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Questions and Answers: Russia, Ukraine, and International Humanitarian and Human Rights Law





Armed self-defence forces in Ukraine. © 2014 Reuters

Since late February 2014, armed personnel in uniforms without insignia but increasingly identified as members of the Russian Federation's security forces have been asserting their authority in Ukraine's Crimea region. As of 2013, approximately 13,000 Russian naval personnel were based in Crimea under the 1997 Partition Treaty on the Status and Conditions of the Black Sea Fleet. Ukraine contends that several thousand more are currently in Crimea.

Additional units transported from Russia have taken part in security operations on behalf of Crimea's local authorities. Russian armed personnel and pro-Russian militias in Crimea have prevented Ukrainian armed forces from leaving their bases, taken control over strategic facilities such as a natural gas terminal in Ukraine's Kherson Oblast, and taken steps to secure Crimea's administrative borders with the rest of Ukraine.

On March 16, Crimea's local authorities held a referendum on whether Crimea should secede from Ukraine to join the Russian Federation. The Ukrainian government opposed the referendum, saying it was illegal. After local authorities announced on March 17 that 97 percent of the population had voted to join Russia, President Vladimir Putin of Russia signed a decree recognizing Crimea as an independent state. On March 18, Putin and Crimea's leadership signed agreements making Crimea and the city of Sevastopol part of the Russian Federation. Putin asked Russia's parliament to adopt a law accepting the new regions as parts of the Russian Federation.

Human Rights Watch is of the view that the international law of occupation applies to Russian forces in Crimea. Under international humanitarian law, an occupying power has an obligation to restore and ensure public order and safety as far as possible while respecting, unless absolutely prevented from doing so, the occupied country's laws in force. International human rights law also remains applicable to situations

amounting to occupation. The occupying party is ultimately responsible for violations of international humanitarian and human rights law committed by local authorities or proxy forces.

This determination is based on the situation in Crimea as applied to the Fourth Geneva Convention of 1949, as discussed below. The referendum vote, decisions on sovereignty by local authorities in Crimea, and endorsement of the referendum by the Russian government do not affect the applicability of the law of occupation to the Crimea situation.

Human Rights Watch, in accordance with its longstanding policy on laws of armed conflict, remains neutral on the decisions of parties to a conflict to use military force and on the military occupation of another country or region.

The specific standards for determining when an occupation begins are not set out in the Geneva Conventions, but certain criteria have been **recognized** by international humanitarian law experts. These include:

1. Presence of foreign forces;
2. Exercise of authority (“effective control”) over the territory considered occupied;
3. Nonconsensual nature of belligerent occupation from the state whose territory is occupied;

4. Indirect control enforced through de facto control over local authorities or other controlling group.

These criteria have been met. Since late February, so-called Crimean self-defense forces accompanied by fully armed and well-equipped security force personnel without insignia have taken over and controlled administrative buildings and military bases across Crimea. While both Crimean and Russian authorities denied that these forces were Russian, at least some of these units Human Rights Watch saw in Crimea were clearly identified as Russian. Many journalists as well as Human Rights Watch have seen, in plain sight, military vehicles and other equipment that Ukrainian forces are not known to have, such as the advanced, all-terrain infantry mobility vehicle “Tigr” (tiger).

1. When did the law on occupation apply to the Russian presence in Ukraine?

Under the 1949 Geneva Conventions, territory is considered “occupied” when it comes under the control or authority of foreign armed forces, whether partially or entirely, without the consent of the domestic government. This is a factual determination, and the reasons or motives that lead to the occupation or are the basis for continued occupation are irrelevant. Even if the foreign armed forces meet no armed resistance and there is no fighting, once territory comes under the effective control of the foreign armed forces, the laws on occupation are applicable.

Therefore, wherever Russian forces exercise effective control of an area on Ukrainian territory, such as Crimea, for the purposes of international humanitarian law (the laws of war) it is an occupying power and must adhere to its obligations as such. Russia's denials that its troops are in Crimea have no legal effect if the facts on the ground demonstrate otherwise.

2. Does applying occupation law to Russia affect the status of the territory that Russia occupies?

Applying the law of occupation, or determining Russia to be an occupying power for the purposes of international humanitarian law, does not in any way affect the sovereignty of the territory. Sovereignty is not transferred to the occupying power.

