

4 ALBERT EMBANKMENT
LONDRES SE1 7SR

Teléfono: +44(0)20 7735 7611

Facsímil: +44(0)20 7587 3210

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A: Todos los Miembros de la OMI
Naciones Unidas y organismos especializados
Organizaciones intergubernamentales
Organizaciones no gubernamentales con carácter consultivo

Asunto: **Crisis de Ucrania - Posición del ACNUR sobre los retornos a Ucrania**

1 La crisis de Ucrania ha afectado gravemente al funcionamiento del transporte marítimo y a las condiciones de trabajo en el sector marítimo mundial, lo que ha provocado una crisis humanitaria y de seguridad.

2 El ACNUR ha publicado la "Posición sobre los retornos a Ucrania" que figura en el anexo. Observando que la situación en Ucrania es inestable y puede seguir siendo incierta durante algún tiempo, el ACNUR pide a los Estados que suspendan el retorno forzoso de nacionales y antiguos residentes habituales de Ucrania. La recomendación de no retorno contenida en la posición se mantendrá hasta que la situación de seguridad en Ucrania haya mejorado significativamente.

3 El Secretario General invita a todas las Partes a que consideren y apliquen, según proceda, las orientaciones adjuntas, habida cuenta de su importancia para los desplazamientos de la gente de mar ucraniana.



POSITION ON RETURNS TO UKRAINE

UNHCR POSITION ON RETURNS TO UKRAINE

March 2022

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Introduction

1. On 21 February 2022, after several months of military build-up on the Ukrainian border, the Russian Federation recognized the self-proclaimed Donetsk People's Republic and Luhansk People's Republic and ordered troops into these two regions.¹ The Russian Federation announced a 'special military operation' against Ukraine on 24 February 2022, and the Russian military began operations across the country.² As at 2 March 2022, Ukrainian troops defended the cities of Kyiv and Kharkiv from attacks, with civilians hiding in metro stations and bomb shelters to avoid frequent shelling.³ The Ukrainian government has issued a decree for the general mobilization of adult males,⁴ and men aged 18 to 60 have reportedly been prevented from leaving the country.⁵
2. Various actors have expressed concern that the conflict could lead to a deteriorating human rights situation and could cause loss of civilian life.⁶ In response to the conflict, the European Union (EU), the United States and others imposed sanctions against the Russian Federation, causing a drop in the value of the Russian Rouble.⁷ Ukraine and the Russian Federation held talks on 28 February 2022 at the Belarus border.⁸
3. Prior to the escalation of the conflict, Ukraine was already in the midst of a "protracted humanitarian crisis", with an estimated 2.9 million persons in need of humanitarian assistance mostly in the eastern oblasts.⁹ Additionally, there were almost 1.5 million internally displaced persons (IDPs) registered in Ukraine.¹⁰ The country also hosts refugees and asylum-seekers from Afghanistan, Syria, the Russian Federation, Somalia, Iraq, Iran, Belarus and other countries.¹¹ According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), the conflict "threatens to trigger a humanitarian catastrophe in Ukraine and also in neighbouring countries that are already seeing a massive influx of people fleeing hostilities."¹²
4. By 27 February 2022, an estimated 352 civilians had been killed, including 14 children, and another 1,684 had been injured.¹³ An estimated 874,026 persons had fled the country as at 1 March 2022, with the flow continuing at a rapid pace.¹⁴ The line of cars waiting to cross at the Medyka border crossing with Poland on 27 February 2022 was over 20 miles long; 45,200 persons arrived in Poland in just 15 hours.¹⁵ Neighbouring countries—including Hungary, Moldova, Poland, Romania and Slovakia—had begun to receive Ukrainians fleeing the conflict as at 27 February 2022, and were preparing for large numbers of arrivals; by 1 March 2022, Poland had received 453,982 arrivals, Romania had received 44,540, an estimated 116,348 persons had crossed into Hungary, 67,000 to Slovakia and another 79,315 into Moldova.¹⁶

