaw, 12 April 2022



To the  
Delegations of the OSCE participating States  
Vienna

# **REPORT ON VIOLATIONS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW, WAR CRIMES AND CRIMES AGAINST HUMANITY COMMITTED IN UKRAINE SINCE 24 FEBRUARY 2022**

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## **I. GENERAL OBSERVATIONS AND EXECUTIVE SUMMARY**

On 3 March 2022 the Moscow Mechanism of the human dimension of the Organization for Security and Co-operation in Europe (OSCE) was invoked by Ukraine supported by 45 participating States. Consequently, a Mission of three experts was appointed on 14 March 2022, which according to the rules of the Moscow Mechanism was to complete its work within three weeks and therefore delivered its report to Ukraine as the inviting state on 5 April 2022.

The mandate was defined as to

- *Establish the facts and circumstances surrounding possible contraventions of OSCE commitments, and violations and abuses of international human rights law and international humanitarian law;*
- *Establish the facts and circumstances of possible cases of war crimes and crimes against humanity, including due to deliberate and indiscriminate attacks against civilians and civilian infrastructure; and to collect, consolidate, and analyze this information with a view to presenting it to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in future have, jurisdiction.*

Given the wide mandate, the Mission invited all potential sources to contribute evidence and did receive support from many sides, in particular from NGOs on the ground and from those with particular investigative capacities. Unfortunately, the Permanent Representation of the Russian Federation informed the Mission upon request that it considered the Moscow Mechanism largely outdated and redundant. The Permanent Representation also declined to nominate a liaison person but referred the Mission to the official statements and briefings of the Government of the Russian Federation, which made it impossible for the Mission to take account of the Russian position on all pertinent incidents, except based on official open sources and websites.

A detailed assessment of most allegations of International Humanitarian Law (IHL) violations and the identification of war crimes concerning particular incidents has not been possible. Nevertheless, the mission found clear patterns of IHL violations by the Russian forces in their conduct of hostilities. If they had respected their IHL obligations in terms of distinction, proportionality and precautions in attack and concerning specially protected objects such as hospitals, the number of civilians killed or injured would have remained much lower. Similarly, considerably fewer houses, hospitals, cultural properties, schools, multi-story residential buildings, water stations and electricity systems would have been damaged or destroyed. Furthermore, much of the conduct of Russian forces displayed in the parts of Ukraine it occupied before and after 24 February 2022, including through its proxies, the self-proclaimed “republics” of Donetsk and Luhansk, violates IHL of military occupation.

Some violations and problems were also identified regarding practices attributable to Ukraine. The Mission is in particular concerned about the treatment of prisoners of war, who originally were considered criminals, and treated in ways that are incompatible with Geneva Convention III. Generally, allegations made by the Russian Federation could not be confirmed that Ukraine and not Russian forces had caused some of the death, injury or destructions attributed to Russia by the media, Ukrainian authorities and NGOs.

The Mission has also considered the impact of the current conflict on human rights. While it has not been able to verify all the reported incidents that involve violations of International Human Rights Law (IHRL), it has found credible evidence suggesting that such violations concerning even the most fundamental human rights (right to life, prohibition of torture and other inhuman and degrading treatment and punishment) have been committed, mostly in the areas under the effective control of Russia or entities under overall control of Russia. The Mission has also concluded that the impact of the conflict on the enjoyment of human rights has gone beyond the direct violations of these rights. By causing a high level of destruction and by interfering with the provision of vital services (education, healthcare), the conflict started by the unlawful attack by Russia has made it very difficult for Ukraine to effectively respect, protect and fulfil the human rights of its inhabitants. Furthermore, the Mission has found that while the conflict has affected all the inhabitants of Ukraine, it has exerted and continues to exert particularly negative effects on individuals belonging to vulnerable groups, such as women, children, older persons or persons with disabilities.

The Mission is not able to conclude whether the Russian attack on Ukraine per se may qualify as a widespread or systematic attack directed against a civilian population. It however holds that some patterns of violent acts violating IHRL, which have been repeatedly documented in the course of the conflict, such as targeted killing, enforced disappearance or abductions of civilians, including journalists and local officials, are likely to meet this qualification. Any single violent act of this type, committed as part of such an attack and with the knowledge of it, would then constitute a crime against humanity.

While some findings of this report are necessarily preliminary due to the short period of investigation in the context of an ongoing international armed conflict with a large number of events occurring every day that could constitute violations of international law or even international crimes, the report can inform other bodies' more in-depth investigations into legal accountability. The findings may also contribute to establishing political accountability. With regard to violations of IHL and IHRL the responsibility lies with both the Russian Federation and Ukraine to observe their respective obligations. As this report shows, violations occurred on the Ukrainian as well as on the Russian side. The violations committed by the Russian Federation, however, are by far larger in nature and scale.

Finally, the report highlights the various relevant accountability mechanisms at the different levels including the pertinent courts, some of which are already at work. A variety of mechanisms do exist and new ones could be created to prevent impunity for the violations and crimes identified.

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## II. INTRODUCTION AND MANDATE

On 24 February 2022 the Russian Federation invaded Ukraine. Already before, on 21 February 2022, President Vladimir Putin had recognized the Eastern Ukrainian provinces of Donetsk and Luhansk as independent states<sup>1</sup> The recognition is understood to refer to these regions' administrative borders and not to the areas under effective control of the so-called republics of Donetsk and Luhansk at that time. On 24 February 2022, in a televised speech, President Putin justified the armed attack against Ukraine as a special military operation carried out in self-defence.<sup>2</sup> The UN General Assembly, in its resolution of 2 March 2022, qualified the Russian attack on Ukraine as an act of aggression in violation of Article 2(4) of the UN Charter.<sup>3</sup> In a resolution of 24 March 2022, the General Assembly, again meeting in a special emergency session, requested an “*immediate cessation of hostilities by the Russian Federation against Ukraine, in particular of any attacks against civilians and civilian objects*”,<sup>4</sup> the protection of which is discussed in some detail.

On 3 March 2022, Ukraine supported by 45 participating States resorted to Para 8 of the Moscow Mechanism of the human dimension of the OSCE. Within this framework, one or more participating States may request the OSCE to inquire of another participating State whether it would agree to invite a Mission of Experts to address a particular, clearly defined question on its territory relating to the human dimension of the OSCE, which Ukraine has consented to. The procedure is outlined in Paras 4–7 of the Moscow Mechanism. Para 4 foresees that a Mission consisting of up to three experts from the rostrum of the Moscow Mechanism must be established by the inviting state which has to inform the OSCE, which will provide appropriate support to such Mission. The report of the Mission is to be submitted to the inviting state. Accordingly, Ukraine on 14 March 2022 informed the OSCE Office for Democratic Institutions and Human Rights (ODIHR), being in charge on behalf of the OSCE in the matter that it had appointed Veronika Bílková, Marco Sassòli and Wolfgang Benedek,<sup>5</sup> the latter being elected as the chair of the Mission by his colleagues.<sup>6</sup>

The mandate of the Mission reads as follows:

- *Establish the facts and circumstances surrounding possible contraventions of OSCE commitments, and violations and abuses of international human rights law and international humanitarian law;*
- *Establish the facts and circumstances of possible cases of war crimes and crimes against humanity, including due to deliberate and indiscriminate attacks against civilians and civilian infrastructure; and to collect, consolidate, and analyze this*

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<sup>1</sup> Address of the President of the Russian Federation, 21 February 2022, *Обращение Президента Российской Федерации*, 21 февраля 2022, at: <https://glasnarod.ru/oficzialno/ obrashhenie-prezidenta-rossijskoj-federacii-polnyj-tekst/>

<sup>2</sup> Address of the President of the Russian Federation, 24 February 2022, *Обращение Президента Российской Федерации*, 24 февраля 2022, at: <https://ria.ru/20220224/obraschenie-1774658619.html>

<sup>3</sup> UN Doc. A/ES-11/L.1, *Aggression against Ukraine*, 1 March 2022. The Resolution was adopted in a GA Emergency Session called for by the UN Security Council by Resolution 2623(2022) under the Uniting for Peace resolution as the Security Council was prevented to exercise its primary responsibility for peace and security.

<sup>4</sup> UN Doc. A/ES-11/L.2, *Humanitarian consequences of the aggression against Ukraine*, 21 March 2022. United Nations General Assembly Adopts Text Recognizing Scale of Humanitarian Woes Arising from Russian Federation's Ukraine Offensive as Unseen in Many Decades, *UN*, 24 March 2022, at: <https://www.un.org/press/en/2022/ga12411.doc.htm>.

<sup>5</sup> Professor ret. Dr. Wolfgang Benedek, Institute of International Law and International Relations and European Training and Research Centre for Human Rights and Democracy, University of Graz; Associate Professor Dr. Veronika Bílková, Faculty of Law, Charles University of Prague, and Institute of International Relations, Prague; Professor Marco Sassòli, University of Geneva.

<sup>6</sup> The experts would like to thank their team, in particular Svitlana Andreichenko, Federica Cristiani, Eugénie Duss, Gregor Fischer-Lessiak, Alba Grembi, Nela Laryšová and Inga Zelena for their valuable support.

*information with a view to presenting it to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in future have, jurisdiction.*

The Mission started its work the following day. As foreseen in para 6 of the Moscow Mechanism the report was to be completed within three weeks, i.e., by 5 April 2022. The temporal mandate of the Mission covers the initial five weeks of the conflict. Territorially, the Mission has investigated potential contraventions of international standards that have occurred in the whole territory of Ukraine, within its internationally recognized borders (including the Autonomous region of Crimea, the City of Sevastopol as well as the Donetsk and Luhansk regions). Regarding the personal scope, the Mission has investigated potential contraventions of international standards committed by or attributable to any party to the conflict or any other public or private actor operating within the territory of Ukraine.

### **III. METHODOLOGY**

#### **A. TIME FRAME AND LIMITATIONS**

The events investigated by the Mission of Experts cover the period from 24 February until 1 April 2022, when the report had to be finalized. This is the period since the beginning of the war against Ukraine which, at the moment of the completion of this report, is unfortunately still ongoing and new developments unfold as dynamically as the flow of information. In particular, the Mission notes allegations received after the formal end of its investigations of summary executions of a large number of civilians during the Russian occupation of villages in the proximity of Kyiv, in particular Bucha and at the occasion of the withdrawal of Russian forces. There are photos and videos of civilians killed in the streets partly with their hands tied and reports about one or more mass graves.<sup>7</sup> This evidence points to a major war crime and a crime against humanity committed by the Russian forces. Such an event deserves and requires a serious international enquiry, on the spot, with forensic experts. Even if the time period at the disposal of the Mission had been prolonged, it could not have conducted such an enquiry.

According to the rules of the Moscow Mechanism, the time for the elaboration of the report was limited to three weeks, which in the case of this Mission meant from 15 March to 4 April. During this time span, new reports of relevant incidents were published daily, and active hostilities occurred within the whole territory of Ukraine. The OSCE/ODIHR advised the experts not to visit Ukraine as safe access to the places of potential violations could not be provided. The Mission benefited from logistical and administrative support from the OSCE/ODIHR which was much appreciated. However, the OSCE was not in a position to provide substantive information or expertise on the topic of the report. In some cases, the described time constraints prevented a more in-depth inquiry as certain information and analysis only becomes available over time. Accordingly, it was not possible to research all relevant incidents thoroughly enough to reach undisputable findings. In such cases, this report clearly points out such limitations.

#### **B. MAIN SOURCES**

In spite of these limitations, the Mission has been able to get access to a large variety of sources allowing to gain a good oversight of the situation in general and of particular issues under review. This has been in some respects possible due to the cooperation of Ukraine as the

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<sup>7</sup> “They were all shot”: Russia accused of war crimes as Bucha reveals horror of invasion, *The Guardian*, 3 April 2022, at: <https://www.theguardian.com/world/2022/apr/03/they-were-all-shot-russia-accused-of-war-crimes-as-bucha-reveals-horror-of-invasion>; Ukraine: Apparent War Crimes in Russia-Controlled Areas, *HRW*, 3 April 2022, at: <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>



requesting state, which, however, because of the ongoing war, was, of course, limited. The Mission regrets, in particular, that it did not succeed in having any contact with the Ukrainian military, which would have been crucial to evaluate certain violations of International Humanitarian Law (IHL) on the conduct of hostilities.

ODIHR opened a channel through which relevant information could be shared. In addition, with regard to the Ukrainian authorities, the Mission followed the information on the websites of governmental institutions like the Office of the General Prosecutor and also received information from the Ukrainian Parliament's Commissioner for Human Rights. The Mission also actively followed relevant media reports and reached out to a large number of contacts within international organizations with knowledge about the situation like, in particular, the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), UNESCO, WHO, FAO, IOM, UNHCR, UNICEF and the Council of Europe. It also received information from specialized non-governmental organizations (NGOs) like the Platform for the Investigation of War Crimes in Ukraine (Ukraine 5 AM Coalition), consisting of more than 20 NGOs<sup>8</sup>, some of which also provided specific reports, other Ukrainian NGOs like Opora or the Kharkiv Human Rights Protection Group as well as specialized international investigative NGOs like Truth Hounds, Bellingcat, Amnesty International, Human Rights Watch, OMCT, Human Rights House, Insecurity Insight and DIGNITY – Danish Institute against Torture. Military experts from third states were also consulted as were available Russian public sources. Valuable information and analysis were also provided by the Humanitarian Research Lab at Yale School of Public Health, by experienced individuals like Stephen Douglas, formerly of the OSCE Special Monitoring Mission to Ukraine and by journalists and interviews with individuals on the ground. Obviously, not all sources can be disclosed for security reasons. In addition, a number of interviews were undertaken with persons possessing particular knowledge on the matter.

Right after its start the Mission contacted the Russian Permanent Representation to the OSCE requesting support to the Mission by providing relevant information. However, the Representation responded that Russia considered the Moscow Mechanism to be outdated and obsolete and therefore also refused to nominate a liaison person. It referred the Mission to the website of the Ministry of Defence of the Russian Federation (see exchange of letters in annex). In spite of this lack of cooperation, the Mission of Experts did its best to also take Russian positions into account.

Obviously, as typically happens in situations of war, disinformation and propaganda on the situation in Ukraine were also disseminated within the period under investigation. The Mission of Experts has been very much aware of this fact. However, by gathering, analysing and comparing the great variety of sources available and carefully evaluating the quality of sources, an accurate overall assessment and an evaluation of a few specific events has been possible.

### **C. OSCE COMMITMENTS AND OTHER SOURCES OF OBLIGATIONS USED**

There are numerous relevant OSCE commitments in the field of human rights, which are enshrined in particular in the Copenhagen Document of 1990 and in subsequent Ministerial Council Decisions. In several press releases OSCE bodies have reminded the parties to the

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<sup>8</sup> Human Rights Centre ZMINA, Ukrainian Helsinki Human Rights Union, Ukrainian Legal Advisory Group, Regional Centre for Human Rights, Media Initiative for Human Rights, The Institute for Peace and Common Ground (IPCG), Centre of Civil Education "Almenda", Crimea SOS, Crimean Human Rights Group, Vostok SOS, Social Action Centre, Advocacy Advisory Panel, Kharkiv Institute for Social Research, DEJURE Foundation, Truth Hounds, Educational Human Rights House Chernihiv, Human Rights Center "Diya", Association of Ukrainian Monitors of Adherence to, Human Rights in the Activities of Law Enforcement Agencies, Ukraine Without Torture, Human Rights Platform, Association for the Development of Judicial Self-Government, Ukrainian Healthcare Center (UHC), Public Association Progressive Group of Frankivtsy.

present conflict of their relevant commitments, such as the safety of the media must also be ensured in conflict situations<sup>9</sup>, that the rights of minorities need to be protected also in conflict situations<sup>10</sup> based on the thematic recommendations and guidelines<sup>11</sup> or that there is an obligation to respect the right to peaceful assemblies and demonstrations (Copenhagen 1990), regarding protests against the attack on Ukraine or the occupation of certain parts.<sup>12</sup> Respect for IHL and personal accountability for its violations are standards adopted in Helsinki 1992 and were recently reminded about at a special Supplementary Human Dimension Meeting in Vienna,<sup>13</sup>

In the situation of an ongoing war the main obligations of relevance are to be found in IHL. However, also standards of International Human Rights Law (IHRL) do apply. The applicable law including OSCE commitments is introduced in chapters IV and V of the report dealing with alleged violations of IHL and of IHRL respectively. In addition to IHL and IHRL, the legal framework on war crimes and crimes against humanity applies to situations of international armed conflict. The legal norms on these crimes provide for individual criminal accountability of persons who commit atrocities during armed conflict.

The most comprehensive catalogue of crimes against humanity and war crimes is provided by the 1998 Rome Statute (RS) of the International Criminal Court (ICC). Although Ukraine and Russia are not state parties to the RS, it applies to the present armed conflict, as Ukraine has recognized the jurisdiction of the ICC over war crimes and crimes against humanity committed on its territory. The categories of crimes against humanity and war crimes are not fully disjunctive. An individual may thus commit crimes of both categories by one single act.

In the analysis of alleged violations of IHL and IHRL in chapters IV and V, there might be some overlap or duplication regarding the facts presented, which, however, has been accepted for reasons of standalone readability of the single sections of this report.

## **IV. ALLEGED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW**

### **A. *JUS IN BELLO* IS INDEPENDENT OF *JUS AD BELLUM* (AGGRESSION) AND THE SAME FOR BOTH PARTIES**

Both Russia and Ukraine have to comply with the same rules of IHL. This total separation between *jus contra bellum* (the law prohibiting to wage war traditionally referred to as *jus ad bellum*) and *jus in bello* (the law applicable in war) has several consequences, often difficult for public opinion to understand and for those fighting to defend their country to accept. First, the separation results in the equality of belligerents under IHL.<sup>14</sup> Second, determining when IHL applies requires an assessment of the factual situation on the ground, such as, for instance,

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<sup>9</sup> OSCE, ‘Safety of journalists must be ensured in conflict situations, says OSCE Media Freedom Representative’, 27 February 2022 at: <https://www.osce.org/representative-on-freedom-of-media/513067>.

<sup>10</sup> OSCE, ‘High Commissioner on National Minorities calls for end to violence in Ukraine, warns of long-term and widespread effects on national minorities’, 30 March 2022, at: <https://www.osce.org/hcnm/514859>

<sup>11</sup> OSCE, High Commissioner on National Minorities, Thematic Recommendations and Guidelines, at: <https://www.osce.org/hcnm/thematic-recommendations-and-guidelines>

<sup>12</sup> OSCE, ‘Peaceful demonstrations to protest attack on Ukraine must be allowed unhindered, OSCE human rights office says’, 1 March 2022, at: <https://www.osce.org/odihr/513187>; and the Copenhagen Document, at: <https://www.osce.org/files/f/documents/9/c/14304.pdf>.

<sup>13</sup> See at: <https://www.osce.org/odihr/514789>

<sup>14</sup> 1949 Geneva Conventions [GC(s)], Art. 1, reading that “[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances” (emphasis added). This article offers textual grounding to the principle of equality of belligerents, see J. S. Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol I, ICRC, 1952, p. 27.

whether there is armed violence between the armed forces of two or more States, which triggers an international armed conflict (IAC).<sup>15</sup> Justifications underlying the resort to violence are wholly irrelevant. Third, arguments concerning *jus ad bellum* cannot be used to interpret IHL. Thus, for example, the proportionality analysis required before launching an attack is the same for a military commander attempting to occupy a town on the territory of the adverse party as for the commander defending a town. This equal application of IHL to both belligerents is particularly difficult to accept in the current situation, where Russia is the aggressor and therefore responsible for all human suffering in Ukraine, whether or not it results from violations of IHL and even when it is directly caused by Ukraine, because even that would not have occurred if Ukraine had not to defend itself from the Russian invasion.

## **B. CLASSIFICATION OF THE SITUATION AND APPLICABLE LAW: INTERNATIONAL ARMED CONFLICT**

As both Russia and Ukraine are States, the armed conflict between them<sup>16</sup> is governed by IHL of international armed conflicts (IACs), foreseen in particular in the four Geneva Conventions and Additional Protocol I to which they are both parties, as well as the large body of customary international law rules applicable to such conflicts.

Although Belarus allows its territory to be used to launch Russian attacks on Ukraine, the Mission considers that as of 1 April it is not a party to the IAC, as long as it does not itself commit acts of violence or other acts that would constitute direct participation in the hostilities by persons attributable to Belarus.<sup>17</sup> Similarly, NATO member States are not parties to the IAC by the mere fact that they supply weapons or share general intelligence information. Nevertheless, both Belarus and NATO member States have a heightened responsibility to “ensure respect” of IHL by the parties they support.<sup>18</sup>

The “republics” of Luhansk and Donetsk are under overall control of Russia.<sup>19</sup> The latter is therefore responsible for their conduct and IHL of international armed conflict (IAC) applies to their conduct. This would anyway also be the case if those “republics” were actually independent States, as Russia claims, and simply co-belligerents of Russia. This concept of overall control over entities, which leads to the applicability of IHL of IACs and in view of the Mission to state responsibility of Russia, has to be distinguished from the concept of effective control over territory (including through proxies attributable to Russia), which matters for the applicability of IHL of military occupation and jurisdiction relevant for human rights obligations, which will be discussed later in this report.

## **C. APPLICABLE LAW**

### **1. INSTRUMENTS APPLICABLE TO THE CONFLICT**

Both Russia and Ukraine are parties to of the four Geneva Conventions of 1949, of its 1977 Additional Protocol I, of 1907 Hague Convention IV with its annexed Regulations concerning the Laws and Customs of War on Land (Hague Regulations). The fact that Russia is not a party

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<sup>15</sup> ICRC, *Commentary to GC III relative to the Treatment of Prisoners of War*, 2020, Article 2 common, paras 243-245.

<sup>16</sup> GCs, Art. 2(1).

<sup>17</sup> ICRC, *Commentary to Geneva Convention III relative to the Treatment of Prisoners of War*, 2020, Article 2 common, para 278.

<sup>18</sup> ICRC, *Commentary to Geneva Convention III relative to the Treatment of Prisoners of War*, 2020, Article 1 common, paras 186-206.

<sup>19</sup> For the arguments supporting the use of the overall control test for the purpose of the classification of conflicts and its elements, see ICTY, *Prosecutor v. Dusko Tadić*, IT-94-1-A, Appeals Chamber, Judgment, 15 July 1999, paras 116-144; ICRC, *Commentary to Geneva Convention III relative to the Treatment of Prisoners of War*, 2020, Article 3 common, para 443.

to the 2005 Additional Protocol III to the Geneva Conventions has no humanitarian relevance in this conflict, as this Protocol only introduces an additional protective emblem. Concerning cultural heritage, both Russia and Ukraine are parties to the 1954 Hague Convention on Cultural Property and its 1954 Protocol I to the Hague Convention on Cultural Property (which in particular deals with cultural property in case of occupation and cultural property deposited in case of armed conflict with another State). The 1999 Protocol II to the Hague Conventions on Cultural Property (which foresees enhanced rules of protection in the conduct of hostilities and individual criminal responsibility for violations) does not apply, as only Ukraine is a party and it applies only between parties.

Concerning certain weapons, international law outlaws the use of certain weapons altogether (in which case the relevant treaties are situated on a sliding scale between IHL and disarmament law) or at least subjects their use to certain specific limitations that go beyond the general rules of IHL, most often in order to avoid incidental effects on civilians. Many of those rules correspond to customary law<sup>20</sup> but some do not. In the latter case, one must determine the treaties to which the State using the weapon is a party. The Protocols to the 1980 Convention on Certain Conventional Weapons (CCW) contain many of the rules on weapons. The CCW itself is a mere framework convention that does not foresee specific prohibitions or limitations but rather simply offers a legal framework for its Protocols that do so. The specific treaties<sup>21</sup> on weapons binding both parties to the IAC in Ukraine are:

1. Treaties regulating the use of certain weapons beyond the general rules of IHL:
  - a. CCW Protocol II on the Use of Mines, Booby-Traps and Other Devices, 1980, which limits the use of landmines and prohibits certain booby-traps.
  - b. CCW Protocol III on Incendiary Weapons, 1980
  - c. CCW Protocol V on Explosive Remnants of War, 2003
2. Treaties prohibiting the use of certain weapons:
  - a. CCW Protocol I on Non-Detectable Fragments, 1980
  - b. CCW Protocol IV on Blinding Laser Weapons, 1995
3. Treaties prohibiting the production, possession, transfer and use of certain weapons:
  - a. Convention on the Prohibition of Biological Weapons, 1972
  - b. Convention on the Prohibition of Chemical Weapons, 1993

The 1997 Ottawa Convention on Anti-Personnel Landmines binds only Ukraine, which has to comply with it even when fighting against Russia, which is not a party.

The 2008 Oslo Convention on Cluster Munitions and the 2017 Treaty on the Prohibition of Nuclear Weapons have been accepted by neither Russia nor Ukraine, but both must comply with the general treaty and customary rules applicable to the use of any weapon when using them (see below: rules on distinction, proportionality and precautions).<sup>22</sup>

International criminal law (ICL) not only contributes to the enforcement of IHL but also to its clarification and, arguably, to its development. The provisions of the Statute of the International Criminal Court (ICC) on war crimes may be considered as a treaty-based source of IHL – and confirming rules of customary IHL – because war crimes necessarily presuppose that criminalized conduct also constitutes a violation of IHL. Neither Russia nor Ukraine are parties to the ICC Statute. However, on 8 September 2015, Ukraine made a declaration under

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<sup>20</sup> See ICRC CIHL Database, ICRC, 'IHL Database: Customary IHL', Rules <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>, Rules 72-86.

<sup>21</sup> The full title and text of all those treaties can be found in the ICRC Treaties Database, 'Treaties, States Parties and Commentaries', <https://ihl-databases.icrc.org/ihl>

<sup>22</sup> See below, IV.F.2.

Art. 12(3) of the Statute, which allows the ICC to have jurisdiction over war crimes and crimes against humanity committed on its territory.<sup>23</sup> Furthermore, in the IAC between Russia and Ukraine, the provisions of the Geneva Conventions and Protocol I require the prosecution of certain IHL violations listed in those instruments as grave breaches,<sup>24</sup> including by third States based upon the principle of universal jurisdiction.<sup>25</sup>

Finally, the mentioned applicable treaty rules are supplemented by those of customary IHL of IACs. In a study, which was published in 2005<sup>26</sup> based upon a wide survey of practice and expert consultations and which is now constantly updated as a database,<sup>27</sup> the International Committee of the Red Cross (ICRC) identified 161 rules of customary IHL, 158 of which it considers to apply (also) in IACs.

## 2. LAW OF OCCUPATION

IHL of military occupation is codified in particular in Articles 47-78 of 1949 Geneva Convention IV and Articles 42-56 of the 1907 Hague Regulations. This law already applied before 24 February to Russian occupied Crimea and Sevastopol and to Ukrainian territory controlled by the “republics” of Luhansk and Donetsk, to the extent that Russia has overall control over those entities and they effectively controlled Ukrainian territory.<sup>28</sup> Such classification as occupied territory has become even less doubtful for territories controlled by those “republics” since 24 February, since Russian troops are present on the ground and contribute directly to the exercise of control.

The applicability of IHL of military occupation during the invasion phase, to parts of Ukrainian territory over which Russia gained control since 24 February is more controversial.<sup>29</sup> The Mission applies in this report a functional concept of occupation to the invasion phase under which certain rules of IHL of military occupation gradually start to apply to certain issues as soon Russia obtained control over those issues, while other rules do not yet apply.<sup>30</sup> A systemic interpretation that takes the object and purpose of Convention IV into account leads to the

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<sup>23</sup> See the *Declaration by Ukraine lodged under Article 12(3) of the ICC Statute*, 8 September 2015, at: [https://www.icc-cpi.int/iccdocs/other/Ukraine\\_Art\\_12-3\\_declaration\\_08092015.pdf](https://www.icc-cpi.int/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf)

<sup>24</sup> GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147; AP I, Art. 85.

<sup>25</sup> GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146; AP I, Art. 85(1).

<sup>26</sup> See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume I: Rules* (CUP 2005).

<sup>27</sup> See ICRC CIHL Database, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>

<sup>28</sup> ICTY, *Prosecutor v Blaškić*, Trial Chamber, Judgment, IT-95-14-T, 3 March 2000, para 149.

<sup>29</sup> The following authorities object to the applicability of IHL of military occupation to the invasion phase: ICJ, *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgement, 19 December 2005, paras 172-173 and 219; Eritrea-Ethiopia Claims Commission, *Partial Award Central Front, Eritrea's Claims 2, 4, 6, 7, 8 & 22 (Between the State of Eritrea and the Federal Democratic Republic of Ethiopia)*, April 28, 2004, para 57; US Department of Defence, *Law of War Manual*, June 2015 (updated December 2016), para 11.1.3.1; Yoram Dinstein, *The International Law of Belligerent Occupation* (CUP 2009), pp. 41-42; Maarten Zwanenburg, ‘Challenging the Pictet Theory’ (2012) 94 *IRRC* 30; Michael Bothe, ‘Effective control during invasion: A practical view on the application threshold of the law of occupation’ (2012) 94 *IRRC* 37, pp. 37-39; Vaios Koutroulis, *Le début et la fin de l'application du droit de l'occupation* (Pedone 2010), 47-69; Georg Schwarzenberger, ‘The Law of Belligerent Occupation: Basic Issues’, 30 *Nordic J of Intl L* (1960), 18-21. For a more nuanced but unclear view, see ICRC, *Commentary to Geneva Convention I relative to the Wounded and Sick in Armed Forces in the Field*, 2016, Article 2, para 300.

<sup>30</sup> Jean S. Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. IV, ICRC, 1952, p. 60; ICRC Expert Meeting, ‘Occupation and Other Forms of Administration of Foreign Territory’ (Report prepared and edited by Tristan Ferraro, ICRC 2012), pp. 24-26; ICRC, ‘International Humanitarian Law and the challenges of contemporary armed conflicts’, 2011, Doc No 31IC/11/5.1.2; Robert Kolb and Sylvain Vitte, *Le droit de l'occupation militaire : perspectives historiques et enjeux juridiques actuels* (Bruylant 2009), pp. 65-86; ICTY, *Prosecutor v Naletilić and Martinović*, Trial Chamber, Judgment, IT-98-34-T, 31 March 2003, paras 219-222; Marco Sassòli, ‘A Plea in Defence of Pictet and the Inhabitants of Territories Under Invasion: The Case for the Applicability of Convention IV During the Invasion Phase’, 94 *IRRC* (2012), 42-50.

conclusion that its rules on occupied territory must apply from the very moment the enemy assumes control over a person or an object in an invaded territory. To take an example, it seems absurd that the deportation of civilians would be allowed during the invasion phase but absolutely prohibited once the invasion turns into an occupation.<sup>31</sup> Indeed, inhabitants of an invaded territory are enemy nationals encountering a belligerent on their own territory, which is precisely the situation IHL rules on military occupation were made to address. Under a sliding scale of obligations that apply according to the degree of control, negative obligations to abstain apply as soon as the conduct they prohibit is materially possible (such as when the person benefitting from the prohibition falls into the hands of the invading forces), while positive obligations to provide and to guarantee would apply only at a later stage. This sliding scale is also more adapted to the fluid realities of modern warfare and the absence of frontlines than the traditional ‘all or nothing’ approach. This approach also avoids the difficulty of determining when the invasion phase turns into the occupation phase.<sup>32</sup>

In any event, even those denying that IHL of military occupation applies as suggested here to the invasion phase would recognize that Russia has in the meantime gained such a control over many towns and villages that it is an occupying power under the 1907 Hague Regulations and therefore fully bound to apply IHL of military occupation with respect to persons and objects found there.

#### **D. VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND WAR CRIMES**

Legally, violations of IHL are committed by States and other parties to armed conflicts. In reality, they are committed by human beings. States must suppress such violations. Some particularly serious violations of IHL, defined in IHL and ICL treaties and customary international law, directly engage the international criminal responsibility of their perpetrators committing them with the necessary knowledge and intent. This includes command responsibility.<sup>33</sup> Superiors can be responsible if they knew or had information which should have enabled them to conclude, in the circumstances and at the time, that the subordinate was committing or going to commit a breach; and the superior did not take all feasible measures within their power to prevent or repress the breach.<sup>34</sup> The Geneva Conventions and Additional Protocol I establish that certain violations of IHL are to be considered “grave breaches”,<sup>35</sup> and they must be prosecuted by High Contracting Parties, including on the basis of the principle of universal jurisdiction.<sup>36</sup> Individual criminal responsibility for other serious violations of IHL is established by customary international law and by international criminal law treaties. Such serious violations of IHL, together with grave breaches, constitute war crimes. A war crime can only be found if an individual perpetrator can be determined and only a court can find such a perpetrator guilty of a war crime. The Mission was unable to determine such individual perpetrators or persons fulfilling the necessary conditions for command responsibility. This report simply mentions which violations would constitute war crimes, if the responsible individuals can be found.

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<sup>31</sup> GC IV, Art. 49(1) only applies in occupied territory.

<sup>32</sup> Michael Bothe, ‘“Effective control”’: a situation triggering the application of the law of belligerent occupation’, background document for the ICRC project on occupation and other forms of administration of foreign territory, First meeting of experts in Occupation and Other Forms of Administration of Foreign Territory, Report prepared and edited by Tristan Ferraro, ICRC, Geneva, April 2012, pp. 39-40.

<sup>33</sup> Command responsibility is a part of customary law, see ICRC, CIHL Database, Rule 153. It is established in AP I, Arts 86 and 87, and confirmed in the jurisprudence, see e.g. ICTY, *Prosecutor v. Zejnir Delalic et al.*, trial Chamber, Judgment, IT-96-21-T, 16 November 1998, para 383.

<sup>34</sup> See ICRC, CIHL Database, Rule 153.

<sup>35</sup> GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147; AP I, Art. 85.

<sup>36</sup> GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146; AP I, Art. 85(1).

Certain acts violating IHL, including war crimes, such as murder, extermination, or deportation may also constitute crimes against humanity, if they are committed “*as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*”.<sup>37</sup>

## **E. TREATMENT OF PERSONS IN THE POWER OF THE ENEMY**

### **1. WOUNDED, SICK AND SHIPWRECKED AS WELL AS MEDICAL PERSONNEL**

The Mission has not received any information indicating that wounded and sick military and civilians are not being collected and cared for without any adverse distinction. The same applies to the treatment of medical personnel. However, the numerous attacks on hospitals and some reported attacks on ambulances, discussed below, also imply violations of the obligation to respect and protect wounded and sick persons and medical personnel recovered or working in those hospitals and ambulances.<sup>38</sup>

### **2. RESPECT OF THE DEAD**

The Mission has detected on social media many images of dead soldiers and civilians<sup>39</sup> that indicate their remains are not being treated decently and buried in a respectful manner, as they should have been under IHL.<sup>40</sup> The posting of pictures of dead soldiers online is not an acceptable manner to identify them and to inform the families concerned.<sup>41</sup> The parties must notify the dead they are able to identify to the State on which they depend, via the ICRC.<sup>42</sup> The reported use of facial recognition software by Ukraine<sup>43</sup> may permit the identification of some of the dead, but to preserve the dignity of the latter the results must not be made public or be exploited for propaganda purposes. A transmission to the family through social networks may be envisaged only without pictorial evidence and if all means foreseen by IHL to inform Russia and the family do not function. To enable it to keep a record in view of future enquiries, the Central Tracing Agency of the ICRC must in every case also be informed.<sup>44</sup> The Ukrainian authorities admitted in conversations with the Mission that this has not yet been done, even for bodies of Russian soldiers they succeeded to identify.

Ukraine indicates that it has approached the ICRC in view of returning the bodies of Russian soldiers to Russia and that Russia has refused to receive them.<sup>45</sup> The need for such an agreement is foreseen in IHL.<sup>46</sup> The ICRC President reports more recently that there is “an understanding” between the parties on the importance of exchanging the bodies of the dead, both military and civilian, and a “willingness for this to happen”, but mentions that the specific mechanisms and

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<sup>37</sup> ICC Statute, Art. 7.

<sup>38</sup> See below, IV.F.8.a.

<sup>39</sup> ‘Look for yours [relatives]’ (transl.), Telegram channel (administered anonymously), at: [https://t.me/rf200\\_noow](https://t.me/rf200_noow); ‘Ukraine: Respect the Rights of Prisoners of War’, *HRW*, 16 March 2022, Berlin, at: <https://www.hrw.org/news/2022/03/16/ukraine-respect-rights-prisoners-war>.

<sup>40</sup> GC I, Art. 17; AP I, Art. 34(1).

<sup>41</sup> GC I, Arts 16 and 17; GC II, Arts 19 and 20; AP I, Art. 33(2).

<sup>42</sup> GC I, Art. 16; GC II, Art. 19.

<sup>43</sup> Johana Bhuiyan and agencies, ‘Ukraine uses facial recognition software to identify Russian soldiers killed in combat’, *The Guardian*, 24 March 2022, at: <https://www.theguardian.com/technology/2022/mar/24/ukraine-facial-recognition-identify-russian-soldiers>.

<sup>44</sup> GC I, Art. 16.

<sup>45</sup> ‘Ukraine asks the International Red Cross to help remove the bodies of Russian soldiers’ (transl.), *RFI*, 26 February 2022, at: <https://www.rfi.fr/ru/украина/20220226-украина-просит-международный-красный-крест-помочь-вывезти-тела-российских-солдат>

<sup>46</sup> AP I, Art. 34(2)(c).

time of their repatriation still need to be discussed.<sup>47</sup> Even without such an agreement, IHL requires the parties to the conflict to take all possible measures to prevent the dead from being despoiled.<sup>48</sup> It has been reported that due to the refusal of Russia to receive the bodies of its soldiers as well as lack of sufficient amounts of refrigerating equipment to store dead bodies in the possession of Ukraine, the corpses have begun to decompose.<sup>49</sup> Ukrainian authorities informed the Mission that the more than 1,000 corpses of Russian soldiers Russia does not want to accept do create a serious public health and environmental problem.

In occupied territory, the mayor of the city of Oleshky indicated that Russian armed forces were preventing anyone from collecting the bodies of Ukrainian civilians and soldiers lying on a bridge over the Dnieper River (over 100 bodies).<sup>50</sup> According to IHL, the parties to a conflict must take all possible measures to search for, collect and evacuate the dead<sup>51</sup> including agreeing to set up search teams.<sup>52</sup> If confirmed and the circumstances permitted, by failing to collect and evacuate the dead and preventing local population from doing so, Russia violated IHL.

### 3. PRISONERS OF WAR (POWS)

Combatants falling into the power of the adverse party are POWs.<sup>53</sup> Some categories of persons whose combatant status is disputed will be dealt with under the question of who is a legitimate target in the conduct of hostilities hereafter.

The number of acknowledged prisoners of war held by both sides<sup>54</sup> seems to be relatively low compared to the number of casualties (according to several sources 5,000-10,000 Russian soldiers).<sup>55</sup> Those numbers raise the concern that either soldiers falling into the power of the enemy are not given quarter,<sup>56</sup> which would be a war crime,<sup>57</sup> or that they are secretly detained.<sup>58</sup> Ms. Tatiana Moskalkova, Commissioner for Human Rights in the Russian Federation mentioned on 21 March 2022 that 500 capture cards from Ukrainian POWs have been handed over to the ICRC.<sup>59</sup> Ukrainian Deputy Prime Minister Irina Vereshchuk spoke in a media interview on 19 March 2022 about 562 Russian POWs in Ukrainian hands and some

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<sup>47</sup> ‘The President of the ICRC said that the Russian Federation and Ukraine are ready to begin the exchange of bodies of the dead’ (transl.), *Interfax*, 24 March 2022, at: <https://www.interfax.ru/world/831189>

<sup>48</sup> ICRC CIHL Database, Rule 113.

<sup>49</sup> Viktoriya Yasnopolskaya, ‘They decompose and emit cadaveric poison: the abandoned bodies of dead Russian soldiers threaten an ecological catastrophe’, *Fakty*, 24 March 2022, at: <https://fakty.com.ua/ru/ukraine/20220324-rozkladayutsya-i-vydilyayut-trupnu-otrutu-kynuti-tila-vbytyh-rosijskyh-soldativ-zagrozhuyut-ekologichnoyu-katastrofoyu/>.

<sup>50</sup> Lilia Rzhetska, ‘Kherson, Ukraine: Life under Russian Occupation’, *DW*, 11 March 2022, at: <https://www.dw.com/en/kherson-ukraine-life-under-russian-occupation/a-61090151>.

<sup>51</sup> ICRC CIHL Database, Rule 112. See also GC I, Art. 1; GC II, Art. 18.

<sup>52</sup> AP I, Art. 33(4).

<sup>53</sup> GC III, Art. 4(1)-(6).

<sup>54</sup> Jan Kallberg, ‘A Troubling Silence on Prisoners of War’, *CEPA*, 22 March 2022, at: <https://cepa.org/a-troubling-silence-on-prisoners-of-war/>.

<sup>55</sup> Mason Bissada, ‘500 Or 10,000 Deaths? Russian Media Finally Seems To Report Dire Troop Casualty Numbers—And Then Deletes Them’, *Forbes*, 21 March 2022, at: <https://www.forbes.com/sites/masonbissada/2022/03/21/500-or-10000-deaths-russian-media-finally-seems-to-report-dire-troop-casualty-numbers-and-then-deletes-them/>; Yaroslav Trofimov (@yarotrof), Twitter, 21 March 2022, at: <https://twitter.com/yarotrof/status/1505972650786672648>; Patrick Reevell (@Reevellp), Twitter, 21 March 2022, at: [https://twitter.com/Reevellp/status/1505985597210566660?s=20&t=xDr\\_BKTywHoyQEi3Jwk86g](https://twitter.com/Reevellp/status/1505985597210566660?s=20&t=xDr_BKTywHoyQEi3Jwk86g).

<sup>56</sup> AP I, Art. 41(1)-(2).

<sup>57</sup> GC III, Art. 130; AP I, Art. 85(3)(e).

<sup>58</sup> GC III, Art. 69.

<sup>59</sup> ‘Russia hands over data of 500 Ukrainians in Russian captivity to ICRC’ (transl.), *Interfax*, 21 March 2022, at: <https://www.interfax.ru/world/830455>.



270 Ukrainian POWs in Russian hands.<sup>60</sup> She nevertheless mentioned that the number of Russian POWs could be as high as 2,000, as communicated by the President of Ukraine to the ICC Prosecutor, noting that the Joint Centre for Tracing and Release of Prisoners, established on 28 February 2022, only became operational on 18 March 2022.<sup>61</sup> The Mission was informed by the Human Rights Ombudsperson of the Ukrainian Parliament on 28 March 2022 about 279 POWs from Russia and 46 from the self-proclaimed “republics”. She indicated, however, that as many POWs must still be in the hands of military units (where they should be under IHL<sup>62</sup>). She visited some of them and personally called 19 families to reassure them about the fate of their relatives. She could not explain why all families and the power on which the POWs depend, Russia, could not be informed through the ICRC, as prescribed by IHL.<sup>63</sup> Furthermore, she mentioned that the POWs were (in separate sections) in pre-trial centres while under IHL they should be held in camps, not in penitentiaries.<sup>64</sup> Most recently, the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine explained to the Mission that only the Vice-Prime Minister was authorized to give numbers of Russian POWs in the power of Ukraine and of Ukrainian POWs in the power of Russia, for whom it admits Ukraine received information through the ICRC and capture cards. It reassured however the Mission that all POWs are being transferred from penitentiaries to camps guarded by the military. The final responsibility remains however that of the Ministry of Justice.

Both sides seemed to have at the beginning of the conflict difficulties in organizing the handling of POWs, but declared their willingness to comply with GC III<sup>65</sup>. For the time being there is not yet confirmation that the ICRC is allowed, as required by IHL<sup>66</sup>, to visit POWs but negotiations between the ICRC and both sides are underway. On 24 March 2022, the ICRC President has reported that both sides have some readiness for the ICRC to start visiting POWs. He clarified however that such visits have not yet started and that talks about specific time and mechanisms are ongoing.<sup>67</sup> By not allowing the ICRC for one month to visit POWs, both Russia and Ukraine violated IHL.<sup>68</sup>

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<sup>60</sup> ‘The number of Ukrainian POWs in the hands of Russia became known and why one cannot wait for POWs’ exchange right until the victory’ (transl.), *TCN*, 19 March 2022, at: <https://tsn.ua/ru/exclusive/stalo-izvestno-okolichestve-plennyh-ukraincev-u-rossiyan-i-pochemu-nelzya-zhdad-obmena-azh-do-pobedy-2013550.html>; UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), paras 46, 50.

<sup>61</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), paras 46, 50.

<sup>62</sup> GC III, Art. 39.

<sup>63</sup> GC III, Arts 70, 122 and 123.

<sup>64</sup> GC III, Art. 21.

<sup>65</sup> Denis Karlovskiy, ‘Presidential Adviser: violence towards Russian prisoners of war and civilians is unacceptable’, *Ukrainska Pravda*, 21 March 2022, at: <https://www.pravda.com.ua/rus/news/2022/03/21/7333375/>; ‘Ukraine: Respect the Rights of Prisoners of War’, *HRW*, 16 March 2022, Berlin, at: <https://www.hrw.org/news/2022/03/16/ukraine-respect-rights-prisoners-war>; Ministry of Defence of Russian Federation, Briefing by Russian Defence Ministry spokesperson, 24 February 2022, at: [https://z.mil.ru/spec\\_mil\\_oper/news/more.htm?id=12410638](https://z.mil.ru/spec_mil_oper/news/more.htm?id=12410638); Ministry of Defence of Russian Federation, Briefing by Russian Defence Ministry spokesperson, 27 February 2022, at: [https://eng.mil.ru/en/special\\_operation/news/more.htm?id=12410963](https://eng.mil.ru/en/special_operation/news/more.htm?id=12410963); Ministry of Defence of Russian Federation, Briefing by Russian Defence Ministry spokesperson, 27 February 2022, at: [https://eng.mil.ru/en/special\\_operation/news/more.htm?id=12411057](https://eng.mil.ru/en/special_operation/news/more.htm?id=12411057).

<sup>66</sup> GC III, Art. 126(1).

<sup>67</sup> ‘The President of the ICRC said that the Russian Federation and Ukraine are ready to begin the exchange of bodies of the dead’ (transl.), *Interfax*, 24 March 2022, at: <https://www.interfax.ru/world/831189>; Marianna Belenkaya, ‘Interview with ICRC President Peter Maurer’ (transl.), *Kommersant*, 28 March 2022, at: <https://www.kommersant.ru/doc/5280597>.

<sup>68</sup> GC III, Art. 126(4).

The ICRC President has also confirmed on the same occasion that both parties have started to provide the ICRC with the names of POWs they hold, that the ICRC is passing them on to the adverse party and that families and some relatives have already been informed.<sup>69</sup> Ukraine has indeed established a National Information Bureau, as prescribed by IHL,<sup>70</sup> and adopted national legislation it considered necessary to handle POWs in conformity with IHL. Most recently, the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine indicated to the Mission that information on captured Russian POWs, including capture cards they filled in, are transmitted by the military who detain them through the National Information Bureau to the ICRC.

On the Ukrainian side, there appeared to be a certain tendency in the beginning of the IAC to consider all POWs as (potential) criminals. Even on 3 April 2022, the Ukrainian General Prosecutor's Office informed the Mission that concerning POWs prosecutors "organize work on supervision of the detention conditions and compliance with international humanitarian law, developing standards for the investigation of war crimes committed with the participation of the prisoners of war."<sup>71</sup> Although in a few cases war crimes charges have been brought against Russian POWs, the General Prosecutor's Office has also charged Russian POWs with violating Ukraine's territorial integrity, killings, and illegal crossings of the Ukrainian border.<sup>72</sup> Under IHL, combatants have the right to participate directly in hostilities (combatant privilege)<sup>73</sup>, which means that they cannot be punished for their mere participation in hostilities, even if such participation constitutes a criminal offence under the enemy's domestic legislation. Moreover, even suspected war criminals benefit from the protection of GC III<sup>74</sup>, but POWs may and must be prosecuted by the detaining power for war crimes.<sup>75</sup> However, this cannot be based upon belonging to a unit or service (air force, artillery). In contradiction to the above, the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine assured the Mission that Russian POWs will only be prosecuted for war crimes and that the initial approach of prosecutors had been caused by a misunderstanding of IHL.

Genuine participants in a *levée en masse* on the Ukrainian side,<sup>76</sup> members of the Ukrainian international legion or other volunteers incorporated into the Ukrainian armed forces<sup>77</sup> are

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<sup>69</sup> 'The President of the ICRC said that the Russian Federation and Ukraine are ready to begin the exchange of bodies of the dead' (transl.), *Interfax*, 24 March 2022, at: <https://www.interfax.ru/world/831189>.

<sup>70</sup> GC III, Art. 122.

<sup>71</sup> Information by the Prosecutor General's Office, received on 3 April 2022, on file with the Mission.

<sup>72</sup> Defence Ministry of Ukraine, Intelligence Department, Announcement: War criminals - servicemen of the 566th separate military transport aviation regiment (military unit 41495) of the village of Sescha, Bryansk region, participating in the commission of war crimes against the people of Ukraine, 16 March 2022, at: <https://gur.gov.ua/content/voennosluzhashchye-566-otdelnoho-voennotransportnoho-avyatsyonnoho-polka.html>; Tatiana Samaruk, 'Intelligence services published the names of Russian pilots who bombed Ukraine' (transl.), RBK Ukraine, 16 March 2022, at: <https://www.rbc.ua/rus/news/razvedka-opublikovala-imena-rossiyskih-pilotov-1647435327.html>; UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 49.

<sup>73</sup> AP I, Art. 43(2).

<sup>74</sup> GC III, Art. 85; AP I, Art. 44(2).

<sup>75</sup> GC I-IV, Art. 49/50/129/146; AP I, Art. 86.

<sup>76</sup> James Marson and Drew Hinshaw, 'Ordinary Ukrainians Rally to Defend Homeland From Russia', *Wall Street Journal*, 26 February 2022, at: <https://www.wsj.com/articles/ordinary-ukrainians-rally-to-defend-homeland-from-russia-11645900464>.

