

Elections, Continuity, and Legitimacy

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Ukraine's Constitutional Order in Wartime

Ukraine's constitutional order is facing an unprecedented challenge due to Russia's ongoing aggression. The war has forced the nation to navigate a delicate balance between maintaining democratic governance and ensuring national survival, all while operating under martial law. The looming expiration of presidential and parliamentary terms has sparked debates on constitutional continuity, the legitimacy of wartime governance, electoral feasibility, and the future of Ukraine's democratic system once the war ends (see [here](#) and [here](#) on Ukraine's parliamentary elections during wartime). Amid these challenges, Ukraine's constitutional framework ensures governance continuity despite suspended elections. This article argues that while wartime elections are neither feasible nor constitutionally required, legitimacy is upheld through constitutional provisions, political consensus, and international recognition. Historical precedents show that democratic states have only held wartime elections when security allowed – unlike in Ukraine now. Understanding these principles is crucial to countering external misinformation and reinforcing Ukraine's democratic resilience in times of war.

The topic of the next elections again emerged in public debates outside Ukraine. Keith Kellogg, Trump's special representative for Ukraine and Russia, said in an [interview](#) that the United States would like to see elections in Ukraine, possibly by the end of the year, following a potential cease-fire agreement: "Most democratic nations have elections in their time of war. I think it is important they do so."

These and other statements have been made against the background of Russia's [allegations](#) of President Zelenskyy's "illegitimacy" and its [propaganda attack](#) aiming to sow discontent and instigate a power struggle in Ukraine.

While some wartime elections have occurred historically, they were held only when hostilities did not disrupt the entire state and security allowed proper electoral processes. In contrast, Ukraine faces an existential war, with active combat across much of its territory, mass displacement, and a direct threat to its survival.

This article explores three critical aspects of Ukraine's constitutional order during war: the constitutional framework for elections during wartime; the principle of constitutional continuity; and the legitimacy of wartime government.

Elections during war: constitutional provisions and feasibility

As discussed [elsewhere](#), the prohibition of wartime elections is established in Ukraine's statutory law. Ukraine's Constitution does not explicitly address the issue of wartime elections, except for Article 83(4) that provides for the extension of the Parliament's powers until the day of the first meeting of the first session of the Verkhovna Rada of Ukraine (the Ukrainian Parliament), elected after the termination of martial law or state of emergency. Nothing similar is made with respect to the president. According to one of the [drafters](#) of the Constitution, this special treatment of Parliament was originally aimed to enhance Parliament's standing in the constellation of powers and prevent possible abuses during wartime or national emergency.

Law of Ukraine "On the Legal Regime of Martial Law" (2015) prohibits the holding of elections during martial law and the Electoral Code of Ukraine (2019) ordains suspension of all elections during such period. This is not an arbitrary political decision but a constitutionally viable solution aimed at ensuring stability in times of crisis. The law prevents governance from collapsing into uncertainty while the country is under extreme conditions.

As discussed [elsewhere](#), conducting elections under the current conditions of war in Ukraine can undermine democratic principles and, therefore, is unconstitutional. Holding elections amid ongoing hostilities poses significant challenges to ensuring free and fair electoral processes, potentially leading to democratic erosion. In such volatile conditions, elections may not reflect the genuine will of the people, thereby compromising the legitimacy of the democratic system. Ukraine's wartime conditions, thus, make elections both unconstitutional and unfeasible, with ongoing hostilities, mass displacement, security risks, and occupied territories undermining electoral integrity and legitimacy.

Historical precedents of wartime elections

History provides several examples of democratic states holding elections during wartime, but a closer examination reveals that such cases occurred only when security conditions were fulfilled and active hostilities did not directly disrupt electoral processes.

In the United States, presidential elections took place during World War II ([1944](#)). However, the circumstances were notably different from Ukraine's current situation. In 1944, the conflict was fought overseas, and the electoral process remained unaffected within the U.S. mainland.

