

Where did the shells come from:

investigation of cross-border attacks in
Eastern Ukraine

IPHR
International
Partnership
for Human Rights



Report prepared by International Partnership for Human Rights together with Noregian Helsinki Committee and Ukrainian Helsinki Human Rights Union.

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Executive summary

This report presents the analyses of the attacks on the villages of Luhansk province (Ukraine) in 2014 and presents the evidence that these attacks can serve as a proof that conflict in question is of an international character (as defined in Article 2 common to the Geneva Conventions of 1949). The Report also provides the evidence of the violations of international humanitarian law and international criminal law perpetrated in the examined area in the summer of 2014.

The Report investigates several incidents within the conflict in Eastern Ukraine, which lasts since 2014 and has resulted in at least 9371 deaths; countless injuries; widespread destruction and illegal appropriation of property; arbitrary arrest and illegal imprisonment; inhuman treatment and torture; and the displacement of civilians.

The International Partnership for Human Rights (IPHR), an independent, nongovernmental monitoring and advocacy organization based in Brussels, has collected evidence through field research in Eastern Ukraine and open-source materials. This evidence has been analysed using applicable international law and practice, and set against an overview of the context and history of the conflict. IPHR's fieldwork was conducted in the framework of Civic Solidarity Platform (CSP) project.

IPHR submits that, based on the evidence collected by its team, there is a reasonable basis to believe that in the cases of the attacks on the villages of Luhansk province Kolesnykivka, Komyshne, Milove, Krasna Talivka, Dmytrivka and Pobeda, there was illegal crossing of the state border of Ukraine organized with the participation of the military units of the Russian Federation (in terms of the Commentary on the Geneva Conventions - intervention), and subsequently attacks on the military infrastructure, state border units and civilian objects (confirmed attacks on the latest took place in Kolesnikivka and Komyshne villages).

Under the circumstances of the attacks in the settlements of Kolesnikivka, Komyshne, Milove and Pobeda of the Luhansk province, the facts of the cross-border shelling of the territory of Ukraine can be considered as established. It should further be noted, that, as confirmed by satellite images, eyewitness testimony and posts in social networks on the Web, the attacks took place starting from the locations near the military units of the armed forces by the Russian Federation.

The attacks on Kolesnikivka and Komyshne villages of the Luhansk province can be qualified under the Article 8 (2) (b) (iv) of the Rome Statute of the International Criminal Court, in particular as intentional attacks against civilian objects and damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage. Such qualification is possible by comparing the material, mental and contextual elements of this crime.

Evidence presented in this report has been analysed using the framework of international treaty and customary law relating to conflict and mass atrocities, i.e. international humanitarian law and international criminal law. There is mounting evidence that the conflict in question may qualify as an international armed conflict, based on evidence of direct involvement of Russian armed and security forces and persons related to the military units of the Russian Federation.

The investigation of the shelling of the villages bordering Russia in Luhansk province were also conducted by the Bellingcat, an independent non-governmental group that uses combination of investigation techniques for fact finding, and the Organization for Security and Cooperation in Europe (OSCE). The Bellingcat reports were based on the analyses of the satellite images and posts in the social networks. The basis of the OSCE reports is formed by the data

received from the observers situated in the region. This Report compliments already available data with the information obtained through testimonies of the witnesses.

The International Partnership for Human Rights believes that pursuant to the common aspirations of peace, security and justice, it is imperative to conduct full and thorough investigations into these events and bring those responsible for international crimes to justice before an independent and impartial tribunal guaranteeing the full respect for fundamental fair trial rights.

Sources of information and methodology of documentation

The evidence of violations presented in this report has been empirically documented by IPHR through field missions and interviews, or collected from independent, reliable sources by IPHR monitors. To ensure a methodologically consistent documentation process, IPHR developed a tailor made crime documentation manual and a practical toolbox. The manual includes detailed description of elements of crimes (war crimes and crimes against humanity), classification of evidence, instructions on obtaining and safely storing different categories of evidence, guidelines on conducting field interviews and obtaining appropriate statements from victims and witnesses and security aspects of the fieldwork.

Over 45 victims and witness statements have been obtained since September 2015 and analyzed for this report. Those statements form the basis of this report. Additional information was obtained through desk research using open-source documents.

Background of the conflict

After the annexation of Crimea by the Russian Federation, pro-Russian separatists began to move for control of the industrial east, seizing control of government buildings in Donetsk, Luhansk, Kharkiv, Sloviansk, Horlivka and Kramatorsk in April 2014, and calling for a referendum on independence. As Russian forces appeared to be building up at the border, the new Ukrainian authorities in Kyiv ordered an “anti-terrorist operation” and regained control of Kharkiv.

On May 11, 2014 pro-Russian separatists in the Donetsk and Luhansk regions held unrecognized referendums, declared independence as the Donetsk Peoples Republic and the Luhansk Peoples Republic, and drafted their constitutions. Soon fighting ensued throughout the eastern region of the Donbas region that encompasses Luhansk and Donetsk. Casualties, among them civilians, began to mount.

On July 17, the civilian passenger jet Malasia Airlines flight MH17 en route from Amsterdam to Kuala Lumpur was shot down in rebel-held territory, claiming 298 lives.

Heavy fighting took place in and around Donetsk at the end of July, with the government offensive making great strides. The cities of Sieverodonetsk, Horlivka, Lysychansk, Shakhtarsk, Popasnaya and the smaller towns in the area were re-taken by government forces, isolating the insurgents in the city center of Donetsk and cutting off supply routes between Luhansk People’s Republic (LPR) and Donetsk People’s Republic (DPR). By July 28, the strategic heights of Savur-Mohyla were under Ukrainian control, along with the town of Debaltseve, an important railroad hub connecting the self-proclaimed Republics.

The Ukrainian Army closed in on Luhansk and Donetsk on August 3, prompting Igor Girkin, insurgent commander for the DPR, to openly call for Russian military intervention. Intense fighting continued around Donetsk in the first weeks of August 2014. Intensive cross-fire between the insurgents and the government forces and heavy shelling and artillery barrage of the city caused tens of civilian deaths and injuries, and damaged hospitals and residential buildings, while many remaining residents took shelter in basements.

On August 14, a convoy of some twenty armored personnel carriers and other vehicles with official Russian military plates reportedly entered Ukraine near the insurgent-controlled Izvaryne border crossing. NATO Secretary General Anders Fogh Rasmussen called the incident a “Russian incursion” into Ukraine, while the Russian Defense Ministry denied the existence of any such convoy. By August 19, the Ukrainian Army moved into the city of Luhansk and shelled the DPR headquarters in Donetsk.

Between August 22 and 25, Russian artillery, personnel, and what Russia called a “humanitarian convoy” were reported to have crossed the border into Ukrainian territory without the permission of the Ukrainian government. Crossings were reported to have occurred both in areas under the control of pro-Russian forces and areas that were not under their control, such as the south-eastern part of Donetsk Oblast, near Novoazovsk. These events followed the reported shelling of Ukrainian positions from the Russian side of the border over the course of the preceding month.

By August 25, an insurgent counter-offensive had stalled the Ukrainian military offensive on Donetsk and Luhansk. The prospect of insurgent defeat appeared to have prompted the Russian artillery fire from within Russian territory on the advancing Ukrainian troops, and direct intervention by Russian troops in combat roles on the Ukrainian territory became a regular feature of the conflict.

After days of peace talks in Minsk under the auspices of the Organization for Security and Co-operation in Europe (OSCE), Ukraine, Russia, the DPR, and the LPR agreed to a ceasefire on 5 September. Despite the ceasefire, however, heavy fighting continued across the Donbas region through October, leaving many soldiers and civilians dead. On January 24, 2015, Grad rockets hailed from rebel-controlled territory on the residential district of Mariupol left more than thirty civilians dead and nearly a hundred wounded.

Minsk II, the new package of peacemaking measures, was signed on February 11, 2015. After the ceasefire started the rebels continued their assault, taking over the city by February 18. The rebels also attacked the headquarters of the government’s anti-terrorist operation (ATO), located far beyond the conflict zone, hitting residential districts and killing civilians in the process. Minor violations of the ceasefire continued throughout March and April, but the ceasefire was largely observed throughout the conflict zone. Both sides withdrew heavy weaponry from the frontline. However the fighting occasionally breaks out from time to time by now.

Kolesnykivka and Komyshne settlements, Luhansk province, Ukraine



An IPHR field mission made three visits to the villages Yuhankivka-Kolesnykivka-Komyshne, Luhansk province, Ukraine. The first trip was made between 6-15 September 2015, with the international monitoring group¹. Based on the findings a report was published² containing clear evidence that the villages were attacked from the territory of the Russian Federation. The following field missions confirmed these findings. Three field missions collected testimonials to the fact of shelling of the area Kolesnykivka-Komyshne from 14 local residents and 12 soldiers of border guard of Ukraine that served in the area in the summer 2014. In addition to the testimonies, IPHR documented places and points of shelling by rocket and tube artillery and analyzed data from satellite images.