<sup>77</sup> Official Website of the President of Ukraine, Appeal to foreign citizens to help Ukraine in fighting against Russia's aggression, 27 February 2022, at: <https://www.president.gov.ua/en/news/zvernennya-do-gromadyan-inozemnih-derzhav-yaki-pragnut-dopom-73213>; <https://www.theguardian.com/world/2022/feb/27/ukraine-appeals-for-foreign-volunteers-to-join-fight-against-russia>.

POWs if they fall into the power of Russia.<sup>78</sup> They are not mercenaries, as Russia claims,<sup>79</sup> as long as they are incorporated into the Ukrainian armed forces. The same is the case for Syrian and Libyan volunteers fighting in the armed forces of Russia,<sup>80</sup> as the term is largely defined by IHL.<sup>81</sup> Members of private military and security companies such as the “Wagner group”<sup>82</sup> only fall under the very restrictive definition of mercenaries if they are both not Russian nationals and are not part of the Russian armed forces.<sup>83</sup> If participating in the IAC against Ukraine, they may even be considered as members of an armed group under a command responsible to Russia and they are therefore POWs if they fall into the power of Ukraine.<sup>84</sup> Otherwise they would be protected civilians (who may as such be punished for any direct participation in hostilities).<sup>85</sup>

Members of the armed forces of the “republics” of Luhansk and Donetsk, may be considered as belonging to Russia, which has overall control over those republics.<sup>86</sup> They should therefore be POWs if they fall into the power of Ukraine.<sup>87</sup> Nevertheless, if they are Ukrainian nationals, the Ukrainian announcement<sup>88</sup> that they will be prosecuted for treason and for the mere fact of participating in hostilities does not necessarily violate IHL. In the reverse situation, many Ukrainian POWs seem to be interned by the “republics” of Donetsk and Luhansk, from where they call their relatives.<sup>89</sup> This may raise some concern because of the past record of how prisoners were treated there before 24 February 2022.<sup>90</sup> It also raises the question whether Ukrainian POWs may be held by those proxy entities. Although IHL requires that POW camps are under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power,<sup>91</sup> this cannot exclude internment by such entities.

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<sup>78</sup> GC III, Art. 4 (A) (1)-(3) and (6); AP I, Arts 43(1) and 44(1).

<sup>79</sup> Ministry of Defence of Russian Federation, Briefing by Russian Defence Ministry spokesperson, 3 March 2022, at: [https://eng.mil.ru/en/news\\_page/country/more.htm?id=12411468](https://eng.mil.ru/en/news_page/country/more.htm?id=12411468).

<sup>80</sup> Gordon Lubold, Nancy A. Youssef and Alan Cullison, ‘Russia Recruiting Syrians for Urban Combat in Ukraine, U.S. Officials Say’, *Wall Street Journal*, 6 March 2022, at: <https://www.wsj.com/articles/russia-recruiting-syrians-for-urban-combat-in-ukraine-u-s-officials-say-11646606234>.

<sup>81</sup> See Art. 43 AP I.

<sup>82</sup> Eric Schmitt, ‘More Russian Mercenaries Deploying to Ukraine to Take on Greater Role in War’, *New York Times*, 25 March 2022, at: <https://www.nytimes.com/2022/03/25/us/politics/russian-mercenaries-ukraine-wagner-group.html>.

<sup>83</sup> AP I, Art. 47.

<sup>84</sup> See AP I, Art. 43; GC III, Art. 4(A)(2).

<sup>85</sup> GC IV, Art. 4(1); AP I, Art. 43 (2) *a contrario*.

<sup>86</sup> GC III, Art. 4(A)(2); ICTY, *Prosecutor v. Dusko Tadić*, IT-94-1-A, Appeals Chamber, Judgment, 15 July 1999, paras 92, 122 and 137.

<sup>87</sup> ICRC, *Commentary to Geneva Convention III relative to the Treatment of Prisoners of War*, 2020, Article 4, para 1008.

<sup>88</sup> ‘SBU detains traitors who returned to Ukraine as part of Russian troops en masse’ (transl.), *Channel 24*, 8 March 2022, at: [https://24tv.ua/ru/sbu-massovo-zaderzhivaet-predatelej-vernuyshisja-ukrainu-sostave\\_n1896886](https://24tv.ua/ru/sbu-massovo-zaderzhivaet-predatelej-vernuyshisja-ukrainu-sostave_n1896886).

<sup>89</sup> Alexandr Sladkov, ‘Broken Spirit: Ukrainian soldiers surrender’ (transl.), *Vesti.ru*, 20 March 2022, at: <https://www.vesti.ru/article/2691937>; ‘“Donbass is Russia, we hand over weapons on our own initiative”: revelations of Ukrainian prisoners’ (transl.), *Ukraina.ru*, 27 February 2022, at: <https://ukraina.ru/youtube/20220227/1033390613.html>; ‘Captured soldiers of the Armed Forces of Ukraine in the LPR told how they laid down their arms’ (transl.), *Ren.tv*, 26 February 2022, at: <https://ren.tv/news/v-mire/944443-plennye-voennye-vsuv-lnr-rasskazali-kak-slozhili-oruzhie>; Daria Kuznetsova, ‘Ombudsman of the LPR: No one was interested in the fate of the captured Ukrainian militaries’ (transl.), *OTP*, 28 February 2022, at: <https://otr-online.ru/news/ombudsmen-lnr-sudboy-plennyh-ukrainskih-voennyh-nikto-ne-interesovalsya-193559.html>; Lydia Misnik, ‘The prisoners of war were taken to the Alley of Angels’: an interview with the head of the DPR Denis Pushilin’ (transl.), *Gazeta.ru*, 23 March 2022, at: <https://www.gazeta.ru/politics/2022/03/23/14659093.shtml>.

<sup>90</sup> UN, Office of the High Commissioner for Human Rights, ‘Arbitrary Detention, Torture and Ill-treatment in the Context of Armed Conflict in Eastern Ukraine (2014-2021)’, 2 July 2021, at: [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UkraineArbDetTorture\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UkraineArbDetTorture_EN.pdf); ‘Ukraine: Torture, Ill-Treatment by Armed Groups in East’, *HRW*, 5 July 2021, Kiev, at: <https://www.hrw.org/news/2021/07/05/ukraine-torture-ill-treatment-armed-groups-east>.

<sup>91</sup> GC III, Art. 39.

In the ICRC's view shared by the Mission, the reference to "regular armed forces" should be interpreted to cover groups that are under the overall control of a Party to a conflict.<sup>92</sup>

In the initial phase of the conflict, there were many declarations from Ukrainian authorities which, if implemented, would constitute violations of IHL and war crimes. On 2 March 2022, a declaration that no quarter will be given to Russian artillery soldiers appeared on the official page of the Command of the Special Operations Forces of the Armed Forces of Ukraine.<sup>93</sup> On 27 March 2022, a very disturbing video appeared on the Internet showing Ukrainian forces shooting at the legs of Russian POWs.<sup>94</sup> The Mission was unable to verify the authenticity of this video. The BBC has been analysing the video footage and, although it has not yet been able to independently verify the footage, its initial findings cannot rule out the authenticity of the video.<sup>95</sup> If it is authentic, this war crime<sup>96</sup> should be easy to prosecute by Ukraine, and Ukrainian authorities are reportedly investigating the incident.<sup>97</sup>

Ukraine created a service called "Ищи своих" (look for yours [relatives]) for search of captured or killed soldiers of the Russian army on Telegram,<sup>98</sup> to allow families of POWs to get news of their relatives. This is not how families and the power on which they depend should be informed of the fate of POWs<sup>99</sup> and it exposes them to public curiosity, which is contrary to IHL.<sup>100</sup> According to Human Rights Watch (HRW), "[o]n the mentioned platform, the ministry has posted hundreds of photos and videos of captured Russian soldiers, often with their passports and identification documents. Some of the soldiers are blindfolded, gagged, or masked."<sup>101</sup> This violation was aggravated by posts with screenshots of correspondence of captured Russian soldiers with their families and friends appearing on the Internet<sup>102</sup> and bringing POWs to press conferences to discuss their roles in the invasion.<sup>103</sup> Whether or not their statements were

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<sup>92</sup> ICRC, *Commentary to Geneva Convention III relative to the Treatment of Prisoners of War*, 2020, Article 39, para 2483.

<sup>93</sup> Violetta Orlova, 'Call your mom for the last time: Special Operation Forces promise to punish Russian artillerists for the deaths of civilians' (transl.), UNIAN, 2 March 2022, at: <https://www.unian.net/war/pozvonite-mame-v-posledniy-raz-ssobeshchayut-nakazat-artilleriyu-rf-za-smerti-mirnyh-lyudey-novosti-donbassa-11726446.html>.

<sup>94</sup> 'Ukrainian Soldiers shoot at POW (2.38)', Reddit.com, posted by Oboroten54 (anonymous Reddit user), 27 March 2022, at: [https://www.reddit.com/r/UkraineWarVideoReport/comments/tpa1ss/ukrainian\\_soldiers\\_shoot\\_at\\_pov\\_238/](https://www.reddit.com/r/UkraineWarVideoReport/comments/tpa1ss/ukrainian_soldiers_shoot_at_pov_238/)

<sup>95</sup> Reality Check & BBC Monitoring, 'Does video show Russian prisoners being shot?', *BBC.com*, 30 March 2022, at: <https://www.bbc.com/news/60907259>.

<sup>96</sup> GC III, Art. 130.

<sup>97</sup> Reality Check & BBC Monitoring, 'Does video show Russian prisoners being shot?', *BBC.com*, 30 March 2022, at: <https://www.bbc.com/news/60907259>.

<sup>98</sup> 'Look for yours [relatives]' (transl.), Website, at: <https://200rf.com/>; 'Look for yours [relatives]' (transl.), Telegram channel (administered anonymously), at: [https://t.me/rf200\\_noow](https://t.me/rf200_noow).

<sup>99</sup> GC III, Arts 69-71 and 122-123.

<sup>100</sup> GC III, Art. 13(2).

<sup>101</sup> 'Ukraine: Respect the Rights of Prisoners of War?', *HRW*, 16 March 2022, at: <https://www.hrw.org/news/2022/03/16/ukraine-respect-rights-prisoners-war>

<sup>102</sup> Oleg Kononenko, 'Do not feel sorry for them there': correspondence with relatives was found on the phone of a Russian soldier killed near Kiev - photo' (transl.), *nv.ua*, 1 March 2022, at: <https://nv.ua/ukraine/events/rodnye-ubitogo-pod-kievom-voennogo-rf-zhelali-chtoby-on-ne-zhalel-ukraincev-novosti-ukrainy-50221275.html>; Anna Paskevich, '\*\*\*\*\* [swear word meaning 'shooting at'] everyone': the SBU showed the correspondence of the deceased Russian military with his mother' (transl.), *Obozrevatel*, 28 February 2022, at: <https://news.obozrevatel.com/society/hachim-po-vsem-podryad-sbu-pokazala-perepisku-pogibshogo-voennogo-rf-s-materyu.htm>.

<sup>103</sup> 'Russia/Ukraine: Prisoners of war must be protected from public curiosity under Geneva Convention', *Amnesty International*, 7 March 2022, at: <https://www.amnesty.org/en/latest/news/2022/03/russia-ukraine-prisoners-of-war-must-be-protected-from-public-curiosity-under-geneva-convention/>; Isabelle Khurshudyan and Sammy Westfall, 'Ukraine puts captured Russians on stage. It's a powerful propaganda tool, but is it a violation of POW rights?', *Washington Post*, 9 March 2022, at: <https://www.washingtonpost.com/world/2022/03/09/ukraine-russia-prisoners-pows/>.

coerced, such practices violate IHL<sup>104</sup> and may endanger the soldiers and their families. Similarly, publicly available videos of Russian POWs being interrogated and made to apologize to the Ukrainian people, glorify the Ukrainian armed forces, denigrate their command or call on relatives to end the war<sup>105</sup> are in breach of IHL.<sup>106</sup> Under IHL, POWs are only required to give basic personal information and are protected from all forms of coercion during interrogation.<sup>107</sup> While POWs may be required to work,<sup>108</sup> announcements that they would be rebuilding the country<sup>109</sup> could mean that they will not be repatriated at the end of active hostilities, as IHL requires.<sup>110</sup> Fortunately, most recently, a senior adviser of the Ukrainian President and other high officials recalled publicly the importance to treat prisoners in conformity with IHL, independently of violations of IHL committed by Russia.<sup>111</sup>

On the Russian side, the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) has reported numerous video footage of Ukrainian POWs being insulted and intimidated upon their capture, which constitutes a violation of IHL.<sup>112</sup> Furthermore, it collected several videos showing interrogations of POWs immediately after their capture, carried out either by Russian armed forces or by members of armed groups affiliated with self-proclaimed “republics”. In these videos, Ukrainian POWs were forced to denigrate the Ukrainian armed forces, chant songs in praise of the Russian armed forces, call on the Ukrainian government to start peace talks with the Russian Federation, and ask Ukrainian soldiers to lay down their weapons. Some showed visible signs of bruises.<sup>113</sup>

Russia also frequently refers to plans to “exchange” prisoners.<sup>114</sup> Such terminology is dangerous because it could encourage Russia to take civilians as hostages in view of exchanging them against Russian POWs.<sup>115</sup> Official statements<sup>116</sup> guaranteed proper treatment of “Ukrainian servicemen” and their release on parole, which is an option under IHL if Ukrainian

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<sup>104</sup> GC III, Art. 13(2).

<sup>105</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February – 26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 48.

<sup>106</sup> GC III, Arts 13(2) and 17(1) and (4).

<sup>107</sup> GC III, Art. 17 (1) and (4).

<sup>108</sup> GC III, Art. 49(1).

<sup>109</sup> Katerina Tischenko, ‘Captured occupiers will work for the economy of Ukraine - Ministry of Internal Affairs’, *Ukrainska Pravda*, 8 March 2022, at: <https://www.pravda.com.ua/rus/news/2022/03/8/7329543/>.

<sup>110</sup> GC III, Art. 118(1).

<sup>111</sup> Denis Karlovskiy, ‘Presidential Adviser: violence towards Russian prisoners of war and civilians is unacceptable’, *Ukrainska Pravda*, 21 March 2022, at: <https://www.pravda.com.ua/rus/news/2022/03/21/7333375/>; ‘Ukraine: Respect the Rights of Prisoners of War’, *HRW*, 16 March 2022, at: <https://www.hrw.org/news/2022/03/16/ukraine-respect-rights-prisoners-war>.

<sup>112</sup> GC III, Art. 13 (2).

<sup>113</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 51.

<sup>114</sup> ‘Moskalkova confirmed a new exchange of prisoners between Russia and Ukraine’ (transl.), *Izvestiya*, 24 March 2022, at: <https://rutube.ru/video/87cb95c667165dd194ef6a9c768516ac/>; Tatiana Zykina, ‘Moskalkova announced the exchange of nine prisoners for the mayor of Melitopol’ (transl.), *RBC.ru*, 21 March 2022, at: <https://www.rbc.ru/politics/21/03/2022/6238d5c59a79478c1341d282>.

<sup>115</sup> AP I, Art. 75(2)(c).

<sup>116</sup> Ministry of Defence of Russian Federation, Briefing by Russian Defence Ministry spokesperson, 24 February 2022, at: [https://z.mil.ru/spec\\_mil\\_oper/news/more.htm?id=12410638](https://z.mil.ru/spec_mil_oper/news/more.htm?id=12410638); Ministry of Defence of Russian Federation, Briefing by Russian Defence Ministry spokesperson, 27 February 2022, at: [https://eng.mil.ru/en/special\\_operation/news/more.htm?id=12410963](https://eng.mil.ru/en/special_operation/news/more.htm?id=12410963); Ministry of Defence of Russian Federation, Briefing by Russian Defence Ministry spokesperson, 27 February 2022, at: [https://eng.mil.ru/en/special\\_operation/news/more.htm?id=12411057](https://eng.mil.ru/en/special_operation/news/more.htm?id=12411057); Ministry of Defence of Russian Federation, Speech of Head of the National Centre for Defence Control of the Russian Federation Colonel General Mikhail Mizintsev, 25 March 2022, at: [https://eng.mil.ru/en/special\\_operation/news/more.htm?id=12414738](https://eng.mil.ru/en/special_operation/news/more.htm?id=12414738).

legislation allows Ukrainian soldiers to accept it,<sup>117</sup> but they seemed to make an exception for “nationalists”.

#### 4. CIVILIANS

Inherently, nearly all Russian violations of IHL rules on the treatment of Ukrainian and foreign civilians occurred in places controlled by Russia and therefore, according to the functional concept of occupation, such violations occurred in Russian-occupied territory. They are therefore dealt with below in the section dedicated to IHL of military occupation. Nevertheless, some violations concerned civilians who did not fall into the hands of Russia or only fell into its hands because of the violation. They will be dealt with in the present section. The Mission is particularly concerned by the fate of particularly vulnerable categories of civilians, such as women, children, displaced persons and persons with disabilities. However, to avoid duplications, findings on those vulnerable persons appear in the human rights part of this report,<sup>118</sup> although those persons also benefit from specific protection under IHL and their reported treatment also constitutes a violation of IHL, sometimes amounting to war crimes. Finally, any alleged violations by Ukrainian forces on Ukrainian territory they control are dealt with in the present section.

##### a. HUMANITARIAN ASSISTANCE

When the civilian population’s basic needs cannot be satisfied either by the population itself or by the party controlling that population, impartial humanitarian organizations or third States may provide humanitarian assistance with the consent of the party controlling the territory where the assistance is to be distributed or through which it has to pass.<sup>119</sup> While an occupying power is obliged to grant such consent,<sup>120</sup> in all other situations consent, at a minimum, may not be arbitrarily withheld under IHL. Denial of consent is arbitrary if it, in particular, violates any of the refusing State’s obligations under IHL or IHRL. If the purpose of such denial of consent or of effectively hindering the provision of humanitarian assistance is to starve the civilian population, this constitutes a war crime.<sup>121</sup> In Ukraine, humanitarian corridors have often been suggested to facilitate the provision of such assistance.<sup>122</sup> Both Russia<sup>123</sup> and Ukraine<sup>124</sup> have sometimes agreed to such corridors and sometimes refused their creation. Sometimes the agreement between the parties was not specific enough to allow the efficient and secure provision of such assistance. In many cases, even when an agreement existed, humanitarian convoys have been either attacked or obliged by acts of violence within the

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<sup>117</sup> GC III, Art. 21(2).

<sup>118</sup> See below, V.D.

<sup>119</sup> AP I, Art. 70.

<sup>120</sup> GC IV, Art. 59; AP I, Art. 69.

<sup>121</sup> ICC Statute, Art. 8(2)(b)(xxv).

<sup>122</sup> ‘Ukraine: Humanitarian corridors for civilians fleeing Russian attacks must provide safety – new testimonies’, *Amnesty International*, 10 March 2022, at: <https://www.amnesty.org/en/latest/news/2022/03/ukraine-humanitarian-corridors-for-civilians-fleeing-russian-attacks-must-provide-safety-new-testimonies/>.

<sup>123</sup> Brenna Smith and Masha Froliak, ‘Russian Soldiers Took Their City, Then Their Homes’, *New York Times*, 20 March 2022, at: <https://www.nytimes.com/2022/03/20/world/europe/russian-soldiers-video-kyiv-invasion.html>; ‘Russia declares partial ceasefire to allow humanitarian corridors in Ukraine’, *Reuters*, 5 March 2022, at: <https://www.reuters.com/world/europe/russia-allow-humanitarian-corridors-ukraine-defence-ministry-says-2022-03-05/>; ‘Russia agrees to humanitarian corridors to evacuate civilians from hotspots, Ukrainian Deputy PM says’, *ABC News AU*, 26 March 2022, at: <https://www.abc.net.au/news/2022-03-26/russia-agrees-to-humanitarian-corridors-ukraine-says/100942362>.

<sup>124</sup> Jon Henley, Peter Beaumont, Julian Borger, ‘Humanitarian corridors’ leading to Russia or Belarus rejected by Kyiv’, *The Guardian*, 7 March 2022, at: <https://www.theguardian.com/world/2022/mar/07/russia-humanitarian-corridors-ukraine-war-mariupol-kyiv>; Ministry of Defence of Russian Federation, Meeting of the Joint Coordination Headquarters for Humanitarian Response in Ukraine, 7 March 2022, at: [https://eng.mil.ru/en/special\\_operation/news/more.htm?id=12412041](https://eng.mil.ru/en/special_operation/news/more.htm?id=12412041).

corridor to withdraw for security reasons.<sup>125</sup> Russia claims that such attacks came often from Ukrainian or unknown uncontrolled forces.<sup>126</sup>

The Mission considers it unlikely that Ukraine hinders the provision of humanitarian assistance to its own population and is not aware of forces not controlled by the parties acting in the midst of the fighting.

#### **b. TREATMENT OF UKRAINIANS BELIEVED TO SYMPATHIZE WITH RUSSIA.**

The Mission has noted a large number of reports and video footage,<sup>127</sup> also mentioned in the report of the HRMMU, concerning civilians believed to be thieves, bootleggers, pro-Russian supporters or curfew violators having been beaten in territory controlled by the Government of Ukraine. The HRMMU mentions more than 45 such cases of credible allegations of ill-treatment by police officers, volunteer defence force members and others.<sup>128</sup> IHL prescribes that all persons should be treated humanely and prohibits any violence and outrage upon personal dignity.<sup>129</sup> The HRMMU reported the arrest by the Ukrainian authorities of approximately 300 individuals suspected of aiding Russia. In three cases, the family of those arrested by the Ukraine's State Security Service (SBU) alleged that they were not informed of the official arrest, the place of detention and the fate of their relatives.<sup>130</sup>

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<sup>125</sup> 'Ukraine: Humanitarian corridors for civilians fleeing Russian attacks must provide safety – new testimonies', *Amnesty International*, 10 March 2022, at: <https://www.amnesty.org/en/latest/news/2022/03/ukraine-humanitarian-corridors-for-civilians-fleeing-russian-attacks-must-provide-safety-new-testimonies/>; 'Ukraine: Humanitarian Catastrophe in Iuzivka', *Amnesty International*, 22 March 2022, at: <https://www.amnesty.org/en/wp-content/uploads/2022/03/EUR5053822022ENGLISH.pdf>; 'Ukrainian evacuation train was hit by debris during a Russian shelling', *EMPR media*, 13 March 2022, at: <https://empr.media/news/conflict-zone/ukrainian-evacuation-train-was-hit-by-debris-during-a-russian-shelling/>; 'Russian forces attack refugee evacuation train in Ukraine', *The Daily Observer*, 13 March 2022, at: <https://www.observerbd.com/news.php?id=357131>; 'Ukraine says seven killed, including a child, after Russia fired at evacuation convoy', *Swissinfo.ch*, 12 March 2022, at: <https://www.swissinfo.ch/eng/ukraine-says-seven-killed--including-a-child--after-russia-fired-at-evacuation-convoy/47426972>.

<sup>126</sup> 'The Ministry of Defence accused the Ukrainian military of shelling a convoy with refugees' (transl.), *Lenta.ru*, 16 March 2022, at: <https://lenta.ru/news/2022/03/16/okolonna/>; Ministry of Defence of Russian Federation, Meeting of the Joint Coordination Headquarters for Humanitarian Response in Ukraine, 7 March 2022, at: [https://eng.mil.ru/en/special\\_operation/news/more.htm?id=12412041](https://eng.mil.ru/en/special_operation/news/more.htm?id=12412041); Ministry of Defence of Russian Federation, Meeting of the Joint Coordination Headquarters for Humanitarian Response in Ukraine, 9 March 2022, at: [https://eng.mil.ru/en/special\\_operation/news/more.htm?id=12412325](https://eng.mil.ru/en/special_operation/news/more.htm?id=12412325); Russian Ministry of Foreign Affairs, Briefing by Foreign Ministry Spokeswoman Maria Zakharova, Moscow, March 9, 2022, at: [https://mid.ru/ru/foreign\\_policy/news/1803456/?lang=en](https://mid.ru/ru/foreign_policy/news/1803456/?lang=en).

<sup>127</sup> 'Lutsk, Telegram channel (administered anonymously), at: <https://t.me/lutsk/5509>; 'A looter was detained in Lutsk. VIDEO' (transl.), *Volyn24*, 4 March 2022, at: <https://www.volyn24.com/news/184775-u-lucku-zatrymaly-marodera-video/>; 'They lowered their underpants and fastened them to a pole: looters were punished in Irpen' (transl.), *TSN*, 12 March 2022, at: <https://tsn.ua/ato/spustili-trusi-i-primotali-do-stovpa-v-irpeni-pokaralimaroderiv-2007481.html>; 'A man was tied to a pole in the Valley - they say he was a marauder (PHOTOS)' (transl.), *Galka.if.ua*, 4 March 2022, at: <https://galka.if.ua/u-dolyni-do-stovpa-pryvyazaly-cholovika-kazhut-buv-maroderom-foto/>; Multiple YouTube videos, at: [https://www.youtube.com/watch?v=qO7X\\_kzgzzI](https://www.youtube.com/watch?v=qO7X_kzgzzI) (10 March 2022); <https://www.youtube.com/watch?v=3njCd36RD4g> (1 March 2022); <https://www.youtube.com/watch?v=uCOlzQtQCgM> (27 February 2022).

<sup>128</sup> UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 41.

<sup>129</sup> AP I, Art. 75(1)–(2)(a)–(b).

<sup>130</sup> UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 40.

### c. TREATMENT OF DETAINEES

Under IHL protected civilians may only be deprived of their liberty in view of a trial or for imperative security reasons.<sup>131</sup> In both cases a regular procedure is prescribed.<sup>132</sup> In any event, persons arrested and detained must be treated humanely. The Mission received several credible reports according to which Russian forces arrested civilians, including journalists, without any procedure, and ill-treated them by methods that amount to torture.<sup>133</sup> This constitutes a war crime.<sup>134</sup> One such case that is particularly well documented and verified by Reporters Without Borders (RSF) concerns a Ukrainian interpreter and fixer of a Radio France taken by Russian troops on 5 March in central Ukraine and held in captivity for nine days. Left in an icy cellar, he was repeatedly beaten with an iron bar and rifle butts, tortured with electricity, deprived of food for 48 hours and subjected to a mock execution.<sup>135</sup>

## 5. IHL OF MILITARY OCCUPATION

Crimea and Sevastopol as well as parts of the Donetsk and Luhansk regions, which are controlled by the self-proclaimed “republics” of Donetsk and Luhansk, were occupied territories already before 24 February 2022: Crimea, directly by Russia, and the two other territories – mainly through the authorities of the “republics”, over which Russia has overall control. The Mission has no information indicating that the ongoing violations of IHL of military occupation in those areas have changed since 24 February 2022, except that any contact with the rest of Ukraine has become even more difficult and the forced recruitments increased as mentioned below.<sup>136</sup> This section of the report therefore concentrates on areas that came under Russian control after 24 February 2022.

### a. ADMINISTRATION OF THE OCCUPIED TERRITORY

As far as the administration of the newly occupied territories, public property situated therein and applicable legislation are concerned, Russia distinguishes between those areas belonging to the Ukrainian Luhansk and Donetsk regions and other newly occupied territories.

Those areas situated in the Ukrainian Luhansk and Donetsk regions are subject, immediately after Russia obtains control over them, to the administration, “laws” and institutions of the respective “republics”. This is prohibited by Art. 47 of GC IV. Moreover, Art. 43 of the Hague Regulations is violated by the complete introduction of a new legislation by the occupying power (or its proxies) and the introduction of criminal legislation and criminal courts of the “republics” violates Art. 64 of GC IV. Such changes cannot deprive the local populations of the benefits of IHL of military occupation, although in practice they do so, which constitutes a violation of every IHL provision concerned.

In other newly occupied areas, Russia has established “Komendaturas” (a kind of civil administration by the occupying forces), which adopt and enforce only rules it considers

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<sup>131</sup> GC IV, Article 42(1) (in Party’s own territory); GC IV, Article 78(1) (in occupied territory).

<sup>132</sup> GC IV, Art. 78(2).

<sup>133</sup> UN, Office of the High Commissioner for Human Rights, ‘Ukraine: grave concern’, *Press Briefing Note*, 12 March 2022, at: <https://www.ohchr.org/en/press-briefing-notes/2022/03/ukraine-grave-concerns>; ‘Seven days with a bag on her head – an activist from Melitopol Olga Gaysumova spoke about her time in captivity’ (transl.), *RIA.ua*, 21 March 2022, at: [https://ria-m.tv/news/280976/sem\\_dney\\_s\\_meshkom\\_na\\_golove\\_aktivistka\\_iz\\_melitopolya\\_olga\\_gaysumova\\_rasskazala\\_o\\_svoem\\_prebyivanii\\_v\\_plenu.html](https://ria-m.tv/news/280976/sem_dney_s_meshkom_na_golove_aktivistka_iz_melitopolya_olga_gaysumova_rasskazala_o_svoem_prebyivanii_v_plenu.html); ‘Photojournalist Max Levin has disappeared near Kyiv’ (transl.), *ZMINA*, 22 March 2022, at: <https://zmina.info/news/pid-kyevom-znyk-fotozhurnalist-maks-levin/>.

<sup>134</sup> ICC Statute. Art. 8(1)(a)(ii)-(iii), (vi) and (viii).

<sup>135</sup> ‘Chilling account of Radio France fixer who was kidnapped and tortured by Russian soldiers in Ukraine’, *RSF*, 21 March 2022, at: <https://rsf.org/en/news/chilling-account-radio-france-fixer-who-was-kidnapped-and-tortured-russian-soldiers-ukraine>.

<sup>136</sup> See below, IV.E.5.g



necessary to protect the security of its forces (curfews; circulation, transfer and use of all types of arms; prohibition of public rallies; and prohibition of collection of information on troops and the military administration) or to maintain law and order,<sup>137</sup> which it may do under IHL.<sup>138</sup> As required by IHL,<sup>139</sup> public life remains governed by Ukrainian legislation and the existing Ukrainian local and in particular municipal authorities continue sometimes to function, with little interaction between Russian forces and those local authorities.<sup>140</sup> However, it is alleged that in some places, Russia is trying to replace the Ukrainian currency with Russian roubles as a means of payment.<sup>141</sup>

Under IHL, the occupying forces may and must maintain law and order in the occupied territory.<sup>142</sup> They must, however, do so while respecting IHL rules applicable to law enforcement. It is doubtful whether this was done when residents of the occupied town of Skadovsk held on 16 March 2022 a peaceful rally, demanding the liberation of the city leadership captured by the Russian military. Indeed, Russian armed forces opened fire on participants of the rally.<sup>143</sup> Similar allegations exist concerning the repression of protests in Kherson, where Russian forces allegedly threw stun grenades and shot at people attending a pro-Ukrainian rally.<sup>144</sup>

The Mission notes reports of the replacement of local authorities in the newly occupied territories. In Melitopol, after the abduction of the elected mayor on 11 March 2022, Ivan Fedorov, a new pro-Russian mayor was installed in the city.<sup>145</sup> Local authorities in other recently occupied Ukrainian cities were also reportedly removed in order to establish local administrations more favourable to Russian interests.<sup>146</sup> While the law of occupation prescribes

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<sup>137</sup> Lilia Rzhetska, 'What do the residents of the Kherson region occupied by Russian troops say?', *DW*, 9 March 2022, at: <https://www.dw.com/ru/chto-rasskazyvajut-zhiteli-hersonskoj-oblasti-zanjatoj-rossijskimi-vojskami/a-61073198>; Ludmila Vasilyeva, 18 March 2022, Facebook, at: [https://www.facebook.com/permalink.php?story\\_fbid=5067611169962766&id=100001417987122](https://www.facebook.com/permalink.php?story_fbid=5067611169962766&id=100001417987122).

<sup>138</sup> HR, Art. 43.

<sup>139</sup> HR, Art. 43.

<sup>140</sup> Lilia Rzhetska, 'What do the residents of the Kherson region occupied by Russian troops say?', *DW*, 9 March 2022, at: <https://www.dw.com/ru/chto-rasskazyvajut-zhiteli-hersonskoj-oblasti-zanjatoj-rossijskimi-vojskami/a-61073198>.

<sup>141</sup> Ukraine General Prosecutor's Office The circulation of the ruble instead of the hryvnia in the occupied territories - an investigation has been launched (transl.), at: <https://gp.gov.ua/ua/posts/obig-rublya-zamist-grivnina-okupovanix-teritoriyax-rozpocato-rozsliduvannya>.

<sup>142</sup> HR, Art. 43.

<sup>143</sup> Valentina Romanenko, 'Residents of Skadovsk went to a rally against the occupiers: the Russian military opened fire' (transl.), *Ukrainska Pravda*, 16 March 2022, at: <https://www.pravda.com.ua/news/2022/03/16/7331879/>; Dmytro Kuleba (@DmytroKuleba), Twitter, 16 March 2022, at: <https://twitter.com/DmytroKuleba/status/1504049697601867779>.

<sup>144</sup> See also below, V.B.5. UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 53; Franak Viačorka (@franakviacorka), Twitter, 21 March 2022, at: <https://twitter.com/franakviacorka/status/1505879575636684803>; Viktoria Girko, 'In Kherson, people rallied for Ukraine, the invaders disperse them with smoke bombs' (transl.), *Fakty*, 27 March 2022, at: <https://fakty.com.ua/ua/ukraine/20220327-u-hersoni-lyudy-vyjshly-na-mityng-za-ukrayinu-zagarbnyky-rozganyayut-yih-dymovymy-shashkamy/>; Youtube, Fakty ICTV, 27 March 2022, at: <https://www.youtube.com/watch?v=T65OgYGLhVY&feature=youtu.be>.

<sup>145</sup> 'New mayor installed in Russia-controlled Melitopol after kidnapping. Here's what we know', *CNN*, 12 March 2022, at: [https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-13-22/h\\_4c5f1055aacea067dd1ea3778b6e9c26](https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-13-22/h_4c5f1055aacea067dd1ea3778b6e9c26); Eliza Mackintosh and Yuliia Presniakova, 'They tried to reveal what life was like under Russian occupation. Then they disappeared', *CNN*, 29 March 2022, at: <https://edition.cnn.com/2022/03/29/europe/ukraine-war-russia-occupation-disappearances-detention-cmd-intl/index.html>.

<sup>146</sup> 'The occupiers in Enerгодар put another deputy from the Opposition Platform for Life in place of the mayor' (transl.), *ZMINA*, 27 March 2022, at:

that the status of public officials cannot be altered and they must be able to continue carrying out their duties as in the past,<sup>147</sup> it does not prevent the occupying power from removing them from their posts.<sup>148</sup> Such dismissal should, however, only be exercised on an individual basis, because the occupying power must fulfil its obligation to maintain civil life and public order while respecting, unless absolutely prevented, the laws in force in the country – and therefore its existing institutions.<sup>149</sup>

Concerning Kherson, the Mission notices that while Russia claimed that public services were operating as usual, that the city was not experiencing shortage of food and essential goods and that Russian armed forces were co-ordinating with local authorities to ensure public order and civil life,<sup>150</sup> the local mayor affirmed that the local administration was struggling to collect dead bodies and to restore electricity, gas, water and heating.<sup>151</sup> In Skadovsk, the local mayor specified that the electricity, gas, water and public services were working but they had to organize themselves to prevent looting and that people were not receiving their pensions.<sup>152</sup> Ensuring public order and civil life is an obligation of means for the occupying power. Accordingly, harm to public order and civilian life constitutes a violation of IHL if Russia did not make every effort of which it was objectively capable. The Mission is not in possession of information confirming or denying that Russia has failed to comply with its obligation to maintain public order and civil life.

#### **b. ENFORCED DISAPPEARANCES**

Some of the mayors Russia removed, as well as local pro-Ukrainian “activists”, journalists and “volunteers” have been “abducted”, *i.e.* arrested and made to forcibly disappear,<sup>153</sup> without respecting any of the procedures IHL prescribes in case of deprivation of liberty<sup>154</sup> and in most

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<https://zmina.info/news/okupanty-u-energodari-posadyly-na-misce-mera-cherhovogo-deputata-vid-opzzh/>; Ukraine General Prosecutor’s Office, Announcement: Participation in the organization of the occupying power in the city of Berdyansk - proceedings have been initiated, 21 March 2022, at: <https://gp.gov.ua/ua/posts/ucast-v-organizaciyi-okupacii-noyi-vladi-u-misti-berdyansk-rozpocato-provadžennya>; Igor Burdiga, ‘Journalist Oleg Baturin: The feeling is that the occupiers are here for a short time’ (transl.), *DW*, 27 March 2022, at: <https://www.dw.com/uk/zhurnalist-oleh-baturin-vidchuttia-take-shcho-okupanty-tut-nenadovho/a-61273457>; ‘20-30 “arrests” a day: how people live in recently occupied cities in the Luhansk region?’, *Gromadske Radio*, 22 March 2022, at: <https://hromadske.radio/en/news/2022/03/22/20-30-arrests-a-day-how-people-live-in-recently-occupied-cities-in-the-luhansk-region>.

<sup>147</sup> GC IV, Art. 54 (1).

<sup>148</sup> GC IV, Art. 54 (2).

<sup>149</sup> HR, Art. 43.

<sup>150</sup> ‘Russia claims control of southern Ukrainian city of Kherson’, *AlJazeera*, 2 March 2022, at: <https://www.aljazeera.com/news/2022/3/2/russian-military-says-has-control-of-kherson-in-southern-ukraine>.

<sup>151</sup> ‘Russia claims control of southern Ukrainian city of Kherson’, *AlJazeera*, 2 March 2022, at: <https://www.aljazeera.com/news/2022/3/2/russian-military-says-has-control-of-kherson-in-southern-ukraine>.

<sup>152</sup> Lilia Rzhetska, ‘Kherson, Ukraine: Life under Russian occupation’, *DW*, 11 March 2022, at: <https://www.dw.com/en/kherson-ukraine-life-under-russian-occupation/a-61090151>.

<sup>153</sup> Felix Light, ‘Kidnapped Ukrainian mayor Ivan Fedorov rescued in ‘special operation’, *The Times*, 17 March 2022, at: <https://www.thetimes.co.uk/article/kidnapped-ukrainian-mayor-ivan-fedorov-rescued-in-special-operation-fm60qt2x9>; Eliza Mackintosh and Yuliia Presniakova, ‘They tried to reveal what life was like under Russian occupation. Then they disappeared’, *CNN*, 29 March 2022, at: <https://edition.cnn.com/2022/03/29/europe/ukraine-war-russia-occupation-disappearances-detention-cmd-intl/index.html>; Sergey Novikov, ‘The occupiers kidnapped the mayor of Skadovsk and his deputy’ (transl.), RBK Ukraine, 16 March 2022, at: <https://www.rbc.ua/rus/news/okkupanty-pohitili-mera-skadovska-zama-1647425131.html>; Dmytro Kuleba (@DmytroKuleba), Twitter, 16 March 2022, at: <https://twitter.com/DmytroKuleba/status/1504049697601867779>; “Kidnapped”: ZMINA launches a campaign about missing Ukrainians” (transl.), *ZMINA*, 28 March 2022, at: <https://zmina.ua/event/vykradeni-zmina-zapuskaye-kampaniyu-pro-znyklyh-vid-ruk-rosiyi-ukrayincziv/>.

<sup>154</sup> ‘Newly appointed official - deputy of Melitopol city council Galina Danilchenko’ (transl.), Naniny Live, 12 March 2022, at: <https://novyny.live/ru/safety/v-melitopole-okkupanty-naznachili-vmesto-pokhishchennogo-mera-svoiu-upolnomochennuiu-42607.html>.

cases without informing their family.<sup>155</sup> Some of those persons were later released<sup>156</sup> or exchanged against Russian POWs held by Ukraine,<sup>157</sup> after having allegedly been ill-treated and/or intimidated.<sup>158</sup> Other inhabitants have often been arrested for some suspicions (often for information found on their phones).<sup>159</sup> They are brought to the local “Komendatura” and released within 1-2 days. There is no information that the procedures IHL prescribes in case of deprivation of liberty are respected. Whether the Ukrainian local police is allowed to continue to function to ensure ordinary law enforcement activities, if its members are ready to continue to work under Russian occupation, is unclear.

The HRMMU has documented 24 cases of arbitrary detention and enforced disappearance of local officials in regions under the control of Russian forces, 13 of whom have been subsequently released.<sup>160</sup> It has also documented the arbitrary detention and enforced disappearance of 21 journalists and civil society activists who vocally opposed the invasion in Kyiv, Kherson, Luhansk, and Zaporizhzhia regions.<sup>161</sup> It is currently trying to verify the reports that five of the journalists and three of the activists were subsequently released. The whereabouts of the other individuals is unknown.<sup>162</sup> This is consistent with 29 well-documented cases NGOs reported to the Mission.<sup>163</sup>

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<sup>155</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 39; Eliza Mackintosh and Yuliia Presniakova, ‘They tried to reveal what life was like under Russian occupation. Then they disappeared’, *CNN*, 29 March 2022, at: <https://edition.cnn.com/2022/03/29/europe/ukraine-war-russia-occupation-disappearances-detention-cmd-intl/index.html>; Denis Karlovsky, ‘Russian occupiers kidnap and torture Nova Kakhovka City Council secretary’, *Ukrainska Pravda*, 18 March 2022, at: <https://www.pravda.com.ua/eng/news/2022/03/18/7332570/>; Ukraine General Prosecutor’s Office, Announcement: The abduction of the Hromadske journalist by the Russian occupiers - criminal proceedings have been instituted, 19 March 2022, at: <https://gp.gov.ua/ua/posts/vikradennya-rosiiskimi-okupantami-zurnalistki-hromadske-rozpocato-kriminalne-provadzennya>; ‘Photojournalist Max Levin has disappeared near Kyiv’ (transl.), *ZMINA*, 22 March 2022, at: <https://zmina.info/news/pid-kyevom-nyk-fotozhurnalist-maks-levin/>.

<sup>156</sup> Aleksandr Moroz, ‘The abducted mayor of Skadovsk has already been released’, *RBK Ukraine*, 16 March 2022, at: <https://www.rbc.ua/rus/news/pohishchennogo-segodnya-mera-skadovska-otпусти-1647433846.html>; ‘Chairman of the Okhtyrka district council (Sumy region) Serhiy Kirichko was released after a week of Russian captivity’, *Ukrinform*, 22 March 2022, at: <https://www.ukrinform.net/rubric-society/3437254-chairman-of-okhtyrka-district-council-released-from-russian-captivity.html>.

<sup>157</sup> ‘Ukraine swapped nine Russian soldiers to free detained mayor -Interfax’, *Reuters*, 16 March 2022, at: <https://www.reuters.com/world/europe/russian-forces-have-released-mayor-city-melitopol-kyiv-2022-03-16/>.

<sup>158</sup> ‘In Kakhovka, Russians released the journalist after 8 days of torture’, *Ukrainska Pravda*, 20 March 2022, at: <https://www.pravda.com.ua/eng/news/2022/03/20/7333041/>; ‘Seven days with a bag on her head – an activist from Melitopol Olga Gaysumova spoke about her time in captivity’ (transl.), *RIA.ua*, 21 March 2022, at: [https://ria-m.tv/news/280976/sem\\_dney\\_s\\_meshkom\\_na\\_golove\\_aktivistka\\_iz\\_melitopolya\\_olga\\_gaysumova\\_rasskazala\\_o\\_svoem\\_prebyivanii\\_v\\_plenu.html](https://ria-m.tv/news/280976/sem_dney_s_meshkom_na_golove_aktivistka_iz_melitopolya_olga_gaysumova_rasskazala_o_svoem_prebyivanii_v_plenu.html).

<sup>159</sup> Lara Bullens, ‘Russia uses abductions to intimidate Ukrainians in occupied territories’, *France 24*, 29 March 2022, at: <https://www.france24.com/en/europe/20220329-russian-forces-are-abducting-ukrainians-in-occupied-territories>; ‘In the Kherson region, the occupiers began to stop civilians and check their phones’, *Channel 24*, 4 March 2022, at: [https://24tv.ua/hersonshhini-okupanti-pochali-zupinyati-tsvilnih-pereviryati\\_n1890095](https://24tv.ua/hersonshhini-okupanti-pochali-zupinyati-tsvilnih-pereviryati_n1890095); Representation of the President of Ukraine in the Autonomous Republic of Crimea, *Facebook (official page)*, 11 March 2022, at: <https://www.facebook.com/ppu.gov.ua/posts/328851965955502>.

<sup>160</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 38.

<sup>161</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 36.

<sup>162</sup> UN, Office of the High Commissioner for Human Rights, Statement; Situation in Ukraine, 25 March 2022, at: <https://www.ohchr.org/en/statements/2022/03/situation-ukraine>.

<sup>163</sup> See also below, V.B.7, on the human rights aspect.

### **c. ALLEGATIONS OF SUMMARY EXECUTIONS**

After the formal end of its investigations, the Mission received allegations of a large number of executions of civilians during the Russian occupation of villages in the proximity of Kyiv, in particular Bucha and at the occasion of the withdrawal of Russian forces. There are photos and videos of civilians killed with their hands tied in the streets and reports about a mass grave.<sup>164</sup> If confirmed, such killings would constitute egregious violations of IHL and war crimes. They require serious national and international enquiries, on the spot, with forensic experts. Even if the time period at the disposal of the Mission had been prolonged, it could therefore not have conducted such an enquiry.

### **d. ADMINISTRATION OF PUBLIC PROPERTY**

With regard to public property, the occupier is entitled to seize all movable property of a nature to serve military operations and to administer and use all immovable public property, including shops, supplies, forests and farms, in accordance with the rules of usufruct.<sup>165</sup> In mid-March, the Russian Defence Minister allegedly asked Russian President Vladimir Putin for permission for the Russian armed forces to cut down forest and greenery in Ukraine, not only for military purposes but also to sell timber. The money from the sale would then be used by the Russian armed forces.<sup>166</sup> This allegation, if confirmed, would constitute a violation of IHL. Cutting down entire forests is definitely going beyond the scope of the usufruct. As a usufructuary of public real property, the occupier may benefit from the production of this property but must not waste, misuse or overuse it. Furthermore, in the case of commercial use of the public immovable property of the occupied territory, the profits made by the occupier can only be used to cover the costs of the occupation and to meet the needs and protect the interests of the inhabitants of the territory, but cannot be used for the wider economic interests of the occupier.

### **e. RESPECT OF PRIVATE PROPERTY**

The Mission is concerned by numerous reports of lootings conducted by Russian soldiers.<sup>167</sup> Several videos shared on social networks display Russian troops looting grocery stores, supermarkets, gas stations or even banks.<sup>168</sup> It is also alleged that Russian armed forces

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<sup>164</sup> “They were all shot” : Russia accused of war crimes as Bucha reveals horror of invasion, *The Guardian*, 3 April 2022, at: <https://www.theguardian.com/world/2022/apr/03/they-were-all-shot-russia-accused-of-war-crimes-as-bucha-reveals-horror-of-invasion>; Ukraine: Apparent War Crimes in Russia-Controlled Areas, *HRW*, 3 April 2022, at: <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>

<sup>165</sup> HR, Arts 53 and 55.

<sup>166</sup> Michael Starr, ‘Ukraine accuses Russia of planning to cut down and sell its forests in ecocide’, *The Jerusalem Post*, 16 March 2022, at: <https://www.jpost.com/international/article-701426>; ‘Ukraine’s military intelligence: Russia plans mass logging of Ukrainian forests’, *Kiev Independent*, 15 March 2022, at: <https://kyivindependent.com/uncategorized/ukraines-military-intelligence-russia-plans-mass-logging-of-ukrainian-forests/>; Main Intelligence Directorate of the Ministry of Defence of Ukraine, Telegram Channel (official channel), at: <https://t.me/DIUKraine/139>.

<sup>167</sup> Yaroslav Trofimov and James Marson, ‘Russian Forces Kill Civilians, Loot for Supplies in Occupied Ukraine, Residents Say’, *Wall Street Journal*, 14 March 2022, at: <https://www.wsj.com/articles/russian-forces-kill-civilians-loot-for-supplies-in-occupied-ukraine-residents-say-11647267560>; David Averre, ‘Russian troops use their tank to loot a gas station amid ‘morale issues’ as ‘desperate’ generals try to restart stalled advance and Ukrainian ambushes play havoc with their supply lines’, *Daily Mail*, 21 March 2022, at: <https://www.dailymail.co.uk/news/article-10636193/Russian-troops-use-tank-loot-gas-station-amid-morale-issues.html>; ‘20-30 “arrests” a day: how people live in recently occupied cities in the Luhansk region?’, *Gromadske Radio*, 22 March 2022, at: <https://hromadske.radio/en/news/2022/03/22/20-30-arrests-a-day-how-people-live-in-recently-occupied-cities-in-the-luhansk-region>.

<sup>168</sup> Insider Ukraine, Telegram Channel (official page), at: <https://t.me/insiderUKR/22316>; Alec Luhn (@ASLUhn), Twitter, 27 February 2022, at: [https://twitter.com/ASLUhn/status/1497888600146395136?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembe](https://twitter.com/ASLUhn/status/1497888600146395136?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembe)

expropriate private property.<sup>169</sup> In one case, on 20 March 2022, Russian soldiers were shown pulling up in a tank outside a Kherson gas station and ransacking the store for basic goods.<sup>170</sup> Under IHL pillage, *i.e.* the appropriation of public and private movable property, is strictly prohibited.<sup>171</sup> Moreover, the occupation forces may not confiscate private property, *i.e.* seize it without compensation, but they are entitled to requisition it for their own needs or for the administration of the territory, subject to payment of financial compensation.<sup>172</sup> Although the goods in question may be necessary for the needs of the occupying army,<sup>173</sup> the Mission is not aware of any requisition procedure. The reported behaviour of the Russian soldiers therefore amounts to pillage, which constitutes a violation of IHL and a war crime.<sup>174</sup>

#### f. DEPORTATIONS

The Mission has received numerous consistent reports from Ukrainian official and NGO sources and from private individuals on social media on forced deportations from occupied territories to Russia.<sup>175</sup> According to the Human Rights Ombudsperson of the Ukrainian Parliament, 500,000 civilians have been deported from Ukraine to Russia.<sup>176</sup> She claimed that all of them had been forcibly displaced, first brought to some filtration camps in Russia near the Ukrainian border and that some of them were then brought as far as Sakhalin island, but left there in freedom. Russia has on several occasions blamed Ukraine for impending any attempts to evacuate Ukrainian citizens to Russia<sup>177</sup> and has reported that nearly 300,000 people had

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d%7Ctwterm%5E1497888600146395136%7Ctwgr%5E%7Ctwcon%5Es1\_&ref\_url=https%3A%2F%2Fwww.newsweek.com%2Fvideos-show-russian-soldiers-looting-banks-grocery-stores-ukraine-1683027.

