

# Russia's Invasion of Ukraine and International Law: Questions and Answers

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In the wake of Russia's invasion of Ukraine, the British Institute of International and Comparative Law (BIICL) has prepared a list of relevant questions and answers, which the general public may have. In addition to answers prepared by BIICL's experts in the relevant areas this blog post includes other relevant BIICL resources.

- Responsibility of Russia for the Invasion of Ukraine
  - International Humanitarian Law (Law of War)
  - Protection of Displaced Persons
  - Business and Human Rights
  - Protection of Foreign Investors
  - Past events and other BIICL resources
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## Responsibility of Russia for the Invasion of Ukraine

### Has Russia committed an unlawful act under international law by invading Ukraine? (YK)

Yes, it has. According to Article 2.4 of the [UN Charter](#) 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. The only exceptions to those provisions are self-defence and where such use of force is authorised by the UN Security Council (Chapter VII of the UN Charter). None of these exceptions applies in case of the attack against Ukraine, which makes Russia's actions unlawful under international law.

### What responsibility should Russia's actions entail? (YK)

The [Articles on Responsibility of States for Internationally Wrongful Acts](#) adopted by the International Law Commission in 2001 provide guidance in this regard. According to Article 1, 'every internationally wrongful act of a State entails the international responsibility of that State'. The characterisation of an act of a State as an internationally wrongful act is governed by international law, and the qualification of that act as lawful by domestic law is irrelevant. The responsible State is under an obligation to: first, cease the wrongful act if it is continuing and offer guarantees of non-repetition; and second, make full reparation for the injury caused by the internationally wrongful act, including any material or moral damage (Articles 30-34).

### Can Russia be held accountable for committing crimes against humanity? (YK/KH)

Yes, both states and individuals can be held accountable for the commission of crimes against humanity. However, states can only be held accountable when those crimes are prohibited under treaty or customary law. While the International Law Commission has adopted the [Draft articles on Prevention and Punishment of Crimes Against Humanity in 2019](#), they have not yet become part of a binding treaty. However, certain specific crimes against humanity, including genocide and torture, have already been enshrined in treaties and have reached the statute of customary international law, which means that their prohibition is already binding on all states. It would be up to a court or tribunal to determine whether Russia has committed those crimes in Ukraine.

With regard to individual criminal responsibility at the international level, individuals can be held accountable for more types of crimes against humanity, including all those defined in the [1998 Rome Statute establishing the International Criminal Court \(Rome Statute\)](#), which includes, inter alia, murder, extermination, imprisonment, torture, or persecution against any identifiable group or collectivity on political, cultural or national grounds, when those acts have been committed as part of a widespread or systematic

attack directed against any civilian population, with knowledge of the attack. Although neither Russia nor Ukraine are party to the Rome Statute, the ICC has jurisdiction over crimes against humanity committed on the territory of Ukraine; an investigation into the Situation in Ukraine has now been [opened](#) by the ICC Prosecutor.

### **Can Belarus be held responsible for the invasion of Ukraine? (YK)**

The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts provide that 'A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.' Therefore, although Belarusian armed forces appear not to have invaded Ukraine yet, providing Russia with its territory and logistical support, Belarus can be held responsible under international law. While the current government of Belarus is not recognised by many States around the world because of rigged presidential elections in 2020, under international law recognition is not a necessary element for being held responsible for committing an internationally wrongful act.

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## **International Humanitarian Law (IHL), also known as the Law of War**

### **Does the situation in Ukraine qualify as an international armed conflict? (KH)**

Yes. When one State resorts to the use of armed force against another State, there is an international armed conflict, no matter the intensity of the hostilities or the reasons given for the armed conflict. In addition, there is no need for a formal declaration of war or recognition of the state of war by Russia for the situation to qualify as an international armed conflict.

### **What rules of IHL are applicable to the conflict? (IA/KH)**

The Geneva Conventions (I - IV) of 1949 outline rules protecting civilians, combatants who are wounded, sick or shipwrecked, etc., during an armed conflict. Parties to any international armed conflict are bound by them since they have been universally ratified, including by Russia and Ukraine.

