

# **ATTACKS** ON CIVILIANS AND CIVILIAN INFRASTRUCTURE IN EASTERN UKRAINE

**PERIOD COVERED:**

March 2014 — November 2017





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# 1. Introduction

## 1.1 Executive Summary

1. International Partnership for Human Rights (IPHR) and Truth Hounds (hereinafter, the Authors) present their latest report – **Attacks on Civilians and Civilian Infrastructure in Eastern Ukraine**. The Report sets forth new evidence of international crimes, perpetrated by the Ukrainian Armed Forces (UAF) and Russian-backed separatist militias – the so-called Donetsk Peoples’ Republic (DPR) and Luhansk Peoples’ Republic (LPR), in the context of and associated with the armed conflict in eastern Ukraine. This Report follows on from and complements a Report published by IPHR in October 2015 – **Fighting Impunity in Eastern Ukraine** (hereinafter, First Report).<sup>1</sup> It focuses on evidence of attacks intentionally or indiscriminately directed at civilians and/or civilian infrastructure, on the use of civilians as human shields for military operations and equipment, and provides further evidence of cross-border attacks and interventions in the conflict by the Armed Forces of the Russian Federation (AFRF).
2. In publishing this Report the Authors aim: (a) to provide the public and Prosecutor of the International Criminal Court (ICC Prosecutor) with evidence of concrete episodes which qualify as war crimes, namely attacks on civilians and civilian infrastructure and the use of human shields; (b) to demonstrate the widespread nature of such crimes and their gravity – highlighting that legal requirements for opening a full ICC investigation have been met; (c) to set forth evidence of Russia’s direct involvement in the conflict and its ensuing international character; (d) to urge the ICC Prosecutor to seek authorisation for opening a full investigation at the earliest opportunity to ensure accountability and to prevent the loss of key evidence; (e) to preserve key evidence for future investigations and prosecutions in Ukraine, at the ICC or in other national or international jurisdictions.
3. In producing this Report, the Authors conducted 24 field missions to 43 settlements that lie on the so-called ‘contact line’ – a *de facto* border between areas controlled by UAF and those controlled by Russian-backed separatist militias – the so-called DPR and LPR. In the course of these missions, the Authors interviewed 297 witnesses and documented 208 attack impact sites, as well as collecting photographic and video evidence of damage to civilian infrastructure, impact craters, missile remnants and documentary evidence corroborating evidence provided by witnesses. The evidence was analysed using the ICC Statute, ICC Elements of Crimes and applicable jurisprudence.
4. The Report is divided into three substantive sections:

Section 2 provides a brief factual overview of the conflict in eastern Ukraine since the publication of our First Report in October 2015. It focuses on events that have bearing on the nature of the armed conflict, the alleged crimes as well as on the seriousness and impact of those crimes (gravity) and the lack of effective domestic investigations and prosecutions (complementarity).

Section 3 sets forth evidence of cross border attacks and territorial incursions by the AFRF in June - September 2014. The aim of this section is to demonstrate that involvement of Russian artillery and troops render this war, at least in part, an international armed conflict. Witness statements, artillery remnants and impact data, satellite imagery and social media posts reveal, to a high degree of probability, that the AFRF conducted cross-border attacks on Ukrainian territory from July to September 2014 from military camps and firing positions on the Russian side of the Russia-Ukraine border. In addition to constituting evidence of direct AFRF involvement in armed attacks in the documented instances, these attacks constitute circumstantial evidence of Russia’s involvement in the wider conflict in Eastern Ukraine, and its overall control over LPR and DPR separatist forces.

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<sup>1</sup> IPHR, ‘New Report: Fighting Impunity in Eastern Ukraine’, 7 Oct. 2015, available at: <http://iphronline.org/new-report-fighting-impunity-in-eastern-ukraine-20151007.html> (last accessed: 28/11/2017).

Section 4 sets forth evidence of attacks on civilians and/or civilian infrastructure by all warring parties from the outset of the conflict in 2014. The Authors have identified 134 episodes documented in 22 settlements, on or in the vicinity of the contact line, that qualify as war crimes as defined in Article 8 of the ICC Statute. The attacks have resulted in at least 100 civilian deaths, 162 civilian injuries and hundreds of cases of total or partial destruction of civilian property and vital infrastructure. These episodes include attacks intentionally directed at civilians or civilian objects (in violation of Article 8(2)(b)(i)/(ii) or Article 8(2)(e)(i) of the ICC Statute), as well as attacks launched against military objectives that lack proportionality between anticipated incidental harm to civilians/civilian objects/the environment and the military advantage sought (in violation of Article 8(2)(b)(iv) of the ICC Statute). The Authors also note a disturbing number of attacks perpetrated against schools, kindergartens and hospitals – amounting to a separate war crime of attacks on medical and educational facilities under Article 8(2)(b)(ix) or Article 8(2)(e)(iv) of the ICC Statute.

The impact sites and known military objectives have been mapped by the Authors, and given unique location reference point. References to locations can be found in the text in this form: (Ln [Number]). The map and all location reference points may be accessed online at: [truth-hounds.org].

Section 5 sets forth evidence of a recurrent practice – perpetrated by all parties to the conflict – of positioning artillery launch sites, military equipment and/or personnel in close proximity to civilians and civilian objects. In so doing, the warring parties place civilians in serious danger of death and injury, as well as risking the destruction or severe damage to important civilian infrastructure – in violation of the principle of distinction. In this section we demonstrate that this practice, in the appropriate circumstances, amounts to a war crime under Article 8(2)(b)(xxiii) or Article 8(2)(c)(i) of the ICC Statute.

5. The Report concludes by drawing the public and ICC Prosecutor's attention to the seriousness and widespread nature of the crimes described herein, and requests the ICC Prosecutor to seek authorisation to launch a full investigation into these and other crimes alleged to have taken place in Ukraine since the outbreak of the crisis in November 2013.

## 1.2 The Authors

6. International Partnership for Human Rights (IPHR) is a non-profit organization with its headquarters in Brussels. It was founded in 2008 with a mandate to empower local civil society groups and assist them in making their concerns heard at the international level. IPHR works together with human rights groups from different countries on project development and implementation, research, documentation and advocacy. Its team members have wide experience in international human rights work and cooperates with human rights groups from across Europe, Central Asia and North America, helping to prepare publications and conduct advocacy activities. Since its establishment, IPHR has carried out a series of activities aimed at assisting and empowering local human rights groups from the Russian Federation, Central Asia and South Caucasus to engage effectively with the international community.
7. Truth Hounds is a non-profit organization with its headquarters in Kiev. It was founded in 2016. The Truth Hounds team started its work as a group of activists and human rights defenders in 2008 in Georgia. Our specialists work in human rights, training and monitoring activities in Ukraine, Georgia, Armenia and Belarus. The founders were among the initiators of the "Euromaidan-SOS". In September, 2014 the team started work as a field mission on documenting war crimes and crimes against humanity in eastern Ukraine and the Crimea, in the framework of a project of the IPHR. In Georgia, the Truth Hounds team, together with its partners, runs the Tbilisi Shelter City project – a shelter for human rights activists from the former Soviet union, which provides a safe environment and counselling to activists and human rights defenders operating in difficult circumstances. Since its establishment, Truth Hounds has worked with the Council of Europe, European Commission, OSCE/ODIHR, the International Criminal Court, and became a member of the Civic Solidarity Platform and Coalition for the International Criminal Court.

8. The National Endowment for Democracy (NED) is a private, nonprofit foundation dedicated to the growth and strengthening of democratic institutions around the world. Each year, NED makes more than 1,700 grants to support the projects of non-governmental groups abroad who are working for democratic goals in more than 90 countries.

## 1.3 Sources of information and methodology of documentation

9. The evidence of violations presented in this Report has been empirically documented by the Authors through field missions and witness interviews, or collected from independent, reliable sources by documenters. To ensure a methodologically consistent documentation process, IPHR developed a tailor made crime documentation manual and a practical toolbox - the matrix of Documentation of War Crimes in IPHR's methodological Documentation Guide.<sup>2</sup> The Guide 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. Additional information was obtained through desk research using open-source documents.
10. Investigating attacks against civilians and civilian infrastructure requires the completion of several stages of data collection, analysis and verification. Each stage includes specific requirements for establishing the material elements of ICC Statute crimes and the linkage evidence to potential perpetrators.

### 1.3.1 DATA COLLECTION

11. The main form of data collection for the purposes of war crimes documentation is interviewing witnesses and victims of alleged crimes. To gather witness and supporting evidence, the documentation team travels to the alleged crime site with the view of identifying victims, witnesses and physical evidence. Witness statements, conducted in an impartial and open manner, form the bulk of the evidence – an indispensable part of the investigation. Further contextual and/or corroborating information is sought from official documents such as reports from State and quasi-State organs (e.g. statements by representatives of the warring parties, law enforcement agencies, international monitoring organisations, media reports).
12. The purpose of the interview is to obtain the victim's most complete answers on the event in question. To ensure the reliability and credibility of witness evidence, the documentation team resorts to the use of open questions: i.e. who, what, where, when, why, how and what was the result. The following data is gathered from every witness:
  - Brief description of the interviewee, their occupation, previous occupation, education, workplace and residence, date of birth and other personal and contact details; timing and location of the incident with questions aimed at verifying the accuracy, reliability, credibility and sources of knowledge of that information (e.g. proximity of date of incident to well known public holidays or events; presence of watch or clock; daily routine; corroborating evidence such as mobile phone data);
  - Other contextual data such as the prevailing meteorological conditions, quantity and quality of light, astronomical events (e.g. position of the moon); verbal description of the location where the incident(s) occurred, address (especially for the location of affected property and infrastructure); graphic representation of the location where the incident occurred (hand-drawn map of the scene); Photo and video evidence, captured by the respondent or his/her close relatives;
  - Location of the interviewee at the time of the events (for establishing accuracy, reliability and credibility

<sup>2</sup> Case file N018, document: "Методическое пособие по документированию военных преступлений.docx" pp. 36-41

and identifying possible hearsay); the list of places targeted by gunfire, addresses of damaged buildings, places of shell bursts; what the interviewee saw (flashes, active colours in the sky, the flight path of the projectile), heard (shots, explosion, whistling, hissing, creaking, rustling), and felt (vibration, oscillation, effect of a blast); from which side of the interviewee the fire was conducted (from a certain cardinal direction, from a certain locality, a particular object, “right-left”, etc...);

- Factors identifying the types of weapons being used, as well as the witness’ own observations and information that may affect the interviewee’s ability to make such observations (e.g.: current or former position in the armed forces, personal experience of modern weaponry, discussions with experts etc); information on positions, movements and composition of warring parties (including the sources of such information and factors supporting its credibility and reliability); information on the presence of military objectives in the vicinity of the targeted area;
- Information on the nature of the targeted area (especially the presence of protected buildings such as schools and hospitals);
- Information on whether any warning was given and if so, how it was given (e.g. alarm sound, warning from one of the military sides, alert in the medias, rumours and where did they come from); whether the respondent was personally affected and how;
- Information about injured civilians as a result of the attack (killed, wounded) and sources of that information;
- Other consequences of the attack: damaged infrastructures, injuries and traumas, financial losses; availability of corroborating evidence (e.g.: notes from doctors concerning injuries and wounds, acts of State organs on the destruction and damage to facilities).

13. At the end of each interview, the statement is read back to (or by) the interviewee and he or she may correct any errors or inaccuracies on the record. The final text of the statement is printed on the site of the interview if possible, and signed by the witness. The interviewer and the respondent sign a duplicated form, which includes information on the potential use of the data and the duty and purposes of interviewing organisation to ensure the confidentiality of the data. All evidence is collected from each witness separately and independently. The presence of other witnesses or anyone that could have an influence on the testimony is not allowed during the interview (or if unavoidable, placed on the record).

### **1.3.2 IMPACT SITE DOCUMENTATION AND ANALYSIS**

14. Attack impact sites are identified from witness statements and official or open-source data. Each impact site is visited by the documentation team. The following documentation and analysis processes are conducted on site to determine the means and methods of the attack, its provenance as well as its impact on civilian lives and infrastructure:

- Systematic photo and video recording of the documentation process; taking necessary measurements to determine the direction of the fire (i.e. width, depth and angle of impact); documentation of missile remnants (photo backed by video) or any other information identifying the type of weapon used;
- In order to boost the accuracy, credibility and reliability of documented information, each documenter must:
  - Specify the date, place and time of the recording and give their name and the names of everyone involved in the analysis of the impact site; show a panorama of the scene, in order to confirm the location and identifying features (e.g.: addresses on buildings, street signs or unusual objects, etc.);
  - Show impact site from the four sides (crosswise) and overall, medium, large and detailed plans;

- Capture on camera the measurements of the impact zone
- Capture the settings on camera with a compass azimuth, the direction from which shooting was carried and show that the direction on camera; during the documentation and analysis of impact sites the documenters:
- Use tapes and a rulers to measure: width, length and depth of the crater (its size) and specify the direction from which they took the measurements of the crater (ex: width from east to west);
- Show the dimensions of the entry point of the projectiles;
- Show the dimensions of the remnants left by exploding shells, the extent of damage on the affected area;
- Show the dimensions of debris and remnants, if they are present on the site of the incident, the size of the remains of the shell if there are any;
- Record the symbols and marks on the shells and their residues, if possible;
- Determine the fire direction with the help of a compass and determine the azimuth to the highest degree of accuracy;
- Where possible, record the coordinates of the places of documenting damages (note the GPS coordinates to mark the place on the map, etc ).

### **1.3.3 COLLECTING PHYSICAL EVIDENCE**

15. Physical evidence such as shell fragments, bullet casings and victims' possessions damaged in attacks are gathered by documenters where necessary and possible. Physical evidence is collected to prevent its loss and/or damage, when documenters determine that its collection is paramount to its preservation. All necessary measures are taken to maintain a clear and reliable chain of custody for each item collected.
16. Each physical evidence collected is attached to witness statements and other information identifying the attack in question. Physical evidence is never considered as stand-alone proof.
17. For physical evidence handed to documenters by witnesses, the evidence is separated, placed in a sealed bag or contained and marked with identifying information including the place, date, circumstances of collection and contact information of the evidence provider.
18. For physical evidence collected directly by a documenter, the physical act of collecting is recorded on video. The evidence is then stored in a secure place in the organization and protected against manipulation and corrosion. Where necessary, the documenters are able to testify in court regarding the evidence, the collection and storage process and other observations made at the impact site.

### **1.3.4 DATA ANALYSIS**

19. After collection, all data is organised and analysed using the framework of the ICC Statute and Elements of Crimes. The aims of the process are to (a) obtain the most complete picture of events documented (including contextual evidence and information on gravity and impact of attacks); (b) determine – to the standard applicable to preliminary examinations at the ICC – whether the documented evidence reveals the existence of an ICC Statute crime; and (c) identify gaps in the evidence and potential sources of information for bridging the identified gaps. To this end:
20. Documenters compare the testimonies of civilian and combatant respondents in relation to the episode independently from one another and compare the data that they have reported. In the event that the collected data answers the questions in the investigation, and the different testimonies demonstrate an acceptable level of consistency, the issue is considered documented. In the alternative, further investigative steps are sought.

21. All impact sites are marked on the map, after which the intensity, provenance, means and methods of the attack are determined using the documented data, allowing a preliminary conclusion as to the likely origin of the attack, and the types of weapons used.
22. Based on the documented evidence, a determination is made on the harm caused to civilians and civilian infrastructure, its extent and gravity.
23. The ICC Statute and Elements of Crimes are used to determine whether a crime has taken place. This analysis takes into account the conflicting parties' adherence to the principles of distinction, proportionality, humanity; an evaluation of the parties military necessity and actual or potential military advantage, and any evidence indicating efforts made to take into account civilians and their well-being.
24. Linkage evidence is analysed to determine those responsible by identifying the likely warring party responsible for the attack, the units stationed at or near the identified launch site and the chain of command of those units.

### **1.3.5 DATA VERIFICATION**

25. Following the field research and the full analysis of the collected data, the following measures are used:
26. Analysis of open-access satellite maps and images, which occasionally allow the identification of military installations and launch sites that correspond to the documented evidence and analysis.
27. Analysis of photos, videos and publications on the Internet and social networks posted by eyewitnesses of the events.
28. Publications on the Internet and social media (photos, videos, posts) that were made by potential perpetrators of the documented attacks.
29. Official data on the combat actions taken by the parties of the conflict, obtained from reports of international monitors (OSCE SMM, Ukraine-Russia Observation Mission), which checks data collected by documenters in field missions.

## 2. Update on the conflict: September 2015 – November 2017

30. In Section 2 of the First Report, the Authors provided an overview of the Ukraine crisis from November 2013 to September 2015. The purpose of this section is to update the public and the ICC Prosecutor on developments in the conflict in eastern Ukraine from September 2015 to November 2017. The aim is not to provide an exhaustive account of all military action, but rather to provide an overview of events that have bearing on elements of alleged ICC Statute crimes committed in the context of the armed conflict in eastern Ukraine.
31. Since September 2015, the warring parties have made little or no concrete territorial acquisitions.<sup>3</sup> The contact line – a 480km stretch between the UAF on one hand, and the DPR and LPR on the other – has become a *de facto* border. Civilians crossed this line a recorded 8,565 million times in 2016 (a two-fold increase from 2015), using four road-traffic checkpoints in Donetsk Province and one pedestrian checkpoint in Luhansk Province.<sup>4</sup>
32. The vast majority of military action and attacks on civilians have taken place in settlements lying directly on the contact line or in its vicinity. Despite numerous attempts to agree binding ceasefires along with troop and/or equipment withdrawal, the past two years of conflict can be considered low-intensity trench warfare – characterised by intermittent artillery and mortar shelling across the contact line, mining and booby-trapping of neutral territory, sporadic sniper fire and reconnaissance missions (by both troops and drones). This has occasionally flared into medium-intensity and full-scale battles, such as those in Svitlodarsk and Avdiivka (discussed below).
33. A full spectrum of weaponry has been employed by all parties during the documented period, ranging from light weapons, automatic rifles, armoured vehicles, tanks and heavy artillery – most notably the highly inaccurate MLRS ‘Grad’. No cross-border artillery attacks from the territory of the Russian Federation have been documented for this period, although there is substantial evidence of Russian troops, advisers, weapons and logistical support on the territory held by separatist forces.
34. On 29 September 2015, representatives from Russia, Ukraine and pro-Russia separatist groups agreed to ‘the withdrawal of tanks, mortars and artillery of less than 100 millimetre calibre to a distance of 15 kilometres’.<sup>5</sup> On 1 October 2015, the leader of the DPR – Alexandr Zakharchenko – announced that separatist forces would not comply with this agreement, ostensibly due to multiple ceasefire violations by the UAF the night before.<sup>6</sup> Further talks were held in Paris and a new timetable was set for troop and equipment pullback.<sup>7</sup> UAF and separatist forces announced the gradual withdrawal of the agreed weapons, although skirmishes involving small arms, mortars and artillery continued on a daily basis.<sup>8</sup>

3 The only settlements known to have changed hands during the period of documentation are the villages of Vodiano, Hovoluhanckoe and Kominternove in Donetsk Province.

4 Foundation101.org, ‘8 million people crossed the contact line in 2016’, 2 Feb. 2017, available at: <https://www.foundation101.org/en/news/20170202> (last accessed: 24/11/2017).

5 Radio Free Europe, ‘Ukraine, Russian-backed rebels agree to withdraw weapons’, 30 Sept. 2015, available at: <https://www.rferl.org/a/ukraine-russian-backed-rebels-agree-withdraw-weapons/27278407.html> (last accessed: 21/11/2017).

6 RIA, ‘Захарченко: ДНР не начала отвод вооружений из-за ночного обстрела’, 1 Oct. 2015, available at: <https://ria.ru/world/20151001/1294481328.html> (last accessed: 21/11/2017).

7 AlJazeera, ‘Ukraine’s warring sides begin pullback of weapons’, 3 Oct. 2015, available at: <http://www.aljazeera.com/news/2015/10/ukraine-warring-sides-pullback-weapons-151003095557859.html> (last accessed: 21/11/2017).

8 Radio Free Europe, ‘Ukrainian forces, rebels pull back tanks in Donetsk’, 20 Oct. 2015, available at: <https://www.rferl.org/a/ukraine-forces-rebels-pull-back-tanks-in-donetsk/27316997.html> (last accessed: 21/11/2017); Information Analysis Centre, ‘Зведені дані щодо ситуації в зоні АТО – 23 жовтня’, 23 Oct. 2015, available at: <http://mediarnbo.org/2015/10/23/zvedeni-dani-shhodo-situatsiyi-v-zoni-ato-23-zhovtnya/> (last accessed: 21/11/2017); Novorossia.su, ‘Басурин: Обстановка в ДНР обострилась, за сутки зафиксировано 26 обстрелов со стороны ВСУ’, 4 Nov. 2015, available at: <https://novorossia.su/news/basurin-obstanovka-v-dnr-obostrilas-za-sutki-zafiksirovano-26-obstrelov-so-storony-vsu> (last accessed: 21/11/2017).

35. On 13 October 2015, the Dutch Safety Board concluded that flight MH17 crashed as a result of a Russian-made Buk missile.<sup>9</sup> On 25 October 2015, a Russian Ministry of Defence official reportedly admitted that elite Russian Special Forces units stationed in eastern Ukraine were redeployed to Syria.<sup>10</sup> On 26 November 2015, Ukrainian border guards detained two AFRF members who claimed to have walked onto Ukrainian territory 'by accident'.<sup>11</sup> On 2 December, NATO's Supreme Commander opined that 'Russia is completely in control of what is happening on the line of contact and they will use that in the future'.<sup>12</sup> In his annual press conference on 17 December 2015, President Putin admitted for the first time the presence of Russian military specialists in eastern Ukraine, but denied that this equated to the presence of regular troops.<sup>13</sup>
36. On 22 December 2015, the village of Kominternove – 24km east of Mariupol – was captured by DPR forces using tanks, armoured personnel carriers and mortar rounds.<sup>14</sup> A new ceasefire agreement was reported to have been reached in Minsk on the same day for the duration of the festive period.<sup>15</sup> The agreement was immediately violated.<sup>16</sup> An OSCE monitoring mission vehicle was hit by small arms fire on 16 January 2016.<sup>17</sup> A further agreement to clear minefields and suspend military training along the demarcation zone was signed in Minsk on 2 March 2016.<sup>18</sup> On 9 March 2016, the AFRF held large-scale military exercises involving 8500 combatants, ships and aircraft in the vicinity of its southern border with Ukraine.<sup>19</sup> From 17 April 2016, active hostilities flared up in and around Stanytsia Luhanska, with the OSCE reporting approximately 300 explosions in and around the settlement – namely from grenade launchers, mortars, cannon and heavy artillery fired from LPR positions.<sup>20</sup>
37. By 26 July 2016, the OSCE had lost all three of its surveillance drones – each one shot down over separatist-
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- 9 BBC, 'MH17 Ukraine disaster: Dutch Safety Board blames missile', 13 Oct. 2015, available at: <http://www.bbc.co.uk/news/world-europe-34511973> (last accessed: 21/11/2017).
- 10 The Wall Street Journal, 'Russia said to redeploy special-ops forces from Ukraine to Syria', 23 Oct. 2015, available at: <https://www.wsj.com/articles/russia-said-to-redeploy-special-ops-forces-from-ukraine-to-syria-1445636834> (last accessed: 23/11/2017); Fox News, 'Russia said to redeploy special-ops forces from Ukraine to Syria', 25 Oct. 2015, available at: <http://www.foxnews.com/world/2015/10/24/russia-said-to-redeploy-special-ops-forces-from-ukraine-to-syria.html> (last accessed: 23/11/2017).
- 11 Information Analysis Centre, 'Сводные данные по ситуации в зоне АТО – 27 ноября', 27 Nov. 2015, available at: <http://mediarnbo.org/2015/11/27/svodnyie-dannyye-po-situatsii-v-zone-ato-27-noyabrya/?lang=ru> (last accessed: 23/11/2017).
- 12 Reuters, 'Russia unlikely to meet Ukraine peace deal deadline, NATO says', 2 Dec. 2015, available at: <https://www.reuters.com/article/us-ukraine-crisis-nato/russia-unlikely-to-meet-ukraine-peace-deal-deadline-nato-says-idUSKBN0TL1FA20151202> (last accessed: 23/11/2017).
- 13 Guardian, 'Vladimir Putin press conference: "Russian military personnel were in Ukraine" – as it happened', 17 Dec. 2015, available at: <https://www.theguardian.com/world/live/2015/dec/17/vladimir-putins-annual-press-conference-live> (last accessed: 23/11/2017).
- 14 0629.com, 'Боевики «ДНР» на бронетехнике зашли в Коминтерново. В Мариуполе войска приведены в боевую готовность. Под Коминтерново обнаружены установки «Град», 22 Dec. 2015, available at: <https://www.0629.com.ua/news/1069272> (last accessed: 23/11/2017); Unian, 'Creeping Russian occupation: OSCE reports no access to Kominternove', 23 Dec. 2015, available at: <https://www.unian.info/war/1220937-creeping-russian-occupation-osce-reports-no-access-to-kominternove.html> (last accessed: 23/11/2017).
- 15 Unian, 'Donbas Contact Group agrees on full ceasefire for Christmas, New Year season', 22 Dec. 2015, available at: <https://www.unian.info/war/1219756-donbas-contact-group-agrees-on-full-ceasefire-for-christmas-new-year-season.html> (last accessed: 23/11/2017).
- 16 Information Analysis Centre, 'Оперативная сводка штаба АТО на 06:00 – 24 декабря', 24 Dec. 2015, available at: <http://mediarnbo.org/2015/12/24/operativnaya-svodka-shtaba-ato-na-06-00-24-dekabrya/?lang=ru> (last accessed: 23/11/2017) – reporting 51 ceasefire violations during the night.
- 17 OSCE, 'Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Small-arms fire hit SMM vehicle in Marinka', 17 Jan. 2016, available at: <http://www.osce.org/ukraine-smm/216561> (last accessed: 23/11/2017).
- 18 Unian, 'В Генштабе рассказали о документах, подписанных контактной группой в Минске 2 марта (видео)', 3 March 2015, available at: <https://www.unian.net/war/1282020-v-genshtabe-rasskazali-o-dokumentah-podpisannyih-kontaktnoy-gruppyo-v-minske-2-marta-video.html> (last accessed: 23/11/2017).
- 19 BBC, 'Russian military deployed near Ukraine for huge exercises', 9 March 2016, available at: <http://www.bbc.com/news/world-europe-35532842> (last accessed: 23/11/2017).
- 20 OSCE, 'Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30hrs, 19 April 2016', 20 April 2016, available at: <http://www.osce.org/ukraine-smm/235136> (last accessed: 24/11/2017).

controlled territory – leaving it without long-range aerial surveillance capabilities.<sup>21</sup> By August 2016, hostilities flared up again along the contact line, with civilian and combatant casualties mounting and observers fearing a return to all-out war.<sup>22</sup> A closed-door meeting was held at the UN Security Council on 11 August 2016 to discuss mounting tensions between Russia and Ukraine, particularly in light of Russia’s allegations that Ukraine carried out shelling and incursions into Crimea.<sup>23</sup>

38. On 13 September 2016, separatist leaders Zakharchenko and Plotnitsky announced a unilateral ceasefire,<sup>24</sup> after Ukraine’s President Petro Poroshenko announced constitutional amendments granting autonomy to eastern Ukraine. This was followed by a statement from the German Foreign Minister that the truce would become effective as of 15 September.<sup>25</sup> However, the ceasefire was not observed by any of the warring sides.
39. A major battle erupted in and around Svitlodarsk in Donetsk Province between 18 December 2016 and 22 December 2016. It is unclear why the battle took place and who fired the first shots. However, it is reported that UAF positions were shelled from LPR artillery in Vuhlehirska and Debaltseve,<sup>26</sup> whilst the UAF is reported to have shelled the LPR-controlled village of Kalynivka.<sup>27</sup> The OSCE recorded the use of MLRS on the night of 21 December.<sup>28</sup> Up to 10 UAF soldiers and 18 LPR fighters were killed, and 35 UAF soldiers and 38 LPR fighters were wounded.<sup>29</sup>
40. Another major battle took place between UAF and DPR forces in January and February 2017, in and around Avdiivka in Donetsk Province. The battle coincided with US President Trump’s inauguration, and appears to have been a tussle for control over a stretch of major highway connecting rebel-held Donetsk City with Horlivka.<sup>30</sup> Reported casualties include up to 58 deaths (14 UAF combatants, 30 DPR fighters and 14 civilians) and over 100 wounded combatants and civilians. A detailed description of the battle and associated civilian casualties is set forth in Section 4.2 below.
41. In February 2017, Russian president Vladimir Putin signed an executive order recognising civil registration documents issued in separatist-held areas of eastern Ukraine. Ukrainian authorities claim that this is a violation of the Minsk agreements.<sup>31</sup> Semen Semenchenko, a Ukrainian war veteran and MP who organised a trade blockade between Ukraine and separatist-held territories, claimed to have stopped 16,000 train

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21 The Wall Street Journal, ‘Keeping an international eye on Ukraine’, 16 Aug. 2016, available at: <https://www.wsj.com/articles/keeping-an-international-eye-on-ukraine-1471376541> (last accessed: 24/11/2017).

22 Radio Free Europe, ‘Guns of August: Fears of full-scale war return as casualties mount in Ukraine’, 10 Aug. 2016, available at: <https://www.rferl.org/a/ukraine-russia-fears-of-full-scale-war-as-casualties-mount/27910909.html> (last accessed: 24/11/2017).

23 BBC, ‘Crimea tension: What is Russia’s end game?’, 14 Aug. 2016, available at: <http://www.bbc.com/news/world-europe-37074732> (last accessed: 24/11/2017).

24 Independent, ‘Ukrainian rebel leader announces ceasefire in statement on Russian TV’, 13 Sept. 2016, available at: <http://www.independent.co.uk/news/world/europe/ukrainian-rebel-leader-announces-ceasefire-in-statement-on-russian-tv-a7244681.html> (last accessed: 24/11/2017).

25 Radio Free Europe, ‘Steinmeier: Kyiv agrees to new truce for Ukraine’s east’, 14 Sept. 2016, available at: <https://www.rferl.org/a/ukraine-french-german-ministers-peace-deal/27988422.html> (last accessed: 24/11/2017).

26 Ukraine Today, ‘“Bloodiest battle in 5 months”: Ukrainian troops repel 3 militant attacks near Svitlodarsk’, 19 Dec. 2016, available at: <https://web.archive.org/web/20161220221743/http://uatoday.tv/society/bloodiest-battle-in-5-months-ukrainian-troops-repel-3-militant-attacks-near-svitlodarsk-849788.html> (last accessed: 23/11/2017).

27 TASS, ‘LPR militias: Kiev forces fire over 150 shells near Kalinovka village’, 19 Dec. 2016, available at: <http://tass.com/world/920335> (last accessed: 23/11/2017).

28 OSCE, ‘Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30, 22 December 2016’, 23 Dec. 2016, available at: <http://www.osce.org/ukraine-smm/291076> (last accessed: 28/11/2017).

29 KyivPost, ‘At least 22 Ukrainian soldiers killed in Russia’s war in December-January’, 12 Jan. 2017, available at: <https://www.kyivpost.com/ukraine-politics/least-22-ukrainian-soldiers-killed-russias-war-december-january.html> (last accessed: 23/11/2017).

30 Guardian, ‘Violence flares un war-weary Ukraine as US dithers and Russia pounces’, 14 Feb. 2017, available at: <https://www.theguardian.com/world/2017/feb/14/avdiivka-frontline-ukraine-war-russia-backed-separatists> (last accessed: 23/11/2017).

31 Reuters, ‘Putin orders Russia to recognise documents issues in rebel-held east Ukraine’, 23 Nov. 2017, available at: <https://www.reuters.com/article/us-ukraine-crisis-russia-documents/putin-orders-russia-to-recognize-documents-issued-in-rebel-held-east-ukraine-idUSKBN15X0KR> (last accessed: 23/11/2017).

coaches in the first two months of 2017.<sup>32</sup> In response, DPR leader Zakharchenko announced a blockade of all trade from Ukraine and the nationalisation of all private companies on DPR-controlled territory.<sup>33</sup>

42. On 23 April 2017, while on a monitoring patrol, one OSCE paramedic was killed and two other staff members were injured in a suspected mine explosion.<sup>34</sup> The Trilateral Contact Group on Ukraine endorsed a ceasefire for the harvest season from 24 June 2017 to the end of August.<sup>35</sup> Though there was a reported drop in the number of explosions, the OSCE recorded multiple ceasefire violations during this period, including some, which led to civilian casualties.<sup>36</sup>
43. The UN Human Rights Office (OHCHR) documented 178 civilian casualties in the conflict zone of eastern Ukraine from 16 August to 15 November 2015.<sup>37</sup> Between 16 November 2015 and 15 February 2016, OHCHR recorded 78 conflict-related civilian casualties in eastern Ukraine, the lowest quarterly figure since the conflict began.<sup>38</sup> For the period from 16 February to 15 May 2016, the figure was 113.<sup>39</sup> That figure rose to 188 conflict-related civilian casualties for 16 May to 15 August 2016.<sup>40</sup> Between 16 August and 15 November 2016, there were 164 conflict-related civilian casualties, 130 between 16 November 2016 and 15 February 2017,<sup>41</sup> 193 casualties for 16 February to 15 May 2017,<sup>42</sup> and 161 civilian casualties from 16 May to 15 August 2017.<sup>43</sup> This brings the total of civilian casualties for the documented period to 1205. The total number of people killed since the outbreak of the armed conflict in eastern Ukraine in 2014 currently stands at 10,225, comprising at least 2,505 civilians. The total number of people injured is 24,541, with an estimated 7,000-9,000 of those being civilians.<sup>44</sup>
44. The conflict has also taken a heavy toll on civilians in other ways – beyond the casualty statistics. As of August 2017, approximately 1.5 million people have been forced from their homes since the conflict began.<sup>45</sup> This

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32 Interfax-Ukraine, 'Coal blockade protesters threaten to block rail traffic between Ukraine, Russia', 20 Feb. 2017, available at: <http://en.interfax.com.ua/news/general/404240.html> (last accessed: 24/11/2017).