Based on all the collected data we can recreate the sequence of events that took place in the area of the villages Kolesnykivka-Komyshne in summer 2014.

On June 2, 2014, a Luhansk border guard unit was assaulted by separatists from the so-called LPR³ and had to relocate personnel and part of its assets into a field camp located in a pine forest near the village of Kolesnykivka at a distance of 300 meters to the nearest inhabited house⁴. Soon the camp was strengthened by consolidated border guard groups, temporarily relocated from other areas, volunteer battalions and units of the Ukrainian Armed Forces.

1 Centre for Legal Support of the Belarusian Association of Journalists (Belarus), Memorial Germany (Germany), German-Russian Exchange (Germany), Helsinki Foundation for Human Rights (Poland), Man and Law (Russia), East-SOS (Ukraine), 'Postup' Human Rights Centre (Ukraine)

2 Second report of international monitoring group according to results of the mission in Luhansk region; Permanent link: <http://vostok-sos.org/monitoring-doklad/>

3 Ukraine says insurgents attack border guards; Permanent link: http://www.democraticunderground.com/?com=view_post&forum=1014&pid=816941

4 Photo evidence collected by the IPHR field mission: map of the region "map1-1.png"

The total number of the combatants placed in the camp reached approximately 300 in the summer of 2014. There were two other points in the area where the Ukrainian military was present: the border position “Mountain”⁵ and the checkpoint on the road leading to Nyzhnia Vilhova⁶.

In the summer of 2014, the only part of the Russian-Ukrainian border in the Luhansk province that Ukraine controlled was by the “Illinka” railway crossing⁷. The demarcation line between Ukraine and so called LPR followed the river Siverskyi Donets⁸.



Shelling of the field camp started in the first week of July 2014. At first, the shelling was done using 82mm mortars. According to border guard testimony, the attackers' firing positions were located on the territory of Ukraine a few dozen meters from the border with Russia. Traces of the installation of six mortar plates were found on the shore of Derkul river, where a steel cable was taut through the river⁹. Soon shelling became more and more regular. In August 2014 Ukrainian military positions and the villages of Kolesnykivka and Komyshne and summer houses in Yuhanivka were shelled almost daily. According to local residents¹⁰ and border guard soldiers testimonies¹¹ the perpetrators' artillery was located on the territory of the Russian Federation to the south from the village Manotsky at a distance of approximately 500-1000 meters from the border. Each time, before shelling started, military equipment was driven forward to their positions. This process was accompanied by specific audible sounds and a visible dust cloud. Shelling began in the evenings. During the shelling witnesses heard sounds and saw flashes from multiple rocket

5 Photo evidence collected by the IPHR field mission: map of the region “map1-1.png”

6 Photo evidence collected by the IPHR field mission: map of the region “map1-1.png”

7 (48°38'26.13»N 39°41'39.12»E)

8 Permanent link: <http://korrespondent.net/ukraine/3412779-karta-ato-na-1-sentiabria>

9 Witness statements: 0205K867, 0205K831

10 Video evidence from IPHR database: Лето в Колесниковке в подвале под российскими градами, Timing: 01:00-02:00

11 Witness statements: 0205K828

launcher system (hereinafter MRLS) shots. Then the equipment was driven back¹². Later that summer firing positions relocated deeper into the territory of the Russian Federation¹³. Satellite images from google earth, taken on September 6, 2014, clearly captured numerous traces of truck movements and turnbacks to the south from Manotsky (the Russian Federation)¹⁴. These pictures can be compared to the images before the start of intense shelling. For instance the images of the same area from 17 July 2014 do not display any traces.



Among other attacks we can provide detailed description of the shelling during the night of 23 July 2014, when tube and reactive artillery systems were used particularly intensively. As a result of the shelling, the house of witness 0205K855¹⁵ was completely destroyed, with the witness suffering a contusion, buildings and other property of Kolesnykivka residents were also damaged and the forest near the village was set on fire¹⁶. Also, on August 2, 2014 the camp at position “Mountain” and the checkpoint were shelled intensively. Four border guards were killed¹⁷. Shelling stopped on September 5, 2014 - the day of the truce, in accordance with the first protocol of Minsk agreements¹⁸.

In total, according to the information obtained from the state administrations in three villages, 29 houses were damaged, two of them were totally destroyed and irreparable, five were significantly damaged, while other buildings suffered broken windows or damaged roofs and technical constructions.

The most affected village was Kolesnykivka. No civilian was killed as the result of the attack in the area, but several people suffered shrapnel wounds. At the same time, as a result of artillery shelling and battles with secret subversive groups in this region, 13 border guard soldiers were killed and approximately 40 wounded¹⁹.

Local residents²⁰ and border guards testified that before and during shellings they observed drones flying above the terrain in question that flew out from and returned to the territory of the Russian Federation. The border guards that served on the position “Mountain” testified that the drones were launched from the outskirts of the Manotsky settlement (in Russian Federation) by people who came there in a white van and a black SUV²¹. Also, several witnesses stated that the border of Ukraine was violated by Mi-24 and Mi-8 military helicopters with full armament and bearing the military identification marks of the Russian Federation. They flew 2 km into Ukraine and then flew away²². There

12 Гудзь, Головков, Товстуха, Video evidence from IPHR database: Лето в Колесниковке в подвале под российскими градами
 13 Video evidence from IPHR database: Лето в Колесниковке в подвале под российскими градами
 14 Points: 48°39'4.34»N; 39°43'45.35»E та 48°39'19.89»N; 39°44'14.88»E
 15 Witness statements: 0205K855; Video evidence from IPHR database: 150910_Kolesnikovka7_ul. Peschanaya_13_intervyu; 150910_Kolesnikovka70_ul. Peschanaya_4_voronka
 16 Video evidence from IPHR database: «Лето в Колесниковке в подвале под российскими градами», timing: 05:00-15:00
 17 Witness statements: 0205K844
 18 Permanent link: <http://www.osce.org/ru/home/123807?download=true>
 19 Witness statements: 0205K844
 20 Video evidence from IPHR database: “Лето в Колесниковке в подвале под российскими градами”, timing: 02:00-03:00
 21 Witness statements: 0205K828; Photo evidence: map written by the witness 0205K828
 22 Witness statements: 0205K828, 0205K829

are also testimonies to border infringement by groups of armed people who engaged with Ukrainian border guards and returned to the territory of Russian Federation after fighting²³.

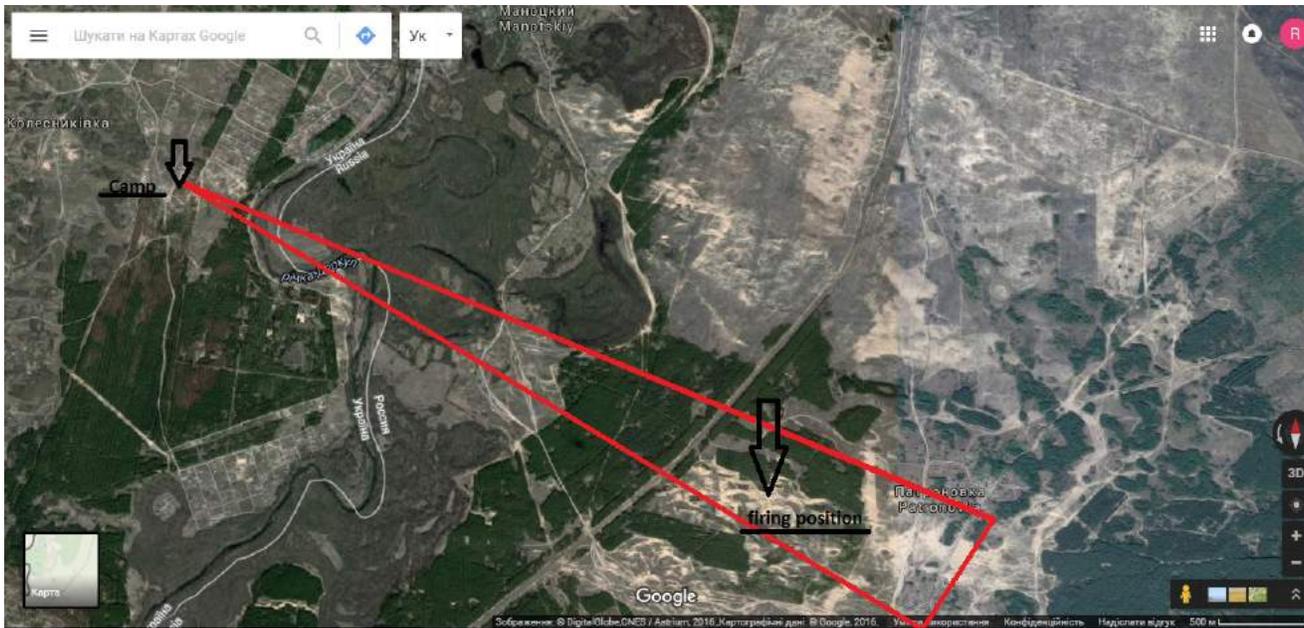


During the inspection of shelling sites, field missions have identified and documented several craters from artillery ammunition gaps. One of the craters in suburban area between Yuhaniivka and Kolesnykivka²⁴ was well preserved, which made it possible to determine with a high probability level that it was made by the explosion of a shell of type MLRS BM-21 “Grad” fired by the Russian Federation (azimuth 120°)²⁵. Many buildings in this suburban block were completely destroyed by shelling. The owner of the house in Kolesnykivka²⁶ showed a projectile “Grad”, which stuck out in the garden near his house. The crater was elongated from east to west. The remains of the shell were tilted to the southeast²⁷. The field mission also documented an unexploded howitzer shell (122-mm caliber)²⁸ and an unexploded MLRS BM-21 “Grad” shell sticking vertically out of the ground²⁹.