Local authorities organized the March 16 referendum in Crimea without the authorization of the Ukrainian government and the referendum has not received broad-based endorsement by other countries. It cannot be considered a transfer of sovereignty that would end the state of belligerent occupation.

3. What law relating to occupation is binding on Russia and Ukraine?

While much of occupation law is also a matter of customary humanitarian law, the primary treaty sources of the modern law of occupation are the Hague Regulations of 1907 (Hague), the Fourth Geneva Convention of

1949 (Geneva IV), and certain provisions of the First Protocol of 1977 Additional to the Geneva Conventions of 1949, to which Russia and Ukraine are party.

The International Committee of the Red Cross (ICRC) in its *Commentary to the Fourth Geneva Convention* notes that the obligations of the convention begin as soon as there is contact between the civilian population of a territory and troops advancing into that territory; that is, at the soonest possible moment. Under the Fourth Geneva Convention, protected persons are all those who find themselves in the hands of a party to the conflict or an occupying power of which they are not nationals. While all of the duties imposed on an occupying power may not become applicable immediately (some presuppose the presence of the occupation authorities for a fairly long period), the entirety of the provisions relating to the rights enjoyed by protected persons and their treatment become applicable immediately.

In addition to the rules found in international humanitarian law, the occupying power must respect international human rights law and national law, subject to certain exceptions. With respect to human rights law, limitations on certain rights are permitted if they are “strictly required by the exigencies of the situation,” but any limitations must still respect the standards in international humanitarian law.

4. What are the basic principles of international humanitarian law underlying military occupation?

International humanitarian law provides that once an occupying power has assumed authority over all or part of a territory, it is obliged to restore and maintain, as far as possible, public order and safety (Hague, art. 43). The occupying power must also respect the fundamental human rights of the territory's inhabitants, including noncitizens (Geneva IV, arts. 29, 47), and ensure sufficient hygiene and public health standards, as well as the provision of food and medical care to the population under occupation (Geneva IV, arts. 55, 56). Collective punishment and reprisals are prohibited (Protocol I, art. 75). Personnel of the International Red Cross/Red Crescent Movement must be allowed to carry out their humanitarian activities (Geneva IV, art. 63).

5. What are the protection obligations of an occupying power toward the local population?

An occupying power is responsible for respecting the fundamental human rights of the population under its authority. Everyone is to be treated humanely and without discrimination based on ethnicity, religion, or any other basis. This includes respecting family honor and rights, people's lives, and private property, as well as religious and customary convictions and practice.

Women are to be especially protected against any attack, in particular against rape, enforced prostitution, or any form of indecent assault. Everyone is to be treated with the same consideration by the occupying power without any adverse distinction based, in particular, on race, religion, or political opinion. Private property may not be confiscated

(Hague, art. 46; Geneva IV, art. 27). However, an occupying power may take such measures of control and security as may be necessary as a result of the war (Geneva IV, art. 27).

An occupying power is specifically prohibited from carrying out reprisals and collective penalties against people or their property (Geneva IV, art. 33) and from taking hostages (Geneva IV, art. 34). In general, no one may be punished for acts they have not personally committed. All parties to a conflict are required to provide information on prisoners of war (Geneva III, art. 122) and “protected persons” (civilian nationals) in their custody (Geneva IV, art. 136).

The occupying power is prohibited from forcibly transferring or deporting protected persons outside of the occupied territory irrespective of motive (Geneva IV, art. 49).

6. What obligations does Russia as an occupying power have with respect to the actions of Crimean authorities, as well as local forces such as the “Crimean Republican Army” and self-defense forces?

Russia is bound by the law of occupation wherever it exercises effective control within the territory of Ukraine – currently, all or at least part of Crimea – without the consent of the Ukrainian state. Even where local authorities remain in place, Russia remains bound by its obligations to the civilian population to ensure public safety and welfare. That means Russia is responsible for preventing and taking action against human rights

abuses by local forces acting as proxies for Russia. In the event that armed groups are acting independently of local authorities, Russia has a responsibility to take appropriate action to maintain security.

7. What are the obligations of an occupying power to provide for well-being of the population?

Generally, an occupying power is responsible for ensuring that food and medical care are available to the population under its control, and to facilitate assistance by relief agencies.