33 Unian, 'Zakharchenko "burning bridges": declares own "trade blockade" of Gov't-controlled areas', 3 March 2017, available at: <https://economics.unian.info/1806906-zakharchenko-burning-bridges-declares-own-trade-blockade-of-govt-controlled-areas.html> (last accessed: 24/11/2017).

34 OSCE, 'Spot report: One SMM patrol member dead, two taken to hospital after vehicle hits possible mine near Pryshyb', 23 April 2017, available at: <http://www.osce.org/special-monitoring-mission-to-ukraine/312971> (last accessed: 28/11/17).

35 OHCHR, 'Report on the human rights situation in Ukraine 16 May to 15 August 2017', available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf) (last accessed: 28/11/17), para. 22.

36 OSCE, 'Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received as of 19:30, 19 July 2017', 20 July 2017, available at: <http://www.osce.org/special-monitoring-mission-to-ukraine/330981> (last accessed: 28/11/17).

37 OHCHR, 'Report on the human rights situation in Ukraine 16 August 2015 to 15 November 2015', 9 Dec. 2016, available at: <http://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf> (last accessed: 23/11/2017), para 26. N.B.: casualty figures include those killed and seriously injured in the context of the armed conflict.

38 OHCHR, 'Report on the human rights situation in Ukraine 16 November 2015 to 15 February 2016', 18 Feb. 2016, available at: [http://www.ohchr.org/Documents/Countries/UA/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf) (last accessed: 24/11/2017).

39 OHCHR, 'Report on the human rights situation in Ukraine 16 February to 15 November 2016', 25 May 2016, available at: [http://www.ohchr.org/Documents/Countries/UA/Ukraine\\_14th\\_HRMMU\\_Report.pdf](http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf) (last accessed: 24/11/2017).

40 OHCHR, 'Report on the human rights situation in Ukraine 16 May to 15 August 2016', 13 Sept. 2016, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport15th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport15th_EN.pdf) (last accessed: 23/11/2017).

41 OHCHR, 'Report on the human rights situation in Ukraine 16 November 2016 to 15 February 2017', 2 March 2017, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf) (last accessed: 24/11/2017).

42 OHCHR, 'Report on the human rights situation in Ukraine 16 February to 15 May 2017', 9 June 2017, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport18th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf) (last accessed: 24/11/2017).

43 OHCHR, 'Report on the human rights situation in Ukraine 16 May to 15 August 2017', 21 Aug. 2017, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf) (last accessed: 23/11/2017), para. 32.

44 OHCHR, 'Report on the human rights situation in Ukraine 16 May to 15 August 2017', 21 Aug. 2017, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf) (last accessed: 23/11/2017), paras. 34-36.

45 UNICEF Newsline, 'The long and dangerous path to school in eastern Ukraine', 20 Sept. 2017, available at: [https://www.unicef.org/infobycountry/ukraine\\_100889.html](https://www.unicef.org/infobycountry/ukraine_100889.html) (last accessed: 28/11/17).

figure includes 220,000 children,<sup>46</sup> some of whom are unaccompanied.<sup>47</sup> Many internally displaced persons (IDPs) are unable to return safely to their homes because the security situation continues to be volatile.

45. IDPs face multiple challenges. Among these are an increased risk of trafficking, and a lack of available housing.<sup>48</sup> For the many civilians still living in conflict-affected areas in the Donetsk and Luhansk regions, access to basic goods, medical care and social security payments is limited, due to difficulties crossing the contact line.<sup>49</sup> Queues to cross the contact line can last for up to five hours;<sup>50</sup> the UN considers some of these security checkpoints to be unsafe due to extreme temperatures, a lack of sanitation facilities and the presence of mines – especially for persons with disabilities, the elderly, children and women.<sup>51</sup> On 27 April 2016, shelling at a transport corridor killed four civilians and injured at least eight.<sup>52</sup>
46. Children have been particularly vulnerable throughout the conflict. There are over 28,000 children living in the settlements along the contact line,<sup>53</sup> who are at risk of being killed and injured by attacks and mines,<sup>54</sup> and who experience significant psychological distress.<sup>55</sup> One in five schools has been damaged or destroyed during the conflict, forcing children to travel increased distances to access education, thus increasing the risk of contact with unexploded mines.<sup>56</sup> During the period of the conflict it was documented 5 wilful killings of children; 6 cases of illegal detention with the use of torture; 8 cases of child death and 19 of injury caused by indiscriminate attacks on civilian objects; attacks on 79 educational institutions in 34 settlements of Donetsk and Luhansk regions.<sup>57</sup>
47. Many people living in conflict-affected areas experience inadequate living standards. The warring parties continue to engage in hostilities from residential areas, placing military objectives near facilities necessary

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46 UNICEF Newsline, 'The long and dangerous path to school in eastern Ukraine', 20 Sept. 2017, available at: [https://www.unicef.org/infobycountry/ukraine\\_100889.html](https://www.unicef.org/infobycountry/ukraine_100889.html) (last accessed: 28/11/17).

47 OSCE, 'Conflict-related displacement in Ukraine: Increased vulnerabilities of affected populations and triggers of tensions within communities', 26 Aug. 2016, available at: <http://www.osce.org/ukraine-smm/261176?download=true> (last accessed: 28/11/17), pp. 9-10.

48 OSCE, 'Conflict-related displacement in Ukraine: Increased vulnerabilities of affected populations and triggers of tensions within communities', 26 Aug. 2016, available at: <http://www.osce.org/ukraine-smm/261176?download=true> (last accessed: 28/11/17), pp. 11, 15.

49 OSCE, 'Conflict-related displacement in Ukraine: Increased vulnerabilities of affected populations and triggers of tensions within communities', 26 Aug. 2016, available at: <http://www.osce.org/ukraine-smm/261176?download=true> (last accessed: 28/11/17), pp. 5, 21; OHCHR, 'Report on the human rights situation in Ukraine 16 November 2016 to 15 February 2017', 15 March 2017, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf) (last accessed: 28/11/17), para. 11.

50 OSCE, 'Hardship for conflict-affected civilians in eastern Ukraine', 16 Feb. 2017, available at: <http://www.osce.org/ukraine-smm/300276?download=true> (last accessed: 28/11/17), p. 3.

51 OHCHR, 'Report on the human rights situation in Ukraine 16 May to 15 August 2017', 12 Sept. 2017, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf) (last accessed: 28/11/17), para. 91; OHCHR, 'Report on the human rights situation in Ukraine 16 November 2016 to 15 February 2017', 15 March 2017, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf) (last accessed: 28/11/17), para. 11.

52 OHCHR, 'Report on the human rights situation in Ukraine 16 February to 15 May 2016', 3 June 2016, available at: [http://www.ohchr.org/Documents/Countries/UA/Ukraine\\_14th\\_HRMMU\\_Report.pdf](http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf) (last accessed: 29/11/17), para. 86.

53 Case file N0018 > Pics: AnswerTPYC XAYHDC27112017.pdf.

54 UNICEF Media Centre, 'Two years on, Ukraine conflict affects over half a million children', 19 Feb. 2016, available at: [https://www.unicef.org/eca/media\\_28678.html](https://www.unicef.org/eca/media_28678.html) (last accessed: 28/11/17) - in 2015 more than 20 children were killed and 40 injured due to the conflict, mainly from mines and unexploded ordnance.

55 UNICEF, 'The children of the contact line in east Ukraine: An assessment of the situation of children and their families living in government-controlled areas along the contact line in the east Ukraine conflict zone', 30 June 2017, available at: [https://www.unicef.org/ukraine/Children\\_of\\_the\\_Contact\\_Line.pdf](https://www.unicef.org/ukraine/Children_of_the_Contact_Line.pdf) (last accessed: 28/11/17), pp. 8-9.

56 UNICEF Media Centre, 'Two years on, Ukraine conflict affects over half a million children', 19 Feb. 2016, available at: [https://www.unicef.org/eca/media\\_28678.html](https://www.unicef.org/eca/media_28678.html) (last accessed: 28/11/17).

57 Truth Hounds, "No country for young", 17 November 2017, available at: [http://truth-hounds.org/wp-content/uploads/2017/09/Zvit2017\\_rus\\_m1.pdf](http://truth-hounds.org/wp-content/uploads/2017/09/Zvit2017_rus_m1.pdf) (last accessed 02/12/2017).

for the survival of the civilian population (see Section 5).<sup>58</sup> Facilities such as hospitals, schools and water treatment plants have taken direct hits from shelling.<sup>59</sup>

48. Fighting in or near residential areas has affected access to basic amenities for many in eastern Ukraine. The Donetsk water treatment plant, which provided clean water to over 600,000 people on both sides of the contact line, has been forced to close on several occasions due to heavy fighting nearby.<sup>60</sup> In June 2017, shelling of a water pumping station meant that 400,000 people had their water supply interrupted for up to 10 days.<sup>61</sup> It is also alleged that separatist groups have purposefully restricted access to water for residents of Government-controlled areas.<sup>62</sup> Many residents living in conflict-affected areas are without gas, affecting their ability to cook and store food, as well as heat and light their homes.<sup>63</sup> For some this situation has lasted since summer 2014.<sup>64</sup> Certain neighbourhoods have been without electricity for long periods of time during the conflict.<sup>65</sup>
49. Access to medical care is restricted. Some medical facilities hit by shells continue to be too damaged for use, while others are limited to only providing emergency care.<sup>66</sup> The DPR and LPR have prevented international humanitarian aid organisations from entering areas under their control, further restricting the availability of medical supplies.<sup>67</sup> A shortage of medicines, fuel and clean water puts civilians at risk of disease – 19 years after Ukraine was declared polio free, an outbreak has been confirmed.<sup>68</sup>
50. Very little progress, if any, has been achieved by Ukrainian prosecutors in bringing those responsible for crimes committed in the context of and associated with the armed conflict to justice, due, in part, to the lack of access to crime sites and suspects. The UN also notes the lack of serious effort by Ukrainian authorities to investigate and prosecute its own troops for conflict-related violations.<sup>69</sup>

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58 OSCE, 'Civilian casualties in eastern Ukraine 2016', 16 Sept. 2017, available at: <http://www.osce.org/special-monitoring-mission-to-ukraine/342121?download=true> (last accessed: 29/11/17), p. 16; OHCHR, Report on the human rights situation in Ukraine 16 May to 15 August 2017', 12 Sept. 2017, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf) (last accessed: 28/11/17), para. 28.

59 OSCE, 'Civilian casualties in eastern Ukraine 2016', 16 Sept. 2017, available at: <http://www.osce.org/special-monitoring-mission-to-ukraine/342121?download=true> (last accessed: 29/11/17), p. 16; OHCHR, Report on the human rights situation in Ukraine 16 May to 15 August 2017', 12 Sept. 2017, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf) (last accessed: 28/11/17), paras. 28-29.

60 OSCE, 'Hardship for conflict-affected civilians in eastern Ukraine', 16 Feb. 2017, available at: <http://www.osce.org/ukraine-smm/300276?download=true> (last accessed: 28/11/17), p. 11.

61 OHCHR, 'Report on the human rights situation in Ukraine 16 May to 15 August 2017', 12 Sept. 2017, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf) (last accessed: 28/11/17), para. 29.

62 OHCHR, 'Report on the human rights situation in Ukraine 16 February to 15 May 2016', 3 June 2016, available at: [http://www.ohchr.org/Documents/Countries/UA/Ukraine\\_14th\\_HRMMU\\_Report.pdf](http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf) (last accessed: 29/11/17), para. 15.

63 OSCE, 'Hardship for conflict-affected civilians in eastern Ukraine', 16 Feb. 2017, available at: <http://www.osce.org/ukraine-smm/300276?download=true> (last accessed: 28/11/17), p. 12.

64 OSCE, 'Hardship for conflict-affected civilians in eastern Ukraine', 16 Feb. 2017, available at: <http://www.osce.org/ukraine-smm/300276?download=true> (last accessed: 28/11/17), p. 12.

65 OHCHR, 'Report on the human rights situation in Ukraine 16 August to 15 November 2016', 8 Dec. 2016, available at: [http://www.ohchr.org/Documents/Countries/UA/UAReport16th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf) (last accessed: 28/11/17), para. 18.

66 OSCE, 'Hardship for conflict-affected civilians in eastern Ukraine', 16 Feb. 2017, available at: <http://www.osce.org/ukraine-smm/300276?download=true> (last accessed: 28/11/17), p. 14.

67 OSCE, 'Hardship for conflict-affected civilians in eastern Ukraine', 16 Feb. 2017, available at: <http://www.osce.org/ukraine-smm/300276?download=true> (last accessed: 28/11/17), p. 14; OHCHR, 'Report on the human rights situation in Ukraine 16 February to 15 May 2016', 3 June 2016, available at: [http://www.ohchr.org/Documents/Countries/UA/Ukraine\\_14th\\_HRMMU\\_Report.pdf](http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf) (last accessed: 29/11/17), para. 6.

68 UNICEF Media Centre, 'Two years on, Ukraine conflict affects over half a million children', available at: [https://www.unicef.org/eca/media\\_28678.html](https://www.unicef.org/eca/media_28678.html) (last accessed: 28/11/17).

69 UN News Centre, 'UN Report finds impunity for killings 'remains rampant' in Ukraine conflict', 14 July 2016, available at: <http://www.un.org/apps/news/story.asp?NewsID=54455#.WfDMVBNSy9Y> (last accessed: 23/11/2017).

### 3. Evidence of cross-border attacks by Russian armed forces supporting the existence of an international armed conflict

51. All allegations of war crimes within the framework of the ICC Statute must demonstrate that the alleged crime took place in the context of and was associated with an armed conflict (contextual element).<sup>70</sup> The character of an armed conflict – either international (IAC) or non-international (NIAC) – determines the range of offences available to the ICC Prosecutor to qualify conduct as a war crime. Both types of conflict can take place on the same territory,<sup>71</sup> and the character of a conflict can change over time.<sup>72</sup> Thus, framing each allegation requires a factual assessment of the character of the conflict at the relevant time. A conflict between a State and armed opposition groups may be ‘internationalised’ through the direct intervention of another State’s troops, an occupation or as a result of the overall control of an opposition force by another State.<sup>73</sup> The latter requires the foreign State to play a role in ‘organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group’.<sup>74</sup>
52. In Section 3.3 of our First Report, the Authors argued that a state of armed conflict has existed on the territory of Ukraine from March 2014, and that there is credible evidence that this conflict, in whole or in part, qualifies as an IAC based on: (1) direct engagement by the Armed Forces of the Russian Federation (AFRF) in the conflict; (2) Russia’s control over the separatist forces; and/or (3) AFRF occupation of a part of Ukrainian territory.
53. The aim of this section is to present further evidence in support of the existence of an IAC between the Russian Federation and Ukraine. Credible and corroborated evidence documented and analysed by the Authors demonstrates direct engagement by AFRF in the armed conflict in Eastern Ukraine – supporting the case for the existence of an IAC.<sup>75</sup> Witness statements, artillery remnants and impact data, satellite imagery and social media posts (cross referenced with the findings of other organisations) reveal, to a high degree of probability, that AFRF conducted cross-border attacks on Ukrainian territory in Luhansk Province from July to September 2014. In addition to constituting evidence of direct AFRF involvement in armed attacks in the documented instances, these attacks constitute circumstantial evidence of Russia’s involvement in the wider conflict in eastern Ukraine, and its overall control over LPR and DPR separatist forces. It is hoped that this information will assist the ICC Prosecutor with the application of the correct legal framework to and the attribution of responsibility for attacks described in the Authors’ Reports as well as war crimes documented by other entities.

70 ICC Elements of Crimes, Article 8 et. seq.

71 ICC-01/04-01/06, Lubanga, Judgment, 14 March 2012, para. 540; ICC-01/04-01/07-3436, Katanga, Judgment, 7 March 2014, paras. 1174 and 1182; ICC-01/04-02/06-309, Ntaganda, Decision on the Confirmation of Charges, 9 June 2014, para. 33.

72 ICC-01/04-01/07-3436, Katanga, Judgment, 7 March 2014, para. 1181.

73 ICC-01/04-01/06, Lubanga, Judgment, 14 March 2012, para. 541; ICC-01/05-01/08-424, Bemba, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 220; ICC-01/04-01/07-3436, Katanga, Judgment, 7 March 2014, para. 1177; See also: ICTY, Tadić, Appeal Judgment, 15 July 1999, para. 137 cited in ICC-01/04-01/06, Lubanga, Decision on the Confirmation of Charges, 29 January 2007, para. 211; ICC-01/04-01/06, Lubanga, Judgment, 14 March 2012, para. 541.

74 ICC-01/04-01/06-803, Lubanga, Decision on the Confirmation of Charges, 29 January 2007, para. 211. ICC-01/04-01/06, Lubanga, Judgment, 14 March 2012, para. 541; ICC-01/04-01/07-3436, Katanga, Judgment, 7 March 2014, para. 1178.

75 For analysis of what constitutes an IAC, see ICTY, The Prosecutor v. Dusko Tadic, Appeals Judgment, IT-94-1-A, 15 July 1999, para 84.

54. To demonstrate that documented evidence raises a reasonable basis to believe in Russia's direct engagement in cross-border attacks, the Authors present the political and military context of the attacks, evidence of AFRF mobilisation and camp build-ups, detailed account of attacks with supporting evidence and analysis of their provenance, as well as evidence of territorial incursions by AFRF collected by other organisations.

### 3.1 Context: AFRF occupation of Crimea and Ukrainian counter-insurgency

55. Section 2 of the First Report provides the background to and overview of the armed conflict in eastern Ukraine from March 2014 to September 2015. Here, the Authors' aim is to draw the ICC Prosecutor's attention to key events that took place in the run up to the documented cross-border attacks, which reveal the context of and likely motive for such attacks.

56. On 1 March 2014, following the covert extraction of Ukraine's President Yanukovich by Russian special forces,<sup>76</sup> the Russian Parliament approved President Putin's request to use military force in Ukraine.<sup>77</sup> On the same day, AFRF were deployed on Ukraine's sovereign territory on the Crimean Peninsula and on 21 March 2014, the Ukrainian Autonomous Republic of Crimea and the City of Sevastopol were annexed by the Russian Federation in violation of UN Charter.<sup>78</sup> On 22 March 2014, Crimea's *de facto* premier Sergei Aksyonov issued a call to arms to the people of southern and eastern Ukraine in a video released on YouTube.<sup>79</sup>

57. In April 2014, separatist forces began to seize control of administrative and security buildings across eastern Ukraine in Donetsk, Luhansk, Kharkiv, Sloviansk, Horlivka and Kramatorsk, calling for independence from Ukraine.<sup>80</sup> The new interim government of Ukraine launched a counter-offensive, and by July 2014, amid heavy fighting, the UAF had re-asserted its authority and control over Sieverodonetsk, Sloviansk, Stanytsia-Luhanska, Lysychansk Popasna, Marjinka, Savur-Mohyla, Debaltseve and other smaller towns in Donetsk

76 Россия 1, "Крым. Путь на Родину", Кондрашов А., available at: [https://russia.tv/brand/show/brand\\_id/59195/](https://russia.tv/brand/show/brand_id/59195/) (last accessed: 12/06/2016); See also: BBC, "Putin Reveals Secrets of Russia's Crimea Takeover Plot", 9 March 2015, available at: <http://www.bbc.com/news/world-europe-31796226> (last accessed: 20/04/2016). Also note, On 20 February 2014, whilst on a visit to Moscow, Speaker of the Supreme Council of Crimea, Vladimir Konstantinov, announced that a worsening of the situation in Kyiv may lead to the secession of Crimea – Pravda.ua, "Спікер ВР АРК вважає, що Крим може відокремитися від України", 20 February 2014, available at: <http://www.pravda.com.ua/news/2014/02/20/7015117/> (last accessed: 31/05/2016).

77 Постановление Совета Федерации "Об использовании Вооруженных Сил Российской Федерации на территории Украины", 1 марта 2014, available at: <http://www.council.gov.ru/activity/legislation/decisions/39979/> (last accessed: 12/06/2016); It has been alleged that the law was procedurally defective as Parliament lacked quorum. Lenta.Ru. "Сбой какой-то в машине, да? Как Совет Федерации разрешил Путину ввести войска на Украину", Ключкин А., Дмитриев Д., 13 марта 2014, available at: <https://lenta.ru/articles/2014/03/13/sovet/> (last accessed: 20/04/2016).

78 Федеральный конституционный закон N 6-ФКЗ "О принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов - Республики Крым и города федерального значения Севастополя", 21 марта 2014, available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_160618/19bbbbfa6e5a06c0d9e8d958af6464287880b069/](http://www.consultant.ru/document/cons_doc_LAW_160618/19bbbbfa6e5a06c0d9e8d958af6464287880b069/) (last accessed: 07/05/2016); BBC, "Ukraine: Putin signs Crimea annexation", 21 March 2014, available at: <http://www.bbc.co.uk/news/world-europe-26686949> (last accessed: 02/06/2016).

79 "Крым: обращение Сергея Аксёнова к Юго-Востоку Украины", 9 March 2014, available at: <https://www.youtube.com/watch?v=bZ4TSIE8Zs0> (last accessed: 21/06/2016); For full analysis of the annexation of Crimea and related international crimes, please see First Report.

80 OSCE, 'Latest from the Special Monitoring Mission in Ukraine – 14 April 2014', 14 April 2014 ('The situation in Donetsk and Luhansk districts continued to cause concerns owing to the observed presence of masked individuals in several towns of the region, occupying several administrative buildings', citing the towns of Kharkiv, Luhansk, Donetsk, Yenakiyev, Debaltseve, Horlivka, Mariupol) available at: <https://web.archive.org/web/20140419044139/http://www.osce.org/ukrainemonitoring/117777>; OSCE, 'Latest from the Special Monitoring Mission to Ukraine - based on information received up until 23 April 2014, 19:00', 24 April 2014 (citing above towns, as well as Sloviansk), available at: <http://www.osce.org/ukraine-smm/117995>; UNHRC, 'Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine', UN Doc. A/HRC/27/75, 19 Sep. 2014, para. 9 ('[G]roups of armed men unlawfully seized public buildings and police and security facilities in cities and towns across the Donetsk and Luhansk regions') available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/27/75](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/75)

and Luhansk Provinces.<sup>81</sup> Following the bringing down of Malaysia Airlines flight MH17 by separatist forces on 17 July,<sup>82</sup> UAF and pro-Kyiv proxy paramilitary groups began to close in on the cities of Luhansk and Donetsk,<sup>83</sup> prompting Donetsk separatist commander Igor Girkin (aka Strelkov) to call for a Russian military intervention.<sup>84</sup>

58. It is crucial to set the cross-border attacks described below in their proper context. By mid-August 2014 an AFRF incursion had successfully occupied and annexed the Ukrainian territories of Crimea and Sevastopol. Meanwhile, pro-Russian separatist militias in Luhansk and Donetsk Provinces, facing a robust counter-insurgency by the UAF, were in rapid retreat to the Russian border. By 19 August 2014, an end to the separatist rebellion in eastern Ukraine appeared imminent and multiple calls for military assistance were made by the separatist leadership.<sup>85</sup>

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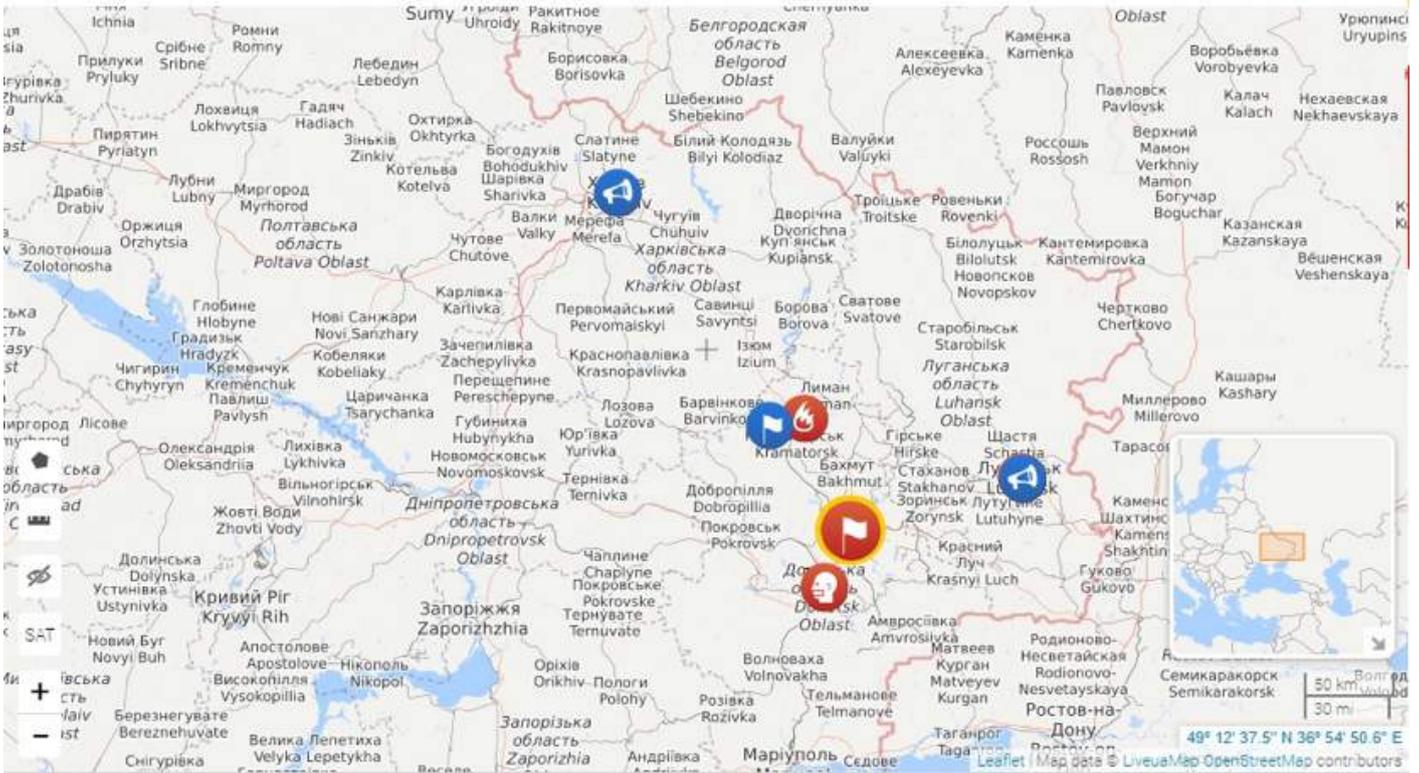
81 OSCE, 'Latest from the OSCE Special Monitoring Mission to Ukraine, based on information received by 18:00hrs, 29 July (Kyiv time)', ('Severodonetsk... was retaken by the Ukrainian army'), available at: <http://www.osce.org/ukraine-smm/122077>; OSCE, 'Latest from OSCE Special Monitoring Mission to Ukraine (SMM) based on information received as of 18:00hrs, 30 July 2014 (Kyiv time)', 31 July 2014 ('[R]egional administration' in charge at Lysychansk), available at: <http://www.osce.org/ukraine-smm/122145>; UNHRC, 'Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine', UN Doc. A/HRC/27/75, 19 Sep. 2014, para. 17 ('As of 30 July 2014, "safe corridors", unilaterally established by the Ukrainian forces, have enabled people to leave the cities of Donetsk, Horlivka and Luhansk') available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/27/75](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/75); Bellingcat, 'Origin of artillery attacks on Ukrainian military positions in Eastern Ukraine between 14 July 2014 and 8 August 2014', 17 Feb. 2015, p. 2 (Map from National Security and Defense Council of Ukraine showing UAF control over settlements) available at: [https://www.bellingcat.com/wp-content/uploads/2016/02/bellingcat\\_-\\_origin\\_of\\_artillery\\_attacks\\_02-12-15\\_final1.pdf](https://www.bellingcat.com/wp-content/uploads/2016/02/bellingcat_-_origin_of_artillery_attacks_02-12-15_final1.pdf); p. 5 ('Ukraine's armed forces began an offensive in the first half of July 2014, which led to regained control over Slavyansk, Kramatorsk, and other towns and villages in the northern part of the Donetsk region'), available at: [https://www.bellingcat.com/wp-content/uploads/2015/09/russia\\_s\\_path\\_s\\_to\\_war.pdf](https://www.bellingcat.com/wp-content/uploads/2015/09/russia_s_path_s_to_war.pdf); ('[T]he pro-Russia militias under the command of Igor Girkin aka Strelkov retreated to Donetsk from the cities of Slovyansk, Kramatorsk, Kostyantynivka, Artemivsk and Debaltseve.'), available at: <https://www.opendemocracy.net/od-russia/jaroslav-koshiw/donetsk-separatists-in-dispute%E2%80%93khodakovsky-vs-strelkov>

82 Openbaar Ministerie, 'JIT: Flight MH17 was shot down by a BUK missile from a farmland near Pervomaiskyi', 28 Sep. 2016 (interim results of the JIT criminal investigation presented at a conference on 28 Sep. 2016 suggest that the BUK missile that shot down flight MH17 originated in Russia and was fired from a field 'controlled by pro-Russian fighters'; the JIT has drawn up a list of 100 suspects, from evidence that includes intercepted phone calls), available at: <https://www.om.nl/onderwerpen/mh17-crash/@96068/jit-flight-mh17-shot/>; See also Bellingcat report, 'MH17: Source of the Separatist's Buk', 9 Nov. 2014, (presenting evidence that 'separatists transported [the] Buk missile system through their territory on July 17'), available at: <https://web.archive.org/web/20141109132619/https://www.bellingcat.com/wp-content/uploads/2014/11/Origin-of-the-Separatists-Buk-A-Bellingcat-Investigation1.pdf>

83 UNHCR, 'Report on the human rights situation in Ukraine', (17 Aug. 2014), para. 3 ('During the past month, the Ukrainian armed forces have tightened their blockades around the main strongholds of the armed groups – the cities of Luhansk, Donetsk and to a lesser extent Horlivka'), available at: <http://www.ohchr.org/Documents/Countries/UA/UkraineReport28August2014.pdf>

84 Radio Free Europe, 'In Ukraine, Separatist Commander 'Strelkov' Seems to be Getting Frustrated', 9 Aug. 2014, available at: <https://www.rferl.org/a/ukraine-rebels-military-situation-frustration-strelkov/26522352.html> (last accessed: 1/11/2017).

85 The Star, 'Pro-Russia rebels plead for troops as Ukrainian Army advances', 3 Aug. 2014, available at: [https://www.thestar.com/news/world/2014/08/03/prorussia\\_rebels\\_plead\\_for\\_troops\\_as\\_ukrainian\\_army\\_advances.html](https://www.thestar.com/news/world/2014/08/03/prorussia_rebels_plead_for_troops_as_ukrainian_army_advances.html); Open Democracy, 'Donetsk separatists in dispute – Khodakovsky vs Strelkov', 11 Aug. 2014, ('[Leaders of the separatist movement] have repeatedly appealed to President Putin for Russia to intervene directly'), available at: <https://www.opendemocracy.net/od-russia/jaroslav-koshiw/donetsk-separatists-in-dispute%E2%80%93khodakovsky-vs-strelkov>; Reuters, 'Some Ukrainian rebels vent frustration with Putin', 20 July 2014, available at: <http://www.reuters.com/article/uk-ukraine-crisis-rebels/some-ukrainian-rebels-vent-frustration-with-putin-idUKKBN0FZ1ME20140730> (last accessed: 1/11/2017).



April 2014 map – each mark shows town targeted by separatists



July 2014 map – rebel held territory at time of MH17.

## 3.2 AFRF mobilisation to the Russia-Ukraine border

59. AFRF troops and heavy artillery units began to mobilise on the Russia-Ukraine border during the Euromaidan protests.<sup>86</sup> On 26 February 2014, President Putin ordered 150,000 troops stationed in Western Russia to be put on alert.<sup>87</sup> On 24 March 2014, the Kremlin ordered large-scale military exercises on the Ukrainian border.<sup>88</sup> Comparative analysis of satellite imagery conducted by the Authors, Bellingcat<sup>89</sup> and the Atlantic Council<sup>90</sup> clearly demonstrates heightened AFRF activity, camp build-ups and heavy artillery manoeuvres in strategic locations along the border. Analysis of social media content and geo-tagging posts by AFRF soldiers confirms the presence of AFRF combat units in the border area.<sup>91</sup> Witnesses testify to seeing and hearing barrel artillery and multiple launch rocket systems (MLRS) manoeuvring on and firing from Russian territory.<sup>92</sup> All evidence points to the mobilisation of a large invasion force and the existence of heavy artillery launch sites on the Russian side of the border.

### 3.2.1 AFRF TROOP BUILD-UP, CAMPS AND SUSPECTED ARTILLERY LAUNCH SITES

60. Witness evidence and analysis of satellite imagery of the Russia-Ukraine border reveal a rapid and unprecedented appearance of clusters of military infrastructure and equipment in the Rostov Region of Russia bordering Luhansk Province in July – September of 2014. MLRS and howitzer military units pointing or moving in the direction of Ukraine can be clearly seen on the images, as can tracks consistent with those made by vehicles manoeuvring into firing positions.

61. Furthermore, by analysing the content and geo-location data of social media posts by AFRF soldiers, the Authors are able to conclude that a large combat force, made up of specialised attacking units from various parts of Russia, was mobilised to the Russia-Ukraine border in the summer and autumn of 2014. The Authors' analysis reveals the presence of personnel from the following military units (m/u) mobilised to the Russia-Ukraine border in the vicinity of Luhansk Province: m/u 30683 (288th artillery brigade based in Mulino City in Nizhny Novgorod Region); m/u 43533 (681st regional training center for combat artillery and missile training based in Mulino City in Nizhny Novgorod Region); m/u 64055 (electronic warfare battalion based in Kursk), m/u 31135 (1st Mechanized Regiment of Taman Division stationed in Moscow Oblast); m/u 31134 (15th Mechanized Regiment Kalininet of the Taman Division stationed in Moscow Oblast).<sup>93</sup> Images posted by

86 UN, 'Official statements regarding the events in Ukraine from top UN officials and Heads of foreign missions and representations. December 2013 - January 2014: Backing Ukraine's territorial integrity, UN Assembly declares Crimea referendum invalid', 27 March 2014, ('Russian troops and armored vehicles were deployed in February [to Crimea]'), available at: <http://www.un.org.ua/en/information-centre/news/1772-2013-12-05-17-51-07>; NATO, 'North Atlantic Council statement on the situation in Ukraine', 2 March 2014, ('The North Atlantic Council condemns the Russian Federation's military escalation in Crimea'), available at: [https://www.nato.int/cps/en/natolive/official\\_texts\\_107681.htm](https://www.nato.int/cps/en/natolive/official_texts_107681.htm); The New York Times, 'Russian troops mass at border with Ukraine', 13 March 2014, available at: <https://www.nytimes.com/2014/03/14/world/europe/ukraine.html>

87 The Globe and Mail, "Globe in Ukraine: Russian-backed fighters restrict access to Crimean city", 26 February 2014, available at: <http://www.theglobeandmail.com/news/world/tension-in-crimea-as-pro-russia-and-pro-ukraine-groups-stage-competing-rallies/article17110382/#dashboard/follows/?cmpid=tgc> (last accessed: 31/05/2016); CNN, "Russia flexes military muscle as tensions rise in Ukraine's Crimea region", 27 February 2014, available at: <http://edition.cnn.com/2014/02/26/world/europe/ukraine-politics/> (last accessed: 31/05/2016).