23 Witness statements: 0205K844, 0205K842
24 (coordinates 48.671845 39.699222)
25 Video evidence from IPHR database: VID_20150910_105723
26 Witness statement: 0205K856-2
27 Video evidence from IPHR database: VID_20150910_104635
28 In point (48°40'25.76»N; 39°41'35.02»E)
29 In point (48°40'24.59»N; 39°41'43.86»E)

Google Earth images made on September 6, 2014 demonstrate that near the village of Kolesnykivka there are at least 150 craters from artillery shells, most of them concentrated in the area of the field camp. At the position “Mountain” where the border guards were based there are at least 70 craters. Several dozen craters can be found at the checkpoint. Based on the satellite images, according to the craters’ appearance, we can conclude that the camp was shelled with different types of artillery, but that position “Mountain” and the checkpoint were shelled mostly with the same caliber of artillery. These conclusions are confirmed by local residents’ and several border guards’ testimonies³⁰. In addition, the images of the craters show that the camp was shelled from one direction - the southeast (azimuth 120°). Continuing the approximate line of shelling in 3.6 km from the craters (places of explosion of the shells) we will find the the area located to the south from Manotskiy (Russian Federation) with countless traces of the military equipment.



Further analysis of the satellite images from Tarasovskiy district in the Rostov region (Russian Federation) in Summer 2014 made it possible to identify a military camp and artillery positions near the Ukrainian border. On the area around the point 48°38'10.88"N, 39°44'53.72"E captured on September 6, 2014 a fortified camp is seen, and large number of traces indicate active movement and maneuvering of the equipment. On the images dated May 26, 2014, there are no such traces.

The second, larger military camp is located to the east from the village of DUBY, 12 km from Ukrainian border³¹. Satellite images from September 6, 2014 captured substantial amounts of military equipment. Over 40 covered trucks were parked in the camp. Four pieces of equipment are in open areas, a few are on the edge of the forest to the south of the camp. To the east of the camp, in the fields across the road, military equipment and tents were spotted. The photo from July 25, 2014 captured four units of self-propelled artillery near the camp³², most likely 2S19 “Msta-S” with the barrel of the Self-propelled artillery (hereinafter SPA) directed to Ukraine towards the village of Herasymivka. The distance between this position and the border with Ukraine along the direction of artillery barrels is 18,5 km. The maximum shooting distance of the “Msta-S” is 25 km³³. Some 200 metres south-southwest of the SPA eight military vehicles were located, four of which were likely to be MRLS. Their launchers were facing in the same direction as the

30 Witness statement: 0205K828; Video evidence from IPHR database: “Лето в Колесниковке в подвале под российскими градами”

31 48°38'16.70»N; 39°53'0.84»E

32 48°38'13.86»N; 39°53'24.05»E

33 Permanent link: <http://wartools.ru/sau-russia/sau-msta-s-2s19>

the barrel of the SPA. On photos captured by employees of the Russian Federation army that were published by them on social networks and geotagged in the area of the second camp³⁴ it is easy to see in the background a battery of self-propelled 2S19 "Msta-S" howitzers. Furthermore, the images from 6 September 2014 captured a column of military vehicles³⁵ and a military helicopter in flight³⁶. According to tower location, dimensions and length of the SPA barrels, we can assume that the column consisted of self-propelled artillery of type SPA 2S3 "Acacia".

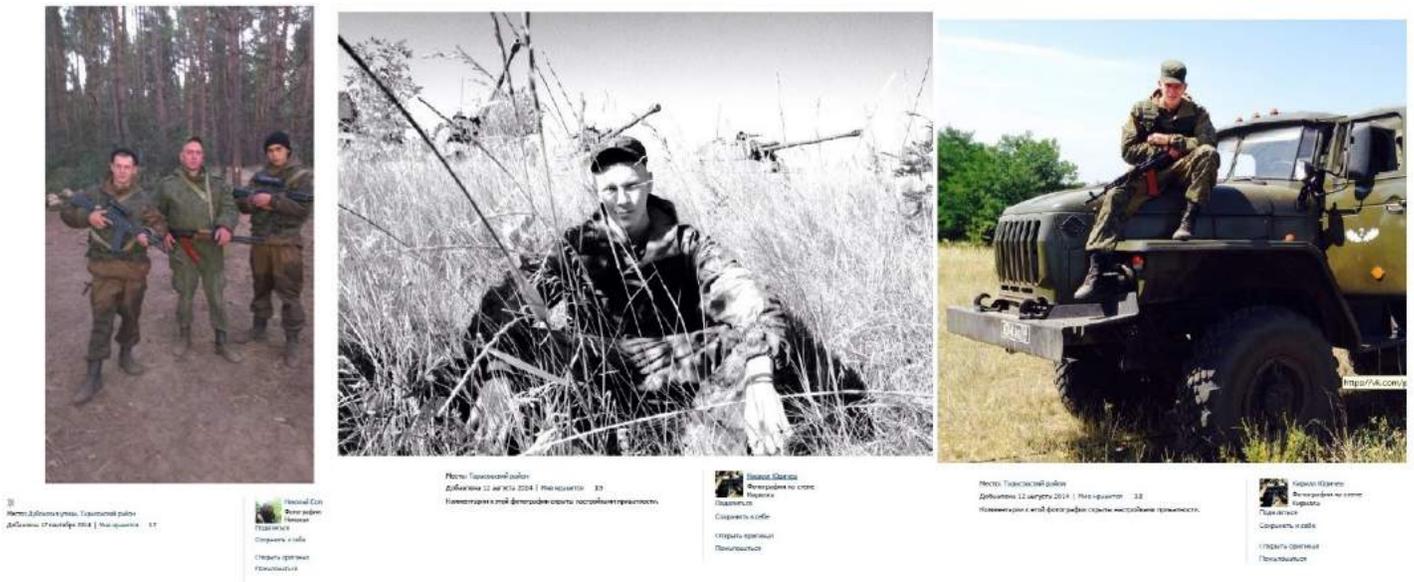


Another Russian artillery position was located 4 km southwest of the small village of Patronivka³⁷. The size of the vehicle and length of the barrel on the image suggests that it is of type 2S19 "Msta-S". The barrels face Ukraine in the direction of the villages of Makarovo and Stanytsia Luhanska. Numerous similar traces represent repeated firing of batteries on these positions. The distance from this position to the border with Ukraine is 1.3 km.

Analysis of social networks demonstrated that some of the pictures posted in the time of the events and geotagged to the area belong to accounts of soldiers located in Tarasivskiy rayon of Rostov region of the Russian Federation. The soldiers who were in the Tarasovskiy rayon of the Rostov region in the summer and autumn of 2014 were serving in military unit (hereinafter m/u) 30683 (288th artillery brigade), in m/u 43533 (681st regional training center for combat training of missile troops and artillery). Both parts are located near Mulino city in the Nizhny Novgorod region of Russia. Photos from the area were also posted by the accounts of soldiers of m/u 64055 (electronic warfare battalion), m/u 31135 (1st Mechanized Regiment of Taman Division), m/u 31134 (15th Mechanized Regiment Kalininets of Taman Division)³⁸.

Those images demonstrate that close to the border with Ukraine (less than 15 km) in the summer 2014 a large number of soldiers and equipment of the Russian Federation Armed Forces was situated. Those troops were on the territory of the Rostov region near the Ukrainian border. From time to time, they moved forward to the border with Ukraine and, most likely, were conducting shelling of the territory of Ukraine.