<sup>169</sup> UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 35.

<sup>170</sup> John Varga, 'Putin humiliation: Russian paratroopers caught red-handed on video looting petrol station', *Express*, 21 March 2022, at: <https://express.co.uk/trem.media/news/world/1584106/vladimir-putin-paratroopers-loot-petrol-station-kherson-ukraine-war-russia-news-video>; David Averre, 'Russian troops use their tank to loot a gas station amid 'morale issues' as 'desperate' generals try to restart stalled advance and Ukrainian ambushes play havoc with their supply lines', *Daily Mail*, 21 March 2022, at: <https://www.dailymail.co.uk/news/article-10636193/Russian-troops-use-tank-loot-gas-station-amid-morale-issues.html>.

<sup>171</sup> HR, Arts 28 and 47; GC IV, Art. 33(2).

<sup>172</sup> HR, Arts 46 (2) and 52.

<sup>173</sup> David Averre, 'Russian troops use their tank to loot a gas station amid 'morale issues' as 'desperate' generals try to restart stalled advance and Ukrainian ambushes play havoc with their supply lines', *Daily Mail*, 21 March 2022, at: <https://www.dailymail.co.uk/news/article-10636193/Russian-troops-use-tank-loot-gas-station-amid-morale-issues.html>; Khaleda Rahman, 'Videos Show Russian Soldiers Looting Banks and Grocery Stores in Ukraine', *News Week*, 27 February 2022, at: <https://www.newsweek.com/videos-show-russian-soldiers-looting-banks-grocery-stores-ukraine-1683027>.

<sup>174</sup> ICC Statute, Art. 8(2)(b)(xvi).

<sup>175</sup> 'Mariupol says Russia forcefully deported thousands of people', *Reuters*, 20 March 2022, at: <https://www.reuters.com/world/europe/ukraines-mariupol-says-russia-forcefully-deported-thousands-its-people-2022-03-20/>; 'Russians forcibly deport women and children from occupied Donetsk and Luhansk regions to Russia' (transl.), *ZMINA*, 22 March 2022, at: <https://zmina.info/news/rosiyan-prymusovo-vyvozyat-do-rf-zhinok-ta-ditej-z-tymchasovo-okupovanyh-doneczkoyi-ta-luganskoyi-oblastej/>; Nichvydycia (@nichvydycia), Twitter, 19 March 2022, at: <https://twitter.com/nichvydycia/status/1505257625839095813>; Mariupol City Council, Telegram Channel (official channel), at: <https://t.me/mariupolrada/8987>.

<sup>176</sup> Discussion between the Mission and the Human Rights Ombudsperson of the Ukrainian Parliament, Vienna, 28 March 2022. According to the media, she rather referred to 400,000 persons: Shona Murray, 'More than 400,000 Ukrainians 'forcibly displaced to Russia', claims Ukraine's ombudswoman', *Euronews*, 20 March 2022, at: <https://www.euronews.com/my-europe/2022/03/30/more-than-400-000-ukrainians-forcibly-displaced-to-russia-claims-ukraine-s-ombudswoman>.

<sup>177</sup> 'Zelenskyy accuses Russia of attack on humanitarian corridor in Mariupol', *Business Standard*, 11 March 2022, at: [https://www.business-standard.com/article/international/zelenskyy-accuses-russia-of-attack-on-humanitarian-corridor-in-mariupol-122031100124\\_1.html](https://www.business-standard.com/article/international/zelenskyy-accuses-russia-of-attack-on-humanitarian-corridor-in-mariupol-122031100124_1.html).

arrived in Russia by mid-March.<sup>178</sup> Russia denied accusations that the Russian military is forcibly deporting Ukrainian citizens to Russia.<sup>179</sup> If (some of) these deportations were forcible (including because Russia created a coercive environment<sup>180</sup> in which those civilians had no other choice than to leave to Russia) and as they necessarily concerned civilians who had fallen into the power of Russia as an occupying power, this violates in each case IHL and constitutes a war crime.<sup>181</sup> However, the occupying power may evacuate areas for the security of the population or imperative military reasons. Evacuation outside the limits of the occupied territory is only permissible when it is materially impossible to avoid such displacement.<sup>182</sup>

#### **g. CONSCRIPTION OF UKRAINIAN NATIONALS**

Under GC IV, to compel a protected civilian to serve in the forces of a hostile power constitutes a war crime.<sup>183</sup> On 29 January 2022, a State Duma deputy announced that many inhabitants of Donetsk and Luhansk “republics” who had received Russian citizenship had served or were serving in the Russia armed forces. He added that those who are registered with their relatives in Russia are automatically required to do military service.<sup>184</sup> If Russia requires Ukrainian inhabitants of the “republics” of Donetsk and Luhansk to whom it illegally provided Russian passports or the population of territories occupied since 24 February 2022, including prisoners they release, to fight in the current IAC against Ukraine, this constitutes a war crime,<sup>185</sup> whether or not they are incorporated into Russian armed forces or those of the “republics”. The Mission was unable to check those allegations by NGOs and the Human Rights Ombudsperson of the Ukrainian Parliament.

#### **h. ENLISTMENT AND LABOUR**

IHL of military occupation provides for the possibility for the occupier to oblige the inhabitants to carry out certain works for the needs of the army of occupation or the inhabitants of the occupied territory as long as the tasks performed do not involve serving in the occupying armed forces or requiring them to take part in military operations.<sup>186</sup> Moreover, any pressure or propaganda aiming at securing voluntary enlistment of the inhabitants in occupying forces is prohibited.<sup>187</sup> The Prosecutor General's Office of Ukraine alleges that, in the Kherson region, Russian armed forces, together with Ukrainian citizens, handed out leaflets on behalf of the occupation administration to local police officers, rescue workers and hunters, calling on them to join the “new city police” and promising all kinds of preferential treatment to those who joined it.<sup>188</sup> Since the information available does not make it possible to identify whether or not

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<sup>178</sup> Lidia Kelly and William Mallard, ‘Mariupol says Russia forcefully deported thousands of people’, *Reuters*, 20 March 2022, <https://www.reuters.com/world/europe/ukraines-mariupol-says-russia-forcefully-deported-thousands-its-people-2022-03-20/>.

<sup>179</sup> ‘Moscow denies deporting Ukrainians to Russia’, *TeleTrader*, 22 March 2022, at: <https://www.teletrader.com/moscow-denies-deporting-ukrainians-to-russia/news/details/57536310?ts=1648496942911>.

<sup>180</sup> ICTY, *Prosecutor v. Krnojelac*, IT-97-25-T, Trial Chamber, Judgment, 15 March 2002, para 475.

<sup>181</sup> GC IV, Arts 49 and 147.

<sup>182</sup> GC IV, Art. 49.

<sup>183</sup> GC IV, Arts 51(1) and 147.

<sup>184</sup> Halya Coynash, ‘Donbas ‘conscripts’ into Russia’s army could be deployed to fight Ukrainians’, *Kharkiv Human Rights Protection Group*, 17 February 2022, at: <https://khpg.org/en/1608810085>.

<sup>185</sup> GC IV, Art. 147.

<sup>186</sup> HR, Art. 52(1); GC IV, Art. 51(1)-(2).

<sup>187</sup> GC IV, Art. 51(1).

<sup>188</sup> Prosecutor General's Office of Ukraine, Calls for recruitment to the occupation "police" in Kherson region - investigation into collaboration activities launched (transl.), 16 March 2022, at: <https://gp.gov.ua/ua/posts/zaklikido-naboru-v-okupaciniu-policiyu-na-xersonshhini-rozpocato-rozsliduvannya-za-faktom-kolaboraciniyidiyalnosti>.

this police force is attached to the armed or auxiliary forces of the occupying power or the exact functions it will perform, the Mission is unable to establish that these actions violate IHL.

#### **i. PROVISION OF RELIEF**

In contrast to other parties to an armed conflict, an occupying power is obliged to consent to external humanitarian assistance for the benefit of the occupied territory's population. Nevertheless, an occupying power's first obligation concerning the basic needs of the local population is not to interfere with its existing supply system.<sup>189</sup> If the basic needs of that population cannot be satisfied under that system, the occupying power must, in the second instance, provide such assistance.<sup>190</sup> However, if the population remains "inadequately supplied" despite the preceding obligations, the occupying power must "agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal".<sup>191</sup> The Mission could not collect sufficient reliable information to assess whether those obligations are being respected by Russia.

### **F. CONDUCT OF HOSTILITIES**

#### **1. PARTICULAR DIFFICULTIES TO ASCERTAIN VIOLATIONS OF THE RULES ON THE CONDUCT OF HOSTILITIES**

It is much easier to establish violations of IHL directed against persons who are in the power of a party to the conflict (for example, whether a prisoner has been tortured, a person has been raped or a house in an occupied territory has been destroyed) than it is to determine violations of IHL on the conduct of hostilities (for instance, whether a person killed or a school destroyed by an aerial bombardment resulted from a violation of IHL). In particular, whether an attack is lawful under that part of IHL does not depend on the results of the attack but rather on an *ex ante* evaluation by the attacking party. Additionally, establishing whether an attack violated the principle of distinction,<sup>192</sup> complied with the proportionality<sup>193</sup> rule and whether all feasible precautions were taken to spare the civilian population<sup>194</sup> requires a complex analysis of several legal factors, including the status of the targeted person or object, whether such person or object was the actual target of the attack, the actual or intended use of the targeted object, the military value to the attacker in eliminating the targeted person or object in relation to the extent (if any) of incidental effects upon civilians and whether the attacker took all feasible precautionary measures in attack to avoid or minimize incidental effects upon civilians. Assessing these legal factors for a given attack would often require knowledge of the military plans of both parties, which were not available to the Mission. In case of individual attacks only plausibility arguments can be made, except based upon declarations of the party allegedly having violated IHL. Furthermore, certain patterns can be observed which lead to the conclusion that a party did not observe IHL. For example, while it may be that one hospital was used by the defender for military purposes or destroyed by mistake, it is hardly possible that this is the case when 50 hospitals are destroyed.

#### **2. GENERAL ASSESSMENT OF VIOLATIONS OF IHL RULES ON TARGETING**

The Mission is appalled by the undisputed fact that the Russian invasion of Ukraine since 24 February 2022 has led to the death and injury of thousands of civilians. UNHCHR has verified, according to a strict methodology of its own, that as of 26 March 2022, 1119 civilians have

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<sup>189</sup> HR, Art. 43

<sup>190</sup> GC IV, Arts 55(1) and 56(1); AP I, Art. 69.

<sup>191</sup> GC IV, Art. 59(1); AP I, Art. 69.

<sup>192</sup> AP I, Art. 52(2).

<sup>193</sup> AP I, Art. 51(5)(b).

<sup>194</sup> AP I, Art. 57.

been killed and 1790 have been injured.<sup>195</sup> The Office stresses that these numbers are necessarily too conservative because of the difficulties to collect reliable information from some locations (such as Izium, Mariupol, Volnovakha, Popasna, Rubizhne, and Trostianets), where intense hostilities have been going on, and because many reports are still pending corroboration.<sup>196</sup> The Ukrainian Prosecutor General's Office informed the Mission that as of 30 March 2022, 1962 civilians (among whom 232 children) were injured, 1199 civilians (among whom 148 children) were killed.

It is even more evident, from reports of numerous official and unofficial sources, that tens of thousands of civilian objects have been damaged or destroyed in Ukraine, including houses, multi-storey residential buildings, administrative buildings, penitentiary institutions, police stations, medical and education facilities, water stations and electricity systems,<sup>197</sup> with disastrous direct and indirect effects on civilians. The Ukrainian Prosecutor General's Office informed the Mission that as of 30 March 2022, 1869 times civilian objects were attacked and consequently, 3881 civilian objects were destroyed or damaged as a result of attacks against civilian objects, figures which are in the Mission's view very conservative in light of the very widespread destructions reported by the media, in particular in towns like Mariupol, Kharkiv, Izum and Irpin.

All those deaths, injuries and damages have understandably led more than 10 million civilians to flee hostilities within Ukraine and to other countries.<sup>198</sup>

On the other hand, the Mission found on social media several allegations of Ukrainian attacks against the self-proclaimed "republics" of Luhansk and Donetsk, which lead to the death of civilians and the destruction of civilian objects.<sup>199</sup> Such allegations are also mentioned by

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<sup>195</sup> UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 13.

<sup>196</sup> UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 14.

<sup>197</sup> UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), paras 1 and 16; UN, Office of the High Commissioner for Human Rights, Ukraine: UN expert seriously concerned by housing rights violations, Press Release, 9 March 2022, at: <https://www.ohchr.org/en/press-releases/2022/03/ukraine-un-expert-seriously-concerned-housing-rights-violations>; Keith Collins, Danielle Ivory, Jon Huang, Cierra S. Queen, Lauryn Higgins, Jess Ruderman, Kristine White, Bonnie G. Wong, 'Russia's Attacks on Civilian Targets Have Obliterated Everyday Life in Ukraine', *New York Times*, 23 March 2022, at: <https://www.nytimes.com/interactive/2022/03/23/world/europe/ukraine-civilian-attacks.html>; Asya Zolnikova, 'The destruction of museums, theaters and temples is a war crime. Dozens of civilian objects have been destroyed under shelling in Ukraine. Will Russia be responsible for this?', *Meduza*, 27 March 2022, at: <https://meduza.io/feature/2022/03/27/razrushenie-muzeev-teatrov-i-hramov-eto-voennoe-prestuplenie>. See also, Ukrainian Civilian Objects Attacks And Casualties Interactive Map, at: <https://attacks.stopwar.team/>; 'Hospitals Bombed and Apartments Destroyed: Mapping Incidents of Civilian Harm in Ukraine', *Bellingcat*, 17 March 2022, at: <https://www.bellingcat.com/news/2022/03/17/hospitals-bombed-and-apartments-destroyed-mapping-incidents-of-civilian-harm-in-ukraine/>.

<sup>198</sup> IOM, OCHA, UNHCR, Protection Cluster, Reach, 'Update on IDP Figures in Ukraine', 18 March 2022, at: <https://reliefweb.int/report/ukraine/update-idp-figures-ukraine-18-march-2022-enuk>; Operational Data Portal, Refugees fleeing Ukraine (since 24 February 2022), at: <https://data2.unhcr.org/en/situations/ukraine>.

<sup>199</sup> Alisa Rebrova, 'In the DPR, two civilians died when a Ukrainian shell hit the house' (transl.), *Lenta.ru*, 16 March 2022, at: <https://lenta.ru/news/2022/03/16/civilians/>; [https://t.me/DNR\\_SCKK/6863](https://t.me/DNR_SCKK/6863); Marina Sovina, '49 civilians killed in DPR due to shelling by Ukrainian security forces in a month', *Lenta.ru*, 16 March 2022, at: [https://lenta.ru/news/2022/03/16/\\_dnr\\_/](https://lenta.ru/news/2022/03/16/_dnr_/); 'Since February 17, 12 civilians have been killed in LPR due to shelling by the Armed Forces of Ukraine', *RIA News*, 24 March 2022, at: <https://ria.ru/20220324/donbass-1779788546.html>.



UNHCHR.<sup>200</sup> A Russian Investigative Committee also initiated criminal proceedings on various cases of Ukrainian shelling affecting civilians, in particular on the territory of the self-proclaimed “republics” of Luhansk and Donetsk. Some of its press releases contain data on location, time, damages/casualties inflicted.<sup>201</sup> The Mission has been unable to verify these allegations.

#### a. DISTINCTION

Despite the aforementioned undisputed losses of life, health and property caused by the Russian invasion, what counts for IHL is not what was destroyed or who was killed or injured but what and who was targeted. To target civilians or civilian objects violates IHL<sup>202</sup> and constitutes a war crime.<sup>203</sup> Only in a limited number of instances, mentioned hereafter,<sup>204</sup> which concern civilians, including journalists, shot at individually, outside buildings, does the Mission have evidence that the victims were targeted. When buildings were destroyed and/or civilians were killed or injured by the impact of artillery, rockets and aerial bombs, the Mission has either insufficient evidence that those buildings were the target or, in some cases, that those buildings were not defended and therefore military objectives – although it is perfectly lawful for Ukrainian forces to defend every building. NGOs and victims report that most of those objects were far away from any military facility. This does not exclude that they were nevertheless military objectives by their location or use. However, it is highly implausible that so many civilian buildings, in particular, those situated far away from actual fighting between ground forces, had thus turned into military objectives or that so many of them were destroyed by mistake while a military objective was targeted.

It is only in few instances that both parties agree that a certain installation was the target, but it remains disputed whether it constituted a military objective. Thus, as a television or television relay centre, the Kyiv TV tower attacked on 1 March 2022<sup>205</sup> and TV towers attacked on 13 March 2022 in Rivne<sup>206</sup> and on 16 March 2022 in Vinnytsya City<sup>207</sup> were not legitimate targets. The important role of media in maintaining the fighting spirit of the population or even their involvement in propaganda does not turn them into military objectives.<sup>208</sup> Russia claims, however, that the Kyiv TV tower comprised the 72nd Main Centre for Information and Psychological Operations of the Ukrainian Armed Forces, which, together with the Security Service of Ukraine (SBU) cyber operations units, using hardware and software complexes and

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<sup>200</sup> UN, Office of the High Commissioner for Human Rights, Statement: Situation in Ukraine, 25 March 2022, at: <https://www.ohchr.org/en/statements/2022/03/situation-ukraine>.

<sup>201</sup> The Investigative Commission of Russia, ‘Russian Investigative Committee establishes Ukrainian nationalists involved in new shelling of DPR and LPR’, *Press Release*, 2 April 2022, at: <https://sledcom.ru/news/item/1669970/>; The Investigative Commission of Russia, ‘Criminal cases initiated on shelling by Ukrainian security forces of the DPR and LPR’, *Press Release*, 1 April 2022, at: <https://sledcom.ru/news/item/1669952/>.

<sup>202</sup> AP I, Art. 48.

<sup>203</sup> AP I, Art. 85(3)(a); ICC Statute, Art. 8(2)(b)(i)-(ii).

<sup>204</sup> See below, IV.F.4.

<sup>205</sup> Verkhovna Rada of Ukraine, Telegram Channel (official channel), at: <https://t.me/verkhovnaradaukrainy/6929>; UN, Office of the High Commissioner for Human Rights, Press Briefing Notes on Ukraine, 8 March 2022, at: <https://www.ohchr.org/en/press-briefing-notes/2022/03/press-briefing-notes-ukraine>. Further collections of information on this issue are in the possession of the Mission.

<sup>206</sup> ‘Air strike on Rivne Oblast: TV tower damage leaves locals without television, radio’, *NV*, 14 March 2022, at: <https://english.nv.ua/nation/air-strike-on-rivne-oblast-tv-tower-damage-leaves-locals-without-television-radio-50224854.html>.

<sup>207</sup> ‘The shelling of a TV tower in Vinnytsia - there is temporarily no terrestrial television broadcasting in the city’ (transl.), *Radio Svoboda*, 16 March 2022, at: <https://www.radiosvoboda.org/a/news-televezha-vinnytsia-obstril/31755804.html>.

<sup>208</sup> See, however, for an ambiguous position on whether media may be legitimate targets of attacks, ICTY, ‘*Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*’ (8 June 2000) (2000) 39 ILM 1257.

communication facilities there, launched cyber-attacks against targets in Russia.<sup>209</sup> If such cyber-attacks were indeed directed at the military potential of Russia and the Russian description does not simply refer to its propaganda role, the TV tower constituted a military objective and it is not obvious that the 5 persons killed and 5 others injured were excessive compared with the military advantage, even if they were civilians and it was expected that they would be affected. Similarly, with regard to the missile attack hitting the Vinnytsya TV tower, Russia has stated that it targeted Ukrainian military infrastructure, specifically the communication, intelligence, relay and commutation centres in the village of Vinnytsya.<sup>210</sup> If the TV tower was indeed used for military communication and intelligence purposes, it had become a military objective. The Mission is unable to establish the specific use or purpose of the TV tower in the circumstances prevailing at the time of the attack.

Russian official sources deny any targeting of civilians or civilian objects and claim that they carry out exclusively pinpoint strikes on military objectives.<sup>211</sup> There have been indeed some precision attacks on military targets in Western Ukraine, such as on the Yavoriv military base near Lviv, where many foreign fighters willing to join the Ukrainian armed forces were allegedly trained – and killed by the attack<sup>212</sup>. In the first days of the invasion, several precise attacks directed against airfields were also reported.<sup>213</sup> However Russian sources cannot explain the above-mentioned large-scale destructions of civilian objects. In most cases attack angles, munitions used and objects hit clearly demonstrate that such attacks are attributable to Russia,<sup>214</sup> which proves Russian suggestions that they result from Ukrainian attacks lack any foundation.

#### **b. PROPORTIONALITY**

Even where the Mission cannot exclude that a military objective or combatants were targeted, an attacker violates IHL if 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 (hereafter: the

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<sup>209</sup> Ministry of Defence of Russian Federation, Briefing by Russian Defence Ministry spokesperson, 2 March 2022, at: [https://eng.mil.ru/en/special\\_operation/news/more.htm?id=12411283](https://eng.mil.ru/en/special_operation/news/more.htm?id=12411283); ‘The Ministry of Defence of the Russian Federation announced a strike with high-precision weapons on the objects of the SBU and the 72nd PSO Center in Kiev’ (transl.), *TVzvezda.ru*, 1 March 2022, at: <https://tvzvezda.ru/news/2022311557-1XRZb.html>.

<sup>210</sup> ‘The Russian military reported a strike on military facilities in Vinnytsya’ (transl.), *Interfax*, 16 March 2022, at: <https://www.interfax.ru/world/829618>.

<sup>211</sup> ‘Peskov: Russian troops in Ukraine do not strike at a residential buildings’, *TASS*, 1 March 2022, at: <https://tass.ru/politika/13913567>; ‘Lavrov: Russia strikes only on Ukraine's military infrastructure’, *TASS*, 1 March 2022, at: <https://tass.ru/politika/13976695>.

<sup>212</sup> ‘35 Killed In Russian Air Strikes On Military Base Near Ukraine's Lviv’, *NDTV*, 13 March 2022, at: <https://www.ndtv.com/world-news/russia-ukraine-war-russia-launches-air-strikes-on-ukraine-military-base-near-polish-border-2819968>; <https://www.jpost.com/breaking-news/article-701157>; Andrew R.c. Marchall, ‘Bloodied but alive after Russian air strike in western Ukraine’, *Reuters*, 13 March 2022, at: <https://www.reuters.com/world/europe/air-strike-launched-ukraine-military-base-near-polish-border-lviv-authorities-2022-03-13/>.

<sup>213</sup> Nadezhda Komendantova, ‘Russian troops fired missiles at airfields in six Ukrainian cities’, *Ukrainews.com*, 24 February 2022, at: <https://ukrainews.com/news/836239-vojska-rf-nanesli-raketno-bombovye-udary-po-aerodromam-v-shesti-gorodah-ukrainy>; Valeria Dragomirova, ‘The Russian Defence Ministry reported attacks on Ukraine's military infrastructure’, *Ukrainews.com*, 24 February 2022, at: <https://ukrainews.com/news/836230-minoborony-rf-soobshhilo-ob-udarah-po-voennoj-infrastrukture-ukrainy>.

<sup>214</sup> ‘Ukraine: Russian Cluster Munition Hits Hospital’, *HRW*, 25 February 2022, at: <https://www.hrw.org/news/2022/02/25/ukraine-russian-cluster-munition-hits-hospital#>; *HRW*, ‘Ukraine: Deadly Attacks Kill, Injure Civilians, Destroy Homes’, *HRW*, 8 March 2022, at: <https://www.hrw.org/news/2022/03/18/ukraine-deadly-attacks-kill-injure-civilians-destroy-homes>; UN, OHCHR, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf); UN, Press briefing notes on Ukraine - Spokesperson for the UN High Commissioner for Human Rights, 11 March 2022, at: <https://ukraine.un.org/en/174617-press-briefing-notes-ukraine-spokesperson-un-high-commissioner-human-rights>.

proportionality rule).<sup>215</sup> If such anticipated losses are clearly excessive, this also constitutes a war crime.<sup>216</sup> In each individual case, to evaluate whether this proportionality rule was violated, would presuppose that the Mission knew what advantage the attacking forces were seeking. In no case reported to it does the Mission have such information. Nevertheless, in view of the number of civilians killed or injured and civilian buildings destroyed far away from where ground forces were actually fighting each other (and therefore every building defended by Ukrainian forces or civilians constitutes a military objective), it seems highly implausible to the Mission that in each case in which civilians were killed the military advantage sought was so important that it justified the impact on civilians which had to be expected in an urban area. It must be stressed that the (un)availability of precise weapons does not play any role in the respect of the proportionality rule. If an attacker does not have sufficiently precise weapons to comply with the proportionality rule in case of a given attack, the attack is unlawful.

Assuming that some Russian attacks in urban areas were targeting military objectives, the proportionality rule requires that Russia should not only have taken the incidental effects on civilians or civilian objects expected to be near the target into account but also reverberating effects, which are particularly impacting civilians in urban areas. The Mission noticed many reports of fires that broke out and/or could not be extinguished after an attack<sup>217</sup> and interruptions of electricity, gas, heating and water supplies following attacks in urban areas,<sup>218</sup> including their impact on the health system.<sup>219</sup> In contemporary urban environments such as those in Ukraine, it may also be argued that the interruption of mobile phone connections<sup>220</sup> can lead to deaths and injuries, if only because wounded and sick can no longer call for help.

### c. PRECAUTIONS

In addition, even when a legitimate military objective is targeted and the proportionality rule is respected, an attacker (and as will be discussed later, to a much lower extent, the defender) has

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<sup>215</sup> AP I, Art. 51(5)(b).

<sup>216</sup> ICC Statute, Art. 8(2)(b)(iv).

<sup>217</sup> Tanya Gerasimova, 'Occupiers Shell Avdiivka Coke Plant', *Ukrainews.com*, 13 March 2022, at: <https://ukrainews.com/en/news/840978-occupiers-shell-avdiivka-coke-plant>; 'Reports in Russian media accuses Ukraine of sabotaging chemical plant', *Jerusalem Post*, 14 March 2022, at: <https://www.jpost.com/international/article-701196>; 'In the Kyiv region, in the village of Gogoliv, a fire was extinguished in a fish shop after a rocket attack' (transl.), *Ukrinform*, 12 March 2022, at: <https://www.ukrinform.ua/rubric-regions/3427450-na-kiivsini-v-seli-gogoliv-likvidovali-pozezu-v-ribnomu-cehu-pisla-raketnogo-obstrilu.html>; <https://www.pravda.com.ua/news/2022/03/12/7330632/>; The State Emergency Service of Ukraine, Official Facebook page, at: <https://www.facebook.com/MNS.GOV.UA/posts/331195489048347>; Oliver Milman, 'Forest fires erupt around Chernobyl nuclear plant in Ukraine', *The Guardian*, 22 March 2022, at: <https://www.theguardian.com/world/2022/mar/22/chernobyl-forest-fires-ukraine-nuclear-plant>.

<sup>218</sup> UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 24. See also: 'Heavy fighting leaves much of Volnovakha in ruins', *Euronews*, 13 March 2022, at: <https://www.euronews.com/2022/03/12/heavy-fighting-leaves-much-of-volnovakha-in-ruins>; 'UN Security Council meets after Russia seizes second Ukrainian nuclear plant', *ABC.net.au*, 4 March 2022, at: <https://www.abc.net.au/news/2022-03-05/russian-forces-seize-ukrainian-power-plant-as-advancement-stalls/100884702>; Ukraine General Prosecutor's Office, Statement: Marinka, Krasnohorivka and other settlements of Donetsk region came under fire from the occupiers - proceedings have been initiated (transl.), 15 March 2022, at: <https://gp.gov.ua/ua/posts/pid-vognem-okupantiv-opinilisya-maryinka-krasnogorivka-ta-insi-naseleni-punkti-doneccini-rozpocato-provadžennya>.

<sup>219</sup> UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 25.

<sup>220</sup> Corin Faife, 'Telecoms blackout hits northeast Ukraine; large power outages also reported', *The Verge*, 3 March 2022, at: <https://www.theverge.com/2022/3/3/22960374/telecoms-blackout-northeast-ukraine-power-outage-sumy>; UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February – 26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 24.

to take feasible precautions with a view of avoiding, and in any event minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.<sup>221</sup> In particular, the attacker must: (1) verify that the target is in fact a lawful one under IHL;<sup>222</sup> (2) warn the civilian population of the attack if possible;<sup>223</sup> (3) cancel or suspend an attack when ‘it becomes apparent’ it will violate IHL;<sup>224</sup> and (4) select the target (when a choice is possible between several targets offering a similar military advantage)<sup>225</sup> as well as (5) chose the means and method of warfare<sup>226</sup> that may be expected to represent the smallest risk for the civilian population. To evaluate whether in case of a given attack all feasible precautions were taken, the Mission would need to know what precautions were taken (but perhaps not successful) and what other precautions were feasible for those who planned or decided upon the attack. The availability of precision-guided munitions is a factor influencing such feasibility. The Mission does not possess such information. Nevertheless, it is not plausible, in particular, that for a country with such advanced weapons technology as Russia, launching attacks (supposedly targeting military objectives and respecting the proportionality rule) in densely populated areas, it was not feasible to choose weapons, ammunitions, tactics and timings other than those which it actually used.

The weapons and ammunitions used in densely populated areas make it particularly implausible that the precautionary obligations were respected.<sup>227</sup> Even when a weapon is not as such prohibited (an issue that will be discussed later in this report), its use must comply with the obligations under the rules on distinction, proportionality and precautions discussed here. The ICRC leads a campaign aiming at a political commitment by States not to use heavy explosive weapons in populated areas, unless sufficient mitigation measures are taken to limit their wide-area effects and the consequent risk of civilian harm.<sup>228</sup> Ireland circulated in 2021 a “Draft Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences that can arise from the use of Explosive Weapons with Wide Area Effects in Populated Areas”.<sup>229</sup> This declaration has not yet been adopted and it remains controversial whether it just reflects existing law or contains or should contain new legal obligations. Many States remained, at least before 24 February 2022, opposed to new legal obligations. It remains to be hoped that their current reaction to Russian practices in Ukraine evidences a change in their attitude. Nevertheless, even assuming that some or all ICRC recommendations do not yet correspond to existing law, the Mission considers it highly implausible that the undisputed use<sup>230</sup> of cluster munitions, munitions with a large blast radius, such as large bombs or missiles, unguided missiles, artillery and mortars, multiple launch rocket systems (MLRS) and dumb

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<sup>221</sup> AP I, Art. 57.

<sup>222</sup> AP I, Art. 57(2)(a)(i).

<sup>223</sup> AP I, Art. 57(2)(c).

<sup>224</sup> AP I, Art. 57(2)(b).

<sup>225</sup> AP I, Art. 57(3).

<sup>226</sup> AP I, Art. 57(2)(a)(ii).

<sup>227</sup> See below, IV.G.9.

<sup>228</sup> ICRC, Report: Explosive Weapons: Civilization in Population Arest Must Protected, 26 January 2022, at: <https://www.icrc.org/en/document/civilians-protected-against-explosive-weapons>.

<sup>229</sup> Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas, at: <https://www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/Draft-Political-Declaration-17032020.pdf>.

<sup>230</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), paras 10-12.

bombs released by aircraft and the alleged use of incendiary weapons,<sup>231</sup> white phosphorus<sup>232</sup> and thermobaric or vacuum bombs,<sup>233</sup> in densely populated areas, was in each case the only feasible choice for the Russian commander. Therefore, such use violated Russia's obligation to take feasible precautionary measures when launching attacks. To omit feasible precautionary measures does not as such constitute a war crime but it may evidence a degree of recklessness sufficient to indicate the knowledge and intent of a deliberate attack against civilians and civilian objects or a clear violation of the proportionality rule, which are war crimes.<sup>234</sup>

#### **d. IMPOSSIBILITY TO SEPARATE, BASED ON OPEN SOURCE INFORMATION, VIOLATIONS OF THE DISTINCTION, PROPORTIONALITY AND PRECAUTIONS RULES**

Theoretically, whether the target of an attack (which is not necessarily what was actually destroyed) was lawful, whether unlawful means were used, whether the expected incidental effects of an attack on the civilian population was excessive in relation to the military advantage anticipated and whether both the attacker and the defender took feasible measures to avoid and, in any event, minimize such incidental effects, are four distinct tests. Based on the rudimentary information at the disposal of the Mission and the diametrically opposed narrative of both parties in Ukraine, these steps become, however, blurred and intermingled.

A particularly insidious form of attack involving violations of the rules on distinction, proportionality and precautions are "double tap attacks". On 1 March 2022 the Kharkiv regional administration on Liberty Square was hit, allegedly by a Russian Kalibr-class cruise missile. After the rescuers arrived (after 5-7 minutes) there was a second strike by a similar rocket that hit the building.<sup>235</sup> This implies that the rescuers and the persons wounded by the first attack, who are in any case protected against attacks,<sup>236</sup> were deliberately targeted.

### **3. SIEGES AND HUMANITARIAN CORRIDORS**

A siege consists of a tactic to encircle an enemy's armed forces, in order to prevent their movement or cut them off from support and supply channels. The aim is to force the enemy to surrender, including by an attempt to capture the besieged area through hostilities. Although it is not unlawful to besiege enemy armed forces in a town as long as they are not willing to

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<sup>231</sup> Zvezdanews, Telegram channel, at: <https://t.me/zvezdanews/71770>; Oleksiy Beloshitskiy, Facebook page, at: <https://www.facebook.com/1609570575/videos/493393615709946/>; Rohit Kachroo (@RohitKachrooITV), Twitter, at: <https://twitter.com/RohitKachrooITV/status/1506702632253022213>; Aldin (@tinso\_ww), twitter, at: [https://twitter.com/aldin\\_ww/status/1507418336904171522](https://twitter.com/aldin_ww/status/1507418336904171522).

<sup>232</sup> 'Strike in Donbas Wounds 30, Russia Accused of Chemical Attacks', *Moscow Times*, 13 March 2022, at: <https://www.themoscowtimes.com/2022/03/13/moscow-accused-of-phosphorous-gas-attacks-in-donbas-a76899>; Christopher Miller (@ChristopherJM), Twitter, 26 March 2022, at: <https://twitter.com/ChristopherJM/status/1507852956070260741>; Emma Reynolds, 'Russia accused of attack on Ukraine using illegal phosphorus bombs', *INews*, 13 March 2022, at: <https://inews.co.uk/news/world/russia-accused-phosphorus-bomb-attacks-ukraine-nato-chief-chemical-weapons-war-crime-1514645>.

<sup>233</sup> 'Ukraine U.S. Ambassador Says Russia Used Vacuum Bomb', *Bloomberg*, 1 March 2022, at: <https://www.bloomberg.com/news/videos/2022-03-01/ukraine-u-s-ambassador-says-russia-used-vacuum-bomb-video>; Jack Detsch, 'It Is Horrendous': Russia Prepares Vacuum Bombs to Blitz Ukraine', *Foreign Policy*, 1 March 2022, at: <https://foreignpolicy.com/2022/03/01/russia-thermobaric-weapons-ukraine/>; UK Ministry of Defence (@DefenceHQ), Twitter, 9 March 2022, at: <https://twitter.com/DefenceHQ/status/1501621370614173701>; further information confirming the use of thermobaric weapons was provided to the Mission, including on Russian channels sharing videos of the launch of TOS-A1 missiles.

<sup>234</sup> AP I, Art. 85(3)(a); ICC Statute, Art. 8(2)(b)(i)-(ii) and (iv)

<sup>235</sup> Pravda Gerascheko, Telegram Channel, at: [https://t.me/Pravda\\_Gerashchenko/1131](https://t.me/Pravda_Gerashchenko/1131); Nikolai Savenko, 'The missile of the Russian occupiers hit the Kharkiv regional administration, part of the building was destroyed' (transl.), *Ukrainews.com*, 1 March 2022, at: <https://ukrainews.com/news/837749-raketa-rossijskih-okkupantov-popala-v-harkovskuyu-obladministratsiyu-chast-zdaniya-razrushena>.

<sup>236</sup> AP I, Arts 41(1)-(2), 51(2).

surrender, sieges heavily affect, in Ukraine and elsewhere, heavily the civilian population. They are accompanied by bombardment and intense fighting between besieging and besieged forces, creating constant danger for the civilians trapped in the besieged area. Those civilians are often cut off from water, electricity supplies, heating, food, and health services. Factors such as age, gender-specific roles, or disabilities, may exacerbate difficulties in accessing scarce resources.

An extreme case is Mariupol, besieged since 2 March 2022.<sup>237</sup> High-resolution satellite images taken by the Maxar company in Mariupol on 22 March 2022 show the extent of the destruction in the besieged city in southern Ukraine.<sup>238</sup> In addition to damaged factory buildings, the images show burning and destroyed residential buildings and other civilian facilities. According to Ukrainian sources, between 80 and 90 per cent of all residential buildings were damaged or destroyed by Russian shelling.<sup>239</sup> The HRMMU reports that as of 26 March, at least 126 multi-story residential buildings were damaged and 65 were destroyed in besieged Mariupol.<sup>240</sup> Between 300,000 and 150,000 Mariupol residents are reported, by different sources, to be trapped in the city<sup>241</sup> and only a few thousand had been allowed to leave by 1 April.<sup>242</sup> Attempts to evacuate all of those who wish to leave have failed and each party accuses the adverse party of being responsible for such failure. Those who remain are subject to constant shelling, have no heating and reportedly very little water and food.<sup>243</sup>

Another example is the town of Iziium in the Kharkiv Region in eastern Ukraine. According to a detailed report published by Amnesty International, corroborated by other sources, that town has been nearly completely destroyed by constant Russian bombardments.<sup>244</sup> Inhabitants have been under a constant siege-like situation since 28 February 2022, remaining civilians hide in their basements, food and water supplies are constantly diminishing, and most of them are cut off from electricity, gas, heating, and mobile communication as a result of attacks.<sup>245</sup> Satellite

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<sup>237</sup> David Leonhardt, 'A City Under Siege', *New York Times*, 17 March 2022, at: <https://www.nytimes.com/2022/03/17/briefing/mariupol-siege-russia-invasion-ukraine.html>; 'Ukraine: Ensure Safe Passage, Aid for Mariupol Civilians', *HRW*, 31 March 2022, at: <https://www.hrw.org/news/2022/03/21/ukraine-ensure-safe-passage-aid-mariupol-civilians>.

<sup>238</sup> Satellite Images, 22 March 2022: Mariupol and Northern Kyiv, *Maxar*, at: <https://www.giscaffe.com/nbc/articles/1/1910752/Maxar-Satellite-Images-22-March-2022-Mariupol-Northern-Kyiv>.

<sup>239</sup> 'Official says 80-90% of Mariupol destroyed or damaged by Russian shelling, airstrikes', *The Kyiv Independent*, 17 March 2022, at: <https://kyivindependent.com/uncategorized/official-says-80-90-of-mariupol-destroyed-or-damaged-by-russian-shelling-airstrikes/>.

<sup>240</sup> UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 25.

<sup>241</sup> 'Ukraine war: Inside the devastated city of Mariupol - left unrecognisable by Putin's brutal invasion', *SkyNews*, 19 March 2022, at: <https://news.sky.com/story/ukraine-war-inside-the-devastated-city-of-mariupol-left-unrecognisable-by-putins-brutal-invasion-12569437>.

<sup>242</sup> 'Ukraine: 20,000 civilians flee war-torn city of Mariupol — as it happened', *DW*, 15 March 2022, at: <https://www.dw.com/en/ukraine-20000-civilians-flee-war-torn-city-of-mariupol-as-it-happened/a-61126783>; <https://www.reuters.com/world/ukraine-unable-get-supplies-mariupol-civilians-unable-leave-mayors-aide-2022-04-01/>.

<sup>243</sup> UN, OHCHR, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–6 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 25; 'Ukraine: Ensure Safe Passage, Aid for Mariupol Civilians', *HRW*, 31 March 2022, at: <https://www.hrw.org/news/2022/03/21/ukraine-ensure-safe-passage-aid-mariupol-civilians>.

<sup>244</sup> 'Ukraine: Beleaguered town of Iziium at breaking point after constant attack from Russian forces – new testimony', *Amnesty International*, 16 March 2022, at: <https://www.amnesty.org/en/latest/news/2022/03/ukraine-beleaguered-town-of-izium-at-breaking-point-after-constant-attack-from-russian-forces-new-testimony/>; UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf).

<sup>245</sup> 'Ukraine: Beleaguered town of Iziium at breaking point after constant attack from Russian forces – new testimony', *Amnesty International*, 16 March 2022, at: <https://www.amnesty.org/en/latest/news/2022/03/ukraine-beleaguered-town-of-izium-at-breaking-point-after-constant-attack-from-russian-forces-new-testimony/>. See also

imagery from 12 March 2022 reviewed by Amnesty International clearly showed craters and damage close to locations reported by open street maps as children's schools and hospitals.<sup>246</sup>

Under IHL, it is not prohibited to besiege an area where there are only enemy forces or to block their reinforcement or resupply, including to achieve their surrender through starvation. IHL tries to reconcile the lawfulness of besieging enemy armed forces with the need to respect and protect civilians in three ways. First, if the besieger respects the rules on distinction, proportionality and precautions and the defender does not use civilians as human shields and keeps military targets and civilians separate, civilians should be able to stay in their homes and not be obliged to flee. The fundamental approach of IHL is not to evacuate civilians to allow the military to conduct undisturbedly hostilities, but to oblige the military to conduct hostilities taking the presence of civilians into account. Second, the besieger must let humanitarian assistance through, but only for the benefit of the civilian population, which involves difficult negotiations and arrangements how and by whom the distribution of assistance to the civilian population only is to be monitored. Third, civilians must be allowed to leave the besieged area. This meets several obstacles. In such a coercive environment as a besieged town such choice is often not free, which may imply a prohibited forcible transfer of civilians. This report dealt above with the alleged mass deportations of civilians,<sup>247</sup> most of whom left besieged areas, to Russia. Furthermore, the besieged forces have no interest in seeing all civilians leave because this would greatly facilitate the capture of the besieged place because everyone who remains there would be a legitimate target of attacks. Thus, Russia claims that Ukraine either does not agree with evacuations or does not respect agreements, including by attacking those willing to leave.<sup>248</sup> Finally, while the besieger has theoretically an interest that civilians leave, in practice and when warfare is conducted against the entire population of the enemy State, it will not be willing to agree with the modalities. Ukraine and many NGOs and media thus report that Russia is failing to agree to evacuations or is violating such agreements through attacks on those trying to leave.<sup>249</sup> Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under IHL constitutes a war crime.<sup>250</sup>

Humanitarian corridors should facilitate both the entry of humanitarian assistance for the civilian population and the departure of civilians who so desire. However, for such a humanitarian corridor to work, the genuine consent of the military of both sides is needed. Due to the weapons used – artillery, missiles – the agreement has to cover a large space because a humanitarian corridor can be shelled from afar. In addition, a minimum of trust is necessary between the parties that one party will not take advantage of the cease-fire for military purposes.

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'Ukraine: Russia's cruel siege warfare tactics unlawfully killing civilians – new testimony and investigation', *Amnesty International*, 1 April 2022, at: <https://www.amnesty.org/en/latest/news/2022/04/ukraine-russias-cruel-siege-warfare-tactics-unlawfully-killing-civilians-new-testimony-and-investigation/>

<sup>246</sup> 'Ukraine: Beleaguered town of Iziium at breaking point after constant attack from Russian forces – new testimony', *Amnesty International*, 16 March 2022, at: <https://www.amnesty.org/en/latest/news/2022/03/ukraine-beleaguered-town-of-izium-at-breaking-point-after-constant-attack-from-russian-forces-new-testimony/>.

<sup>247</sup> See above, IV.F.5.f.

<sup>248</sup> See, e.g., concerning the evacuations from Mariupol, Reports of the Investigative Committee of Russia, <https://en.sledcom.ru/news/item/1664708/?pdf=1> and <https://en.sledcom.ru/news/item/1667432/?pdf=1>.

<sup>249</sup> 'Ukraine: Humanitarian Catastrophe in Iziium', *Amnesty International*, 22 March 2022, at: <https://www.amnesty.org/en/wp-content/uploads/2022/03/EUR5053822022ENGLISH.pdf>; 'Ukraine: Humanitarian corridors for civilians fleeing Russian attacks must provide safety – new testimonies', *Amnesty International*, 10 March 2022, at <https://www.amnesty.org/en/latest/news/2022/03/ukraine-humanitarian-corridors-for-civilians-fleeing-russian-attacks-must-provide-safety-new-testimonies/>; 'Evacuation of Mariupol fails again, stranding civilians under siege', *Reuters*, 6 March 2022, at: <https://www.reuters.com/world/europe/russia-ukraine-blame-each-other-mariupol-evacuation-fails-again-2022-03-06/>.

<sup>250</sup> ICC Statute, Art. 8(2)(xxv).

In Ukraine such negotiations are still only sporadically successful for Mariupol, while several thousands of civilians were able to leave Sumy.<sup>251</sup>

#### 4. TARGETED ATTACKS ON INDIVIDUAL CIVILIANS

The Mission received several allegations of attacks against civilians walking or riding bicycles in the public space,<sup>252</sup> driving in cars or travelling on trains,<sup>253</sup> four of which affected journalists,<sup>254</sup> that can even less be explained otherwise than as instances of deliberately targeting civilians (which is a war crime)<sup>255</sup> than the dead of civilians in civilian houses, which could hypothetically have turned into military objectives or have been destroyed incidentally or by mistake. The same applies to the execution of civilians, like a journalist with disabilities,<sup>256</sup> in their own house or yard.<sup>257</sup> If confirmed, those are war crimes.

#### 5. ARMING OF THE CIVILIAN POPULATION

From the very beginning of the Russian invasion, Ukrainian authorities encouraged all inhabitants – or at least men between 18 and 60 years old – to join the fighting against Russian forces.<sup>258</sup> When such persons are incorporated into the Ukrainian armed forces, this is lawful under IHL (while such persons then also turn under IHL into lawful targets of Russian attacks). Otherwise, the distribution of weapons to civilians<sup>259</sup> makes them lawful targets of attacks (if they use them) while not giving them combatant privilege. On the approach of Russian forces, civilians could under IHL also “spontaneously” take up arms to resist the invading forces, if they did not “had time to form themselves into regular armed units”, provided they carry arms

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<sup>251</sup> ‘Thousands evacuate Sumy as Russia bombardment continues’, *AlJazeera*, 15 March 2022, at: <https://www.aljazeera.com/news/2022/3/15/thousands-evacuate-sumy-as-russia-bombardment-continues>.

<sup>252</sup> Ukraine General Prosecutor’s Office, News: The shelling of a couple of pensioners who rode bicycles to the hospital - in the Sumy region proceedings have been initiated’ (transl.), 22 March 2022, at: [https://life.pravda.com.ua/society/2022/03/22/247925/](https://gp.gov.ua/ua/posts/obstril-podruzzya-pensioneriv-yaki-yixali-na-velosipedax-u-likarnyu-na-sumshhini-rozpocato-provadžennya; Diana Krechetva, ‘In Bucha, the occupier shot a father in front of his son - the boy miraculously survived’ (transl), <i>Zhitya</i>, 22 March 2022, at: <a href=).

<sup>253</sup> Ukraine General Prosecutor’s Office, Official Facebook page, at: <https://www.facebook.com/pg.gov.ua/posts/335290821967091>; ‘In Kharkiv region, an enemy tank shot down a car with a family inside, killing three people, including a 9-year-old girl’ (transl) Ukrinform, 22 March 2022, at: <https://www.ukrinform.net/rubric-ato/3436598-russian-tank-shoots-dead-family-in-kharkiv-region.html>; ‘Russian forces attack refugee evacuation train in Ukraine’, *The Daily Observer*, 13 March 2022, at: <https://www.observerd.com/news.php?id=357131>.

<sup>254</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 54.

<sup>255</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 35.

<sup>256</sup> ‘International structures must protect Ukrainians from kidnappings and executions’, *ZMINA*, 14 March 2022, at: <https://zmina.ua/statements/mizhnarodni-strukturny-mayut-zahystyty-ukrayincziv-vid-vykraden-ta-strat-gromadskist/>.

<sup>257</sup> Ukraine General Prosecutor’s Office, In Sumy region, occupiers shot pensioners in their own yard - an investigation has been launched, 22 March 2022, at: <https://gp.gov.ua/ua/posts/na-sumshhini-okupanti-rozstrilyali-pensioneriv-na-vlasnomu-podviriyi-rozpocato-rozsliduvannya>.

<sup>258</sup> ‘Ukrainian president signs decree on general mobilisation of population -Interfax’, *Reuters*, 24 February 2022, <https://www.reuters.com/world/europe/ukrainian-president-signs-decree-general-mobilisation-population-interfax-2022-02-24/>.