88 The Telegraph, "Vladimir Putin orders military exercise on Ukraine border after killings", 24 April 2014, available at: <http://www.telegraph.co.uk/news/worldnews/europe/russia/10785386/Vladimir-Putin-orders-military-exercise-on-Ukraine-border-after-killings.html> (last accessed: 26/07/2017).

89 Bellingcat, 'Russia Ante Portas: Updated Satellite Imagery Shows Border Crossings and Artillery Sites', 15 June 2016, available at: <https://www.bellingcat.com/news/uk-and-europe/2016/06/15/9629/>

90 The Atlantic Council of the United States, Hiding in Plain Sight: Putin's War in Ukraine (Washington: Atlantic Council, 2015), available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf)

91 The Atlantic Council of the United States, Hiding in Plain Sight: Putin's War in Ukraine (Washington: Atlantic Council, 2015), pp. 16, 23, available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf)

92 E.g.: Witness statements: 0205K828, 0205K844, 0205K856-2.

93 Case File 0205\_military\_on\_the\_border (IPHR Database of 33 soldiers of Russian Regular army, m/u 54801, 41450, 43533, 30683, 11659, 54164, 73582, 02511, 54046, 31135, 45767, 31134, 64055, 12128).

AFRF soldiers also confirm the presence of AFRF MLRS and howitzer units in the vicinity of the Russia-Ukraine border.<sup>94</sup>



Map of area identifying locations of all of the below sites.

62. The Authors have documented the following AFRF camps and suspected artillery launch sites:

- **Manotsky settlement site** – Located at a distance of 500-1000 meters from the Russia-Ukraine border,<sup>95</sup> this site appears to have been used as an initial firing position for AFRF MLRS and barrel artillery and for launching drone reconnaissance missions in August 2014.<sup>96</sup> Ukrainian border guards



Traces of heavy vehicle movements to and from the suspected firing positions are clearly visible on satellite images taken on 6 September 2014

and local residents testify to hearing artillery carrying vehicles manoeuvring into firing positions at these locations and retreating after each attack.<sup>97</sup> Witnesses describe hearing sounds and seeing smoke and dust emanating from these positions, consistent with those made by MLRS-carrying vehicles. Border guards testify to seeing flashes and hearing at least five barrel artillery and MLRS

94 Case File 0205AFRF soldiers captured with geotagging near their military vehicles.

95 Geolocation Coordinates.: 48040'46" N 39043'32" E

96 Witnesses 0205K1086 observed that the MLRS AFRF firing positions were relocated further into Russian territory towards the end of August.

97 Witness statement: 0205K828.

attacks onto Ukrainian territory from these positions.<sup>98</sup> This testimony is corroborated by comparing satellite imagery of this location before and after the period of suspected cross-border attacks - traces of heavy vehicle movements to and from the suspected firing positions are clearly visible on satellite images taken on 6 September 2014.<sup>99</sup> No such traces are visible on images from 17 July 2014.<sup>100</sup>



*No traces are visible on satellite images taken on 17 July 2014*

- **Patronovka village site** – Located at a distance of 1.3km from the Russia-Ukraine border;<sup>101</sup> this site appears to have been used as a fortified military camp and artillery launch site. Satellite imagery taken on 6 September 2014 shows military infrastructure and a large number of heavy-vehicle tracks consistent with movement and manoeuvres of artillery-carrying vehicles, as well as the presence of four self-propelled howitzers MSTA-S all barrels facing towards Ukraine (specifically the villages of Makarovo and Stanytsia Luhanska located at a distance of 15km and 17km respectively) and a command machine. No such tracks are visible on images taken on 17 July 2014.<sup>102</sup>



*Four self-propelled howitzers MSTA-S and a command machine, and numerous traces. Image taken on 06 September 2014*

98 Witness statements: 0205K827,0205K828

99 Photo evidence: Arta2.jpg

100 Photo evidence: Arta1.png

101 Geolocation Coordinates: 48037'58" N 390 44'58" E.

102 Satellite images Google Earth: 06/09/2014, 48037'53" N 390 42'36" E; 25/07/2014, 48037'53" N 390 42'36" E



No traces or vehicle presence. Image taken on 17 July 2014

- **Duby village site** – Located at a distance of 12 km from the Russia-Ukraine border,<sup>103</sup> this site appears to have served as a large military camp and artillery launch site. Satellite imagery taken on 6 September 2014 shows military infrastructure, approximately 40 covered trucks inside the camp and



Image taken on 06 September 2014

military equipment scattered around the camp on the edge of the woods to the south and east of the camp.<sup>104</sup> Four 2S19 Msta-S self-propelled howitzer vehicles (with a known maximum target range of 25km<sup>105</sup>) are visible on the satellite image from 25 July 2014.<sup>106</sup> This information is corroborated by images of 2S19 Msta-S howitzers in photos posted on social media AFRF personnel geo-tagged to this area.<sup>107</sup> Approximately 200 metres south-south-west of these units another eight military vehicles are

103 Geolocation Coordinates: 48038'16" N 39-52'58" E

104 Satellite image Google Earth, 06/09/2014, 48038'16" N 39052'57" E

105 Wartools, "САУ Мста-С 2С19 - 152-мм самоходная гаубица", available at: <http://wartools.ru/sau-russia/sau-msta-s-2s19> (last accessed: 15/11/2017).

106 Satellite image Google Earth, 25/07/2014, 48038'14" N 39053'23" E

107 Photo evidence: soldiers.jpg

visible of which at least that resemble MLRS (known maximum target range of 40km) carriers.<sup>108</sup> All four Msta-S barrels and MLRS vehicles are pointing in the direction of Ukraine (specifically the village of Herasymivka located some 18.5 km away).<sup>109</sup> The same satellite image also captured a moving column of self-propelled 2S3 'Acacia' artillery vehicles (known maximum target range 18.5 – 25km<sup>110</sup>) and a Russian military helicopter in mid-flight over the area.<sup>111</sup>



Image taken on 25 July 2014

- **Tree farm site next to Derkul village** – Located at a distance of 0,76km from the Russian-Ukrainian border.<sup>112</sup> According to one witness, the site was used as an artillery launch site.<sup>113</sup>
- **Site on Russian bank of the Siversky Donets River** - Located at a distance of 1.75km from the Russian-Ukrainian border.<sup>114</sup> According to one witness, the site was used as a launch site for MRLS BM-21 'Grad' missiles (target range 20-45km) aimed at Ukrainian positions in and around the village of Kolesnykivka.<sup>115</sup>

63. Other organisations have confirmed that there was a build-up of troops very close to the Russia-Ukraine border from April 2014,<sup>116</sup> and it has been suggested that this was more than a regular military exercise.<sup>117</sup> According to NATO, the Russian force at the border was 'sized and outfitted and provisioned with everything that it need[ed] to have an incursion into Ukraine.'<sup>118</sup> The following AFRF sites have been documented based on high-resolution satellite imagery analysis:

108 Satellite image Google Earth, 06/09/2014, 48038'10" N 39053'15" E

109 Satellite image Google Earth, 48047'11" N 39041'56" E

110 Wartools, "САУ Акация 2С3 - самоходная гаубица", available at: <http://wartools.ru/sau-russia/sau-akatsiya-2s3> (last accessed: 01/12/17)

111 Satellite image Google Earth, 06/09/2014, 48°37'55.76"N 39°50'57.61"E.

112 Geolocation coordinates: 480 49'44" N 39048'43" E.

113 Witness 0205K827 .

114 Geolocation coordinates.: 48036'29" N 39041'56" E See also Satellite image Google Earth, 31/08/2014, 48°36'29"N 39°41'56"E

115 Witness statements: 0205K828, Photo evidence: map drawn by the witness 0205K828, point «14» on the map (Annex 1).

116 'EU Statement on the Current Security Challenges in the OSCE Area and OSCE Engagement with Ukraine', PC.DEL/449/14, 29 April 2014, p. 1, available at: <http://www.osce.org/pc/118340?download=true>

117 Ambassador Daniel B. Baer, 'United States Mission to the OSCE: Remarks on military activities of the Russian Federation on the border With Ukraine', FSC-PC.DEL/9/14, 8 April 2014, p. 1, available at: <http://www.osce.org/fsc/117341?download=true>

118 Ambassador Daniel B. Baer, 'United States Mission to the OSCE: Remarks on military activities of the Russian Federation on the border With Ukraine', FSC-PC.DEL/9/14, 8 April 2014, p. 1, available at: <http://www.osce.org/fsc/117341?download=true>

- **Site in region surrounding Belgorod** - Located at a distance of less than 40km from the Russian-Ukrainian border.<sup>119</sup> High-resolution satellite images taken on 22 and 26 March show military vehicles arriving, including Mi-8 and Mi-24 attack helicopters, tanks, and over hundred infantry fighting vehicles.<sup>120</sup>
- **Site in area surrounding Novocherkassk city** - Located at a distance of 50km from the Russian-Ukrainian border.<sup>121</sup> High-resolution satellite images show an area that was previously an empty field contained military equipment including vehicles, tents, and logistics equipment by 27 March. Tracks consistent with military exercises are visible, as are earthen defensive positions. Infantry fighting vehicles and artillery pieces are also visible in the satellite images.<sup>122</sup>
- **Seleznev village site** - Located at a distance of 750m from the Russian-Ukrainian border.<sup>123</sup> Satellite imagery taken on 16 July of craters left behind after artillery attacks in the Ukraine territory of Amvrosiivka suggests this was used an artillery launch site, and that these strikes were carried out by BM-21 Grad or 9K51M Tornado-G MLRS.<sup>124</sup>
- **Pavlovka site** - Located at a distance of 2km from the Russian-Ukrainian border,<sup>125</sup> satellite imagery taken on 16 July show this site was used to stage artillery attacks in Ukraine territory.<sup>126</sup> The 7th Airborne Division Unit 54801 was deployed to the Pavlovka base in June.<sup>127</sup>
- **Site near Gukovo** - Located at a distance of approximately 5km from the Russian-Ukrainian border.<sup>128</sup>

119 Geolocation coordinates: 50.65N, 36.52E, American Association for the Advancement of Science, Geospatial Technologies and Human Rights Project, Satellite imagery of the crisis in Ukraine, Part II: Border deployments (Washington: American Association for the Advancement of Science, 2014), p. 10, available at: [https://www.aas.org/sites/default/files/Ukraine\\_Border\\_Deployments.pdf](https://www.aas.org/sites/default/files/Ukraine_Border_Deployments.pdf)

120 American Association for the Advancement of Science, Geospatial Technologies and Human Rights Project, Satellite imagery of the crisis in Ukraine, Part II: Border deployments (Washington: American Association for the Advancement of Science, 2014), (Corroborating images and statements released by NATO that are no longer on the NATO website), pp. 9-10, available at: [https://www.aas.org/sites/default/files/Ukraine\\_Border\\_Deployments.pdf](https://www.aas.org/sites/default/files/Ukraine_Border_Deployments.pdf)

121 Geolocation coordinates: 47.52N, 40.22E, American Association for the Advancement of Science, Geospatial Technologies and Human Rights Project, Satellite imagery of the crisis in Ukraine, Part II: Border deployments (Washington: American Association for the Advancement of Science, 2014), p. 11, available at: [https://www.aas.org/sites/default/files/Ukraine\\_Border\\_Deployments.pdf](https://www.aas.org/sites/default/files/Ukraine_Border_Deployments.pdf)

122 American Association for the Advancement of Science, Geospatial Technologies and Human Rights Project, Satellite imagery of the crisis in Ukraine, Part II: Border deployments (Washington: American Association for the Advancement of Science, 2014), pp. 11-12, (Corroborating images and statements released by NATO that are no longer on the NATO website), available at: [https://www.aas.org/sites/default/files/Ukraine\\_Border\\_Deployments.pdf](https://www.aas.org/sites/default/files/Ukraine_Border_Deployments.pdf)

123 Coordinates: 47.63709, 38.469355, The Atlantic Council of the United States, Hiding in Plain Sight: Putin's War in Ukraine (Washington: Atlantic Council, 2015), p. 29, available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf)

124 The Atlantic Council of the United States, Hiding in Plain Sight: Putin's War in Ukraine (Washington: Atlantic Council, 2015), p. 29, available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf); Bellingcat, 'Origin of artillery attacks on Ukrainian military positions in Eastern Ukraine between 14 July 2014 and 8 August 2014', 17 Feb. 2015, pp. 5-9, available at: [https://www.bellingcat.com/wp-content/uploads/2016/02/bellingcat\\_-\\_origin\\_of\\_artillery\\_attacks\\_02-12-15\\_final1.pdf](https://www.bellingcat.com/wp-content/uploads/2016/02/bellingcat_-_origin_of_artillery_attacks_02-12-15_final1.pdf)

125 Coordinates: 47.939519, 39.846468, The Atlantic Council of the United States, Hiding in Plain Sight: Putin's War in Ukraine (Washington: Atlantic Council, 2015), p. 23, available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf)

126 Bellingcat, 'Origin of artillery attacks on Ukrainian military positions in Eastern Ukraine between 14 July 2014 and 8 August 2014', 17 Feb. 2015, p. 16, available at: [https://www.bellingcat.com/wp-content/uploads/2016/02/bellingcat\\_-\\_origin\\_of\\_artillery\\_attacks\\_02-12-15\\_final1.pdf](https://www.bellingcat.com/wp-content/uploads/2016/02/bellingcat_-_origin_of_artillery_attacks_02-12-15_final1.pdf)

127 The Atlantic Council of the United States, Hiding in plain sight: Putin's war in Ukraine (Washington: Atlantic Council, 2015), p. 23, available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf)

128 Coordinates: 48°05'25.0"N 39°54'45.3"E, Bellingcat, 'Origin of artillery attacks on Ukrainian military positions in Eastern Ukraine between 14 July 2014 and 8 August 2014', 17 Feb. 2015, p. 15, available at: [https://www.bellingcat.com/wp-content/uploads/2016/02/bellingcat\\_-\\_origin\\_of\\_artillery\\_attacks\\_02-12-15\\_final1.pdf](https://www.bellingcat.com/wp-content/uploads/2016/02/bellingcat_-_origin_of_artillery_attacks_02-12-15_final1.pdf)

Satellite imagery taken on 8 August of craters left behind after artillery attacks on Ukrainian territory, as well as social media videos that have been geo-located, show that attacks by MLRSs took place.<sup>129</sup>

- **Site near Kuzminsky town** - Located at a distance of 46km from the Russian-Ukrainian border,<sup>130</sup> satellite imagery and social media pictures show that hundreds of military vehicles were stationed here, as well as tents and fuel tanks. A motorised rifle regiment occupied the area from at least 27 March and 5 April, as evidenced by a large encampment of tents, trucks, and armoured vehicles,<sup>131</sup> while the 5<sup>th</sup> Tank Brigade was stationed here in October and November. This camp held hundreds of soldiers.<sup>132</sup>
- **Kuybyshevo site** - Located at a distance of 3km from the Russian-Ukrainian border,<sup>133</sup> this site was a large base for heavy artillery and served as a base for artillery strikes on Ukrainian territory in July 2014. A Russian soldier has described firing artillery from this site, and photographs show soldiers firing in the direction of Ukraine. The dates of these artillery firings coincide with reports by the US State Department.<sup>134</sup>

### 3.2.2 AFRF TERRITORIAL INCURSIONS AND RECONNAISSANCE MISSIONS

64. Witnesses observed territorial incursions by unmanned reconnaissance aircraft (drones) and AFRF military helicopters in what appear to be reconnaissance missions into Ukrainian airspace prior to and following cross-border attacks. A Ukrainian border guard stationed in the 'Mountain' camp, in the vicinity of Kolesnikovke settlement, recalls seeing drones launched onto Ukrainian territory by AFRF personnel from the outskirts of Manotskyy settlement in Russia throughout the shelling campaign.<sup>135</sup> Local residents of Kolesnikovke observed the same or similar drones flying over their settlement and nearby UAF positions.<sup>136</sup> Witnesses also observed Mi-24 and Mi-8 assault helicopters with Russian military insignia crossing into Ukrainian airspace on 2 August 2014.<sup>137</sup>

65. Other organisations have documented AFRF territorial incursions for the purpose of reconnaissance, including incursions by ground forces. On 25 August 2014, ten soldiers in green military uniforms with white armbands were detained by Ukrainian forces at Dzerkalne, a village 20 kilometres from the Russian border. The Russian military confirmed that these men were indeed Russian paratroopers, who had become lost on Ukrainian territory while conducting exercises at the border.<sup>138</sup>

66. According to NATO Secretary General Fogh Rasmussen, on 14 August 2014 a convoy of twenty armoured

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129 The Atlantic Council of the United States, *Hiding in plain sight: Putin's war in Ukraine* (Washington: Atlantic Council, 2015), pp. 18-19, available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf)

130 Coordinates: 47.411287, 39.231931, The Atlantic Council of the United States, *Hiding in plain sight: Putin's war in Ukraine* (Washington: Atlantic Council, 2015), p. 11, available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf)

131 American Association for the Advancement of Science, Geospatial Technologies and Human Rights Project, *Satellite imagery of the crisis in Ukraine, Part II: Border deployments* (Washington: American Association for the Advancement of Science, 2014), pp. 13-14 (Corroborating images and statements released by NATO that are no longer on the NATO website), available at: [https://www.aas.org/sites/default/files/Ukraine\\_Border\\_Deployments.pdf](https://www.aas.org/sites/default/files/Ukraine_Border_Deployments.pdf)

132 The Atlantic Council of the United States, *Hiding in plain sight: Putin's war in Ukraine* (Washington: Atlantic Council, 2015), p. 13, available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf)

133 Coordinates: 47.815116, 38.867638, The Atlantic Council of the United States, *Hiding in plain sight: Putin's war in Ukraine* (Washington: Atlantic Council, 2015), p. 23, available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf)

134 The Atlantic Council of the United States, *Hiding in plain sight: Putin's war in Ukraine* (Washington: Atlantic Council, 2015), pp. 23-24, available at: [http://www.atlanticcouncil.org/images/publications/Hiding\\_in\\_Plain\\_Sight/HPS\\_English.pdf](http://www.atlanticcouncil.org/images/publications/Hiding_in_Plain_Sight/HPS_English.pdf)

135 Witness 0205K828; Map attached to witness statement.

136 Witness statement 0205K1087.

137 Witness statements: 0205K828, 0205K829.

138 BBC News, 'Captured Russian troops "in Ukraine by accident"', (26 Aug. 2014), available at: <http://www.bbc.com/news/world-europe-28934213>

personnel carriers and other vehicles with official Russian military plates entered the territory of Ukraine near the insurgent-controlled Izvaryne border crossing. NATO qualified the incident as a “Russian incursion” into Ukraine, while the Russian Defence Ministry denied the existence of any such convoy.<sup>139</sup>

67. Between 22 and 27 August 2014, 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 Region, near Novoazovsk.<sup>140</sup>
68. On 8 November 2014, OSCE monitors reported that there were large movements of unmarked heavy equipment in separatist-held territory. These movements included armoured personnel carriers, lorries, petrol tankers, and tanks, which were being manned and escorted by men in dark green uniforms without insignias.<sup>141</sup> On 12 November, NATO commander Gen Philip Breedlove stated that Russian military equipment and Russian combat troops had been seen entering Ukraine in columns over several days.<sup>142</sup>
69. Bellingcat reports that on 29 August, Russian soldiers from m/u 54096 of the 6<sup>th</sup> Tank Brigade were involved in fighting in eastern Ukraine, during the ‘Battle of Ilovaysk’. Two T-72B3 tanks from the 6<sup>th</sup> Tank Brigade were damaged or destroyed by Ukrainian forces and were photographed afterwards; markings on the tanks identify them clearly as AFRF military vehicles. Russian servicemen of the 6<sup>th</sup> Tank Brigade also posted photographs of themselves by a sign for the Ukrainian village Chervonosil’skoe, near Ilovaysk.<sup>143</sup>
70. Unlawful territorial incursions and reconnaissance missions by AFRF troops and unmanned aircraft further confirm Russia’s active involvement in the conflict.

### 3.2.3 CONCLUSION

71. AFRF troop mobilisations, camp build-ups and active artillery launch sites on the Russia-Ukraine border are above and beyond what is considered ‘normal’ activity on the border of a neighbouring State. AFRF territorial incursions and reconnaissance missions constitute an outright violation of Ukraine’s territorial integrity and national sovereignty. Moreover, such activities documented in summer and autumn 2014 had no precedent in the region prior to the Euromaidan events. These activities cannot be interpreted as anything other than the deployment of a large-scale invasion force with heavy artillery cover from launch sites in the vicinity of the Russia-Ukraine border. This deployment supports the claim of AFRF’s orchestration of and direct involvement in the armed conflict in eastern Ukraine.

139 Reuters, ‘NATO saw “Russian incursion” into Ukraine – Rasmussen’ (15 Aug. 2014), available at: <https://www.reuters.com/article/uk-ukraine-crisis-nato-chief/nato-saw-russian-incursion-into-ukraine-rasmussen-idUKKBN0GF12V20140815>; RT News, ‘Russian Defense Ministry Denies Reports Military Column Crossed into Ukraine’, (15 Aug. 2014), available at: <https://www.rt.com/news/180584-border-russian-military-troops/>

140 BBC, Ukraine crisis: Russia aid convoy ‘invades Ukraine’, 22 Aug. 2014, available at: <http://www.bbc.com/news/world-europe-28892525>; The New York Times, ‘Ukraine reports Russian invasion on a new front’, 27 Aug. 2014, (‘Andriy Lysenko, a spokesman for the Ukrainian military in Kiev, said the Russian armored column entered the town of Amvrosiyivka, south of Donetsk’), available at: <https://www.nytimes.com/2014/08/28/world/europe/ukraine-russia-novoazovsk-crimea.html> ; Bellingcat, ‘Russia’s path(s) to war’, 21 Sep. 2015, p. 46, (citing evidence for usage of Novoazovsk-Veselo-Voznesenka crossing), available at: [https://www.bellingcat.com/wp-content/uploads/2015/09/russia\\_s\\_path\\_s\\_to\\_war.pdf](https://www.bellingcat.com/wp-content/uploads/2015/09/russia_s_path_s_to_war.pdf) (last accessed: 15/11/2017).

141 OSCE, ‘Spot report by the OSCE Special Monitoring Mission to Ukraine (SMM), 8 November 2014’, 8 Nov. 2014, available at: <http://www.osce.org/ukraine-smm/126483> (last accessed: 1/11/2017).

142 See The Guardian, “Russian tanks and troops crossing into Ukraine, says NATO commander”, available at: <http://www.theguardian.com/world/2014/nov/12/russian-tanks-troops-crossing-into-ukraine-nato-supreme-commander> (last accessed: 25.08.2017).

143 Bellingcat, ‘Russia’s 6th Tank Brigade: The dead, the captured, and the destroyed tanks (Pt. 1)’, 22 Sep. 2014, available at: <https://www.bellingcat.com/news/uk-and-europe/2015/09/22/russias-6th-tank-brigade/> (last accessed 15/11/2017); Bellingcat, ‘Russia’s 6th Tank Brigade: The dead, the captured, and the destroyed tanks (Pt. 2)’, 29 Sep. 2014, available at: <https://www.bellingcat.com/news/uk-and-europe/2015/09/29/russias-6th-tank-brigade-pt-2/> (last accessed: 15/11/2017).

### 3.3 Documented cross-border attacks

72. The Authors have documented cross-border attacks on Ukrainian settlements of Kolesnykivka, Komyshe, Yuhanovka, Milovne, Krasna Talivka, Dmytrivka and Pobieda in Luhansk Province from June to September 2014. Based on documented evidence, there is a reasonable basis to believe that all the attacks described in this section originated from the territory of the Russian Federation and were perpetrated by or under the overall control of AFRF.

#### 3.3.1 ATTACKS ON AND AROUND KOLESNYKIVKA, KOMYSHNE AND YUHANOVKA SETTLEMENTS



*Satellite map showing launch sites and targeted villages.*

- **Targeted area:** Kolesnykivka,<sup>144</sup> Komyshe<sup>145</sup> and Yuhanovka<sup>146</sup> are small civilian settlements in close proximity to the Ukraine-Russia border (0,5-3km), which runs along the Derkul River. In June 2014, a UAF field camp was established in the woods on the outskirts of Kolesnykivka (roughly 300 meters from the closest civilian dwelling) containing approximately 300 combatants.<sup>147</sup> Two other UAF positions were located at 'Mountain' camp and a UAF checkpoint on the road to Nyzhnia Vilhova.<sup>148</sup> In July 2014, the area was located approximately 14km from contact line between UAF and LPR forces.
- **Overview of attacks:** According to statements by Ukrainian border guards, initial cross-border attacks on the area took place in the first week of July 2014 when the UAF camp near Kolesnykivka was attacked using 82mm mortars.<sup>149</sup> The frequency and missile calibre of these attacks subsequently intensified. On 23 July 2014, heavy artillery fire damaged civilian housing, injuring civilian inhabitants, and set the nearby woods on fire.<sup>150</sup> On 2 August 2014, heavy artillery fire on the 'Mountain' camp and UAF checkpoint resulted in the deaths of four Ukrainian border guards.<sup>151</sup> By August 2014, witnesses report daily artillery

144 Geolocation coordinates: 48040'17" N 39041'13" E

145 Geolocation coordinates: 48043'09" N 39038'13" E

146 Geolocation coordinates: 48040'56" N 39042'43" E

147 Geolocation coordinates: 48040'18" N 39041'49" E

148 Geolocation coordinates: 48042'18" N 39041'26" E

149 Witness statements: 0205K867, 0205K831.

150 Witness statement: 0205K855; Video evidence: 150910\_Kolesnikovka7\_ul.Peschanaya\_13\_intervyu; 150910\_Kolesnikovka70\_ul.Peschanaya\_4\_voronka 16; «Лето в Колесниковке в подвале под российскими градами», timing: 05:00-15:00.

151 Witness statement: 0205K844.

fire on military and civilian objects in the targeted area.<sup>152</sup> The attacks stopped on 5 September 2014,<sup>153</sup> on the day of agreement of the ceasefire in the first Minsk Agreement.<sup>154</sup>

- **Means, methods and provenance of attacks:** Six discarded mortar plates found on the Ukrainian side of Derkul River and a steel cable running across the river suggest that the initial 82mm mortar attacks were launched from this position by combatants who crossed the border and retreated back onto Russian territory after the attack.<sup>155</sup> Crater analysis and missile remnants indicate that subsequent attacks were conducted using MLRS Grad rockets from the territory of the Russian Federation.<sup>156</sup> Satellite imagery reveals at least 150 artillery impact craters in and around Kolesnykivka, at least 70 craters in and around the 'Mountain' camp, and at least 24 craters in the vicinity of the UAF checkpoint.<sup>157</sup> Their provenance is clearly visible from the impact angles, indicating that the vast majority of the missiles came from the direction of the Russian Federation (azimuth 120).<sup>158</sup> Crater analysis on the outskirts of Kolesnykivka confirms that the attack was perpetrated with an MLRS BM-21 'Grad',<sup>159</sup> whereas the 'Mountain' and UAF checkpoint were shelled using 122-mm howitzers.<sup>160</sup> Analysis of the crater depth, direction and angle of impact confirms that the missile was launched from Russian territory.<sup>161</sup> A 'Grad' remnant was retrieved from a civilian's garden in Kolesnykivka, its impact angle and direction also confirming its Russian provenance.<sup>162</sup> The Authors documented a further Grad shell and an unexploded 122mm calibre howitzer shell in the targeted area.<sup>163</sup> The depths and impact angles of all the documented craters<sup>164</sup> are consistent with geo-locations of suspected AFRF artillery launch sites described in the previous section,<sup>165</sup> as well as the firing ranges of artillery systems documented at these locations.<sup>166</sup> In light of the angle and direction of impact, as well the proximity of targets to the Russian border, the attacks could not have originated anywhere other than the territory of the Russian Federation.
- **Damage:** Two civilian dwellings were destroyed and a further 27 were partially damaged as a result of the attacks on the three settlements.<sup>167</sup> Several civilians suffered shrapnel wounds and shell shock.<sup>168</sup> At least 13 UAF border guards were killed and 40 were injured.<sup>169</sup>
- **Conclusion:** Evidence documented by the Authors demonstrates, to a high degree of probability, that in July – September 2014, Ukrainian settlements of Kolesnykivka, Komyshne and Yuhanovka and UAF positions in their vicinity were attacked using 82mm mortars, 122mm howitzer shells and MLRS BM-

152 Case file 0205, 150910\_Kolesnikovka7\_ul. Peschanaya\_13\_intervyu.MOV, witness statement 0205K833

153 Witness statement 0205K856.

154 Minsk Protocol, 5 Sep. 2014.

155 Witness statements: 0205K867, 0205K831.

156 Case file 0205, crater analysis videos: VID\_20150909\_185509.3gp, VID\_20150910\_104635.3gp, VID\_20150910\_105723.3gp,

157 See Satellite image Google Earth, 06/09/2014, 48°40'18N 39°41'49"E; Case file 0205, crater analysis videos: VID\_20150909\_185509.3gp, VID\_20150910\_104635.3gp, VID\_20150910\_105723.3gp; Witness statement: 0205K828; Video evidence: "Лето в Колесниковке в подвале под российскими градами".

158 See case file 0205, video VID\_20150910\_105723.3gp.

159 Case file 0205, see 2015909184752.jpg, 2015909185933.jpg, foto1.jpg.

160 See Satellite image Google Earth, 06/09/2014, 48°43'23N 39°39'29"E and Satellite image Google Earth, 06/09/2014, 48°42'22N 39°41'35"E

161 Case file 0205, see VID\_20150910\_104635.3gp, VID\_20150910\_105723.3gp. 150909\_Kolesnikovka20\_dom1\_intervyu 2.MOV,

162 Case file 0205, see VID\_20150909\_185509.3gp.

163 Case file 0205, see 150909\_Kolesnikovka10\_dom1\_snariad.MOV.

164 Case file 0205, see folder Колесниковка-Камышное > Фото-видео

165 Manotsky settlement site, Duby village site, Petrovinka village site, Derkul village site, Siversky Donets site.

166 In addition, some impact craters near Kolesnykivka indicate a secondary MRLS BM-21 attack from the direction of a LPR position in the village of Parkhomenko (azimuth 173): Witness statements: 0205K845, 0205K828.

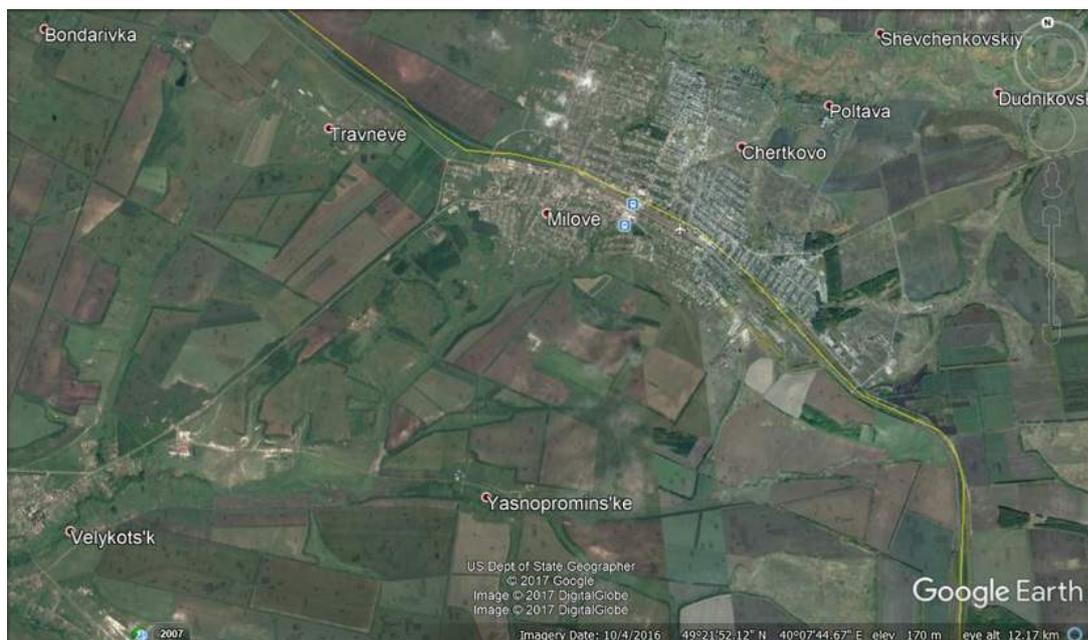
167 DRA, "Положение гражданского населения в отдельных районах донецкой и луганской областей.pdf", 2015, available at: <https://www.austausch.org/files/DRA/Publikationen/pdf>

168 DRA, "Положение гражданского населения в отдельных районах донецкой и луганской областей.pdf", 2015, available at: <https://www.austausch.org/files/DRA/Publikationen/pdf> (last accessed 01/12/2017).

169 Witness statements: 0205K844.

21 'Grad' missiles, and that these attacks originated from the territory of the Russian Federation and were perpetrated by the AFRF. Villages further into Ukraine that may have been targeted from the same positions include Makarovo, Nyzhnia Vilhova, Verhnia Vilhova, Harasymivka and Schastia.<sup>170</sup>

### 3.3.2 ATTACKS ON MILOVE SETTLEMENT



Satellite map showing launch sites and targeted villages.