34 List of evidences: 0205_military_on_the_border (Annex 1)
 35 48°36'55.97»N 39°50'35.37»E
 36 48°37'55.76»N 39°50'57.61»E
 37 48°37'53.71»N 39°42'36.03»E; Picture GoogleEarth on 06.09.2014
 38 List of evidences: 0205_military_on_the_border (Annex 1)



Witnesses interviewed by the field missions also testified that the shelling positions of the attackers were near a tree farm by the village of Derkul (RF)³⁹, near the river Siversky Donets (the Russian Federation part) was shelling position of MRLS BM-21 “Grad”, from which there was shooting of the camp and of Kolesnykivka⁴⁰. Also the position of five units MRLS BM-21 “Grad” was situated to the west from the village Parkhomenko (Ukraine, the territory of the so-called LPR). Regular shelling was conducted from there⁴¹. Field mission confirms the presence of craters from shells exploding near the village of Kolesnykivka, indicating a direction of fire from the south (azimuth measurements by members of field missions - 170 degrees⁴² and 155 degrees⁴³). Azimuth at village Parkhomenko - 173 degrees.



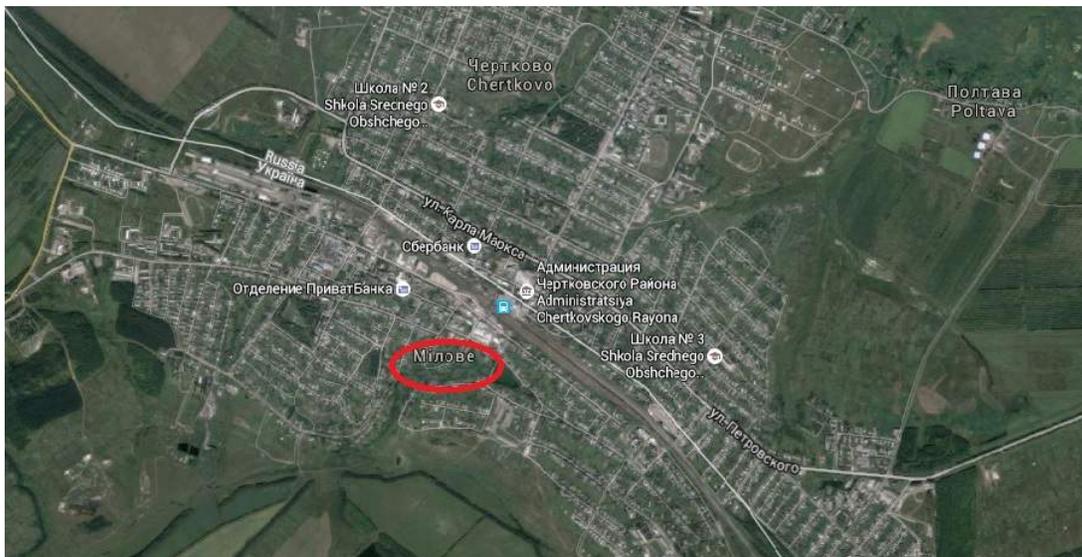
39 Witness statements: 0205K827
 40 Witness statements: 0205K828, Photo evidence from IPHR database: map written by the witness 0205K828 point «14» on the map (Annex 2)
 41 Witness statements: 0205K845, 0205K828
 42 Video evidence from IPHR database: VID_20151217_151725
 43 Video evidence from IPHR database: VID_20151217_152235

One of the shells hit the south side of house on Soniachna street in Kolesnykivka⁴⁴. Local residents testified that attacks from Russian territory were made with more accuracy than shelling from LPR. The craters described above were hit from a distance of not less than 1100 meters from the camp, which was likely to be a target of shelling, which confirms witness statements.

According to local residents' and border guards' testimonies⁴⁵, MRLS missiles launched from the territory of the Russian Federation were often directed at the territory of Ukraine in the direction of Makarov, Nyzhnia Vilhova, Verhnia Vilhova, Harasymivka, Schastia⁴⁶. The civilian from Kolesnykivka village in whose yard several composite pipes of shells MLRS "Grad" were found confirmed that he and his sister witnessed the attack from Russia in the summer of 2014⁴⁷. According to him, every time they heard a volley they hid in the cellar, but once they did not have time to hide in the shelter. When they ran out of the house, he heard the sounds of "Grad" launch systems and saw flaming projectiles approaching from the side of the river Derkul. The man and woman ducked down close to the wall of the house to hide from the attack, and the projectiles were flying above them. They remember the sound of shells shaking the walls of the house. The shells flew deep into the territory of Ukraine.

All the facts above leave no doubt that between July-August 2014 the Russian Federation shelled the positions of Ukrainian soldiers and civilian objects in the villages of Kolesnykivka and Komyshe from its territory, deploying tube and reactive artillery, and causing death and injury to at least 13 Ukrainians, and destroying and damaging their property. Russia also used drones to conduct reconnaissance and fire adjustments and invaded the airspace of Ukraine with military helicopters.

Milove Settlement, Luhansk province, Ukraine



Milove is a village close to Ukrainian-Russian border located in the far east of Ukraine and bordering the Russian village of Chertkovo. In fact, those two villages are the same settlement - the border between two countries goes down "Druzhby Narodiv" street, which separates two settlements. At the time of the events described below (early summer 2014) areas not controlled by the government of Ukraine were at least 80 km from Milove. Currently the

44 Witness: 0205K868; Video evidence from IPHR database: VID_20151217_150410; VID_20151217_151208;

45 Witness statements: 0205K5845, 0205K831

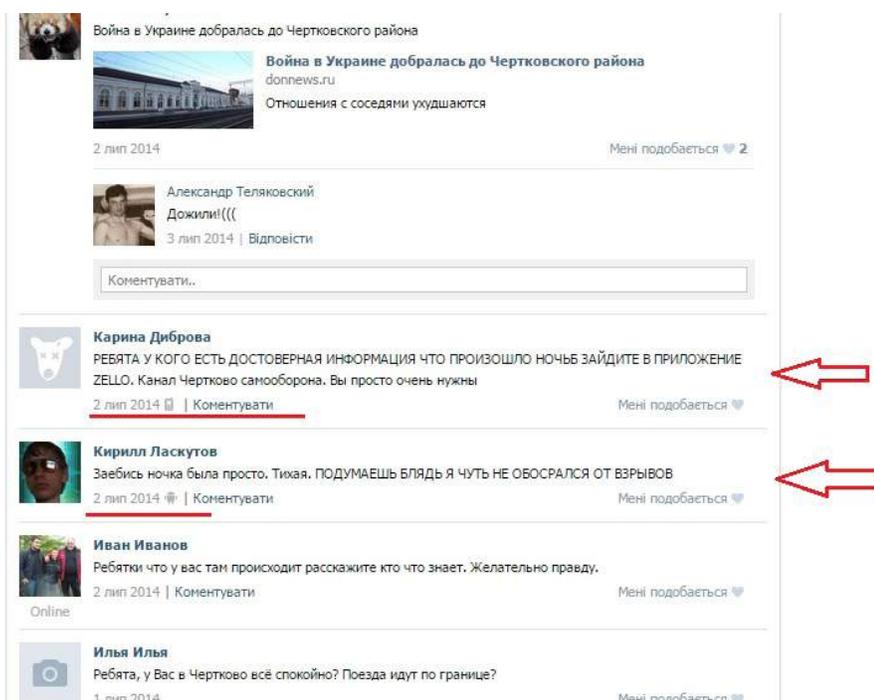
46 Video evidence from IPHR database: "150909_Kolesnikovka20_dom1_intervyu 2.MOV"

47 Video evidence from IPHR database: "150909_Kolesnikovka20_dom1_intervyu 2.MOV"

demarcation line is even further from the village. However, Ukrainian military facilities in this area were shelled in July and August 2014.

The first shelling occurred in the night of July 1-2, 2014⁴⁸. The target of the attack was a Ukrainian Air Defense Forces unit, located 1,5 km from the border with the Russian Federation⁴⁹. The shelling lasted from 00:30 to 01:30. It was launched from the area of the village of Yasnoprominske (Ukraine) using two 82 mm mortars, which, judging by track traces (probably mortar plates) were moved to the firing position from the Russian Federation and after the shelling were transported back⁵⁰. Based on the mine caps found at the site of firing position 48 shots were fired⁵¹. The time between shots and explosions was no more than five seconds⁵², indicating a small firing distance.

Several comments posted in the social network group "Chertkovo"⁵³ (Vkontakte) on July 2, 2014 confirmed nighttime shelling: "It was a peaceful night. Quiet. I was close to fucking shit myself 'cause of explosions"⁵⁴, "Guys who got credible info on what happened at night please get to the application ZELLO. Chertkovo self-defense channel. We really need you"⁵⁵. Local media also printed reports of the shelling⁵⁶.