Access to the Territory and International Protection

5. As the situation in Ukraine remains fluid and uncertain, UNHCR acknowledges the positive stance of several countries on access to asylum and calls on all countries to allow civilians of all nationalities fleeing Ukraine non-discriminatory access to their territories and to ensure respect for the principle of non-refoulement at all times.
6. Temporary protection under the EU Temporary Protection Directive may be one way to ensure protection coherence and the harmonisation of State responses in the EU and to provide immediate protection from refoulement and basic standards of treatment.¹⁷ UNHCR is aware of and welcomes discussions in this regard.
7. All claims of nationals and former habitual residents of Ukraine seeking international protection should be processed in fair and efficient procedures in accordance with international and regional refugee law. UNHCR is concerned that recent developments in Ukraine are giving rise to an increase in international protection needs for people fleeing Ukraine, whether as refugees under the 1951 Convention or regional refugee instruments, or as beneficiaries of other forms of international protection.¹⁸
8. In view of the volatility of the situation in the entire territory of Ukraine, UNHCR does not consider it appropriate to deny international protection to Ukrainians and former habitual residents of Ukraine on the basis of an internal flight or relocation alternative.
9. For individuals whose claim had been rejected prior to recent events, the current situation in Ukraine may give rise to changed circumstances, which need to be considered if a new asylum claim is submitted.
10. There may be individuals who have been associated with acts that bring them within the scope of the exclusion clauses contained in Article 1F of the 1951 Convention.¹⁹ In such cases, it will be necessary to examine carefully any issues of individual responsibility for crimes which may give rise to exclusion from international refugee protection. In addition, to preserve the civilian character of asylum, States would need to assess the situation of arrivals carefully so as to identify armed elements and separate them from the civilian refugee population.²⁰

Sur Place claims by Nationals and Habitual Residents of Ukraine

11. Many Ukrainians (or former habitual residents of Ukraine) residing in other countries currently benefit from legal statuses, related to, for example, studies or work, granted before the escalation of the conflict. UNHCR recommends, where possible and appropriate, to extend existing legal statuses for as long as necessary. Persons benefiting from such arrangements should not be prevented from applying for asylum.

Designation of Ukraine as Safe Country of Origin

12. In the current circumstances, UNHCR does not consider Ukraine a “safe country of origin”. States should remove Ukraine from “safe country of origin” lists. UNHCR accordingly calls on governments not to apply accelerated procedures with reduced procedural safeguards (including non-suspensive appeals) to applications for international protection by Ukrainian nationals or habitual residents of Ukraine; and not to subject these persons to different reception conditions than other applicants for international protection.

Refugees and Asylum-Seekers (Other Nationalities)

13. People of nationalities other than Ukrainian may also choose, or be compelled, to leave Ukraine as a result of developments related to the conflict, and should be allowed to do so. Some of these persons may have been recognized as refugees, granted complementary protection or registered as asylum-seekers in Ukraine. Afghan and Syrian nationals are among the largest groups of asylum-seekers and

refugees in Ukraine, along with nationals of the Russian Federation and other countries. Ukraine has been and remains a country hosting refugees and people otherwise in need of international protection. If travelling onwards in search of safety, these persons should be referred to national asylum procedures for consideration of their applications for international protection. In addition, there may be foreign-nationals or stateless persons who resided in Ukraine and who had not (yet) applied for international protection in Ukraine before they were compelled to leave the country due to the current circumstances. UNHCR recommends that these persons be referred to the national asylum procedure in the country where they seek international protection.

Non-Return Advisory

14. As the situation in Ukraine is volatile and may remain uncertain for some time to come, UNHCR calls on States to suspend the forcible return of nationals and former habitual residents of Ukraine, including those who have had their asylum claims rejected. The bar on forcible return serves as a minimum standard and needs to remain in place until such time as the security situation in Ukraine has significantly improved to permit a safe and dignified return of those determined not to be in need of international protection.
15. UNHCR will continue to monitor the situation in Ukraine with a view to assessing the international protection needs arising out of the current situation.

¹ Jamestown Foundation, *Russia Recognizes Donetsk, Luhansk Satrapies as 'Independent States'*, 22 February 2022, www.ecoi.net/en/document/2068374.html; BBC, *Ukraine Crisis: Russia Orders Troops into Rebel-Held Regions*, 21 February 2022, www.bbc.com/news/world-europe-60468237; Deutsche Welle (DW), *Russia Recognizes Independence of Ukraine Separatist Regions*, 21 February 2022, www.dw.com/en/russia-recognizes-independence-of-ukraine-separatist-regions/a-60861963.

² Time, *Here's What We Know So Far About Russia's Assault on Ukraine*, 24 February 2022, <https://time.com/6150708/russia-ukraine-invasion-war/>; Aljazeera, *Timeline: Putin Attacks Ukraine – How It Happened*, 24 February 2022, www.aljazeera.com/news/2022/2/24/timeline-putin-attacks-ukraine-how-it-happened.