73. The Authors have documented three separate attacks on UAF positions in and around the Milove settlement (Luhansk Province, Ukraine) on 2 July, 8 August and 9 August 2014. Milove village (Ukraine) and Chertkovo village (Russian Federation) are two halves of one settlement split by the Ukraine-Russia border that runs along Druzhby Narodiv Street.<sup>171</sup> At the time of the attacks, Milove was a predominantly civilian location housing a unit of Ukrainian Air Defence forces and a Ukrainian Border Service base. In July-September 2014, Milove was situated approximately 80km from the nearest LPR position.

#### 3.3.2.1 Attack on Ukrainian Air Defence unit on 2 July 2014

- **Targeted area:** A unit of the Ukrainian Air Defence, including a radar and two administrative buildings, is located approximately 1.5km from the Ukraine-Russia border.<sup>172</sup>
- **Overview of attack:** The attack took place 00:30am-1:30am on 2 July 2014. An estimated 48 rounds of 82mm mortars were fired at and hit the Air Defence unit.<sup>173</sup>
- **Suspected provenance of attack:** A sound recording of the 2 July mortar attack registered an interval of five seconds between launch and impact.<sup>174</sup> This suggests a firing distance of three kilometres, which is consistent with the firing range of standard issue Russian M-37 or 82-BM-37 mortars. 48 mine caps and mortar plate tracks were found near the Ukrainian village of Yasnoprominske, situated approximately three kilometres from the targeted area.<sup>175</sup> The tracks leading from the border to the suspected launch

170 Witness statements: 0205K5845, 0205K831 - testifying to seeing missiles flying overhead in the direction of these settlements in Ukraine.

171 Geolocation coordinates: 49022'52" N 40008'06" E.

172 Geolocation coordinates: 49022'02" N 40005'48" E.

173 Witness statements: 0205K835, 0205K849. Case file 0205, Drown map Бацман Виталий 002.jpg.

174 Video evidence: "Звуки артподготовки под Украинским селом Меловое или Российским селом Чертково 2 ночи 02.07.14.mp4".

175 Witness statements: 0205K835, 0205K849. Case file 0205, Drown map Бацман Виталий 002.jpg.

site suggests the attackers crossed the border to perpetrate the mortar attack and then retreated back across the border.<sup>176</sup>

- **Damage:** Evidence of damage to military objects is not available due to restricted access. No casualties were reported.
- **Conclusion:** Evidence documented by the Authors demonstrates to a high degree of probability that on 2 July 2014, a unit of the Ukrainian Air Defence was attacked using 82mm mortars from the village of Yasnoprominske, and that combatants entered from the Russian Federation onto Ukrainian territory to perpetrate the attack

### 3.3.2.2 Attack on a Ukrainian Border Service unit on 8 August 2014

- **Targeted area:** A unit of the Ukrainian Border Service located inside an administrative building surrounded by civilian housing in the centre of Milove, approximately 0.45km from the Ukraine-Russia border.<sup>177</sup>
- **Overview of attack:** On 8 August 2014, the Ukrainian border service base was attacked using four rounds launched from RPO 'Shmel' rocket launchers, an SPG-9 73mm calibre gun, and several GP25 40mm grenades.<sup>178</sup> Two POM-2 antipersonnel fragmentation mines were left by the attackers in the vicinity of the building, with one of them going off at 7:00a.m the next morning.<sup>179</sup>
- **Suspected provenance of attack:** Two abandoned RPO 'Shmel' rocket engines were found at approximately 50 and 150 meters from the border service building and 0.4 km from the Ukraine-Russia border.<sup>180</sup> The fact that only the facade facing the Russian Federation was hit indicates that the attackers crossed onto Ukrainian territory to perpetrate the attack and then retreated back onto Russian territory.<sup>181</sup> Based on the direction, distance and angle of attack, the only unobstructed position for the SPG-9 fire was an abandoned factory (subsequently destroyed) located approximately 1 km away on the Russian side of the border.<sup>182</sup> The provenance of the GP-25 grenade attack has not been determined.
- **Damage:** The windows, facade and roof of the Ukrainian border service building were destroyed and the interior badly damaged in the 8 August attack.<sup>183</sup> The garage of the border service building was damaged by GP-25 grenades.<sup>184</sup> Four border guards were injured as a result of the POM-2 antipersonnel mine explosion in the morning after the attack on the border guard unit.<sup>185</sup>
- **Conclusion:** Evidence documented by the Authors demonstrates to a high degree of probability that on 8 August 2014, a Ukrainian Border Service unit in Milove was attacked using RPO 'Shmel' rocket launchers, an SPG-9 73mm calibre gun, and several GP25 40mm grenades, and that the attack originated from territory of the Russian Federation.

176 Witness statement: 0205K833.

177 Geolocation coordinates: 49022'03" N 40009'27" E.

178 Witness statement: 0205K835 .

179 Photo evidence: "DSC\_0366.jpg", "Міна ПОМ-2.jpg", "ПОМ-2.jpg", "Противо-пехотная осколочная мина. jpg".

180 Photo evidence: "DSC\_0337.jpg", "Двигатель ШМЕЛЯ.jpg", "Реактивный Двиг ШМЕЛЯ.jpg", "Реактивный двигатель Шмель.jpg", "Реактивный дигатель.jpg.

181 Witness statement: 0205K849.

182 Witness statement: 0205K833; Video evidence: "VID\_20160330\_163417[1].3gp" .

183 Photo and video evidence: group of photos and video collected by the field mission: "фото здания + шмель и противопехотная мина"; Permanent link to videos from Open source: <https://www.youtube.com/watch?v=vZO2zuJaZPw> ; <https://www.youtube.com/watch?v=rHzHRmMHId0>.

184 Witness statement: 0205K833; Video evidence: "VID\_20160330\_163417[1].3gp" .

185 Witness statement: 0205K849.

### 3.3.2.3 Attack on Ukrainian Air Defence unit on 9 August 2014

- **Targeted area:** A unit of the Ukrainian Air Defence is located approximately 1.5km from the Ukraine-Russia border.<sup>186</sup> Military radar and two buildings were located there.
- **Overview of attack:** On 9 August 2014 the Ukrainian Air Defence unit located in Milove was shelled using large calibre artillery – the shelling occurred from 4:30 to 5:40am.<sup>187</sup>
- **Suspected provenance of attack:** The attack was recorded on video<sup>188</sup> shot from the roof of a building located in Chertkovo, approximately 300 meters east of the Russia-Ukraine border.<sup>189</sup> Based on the time and date of the attack and the position of visible twilight, it is possible to discern that the flashes and sounds consistent with those made during the launch of heavy artillery missiles came from the east – i.e.: the territory of the Russian Federation. This is confirmed by witnesses who testify that the attack came from the direction of Poltava and/or Mankovo-Kalytvenskoe (both located in Russia).<sup>190</sup> The 1.2-second lag between the flashes and accompanying sounds suggests that the launch sites were located approximately 411 metres from the camera.<sup>191</sup> The 26-second lag between the sound of launch and the sound of impact is consistent with the distance of approximately 6km between the suspected launch site and the targeted Ukrainian Air Defence unit. The depth, angle and direction of craters described by witness who attended the targeted site confirm the Russian provenance of the attack with use 152-mm artillery.<sup>192</sup>
- **Damage:** A Ukrainian military radar station was destroyed in the attack.<sup>193</sup>
- **Conclusion:** Evidence documented by the Authors demonstrates to a high degree of probability that on 9 August 2014, a Ukrainian Air Defence unit located in Milove was attacked using 152-mm calibre heavy artillery, and that these attacks originated from the territory of the Russian Federation.

74. With the closest LPR position located at a distance of 80km from the targeted area, there is a reasonable basis to believe that all three attacks on UAF positions in Milove were perpetrated by or under the overall control of the AFRF.

### 3.3.3 ATTACKS ON KRASNA TALIVKA SETTLEMENT

- **Targeted area:** The Ukrainian village of Krasna Talivka is located in the Stanytsia Luhanska region of Luhansk Province.<sup>194</sup> The village is located approximately 3.5km from the closest marker on the Ukraine-Russia border, which surrounds the village on three sides. In July 2014, a border checkpoint and unit of Ukrainian Border Service were located in the area. At the material time, the village was located 30km from the nearest LPR position.<sup>195</sup>
- **Overview of attacks:** UAF positions in and around Krasna Talivka were attacked twice in the summer of 2014. The first attack took place on 27 June 2014 at approximately 11:00am. Two anti-tank guided

186 Geolocation coordinates: 49022'02" N 40005'48" E

187 Video evidence: "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)"

188 Video evidence: "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)" .

189 Geolocation coordinates: 49022'31" N 40009'46" E

190 Witness statements 0205K849.

191 Witness statements: 0205K833; 0205K849.

192 Witness statement: 0205K849.

193 Witness statement: 0205K849.

194 Geolocation coordinates: 48051'13" N 39050'43" E

195 Korrespondent.net, 'Map of ARO on 1 September', 1 September 2014, available at: <http://korrespondent.net/ukraine/3412779-karta-ato-na-1-sentiabria> (last accessed: 15/11/2017).



Satellite image of area of the attacks

missiles (ATGM), most likely the 9M133 'Kornet', were fired at an observation tower and border guard of the Ukrainian Border Service within the space of 10 minutes.<sup>196</sup> The second attack took place on 25 August 2014 at 3:10am. A Ukrainian Border Service team codenamed 'Secret' situated approximately 3km from the Ukraine-Russia border was attacked by unknown combatants.<sup>197</sup> UAF reinforcements were called in and the attack lasted for approximately 60 minutes.<sup>198</sup> During the attack, witnesses observed two AFRF MI-24 helicopters and three AFRF BTR-82A armoured vehicles crossing the border to provide heavy-weapons cover for the attackers.<sup>199</sup>

- **Suspected provenance of attacks:** Both attacks took place on Ukrainian soil by combatants who crossed the border to perpetrate the attacks and subsequently retreated back onto Russian territory. Following the 27 June attack, two copper conductors leading towards Russia were found at the location of the suspected launch.<sup>200</sup> Further investigations by border guards identified the combatants' escape route back into the Russian Federation.<sup>201</sup> The 25 August attack took place in the vicinity of the Ukraine-Russia border in close proximity with the AFRF camp in Derkul (see above).<sup>202</sup> After the attack, a temporary camp was found in the woods outside of Krasna Talivka, containing two Kalashnikov machine gun cartridges, a sleeping bag with traces of blood, a Russian-made C-ration, binoculars, a thermal imager and a pouch with medicines with AFRF Pskov division insignia.<sup>203</sup>
- **Damage:** As a result of the 27 June attack, a Ukrainian Border Service observation tower and border guard post were destroyed and two Ukrainian border guards were wounded.<sup>204</sup> The 25 August attack

196 Witness statement: 0205K839, 0205K840, 0205K838.

197 Witness statement: 0205K839, 0205K840, 0205K838, 0205K834.

198 Witness statement: 0205K834, 0205K839, 0205K838.

199 Witness statement: 0205K834, 0205K838; Toparmy.ru, 'БТР 82А фото новый бронетранспортер России', 30 January 2015, available at: <http://toparmy.ru/rossijskaya-armiya/novoe-rossijskoe-vooruzhenie/btr-82a-foto-novyj-bronettransporter-rossii.html> (last accessed: 15/11/2017).

200 Witness statement: 0205K839.

201 Witness statement: 0205K839, 0205K838.

202 Witness statement: 0205K834.

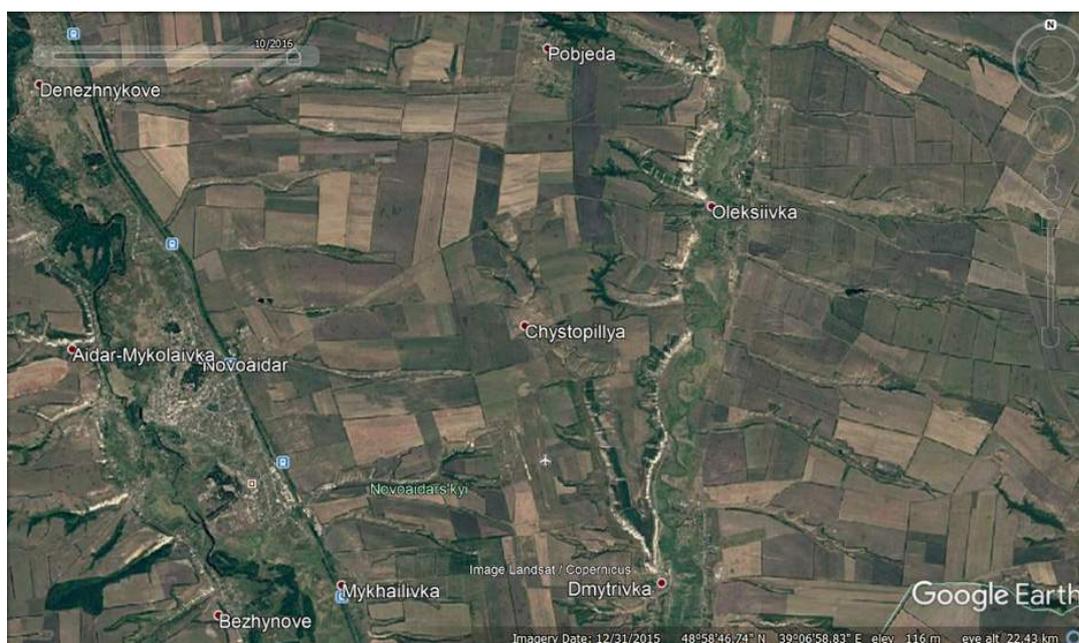
203 Witness statement: 0205K834, 0205K840.

204 Witness statement: 0205K839, 0205K840; Video evidence: VID\_20160401\_110843[1]; VID\_20160401\_113120[1].

resulted in the deaths of four UAF combatants, two combatants were wounded<sup>205</sup> and four Ukrainian Border Service vehicles destroyed.<sup>206</sup>

- **Conclusion:** Evidence documented by the Authors demonstrates to a high degree of probability that on 27 June and 25 August 2014, UAF positions in and around Krasna Talivka were attacked by combatants, who fled back to the territory of the Russian Federation following the attack. With the closest LPR position located at a distance of 30km from the targeted area and a reported use of MI-24 helicopters and BTR-82A armoured vehicles in the second attack, there is a reasonable basis to believe that the attacks were perpetrated by or under the overall control of the AFRF.

### 3.3.4 ATTACKS ON DMYTRIVKA AND POBIEDA SETTLEMENTS



Satellite map showing targeted villages.

- **Targeted area:** The villages of Dmytrivka<sup>207</sup> and Pobieda<sup>208</sup> are located in Luhansk Province approximately 40km from the Ukraine-Russia border. Predominantly civilian in character, at the material time UAF units were stationed in both villages: a heavy artillery battalion, the 1<sup>st</sup> tank brigade and Kyiv-12 battalion in Dmytrivka,<sup>209</sup> and the 'A' sector paramilitary, heavy artillery units, five military helicopters, an air defence system, a repair depot and a field hospital in Pobieda.<sup>210</sup> At the time of the attacks, the closest LPR position to these areas were between 35km and 45km respectively.<sup>211</sup>
- **Overview of attacks:** UAF positions in and around Dmytrivka and Pobieda were attacked using MRLS 'Smerch' and/or MRLS 'Tornado-S' loaded with cluster munitions.<sup>212</sup> Dmytrivka was shelled from 11:00pm on 3 September 2014 until 07:00am on 4 September in four bouts of shelling.<sup>213</sup> Witnesses testify to the

205 Witness statements 0205K828, 0205K834, 0205K839, 0205K840.

206 Witness statement 0205K828.

207 Geolocation coordinates: 48055'35" N 39009'10" E.

208 Geolocation coordinates: 49002'29" N 39006'54" E.

209 Witness statement: 0205K869; Gazeta.UA, "After Russian "Smerch" Dmytrivka turned in flames", available at: [http://gazeta.ua/articles/np/\\_dmitrivka-pislya-rosijskih-smerchiv-peretvorilas-na-popelische/583104](http://gazeta.ua/articles/np/_dmitrivka-pislya-rosijskih-smerchiv-peretvorilas-na-popelische/583104) (last accessed: 15/11/2017).

210 Witness statement: 0205K869, 0205K862, 0205K863, 0205K873.

211 Information Analysis centre, Official map of ATO, available at: <http://mediarnbo.org/2014/09/04/situatsiya-na-shodi-ukrayini-na-04-veresnya/> (last accessed: 15/11/2017).

212 Witness statement: 0205K869, 0205K859, 0205K861, 0205K862.

213 Witness statement: 0205K869, 0205K859, 0205K861, 0205K862.

use of cluster munitions by the attackers.<sup>214</sup> Pobieda was shelled on 4 September 2014.<sup>215</sup> The majority of projectiles targeted UAF positions. Witnesses describe hearing the sound of ‘falling planes’ and loud explosions.<sup>216</sup> A munitions depot was hit, setting off munitions and causing extensive fires.<sup>217</sup>

- **Suspected provenance of attacks:** An unexploded projectile was documented in Dmytrivka, its shank facing towards the Russian Federation to the southeast (azimuth 110-130).<sup>218</sup> The projectile was identified as being consistent with the Russian-made Tornado-S system,<sup>219</sup> a weapon that has never been officially sold or used outside of Russia.<sup>220</sup> The same weapon may have been used on the shelling in Pobieda, where the angle and direction of a documented unexploded shell suggests that the attack originated in or around the area of Stanitsa Mitiakinskaya<sup>221</sup> – located in the Russian Federation.<sup>222</sup> The distance from the suspected launch site and targeted areas is consistent with the 50-90km firing range of MLRS ‘Smerch’ and MRLS ‘Tornado-S’. Authors observed on both shelled sites remnants of 300-mm rockets launched from MLRS ‘Smerch/Tornado’ and containers where cluster munitions were loaded.<sup>223</sup>
- **Damage:** The attacks caused extensive destruction and fire damage in Dmytrivka. Seventy-six UAF combatants were killed; UAF military equipment and a munitions depot were destroyed.<sup>224</sup> Civilian buildings and infrastructure was also extensively damaged by direct hits and shrapnel.<sup>225</sup>
- **Conclusion:** Evidence documented by the Authors demonstrates to a high degree of probability that on 3-4 September 2014, UAF units located in and around the villages of Dmytrivka and Pobieda were attacked using MRLS ‘Smerch’ and/or MRLS ‘Tornado-S’ artillery, carrying cluster munitions. With the closest LPR position located at a distance of 35km-45km from the targeted area and a reported use of MRLS ‘Tornado-S’ artillery, there is a reasonable basis to believe that the attacks on UAF positions in Dmytrivka and Pobieda were perpetrated by or under the overall control of the AFRF. These findings are consistent with a statement by Ukrainian authorities<sup>226</sup> and the OSCE monitoring mission.<sup>227</sup>

### 3.3.5 CONCLUSION

75. Based on evidence presented in this section, there is a reasonable basis to believe that the attacks on Kolesnykivka, Komyshne, Yuhanovka, Milovne, Krasna Talivka, Dmytrivka and Pobieda settlements between June and September 2014 originated from the territory of the Russian Federation and were perpetrated by or under the overall control of AFRF.

214 Witness statement: 0205K864.

215 Witness statement: 0205K869, 0205K862, 0205K863, 0205K873.

216 Witness statement 0205K858.

217 Witness statement: 0205K858, 0205K865.

218 Witness statement: 0205K869, 0205K859.

219 Witness statement: 0205K869, 0205K859, 0205K861, 0205K862.

220 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 Sinikukka Saari. Permanent link: [http://www.fjia.fi/en/publication/485/the\\_new\\_minsk\\_ceasefire/](http://www.fjia.fi/en/publication/485/the_new_minsk_ceasefire/) (last accessed: 15/11/2017).

221 Geolocation coordinates: 48036’34” N 39047’00” E.

222 Witness statement: 0205K858, Video evidence from IPHR database: video\_pobieda\_smerch1

223 Case file 0205: video\_pobieda\_smerch1.3gp; all photos in folder 205>Победа-Дмитровка>с. Дмитрівка>вул. Ворошилова.

224 Video evidence from IPHR database: “обстрел лагеря украинских военных в поселке Дмитровка”. Witness statements 0205K843, 0205K857, 0205K858. Case file 0205 see video “Победа после “Смерча”.mp4”.

225 Witness statement: 0205K862.

226 National Security and Defence Council of Ukraine, Current information from Dmytrivka-Pobieda on 04.09.2014, Available at: <http://www.rnbo.gov.ua/news/1802.html> (last accessed: 15/11/2017).

227 Weekly update from the OSCE Observer Mission at the Russian Checkpoints Gukovo and Donetsk, 28 August until 08:00, 3 September 2014. Available at: <http://www.osce.org/om/123151> (last accessed 15/11/2017).

## 3.4 Conclusion

76. The nature and extent of Russia's involvement in the conflict in eastern Ukraine is crucial to the determination of whether this conflict is of an international or non-international character. This qualification determines the range of offences available to the ICC Prosecutor to bring those responsible for war crimes to justice. Evidence of cross-border attacks by the AFRF is therefore a crucial piece of the puzzle in the ICC Situation on Ukraine.
77. Using open-source satellite imagery, witness statements and social media posts by AFRF soldiers, the Authors and other organisations have documented unprecedented AFRF troop mobilisation, camp build-ups and the appearance of artillery launch sites on the Russia – Ukraine border in June to September 2014. This troop deployment was followed by reconnaissance missions and territorial incursions by troops, helicopters and unmanned drones. The Authors have documented attacks on settlements in the vicinity of the border - Kolesnykivka, Komyshne, Yuhanovka, Milovne, Krasna Talivka, Dmytrivka and Pobieda – which took place between June and September 2014. Witness statements, impact crater analysis, weapon remnants and satellite imagery analysis all point to the fact that the attacks originated on the territory of the Russian Federation. These attacks must also be seen in the wider context – a successful AFRF incursion and occupation of Ukrainian territories of Crimea and Sevastopol, contrasted with the rapid loss of territory by pro-Russian separatist militias in Luhansk and Donetsk Provinces facing a robust counter-insurgency by the UAF. Unsurprisingly, the documented attacks coincided with a significant change in the separatists fortunes – a turn in the tide of the conflict.
78. Consequently, documented evidence of cross-border attacks demonstrates Russia's direct engagement in the armed conflict in eastern Ukraine – supporting the case for the existence of an IAC.<sup>228</sup> In addition to constituting evidence of direct AFRF involvement in armed attacks in the documented instances, these attacks constitute circumstantial evidence of Russia's involvement in the wider conflict in eastern Ukraine, and its overall control over LPR and DPR separatist forces.
79. The Authors respectfully request the ICC Prosecutor to take this information into consideration in determining the applicable legal framework and attribution of responsibility for war crimes committed in the context of and associated with the conflict in eastern Ukraine.

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228 For analysis of what constitutes an IAC, see ICTY, *The Prosecutor v. Dusko Tadic*, Appeals Judgment, IT-94-1-A, 15 July 1999, para 84.

## 4. Documented attacks on civilians and civilian objects

80. In this section, the Authors present evidence of documented attacks on civilians and civilian objects in Eastern Ukraine from June 2014 to May 2017. The Authors have documented a total of 189 episodes of civilian deaths, injuries and/or damage to civilian property resulting from attacks on 32 Ukrainian settlements, perpetrated in the context of and associated with the armed conflict in Eastern Ukraine. Each episode was analysed using the ICC Statute, ICC Elements of Crimes and applicable jurisprudence. There is a reasonable basis to believe that in the case of 134 episodes documented in 22 settlements, on or in the vicinity of the so-called ‘contact line’ between the UAF and separatist forces, the attacks amounted to war crimes as defined in Article 8 of the ICC Statute. The attacks have resulted in at least 100 civilian deaths, 162 civilian injuries and thousands of cases of total or partial destruction of civilian property.
81. These episodes include attacks intentionally directed at the civilians or civilian objects (in violation of Articles 8(2)(b)(i)/(ii) in IAC or 8(2)(e)(i) in NIAC of the ICC Statute), as well as attacks launched against military objectives that lack of proportionality between anticipated incidental harm to civilians/civilian objects/the environment and the military advantage sought (in violation of Article 8(2)(b)(iv) of the ICC Statute). The Authors also note that a disquieting number of attacks were perpetrated against schools, kindergartens and hospitals – amounting to a separate war crime of attacks on medical and educational facilities under Articles 8(2)(b)(ix) in IAC and 8(2)(e)(iv) in NIAC of the ICC Statute. The most common means of attack were MRLS ‘Grad’ artillery and mortar shells – inherently indiscriminate weapons when used against densely populated urban areas. Some machine gun and grenade attacks have also been documented. The vast majority of documented attacks were perpetrated by forces stationed on territory controlled by DPR or LPR forces, although a number of attacks by the UAF have also been documented.
82. The Authors respectfully submit that the supporting evidence provided to the ICC Prosecutor on filing this Report – including witness statements, photographs, videos and impact crater analysis – is sufficient to justify opening a full investigation with a view to bringing those responsible to account.

### 4.1 Analytical framework

83. The Authors recognise that a single set of facts may be qualified as multiple offences under the Rome Statute, and that the most appropriate qualifications may only become apparent at the end of a full investigation. At this stage, our aim is to demonstrate that events documented by the Authors satisfy the material and contextual elements<sup>229</sup> of one or several ICC Statute crimes to the standard required for opening a full investigation into these events – i.e. that there is a reasonable basis to believe that crimes within the jurisdiction of the Court have taken place.<sup>230</sup>
84. Armed attacks on predominantly civilian urban areas may engage a number of offences under Article 8 of the ICC Statute (war crimes). The suitability of any given charge depends on factors such the prevalence of

229 It is not necessary, nor indeed possible, at this stage to satisfy the mens rea for the proposed offenses - ICC-01/15-4-Corr (Situation in Georgia), para. 219.

230 The “reasonable basis to believe” standard in Article 53(1)(a) of the ICC Statute is the lowest evidentiary standard provided for in the Statute. The information available to the Prosecutor is neither expected to be “comprehensive” nor “conclusive.” It must be understood within the context in which it operates: the standard should be construed and applied against the underlying purpose of the procedure in article 15(4) of the Statute, which is to prevent the Court from proceeding with unwarranted, frivolous, or politically motivated investigations that could have a negative effect on its credibility. Nor does all the information under this standard need to necessarily point to one conclusion: ICC, Situation in the Republic of Kenya, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya,” 31 March 2010, paras. 27-35.

combatants in the targeted area, the means and methods of the attack, the size and scope of the attack, the number and nature of persons or infrastructure hit and the inferred intent of the attacker.<sup>231</sup> The decision on charges is also determined by the nature of the conflict within the context of which the offence took place – the list of offences applicable in the context of an IAC being wider than for NIAC. Framing each allegation requires a factual assessment of the nature of conflict at the relevant time, based on evidence of direct engagement, overall control or occupation by a foreign State. A conclusive analysis of the nature of the conflict for each documented attack is beyond the scope of this Report. Nevertheless, in the opinion of the Authors, information provided in the First Report and Section 3 above raise a reasonable basis to believe that an IAC has existed on the territory of Ukraine since the summer of 2014. The assessment of whether each documented attack took part in the context or and was associated with the IAC requires the full investigative powers of the ICC Prosecutor.

85. Consequently, each attack is documented and assessed using the following analytical framework distilled from the ICC Statute and jurisprudence:

- *Attack intentionally directed at civilians and/or civilian objects:*

It must be demonstrated that the aim of the attack was the civilian population, civilians not taking direct part in hostilities or civilian objects. The term ‘attack’ is defined as ‘acts of violence against the adversary, whether in offence or in defence’.<sup>232</sup> The allegation cannot be counterbalanced by invoking military necessity,<sup>233</sup> or excused as a reprisal.<sup>234</sup> The presence amongst the civilian population of individuals who do not fit within the definition of a civilian does not deprive the entire population of its civilian character,<sup>235</sup> although the Court will consider factors such as the number and the behaviour of combatants present amongst the civilians.<sup>236</sup> Civilians and civilian objects lose their protected status only when and for such time that they take a direct part in hostilities.<sup>237</sup> No evidence of actual civilian casualties is required, provided an intention to cause casualties can be inferred.<sup>238</sup> Such attacks may be charged under Article 8(2)(b)(i)/(ii) in IAC and Article 8(2)(e)(i) in NIAC.<sup>239</sup> Where attacks are intentionally directed at buildings dedicated to religion, education, art, science, charity, historic monuments, hospitals or places where the sick and wounded are collected, they may be charged under Article 8(2)(b)(ix) in IAC and Article 8(2)(e)(iv) in NIAC (provided they did not serve as military objectives at the time).<sup>240</sup>

- *Failure to discriminate between military and civilian targets:*

Where the attack is directed towards a legitimate military objective and simultaneously at the civilian population or civilians not taking direct part in hostilities, the attack may be considered to be an attack intentionally directed at civilians and charged as such under Article 8(2)(b)(i)/(ii) in IAC and Article 8(2)(e)(i) in NIAC,<sup>241</sup> provided it is established that the principal target of the attack was the civilian population.<sup>242</sup> There are no clear international guidelines for determining whether a civilian casualty was deliberately targeted or incidental to an attack on a military objective. The ICTY Trial Chamber attempted to develop

231 Elements assisting in ascertaining the intention are the means and methods used during the attack, the number and status of victims, the discriminatory character of the attack and the nature of the act: ICC-01/04-01/07-3436, Katanga, 7 March 2014, para. 807.

232 ICC-02/05-02/09-243-red, Prosecutor v. Abu Garda, Decision on the Confirmation of Charges, 8 February 2010, para. 65; ICC-01/04-01/07-3436, Katanga, 7 March 2014, para. 798; ICC-01/04-02/06-309, Ntaganda, 9 June 2014, para. 45.

233 ICC-01/04-01/07-3436, Katanga, 7 March 2014, para. 800.

234 ICC-01/04-01/10-465-Red, Prosecutor v. Mbarushimana, Decision on the Confirmation of Charges, 16 December 2011, para. 143.

235 ICC-01/04-01/10-465-Red, Mbarushimana, 16 December 2011, para. 148.

236 ICC-01/04-01/07-3436, Katanga, 7 March 2014, para. 801.

237 Article 51(3) of Additional Protocol I and Article 13(3) of Additional Protocol II.

238 ICC-01/04-01/07-55, Katanga, 6 July 2007, para. 37.

239 N.B.: there is no specific offence of international attack against civilian objects in NIAC, although this prohibition appears to have been subsumed into Article 8(2)(e)(i) – see ICC-01/04-02/06, Ntaganda, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, para. 46.

240 See ICTY-IT-95-14, Prosecutor v. Blaškić, Judgment, 3 March 2000, para. 185.

241 ICC-01/04-01/07-3436, Katanga, 7 March 2014, para. 802; ICC-01/04-01/10-465-Red, Mbarushimana, 16 December 2011, para. 142.

242 ICC-01/04-01/07-3436, Katanga, 7 March 2014, para. 802.

such guidelines in Gotovina, holding that a high prevalence of BM-21 Grad and 155mm gun attacks on civilian objects located over 200 meters from military objectives can be inferred to constitute attacks intentionally directed at civilians.<sup>243</sup> The so-called '200 Metre Standard' was criticised on appeal but no alternative was provided.<sup>244</sup> Moreover, the OSCE has observed that the projectiles used in the eastern Ukraine conflict 'generally create a blast zone and fragmentation with the potential to kill or injure anyone and damage anything within that zone that can range from 35 to 200 meters depending on the weapon used'.<sup>245</sup> The question is therefore one of fact to be decided on a case-by-case basis on factors such as type of weapon used, distance from launch site, distance of impact site from the military objective and the geographic distribution of impact sites.<sup>246</sup> For the purposes of legal analysis in this Report, the Authors opted for a 'generous' benchmark of 400 meters as a 'permissible accuracy range', based on military expert testimony at the ICTY.<sup>247</sup> Any damage beyond 400 meters from a legitimate military target was therefore regarded as an intended attack on civilians.

- *Total absence of proportionality between anticipated incidental harm to civilians and the military advantage sought:*

Where the incidental effect on the civilian population or civilians not taking direct part in hostilities is so disproportionate to the military objective that it reveals the author's intention to make the civilian population the object of his/her attack, it may be charged as such under Article 8(2)(b)(i)/(ii) in IAC and Article 8(2)(e)(i) in NIAC.<sup>248</sup>

- *Lack of proportionality between anticipated incidental harm to civilians/civilian objects/the environment and the military advantage sought:*

Where an attack is intentionally launched against a military objective, and the attacker was (or ought to have been) aware of the incidental harm that such an attack may cause to civilians, civilian objects or the environment, and that harm was disproportionate to the military advantage sought, it may be charged under Article 8(2)(b)(iv) in IAC. No equivalent ICC Statute provision exists for NIACs. The finding of responsibility hangs on the question of proportionality – i.e. whether the accused used all available means to spare civilian lives and took all necessary measures to avoid inflicting harm, loss or damage to the civilian population.<sup>249</sup> The indiscriminate nature of the attack relates to both the means (weapons incapable of

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243 ICTY, IT-06-90, Gotovina et al., Judgement, 15 April 2011, paras. 1903-1906.

244 ICTY, IT-06-90-A, Gotovina et al, Appeal Judgement, 16 Nov. 2012, paras. 51-67 (N.B: two of five appeal judges dissenting on this point).

245 OSCE, 'Thematic Report: Hardship for conflict-affected civilians in eastern Ukraine', February 2017, available at: <http://www.osce.org/ukraine-smm/300276?download=true> (last accessed: 27/11/2017), p.4.