<sup>259</sup> Zhanna Bezpiatchuk, ‘Ukraine conflict: Citizen volunteers take up arms to fight Russian invasion’, *BBC News*, 27 February 2022, at: <https://www.bbc.com/news/av/world-60546011>; Anna Rudyk, ‘Authorities will give weapons to everyone to protect Ukraine-Zelensky’, *Ukrainews.com*, 24 February 2022, at: <https://ukrainews.com/news/836335-dlya-zashhity-ukrainy-vlasti-budut-vydavat-oruzhie-vsem-zelenskij>; James Marson and Drew Hinshaw, ‘Ordinary Ukrainians Rally to Defend Homeland From Russia’, *Wall Street Journal*, 26 February 2022, at: <https://www.wsj.com/articles/ordinary-ukrainians-rally-to-defend-homeland-from-russia-11645900464>.



openly and respect the laws and customs of war.<sup>260</sup> Such participants in a “*levée en masse*” benefit from POW status if they fall into the power of Russia but they also lose the protection of civilians against attacks. However, when the Ukrainian authorities called upon civilians to find weapons and prepare Molotov cocktails to fight the Russian invaders,<sup>261</sup> such civilians cannot be considered to have taken up “spontaneously” arms “without having had time to form themselves into regular armed units”. Such a call was therefore not appropriate under IHL because it made those persons lose protection against attacks without gaining combatant status. If Russian forces had to expect that every civilian was ready to receive them with Molotov cocktails, this put also other civilians and civilian residences in risk of attacks.

## 6. HUMAN SHIELDS

To justify the undisputable fact that civilians are affected by its attacks, Russia claims that Ukrainian forces use human shields.<sup>262</sup> According to Ukrainian allegations the Mission could not verify, Russian troops use civilians in territories they occupied since 24 February 2022 to protect them against Ukrainian attacks.<sup>263</sup> In some cases there are credible allegations that individual civilians or groups of them were used by Russian troops in their attacks to protect them from the resistance of Ukrainian forces. In other cases, the term “human shields” seems to designate Ukrainian civilians who are not allowed to quit Russian controlled villages, even when no Ukrainian attacks are planned and their presence is not communicated to Ukrainian forces, which would be necessary for a violation of Article 51(7) of Protocol I. Such conduct of the Russian forces, e.g. when they forced inhabitants of buildings to stay in their own basements while Russian troops took control over the buildings and installed sniping positions,<sup>264</sup> nevertheless constitutes an evident lack of passive precautions prescribed by IHL<sup>265</sup> and an unlawful restriction of their freedom. If it is accompanied by any demands to the persons concerned or third persons, it also constitutes a prohibited taking of hostages.

## 7. PASSIVE PRECAUTIONS TO BE TAKEN BY THE DEFENDER

Ukraine has a well-developed system of shelters, including in metro stations deep below surface,<sup>266</sup> which has certainly contributed to the relatively low number of civilians killed in towns like Kyiv and Kharkhiv, compared with the amount of destructions. Ukraine thereby respects an obligation of the defender under IHL.<sup>267</sup> Such passive precautions are particularly important in case of penitentiary institutions, which should use all possible means to ensure the security of detainees and prisoners during hostilities (and to continue to provide access to food, drinking water and medicine). It is reported that during attacks against penitentiaries, which obviously violate IHL, penitentiary staff and prisoners were hiding together in the bomb

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<sup>260</sup> Art. 4(A)(6) GC III.

<sup>261</sup> Samuel Osborne, ‘Ukraine invasion: Civilians help make Molotov cocktails to take on Russian forces’, *SkyNews*, 27 February 2022, at: <https://news.sky.com/story/ukraine-invasion-civilians-help-make-molotov-cocktails-to-take-on-russian-forces-12552181>.

<sup>262</sup> ‘Medinsky said that the Russian Federation will try once again to discuss humanitarian corridors with Ukraine’ (transl.), Tass, 7 March 2022, at: <https://tass.ru/politika/13993799>; Permanent Mission of the Russian Federation to the UN, Explanation of vote by Permanent Representative Vassily Nebenzia after the UNSC vote on a draft resolution on Ukraine, 25 February 2022, at: <https://russiaun.ru/en/news/250222nu>.

<sup>263</sup> Anna Rudyk, ‘Invaders put equipment in the yards of residential buildings, hiding behind civilians as a human shield - Ministry of Internal Affairs’ (transl.), *Ukrainianews*, 8 March 2022, at: <https://ukrainews.com/news/839544-okkupanty-stavyat-tehniku-vo-dvorah-zhilyh-domov-prikryvayas-mirnymi-lyudmi-kak-zhivym-shhitom-mvd>.

<sup>264</sup> Brenna Smith and Masha Froliak, ‘Russian Soldiers Took Their City, Then Their Homes’, *New York Times*, 20 March 2022, at: <https://www.nytimes.com/2022/03/20/world/europe/russian-soldiers-video-kyiv-invasion.html>.

<sup>265</sup> AP I, Art. 58.

<sup>266</sup> ‘Ukrainians shelter in Kyiv metro amid Russia threat’, *Euronews*, 25 February 2022, at: <https://www.euronews.com/2022/02/25/ukrainians-shelter-in-kyiv-metro-amid-russia-threat>

<sup>267</sup> AP I, Art. 58.

shelters.<sup>268</sup> To militarily defend a besieged city full of civilians necessarily involves an intermingling between combatants and civilians, which is, however not necessarily prohibited by IHL, which requires a defender to take feasible measures to protect civilians and civilian objects under their control against the effects of attacks, including by separating them from legitimate targets, only if this is possible from a military, factual and humanitarian point of view.<sup>269</sup> The above-mentioned arming of the civilian population,<sup>270</sup> however, violates those obligations, if the civilians concerned continue to stay in their civilian houses while the enemy tries to capture their town. Similarly, Russian forces violate those obligations if they place, as has been reported, artillery positions in densely populated areas.

## 8. SPECIALLY PROTECTED OBJECTS

### a. MEDICAL UNITS AND TRANSPORT

Medical units, such as hospitals, and transport, such as ambulances, whether military or civilian, are specially protected by IHL because of their primary importance during armed conflicts, both to maintain public health and to care for the wounded and sick caused by the armed conflict. Specifically, they must be respected (that is, not attacked) and protected, but they may not be used for military purposes or to shield military objectives. This special protection is lost if they are used to commit, outside their humanitarian function, acts harmful to the enemy but only after a warning has been given setting, whenever appropriate, a reasonable time limit and only after such warning has remained unheeded.<sup>271</sup> Even in that case of loss of special protection, the general rules of IHL mentioned above<sup>272</sup> apply and a proportionality evaluation has to be made between the military advantage of stopping the acts harmful for the attacker and the expected death and injury of the medical personnel and current and future patients.

In Ukraine, a database collecting data on destroyed healthcare facilities counts 52 affected facilities between 24 February 2022 and 22 March 2022.<sup>273</sup> The HRMMU, present in the field, has verified 74 incidents in which medical facilities were affected with various degrees of damage, including 46 hospitals, seven psycho-neurological facilities and 21 other medical facilities. As a result, 54 medical establishments were damaged, 10 destroyed, and two were looted. Sixty-one of the attacks which damaged medical facilities occurred in Government-controlled territory. These include air strikes on hospitals in Izium, Mariupol, Ovruch, Volnovakha, and Vuhledar. Nine attacks occurred in territory controlled by the self-proclaimed “republics”, and four in contested places.<sup>274</sup> The Mission has received numerous reports corroborating this information.<sup>275</sup> According to one particular in-depth report produced by the

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<sup>268</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), paras 33-34.

<sup>269</sup> AP I, Art. 58.

<sup>270</sup> See above, IV.F.5.

<sup>271</sup> AP I, Arts 12 and 13.

<sup>272</sup> See above, IV.F.2.

<sup>273</sup> Department of Population Health Science and Policy, The Icahn School of Medicine at Mount Sinai, Timeline of Attacks on Healthcare & Vital Civilian Infrastructure in Ukraine, at: [https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?source=1b83yp199fFCNYB-\\_8zsFUa9-zbbDI3Hoj5ZM75rkFo&font=Default&lang=en&initial\\_zoom=2&height=650](https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?source=1b83yp199fFCNYB-_8zsFUa9-zbbDI3Hoj5ZM75rkFo&font=Default&lang=en&initial_zoom=2&height=650).

<sup>274</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 17.

<sup>275</sup> See e.g. WHO, Emergency in Ukraine: external situation report #2: reporting period: 4–11 March 2022, 11 March 2022, at: <https://www.who.int/publications/i/item/WHO-EURO-2022-5152-44915-63876>; UN, Ukraine health facilities ‘stretched to breaking point’, warns WHO, 14 March 2022, at: <https://news.un.org/en/story/2022/03/1113902>; Anna Rudyk, ‘Militants shelled a hospital in Vuhledar, Donetsk region, - Podoliak’ (transl.), *Ukrainews*, 24 February 2022, at: <https://ukrainews.com/news/836475-boeviki-obstrelyali-bolnitsu-v-ugledare-donetskoj-oblasti-podolyak>; Ukraine: Russian Cluster Munition Hits Hospital,

Yale School of Public Health the Russian forces have indeed engaged into a widespread and systematic pattern of damage to Ukrainian healthcare facilities by indiscriminate bombardment and in some cases intentional targeting.<sup>276</sup> One specific attack on health facilities, that on the Mariupol Maternity House and Children's Hospital on 9 March 2022, will be discussed hereafter.<sup>277</sup>

Even assuming that some attacks were directed against facilities engaged in acts harmful to the enemy or were incidentally harmed by attacks against legitimate targets, this cannot explain the large number of affected facilities. In addition, in only one single case has Russia vaguely claimed that it gave the necessary warning<sup>278</sup> – but without a time-limit and without any indication what had to be done to preserve the special protection. Therefore, in none of the cases was the special protection lost. Intentionally directing attacks against hospitals and places where the sick and wounded are collected is a war crime, provided they are not military objectives.<sup>279</sup>

#### b. NUCLEAR POWER STATIONS

Even after its closure following the 1986 nuclear accident, former Chernobyl nuclear power station remains an installation containing dangerous forces, specially protected by IHL. Such an installation may (with some exceptions not relevant here) not be attacked, even where it constitutes a military objective, if such attack may cause the release of dangerous forces.<sup>280</sup> Other military objectives located at or in the vicinity of such an installation may not be made the object of attack if such attack may cause the release of dangerous forces.<sup>281</sup> From various open sources,<sup>282</sup> including statements of the director of the International Atomic Energy Agency (IAEA),<sup>283</sup> the Mission understands that on 24 February 2022 Russian forces took control over the installation but did not attack it. During the seizure of the exclusion zone around the installation, Russian forces are, however, alleged to have threatened such attacks.<sup>284</sup> Once the installation was under their control, Russian forces allowed Ukrainian specialists to continue

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*HRW*, 25 February 2022, at: <https://www.hrw.org/news/2022/02/25/ukraine-russian-cluster-munition-hits-hospital#>; <https://ukranews.com/news/837895-rossijskie-vojska-snova-obstrelyali-harkov-povrezhdena-bolnitsa-i-mikrorajon-smi>; Dmitriy ponomarenko, 'Russian troops shelled Kharkov again. Damaged hospital and microdistrict – media' (transl.), *Ukrainews*, 1 March 2022, at: <https://ukranews.com/news/839705-rossijskie-vojska-unichtozhili-tsentralnuyu-gorodskuyu-bolnitsu-v-izyume-harkovskoj-oblasti>; 'Ukraine accuses Russia of hitting psychiatric hospital', *AlJazeera*, 11 March 2022, at: <https://www.aljazeera.com/news/2022/3/11/ukraine-accuses-russia-of-hitting-psychiatric-hospital-near-izyum>; Ukraine General Prosecutor's Office, News: The Russian Armed Forces bombed the hospital and took doctors and patients hostage - an investigation has been launched (transl.), 15 March 2022, at: <https://gp.gov.ua/ua/posts/zbroini-sili-rf-bombarduvali-primishhennya-likarni-i-zaxopili-u-zarucniki-likariv-i-pacijentiv-rozpocato-rozsliduvannya>. Further information on the Kharkiv psychiatric hospital as well as the Mykolaiv cancer hospital was provided to the Mission.

<sup>276</sup> Yale School of Public Health, Humanitarian Research Lab, Evidence of Wide-spread and Systematic Bombardment of Ukrainian Healthcare Facilities, 1 April 2022, on file with the Mission.

<sup>277</sup> See below, IV.G.12.a.

<sup>278</sup> 'Polyansky pointed to a fake about a strike on civilians in a hospital in Mariupol', *RIA News*, 10 March 2022, at: <https://ria.ru/20220310/mariupol-1777388570.html>.

<sup>279</sup> ICC Statute, Art. 8(2)(b)(ix) and (xxiv).

<sup>280</sup> Art. 56 AP I.

<sup>281</sup> ICRC CIHL Database, Rule 42.

<sup>282</sup> UN, OHCHR, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), paras 20-23; 'Russian forces seize Chernobyl nuclear power plant', *BBC News*, 25 February 2022, at: <https://www.bbc.com/news/world-us-canada-60514228>; Volodymyr Zelenskiy (@ZelenskiyyUA), Twitter, 24 February 2022, at: <https://twitter.com/ZelenskiyyUa/status/1496862540957114370>.

<sup>283</sup> See e.g. IAEA, Update 8 – IAEA Director General Statement on Situation in Ukraine, 3 March 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-8-iaea-director-general-statement-on-situation-in-ukraine>.

<sup>284</sup> Tuckler Reals, 'Ukraine says Russia's Putin has "ordered the preparation of a terrorist attack" on Chernobyl nuclear plant', *CBS News*, 11 March 2022, at: <https://www.cbsnews.com/news/ukraine-chernobyl-russia-putin-orders-terrorist-attack-nuclear-plant-kyiv-says/>.

their vital task for nuclear security.<sup>285</sup> Those staff could however not be rotated because the nearby town of Slavutysh remained under Ukrainian control, which was considered by some as a taking of hostages.<sup>286</sup> Slavutysh itself was shelled during the fighting for its control, which threatened the lives of the specialists and therefore the safe running of the installation. On 26 March 2022, it fell under Russian control but on 28 March 2022 Russian forces withdrew again.<sup>287</sup>

Staff of the installation could be finally rotated only on 20 March 2022.<sup>288</sup> In addition, hostilities lead to an interruption of the power link to the installation,<sup>289</sup> which is vital for its safe running and can only temporarily be replaced by generators. Moreover, the movement of Russian military vehicles around the installation raised dust that may have increased the radiation level.<sup>290</sup> Finally, the hostilities and the presence of Russian forces made the extinction of forest fires more difficult, which also threatened to mobilize radioactive particles that were deposited 35 years ago.<sup>291</sup> On 31 March 2022, Russian forces withdrew from Chernobyl.<sup>292</sup> It was then discovered that the Russian forces dug trenches in the highly radioactive Red Forest and received significant doses of radiation.<sup>293</sup>

Other, functioning nuclear powers stations are situated in Zaporozhskaya. The Mission understands that on 4 March 2022 Russian forces took control over the installation but did not attack buildings<sup>294</sup> that could have released dangerous forces, if damaged. They attacked and

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<sup>285</sup> Ben Tobias, 'Ukraine war: Chernobyl workers' 12-day ordeal under Russian guard', *BBS News*, 7 March 2022, at: <https://www.bbc.com/news/world-europe-60638949>.

<sup>286</sup> Gul Tuysuz and Tamara Qiblawi, 'Russian forces seize control of Chernobyl nuclear plant and hold staff hostage: Ukrainian officials', *CNN*, 25 February 2022, at: <https://edition.cnn.com/2022/02/24/europe/ukraine-chernobyl-russia-intl/index.html>; Joris Fioriti, 'Chernobyl Workers Held 'Hostage' Amid Fears for Reactor Safety', *The Moscow Times*, 16 March 2022, at: <https://www.themoscowtimes.com/2022/03/16/chernobyl-workers-held-hostage-amid-fears-for-reactor-safety-a76963>.

<sup>287</sup> IAEA, Update 38 – IAEA Director General Statement on Situation in Ukraine, 31 March 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-38-iaea-director-general-statement-on-situation-in-ukraine>; IAEA, Update 39 – IAEA Director General Statement on Situation in Ukraine, 1 April 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-39-iaea-director-general-statement-on-situation-in-ukraine>.

<sup>288</sup> IAEA, Update 29 – IAEA Director General Statement on Situation in Ukraine, 22 March 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-29-iaea-director-general-statement-on-situation-in-ukraine>.

<sup>289</sup> IAEA, Update 17 – IAEA Director General Statement on Situation in Ukraine, 10 March 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-17-iaea-director-general-statement-on-situation-in-ukraine>.

<sup>290</sup> Ben Turner, 'Chernobyl radiation levels increase 20-fold after heavy fighting around the facility', *LIVE Science*, 25 February 2022, at: <https://www.livescience.com/chernobyl-radiation-levels-rise-after-fighting>; IAEA, Update 1 – IAEA Director General Statement on Situation in Ukraine, 25 February 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-iaea-director-general-statement-on-situation-in-ukraine-25-feb-2022>.

<sup>291</sup> Oliver Milman, 'Forest fires erupt around Chernobyl nuclear plant in Ukraine', *The Guardian*, 22 March 2022, at: <https://www.theguardian.com/world/2022/mar/22/chernobyl-forest-fires-ukraine-nuclear-plant>.

<sup>292</sup> IAEA, Update 38 – IAEA Director General Statement on Situation in Ukraine, 31 March 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-38-iaea-director-general-statement-on-situation-in-ukraine>; IAEA, Update 39 – IAEA Director General Statement on Situation in Ukraine, 1 April 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-39-iaea-director-general-statement-on-situation-in-ukraine>.

<sup>293</sup> Jake Lahut, Kayla Epstein, Darren Samuelsohn, 'Russian troops got 'significant doses of radiation' after digging trenches around Chernobyl, Ukrainian power authority says', *Business Insider Africa*, 31 March 2022, at: <https://africa.businessinsider.com/military-and-defense/russian-troops-got-significant-doses-of-radiation-after-digging-trenches-around/ntcedmw>.

<sup>294</sup> IAEA, Update 11 – IAEA Director General Statement on Situation in Ukraine, 4 March 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-11-iaea-director-general-statement-on-situation-in-ukraine>; UN, OHCHR, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26

damaged, however, nearby buildings by attacks that could have affected those able to release radioactivity.<sup>295</sup> The HRMMU reports that some 50 units of Russian armed forces' heavy machinery, around 400 personnel and "a lot" of explosives and ammunition are currently present at the facility. On 14 March 2022, Russian armed forces detonated weapons in the proximity of a nuclear reactor, allegedly to dispose of them. All this endangered the facility and its staff, but did not have any impact on the radiation levels.<sup>296</sup> The Ukrainian nuclear regulator lost communications from the facility concerning off-site and on-site radiological monitoring but the IAEA reports that it is receiving remote data from its monitoring systems installed there.<sup>297</sup>

Finally, a nuclear research facility in the eastern Ukrainian city of Kharkiv suffered building damage during shelling on 26 March 2022. However, the IAEA reports that its small amount of radioactive nuclear material remained intact. The neutron source, which contains nuclear material used to generate neutrons for research and isotope production, was not damaged.<sup>298</sup>

In conclusion, the Mission does not possess sufficient elements to consider that Russia has violated its specific obligations concerning nuclear power stations. To conclude so, one would have to determine whether the activities around the nuclear facilities mentioned above were not planned and conducted in a manner avoiding the risk of release of radioactivity.

### c. CULTURAL HERITAGE AND PLACES OF WORSHIP

The Mission has noticed considerable Ukrainian efforts to protect and preserve cultural heritage – including Russian cultural heritage<sup>299</sup> – in conformity with the IHL obligation of the defender to safeguard cultural property.<sup>300</sup> Despite those efforts, the Mission has taken note of an impressive and depressing list of cultural heritage damaged during the armed conflict.<sup>301</sup>

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March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), paras 21-23, as well as analytical data sourced from public information provided to the Mission.

<sup>295</sup> IAEA, Update 10 – IAEA Director General Statement on Situation in Ukraine, 4 March 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-10-iaea-director-general-statement-on-situation-in-ukraine>; UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), paras 21-23;

<sup>296</sup> UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), paras 21-23.

<sup>297</sup> IAEA, Update 37 – IAEA Director General Statement on Situation in Ukraine, 30 March 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-37-iaea-director-general-statement-on-situation-in-ukraine>.

<sup>298</sup> IAEA, Update 35 – IAEA Director General Statement on Situation in Ukraine, 28 March 2022, at: <https://www.iaea.org/newscenter/pressreleases/update-35-iaea-director-general-statement-on-situation-in-ukraine>.

<sup>299</sup> Stuart Braun, 'Ukraine rushes to save cultural heritage from destruction', *DW*, 17 March 2022, at: <https://www.dw.com/en/ukraine-rushes-to-save-cultural-heritage-from-destruction/a-61158291>.

<sup>300</sup> HR, Art. 27; API, Art. 53.

<sup>301</sup> See the list recording the damage to cultural property, at: <https://mkip.notion.site/mkip/e9a4dfe6aa284de38673efedbe147b51?v=f43ac8780f2543a18f5c8f45afdce5f7>. See <https://ukranews.com/news/838345-iz-za-vrazheskih-obstrelov-v-harkove-postradal-svyato-uspenskij-sobor-upts-mp-tam-pryatalis-lyudi>; <https://www.ohchr.org/en/press-releases/2022/03/ukraine-un-expert-says-war-against-multi-ethnic-population-must-stop-calls>; <https://gur.gov.ua/content/okupatsiini-viiska-vyluchaiut-ta-znyshchuiut-ukrainsku-literaturu-ta-pidruchnyky-istorii.html>; <https://www.aljazeera.com/news/2022/3/12/ukraine-says-russia-shelled-mosque-in-besieged-city-of-mariupol>; <https://gp.gov.ua/ua/posts/pid-cas-obstrilu-kiyivshhini-okupanti-vbili-mirmix-meskanciv-ta-znishhili-istoricnu-pamyatku-rozpocato-rozsliduvannya>; <https://www.nurnberg2022.org/en/post/russian-army-destroys-orthodox-churches>; <https://gp.gov.ua/ua/posts/pid-cas-obstrilu-kiyivshhini-okupanti-vbili-mirmix-meskanciv-ta-znishhili-istoricnu-pamyatku-rozpocato-rozsliduvannya>.

According to media reports, UNESCO confirms the damaging of at least 53 culturally important sites.<sup>302</sup> This includes Christian orthodox churches, a mosque and a Jewish cemetery.

The shelling on 12 March 2022 of Svyatogirsk monastery where nearly 1,000 civilians were sheltering deserves a special mention. According to the General Prosecutor's Office of Ukraine, Russian forces using aircraft (according to other sources artillery), struck the Holy Dormition Svyatogorsk Lavra, a major Christian Orthodox monastery near the town of Svyatogorsk in Donetsk. The premises that offered shelter to 929 persons, including 200 children, were damaged. Allegedly, more than 30 people were injured.<sup>303</sup> It is reported that almost all the windows were broken and church buildings were destroyed to varying degrees.<sup>304</sup> The Ministry of Defence of the Russian Federation stated that "*militants of the national battalion*" "*Aidar*" equipped firing positions in the Lavra, "*held about 300 civilians and monks hostage*", and "*during the liberation*", the Russian military "*destroyed part of the nationalists*", but that "*the hostages and buildings of the monastery were not affected*".<sup>305</sup> The Mission does not possess any element substantiating this claim.

In each individual case, such destruction of cultural property could only be justified under IHL if either the cultural property itself was used by Ukraine for military purposes – which is lawful only in case of imperative military necessity – or if the incidental effects on cultural property of an attack against a lawful military objective were not expected to be disproportionate and all feasible measures were taken to avoid them.<sup>306</sup> The Mission considers that it is highly unlikely that those very exceptional circumstances were fulfilled in each of the 123 cases listed by a specialized website as of 25 March 2022.<sup>307</sup> The deliberate targeting of cultural property that has not lost protection violates IHL and constitutes a war crime.<sup>308</sup>

#### d. SCHOOLS

The Mission has received numerous credible and consistent reports, supported by pictures and video images, about destroyed schools, including psycho-neurological boarding schools and rehabilitation centres, and of university buildings.<sup>309</sup> On 26 March 2022, The Prosecutor-general of Ukraine reported that 570 educational institutions and 40 institutions for children have been damaged by attacks.<sup>310</sup> On the same date, the HRMMU had verified attacks on 35 educational facilities, including three universities, eight kindergartens, 23 schools, and one

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<sup>302</sup> 'At least 53 culturally important sites damaged in Ukraine-Unesco', *The Guardian*, 1 April 2022, at: <https://www.theguardian.com/world/2022/apr/01/at-least-53-culturally-important-sites-damaged-in-ukraine-unesco>.

<sup>303</sup> General Prosecutor's Office, Official Telegram Channel, at: [https://t.me/pgo\\_gov\\_ua/3154](https://t.me/pgo_gov_ua/3154).

<sup>304</sup> Andrew E. Kramer, 'Shelling damages a reverted monastery and injures some seeking shelter there', *New York Times*, 13 March 2022, at: <https://www.nytimes.com/2022/03/13/world/europe/monastery-shelling-ukraine.html>.

<sup>305</sup> Quasi-republic KhNR", shelling of Chernihiv and Lvov region and news about the negotiations. The main thing by the morning of March 13', *Bumaga*, 13 March 2022, at: <https://paperpaper.ru/papernews/2022/3/13/kvazirespublika-hnr-obstrelly-chem/>.

<sup>306</sup> AP I, Art. 53; Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, Art. 4(1)-(2).

<sup>307</sup> See the list recording the damage to cultural property, at: <https://mkip.notion.site/mkip/e9a4dfe6aa284de38673efedbe147b51?v=f43ac8780f2543a18f5c8f45afdce5f7>

<sup>308</sup> ICC Statute, Art. 8 (2)(b)(ix). See also AP I, Art. 85(4)(2).

<sup>309</sup> UN, OHCHR, 'Ukraine: grave concern', *Press Briefing Note*, 12 March 2022, at: <https://www.ohchr.org/en/press-briefing-notes/2022/03/ukraine-grave-concerns>; Valeria Dragomirova, 'In Zhytomyr, the occupiers attacked the school - half of the building was destroyed' (transl.), *Ukrnews.com*, 4 March 2022, at: <https://ukranews.com/news/838659-v-zhitomire-okkupanty-nanesli-udar-po-shkole-polovina-zdaniya-razrushena>; Nikolay Savenko, 'The occupiers hit the building of the University of the State Fiscal Service in Irpen with a rocket' (transl.), *Ukrnews.com*, 5 March 2022, at: <https://ukranews.com/news/838945-okkupanty-popaliraketoy-v-zdanie-universiteta-gosudarstvennoj-fiskalnoj-sluzhby-v-irpene>.

<sup>310</sup> Prosecutor General's Office, Official Telegram page, at: [https://t.me/pgo\\_gov\\_ua/3380](https://t.me/pgo_gov_ua/3380).

scientific centre.<sup>311</sup> A specialized NGO reported that by 21 March 2022 bombs and intense shelling had damaged more than 460 schools across the country and that over 60 were totally destroyed.<sup>312</sup>

IHL treaty law does not offer special protection to educational facilities. Schools are, however, civilian objects and have to be treated as such even in case of doubt (whether they are used for military purposes).<sup>313</sup> In addition, even when targeting a school that has turned into a military objective or a nearby target, the presence of the children, who remain civilians, has to be taken into account in the proportionality evaluation. It may also be argued that the long-term effect of a destruction of a school on the education of the children must be taken into account. Unlike what is prescribed for other specially protected objects, IHL treaty law does not prohibit a defender to use school buildings for defence purposes, in which case they turn into military objectives. However, Ukraine is among the 114 States that have accepted the Safe Schools Declaration, an inter-governmental political commitment to protect education during armed conflict, led by the Governments of Argentina and Norway.<sup>314</sup> It includes Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict,<sup>315</sup> which prohibit, inter alia, any use of functioning schools for purposes which make them turn into a military objective (and prescribes particular precautionary measures to avoid attacks targeting even schools that have turned into military objectives). The Mission has no indication that Ukraine has not lived up to its commitment and Russia has not argued that any of the schools destroyed had been used for military purposes. Therefore, even admitting the possibility that some schools were damaged incidentally during lawful attacks targeting military objectives, the Mission concludes that the number of schools damaged or destroyed is an expression of the indiscriminate way in which Russian armed forces have conducted hostilities.

## 9. USE OF WEAPONS

It is uncontroversial and well documented that a majority of Russian attacks in populated areas have been conducted with unguided artillery, often launched from multiple rocket launchers, or with unguided aerial bombs.<sup>316</sup>

### a. CLUSTER MUNITIONS

In many well documented cases (the Mission has received an analysis of 134 individual incidents), cluster munitions have been used.<sup>317</sup> This has equally been documented by the HRMMU, which also refers to reports by Russia and its proxies that Ukraine equally used such

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<sup>311</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 16.

<sup>312</sup> Six Million Children Trapped In Ukraine Face Grave Danger As Attacks On Schools And Hospitals Soar, *Save the Children*, 21 March 2022, at: <https://www.savethechildren.net/news/six-million-children-trapped-ukraine-face-grave-danger-attacks-schools-and-hospitals-soar>.

<sup>313</sup> AP I, Art. 52(3).

<sup>314</sup> At: <https://ssd.protectingeducation.org/>; Ukraine Becomes The 100th Country To Commit To Keeping Schools Safe During Armed Conflict, *Save the Children*, 20 November 2019, at: <https://www.savethechildren.net/news/ukraine-becomes-100th-country-commit-keeping-schools-safe-during-armed-conflict>.

<sup>315</sup> Guidelines For Protecting Schools And Universities From Military Use During Armed Conflict, at: [https://protectingeducation.org/wp-content/uploads/documents/documents\\_guidelines\\_en.pdf](https://protectingeducation.org/wp-content/uploads/documents/documents_guidelines_en.pdf).

<sup>316</sup> UN Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 9.

<sup>317</sup> See, HRW Reports, at: <https://www.hrw.org/news/2022/02/25/ukraine-russian-cluster-munition-hits-hospital#>; <https://www.hrw.org/news/2022/03/18/ukraine-deadly-attacks-kill-injure-civilians-destroy-homes>; <https://www.hrw.org/news/2022/03/17/ukraine-cluster-munitions-repeatedly-used-mykolaiv>; <https://www.hrw.org/news/2022/03/04/ukraine-cluster-munitions-launched-kharkiv-neighborhoods>.

munitions.<sup>318</sup> Cluster munitions open in mid-air and disperse up to hundreds of smaller sub-munitions into an area. The sub-munitions, which are generally explosive in nature, are usually designed to detonate on impact with the ground. They may also be fused to detonate or air-burst at a prescribed height from the ground. The damaging or injurious purpose is achieved by a combination of blast and fragmentation. For States not parties to the Oslo Convention, like Russia and Ukraine, the use of cluster munitions is not prohibited as such. Some argue, however, that due to their historically proven indiscriminate effect, including by unexploded bomblets which kill later civilians as explosive remnants of war, they are prohibited by the general rules. Without taking a position on this controversy, the Mission cannot believe (assuming that military objectives were targeted; otherwise, the use of any weapon was unlawful) that the extent of civilian deaths, injuries and destruction that had to be expected due to the proven wide area effect of those munitions and their use in densely populated areas, was in each case not excessive compared with the military advantage anticipated. Their use therefore constituted in each case in which this proportionality rule was not respected a violation of IHL and a war crime.<sup>319</sup> Furthermore, even assuming that in some cases the rules on distinction and proportionality were respected, the Mission does not see how a Russian commander using cluster munitions against targets in densely populated areas could comply with his or her obligation to “*take all feasible precautions in the choice of means and methods of attack [targeting a military objective and complying with the proportionality rules] with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects*”.<sup>320</sup> Even the military of States not having outlawed cluster munitions consider that the use of cluster munitions is only justified to engage wide area or dispersed targets, such as soft-skinned vehicles, concentrations of troops, military vehicles and other military objects and some kinds of armour.

#### **b. OTHER CONTROVERSIAL WEAPONS, IN PARTICULAR INCENDIARY WEAPONS**

The same conclusion is drawn by the Mission concerning the use of GRAD multiple rocket launchers, which were used by both parties of the IAC,<sup>321</sup> concerning anti-personnel landmines by Russia,<sup>322</sup> which is not a party to the Ottawa Convention banning them, and the use of thermobaric weapons by Russia,<sup>323</sup> as at least the US does not consider such use to be prohibited as such.<sup>324</sup> The same applies to the alleged use by both parties of white phosphorus, which is considered by some Western military as not being prohibited as such.<sup>325</sup> Russia seems to

<sup>318</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 9.

<sup>319</sup> AP I, Art. 51(5)(b) AP; ICC Statute, Art. 8(2)(b)(iv).

<sup>320</sup> AP I, Art. 57(2)(a)(ii).

<sup>321</sup> Irina Venediktova, Facebook page, at: <https://www.facebook.com/irina.venediktova.31/posts/5253762707969955>; ‘Zakharova said that the Armed Forces of Ukraine are conducting continuous shelling from densely populated areas’ (transl.), *TASS*, 9 March 2022, at: <https://tass.ru/politika/14010819>.

<sup>322</sup> ‘Ukraine: Russia Uses Banned Antipersonnel Landmines’, *HRW*, 29 March 2022, at: <https://www.hrw.org/news/2022/03/29/ukraine-russia-uses-banned-antipersonnel-landmines>

<sup>323</sup> ‘Ukraine U.S. Ambassador Says Russia Used Vacuum Bomb’, *Bloomberg*, 1 March 2022, at: <https://www.bloomberg.com/news/videos/2022-03-01/ukraine-u-s-ambassador-says-russia-used-vacuum-bomb-video>; Jack Detsch, ‘It Is Horrendous’: Russia Prepares Vacuum Bombs to Blitz Ukraine’, *Foreign Policy*, 1 March 2022, at: <https://foreignpolicy.com/2022/03/01/russia-thermobaric-weapons-ukraine/>; UK Ministry of Defence (@DefenceHQ), *Twitter*, 9 March 2022, at: <https://twitter.com/DefenceHQ/status/1501621370614173701>

<sup>324</sup> Matt Montazzoli, ‘Are Thermobaric Weapons Lawful?’, *Articles of War*, 23 March 2022, at: <https://lieber.westpoint.edu/are-thermobaric-weapons-lawful/>.

<sup>325</sup> Matthew J. Aiesi, ‘The Jus in Bello of White Phosphorus: Getting the Law Correct’, *Lawfare*, 26 November 2019, at: <https://www.lawfareblog.com/jus-bello-white-phosphorus-getting-law-correct>.



consider that such use is prohibited as such,<sup>326</sup> a position with which the Mission agrees. More generally, concerning incendiary weapons, the use of which has been alleged, often without further specifications,<sup>327</sup> sometimes with explicit reference to the heavy flamethrower system TOS-1A,<sup>328</sup> and which may also cover the use of white phosphorus, the ICRC considers that customary IHL requires belligerents using incendiary weapons to take particular care to avoid causing incidental harm to civilians, and it also prohibits the anti-personnel use of such weapons against combatants “if such use would cause unnecessary suffering” or, in other words, “if it is feasible to use a less harmful weapon to render a combatant *hors de combat*.”<sup>329</sup> CCW Protocol III restricts the use of incendiary weapons in circumstances in which they can endanger civilians.<sup>330</sup> It defines incendiary weapons as “any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof.”<sup>331</sup> The Protocol does not cover weapons with merely incidental incendiary effects, such as illuminants or smoke systems. Nor does it prohibit munitions “designed to combine penetration, blast or fragmentation effects with an additional incendiary effect”, except if the incendiary effect is “specifically designed to cause burn injury to persons”.<sup>332</sup>

## 10. UNLAWFUL METHODS OF WARFARE

The Mission received several reports, sometimes accompanied by photographic evidence, alleging the use by Russian troops of the red cross emblem to mark military non-medical vehicles,<sup>333</sup> of Ukrainian flags,<sup>334</sup> army or police uniforms or vehicles,<sup>335</sup> white flags,<sup>336</sup> civilian clothes,<sup>337</sup> and OSCE symbols<sup>338</sup> to facilitate their military operations.

<sup>326</sup> ‘Kadyrov accused Kyiv of using white phosphorus’ (transl.), *Radio Sputnik*, 25 March 2022, at: <https://radiosputnik.ria.ru/20220325/kadyrov-1780057140.html>.

<sup>327</sup> Oleksiy Beloshitskiy, Facebook, at: <https://www.facebook.com/1609570575/videos/493393615709946/>; Rohit Kachroo (@RohitKachrooTV), Twitter, at: <https://twitter.com/RohitKachrooTV/status/1506702632253022213>; Aldin (@tinso\_ww), twitter, at: [https://twitter.com/aldin\\_ww/status/1507418336904171522](https://twitter.com/aldin_ww/status/1507418336904171522).

<sup>328</sup> Zvezdanews, Telegram channel, at: <https://t.me/zvezdanews/71770>.

<sup>329</sup> ICRC CIHL Database, Rules 84-85.

<sup>330</sup> CCW Protocol III on Incendiary Weapons.

<sup>331</sup> CCW Protocol III. Art. 1(1).

<sup>332</sup> CCW Protocol III. Art. 1(1)(b)(ii).

<sup>333</sup> Nazar Steporuk, ‘On white KAMAZ trucks with red flags: near Chernobyl the occupiers dressed up as “peacekeepers”’, *UNIAN*, 24 February 2022, at: <https://www.unian.net/society/na-belyh-kamazah-s-krasnymi-flazhkami-vozle-chernobylya-okkupanty-naryadilis-v-mirotvorcev-novosti-ukrainy-11716645.html>; Allison Quinn, ‘Putin Sent in Troops Disguised With White Peace Monitor Symbols and Ukrainian Uniforms, Says Kyiv’, *The Daily Beast*, 24 February 2022, at: <https://www.thedailybeast.com/putin-sent-in-troops-disguised-with-ocse-white-peace-monitor-symbols-and-ukrainian-uniforms-says-kyiv>.

<sup>334</sup> Ministry of Defence of Ukraine, Official Facebook page, at: <https://www.facebook.com/photo?fbid=266315935680866&set=pb.100069073844828.-2207520000>.

<sup>335</sup> Allison Quinn, ‘Putin Sent in Troops Disguised With White Peace Monitor Symbols and Ukrainian Uniforms, Says Kyiv’, *The Daily Beast*, 24 February 2022, at: <https://www.thedailybeast.com/putin-sent-in-troops-disguised-with-ocse-white-peace-monitor-symbols-and-ukrainian-uniforms-says-kyiv>; Mia Jankowicz, ‘Ukraine accuses Russian soldiers of stealing uniforms and vehicles to enter Kyiv’, *Insider*, 25 February 2022, at: <https://www.businessinsider.com/ukraine-says-russia-soldiers-stole-uniforms-trucks-to-reach-kyiv-2022-2?r=US&IR=T>.

<sup>336</sup> Ministry of Defence of Ukraine, Official Facebook page, at: <https://www.facebook.com/photo?fbid=266315935680866&set=pb.100069073844828.-2207520000>.

<sup>337</sup> Alexander Savitsky, ‘Kyiv residents fearful, helpless as Russian troops approach’, *DW*, 1 March 2022, at: <https://www.dw.com/en/daily-life-in-kyiv-between-fear-and-frustration/a-60974789>.

<sup>338</sup> Allison Quinn, ‘Putin Sent in Troops Disguised With White Peace Monitor Symbols and Ukrainian Uniforms, Says Kyiv’, *The Daily Beast*, 24 February 2022, at: <https://www.thedailybeast.com/putin-sent-in-troops-disguised-with-ocse-white-peace-monitor-symbols-and-ukrainian-uniforms-says-kyiv>.

The use of the red cross for any purpose other than marking medical units, transport and personnel or Red Cross organizations violates IHL.<sup>339</sup> Therefore, IHL was violated in the well-documented case of a Russian military vehicle transporting munitions marked by a hardly visible red cross,<sup>340</sup> and in the case of an alleged evacuation of children by Russian forces using the red cross emblem.<sup>341</sup> However, such use of the red cross constitutes prohibited perfidy only if the purpose of the use was to kill injure or capture an adversary,<sup>342</sup> which is not alleged for the red cross or the use of civilian clothes to avoid detection of saboteurs (who thus nevertheless lose POW status). Such a specific aim is, however, alleged in a case of the use of a white flag,<sup>343</sup> which makes it become a war crime.<sup>344</sup> The use of Ukrainian flags and insignia by Russian forces is also prohibited,<sup>345</sup> as well as that of the UN<sup>346</sup> and arguably other international organizations such as that of the OSCE.

## 11. NAVAL WARFARE

### a. PUBLICATION OF A CONTRABAND LIST

Under the law of naval warfare, to exercise belligerent rights vis-à-vis merchant vessels (M/Vs), a party must publish a contraband list.<sup>347</sup> Russia has adopted three decrees imposing prohibitions and restrictions on the export of goods from Russia, applicable to all foreign states with a few exceptions.<sup>348</sup> Since contraband are goods destined for the territory under the control of the enemy susceptible for use in armed conflict,<sup>349</sup> goods with a neutral destination coming from a belligerent port do not constitute contraband.<sup>350</sup> In conclusion, Russia has not published a contraband list as foreseen by the law of naval warfare.

### b. DESTRUCTION OF NEUTRAL SHIPS

Indiscriminate and arbitrary measures of control against neutral M/Vs that cannot be based on “reasonable ground of suspicion” are unlawful.<sup>351</sup> They can be, however, legitimate military objectives and may be attacked if they constitute military objectives.<sup>352</sup> Since 24 February 2022, there have reportedly been several instances of Russia using force against neutral M/Vs within Ukrainian territorial waters,<sup>353</sup> some of which resulted in sunken vessels and injuries to their

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<sup>339</sup> AP I, Art. 38 (1).

<sup>340</sup> Violetta Orlova, ‘War crime: occupiers use medical transport to transport ammunition’ (transl.), *UNIAN*, 3 March 2022, at: <https://www.unian.net/war/voennoe-prestuplenie-okkupanty-ispolzuyut-medicinskiy-transport-dlya-perevozki-boepripasov-novosti-donbassa-11727307.html>.

<sup>341</sup> Kotznews, Telegram channel, at: <https://t.me/sashakots/29764>; Alexandr Kotz, ‘Save homes and people's lives. How is the attack on Kyiv going?’, *KP.ru*, 13 March 2022, at: <https://www.kp.ru/daily/27375.5/4557542/>

<sup>342</sup> AP I, Art. 37(1).

<sup>343</sup> AP I, Art. 37(1)(a); HR, Art. 23(f).

<sup>344</sup> ICC Statute, Art. 8(2)(b)(xi).

<sup>345</sup> AP I, Art. 39(2).

<sup>346</sup> AP I, Art. 38(2).

<sup>347</sup> San Remo Manual (SRM), para 149.

<sup>348</sup> Wilhelmina Shavshiva, ‘Russia introduces export bans and permit procedures’, *EY.com*, 14 March 2022, at: [https://www.ey.com/en\\_ru/tax/tax-alert/2022/03/ey-russia-introduces-export-bans-and-permit-procedures-14-march-2022-tax-eng](https://www.ey.com/en_ru/tax/tax-alert/2022/03/ey-russia-introduces-export-bans-and-permit-procedures-14-march-2022-tax-eng).

<sup>349</sup> SRM para 148; Helsinki Principles, para 5.2.3.

<sup>350</sup> Helsinki Principles para 5.2.5; ‘Increased risk when calling at Russian ports’, *Norwegian Maritime Authority*, 25 March 2022, at: <https://www.sdir.no/en/news/news-from-the-nma/increased-risk-when-calling-at-russian-ports/>.

<sup>351</sup> SRM, para 118.

<sup>352</sup> API Art. 52 (2); see also SRM, art 67(f).

<sup>353</sup> International Partnership for Human Rights War Crimes at Sea: Shelling of Merchant Ships in Ukraine’s Territorial Waters, *TruthHounds*, at: [https://truth-hounds.org/wp-content/uploads/2022/02/war-crimes-at-sea-final\\_vs.pdf](https://truth-hounds.org/wp-content/uploads/2022/02/war-crimes-at-sea-final_vs.pdf).

crew.<sup>354</sup> This included an attack launched against the Millennial Spirit chemical tanker, which entailed a high risk of chemical leakage that could have resulted in large-scale environmental damage.<sup>355</sup>

Pursuant to the obligation to protect merchant shipping from collateral damage,<sup>356</sup> naval mines laid by belligerents must become harmless one hour after loss of control over them.<sup>357</sup> Reports about “authorities working to neutralize” naval mines hours after having gone adrift indicate that this rule was violated,<sup>358</sup> allegedly by Ukraine in its internal waters and territorial sea.<sup>359</sup>

### c. MEASURES AGAINST ENEMY MERCHANT VESSELS

Enemy M/Vs can be targeted if they contribute to the enemy’s military action and disobey orders to stop and resist visit, search and capture.<sup>360</sup> On 27 February 2022, Russian Navy vessels seized two M/Vs sailing under the Ukrainian flag 18 nautical miles (nm) from the Crimean Peninsula, south of Cape Tarkhankut, transporting grain from Nikolaev in Ukraine to Constanta in Romania.<sup>361</sup> They threatened to destroy the vessels with missiles if they did not stop. Detaining and capturing enemy M/Vs is permissible under IHL but the property does not pass to the captor until the prize has been condemned by a prize court.<sup>362</sup> There is no indication that such a prize court exists and adjudicated the prize in Russia.

### d. BLOCKADE

To be lawful, a blockade must be declared and notified to all Powers, whether neutral or enemy,<sup>363</sup> including specifications on the commencement, duration, location, extent of the blockade and the period within which vessels of neutral states may leave the blockaded coastline. To the knowledge of the Mission, no blockade over the entire Ukrainian coastline has been declared. On 24 February the Russian Defence Ministry suspended movement of commercial vessels in the Sea of Azov until further notice.<sup>364</sup> While Russia has not expressly declared the blockade, a relevant announcement by the Federal Agency for Maritime and River Transport could qualify as such declaration.<sup>365</sup> On the other hand, while the Kerch Strait is closed for vessels passing north into the Sea of Azov, vessels heading south are permitted to transit.<sup>366</sup> According to the Russian Federal Agency for Maritime and River Transport, navigation in the Kerch Strait was not suspended but is reduced to minimum, as “vessels can

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<sup>354</sup> ‘One killed as two cargo ships hit by explosions off Ukraine’, *AlJazeera*, 3 March 2022, at: <https://www.aljazeera.com/news/2022/3/3/two-cargo-ships-hit-by-explosions-around-ukraine-one-killed>.

<sup>355</sup> API, Arts 35(3) and 55; SRM para 94; Rome Statute, Art. 8(2)(b)(iv).

<sup>356</sup> SRM, paras 82-86.

<sup>357</sup> SRM, para 82(b).

<sup>358</sup> ‘War in Ukraine – impact on maritime situation’ *Gard*, 29 March 2022, at: <https://www.gard.no/web/updates/content/33328301/war-in-ukraine-impact-on-maritime-situation>; ‘Risk of collateral damage in the north western, western, and southwest black sea’, *NSC*, 30 March 2022, at: <https://shipping.nato.int/nsc/operations/news/-2022/risk-of-collateral-damage-in-the-north-western-black-sea-2>

<sup>359</sup> Russia warns of Ukrainian mines in Black Sea, *AlArabiya News*, 19 March 2022, at: <https://english.alarabiya.net/News/world/2022/03/19/Russia-warns-of-Ukrainian-mines-in-Black-Sea->.

<sup>360</sup> London Protocol, para 2; SRM, para 60.

<sup>361</sup> ‘Russia Seizes Ukraine-Flagged Tanker and Bulker in Black Sea’, *Ship & Bunker News Team*, 28 February 2022, at: <https://shipandbunker.com/news/emea/402595-russia-seizes-ukraine-flagged-tanker-and-bulker-in-black-sea>.

<sup>362</sup> 1913 Oxford Manual, Art. 110.

<sup>363</sup> SRM, para 93.

<sup>364</sup> ‘Russia confirms suspension of movement of commercial vessels in the Azov sea – Interfax’, *Reuters*, 24 February 2022, at: <https://www.reuters.com/article/ukraine-crisis-russia-shipping-grains-az-idAFR4N2U2026>.

<sup>365</sup> ‘Rosmorrechflot confirms suspended navigation in Sea of Azov’, *Interfax*, 24 February 2022, at: <https://interfax.com/newsroom/top-stories/73960/>.

<sup>366</sup> Jamie Wallace, ‘Ukraine / Russia - Port update’, *Standard Club*, 25 February 2022, at: <https://www.standard-club.com/knowledge-news/ukraine-russia-port-update-4179/#:~:text=Navigation%20in%20the%20Sea%20of,allowed%20within%20the%20port%20limits>.

make local voyages between ports in Crimea and the Krasnodar Territory.” This could constitute a blockade against the Ukrainian cities Berdyansk and Mariupol.<sup>367</sup>

#### **e. THE POSSIBILITY FOR NEUTRAL SHIPS AND THEIR CREWS TO LEAVE**

On 24 February 2022, Ukraine announced that it would close its ports for entry and exit of neutral vessels.<sup>368</sup> According to Russian claims, the crews of 68 foreign countries have communicated that “any exit of a foreign ship from Ukrainian ports is prohibited by the Ukrainian authorities under the threat of immediate flooding.” The International Maritime Organization, estimates that up to 2,000 seafarer could be affected, although some may have been repatriated. The organization has called for the creation of a blue safe maritime corridor for the safe evacuation of seafarers.<sup>369</sup> Russia responded with the creation of humanitarian corridors, which has been disputed by Ukraine.<sup>370</sup>

## **12. SPECIFIC ATTACKS**

The Mission tried to look in more detail into two incidents, which occurred in the besieged and heavily destroyed city of Mariupol, where some 150,000-300,000 civilians remain trapped, living in unbearable conditions. Those incidents are particularly well documented and both parties have clarified their position concerning them.