An occupying force has a duty to ensure the food and medical supplies of the population, as well as to maintain hospitals and other medical services, “to the fullest extent of the means available to it” (Geneva IV, arts. 55, 56). This includes protecting civilian hospitals, medical personnel, and the wounded and sick. Medical personnel, including recognized Red Cross/Red Crescent societies, are to be allowed to carry out their duties (Geneva IV, arts. 56, 63). The occupying power is to make special efforts to assist children orphaned or separated from their families (Geneva IV, art. 24) and facilitate the exchange of family news (Geneva IV, arts. 25, 26).

If any part of the population of an occupied territory is inadequately supplied, the occupying power is to facilitate relief by other countries and impartial humanitarian agencies (Geneva IV, art. 59). However, the provision of assistance by others does not relieve the occupying force of its

responsibilities to meet the needs of the population (Geneva IV, art. 60). The occupying power shall ensure that relief workers are respected and protected.

8. Must parties to a conflict provide humanitarian organizations access to prisoners-of-war and other detainees?

The Third and Fourth Geneva Conventions require parties to a conflict to permit access by the ICRC and other relief agencies to prisoners-of-war (POWs) and interned civilians. The ICRC must be granted regular access to anyone deprived of their liberty to monitor the conditions of their detention and to restore contact with their families. The ICRC has full liberty to select the places it wishes to visit and to interview people confidentially. Visits may only be refused for reasons of “imperative military necessity,” and as an exceptional and temporary measure. Other humanitarian agencies may request access to POWs and detained civilians. The detaining authority shall facilitate such visits, though it may limit the number of humanitarian agencies visiting a person who is being held.

9. When can civilians be detained or taken prisoner by an occupying power?

The Fourth Geneva Convention permits the internment or assigned residence of protected persons for “imperative reasons of security.” This must be carried out in accordance with a regular procedure permissible under international humanitarian law and allow for the right of appeal and for review by a competent body at least every six months (Geneva IV, art.

78). The Fourth Geneva Convention provides detailed regulations for the humane treatment of internees. The ICRC must be given access to all protected persons, wherever they are, whether or not they are deprived of their liberty.

10. What obligations exist concerning the property and resources of the occupied territory?

In general, the destruction of private or public property is prohibited unless military operations make it absolutely necessary (Geneva IV, art. 53). Cultural property is entitled to special protection; the occupying power must take measures to preserve cultural property (Cultural Property Convention, art. 5). As a rule, private property may not be confiscated. Religious, charitable, and educational institutions are to be treated as private property. The occupying power may requisition food and medical supplies for occupation forces and administrative personnel so long as the needs of the civilian population have been taken into account and fair payment is made (Geneva IV, art. 55). Taxes and tariffs may also be imposed to defray the administrative costs of the occupation, including the cost of occupying forces (Hague, art. 49).

Public properties are treated as either movable or immovable property. Movable government properties that may be used for military purposes (transport, weapons) are considered “spoils of war” and may be seized without compensation (Hague, art. 53). Immovable government properties (public buildings, real estate) may not be appropriated; however, they may

be used and administered by the occupying power so long as their assets are maintained (Hague, art. 55). Any loss of value from their use must be compensated.

11. To what extent does international human rights law apply?

International human rights law is applicable during armed conflicts and occupations. Both Ukraine and Russia are parties to several international human rights treaties, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights. These treaties outline guarantees for fundamental rights, many of which correspond to the rights to which civilians are entitled under humanitarian law (e.g. right to life, prohibition on torture, inhuman and degrading treatment, nondiscrimination, liberty and security of the person, due process). While in a time of war or public emergency restrictions on and derogations from many of these rights are permitted (e.g. restrictions on freedom of assembly and right to privacy), such restrictions are limited to those that are strictly required by the necessity of the situation and that are compatible with obligations under international humanitarian law.

12. Do international human rights bodies such as the European Court of Human Rights and the UN Human Rights Committee still have jurisdiction over the situation in Crimea?

These bodies retain jurisdiction over Crimea and may be called upon to adjudicate or issue opinions on whether violations of relevant treaties have been committed by Ukrainian or Russian authorities. Ukraine has already

filed a case against Russia for actions in Crimea with the European Court of Human Rights, alleging violations of the European Convention on Human Rights. Upon receiving the case, the European Court, expressing “a view to preventing such violations,” called upon both Ukraine and Russia “to refrain from taking any measures, in particular military actions, which might entail breaches of the Convention rights of the civilian population, including putting their life and health at risk, and to comply with their engagements under the Convention, notably in respect of Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment).” Both countries were ordered to inform the court as soon as possible of the measures taken to ensure full compliance with the Convention.

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