



## What You Need to Know: Unpacking the Law in Russia's War Against Ukraine

# IHL Compliance in Russia's War in Ukraine

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**Tragically, there have been myriad reports of international humanitarian law (IHL) violations in Russia's war in Ukraine, including widespread reports of attacks directed against civilians and civilian objects, torture, and mistreatment of prisoners of war. What issues of IHL application or interpretation do you think have been most important thus far in the full-scale conflict?**

The ongoing hostilities are an international armed conflict (IAC) to which the full range of relevant IHL treaties apply, as both Russia and Ukraine are parties to the four [Geneva Conventions](#) of 1949 and of their [Additional Protocol I](#) of 1977. The latter provides well-established rules on targeting aimed at sparing civilians and civilian objects from the effects of hostilities to the extent possible. These include the obligation of distinction (between civilians and combatants and civilian objects and military objectives), the prohibition of indiscriminate and/ or disproportionate attacks, and the duty to take precautions in attack.

While violations of IHL, especially those serious enough to be classified as war crimes, cannot be ascertained without a proper investigation on the ground, it appears from the effects of Russian operations—i.e., the number of civilian deaths and the extensive damage to or destruction of residential buildings, [medical facilities \(including maternity hospitals\)](#), [cultural monuments](#), among other examples—that the basic tenets of the conduct of hostilities have in many cases not been observed. There seem to have also been deliberate and extensive attacks on what is popularly called “critical” civilian infrastructure such as [electrical grids](#) and [water processing plants](#) aimed at breaking civilian morale, which would be unlawful. Patterns of abuse have also been reported in relation to the treatment of persons in enemy hands: the [execution](#) of civilians, [mistreatment](#) in places of detention, [deportations](#) of children, and so on.

The vast majority of violations have occurred against civilians and civilian objects in Ukraine, because hostilities are for the most part taking place in its territory. It may be asked whether disregard of the rules by the Russian armed forces and their “affiliates” is purely deliberate or could also

be due to insufficient knowledge of and proper training in IHL up and down the chain of command. It may be all of the above, which in any case is no excuse. The important thing to note is that, as in other armed conflicts, proper application of existing law is lacking and not the law as such.

Being an IAC—and not, for example, the so-called “war on terror,” parts of which can be classified as discrete non-international armed conflicts—fighting in Ukraine has not, in my view, thrown up completely unheard of legal and practical issues (on cyber operations—see below). Hostilities in some eastern parts of the country have actually resembled World War I trench warfare despite modern technology. The dizzying array of weapons being used and those being mentioned for potential use should also not cloud our judgment. The employment of any means or method of warfare must conform to IHL, and in the case of new weapons, States are obliged to check for possible [prohibitions](#).

The war has, not surprisingly, highlighted some specific already known gaps. Among them, but not limited to, are uncertainty about the exact protection due to civilians in the invasion phase of an IAC, the weakness of the definition of mercenaries, the utility of the notion of a *levée en masse*, queries as to the application of the nationality criterion in case of dual or multiple nationals with regard to POW status, the war crime of forced conscription of civilians, and the lack of a universally accepted prohibition on certain types of weapons, such as [cluster munitions](#).

### **Are there particular IHL issues that have been overlooked or merit deeper analysis as the conflict continues?**

I would perhaps note two. The first is the contribution of cyber operations, including attacks, to the conduct of the war by both sides. As is well-known, views on some aspects of IHL applicability and application to cyber operations are still being [developed](#) by experts. This is enhanced by the opacity of facts, as the belligerents and third States continue to closely guard the extent to and ways in which cyber means are being employed. There is little doubt that the current conflict will be mined for practical and legal lessons learned in the future. However, a discrete question

that may be said to have emerged already is the protection of civilians digitally involved in the conflict by transmission of tactical targeting information to their armed forces via laptops or cell phones (e.g. the Ukrainian IT “[army](#)” or individual “hacktivists”). Are they directly participating in hostilities such that they may be attacked and killed by the adversary? Is there an [obligation](#) of the relevant authorities to warn them of this and other possible consequences? It is submitted that the answer is yes on both counts, but there is as yet insufficient analysis and public explanation given by practitioners or experts, especially from States.

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The second topic relates to the precise rules governing “screening” operations for security reasons in armed conflicts, both international, as in this case, and non-international. In the Russia-Ukraine conflict, thousands of Ukrainian civilians have [reportedly](#) been subject to screening (“[filtration](#)”) operations characterized by various forms of ill-treatment and extremely poor conditions of detention, the duration of which could range from several hours to several weeks. IHL rules and procedural safeguards on internment may kick in depending on the context, but it would appear that screening processes need to be the subject of more detailed legal and practical examination.

Screening presupposes the collection and evaluation of personal data. Some questions that should be addressed are: what are the lawful purposes of screening? How long can it last? Who can lawfully carry it out and under what material and procedural conditions? What about the protection of the civilian data collected? These and other queries need responses if the necessary civilian protection is to be ensured.

A final, abiding issue which must be mentioned, but cannot be elaborated on here, is why compliance with IHL by all States and other actors is not better on the ground and how to improve it. An extraordinary amount of energy by eminent [international experts, scholars and diplomats](#) has in the past year been devoted to examining and debating where the Russian President Vladimir Putin and his associates could be tried, including after the International Criminal Court's announcement in March of an arrest warrant for Putin. Accountability for atrocities is indispensable, of course. But it happens largely after the fact, and IHL needs to be respected in the heat of battle. How to achieve that goal—and reduce civilian suffering during hostilities instead of counting the dead in a courtroom—should in my view become an urgent focus of international attention in the future. 🌐