#### **a. MARIUPOL MATERNITY HOUSE AND CHILDREN’S HOSPITAL**

On 9 March 2022 the Mariupol Maternity House and Children’s Hospital with 390 beds was seriously damaged by an attack, which resulted in 3 deaths and some 17 injuries (at least one injured pregnant woman and her subsequently delivered baby later died of these injuries).<sup>371</sup> All non-Russian sources indicate that the hospital was clearly identifiable and operational at the time it was hit.<sup>372</sup> This has been verified by the HRMMU<sup>373</sup> and several testimonies on social and other media, and the geolocation of the accompanying images confirm this.<sup>374</sup> In

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<sup>367</sup> Alexander Lott, Marine Traffic, ‘Global Ship Tracking Intelligence’ (AIS) Marine Traffic, at: <https://www.marinetraffic.com/en/ais/home/centerx:36.4/centery:45.1/zoom:8>.

<sup>368</sup> IMO Communication from the Government of Ukraine (Circular Letter No.4518) 24 February 2022, at: [https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black%20Sea%20and%20Sea%20of%20Azov%20-%20Member%20States%20and%20Associate%20Members%20Communications/Circular%20Letter%20No.4518%20-%20Communication%20From%20The%20Government%20Of%20Ukraine%20\(Secretariat\).pdf](https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black%20Sea%20and%20Sea%20of%20Azov%20-%20Member%20States%20and%20Associate%20Members%20Communications/Circular%20Letter%20No.4518%20-%20Communication%20From%20The%20Government%20Of%20Ukraine%20(Secretariat).pdf).

<sup>369</sup> IMO, IMO Council decisions on Black Sea and Sea of Azov situation, 11 March 2022, at: <https://www.imo.org/en/MediaCentre/PressBriefings/pages/ECSStatement.aspx>.

<sup>370</sup> IMO, ‘Communication from the Government of the Russian Federation’, (Circular Letter No.4543) 28 March 2022, at: [https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black Sea and Sea of Azov - Member States and Associate Members Communications/Circular Letter No.4543 - Communication From The Government Of The Russian Federation \(Secretariat\).pdf](https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black%20Sea%20and%20Sea%20of%20Azov%20-%20Member%20States%20and%20Associate%20Members%20Communications/Circular%20Letter%20No.4543%20-%20Communication%20From%20The%20Government%20Of%20The%20Russian%20Federation%20(Secretariat).pdf); and IMO, ‘Communication from the Government of Ukraine,’ (Circular Letter No.4544), 31 March 2022, at: [https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black Sea and Sea of Azov - Member States and Associate Members Communications/Circular Letter No.4544 - Communication From The Government Of Ukraine \(Secretariat\).pdf](https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black%20Sea%20and%20Sea%20of%20Azov%20-%20Member%20States%20and%20Associate%20Members%20Communications/Circular%20Letter%20No.4544%20-%20Communication%20From%20The%20Government%20Of%20Ukraine%20(Secretariat).pdf).

<sup>371</sup> UN, Office of the High Commissioner for Human Rights, ‘Ukraine: grave concern’, *Press Briefing Note*, 12 March 2022, at: <https://www.ohchr.org/en/press-briefing-notes/2022/03/ukraine-grave-concerns>.

<sup>372</sup> See e.g. Katie Polglase, Gianluca Mezzofiore and Livvy Doherty, ‘Anatomy of the Mariupol hospital attack’, *CNN*, 17 March 2022, at: <https://edition.cnn.com/interactive/2022/03/europe/mariupol-maternity-hospital-attack/index.html>. See also <https://www.reuters.com/world/mariupol-hospital-bombing-killed-three-people-including-child-ukraines-president-2022-03-10/>; <https://ukranews.com/news/840022-rossijskie-okkupanty-sovershili-aviadudar-na-detskuyu-bolnitsu-i-roddom-v-mariupole>.

<sup>373</sup> UN, Office of the High Commissioner for Human Rights, ‘Update on the Human Rights Situation in Ukraine’, Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 18.

<sup>374</sup> Sputnik News ATO (@SputnikATO), Twitter, 9 March 2022, at: <https://twitter.com/SputnikATO/status/1501570825803161610?s=20&t=qwvZoLqRXce2VC0cAkVOog>;

addition images taken just before and after the attack prove that it was an operational hospital and that it was severely damaged by the attack.<sup>375</sup>

Russia first qualified this incident as a fake news<sup>376</sup> and accused Ukraine of having staged it. Later Russia argued that the building was used by the Azov Battalion and that all patients had been evacuated, inter alia following a warning given by Russia.<sup>377</sup> This warning allegedly consisted of a declaration by the Russian representative in the Security Council on 7 March 2022.<sup>378</sup>

A media report trying to corroborate this military use shows a photograph of a tank and armed persons in front of a building alleged to have been the maternity hospital,<sup>379</sup> but this building does not align with any of the buildings within 1 km of the hospital when compared with satellite imagery. The shape of the building is quite unique and would be detectable from above. Likewise, a video embedded in the article<sup>380</sup> depicting what appears to be a soldier with an anti-tank guided missile on the roof of a building does not match any buildings within 1 km of the hospital. The Permanent Representative of Russia to the UN, however, showed on 11 March pictures of the hospital claiming that it could not have been hit by a rocket: he showed a photo of a crater, "*which by all indications was formed as a result of the explosion of a mine planted in the ground*".<sup>381</sup> The Mission therefore concludes that the hospital was destroyed by a Russian attack. Based upon Russian explanations, the attack must have been deliberate. No effective warning was given and no time-limit set. This attack therefore constitutes a clear violation of IHL<sup>382</sup> and those responsible for it have committed a war crime<sup>383</sup>.

#### **b. MARIUPOL THEATRE**

The Mission was informed by the media<sup>384</sup> and several Ukrainian governmental<sup>385</sup> and NGO sources<sup>386</sup> that on 16 March, the Drama Theatre located in the centre of Mariupol was destroyed

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Volodymyr Zelenskiy (@ZelenskiyyUA), Twitter, 9 March 2022, at: [https://twitter.com/ZelenskiyyUA/status/1501579520633102349?s=20&t=n0e7DjsQ2\\_x1CaVdbyqnXw](https://twitter.com/ZelenskiyyUA/status/1501579520633102349?s=20&t=n0e7DjsQ2_x1CaVdbyqnXw); Sputnik News ATO (@SputnikATO), Twitter, 9 March 2022, at: <https://twitter.com/SputnikATO/status/1501619569122856968/photo/1>; Associated Press, Youtube channel, at: <https://www.youtube.com/watch?v=6-NC-QOhhv4>.

<sup>375</sup> Mike Eckel (@Mike\_Eckel), Twitter, 12 March 2022, at: [https://twitter.com/Mike\\_Eckel/status/1502735991379042315](https://twitter.com/Mike_Eckel/status/1502735991379042315).

<sup>376</sup> Elizaveta Lukaschukova, 'The bombing of a maternity hospital in Mariupol turned out to be a fake. Here are all the photo and video blunders and inconsistencies', *Yamal News*, 11 March 2022, at: <https://yamal-media.ru/narrative/roddom-v-mariupole>.

<sup>377</sup> Valentin Alfimov, 'Who actually bombed the children's hospital in Mariupol', *KP.ru*, 9 March 2022, at: <https://www.kp.ru/daily/27374/4556142/>.

<sup>378</sup> 'Polyansky pointed to a fake about a strike on civilians in a hospital in Mariupol', *RIA News*, 10 March 2022, at: <https://ria.ru/20220310/mariupol-1777388570.html>.

<sup>379</sup> Valentin Alfimov, 'Who actually bombed the children's hospital in Mariupol', *KP.ru*, 9 March 2022, at: <https://www.kp.ru/daily/27374/4556142/>.

<sup>380</sup> WarGonzo, Youtube channel, at: [https://www.youtube.com/watch?v=s4-zYV\\_6Tgk](https://www.youtube.com/watch?v=s4-zYV_6Tgk).

<sup>381</sup> Permanent Mission of the Russian Federation to the UN, Statement by Permanent Representative Vassily Nebenzia at UNSC briefing on biological laboratories in Ukraine, 11 March 2022, at: [https://russiaun.ru/en/news/110322n\\_u](https://russiaun.ru/en/news/110322n_u).

<sup>382</sup> GC I, Arts 19, 21 and 35; API I, Arts 12 and 13.

<sup>383</sup> ICC Statute, Art. 8(2)(b)(ix).

<sup>384</sup> See, e.g., Hugo Bachega and Orysia Khimiak, 'A bomb hit this theatre hiding hundreds - here's how one woman survived', *BBC News*, 22 March 2016, at: <https://www.bbc.com/news/world-europe-60835106>; 'President Zelenskiy: 'My heart breaks' after Mariupol theatre bombing', *Euronews*, 17 March 2022, at: <https://www.euronews.com/2022/03/17/president-zelenskiy-my-heart-breaks-after-mariupol-theatre-bombing>.

<sup>385</sup> Mariupol City Council, Telegram Channel (official channel), at: <https://t.me/mariupolrada/8880>; Dmytro Kuleba (@DmytroKuleba), Twitter, 16 March 2022, at: <https://twitter.com/DmytroKuleba/status/1504141027879313412>.

<sup>386</sup> 'Ukraine: Mariupol Theater Hit by Russian Attack Sheltered Hundreds', *HRW*, 16 March 2022, at: <https://www.hrw.org/news/2022/03/16/ukraine-mariupol-theater-hit-russian-attack-sheltered-hundreds>.

by a powerful explosive (which is undisputed), allegedly by a Russian air strike. That the destruction of the theatre, which was clearly marked as housing children by signs on both sides, and in which many civilians had taken refuge, was deliberate is equally undisputed.<sup>387</sup> Russia does not claim that it was a legitimate target but that it was blown up by the Ukrainian Azov battalion.<sup>388</sup> The Mission did not receive any indication that this could be the case. Up to 1,300 persons were allegedly seeking shelter in the theatre, both underground and on the floors.<sup>389</sup> After the attack, some 150 persons including children were able to leave by their means while 300 were determined to be dead.<sup>390</sup> These were the persons who took shelter in the part of the theatre, that was fully destroyed. The lack of information about the fate of the remaining persons was explained to the Mission by the siege of Mariupol and the traumatization of the survivors, which made it impossible to interview many of them. This incident constitutes most likely an egregious violation of IHL<sup>391</sup> and those who ordered or executed it committed a war crime.<sup>392</sup>

## G. CONCLUSION

In conclusion, while in the circumstances a detailed assessment of most allegations of IHL violations and war crimes concerning particular incidents has not been possible, the Mission found clear patterns of such violations by the Russian forces on most of the issues investigated. Some violations and problems were also identified regarding practices of Ukraine but allegations that Ukraine and not Russia had caused some of the death, injury or destructions attributed to Russia could not be confirmed.

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<sup>387</sup> 'Ukraine: Mariupol Theater Hit by Russian Attack Sheltered Hundreds', *HRW*, 16 March 2022, at: <https://www.hrw.org/news/2022/03/16/ukraine-mariupol-theater-hit-russian-attack-sheltered-hundreds>; 'President Zelenskyy: 'My heart breaks' after Mariupol theatre bombing', *Euronews*, 17 March 2022, at: <https://www.euronews.com/2022/03/17/president-zelenskyy-my-heart-breaks-after-mariupol-theatre-bombing>.

<sup>388</sup> 'Ukraine says Russia strikes Mariupol theatre sheltering residents, Moscow denies attack', *Reuters*, 16 March 2022, at: <https://www.reuters.com/world/russian-bombing-hits-theatre-mariupol-sheltering-residents-city-council-2022-03-16/>.

<sup>389</sup> 'Mariupol City Officials: 300 Killed in Bombing of Theater Used as Shelter', *VOA News*, 25 March 2022, at: <https://www.voanews.com/a/mariupol-city-officials-300-killed-in-bombing-of-theater-used-as-shelter-6501265.html>; UN, Office of the High Commissioner for Human Rights, 'Update on the Human Rights Situation in Ukraine', Reporting period: 24 February–26 March 2022, 28 March 2022, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf), para 26.

<sup>390</sup> 'Mariupol City Officials: 300 Killed in Bombing of Theater Used as Shelter', *VOA News*, 25 March 2022, at: <https://www.voanews.com/a/mariupol-city-officials-300-killed-in-bombing-of-theater-used-as-shelter-6501265.html>.

<sup>391</sup> AP I, Arts 48, 51(2) and 52(1).

<sup>392</sup> AP I, Art. 85(3)(a); ICC Statute, Art. 8(2)(b)(i)-(ii).

## V. ALLEGED VIOLATIONS AND ABUSES OF INTERNATIONAL HUMAN RIGHTS LAW

### A. GENERAL ISSUES

#### 1. APPLICABLE LEGAL STANDARDS

Ukraine is a state party to the European Convention on Human Rights (ECHR), the Revised European Social Charter (RESC), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and all the other UN human rights instruments with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW). It has also ratified virtually all optional protocols (OP) to these conventions, except for the OP to the ICESCR and the Protocol to RESC (collective complaints).

The Russian Federation is a state party to the RESC, ECPT, the CIS Convention on Human Rights and Fundamental Freedoms (CHRFF), the ICCPR, ICESCR and all the other UN human rights instruments with the exception of CMW and the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED). It has ratified the first OP to the ICCPR, the first two OP to the UN Convention on the Rights of the Child (CRC) and the OP to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As a result of its expulsion from the Council of Europe,<sup>393</sup> Russia “*shall cease to be a High Contracting Party to the ECHR on 16 September 2022*”.<sup>394</sup> The ECtHR will however remain competent to deal with applications directed against Russia relating to alleged violations of the ECHR that occur before 16 September 2022 (Article 58(2) of the ECHR).

The two countries have committed themselves to standards recognized under the OSCE human dimension.<sup>395</sup>

There are also numerous non-binding instruments that either assist in interpreting human rights obligations contained in treaties or seek to identify or propose standards for areas where no such treaties exist. These instruments encompass *inter alia* the *Guiding Principles on Internal Displacement*,<sup>396</sup> the *Declaration on the Protection of Persons from Enforced Disappearances*,<sup>397</sup> the *Code of Conduct for Law Enforcement Officials*<sup>398</sup> or the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.<sup>399</sup>

The so-called Donetsk and Luhansk “People’s Republics” are not internationally recognized states. There is a long-term discussion, whether *de facto* entities and non-state actors more broadly are, at least to some extent, bound by the obligations stemming from IHRL.<sup>400</sup> The

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<sup>393</sup> Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, 16 March 2022.

<sup>394</sup> Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe, 23 March 2022, para 7.

<sup>395</sup> See *OSCE Human Dimension Commitments, Vol. I Thematic Compilation, 3<sup>rd</sup> Edition, Vol. II. Chronological Compilation, Vol. III*, OSCE-ODIHR, Warsaw, 2012.

<sup>396</sup> UN Doc. E/CN.4/1998/53/Add.2, *Guiding Principles on Internal Displacement*, 11 February 1998.

<sup>397</sup> UN Doc. A/RES/47/133, *Declaration on the Protection of Persons from Enforced Disappearances*, 18 December 1992.

<sup>398</sup> UN Doc A/RES/34/169, *Code of Conduct for Law Enforcement Officials*, 17 December 1979.

<sup>399</sup> UN Doc. A/RES/60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 16 December 2005.

<sup>400</sup> See Yael Ronen, Non-recognition, Jurisdiction and the TRNC before the European Court of Human Rights, 62 *Cambridge LJ* (2003), 534-537; Steven Wheatley, Anthony Cullen, The Human Rights of Individuals in *De Facto*

Mission does not take any position in this discussion. Following the approach embraced by human rights bodies with respect to events occurred in the territories of other *de facto* entities (Abkhazia, South Ossetia, Nagorno Karabakh, the Turkish Republic of Northern Cyprus), the Mission focuses on the obligations assumed by state parties to human rights instruments.

## **2. DEROGATION FROM THE OBLIGATIONS UNDER HUMAN RIGHTS INSTRUMENTS**

During public emergency threatening the life of the nation, such as international armed conflict, states may derogate from their obligations to secure human rights under derogation clauses contained in several human rights instruments (Article 4 of the ICCPR, Article 15 of the ECHR, Article F of the RESH, Article 35 of the CHRFF). Derogation amounts to temporary suspension of certain human rights guarantees for the period necessary to overcome the public emergency.

States may derogate from their IHRL obligations to the extent strictly required by the exigencies of the situation. The measures of derogation may not be inconsistent with the state's other international obligations, such as those under IHL. They may not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Certain human rights, such as the right to life and the prohibition of torture, are considered non-derogable. States availing themselves of the right of derogation shall officially proclaim the state of emergency and shall keep the Secretary-General of the UN (ICCPR) and of the Council of Europe (ECHR, RESC) fully informed about the extent and content of the derogation, grounds for it and its subsequent modifications or withdrawal.

The Russian Federation has not made any derogation with respect to the conflict in the territory of Ukraine. All the human rights instruments ratified by it therefore remain in force. Ukraine has derogated from its obligations under the ICCPR and the ECHR at several instances since 2014. The older derogations (2015-2019) relate to the situation in the Autonomous Republic of Crimea and the City of Sevastopol and in the Donetsk and Luhansk regions. The recent derogations (2022) have been made following the Russian attack against Ukraine and the introduction, for a period of 30 days, of a state of emergency in most regions of Ukraine (23 February) and of martial law on the entire territory of Ukraine (24 February, extended for another 30 days from 26 March). The recent derogations concern a broad range of human rights, namely those granted by Articles 2(3), 3, 8(3), 9, 12-14, 17, 19-22, 24-27 of the ICCPR, Articles 4(3), 5-6, 8-11 and 13-14 of the ECHR, Article 1-3 of the Additional Protocol to the ECHR and Article 2 of Protocol 4 to the ECHR.<sup>401</sup>

## **3. APPLICATION OF IHRL IN ARMED CONFLICTS**

It is generally accepted that IHRL continues to apply in times of armed conflict. This view has been consistently upheld by the International Court of Justice (ICJ),<sup>402</sup> the UN Human Rights

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Regimes under the European Convention on Human Rights, 13 *HRLR* (2013), 691-728; Daron Tan, *Filling the Lacuna: De Facto Regimes and Effective Power in International Human Rights Law*, 51 *Int'l L. & Politics* (2019), 435-492.

<sup>401</sup> Status of the Treaties, *UN Treaty Collection*, at: [https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=\\_en&mtdsg\\_no=IV-4&src=IND](https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND); Reservations and Declarations for Treaty No.005, *Council of Europe*, at: <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=005&codeNature=0>.

<sup>402</sup> ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, para 25; ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para 106.



Council,<sup>403</sup> the UN Human Rights Committee (HRC),<sup>404</sup> the European Court of Human Rights (ECtHR)<sup>405</sup> and many other international bodies.

The existence of an armed conflict may have an impact on the extent of the jurisdiction that the states parties to this conflict exercise and within which they have the obligation to secure human rights. Under the established case-law of human rights bodies, the jurisdiction is primarily territorial but there is “*a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries*”.<sup>406</sup>

One of these exceptional circumstances is the effective control resulting from lawful or unlawful military action that a state exercises, directly or through a subordinate local administration, over an area outside its national territory.<sup>407</sup> In these cases, the jurisdiction stems from the factual domination over the territory, regardless of whether this domination has any valid legal basis. The state exercising effective control over an area has the responsibility to ensure to individuals within this area the entire range of recognized human rights.

The Mission has concluded that some parts of the Ukrainian territory are indeed under the effective control of another state, the Russian Federation. This is the case of the Autonomous Republic of Crimea and the City of Sevastopol, which have been temporarily occupied and (unlawfully) annexed by Russia since 2014. Russia does not deny having jurisdiction over these areas, asserting, however, that they are part of its national territory. In *Ukraine v. Russia (Re Crimea)*, the ECtHR held, albeit on a preliminary basis, that “*the jurisdiction of /Russia/ over Crimea is in the form or nature of “effective control over an area” rather than in the form or nature of territorial jurisdiction*”.<sup>408</sup>

Certain parts of the Donetsk and Luhansk regions have also been under the effective control of Russia since 2014. This control is exercised through a subordinate local administration of the so-called Donetsk and Luhansk “People’s Republics”, over whose acts Russia exercises (at least) overall control. Since 24 February 2022, moreover, Russia seems to have progressively secured (and sometimes subsequently lost) effective control over certain other areas of the Ukrainian territory, especially other parts of the Donetsk and Luhansk regions and the Kherson region.

The Mission notes that in *Georgia v. Russia II (2021)*, the ECtHR distinguished between the active phase of hostilities, where effective control by a non-territorial sovereign is not yet established, and the occupation phase after the end of the active phase of hostilities, where such control is already in place.<sup>409</sup> In line with this distinction, Russia has jurisdiction only over those parts of the Ukrainian territory where the active phase of hostilities has already ended.

The Mission also notes that in *Ilaşku and Others v. Moldova and Russia (2004)*, the ECtHR stated that the territorial state, “*even in the absence of effective control, /.../ still has a positive*

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<sup>403</sup> UN Doc. A/HRC/RES/9/9, *Resolution 9/9. Protection of the human rights of civilians in armed conflict*, 18 September 2008.

<sup>404</sup> UN Docs CCPR/C/21/Rev.1/Add.13, *General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, para 11; CCPR/C/CG/36, *General comment No. 36 (2018) on the right to life*, 30 October 2018, para 64.

<sup>405</sup> ECtHR, *Hassan v. United Kingdom*, Application no. 29750/09, Judgment (GC), 16 September 2014, para 104.

<sup>406</sup> ECtHR, *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, Judgment (GC), 7 July 2011, para 132.

<sup>407</sup> ECtHR, *Loizidou v. Turkey (preliminary objections)*, Application no. 15318/89, Judgment, 23 March 1995, para 62; *Cyprus v. Turkey*, Application no. 25781/94, Judgment (GC), 10 May 2001, para 76.

<sup>408</sup> ECtHR, *Ukraine v. Russia (Re Crimea)*, Applications nos 20958/14 and 38334/18, Judgment (GC), 16 December 2020, para 349.

<sup>409</sup> ECtHR, *Georgia v. Russia (II)*, Application no. 38263/08, Judgment (GC), 21 January 2021, para 73. See also UN Doc. CCPR/C/21/Rev.1/Add.13, *General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, para 10.

*obligation /.../ to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the /ECHR/”.*<sup>410</sup> This positive obligation is not identical to the obligation to secure the full range of human rights. Rather, it is a residual obligation to strive, to the extent possible in the given circumstances, to regain control over territories outside the factual control of the state. The statement made in the derogation note by Ukraine with respect to the situation in Crimea and in some parts of the Donetsk and Luhansk regions<sup>411</sup> shall be read in light of this positive obligation.

In the recent decision in *Bekoyeva v. Georgia* (2021),<sup>412</sup> moreover, the ECtHR has suggested that a state might be prevented from exercising its authority over certain areas not only when these areas are under the effective control of another state, but also when acts of war, in a context of chaos, occur there. The State’s “*inability to exercise State authority over the relevant territories during the active phase of the hostilities is to be understood as a limitation of the normal exercise of the respondent State’s territorial jurisdiction over the war-stricken territories*”.<sup>413</sup> The residual responsibility, whose concrete extent depends on the concrete situation, remains applicable here as well.

In addition to the effective control over an area, another circumstance that may give rise to the exercise of the jurisdiction by a state outside its territorial boundaries is the so-called state agent control and authority. This circumstance materialises when “*the use of force by a State’s agents operating outside its territory /.../ bring the individual thereby brought under the control of the State’s authorities into the State’s /.../ jurisdiction*”.<sup>414</sup> This is typically the case when a person is detained by state agents, for instance members of the armed forces of a state, outside the territory of that state. The obligation to secure human rights is then limited to those rights that are “*relevant to the situation of that individual*”.<sup>415</sup>

The ECtHR is of the view that in the areas of active hostilities, “*the very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos /.../ excludes any form of “State agent authority and control” over individuals*”.<sup>416</sup> This statement, however, seems to relate to acts carried out in the course of active hostilities, not to those carried out with respect to persons detained or otherwise subject to the power by the parties to the conflict. The Mission has received information about instances in which individuals – members of the Ukrainian armed forces or Ukrainian civilians – have been captured or detained outside the areas under the effective control of Russia. In line with the state agent control and authority principle, such individuals are within the jurisdiction of Russia from the moment of their capture or detention until their release.

The Mission also takes note of the view expressed by the UN Human Rights Council (HRC) that “*States parties engaged in acts of aggression as defined in international law, resulting in deprivation of life, violate ipso facto article 6 of the Covenant*”.<sup>417</sup> If correct, this conclusion

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<sup>410</sup> ECtHR, *Ilaşku and Others v. Moldova and Russia*, Application no. 48787/99, Judgment, 8 July 2004, para 331. See also UN Doc. CCPR/C/MDA/CO/2(2009), *Concluding Observations on Moldova*, 4 November 2009, para 5.

<sup>411</sup> “*The Russian Federation, as the Aggressor State and Occupying Power, bears full responsibility for respect of human rights in temporarily occupied territories of Ukraine under international humanitarian law, as well as in accordance with international human rights law.*” *Declaration of the Verkhovna Rada of Ukraine on Derogation from Certain Obligations under the ICCPR and the ECHR*, 16 July 2015.

<sup>412</sup> ECtHR, *Bekoyeva v. Georgia*, Application no. 48347/08, Judgment, 5 October 2021, para 38.

<sup>413</sup> ECtHR, *Bekoyeva v. Georgia*, *op. cit.*, para 39.

<sup>414</sup> ECtHR, *Al-Skeini*, *op. cit.*, para 136. See also UN Doc. CCPR/C/CG/36, *op. cit.*, para 63.

<sup>415</sup> ECtHR, *Al-Skeini*, *op. cit.*, para 137.

<sup>416</sup> ECtHR, *Georgia v. Russia (II)*, *op. cit.*, para 126.

<sup>417</sup> UN Doc. CCPR/C/CG/36, *op. cit.*, para 70.

seems potentially applicable to the acts resulting in the violations of many other human rights, as long as there is a direct causal link between these acts and the act of aggression.

#### 4. THE RELATIONSHIP BETWEEN IHRL AND IHL

In a situation of armed conflict, IHRL applies in parallel to IHL, according to a so-called concurrent or dual applicability. As stipulated by the HRC, “while, in respect of certain /.../ rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of /.../ rights, both spheres of law are complementary, not mutually exclusive”.<sup>418</sup> In its 2004 advisory opinion, the ICJ distinguished three possible situations of the relationship between the two areas: “Some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law”.<sup>419</sup> These overlaps explain why some incidents appear in both the IHL and IHRL parts of this report.

*Lex specialis derogat legi generali* is a generally recognized principle of international law, used in legal interpretation and in the resolution of normative conflicts. It is also conventionally used in cases of the overlap between IHL and IHRL, to determine the relationship between the two branches.<sup>420</sup> The application of the *lex specialis* principle in the context of an international armed conflict often gives priority to IHL. This, however, does not need to be so in all cases. As the Office of the UN High Commissioner for Human Rights (OHCHR) holds, “the more effective the control over persons or territory, the more human rights law would constitute the appropriate reference framework”.<sup>421</sup> Whereas the process of targeting is primarily informed by IHL rules, the fair trial guarantees need to be interpreted in light of IHRL standards.<sup>422</sup> This approach is reflected in practice of human rights bodies, which do not set the IHRL framework in the context of armed conflict fully aside but seek to interpret this framework in harmony with applicable IHL rules. The Mission embraces this approach as well.

#### 5. THE RELATIONSHIP BETWEEN VIOLATIONS OF IHRL AND CRIMES AGAINST HUMANITY

The relationship between violations of IHRL and crimes against humanity is somewhat similar to that between violations of IHL and war crimes described above.<sup>423</sup> Violations of IHRL, legally speaking, are committed by states. Crimes against humanity, on the contrary, are committed by individuals. The former give rise to the responsibility of the state, the latter to the criminal responsibility of an individual. The catalogue of crimes against humanity is much shorter than that of violations of IHRL and it encompasses only the most serious violations of IHRL. Unlike war crimes, crimes against humanity are not explicitly enumerated, or even mentioned, in IHRL treaties. There is also no special instrument on crimes against humanity as such.<sup>424</sup>

The most comprehensive catalogue of crimes against humanity is provided by the 1998 Rome Statute (RS) of the International Criminal Court (ICC). Although Ukraine and Russia are not

<sup>418</sup> UN Doc. CCPR/C/21/Rev.1/Add.13, *General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, para 11.

<sup>419</sup> ICJ, *Legal Consequences*, *op. cit.*, para 106.

<sup>420</sup> ICJ, *Nuclear Weapons*, *op. cit.*, para 25; ICJ, *Construction of a Wall*, *op. cit.*, para 106.

<sup>421</sup> OHCHR, *International legal protection of human rights in armed conflict*, Doc. HR/PUB/11/01, November 2011, p. 63.

<sup>422</sup> Jakob Kellenberger, *International humanitarian law and other legal regimes: interplay in situations of violence*, Statement to the 27th Annual Round Table on Current Problems of IHL, San Remo, Italy, 4–6 September 2003.

<sup>423</sup> See above, IV. D.

<sup>424</sup> In 2019, the UN International Law Commission adopted, in the second reading, *Draft articles on Prevention and Punishment of Crimes Against Humanity*. See UN Doc. A/74/10, *Report of the International Law Commission*, 2019, pp. 22-140.

state parties to the RS, neither of them has contested the definition of crimes against humanity enshrined in Article 7. In fact, during the discussions in the International Law Commission, Russia explicitly supported “*the verbatim reproduction /.../ of the definition of crimes against humanity found in the Rome Statute*”.<sup>425</sup> Ukraine has expressed its support for the definition implicitly, by recognizing the jurisdiction of the ICC over *inter alia* crimes against humanity committed on its territory since 21 November 2013.

The RS defines crimes against humanity as one of the acts enlisted in its Article 7 when those acts are “*committed as part of a widespread or systematic attack directed against any civilian population, with the knowledge of the attack*”. These acts include murder, extermination, enslavement, deportation or forcible transfer of population, unlawful imprisonment, rape and other forms of sexual violence, persecution, enforced disappearance of persons, apartheid and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. “Attack directed against any civilian population” is “*a course of conduct involving the multiple commission of such acts against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack*” (Article 7(2) of the RS). According to the established case-law, “widespread” refers to the large-scale nature of the attack and the number of targeted persons, and “systematic” describes the organized nature of the acts of violence and the improbability of their random occurrence.<sup>426</sup>

The categories of crimes against humanity and war crimes are not fully disjunctive. An individual may thus commit crimes of both categories by one single act.

## **B. IMPACT OF THE CONFLICT ON CIVIL AND POLITICAL RIGHTS**

The conflict in the territory of Ukraine has had a major impact on the enjoyment of civil and political rights, including some of non-derogable rights, such as the right to life or the prohibition of torture. In this area, IHRL largely overlaps with IHL and the IHRL standards thus have to be interpreted in light of the *lex specialis* of IHL. Many provisions of the ICCPR and the ECHR have been derogated from by Ukraine after the Russian attack. Non-derogable rights and non-derogable parts of derogable rights remain, however, in force, as do provisions and instruments which do not allow for derogation or have not been derogated from.

The Mission recalls that IHRL gives rise to both substantive and procedural obligations. States have to refrain from interfering with these rights, prevent other actors, including private entities, from breaching such rights, and adopt positive measures making the enjoyment of these rights possible. They moreover have to effectively investigate allegations of violations of human rights, hold those responsible for such violations accountable and provide or facilitate remedies and reparations to victims. Serious violations of civil and political rights, especially of non-derogable rights, may constitute crimes against humanity and/or war crimes.

The Mission has received extensive information suggesting that many civil and political rights have been not only affected but also directly violated during the first five weeks of the conflict. The vast majority of such violations have either occurred in the areas under the effective control of Russia or can otherwise be attributed to this state. Many of these violations are at the same time violations of IHL and the most serious among them are likely to constitute war crimes and/or crimes against humanity. The Mission has been able to identify some of these violations, especially those involving breaches of negative obligations (e.g., targeted killing of a civilian). It is more difficult to say to what extent positive obligations (e.g., the obligation to investigate)

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<sup>425</sup> UN Doc. A/C.6/70/SR.23, *Sixth Committee. Summary record of the 23rd meeting*, 27 November 2015, para 18.

<sup>426</sup> ICTR, *Prosecutor v. Gatete*, Judgement, ICTR-2000-61-T, 31 March 2011, para 63; *Prosecutor v. Ndindiliyimana et al.*, Judgement, ICTR-00-56-T, 17 May 2011, para 2087; *Prosecutor v. Nyiramasuhuko et al.*, Judgement, ICTR-98-42-T, 24 June 2011, para 6040.

have been disrespected, provided that the fulfilment of such obligations may require a period extending the one covered by the mandate of the Mission.

The focus of this report lies on those civil and political rights that have been the most severely affected by the conflict. That, however, is not meant to suggest that other rights would remain unaffected.

## 1. RIGHT TO LIFE

The right to life is enshrined in Article 6 of the ICCPR and Article 2 of the ECHR. This right is non-derogable under the ICCPR but can be derogated from, “*in respect of deaths resulting from lawful acts of war*” (Article 15(2)), under the ECHR. Neither Ukraine nor Russia has made such derogation. IHL bodies have, however, repeatedly stipulated that even in the absence of derogation, the provisions of human rights treaties have to be interpreted in light of IHL as the applicable *lex specialis*.<sup>427</sup> IHL rules help clarify what amounts to the “*arbitrary deprivation of life*” prohibited by Article 6(1) of the ICCPR and when the use of force is “*no more than absolutely necessary*” to achieve one of the purposes described in Article 2(2) of the ECHR. Any act, which fails to meet the standard set by IHL, would constitute a violation of the right to life. Deprivation of the right to life in the form of murder of civilians, when committed as part of a widespread or systematic attack directed against any civilian population with the knowledge of this attack, amounts to a crime against humanity (Article 7(1)(a) of the RS).

The Mission notes with concern the large overall number of persons killed in the conflict, both among civilians and among the military personnel. By 28 March 2022, the Ukrainian army reported 1,300 military casualties (US estimates are 2-3 times higher) and the Russian army reported 1,350 military casualties (NATO estimates are 5-10 times higher). Civilian casualties, according to the conservative figures provided by the UN, edge close to 1,200 according to the UN (Ukrainian estimates are 3-4 times higher).<sup>428</sup> Although some of these instances of death, especially among military personnel, may be lawful under IHL, they are all regrettable. The Mission shows the view expressed by the HRC that “*efforts to avert the risks of war /.../, are among the most important safeguards for the right to life*”<sup>429</sup> and that the state which starts an unlawful war is, at least politically and morally, if not legally, responsible for any death that occurs in the course of such an unlawful war.

Extrajudicial (targeted) killings and executions constitute one of the most serious violations of the right to life. They consist of murders committed outside judicial process, typically by, or with the consent of, public officials. Deprivation of life carried out in compliance with IHL, for instance killing of an enemy combatant, is not an extrajudicial killing or execution. “*Violations of the right to life during armed conflict, especially of civilian population and other non-combatants, contrary to international humanitarian law*”<sup>430</sup> conversely qualify as such.

The Mission has received reports about numerous instances of killings of civilians by the Russian forces that reveal features of extrajudicial killings. On 7 March 2022, Yuriy Prylypko, the head of the local self-government in the village of Gostomel in the Kyiv region, and two volunteers, Ruslan Karpenko and Ivan Zorya, were shot dead by Russian soldiers while delivering food and medicine to local residents. The body of Prylypko was allegedly mined after his death.<sup>431</sup> On 13 March 2022, Oleksandr Kononov, a disabled pro-Ukrainian activist

<sup>427</sup> ICJ, *Nuclear Weapons*, *op. cit.*, para 25; ECtHR, *Hassan*, *op. cit.*, para 103.

<sup>428</sup> Ukraine: civilian casualty update 28 March 2022, *OHCHR*, 28 March 2022, at: <https://www.ohchr.org/en/news/2022/03/ukraine-civilian-casualty-update-28-march-2022>

<sup>429</sup> UN Doc. CCPR/C/CG/36, *op. cit.*, para 69.

<sup>430</sup> See UN Doc. A/ HRC/47/3, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, 7 June 2021, para 7.

<sup>431</sup> Grave human rights violations targeting human rights defenders, journalists, civil society activists, and representatives of local communities, *Submission by the OMCT*, 31 March 2022, with the authors.

from the Luhansk region, was shot dead at home, in his wheelchair, by Russian soldiers.<sup>432</sup> These incidents seem hard to explain by military necessity.

The Office of the Prosecutor General of Ukraine has moreover started investigating allegations of a deliberate attack on civilians standing in the queue to get bread in the town of Chernihiv, resulting in the death of 10 persons.<sup>433</sup> The Ministry of Defence of the Russian Federation denied the involvement in this incident, claiming that “*there is no Russian military in Chernihiv /.../ and there was no offensive*”.<sup>434</sup> Investigations have also been opened with respect to several incidents, in which individuals, usually families or older couples, were shot dead or seriously injured while travelling about their village, town or region. In one such incident, on 19 March 2022, an older woman was killed and her husband injured by Russian soldiers, while riding bicycles to the local hospital in Trostyanets in the Sumy region.<sup>435</sup> In another incident, a family of three was shot dead by Russian soldiers when riding a car on the highway in the Kharkiv region.<sup>436</sup> While more in-depth investigation into these incidents is needed, they seem hard to explain by military necessity and suggest instances of extrajudicial killings.

Moreover, on 1 April 2022, the first reports about a very large number of civilians murdered in the village of Bucha in the Kyiv region, started to appear on the media.<sup>437</sup> The Russian forces allegedly killed all local men aged 16-60 on their retreat from the village. If confirmed, this incident would amount not only to a violation of the right to life in the form of massive extrajudicial killing but would also, undoubtedly, constitute a crime against humanity.

Several individuals of Ukrainian nationality suspected of being marauders, traitors or pro-Russian spies have also died in unclear and suspicious circumstances. One is Denis Kireev, a former Ukrainian banker and participant in the early negotiations between Ukraine and Russia who was allegedly shot dead on 5 March 2022 during his arrest by the Security Service of Ukraine after a wiretapping counter-espionage operation. The circumstances of his death, however, remain uncertain.<sup>438</sup> Several media have also reported that Volodymyr Struk, a pro-Russian mayor in the town of Kremnina, in the Luhansk region, was abducted and shot dead by unknown individuals on 2 March 2022. In response to his death, Anton Gerashchenko, an advisor to the Ukrainian Ministry of Internal Affairs, wrote in a post on Telegram that Struk was “*judged by the public tribunal and apparently shot by unknown patriots as a traitor under*

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<sup>432</sup> ‘Russians ‘shoot dead disabled Ukrainian volunteer who had one arm and one leg in his wheelchair’, *Daily Mail Online*, 13 March 2022, at: <https://www.dailymail.co.uk/news/article-10608825/Russians-shoot-dead-disabled-Ukrainian-volunteer-one-arm-one-leg-wheelchair.html>.

<sup>433</sup> У Чернігові російські війська обстріляли людей в черзі за хлібом – загинуло 10 осіб, *Офіс Генерального прокурора*, 13 березня 2022, at: <https://gp.gov.ua/ua/posts/u-chernigovi-rosiiski-viiska-obstrilyali-lyudei-v-cerzi-za-xlibom-zaginulo-10-osib>.

<sup>434</sup> Российские военные сообщили об ударе по военным объектам в Виннице, *Interfax*, 16 марта 2022, at: <https://www.interfax.ru/world/829618>.

<sup>435</sup> Обстріл подружжя пенсіонерів, які їхали на велосипедах у лікарню - на Сумщині розпочато провадження, *Офіс Генерального прокурора*, 22 березня 2022, at <https://gp.gov.ua/ua/posts/obstril-podruzzya-pensioneriv-yaki-yixali-na-velosipedax-u-likarnyu-na-sumshhini-rozpocato-provadzennya>.

<sup>436</sup> На Харківщині окупанти розстріляли авто з родиною - розпочато розслідування, *Офіс Генерального прокурора*, 27 березня 2022, at: <https://gp.gov.ua/ua/posts/vorog-zavdav-novix-udariv-ponaselenim-punktam-doneccini-rozpocato-6-kriminalnix-provadzen-2>.

<sup>437</sup> ‘Russian Army Executes Hundreds of Civilian Men in Bucha, Other Kyiv Suburbs. Bodies Litter the Streets with Hands Tied Behind Backs’, *Santa Monica Observer*, 1 April 2022, at: <https://www.smobserved.com/story/2022/04/01/news/russian-army-shot-all-men-aged-16-to-60-in-bucha-7000-civilians-killed-if-true-biggest-war-crime-of-the-war/6642.html>.

<sup>438</sup> Roman Kravets, SBU shot dead Ukrainian negotiator in Homel during detention, *Ukrainska Pravda*, 5 March 2022, at: [https://www-pravda-com-ua.translate.google.com/rus/news/2022/03/5/7328458/?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en&\\_x\\_tr\\_pto=wapp](https://www-pravda-com-ua.translate.google.com/rus/news/2022/03/5/7328458/?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp).

*laws of war*".<sup>439</sup> Who exactly the unknown individuals were, has not however been clearly established so far. These two, and other similar, incidents need to be properly investigated.

Instances of "civilian justice" resulting in the death of alleged marauders have also been reported. For instance, on 5 March 2022, a 37-year-old man, who had been previously held liable for theft and alcohol abuse on several occasions, died after being exposed on the "pillar of shame" and subject to public spanking, in the town of Novovolynsk in the Volyn region. The incident is reportedly under investigation.<sup>440</sup> If the facts are confirmed, the persons involved would have to be brought to justice.

## 2. PROHIBITION OF TORTURE AND INHUMAN AND DEGRADING TREATMENT

The prohibition of torture and other inhuman and degrading treatment is enshrined in Article 7 of the ICCPR, Article 3 of the ECHR and Article 2 of the *UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (CAT). It is one of the few absolute rights from which no derogation, even in times of armed conflict, is possible.

Torture constitutes "*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*" (Article 1(1) of the CAT).

The Rome Statute ranks torture, when committed as part of a widespread or systematic attack directed against any civilian population with the knowledge of this attack, among crimes against humanity and defines it as "*the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused*" (Article 7(2)(e)). Torture is also prohibited under IHL and if committed against persons protected under the Geneva Conventions, it constitutes a war crime (Article 8(2)(a)(ii) of the RS).

Inhuman and degrading treatment or punishment differ from torture by the degree of physical or mental suffering imposed on the person. Inhuman treatment or punishment is "*premeditated /.../, applied for hours /.../ and caus[ing] either actual bodily injury or intense physical and mental suffering*".<sup>441</sup> Degrading treatment or punishment humiliates or debases an individual showing lack of respect for, or diminishing, his or her human dignity and arousing feelings of fear, anguish and inferiority capable of breaking an individual's moral and physical resistance.<sup>442</sup> To qualify as one of the three acts prohibited by IHRL, mistreatment must attain a minimum level of severity. The assessment of this level "*depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim*".<sup>443</sup>

The Mission has received worrying information about the alleged use of torture or other forms of mistreatment with respect to members of the armed forces and civilians detained by Russia and, to a lesser extent, by Ukraine.

The local journalist and human rights defender Oleh Baturin who was held captive by the Russian forces for 8 days following his abduction in Kakhovka in the Kherson region on 12

<sup>439</sup> At: [https://t.me/Pravda\\_Gerashchenko/1565](https://t.me/Pravda_Gerashchenko/1565).

<sup>440</sup> На Волині помер мародер, якого затримали напередодні, *Волинь.UA*, 27 березня 2022, at: <https://volynua.com/posts/na-volini-pomer-maroder-yakogo-zatrimali-napereodni>.

<sup>441</sup> ECtHR, *Kudla v. Poland*, Application no. 30210/96, Judgment, 26 October 2000, para 92

<sup>442</sup> ECtHR, *Pretty v. United Kingdom*, Application no. 2346/02, Judgment, 29 April 2002, para 52.

<sup>443</sup> ECtHR, *Kalashnikov v. Russia*, Application no. 47095/99, Judgment, 15 July 2002, para 95.

March 2022, was reportedly beaten, humiliated and threatened with death while detained.<sup>444</sup> During the occupation of the town of Trostyanets in the Sumy region, the Russian forces allegedly brutally abused and finally killed a local inhabitant who was later found with multiple bodily injuries in his garage.<sup>445</sup> The World Organization Against Torture (OMCT), monitoring the situation in Ukraine, has indicated having received reports of numerous cases of torture in the Temporary Detention Centre of Kherson under the control of Russia. Persons detained there, mostly Ukrainian veterans of military operations in eastern Ukraine and civilians, are severely beaten, subject to mock executions and denied access to food, water and medical care.<sup>446</sup> The Mission has no doubt that if confirmed, these incidents would involve torture and/or inhuman treatment and constitute war crimes and/or crimes against humanity.

On 27 March 2022, a video was posted on the Internet showing alleged mistreatment of Russian prisoners of war by Ukrainian soldiers in the village of Vilkhivka in the Kharkiv region. According to the video, the prisoners were beaten and shot in legs. This incident is now under investigation both in Russia and in Ukraine.<sup>447</sup> If confirmed, the same conclusion would be applicable here. It has also been reported that since the early days of the conflict, Ukraine has posted on public channels (Telegram, Facebook, Twitter, Youtube, Instagram) videos that show Russian prisoners of war and expose them in this way to public curiosity.<sup>448</sup> Such acts, while not constituting torture, may nonetheless qualify as degrading treatment.

Moreover, there is a large number of reports and videos showing mistreatment of persons who are believed to be marauders, bootleggers, spies, pro-Russian supporters or curfew violators in the territory under the control of Ukraine.<sup>449</sup> Mistreatment, carried out by police officers, members of the territorial defence or civilians, usually consists of such individuals being duct-taped to electricity poles or trees, partially or fully stripped, beaten, including with sticks and rods, and sprayed with paint or having the word marauder written on their body or clothes. The OHCHR has documented more than 45 such cases.<sup>450</sup> The Mission recalls once again that all such incidents call for proper investigation and the appropriate punishment of those involved. If the participation of public officials is confirmed, these incidents would constitute, depending on the severity of mistreatment, an act of torture or inhuman and degrading treatment.

### 3. RIGHT TO LIBERTY AND SECURITY

The right to liberty and security is enshrined in Article 9 of the ICCPR and Article 5 of the ECHR. Ukraine has derogated from these provisions in connection with the adoption of *Law No. 2111-IX amending the Criminal Procedural Code of Ukraine and the Law on Pre-Trial Detention*.<sup>451</sup> Certain guarantees offered by the right to liberty and security may however not

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<sup>444</sup> 'Oleh Baturin: Ukrainian Journalist Who Was Held Captive by Russians For 8 Days Released', *International Business Times*, 22 March 2022, at: <https://www.ibtimes.sg/who-oleh-baturin-ukrainian-journalist-who-was-held-captive-by-russians-8-days-released-63506>.

<sup>445</sup> Закатували чоловіка у м. Тростянець - розпочато слідство, *Офіс Генерального прокурора*, 27 березня 2022, at: <https://gp.gov.ua/ua/posts/zakatuvali-colovika-u-m-trostryanec-rozpocato-slidstvo>.

<sup>446</sup> Ukraine: Concern over the abduction and torture of civilians in territories under Russian control, *OMCT*, 29 March 2022, at: <https://www.omct.org/en/resources/statements/ukraine-concern-over-the-abduction-and-torture-of-civilians-in-territories-under-russian-control>.

<sup>447</sup> Ukraine: Apparent POW Abuse Would Be War Crime, *HRW*, 31 March 2022, at: <https://www.hrw.org/news/2022/03/31/ukraine-apparent-pow-abuse-would-be-war-crime>.

<sup>448</sup> Ukraine: Respect the Rights of Prisoners of War, *HRW*, 16 March 2022, at: <https://www.hrw.org/news/2022/03/16/ukraine-respect-rights-prisoners-war>.

<sup>449</sup> See Наталія Адамович, Мародери: чи є законна межа для покарання під час війни?, *Zmina*, 21 березня 2022, at: <https://zmina.info/articles/pokarannya-maroderiv-pid-chas-vijny-chy-ye-zakonna-mezha/>.

<sup>450</sup> OHCHR, *HRMMU Update on the human rights situation in Ukraine, 24 February-26 March*, 28 March 2022, para 41.

<sup>451</sup> Закон України № 2111 Про внесення змін до Кримінального процесуального кодексу України та Закону України "Про попереднє ув'язнення" щодо додаткового регулювання забезпечення діяльності правоохоронних органів в умовах воєнного стану, 3 березня 2022.



be subject to derogation.<sup>452</sup> They include the prohibition of arbitrary detention, the prohibitions against taking of hostages or abductions, and procedural guarantees protecting the liberty of persons. “*The existence and nature of a public emergency /.../ may be relevant to a determination of whether a particular arrest or detention is arbitrary*”.<sup>453</sup> In the situation of armed conflicts, rules of IHL would be used for such a determination under the ICCPR.<sup>454</sup>

Under the ECHR, which contains a list of cases of lawful deprivation of liberty, rules of IHL would serve to interpret these cases, as far as the detention of PoWs and civilian internees is concerned. As the ECtHR held in the *Hassan v. United Kingdom* (2014), “*by reason of the co-existence of the safeguards provided by international humanitarian law and by the Convention in time of armed conflict, the grounds of permitted deprivation of liberty set out in /Article 5/ should be accommodated, as far as possible, with the taking of prisoners of war and the detention of civilians who pose a risk to security under the Third and Fourth Geneva Conventions*”.<sup>455</sup> This is so even in cases when no formal derogation has been made.<sup>456</sup>

Under the Rome Statute, “*imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law*” constitutes – when committed as part of a widespread or systematic attack directed against any civilian population with the knowledge of this attack – a crime against humanity (Article 7(1)(e) of the RS).

The importance of the right to freedom and liberty and the prohibition of arbitrary detention has also been stressed by the OSCE participating States. In the Moscow Meeting (1991), they pledge to “*treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person and will respect the internationally recognized standards that relate to the administration of justice and the human rights of detainees*” (point 23).

The Mission has received alarming reports concerning the numbers of Ukrainian civilians, who have allegedly been detained, abducted or kidnapped by the Russian or Russian-controlled forces. The OHCHR has documented 15 cases of detention of journalists, human rights defenders, and other activists and 24 cases of detention of public officials and civil servants of local authorities.<sup>457</sup> In most cases, these persons were detained without being informed about the grounds for their detention and without any information about their whereabouts being communicated to their families. They had no access to a lawyer or to the ICRC and while held *incommunicado*, they were subject to various forms of mistreatment and to threats. Some of these persons have been released, but the whereabouts of the others remain unknown, thus leading to allegations of enforced disappearances.