³ Aljazeera, *Many Deaths as Russia Intensifies Bombardment of Ukraine Cities*, 2 March 2022, www.aljazeera.com/news/2022/3/2/more-deaths-as-russia-intensifies-bombing-of-ukraine-cities; CNN, *Russia Bombs Residential Area of Kharkiv and Intensifies Kyiv Assault as Talks with Ukraine End*, 1 March 2022, <https://edition.cnn.com/2022/02/28/europe/ukraine-russia-invasion-monday-intl-hnk/index.html>; The Guardian, *Russia Launches Multiple Rocket Attacks in Kharkiv and Renews Kyiv Assault*, 28 February 2022, www.theguardian.com/world/2022/feb/28/russian-rocket-strikes-kill-dozens-in-kharkiv-as-ukraine-russia-talks-begin.

⁴ The decree, issued on 24 February 2022, calls for the general mobilization to be carried out in the following territories: Vinnytsia, Volyn, Dnipropetrovsk, Donetsk, Zhytomyr, Zakarpattia, Zaporizhia, Ivano-Frankivsk, Kyiv, Kirovohrad, Luhansk, Lviv, Mykolaiv, Odessa, Poltava, Rivne, Sumy, Ternopil, Kharkiv, Kherson, Kherson Cherkasy, Chernivtsi, Chernihiv regions, the city of Kiev. Information available to UNHCR, 28 February 2022. See also, Reuters, *Ukrainian President Signs Decree on General Mobilisation of Population -Interfax*, 24 February 2022, www.reuters.com/world/europe/ukrainian-president-signs-decree-general-mobilisation-population-interfax-2022-02-24/; DW, *Ukraine President Orders General Mobilization*, 24 February 2022, www.dw.com/en/ukraine-president-orders-general-mobilization/a-60908996.

⁵ Aljazeera, *'We Are Going to Defend Ourselves': Ukrainians Join War Front*, 27 February 2022, www.aljazeera.com/news/2022/2/27/we-are-going-to-defend-ourselves-ukrainians-join-war-front; The Intercept, *In Ukraine's West, Conscripts of all Ages Head to Battle, Expressing Outrage at Putin's Invasion*, 26 February 2022, <https://theintercept.com/2022/02/26/ukraine-russia-invasion-conscription/>; The Independent, *Ukraine Tells Citizens to Make Molotov Cocktails to Fight Russia and Lifts Age Limits on Army Recruitment*, 25 February 2022, www.independent.co.uk/news/world/europe/russia-ukraine-army-age-lifted-b2023117.html; Channel News Asia, *Guards Fire Shots as Ukrainians Try to Cram onto Evacuation Trains*, 25 February 2022, www.channelnewsasia.com/world/ukraine-russia-invasion-evacuation-train-shots-fired-2520346; Hungary Today, *Masses of Ukrainian Refugees Cross the Hungarian Border on Foot*, 25 February 2022, <https://hungarytoday.hu/ukrainian-war-refugees-hungarian-border-ethnic-hungarians/>. There are reports of people with nationalities other than Ukrainian, including foreign students, who have also been prevented from leaving Ukraine. BBC, *Ukraine Conflict: Nigerian Outrage at Treatment of Students at Poland Border*, 28 February 2022, www.bbc.com/news/world-africa-60555650; Business Insider, *African Students Fleeing the Russian Invasion Say They Have Been Prevented from Crossing to Poland Due to a 'Ukrainians' First' Policy*, 27 February 2022, www.businessinsider.com/african-students-ukrainians-first-policy-preventing-them-leaving-war-zone-2022-2.

⁶ See, for example, Amnesty International, *Soaring Concern for Human Rights and Human Lives as Russia Invades Ukraine*, 24 February 2022, www.amnesty.org/en/latest/news/2022/02/soaring-concern-for-human-rights-and-human-lives-as-russia-invades-ukraine/; Office of the High Commissioner for Human Rights (OHCHR), *UN Human Rights Chief Urges an Immediate*

