

The Ministry
of Defense of Ukraine



GUIDELINE

Essential national provisions and international humanitarian law for foreigners in the Armed Forces of Ukraine

Created with the support of the Ukrainian Red Cross Society

THE MINISTRY OF DEFENSE OF UKRAINE

GUIDELINE
**“Essential national provisions and international humanitarian law
for foreigners in the Armed Forces of Ukraine”**

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The Guideline “Essential national provisions and international humanitarian law for foreigners in the Armed Forces of Ukraine” was designed and written by the Legal Department of the Ministry of Defense of Ukraine

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The Guideline “Essential national provisions and international humanitarian law for foreigners in the Armed Forces of Ukraine” is NOT a part of the Ukrainian legislation and should not be used as such. However, the Guideline may reference source documents.



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Introduction

In February 2014 the russian federation illegally occupied Ukraine's Crimean Peninsula (Autonomous Republic of Crimea)¹ and attacked eastern parts of Ukraine, starting an international armed conflict. Nearly a decade onward, on 24 February 2022 the russian federation launched a full-scale invasion of Ukraine and a new phase of the russian-Ukrainian armed conflict began. **Foreigners and stateless persons (hereafter, foreigners) have been playing a huge role in Ukraine's ability to withstand aggression.** To this day, numerous foreigners express a strong desire to join the Armed Forces of Ukraine (hereafter, AFU) and uphold the democratic values for which Ukraine is fighting.

This Guideline serves as a practical tool for foreigners interested in joining the AFU and for those, who are already service(wo)men. It offers valuable information on foreigners' prospects for joining the AFU, their rights, duties, and social guarantees as military personnel. Information provided in this Guideline is not exhaustive and may be periodically reviewed or amended. It is offered by the Ministry of Defense of Ukraine (hereafter, MoD U) for general informational purposes and should not be considered as legal advice. This document outlines key points related to the aforementioned topics and includes references to legislative acts that provide more detailed information.

One of the most crucial points to be noted by foreigners and the international community generally is that foreigners in the AFU are official members, who have joined the largest Ukrainian military organization on legal grounds.

They have the same legal status of service members as citizens of Ukraine in the AFU. This means that both categories enjoy equal rights, military wages, have the same obligations and duties etc.

1 United Nations General Assembly Resolution A/68/L.39. Territorial integrity of Ukraine. [online]. Available at: https://www.un.org/ga/search/view_doc.asp?symbol=A/68/L.39.

However, there are some differences, particularly in the process of enlistment and discharging from the armed forces, as well as in social rights and guarantees. These differences will be highlighted in this Guideline.

It should be noted that the information mentioned in the Guideline can rapidly change against the backdrop of martial law and ongoing international armed conflict. Therefore, it is advisable for every foreigner to thoroughly review the relevant laws and regulations provided in this Guideline to ensure that the information is actual.

It is highly recommended to rely only on official sources, such as the official website of the International Legion for the Defense of Ukraine, which is extremely helpful and provides foreigners with information about the key stages of joining the AFU. If needed, the website can be used for contacting representatives of the International Legion.



Besides this, <https://visitukraine.today/> could also be helpful on the matter of rules on crossing the Ukrainian border and key tips in the preparation for a visit to Ukraine.



In case there are recommendations on further amendments to this Guideline, please send them to the official email of the **International Law Section of the Legal Department of MoD U**: [ild_ld@mod.gov.ua.z](mailto:ild_ld@mod.gov.ua)

1. Overview of the legislation of Ukraine: foreigners in the Armed Forces of Ukraine

According to the national legislation of Ukraine, **foreigners have a right to serve in the AFU**. In general, foreigners' military service practically does not differ from the citizens' military service. Foreigners on a legal basis have been serving in different AFU detachments since 2016. Therefore, they are officially members of the AFU, the legal status of whom is defined through the system of laws and regulations of Ukraine. Short overview of the main of them are provided in this Chapter below.



Law of Ukraine “On the Armed Forces of Ukraine”

Determines the AFU’s functions, composition, branches and services, activity, deployment, leadership, and management.



Law of Ukraine “On military duty and military service”

Defines fundamental provisions regarding the procedure for enlisting and discharging the foreigners, their rights and duties as service(wo)men.



Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”

Clarifies the legal status of foreigners and stateless persons residing in Ukraine and establishes the procedure for their entry into and exit from Ukraine.



Law of Ukraine “On social and legal protection of servicemen and their family members”

It applies to foreigners partly in relation to financial guarantees (military wage and other monetary assistance) and vacations and leaves.



Law of Ukraine “On the status of war veterans, guarantees of their social protection”

Establishes the legal status of war veterans and outlines the state's policy regarding the social and legal protection of these individuals.



Regulation on military service of foreigners and stateless persons in the AFU, approved by the Presidential Decree № 248/2016

Outlines all aspects of foreigners' military service in details. It includes a typical contract, which is an official document and the legal basis for foreigners in the AFU. Additionally, it defines the mutual obligations between the foreigner and the AFU.