The Additional Protocol I to the Geneva Convention of 1949, adopted in 1977 (AP I), provide greater protection to the victims in international armed conflicts. While it only applies to the parties that have ratified it, both Ukraine and Russia are parties thereto which means that its terms apply to this conflict.

The Hague Conventions respecting the Laws and Customs of War on Land, 1899 and 1907 regulate the means and methods of warfare. The provisions are considered to have become Customary International Law, meaning that they bind all States, even if they are not party to them.

While most of the rules on IHL have been enshrined in treaties, some principles are binding on all States because they have become Customary International Law, which is formed by State practice and *opinio juris*. The ICRC has listed the customary rules of IHL, which can be accessed [here](#) (volume I) and [here](#) (volume II).

States are responsible for grave breaches of IHL under the Geneva Conventions (Article 50). Individuals can also be held accountable for war crimes. With regard to individual criminal responsibility, although neither Russia nor Ukraine are party to the Rome Statute, the ICC has jurisdiction over crimes against humanity committed on the territory of Ukraine; an investigation into the Situation in Ukraine has now been [opened](#) by the ICC Prosecutor.

### **Can civilians and civilian objects ever be targeted? (IA/KH)**

As a general rule, civilians and civilian objects are prohibited from being subjects of attack and therefore any attack against them is prohibited. Parties to an armed conflict must at all times distinguish between civilians and combatants, as well as between civilian objects and military objectives. The exception to this rule is if a civilian becomes a combatant or if a civilian object is turned into a military objective. Civilians are all those who are not combatants, i.e., who are not members of the armed forces of a party to the conflict. In case of doubt as to whether a person is a combatant or a civilian, the parties to the conflict must always consider that person to be a civilian. Combatants must always distinguish themselves from civilians by wearing identifiable badges and carrying arms openly. In addition, the use of "human shields" is prohibited.

In addition, precautions must be taken in attack to spare civilians and civilian objects. Furthermore, customary rules and Article 58(b) of Additional Protocol I provide that parties to the conflict should avoid locating military objectives within or near densely populated areas. Further, under the Statute of the International Criminal Court, intentionally directing attacks against civilians not directly participating in hostilities, as well as civilian objects, constitutes a war crime. As combatants have the right to directly participate in hostilities, they enjoy immunity from prosecution for participating in hostilities, unless their conduct amounts to a war

crime.

### **Can journalists and media personnel ever be the object of attacks during an armed conflict? (IA/KH)**

Journalists and media personnel are civilians and thus cannot be directly targeted during armed conflicts. "Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities", according to rule 34 of the ICRC. This is a customary international norm, affirmed by all the IHL documents, as well as State practice. BIICL has published a handbook on [Media Professionals and International Humanitarian Law](#).

### **Can civilians participate in hostilities? (IA/KH)**

Upon the breaking out of an armed conflict, IHL is triggered, and thus status-based rules apply. During an armed conflict, either primary (combatants, civilians) or secondary (prisoners of war) status seeks to classify belligerents to ensure that civilians are protected in the hostilities. Civilians are defined as persons who are not members of the armed forces (Additional Protocol I Article 50) and are guaranteed immunity from direct attack. IHL does not prohibit civilians from directly participating in hostilities. According to Article 51(3) of the Additional Protocol, civilians enjoy protection against attack, unless and for such time as they take a direct part in hostilities. Thus, for as long as they are directly participating in the hostilities, they can be legitimate military targets. Civilians directly participating in hostilities have different guarantees to combatants. They do not enjoy combatant's immunity from acts of war and can be prosecuted in the domestic criminal courts for any acts that amount to a crime.

### **Who is a prisoner of war? How are prisoners of war protected? (IA/KH)**

When captured, combatants become prisoners of war, and thus are protected under the rules established under IHL. They must be humanely treated at all times, as outlined in detail in the third Geneva Convention. They further enjoy full immunity from prosecution for participation in hostilities. However, if combatants fail to distinguish themselves from the civilians, upon capture, they do not have a right to prisoner of war status and in several jurisdictions run the risk of being tried as spies, or saboteurs.

### **Can schools and hospitals be the object of attacks during an armed conflict? (IA/KH)**

As civilian objects, schools and hospitals cannot be the object of attacks during an armed conflict. Attacks against both military and civilian hospitals are prohibited. Attacks against the medical staff members of armed forces are also prohibited as they are not considered as combatants under IHL.