246 See for e.g.: ICTY, IT-98-29-T, Prosecutor v. Stanislav Galić, Judgement and Opinion, 5 Dec. 2003, paras. 561-594.

247 ICTY, IT-06-90, Gotovina et al., Judgement, 15 April 2011, paras. 1903-1906.

248 ICC-01/04-01/07-3436, Katanga, 7 March 2014, para. 802.

249 ICTY, The Prosecutor v. Dario Kordic, Mario Cerkez, Appeal Judgement, IT-95-14/2-A, 17 December 2004, para. 52. An important precautionary measure that impacts the assessment of proportionality is the obligation on all parties to give effective advance warning of attacks that may affect the civilian population, unless circumstances do not permit: ICRC, Customary IHL, "Rule 20: Advance Warning," available at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter5\\_rule20#Fn\\_25\\_10](https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter5_rule20#Fn_25_10) (last accessed: 2/08/2015): Advance warning may not be required where the element of surprise is essential to the success of an operation or to the security of the attacking forces or that of friendly forces – see Hague Regulations, Article 26; Additional Protocol I, Article 57(2)(c).

discriminating between targets – e.g.: cluster munitions<sup>250</sup>) and methods (e.g.: area bombardment<sup>251</sup>) of combat.<sup>252</sup>

## 4.2 Avdiivka<sup>253</sup>

86. The information and analysis provided below is based on documentation by Truth Hounds Documentation Field Mission on behalf of the Authors, conducted in the course of four on-site visits to Avdiivka on 15-17 September 2016, 13-17 February 2017, 28 February 2017 and 30 March 2017. The documenters interviewed a total of 53 witnesses and documented 28 impact sites.

### 4.2.1 TARGETED AREA

87. Avdiivka is an industrial town in the Donetsk Oblast' of Ukraine with an estimated population of 35,000.<sup>254</sup> The main employer and source of electrical power in Avdiivka is the Kokhsokhim factory located north-northwest of Avdiivka (Ln 500). The town was captured by separatist forces in May 2014, and re-captured by the UAF on 29 July 2014.<sup>255</sup> It is situated in close proximity to the DPR-controlled town of Yasinuvata (to the southeast) and Donetsk city (to the south) – three and a half kilometres separate the southernmost buildings in Avdiivka from the Spartak area of Donetsk city.<sup>256</sup> Attacks on civilians in Avdiivka were documented in the First Report.<sup>257</sup>

88. Following the Minsk II ceasefire agreement,<sup>258</sup> the industrial zone in the southeast corner of Avdiivka<sup>259</sup> became a *de facto* buffer zone between the UAF and DPR positions. In February 2016, the UAF took control of the industrial zone and built fortifications.<sup>260</sup> Creeping advances by the UAF in 2016 also resulted in its control over a small stretch of the M04 highway – a road of strategic importance to DPR as it connects Donetsk city to the DPR-held city of Horlivka.<sup>261</sup> From January to March 2017, the UAF military presence in Avdiivka included:

- UAF quarters located to the north of the city next to the train station (Ln 201)
- UAF military checkpoint on Vorobyov street separating the old and new parts of the town with personnel stationed in residential building nearby (Ln 202 and 203)

250 The ICTY has held that the use of cluster munitions in urban areas was indiscriminate and may qualify as a direct attack on civilians - ICTY IT-95-11-A, The Prosecutor v Martić, Appeal Judgment, 8 October 2008, para 260.

251 "An attack that treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects" - See Article 51(5)(a) of Additional Protocol I; For NIAC, see See ICRC, Customary IHL, "Rule 13: Area Bombardment," available at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule13](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule13) (last accessed: 25/04/2015).

252 See ICRC, Customary IHL, "Rule 12: Definition of Indiscriminate Attacks", available at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule12](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule12) (last accessed: 25 March 2015); See also Article 51(4)(b) and (c) Additional Protocol 1 and Article 8(2)(b)(xx) ICC Statute.

253 Case file N018 > Pics, location map: Avdiivka.jpg

254 Державна служба статистики України, 'Чисельність наявного населення України на 1 січня 2017 року', 09 June 2017, available at: [http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ\\_new1/2017/zb\\_chnn\\_0117.pdf](http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2017/zb_chnn_0117.pdf) (last accessed 25/11/2017).

255 Урядовий Кур'єр, 'Силовики звільнили Авдіївку', 30 July 2014, available at: <http://ukurier.gov.ua/uk/news/siloviki-zvilnili-avdiivku/> (last accessed: 22/11/2017)

256 Geolocation coordinates: 48005'07" N 37046'08" E

257 First Report, section 4.1.4, Case File 118.

258 Financial Times, 'Full text of the Minsk agreement', 12 February 2015, available at: <https://www.ft.com/content/21b8f98e-b2a5-11e4-b234-00144feab7de> (last accessed 24/11/2017)

259 Geolocation coordinates: 48007'07" N 37047'27" E; Location 17 on the Map

260 Уніан, 'Сили АТО зайняли промзону поблизу Авдіївки, витіснивши звідти терористів (відео)', 24 February 2015, available at: <https://www.unian.ua/war/1273908-sili-ato-zaynyali-promzonu-poblizu-avdiivki-vitishnivshi-zvidti-teroristiv-video.html> (last accessed 24/11/2017)

261 TSN, 'УКРАЇНСЬКІ ВІЙСЬКОВІ ВЗЯЛИ ПІД ВОГНЕВИЙ КОНТРОЛЬ ЯСИНУВАТСЬКУ РОЗВ'ЯЗКУ – ВОЛОНТЕРИ, 9 March 2016, available at: <https://tsn.ua/ato/ukrayinski-viyskovi-vzjali-pid-vogneviy-kontrol-yasinuvatsku-rozv-yazku-volonteri-606397.html> (last accessed 24/11/2017)

- UAF quarters based in an old orphanage building in the 'Khimik' area - sleeping quarters and medical units (Ln 204)
- UAF firing position on the south-southeast edge of the city: in the industrial zone (Ln 17); at the end of Lermontov and Kolosov streets (Ln 205 and 206); the wooded area to the south-southeast (Ln 208) and adjacent to the railway line on the southwest edge (Ln 209).
- UAF ammunition stockpile, combat vehicles and personnel positioned in the south-southeastern end of Kolosov Street (Ln 207).<sup>262</sup>
- UAF artillery firing position outside the city near the lake (Ln 327).

#### 4.2.2 DESCRIPTION/OVERVIEW OF ATTACKS

89. Following the recapture of Avdiivka by the UAF in July 2014, civilians and civilian objects have come under sporadic attacks from DPR positions in Donetsk city and Yasinuvata. These attacks, varying in means and intensity, resulted in damage to civilian objects, civilian injury and loss of life.<sup>263</sup> Aside from artillery and mortar attacks, civilians have also suffered from sporadic sniper fire coming from DPR positions.<sup>264</sup>

90. 26 January 2017 marked the start of a new wave of intense mortar and artillery attacks by DPR forces, which continued on a quasi-daily basis for a month. It is unclear which side initiated this round of hostilities. However, it is likely that the DPR attacks were prompted by the UAF takeover of the industrial zone (Ln 17) and efforts to control a stretch of the M04 Highway. Also of note is the Ukrainian government claim that these attacks, which took place shortly after the inauguration of President Trump, were aimed at testing the new US Administration's position on the conflict in Ukraine. According to the Ukrainian foreign minister Pavlo Klimkin, 170 vehicles with munitions and 60 with fuel had crossed over from the Russian Federation in the run-up to these attacks as part of a plan coordinated from the Kremlin.<sup>265</sup>

91. Based on documented remnants, impact craters and witness statements, the attacks were carried out using MLRS BM-21 Grad missiles, 125mm tank projectiles, 122mm mortar shells and 82mm mortar shells, as well as sniper rifle, automatic grenade-launchers and machine-gun fire. In most cases, the provenance of the attack is clear from the angle of impact craters or the aspect of buildings hit by projectiles. All impact sites where provenance was possible to establish point towards DPR positions in and around Donetsk city and Yasinuvata.

92. The enclosed map of documented impact sites demonstrates the wide dispersal of attacks during the documented period. The most targeted areas are the industrial zone and adjoining streets (Kolosov and Lermontov streets) to the southeast, the 'Khimik' quarter west of the railway station and locations in between on Turgenev and Zelena streets. Attacks also took place on locations in the northeast (other end of Kolosov and Zvodska streets), and on the Koksokhim factory in the north-northwest.

93. The OSCE has reported over 9,250 artillery strikes in and around Avdiivka and Yasinuvata in just the first six days of the fighting in 2017.<sup>266</sup> Official statistics on casualties vary, with the UAF reporting the deaths

262 Photo evidence documented by Truth Hounds: IMG\_1494.jpg; Video evidence documented by Truth Hounds WP\_20170216\_12\_26\_53\_Pro.mp4; Video evidence documented by Truth Hounds: IMG\_1496.MOV; Witness statement: 0237K877.

263 See Case Files 221; 211 and 118.

264 E.g.: witness 0118K880 (18 July 2015); witness 0221K985 and doc. IMG\_0002.JPG (11 June 2016); witness 0221K990 (13 July 2016); witness 0221K991 (4 July 2016).

265 Guardian, 'Violence flares in war-weary Ukraine as US dithers and Russia pounces', 14 February 2017, available at: <https://www.theguardian.com/world/2017/feb/14/avdiivka-frontline-ukraine-war-russia-backed-separatists> (last accessed: 29/11/2017) – these claims have not been verified by independent sources.

266 OSCE, 'Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received as of 19:30, 31 January 2017', 1 February 2017, available at: <http://www.osce.org/ukraine-smm/296961> (last accessed 24/11/2017)

of 19 soldiers and 66 injured combatants, and DPR reporting 18 combatant deaths.<sup>267</sup> The Authors have documented at least 15 civilian deaths and 33 injuries in Avdiivka since hostilities broke out in 2014. The greatest damage was done to civilian infrastructure, with an estimated 128 civilian residences totally or partially destroyed, and damage incurred to a school, a kindergarten, hospital and humanitarian assistance point. An attack on the Koksokhim coal plant on 2 February resulted in a power outage across Avdiivka, leading to a humanitarian crisis and the emergency evacuation of civilians.<sup>268</sup> A further immeasurable cost is the trauma and anxiety incurred by the civilian population, in light of the persistency of shelling with highly inaccurate weapons by the DPR, creating an atmosphere of constant fear among residents.<sup>269</sup>

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267 New York Times, 'Residents take cover as Ukraine border battles reignite conflict', 3 Feb. 2017, available at: <https://nyti.ms/2k50iV1> (last accessed: 29/11/2017).

268 ZN,UA, 'Для обігріву мешканців Авдіївки запустять потужний генератор', 31 January 2017, available at: [https://dt.ua/UKRAINE/dlya-obigrivu-meshkanciv-avdiyivki-zapustyat-potuzhny-generator-231744\\_.html](https://dt.ua/UKRAINE/dlya-obigrivu-meshkanciv-avdiyivki-zapustyat-potuzhny-generator-231744_.html) (last accessed 24/11/2017)

269 AFP, 'Ukraine clashes rage for third day, sparking EU concern', 31 January 2017, available at: <https://www.afp.com/en/news/23/ukraine-clashes-rage-third-day-sparking-eu-concern> (last accessed: 24/11/2017).

### 4.2.3 TABLE OF DOCUMENTED ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS IN AVDIIVKA

CASE FILE	DATE/TIME	IMPACT SITE	MEANS/METHOD	OUTCOME	EVIDENCE
221	4 August 2014 (7:30pm)	School N. 4 (Klubny lane, 1, Ln 501) – 950m from nearest UAF position	Two mortar shells	Projectile fragments hit school building.	<u>Witness Statement:</u> 0221K936 (date, timing and intensity of shelling, damage to property and casualties). <u>Video and photos of impact site:</u> WP_20160916_14_38_24_Pro.mp4.
221	10 November 2014	Water distribution point (Ln 502) – 200m from UAF checkpoint and 100m from UAF quarters	Unidentified explosive projectile	Projective hit a queue of civilians at a fresh water distribution point killing 4 and injuring 7.	<u>Witness Statement:</u> 0221K902 (date, timing and intensity of shelling and casualties).
211	24 January 2015 (4pm)/6 August 2015 (10pm)	House of Culture/library and sewing shop (28 Karla Marksa St. Ln 503) – 860m from UAF checkpoint	Artillery shells from DPR positions in Spartak.	Severe damage to civilian/cultural property.	<u>Witness Statement:</u> 0221K988; 0221K988 (testifies about date, timing and damage to property) <u>Photos of impact site:</u> Case File 221 > Авдеєвка > ДК > ДК.
221	28 January 2015	Residential quarter – Stoiteley kvartal (c. Ln 99) – 1.3km from nearest UAF base, 1.9km from nearest UAF firing position.	Shelling	Civilian killed as a result of shelling	<u>Witness Statement:</u> 0221K992 (date, shelling and casualties)._
118	17 February 2015	Civilian residence on 17 Molodyozhnaya (Ln 46) – close proximity to UAF quarters	Artillery from DPR position in Yasynuvata	Damage to civilian property; Damage to gas pipe and ensuing fire.	<u>Witness statement:</u> 0118K1010 (date, time, intensity of shelling, damage to civilian property).
118	18 July 2015 (6:30pm)	Residential area - 44, Zelenaya St. (Ln 70) – 1.5km from closest UAF position.	Machine gun fire from direction of DPR position in Yasynuvata	Civilian injured in the leg by direct hit.	<u>Witness statement:</u> 0118K880 (date, timing, injury).
211	6 August 2015 (10pm)	House of Culture/library and sewing shop (28 Karla Marksa St. Ln 503) – 860m from UAF checkpoint	Artillery shells from DPR positions in Spartak.	Severe damage to civilian/cultural property.	<u>Witness Statement:</u> 0221K988; 0221K988 (testifies about date, timing and damage to property) <u>Photos of impact site:</u> ] Case File 221 > Авдеєвка > ДК.

211	11 June 2016 (1pm)	Residential quarter – Krasna St. – 1.7km from closest UAF position.	7.62mm machine gun or sniper rifle bullet	Civilian child sustained broken leg after direct hit	<u>Witness statement:</u> 0221K985 (date, time and injury). <u>Photo evidence:</u> IMG_0004.JPG - shows type of bullet; IMG_0002.JPG - shows results of medical examination.
221	4 July 2016 (6:30pm)	Civilian residence (68 Lomonosova St. Ln 504) – 2.5km from closest UAF position.	AK-47 machine gun fired from direction of DPR-controlled Yasynuvata junction	Civilian sustained injury to ear after direct hit.	<u>Witness statement:</u> 0221K991 (date, time and casualties).-
211	13 July 2016 (9pm)	Civilian residence on 18 Lomonosova St. (Ln 505) – 2km from nearest UAF position.	Unknown calibre bullet fired from direction of DPR-controlled Yasynuvata	One civilian death (standing in front of his house at the time).	<u>Witness statement:</u> 0221K990 (date, time and civilian casualty).
211	18 August 2016	Civilian residence and church on 185, Krasna St. (Ln 49) – 1.7km from nearest UAF position	SPG-9 from direction of DPR-controlled Yakovlivka	Damage to civilian property and building dedicated to religion.	<u>Witness statements:</u> 0221K987, 0221K993 <u>Photo evidence:</u> P60915-135715.jpg, P60915-135707.jpg, P60915-135701.jpg - show remnants of the shell; from P60915-145144.jpg to P60915-135825.jpg - show damage to civilian property; Case File 221 > Авдеєвка > церква А. Михайла - shows damage to the building dedicated to religion
211	14 September 2016 (12:00am; 5:10pm)	Civilian cemetery and funeral parlour (Ln 506) – 2km from nearest UAF firing position; Civilian residence (Ln 507) – 1km from UAF firing position.	36x122-mm artillery from direction of DPR-controlled Spartak	Damage to civilian objects; Serious injury to civilian.	<u>Witness statement:</u> 0221K986 (date, time, intensity of shelling, origin and damage to civilian objects); 0221K989 (date, time and injury); 0221K992 (date, casualties, and means). <u>Video evidence:</u> V60915-160816.mp4 (impact crater analysis demonstrating shelling came from south). <u>Photos evidence:</u> Case File 221 > Авдеєвка > Ритуальний услуги (craters and damage to property)

221	26 January 2017 (11 pm)	Civilian residences: 23 & 27 Kolosov St. (Ln 67, 68); 71 Lermontov St. (Ln 18) – southeast edge of town; Close proximity to UAF firing positions (Ln 205, 206, 208) and disputed 'Industrial Zone' (Ln 17)	Heavy calibre artillery fire from DPR positions – impact craters measured up to 6.2m across and 180cm deep.	Damage to civilian housing: N. 23 Kolosov St. was left without a roof and its porch and outbuildings were completely destroyed; Electricity and gas supplies were disconnected; water in the heating system froze in several buildings; central heating boilers were destroyed; Windows and outbuildings destroyed at N. 71 Lermontov St.	<u>Witness statements</u> : 0237K877 (time of attack; impact); 0221K878 (impact); 0221K879 <u>Impact crater analysis</u> : WP_20170216_12_59_17_Pro.mp4 , IMG_1500.MOV; <u>Video of impact site</u> : V70216-122041.mp4.
221	30 January 2017 (4:30 pm)	Civilian residences: 35 Turgenev St. (Ln 69); 42 Zelena St. (Ln 70) - within 1km from the closest UAF firing positions. Koksokhim power station (Ln 500) – 2.5km from UAF base and 6km from nearest firing position.	Artillery shells fired at intervals of 3-4 seconds from direction of Yasynovata	First shell hit civilian residence but did not explode; second shell destroyed summer kitchen. Impact on Koksokhim factory led to power outage for whole town. At -20C temperatures situation quickly turned to a humanitarian crisis.	<u>Witness statements</u> : 0118K880 (time of attack); <u>Photo evidence</u> : IMG_1478.MOV (impact) <u>Video of impact site</u> : 20170215_122441.mp4 <u>SMM OSCE report</u> : <a href="http://www.osce.org/ru/ukraine-smm/296981">http://www.osce.org/ru/ukraine-smm/296981</a> UN Report: OHCHR, 'Report on the human rights situation in Ukraine' 16 November 2016 to 15 February 2017' < <a href="http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf">http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf</a> <u>Human Rights Watch</u> : Human Rights Watch, 'Ukraine: Dangers, Unnecessary Delays at Crossing Points Improve Security, Facilities Along the Line of Contact, Facilitate Better Crossing for Civilians' < <a href="https://www.hrw.org/news/2017/02/17/ukraine-dangers-unnecessary-delays-crossing-points">https://www.hrw.org/news/2017/02/17/ukraine-dangers-unnecessary-delays-crossing-points</a> > Accessed 26 July 2017
221	31 January 2017 (7am)	Civilian residences 31 Komunalna st. (Ln 111) – 1.7km from nearest UAF quarters; Civilian residences on Turgenev, Zelena and Kolosov st. (Ln 71) – close proximity to UAF firing positions.	MLRS Grad rockets fired from south-east direction (DPR-controlled territory)	Civilian apartments badly damaged; One civilian wounded.	<u>Witness statements</u> : 0221K881 (time of attack); <u>Photo evidence</u> : IMG_1478.MOV (impact) <u>Video of impact site</u> : V70214-112040.mp4; : V70214-171237.mp4; V70215-110254.mp4 <u>Ukrainian police report</u> : <a href="https://cv.npu.gov.ua/mvs/control/donetsk/uk/publish/article/399817">https://cv.npu.gov.ua/mvs/control/donetsk/uk/publish/article/399817</a>

221	1 February 2017 (from 7am)	Civilian residences: 45 Zelena St. (Ln 72); 83 Zavodka St. (Ln 73); 96 Zavodska St. (Ln 74); 100 Zovodska St. (Ln 75); 214 Kolosov St. (Ln 48); 84 Turgenev St. (Ln 7x6). Targets on Kolosov and Zavodska St. located over 2km from nearest UAF positions.	MLRS BM 21 Grad rockets fired from the east-south-east (Yakovlivka) confirmed by witnesses and crater analysis.	Total or partial damage caused to 52 civilian residences; One civilian (Ekaterina Volkova) killed as a result of shelling on Zavodska St.	<u>Witness statements:</u> 0221K882, 0221K883, 0221K884, 0221K885 (time and provenance); 0221K886 (death); <u>Video of impact site:</u> WP_20170215_13_22_00_Pro.mp4; WP_20170215_17_29_06_Pro.mp4; IMG_1481.MOV; WP_20170215_17_23_12_Pro.mp4; WP_20170216_14_37_23_Pro.mp4; IMG_1513.MOV; V70216-135835.mp4; IMG_1514.MOV; 20170215_111838.mp4; <u>Statement by Chief of police in Donetsk area:</u> <a href="https://www.facebook.com/Vyacheslav.Abroskin/posts/1680505355575465">https://www.facebook.com/Vyacheslav.Abroskin/posts/1680505355575465</a>
221	2 February 2017 (from 3:30am)	Civilian commerce buildings on and around Sadova St. (Ln 77); School (Ln 106); Hospital (Ln 108/7); Civilian residence on 8 Mendeleev St. (Ln 78); 13/17/19 Molodizhna St. (Ln 115; 80; 82); 9 Vorobyov St. (Ln 79); Humanitarian aid distribution point (Ln 81). Targets located within 1km of nearest UAF firing position.	120mm mortars (8 craters measured 280cm across and 80cm deep) from south-east direction; Tank shells (stabiliser found) – fired from DPR-controlled Yasynuvata and/or Yakovlivka	Total or partial damage to civilian commerce; Damage to school and hospital; Damage to civilian residences; Damaged gas pipe; Civilian (Elena Volkova) killed and photojournalist injured on Mendeleev St.; Civilian injured on Vorobyov St.; civilian injured on Molodizhna st.; Ambulance driver and head of emergency services killed in attack on humanitarian aid point.	<u>Witness statements:</u> 0221K887; 0221K889 (time of attack); 0221K890, 0221K891, 0221K889, 0221K894, 0221K894 (death and injury); 0221K892, 0221K893, 0221K899, 0221K931, 0221K891, 0221K895 (impact) <u>Video of impact site:</u> IMG_1466.MOV; IMG_1465.MOV; :V70214-123916.mp4; V70214-122018.mp4, V70214-121404.mp4; IMG_1464.MOV; V70214-104915.mp4; 20170213_164435.mp4; 20170214_095633.mp4 <u>Impact crater analysis:</u> V70214-161226.mp4, V70214-160240.mp4; V70214-092831.mp4;
221	3 February 2017 (from 10pm)	Civilian residence: 73 Soborna St. (Ln 83). 1 km from UAF quarters and 2.5km from nearest UAF firing position.	Shell hit eastern facade of building making a 150x150cm hole in masonry.	Damage to civilian residences.	<u>Video of impact site:</u> 20170214_163147.mp4; 20170214_163557.mp4 <u>OSCE report:</u> OSCE, 'Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received as of 19:30, 3 February 2017' < <a href="http://www.osce.org/ukraine-smm/297646">http://www.osce.org/ukraine-smm/297646</a> > Accessed 26 July 2017.
221	9 February 2017 (2:00pm)	Civilian residence: 14 Turgenev St. st (Ln 84) – close proximity to UAF firing position.	82mm mortar shell fired from DPR-controlled Yasynuvata junction	Partial damage to civilian residence and injury to civilian from fragments.	<u>Witness statements:</u> 0221K885; 0221K896 <u>Video of impact site:</u> V70215-102910.mp4

221	15 February 2017 (8:40pm)	Civilian residences: Kolosov and Lermontov St. (Ln 85-90; 66) – close proximity to UAF firing positions and industrial zone.	120mm mortars from south-east or south-southeast direction (DPR-controlled Yasynuvata/Mineralne); grenades and machine gun fire	Total or partial damage to civilian residences. Damage to electricity supply.	<u>Witness statements:</u> 0237K877, 0221K878, 0221K879 <u>Video of impact site:</u> WP_20170216_13_08_10_Pro.mp4; WP_20170216_11_18_43_Pro.mp4, IMG_1485.MOV; IMG_1496.MOV; V70216-111115.mp4; V70216-110844.mp4; IMG_1500.MOV; V70216-115919.mp4; WP_20170216_13_42_04_Pro.mp4, IMG_1502.MOV.
221	16 February 2017 (6:03pm)	Civilian commerce: 12 Gagarin St. (Ln 91); Civilian residence: 1 Gagarin St. (Ln 123); 1 9-Kvartal St (Ln 92). 1km from nearest UAF firing position and 0.5km from nearest UAF quarters.	Full MLRS Grad system used (based on sound recorded by documenters) fired from DPR-controlled Yasynuvata.	Partial damage to civilian residences and commerce. One civilian death and 2 civilian injuries.	<u>Witness statements:</u> DU-00372, 0221K897 <u>Video of impact site:</u> IMG_1529.MOV, IMG_1525.MOV, IMG_1526.MOV, V70217-083018.mp4; V70217-082122.mp4; IMG_1521.MOV;
221	17 February 2017	Civilian residences: 81 Grushevskovo St. and 8 Uvileyny kvartal (Ln 21) – 1.8km from nearest UAF firing position/1.2km from UAF quarters	Eight tank shells fired from the southeast (Yasynuvata).	Partial damage to civilian residences. Injury to two civilians.	<u>Witness statements:</u> 0221K898, 0221K899, 0221K932. <u>Video of impact site:</u> IMG_1631.JPG; IMG_1604.MOV
221	24 February 2017 (7:45pm)	Civilian residence: 68 & 59 Chernyshevsky St. (Ln 93/94); Sportivnaya St. (Ln 95) – located 800m – 1.5km from UAF firing sites	122mm mortar shells fired from DPR-controlled Spartak	Partial damage to civilian residences.	<u>Witness statements:</u> 0221K900, 0221K901
221	2 March 2017 (4:00pm)	Civilian residence: 3/5 Mendelev St. (Ln 96-98); School (Ln. 99); Gagarin St (Ln 100 and 101); Kindergarten (Ln 102) – located 1.2km from UAF quarters and 1.75km from UAF firing site.	125mm tank projectiles fired from DPR-controlled Yasynuvata	Partial damage to civilian residence, school and kindergarten.	<u>Witness statements:</u> 0221K902, 0221K903, 0221K904, 0221K905, 0221K906, 0221K907, 0221K908. <u>Video of impact site:</u> IMG_0187.MOV, IMG_0189.MOV

N5	13 May 2017 (7pm)	Civilian residence on 53 Sopronova (Pionerskaya) St. (Ln 326) – 2.5km from nearest UAF firing position.	Artillery fired from DPR-controlled territory	Four civilian deaths; two civilians injured and civilian property damaged.	<p><u>Witness Statement:</u> N005K1066 (date, timing and intensity of shelling, damage to property and casualties).  <u>Video evidence:</u> IMG_11 25.MOV - show damage to civilian property and impact site analysis demonstrating origin of shelling; Photos and videos in folder [damage] - show damage to civilian property.  <u>Other sources:</u> OSCE, 'Ongoing Violations of International Law and Defiance of OSCE Principles and Commitments by the Russian Federation in Ukraine', available at: <a href="https://osce.usmission.gov/ongoing-violations-international-law-defiance-osce-principles-russia-ukraine/">https://osce.usmission.gov/ongoing-violations-international-law-defiance-osce-principles-russia-ukraine/</a> (last accessed: 28/11/2017).</p>
N5	30 May 2017 (6:45pm)	Civilian residence/commerce on 201 Soborna St. (Ln 327) – 670m from nearest UAF position (Ln 202).	82mm mortar and/ or grenade launcher fired from DPR-controlled territory	Serious injuries sustained by three civilians.	<p><u>Witness Statement:</u> N005K1067 (date, timing and intensity of shelling, damage to property and casualties).  <u>Video evidence:</u> IMG_11 36.MOV (impact site analysis).</p>

#### 4.2.4 LEGAL ASSESSMENT

94. Based on the information available to the Authors, following the initial skirmish for control over the town, DPR's main military objectives in Avdiivka in 2017 would have been to regain control of the M04 Highway, destroy UAF fortifications and push UAF troops back from the industrial zone (Ln 17). DPR attacks on UAF firing positions (Lns 205, 206, 208 and 209) and the ammunitions depot (Ln 207) may also be considered legitimate military targets, despite their location in and around civilian residences. Based on impact crater analysis, launch sites for the attacks were located in Donetsk city, Yasinuvata and Yakovlivka at a distance of 10-20km. Taking the upper limit of a Grad projectile's accuracy range of 400 metres,<sup>270</sup> any death and injury to civilians and damage to civilian objects incidental to attacks within a 400 metre radius of these targets is likely to be considered proportionate to the military advantage sought.
95. Conversely, attacks on the two UAF quarters nestled in densely populated areas of Avdiivka (Ln 201 and 204) arguably fails to represent a sufficient military advantage to justify the very likely risk of death and injury to civilians and damage to civilian objects. DPR forces were (or ought to have been) cognisant of the inaccurate nature of their weapons. Thus, they would have been well aware of the risk of incidental injury to civilians and damage to civilian objects as a result of using such weapons on densely populated areas. There is no evidence that the UAF quarters contained any artillery units or that any attacks were launched from these points on DPR positions. Shelling these positions would not have increased the DPR forces' ability to regain control of the M04 Highway or push the UAF out of the industrial zone. Consequently, any incidental harm to civilians and damage to civilian objects within a 400-metre radius of UAF quarters should be considered disproportionate and prosecuted under Article 8(2)(b)(iv) of the ICC Statute.<sup>271</sup>
96. Artillery attacks on civilian residences and infrastructure located at distances beyond 400 meters from any UAF firing positions or quarters are clearly in violation of the principle of distinction. Similarly, attacks using more precise weapons such as sniper rifles and machine guns cannot be justified unless the civilian casualties were on the territory of legitimate military targets. The enclosed map demonstrates the wide dispersion of attacks on Avdiivka over the documented period. Impact sites located outside of the accuracy range for attacks on UAF positions went above and beyond the legitimate military advantage sought by the DPR. Of particular note are attacks on a hospital (Ln 55), school (Ln 99), kindergarten (Ln 102) and humanitarian aid distribution centre (Ln 81) located more than 1km from the nearest UAF position. A further example is the 30 January 2017 attack on the Koksokhim factory (Ln 500) – 2.5km from closest UAF quarters and 6km from the closest UAF firing position – which left the town without electricity or heating in temperatures of 20 below freezing leading to a humanitarian catastrophe. Such attacks go beyond being merely indiscriminate. The wide distribution of documented attacks across Avdiivka and inherently indiscriminate choice of weapons (for urban warfare) shows the attackers' clear disregard for civilian life and infrastructure. Intent to direct these attacks on civilians may be inferred from the attackers' failure to discriminate between military objectives and civilians, or alternatively, the total absence of proportionality in their choice of targets. Consequently, this category attacks may be prosecuted under Article 8(2)(b)(i)/(ii) or Article 8(2)(e)(i) of the ICC Statute. Additionally, such attacks on the school, kindergarten and hospital, may be charged under Article 8(2)(b)(ix) (in IAC) or Article 8(2)(e)(iv) (in NIAC) of the ICC Statute.

#### 4.2.5 CONCLUSION AND RECOMMENDATIONS

97. In light of the foregoing, the Authors submit that a number of attacks by DPR forces on civilians, civilian residences and infrastructure in Avdiivka were in violation of the principle of distinction and constitute war crimes under Article 8 of the ICC Statute. The Authors recommend further investigations with the view of prosecuting those responsible for the following crimes:

270 ICTY, IT-06-90, Gotovina et al., Judgement, 15 April 2011, para. 1898 (expert testimony).

271 Provided that it can be established that these attacks were launched in the context of and were associated with an IAC.

- Under Art. 8(2)(b)(iv): DPR attacks targeting UAF quarters located at Ln 201-204 (provided they were not used as firing positions or attack launch sites), which resulted in foreseeable and disproportionate incidental harm to civilians and damage to civilian infrastructure located within a 400 meter radius of the UAF targets;
- Under Article 8(2)(b)(i)/(ii) or Article 8(2)(e)(i): DPR attacks on civilians and civilian infrastructure located more than 400 meters away from any UAF positions in Avdiivka.
- Under Article 8(2)(b)(ix) or Article 8(2)(e)(iv): DPR attacks on educational and medical facilities in Avdiivka.

## 4.3 Krasnohorivka<sup>272</sup>

98. The information and analysis provided below is based on documentation by Truth Hounds Documentation Field Mission on behalf of the Authors, conducted in the course of five on-site visits to Krasnohorivka on 18-19 September 2015, 14-17 August 2016, 26 February 2017, 3-6 June 2017 and 16-19 October 2017. The documenters interviewed a total of 31 witnesses and documented 39 impact sites.

### 4.3.1 TARGETED AREA

99. Krasnohorivka is a town of approximately 15,000 civilians,<sup>273</sup> located in the Ukraine-controlled part of Donetsk Province.<sup>274</sup> Krasnohorivka sits 20km east of the centre of Donetsk City and roughly 3km from the contact line between UAF and DPR forces. DPR-controlled Staromykhailivka is located to the east – south-east, and the two settlements are situated just 2km away from one another.

100. The town fell under DPR control in the spring of 2014, but was attacked and retaken by the UAF in July 2014. DPR positions in Krasnohorivka included a tank-defended checkpoint in the north (Ln 5101), two smaller checkpoints on the Donetsk access road to the east (Ln 222 and 511), a major outpost on the northern edge of the town (Ln 512) and a headquarters in the centre of town (Ln 513).<sup>275</sup> Initial UAF positions were based in or around civilian objects – such as at school N. 2 (Ln 210) and Mayak restaurant (Ln 222). After UAF secured control of the town, a UAF base was set up in the centre of town located on business premises (Ln 211) and a UAF checkpoint on the southern edge of town on the road leading to Marjinka (Ln 212). The UAF maintain two firing positions on the eastern outskirts of Krasnohorivka (Ln 215; 224), located approximately 1.5-2km from the densely populated centre of town. Krasnohorivka has six educational facilities and a hospital, all of which have been targeted since the outbreak of hostilities.

### 4.3.2 DESCRIPTION/OVERVIEW OF ATTACK

101. Krasnohorivka, a town of relatively low strategic importance to the warring parties, has been unduly targeted throughout the period of documentation. Of the 189 attacks documented by the Authors, 39 took place in Krasnohorivka.

102. The first attack documented by the Authors was a Grad artillery attack by the UAF in a push to regain control of the town from DPR militias. The attack resulted in two civilian deaths and the destruction of a school and civilian residences.<sup>276</sup> After the UAF regained control of the settlement, DPR forces stationed in

272 Case file N018 > Pics, location map: Krasnohor.jpg

273 Державна служба статистики України, 'Чисельність наявного населення України на 1 січня 2017 року', 09 June 2017, available at: [http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ\\_new1/2017/zb\\_chnn\\_0117.pdf](http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2017/zb_chnn_0117.pdf) (last accessed 25/11/2017)

274 Geolocation coordinates: 48000'00" N 37030'15" E

275 Witness statement: 0138K941.

276 See Case File 138 – 13 July 2014 attack.

Staromikhailivka began a protracted bombing campaign that has lasted up to the limit of the Authors' current documentation period.