2. Enlistment and discharging from the Armed Forces of Ukraine

Military service for foreigners commences upon their enlistment and continues until their discharge. Throughout this period, both the foreigner and the AFU have mutual rights and obligations. When enlisting, a foreigner commits to strictly adhere to the Constitution and laws of Ukraine, fulfill military duties with loyalty and honesty. In return, the AFU pledges to provide foreigners with military wages, social benefits, necessary training, etc. This Chapter outlines the essential procedures for enlistment and discharging from military service in the AFU.

2.1 Enlistment in the Armed Forces of Ukraine

Foreigners may be accepted to the AFU only voluntarily under a contract of foreigners and stateless persons in the Armed Forces of Ukraine appointed to the privates, or non-commissioned officers' positions (see Annex 1). They may be promoted to officer ranks of the AFU only after obtaining Ukrainian citizenship under the procedure established by law.

Only foreigner who meets the following requirements can sign contract with the AFU and be enlisted:

- does not have a previous conviction;
- has legal grounds to stay in Ukraine;
- is in the age between 18 and 60 years;
- fits for military service in terms of health condition;
- has passed the professional and psychological selection;
- has a sufficient level of physical fitness.

To be enlisted, a foreigner applies to the territorial recruitment and social support center (hereafter, TRSSC) at their residence or directly to the military detachment s/he wishes to serve. After receiving the application, TRSSC or the military detachment verifies the information provided by the foreigner. For this purpose, law enforcement agencies² will be requested to verify if the applicant meets the abovementioned requirements.

There are two possible results of considering foreigners' application:

- (1) the foreigner is successfully selected, and subsequently, a contract is signed, or
- (2) the foreigner is rejected with justification.

Foreigners who have signed the contract with the AFU make an official Commitment to strictly follow the Constitution and laws of Ukraine and faithfully perform duties of the military service (see Chapter 5).

There is a two-month probation period for foreigners who have signed the contract with the AFU. The contract will be terminated if during the probation period a foreigner does not fulfil requirements assigned to a military position and does not perform official duties properly or if s/he repeatedly violates military discipline.

Foreigners' appointment to certain positions in the AFU depends on their previous military and (or) combat experience, occupation, and education. In the absence of such, foreigners are sent to the training centers or military detachments to complete a training course on acquiring the relevant military occupation.

Only after passing all procedures mentioned above, the foreigner could be deployed to the combat area. Moreover, such deployment could happen only after the detachment's collective training and combat exercise are successfully conducted.

² Particularly the request is sent to the Ministry of Internal Affairs of Ukraine, the State Migration Service of Ukraine, the Administration of the State Border Guard Service of Ukraine, and the Security Service of Ukraine.

Important reservation!

Some precautions should be taken before enlisting in the AFU. In particular, your Government's policy on serving own citizens in the Armed Forces of the other State needs to be checked. This policy varies from one state to another. The legislation of some states ensures criminal responsibility for enlisting in the armed forces of a foreign state without the consent of the designated authorities or unauthorized participation in an armed conflict abroad. Therefore, it is strongly recommended to ensure that military service in the AFU will not lead to any negative legal consequences.

Besides, it is strongly recommended to familiarize yourself with the restrictions on transferring goods across the state border of Ukraine. The following items are prohibited: weapons (cold, pneumatic, and firearms and their accessories); explosives and gas canisters, toxic and poisonous substances, etc³.

The following terms of military service are established for foreigners in the AFU: for privates is 3 years; for non-commissioned officers is from 3 to 5 years.

Foreigners who have signed the contract with the AFU are considered to be temporarily (for the period of the contract) residing on legal grounds on the territory of Ukraine. The temporary residence of such foreigners is confirmed by private's, or non-commissioned officer's military ID. In this case, temporary residence in Ukraine is provided automatically and a foreigner does not need to contact the State migration service of Ukraine for the registration of any additional documents⁴.

3 See in details here: "Leaving Ukraine: what things are prohibited to carry across the border" - <https://visitukraine.today/blog/1809/viizd-z-ukraini-yaki- reci-zaboroneno-perevoziti-cerez-kordon>

4 See para. 18 of Article 4 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons".

2.2 Discharging from the Armed Forces of Ukraine

Foreigners can be discharged from the AFU (1) at the initiative of the military commander or (2) at the service(wo)man's own initiative⁵.

During the martial law⁶, **at the initiative of the military commander**, the contract could be terminated because of the:

1) age - if the maximum age for military service (60 years) is reached;

2) medical reason - if the military medical commission's conclusion (resolution) is on foreigner's unfitness for military service;

3) criminal conviction - if a foreigner is imposed punishment in the form of deprivation or restriction of liberty or reduction in rank.

At the service(wo)man's initiative, the contract could be terminated due to:

1) age - if the maximum age for military service (60 years) is reached;

2) own will - but only after six months of continuous military service;

3) family circumstances or other valid reasons (if foreigners did not express a desire to continue military service), among which are:

- raising a child (children) under the age of 18 on her/his own;
- raising a child with a disability under the age of 18;
- providing constant care for a sick wife (husband), child, as well as one's parents or the wife (husband), which is

⁵ See para. 37 of the Regulations and part five of Article 26 of the Law of Ukraine "On Military Duty and Military Service."