Enforced disappearance constitutes one of the most serious threats to human rights. It consists of “*the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law*”.<sup>458</sup> Although Russia is not state party to the ICPPED, the prohibition of enforced disappearance stems also from the rights to life to liberty and security, and to family life and the prohibition of torture.

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<sup>452</sup> UN Doc. CCPR/C/GC/35, *General comment No. 35. Article 9 (Liberty and security of person)*, 16 December 2014, paras 64-66.

<sup>453</sup> UN Doc. CCPR/C/GC/35, *op. cit.*, para 66.

<sup>454</sup> UN Doc. CCPR/C/GC/35, *op. cit.*, para 64. See also UN Doc. A/RES/43/173, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988.

<sup>455</sup> ECtHR, *Hassan*, *op. cit.*, para 104.

<sup>456</sup> ECtHR, *Hassan*, *op. cit.*, para 103.

<sup>457</sup> OHCHR, *HRMMU Update*, *op. cit.*, paras 36-40.

<sup>458</sup> Article 2 of the ICPPED. See also Article 7(2)(i) of the RS.

One of the best documented cases of abduction concerns the mayor of Melitopol, Ivan Fedorov. Removed from his office and detained by a group of 10 persons on 11 March 2022, Fedorov was held by the Russian forces for five days, brought to the Luhansk region, and then released in exchange for nine captured Russian conscripts. While detained, the prosecutor general of the so-called Luhansk People's Republic charged him with the offence of providing financial and other assistance to the nationalist organization Right Sector (financial support of a terrorist organization. Fedorov was not tortured but experienced psychological pressure and threats.<sup>459</sup>

Four other persons from Melitopol – local activist Olga Haisumova, the chairman of the District Council Sergiy Prima, the police officer Dmitry Stoikov and the bishop of the World Life Church Dmitry Bodya – have also been abducted.<sup>460</sup> Haisumova was released after eight days but she had to give her written consent to cooperate with the Russian army. She reported that during her detention she had been kept with a bag over her head in a cold building.<sup>461</sup> The whereabouts of the other three persons are unknown. Several other mayors or public officials (Evhen Matveev of Dniprorudne,<sup>462</sup> Viktor Tereshchenko of Velykoburlutsk,<sup>463</sup> Oleksandr Yakovlyev of Skadovsk,<sup>464</sup> Viktor Maruniak of Stara Zburivka,<sup>465</sup> and Yuriy Fomichev of Slavutych<sup>466</sup>) were also reported missing. Two of them (Yakovlev and Fomichev) have since been released. The Mission has concluded that these incidents reveal features of arbitrary deprivation of liberty and some are likely to amount to enforced disappearances, thus constituting not only a violation of the right to liberty and security but also, likely, a crime against humanity.

Equally alarming are the reports about the alleged detention of large numbers of Ukrainian civilians and their massive displacement to the areas under the effective control of Russia or, even, to Russia's own territory. According to the information provided by the Ukrainian Parliament Commissioner for Human Rights Lyudmila Denisova, more than 400,000 Ukrainian citizens have been forcibly displaced to Russia.<sup>467</sup> The Mission recalls that deportation and forcible transfer of population, when committed as part of a widespread or systematic attack directed against any civilian population with the knowledge of this attack, constitutes a crime against humanity (Article 7(1)(d) of the RS).

The OHCHR has also reported that more than 300 individuals have been arrested by the Ukrainian authorities on the suspicion of crimes against the national security of Ukraine and

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<sup>459</sup> 'Ukrainian mayor kidnapped by Russian soldiers says he heard other captives being tortured', *The Independent*, 1 April 2022, at: <https://www.independent.co.uk/news/world/europe/ivan-fedorov-kidnapped-melitopol-mayor-torture-b2048749.html>.

<sup>460</sup> 'In Melitopol, Russian invaders kidnapped the bishop of the Word of Life Church', *Religious Information Service of Ukraine*, 21 March 2022, at: [https://risu.ua/en/in-melitopol-russian-invaders-kidnapped-the-bishop-of-the-word-of-life-church\\_n127432](https://risu.ua/en/in-melitopol-russian-invaders-kidnapped-the-bishop-of-the-word-of-life-church_n127432).

<sup>461</sup> У полоні від мелітопольської активістки вимагали підписати два документи, *Укрінформ*, 21 березня 2022, at: <https://www.ukrinform.ua/rubric-regions/3436000-u-poloni-vid-melitopolskoi-aktivistki-vimagali-pidpisati-dva-dokumenty.html>.

<sup>462</sup> Isabelle Khurshudyan, Annabelle Timsit, Timothy Bella, 'Reports of Russia abducting two mayors signal ominous new phase of Ukraine invasion', *Washington Post*, 13 March 2022, at: <https://www.washingtonpost.com/world/2022/03/13/ukraine-mayor-abduction-kidnapping-dniprorudne-yevhen-matveev/>

<sup>463</sup> Brad Dress, 'Ukrainian official says Russian forces have abducted another mayor', *The Hill*, 17 March 2022, at: <https://thehill.com/policy/international/598700-ukrainian-officials-say-russian-forces-have-abducted-third-mayor/>.

<sup>464</sup> Росіяни викрали мера Скадовська та його заступника. Люди вийшли на мітинг, *Українська Правда*, 21 березня 2022, at: <https://www.pravda.com.ua/news/2022/03/16/7331848/>.

<sup>465</sup> Ukraine: Concern over the abduction and torture of civilians, *op. cit.*

<sup>466</sup> Ruslan Rehimov, 'Ukraine says Russia kidnapped mayor of northern Ukrainian city', *AA*, 26 March 2022, at: <https://www.aa.com.tr/en/russia-ukraine-war/ukraine-says-russia-kidnapped-mayor-of-northern-ukrainian-city-/2546772>.

<sup>467</sup> Shona Murray, 'More than 400,000 Ukrainians 'forcibly displaced to Russia', claims Ukraine's ombudswoman', *Euronews*, 20 March 2022, at: <https://www.euronews.com/my-europe/2022/03/30/more-than-400-000-ukrainians-forcibly-displaced-to-russia-claims-ukraine-s-ombudswoman>.

for aiding Russian armed forces.<sup>468</sup> These arrests have allegedly taken place in conformity with the rules foreseen by the relevant legislation (as amended by Law No. 2111). There has been information, however, about three individuals detained by the State Security Service, whose families have been left without information about the fate of their relative. Videos showing some of the arrested persons have also allegedly been posted on social media. Such incidents need to be duly investigated, as they might involve violation of the right to freedom and security.

The situation in institutions accommodating persons whose liberty has been restrained (penitentiary institutions, psychiatric hospitals, etc.) also gives reasons for concern. More than ten penitentiary institutions (Dykaniv Correctional Colony № 12, Pokrov Correctional Colony № 17, Kholodnohirska Correctional Colony № 18, Oleksiyivska Correctional Colony № 25, Kharkiv Correctional Colony № 43, Khroliv Correctional Center № 140, Kharkiv Remand Prison, Mykolaiv Remand Prison 5 Snigu, Mariupol Pre-Trial Detention Center, Azov Correctional Colony № 107, Mariupol Correctional Center № 138) have been affected by shelling, though no casualties have been reported. The Mission recalls that even in times of emergency, States have the positive obligation to take care of persons detained in the institutions under their control and have to ensure, to the extent possible, their safety and access to food, water and medicine. There have also been reports in the media that Ukrainian authorities have plans to release prisoners with combat experience from jails “*if they are willing to fight against Russian forces*” and “*to compensate for their guilt in the hottest spots*”.<sup>469</sup> Such “conditional release” would seem hardly compatible with IHL.

#### 4. RIGHT TO A FAIR TRIAL

The right to a fair trial is enshrined in Article 14 of the ICCPR and Article 6 of the ECHR. Ukraine has derogated from these provisions in connection with the adoption of Law No. 2111-IX. The basic guarantees of fair trial are, however, considered non-derogable.<sup>470</sup> In the situation of armed conflict, moreover, States may not derogate those elements of the right to a fair trial which are explicitly guaranteed under IHL.<sup>471</sup> States may therefore never use derogation to act “*in violation of humanitarian law /.../, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence*”.<sup>472</sup> The crucial importance of the right to a fair trial has been repeatedly confirmed by the OSCE participating States.<sup>473</sup>

The Mission has not received information indicating that the operation of the judicial system would be seriously disrupted or that the guarantees to a fair trial would not be respected in the territories under the control of Ukraine. Although judicial premises have not been spared destruction stemming from the conflict, neither prosecutors, nor courts or other legal professions have in their majority suspended their activities and the judicial proceedings are taking place according to the national legislation (as amended by Law No. 2111-IX). The

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<sup>468</sup> OHCHR, *HRMMU Update, op. cit.*, para 40.

<sup>469</sup> Lamiat Sabin, ‘Prisoners in Ukraine with combat experience will be released from jail to help defend against Russia’, *The Independent* 28 February 2022, at <https://www.independent.co.uk/news/world/europe/ukraine-army-russia-prisoners-jail-b2024985.html>; also: David Averre, Daily Mail, Zelensky reveals Ukrainian prisoners with combat experience will be released to help defend the nation against Russian invasion, Daily Mail, 28 February 2022, at <https://www.dailymail.co.uk/news/article-10559879/Zelensky-reveals-prisoners-combat-experience-RELEASED-help-defend-Ukraine.html>.

<sup>470</sup> UN Doc. CCPR/C/46/D/263/1987, *Miguel González del Río v. Peru*, Communication No. 263/1987, 2 November 1992, para 5.1.

<sup>471</sup> UN Doc. CCPR/C/21/Rev.1/Add.11, *General comment no. 29. States of emergency (article 4)*, 31 August 2001, para 16.

<sup>472</sup> UN Doc. CCPR/C/21/Rev.1/Add.11, *op. cit.*, para 11.

<sup>473</sup> *Decision No. 12/05 on Upholding Human Rights and the Rule of Law in Criminal Justice Systems* (Ljubljana 2005); or: *Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area* (Helsinki 2008).

Mission takes note of the decision made on 1 April 2022 by the Verkhovna Rada of Ukraine to restore the office of the military prosecutor, abolished in 2019<sup>474</sup> and recalls that the European standards on the operation of the prosecution service apply to both civil and military prosecutors.<sup>475</sup>

The situation is more complicated in the areas under the effective control of Russia, where some of the judicial officials have been removed and replaced by pro-Russian individuals and where the Russian legal order, or the legal order of the so-called Donetsk and Luhansk “People’s Republics”, have already been or are being introduced, in violation of the rules of IHL and IHRL. There are also reports of trials of persons arrested in the areas under the effective control of Russia, especially in Crimea, taking place, usually before courts in Russia, without sufficient guarantees of a fair trial provided to such persons.<sup>476</sup>

By 30 March 2022, the Office of the Prosecutor General of Ukraine opened 3,568 criminal cases relating to crimes under international law and 4,649 cases concerning wilful killings. Of these, 3,175 concern war crimes, 41 the act of aggression, 8 war propaganda and 62 are for other offences. It is reported that the charges for war crimes have all been made against members of the Russian armed forces.<sup>477</sup> That gives rise to concerns as to whether Ukraine is abiding by the obligation to search for and bring before its courts all persons alleged to have committed or to have ordered to have committed war crimes, regardless of their nationality.<sup>478</sup> The failure to investigate alleged war crimes committed by one’s own nationals would constitute a violation of this obligation. The same concerns apply to Russia, as the law enforcement organs in the territories under its control also appear to focus only on alleged war crimes committed by the other party to the conflict.

## 5. RIGHT TO FREEDOM OF EXPRESSION

The right to freedom of expression is enshrined in Article 19 of the ICCPR and Article 10 of the ECHR. Ukraine has derogated from these two provisions. The OSCE participating States have repeatedly recognized the importance of the right to freedom of expression and the special role of media (Helsinki 1975, Istanbul 1999, Astana 2010). The right to freedom of opinion and expression entails the rights to hold opinions and to receive and impart information and ideas without any interference.

In the context of armed conflict, particular emphasis needs to be on the safety of journalists. Under the case-law of the ECtHR, States have both negative and positive obligations towards journalists that include the obligation not to interfere with their work as well as the obligation to take steps to effectively investigate, and to provide protection against, unlawful acts involving violence committed by non-state actors or third parties.<sup>479</sup>

The OSCE participating States have committed themselves to “*adopt /.../ all feasible measures to protect journalists engaged in dangerous professional Missions, particularly in cases of*

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<sup>474</sup> Ірина Лисогор, Верховна Рада відновила діяльність військової прокуратури, *LB.ua*, 1 квітня 2022, at: [https://lb.ua/pravo/2022/04/01/511916\\_verhovna\\_rada\\_vidnovila\\_diyalnist.html](https://lb.ua/pravo/2022/04/01/511916_verhovna_rada_vidnovila_diyalnist.html).

<sup>475</sup> Venice Commission, Study N° 494/2008, *Report on European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution Service*, CDL(2010)112, 3 January 2011.

<sup>476</sup> ‘Another Group Of Crimean Tatar Activists Handed Lengthy Prison Terms In Russia’, *Radio Free Europe/Radio Liberty*, 18 March 2022, at: <https://www.rferl.org/a/crimean-tatars-jailed-russia/31760056.html>

<sup>477</sup> The Ukrainian Prosecutor’s Office has opened 3,457 criminal cases against the Russian military, *Daily News*, 31 March 2022, at: <https://www.txtreport.com/news/2022-03-31-the-ukrainian-prosecutor-s-office-has-opened-3-457-criminal-cases-against-the-russian-military.rJg4UjWmmq.html>.

<sup>478</sup> Article 49 GCI, Article 50 GCII, Article 50 GCIII, Article 129 GCIV, Article 145 API.

<sup>479</sup> ECtHR, *Dink v. Turkey*, Applications nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, Judgment, 14 September 2010; *Özgür Gündem v. Turkey*, Application no. 23144/93, Judgment, 16 March 2000, *Gongadze v. Ukraine*, Application no. 34056/02, Judgment, 8 February 2006.

*armed conflict, and will co-operate to that effect*".<sup>480</sup> During the Ministerial Council of Milan in 2018, a *Decision on the safety of journalists*<sup>481</sup> was adopted. It condemns all acts of violence directed against journalists "such as killing, torture, enforced disappearance, arbitrary arrest, arbitrary detention and arbitrary expulsion, intimidation, harassment, and threats of all forms, such as physical, legal, political, technological or economic, used to suppress their work and/or unduly force closure of their offices, including in conflict situations" (para 3) and urges "the immediate and unconditional release of all journalists who have been arbitrarily arrested or detained, taken hostage or who have become victims of enforced disappearance" (para 5).

On the global level UNESCO is promoting the safety of journalists and combatting impunity for attacks while the OHCHR also has a focus on this issue. The Council of Europe has established a platform on safety of journalists, which regularly reports on all attacks on journalists under its competence, with a strong focus on Ukraine. On the level of non-governmental organizations there are several key organizations like the Committee for the Protection of Journalists, the European Federation of Journalists or IFEX which regularly report on violations of the rights of journalists as well as issues of safety.

On 27 February 2022, the OSCE Representative on Freedom of the Media, Teresa Ribeiro, expressed her serious concern about the safety of journalists in the context of the Russian military action against Ukraine. She also stressed the need to consider and protect as civilians media professionals in areas of armed conflict. She recalled that "violence against journalists under any circumstances, including in conflict situations, is unacceptable".<sup>482</sup>

The Mission has received information indicating that the standards of the protection of journalists have been repeatedly violated in the current conflict. Since 24 February 2022, five journalists have been killed and many more injured by the Russian forces. While the details of individual incidents are not always available, reports suggest that at least some of them have involved intentional targeting of journalists. There are also many cases where journalists have been detained or abducted by the Russian forces. Some of them have later been released, the whereabouts of the other remain uncertain. According to the Committee to Protect Journalists, which monitors the situation on a regular basis, several journalists have been shot at by Russian forces and robbed of their belongings although they were clearly marked as press. In several cases, the cars of journalists clearly marked as press were shot at.<sup>483</sup>

Four of the reported incidents involve the death of journalists.<sup>484</sup> On 1 March 2022, the Ukrainian journalist Yevhenii Sakun died when a TV tower in Kyiv was hit by Russian shelling. On 13 March 2022, Brent Renaud, a documentary filmmaker from the US, was fatally shot in Irpin, and the US-Colombian journalist Juan Arredondo who accompanied him was severely injured. On 14 March 2022, the Ukrainian journalist Oleksandra Kuvshynova and Fox News camera operator Pierre Zakrzewski were killed. Fox News correspondent Benjamin Hall was injured after a vehicle they were travelling in came under fire by the Russian forces. On 23 March 2022, the Russian journalist Oksana Baulina, working for the independent investigative website *The Insider*, was killed in Kyiv by Russian shelling.

Other reported incidents involve attacks on or abduction of journalists. On 26 February 2022 the Danish journalist Stefan Weichert and photographer Emil Filtenborg Mikkelsen from Ekstra Bladet were injured while on duty near Okhtyrka, a town in Sumy Oblast of Ukraine.

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<sup>480</sup> Moscow, 1991, para 34.

<sup>481</sup> MC.DEC/3/18, *Decision No. 3/18 Safety of Journalists*, 7 December 2018.

<sup>482</sup> OSCE, *Safety of journalists must be ensured in conflict situations, says OSCE Media Freedom Representative*, 27 February 2022.

<sup>483</sup> See <https://cpj.org/2022/03/reporters-shot-shelled-robbed-while-covering-russian-invasion-of-ukraine/> with details on several incidents.

<sup>484</sup> Russia-Ukraine War, *Committee to Protect Journalists*, 31 March 2022, at: <https://cpj.org/invasion-of-ukraine/>.

Reportedly, both have been hospitalized. On 5 March 2022, a fixer of *Radio France* was kidnapped and held for nine days by Russian troops during which he was tortured and subjected to a mock execution.<sup>485</sup> On 8 March 2022, the Ukrainian journalist Viktoria Roshchina working for the independent TV channel *Hromadske* disappeared in Berdiansk. She was freed ten days later after being allegedly forced to record a video saying the Russian soldiers “*saved her life*” and that she was “*treated well.*” On 12 March 2022, the journalist Oleg Baturin, who was already mentioned in section V.B.2, and the journalist and activist Serhiy Tsyhipa from Nova Kakhovka were both abducted and the latter remains missing. There are also several cases in which the Russian armed men detained journalists in areas under their control like Melitopol to search their equipment and put them under pressure to cooperate with the occupying force.<sup>486</sup>

All these incidents need to be properly investigated. Whereas some may turn out to involve non-intentional killing or wounding of a journalist present on the stage of hostilities, other seem to be instances of deliberate targeting or arbitrary detention. Such instances would constitute the violation of the right to freedom of expression (as well as the rights covered in subsections 1-4) as well as, very likely, a crime against humanity and/or a war crime.

The freedom of media has been put under pressure not only by attacks on individual journalists but also by those on media infrastructure. At least 10 TV towers in eight regions in Ukraine (Melitopol, Kyiv-Vynarivka, Kharkiv, Rivne, Vinnytsa, Korosten, Lysychanks, Bilopillya) have been destroyed or damaged. As a result, Ukrainian broadcasting has completely or partially disappeared from these regions.<sup>487</sup> Whether each of these TV towers constituted a lawful military objective must be properly established.

In the areas under the effective control of Russia, including Crimea and Kherson, local media have been prevented from operating or used to broadcast the pro-Russian propaganda. Certain media outlets, e.g., *Pushkinskaya*, *Dumskaya*, *048*, *Media-Inform*, *Reporter*, *Third Digital*, *Volnoretz* and *All.news*, have received anonymous letters calling on them to abandon their anti-Russian activities.<sup>488</sup> The access to certain foreign channels, such as BBC News, Radio Free Europe/Radio Liberty or the Voice of America, has been blocked by the decision of the Russian Roskomnadzor and cannot be accessed from territories under the effective control of Russia.<sup>489</sup> In addition to media, social networks have also seen large restrictions imposed on them in the territories under the effective control of Russia. In early March 2022, Russia blocked access to Facebook and Twitter. As a result of all these steps, inhabitants of the areas under the effective control of Russia are now living in a different information space to the rest of the Ukrainian citizens. The Mission recalls that the right to freedom of expression encompasses the right to receive information and that while this right is not absolute, all restrictions must meet the conditions set in Article 19(3) of the ICCPR and Article 10(2) of the ECHR and must not result in unacceptable censorship.

The introduction in early March 2022 of new offences into the Criminal Code (CC) and the Code of Administrative Offences (CoAO) of the Russian Federation, also applicable *de iure* in the Autonomous Republic of Crimea and the city of Sevastopol and *de facto*, through similarly

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<sup>485</sup> ‘Ukraine: ‘Radio France’ fixer kidnapped and tortured by Russian troops’, *IFEX*, 21 March 2022, at: <https://ifex.org/ukraine-radio-france-fixer-kidnapped-and-tortured-by-russian-troops/>.

<sup>486</sup> ‘Four Ukrainian Journalists Detained by Armed Men’, *Safety of Journalists Platform*, 23 March 2022, at: <https://fom.coe.int/alerte/detail/107637315?langue=en-GB>.

<sup>487</sup> ‘Russia committed 148 crimes against journalists and media in Ukraine during 1 month since its large-scale invasion’, *Institute of Mass Information*, 24 March 2022, at: <https://imi.org.ua/en/news/russia-committed-148-crimes-against-journalists-and-media-in-ukraine-during-1-month-since-its-large-i44608>.

<sup>488</sup> ‘Russians use abduction, hostage-taking to threaten Ukrainian journalists in occupied zones’, *Reporters Without Borders*, 25 March 2022, at: <https://rsf.org/en/news/russians-use-abduction-hostage-taking-threaten-ukrainian-journalists-occupied-zones>.

<sup>489</sup> ‘Russia restricts access to several Western media websites’, *AlJazeera*, 4 March 2022, at: <https://www.aljazeera.com/news/2022/3/4/russia-restricts-access-to-several-western-media-websites>.

worded codes of the so-called Donetsk and Luhansk “People’s Republics”, has also seriously hampered the right to the freedom of expression of individuals living in those areas. The new offences encompass “*public actions aimed at discrediting the use of the Armed Forces of the Russian Federation in order to protect the interests of the Russian Federation and its citizens, maintain international peace and security*” (Articles 280.3 of the CC and 20.3.3 of the CoAO) and “*calls for restrictive measures against the Russian Federation, citizens of the Russian Federation or Russian legal entities*” (Articles 284.2 of the CC and 20.3.4 of the CoAO). According to the information provided by the Ukrainian authorities, at least four inhabitants of the occupied Crimea have already been fined for the violation of Article 20.3.3 of the CoAO.<sup>490</sup> Such prosecutions risk having a chilling effect on the public debate.

The Mission also takes note of the decision by the Ukrainian government to combine all national TV channels broadcasting mainly information and analysis into one channel (*United News*) in order to better prevent the spread of misinformation and “*bring the truth about the war during the period of martial law in Ukraine*”.<sup>491</sup> While this decision might be appropriate in the extreme circumstances of the conflict, it should be reassessed as soon as the martial law is suspended, since media pluralism is one of the bases of a democratic state.

## 6. OTHER CIVIL AND POLITICAL RIGHTS

The conflict in the territory of Ukraine has affected the enjoyment of many other civil and political rights. Among those where the effect has been particularly strong are *inter alia* the right to freedom of assembly, the right to freedom of association, the right to freedom of movement, the right to private and family life or the right to property. All these rights are derogable and all have been indeed derogated from under the ICCPR and the ECHR by Ukraine.

The right to freedom of **assembly** is granted by Article 21 of the ICCPR, Article 11 of the ECHR and by OSCE commitments (Paris 1990, Copenhagen 1990). This right “*enables individuals to express themselves collectively and to participate in shaping their societies*”.<sup>492</sup> It applies to peaceful assemblies including those that are “*used to pursue contentious ideas or goals*”.<sup>493</sup> Assemblies may be dispersed but only in exceptional situations, when relevant and sufficient reasons require to do so.<sup>494</sup> Law enforcement agents should avoid using firearms. “*Less-lethal weapons with wide-area effects, such as tear gas and water cannons, tend to have indiscriminate effects. When such weapons are used, all reasonable efforts should be made to limit risks /.../. Such weapons should be used only as a measure of last resort, following a verbal warning, and with adequate opportunity given for assembly participants to disperse*”.<sup>495</sup>

The Mission has received reports and videos casting doubt on whether the applicable standards have been respected by Russia in the course of several demonstrations held in certain newly occupied towns. On 6 March 2022, one man was allegedly shot dead and seven others injured during a peaceful demonstration held in Nova Kakhovka.<sup>496</sup> On 21 March 2022, during a protest against the occupation held in Kherson, Russian forcercs purportedly used tear gas, stun grenades

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<sup>490</sup> Crimean peninsula in turmoil from all-out aggression of the Russian Federation against Ukraine, *Mission of the President of Ukraine in the Autonomous Republic of Crimea*, 16 March 2022.

<sup>491</sup> Chris Dziadul, ‘Ukraine to combine all national TV channels’, *BroadBandTVNews*, 21 March 2021, at: <https://www.broadbandtvnews.com/2022/03/21/ukraine-to-combine-all-national-tv-channels/>.

<sup>492</sup> UN Doc. CCPR/C/GC/37, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, para 1.

<sup>493</sup> UN Doc. CCPR/C/GC/37, *op. cit.*, para 7.

<sup>494</sup> UN Doc. CCPR/C/GC/37, *op. cit.*, para 85; ECtHR, *Ibrahimov and Others v. Azerbaijan*, Applications nos 69234/11, 69252/11 and 69335/11, Judgment, 11 February 2016, para 80.

<sup>495</sup> UN Doc. CCPR/C/GC/37, *op. cit.*, para 87-88.

<sup>496</sup> ‘Thousands protested against Russians in the occupied Nova Kakhovka’, *24UkraineNews*, 6 March 2022 at: [https://en.24tv.ua/thousands-protested-against-russians-in-the-occupied-nova-kakhovka\\_n1893707](https://en.24tv.ua/thousands-protested-against-russians-in-the-occupied-nova-kakhovka_n1893707).

and even live ammunition against the protest, causing several injuries.<sup>497</sup> On 26 March 2022, Russian soldiers sought to disperse a similar protest held in Slavutych, shooting in the air and throwing stun grenades at the crowd, again resulting in several injuries.<sup>498</sup> The Mission recalls that dispersing a peaceful assembly and, even more, using disproportionate force to do so, amounts to the violation of the right to freedom of assembly.

The right to freedom of **association** is granted by Article 22 of the ICCPR, Article 11 of the ECHR, Article 8 of the ICESCR and OSCE commitments (Paris 1990, Copenhagen 1990). It encompasses the right to join or leave an association and to take collective actions within this association. An association is “an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose”.<sup>499</sup> It encompasses political parties, trade unions, religious associations as well as non-governmental organizations. It is possible to dissolve associations but such dissolution must always be the measure of last resort and may be resorted to in cases where the association “uses violence or threatens civil peace and the democratic constitutional order of the country”.<sup>500</sup>

The potential extension of the legislation against so-called foreign agents to the areas that get newly under the effective control of Russia, gives rise to serious concern. The legislation is directed against specific actors of civil society engaging in political activity and receiving foreign funding. Such actors have to register and to use the special label “foreign agent” on all their outputs. They also face various administrative obstacles. Originally introduced in 2012, the legislation has been gradually expanded to cover not only NGOs but also media outlets and individuals. The legislation, widely criticized internationally for its chilling effect on civil society,<sup>501</sup> has already been applied in Crimea.<sup>502</sup>

In Ukraine, since the outbreak of the conflict, 11 political parties, including the Opposition Platform for Life represented in the Verkhovna Rada, have been suspended.<sup>503</sup> These parties have been accused of pro-Russian sympathies, war propaganda, calling for a change in the constitutional order, threats to the state sovereignty or collaborationism. The Ministry of Justice is now taking steps that should result in the dissolution of these parties. Some doubts have been raised about the legality of these steps.<sup>504</sup> Such a measure must be indeed duly considered by a judicial institution and could only take place if the conditions described above are met. The same applies with respect to the announced intention by Ukraine and by the pro-Russian administration of the occupied Crimea to ban the operations of, respectively, the Ukrainian

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<sup>497</sup> Окупанти відкрили вогонь по протестувальниках у Херсоні: кадри свавілля, *Politeka*, 21 березня 2022, at: <https://politeka.net/uk/incidents/371701-okkupanty-otkryli-ogon-po-protestuyushchim-v-hersone-kadry-bespredela>.

<sup>498</sup> Російські військові намагалися розігнати мітинг у Славутичі, є поранені, *Slovoidilo*, 26 березня 2022, at: <https://www.slovoidilo.ua/2022/03/26/novyna/bezpeka/rosijski-vijskovi-namahalysya-rozihnaty-mitynh-slavutychi-ye-poraneni>.

<sup>499</sup> Venice Commission, Study no. 706/2012, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 14 December 2014, para 7.

<sup>500</sup> Parliamentary Assembly, Resolution 1308 (2002), *Restrictions on Political Parties in the Council of Europe Member States*, 18 November 2002, para 11.

<sup>501</sup> See Venice Commission, *Opinion No. 1014/2020, Opinion on the Compatibility With International Human Rights Standards of a Series of Bills Introduced by the Russian State Duma Between 10 And 23 November 2020 To Amend Laws Affecting “Foreign Agents”*, CDL-AD(2021)027, 6 July 2021.

<sup>502</sup> Минюст России объявил Крым.Реалии «иностранным агентом», *EuromaidanPress*, 05 декабря 2017, at: <https://euromaidanpress.com/2021/07/20/agents-undesirable-extremists-how-modern-russia-combats-dissent/>.

<sup>503</sup> Pjotr Sauer, ‘Ukraine suspends 11 political parties with links to Russia’, *The Guardian*, 30 March 2022, at: <https://www.theguardian.com/world/2022/mar/20/ukraine-suspends-11-political-parties-with-links-to-russia>.

<sup>504</sup> Volodymyr Ishchenko, ‘Why did Ukraine suspend 11 ‘pro-Russia’ parties?’, *Al Jazeera*, 21 March 2022, at: <https://www.aljazeera.com/opinions/2022/3/21/why-did-ukraine-suspend-11-pro-russia-parties>.



Orthodox Church of the Moscow Patriarchate<sup>505</sup> and the Ukrainian Orthodox Church – Kyiv Patriarchate<sup>506</sup> and to confiscate their property.

The right to freedom of **movement**, recognized by Article 12 of the ICCPR and Article 2 of Protocol No 4 to the ECHR, includes the right to freely move and have residence within one country, as well as the right to leave her/his own country. The outbreak of the conflict in the territory of Ukraine has seriously affected the enjoyment of this right in all the parts of the country. It has practically cut the areas under the effective control of Russia off from the rest of the Ukrainian territory. According to the information provided by the Ukrainian authorities, on 24 February 2022, all the check points between Crimea and the rest of the Ukrainian territory were destroyed, making it impossible to travel across the border.<sup>507</sup> The reported instances of massive displacement of Ukrainian civilians to the areas under the effective control of Russia or, even, the territory of Russia, also affect the enjoyment of the right to freedom of movement and may constitute a crime against humanity (Article 7(1)(d) of the RS).

The right to **private and family life**, as granted by Article 23 of the ICCPR and Article 8 of the ECHR, has also been seriously affected by the conflict. Some families have lost some of their members due to active hostilities. Many more have been separated, with women and children displacing to other parts of Ukraine or even crossing the borders to other countries and men staying behind to fight in the Ukrainian army.<sup>508</sup> While the compulsory recruitment of men 18-60 years does not of itself violate the right to private and family life, it brings about serious disruption of family lives in many households. Ukraine has the positive obligation to try to minimise the impact of the conflict on families but, understandably, the content of this obligation has to be interpreted in light of the severe emergency that the country faces. Arbitrary detention, abductions and enforced disappearances of individuals, reported in the areas under the effective control of Russia, may of themselves violate the right to private and family life.

The right to **property** is absent from the ICCPR but present in Article 1 of the Additional Protocol to the ECHR. Property rights are also part of the OSCE commitments (Bonn 1990, Copenhagen 1990, Paris 1990). The right to property grants everyone the right to own property and use his or her possessions. No-one shall be deprived of property unless public necessity so demands and unless fair compensation is provided. Destruction of property stemming from acts of war which are lawful under IHL is compatible with this regulation. Destruction of property stemming from acts of war which are not lawful under IHL violates the right to property and may amount to a war crime (Article 8(2)(b)(ii)(iv)(v) of the RS).

The current conflict has brought about large-scale destruction of civilian (public and private) property, including destruction which cannot be justified under IHL.<sup>509</sup> There are also reports of pillage and confiscation of the civilian property without any financial compensation. On 10 March 2022, Russian soldiers allegedly pillaged a convoy of humanitarian aid directed to the

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<sup>505</sup> ‘Ukraine might Ban the Russian Orthodox Church and Take All of its Property and Money’, *Novinite*, 1 April 2022, at: <https://www.novinite.com/articles/214547/Ukraine+might+Ban+the+Russian+Orthodox+Church+and+Take+All+of+its+Property+and+Money>.

<sup>506</sup> Михаил Метцель, Аксенов поручил разработать проект о национализации имущества украинских олигархов в РФ, *TASS*, 30 марта 2022, at: [https://tass.ru/politika/14229709?utm\\_source=jpost.com&utm\\_medium=referral&utm\\_campaign=jpost.com&utm\\_referrer=jpost.com](https://tass.ru/politika/14229709?utm_source=jpost.com&utm_medium=referral&utm_campaign=jpost.com&utm_referrer=jpost.com).

<sup>507</sup> Brief on the Situation in the Occupied Crimea Within the Large-Scale Russian Aggression, *Mission of the President of Ukraine in the Autonomous Republic of Crimea, sine data*, p. 3.

<sup>508</sup> Natalia Liubchenkova, ‘Ukraine war: Pictures reveal the heartbreaking goodbyes of families torn apart by Russia’s invasion’, *EuroNews*, 8 March 2022, at <https://www.euronews.com/2022/03/08/ukraine-war-pictures-reveal-the-heartbreaking-goodbyes-of-families-torn-apart-by-russia-s->; Alfred Hackensberger, ‘Ukrainian families are being ripped apart as men stay behind to fight the Russian invasion’, *Business Insider*, 3 March 2022, at <https://www.businessinsider.com/ukrainian-families-being-ripped-apart-as-men-stay-fight-russia-2022-3>.

<sup>509</sup> Ukraine: Deadly Attacks Kill, Injure Civilians, Destroy Homes, *HRW*, 18 March 2022, at <https://www.hrw.org/news/2022/03/18/ukraine-deadly-attacks-kill-injure-civilians-destroy-homes>.

besieged town of Mariupol.<sup>510</sup> On 21 March 2022, Russian forced looted a gas station in Kherson for food.<sup>511</sup> Such acts violate both IHL and IHRL.

Moreover, due to the continuing occupation of Crimea and parts of the Donetsk and Luhansk regions, and the new occupation of certain other areas, many Ukrainian civilians have been deprived of the access to and control, use and enjoyment of their property situated in these areas. Such a deprivation, when not compensated for by alternative measures to secure property rights, would constitute a violation of the right to property.<sup>512</sup>

On 3 March 2022, Law No. 2116 *On the Basic Principles of Forcible Seizure of Objects of Property Rights of the Russian Federation and its Residents in Ukraine*<sup>513</sup> was adopted in Ukraine. The law entitles the government to suggest which objects of property rights could be confiscated. Upon the approval by the Security Council of Ukraine, the ownership over such objects passes over to Ukraine, without any compensation. Objects of property rights include movable and immovable property, funds, bank deposits, securities, corporate rights, and other property located in Ukraine and owned directly or through affiliates by Russia. On 1 April 2022, the application of the law was extended to natural and legal persons, regardless of nationality, with a close link to Russia.<sup>514</sup> The Mission has not received information on the application of the law. The vague wording of the law, as amended on 1 April 2022, gives rise, however, to concerns as to its compatibility with the guarantees of the right to property. Even more alarming are the reports that confiscation of property should also be carried out in the occupied Crimea, with respect to persons loyal to the elected government of Ukraine.<sup>515</sup>

### C. IMPACT OF THE CONFLICT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Killings of detained civilians, targeted killings of journalists, abduction of mayors or enforced disappearance of a large number of civilians are the most visible and most direct violations of IHRL committed during the current conflict. Yet, the conflict has affected the enjoyment of human rights in less direct and less visible but not perforce less serious ways as well. By causing a high level of destruction and forcing millions of persons to leave their homes, the conflict has interfered with the provision of services which are vital for the normal functioning of a society, such as the educational, healthcare or social security systems. It has also threatened food and water security and left long-lasting marks on the state of the environment. The harm stemming from all these effects of the conflict may be as serious as the harm produced by the actual fighting. As such, it must not be overlooked.<sup>516</sup>

Similar to civil and political right, economic, social and cultural (ESC) rights give rise to both negative and positive obligations. Unlike the former, however, they are subject to a progressive realisation, dependent on the available resources. The speed of this realisation and the amount of available resources have to be determined in light of the concrete situation of a country.

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<sup>510</sup> John Psaropoulos, 'Human costs mount in the third week of war in Ukraine', *AlJazeera*, 16 March 2022, at: <https://www.aljazeera.com/news/2022/3/16/human-costs-mount-in-the-third-week-of-war-in-ukraine>.

<sup>511</sup> David Averde, 'Russian troops use their tank to loot a gas station amid 'morale issues' as 'desperate' generals try to restart stalled advance and Ukrainian ambushes play havoc with their supply lines', *Daily Mail*, 21 March 2022, at: <https://www.dailymail.co.uk/news/article-10636193/Russian-troops-use-tank-loot-gas-station-amid-morale-issues.html>.

<sup>512</sup> ECtHR, *Chiragov and Others v. Armenia*, Application no. 13216/05, Judgment (GC), 16 June 2015, paras 192-201.

<sup>513</sup> Закон України № 2116-IX Про основні засади примусового вилучення в Україні об'єктів права власності Російської Федерації та її резидентів, 3 березня 2022.

<sup>514</sup> More information is available here: <https://itd.rada.gov.ua/billInfo/Bills/Card/39237?fbclid=IwAR2DsqrRwS2gR9t8ldE4cTri1n1-GLE64xOoeh0AxkcJzKUMKSpJte8EURE>.

<sup>515</sup> Михаил Метцель, Аксенов поручил, *op. cit.*

<sup>516</sup> See Gilles Giacca, *Economic, Social, and Cultural Rights in Armed Conflict*, Oxford University Press, 2014.

Emergencies, such as international armed conflict provoked by an unlawful attack of another state, have an impact on this determination. States shall nonetheless seek, to the extent possible, to reduce the negative effects of the emergency on individuals, and especially on vulnerable groups.<sup>517</sup> Moreover, the obligations to “take steps” to progressively achieve the full realization of ESC rights, to respect (not to interfere with) ESC rights, to guarantee the minimum content of the core obligations, and to abide by the principle of non-discrimination remain applicable even in times of war.

The Mission has been able to identify some instances of direct violations of ESC rights, again usually in the areas under the effective control of Russia. Some of these violations may at the same time constitute violations of IHL and may even amount to war crimes or crimes against humanity (starvation of the population, denial of access to health care, etc.). The Mission has also sought, for reasons indicated above, to map the broader effects of the war on the enjoyment of ESC rights and to identify measures that Ukraine has adopted, or should adopt, to make this enjoyment possible even in the extreme situation of armed conflict. Again, the focus lies on those ESC rights that have been the most severely affected by the conflict.

## 1. RIGHT TO EDUCATION

The right to education is enshrined in Article 13 of the ICESCR, Article 2 of the Additional Protocol to the ECHR and also, for specific categories of individuals, in Article 10 of the CEDAW, Articles 28 and 29 of the CRC and Article 24 of the CRPD. Ukraine has derogated from Article 2 of the Additional Protocol to the ECHR. Guarantees to access all levels of education are also included in the OSCE Commitments (Vienna 1989, Copenhagen 1990).

In 2021, the UN Security Council adopted unanimously Resolution 2601 which deals with the protection of the right to education in armed conflicts.<sup>518</sup> The resolution condemns the military use of schools and attacks on schools in violation of IHL and calls upon all States to “*safeguard, protect, respect, and promote the right to education, including in armed conflict*” (para 3). In 2014, non-binding *Guidelines for protecting schools and universities from military use during armed conflict*<sup>519</sup> were issued by experts.

The Mission deplores that the conflict in the territory of Ukraine has had a very negative effect on the right to education. Already on 3 March 2022, UNESCO reported “*attacks against education facilities, with the damaging of at least seven institutions in the past week*”.<sup>520</sup> It also noted that “*the nationwide closure of schools and education facilities has affected the entire school-aged population -- 6 million students between 3 and 17 years old, and more than 1.5 million enrolled in higher education institutions*”.<sup>521</sup> By 26 March 2022, the OHCHR recorded attacks on 35 educational facilities, including 3 universities, 8 kindergartens, 23 schools and

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<sup>517</sup> UN Doc. E/CN.12/1997/8, *General Comment No. 8 (1997): The relationship between economic sanctions and respect for economic, social and cultural rights*, 12 December 1997, para 10.

<sup>518</sup> UN Doc. S/RES/2601(2021), *The Children and armed conflict*, 29 October 2021.

<sup>519</sup> The document is available online at [https://protectingeducation.org/wp-content/uploads/documents/documents\\_guidelines\\_en.pdf](https://protectingeducation.org/wp-content/uploads/documents/documents_guidelines_en.pdf).

<sup>520</sup> Ukraine. Statement following the adoption of the UN General Assembly resolution, *UNESCO*, 3 March 2022, at <https://www.unesco.org/en/articles/ukraine-unesco-statement-following-adoption-un-general-assembly-resolution?hub=701>.

<sup>521</sup> Ukraine. Statement following the adoption, *op. cit.*

one scientific centre.<sup>522</sup> The numbers provided by the Ukrainian sources are even higher.<sup>523</sup> Some cases have been well documented by NGOs.<sup>524</sup>

The Mission notes that while a certain level of destruction of educational facilities can unfortunately be expected to occur in the course of active hostilities, the relatively high number of incidents involving the shelling and bombing of such facilities, including some of those not located in the vicinity of any military targets,<sup>525</sup> gives rise to concern, as it suggests that such facilities might be targeted intentionally or that insufficient care is paid to the principle of distinction. As was established in section IV.F.8.d of this report, some of the incidents very likely constitute a violation of IHL and a war crime (Article 8(2)(b)(ix) of the RS). They also violate the provisions of Resolution 2601.

The Mission also points out the larger impact of the conflict on the right to education. At the declaration of the martial law, teaching in all types of educational facilities across most of the regions of Ukraine was temporarily suspended. Since mid-March 2022, education has been at least partly resumed in most regions of Ukraine.<sup>526</sup> It is usually carried out remotely, with children being able to login to their classes from any place in Ukraine or even from outside the country. They can also make use of a special platform for online teaching, the All-Ukrainian Online School, that was put in place in the context of the Covid-19 crisis.<sup>527</sup> Already in the early stages of the conflict, the Ministry of Education and Science of Ukraine adopted a *Concept Plan on the functioning of the education system of Ukraine during martial law and further reconstruction period related to Russian aggression* which has been gradually updated.<sup>528</sup> The Mission welcomes all these steps which testify to the genuine effort by Ukraine to grant the enjoyment of the right to education even in the difficult circumstances of the armed conflict.

The Mission is at the same time concerned by reports indicating that since the beginning of the conflict, schools in the areas under the effective control of Russia, have been turned into places of propaganda. Such schools have received manuals for teachers from the Russian Ministry of Education, with instructions on how to justify the Russian attack on Ukraine.<sup>529</sup> It has also been reported that in Crimea, local schools have been discouraged from teaching in Ukrainian or in Crimean Tatar.<sup>530</sup> Such practices are at odds not only with the right to education but also the right to freedom of expression and the rights of national minorities.

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<sup>522</sup> OHCHR, *HRMMU Update on the human rights situation in Ukraine, 24 February-26 March*, 28 March 2022.

<sup>523</sup> See the website here: <http://saveschools.in.ua/en/>.

<sup>524</sup> Insecurity Insight, *Ukraine 24 February-02 March 2022. Attacks on Education, Education in Danger Newsbrief*, March 2022, at: <https://www.insecurityinsight.org/wp-content/uploads/2022/03/Attacks-on-Education-in-Ukraine-24-February-02-March-2022.pdf>; Ukraine: Cluster munitions kill child and two other civilians taking shelter at a preschool, *Amnesty International*, 27 February 2022, at <https://www.amnesty.org/en/latest/news/2022/02/ukraine-cluster-munitions-kill-child-and-two-other-civilians-taking-shelter-at-a-preschool/>; The Global Coalition to Protect Education from Attack, *Ukraine: Deadly Attacks Kill, Injure Civilians, Destroy Homes*. *HRW*, 18 March 2022, at <https://protectingeducation.org/news/ukraine-deadly-attacks-kill-injure-civilians-destroy-homes/>.

<sup>525</sup> See info about the attack on School No. 108, in *Ukraine: Deadly Attacks Kill, Injure Civilians*, *op. cit.*

<sup>526</sup> У школах тринадцяти областей організоване дистанційне навчання, *Укрінформ*, 30 березня 2022, at: <https://www.ukrinform.ua/rubric-society/3441869-u-skolah-trinadcati-oblastej-organizovane-distancijne-navcanna.html>.

<sup>527</sup> See the website here: <https://lms.e-school.net.ua/about>.

<sup>528</sup> MoES initiates creation of international coalition in support of education and science in Ukraine, *Ministry of Education and Science of Ukraine*, 18 March 2022, at: <https://mon.gov.ua/eng/news/mon-iniciyuye-stvorenniya-mizhnarodnoyi-koalitsiyi-na-pidtrimku-osviti-ta-nauki-ukrayini>.

<sup>529</sup> В школах аннексированного Крыма оправдывают войну России против Украины – представительство президента Украины, *Krym.Realii*, 1 March 2022, at: <https://ru.krymr.com/a/news-propaganda-v-krymskih-shkolah/31730858.html>.

<sup>530</sup> Agnieszka Pikulicka-Wilczewska, *Russia's crackdown on Crimean Tatars foreshadows wider repression*, *AlJazeera*, 12 March 2022, at <https://www.aljazeera.com/news/2022/3/12/russia-ukraine-crimean-tatars-dissent-repression>.

## 2. RIGHT TO HEALTH

The right to health is recognized in Article 12 of the ICESCR and Article 11 of the RESC and, for specific categories of persons, in Article 12 of CEDAW, Article 24 of CRC and Article 25 of CRPD. Healthcare issues are also included in the OSCE commitments (Vienna 1989). The right to health entails the freedom to control one's health and body and the entitlement to have access to a system of health protection providing equal opportunity to individuals to enjoy the highest attainable level of health.<sup>531</sup>

In 2016, the UN Security Council adopted Resolution 2286,<sup>532</sup> which “*strongly condemns acts of violence, attacks and threats against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities*” (para 1). It also calls upon parties to armed conflicts to “*fully comply with their obligations under international law /.../ to ensure the respect and protection of all medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities*” (para 2). Still in 2016, pursuant to para 13 of the Resolution, the UN Secretary-General issued recommendations on measures to prevent acts of violence against healthcare personnel and facilities.<sup>533</sup> Some 50 states, including Ukraine, expressed their support to the two documents through the *Political declaration on the protection of medical care in armed conflicts* issued in 2017.<sup>534</sup>

The current conflict has put the operation of the healthcare system in Ukraine, and the enjoyment of the right to health by the inhabitants of Ukraine, under strain. For the period 24 February to 29 March 2022, the WHO's Surveillance System for Attacks on Health Care (SSA) reported 74 verified attacks on health resources – 60 of which impacted health care facilities, 10 impacted patients, 11 impacted transport, 17 impacted personnel, 8 impacted medical supplies, and 1 impacted warehouses.<sup>535</sup> The numbers correspond *grosso modo* to those provided by the OHCHR.<sup>536</sup> The Mission is concerned by the high numbers which suggest that healthcare institutions might be targeted intentionally or that insufficient care is paid to the planning of operations. As it has already been established in this report, some of these incidents, such as attack on the Maternity Hospital in Mariupol, constitute a clear violation of IHL and a war crime (Article 8(2)(b)(ix) of the RS).<sup>537</sup> They also violate the provision of Resolution 2286.

The Mission moreover points to the larger effects that the conflict has had on the health of persons and on the operation of the healthcare system. The OHCHR has noted “*an increase in general mortality rates among civilians in a number of besieged cities*” attributing it not only to the direct fighting but also to “*the stress on /.../ health and /.../ the disrupted or absent*

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<sup>531</sup> UN Doc. E/CN.4/2000/4, *General Comment No. 14: The right to the highest attainable standard of health*, 11 August 2000, para 8.

<sup>532</sup> UN Doc. S/RES/2286(2016), *Protection of civilians in armed conflict*, 3 May 2016.

<sup>533</sup> UN Doc S/2016/722, *Recommendations of the Secretary-General, submitted pursuant to paragraph 13 of Security Council resolution 2286 (2016), on measures to prevent acts of violence, attacks and threats against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, and to better ensure accountability and enhance their protection*, 18 August 2016.

<sup>534</sup> The text is available at: [https://onu.delegfrance.org/IMG/pdf/political\\_declaration\\_-\\_31\\_october\\_2017\\_-\\_protection\\_of\\_medical\\_care\\_in\\_armed\\_conflicts.pdf](https://onu.delegfrance.org/IMG/pdf/political_declaration_-_31_october_2017_-_protection_of_medical_care_in_armed_conflicts.pdf).

<sup>535</sup> Surveillance System for Attacks on Health Care (SSA), WHO, 29 March 2022, at: <https://extranet.who.int/ssa/Index.aspx#:~:text=Launched%20in%20December%202019%2C%20the,about%20attacks%20on%20health%20care.>

<sup>536</sup> OHCHR, *HRMMU Update, op. cit.*, para 17.