103. The thrust of DPR attacks appears to have been aimed at larger buildings in the settlement, namely the town hospital (Ln 214), schools (Ln 220, 218, 213 and 210) and the agricultural college (Ln 216). The initial UAF bases at School n. 2 (Ln. 2) and Mayak restaurant (Ln 222) were destroyed in 2014. As illustrated in the map of impact sites, subsequent attacks fell on the southern residential district on or around School N. 3 (Ln 213) located in the vicinity of a UAF checkpoint (Ln 212), the Sonyachna district (Ln 700) located 750m west of UAF firing positions, and the hospital (Ln 214) located 1.2km from the nearest UAF position.
104. Based on documented remnants, impact craters and witness statements, the attacks were carried out using MLRS BM-21 Grad missiles, 125mm tank projectiles, 122mm mortar shells and 82mm mortar shells. In most cases, the provenance of the attack is clear from the angle of impact craters or the aspect of buildings hit by projectiles, as well as witness testimony. Aside from the initial UAF attack, all other impact sites where provenance was possible to establish point towards DPR positions in Staromikhailivka and Donetsk city.

### 4.3.3. TABLE OF DOCUMENTED ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS IN KRASNOHORIVKA

CASE FILE	DATE/TIME	IMPACT SITE	MEANS/METHOD	OUTCOME	EVIDENCE
138	13 July 2014 (4:30pm)	Residential districts: Sonyachna and Paris Kommuny streets – Ln 700; School N. 1 (Ln 220). Location of DPR positions unknown.	MLRS Grad attack from direction of UAF-controlled Marjinka, Ekaterinovka and/or Antonovka	Two civilians killed; Damage to civilian residential property; Near total destruction of School N.1.	<u>Witness statements:</u> 0138K919 (date, time of shelling; 0138K946 (date, time of shelling and damage; 0138K939 (civilian casualties); 0138K942 (means, origin, date, time of attack); 0138K941 (date and means); 0138K1005 (date, intensity of shelling, damage and casualties); 0138K947 (date and damage); 0138K947 (origin, method, time and damage) 0138K945 (date, time, method of shelling). <u>Video of impact sites and crater analysis:</u> [V60815-145823. mp4, V60815-151238.mp4, V60816-145422.mp4] - shows crater analysis demonstrating shell came from Ukraine controlled territory and method of attack - Photos and videos in folder [школа 1] show damage to civilian property.
138	31 July 2014 (10pm)	Civilian residences on 3 Linya St. and Lermontova St. (Ln 219) – 600m from UAF checkpoint (Ln 212).	Artillery (origin unknown)	Damage to civilian property; One civilian injured.	<u>Witness statements:</u> 0138K939 (date, time and damage); 0138K1007 (date, time, intensity of shelling, damage to civilian property and casualties).
138	1 August 2014 (7am)	Civilian residences on 26 Lermontova St. (Ln 219) – 600m from UAF checkpoint (Ln 212).	Artillery attack from DPR-controlled Staromikhailivka	Two civilians killed; two civilians injured.	<u>Witness statement:</u> 0138K939 (date, time, damage, intensity and casualties); N003K1090 (date, time, damage, intensity, origin and casualties)
138	14 October 2014	Civilian residences in Sonyachna district (Ln 700) – 900m from UAF firing position (Ln 215/224); 450m from UAF base (Ln 222).	Artillery attack from DPR-controlled Staromikhailivka	Damage to civilian property.	<u>Witness statement:</u> 0138K941 (date, origin and means).

138	12 January 2015	Civilian residences on Lermontova and 8 March streets (Ln 219); School #3 (Ln 213); Lenin square. – 0.5km from closest UAF position (Ln 212).	MLRS Grad attack from direction of DPR-controlled territory	Two civilians killed; Damage to civilian property; Damage to school.	<u>Witness statement:</u> 0138K919 (date, time, intensity of shelling, damage to civilian property and casualties); 0138K939 (damage and casualties); 0138K952 (date, time and damage); 0138K941 (date and means). <u>Video of impact sites and crater analysis:</u> Folder "Видео последствий обстрелов" [V60815-152633.mp4, V60816-133009.mp4, V60816-133436.mp4, V60816-145014.mp4] - shows GRAD remnants, damage and crater analysis demonstrating origin of the attack. Photos in folder "Профучилище" show damage to high school.
138	18 January 2015	Civilian market (Ln 221), house on 8 Suvorova St. (Ln 508) – 700m from closest UAF position (Ln 211).	MLRS Grad attack from direction of DPR-controlled Antonovka	One civilian killed; One civilian injured Damage to civilian market and housing.	<u>Witness statement:</u> 0138K941 (date, casualties and means); N003K1088 (date, time, casualties, means and origin)
138	8 February 2015 (5:10pm)	Civilian residences on Matrosova, Lenina, Sverdlova streets; Church (Ln 223) – 450m from UAF base (Ln 211).	Artillery and mortar (origin unknown)	Damage to civilian housing; Damage to church.	<u>Witness statement:</u> 0138K919 (date, time, intensity of shelling, damage to civilian property); 0138K941 (date, time, intensity of shelling and damage to civilian property). <u>Video of impact site:</u> Video in folder "Видео последствий обстрелов" [V60816-084102.mp4] - shows damage to church.
138	14 February 2015 (1:20pm)	Residential dormitory for agricultural school (Ln 216) – 1.2km from nearest UAF positions (Ln 224).	Mortar attack (origin unknown)	Damage to education facility and civilian residences.	<u>Witness statement:</u> 0138K949 (date, time, intensity and damage). <u>Photos and videos of impact site:</u> in folder [Аграрный техникум] - shows damage to civilian property and crater analysis.
138	3 June 2015 (4:30am)	School N. 3 (Ln 213) – 500m from UAF checkpoint (Ln 212) Hospital (Ln 214) – 1.4km from UAF firing position; civilians residences	Artillery from direction of DPR-controlled Staromikhailivka	Thirteen hours of heavy artillery shelling resulted in: 7 direct hits on/partial destruction of School N.3; Partial destruction of a civilian hospital (including destruction of 2 ambulance cars). One civilian dead and one seriously injured.	<u>Witness Statement:</u> 0138K919, 0138K950, 0138K1005 (date, time, intensity of shelling and damage to civilian property); 0138K1004 (date, time and damage); 0138K939 (date, damage and intensity); 0138K941 (date, time, intensity of shelling and damage to civilian property and casualties); 0138K947 (date and damage). <u>Photos and videos of impact site:</u> see folder [больница] for hospital impact site and remnants; See folder "школа 3" [V60914-113929.mp4] for school N. 3 impact site (including impact crater analysis).

138	26 July 2014	Civilian residences in Sonyachna district (Ln 700) – 900m from UAF firing position (Ln 215/224).	Artillery attack from un-recorded origin	Damage to civilian property.	<u>Witness statement:</u> 0138K941 (date, intensity of shelling and damage to civilian property).
138	10 August 2015 (10pm)	Civilian residences in Sonyachna district (Ln 700) – 900m from UAF firing positions (Ln 215/224).	Artillery and/or mortar launched from Staromikhailivka	Damage to civilian property.	<u>Witness statement:</u> 0138K941 (date, time, intensity of shelling and damage to civilian property).
138	15 August 2015	Civilian hospital (Ln 214) – 1.4km from nearest UAF position; Civilian residences, market and shop on Sovetskaya St. (Ln 221).	Artillery launched from Staromikhailivka (confirmed by witnesses and crater analysis).	Damage to hospital and ambulance vehicle; Damage to civilian properties.	<u>Witness statements:</u> 0138K950 (date, time, intensity of shelling and damage to civilian property); 0138K1006 (date, time, origin, intensity of shelling and damage); 0138K941 (date, time, intensity of shelling and damage to civilian property). <u>Photos and videos of impact sites:</u> in folder [больница] - shows damage to civilian property, remains of the shells and craters. Video in folder "видео последствий обстрелов [У60815-151742.mp4] - shows crater analysis demonstrating origin of attack.
138	23 August 2015 (11pm)	Civilian hospital (Ln 214) – 1.4km from nearest UAF position; Civilian residences on Sovetskaya and Mayakovskogo St. (Ln 221).	Artillery and/or mortar attack from DPR controlled territory	Severe damage to roof of civilian hospital and nearby civilian residential properties.	<u>Witness statement:</u> 0138K950 (date, time, intensity of shelling and damage to civilian property); 0138K941 (date, time, intensity of shelling and damage to civilian property). <u>Photos and videos of impact sites:</u> in folder [больница] - shows damage to civilian property, shell remnants and impact craters.
138	9 April 2016	Civilian hospital (Ln 214) – 1.4km from nearest UAF position (Ln 215).	Mortar shells	Damage to civilian hospital (broken windows, walls and stairs).	<u>Witness statement:</u> 0138K950 (date, time, intensity of shelling and damage to civilian property). <u>Photos and videos of impact site:</u> in folder [больница] - shows damage to civilian property, remnants and craters.
138	3 June 2016	Civilian residences on Paris Kommuna St. (Ln 63) – 470m from UAF checkpoint.	Unrecorded means and origin	Damage to civilian property.	<u>Witness statement:</u> 0138K919 (date, time, intensity of shelling and damage to civilian property).

138	15 June 2016	Civilian residences on 7 Sonyachna St. (Ln 217); School N.1 (Ln 220) – 770m from nearest UAF position (Ln 215).	Tank attack from DPR-controlled Staromikhailivka (based on crater analysis)	Destruction of 3 civilian apartments; 1 civilian injured; Damage to school.	<u>Witness statement:</u> 0138K946 (date, time of shelling, casualties and damage); 0138K942 (date, means, origin, date, time of attack); 0138K1005 (origin and means); 0138K948 (date and time of attack); 0138K941 (date, time, intensity of attack and damage to civilian property); 0138K947 (date, time, casualties and damage); 0138K945 (time of attack, casualties and damage to civilian property). <u>Photos:</u> [Sunny-7 folder ] - shows damage to civilian property and remains of shell. <u>Videos:</u> in folder “відео наслідків обстрілів” [V60813-114511.mp4, V60813-120214.mp4, V60813-120401.mp4, V60814-102532.mp4, V60814-102813.mp4] - shows damage to property and impact crater. <u>Document and videos</u> in “доценко” folder contains medicine epicrisis and interview of the victim.
138	17 June 2016	Civilian residences (Ln 217); School N.1 (Ln 220) – 760 meters from nearest UAF position (Ln 215).	Unrecorded means; Originated from DPR-controlled area (probably Donetsk City)	Damage to civilian property and school.	<u>Witness statement:</u> 0138K942 (origin, date of attack); 0138K941 (date of attack).
138	20 June 2016	Civilian residences on Sonyachna St. (Ln 217); 2 Suvorova St. (Ln 508); School N. 1 – 770m from nearest UAF position.	Unrecorded means and origin	Two civilians injured; Damage to civilian property; damage to school.	<u>Witness statement:</u> 0138K941 (date, time, intensity of attack, damage to civilian property and casualties); 0138K947 (date, casualties and damage).
138	27 June – 4 July 2016	Civilian residences in Vostochniy district and School N. 1 (Ln 220) – 760m from nearest UAF position (Ln 215).	Artillery fire over the course of 6 days.	Damage to civilian property and school.	<u>Witness statement:</u> 0138K941 (date, time, intensity of shelling and damage to civilian property and casualties).
138	12 July 2016	School N. 1 (Ln 220) – 760m from nearest UAF position (Ln 215).	Artillery fire (13 shells).	Damage to school.	<u>Witness statement:</u> 0138K942(date and intensity of attack).
138	26 July 2016	Civilian residence at 7, Sonyachna st. (Ln 217) – 770m from nearest UAF position (Ln 215).	Artillery fire	Damage to civilian property.	<u>Witness statement:</u> 0138K941 (date, time, intensity of shelling and damage to civilian property).

138	28 July 2016	Civilian hospital (Ln 214) – 1.2km from nearest UAF position (Ln 215).	Mortar fire	Structural damage to hospital.	<u>Witness statement:</u> 0138K950 (date, time, intensity, means and damage to civilian property). <u>Photos and videos:</u> in folder [больница] - shows damage to civilian property, remains of the shells and craters.
138	30 July 2016	Civilian hospital (Ln 214) – 1.2km from nearest UAF position (Ln 215).	Mortar fire	Damage to hospital.	<u>Witness statement:</u> 0138K950 (date, time, intensity, method of shelling and damage to civilian property).
138	5 August 2016	Civilian residences and education facility on 2, Vostochnaya (Ln 217) and 7, Sonyachna streets (Ln 220) – 760m from nearest UAF position.	Artillery/mortar fire from DPR controlled territory (based on crater analysis)	Damage to agricultural college and civilian property.	<u>Witness statement:</u> 0138K941 (date, time, intensity of attack and damage to civilian property). <u>Photos and videos:</u> in folder [Аграрный техникум] - shows damage to civilian property and crater analysis.
138	7 August 2016	Agricultural school (Ln 216) and civilian hospital (Ln 214) – 1.2km from nearest UAF position (Ln 215).	82mm mortar fire from DPR-controlled Staromikhailivka (based on crater analysis).	Damage to school and hospital buildings.	<u>Witness statement:</u> (date, time, intensity, means of attack and damage to civilian property; 0138K1004 (time, damage, means and origin of attack); 0138K1005 (damage to civilian property; 0138K949 (date, time, intensity and damage); 0138K941 (date, time, intensity of attack and damage to civilian property). <u>Photos and videos:</u> in folder [Аграрный техникум] - shows damage to civilian property and crater analysis; Videos in folder "Видео последствий обстрелов" [V60814-102813.mp4] - show damage to civilian property and crater analysis. [V60815-114244.mp4, V60815-114837.mp4] - shows crater analysis and shell remnants that allow to conclude origin of attack was DPR-controlled territory. Video [V60815-115523.mp4] - shows mortar shell remnants and crater analysis that testify attack was conducted with 82-mm mortar from DPR-controlled territory.
138	9/10 August 2016	Civilian residences (Nakhimova and Ostrovskovo St. – Ln 509); Stadium and morgue – 1km from nearest UAF position (Ln 224).	Mortar fire	Damage to civilian property	<u>Witness statement:</u> 0138K1005 (date and means of attack); 0138K941 (date, time, intensity of attack and damage to civilian property).
N3	5 February 2017	Civilian residence on 57 Shklina St. (Ln 14) – 450m from UAF checkpoint	Artillery or 122mm mortar	Damage to civilian property	<u>Witness statement:</u> N003K1062 (date, time, intensity of attack and damage to civilian property).

138	6 February 2017	Civilian residence at 16, 8 <sup>th</sup> March st (Ln 5101) – 560m from UAF checkpoint (Ln 212).	Artillery fire	Damage to civilian property	<u>Witness statement:</u> 0138K1002 (date, time, damage to civilian property); <u>Photos and video:</u> in folder “Калашников_8 марта” - show damage to civilian property.
138	10 February 2017	Civilian residence on Shkilna St. (Ln 14) and road connecting Krasnahorivka and Marjinka – 450m from UAF checkpoint (Ln 212).	Grad-P artillery fire from DPR-controlled Staromikhailivka	Two civilians injured; Damage to civilian property.	<u>Witness statement:</u> 0138K916 (date, timing, damage and casualties).
138	18 February 2017	Civilian residences on Shkilna St. (Ln 16) – 450m from UAF checkpoint (Ln 212).	122mm artillery fire from DPR-controlled Staromikhailivka	Damage to civilian property.	<u>Witness statement:</u> 0138K917_(date, timing, damage and intensity of attack); 0138K918 (date, timing, damage and intensity of attack). <u>Videos:</u> [ IMG_1592.MOV, IMG_1595.MOV ] - show damage to property and firing direction.
138	24 February 2017	Civilian residence on Shkilna St. (Ln 16) – 450m from UAF checkpoint (Ln 212).	Artillery/mortar fire	Damage to civilian property.	<u>Witness statement:</u> 0138K918 and 0138K919 (date, time and damage to civilian property).
N3	25 May 2017	Civilian hospital (Ln 214); Agricultural school (Ln 216) and civilian residences on Lomonosova, Voroshylova and Khmerlitskogo streets – 1.2km from nearest UAF positions (Ln 215 and Ln 224).	Grad P artillery (leaving craters 5m in diameter and 2m deep) – from DPR controlled territory (Petrovskiy district).	Damage to hospital, school and civilian property.	<u>Witness statement:</u> N003K1063 (date, time intensity of attack, damage to civilian property and origin; 0138K941 (origin, date, time, intensity of attack, damage to civilian property; T3K951 (date, time, intensity of attack, damage to civilian property).
N3	28 May 2017	Civilian hospital (Ln 214); Civilian residences on Pervomayskaya, Voroshylova and Tolstovo St. (Ln 221) – 1.2km from nearest UAF position (Ln 215, Ln 224).	Grad P artillery (leaving craters 5m in diameter and 2m deep) – from DPR controlled territory (Petrovskiy district).	Damage to hospital and civilian property.	<u>Witness statement:</u> N003K1063 (date, time intensity of attack, damage to civilian property and origin; 0138K941 (origin, date, time, intensity of attack, damage to civilian property; T3K951 (date, time, intensity of attack, damage to civilian property). <u>Photos and videos:</u> in [Damage-property] - show damage to civilian property. Video [IMG_1009.MOV] - show shell fragments.

#### 4.3.4. LEGAL ASSESSMENT

105. It is assumed that the main objective of the UAF attack was to push out DPR militias and regain control of the settlement. The documented UAF artillery fire was concentrated on the Sonyachna district (Ln 700) and hit a school (Ln 220). The nearest DPR positions at the time were situated 200 and 500 meters away. Even if DPR forces or weapons were located in the vicinity at the time, the choice of weapon (Grad BM-21 rockets) to attack a densely populated area demonstrates a disregard for civilian life and property. It may be argued that the incidental loss of life (two civilians were killed) and destruction of civilian property (School N.1 and blocks of flats) was disproportionate to the military objective, which could have been achieved by less indiscriminate means and/or accompanied by measures aimed at safeguarding the civilian population. The final assessment of these attacks will largely depend on evidence of military necessity and available alternatives (if any).
106. DPR attacks on the southern quarter of Krasnohorivka were most likely aimed at the UAF checkpoint on the road leading to Marjinka (Ln 212). The UAF checkpoint may be considered as a legitimate military objective. Nevertheless, the checkpoint did not represent a serious threat or military advantage to DPR forces on account of the small number of soldiers performing largely policing functions there.<sup>277</sup> The use of Grad artillery and mortar shells to target a military objective of low strategic importance located next to a densely populated civilian area is clearly disproportionate. All the above-documented impact sites in this area are located within 400-500 meters of the checkpoint – at or beyond the outer limit of the acceptable margin of error for the means used. DPR forces knew or ought to have been well aware of the imprecise nature of the weapons and the likelihood of incidental loss of life and injury to civilians. At the very least, these attacks should be qualified as indiscriminate and prosecuted under Article 8(2)(b)(iv) of the ICC Statute.<sup>278</sup> Further, the Authors would argue that the persistence of DPR attacks on the area throughout the documentation period despite the absence of tangible military gains would suggest that the injury and damage suffered by civilians was not merely ‘incidental loss’. Intent to direct these attacks towards civilians may be inferred from the attackers’ failure to discriminate between military objectives and civilians, or alternatively, the total absence of proportionality in their choice of targets. Consequently, this category attacks may also be prosecuted under Article 8(2)(b)(i)/(ii) or Article 8(2)(e)(i) of the ICC Statute.
107. DPR attacks on Sonyachna district (Ln 700), the agricultural college (Ln 216), and the town’s hospital (Ln 214) may be explained by the location of UAF artillery positions on the eastern outskirts of Krasnohorivka (Ln 215 and 224). Nevertheless, these civilian objects were located between 760m and 1.2km from the UAF positions – i.e. well beyond the acceptable accuracy range for the Grad BM-21 rockets and mortars used to perpetrate the attacks (particularly given the relatively close range of DPR launch sites in Staromikhailivka). Moreover, the persistence of these attacks, particularly on the schools and hospital, raise questions as to whether DPR forces were aiming at the UAF positions at all. Consequently, intent to direct these attacks on civilians may be inferred from the attackers’ failure to discriminate between military objectives and civilians, or alternatively, the total absence of proportionality in their choice of targets. This category attacks may be prosecuted under Article 8(2)(b)(i)/(ii) or Article 8(2)(e)(i) of the ICC Statute. Moreover, the persistent attacks on the town’s hospital, schools and agricultural college may also be charged under Article 8(2)(b)(ix) (in IAC) and Article 8(2)(e)(iv) (in NIAC) of the ICC Statute.

#### 4.3.5. CONCLUSION

108. In light of the foregoing, the Authors submit that the above-documented attacks by UAF and DPR forces on civilians, civilian residences and infrastructure in Krasnohorivka were in violation of the principle of distinction and constitute war crimes under Article 8 of the ICC Statute. The Authors recommend further investigations with a view to prosecuting those responsible for the following crimes:

277 Witness Statement: 0138K918.

278 Provided that it can be established that these attacks were launched in the context of and were associated with an IAC.

- Under Art. 8(2)(b)(iv): UAF attack on 13 July 2014 presumably targeting DPR positions in the town, which resulted in foreseeable and disproportionate incidental harm to civilians and damage to civilian infrastructure;<sup>279</sup>
- Under Article 8(2)(b)(i)/(ii), Article 8(2)(e)(i) and/or Art. 8(2)(b)(iv): DPR attacks on civilians and civilian infrastructure located more than 400 meters away from any UAF positions in Krasnohorivka.
- Under Article 8(2)(b)(ix) or Article 8(2)(e)(iv): DPR attacks on educational and medical facilities in Krasnohorivka.

## 4.4 Kurdiumpyvka - Zelenopillya<sup>280</sup>

109. The information and analysis provided below is based on documentation by Truth Hounds Documentation Field Mission on behalf of the Authors, conducted in the course of two on-site visits to Kurdiumpyvka on 27 February 2017 and 14 March 2017. The documenters interviewed a total of eight witnesses and documented 16 impact sites.

### 4.4.1. TARGETED AREA

110. Kurdiumpyvka is a small settlement of 893 inhabitants<sup>281</sup> located on Ukrainian-controlled territory in Donetsk Province.<sup>282</sup> Kurdiumpyvka is adjoined to the east by the small village of Zelenopillya. The area is situated approximately 4km from the village of Zaitseve (on either side of the contact line from spring 2015 and DPR-controlled territory prior to that<sup>283</sup>) to the south-south east, 20km north-northwest of the city of Horlivka (a DPR stronghold) and 12km northwest of Ukrainian-controlled Bakhmut City. At the time of the attacks, there were no UAF units or equipment in or around Kurdiumpyvka and Zelenopillya, and no other known objects of strategic importance.

### 4.4.2. DESCRIPTION/OVERVIEW OF ATTACKS

111. At 10:00am on 31 January 2015, a MLRS Grad attack on the village of Kurdiumpyvka and the adjoining village of Zelenopillya resulted in the deaths of five civilians and destruction of 10 civilian properties on Vokzalnaia, Zovodskaia and Mira streets. Based on witness statements and the angle of impact damage, the attack originated from the DPR-controlled town of Horlivka.<sup>284</sup> On 15 June 2015, another missile attack from DPR-held territory damaged three civilian properties on Vokzalnaia and Kirov streets, injuring one civilian resident.<sup>285</sup> The nearest UAF position was over 6km away.

112. At approximately 9:00pm on 6 February 2017, DPR forces began shelling civilian residences on Vatutin, Zavodska and Sevastopolska streets (Ln 22-37; 59).<sup>286</sup> Witnesses report that approximately 30 artillery shells were fired on the undefended settlement within the space of a couple of minutes, with a delay of approximately 30 seconds between the sound of launch and impact.<sup>287</sup> All 16 documented impact craters<sup>288</sup> were 2.6 to 2.8

279 Provided that it can be established that the attack took place in the context of an IAC.

280 Case file N018 > Pics, location map: Kurdiumpyvka.jpg

281 Державна служба статистики України, 'Чисельність наявного населення України на 1 січня 2017 року', 09 June 2017, available at: [http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ\\_new1/2017/zb\\_chnn\\_0117.pdf](http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2017/zb_chnn_0117.pdf) (last accessed 25/11/2017)

282 Geolocation coordinates: 48028'06" N 37057'35" E

283 Witness statement: 0259K1091

284 Witness Statements: 0259K810; 0259K997; 0259K911; 0259K998; 0259K999.

285 Witness statement: 0259K998

286 Witness statement: 0259K912, 0259K913, 0259K909, 0259K910, 0259K911

287 Witness statement: 0259K913, 0259K909, 0259K910, 0259K911

288 The remaining craters, located in residents' backyards, had been filled in prior to the documenters' arrival.

meters in diameter, with entry holes of 9 cm, 12 cm, 27 cm.<sup>289</sup> All craters consistently indicate launch sites to the south-southeast (azimuth 160), most likely from the DPR-controlled settlement of Hol'mivs'kiy.<sup>290</sup> The attack on Kurdiomyvka resulted in the deaths of six civilians, as well as damage to civilian residences and infrastructure.<sup>291</sup>

#### 4.4.3. LEGAL ASSESSMENT

113. At the time of the attacks, Kurdiomyvka and adjoining Zelenopillya were undefended civilian settlements with no UAF presence or installations. It appears this location was attacked purely because it has the misfortune of being situated within the firing range of DPR weapons located on the other side of the contact line in DPR-controlled part of Zaitseve and Horlivka. The artillery attacks on 31 January 2015, 15 June 2015 and 6 February 2017 presented no concrete military advantage to DPR forces and served no legitimate military objective – a grave violation of the principle of distinction. Consequently, the attacks can be qualified as attacks intentionally directed at civilians and/or civilian objects – in violation of Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute.

#### 4.4.4. CONCLUSION

114. In light of the foregoing, the Authors recommend that those responsible for the intentional attack on civilians and civilian objects in Kurdiomyvka and Zelenopillya on 31 January 2015, 15 June 2015 and 6 February 2017 should be identified and prosecuted under Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute.

## 4.5 Sartana<sup>292</sup>

115. The information and analysis provided below is based on documentation by Truth Hounds Documentation Field Mission on behalf of the Authors, conducted in the course of an on-site visit to Sartana on 1 March 2017. The documenters interviewed a total of 4 witnesses and documented six impact sites.

#### 4.5.1. TARGETED AREA

116. Sartana is a settlement in Ukrainian-controlled part of Donetsk Province with a population of approximately 10,700 inhabitants. Sartana is located 8.5km from the contact line between UAF and DPR forces.<sup>293</sup> It sits 6km from the eastern outskirts of the city of Mariupol. The area is subject to frequent high-intensity combat,<sup>294</sup> and Sartana itself has been shelled at least seven times since the start of the conflict.<sup>295</sup> There were no UAF positions in Sartana and no UAF units or equipment in the settlement on the day of the attack. The closest UAF position is a temporary UAF artillery launch site located at a distance of 1.5 and 2km from Sartana.<sup>296</sup> The attack took place in the context of an escalating conflict in the area following an attempt by UAF to occupy the village of Pikuzy (former Kominternovo) located 10km directly east of Sartana.

289 Video of impact crater analysis: 0314-101446, 20170314\_121335.mp4, 20170314\_104239.mp4, 20170314\_111938.mp4, 20170314\_120022.mp4, 20170216\_102738.mp4

290 Geolocation coordinates: 48024'10" N 38004'32" E

291 Witness statement: 0259K910

292 Case file N018 > Pics, location map: Sartana.jpg

293 Geolocation coordinates: 47010'55" N 37041'35" E

294 See for e.g.: First Report, section 4.13.2 (Mariupol City); see also SMM OSCE report, access: <http://www.osce.org/ukraine-smm/125545> (a MLRS Grad attack on Sartana targeting a funeral procession on 14 October 2014 which resulted in the deaths of seven civilians).

295 Witness statement: 0256K914

296 Witness statement: 0256K915

## 4.5.2. DESCRIPTION/OVERVIEW OF ATTACK

117. On 3 February 2017, Sartana was attacked by DPR forces using MLRS Grad rockets and artillery guns. The attack came in two volleys. The first took place at 5:00am in a series of six or seven rounds with pauses for correction.<sup>297</sup> The first shell landed in a field to the north of the village (Ln 2, 3). Subsequent projectiles fell on civilian residences and infrastructure, damaging houses, farm buildings and agricultural machinery on and around Severnaya Street (Ln 1).<sup>298</sup> Impact crater analysis determined that the projectiles originated from an MLRS Grad attack, launched from the north-east (azimuth 34), and an artillery gun (launched from azimuth 73).<sup>299</sup>

118. The second volley of projectiles hit at 11:05pm.<sup>300</sup> Projectiles were fired in three round with gaps of about one minute between each launch, presumably for recalibration.<sup>301</sup> The attacks damaged civilian residences on Pivnichna street (Ln 4-6). Analysis of impact craters and projectile remnants confirm that the attack was launched from the south-east (azimuth 107) using an MLRS Grad.<sup>302</sup>

## 4.5.3. LEGAL ASSESSMENT

119. At the time of the attack, Sartana was an undefended civilian settlement with no UAF presence or installations. The artillery attacks on 3 February 2017 presented no concrete military advantage to DPR forces and served no legitimate military objective – a grave violation of the principle of distinction. The attack may have been a reprisal for the UAF attempt to occupy DPR-controlled Pikuzy/Kominternovo. Pauses for recalibration strongly indicate the intentional nature of the attacks. Consequently, the events on 3 February 2017 can be qualified as an attack intentionally directed at civilians and/or civilian objects – in violation of Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute.

## 4.5.4. CONCLUSION AND RECOMMENDATIONS

120. In light of the foregoing, the Authors recommend that those responsible for the intentional attack on civilians and civilian objects in Sartana on 3 February 2017 should be identified and prosecuted under Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute.

## 4.6 Popasna<sup>303</sup>

121. The information and analysis provided below is based on documentation by Truth Hounds Documentation Field Mission on behalf of the Authors, conducted in the course of five on-site visits to Popasna on 25 September 2016, 30-31 October 2016, 27 March 2017, 9-11 September 2017. The documenters interviewed a total of 11 witnesses and documented 10 impact sites.

### 4.6.1. TARGETED AREA

122. Popasna is a settlement in Ukrainian-controlled part of Luhansk Province with an estimated population of 22,000 civilians.<sup>304</sup> It is situated approximately 5km from the contact line between UAF and LPR forces<sup>305</sup> and

297 Witness statement: 0256K914

298 Police of Donetsk area report, access: <https://dn.npu.gov.ua/uk/publish/article/401752>

299 Video of impact crater analysis: IMG\_1675.MOV; IMG\_1672.MOV.

300 As reported by the Police of Donetsk area report, access: <https://dn.npu.gov.ua/uk/publish/article/402653> (last accessed: 29/11/2017).

301 Witness statement: 0256K914

302 Video of impact crater analysis: IMG\_1671.MOV; IMG\_1670.MOV.

303 Case file N018 > Pics, location map: Popasna.jpg

304 Державна служба статистики України, 'Чисельність наявного населення України на 1 січня 2017 року', 09 June 2017, available at: [http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ\\_new1/2017/zb\\_chnn\\_0117.pdf](http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2017/zb_chnn_0117.pdf) (last accessed 25/11/2017)

305 Geolocation coordinates: 48037'54" N 38022'20" E

approximately 10km from LPR-stronghold of Pervomaysk.<sup>306</sup> The main industrial employer is a civilian 'VRZ' factory (Ln 314). The settlement was overrun by LPR separatists in April 2014 and retaken by the Ukrainian Donbas Battalion on 22 July 2014.<sup>307</sup>

123. There is one known UAF artillery launch site on the north-eastern outskirts of Popasna (Ln 248), situated approximately 1.4km from the nearest residential area. The UAF also has two checkpoints in Popasna – one on the eastern edge of town (Ln 244) and another on the southern edge (Ln 243).

#### 4.6.2. DESCRIPTION/OVERVIEW OF ATTACK

124. As part of its efforts to retake Popasna in July 2014, the UAF used heavy artillery launched from the direction of UAF-controlled Bakhmut to attack LPR positions in the settlement. Damage to a civilian dwelling (Ln 333), located 100 meters from an LPR base (Ln 335), was documented on 18 July 2014.<sup>308</sup> All subsequent attacks on civilians and civilian objects documented by the Authors were perpetrated by LPR forces stationed in LPR-controlled territory, primarily Pervomaysk.

125. On 26 November 2014, an MLRS Grad attack from Pervomaysk landed in the heart of the town (Ln 313), destroying two civilian houses located approximately 3km from the closest UAF firing position at the time (Ln 248).<sup>309</sup> A further string of documented heavy artillery attacks were launched at Popasna by LPR forces stationed in Pervomaysk between 17 and 27 January 2015, resulting in a total of five civilian deaths, one civilian injury and extensive damage to civilian residences and a school. The shelling targeted a residential area on the southern edge of town, hitting residential multi-stories (Ln 338, 343)<sup>310</sup> and a school (Ln 339)<sup>311</sup> located 600-700m from an UAF checkpoint (Ln 243). In addition, a residential area in the north east of Popasna (Ln 336), located 960m from the nearest UAF position, was hit twice in two days.<sup>312</sup> On 15 February 2015, a further MLRS Grad attack hit a residential dwelling (Ln 247) located 1.8km from the nearest UAF position (Ln 243).<sup>313</sup> The same area was subsequently hit using 152mm high-explosive projectiles launched from LPR-controlled Irmino and/or Kalinove on 24 August 2016, resulting in the destruction of civilian property.<sup>314</sup>

126. On 15 October 2016 a volley of eight 122-mm mortars launched from LPR-controlled territory hit Popasna railway hospital, located approximately 450m away from an UAF checkpoint.<sup>315</sup> On 18 October

306 Geolocation coordinates: 48037'53" N 38031'34" E

307 Українська правда, 'Попасна звільнена, там вивішені українські прапори', 22 July 2014. available at: <https://www.pravda.com.ua/news/2014/07/22/7032683/> (last accessed 26/11/2017)

308 Witness statement: N010K1072 (date, time, intensity of shelling, damage to civilian property and origin of shelling); N010K1075 (date, origin and damage).