⁶ See The President Decree "On the imposition of martial law in Ukraine" from 24 February 2022, available at: <https://www.president.gov.ua/documents/642022-41397>. Throughout 2022-2023, martial law has been systematically extended by the President's Decrees (see the most recent one here: <https://zakon.rada.gov.ua/laws/show/451/2023#Text>

confirmed by the conclusion of the medical and social expert commission or the medical advisory commission;

- raising a child with severe perinatal damage to the nervous system, severe congenital malformations, rare orphan diseases, oncological, oncohematological diseases, cerebral palsy, severe mental disorders, type I diabetes (insulin-dependent), acute or chronic diseases kidneys of the IV degree, a child who received a severe injury, needs an organ transplant or palliative care, which is confirmed by a document issued by the medical advisory commission of a health care institution, but which does not have any category (group) of disability;
- providing care for a person with a disability refined by the court as incapable;
- providing constant care for a person with a disability of the 1st category (group);
- providing constant care for a person with a disability of the II d category (group) or for a person who, according to the conclusion of the medical and social expert commission or the medical advisory commission, needs constant care, in the case if there is no other persons who can provide it;
- having a child (children) under the age of 18 (for one of the spouses, both of whom serve in the AFU);
- pregnancy (for servicewomen);
- parental leave until the child reaches the age of 3 or if the child needs home care for the duration specified in the medical conclusion, but no longer than the child reaches the age of 6 (for servicewomen).

Service(wo)man who wish to discharge should apply through the chain of command to the commander of their military detachment, along with all the relevant documents confirming the grounds for discharge. **The consideration process typically takes some time.** In any case, the service(wo)man is required to continue performing duties until the commander of the military detachment issues an order for discharge.

3. Social guaranties for foreigners in the Armed Forces of Ukraine

For all foreigners in the AFU the set of social rights is granted by law. They are specified in the contract as well as the legislation of Ukraine. In this Chapter short description of the core social guaranties is presented. Each of them also contains a link to the legislative act, that specifies further detailed information.

Financial guaranties

Military wages. Foreigners in the AFU monthly receive military wages. It is the same for all military personnel of the same rank and position, regardless of citizenship. Military wages consist of basic and extra pay. Basic pay is the fundamental component of military wage, that directly depends on the foreigner's position. Extra pay depends on several components like: grade (rank), years of military service, scientific degree etc.

Basic and extra pay are components of monthly military wages guaranteed for foreigners in the AFU. Rules, procedures, and conditions of payment of military wages are regulated by the Procedure for the payment of military wages, approved by Order of the Minister of Defense of Ukraine № 260, 06 July 2018.



Monetary remuneration. Additionally, to military wages a foreigner in the AFU receives monetary remuneration during the deployment to the combat area and (or) performing combat duties. The amount of monetary remuneration depends on the area of deployment and combat duties performed by the service(wo)man, which is explained below in the table.

Amount and pay frequency	Payment conditions
<p>100,000 UAH per month (approx. 2,700 USD)</p>	<ul style="list-style-type: none"> • Conducting a combat mission on the front line; • Service(wo)men of Air, Artillery, Navy, and Anti-aircraft defense forces conducting combat operations regardless of the area; • Medical personnel operating in the combat area; • Demining in the combat area.
<p>50, 000 UAH per month (approx. 1,350 USD)</p>	<ul style="list-style-type: none"> • Conducting combat operations within the military command units, particularly in the headquarters of strategic, operational and tactical groups of forces, etc.
<p>30, 000 UAH per month (approx. 800 USD)</p>	<ul style="list-style-type: none"> • Conducting a combat mission outside the combat area; • Demining outside the combat area, etc.
<p>15,000 - 30,000 UAH per month (approx. 400 - 800 USD)</p>	<ul style="list-style-type: none"> • Conducting a combat mission outside the combat area; • Demining outside the combat area, etc.

Monetary remuneration is paid on a monthly basis during the period of a foreigner's deployment to the combat area and/or while performing combat duties.

If a foreigner was deployed or performing combat duties for less than a full month, the monetary remuneration is paid proportionally based on the number of days accomplished. Furthermore, monetary remuneration is continued to be paid during the following circumstances:

1. Inpatient treatment of an injury (concussion, trauma, or mutilation) incurred during combat operations.
2. Medical leave after serious injury (concussion, trauma, or mutilation), incurred during combat operations, approved by the conclusion of the military medical commission.
3. Period of being in captivity of the enemy (not paid to those who voluntarily surrendered).
4. Time of disappearance (for missing service(wo)man in action).

In case of a service(wo)man's death caused by an injury (concussion, trauma, or mutilation) incurred during a combat activity, family members are entitled to receive monetary remuneration for the full month in which the service(wo)man passed away.

The legal grounds of paying monetary remuneration are orders, issued by the authorized military commander. All military personnel (not only from the AFU, but from other defense institutions as well), who meet the mentioned above criteria, are paid monetary remuneration. Among them are the National Guard of Ukraine, the State Border Guard Service and other defense agencies.

Further detailed information on the amount of monetary remuneration depending on the performed combat duties could be found in the Resolution of the Cabinet of Ministers of Ukraine, N^o 168, 28 February 2022, "Issues of certain payments to military personnel, police officers and their families during martial law."



One-time monetary assistance. In case of the death or disability or loss of service capacity, a foreigner (or his/her family member in case of death) is granted a one-time monetary assistance.

