

The 2023 Help Network Conference

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Prohibition of Ill-treatment during Armed Conflict

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1. Introduction

- In February 2013 the HELP team published an updated version of the course on “Prohibition of Ill-treatment”, which had initially been developed in 2017
- Striking that in 2022 close to 40% of judgments finding at least one violation of the Convention by the Court concern some aspect of Article 3 of the Convention¹
- Ill-treatment remains an issue of significant concern for the European legal order
- The updated course consists of an introductory module and 8 substantive modules:
 1. Introductory module
 2. Legal Framework and Concepts
 3. Effective (procedural) response to ill-treatment and combating impunity
 4. Ill-treatment in places of deprivation of liberty
 5. Use of force as a means of restraint
 6. Ill-treatment beyond coercive context
 7. Interrelation with other rights
 8. Who does what?
 9. Ill-treatment during armed conflict

2. The module Ill-treatment during armed conflict

- The module Ill-treatment during armed conflict is a novelty of the course on “Prohibition of Ill-treatment”

* Opinions expressed personal.

¹ [Statistic report](#) Violations by Article and by State 2022.

- Timely and relevant given the war in Ukraine and other conflicts (active or latent) at the territory of member States
- Many inter-State cases² – including the two recently declared admissible by the Grand Chamber against the Russian Federation³ – involve allegations of ill-treatment
- This module is intended to provide a review of the relevant legal framework, both under international human rights law and international humanitarian law
- It also refers to some of the most frequent situations where ill-treatment may occur in times of armed conflict
- The aim of the module is to allow the participants to:
 - Achieve a general knowledge and understand the existing legal framework concerning the prohibition of ill-treatment during armed conflict;
 - Acquire a general understanding of what type of situations may in practice give rise to a risk of ill-treatment;
 - Acquire a general understanding of how best to use the relevant framework and mechanisms to ensure the effective application of the prohibition of ill-treatment during armed conflict and to achieve accountability thereof

3. Structure and topics of the module on ill-treatment during armed conflict

A. Legal framework

- International human rights law (IHRL) and international humanitarian law (IHL) are **complementary sources of obligations** in situations of armed conflict. While they remain separate branches of international law, both can apply simultaneously in such context and each can be used to interpret the other
- Application of IHL requires however that a **minimum threshold of violence** is reached. When applicable, IHL categorises persons and affords different protections to different groups of protected persons. In contrast, **IHRL applies to all persons** within the jurisdiction of the concerned State
- The prohibition of ill-treatment is **absolute and non-derogable**, even in the most difficult circumstances, such as in times of an armed conflict. This **ban is enshrined both in IHRL and IHL**. Enforcement of the latter is ensured by a variety of mechanisms and actors, which primarily include States, European and international bodies and institutions, as well as international criminal law mechanisms and the ICRC
- Application of IHRL in armed conflict raises both **the issue of the jurisdiction of a State and the attribution or imputability of an action (or omission) to that State**. In particular, the question of

² There is in total 14 inter-State cases pending before the Court (concerning 18 applications). Six inter-State cases concern Russia: *Georgia v. Russia (IV)*; *Ukraine v. Russia (re Crimea)*; *Ukraine and the Netherlands v. Russia*; *Ukraine v. Russia (VIII)*; *Ukraine v. Russia (IX)*; *Russia v. Ukraine*.

³ *Ukraine v. Russia (re Crimea)* [GC] (dec.), nos. 20958/14 and 38334/18, 16 December 2020, and *Ukraine and the Netherlands v. Russia* [GC] (dec.), nos. 8019/16 et al., 30 November 2022.

whether the acts occurring in the territory of which the military operation is conducted fall within the jurisdiction by a Contracting State requires the examination of the issues of jurisdiction during the active phase of hostilities and of extraterritorial jurisdiction.

B. Situations where there is a risk of ill-treatment

- Parties to an armed conflict should protect the lives and dignity of the persons **deprived of their liberty** (notably, the prisoners of war and civilian internees), including by refraining from using ill-treatment against them to acquire intelligence and by ensuring conditions of detention which are compatible with respect for human dignity. Access to detention facilities by the ICRC is key to ensuring that those detained are treated humanely
- **Transfers** may also raise serious concerns. Parties to the conflict should not transfer or hand over detainees to another detaining authority if there is a risk of arbitrary deprivation of life or of ill-treatment upon transfer or handover. Likewise, **forced displacement of civilians** for reasons related to an armed conflict is prohibited unless the security of the civilians involved or imperative military reasons so demand
- The **anguish and distress suffered by relatives of victims** of serious human rights violations may amount to ill-treatment, in light of the profound psychological impact of the said violations. This is particularly the case with regard to enforced disappearances but also in some instances which relate to the confirmed death of relatives and to the treatment of their bodies.

C. Gender impacts

- **Special protection of women**, including pregnant women and mothers of dependent children, in IHL
- **Gender-based violence** as a deliberate form of ill-treatment in times of conflict
- **Rape and sexual abuse** as war crimes, crimes against humanity, or even genocide

D. Accountability

- The necessity to ensure that **domestic law ensuring accountability** is accessible, foreseeable and certain
- The obligation to carry an **official effective investigation** into allegations of ill-treatment
- Protection of those **deprived of liberty** under Articles 5 and 6 of the Convention
- **International accountability** through the regional human rights courts and ICC
- **Transitional justice** mechanisms

4. Conclusion

- Very important course for legal professionals and in particular those encountering cases of ill-treatment during an armed conflict