309 Witness statement: 026K956 (date, time, intensity of shelling, damage to civilian property and means of attack).

310 Witness statement: N010K1075 (date, time, intensity of shelling, damage to civilian property, means of the attack and casualties). Photo [WP\_20170910\_15\_35\_05\_Pro.jpg] - is a police document about the shelling; Witness statements: N010K1077 (date, time, damage to civilian property and method of shelling). Photos and video in [Чумак > Фото видео] - show damage to civilian property. Photo [WP\_20170910\_15\_35\_16\_Pro.jpg] - is a police document about the shelling.

311 Video [попасная\_школа1.MOV] - shows impact site analysis and damage to school.

312 Witness statement: N010K1073 (date, time, intensity of shelling, damage to civilian property). N010K1075 - testifies about damage to civilian property, origin of the attack. Video [попасная\_циолковского.MOV] - show shelled site demonstrating origin of shelling; N010K1076 (date, time, damage to civilian property, origin). Photo [WP\_20170910\_12\_48\_18\_Pro.jpg] - show damage. Photo [WP\_20170910\_15\_35\_16\_Pro.jpg] - is a police document about shelling.

313 Witness statement: 0224K1021 (date, time, intensity of shelling and means of attack).

314 Witness statement: 0224K1021 (date, time, intensity of shelling, damage to civilian property and origin). Video [IMG\_0213.MOV] - shows damage to civilian property and impact site analysis.

315 Witness statement: 0224K1024 (date, time, damage to civilian property); 0224K1025 (date, time, intensity and origin of shelling). Videos [IMG\_0222.MOV, IMG\_0215.MOV, IMG\_0221.MOV, IMG\_0214.MOV] - show damage to civilian property and impact site analysis.

2016, a residential area on the eastern edge of Popasna was hit with 122mm mortars from Pervomaysk, injuring one civilian and damaging civilian property. The nearest UAF position was 1km away.<sup>316</sup>

127. On 2 March 2017, an artillery attack using 152mm high-explosive projectiles launched from LPR-controlled territory hit a civilian residence located just under 2km from the nearest UAF position.<sup>317</sup>

### 4.6.3. LEGAL ASSESSMENT

128. The UAF attack of 18 July 2014 was evidently aimed at destroying the LPR base in Popasna. The incidental damage to a civilian residence located 100m from the LPR position is likely to be deemed proportionate to the military objective sought.

129. After the UAF retook Popasna in July 2014, it located its firing position and check-points on the outskirts of the town and away from densely populated areas. The loss of life and damage to civilian objects resulting from MLRS Grad, high-explosive and mortar attacks by LPR forces happened at distances of 450m and 3km from UAF positions. With Pervomaysk being located a mere 10km away, none of the attacks can be regarded as proportionate incidental damage. At such distances, even a weapon as inaccurate as the MLRS Grad should produce a smaller error radius. Thus, it may be inferred that LPR forces responsible for launching this attack either intended to direct the attack against the civilian area, or alternatively, failed to take measures to discriminate between civilian objects and military targets, in violation of Article 8(2)(b)(i)/(ii) or Article 8(2)(e)(i) of the ICC Statute.

### 4.6.4. CONCLUSION

130. In light of the foregoing, the Authors recommend that LPR forces responsible for launching attacks on civilians and civilian objects in Popasna should be identified and prosecuted under Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute. Furthermore, LPR forces liability should also be considered under Article 8(2)(b)(ix) or Article 8(2)(e)(iv) of the ICC Statute – attacks directed at educational and medical facilities.

## 4.7 Troitske<sup>318</sup>

131. The information and analysis provided below is based on documentation by Truth Hounds Documentation Field Mission on behalf of the Authors, conducted in the course of one on-site visit to Troitske on 27 March 2017. The documenters interviewed a total of seven witnesses and documented six impact sites.

### 4.7.1. TARGETED AREA

132. Troitske is a village in Ukraine-controlled part of Lugansk Province (Popasna Rayon) with an estimated population of 1400 civilians.<sup>319</sup> It is situated approximately 15km from the LPR-stronghold of Pervomaysk,<sup>320</sup> and 10km from LPR-controlled Kalynove and 15km from LPR-controlled Almazna to the East.<sup>321</sup>

316 Witness statement: 0224K1023 (date, time, intensity of shelling, damage to civilian property and casualties). Videos [IMG\_0225.MOV, IMG\_0223.MOV, IMG\_0224.MOV] - shows damage to civilian property and impact site analysis.

317 Witness statement: 0224K1022 (date, time, intensity of shelling, damage to civilian property and origin). Video [IMG\_0099.MOV] - show damage to civilian property and impact site analysis.

318 Case file N018 > Pics, location map: Troitske.jpg

319 Державна служба статистики України, 'Чисельність наявного населення України на 1 січня 2017 року', 09 June 2017, available at: [http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ\\_new1/2017/zb\\_chnn\\_0117.pdf](http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2017/zb_chnn_0117.pdf) (last accessed 25/11/2017)

320 Geolocation coordinates: 48037'53" N 38031'34" E

321 Geolocation coordinates: 48031'04" N 38034'00" E

133. The settlement is sparsely populated, stretching along the banks of the Luhan river. UAF bases and firing positions surround the settlement, located to the south, north and east of the village at a distance of 2km from the centre of the village (Ln 306, 307, 308, 309, 312). No UAF positions or personnel were located in the settlement itself.

#### 4.7.2. DESCRIPTION/OVERVIEW OF ATTACK

134. Troitske has been attacked on multiple occasions since the start of the conflict. On 29 September 2014, a school (Ln 305) was hit in a MLRS attack launched by LPR forces. The nearest UAF position was 1.9km away.<sup>322</sup> Between 21 January and 15 February 2015, Troitske was attacked continuously from LPR positions in Almazna, using 122mm mortars and MLRS Grad missiles. The attacks resulted in four civilian deaths, three serious injuries and extensive damage to civilian infrastructure, including 122 civilian houses, a school, church and administrative buildings (approximate position Ln 310).<sup>323</sup> The nearest UAF positions were at least 1.9km away.

135. Further artillery and mortar attacks hit a total of six civilian residences (Ln 311) and a clinic (Ln 113) on 18 August 2016,<sup>324</sup> 29 January 2017,<sup>325</sup> 2 February 2017<sup>326</sup> and 4 February 2017.<sup>327</sup> In all documented cases, the impact sites were located between 800m and 2.2km from the nearest UAF positions.

#### 4.7.3. LEGAL ASSESSMENT

136. The shelling of Troitske by LPR forces appears to have been aimed at the circle of UAF positions located at a radius of 2km from the centre of the village. Most attacks appear to have originated in LPR-controlled Almazna – located at a distance of 15km. At this distance, MLRS Grad and mortar attacks that systematically miss their targets by 800m-2.2km cannot be regarded as proportionate incidental damage. It may therefore be inferred that LPR forces responsible for launching this attack either intended to direct the attack against the civilian area, or alternatively, failed to take measures to discriminate between civilian objects and military targets, in violation of Article 8(2)(b)(i)/(ii) or Article 8(2)(e)(i) of the ICC Statute.

#### 4.7.4. CONCLUSION

137. In light of the foregoing, the Authors recommend that LPR forces responsible for launching attacks on civilians and civilian objects in Troitske should be identified and prosecuted under Article 8(2)(b)(i)/(ii) (in

322 Witness statements 0260K966 (date, time, intensity of shelling, damage to civilian property and means of attack); 0260K967 (date, time, intensity of shelling, damage to civilian property and UAF positions); 026K956 (date, time, intensity of shelling, damage to civilian property and means of attack). Photos at [фото-видео > школа > школа 2014] - show damage to school property. Video [IMG\_0082.MOV] - shows crater analysis near school demonstrating that shelling came from Almazna (LPR). Photos and videos at [фото-видео] - show damage to civilian property.

323 Witness statements: 0260K966, 0260K968 (time, intensity of shelling, damage to civilian property and casualties); 0260K1057 (day, time, intensity of shelling, damage to civilian property and casualties); 0260K967 (date, time, intensity of shelling, damage to civilian property and UAF positions); 026K956 (date, time, intensity of shelling, damage to civilian property and method of shelling). Videos at [фото-видео > школа > школа 2015] - show damage to school property. Video [IMG\_0082.MOV] - shows crater analysis near school demonstrating that shelling came from Almazna (LPR). Photos and videos at [фото-видео] - show damage to civilian property.

324 Witness statement: 0260K1058 (date, time, intensity of shelling, damage to civilian property). Photos in folder [обстрелы 2016-17 > решетарь фото разрушений] - show damage to civilian property and craters.

325 Witness statement: 0260K929 (date, time, intensity of shelling, damage to civilian property). Photos in folder [обстрелы 2016-17 > Сепокурова] - show damage to civilian property and craters. Video [IMG\_0097.MOV] - show crater analysis demonstrating origin of shelling.

326 Witness statement 0260K968 (damage to civilian property). Video evidence [IMG\_0083.MOV, IMG\_0084.MOV, IMG\_0085.MOV, IMG\_0088.MOV, IMG\_0089.MOV, IMG\_0090.MOV] and Photo evidence [MG\_0086.JPG, IMG\_0087.JPG] - show damage to civilian property and crater analysis demonstrating origin and method of shelling.

327 Witness statement: 0260K968 (dates of shelling and damage to civilian property).

IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute. Furthermore, liability of LPR attackers should also be considered under Article 8(2)(b)(ix) or Article 8(2)(e)(iv) of the ICC Statute – attacks directed at educational and medical facilities.

## 4.8 Marjinka<sup>328</sup>

138. The information and analysis provided below is based on documentation by Truth Hounds Documentation Field Mission on behalf of the Authors, conducted in the course of five on-site visits to Marjinka on 11-12 September 2016, 16-19 December 2016, 26 February 2017, 04-06 June 2017 and 13 July 2017. The documenters interviewed a total of 22 witnesses and documented 23 impact sites.

### 4.8.1. TARGETED AREA

139. Marjinka is a settlement of about 9,500 civilians,<sup>329</sup> situated on the contact line between UAF and DPR forces<sup>330</sup> – the *de facto* border separates Marjinka and the adjoining DPR-controlled village of Oleksandrivka on its eastern outskirts. To the northwest, Marjinka borders Petrovskiy district, a DPR stronghold. DPR forces briefly took control of Marjinka from mid-April until August 2014. The town was recaptured by the UAF on 5 August 2014. The settlement is situated approximately 23km west-southwest of the centre of Donetsk City.

140. A major UAF-DPR checkpoint is located to the south of the settlement (Ln 231). Other UAF checkpoints are located along or in close proximity to the contact line (Ln 227, 334), and UAF forces regularly patrol the line itself. A UAF base is located on the southern outskirts (Ln 225), and another on the northern outskirts of the settlements (Ln 229). A DPR military base is located 400 meters away from the closest civilian dwelling in Marjinka (Ln 228).

### 4.8.2. DESCRIPTION/OVERVIEW OF ATTACK

141. As part of its push to regain control over separatist-captured territory, the UAF attacked Marjinka using heavy artillery from its positions in Pobyeda<sup>331</sup> and Konstantinovka<sup>332</sup> in July and early August 2014. Four civilians died and civilian residences (Ln 59) and a school (Ln 240) were badly damaged as a result of MLRS Grad attacks by the UAF on 11 July 2014, 19/21 July 2014 and early August 2014.<sup>333</sup>

142. After the town's recapture by the UAF, DPR forces stationed in Oleksandrivka and Petrovskiy district regularly attacked Marjinka using artillery, tanks and machine guns. DPR artillery attacks on 7 January 2015 resulted in the destruction of civilian property (Ln 242) some 430 meters from the nearest UAF position (Ln 229).<sup>334</sup> On 25 January 2015, a DPR artillery attack damaged a school (Ln 240) located 450m from the nearest UAF base.<sup>335</sup> On 2 May 2015, an AK-47 fired from Oleksandrivka killed a civilian on his own property situated

328 Case file N018 > Pics, location map: Marjinka.jpg

329 Державна служба статистики України, 'Чисельність наявного населення України на 1 січня 2017 року', 09 June 2017, available at: [http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ\\_new1/2017/zb\\_chnn\\_0117.pdf](http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2017/zb_chnn_0117.pdf) (last accessed 25/11/2017)

330 Geolocation coordinates: 47056'24" N 37030'20" E

331 Geolocation coordinates: 47054'53" N 37027'40" E

332 Geolocation coordinates: 47052'07" N 37024'20" E

333 Witness statements: 0134K1012 (date, time, damage to civilian property and casualties); 0134K1013 (date, time, origin and means of attack); 0134K954 (date, time of attacks, damage to civilian property); 0134920 (date, time, intensity of attacks, damage to civilian property). Video evidence: [IMG\_1569.MOV] - demonstrates impact site and shell remains. Documentary evidence: [Акт - школа лето 2014.doc] - describes damage to school property. Photos in folder 'Школа 1' show damage to school property.

334 Witness statement: 0134K922 (date, time, intensity of attack, damage to civilian property and casualties).

335 Witness statement: 0134K954 (date, damage to civilian property). Document [Акт - школа зима 2015.doc] - describes damage to school property. Photos in folder 'Школа 1' show damage to school property.

some 800 meters from the nearest UAF position.<sup>336</sup> From 3 June 2015, DPR forces made several unsuccessful attempts to recapture Marjinka, killing at least 28 people (including 9 civilians).<sup>337</sup> The documented attacks resulted in civilian deaths, injuries and damage to civilian property, however all impact sites documented by the Authors were located in close proximity to UAF positions.<sup>338</sup>

143. In the autumn of 2016, a new round of attacks on Marjinka from DPR-controlled territory resulted in further civilian injuries and damage to civilian infrastructure. Many of these attacks targeted the numerous UAF positions situated on or near the contact line.<sup>339</sup> Nevertheless, a 120mm artillery shelling on 16 August 2016 resulted in the destruction of a civilian residence (Ln 232) located some 500m from a UAF base (Ln 225).<sup>340</sup> On 30 August 2016, another DPR artillery attack resulted in the destruction of three civilian residences (Ln 226) located 1km from the nearest UAF position (Ln 227).<sup>341</sup> On 14 November 2016, school N. 1 (Ln 240) was once again hit by DPR-launched 122mm mortar shells.<sup>342</sup> At the time, the school was 620m away from the nearest UAF position (Ln 225). The school was attacked once again in June 2017, this time with an automatic machine gun fired from DPR-controlled Oleksandrivka.

144. On 2 February 2017 at 7:30pm, a residential quarter in the northwest of Marjinka was attacked from DPR positions to the east, using small-calibre artillery. The attack resulted in damage to civilian property on Pervomayska and Horkoho streets (Ln 7-11).<sup>343</sup> Analysis of the impact site and shell fragment recovered from the site<sup>344</sup> indicates that the attack was conducted using 30mm BMP-2 cannon. At the time of the attack, a UAF base was located approximately 1km from the impact site and the closest UAF firing position was approximately 1,4km away (Ln 229).

### 4.8.3. LEGAL ASSESSMENT

145. Despite Marjinka being an active conflict area in light of its location on the contact line, civilians who have the misfortune of living there are entitled to the protection of international humanitarian law and, crucially, the principle of distinction. The number and density of UAF combatants in Marjinka would render prosecutions for most of the documented attacks difficult. Nevertheless, a number of attacks that resulted in injury to civilians and destruction of civilian objects go beyond the lawful parameters of 'incidental loss'.

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336 Witness statement: 0134K1015 (date, time, nature of attack and casualty).

337 OSCE, Spot report by the OSCE Special Monitoring Mission to Ukraine (SMM), 3 June 2015: Fighting around Marinka', 4 June 2015, available at: <http://www.osce.org/ukraine-smm/162116> (last accessed: 3/11/2017); Witness statements: 0134K1016 (date, intensity of attacks and damage to property); 0134K953 (location of UAF base); N003K1064 (date, time of attacks, damage to civilian property); N003K1065 (date, time of attacks, intensity, means, damage to civilian property). Videos and photos in folder [damage] - show damage to civilian property. Videos and photos in folder [shell-remains] - show measurement of the shell that hit house.

338 Witness statements: 0134K1014 (date, time, intensity of attack, damage to civilian property and casualties). Photos in folder 'Клименко' are the death certificates of killed baby; Witness statement: 0134K1020 (date, time, damage to civilian property and origin of attack). Photos [WP\_20170226\_09\_45\_05\_Pro.jpg, WP\_20170226\_09\_44\_52\_Pro.jpg, WP\_20170226\_09\_44\_34\_Pro.jpg, WP\_20170226\_09\_44\_28\_Pro.jpg] - are the act of fire incident. Photos [from WP\_20170226\_10\_04\_18\_Pro.jpg to WP\_20170226\_10\_03\_22\_Pro.jpg] - show damage to civilian property.

339 See Case File 134 – attacks on 26 January 2015, 16 June 2015, 10 August 2016, 23 August 2016, 14 December 2016, 18 December 2016.

340 Witness statement: 0134K1012 (date, time, intensity of attack, damage to civilian property); 0134K1018 (date and damage to civilian property). Photos in folder 'Заводская 22' - show damage to civilian property.

341 Witness statement: 0134K1011 (date, time, intensity of attack, damage to civilian property, means and origin).

342 Witness statement: 0134K954 (date, time, intensity of attack, damage to civilian property. Photo [IMG\_0559.JPG] - shows shell remains. Videos [IMG\_0562.MOV, IMG\_0561.MOV, IMG\_0560.MOV] - show damage to civilian property and demonstrate origin of the attack.

343 Witness statement: 0134K922; Video of impact site: WP\_20170226\_11\_38\_28\_Pro.mp4, WP\_20170226\_11\_43\_19\_Pro.mp4, IMG\_1584.MOV, IMG\_1585.MOV, IMG\_1586.MOV, IMG\_1589.MOV; Photo of impact site: WP\_20170226\_11\_37\_25\_Pro.jpg, WP\_20170226\_11\_37\_29\_Pro.jpg

344 Video of impact site: WP\_20170226\_11\_43\_19\_Pro.mp4

146. UAF attacks in July and early August 2014 merit further investigation to establish the location of DPR positions at the time of the attacks. The UAF weapon of choice – MLRS Grad – is highly inaccurate and therefore inherently indiscriminate when used in densely populated areas. Serious questions remain as to the suitability and proportionality of using this type of weapon in urban warfare in eastern Ukraine.

147. Although the majority of DPR attacks on Marjinka throughout 2015 and 2016 were aimed at legitimate UAF targets, a number of attacks documented above veered beyond the lawful limit of ‘incidental loss’. The Authors submit that all artillery attacks on civilian objects located 400m or more from known UAF positions intentionally directed at civilians and/or civilian objects were in violation of Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute.

148. The attacks that took place on 2 February 2017 targeted a civilian residential area, situated at a distance of 1km from the nearest UAF military objective. The BMP-2 cannon used to perpetrate the attack has a range of 4km and an accuracy range well below 1km when stationary. Consequently, it may be inferred that DPR forces responsible for launching this attack either intended to direct the attack against the civilian area, or alternatively failed to take measures to discriminate between civilian objects and military targets, in violation of Article 8(2)(b)(i)/(ii) or Article 8(2)(e)(i) of the ICC Statute.

#### **4.8.4. CONCLUSION**

149. In light of the foregoing, the Authors recommend that those responsible for launching attacks on civilians and civilian objects in Marjinka from July 2014 to June 2017, targeting areas situated more than 400 meters away from legitimate UAF targets, should be identified and prosecuted under Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC). Furthermore, the liability of DPR forces responsible for the attacks against schools and kindergartens should also be considered under Article 8(2)(b)(ix) or Article 8(2)(e)(iv) of the ICC Statute – attacks directed at educational facilities.

## **4.9 Stanytsia Luhanska – Valuiske**<sup>345</sup>

150. The information and analysis provided below is based on documentation by Truth Hounds Documentation Field Mission on behalf of the Authors, conducted in the course of three on-site visits to Stanytsia Luhanska and Valuiske on 1-6 November 2015, 16-19 December 2015, 07 April 2016. The documenters interviewed a total of 35 witnesses and documented 19 impact sites. 4.9.1 Targeted Area

#### **4.9.1. TARGETED AREA**

151. Stanytsia Luhanska is a settlement of 13,700 inhabitants<sup>346</sup> located on Ukraine-controlled territory in Luhansk Province.<sup>347</sup> The town is situated approximately 15km from LPR-controlled Luhansk City to the southwest (8km between the nearest buildings), and 17km from the closest marker on Ukraine-Russian border. The south and southwest edge of Stanytsia Luhanska is between 500m and 1.5km from Seversky Donets River that forms the contact line between UAF and LPR forces since August 2014. Stanytsia Luhanska was briefly occupied by LPR separatists from April 2014 but returned to UAF control on 21 August 2014. The villages of Makarove and Valuiske are located to the east-north-east of Stanytsia Luhanska and form one continuous semi-urban settlement with Stanytsia Luhanska.

152. At the time of the July 2014 attack, the only known military objectives in or around the settlement were

345 Case file N018 > Pics, location map: Stanytsia.jpg

346 Державна служба статистики України, ‘Чисельність наявного населення України на 1 січня 2017 року’, 09 June 2017, available at: [http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ\\_new1/2017/zb\\_chnn\\_0117.pdf](http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2017/zb_chnn_0117.pdf) (last accessed 25/11/2017)

347 108 Geolocation coordinates: 48038'44" N 39029'33" E

an LPR checkpoint on the bridge over the Seversky Donets River (Ln 516), situated approximately 530m from the southwest edge of the settlement and 3,7km from the impact sites on and around Ostrovskogo street (Ln 517), as well as the LPR base in the police headquarters building (Ln 518). Following the UAF takeover of the town, a UAF checkpoint and infantry armoured vehicles firing position were located on the southeast edge of town at the intersection of Schevchenko and Moskva-Donbass streets (Ln 519). There are no known military objectives in Valuiske – the closest UAF position is located at a distance of 2,5km from the settlement (Ln 520).

#### 4.9.2. DESCRIPTION/OVERVIEW OF ATTACKS

153. On 2 July 2014 two SU-25 Ukrainian combat aircraft flew over Stanytsia Luhanska dropping unguided rockets onto the town's police headquarters (Ln 518) and civilian residences on Ostrovskogo Street (Ln 517).<sup>348</sup> Witnesses identify the SU-25 aircraft as belonging to Ukrainian air forces and confirm that missiles originated from these aircraft.<sup>349</sup> Video taken directly after the attack shows missile remnants from the attacks, which fit the specification of SU-25 payload.<sup>350</sup> Witnesses confirm that there were no LPR combatants at the police station or targeted civilians residences on the day of the attack.<sup>351</sup> As a result of the attack, 11 civilians lost their lives, 16 were seriously injured<sup>352</sup> and 11 civilian residences were badly damaged or destroyed.<sup>353</sup>

154. As they lost control over the settlement, LPR separatist forces launched an MLRS Grad attack on Kalinina and Krupskoy streets (Ln 521 - residential area on the southern edge of town approximately 1km from the nearest UAF position) on 18 August 2014. The attack resulted in the deaths of four civilians.<sup>354</sup> Following the recapture of Stanytsia Luhanska by the UAF on 21 August 2014, the settlement came under sustained artillery attack from LPR positions. On 24 August 2014, the town was shelled resulting in three civilian injuries.<sup>355</sup> On the same day, the town's hospital (Ln 522) was shelled with at least 22 mortar shells (122mm calibre), damaging the building and injuring three staff members.<sup>356</sup> The hospital was located approximately 2.5km from the nearest UAF position at the time of the attack, but may have been visited by a company of UAF soldiers several hours prior to the attack.<sup>357</sup> On 29 August 2014, the town was shelled again using MLRS Grad missiles from the direction of LPR-controlled Nikolayevka,<sup>358</sup> resulting in damage to civilian property.<sup>359</sup>

155. On 2 September 2014, an MLRS Grad attack originating from LPR-controlled Vesela Hora and/or Krasniy Yar resulted in the demise of six civilians and the destruction or damage to dozens of civilian properties on Shevchenko, Moskva-Donbass, Barabashova and Karl Marx streets (Ln 525).<sup>360</sup> The shelling also resulted in the partial destruction of school n.2 (Ln 524) and a forestry museum (Ln 523).<sup>361</sup> A UAF checkpoint and infantry armoured vehicle firing position was located on the southeast edge of the town at the intersection of Schevchenko and Moskva-Donbass streets (Ln 519),<sup>362</sup> between 300m and 1km away from the impact

348 Witness statements: 0204K804; 0204K817; 0204K798; 0204K820; 0204K816; 0204K802

349 Witness statements: 0204K816, 0204K813.

350 SU25-evidence.3gp

351 Witness statement: 0204K822.

352 Witness statement: 0204K825

353 Witness statements: 0204K809, 0204K813, 0204K799, 0204K797, 0204K826; Video and photos of impact sites: Videos DSC\_0133.MOV, DSC\_0134.MOV, DSC\_0135.MOV, DSC\_0121.MOV, DSC\_0122.MOV; DSC\_0102.JPG-DSC\_0120.JPG, DSC\_0123.JPG-DSC\_0131.JPG.

354 Witness statement: 0204K802.

355 Witness statements: 0204K811, 0204K807.

356 Witness statements: 0204K825, 0204K812, 0204K814, 0204K826; Video and photos of impact site.

357 Witness statement: 0204K814.

358 Geolocation coordinates: 48035'28" N 39031'02" E

359 Witness statements: 0204K817, 0204K818, 0204K824; Video of impact site: DSC\_0025.MOV.

360 Witness statements: 0204K805, 0204K799, 0204K823, 0204K802,0211K870; Photos and videos of impact site: DSC\_0001.JPG - DSC\_0086.JPG.

361 Witness statement: 0204K980

362 Witness statement: 0204K818; 0204K798]

sites. Sporadic artillery and mortar attacks on Stanytsia Luhanska from LPR-controlled territory took place throughout January 2015, damaging civilian housing and a school.<sup>363</sup>

156. Civilian objects in Valuiske – residential blocks and a kindergarten (Ln 526) – were hit in a series of mortar and MLRS Grad attacks on 18 October 2014, 4 December 2014, 15 February 2015 and 22 August 2015. The attacks, originating from LPR-controlled territory across the Siversky-Donets River, resulted in at least one civilian being seriously injured and the damage and/or destruction of civilian property. All impact sites were located at least 1km away from the nearest UAF position.<sup>364</sup>

### 4.9.3. LEGAL ASSESSMENT

157. At the time of the July 2014 UAF attack, there were no LPR combatants or military equipment inside Stanytsia Luhanska – the closest LPR position being at least 2km away. It is conceivable that the attack by UAF aircraft, particularly on the police headquarters building, was conducted under the assumption that LPR combatants were still in the building. As a result, it may be argued that the attack was not intentionally directed at civilians and civilian objects. However, this attack was clearly not based on sound intelligence of LPR combatant positions in the settlement. Moreover, the use of unguided missiles launched from assault aircraft on a densely populated urban area implies that the UAF had no intention of discriminating between any potential LPR combatants and civilians in the area. Therefore, as a minimum, in perpetrating this attack, the UAF displayed a total absence of proportionality between anticipated incidental harm to civilians and the military advantage sought – in violation of Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute.

158. Artillery and mortar attacks on civilian areas by LPR separatists during and after the UAF recapture of Stanytsia Luhanska and Valuiske also demonstrate a marked absence of ability or desire to discriminate between military objectives and civilian objects. Instead, these attacks bare the hallmark of reprisals for the loss of territory. Distances between UAF positions and impact sites range from 300m to 2.5km. Whereas it may be argued that hits on civilian areas within 400m of UAF infantry armored vehicle launch sites constitute proportionate incidental collateral damage to the military objective sought, any damage and injury caused beyond that distance demonstrates the attackers' unwillingness or inability to discriminate between civilians and combatants – either in their choice of weaponry or in the way they use it. Therefore, attacks that caused damage to civilian areas beyond the acceptable accuracy range should be regarded as a failure to discriminate between civilians and combatants, or at the very least, a total absence of proportionality between anticipated incidental harm to civilians and the military advantage sought – in violation of Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute.

### 4.9.4. CONCLUSION AND RECOMMENDATIONS

159. In light of the foregoing, the Authors recommend that those responsible for the intentional UAF attack on civilians and civilian objects in Stanytsia Luhanska on 2 July 2014 should be identified and prosecuted under Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute.

160. Likewise, the Authors recommend that those responsible for the intentional LPR attacks on civilians and civilian objects located 400m and beyond UAF artillery positions in Stanitsia Luhanska in August-September 2014 and January 2015, should be identified and prosecuted under Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute.

161. Furthermore, the liability of LPR forces responsible for the attacks on schools and hospitals should also

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363 Witness statements: 0204K805 (attack on 9 January 2015); 0204K802, 0204K822 (attack on 24 January 2015); 0204K964, 0204K822 (attack on school on 26 January 2015); 0204K802, 0204K822 (attack on 31 January 2015).

364 Witness Statement: 0211K870 (date, timing, direction and intensity of shelling, damage to property and casualties).

be considered under Article 8(2)(b)(ix) or Article 8(2)(e)(iv) of the ICC Statute – attacks directed at educational and medical facilities.

## 4.10 Svitlodarsk - Luhanske<sup>365</sup>

162. The information and analysis provided below is based on documentation by Truth Hounds Documentation Field Mission on behalf of the Authors, conducted in the course of three on-site visits to Svitlodarsk on 28-30 December 2016, 12-16 and 28 March 2017. The documenters interviewed a total of 18 witnesses and documented eight impact sites.

### 4.10.1. TARGETED AREA

163. Svitlodarsk is a small urban settlement located in the Ukraine-controlled part on Donetsk Province on the banks of the Luhan River,<sup>366</sup> with a population of 12,000 civilians.<sup>367</sup> The town is adjoined by the settlement of Luhanske to the north, with a population of 2200 civilians.<sup>368</sup> The settlements are situated 14km from DPR-controlled Vuhlehirsk, 18km from the strategic city of Debaltseve and 20km from the DPR stronghold of Horlivka.

164. Svitlodarsk and Luhanske are encircled by UAF positions (Ln 276, 282, 274, 275, 289) – the distance between UAF positions and civilian objects in Svitlodarsk and Luhanske ranges from 2.5km to 5km. There are no known UAF objectives inside the two settlements. In February 2015, DPR forces were stationed 4km from the centre of Svitlodarsk (Ln 526).

### 4.10.2. DESCRIPTION/OVERVIEW OF ATTACKS

165. From 24 January 2015 to 29 January 2015 the area was subject to intense shelling campaign by DPR forces using MLRS Grad and mortars. In Svitlodarsk, this resulted in severe damage to a hospital (Ln 280), kindergarten (Ln 283), school (Ln 284) and a number of civilian commercial and residential properties. A nurse was killed as a result of the attack on the hospital.<sup>369</sup> In Luhanske, a hospital, kindergarten and several civilian properties were severely damaged in the shelling, resulting in the death of three civilians and injuries to two others.<sup>370</sup> UAF positions were located at a distance of 2.5km and 5km from the impact sites.

166. Svitlodarsk was again attacked by DPR forces on 9 February 2015, injuring three civilians and resulting in the destruction of a shop (Ln 277) and civilian residences.<sup>371</sup> A DPR attack on 13 February 2015 resulted in the

365 Case file N018 > Pics, location map: Svitlodarsk.jpg

366 Geolocation coordinates: 48026'03" N 38013'13" E

367 Державна служба статистики України, 'Чисельність наявного населення України на 1 січня 2017 року', 09 June 2017, available at: [http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ\\_new1/2017/zb\\_chnn\\_0117.pdf](http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2017/zb_chnn_0117.pdf) (last accessed 25/11/2017)

368 Державна служба статистики України, 'Чисельність наявного населення України на 1 січня 2017 року', 09 June 2017, available at: [http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ\\_new1/2017/zb\\_chnn\\_0117.pdf](http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2017/zb_chnn_0117.pdf) (last accessed 25/11/2017)

369 Witness statements 0237K963 (date, time, intensity of shelling, damage to civilian property and casualties); 0079K1092 (date, time, intensity of shelling, damage to civilian property); 0079K1093 (date, time, intensity of shelling, damage to civilian property and casualties); 0237K960 (date, time, damage to civilian property); 00791094 (date, time, intensity of shelling, damage to civilian property); 0237K1040 (date, time, intensity of shelling, means, damage to civilian property); 0237K963 (date, time, intensity of shelling, damage to civilian property); 0237L1044 (date, time, intensity of shelling, damage to civilian property). Photos [IMG\_0628.JPG, IMG\_0627.JPG] - show damage to hospital; Photos [IMG\_0627.JPG, IMG\_0628.JPG] - show damage to the property of hospital.

370 Witness statements 0238K1046 (date, time, intensity of shelling, damage to civilian property and casualties); 0238K1047 (casualties and time of incident; 0238K1049 (date, time of shelling, damage to civilian property and casualties). Videos [IMG\_0664.MOV, IMG\_0663.MOV] - show damage to civilian property.

371 Witness statement: 0237K1040 (date, time, intensity of shelling, means, damage to civilian property); 0237K960 (damage to civilian property); 0237K1041 (date, time, origin, damage to civilian property and casualties); 0237K1043 (time, intensity of shelling, damage to property, casualties). Video [V70316-115859.mp4] - shows damage to civilian property.

partial or total destruction of a shop, four residential blocks, a school and a kindergarten.<sup>372</sup> A further attack was documented on 23 December 2016, in which a hospital (Ln 280), market (Ln 288), fire station and several residential properties were hit.<sup>373</sup> During all of the above cases, UAF positions were located at a distance of 2.5km and 5km from the impact sites.

167. On 19 February 2015, during a standoff between UAF and DPR forces, a shell fired from UAF-controlled territory in Mironivka landed on a civilian residential property in Svitlodarsk, injuring two civilians. The nearest DPR position at the time of the attack was 4km away (Ln 526).

#### **4.10.3. LEGAL ASSESSMENT**

168. At the time of all above-documented attacks, there were no UAF troops or positions in Svitlodarsk and Luhanske, giving them the status of undefended civilian settlements. The fact that a UAF base, checkpoint and firing positions encircled the settlement at distances of 2.5km to 5km from the nearest civilian object does not change the status of the settlements. At such distances, there is no excuse for failing to distinguish between military and civilian objects. Thus, MLRS Grad and mortar attacks perpetrated on the settlements on 24 January to 29 January 2015, 9 February 2015 and 13 February 2017 presented no concrete military advantage to DPR forces and served no legitimate military objective – a grave violation of the principle of distinction. Similarly, with the nearest DPR position being 4km from the settlements, the 19 February 2015 artillery attack by the UAF was in violation of the principle of distinction. Consequently, the attacks can be qualified as attacks intentionally directed at civilians and/or civilian objects – in violation of Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) of the ICC Statute.