Amount of assistance⁷	Payment conditions
15,000,000 UAH (approx. 400,000 USD)	In case of the death of a service(wo) man during deployment, performing combat duties
2,271,000 UAH (approx. 60,000 USD)	In case of the death of a service(wo) man during the performing service duties, particularly if death is caused by illness acquired during performing these duties
1, 514,000 UAH (approx. 40,000 USD)	In case of the death of a service(wo) man occurred during the period of service or as a result of illness or accident that occurred during the mentioned period.
<p>Beneficiaries: parents, one of the spouses who has not remarried and children under the age of 18.</p> <p>Instructions: relatives have to submit application documents confirming their identity, family relationship and relevant cause of death of a service(wo)man to the respective TRSSC.</p>	

⁷ The amount of the one-time monetary assistance varies depending on the level of the living and subsistence minimum. The amounts shown in this table are actual for 2024.

Amount of assistance	Payment conditions
	In case of a disability caused by injury (concussion, trauma, or mutilation) incurred during performing service duties, or as a result of an illness related to the performance of these duties, particularly:
1, 211,200 UAH (approx. 32,000 USD)	a disability of the 1st category (group)
908, 400 UAH (approx. 24,000 USD)	a disability of the IIrd category (group)
757, 000 UAH (approx. 20,000 USD)	a disability of the IIIrd category (group)
	In case of a disability occurred during the period of service or as a result of illness (disease) or accident that occurred during the mentioned period, particularly:
363, 360 UAH (approx. 9,500 USD)	a disability of the 1st category (group)

Amount of assistance	Payment conditions
272,520 UAH (approx. 7,100 USD)	a disability of the IIrd category (group)
211, 960 UAH (approx. 5,500 USD)	a disability of the IIIrd category (group)
<p>Reservation: service(wo)men may be assigned other amounts of one-time monetary assistance depending on the level of incapacity determined by the medical and social expert commission;</p> <p>Beneficiaries: servicemen themselves;</p> <p>Instructions: service(wo)men have to submit to the respective TRSSC or military detachment an application with a conclusion of the medical and social expert commission, which defines the category (group) of disability or the percentage of service incapacity and the conclusion of the military medical commission, which defines the nexus of an injury (concussion, trauma, or mutilation) or disease with military service.</p>	

Further detailed information on the amount of the **one-time monetary assistance**, procedures and requested documents could be found in the Procedure for assigning and payment of one-time monetary assistance in case of death, disability, or partial service incapacity of service(wo) men, conscripts, and reservists who are called up for training (special)



sessions or to serve in the military reserve, approved by the Resolution of the Cabinet of Ministers of Ukraine from 25 December 2013, № 975.

One-time monetary allowance. In case of discharging from the AFU, including due to own will, foreigners are paid a one-time monetary allowance. Its amount depends on the length of service. 50 percent of the monthly military wages for each full year of service is paid.

Monetary assistance for recovery. This assistance is paid for foreigners annually in the amount of a monthly military wage. Service(wo)men usually but not necessarily request it by submitting an application while taking an annual vacation.

Vacations and leaves

All foreigners in the AFU are granted a range of vacations and leaves to be taken due to several reasons. During martial law this range is quite limited in comparison to peacetime. Main types of vacations and leaves during martial law and short descriptions of them are provided below.

More information can be found in the Law of Ukraine “On social and legal protection of servicemen and their family members”



Annual vacation is granted for all foreigners in the AFU. During martial law its length is up to 30 calendar days per year. It can be taken during the calendar year in parts no longer than 15 calendar days each. Moreover, time necessary for traveling within Ukraine to the place of the vacation and back (no more than 2 days in one direction) is provided additionally to the length of each part of the annual vacation. Military wage is also paid during the annual vacation.

Family vacation is granted to all foreigners, who have specified by the law family circumstances or in other exceptional cases when their presence with family is necessary (severe health condition or death of close relatives, marriage, etc.). Its length is up to 10 calendar days. Time necessary for traveling within Ukraine to the place of the vacation and back (no more than 2 days in one direction) as well as military wages are also provided. Amount of family vacation per year is not limited and fully depends on the circumstances. They need to be proved by documents while submitting the application.

Medical leave is granted under the conclusion of the military medical commission due to illness or after injury (concussion, trauma, or mutilation) with the retention of military wage. The duration of such leave is determined by the nature of the illness or injury. After the treatment, foreigners undergo a medical examination by the military medical commission to determine further acceptance for military service.

Veteran status (participant in hostilities).

This status is granted to service(wo)men who participated in the combat operations within the AFU units. Veterans, whether active or former service(wo)men, are entitled to various social benefits outlined in the Law of Ukraine “On the Status of War Veterans and the Guarantees of Their Social Protection.” These benefits include priority-free dental prosthetics, free public transport, a 75 percent discount on payment for utility services , annual financial assistance, and others.

Material property and food provision

Foreigners in the AFU are provided with appropriate uniforms for all seasons, ammunition, and equipment necessary for performing everyday duties and combat activities. Concrete norms of material property provision are established by the Order of the Minister of Defense “On material provision of servicemen of the Armed Forces of Ukraine and the State Special Transport Service” from 29 April 2016, N° 232.