<sup>537</sup> Myths and Reality: Russia's Attack on a Maternity Hospital in Mariupol as a War Crime, *Truth Hounds*, 16 March 2022, at: <https://truth-hounds.org/en/myths-and-reality-russias-attack-on-a-maternity-hospital-in-mariupol-as-a-war-crime/>. See also section IV.F.12.a of this report.

*provision of medical aid*".<sup>538</sup> The WHO Regional Office for Europe has reported that "*many health workers are displaced themselves or unable to work. Close to 1000 health facilities are close to conflict lines or are in changed areas of control. The consequence of that – limited or no access to medicines, facilities and health professionals – mean that treatments of chronic conditions have almost stopped*".<sup>539</sup>

In response to these difficulties, the Ministry of Health of Ukraine has issued various materials that should help individuals to overcome some of the threats to their health ("How to cope with stress in time of war?", "How to take care of yourself if you have a cardio-vascular disease?", "For people with HIV", "Routine vaccination in times of war", etc.).<sup>540</sup> It has also established a special channel on Telegram, through which all these materials as well as updated information on the healthcare system are communicated to people.<sup>541</sup> The Mission, recognizing the difficulties of granting the enjoyment of the right to health in times of armed conflict, welcomes these initiatives.

The Mission is at the same time concerned by the reports that in some areas under the effective control of Russia, especially Crimea, the local population has allegedly been denied access to hospitals (Armyansk, Krasnoperekopsk, Dzhankoi), which are reserved for the treatment of sick and wounded Russian soldiers. While the occupying power may, under IHL, requisition civilian hospitals, such a measure is lawful only if the needs of the civilian population are cared for by alternative means (Article 57 of GCIV). The denial of access to healthcare or making this access difficult by requiring civilians to go to private clinics or to hospitals situated far away from their place of residence would be a violation of this provision as well of the right to health.

### 3. RIGHT TO SOCIAL SECURITY

The right to social security is recognized in Articles 9 and 10 of the ICESCR, Article 12 of the RESC and, for specific categories of persons, by Article 26 of the CRC, Article 11 of the CEDAW and Article 28 of the CRPD. The right is also invoked in the OSCE commitments (Helsinki 1975, Vienna 1989, Helsinki 1992). The right "*encompasses the right to access and maintain benefits /.../ without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents*".<sup>542</sup>

The current conflict, especially due to the massive displacement of the population, has made the normal operation of the social security sector very difficult. Prior to the conflict, almost 25% of the government expenditure was spent on social security, with old age pensions accounting for half of this figure. Many people in Ukraine are thus fully dependent on social security and have no alternative source of income. During the Covid-19 crisis, in autumn 2021, Ukraine established a single list of all recipients and an online system of applications. Yet, large portions of the population, such as older persons, due to the lower level of digital literacy, continue to collect benefits through post offices or banks.

In the early days of the conflict, the Ministry of Social Policy of Ukraine faced difficulties in paying out benefits to the inhabitants, especially those living in war-stricken regions. In its report issued on 1 March 2022, the UN Office for the Coordination of Humanitarian Affairs (OCHA) confirmed that "*primary services such as /.../ social transfers /.../ have been*

<sup>538</sup> OHCHR, *HRMMU Update, op. cit.*, para 15.

<sup>539</sup> Ukraine: 28 days of war, 64 verified attacks on health care, and 18 million people affected, *WHO*, 24 March 2022, at <https://www.euro.who.int/en/media-centre/sections/press-releases/2022/ukraine-28-days-of-war,-64-verified-attacks-on-health-care,-and-18-million-people-affected>.

<sup>540</sup> At: <https://moz.gov.ua/>.

<sup>541</sup> At: <https://t.me/mozofficial>.

<sup>542</sup> UN Doc. E/C.12/GC/19, *General Comment No 19. The right to social security*, 4 February 2008, para 2.

affected”.<sup>543</sup> The most affected were the most vulnerable persons, such as older persons. HelpAge International warned against the “*risk of severe income shortages /for older persons/, as nearly every older person affected (99%) relied on a pension as their main source of income, which can be disrupted if they cannot access payment points*”.<sup>544</sup>

The operation of the social security system seems to have been largely restored since then. In line with the special legislation issued by the Cabinet of Ministers on 26 February 2022<sup>545</sup> and complemented later on by other legal acts,<sup>546</sup> Ukraine has put in place mechanisms to ensure old payments and introduce some new benefits. Social security payments are sent to bank account or distributed through local branches of the Ukrainian Post Service. A special new e-portal has also been put in place for those in urgent need of help and has already been used by some 23,000 persons.<sup>547</sup> Still, people in war-stricken regions as well as some displaced persons face difficulties getting access to the social security benefits.

The inhabitants of the areas under the effective control of Russia, especially in the Eastern part of Ukraine, are in a particularly vulnerable situation. Already prior to the conflict they had difficulties collecting their benefits, as they had to do so in the territory under the Ukrainian control.<sup>548</sup> This model has turned out to be unworkable and should not be used with respect to any beneficiaries of the social security system, wherever on the territory of Ukraine they live.

#### 4. RIGHT TO FOOD AND WATER

The right to food is recognized in Article 11 of the ICESCR. It is realized “*when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement*”.<sup>549</sup> The food thus needs to be available, adequate, and accessible. The right to food “*also includes the right to have access to safe drinking water*”.<sup>550</sup>

In its Note on the impact of the war on food security in Ukraine published on 25 March 2022, the UN Food and Agriculture Organization (FAO) highlights that the “*immediate food security dimension of this conflict is related to food access and not food availability*”.<sup>551</sup> It also predicts that “*food shortages are expected immediately or in the next three months in over 40 percent of cases, and that supply of and access to food is a significant issue across all trading sectors*”.<sup>552</sup> Major constraints derive from the possible shortage of fuel availability and other agricultural products (seeds, nitrogen fertilizer, pesticides and equipment). The access to water has also been impaired in certain parts of Ukraine. The UN High Commissioner for Refugees

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<sup>543</sup> Flash Appeal. Ukraine Humanitarian Programme Cycle, March-May 2022, 1 March 2022, OCHA, at: <https://reliefweb.int/report/ukraine/ukraine-flash-appeal-march-may-2022-enukru>.

<sup>544</sup> HelpAge International, Ukraine: Older people face abandonment and isolation as conflict with Russia intensifies, 24 February 2022, at: <https://www.helpage.org/newsroom/latest-news/ukraine-older-people-face-abandonment-and-isolation-as-conflict-with-russia-intensifies/>.

<sup>545</sup> Кабінет Міністрів України, *Постанова № 162 Про особливості виплати та доставки пенсій, грошових допомог на період введення воєнного стану*, 26 лютого 2022 (amended on 21 March 2022).

<sup>546</sup> Кабінет Міністрів України, *Постанова № 204, Про особливості призначення та використання грошової компенсації вартості одноразової натуральної допомоги “пакунок малюка” на період введення воєнного стану*, 21 березня 2022.

<sup>547</sup> At: <https://edopomoga.gov.ua/>.

<sup>548</sup> Pensions for IDPs and persons living in the areas not controlled by the Government in the east of Ukraine, *UN Briefing Note*, January 2020.

<sup>549</sup> UN Doc. E/C.12/1999/5, *General Comment 12, Right to adequate food*, 12 May 1999, para 6.

<sup>550</sup> See UN Docs E/C.12/2002/11, *General Comment No. 15. The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003; A/RES/64/292, *The human right to water and sanitation*, 3 August 2010.

<sup>551</sup> FAO, Ukraine. Note on the impact of the war on food security in Ukraine, 25 March 2022, p. 5, <https://doi.org/10.4060/cb9171en>.

<sup>552</sup> Ukraine. Note on the impact of the war on food security in Ukraine, *FAO*, 25 March 2022, at: <https://doi.org/10.4060/cb9171en>.

(UNHCR) has reported that “*more than 200,000 people are now without access to water across several localities in Donetsk oblast*”.<sup>553</sup> The shortage is even more critical in besieged cities such as Mariupol or Sumy, where the situation has been described as “*extremely dire, with residents facing critical and potentially fatal shortages of food, water and medicine*”.<sup>554</sup>

The Mission has not received information showing that in the conflict in Ukraine, the starvation of the civilian population would be used as a deliberate strategy. It however notes that a massive destruction of objects necessary for the survival of civilian population or a protracted siege of a town/city accompanied by the refusal to allow for the evacuation of civilian population through safe humanitarian corridors and to provide for or make possible safe delivery of humanitarian assistance to this population, may serve as indications that such a strategy has been resorted to. The Mission recalls that starvation may amount not only to a violation of IHL and a war crime (Article 8(2)(b)(xxv) of the RS) but also to a violation of the right to food and water and a crime against humanity (Article 7(1)(b) of the RS).

The Mission further recalls that even in the extreme situation of an armed conflicts, States have not only the negative obligation to refrain from interfering with the enjoyment of the right to food but also the positive obligations to prevent, to the extent possible, the interference into this right by third parties and to “*take the necessary action to mitigate and alleviate hunger*”.<sup>555</sup> Special attention has to be paid to the needs of persons in places cut from normal access to food and water and to the needs of vulnerable persons, such as pregnant women, small children or internally displaced persons.

## 5. RIGHT TO A HEALTHY ENVIRONMENT

The right to a healthy environment is not explicitly enshrined in human rights instruments. Yet, in 2021, the UN Human Rights Council (with several abstentions, including that by Russia) recognized that having a clean, healthy and sustainable environment is an autonomous human right.<sup>556</sup> Environmental concerns are part of the OSCE commitments (Helsinki 1992, Istanbul 1999 or Astana 2010). There is a close link between the (emerging) right to healthy environment and other human rights, such as the right to life and the right to health. It has been recognized that these rights give rise to certain obligations relating to the environment notwithstanding the existence (or not) of an autonomous right to healthy environment.<sup>557</sup>

In its report issued on 1 March 2022, the OCHA pointed out that the conflict in Ukraine had given rise “*to significant environmental challenges to public health, including explosive ordnance contamination, increased radiation levels from Chernobyl and the burning oil storage depot at Vasylkyv*”.<sup>558</sup> On 3 March 2022, 902 individuals and 156 organizations from 75 countries adopted, through the Environmental Peacebuilding Association, an open letter expressing concern about the impact of the conflict in the territory of Ukraine on the state of the environment and the health of people.<sup>559</sup> There is a high risk that the active hostilities and the occupation of parts of the Ukrainian territory by Russia will result in a similar deterioration

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<sup>553</sup> ‘Ukraine invasion: Needs keep growing with cities facing ‘fatal shortages’; breakthrough as UN convoy reaches Sumy’, *UN News*, 18 March 2022, at <https://news.un.org/en/story/2022/03/1114232>.

<sup>554</sup> Ukraine Invasion, *op. cit.*

<sup>555</sup> UN Doc. E/C.12/1999/5, *op. cit.*, para 6.

<sup>556</sup> UN Doc. A/HRC/RES/48/13, *The human right to a clean, healthy and sustainable environment*, 18 October 2021.

<sup>557</sup> See UN Doc. A/HRC/25/53, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Mapping report*, 30 December 2013, Section IV.

<sup>558</sup> OCHA, Flash Appeal. Ukraine Humanitarian Programme Cycle, March-May 2022, 1 March 2022, p. 24.

<sup>559</sup> Open Letter on the Environmental Dimensions of the Russian Invasion of Ukraine, Environmental Peacebuilding Association, 3 March 2022, at: <https://www.environmentalpeacebuilding.org/conferences/2nd-international-conference-on-environmental-peacebuilding/>.



of the environmental situation which has already been documented for the Donetsk and Luhansk regions.<sup>560</sup> Analysts have predicted that “*the widespread destruction caused by the Russian invasion will /.../ lead to the contamination of land, water, and inhabited environments, where they can persist with a lifespan likely much longer than this conflict*”.<sup>561</sup>

The Mission recalls that “*intentionally 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 overall military advantage anticipated*” constitutes a war crime (Article 8(2)(b)(iv)). Such an act would also violate the right to a healthy environment and the right to health.<sup>562</sup> IHRL arguably gives rise to a broader range of obligations that would include, at least, the obligation to refrain from any action that might have a long-lasting negative effect on the environment and the obligation to take the environmental considerations into account when adopting decisions, including decisions on the course of military actions.

## **D. IMPACT OF THE CONFLICT ON VULNERABLE GROUPS**

The current conflict has affected the population of Ukraine as a whole. Yet, it has had a specific and sometimes particularly heavy impact on individuals belonging to certain vulnerable groups. These groups include, but are not limited to, women, children, older persons, persons with disabilities, national and ethnic minorities, LGBTQ people or watchdogs (human rights defenders and other activists). Furthermore, the conflict itself has produced new vulnerable groups, especially internally displaced persons (IDPs) and refugees.<sup>563</sup> The special needs and problems faced by individuals belonging to all these vulnerable groups deserve attention. In times of crisis, vulnerable persons become even more vulnerable but they often get overlooked and ignored. That must not be the case in Ukraine.

The leading principle applicable to individuals belonging to vulnerable groups is the principle of non-discrimination. This principle is enshrined in Article 26 of the ICCPR, Article 14 of the ECHR, Protocol 12 to the ECHR, Article E of the RESC and Article 20 of the CHRFF. This principle imposes on States the obligations not to treat those belonging to vulnerable groups less favourably than other people and to take special needs of such individuals into account in all areas of life. The principle of non-discrimination is non-derogable. The derogation clauses explicitly stipulate that measures adopted in emergencies may never involve discrimination.

States also have the positive obligation to seek, to the extent possible, to minimize the negative impact of emergencies, such as armed conflicts, on vulnerable groups. The content of this obligation may only be determined taking the concrete circumstances into account. Similar as for ESC right, the Mission in this part does not limit its attention to clear violations of IHRL but maps the broader impact of the conflict on the situation of vulnerable groups.

### **1. WOMEN**

The rights of women are protected by general human rights instruments and by the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW). Both Ukraine

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<sup>560</sup> See Donbas Environment: Invisible Front, Report, *Truth Hounds*, 2021, at: donbas-ecology-report-2021-truth-hounds\_en.pdf.

<sup>561</sup> Kristina Hook, Richard “Drew” Marcantonio, ‘Grappling with environmental risks in the fog of war’, *Bulletin of the Atomic Scientists*, 10 March 2022, at <https://thebulletin.org/2022/03/grappling-with-environmental-risks-in-the-fog-of-war/>.

<sup>562</sup> See also UN Doc. E/CN.4/1992/26, *Report on the situation of human rights in Kuwait under Iraqi occupation prepared by Mr. Walter Kálin*, 16 January 1992, para 208.

<sup>563</sup> Since the scope of the mandate of the Mission is limited to the territory of Ukraine, the report does not contain a specific section on refugees.

and Russia are state parties to CEDAW and to its Optional Protocol. The CEDAW grants women a whole range of human rights and protects them against discrimination.

In 2000, the UN Security Council adopted Resolution 1325 on women and peace and security,<sup>564</sup> which urges “*all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially as civilians*” (para 9) and calls upon them to “*take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict*” (para 10).

These standards have also found reflection in the OSCE commitments. In Decision No. 8/01 (Bucharest 2001), the participating States stressed “*the vulnerability of women especially in conflict and post-conflict situations*” (para 3). In *Decision No. 15/05 on Preventing and Combating Violence against Women* (Ljubljana 2005), they committed themselves to “*take all necessary steps to prevent gender-based violence against women and girls during and after armed conflict /.../, including the bringing to justice of perpetrators of crimes /.../*” (para 7).

Since the outbreak of the current conflict, there have been warning that armed conflicts conventionally lead to a steep increase in gender-based violence. One day into the conflict, the director of Amnesty International Ukraine, Oksana Pokalchuck predicted that the conflict “*will have a bad impact on women in the country. Domestic violence and sexual violence rises in wars*”<sup>565</sup> The subsequent developments have confirmed this prediction. Reports indicate instances of conflict-related gender-based violence, such as rape, sexual violence or sexual harassment. Women have also been exposed to an increased risk of human trafficking and have faced difficulties when seeking to access gender-specific healthcare.

Since the outbreak of the conflict, Ukraine has witnessed an increase in gender-based violence. Both the Ukrainian Minister of Foreign Affairs Dmytro Kuleba,<sup>566</sup> and the Ukrainian MP Lesia Vasylenko,<sup>567</sup> have levelled accusations of rape and other forms of sexual violence at the Russian forces. One of the incidents occurred in the village of Bovary, close to Kyiv, where a drunken Russian soldier allegedly broke into a private house, killed the owner and then raped his wife several times, in the presence of her small child.<sup>568</sup> There are allegations of rapes, including gang rapes, committed by Russian soldiers in many other regions in Ukraine.<sup>569</sup> The Mission recalls that rape or other forms of sexual violence may constitute or a crime against humanity (Article 7(1)(g) of the RS) or a war crime (Article 8(2)(b)(xxii) of the RS). All allegations of such acts need to be properly investigated and those found guilty need to be brought punished.

In addition to sexual violence, armed conflicts often bring about an increase in domestic violence. According to the 2020 Amnesty International report on the situation in the Donetsk and Luhansk regions, domestic abuse in conflict-affected areas increased steeply: “*In 2018*

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<sup>564</sup> UN Doc. S/RES/1325 (2000), *Women and peace and security*, 31 October 2000.

<sup>565</sup> Maya Oppenheim: ‘Sexual violence as ‘weapon of war’ to rise after Russia’s invasion, campaigners warn’, *The Independent*, 25 February 2022, at: <https://www.independent.co.uk/news/world/europe/sexual-violence-women-russia-b2023618.html>.

<sup>566</sup> ‘Foreign minister accuses Russian soldiers of rape in Ukrainian cities’, *Reuters*, 4 March 2022, at: <https://www.reuters.com/world/foreign-minister-accuses-russian-soldiers-rape-ukrainian-cities-2022-03-04/>.

<sup>567</sup> Rory Sullivan, ‘Russian troops using rape as ‘instrument of war’, claims Ukraine’s prosecutor general’, *The Independent*, 25 March 2022, at: <https://www.independent.co.uk/news/world/europe/russian-troops-rape-ukraine-allegation-b2043534.html>.

<sup>568</sup> Mia Jankowicz, ‘Ukraine prosecutor-general says Russian soldiers raped a woman after breaking into her home and killing her husband’, *Business Insider*, 23 March 2022, at: <https://news.yahoo.com/ukraine-prosecutor-general-says-russian-114537176.html>.

<sup>569</sup> Cora Engelbrecht, ‘Reports of sexual violence involving Russian soldiers are multiplying, Ukrainian officials say’, *New York Times*, 29 March 2022, at: <https://www.nytimes.com/2022/03/29/world/europe/russian-soldiers-sexual-violence-ukraine.html>.

there has been there was 76% increase in Donetsk region and in Luhansk region 158% increase in numbers of such cases compared to an average for the previous three years.”<sup>570</sup> The same increase might occur in the other regions of Ukraine, though the effect of the separation of families due to the compulsory recruitment of men aged 18-60 is yet to be seen.

Women have also been disproportionately affected by the massive displacement that the conflict has brought about. Of the 10 million persons who have fled their homes since 24 February 2022, the majority have been female. Displaced women find themselves in an extremely vulnerable position as they often leave almost everything behind, are separated from their relatives and cope with the trauma of war. International organizations have warned that human traffickers are abusing the situation of woman and girls who are alone and luring them into the trap of forced prostitution, slavery or forced labour.<sup>571</sup> There are reports of attempted human trafficking and forced prostitution at the borders with other countries.<sup>572</sup> Women and girls on the move or in temporary shelters are also prone to becoming victims of gender-based violence.<sup>573</sup>

Women who stay in Ukraine also often find themselves in dire situation. Lack of access to social services including schools and disrupted community networks have increased the care burden of local women who are responsible for the care for children, disabled and elderly family members. Moreover, the UN Population Fund (UNFPA)<sup>574</sup> estimates that some 80,000 women in Ukraine will give birth in the next three months – a large number of them in unsuitable conditions as healthcare centers in Ukraine become inaccessible. The lack of access to proper care endangers the lives of mothers and their newborns not only during the labour but also afterwards. Some of the healthcare institutions, such as the Maternity Hospital in Mariupol, have also been targeted, resulting in the death of a mother and her newborn.<sup>575</sup> The conflict affects not only the physical health of mothers and newborns but their mental health as well. Another issue is restricted access to female sanitary products.

## 2. CHILDREN

Children are protected by general human rights instruments and the UN Convention on the Rights of the Child (CRC). Both Ukraine and Russia are state parties to CRC and its first two Optional Protocols (OP) – on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. No derogation is possible under these instruments. According to article 38 of the CRC, States must “*respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child*”.

Since 1999, the UN Security Council has been actively seized with the protection of children in armed conflicts. In the first resolution on this topic, it identified some of the main risks for children stemming from armed conflicts as “*killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law, and attacks on objects protected under international law, including places*

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<sup>570</sup> Not a private matter: domestic and sexual violence against women in Eastern Ukraine, *Amnesty International*, 11 December 2020., at: <https://www.amnesty.org/en/documents/eur50/3255/2020/en/>.

<sup>571</sup> ‘Teen fleeing Ukraine gets help from CA godmother describes run-in with human traffickers’, *ABC7 News Bay Area*, 19 March 2022, at: <https://abc7.com/ukraine-war-teen-refugee-human-trafficking-poland/11665097/>.

<sup>572</sup> Katy Fallon, Antonia Cundy and Rosabel Crean, ‘Vigilantes stalk Ukraine border as sex traffickers target fleeing women and children’, *The Guardian*, 24 March 2022, at: <https://www.theguardian.com/global-development/2022/mar/24/vigilantes-stalk-ukraine-border-as-sex-traffickers-target-fleeing-women-and-children>

<sup>573</sup> Gender based violence, *Humanitarian Response*, 10 March 2022.

<sup>574</sup> Conflict compounds the vulnerabilities of women and girls as humanitarian needs spiral, *UNFPA*, 22 March 2022., at: <https://www.unfpa.org/ukraine-war>.

<sup>575</sup> ‘Ukraine war: Pregnant woman and baby die after hospital shelled’, *BBC*, 14 March 2022, at: <https://www.bbc.com/news/world-europe-60734706>. See also section IV.F.12.a of this report.

that usually have a significant presence of children such as schools and hospitals”.<sup>576</sup> Although the main focus of the UN Security Council and the Working Group on Children and Armed Conflicts established by it in 2015 has been on child soldiers, they have also dealt with some of the other problems faced by children in armed conflicts.

The OSCE participating States have pledged to “actively promote children’s rights and interests, especially in conflict and post-conflict situations” (Istanbul 1999, point 28) and to combat all forms of violence against children, including sexual exploitation (*Decision No. 15/06 on Combating Sexual Exploitation of Children* – Brussels 2006) and trafficking of children (*Decision No. 8/07 on Combating Trafficking in Human Beings for Labour Exploitation* – Madrid 2008).

The Mission has been able to confirm that the current conflict has affected children in many different ways. First, children are among the direct victims of the conflict. The lowest estimates provided by the UN indicate that 78 children were killed and 105 were injured over the first month of war.<sup>577</sup> The first reported child victims were the siblings Polina (10 years old) and Semyon (5 years old) Kudriny, who died of injuries received during an attack on their family car on 27 February 2022.<sup>578</sup> The youngest child victim of the conflict was a baby who died while being delivered via caesarean section by a woman injured in the attack on the Mariupol maternity hospital on 9 March 2022.<sup>579</sup> Although the legality of all such incidents must be determined by the applicable rules of IHL, the high number of child casualties gives rise to concerns about the extent to which the Russian forces respect the obligations stemming from Article 38 of the CRC. Even when not direct victims themselves, many children lose their relatives in the conflict. Such children will have their family life forever disrupted.

Secondly, according to the UN figures, more than half of the Ukrainian population under 18 years old, i.e., 4.3 out of 7.5 million persons, have been displaced since 24 February 2022. More than 1.8 million have crossed the borders and the remaining 2.5 million are IDPs on the territory of Ukraine.<sup>580</sup> Most children leave with their families but there are also cases of unaccompanied minors who have made the way to safety on their own.<sup>581</sup> Prior to the conflict, almost 100,000 children in Ukraine lived in institutions (residential care and boarding schools) and some of those have been left alone since then. The massive displacement exposes children to numerous risks: the risk of being killed or injured during the displacement, the risk of human trafficking and exploitation, the risk of child labour, the risk of forced recruitment or the risk of gender-based violence.<sup>582</sup> Appropriate measures must be put in place to protect children against these risks to the extent possible.

Thirdly, the conflict brings about large scale destruction and disruption of vital services, such as food, water and electricity supply, or the provision of health care. UNICEF has already observed a reduction in vaccination coverage for childhood immunizations, such as measles and polio, and has warned against the risk of outbreaks of vaccine-preventable disease,

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<sup>576</sup> UN Doc. S/RES/1261 (1999), *The Children and armed conflict*, 30 August 1999, para 2.

<sup>577</sup> ‘More than half of Ukraine’s children displaced after one month of war’, *UN News*, 24 March 2022, at: <https://news.un.org/en/story/2022/03/1114592>.

<sup>578</sup> David Mercer, ‘Ukraine invasion: Boy, 5, dies in hospital days after sister and parents were shot dead by Russian troops – reports’, *Sky News*, 4 March 2022, at: <https://news.sky.com/story/ukraine-invasion-boy-5-dies-in-hospital-days-after-sister-and-parents-were-shot-dead-by-russian-troops-reports-12557343>.

<sup>579</sup> Alex Stambaugh, ‘Pregnant woman and her baby die after Mariupol maternity hospital bombing’, *CNN*, 14 March 2022, at: <https://edition.cnn.com/2022/03/14/europe/mariupol-pregnant-woman-baby-death-intl/index.html>.

<sup>580</sup> UNICEF, *More than half*, *op. cit.*

<sup>581</sup> Children fleeing war in Ukraine at heightened risk of trafficking and exploitation, *UNICEF*, 19 March 2022, at: <https://www.unicef.org/press-releases/children-fleeing-war-ukraine-heightened-risk-trafficking-and-exploitation>.

<sup>582</sup> Children fleeing, *op. cit.*

especially in shelters.<sup>583</sup> The conflict also affects access to education, as described above in section V.C.1. Since its outbreak, moreover, adoption procedures have been largely suspended, with dozens of children adopted by couples from outside Ukraine getting stuck in care institutions. At the same time, there are reports about orphans of war being offered for adoption.<sup>584</sup> Ukraine is also a popular destination for foreign surrogacy due to the simplicity of the administrative procedure. It is estimated that some 2,000-2,500 babies are born through surrogacy there each year.<sup>585</sup> Most of the babies born since the outbreak of the conflict are now stranded in Ukraine because their parents do not want or are unable to enter the country.<sup>586</sup>

Fourthly, there have been allegations that the Russian Federation is considering recruiting, for the purpose of military deployment in Ukraine, boys under 18 years old, from Russia and possibly also from Crimea.<sup>587</sup> Such recruitment, if carried out, would constitute a clear violation of Articles 1-3 of the OP to the CRC, by means of which States shall set the minimum age of compulsory and voluntary recruitment into their national armed forces at 18 years and shall “take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities” (Article 1).<sup>588</sup>

### 3. OLDER PERSONS

Older persons are not protected by any specific human rights treaty. Nevertheless, general human rights instruments apply to them in full and their provisions should be interpreted in light of soft law instruments on older persons, such as the *UN Principles for Older Persons*.<sup>589</sup> Older persons make up almost one fourth of the population of Ukraine. The Mission has received reports indicating that many of them have been heavily affected by the conflict.

Some older persons have become direct victims of the conflict. The circumstances of some of these incidents suggest that older persons might have been targeted intentionally, in an act of extrajudicial killing. On 28 February 2022, an elderly couple reportedly died in a car blown up by an armored column in the town of Makariv close to Kyiv.<sup>590</sup> On 19 March 2022, an older woman was killed and her husband injured by the Russian soldiers, while riding bicycles to the local hospital in Trostyanets in the Sumy region.<sup>591</sup> On 26 March 2022, another older couple was reportedly shot dead while trying to leave the village of Marinka by car.<sup>592</sup> Moreover, on

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<sup>583</sup> More than half of Ukraine’s children, *op. cit.*

<sup>584</sup> Kathryn Joyce, ‘Ukraine’s kids and adoption: Will an ugly history repeat itself?’, *Salon*, 22 March 2022, at: <https://www.salon.com/2022/03/22/ukraines-kids-latest-target-for-the-christian-adoption-industry/>.

<sup>585</sup> Kirsty Horsey, Zaina Mahmoud, ‘Ukrainian Surrogates: a surprising silence’, *BioNews*, 7 March 2022, at: [https://www.bionews.org.uk/page\\_162770](https://www.bionews.org.uk/page_162770).

<sup>586</sup> Rebecca Wright and Olha Konovalova, ‘Underneath embattled Kyiv, babies born to foreign parents via surrogate shelter in a basement’, *CNN*, 15 March 2022, at: <https://edition.cnn.com/2022/03/14/europe/ukraine-surrogate-babies-shelter-intl-cmd/index.html>.

<sup>587</sup> Michael Starr, ‘Ukraine accuses Russia of preparing to conscript from youth movement’, *Jerusalem Post*, 20 March 2022, at: <https://www.jpost.com/international/article-701802>.

<sup>588</sup> Upon ratification of the OP, the Russian Federation declared that “in accordance with the legislation of the Russian Federation, citizens under the age of 18 may not be recruited for military service in the armed forces of the Russian Federation and a military service contract may not be concluded with them”.

<sup>589</sup> UN Doc. A/RES/46/91, *Implementation of the International Plan of Action on Ageing and related activities*, 16 December 1991.

<sup>590</sup> ‘Elderly civilian Ukrainian couple are blown up in their car in completely unprovoked attack by Russian ‘special peacekeeping force’ tank’, *DailyMail*, 8 March 2022, at: <https://www.dailymail.co.uk/news/article-10590863/Ukraine-war-Elderly-civilian-couple-blown-car-Russian-tank.html>.

<sup>591</sup> Обстріл подружжя пенсіонерів, які їхали на велосипедах у лікарню - на Сумщині розпочато провадження, *Офіс Генерального прокурора*, 22 березня 2022, at: <https://gp.gov.ua/ua/posts/obstril-podruzzya-pensioneriv-yaki-yixali-na-velosipedax-u-likarnyu-na-sumshhini-rozporcato-provadžennya>.

<sup>592</sup> Обстріли населених пунктів Донеччини авіабомбами і реактивною артилерією - розпочато 12 кримінальних проваджень, *Офіс Генерального прокурора*, 27 березня 2022, at: <https://www.gp.gov.ua/ua/posts/obstrili-naselenix-punktiv-doneccini-aviabombami-i-reaktivnoyu-artilerijeyu-rozporcato-12-kriminalnix-provadžzen>.

11 March 2022, an elderly persons' residence in the town of Kreminna in the Luhansk region was hit by a Russian tank, resulting in the death of 56 persons. The surviving 15 persons were displaced to a regional geriatric care home situated in the occupied territory.<sup>593</sup> All these incidents again must be investigated and considered in light of the applicable rules of IHL.

Even more older persons are among the indirect victims of the conflict. Due to the fragile health conditions and movement difficulties, they often find it difficult to flee to safety and are left alone without anyone to take care of them. Some of them refuse evacuation. Those who stay or are left behind remain without access to food, drinking water, vital medicine and health care. Since most of them rely on an old-age pension as the main source of their income, the disruption of the social security system or the impossibility to get access to payment points constitutes a serious threat to their life.<sup>594</sup> Older persons with compounded vulnerability (e.g., older persons with disabilities) find themselves in particularly difficult circumstances.

According to a survey carried out by HelpAge in the Eastern part of Ukraine in early March 2022, 91% of interviewed older persons were in need of food assistance; 79% had difficulties getting access to sufficient clean drinking water; 75% were in need of hygiene items (toothpaste, soap, adult diapers, and toilet paper); 91% faced interruptions of electricity supply and lack of sufficient heating; and 34% were in need of urgent medication for chronic illnesses.<sup>595</sup> The State in control of the area on which these persons live has the positive obligation to do try to meet these needs to the extent possible.

#### 4. PERSONS WITH DISABILITIES

Persons with disabilities are protected by general human rights instruments and the UN Convention on the Rights of Persons with Disabilities (CRPD), to which both Ukraine and Russia are State parties. Ukraine has also ratified the OP to the CRPD. The CRPD does not allow derogations. Its article 11 obliges states to *"take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict /.../"*.

In 2019, the UN Security Council, in a unanimous vote (including the vote of Russia) adopted Resolution 2475(2019) on the Protection of Persons with Disabilities in Conflict.<sup>596</sup> Recalling Article 11 of the CRPD, the resolution urges all parties to armed conflict to *"take measures, in accordance with applicable international law obligations to protect civilians, including those with disabilities, and to prevent violence and abuses against civilians in situations of armed conflict, including those involving killing and maiming, abduction and torture; as well as rape and other forms of sexual violence in conflict and post-conflict situations"* (para 1). Parties to armed conflict also have the obligation to allow and facilitate safe, timely and unimpeded humanitarian access to all people in need of assistance (para 3). The resolution furthermore emphasizes the obligation of States to take all appropriate measures to eliminate discrimination and marginalization on the basis of disability in situations of armed conflict (para 8).

Prior to the conflict, there were over 2.7 million persons with disabilities living in Ukraine. Since 24 February 2022, they have become yet another vulnerable group seriously affected by

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<sup>593</sup> 'Russian attack killed 56 elderly residents of a care home in eastern Ukraine, says regional official', *CNN*, 20 March 2022 at: [https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-20-22/h\\_d4e310461013be01dd92f2da81c24314](https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-20-22/h_d4e310461013be01dd92f2da81c24314).

<sup>594</sup> Ukraine: Older people face abandonment and isolation as conflict with Russia intensifies, *HelpAge*, 24 February 2022, at: <https://www.helpage.org/newsroom/latest-news/ukraine-older-people-face-abandonment-and-isolation-as-conflict-with-russia-intensifies/>,

<sup>595</sup> Eastern Ukraine: The needs of older people – 4 March 2022, *HelpAge*, at: <https://www.helpage.org/silo/files/rapid-needs-assessment-of-older-people-in-eastern-ukraine.pdf>.

<sup>596</sup> UN Doc. S/RES/2475(2019), *Protection of Persons with Disabilities in Conflict*, 20 June 2019.

the conflict. Likewise older persons, they are often left behind in dangerous areas, when the rest of the population leaves, because they are either unwilling or (often) unable to flee to safety. According to the information received from NGOs, “*evacuation of adults with disabilities is conducted per case and on an ad hoc basis only by NGOs and volunteers, who do not have enough funds and capacity to evacuate people en mass*”.<sup>597</sup> Some persons with disabilities could move to shelters, but many shelters are not adjusted to the needs of such persons and, as such, are inaccessible to many of them. Audio warnings are not available for persons who are deaf. There is at least one case of extrajudicial killing of a disabled person (section V.B.1).

Un-evacuated persons with disabilities, especially those staying in areas of active hostilities, face isolation, lack access to food, drinking water, medication or heating, are deprived of electricity and have difficulties getting social benefits. This applies both to persons living on their own and those staying in residential care institutions.<sup>598</sup> Some of these institutions, such as the Oskil psychoneurological residence in the Kharkiv region, have been targeted.<sup>599</sup> Persons with mental disabilities face particular challenges due to their limited capacity to understand the situation and to cooperate with those bringing help. Emergency information is not provided in easy read and other formats accessible to persons with intellectual impairments. The shortage of medicine, medical supplies, and medical staff is critical in some places. Yannis Vardakastanis, chair of the International Disability Alliance, has labelled this situation as “*an impending humanitarian crisis within the crisis*”.<sup>600</sup>

While some persons with disabilities remain in their places of residence, other have left those places. The reports indicate that around one fifth of IDPs households have at least one person with disabilities.<sup>601</sup> A similar share can be expected among Ukrainians who have crossed the borders. Checkpoints and immigration controls are, however, rarely accessible and information on relocation and humanitarian support is not being provided in appropriate formats. In the first weeks of the conflict, men with disabilities or men taking care of a disabled relative were reportedly being stopped at the borders due to the obligatory male conscription (18-60 years) and the uncertainty linked to the exceptions to this conscription. This uncertainty seems to have been largely dissipated through the adoption of new legal acts in mid-March 2022.<sup>602</sup>

## 5. NATIONAL AND ETHNIC MINORITIES

The rights of ethnic minorities are recognized in Article 27 of the ICCPR, from which Ukraine has derogated, and in the *Framework Convention for the Protection of National Minorities*, to which Ukraine, but not Russia, is state party. The principle of non-discrimination as set forth in IHRL is key for the interpretation of the rights of ethnic and national minorities. The protection of national minorities also features high among the OSCE commitments (Vienna 1989, Copenhagen 1990, Geneva 1991, Budapest 1994, Istanbul 1999). The OSCE

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<sup>597</sup> Information submitted by the Coalition of NGOs to the authors of the report.

<sup>598</sup> Rebecca Thomas, ‘Hundreds of homeless staff and patients living in psychiatric hospitals in Ukraine’, *The Independent*, 14 March 2022, at: <https://www.independent.co.uk/news/health/homeless-staff-hospitals-ukraine-b2034089.html>.

<sup>599</sup> Holly Bancroft, ‘Ukraine claims Russia has bombed psychiatric hospital with 330 people inside’, *The Independent*, 11 March 2022, at: <https://www.independent.co.uk/news/world/europe/russia-ukraine-psychiatric-hospital-latest-b2033633.html>.

<sup>600</sup> Alena Bieling, ‘Persons with disabilities in Ukraine face a ‘crisis within a crisis’’, *Euractiv*, 15 March 2022.

<sup>601</sup> IOM, *Ukraine IDP figures – general population survey March 2022 Preliminary findings*, 16 March 2022.

<sup>602</sup> Кабінет Міністрів України, *Постанова № 264 Про внесення змін до Правил перетинання державного кордону громадянами України*, 15 березня 2022; *Закон України № 2122-IX Про внесення змін до деяких законів України щодо звільнення від військової служби осіб з інвалідністю та осіб, які доглядають за особами з інвалідністю і хворими дітьми*, 15 березня 2022.

participating States have moreover repeatedly stressed the importance of the protection of the Roma and Sinti population living in the territory of many European states, including Ukraine.<sup>603</sup>

Ukraine is home to many national and ethnic minorities. The first (and so far only) national census of Ukraine took place in 2001.<sup>604</sup> According to its results, 17% of the population identified as ethnic Russian and the census showed 16 other national and ethnic minorities such as Belarusians, Crimean Tatars, Greeks, Jews, or Moldavians, with a population share below 1%. The composition of the population has most likely changed since 2001, especially due to the occupation of Crimea and the Donetsk and Luhansk regions by Russia in 2014-2022. In 2021, Ukraine enacted a *Law on Indigenous Peoples*,<sup>605</sup> which grants special rights to Crimean Tatars, Karaites, and Krymchaks, all of whom live predominantly in Crimea.

The conflict in the territory of Ukraine has affected the national and ethnic minorities. Military operations are taking place in many regions with compact populations of small-numbered minorities. They are putting in danger both the lives of these people and their distinct culture and language. In addition, cultural sites, and historical artifacts are being damaged during the operations. There is a high number of ethnic and national minorities living in the southeast of the country, which has experienced an intense fighting. For example, the wider area of Mariupol is home to about 80,000 Greeks. At least 10 of them have been reported dead as a result of Russian bombing in February 2022. Since then, the number of casualties has grown. The region of Mariupol is also home of the Turkic-speaking Urums. Many of them are surrounded in the area with either minimal or no possibility of evacuation.<sup>606</sup> The town of Volnovakha in Donetsk region, which has been almost completely destroyed by shelling, is home to ethnic Ukrainians, Russians, Armenians, Greeks and Jews. The military operations have affected predominantly Russian-speaking cities such as Kharkiv, Kherson or Melitopol.

The rights of national and ethnic minorities, as well as of indigenous peoples, are violated on the territories under the effective control of Russia. i.e., in Crimea and parts of Donetsk and Luhansk regions. The violations have taken place since 2014 and concern especially those, who promote the unity of Ukraine, such as ethnic Ukrainians or Crimean Tatars. These repressions have intensified following the outbreak of the conflict, with several representatives of the national or ethnic minorities being arrested, usually on accounts of high treason or financial support for a terrorist group.<sup>607</sup> There are also reports about discrimination against the Roma but those primarily refer to the situation of Roma refugees having left Ukraine and facing difficulties due to the lack of personal identification.<sup>608</sup>

## 6. LGBTQ PERSONS

LGBTQ persons are protected by general human rights instruments. The principle of non-discrimination prohibits discrimination based on sexual orientation or gender identity under the

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<sup>603</sup> See the Decision No. 3/03 on the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (Maastricht 2003), the Decision No. 6/08 on Enhancing OSCE Efforts to Implement the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (Helsinki 2008) and the Decision No. 8/09 on Enhancing OSCE Efforts to ensure Roma and Sinti Sustainable Integration (Athens 2009).

<sup>604</sup> All-Ukrainian Population Census '2001, State Statistical Committee of Ukraine, at: <http://2001.ukrcensus.gov.ua/eng/results/>.

<sup>605</sup> *Закон України № 38 Про корінні народи України*, 1 липня 2021.

<sup>606</sup> Kateryna Haertel, Ukraine's National Minorities Trapped by the War: the Cases of Ethnic Greeks and Bulgarians, *ECMI Minorities Blog*, 23 March 2022, at: <https://www.ecmi.de/infochannel/detail/ecmi-minorities-blog-ukraines-national-minorities-trapped-by-the-war-the-cases-of-ethnic-greeks-and-bulgarians>.

<sup>607</sup> Crimean peninsula in turmoil, *op. cit.*

<sup>608</sup> Andrei Popoviciu, 'Ukraine's Roma refugees recount discrimination en route to safety', *AlJazeera*, 7 March 2022, at: <https://www.aljazeera.com/news/2022/3/7/ukraines-roma-refugees-recount-discrimination-on-route-to-safety>.



“other status” (Article 26 of the ICCPR, Article 14 of the ECHR<sup>609</sup>). The *Yogyakarta principles* issued in 2006 are a useful tool of interpretation of general human rights provisions in cases related to LGBTQ persons.<sup>610</sup> These principles *inter alia* confirm that “everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity” (Principle 2) and that “everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group” (Principle 5).

LGBTQ persons have felt particularly concerned and threatened by the Russian attack on Ukraine. Whereas in Ukraine, their legal status has been gradually improving over the years, Russia has taken the opposite path, steadily toughening restrictions imposed on such persons. Since 2013, as a result of a new legislation banning the so-called propaganda which promotes non-traditional sexual relationships, the legal situation of LGBTQ persons in Russia has rapidly deteriorated.<sup>611</sup> Since 2014, the application of the anti-LGBTQ legislation has been extended to the territories under the effective control of Russia, i.e., Crimea, where the Russian legislation is in force, and the so-called Donetsk and Luhansk “People’s Republics”, which have adopted virtually identical legislation.<sup>612</sup> Moreover, throughout all areas under the Russian control, violent acts motivated by homophobia are on the rise and seem to be largely tolerated.

The Russian attack on Ukraine has put the Ukrainian LGBTQ community on alert. There is a general fear that regions that would newly fall under the Russian control could see the adoption of anti-gay legislation. Rumours have also been spread that LGBTQ persons figure on the list of persons to be killed or sent to detention camps that the Russian armed forces allegedly bring with them.<sup>613</sup> Moreover, in his sermon held on 6 March 2022, the Moscow Patriarch Kirill cited gay parades among the main “sins” that have forced Russia to conduct the special military operation in Ukraine.<sup>614</sup> This situation has made many members of the LGBTQ community either join the armed forces of Ukraine or seek to leave the country. For those LGBTQ persons who remain in the country and do not join the military forces, special shelters have been established in a few Ukrainian cities. These shelters however contribute to the visibility and vulnerability of the LGBTQ community. On 1 March 2022, one of the shelters (in Kyiv) was attacked and four LGBTQ persons present there were beaten by unspecified individuals.<sup>615</sup> This incident must be properly investigated and the perpetrators brought to justice.

Trans persons have also faced special difficulties. It has been reported that since the beginning of the conflict, hundreds of them have sought to cross the Ukrainian border.<sup>616</sup> Some have, however, been prevented from doing so and forced to join the armed forces despite their legal status as women in their documents. Trans persons who have lost their documents or who, due

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<sup>609</sup> See ECtHR, *Fretté v. France*, Application no. 36515/97, Judgment, 26 February 2002, para 32; *Identoba and Others v. Georgia*, Application no. 73235/12, Judgment, 12 May 2015, para 96; UN Doc. CCPR/C/119/D/2172/2012, *G. v. Australia*, 28 June 2017, para 7.12.

<sup>610</sup> The text is available at: <http://yogyakartaprinciples.org/>,

<sup>611</sup> Haley Ott, ‘Some LGBTQ Ukrainians fear human rights abuses if Russia stays: “We will fight”’, *CBS News*, 24 February 2022, at: <https://www.cbsnews.com/news/ukraine-lgbtq-fear-human-rights-abuses-if-russia-invades/>

<sup>612</sup> Article 6.22 of the Luhansk Code of Administrative Offences (Статья 6.22. Пропаганда нетрадиционных сексуальных отношений среди несовершеннолетних).

<sup>613</sup> Alex Cooper, ‘State Dept: Russia Has ‘Kill Lists’ That May Include LGBTQ+ Ukrainians’, *Advocate*, 22 February 2022, at: <https://www.advocate.com/world/2022/2/22/state-dept-russia-has-kill-lists-may-include-lgbtq-ukrainians>.

<sup>614</sup> Патриаршая проповедь в Неделю сыропустную после Литургии в Храме Христа Спасителя, *Московский Патриархат*, 6 марта 2022, at: <http://www.patriarchia.ru/db/text/5906442.html?fbclid=IwAR364NBBGQmorRmudkkzXIVaceABe6WQtuFJ-vq581WFDEJXc9QiGKGRdwQ>.

<sup>615</sup> Michael K. Lavers, ‘Four Ukraine LGBTQ activists attacked inside Kyiv office’, *Washington Blade*, 1 March 2022, at: <https://www.washingtonblade.com/2022/03/01/four-ukraine-lgbtq-activists-attacked-inside-kyiv-office/>

<sup>616</sup> Nelson C. J., ‘“Mentally, I am still in Ukraine”: Three Trans Ukrainians on the Tolls of War’, *Them*, 18 March 2022, at: <https://www.them.us/story/trans-ukrainians-war-refugees>.

to the lengthy bureaucratic procedure, do not yet have the documents reflecting their new gender, have faced similar difficulties. That was the case of the transgender Borys Kruglov (singer Zi Famelu, Zianzha), who got stuck at the borders because of the male gender marker in her passport but finally succeeded in getting out of Ukraine.<sup>617</sup> When seeking to cross the borders, trans persons have reported being subject to body checks that may in some instances amount to humiliating treatment. Moreover, due to the pharmacy closures and shortage of medicine, certain trans persons have started running out of the hormones, which might have a harmful effect on their health.<sup>618</sup>

## 7. WATCHDOGS (HUMAN RIGHTS DEFENDERS AND OTHER ACTIVISTS)

Yet another category of vulnerable persons includes human rights defenders (HRDs) and other activists who serve as watchdogs not only in times of peace but also in times of war. Their main task is to monitor the situation, establish and reveal truth about contested events and draw attention to any irregularities they may unveil. This task makes them unpopular with authorities and vulnerable to measures of retaliation and repression. Due to their increased vulnerability, watchdogs are in need of special IHRL protection.

In 1998, the UN General Assembly adopted the *Declaration on Human Rights Defenders*.<sup>619</sup> The Declaration stresses that “*everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels*” (Article 1). It contains a list of rights granted to HRDs. It also explicitly notes that States “*shall take all necessary measures to ensure the protection by the competent authorities of everyone, /.../ against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration*” (Article 12(2)).

The important role played by watchdogs and the need for their enhanced protection has been repeatedly confirmed by the OSCE participating States (Helsinki 1975, Madrid 1983, Vienna 1989, Budapest 1994).

The current conflict has made the position of HRDs and other activists, especially those living in the areas under the effective control of Russia difficult. In Crimea, several Crimean Tatar activists have been arrested on dubious grounds, such as high treason or financial support of terrorism. The OHCHR has noted that “*there are growing concerns about possible reprisals and retaliation against HRDs in areas occupied by Russian armed forces*”.<sup>620</sup> These concerns seem well grounded, as several HRDs and other activists from newly occupied territories have already been reported missing or dead (section V.B.1). The OHCHR has also noted that “*due to the ongoing hostilities and large-scale displacement, many human rights defenders (HRDs) have been unable to perform their human rights work, which has had negative implications on the vulnerable groups they support*”.<sup>621</sup>

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<sup>617</sup> ‘Famous transgender singer not allowed to leave Ukraine’, *Generico*, 6 March 2022, at: <https://generico.ru/2022/03/06/famous-transgender-singer-not-allowed-to-leave-ukraine/>.

<sup>618</sup> Lorenzo Tondo, ‘I will not be held prisoner’: The transgender women turned back at Ukraine’s borders’, *The Irish Times*, 22 March 2022, at: <https://www.irishtimes.com/news/world/europe/i-will-not-be-held-prisoner-the-transgender-women-turned-back-at-ukraine-s-borders-1.4833204>.

<sup>619</sup> UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 8 March 1999, UN Doc. A/RES/53/144.

<sup>620</sup> OHCHR, *HRMMU Update*, *op. cit.*, para 1.

<sup>621</sup> OHCHR, *HRMMU Update*, *op. cit.*, para 1.

## 8. INTERNALLY DISPLACED PERSONS (IDPs)

Internally displaced persons are “*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border*”.<sup>622</sup> They are protected by general human rights instruments and the *UN Guiding Principles on Internal Displacement*. While the *Guiding Principles* are not legally binding, the OSCE participating States have taken note of them “*as a useful framework for the work of the OSCE*”.<sup>623</sup> The *Guiding Principles* stress that IDPs “*shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country*” (Principle 1(1)).