On August 8, 2014 at 3:30 at night a Border Service Department in Milove was shelled. The shelling was carried out with the use of the RPO "Shmel" flamethrowers, and SPG and GP-25 grenades⁵⁷. The first two shots from RPO "Shmel" were carried out from a distance of 50 meters from the building of the border service department (still the territory

48 Witness statement: 0205K849

49 Handwritten map by 0205K849 witness

50 Witness statement: 0205K833

51 Witness statement: 0205K835, 0205K849

52 Video evidence from IPHR database: "Звуки артподготовки под Украинским селом Меловое или Российским селом Чертково 2 ночи 02.07.14.mp4"

53 Permanent link to social network page: https://vk.com/p_chertkovo

54 Photo evidence from IPHR database: "VK-4ertkovo.jpg"

55 Photo evidence from IPHR database: "VK-4ertkovo.jpg"

56 Permanent link: http://www.donnews.ru/Voyna-v-Ukraine-dobralas-do-Chertkovskogo-rayona_15960

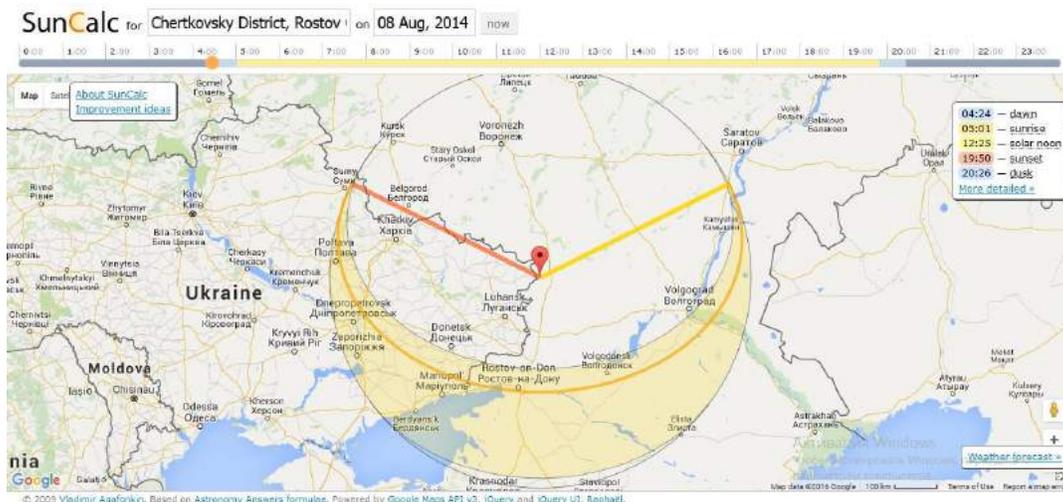
57 Witness statement: 0205K835

of Ukraine) and hit the facade of a building facing the Russian Federation part of the border and the roof, and then two more shells flew from a distance of 150 meters which also hit the roof⁵⁸. Rocket launchers left behind indicated launch sites⁵⁹. SPGs shelled from the rooftop of the building from the Russian Federation⁶⁰ (the roof of abandoned factory). At the time of the field mission to this border department, the building on the territory of Russian Federation was pulled down but no other places were found from where the shelling could have been launched. No other places were found where it would be possible to install an SPG. There were several GP-25 hits on the garage of the border department territory⁶¹.

The shelling completely burned the roof of the building, damaged the facade and interior and broke windows⁶².

After the shelling on the street near the fence of the border service department building, two or three “POM-2” antipersonnel fragmentation mines were found⁶³. One of them exploded at around 7:00 am and injured 4 guards⁶⁴.

Immediately after the shelling of the border department, at 04:00:04-30⁶⁵ a shelling of air defense unit of Ukrainian Armed Forces with the use of large-caliber artillery began⁶⁶. There are two videos⁶⁷ of the attack available in open sources, captured by a resident of Chertkovo from the roof of his house, located near the school №3⁶⁸ (coordinates 49.375236, 40.162382). On the video⁶⁹ you can hear car alarms, and then a powerful explosive sound and after 27 seconds a remote explosive sound. The second video⁷⁰ captured three consecutive powerful explosive sounds, the latter of which was preceded by a flash (15th second of video) and after 26 seconds three remote explosive sounds.



58 Witness statement: 0205K849

59 Photo evidence from IPHR database: “DSC_0337.jpg”, “Двигатель ШМЕЛЯ.jpg”, “Реактивный Двиг ШМЕЛЯ.jpg”, “Реактивный двигатель Шмель.jpg”, “Реактивный дигатель.jpg”

60 Witness statement: 0205K849

61 Witness statement: 0205K833; Video evidence: “VID_20160330_163417[1].3gp”

62 Photo and video evidence from IPHR database: group of photos and video collected by the field mission with a group name “фото здания + шмель и противопехотная мина”; Permanent link to videos from Open source: <https://www.youtube.com/watch?v=vZ02zujzPw> ; <https://www.youtube.com/watch?v=rHzHRmMHld0>

63 Photo evidence from IPHR database: “DSC_0366.jpg”, “Мина ПОМ-2.jpg”, “ПОМ-2.jpg”, “Противо-пехотная осколочная мина.jpg”,

64 Witness statement: 0205K849

65 Photo evidence from IPHR database: “Shelling-time.jpg”

66 Video evidence from IPHR database: “Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014”, “Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014 (1)”

67 Video evidence from IPHR database: “Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014”, “Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014 (1)”

68 Photo evidence from IPHR database: “Location-shooting.jpg”

69 Video evidence from IPHR database: “Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014 (1)”

70 Video evidence from IPHR database: “Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014”

The sun at that time had not risen yet (sunrise was at 5:01), just the dawn was visible to the northeast⁷¹, so the flash was visible towards the east. It is also supported by the fact that the author of the video directed the video camera to the east, from where the powerful sounds were heard. In addition, the video shows that between the flash and the sound approximately 1,2 seconds passed, which must mean that if the flash was due to artillery shelling then its position was located approximately 411 meters from the place where the video was shot.

Thus, we can conclude that the shelling was carried out from the territory of the Russian Federation from the east of the settlement of Chertkovo. This is also confirmed by witnesses testimony. One of the witnesses claims⁷² that he heard shelling that was carried out from the direction of Mankovo-Kalytvenskoe⁷³. Another local resident⁷⁴ told us that he heard from his fellows that during that night on the edge of the village windows and fences were broken by powerful shots near buildings belonging to residents of Poltava⁷⁵ settlement. The shelling lasted until 5:40⁷⁶. On places of shells gaps left craters about 2.5 meters in diameter and 1 m deep⁷⁷. The shelling destroyed a Ukrainian military radar station⁷⁸.

Analysis of evidence and a field mission to Milove and to Border service led us to the conclusion that the attacks described above were committed with the use of hand carried weapons, artillery systems and mortars from the territory of the Russian Federation, as well as by people who violated the border with Ukraine and returned to the territory of Russia after the attack.

Krasna Talivka settlement, Luhansk province, Ukraine

The village of Krasna Talivka is located in Stanitsa Luhanska rayon, Luhansk province, Ukraine. The border with Russian Federation surrounds this village on three sides. Ukrainian-Russian border checkpoints and the border security department are located in Krasna Talivka. The checkpoint is now closed. In summer 2014 the distance between the village and the nearest battlefield was about 30 kilometers in a straight line⁷⁹.

On 27 of June 2014 at 11:00-14:00, the observation tower and the border guard station near Krasna Talivka was shelled using an anti-tank missile system called in Russian - ПТПК (hereinafter "TOW") (2 shells in 10 min.⁸⁰, action radius 1,5 km and after the shelling long thin copper conductors, spreading/laying towards direction of Russia was found by witness⁸¹) by possibly Russian troops from the Ukrainian side of the border⁸². According to witness statements, after carrying out this shelling, the group of border guards found the location of the intelligence group on the territory of Ukraine and their escape path to the territory of Russian Federation with the TOW weapon system⁸³. The likelihood that fire was opened by separatist forces is minimal given the location of Krasna Talivka a long distance from the separatist-controlled area and well protected by Ukrainian forces on the way to that area and back. As a result of the shelling, two the border guard fighters were wounded and the observation tower and border guard post were destroyed⁸⁴. After the shelling, Ukrainian border guards initiated negotiations with the Russian border