The United Kingdom followed a different approach, prioritizing stability before resuming democratic processes. In [1918](#) and [1945](#), elections were held only after hostilities had ceased in Europe, ensuring that electoral processes were conducted securely and without interference from ongoing warfare.

Israel, which has experienced prolonged military conflicts, has managed to hold elections despite security threats. However, these elections were only conducted when the security situation allowed and were never held under conditions where active warfare directly disrupted the entire state. For instance, during the [Second Intifada](#), despite ongoing violence, Israel proceeded with its scheduled legislative elections in 2003. However, in other instances, elections have been postponed due to security concerns. A notable [example](#) is the postponement of local elections in 2023 due to the outbreak of war, highlighting the challenges of holding elections during active hostilities.

These historical precedents illustrate that wartime elections are only feasible when security, logistical, and political conditions permit their integrity. In contrast, Ukraine faces direct, ongoing hostilities across its entire territory, making elections neither constitutionally viable nor practically possible under the current conditions.

Constitutional continuity under extreme conditions

Ukraine's constitutional order is designed to prevent a power vacuum, ensuring the continuity of state institutions in all situations (both ordinary and extraordinary) and ruling out eventual disruptions. These safeguards of governance stability are central to the broader principle of constitutional continuity – a framework designed to preserve the legitimacy, functionality, and authority of government institutions, even in times of war or national crisis. At its core, constitutional continuity means that no situation, no emergency, no matter how severe, should lead to the breakdown of state authority. It ensures that all branches of government – the presidency, legislature, judiciary, and executive bodies – remain operational and capable of fulfilling their responsibilities. This principle extends beyond immediate crisis management; it establishes the foundation for the long-term survival of Ukraine's constitutional system, preventing governance paralysis and safeguarding democratic legitimacy.

In practice, this approach aligns with concepts of [continuity of constitutional government](#), which focus on ensuring that all necessary institutions and constitutional actors remain functional to sustain governance, uphold the rule of law, and guarantee orderly transitions of power. A parallel can be drawn to the United States' concept of [enduring constitutional government](#) (ECG), which envisions a coordinated effort among the executive, legislative, and judicial branches to maintain government operations during a catastrophic emergency. Like ECG, Ukraine's approach ensures

that, regardless of the challenges it faces, its government remains intact, legitimate, and fully capable of executing its constitutional responsibilities in both the short and long term.

The principle of constitutional continuity, though not formulated *expressis verbis* in the constitutional text, is deeply entrenched in the Ukrainian constitutional design. Under Article 108(1), the incumbent president remains in office until a new president is elected and sworn in, providing executive stability and avoiding interregnum situations. In the same way, Article 90(1) guarantees the continued functioning of the Verkhovna Rada beyond its standard term until a newly elected Parliament convenes, preserving the legislative branch's authority without breaks. Under Article 83(4) of the Constitution, during martial law or a state of emergency, Parliament's powers extend until the first session of the newly elected Verkhovna Rada after the emergency ends. While Cabinet of Ministers is required to resign before the newly elected Parliament, it continues to function in a caretaker capacity until a new cabinet is formed (Article 115(4) of the Constitution). This provision guarantees continuity in executive decision-making, preventing administrative paralysis.

Additionally, Ukraine's judicial system, including the Constitutional Court, remains fully operational even under whatever extreme conditions occur, serving as a legal safeguard against potential overreach of emergency powers.

The [claim](#) that the Ukrainian Constitution extends only the Verkhovna Rada's powers – leaving the Speaker as the sole authority after the President's term expires, is a misreading of constitutional provisions and ignores the constitutional continuity principle. While Article 83(4) explicitly states that the Parliament's powers extend until a newly elected Verkhovna Rada convenes after martial law is lifted, Article 108(1) provides that the president continues to exercise his or her powers until a newly elected president is sworn in. Article 112 allows the Speaker to assume presidential powers only in four enumerated cases: resignation, incapacity, impeachment, or death. Expired terms are not included. In other words, the general rule of Article 108(1) applies. This construction aligns with the principle of constitutional continuity, which guarantees that state institutions remain operational under any conditions.