#### **4.10.4. CONCLUSION**

169. In light of the foregoing, the Authors recommend that those DPR and UAF combatants responsible for launching attacks on civilians and civilian objects in Svitlodarsk and Luhanske in January and February 2015, should be identified and prosecuted under Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC). Furthermore, the liability of DPR forces should also be considered under Article 8(2)(b)(ix) or Article 8(2)(e)(iv) of the ICC Statute – attacks directed at educational and medical facilities.

## **4.11 Other documented attacks**

170. The Authors have documented further attacks on civilian objects, which may amount to war crimes under the ICC Statute as direct or indiscriminate attacks on the civilian population. Due to the comparatively small volume or frequency of documented attacks on specific settlements, the Authors have chosen to present their evidence of these attacks in table form. This is not intended to detract for the seriousness of these attacks, nor in any way suggest a lesser criminal liability of those responsible.

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372 Witness statements: 0237K958 (date, time, intensity of shelling, damage to civilian property); 0237K1040 (date of shelling); 0237K960 (damage to civilian property); 0237K959 (origin, damage to civilian property, date, time, intensity of shelling); 0237K1042 (date, time, damage to civ property, origin); 0237K962 (date, time, damage to civ property); 0137K957 (date, time, intensity of shelling, damage to civilian property); 0237K956 (date, time, intensity of shelling, damage to civilian property). Videos [V70316-110452.mp4, V70317-143558.mp4] - crater analysis. Video [V70316-111409.mp4] - demonstrates means of shelling and N-E direction of shelling. Video [V70315-151629.mp4] - demonstrates that multi-storey 47 (P286) was damaged from the DPR-controlled territory. Video [20170317\_142844.mp4] - show damage to kindergarten. Video [20170315\_144435.mp4] - demonstrates that shelling was conducted also with 122-mm mortar. Video [20170315\_141651.mp4] - show origin of shelling from DPR.

373 Witness statements: 0237K963 (date, damage to civilian property); 0237K1044 (date, time, intensity of shelling, damage to civilian property); 0237K1045 (date, time, intensity of shelling and damage to civilian property); 0238K976 (date, timing, intensity of shelling, damage to civilian property). Video [MOV\_0069.mp4] - demonstrates that shell came from DPR-controlled territory and also method of shelling. Video [IMG\_0608.mp4] - shows damage to market and method of shelling.

#### 4.11.1. TABLE OF OTHER ATTACKS DOCUMENTED BY THE AUTHORS

CASE FILE	DATE/TIME	IMPACT SITE	MEANS/ METHOD	OUTCOME	LEGAL ASSESSMENT	EVIDENCE
204	28 November 2014	Ambulance vehicle travelling on Road P22 between Stanytsia Luhanska and Luhansk City (attack began after vehicle passed LPR checkpoint)	Mortar attack on vehicle from Ukraine-controlled territory. Once vehicle passed LPR checkpoint mortar fire began to follow the vehicle until it reached a turning.	Doctor sustained injuries to both legs. Vehicle damaged from shrapnel.	Attack intentionally directed at civilians and/or civilian objects in violation of Article 8(2)(b)(i)/(ii) in IAC and Article 8(2)(e)(i) in NIAC.	<u>Witness statement</u> : 0204K813 (date, timing, origin, method, damage and casualties).
211/221	6 December 2014; 29 October 2014; 8 February 2015; 18 July 2016.	Novomykhailivka (Ukraine-controlled part of Donetsk Province) - hospital, church and civilian residences. Nearest UAF firing position was 400-500 meters from impact sites.	Mortar and MLRS Grad attacks on civilian objects from DPR-controlled territory.	Damage to hospital, church and civilian residences. Four civilians wounded.	Lack of proportionality between anticipated incidental harm to civilians/civilian objects/the environment and the military advantage sought in violation of Article 8(2)(b)(iv); Possible attack directed against medical facilities under Article 8(2)(b)(ix) or Article 8(2)(e)(iv).	<p><u>Witness statements</u>: 0221K872 (timing and intensity of shelling, damage to property and her injuries; 0221K873 (date, timing, intensity of shelling, damage to property and casualties); 0221K847 (date, timing and intensity of shelling, damage to property and casualties; 0221K982 (time, intensity of shelling, damage to property); 0221K983 (timing, intensity, casualties and damage); 0221K984 (date, timing, intensity, casualties and damage); 0221K871 (timing, direction and intensity of shelling, casualties); 0221K873 casualties.</p> <p><u>Video evidence</u>: [ V60913-110940.mp4 ] - shows impact crater analysis demonstrating origin; [ VID00034.MP4 ] - shows damage to property, victim's injuries, impact places.</p> <p><u>Photos evidence</u>: [ P60913-105316.jpg, P60913-105336.jpg, P60913-105347.jpg ] - shows medical documents of victim injuries; [ P60913-112335.jpg ] - shows damage to property.</p>

246	18 and 20 October 2014	Novotroitske (Ukraine-controlled part of Donetsk Province) - kindergarten (Ln 295), farm (Ln 291), civilian residences. Nearest UAF positions (Ln 294, 292, 293) between 600m and 1.3km from impact sites.	MLRS Grad attacks on civilian objects from DPR-controlled territory.	Two civilians dead; Three civilians injured; Damage to kindergarten; Damage to farm; Damage to over 100 civilian residences.	Attack intentionally directed at civilians and/or civilian objects OR failure to discriminate between civilian and military objects in violation of Article 8(2)(b) (i)/(ii) in IAC and Article 8(2)(e)(i) in NIAC.	<u>Witness statements:</u> 0246K1051 (date, time, intensity of shelling, damage to civilian property and casualties); 0246K1052 (date, timing of shelling, damage to civilian property); 0246K1053 (date, timing of shelling, damage to civilian property and casualties); 0246K1050 (date, time, intensity of shelling, damage to civilian property and casualties); Videos and photo evidence [IMG_0545.MOV, IMG_0546.JPG, IMG_0547.MOV] - show damage to kindergarten and demonstrate origin of the attack; [IMG_0552.JPG] - show remains of Grad rocket; [IMG_0549.MOV] - shows impact hole demonstrating origin of the attack. All photos and videos in folder show damage to civilian property.
N6	3 August 2014; 8 December 2014; 29 April 2015; 13 August 2015.	Zalizne (Ukraine-controlled part of Donetsk Province)- school (Ln 328) and civilian residences. The nearest UAF position was located 1.43km away from impact sites (Ln 329).	Artillery attack from DPR-controlled territory.	Severe damage to school structure; Damage to civilian residences	Attack intentionally directed at civilians and/or civilian objects in violation of Article 8(2)(b) (i)/(ii) in IAC and Article 8(2)(e)(i) in NIAC and/or attack directed against educational facilities under Article 8(2)(b)(ix) or Article 8(2)(e)(iv).	<u>Witness statement:</u> N006K1068 (date, time, intensity of shelling, damage to civilian property). <u>Video evidence:</u> [Железное (Артемово)_школа №13.mp4] - show damage to school and crater analysis demonstrating origin of the attack.
N9	19 December 2015	Novgorodske (Ukraine-controlled part of Donetsk Province) - kindergarten (Ln 332) in. Nearest UAF position was located 2.36km from impact site (Ln 316).	82mm mortar attack (exact origin unknown)	Damage to kindergarten	Attack intentionally directed at civilians and/or civilian objects in violation of Article 8(2)(b) (i)/(ii) in IAC and Article 8(2)(e)(i) in NIAC and/or attack directed against educational facilities under Article 8(2)(b)(ix) or Article 8(2)(e)(iv).	<u>Witness statement:</u> N009K1071 (date, time, intensity and damage).

N12	31 May 2015	Zajtseve (Ukraine-controlled part of Donetsk Province) - field (Ln 345) in. Nearest UAF position was 970m from impact site (Ln 343).	Mortar attack (exact origin unknown).	Injured civilian.	Attack intentionally directed at civilians in violation of Article 8(2)(b)(i) in IAC and Article 8(2)(e)(i) in NIAC.	<u>Witness statements:</u> N012K1079; N012K1080 (date, time, intensity of shelling and casualties); N012K1081 (date and casualties). Photo evidence: [ IMG_1 209.JPG ] - shows injury.
N11	8 November 2014; 24 April 2015; August 2015.	Chermalyk (Ukraine-controlled part of Donetsk Province) - kindergarten (Ln 344), school, agricultural school (Ln 347) and civilian properties (Ln 345) in Nearest UAF position was 1.1km away (Ln 346; 348).	BPM-1 infantry vehicle cannon or similar from DPR-controlled territory.	One civilian dead, two injured; Damage to kindergarten, school, agricultural school and several civilian residences.	Attack intentionally directed at civilians and/or civilian objects in violation of Article 8(2)(b)(i)/(ii) in IAC and Article 8(2)(e)(i) in NIAC and/or attack directed against educational facilities under Article 8(2)(b)(ix) or Article 8(2)(e)(iv).	<u>Witness statements:</u> N012K1082 (date, time, intensity of shelling, damage and casualties); N012K1083 (date, time, damage and casualties); N012K1084 (time, origin and intensity of shelling, casualties). <u>Video evidence:</u> [MVI_1441.MOV] - shows damage to school property. Photos [Чермалык. Детский сад_след осколков.jpg, Чермалык. Детский сад_след осколков_2.jpg, Чермалык. Детский сад_след осколков_1.jpg] - show damage to kindergarten property; Photos in folder [Чермалык_фото > Чекмак] - show damage to civilian property and documents of death.
227	22 August 2016, 16 October 2016, 28 October 2016; 1 March 2017.	Zolote-4 (Ukraine-controlled part of Luhansk Province) – civilian residences (Ln 267, 266, 269). Nearest UAF position was a checkpoint between 300 and 500m away.	AGS-15 grenade launcher and high calibre machine gun from LPR-controlled territory.	One civilian dead and one injured.	Lack of proportionality between anticipated incidental harm to civilians/civilian objects/the environment and the military advantage sought in violation of Article 8(2)(b)(iv).	<u>Witness statements:</u> 0227K924, 0227K925, 0227K926, 0227K1036 (date, time, intensity of attack, damage to civilian property, casualties and origin of attack); 0227K1034 (date, time, intensity of attack, damage to civilian property and casualties). <u>Video evidence:</u> [IMG_0191.MOV] - show method, origin of attack. Video [IMG_0190.MOV] - show damage to civilian property.

228	8 August 2016; 29 August 2016.	Toretsk (Ukraine-controlled part of Donetsk Province) – civilian residences (Ln 270, 271). Nearest UAF position was 1.33km.	Artillery and/or mortar from DPR-controlled territory (Horlivka).	Seven civilians injured; Civilian residences damaged.	Attack intentionally directed at civilians and/or civilian objects in violation of Article 8(2)(b)(i)/(ii) in IAC and Article 8(2)(e)(i) in NIAC.	<u>Witness statement</u> : 0228K1037 (date, time, intensity of shelling, damage to civilian property and casualties); 0228K1038, 0228K1039 (date, time, intensity of shelling, damage to civilian property, origin and casualties). <u>Video evidence</u> : [IMG_0049.MOV] - show shell remains. Video [IMG_0051.MOV] - show damage to civilian property Video [IMG_0063.MOV, IMG_0059.MOV] - show direction of shelling. Videos [IMG_0062.MOV, IMG_0061.MOV] - show damage to civilian property.
261	8 November 2016	Novgorodske (Ukraine-controlled part of Donetsk Province) – civilian residences (Ln 318). Nearest UAF position was 1km away (Ln 316).	122mm mortar or artillery launched from DPR-controlled Horlivka.	One civilian dead; Five civilian houses damaged.	Attack intentionally directed at civilians and/or civilian objects in violation of Article 8(2)(b)(i)/(ii) in IAC and Article 8(2)(e)(i) in NIAC.	<u>Witness statement</u> :0261K1059 (date, time of shelling, damage to civilian property and casualties); 0261K1060 (date, time of shelling, damage to civilian property, casualties, origin and means of shelling). 0261K1061 date, time of shelling, damage to civilian property). <u>Photos</u> : at folder [8 mapta] - show damage to civilian property. <u>Videos</u> [ IMG_0566.MOV, IMG_0564.MOV, IMG_0563.MOV] - show damage to civilian property, crater analysis.

#### 4.11.2 TABLE OF ATTACKS DOCUMENTED BY OTHER ORGANISATIONS

171. The UN Human Rights Office (OHCHR) and the OSCE Special Monitoring Mission (SMM) have observed a number of attacks in addition to those documented by the Authors. The Authors were not able to obtain access to these organisations' evidence in support of these findings. As a result, we are unable to conduct a legal assessment of potential criminal liability connected to these events. Nevertheless, the events described below appear, on the face of it, to constitute direct or indiscriminate attacks on civilians and vital civilian infrastructure, and therefore merit further investigation by the ICC Prosecutor.

LOCATION/ EVENT	DATE	IMPACT ON CIVILIANS	OVERVIEW	SOURCE
Avdiivka Shelling on May 13	May 13 2017	4 people killed	On 14 May, the SMM reported that four people were killed after an artillery shell – fired from an area under Russian-led separatist control – exploded on a house in Avdiivka. Tragically, this latest instance of Russian-led forces shelling civilian targets left two small girls orphaned. The SMM reported on 13 May on the death of a non-combatant male while under medical care for wounds sustained in the conflict. Such attacks must stop. We call on Russia to stop attacks on the civilians and end this senseless violence.	OSCE, 'Ongoing Violations of International Law and Defiance of OSCE Principles and Commitments by the Russian Federation in Ukraine' < <a href="https://osce.usmission.gov/ongoing-violations-international-law-defiance-osce-principles-russia-ukraine/">https://osce.usmission.gov/ongoing-violations-international-law-defiance-osce-principles-russia-ukraine/</a> > Accessed 26 July 2017.
Dokuchaievsk power station shelling	15-Apr-16	Damage to civilian objects crucial to the survival of the civilian population	In the Government controlled village of Stepne, residents have had no access to water since the local power station in Dokuchaievsk was damaged by shelling on 15 April 2016. Water pipes across territory controlled by the LPR have been severely damaged due to shelling, limiting access to water for the population.	OHCHR, 'Report on the Human Rights Situation in Ukraine 16 August to 15 November 2016' < <a href="http://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf">http://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf</a> > Accessed 19 July 2017
Biuruzove Street hospital shelling	24-Jun-16 and 23-Jul-16	Hospital shelling while 60 patients receiving treatment	On 24 June 2016, the children's ward of a polyclinic on Biuruzove Street in Donetsk city was shelled, breaking windows, damaging doors and the heating system. On 23 July 2016, Hospital No. 21 in Kuibyshevskii district of Donetsk city was under fire for two hours, while the hospital was attending to the medical needs of 60 patients. Two patient rooms and the surgical ward were severely damaged by mortar and automatic rifle fire, seriously affecting the hospital's capacity	OHCHR, 'Report on the human rights situation in Ukraine 16 May to 15 August 2016 ' < <a href="http://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf">http://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf</a> > Accessed 25 July 2017

Horlivka residential areas explosions	04-Jul-16	Unspecified	On 4 July the SMM recorded two explosions assessed as outgoing mortar rounds from a residential area in "DPR"-controlled Horlivka where the SMM had also observed two sets of fresh tracks indicating that the weapons had moved from a nearby industrial complex with large storage facilities to a potential firing position, then back to the storage area.	OSCE, 'Hardship for conflict-affected civilians in eastern Ukraine' < <a href="http://www.osce.org/Ukraine-smm/300276?download=true">http://www.osce.org/Ukraine-smm/300276?download=true</a> > Accessed 26 July 2017
Mykytivka in Horlivka school shelling	9-10 July 2016	20 local residents shelled while hiding in school	On the night of 9-10 July 2016, a school in Sakhanka, School No. 84 in Mykytivka in Horlivka, and School No. 7 in Horlivka were damaged by shelling. At the time, approximately 20 local residents were hiding in the basement of School No. 84 in Mykytivka. When visiting the schools in late July 2016, OHCHR did not observe any arms or fighters inside the buildings or in their vicinity.	OHCHR, 'Report on the human rights situation in Ukraine 16 May to 15 August 2016' < <a href="http://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf">http://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf</a> > Accessed 25 July 2017
Makiivka, Dokuchaievsk and Marinka School Shelling	13-14 September 2016 to 4 October 2016	Unrecorded	Schools and educational facilities in the conflict zone continue to be damaged in shelling and exchanges of fire. Between 13 and 14 September, two schools in territory under 'Donetsk people's republic'-control were hit: School No. 44 in Makiivka was shelled, and bullets from small arms hit School No. 3 in Dokuchaievsk during the school day. On 4 October, School No. 2 in Government-controlled Marinka was shelled. The following day, on 5 October, schools No. 77, and kindergarten No. 154 suffered damage from a nearby explosion.	OHCHR, 'Report on the Human Rights Situation in Ukraine 16 August to 15 November 2016' < <a href="http://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf">http://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf</a> > Accessed 19 July 2017
Donetsk Water and heating cut from shelling	Feb-17	1 million residents affected	Around 1 million people in areas of Donetsk City outside Government control were left without water or heat for 24 hours following the shelling, which had damaged electricity and water systems, generating a "knock-on" effect on the heating supply. Temperatures were frigid, with civilians facing -20 degrees Celsius without adequate shelter, heat or access to water — all essential for survival.	United Nations, 'Thousands of Civilians Risk Losing Access to Basic Necessities as Fighting Escalates in Eastern Ukraine, Security Council Told' < <a href="https://www.un.org/press/en/2017/sc12704.doc.htm">https://www.un.org/press/en/2017/sc12704.doc.htm</a> > Accessed 26 July 2017
Maiorsk checkpoint shelling with civilians queuing nearby	27-Oct-16	No casualties reported	On 27 October, the Maiorsk checkpoint was closed due to ongoing mortar shelling and exchanges of fire and in the evening another entry-exit checkpoint in Marinka was targeted by small arms fire and automatic grenade launcher. The same checkpoint was shelled on the night of 8 November, while civilians were queuing nearby. No casualties were reported.	OHCHR, 'Report on the Human Rights Situation in Ukraine 16 August to 15 November 2016' < <a href="http://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf">http://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf</a> > Accessed 19 July 2017

<p>Water supply to Toretsk; Gas supply to Marijinka and Krasnohorivka</p>	<p>22-Nov-16</p>	<p>40,000 residents left with no access to water for 10 days; 15,000 residents left with no central gas supply for two years.</p>	<p>On 22 November 2016, damage to a water pipeline running through the 'no-man's land' left 40,000 residents of the Government-controlled town of Toretsk with no access to water for 10 days. Exchange of fire between Government forces in Avdiivka and the DPR armed groups in Yasynuvata repeatedly disrupted the services of the Donetsk Filter Station which serves 345,000 people on both sides of the contact line. Also, continuous shelling has obstructed the restoration of gas supplies for about 15,000 people living in the Government-controlled Marijinka and Krasnohorivka. The gas supply to the two towns stopped more than two years ago due to shelling damage.</p>	<p>OHCHR, 'Report on the human rights situation in Ukraine 16 November 2016 to 15 February 2017' &lt;<a href="http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf">http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf</a>&gt;</p>
<p>Donetsk indiscriminate shelling power and water supply cut</p>	<p>January and February 2017</p>	<p>1.1 million residents deprived of water</p>	<p>In Donetsk region, shelling in January and February 2017 cut off the power supply to four water filtration stations and damaged water pipes, depriving 1.1 million residents on both sides of the contact line of access to water for periods of between one and three days, and compromised the sustainable supply of clean water to Mariupol city.</p>	<p>OHCHR, 'Report on the human rights situation in Ukraine 16 November 2016 to 15 February 2017' &lt;<a href="http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf">http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf</a>&gt;</p>
<p>Donetsk Filtration System shelling and Mariupol water supply</p>	<p>January 2017 -</p>	<p>795,000 civilians dependent on water facilities</p>	<p>Indiscriminate shelling and the presence of Ukrainian Armed Forces and armed groups near water facilities in Donetsk region continued to have a detrimental impact on the supply of water on both sides of the contact line. The Donetsk Filtration Station, which serves 345,000 people<sup>1</sup> in Avdiivka, Yasynuvata and parts of Donetsk, stopped operations six times during the reporting period due to renewed shelling and resulting damage. Each such incident resulted in water supply interruptions on both sides of the contact line and threatened the life and physical integrity of employees. Mariupol, where nearly 450,000 people currently reside, has been receiving insufficient water and relying on a natural back-up reservoir since January 2017 due to damage to the South Donbas water pipeline. Another concern is shelling in the vicinity of the First Lift Pumping Station of the South Donbas water pipeline. This facility is an essential part of water infrastructure as it supplies raw water to five filtration stations which, in turn, process water for over one million people living on both sides of the contact line, from Mariupol in the south to the northwestern border of Donetsk region.</p>	<p>OHCHR, 'Report on the human rights situation in Ukraine 16 February to 15 May 2017' &lt;<a href="http://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf">http://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf</a>&gt; Accessed 24 July 2017</p>

Dolomitne projectile home destruction	10-Apr-17	Elderly couple's home hit by projectile	<p>On 10 April, in Dolomitne, where OHCHR observed the presence of armed groups close to residential houses, the home of an elderly couple was hit by a projectile and burned down. When visiting shelled areas in territory controlled by armed groups, OHCHR often noted fresh traces of heavy vehicles, indicating the recent presence of armed formations.</p>	<p>OHCHR, 'Report on the human rights situation in Ukraine 16 February to 15 May 2017' &lt;<a href="http://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf">http://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf</a>&gt; Accessed 24 July 2017</p>
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## 4.12 Conclusion

172. The Authors have documented evidence of 134 episodes, which took place in 22 settlements on or in the vicinity of the 'contact line' between the UAF and separatist forces (DPR and LPR). The attacks resulted in at least 100 civilian deaths, 162 civilian injuries and hundreds of cases of total or partial destruction to civilian dwellings and vital infrastructure.
173. Using the ICC Statute, ICC Elements of Crimes and applicable jurisprudence, the Authors have determined that evidence supporting these attacks supports a reasonable basis to believe that the attacks amount to war crimes under Article 8 of the ICC Statute – either as attacks intentionally directed against the civilians and/or civilian objects (Article 8(2)(b)(i)/(ii) or Article 8(2)(e)(i) of the ICC Statute), or as attacks launched against military objectives that lack of proportionality between anticipated incidental harm to civilians/civilian objects/ the environment and the military advantage sought (in violation of Article 8(2)(b)(iv) of the ICC Statute). Furthermore, a large number of attacks were directed at medical and educational facilities, which amounts to a separate crime under Article 8(2)(b)(ix) or Article 8(2)(e)(iv) of the ICC Statute.
174. The Authors respectfully request the ICC Prosecutor to launch a full investigation into all of the above-documented episodes, with the view of bringing those responsible to justice.

## 5. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations

175. The Authors have documented the recurrent practice – perpetrated by all parties to the conflict – of positioning artillery launch sites, military equipment and/or personnel in close proximity to civilians and civilian objects. In so doing, the warring parties place civilians in serious danger of death and injury as well as risking the destruction or severe damage to civilian dwellings and important infrastructure – in violation of the principle of distinction. Using the civilian population as ‘human shields’ in this manner to render certain points, areas or military forces immune from military operations is a war crime under the ICC statute in both IAC, and indirectly in NIAC. The Authors respectfully request the ICC prosecutor to investigate this practice with the view of bringing those responsible to account.

### 5.1 Analytical framework

176. Using civilians as ‘human shields’ to prevent attacks against military objects is a serious violation of the Geneva Conventions<sup>374</sup> and amounts to a war crime under Article 8(2)(b)(xxiii) of the ICC Statute (in IAC). According to the ICC Elements of Crimes, the prosecution must establish that the perpetrator ‘moved or otherwise took advantage of the location of one or more civilians or other [protected] persons [intending] to shield a military objective from attack or shield, favour or impede military operations’.<sup>375</sup> This definition is wide enough to include displacing civilians to military installations, as well as the placement of military equipment and personnel at or in close proximity to civilian objects and/or densely populated civilian areas. What distance qualifies as ‘close proximity’ for the purpose of this offence is a question of fact to be decided on a case-by-case basis. Important factors to consider include the types and known accuracy of weapons used by the warring parties, the parties’ access to information on the presence and concentration of civilians, and their practical ability to position military objectives in alternative locations.

177. There is no requirement to show that actual harm was caused to the civilians in question. According to the ICTY Appeals Chamber in *Prosecutor v. Blaskic*:

*‘Using protected [persons] as human shields constitutes a violation of the provisions of the Geneva Conventions regardless of whether those human shields were actually attacked or harmed. Indeed, the prohibition is designed to protect [protected persons] from being exposed to the risk of harm, and not only to the harm itself.’<sup>376</sup>*

178. Notwithstanding that the ICC Statute does not explicitly include an equivalent offence in NIAC, the overriding principle of distinction dictates that ‘the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations’.<sup>377</sup> Accordingly, the ICRC considers the prohibition against using civilians and protected persons as human shields to be applicable in NIAC by virtue of customary international law.<sup>378</sup> The ICTY Appeals Chamber in *Blaskic* agreed with this assessment and determined that using protected persons as human shields amounts to the war crime of inhuman or

374 Article 23 of Third Geneva Convention; Article 28 of Fourth Geneva Convention; Article 51(7) of Additional Protocol I to the Geneva Conventions.

375 ICC Elements of Crimes, Article 8(2)(b)(xxxiii): War crime of using protected persons as shields.

376 ICTY, *The Prosecutor v. Blaskic*, Appeal Judgement, IT-95-14, 29 July 2004, para. 654.

377 Article 13(1) of additional Protocol II to the Geneva Conventions.

378 ICRC, ‘Rule 97. Human Shields’, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule97](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule97) (last accessed: 16/11/2017).

cruel treatment in NIAC.<sup>379</sup> Accordingly, the Authors respectfully submit that using the civilian population as ‘human shields’ to render certain points, areas or military forces immune from military operations is a war crime in NIAC under Article 8(2)(c)(i) of the ICC Statute.

## 5.2 Documented evidence of utilising civilians as ‘human shields’

179. The Authors have documented evidence that all parties to the conflict – UAF, pro-Ukraine paramilitaries, LPR and DPR forces – have regularly placed military equipment and/or personnel on or in the vicinity of civilian objects and in densely populated civilian areas.

180. Our findings are mirrored by those of OSCE monitors who have observed ‘weapons in populated areas and observed outgoing fire from populated areas’ controlled UAF, DPR and LPR.<sup>380</sup>

181. The Authors note that the following instances of using civilians as ‘human shields’ is likely to amount to the mere ‘tip of the iceberg’ in what appears to be a widespread practice:

- On 2 June 2014, a group of LPR combatants attacked a Ukrainian border post in Luhansk City from the roofs of surrounding civilian multi-story residences with civilians still present in the buildings.<sup>381</sup> The assault lasted for two days.<sup>382</sup>
- On 30 October 2014, the UAF positioned a military base on the premises of a school in Krasnohorivka (Ln 218) for several months, leading to the school’s partial destruction.<sup>383</sup>
- In November 2014, LPR forces stationed in Luhansk City positioned and fired their MLRS ‘Grad’ missiles 150 meters away from the densely populated Kamyanyi Brid district of Luhansk.<sup>384, 385</sup>
- On 2 January 2015, the pro-Ukraine ‘Tornado’ paramilitary battalion established a camp and firing position at a civilian clinic in Stanytsia Luhanska,<sup>386</sup> depriving it of its protected status. The clinic was subsequently shelled by the LPR.<sup>387</sup>
- On 5 June 2015, UAF used the premises of a school in Marjinka (Ln 238) to repel an attack by DPR forces.<sup>388</sup>
- On 23 August 2016, a school in Marjinka (Ln 238) was partially damaged in an attack by DPR forces on a UAF checkpoint (Ln 239) positioned 100 meters away.<sup>389</sup>

379 CTY, *The Prosecutor v. Blaskic*, Appeal Judgement, IT-95-14, 29 July 2004, para. 653.

380 OSCE, ‘Thematic Report: Hardship for conflict-affected civilians in eastern Ukraine’, February 2017, available at: <http://www.osce.org/ukraine-smm/300276?download=true> (last accessed: 27/11/2017), p.4.

381 Geolocation coordinates: 48031’28” N 39015’25” E

382 Witness Statements: 0205K844, 0204K808, 0205K828, 0205K836, 0205K845, 0205K847, 0205K827.

383 Witness statement: 0138K938. Photos [folder ‘Школа 4’] - show damage to civilian property. Videos in folder “видео последствий обстрелов” [V60815-160739.mp4, V60815-165010.mp4, V60815-165425.mp4] - show damage to property of school.

384 Geolocation coordinates: 48035’28” N 39016’37” E ; Witness statement: 0204K817

385 Add geolocation coordinates; Witness Statement: 0221K900. Video [IMG\_1626.MOV] - shows damage to civilian property.

386 Geolocation coordinates: 48039’16” N 39028’30” E

387 Witness statement: 0204K811, 0204K821; Photos and videos: Case file: SL 4th november > торнадо амбулатория, обстрел амбулатории, подвалы амбулатории.

388 Witness statement: 0134K1016; 0134K953; N003K1064; N003K1065.

389 Witness statements: 0134K953.

- On 13 January 2017, an attack on a UAF base in Novoselivka positioned 100 meters away from a block of civilian houses led to extensive damage to civilian property (Ln 103).<sup>390</sup>

182. Moreover, civilian lives and infrastructure are not only threatened by permanent or semi-permanent military installations such as military quarters, bases, checkpoints and stationary launch sites. As observed by the OSCE, ‘civilians have reported that the shelling occurred overnight and that they often saw equipment brought in for these purposes, or that members of “DPR” and “LPR” armed formations had approached them requesting to use the roofs of their houses as firing positions’ (with similar situations reported on territory controlled by the UAF).<sup>391</sup>

## 5.3 Conclusion

183. As demonstrated by the examples above, the practice of placing military objectives (personnel, equipment and/or firing positions) on civilian premises or amongst the civilian population has been perpetrated by all warring parties throughout the entire period of documentation. The Authors note that the above-mentioned examples are but a small sample of the practice of using human shields, which appears to be ubiquitous.

184. Such practices unnecessarily endanger civilian lives and infrastructure – exposing them to indiscriminate attacks, particularly in light of the inaccurate nature of the weapons deployed by all sides. Moreover, the presence of armed positions in populated areas increases other risks and hardships for civilians. As pointed out by the OSCE, ‘[o]n both sides of the contact line residents have complained of being harassed by members of the sides, and have made allegations about their misconduct while under the influence of alcohol and their bad behaviour towards the local population’.<sup>392</sup>

185. The Authors respectfully submit that there is a reasonable basis to believe that placing military equipment and/or personnel on or in the vicinity of civilian objects and in densely populated civilian areas qualifies as the war crime of using civilians as human shields (Article 8(2)(b)(xxiii) of the ICC Statute in IAC), or in the alternative, as inhuman or cruel treatment (Article 8(2)(c)(i) of the ICC Statute in NIAC). Consequently, the Authors respectfully request the ICC Prosecutor to investigate all such instances with the view of prosecuting those responsible.

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390 Witness statement: 0258K923; Videos and photos [IMG\_1620.MOV, IMG\_1621.MOV, WP\_20170227\_15\_06\_52\_Pro.jpg ] - show damage to civilian property.

391 OSCE, ‘Thematic Report: Hardship for conflict-affected civilians in eastern Ukraine’, February 2017, available at: <http://www.osce.org/ukraine-smm/300276?download=true> (last accessed: 27/11/2017), p.4.

392 OSCE, ‘Thematic Report: Hardship for conflict-affected civilians in eastern Ukraine’, February 2017, available at: <http://www.osce.org/ukraine-smm/300276?download=true> (last accessed: 27/11/2017), p.5.

## 6. Conclusion and request

186. For the purpose of this Report, the Authors conducted 24 field missions to the 43 settlements in conflict-affected areas, interviewing 297 witnesses and documenting 208 impact sites. Using the gathered evidence, as well as information obtained from other organisations, the Authors have applied the ICC Statute, ICC Elements of Crimes and applicable jurisprudence to conclude that there is a reasonable basis to believe the following findings:

- That from June to September 2014, the Armed Forces of the Russian Federation attacked Ukrainian settlements and military positions on the territory of Ukraine, in a series of cross-border attacks. These attacks demonstrate Russian involvement in the conflict, rendering the conflict, at least in part, an international armed conflict for the purposes of the ICC Statute.
- That at least 134 attacks on civilians and/or civilian objects taking place in 22 settlements may amount to war crimes as attacks intentionally directed at civilians under Article 8(2)(b)(i)/(ii) (in IAC) or Article 8(2)(e)(i) (in NIAC) or as indiscriminate attacks under Article 8(2)(b)(iv). In addition, some of these attacks may also amount to attacks intentionally launched at medical, educational and/or religious facilities under Article 8(2)(b)(ix) (in IAC) or Article 8(2)(e)(iv) (in NIAC).
- That all parties to the conflict have employed the practice of utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations, in violation of Article 8(2)(b)(xxiii) (in IAC) or Article 8(2)(c)(i) (in NIAC).

187. Documented attacks resulted in at least 100 civilian deaths, 162 civilian injuries and hundreds of cases of total or partial destruction to civilian dwellings and vital infrastructure. Moreover, behind every documented attack and civilian casualty is a human tragedy that demands accountability and justice. The conflict has resulted in more than 10,000 deaths, the displacement of 1.5 million civilians (including 220,000 children) and the immeasurable trauma of living within the boundaries of a protracted conflict. Attacks on civilians, whether intended or indiscriminate, contribute to the pain and suffering of civilians, as does the practice of placing military equipment and personnel in civilian areas.

188. For all of the above reasons, the Authors respectfully urge the ICC Prosecutor to seek authorisation to open a full investigation into the Situation on Ukraine, with a view to bringing those responsible for war crimes and crimes against humanity to justice.