Additionally, military personnel receive three meals daily, in accordance with the norms outlined in the Resolution of the Cabinet of Ministers of Ukraine from 29 March 2002, N° 426, which regulates the nutrition standards for military personnel in the AFU and other military formations.



4. Basic International humanitarian law

COMMITMENT OF FOREIGNER

I, (first and last name), join the Armed Forces of Ukraine and undertake to defend Ukraine, its independence, and territorial integrity.

I will conscientiously and honestly perform military duties and the commanders' orders, strictly obey the Constitution and the laws of Ukraine, keep military secrecy, and during the execution of tasks and orders in conditions of martial law or deployment - act in accordance with generally recognized principles and provisions of international humanitarian law.

Statute of the Internal Service
of the Armed Forces of Ukraine

With this Commitment foreigners in the AFU are taking an obligation to know and strictly follow international humanitarian law (hereafter, IHL) provisions adopted by Ukraine. This Chapter contains basic IHL provisions that must be known and followed by foreigners during the combat activities. Additionally, the legal grounds for foreigners in the AFU to be treated as combatants, not mercenaries are highlighted below.

IHL is a branch of public international law that applies in the armed conflicts and aims to limit means and methods of warfare and protect civilians and those who have ceased to take part in hostilities (wounded and prisoners of war).

Set of IHL sources mandatory for Ukraine is quite broad. To make IHL more practical and sufficient for the AFU the Regulation on compliance with IHL in the Armed Forces of Ukraine, approved by the Ministry of Defence Order №164, 23 March 2017, was issued.



SERVICEMAN!

DURING THE DEPLOYMENT AND PERFORMING SPECIAL (COMBAT) TASKS

REMEMBER: HUMANITY RULES MUST BE FOLLOWED EVEN DURING THE ARMED CONFLICT AND EVEN TOWARDS ENEMY. THESE RULES ARE DEFINED BY THE INTERNATIONAL HUMANITARIAN LAW (MOSTLY IN GENEVA CONVENTIONS AND ADDITIONAL PROTOCOLS TO THEM).

PROTECTED PERSONS:

- Whenever the situation is suitable, collect all the wounded and sick people (including enemy) and take care of them.
- Never take hostages or use «human shields».
- Never torture or treat inhumanly, inflict body harm, mutilate, punish collectively or punish without a proper justice.

PROTECTED OBJECTS:

- Attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population is prohibited.
- Robbery of civilian property is prohibited.
- Causing widespread, long-term and severe damage to the natural environment is prohibited.

PROTECTION OF MEDICAL MISSIONS:

- Distinctive Emblem for the Red Cross must be respected in all circumstances. Any actions aimed to diminish their protective value and respect are prohibited. Medical facilities, personnel, equipment and medical vehicles must be respected and protected.

CONDUCT COMBAT ACTIVITIES:

- Civilians and civilian objects shall not be the object of attack.
- All possible measures must be taken to distinguish civilian persons and objects. In case of doubt, the person and object in question must be presumed to be protected against direct attack.
- Indiscriminate attacks are prohibited.
- Attacks, expected to cause incidental civilian casualties or damage civilian objects, must not be excessive in relation to the concrete and direct military advantage.
- Killing or injuring combatant (servicewoman of the armed forces of state participating in an armed conflict) who is under your control, unable to defend or who has clearly expressed his intention to surrender is prohibited.
- All possible precautions to protect civilians and civilian objects under your control must be taken.

VIOLATION ONE OF THE MENTIONED ABOVE RULES CAN BRING YOU TO DISCIPLINARY OR CRIMINAL RESPONSIBILITY.

IN CASE OF DOUBT OR QUESTIONS CONTACT THE LEGAL ADVISOR OF YOUR UNIT

IHL Soldier’s card is part of the mentioned Regulation. It is a practical tool to be held by every soldier in the AFU. IHL soldier’s card contains main requirements on conducting hostilities, protected persons and objects etc. All of them are based on the fundamental IHL principles, briefly described below.

IHL fundamental principles are:

- humanity;
- military necessity;
- distinction;
- proportionality;
- precautions (limitation).

The principle of humanity is on respecting and ensuring that the persons taking no active part in hostilities (civilians, hors de combat⁸ (members of armed forces who have laid down their arms and do not participate in hostilities because of sickness, wounds, detention, or any other cause) shall in all

8 The term literally means “out of combat” and describes a soldier who cannot fight due to being sick, wounded, captured or incapacitated.

circumstances be treated humanely, without any adverse distinction founded on race, religion or faith, sex, birth or wealth, or any other similar criteria.

The principle of military necessity permits to take measures that are actually necessary to accomplish a legitimate military mission and are not otherwise prohibited under IHL. The legitimate military purpose is achieved or partial submission of the enemy is executed at the earliest possible moment with the minimum expenditure of life and resources. Measures that are prohibited under IHL include prohibited means (poison or poisoned weapons, chemical weapons, expanding small arms ammunition, anti-personnel landmines etc.) and methods (perfidy, human shields, military order to kill everyone etc.).

The principle of distinction implies making a clear distinction between civilians and combatants as well as between civilian objects and military objectives during the planning and conducting military operations. Generally, civilians and civilian objects are protected under IHL and only combatants and military objectives could be attacked.