Thus, in times of war or national crisis, constitutional continuity serves as the ultimate safeguard of governance effectiveness, ensuring that nothing disrupts the functioning of the state or creates a vacuum of authority. Such continuity guarantees ensure that all branches function until conditions allow for lawful elections.

This principle is not an ad hoc measure but a deeply embedded feature of Ukraine's constitutional design, affirming that Ukraine's democratic governance remains intact,

rooted in the rule of law, and fully capable of executing its responsibilities even under extraordinary conditions.

The legitimacy of wartime governance

In times of war, the principle of constitutional continuity takes on a critical dimension, particularly in ensuring stable and effective military leadership. Under Article 106 of Ukraine's Constitution, the president is not only the head of state but also the Supreme Commander-in-Chief of the Armed Forces. This dual role has profound implications for governance continuity and national security during wartime.

A key constitutional concern is military command stability. A mid-war leadership change could disrupt command, weaken military-civilian coordination, and jeopardize strategic decision-making. Elections during active hostilities risk contested results, leadership vacuums, and loss of confidence in command structures. Additionally, stable leadership is vital for operational secrecy, intelligence security, and diplomatic coordination, ensuring protected classified information, uninterrupted wartime diplomacy, and seamless strategic planning.

Thus, in wartime, constitutional continuity is not just a legal necessity – it is a national security imperative. Keeping the president in office ensures defence stability and prevents an exploitable leadership crisis.

In times of war, when elections cannot be held, the legitimacy of state leadership must be upheld through alternative constitutional and democratic mechanisms. In Ukraine, this legitimacy is reinforced through three key pillars:

Constitutional continuity – enshrined in the Constitution, which explicitly provides for the continued functioning of the president, legislature, and government until elections can be lawfully conducted.

Political consensus – Ukraine's political actors, civil society, and the public widely recognize that governance continuity is crucial for national survival. Holding elections amid active hostilities is seen as both impractical and dangerous. Notably, no political faction has challenged the extended term before the Constitutional Court, not due to a lack of competition, but because there is broad agreement that constitutional provisions on continuity apply unambiguously in wartime, affirming the legitimacy of Ukraine's leadership.

International recognition – Ukraine's allies and diplomatic partners, including the US, the EU, NATO, and the UN, continue to recognize its leadership as legitimate and democratically grounded. Their unwavering support reinforces Ukraine's standing as

a functioning democracy that upholds constitutional governance even under extreme conditions.

Thus, the absence of elections does not mean the absence of constitutional legitimacy. On the contrary, Ukraine's legitimacy is reinforced through constitutional provisions, democratic consensus, and international validation.

Conclusion: stability as a constitutional necessity

Wartime elections are neither a legal obligation nor a democratic necessity when they cannot be free, fair, or secure. Historical precedents confirm that elections are only feasible when security conditions allow, which is not the case in Ukraine's current war. Meanwhile, the absence of elections does not mean the absence of legitimacy. Ukraine's constitutional provisions, democratic consensus, and international recognition ensure that its government remains constitutionally legitimate, functional, and committed to democratic principles.

Once martial law ends, Ukrainian authorities should fulfil their constitutional duty to hold elections, ensuring a seamless transition back to full democratic governance. This transition presents other unique challenges, from logistics to structuring the post-war electoral process – whether holding all elections simultaneously or sequencing presidential and parliamentary votes to uphold democratic principles. But until then, Ukraine's leadership remains fully legitimate under both constitutional law and international recognition. Calls to question this legitimacy ignore Ukraine's constitutional safeguards, historical precedent, and the security necessity of stable wartime governance.

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