71 Permanent link: <http://suncalc.net/#/49.2957,40.3047,6/2014.08.08/04:28>

72 Witness statement: 0205K833

73 49.393316, 40.263309

74 Witness statement: 0205K849

75 49.387765, 40.177408

76 Photo evidence from IPHR database: "Shelling-time.jpg"

77 Witness statement: 0205K849

78 Witness statement: 0205K849

79 Permanent link: <http://korrespondent.net/ukraine/3412779-karta-ato-na-1-sentiabria>

80 Witness statement: 0205K838

81 Witness statement: 0205K839

82 Witness statement: 0205K839, 0205K840, 0205K838

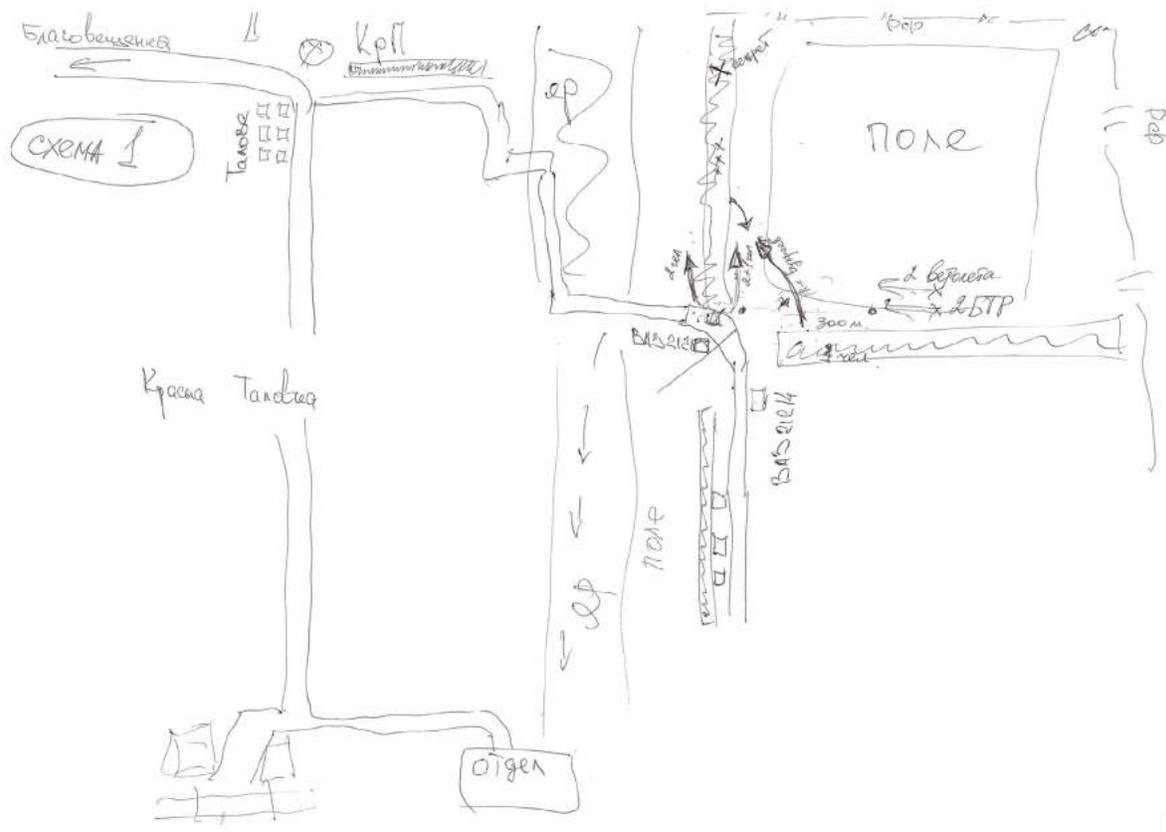
83 Witness statement: 0205K839, 0205K838

84 Witness statement: 0205K839,0205K840; Video evidence from IPHR database: VID_20160401_110843[1];

guards in the city of Blagoveshchenskoe, but on the day of the meeting the Ukrainian delegates came under mortar fire organized in a similar fashion to the previous incident (shelling from Ukrainian territory and escape into Russian Federation)⁸⁵.

On 25 August 2014 the "Secret" Ukrainian border team (3 combatants) was situated at point "Ghost" in the area of the village of Krasna Talivka, Luhansk province, with the task of watching and possibly protecting that segment of the border with the Russian Federation⁸⁶. Point "Ghost" was situated on Ukrainian territory 3 km from the border with the Russian Federation close to the village of Derkul (Russian Federation)⁸⁷ on the route from Krasnovka (Russian Federation) to Talove (Ukraine). Approximately at 3-3:10 a.m. "Secret" came under surprise attack from Ukrainian territory by unknown fighters⁸⁸. As a result of the attack two combatants of the Ukrainian border army from the "Secret" border team were killed and a third managed to call for help⁸⁹.

At 3:25 a.m. fighters from the border department in Krasna Talivka (11 combatants) came to rescue "Secret" but were ambushed by unknown fighters in the forest⁹⁰. The following groups were called to aid "Secret" - border security fighters from Millerove turn (14 combatants), Lviv motorised manoeuvrable group (7 people)⁹¹ and a group from Talove (4 people)⁹². The whole fight continued for approximately 60 minutes⁹³.



VID_20160401_113120[1]

85 Witness statement: 0205K838

86 Witness statement: 0205K839, 0205K840, 0205K838, 0205K834

87 Witness statement: 0205K834

88 Witness statement: 0205K839, 0205K840, 0205K838, 0205K834

89 Witness statement: 0205K834, 0205K839, 0205K840

90 Witness statement: 0205K834, 0205K839, 0205K838

91 Witness statement: 0205K834

92 Witness statement: 0205K838

93 Witness statement: 0205K834, 0205K839

Unknown fighters acted professionally and forced some Ukrainian border servicemen to retreat and stay in the forest⁹⁴. At the same time, the Ukrainian border was crossed from the Russian side by two MI-24 war helicopters and three BTR-82A armored transport vehicles (hereinafter ATC-BTR-82A)⁹⁵. According to witness statements, helicopters began patrolling the the border line from the side of the Russian Federation at the end of winter 2014⁹⁶. Also, one of the witnesses was sure that the heavy weapons were from Russian Federation because there were no Ukrainian heavy vehicles in that part of the controlled territory⁹⁷.

After the fight on the battlefield Ukrainian fighters found: two cartridges for a Kalashnikov machine gun, a sleeping bag with traces of blood, a C-ration produced in the RF, binoculars, a thermal imager, a cape with medicines from Pskov division⁹⁸.

As a result of the fights, four Ukrainian fighters were killed (two fighters from “Secret” and two from reinforcement groups), two were wounded, cars of Ukrainian border guards were destroyed by helicopters and ATC BTR-82A.



In addition, one of the witnesses testified that on January 2015 on the “Ghost” point near Krasna Talivka he saw two combatants wearing camouflage jackets of a Russian type. After being spotted by Ukrainian combatants those fighters went back to Russian territory. In February 2015, the same witness testified that he noticed a sniper’s hide-out and footprints in the area of Krasna Talivka (close to Ukrainian checkpoint on the way to Gerasimovka). Also, witnesses testified to multiple secret subversive groups’ infiltration into Krasna Talivka territory and mining of the territory by them⁹⁹.

94 Witness statement: 0205K834, 0205K838

95 Witness statement: 0205K834, 0205K838; Article “БТР 82А” фото новый бронетранспортер России, Permanent link: <http://toparmy.ru/rossijskaya-armiya/novoe-rossijskoe-vooruzhenie/btr-82a-foto-novyj-bronettransporter-rossii.html>

96 Witness statement: 0205K840

97 Witness statement: 0205K839

98 Witness statement: 0205K834, 0205K840

99 Witness statement: 0205K842

Dmytrivka and Pobieda settlements, Luhansk province, Ukraine



Dmytrivka and Pobieda are villages located in the Luhansk province of Ukraine. The closest territory not controlled by the Ukrainian government on September 1-4, 2014 was located in a southerly direction (about 35 km from Dmytrivka and about 45 km from Pobieda in a straight line)¹⁰⁰. The border with the Russian Federation is to the East of Dmytrivka (about 40 km in a straight line from the nearest point of the border with Russian Federation) and Pobieda (around 40 km in a straight line to the nearest point of the border with the Russian Federation).

From July 2014¹⁰¹, a Ukrainian battalion of rocket launchers, the 1st tank brigade and battalion Kyiv-12 were located in Dmytrivka¹⁰².

On September 3, 2014 at around 22:00-23:00 the Ukrainian forces post was shelled with MRLS “SMERCH” artillery loaded with “Tornado-S” shells that are different from the shells used by Ukrainian forces¹⁰³. According to a report by the Finnish Institute of International Affairs (Comment 5, 2015) “Tornado-S” is a unique Russian weapon which Russian army adopted up in 2012. This type of weapon has never been sold abroad by the Russian Federation¹⁰⁴.