Combatants are members of the armed forces of the party to the conflict, except medical and religious personnel, who may take a direct part in hostilities, i.e. participate in the use of a weapon or a weapon-system in an indispensable function.

Civilians are persons who are not combatants. Civilians enjoy the protection (they cannot be a legitimate target), unless and for such a time as they take a direct part in hostilities. In case of doubt as to whether a person is a civilian, s/he is considered a civilian.

Military objectives are objects, that are by:

- the nature, the place, the purpose, or the use effectively contribute to military action and
- whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Civilian objects are all objects which are not military objectives.

Civilian objects shall not be the object of attack or of reprisals, unless they are used for military purposes and fulfill the military objectives criteria.

The principle of distinction also can be explained through the following rules:

- Combatants must distinguish themselves from civilians;
- Utilizing the presence of a civilian or other protected person to render certain points, areas, or military forces immune from military operations is prohibited;
- Civilian population and civilian and protected objects may not be intentionally targeted;
- Only military objectives can be the object of an attack;
- Indiscriminate attacks are prohibited.

Indiscriminate attacks are: a) those which are not directed at a specific military objective; b) those which employ a method or means of combat which cannot be directed at a specific military objective; or c) those which employ a method or means of combat the effects of which cannot be limited as required by IHL; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction⁹.

The principle of proportionality implies that collateral civilian damage (civilian casualties and destructions of civil objects) arising from military operations must not be excessive in relation to the direct and concrete military advantage anticipated from such operations.

The principle of precautions (limitation) implies that in attack all feasible precautions must be taken to avoid (and in any event to minimize) incidental loss of civilian life, injury to civilians and damage to civilian objects. Precautions consists of the following:

- do everything feasible to verify the target as a military objective;
- do not attack if in doubt that a civilian object is used by the military;

9 Article 51 of the Additional Protocol I “Protection of the civilian population”.

- among several military objectives of equal advantage, choose the least dangerous to civilians and civilian objects.

All mentioned above IHL fundamental principles are applied jointly within the existing information on operational awareness.

Foreigners are not mercenaries. They are combatants.

IHL defines that persons who are members of the armed forces of the party to the conflict, except medical and religious personnel, are combatants. The armed forces consist of all organized armed forces, groups, and units under the command of a person responsible to that party for the conduct of his subordinates¹⁰. Thus, foreigners officially enlisted into the AFU units are combatants. The status of a combatant has an important practical significance. The combatants have a right to take a direct part in hostilities, i.e. participate in the use of a weapon or a weapon-system in an indispensable function. Therefore, combatants cannot be prosecuted and convicted for such participation by the opposing party. In addition, if s/he falls into the power of an adverse party, s/he is entitled to the status of a prisoner of war. From that moment, the combatant is under the IHL's protection, particularly by the Geneva Convention for the Protection of Prisoners of War of 1949.

All accusations of committing mercenary activities have no legal basis. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries defines 5 criteria a person must jointly fulfill to have a mercenary status. Foreigners in the AFU do not fulfill at least 3 of them.

Firstly, foreigners in the AFU do not meet the criteria that person must not be a member of the armed forces of a Party to the conflict. As mentioned before, foreigners have been serving in different AFU detachments, including the International Legion, since 2016. They are the members of

¹⁰ Article 43 of the Additional Protocol I "Armed forces".

the AFU, as defined by the laws and regulations of Ukraine. According to Ukrainian legislation, the legal status of the member of the UAF is the same for foreigners and citizens of Ukraine. From the international law perspective, this is already enough to prove that all Russian accusations that foreigners are mercenaries are wrong.

Secondly, foreigners in the AFU do not meet the criteria that a person must be specially recruited locally or abroad in order to fight in an armed conflict. Foreigners in the AFU are not specially recruited to fight. Foreigners in the AFU perform their military duties during both peace and war time. Just like a Ukrainian soldier, foreigners perform duties not only by fighting in the armed conflict. Moreover, enlistment in the UAF is completely voluntary. No one is forced or recruited.

Thirdly, foreigners in the AFU do not meet the criteria that a person must take a direct part in the hostilities and be essentially motivated by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party. Foreigners in the AFU take part in hostilities of Russia-Ukraine armed conflict on the same grounds and legal basis as other UAF members. Different aspects of their direct participation (tasks, time, objectives etc.) are designated by the commander of the AFU unit executing each operational task. Operational tasks for units are formed by the military leadership within the general strategy. Also, no national authority or officials of Ukraine ever promised material compensation substantially in excess of that promised or paid to Ukrainian citizens. **Foreigners in the AFU receive the same salary and other financial benefits as citizens of Ukraine in the same position, level, and rank.**

Therefore, foreigners in the AFU are not mercenaries because they do not fit at least 3 mercenary criteria.

Violations of IHL and accountability

Political and military leadership of the AFU does not support or tolerate IHL violations, even committed against enemy soldiers. Therefore, in case of committing IHL violations, foreigners can be held to disciplinary or criminal accountability. Type of accountability directly depends on the seriousness of the IHL violation.