In 2005 the UN Security Council identified and condemned six grave violations against children in times of war, among which is the targeting of schools or medical facilities. BIICL has previously undertaken research on [Protecting Education in Insecurity and Armed Conflict](#).

### **Can cultural heritage be the object of attacks during an armed conflict? (KH/BD)**

In line with the principle of distinction, attacks may only be directed against [military objectives](#); thus, in principle, all civilian objects enjoy protection during hostilities. Objects and sites of cultural, religious or historical importance benefit from additional protection on the basis of treaty and customary international law. In particular, both Russia and Ukraine are party to the 1954 [Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict](#) which applies to 'movable or immovable property of great importance to the cultural heritage of every people', as well as buildings and centres containing them, such as museums or libraries. It is for the State to identify what cultural property is of sufficient importance in order to fall under this Convention.

In order to assist the identification of what constitutes cultural property under the Convention, Ukraine [has affixed](#) the distinctive Blue Shield emblem on monuments and sites. However, the bearing of the Blue Shield is not mandatory for an object to benefit from the general protection provided by the Convention. Article 4 of the Hague Convention requires its States Parties to respect the cultural property located on the territories of States Parties. This means that States Parties must refrain from *exposing cultural property and its immediate surroundings to destruction or damage* (such as by using it in support of the military effort), and from any acts of hostility directed against such property. For more information, please read our short commentary [here](#).

### **Is the threat or use of nuclear weapons permitted under international law? (IA/KH)**

The [Treaty on the Prohibition of Nuclear Weapons](#) (2017) prohibits the threat or use of nuclear weapons or other nuclear explosive devices. Like other major nuclear powers, Russia has not yet signed or ratified the Treaty while it also campaigns against the prohibition becoming Customary International Law.

### **Is cyber-warfare governed by International Humanitarian Law? (IA/KH)**

Since the creation of the laws governing armed conflicts in the previous centuries, technology has advanced in a way which the negotiators and drafters could not possibly have imagined. Cyber warfare is a method which has not been specifically addressed by

any treaty. The issue is that cyber-attacks can be deadly and create significant destruction. As such, in times of war, civilians and civilian objects should not be the subject of cyber warfare. Following a series of cyber-attacks against the state of Estonia, NATO created a handbook to outline the rules of cyber-warfare, the [Tallinn Manual](#). Although the manual is non-binding, it remains the most comprehensive guide on how IHL applies to cyberspace. BIICL has previously held an event on [State Responsibility for Cyber Operations: International Law Issues](#).

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## Protection of Displaced Persons

### Are displaced persons from Ukraine entitled to protection under international law? (JPG/NM)

All individuals who fled Ukraine have the right to seek and enjoy asylum in a safe country under International Refugee Law - specifically under the [1951 Refugee Convention and its 1967 Protocol](#). In the EU they can also be granted subsidiary protection (under the [EU Qualification Directive](#)), a protection status given to persons (through the same status determination processes) who do not qualify as refugees, but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin (whether it is Ukraine or elsewhere), would face a real risk of suffering serious harm. Serious harm is defined as including 'serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict'. Whilst subsidiary protection (a component of international protection) is specific to the EU framework, many countries have other forms of humanitarian protection which may be applicable to people fleeing conflict.

### What about Temporary Protection in the European Union? (JPG/NM)

In addition to the provisions of the Refugee Convention, and in the territory of the European Union, the European Council has unanimously decided to activate the [Temporary Protection Directive](#) (TPD), which was adopted in 2001 but had never been triggered before. Both protection schemes are open to those fleeing Ukraine, but they are mutually exclusive (and the TPD only applies in EU Member States). Third-country nationals that were living in Ukraine before the invasion will also be entitled to seek and enjoy asylum - or, if in an EU Member State, to rely on the TPD - if they cannot return safely to their country of nationality.

Under the TPD, Ukrainian nationals, as well as third country nationals or stateless persons benefiting from international protection in Ukraine, and their family members will benefit from temporary protection if they resided in Ukraine before or on the 24 February 2022. The Directive shall apply also to third country nationals residing in Ukraine before or on the 24 February with a permanent residence permit and who cannot safely return to their country of nationality. Importantly, the [Dublin III Regulation](#), which provides for rules on which country is responsible for examining an asylum application - normally the country where the asylum seeker first entered the European Union, will not apply to those seeking protection under the TPD.