The shelling lasted until 7:00 in the morning of September 4, 2014¹⁰⁵. One of the projectiles did not burst and stuck in the ground close to civilian car ZIL-131. According to civilian witness statements the shells’ attitude angle was 80

100 Official map of ATO, Permanent link: <http://mediarnbo.org/2014/09/04/situatsiya-na-shodi-ukrayini-na-04-veresnya/>
 101 Witness statement: 0205K859
 102 Witness statement: 0205K869; Article “After Russian “Smerch” Dmytrivka turned in flames”, Permanent link: http://gazeta.ua/articles/np/_dmitrivka-pislya-rosijskih-smerchiv-peretvorilas-na-popelische/583104
 103 Witness statement: 0205K869, 0205K859, 0205K861, 0205K862
 104 The Finnish Institute of International Affairs, Comment 5, 2015: “The new Minsk ceasefire - a breakthrough of just a mirage in the Ukrainian conflict settlement?” by Andras Racz and Sinukukka Saari. Permanent link: http://www.fiia.fi/en/publication/485/the_new_minsk_ceasefire/
 105 Witness statement: 0205K861

degrees to the normal, with the shank turned southeast¹⁰⁶ (azimuth 110-130¹⁰⁷ which was also confirmed by IPHR field mission). The shelling was guided by GPS tracker¹⁰⁸.

Shelling was divided into four parts: “shelling – pause”¹⁰⁹. The third series of the shelling was the most powerful. The shells made a distinctive hissing noise as they flew. After the third series of shelling the fire started at the place of dislocation¹¹⁰.

Most of the area of the shelling was burnt. Fifteen Ukrainian combatants died, much equipment was destroyed, as was an ammunition park, as a result of which many Ukrainian shells flew to the village¹¹¹. Moreover, many civilian buildings were damaged (roofs and windows were destroyed, house fronts were damaged by shrapnel)¹¹².

Before the shelling on 2-3 of September some of locals were informed by Ukrainian military about the possibility of shelling¹¹³.

Some witnesses testified to the usage of cluster munitions during the shelling in Dmytrivka. “I left the house and heard a rumble, like it was a jet idling. I used to live near the airfield and often heard such a sound. Then an explosion in the sky and in a few moments a series of cracks in the earth. The holes had a blue color. I also saw a glow in the sky, but it is difficult to say on which side”¹¹⁴.

On September 4, 2014, the village of Pobieda, Luhansk province, was massively shelled using MRLS “SMERCH”¹¹⁵. At that time the following military objects were situated in the area: the location of the headquarters of “A” sector¹¹⁶, units of the rocket artillery, five helicopters (four Mi-24 and one Mi-8), an air defense system, a repair depot and a field hospital¹¹⁷.

The shelling was possibly carried out from beside Stanitsa Mitiakinskaya (the Russian Federation), where the military base of Russian forces was built and spotted by a witness¹¹⁸.

The incident began on 1-3 of September 2014 with preliminary single shots made with MRLS “SMERCH”. The first of them landed in an unpopulated area of the village and did not cause harm – there were four empty shells of 30 cm diameter with stabilizing fins¹¹⁹. Some witnesses testified that they smelled sulphur and saw smoke¹²⁰. Witness testified that shells were fired from the side of the Ukrainian-Russian border (40-50 km from Pobieda village). Later the same day a witness testified that he saw “a salute from the shells” in Pobieda¹²¹.

106 Witness statement: 0205K869

107 Witness statement: 0205K859

108 Witness statement: 0205K869

109 Witness statement: 0205K859

110 Witness statement: 0205K859

111 Video evidence from IPHR database: “обстрел лагеря украинских военных в поселке Дмитровка”

112 Witness statement: 0205K862

113 Witness statement: 0205K859, 0205K862

114 Witness statement: 0205K864

115 Witness statement: 0205K869, 0205K862, 0205K863, 0205K873

116 Permanent link: <http://hromadskeradio.org/ru/programs/hroniky-donbasu/poselok-pobeda-posle-raketnogo-obstrela-fotoreportazh>

117 Witness statement: 0205K869, 0205K862, 0205K863, 0205K873

118 Witness statement: 0205K869, point 48.639242, 39.747818

119 Witness statement: 0205K869, 0205K857, 0205K865

120 Witness statement: 0205K858

121 Witness statement: 0205K858

The next day¹²² one stuck in the ground and did not explode. An eyewitness testifies that the rocket's attitude angle was 20 degrees to the normal and the shank was turned on Stanitsa Mitiakinskaya (Russian Federation)¹²³. Moreover, another shell fell into the command station building and library but did not explode¹²⁴.

On the evening of September 4 the shelling of the base began. A witness testified that while in Koliadovka village (15 km from Pobieda village) he heard the hissing of the rockets and deafening explosions; he also saw 10 columns of smoke rising from the area of Pobieda¹²⁵. The shelling was accompanied by the sound of "falling planes"¹²⁶ and loud explosions. Some of the shells got into the ammunition depot and caused heavy explosions which continued until 21:00 that day¹²⁷.

All the shelling of the Pobieda village was conducted from the direction of the village of Mykhayliuky (110-130 azimuth, documented by IPHR field mission)¹²⁸.

According to the OSCE monitors' report from the beginning of September 2014, they heard shooting from the Russian side of the border: "In the past weeks, artillery detonations and shootings had been heard only from western and northern directions; but throughout the week for the first time OTs (Observer Teams - red.) reported light and heavy calibre shootings from the east and south-east areas which are also bordering Ukraine"¹²⁹. OSCE does not confirm the exact shelling of Dmytrivka and Pobieda was made from the territory of the Russian Federation, but they confirm the usage of heavy weapons in that area at the time around September 3, 2014). Also Ukrainian authorities confirmed that the shelling of Dmytrivka and Pobieda was conducted from the territory of the Russian Federation¹³⁰.

According to testimony and evidences collected by the IPHR field mission in Dmytrivka and Pobieda, the locations of the villages, information from open sources and official reports we can conclude that the shelling of Dmytrivka and Pobieda was carried out from the East, probably near the Ukrainian border using unique shells of the type "Tornado S" produced in the Russian Federation. It proves that the shellings were at least supported by Russian Federation military and specialists. But taking into account the report of the OSCE for September 3, 2014 and information from the Finnish Institute of International Affairs about the "Tornado S" mentioned above we can presume that those exact shellings were carried out by Russian military forces from the territory of the Russian Federation.

Legal Assessment

i) Qualification of the armed conflict

The attacks on the settlements of Kolesnikovka, Komyshne, Milove, Krasna Talivka, Dmytrivka and Pobeda of the Luhansk province indicate the existence of an armed conflict of international character, as defined in Article 2 common to the Geneva Conventions of 1949. According to this Article, recognition or nonrecognition of the existence of an armed conflict that is international in nature does not affect the applicability of the Conventions. The Commentary

122 Witness statement: 0205K858

123 Witness statement: 0205K869

124 Witness statement: 0205K857

125 Witness statement: 0205K869

126 Witness statement: 0205K858, 0205K865

127 Video evidence from IPHR database: Победа после "Смерча"

128 Witness statement: 0205K858, Video evidence from IPHR database: video_pobieda_smerch1

129 Weekly update from the OSCE Observer Mission at the Russian Checkpoints Gukovo and Donetsk, 28 August until 08:00, 3 September 2014. Permanent link: <http://www.osce.org/om/123151>

130 Current information from Dmytrivka-Pobieda on 04.09.2014, Permanent link <http://www.rnbo.gov.ua/news/1802.html>

to the Geneva Conventions of 1949 unequivocally supports the generally accepted view that an international armed conflict starts from the moment when military intervention of the armed forces of one state takes place on the territory of another state¹³¹. In this case, the duration of the conflict / attacks and casualties is not relevant¹³². As shown above, in the cases of the attacks on Kolesnykivka, Komyshne, Milove, Krasna Talivka, Dmytrivka and Pobeda, there was illegal crossing of the state border of Ukraine (in terms of the Commentary on the Geneva Conventions - intervention), and subsequently attacks on the military infrastructure, state border units and civilian objects (confirmed attacks on the latest took place in Kolesnikivka and Komyshne villages). Abandoned personal belongings near Krasna Talivka, traces of movement of artillery units, movement of Russian military units on the territory of the Russian Federation and across the border of Ukraine indicate that border crossings and attacks on the territory of Ukraine could not have been organized without the participation of military units of the Russian Federation. Thus, illegal crossing of the state border by persons related to the military units of the Russian Federation, attacks on objects on the territory of Ukraine can be equated to the start of an armed conflict of international character.

Moreover, in the practice of international courts¹³³ and in the doctrine of international humanitarian law¹³⁴ it is considered established that an international armed conflict takes place in the case of any attacks by one State against another State. The provision of the attack (crime) against the territory of a State is well-known in international law as the Principle of objective territoriality, which for the first time was ascertained at the international level by the decision of the Permanent Court of International Justice of the League of Nations in the Case of the S.S. Lotus in 1927¹³⁵. According to this principle and its interpretations in the context of international humanitarian law, an armed conflict of international character occurs when there is any attack from the territory of one State against the territory of the other State. At the same time, the number of victims, the duration and intensity of the conflict are not relevant for the qualification. Under the circumstances of the attacks examined above at the settlements of Kolesnikivka, Komyshne, Milove and Pobeda of the Luhansk province, the facts of the shelling of the territory of Ukraine can be considered as established. These attacks themselves are enough to ascertain the presence of an armed conflict of international character. It should further be noted, that, as confirmed by satellite images, eyewitness testimony and posts in social networks on the Web, the attacks took place starting from the locations near the military units of the armed forces by the Russian Federation. This eliminates the possibility of attacks by non-state military units, which somehow entered the territory of the Russian Federation.

ii) Causing excessive incidental death, injury or damage

The attacks on Kolesnikivka and Komyshne villages of the Luhansk province can be qualified under the Article 8 (2) (b) (iv) of the Rome Statute of the International Criminal Court, in particular as intentional attacks against civilian objects and damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage. Such qualification is possible by comparing the material, mental and contextual elements of this crime.