- Halt to the Russian Federation's Military Action Against Ukraine, 24 February 2022, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28153&LangID=E; Human Rights Watch (HRW), *Russia, Ukraine & International Law: On Occupation, Armed Conflict and Human Rights*, 23 February 2022, www.hrw.org/news/2022/02/23/russia-ukraine-international-law-occupation-armed-conflict-and-human-rights.
- 7 The Guardian, *Ukraine War: Sanctions-Hit Russian Rouble Crashes as Zelenskiy Speaks of 'Crucial' 24 Hours*, 28 February 2022, www.theguardian.com/world/2022/feb/28/ukraine-war-sanctions-hit-russian-rouble-crashes-as-zelenskiy-speaks-of-crucial-24-hours; Reuters, *Russia's Isolation Deepens as Ukraine Resists Invasion*, 28 February 2022, www.reuters.com/world/europe/russias-isolation-deepens-ukraine-resists-invasion-2022-02-28/.
- 8 The Independent, *Ukraine-Russia News Live: Stage Set for Belarus Peace Talks After Putin Puts Nuclear Forces on High Alert*, 28 February 2022, www.independent.co.uk/news/world/europe/russia-ukraine-latest-putin-kyiv-zelensky-war-update-b2024651.html. No cease-fire agreement was reached, the parties agreed to schedule a second round of talks. Voice of America (VOA), *Ukraine, Russia Prep for 2nd Round of Talks as Kyiv Demands Cease-Fire*, 28 February 2022, www.voanews.com/a/russia-faces-diplomatic-economic-pressure-as-ukraine-resists-invasion-/6462659.html.
- 9 UN Office for the Coordination of Humanitarian Affairs (OCHA), *2022 Humanitarian Needs and Response Overview: Ukraine*, 30 November 2021, www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_hno_hrp-en.pdf, pp. 2, 4.
- 10 OCHA, *Ukraine: Situation Report*, 22 October 2021, <https://reports.unocha.org/en/country/ukraine/card/2bMBM0ECTo/>. Given the fast evolving nature of the situation, this and other statistics may have changed and should not be relied upon to reflect current numbers. See, for example, BBC, *Ukraine Crisis: How Many Refugees and Where Might They Go?*, 2 March 2022, www.bbc.com/news/world-60555472.
- 11 UNHCR, *Ukraine: Thematic Update*, 27 May 2021, www.unhcr.org/ua/wp-content/uploads/sites/38/2021/03/2021-03-UNHCR-UKRAINE-Refugee-and-Asylum-Seekers-Update_FINAL-1.pdf, pp. 1-2. See also, UNHCR, *Ukraine: Refugees and Asylum-Seekers*, accessed 25 February 2022, www.unhcr.org/ua/en/refugees-asylum-seekers.
- 12 OCHA, *Ukraine: Humanitarian Impact Situation Report*, 27 February 2022, <https://reliefweb.int/sites/reliefweb.int/files/resources/Ukraine%20Situation%20Report%2027Feb2022.pdf>, p. 2. "The current situation is exacerbating an already dire humanitarian situation in the Donbas region and generating new multisectoral needs across the country." OCHA, *Ukraine: Humanitarian Impact Situation Report*, 26 February 2022, https://reliefweb.int/sites/reliefweb.int/files/resources/2022-02-26_Ukraine_Situation%20Report%20%231.pdf, p. 2.
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- 14 This data will continue to be updated and made available at the UNHCR data portal: UNHCR, *Operational Data Portal: Ukraine Refugee Situation*, accessed 2 March 2022, <http://data2.unhcr.org/en/situations/ukraine>.
- 15 Washington Post, *Miles-Long Lines, the Kindness of Strangers, an Uncertain Future: Scenes from the Ukraine-Poland Border*, 27 February 2022, www.washingtonpost.com/world/2022/02/27/ukraine-russia-refugees-poland/; Tweet from UNHCR, 27 February 2022, https://twitter.com/RefugeesMedia/status/1497866275317587971?s=20&t=MzY_axbz7LkgOBcSYC-bFw.
- 16 UNHCR, *Operational Data Portal: Ukraine Refugee Situation*, accessed 2 March 2022, <http://data2.unhcr.org/en/situations/ukraine>. See also, BBC, *Ukraine Crisis: How Many Refugees and Where Might They Go?*, 2 March 2022, www.bbc.com/news/world-60555472; UNHCR, *UNHCR Mobilizing to Aid Forcibly Displaced in Ukraine and Neighbouring Countries*, 1 March 2022, www.unhcr.org/news/briefing/2022/3/621deda74/unhcr-mobilizing-aid-forcibly-displaced-ukraine-neighbouring-countries.html; Reuters, *Around 350,000 Refugees Have Entered Poland from Ukraine, Says Deputy Minister*, 1 March 2022, www.reuters.com/world/europe/around-350000-refugees-have-entered-poland-ukraine-says-deputy-minister-2022-03-01/.
- 17 European Union, *Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving such Persons and Bearing the Consequences Thereof*, 7 August 2001, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>.
- 18 Applicable frameworks include that of the 1951 Refugee Convention and its 1967 Protocol; the EU Qualification Directive [European Union, *Directive 2011/95/EU of the European Parliament and of the Council on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (recast)* ("Qualification Directive"), 13 December 2011, www.refworld.org/docid/4f06fa5e2.html]; or other applicable regional frameworks, including the 1969 OAU Convention and the Cartagena Declaration [Cartagena Declaration on Refugees, *Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, www.refworld.org/docid/3ae6b36ec.html].
- 19 UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees*, 4 September 2003, CR/GIP/03/05, www.unhcr.org/refworld/docid/3f5857684.html.
- 20 See UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, www.refworld.org/docid/452b9bca2.html.