According to the study of the International Organization for Migration (IOM),<sup>624</sup> by 25 March 2022, almost 6.48 million people had been displaced in Ukraine as a direct result of the conflict. IOM also reports that 13.5 % of those newly displaced had already had prior experience with displacement from 2014-2015. Over 53% of IDPs are women and there is also a large number of children, older persons, persons with disabilities and other vulnerable groups. Some 186,000 IDPs are third-country nationals.

Principle 6 of the *UN Guiding Principles* prohibits arbitrary displacement. In situations of armed conflict, arbitrary displacement amounts to any displacement not required by the security of the civilians involved or imperative military reasons. The evacuation of civilians from besieged cities and towns through humanitarian corridors may meet this condition. The evacuation must however take place under the conditions foreseen by Principle 8, which stipulates that “*displacement shall not be carried out in manner that violates the right to life, dignity, liberty and security of those affected*”. There are reports indicating repeated and most probably intentional attacks on civilians leaving through humanitarian corridors.<sup>625</sup> There are also reports suggesting that members of vulnerable groups, such as older persons or persons with disabilities, face increasing hardship getting to safety.<sup>626</sup> Deportations and forcible transfer of civilians not meeting the conditions indicated above would violate Principle 6 and could also constitute a crime against humanity (Article 7(1)(d) of the RS). As stated in section V.B.3, there are reports about such deportations of Ukrainian civilians to the areas under the effective control of Russia or even to Russia.

IDPs remain under the protection of IHRL standards in the whole course of their displacement. They must be protected against any act of violence, including murder, direct or indiscriminate attacks, starvation as a method of combat, their use as human shields or attacks against their camps and settlements (Principle 10). Many Ukrainian IDPs stay in provisional shelters hosted in schools, churches, theatres, music halls or metro stations. Several large-scale attacks on such shelters, including the attack on the Mariupol theatre and on the Holy Dormition Svyatogorsk

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<sup>622</sup> UN Doc. E/CN.4/1998/53/Add.2, *op. cit.*, para 2.

<sup>623</sup> OSCE, *Decision No. 4/03 on Tolerance and Non-discrimination*, Maastricht, 2003, para 13.

<sup>624</sup> ‘Almost 6.5 Million People Internally Displaced in Ukraine’, *IOM*, 21 March 2022, at: <https://www.iom.int/news/almost-65-million-people-internally-displaced-ukraine-iom>. See also A month since the start of the war, almost a quarter of Ukraine’s population are displaced, UNHCR, 25 March 2022, at: <https://www.unhcr.org/news/briefing/2022/3/623da5894/month-since-start-war-quarter-ukraines-population-displaced.html>.

<sup>625</sup> Dmitry Zaks, Dave Clark, ‘Ukraine accuses Russia of attacking humanitarian corridors as civilians flee cities’, *The Times of Israel*, 8 March 2022, at: <https://www.timesofisrael.com/ukraine-accuses-russia-of-attacking-humanitarian-corridors-as-civilians-flee-cities/>.

<sup>626</sup> UNHCR, *Ukraine Situation Flash Update #4,18* March 2022, at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Ukraine%20situation%20flash%20update%20No%204%20%2018%2003%202022.pdf>.

Lavra, have been reported<sup>627</sup> and may, or clearly do, constitute a war crime (section IV.F.12.b). The protection shall be available to all IDPs without any discrimination (Principle 4). There have been reports that certain IDPs, such as foreigners with a residence permit in Ukraine, have been treated with lower priority.<sup>628</sup> At the same time, giving priority to vulnerable IDPs, such as children, pregnant women or older persons, does not constitute a violation of this principle.

IDPs shall enjoy the full catalogue of civil and political and ECS rights, to the extent that those rights have not been derogated from and that the circumstances permit (Principles 10-23). Some of the rights might be very difficult to secure in collective shelters, especially those located in besieged cities and in areas of active hostilities (where the shelters should not be in the first place). Such shelters are often overcrowded, and face shortages of food, water, warm cloths and medical supplies. There is lack of privacy and of gender separation, thus increasing the risk of gender-based violence and of transmission of infectious disease, including Covid-19. IDPs must have unhindered access to humanitarian assistance (Principles 24-27).

IDPs must be allowed to “*return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country*” (Principle 28(1)) and national authorities of the state exercising jurisdiction over them shall facilitate their return or resettlement as much as possible. Upon return or resettlement, IDPs are entitled to restitution of their property and possessions or, if such restitution is not possible, national authorities shall provide them or assist them in obtaining compensation or another form of just reparation (Principle 29(2)).

In Ukraine, the legal status of IDPs is regulated by the Law *On Ensuring the Rights and Freedoms of Internally Displaced Persons*, adopted on 20 October 2014.<sup>629</sup> By virtue of its Article 4(1), “*the fact of internal displacement shall be proved by the certificate of registration of internally displaced person*”. The registration is regulated by the Resolution of the Cabinet of Ministers No. 509 on registration of internally displaced persons.<sup>630</sup> This Regulation has recently been amended to expand the list of persons entitled to register as IDPs to those leaving their homes following the Russian attack and the declaration of the martial law on 24 February 2022.<sup>631</sup> The personal scope of the Law and the Regulation is no longer limited to citizens of Ukraine but encompasses stateless persons and foreigners permanently residing in the territory of Ukraine. The legislation prohibits discrimination in the exercise of rights and freedoms based on internal displacement. It confirms that IDPs have the same rights and freedoms as the rest of the population. It gives IDPs the right to free temporary residence, access to healthcare and a monthly targeted assistance (2-3,000 hrivnas). It also introduces benefits for those helping IDPs, typically entrepreneurs employing them.

A UN study carried out in 2021 revealed deficiencies in this legal framework and in its implementation.<sup>632</sup> It noted that by making access to certain benefits and services dependent on IDP registration, the framework risked turning this registration into a permanent status. It also noted that IDPs had a significantly lower employment rate than the rest of the population, they

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<sup>627</sup> Hugo Bachega, ‘Russia attacks theatre sheltering civilians – Ukraine says’, *BBC*, 17 March 2022, at: <https://www.bbc.com/news/world-europe-60772331>; Stephanie Martin, ‘Russian evangelical leader apologizes to Christians in Ukraine as Monastery with 1,000 people attacked’, *Church Leaders*, 14 March 2022, at: <https://churchleaders.com/news/419497-russian-evangelical-leader-christians-in-ukraine-monastery.html>.

<sup>628</sup> Ukraine: Unequal Treatment for Foreigners Attempting to Flee Pattern of Blocking, Delaying Non-Ukrainians, *HRW*, 4 March 2022, at: <https://www.hrw.org/news/2022/03/04/ukraine-unequal-treatment-foreigners-attempting-flee>.

<sup>629</sup> Закон України № 1706-VII Про забезпечення прав і свобод внутрішньо переміщених осіб, 20 жовтня 2014.

<sup>630</sup> Кабінет Міністрів України, Постанова № 509 Про облік внутрішньо переміщених осіб, 1 жовтня 2014.

<sup>631</sup> Кабінет Міністрів України, Постанова № 269 Про внесення змін до Порядку оформлення і видачі довідки про взяття на облік внутрішньо переміщеної особи, 13 березня 2022.

<sup>632</sup> UN, Inclusion of Internally Displaced Persons, *Briefing Note*, June 2021.

were facing protracted difficulties to find housing, and had to overcome physical and bureaucratic hurdles to get access to compensations. It is important to make sure that these deficiencies are not replicated in the current situation and that they are redressed as soon as circumstances allow.

IDPs from Ukraine also live in the territories under the effective control of Russia. The Mission has not received any information about the legal status and factual situation of these persons, apart from the alarming reports about the deportation and forcible transfer of those persons to the territory under the effective control of Russia or to Russia.

## **E. CONCLUSIONS**

The Mission has considered the impact of the current conflict on IHRL. While it has not been able to verify all the reported incidents which might involve violations of IHRL, it has found credible evidence suggesting that such violations, including violations of fundamental human rights (right to life, prohibition of torture and other inhuman and degrading treatment and punishment), have been committed, mostly in the areas under the effective control of Russia. The Mission has also concluded that the impact of the conflict on the enjoyment of human rights has gone beyond the direct violations of these rights. By causing a high level of destruction and by interfering with the provision of vital services (education, healthcare, etc.), the conflict, started by the unlawful attack on Ukraine by Russia, has made it very difficult for Ukraine to effectively respect, protect and fulfil human rights of its inhabitants. Finally, the Mission has found out that while the conflict has affected the population of Ukraine as a whole, it has had a particularly negative effect on individuals belonging to vulnerable groups, such as women, children, older persons or persons with disabilities.

The Mission has not been able to conclude whether the Russian attack on Ukraine *per se* may qualify as a widespread or systematic attack directed against any civilian population. It however holds that some patterns of violent acts violating IHRL, which have been repeatedly documented in the course of the conflict, such as targeted killing, enforced disappearance or abductions of civilians, including journalists and local officials, are likely to meet this qualification. Any single violent act of this type, committed as part of such an attack and with the knowledge of it, would then constitute a crime against humanity.

## **VI. ENSURING ACCOUNTABILITY FOR IHL AND HUMAN RIGHTS VIOLATIONS, WAR CRIMES AND CRIMES AGAINST HUMANITY**

### **A. OBLIGATIONS RELATED TO ACCOUNTABILITY**

Due to constraints regarding time, resources and access to the conflict area, the Mission could not attribute any violation to any individual. The Mission, however reminds Russia, Ukraine and all participating States of their obligations in this respect and provides an overview of existing and suggested international mechanisms.

#### **1. OBLIGATION TO INVESTIGATE**

While under IHRL every violent death has to be investigated for the right to life to be respected, under IHL this is only necessary when a reasonable suspicion exists that a war crime has been committed. However, it is increasingly considered that a preliminary fact-finding inquiry is required in any case where there are grounds to believe that civilians may have been killed or injured or at least where this consequence was not expected.<sup>633</sup>

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<sup>633</sup> UN Doc. A/68/389, *Report of the Special Rapporteur Ben Emmerson on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, 18 September 2013, paras 42, 45, 78; ICRC and

## 2. OBLIGATION TO REPRESS WAR CRIMES AND CRIMES AGAINST HUMANITY

Most war crimes in international armed conflicts constitute “grave breaches” of the Geneva Conventions and Protocol I. IHL requires States to enact legislation to punish such grave breaches, to search for persons who allegedly committed such crimes and to bring them before their own courts or to extradite them to another State for prosecution.<sup>634</sup> The Mission took note with satisfaction of the information that the Office of the General Prosecutor of Ukraine has opened more than 3100 cases of war crimes investigations since 24 February. While it is lawful and required by IHL that such investigations also concern persons belonging to the adverse party, the Mission notes that none of these investigations appears to concern Ukrainian soldiers.

The obligation to prosecute war crimes is subject to compulsory universal jurisdiction.<sup>635</sup> The Mission welcomes that following the events in Ukraine, several European states have started criminal inquiries or preliminary investigations concerning the situation and take their obligations under the principle of universal jurisdiction seriously. The Mission also welcomes that the ICC Prosecutor Karim A.A. Khan QC announced the opening of an investigation into the Situation in Ukraine on the basis of 41 State referrals received. This includes war crimes and crimes against humanity committed since 24 February on the territory of Ukraine. The Mission regrets that the President of Ukraine has not yet signed into law legislation adopted in May 2021 by Verkhovna Rada implementing the Rome Statute, including criminalizing crimes against humanity and all war crimes. Such legislation would greatly facilitate the application of the complementarity principle between the ICC and Ukraine.

Regarding crimes against humanity, it is in the competence of international and national courts to investigate and eventually find whether such crimes have taken place. This report has found several indications that such crimes have likely been committed (see section V). According to Article 7 of its Statute, the International Criminal Court can investigate the existence of such crimes. In addition, due to the *principle of universality* several national jurisdictions provide in their criminal law legal bases for the possibility to bring perpetrators of crimes against humanity to justice, even when the crime has not taken place on their territory. In most cases, this requires that the person(s) to be tried can stand trial in the respective country. In some countries also trials in absentia are also possible.

## 3. REPARATIONS

Under the law of State responsibility, the State responsible for violations of IHL or IHRL must cease the unlawful conduct, offer appropriate assurances and guarantees of non-repetition, and make full reparation, which includes restitution, compensation or satisfaction. For IACs, Article 3 of the Hague Convention IV and Article 91 of Protocol I specifically mention financial compensation. It is controversial whether under IHL victims of violations have an individual right to claim reparation from the responsible State, but such a right and a corresponding right to a remedy certainly exists concerning those of IHL violations that equally constitute IHRL violations. In this respect the *UN Basic Guidelines on the Right to Remedy and Reparations for Victims of Gross Violations on International Human Rights Law* of 2005<sup>636</sup> need to be taken into account.

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Geneva Academy of International Humanitarian Law and Human Rights, *Guidelines on investigating violations of IHL: Law, policy and good practice*, 2019, 16-25.

<sup>634</sup> See GCs, Common Arts 49(2)/50(2)/129(2)/146(2), to which P I, Art 85(1) refers.

<sup>635</sup> See GCs, Common Arts 49(2)/50(2)/129(2)/146(2), to which P I, Art 85(1) refers.

<sup>636</sup> UN Doc. A/RES/60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 16 December 2005.

#### **4. OBLIGATION OF STATES TO RESPECT AND ENSURE RESPECT OF IHL**

Article 1 common to the Geneva Conventions and Protocol I reads: ‘*The High Contracting Parties undertake to respect and to ensure respect for the [relevant treaty] in all circumstances.*’ The ICJ determined that this obligation also exists under customary law.<sup>637</sup> The obligation to respect implies that Ukraine and Russia are responsible for IHL violations committed by their armed forces, other organs and persons as well as entities that are attributable to them (such as officials instated and/or controlled by the government of the Russian Federation within the self-proclaimed “republics” of Luhansk and Donetsk). In addition, States have a due diligence obligation to ensure respect of IHL by the entire population under their control. Beyond these obligations, all States, including those that are not involved in the armed conflict, must do everything reasonably within their power to prevent and bring to an end IHL violations committed by Russia and Ukraine. This implies a negative obligation not to encourage, aid or assist in the commission of such violations as well as a positive obligation to take measures, either collectively or individually, to prevent or end such violations.<sup>638</sup> The Mission notices an unprecedented willingness of States to take such measures to end Russia’s violations of IHL, including through regional organizations and UN General Assembly resolutions. Such obligation should equally be respected by Belarus, which is allowing Russia to use its territory to conduct military operations in Ukraine. The Mission is confident that States supporting Ukraine to face the Russian aggression, including by supplying weapons, are using their influence to ensure Ukraine’s respect for IHL and to put an end to the violations mentioned in this report.

#### **5. NECESSITY TO ENQUIRE INTO VIOLATIONS OF IHL**

The impartial, independent and reliable establishment of facts by a neutral, legitimate body greatly contributes to ensuring better respect of IHL and IHRL. It is the necessary basis to ensure individual accountability and state responsibility. It allows Ukrainians and Russians, including future generations, to know the truth. It also serves to prevent or suppress rumours, perceptions or propaganda that IHL is always violated (at least by the respective adversary), all of which has led to further violations in the past. Such fact-finding also provides third States with reliable information on the situation, allowing them to make appropriate decisions in light of their aforementioned obligations to ensure respect of IHL.

The Mission notes with satisfaction the unprecedented willingness to have such fact-finding into violations of IHL and IHRL in Ukraine. Apart from the Mission’s own efforts in the OSCE framework, for example, the UN Human Rights Council has established a commission of inquiry.

### **B. OVERVIEW OF ACCOUNTABILITY MECHANISMS**

In reaction to the gross violations, in particular of IHL taking place during this international armed conflict, a number of public institutions and private initiatives inside Ukraine and internationally have committed themselves to collect evidence on alleged violations of IHL and possible war crimes as well as violations of IHRL and possible crimes against humanity. In most cases these initiatives use public information, which is abundantly available from open sources like social networks and from public and private recordings. Some like the Lemkin Centre in Warsaw collect information from refugees, some develop databases and also provide analysis. While there is an increasing collaboration of the different initiatives, like in form of

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<sup>637</sup> See ICJ, *Case Concerning the Military and Paramilitary Activities in And Against Nicaragua (Nicaragua v. United States of America)*, Judgment, 27 June 1986, paras 220, 255-6.

<sup>638</sup> ICRC, *Commentary to Geneva Convention III relative to the Treatment of Prisoners of War*, 2020, Article 1 common, paras 186-206.

the Platform for the Investigation of War Crimes in Ukraine – 5 AM Coalition, there is room for better coordination in order to avoid duplication and make these efforts more effective.

## 1. GLOBAL LEVEL

There are several accountability mechanisms which do already follow the events in Ukraine. On the international level the Human Rights Council of the United Nations based on its Resolution of 4 March 2022 has established an Independent International Commission of Inquiry on Ukraine to ensure accountability for human rights violations and abuses of IHL associated with Russia's aggression against Ukraine and to end impunity.<sup>639</sup> Its wide mandate includes investigations and collection of evidence as well as recommendations on measures of accountability. It is supported by the UN Human Rights Monitoring Mission in Ukraine, established already in 2014, which also shared valuable information with our Mission.<sup>640</sup>

The International Criminal Court based on referrals from 41 States Parties of the Rome Statute and the Declaration by Ukraine of 2015 has started investigations.<sup>641</sup> These are also based on a preliminary investigation undertaken in view of two declarations of Ukraine, which is not a State Party to the Rome Statute, of 2014 and 2015 respectively, by which Ukraine accepted the jurisdiction of the ICC for war crimes and crimes against humanity allegedly committed on its territory.<sup>642</sup>

The International Court of Justice (ICJ), which is competent for disputes between States, has been seized with the matter under the genocide convention and on 16 March 2022 indicated provisional measures. The ICJ ordered the Russian Federation “*to immediately suspend military operations that commenced on 24 February on the territory of Ukraine*” and to “*ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations*”.<sup>643</sup> Unfortunately, this order has been disrespected. The case is to continue.

IHL, in Article 90 of Protocol I provides for an International Humanitarian Fact-Finding Commission (IHFFC). The IHFFC may inquire into allegations of serious violations committed in IACs between States having accepted – *ex ante* or *ad hoc* – its jurisdiction. 72 States have already made the necessary *ex ante* declaration. Ukraine and until recently Russia have made the necessary Article 90(2) declaration to give the IHFFC *ex ante* the right to enquire into alleged IHL violations. It is regrettable that Russia withdrew its declaration in 2019. The current conflict would provide an appropriate context in which the IHFFC could usefully lend its services to the parties in conflict. Outside of its treaty mandate, the IHFFC has conducted an inquiry pursuant to a request by the OSCE in 2017 to investigate the death of one paramedic

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<sup>639</sup> See UN Human Rights Council, Independent International Commission of Inquiry on Ukraine, 4 March 2022, at: <https://www.ohchr.org/en/hr-bodies/hrc/iicuhr-ukraine/index> and HRC-Resol. 49/1 on the Situation of Human Rights in Ukraine Stemming from the Russian Aggression.

<sup>640</sup> See, for example, Update on the Human Rights Situation in Ukraine, 24 February – 26 March, at: [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf).

<sup>641</sup> See ICC, *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation*, 2 March 2022, at: <https://www.icc-cpi.int/Pages/item.aspx?name=2022-prosecutor-statement-referrals-ukraine>.

<sup>642</sup> See ICC, *Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine*, 11 December 2020, at: <https://www.icc-cpi.int/Pages/item.aspx?name=201211-otp-statement-ukraine>.

<sup>643</sup> ICJ, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order, 16 March 2022.



and the injury of two members of the OSCE Special Monitoring Mission to Ukraine.<sup>644</sup> Ukraine, Russia and the OSCE could build upon this precedent.

There have also been proposals from two conferences organized by the International Commission of Jurists and the Kingdom of the Netherlands to strengthen international accountability mechanisms, extending and transforming into a permanent mechanism without geographical limitations the experience from other fact-finding mechanisms like the International, Impartial and Independent Mechanism for Syria (IIIM) and the Independent Investigative Mechanism for Myanmar (IIMM) focusing on collecting evidence for international and domestic criminal proceedings.<sup>645</sup> One main purpose of all these mechanisms is to prevent impunity for crimes committed.

## 2. EUROPEAN LEVEL

The findings of the report of the Mission of Experts can also be of relevance for cases brought before the European Court of Human Rights which according to the rules related to the denunciation of the European Convention of Human Rights maintains its jurisdiction until 16 September 2022. Russia has not derogated from its obligations under the ECHR. According to the jurisprudence of the European Court of Human Rights (e.g. *Al-Skeini v. United Kingdom, Ilascu and others v. Moldova and Russia*) there is accountability for violations happening in the areas under the effective control of the contracting party abroad.<sup>646</sup>

The European Court of Human Rights on the requests of Ukraine and a group of Ukrainian citizens on 1, 4 and 10 March 2022 indicated urgent interim measures against Russia requesting it to *refrain from military action against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals, and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops* (1 March 2022). On 1 April 2022, the interim measures were expanded ordering the Russian government that evacuation routes should allow civilians to seek refuge in safer regions of Ukraine.<sup>647</sup> Unfortunately, the interim measures so far seem to have been largely ignored.

After the withdrawal of the Russian Federation from the Council of Europe on 16 March 2022, the Court remains competent to deal with cases brought against Russia for facts occurring until 16 September 2022. Until that time there is also a possibility for interstate applications like those Ukraine has already made against Russia in the past.

To ensure effective prosecution, European Union Member States may cooperate by way of a European Arrest warrant. It requires all European Union Member States to arrest and transfer a suspected criminal or sentenced person to the issuing state. European States and institutions may also cooperate in gaining evidence. Such cooperation can also be established in order to assist a third country. In the case of Ukraine, Eurojust is supporting the establishment of a Joint Investigating Team of Lithuania, Poland and Ukraine to facilitate investigations in war crimes, crimes against humanity and other core crimes.<sup>648</sup>

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<sup>644</sup> Executive Summary of the Report of the Independent Forensic Investigation in relation to the Incident affecting an OSCE Special Monitoring Mission to Ukraine (SMM) Patrol on 23 April 2017 (2017).

<sup>645</sup> ICJ, *Report Launch: The Future of Accountability Mechanisms – Twenty Recommendations*, 15 November 2021, at: <https://www.icj.org/report-launch-the-future-of-accountability-mechanisms-twenty-recommendations/>.

<sup>646</sup> See section V.A.3.

<sup>647</sup> See in particular ECtHR, Press Release 116 of 1 April 2022 on the Expansion of interim measures in relation to Russian military action in Ukraine.

<sup>648</sup> See European Union Agency for Criminal Justice Cooperation, Eurojust supports joint investigation team into alleged core international crimes in Ukraine, 28 March 2022, at: <https://www.eurojust.europa.eu/news/eurojust-supports-joint-investigation-team-alleged-core-international-crimes-ukraine>.

### 3. NATIONAL LEVEL

On the level of national jurisdictions, the Office of the General Prosecutor of Ukraine has opened investigations into allegations of war crimes and crimes against humanity by Russians.<sup>649</sup> It has also created a Legal Task Force on Accountability for Crimes in Ukraine.<sup>650</sup> Russia has established an Investigative Committee initiating criminal proceedings on various alleged cases of Ukrainian shelling.<sup>651</sup> The Mission recommends that both States extend their investigations to suspects belonging to their own party. Also, other national prosecutors like the German, Lithuanian or the Polish have opened investigations based on the respective national laws.<sup>652</sup>

There are proposals to establish a Special Tribunal for Aggression against Ukraine by interested States.<sup>653</sup> However, there are different views on the merits of this approach.<sup>654</sup>

Similarly, several non-governmental organizations are working for the prevention of impunity such as the IFEX “No Impunity Campaign” for attacks on journalists.

Accountability requires solid preparation of cases of violations to be used in courts and other fora. Several States under the leadership of Denmark have launched a “Global Platform to work for accountability following Russia’s aggression against Ukraine”.<sup>655</sup> It can benefit from the experience of the “International Accountability Platform for Belarus” established in Denmark and run by specialized NGOs with the support of several States to document major human rights violations in Belarus in response to a recommendation of the report on Belarus under the Moscow Mechanism in 2020.<sup>656</sup> It coordinates the documentation and ensures the safe storage of data on crimes in such quality that they can be used by judicial bodies and other investigative mechanisms like the Mission of Inquiry on Belarus of the United Nations while also taking care of proper protection of victims and witnesses.

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<sup>649</sup> See General Prosecutor’s Office of Ukraine, Homepage, at: <https://gp.gov.ua/ua/categories/novini>.

<sup>650</sup> See ‘Government of Ukraine Announces the Creation of a Legal Task Force on Accountability for Crimes Committed in Ukraine’, *Doughty Street Chambers*, 29 March 2022, at: <https://www.doughtystreet.co.uk/news/government-ukraine-announces-creation-legal-task-force-accountability-crimes-committed-ukraine>.

<sup>651</sup> At: <https://en.sledcom.ru/press/cases/item/1019984/>.

<sup>652</sup> See, for example, ‘Germany launches probe into suspected war crimes in Ukraine’, *AlJazeera*, 8 March 2022, at: <https://www.aljazeera.com/news/2022/3/8/germany-launches-probe-into-suspected-war-crimes-in-ukraine>; and: ‘Lithuanian, Polish, Ukrainian prosecutors to probe war crimes’, *LRT*, 29 March 2022, at: <https://www.lrt.lt/en/news-in-english/19/1656900/lithuanian-polish-ukrainian-prosecutors-to-probe-war-crimes>.

<sup>653</sup> See Rt. Hon Gordon Brown et al, Statement calling for the creation of a special tribunal for the punishment of the crime of aggression against Ukraine, 4 March 2022, at: <https://www.eurointegration.com.ua/files/a/a/aad78ad-combined-statement-and-declaration-1-.pdf>.

<sup>654</sup> See Kevin Jon Heller, ‘Creating a Special Tribunal on the Aggression against Russia is a Bad Idea’, at: <https://opiniojuris.org/2022/03/07/creating-a-special-tribunal-for-aggression-against-ukraine-is-a-bad-idea/>.

<sup>655</sup> See ‘Denmark launches global platform to work for accountability following Russia’s aggression against Ukraine’, *Udenrigsministeriet*, 25 March 2022, at: <https://via.ritzau.dk/pressemeldelse/denmark-launches-global-platform-to-work-for-accountability-following-russias-aggression-against-ukraine?publisherId=13560888&releaseId=13646957>.

<sup>656</sup> OSCE, *Report on Belarus*, 28 May 2011, at: <https://www.osce.org/files/f/documents/6/b/78705.pdf>; for the International Accountability Platform see: <https://iapbelarus.org>.

## VII. GENERAL CONCLUSIONS

In conclusion, while under the present circumstances a detailed assessment of most allegations of IHL violations and the identification of war crimes and crimes against humanity concerning particular incidents has not been possible, the Mission found clear patterns of IHL violations by the Russian forces on many of the issues investigated. This concerns in particular their conduct of hostilities. It is not conceivable that so many civilians would have been killed and injured and so many civilian objects, including houses, hospitals, cultural property, schools, multi-story residential buildings, administrative buildings, penitentiary institutions, police stations, water stations and electricity systems would have been damaged or destroyed if Russia had respected its IHL obligations in terms of distinction, proportionality and precautions in conducting hostilities in Ukraine. The conduct of the siege of Mariupol is an extreme example. Much of the conduct of Russian forces in parts of Ukraine it occupied before and after 24 February 2022, including through its proxies, the self-proclaimed “republics” of Donetsk and Luhansk, equally violates IHL of military occupation.

Some violations and problems were also identified regarding practices of Ukraine. The Mission is in particular concerned about the treatment of prisoners of war, originally considered criminals, and treated in ways that are incompatible with Geneva Convention III. Generally, allegations that Ukraine and not Russia had caused some of the death, injury or destructions attributed to it by the media, Ukrainian authorities and NGOs to Russia could not be confirmed.

The Mission is also astonished about the small number of prisoners of war acknowledged by both parties and regrets that they do not yet benefit from ICRC visits prescribed by Geneva Convention III.

The Mission has also considered the impact of the current conflict on human rights. While it has not been able to verify all the reported incidents which might involve violations of IHRL, it has found credible evidence suggesting that such violations, concerning even the most fundamental human rights (right to life, prohibition of torture and other inhuman and degrading treatment and punishment), have been committed, mostly in the areas under the effective control of Russia. The Mission has also concluded that the impact of the conflict on the enjoyment of human rights has gone beyond the direct violations of these rights. By causing a high level of destruction and by interfering with the provision of vital services (education, healthcare), the conflict started by the unlawful attack by Russia has made it very difficult for Ukraine to effectively respect, protect and fulfil human rights of its inhabitants.

The Mission has also found out that while the conflict has affected all the inhabitants of Ukraine, it has had a particularly negative effect on individuals belonging to vulnerable groups, such as women, children, older persons or persons with disabilities.

The Mission is not able to conclude whether the Russian attack on Ukraine *per se* qualifies as a widespread or systematic attack directed against any civilian population. It however holds that some patterns of violent acts violating IHRL, which have been repeatedly documented in the course of the conflict, such as targeted killing, enforced disappearance or abductions of civilians, including journalists and local officials, are likely to meet this qualification. Any single violent act of this type, committed as part of such an attack and with the knowledge of it, would then constitute a crime against humanity.

While the findings of this report are – in part – necessarily preliminary due to the short period of investigation in the context of an ongoing armed conflict, they can inform other bodies’ more in-depth investigations into legal accountability. The findings may also contribute to establish political accountability. With regard to violations of IHL and IHRL the responsibility is both on the Russian Federation and Ukraine to observe their respective obligations. As this report

shows, violations occurred on the Ukrainian as well as on the Russian side. The violations committed by the Russian Federation, however, are by far larger in scale and nature.

Regarding the implementation of the principle of accountability the Mission notes several ongoing initiatives on the collection and preservation of evidence on the global, regional and national levels by both public and private actors. While it was able to contribute to a first collection and analysis of facts, more detailed investigations are necessary, in particular with regard to establish individual criminal responsibility for war crimes. This is a task for the courts which can benefit from the collections of evidence by professional organizations and from the assessment of patterns and specific incidents by Missions of inquiry like our own.

Univ.-Prof. ret. Dr. Wolfgang Benedek  
Graz, Austria  
Univ.-Prof. Dr. Veronika Bílková  
Prague, Czech Republic  
Univ.-Prof. Dr. Marco Sassòli  
Geneva, Switzerland

March 17, 2022

His Excellency  
Ambassador Alexander Lukashevich  
Permanent Representative of the Russian Federation to OSCE

cc Mr. Matteo Mecacci  
Director of the Office of Democratic Institutions and Human Rights (ODIHR)

Representatives of Ukraine and 45 invoking Participating States

Your Excellency,

By letter of March 15, 2022 from ODIHR, we have been appointed as a mission of experts under the Moscow Mechanism in the case of 45 OSCE Participating States invoking the Mechanism with respect to the territory of Ukraine with the following mandate:

- "Establish the facts and circumstances surrounding possible contraventions of OSCE commitments, and violations and abuses of international human rights law and international humanitarian law;
- Establish the facts and circumstances of possible cases of war crimes and crimes against humanity, including due to deliberate and indiscriminate attacks against civilians and civilian infrastructure; and to collect, consolidate, and analyze this information with a view to presenting it to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in future have, jurisdiction.

We will undertake this mission in the period 15 March - 5 April 2022 in full independence and impartiality, based on the rules of the Moscow Mechanism.

As Your government is involved in military activities on the territory of Ukraine, which will be part of our investigation, and as it might be in possession of relevant information that would facilitate this investigation, we invite You to cooperate with our mission and provide us with relevant information in order to allow us to take the positions of both sides to the conflict better into account.

In this context we would like also to refer to Paragraph 6 of the Moscow document which provides that "*the mission may receive information in confidence from any individual, group or organization on questions it is addressing*" and that "*the participating States will refrain from any action against persons, organizations or institutions on account of their contacts with the mission of experts.*"

Due to the deadline of three weeks in which we have to submit our report, we would appreciate the nomination of a liaison person with the Russian Federation as soon as possible.

We thank You for Your understanding. Please, acknowledge receipt of this letter.

Yours sincerely



Wolfgang Benedek on behalf of the mission of experts



ПОСТОЯННОЕ ПРЕДСТАВИТЕЛЬСТВО  
РОССИЙСКОЙ ФЕДЕРАЦИИ  
ПРИ ОРГАНИЗАЦИИ ПО БЕЗОПАСНОСТИ  
И СОТРУДНИЧЕСТВУ В ЕВРОПЕ

PERMANENT MISSION  
OF THE RUSSIAN FEDERATION  
TO THE ORGANIZATION FOR SECURITY AND  
CO-OPERATION IN EUROPE

*Erzherzog Karl Strasse 182, 1220 Vienna  
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21 March 2022

№ 162

Dear Professors,

With regard to your letter of 17 March 2022 we would like to inform you of the following.

The Russian Federation has numerously stated – and you might be well-aware of this stance – that the OSCE Human Dimension Mechanisms (Moscow Mechanism included) have become outdated and redundant for the most part, since the OSCE Permanent Council's meeting, encompassing the discussions on current issues, got a regular status. Not to mention the fact that they have been used for ratcheting up accusatory rhetoric and putting political pressure on some OSCE participating States.

With this in mind, we do not see any added value in nominating a liaison person from our side.

We believe that you could take all the necessary information reflecting the position of the Russian Federation from the statements of the Permanent Mission of the Russian Federation to the OSCE with regard to Ukraine, made at

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**Geneva, Switzerland**

**CC: H.E. Amb. Adam HAŁACIŃSKI**  
**Chairman of the OSCE Permanent Council**  
**Permanent Representative of Poland to the OSCE**  
**Vienna**

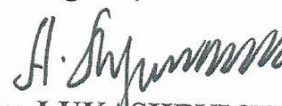


Permanent Council's meeting in the period from 2014 to 2022, as well as from the statements and briefings of the Russian officials and authorities, primarily the Ministry of Defence of the Russian Federation, starting from 24 February 2022.

At the same time, we would like to suggest that you also pay the utmost attention to the outrageous and violent expressions of Ukrainian representatives in the media, including paramilitary nationalists, targeted against Russians. Here are links to some specific examples of hate speech - [https://www.youtube.com/watch?v=-PQZyn4P\\_ws](https://www.youtube.com/watch?v=-PQZyn4P_ws), <https://t.me/OpenUkraine/9936>, [https://t.me/rlz\\_the\\_kraken/47261](https://t.me/rlz_the_kraken/47261).

Such unacceptable publications border on, if not constitute, direct advocacy of war and war crimes committed by Kiev. Studying them would help you present a more balanced picture of the situation.

Kind regards,

  
**Alexander LUKASHEVICH**  
**Permanent Representative**

**Comments by Ukraine to the Report of the Mission of Experts,  
established to address the violations of international humanitarian  
and human rights law, war crimes and crimes against humanity  
committed during Russia's war of aggression against Ukraine**

Ukraine expresses its gratitude to the Mission of Experts for the tremendous work accomplished in order to investigate the violations of international humanitarian and human rights law, war crimes and crimes against humanity committed by the Russian Federation and its armed forces during the ongoing war of aggression against Ukraine.

As stressed in the Mission of Experts' Report, "the Mission found clear patterns of IHL violations by the Russian forces on many of the issues investigated. This concerns in particular their conduct of hostilities. It is not conceivable that so many civilians would have been killed and injured and so many civilian objects, including houses, hospitals, cultural property, schools, multi-story residential buildings, administrative buildings, penitentiary institutions, police stations, water stations and electricity systems would have been damaged or destroyed if Russia had respected its IHL obligations in terms of distinction, proportionality and precautions in conducting hostilities in Ukraine. The conduct of the siege of Mariupol is an extreme example. Much of the conduct of Russian forces in parts of Ukraine it occupied before and after 24 February 2022, including through its proxies, the self-proclaimed "republics" of Donetsk and Luhansk, equally violates IHL of military occupation."

Being fully aware that only a comprehensive reading of the Report provides a complete picture of the enormous amount of atrocities committed by Russia in Ukraine, we wish to draw attention to some of the violations and findings identified by the Mission of Experts:

- Russia is the aggressor and therefore responsible for all human suffering in Ukraine;
- credible evidence suggesting that such violations, concerning even the most fundamental human rights (right to life, prohibition of torture and other inhuman and degrading treatment and punishment), have been committed, mostly in the areas under the effective control of Russia;
- undisputed use by the Russian armed forces of cluster munitions, munitions with a large blast radius, such as large bombs or missiles, unguided missiles, artillery and mortars, multiple launch rocket systems (MLRS) and dumb bombs released by aircraft and the alleged use of incendiary weapons, white phosphorus and thermobaric or vacuum bombs, in densely populated areas;
- credible reports according to which Russian forces arrested civilians, including journalists, without any procedure, and ill-treated them by methods that amount to torture;
- allegations of rapes, including gang rapes, committed by Russian soldiers in many other regions in Ukraine. The Mission recalls that rape or other forms of sexual violence may constitute or a crime against humanity or a war crime;
- patterns of violent acts violating IHRL, which have been repeatedly documented in the course of the conflict, such as targeted killing, enforced disappearance or abductions of civilians, including journalists and local officials;
- the Mission has found out that while the conflict has affected all the inhabitants of Ukraine, it has had a particularly negative effect on individuals belonging to vulnerable groups, such as women, children, older persons or persons with disabilities;
- in most cases attack angles, munitions used and objects hit clearly demonstrate that such attacks are attributable to Russia;



- allegations made by the Russian Federation could not be confirmed that Ukraine and not Russian forces had caused some of the death, injury or destructions attributed to Russia;
- the Mission received several reports, sometimes accompanied by photographic evidence, alleging the use by Russian troops of the red cross emblem to mark military non-medical vehicles, of Ukrainian flags, army or police uniforms or vehicles, white flags, civilian clothes, and OSCE symbols to facilitate their military operations.

Ukraine draws separate attention of the OSCE and its participating States to the Mission's conclusion about the need for serious international enquiry, on the spot, to investigate "summary executions of a large number of civilians during the Russian occupation of villages in the proximity of Kyiv, in particular Bucha and at the occasion of the withdrawal of Russian forces. There are photos and videos of civilians killed in the streets partly with their hands tied and reports about one or more mass graves. This evidence points to a major war crime and a crime against humanity committed by the Russian forces."

Ukraine also wishes to provide additional clarifications and information on some provisions of the Report, which you will find below.

1. *"On 24 February 2022 the Russian Federation invaded Ukraine"* [page 1 of the Report]. **Comment by Ukraine:** Russia invaded Ukraine (Autonomous Republic of Crimea) on February 20, 2014. By the decision of the European Court of Human Rights in the case *Ukraine v. Russia (re Crimea)* the ECHR stated that Russia has been exercising effective control over the Autonomous Republic of Crimea since February 27, 2014. In April 2014, Russia launched armed aggression on the East of Ukraine and occupied parts of the Donetsk and Luhansk regions.
2. *"Crimea and Sevastopol as well as parts of the Donetsk and Luhansk regions, which are controlled by the self-proclaimed "republics" of Donetsk and Luhansk, were occupied territories already before 24 February 2022: Crimea, directly by Russia, and the two other territories – mainly through the authorities of the "republics", over which Russia has overall control"*. [page 18 of the Report]. **Comment by Ukraine:** Ukraine welcomes that the Moscow Mechanism experts have clearly and unequivocally recognized the fact of occupation of certain areas of the Donetsk and Luhansk regions of Ukraine by the Russian Federation since 2014. Regarding the use of the terms "so-called republics of Donetsk and Luhansk", "so-called Donetsk and Luhansk "People's Republics"", "self-proclaimed "republics" of Donetsk and Luhansk" and similar terms in the Report, Ukraine stresses that the correct terminology is "temporarily occupied territories of the Donetsk and Luhansk regions of Ukraine".
3. *"Although Belarus allows its territory to be used to launch Russian attacks on Ukraine, the Mission considers that as of 1 April it is not a party to the IAC"* [page 5 of the Report]. **Comment by Ukraine:** according to the article 3 of the United Nations General Assembly Resolution 3314 (XXIX) on the Definition of Aggression, "the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State" is qualified as an act of aggression. In an urgent meeting with Vladimir Putin, Oleksandr Lukashenko announced that they had agreed to keep Russian troops stationed in Belarus. In addition, there are numerous confirmed facts that have demonstrated the use of the territory of Belarus by Russia to carry out their unlawful attacks on the territory of Ukraine. In particular, Russian tanks, infantry fighting vehicles, and Russian heavy flamethrower systems were moved

into Ukrainian territory from southwestern Belarus, crossing over at the Senkivka checkpoint; Russia launched the missiles from the Mogilev area towards Ukraine. The Maxar satellite imagery released on 23 of February 2022 (the day before the attack) showed that Russia had deployed more than one hundred vehicles and dozens of troop shelters at Bolshoi Bokov airfield in southern Belarus, near the city of Mazyr. This new deployment is less than twenty kilometres from the Ukrainian border. Besides of aforementioned, there are facts that Belarusian troops are also taking part in the attack against Ukraine despite previous insistence from Belarusian leader Oleksandr Lukashenko that Belarus would not participate in any military action against the country.<sup>1</sup> Moreover, the comparison in the Report of Belarus' so-called "assistance" to Russia, which in fact constitutes aggression against Ukraine, with NATO's assistance to Ukraine is invalid.

4. *"The Mission does not possess sufficient elements to consider that Russia has violated its specific obligations concerning nuclear power stations"* [page 39 of the Report]. **Comment by Ukraine:** the Russian federation has forcefully seized control of nuclear facilities where nuclear material is located and damaged buildings in nuclear sites in Ukraine, thereby undermining their safe and secure operation and significantly raising the risk of a nuclear accident or incident. The risks caused by the Russian invasion endanger the population of Ukraine, its neighboring countries and the international community. The unprovoked and unjustified military aggression of the Russian federation against Ukraine constitutes a gross violation of international law, including specific nuclear-related obligations. In particular, the IAEA General Conference unanimous decision GC(53)DEC/13 of 2009 stating that "any armed attack on and threat against nuclear facilities devoted to peaceful purposes constitutes a violation of the principles of the United Nations Charter, international law and the Statute of the Agency". In its resolution GOV/2022/17 of 3 March 2022 the IAEA Board of Governors called on Russia "to immediately cease all actions against, and at, the Chornobyl Nuclear Power Plant and any other nuclear facility in Ukraine, in order for the competent Ukrainian authorities to preserve or promptly regain full control over all nuclear facilities within Ukraine's internationally recognized borders and ensure their safe and secure operations, and in order for the Agency to fully resume its safeguards verification activities, including the necessary verification of material accountancy and control". Russia has also violated a number of fundamental principles in the field of nuclear safety adopted as internationally recognized IAEA recommendations (IAEA Safety Standards), including a list of 18 specific violations. We also recall the Preamble of the Amended Convention on the Physical Protection of Nuclear Material (A/CPPNM) which refers to Article 2 of the Charter of the United Nations, emphasizing that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". Furthermore, we recall Article 2.4 (c) of the A/CPPNM stipulating that "nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes". Station of the military vehicles of the Russian armed forces at the industrial sites of the Chornobyl NPP and Zaporizhzhya NPP constitutes a grave violation of Article 59 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977.

4a) *"The Mission understands that on 24 February 2022 Russian forces took control over the installation but did not attack it. Russian forces allowed Ukrainian*

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<sup>1</sup> [https://twitter.com/Phil\\_Lewis\\_/status/1496720862053076995](https://twitter.com/Phil_Lewis_/status/1496720862053076995)

*specialists to continue their vital task for nuclear security Staff of the installation could be finally rotated only on 20 March 2022” [pp.37-38 of the Report].* **Comment by Ukraine:** on 24 February 2022 the armed forces of the Russian federation crossed Ukrainian border from the territory of Belarus and seized all nuclear facilities of the State Specialized Enterprise “Chornobyl Nuclear Power Plant”, located within the Exclusion Zone. Operating personnel of the Chornobyl NPP (in total 92 persons) and the soldiers of the National Guard of Ukraine (in total around 130 persons) became hostage by the Russian armed forces. A single shift of personnel remained at the site until 20.03.2022 and continued fulfilling its duties at a gunpoint. This is a blatant violation of all existing regulations of safety for NPPs operation. Movement of significant number of heavy military machinery of the Russian armed forces through the Exclusion zone significantly raised levels of gamma radiation dose rate. This fact was widely observed by relevant detection systems of many European States. During the period of 28-29.03.2022 wildfires in the highly contaminated “Red Forest” in the area of Chornobyl were identified by several international organizations and NGOs, including Greenpeace. As the origin of wildfires is now being studied by competent authorities of Ukraine, there have been a number of indications that the wildfires in the Exclusion Zone were triggered by Russian military activities. Under the Russian occupation, the Ukrainian fire service has not been fully operational and has thus been unable to respond quickly to extinguish or limit the fires. As a result, workers at the power plant, their families at the city of Slavutych and people living near the power plant outside the Exclusion zone are at risk of being impacted by the resuspended contamination, both from the fires and the Russian army vehicles crossing highly contaminated zones. Therefore, in addition to enormous stress and threat of violence from the Russian armed forces at the site of Chornobyl NPP, its personnel was faced with the additional risks from radioactive forest fires.

4b) *“The Mission understands that on 4 March 2022 Russian forces took control over the installation but did not attack buildings that could have released dangerous forces, if damaged.” [pp.38-39 of the Report].* **Comment by Ukraine:** on 4 March 2022 Russian armed forces intentionally shelled Zaporizhzhia Nuclear Power Plant causing fire from every sides of the NPP. For a long period, Ukrainian State Emergency Service was not able to cease fire due to unstoppable shelling. Despite on the stable level of radiation that was characterized by Ukrainian authorities as “normal” does not means the absence of violation specific obligations by Russia in relation to Zaporizhzhia Nuclear Power Plant.

5. *“The same applies to the alleged use by both parties of white phosphorus.” [pp.42-43 of the Report].* **Comment by Ukraine:** Mission’s allegations, based on the Russian propaganda source ‘Radio Sputnik’ citing Kadyrov’s statement about Ukraine’s usage of white phosphorus ammunitions, are incorrect. Prohibition of the use of white phosphorus ammunitions is covered by the Convention on Certain Conventional Weapons to which Russia and Ukraine are parties. Ukraine did not use the white phosphorus. On the contrary, Russia was actively using white phosphorus ammunitions against civilians in the Lugansk region (Popasne) on 13 March 2022, in the Donetsk region (Maryinka, Krasnogorivka, Novomykhaylivka) on 30-31 March 2022, in Avdiivka on 27 March 2022.
6. *Regarding the detention of prisoners of war [p.10 of the Report].* **Comment by Ukraine:** 1) It is noted that Joint Centre for Tracing and Release of Prisoners, established on 28 February 2022, only became operational on 18 March 2022. Indeed, the Joint Centre for the Tracing and Release of Prisoners of the Security Service of Ukraine opened on February 28, 2022. However, it operates on the basis

of the Joint Center for Coordination of Search, Release of Illegally Deprived Persons in the Area of Implementation of Measures for National Security and Defense, Repulse and Deterrence of Armed Aggression of the Russian Federation in Donetsk and Luhansk oblasts, established in 2015. At the same time, the functions of the National Information Bureau are performed by the Ukrainian National Center for Peacebuilding, a state enterprise under the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine. The assignment of these functions really took place on March 17, 2022 by adopting an order of the Cabinet of Ministers of Ukraine, and on the same day the hotline of the National Information Bureau was launched, and communication with government agencies on establishing cooperation has begun. In addition, it should be noted that on March 11, 2022, by the decision of the Cabinet of Ministers of Ukraine, the Coordination Headquarters for the Treatment of Prisoners of War was established in order to promote coordination of central and local executive bodies, other state bodies, local governments and military formations, formed in accordance with laws, law enforcement agencies and public associations for the treatment of prisoners of war. 2) All information on Russian prisoners of war is transmitted by the National Information Bureau to the relevant Bureau of the Central Investigation Agency of the International Committee of the Red Cross as soon as such transfer becomes possible. No delays are allowed. 3) Ukraine reaffirms its readiness to admit the delegates of the International Committee of the Red Cross to the prisoners of war in their places of detention.

7. *“Reports about “authorities working to neutralize” naval mines hours after having gone adrift indicate that this rule was violated, allegedly by Ukraine in its internal waters and territorial sea.”* [page 45 of the Report]. **Comment by Ukraine:** Mission’s allegations, based on Russia’s fake news reproduced by “AlArabiya News”, are incorrect. Also, these allegations do not find their confirmation in the NAVAREA maps and messages. Ukraine’s official position on the issue was presented on 29 March 2022 in the Statement of the Ministry of Foreign Affairs of Ukraine on the illegal activities of the Russia’s Navy in the Black Sea (<https://mfa.gov.ua/en/news/statement-ministry-foreign-affairs-ukraine-illegal-activities-russias-navy-black-sea>).
8. *“The organization has called for the creation of a blue safe maritime corridor for the safe evacuation of seafarers. Russia responded with the creation of humanitarian corridors, which has been disputed by Ukraine.”* [page 46 of the Report]. **Comment by Ukraine:** first of all, the IMO called for the creation of a blue safe maritime corridor for the safe evacuation of seafarers by the mediation of the Secretary General. (Quotation from the IMO Council decision: “The Council, in this regard, taking into account the sensitivities of the matter, invited the Secretary-General to collaborate with the relevant parties and take necessary immediate actions to initiate the establishment and support the implementation of a blue safe maritime corridor in the Black Sea and the Sea of Azov and keep Member States informed of developments and report to the next session of the Council. The Secretary-General has indicated his commitment to take immediate action to realize the blue safe maritime corridor with the cooperation and collaboration of the relevant parties including littoral states.”). A corridor cannot be created independently by one of the parties (Russia) without involving another one (Ukraine) and without consent of the IMO, and appropriate negotiation process. The so-called “creation of humanitarian corridors” by Russia was held in a clearly inappropriate manner.