The most serious IHL violations (grave breaches) are war crimes. War crimes constitute one of the types of international crimes. There are no time or territorial limitations on criminal prosecution of war crimes. Amnesty is not applied to war criminals as well. Therefore, war criminals could be held accountable by any State (universal jurisdiction) or by International Criminal Court and anytime (even after decades of committing the war crime).

Among the most serious IHL violations are:

- willful killing;
- torture or inhuman treatment;
- willfully causing great suffering, or serious injury to body or health;
- extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence
- etc.

Criminal responsibility for committing war crimes on the territory of Ukraine is established by Article 438 of the Criminal Code of Ukraine. It is applicable to any person who violates IHL, regardless of nationality and affiliation to the party of the Russian-Ukrainian armed conflict.

Criminal Code of Ukraine

Article 438. Violation of rules of the warfare

1. Cruel treatment of prisoners of war or civilians, deportation of civilian population to engage them in forced labour, pillage of national treasures on occupied territories, use of methods of the warfare prohibited by international instruments, or any other violations of rules of the warfare stipulated by international treaties, ratified by the Verkhovna Rada of Ukraine, and also issuing an order to commit any such actions

- shall be punishable by imprisonment for a term of eight to twelve years.

2. The same actions, where they are accompanied with premeditated murder

- shall be punishable by imprisonment for a term of ten to fifteen years or life imprisonment.

Moreover, by committing war crimes, not only a war criminal, but his/her commanders could be held to accountability, if they fail to prevent or respond to it.

5. International Red Cross and Red Crescent Movement. Protection and usage of the Red Cross emblem

The International Red Cross and Red Crescent Movement (hereinafter, the Movement) is a global humanitarian network of 80 million people that helps those facing disaster, conflict and health and social problems. It consists of three separate components:

1) the International Committee of the Red Cross (ICRC)

ICRC is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance.



2) the International Federation of Red Cross and Red Crescent (IFRC)

IFRC is an international membership organization that unites 191 Red Cross and Red Crescent Societies. The mission of the IFRC is to inspire, encourage, facilitate and promote at all times all forms of humanitarian activities by National Societies. Its secretariat supports local Red Cross and Red Crescent action in member states.



3) the National Societies of the Red Cross and Red Crescent (191 National Societies)

NS are the country-based national humanitarian organizations, who acts as the auxiliary body for the State



complementing and assisting in the humanitarian action on the national level. NS are separate and independent organizations that act under the framework of the Movement and abide by the Red Cross Movement principles.

The Ukrainian Red Cross Society (URCS)

An independent national humanitarian organization which acts as an auxiliary institution for the government of Ukraine and complements State efforts in humanitarian action, medical and emergency response and IHL development and dissemination on a national level and cooperate to that end with executive and legislative bodies, including Ministry of Defense, Ministry of Reintegration of the Temporary Occupied Territories of Ukraine, Ministry of Health of Ukraine, Ministry of Justice, Ministry of Internal Affairs, Ministry of Foreign Affairs etc.

Mission and Principles of the Movement

Mission is to prevent and alleviate human suffering wherever it may be found, to protect life and health and ensure respect for the human being, in particular in times of armed conflict and other emergencies, to work for the prevention of disease and for the promotion of health and social welfare, to encourage voluntary service and a constant readiness to give help by the members of the Movement, and a universal sense of solidarity towards all those in need of its protection and assistance.

Fundamental Principles are:

- humanity - to prevent and alleviate human suffering wherever it may be found, to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples;
- impartiality - to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress regardless their nationality, race, religious beliefs, class or political opinions;
- neutrality - to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at

any time in controversies of a political, racial, religious or ideological nature;

- independence - to maintain autonomy so to be able at all times to act in accordance with the principles of the Movement;
- voluntary service - it is a voluntary relief movement not prompted in any manner by desire for gain;
- unity - there is only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory;
- universality - there are equal status and equal responsibilities within the Movement, in which all Societies have and fulfil duties in helping each other, is worldwide.

Protection and usage of the Red Cross emblem

The Red Cross emblem is a global universal sign of protection granted under IHL of:

- medical service of Armed Forces, its personnel and facilities;
- military chaplains;
- medical institutions, vehicles and personnel of the National Society of Red Cross designated to provide help during the armed conflict;
- civilian medical institutions, vehicles and personnel during armed conflict (if the utilization of emblem is approved by Authorities).



Functions of the Red Cross (according to IHL):

Protective	Distinctive
<p>To protect those who has to be protected under IHL:</p> <p><u>people</u> - individuals mentioned above should wear the white armlet with the Red Cross to demonstrate the protection. The armlet must be accompanied by the personal ID authorization with the photo of person and indication of the issuing body</p> <p><u>facilities</u> - should be marked with the large-sized Red Cross on the roof so it evidently says about its protected status. It is conventional to use white flags with Red Cross as an indicator of protection</p> <p><u>vehicles</u> - should be marked by an emblem on every side and a rood of the vehicle in a large size, so it could be evident from every angle of view that the vehicle is used by the medical service and is protected.</p>	<p>To distinguish, particularly in logos of the National Societies, ICRC and IFRC.</p> <p>General rules are:</p> <ol style="list-style-type: none"> 1. It should not be used in forms that can possibly misguide about its function. This basically means that it should be used in small sizes and not in the forbidden ways. 2. It could not be displayed in distinctive capacity on roofs of buildings and on the armlets. 3. The Red Cross emblem should go along with the word indication of the Movement Component it refers affiliation to.