### What about people who are not yet within Asylum or Temporary Protection Processes? (JPG/NM)

All persons displaced continue to enjoy the protection of their human rights, not least the principle of non-refoulement whether or not they enjoy protection as refugees, subsidiary protection or under the temporary protection directive. Those who are displaced internally should be protected by both human rights law and international humanitarian law (which considers them to be civilians and therefore protected, provided they do not take part in hostilities).

### Can those displaced from Ukraine travel to any country of their choice to seek safety? (JPG/NM)

Since the Russian invasion, certain States have lifted travel restrictions, in particular visa requirements, for Ukrainian nationals (e.g., in [Ireland](#)) while others have introduced special visa regimes (e.g., [Canada](#)). Ukrainian nationals are able to travel to countries that have lifted restrictions, or to countries that already had visa-free travel regimes before the invasion, to seek safety. Land borders have been opened, and remain open, in Hungary, Moldova, Poland, Romania, and Slovakia. BIICL has undertaken work on legal pathways to protection which may be accessed [here](#).

### Is access to other countries reserved only for people with a Ukrainian passport? What about discrimination at the borders? (JPG/NM)

There have been [disturbing reports](#) of discrimination against non-Ukrainians and non-white individuals as they attempt to cross international borders. This discrimination is in [violation of international law](#), which requires non-discriminatory protection of human rights. Among the non-Ukrainian nationals fleeing Ukraine are individuals that are seeking to return to their country of origin (e.g., international students), as well as individuals that cannot return to their country of origin safely (some of whom might have already obtained refugee status in Ukraine). For the latter cohort, it should be borne in mind that everyone fleeing Ukraine, regardless of their nationality, is entitled to seek and enjoy asylum if they cannot safely return to their country of origin.

In addition, pursuant to [Article 31 of the Refugee Convention](#), States Parties shall not impose penalties on refugees if they have crossed a border without authorisation. This means that, even when visa requirements have not been lifted, or when they have not

been lifted for non-Ukrainian nationals, non-Ukrainians fleeing Ukraine to seek asylum shall be allowed to cross the border and to submit an international protection claim, regardless of whether or not they are in possession of a valid travel document and/or authorisation.

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## **Business and Human Rights**

### **Do foreign companies have a responsibility under international law to leave Russia? (IP)**

Foreign companies have no direct obligation under international human rights law to leave Russia. They are obliged to do so if their operations fall under an international, regional, or national sanction regime. In situations of armed conflicts, additional obligations under international humanitarian and international criminal law apply to companies and their directors who must consider whether their operations are contributing to violations.

Both the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, which are non-binding standards, outline the decision-making process for business exit and termination, based on a human rights impact assessment. The UN Working Group on business and human rights [clarifies](#) that a conflict situation requires heightened human rights due diligence that considers the impact of business on the conflict itself as well as on human rights.

Some companies currently ceasing operations in Russia are doing so because they have been directly forbidden by US and European economic sanctions from dealing with Russia; others are suspending operations voluntarily either because they are indirectly affected by sanctions, because of legal, reputational, or financial risks, or because of ethical and human rights considerations. For more, see [here](#).

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## **Protection of Foreign Investors**

### **Can Russia be held responsible if it prevents foreign investors from leaving the country, nationalizes their assets or treats them unfairly? (YK)**

Foreign investors can challenge the actions of the Russian authorities not only in domestic courts of Russia but also to international arbitration. Russia is a party to numerous international investment agreements, which protect the rights of foreign investors and permit them to assert claims against Russia in arbitration. Decisions of such arbitral tribunals are binding upon Russia. Any monetary award can be enforced against commercial assets of the Russian Federation, including outside Russia. The largest ever arbitration award was rendered in favour of shareholders of Yukos, once the largest oil company of Russia. The amount was over 50 billion US dollars.