THE MATERIAL ELEMENT. According to the Elements of Crimes under Article 8 (2) (b) (iv), the attack should be of such a nature that will cause incidental loss of life to civilians or damage to civilian objects. The attack should not be

131 J. Pictet, Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ICRC, Geneva, 1952, p. 32.

132 Ibid

133 ICTY, The Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70.

134 See, for example, H.P. Gasser, International Humanitarian Law: an Introduction, in: Humanity for All: the International Red Cross and Red Crescent Movement, H. Haug (ed.), Paul Haupt Publishers, Berne, 1993, p. 510-511

135 S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7)

targeted at the civilian objects only. It should cause accidental damage. As was demonstrated in the report, during the attacks at the settlements of Kolesnikivka and Komyshne the damage was caused both to civilian objects and to the boundary part. Moreover, the Elements of Crimes state that the attack shall not provide particular and immediate military advantage. In the case of the shelling of the two settlements indicated above, we also find this aspect of the material element. Thus, Kolesnikivka and Komyshne villages are situated 5 km away from the dividing line with so-called LPR, and the border part, which became the object of attack, is not a division whose destruction would offer serious military advantage.

THE MENTAL ELEMENT. According to the Elements of Crimes, the mental element under the Article 8 (2) (b) (iv) concerns the awareness of the performer (this term is used in a neutral sense) that the attack would lead to civilian casualties or damage to civilian objects, which are clearly not comparable to concrete and direct overall military advantage. The confirmation of this could be the fact that the attack was carried out on the object, which is located close to the settlement. At the same time, the weapon that was chosen for the attack (namely mortars and multiple launch rocket system GRAD) were not precision weapons by definition their use causes damage to objects and manpower over significant areas.

THE CONTEXTUAL ELEMENT. The contextual element of crimes under Article 8 (2) (b) (iv) and according to the Elements of Crimes is committing a crime within the armed conflict of international character and awareness on the part of the performer (in a neutral meaning of this word) of the existence of an armed conflict. Based on the qualifications of attacks on a number of settlements in Luhansk province (including Kolesnikivka and Komyshne), which was presented in the first paragraph of the legal assessment, there was an on-going armed conflict of international character between the Russian Federation and Ukraine at the moment of attacks at the civilian objects in Kolesnikivka and Komyshne. By carrying out attacks on military and civilian targets in the above-mentioned settlements the performer should have understood that he was using a weapon forbidden outside military conflicts (in particular “BM-21 Grad”, “BM-30 Smerch” with cluster and high-explosive munition) and that the attack was carried out on the territory of Ukraine. The attack itself pursued military advantage. This demonstrates the fulfillment of the Elements of Crimes requirement for awareness of the existence of an armed conflict.

Thus, we can conclude that the attacks on Kolesnikivka and Komyshne villages of the Luhansk province shall be qualified under the Article 8 (2) (b) (iv).

Annexes

Annex 1

Soldiers of Russian Federation army that published photos, captured by them, in social networks and geotagged in the area of the camp to east from village Duby, in 12 km from Ukrainian border.

N	Name	Military unit	Place	Date of the event	Account	Date of birth	Place of residence
1	Sivakov Ivan Sergeevich		Krasnosulinskiy district	August-September 2014	https://vk.com/id150500068	August 30	Volgograd
2	Nikolaienko Artem Alexeevich	m/u 54801 247th GAAR	Lysogorka	28 June 2014	https://vk.com/id152076066	27.10.1991	Ufa
3	Zadrin Grigoriy Viktorovich	m/u 41450 137 GPR	Matveev Kurgan	September 2014	https://vk.com/id61017199		Nizhniy Novgorod
4	Krutynin Dmitri Viacheslavovich	m/u 43533 Mulino 8th squadron	Millerovskiy and Tarasovskiy district	Winter 2014-2015	https://vk.com/id164501003 ; https://ok.ru/dmitry.krutynin	11.05.1994	Ivanovo
5	Denis Bogorodskiy	Squadron MSTA-S (Mulino)	Neklinovskiy district	Summer-autumn 2014	https://vk.com/maloy_sportik777	22 авруста	Kemerovo
6	Dmitriy Gorbaciov	Tanks	Neklinovskiy district	30 August 2014		17.10.1995	Pevek
7	Danil Hyzhniak	Artillery	Neklinovskiy district				
8	Iudichev Kiril	m/u 30683 (288-th artillery party) (Mulino)	Tarasovskiy district		https://vk.com/id24100391	11.06.1990	Orel
9	Kuznietsov Maksim Viktorovich	m/u 11659 (22-nd SSMB GRU RF) (Novocherkassk)	Tarasovskiy district	June 2014	https://vk.com/id112266217	09.05.1990	Rostov-na-Donu
10	Sokolov Artem		Tarasovskiy district	July-August 2014	https://vk.com/id70011044	21.06.1994	Murom

11	Savchuk Sergey	m/u 54164 38-th SGSR ABF	Tarasovskiy district	September 2014	https://vk.com/id202050191	18.06.1993	Tambov
12	Kuzin Dmitriy		Tarasovskiy district	28 July 2014	https://vk.com/id80428603	25 дек	Alaryr'
13	Zaychenkov Denis		Tarasovskiy district	6 September 2014	https://vk.com/id206733431	14.11.1993	Kursk
14	Maltsev Sergey		Tarasovskiy district	July 2014	https://vk.com/id253311670	01.11.1994	
15	Paderin Konstantin	m/u 73582	Tarasovskiy district	Autumn 2014	https://vk.com/kospaderin	24.01.1991	Tobolsk
16	Alexandr Morgun	m/u 02511 138th SMRB Kamenka(intelligence)	Tarasovskiy district	30 June 2014	https://vk.com/id83303329	09.08.1991	
17	Araz Ragimov		Tarasovskiy district	September 2014	https://vk.com/id169792527		Voronezh
18	Listopad Alexey	m/u 54046 GRAD 19th SMRB	Khutor Varenyk		https://vk.com/id78464186		
19	Frolov Anrey Sergeevich	m/u 30683 (288-th artillery party) (Mulino)	Khutor Duby	2014	https://vk.com/id78528372	1994	Vazhgord
20	Butorin Adrey	m/u 30683 (288-th artillery party) (Mulino)	Khutor Duby	September 2014	https://vk.com/id14443962	01.02.1993	Tetyushi
21	Pudrov Alexandr Alexandrovich	m/u 31135 (1-st MTRR of Taman division)	Tarasovskiy district		https://vk.com/id209000775	22.05.1994	
22	Voyteshuk Artem Leonidovich	m/u 45767 Mine picker battalion			https://vk.com/id162014241	31.05.1989	Tumen
23	Esin Vasili		Khutor Duby	31 August 2014	https://vk.com/id2861589		Sankt-Petersburg
24	Shulgin Vladislav		Tarasovsky district	25 September 2014	https://vk.com/id188855534	July 8	Voronezh
25	Zhukov Kiril		Tarasovsky district	8 July 2014		April 15	Vyaz'ma
26	Tepluhin Sergey	m/u 31135 (1 MTRR)	Tarasovsky district		https://vk.com/id238607666	06.04.1989	Dzerdzhynsk
27	Maksim Yakovlev		Tarasovsky district	August 2014		October 31	Cherepovets
28	Truhin Ivan	MSTA-S m/u 31134 (15-й MTRR Kalininets of taman division)	Khutor Duby	October 2014	https://vk.com/id64222165		

29	Kniaziev Stanislav	m/u 54046 (9th SMRB)	Khutor Prognoy				
30	Kulykov Dmitriy	m/u 54046 (9th SMRB)	Khutor Prognoy				
31	Pugachov Evgeniy	m/u 64055 EWB	Tarasovsky district	16 September 2014	https://vk.com/pugachev89	09.04.1989	
32	Zhbanov Aleksandr Aleksandrovich	m/u 12128 (21th SMRB)	Tarasovsky district	May 2014	https://vk.com/id132855366	19.08.1994	Michurinsk
33	Roman Isajev	m/u 54046 (9th SMRB)	Tarasovsky district	Summer-autumn 2014	https://vk.com/id16874889		



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