It is the duty of the state authorities to manage and control the use of the Red Cross emblem.

ANNEX 1

MINISTRY OF DEFENCE OF UKRAINE

CONTRACT

**of foreigners and stateless persons in the Armed Forces
of Ukraine appointed to the privates,
and non-commissioned officers' positions**

Ministry of Defence of Ukraine represented by the
Commander of military unit _____
on one side, and foreigner, person without citizenship

surname, name, and patronymic name, date, month, year
of birth,

ID number, military rank

military position*

personal number if applicable, place of residence

passport number, date, and place of issue

on the other side,

Being under protection of the State and having rights
and freedoms secured by the Constitution of Ukraine, in
accordance with the Law of Ukraine "On Military Duty and
Military service" and with the Regulation on Military Service
of foreigners and stateless persons in the armed Forces of
Ukraine, entered into this Contract on the following:

1. Foreigner, person without citizenship

name, surname, and patronymic name

has read and understood the laws and other legal acts of Ukraine regulating the military service, and voluntarily undertakes:

- to serve in the Armed Forces of Ukraine during the term of the Contract and in accordance with requirement defined by the legislation regulating the military service, and by this Contract;
- to strictly comply with the Constitution of Ukraine and the laws of Ukraine, faithfully and honestly carry out duties of the military service;
- to cherish the Military Glory of the Armed Forces of Ukraine, the Honor and Dignity of a Servicemen of the armed forces of Ukraine;
- to know and conscientiously perform assigned duties during the term of the Contract and special duties defined by the Statutes of the Armed Forces of Ukraine;
- to skillfully handle entrusted equipment (weapons) and command subordinates, constantly raise the level of military professional knowledge, improve his/her proficiency and skills, achieve positive results in combat and physical training;
- not to disclose restricted information obtained in the course of service duties;
- to know and strictly adhere to the norms of international humanitarian law adopted by Ukraine;
- to provide information about himself and his/her family members needed for military service and social protection.

2. The Ministry of Defence of Ukraine undertakes to provide a serviceman – foreigner or person without citizenship:

name, surname, and patronymic name

with:

- compliance with his/her personal rights and freedoms and the rights of his/her family members, including benefits, guarantees and compensations established by the legislation of Ukraine;
- appointments to military positions in accordance with his/her education, military specialty, and assignments of military ranks, promotions taking into consideration professional and moral duties;
- training in military training units of higher-level education institutions, respective retraining and advanced training;
- granting him/her the right to health protection and medical care in medical institutions of the Ministry of Defence of Ukraine;
- ensuring the established time of service except for the period of military exercises, ship's sailing, live-firing exercises, combat duties, service in the daily duties;
- free movement on the territory of Ukraine at weekends, public holidays and non-working days except for the period of military exercises, ship's sailing, live-firing exercises, combat duties, service in the daily duties;
- rest for the service on weekends, holidays and non-working days;
- adequate material compensation during military service;
- nutrition according to established norms for privates, and non-commissioned officers during military exercises, combat duties, service in the daily duties;
- financial entry aid for him/her and each his/her family

member moving with him/her to a new place of military service, subject to registration;

- payment of allowance including long-service, qualification, sport and honor titles and other bonuses and rewards;
- other social benefits to him/her and his/her family member determined by law.

3. This Contract is fixed-term and is concluded in accordance with the terms established by law upon agreement of both Parties, for _____ years.

4. The Parties will notify each other no later than three months before the expiration date of the Contract on the willingness or unwillingness to enter into a new Contract or refusal to do so indicating the reasons as provided by law.

5. The Contract is concluded in two copies, one to be kept in a personal record of the serviceman at the military installation, second to be kept by a serviceman.

6. To resolve issues not covered by this Contract the Parties will be guided by provisions of law and other legislative regulations.

7. In case of violation of conditions of this Contract the Parties will bear responsibility established by law.

8. Other terms of The Contract

In addition to the clause 3, the Contract can be terminated before its expiration:

- by agreement of the Parties in writing;
- at the initiative of the Ministry of Defence of Ukraine in case of violation of this Contract by a foreigner or a person without citizenship;
- at the initiative of a foreigner or a person without citizenship.

In the case of the Contract can be terminated before its expiration "By written agreement of the parties" or "at the

initiative of a foreigner or a person without citizenship”, the property, is received during service, but the term of which has not expired, is returned to the military unit or its value is reimbursed.

Personal signature, surname and initials of the foreigner, person without citizenship

_____ 2024

9. The terms of the Contract may be amended or supplemented only with consent of the Parties in written form.

10. Signatures of Parties:

Personal signature, surname and initials of the foreigner, person without citizenship

_____ 2024

Commander of the military unit

_____ 2024

11. The Contract enters into force from _____ 2024.

12. The Contract is terminated from _____ 2024 due to _____

Reasons for termination of Contract, date of exclusion from the lists of personnel, order N° _____

Position, military unit, military rank, personal signature, surname and initials of Commander (Chief)

_____ 2024