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## **Selected Additional Resources from BIICL or BIICL staff**

### **On the Use of Force**

- [The Use of Force in Relation to Sovereignty Disputes Over Land Territory](#)
- C Yiallourides, '[International Law, Force and Coercion in the South China Sea](#)' in L Buszynski & Do Thanh Hai (eds) *The South China Sea From a Regional Maritime Dispute to Geo-Strategic Competition* (Routledge 2020)
- C Yiallourides and Z Yihdego, '[Disputed Territories and the Law on the Use of Force: Lessons from the Eritrea-Ethiopia Case](#)' in Yihdego and others (eds) *Ethiopian Yearbook of International Law* (Springer 2019)

### **On Displacement**

- [Legal Pathways to Protection](#)
- Kristin Hausler, '[Refugees and asylum seekers from conflict-affected States](#)', in Annyssa Bellal (ed), *War Report 2014* (Oxford University Press, 2015)

### **On International Humanitarian Law**

- [Protection of Education in Insecurity and Armed Conflict](#)
- [Media Professionals and International Humanitarian Law](#)
- B Drazewska, '[Military Necessity in International Cultural Heritage Law](#)' (Brill 2021)
- K Hausler, '[The Protection of Cultural Heritage in Armed Conflict](#)', in Stuart Casey-Maslen (ed), *War Report 2013* (Oxford University Press, 2014)
- K Hausler, '[The EU Approach to Cultural Heritage in Conflict and Crisis: An Elephant in the Room?](#)', *Santander Art and*

## On Investment Law

- [The Protection of Investments in Disputed Territories: A Panel Hosted by BIICL's Investment Treaty Forum](#)

## On the Responsibilities of Business in Conflict Zones

- Irene Pietropaoli, ['Business, human rights and transitional justice'](#) (Routledge 2020)

## Past Events

- [International Law of Territorial Disputes: Current Issues](#)
- [State Responsibility for Cyber Operations: International Law Issues - Event Report](#)
- [The Protection of Cultural Heritage in Conflict- Event Report](#)

## Relevant Recent Articles from the International and Comparative Law Quarterly (open access)

### 2022

- Rebecca J Barber, ['COOPERATING THROUGH THE GENERAL ASSEMBLY TO END SERIOUS BREACHES OF PEREMPTORY NORMS'](#)

### 2021

- Meagan S Wong, ['AGGRESSION AND STATE RESPONSIBILITY AT THE INTERNATIONAL CRIMINAL COURT'](#)
- Rebecca J Barber, ['AN EXPLORATION OF THE GENERAL ASSEMBLY'S TROUBLED RELATIONSHIP WITH UNILATERAL SANCTIONS'](#)
- Katie A Johnston, ['IDENTIFYING THE JUS COGENS NORM IN THE JUS AD BELLUM'](#)
- Shane Darcy, ['ACCIDENT AND DESIGN: RECOGNISING VICTIMS OF AGGRESSION IN INTERNATIONAL LAW'](#)

### 2020

- Abdulqawi Ahmed Yusuf, ['ENGAGING WITH INTERNATIONAL LAW'](#)
- Bríd Ní Ghráinne, ['SAFE ZONES AND THE INTERNAL PROTECTION ALTERNATIVE'](#)
- John Ip, ['RECONCEPTUALISING THE LEGAL RESPONSE TO FOREIGN FIGHTERS'](#)

### 2019

- Lawrence Hill-Cawthorne, ['INTERNATIONAL LITIGATION AND THE DISAGGREGATION OF DISPUTES: UKRAINE/RUSSIA AS A CASE STUDY'](#)
- Miles Jackson, ['VIRTUOUS ACCOMPLICES IN INTERNATIONAL CRIMINAL LAW'](#)

### 2018

- Marko Milanović and Tatjana Papić, ['THE APPLICABILITY OF THE ECHR IN CONTESTED TERRITORIES'](#)
- Tomohiro Mikanagi, ['ESTABLISHING A MILITARY PRESENCE IN A DISPUTED TERRITORY: INTERPRETATION OF ARTICLE 2\(3\) AND \(4\) OF THE UN CHARTER'](#)
- Harriet Moynihan, ['AIDING AND ASSISTING: THE MENTAL ELEMENT UNDER ARTICLE 16 OF THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY'](#)
- Catherine O'Rourke and Aisling Swaine, ['CEDAW AND THE SECURITY COUNCIL: ENHANCING WOMEN'S RIGHTS IN CONFLICT'](#)

