Where did the shells come from?

investigation of cross-border attacks in eastern Ukraine

IPHR International Partnership for Human Rights

NORWEGIAN HELSINKI COMMITTEE

УКРАЇНСЬКА ГЕЛЬСІНСЬКА СПІЛКА З ПРАВ ЛЮДИНИ

TRUTH HOUNDS

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Executive summary

This report presents an analysis of the attacks on villages in Luhansk province in eastern Ukraine in 2014 and evidence which indicates that these attacks prove that the conflict is of an international character as defined in Article 2 common to the Geneva Conventions of 1949. The report also presents detailed findings concerning violations of international humanitarian law and international criminal law which were perpetrated in the area in the summer of 2014.

The report investigates several incidents which occurred during the conflict in eastern Ukraine, which has lasted since 2014 and has resulted to date in at least 9371 deaths; countless injuries; widespread destruction and the illegal appropriation of property; incidents of arbitrary arrest and illegal imprisonment; inhuman treatment and torture; and the large-scale displacement of civilians.

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

Based on the evidence collected by its team, IPHR submits that there are reasonable grounds to believe that in the attacks on the villages of Kolesnykivka, Komyshne, Milove, Krasna Talivka, Dmytrivka and Pobeda in Luhansk province, fighters from the Russian federation illegally crossed the Ukrainian state border (which, in terms of the Commentary on the Geneva Conventions, amounts to intervention), and subsequently carried out attacks on military infrastructure, state border units and civilian objects (confirmed attacks on civilian objects took place in the villages of Kolesnykivka and Komyshne).

In the attacks on the settlements of Kolesnykivka, Komyshne, Milove and Pobeda in Luhansk province, the facts of cross-border shelling of Ukrainian territory have been established. Satellite images, eyewitness testimony and posts on social networks on the internet further confirm that the attacks originated from locations near to the military units of the Russian armed forces on the territory of the Russian Federation.

The attacks on Kolesnykivka and Komyshne villages can be qualified under Article 8 part 2(b)(iv) of the Rome Statute of the International Criminal Court as intentional attacks against civilian objects and attacks which caused excessive damage to the natural environment in relation to the concrete and direct overall military advantage. Such conclusions were reached after a detailed comparison of the material, mental and contextual elements of these attacks.

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

Investigations into the circumstances of the shelling of the villages bordering Russia in Luhansk province were also conducted by Bellingcat, an independent non-governmental group that uses combined investigation techniques for fact finding, as well as the Organization for Security and Cooperation in Europe (OSCE). The Bellingcat reports were based on the analysis of satellite images and posts on social networks. The OSCE reports were based on data

received from their observers situated in the region. This report compliments this available data with information from witness testimonies.

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

Sources of information and methodology of documentation

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

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

Background of the conflict

After the annexation of Crimea by the Russian Federation, pro-Russian separatists began to try to take control of the industrial east, seizing government buildings in Donetsk, Luhansk, Kharkiv, Slovyansk, Horlivka and Kramatorsk in April 2014, and calling for a referendum on independence. In response to the increased number of Russian forces at the border, the newly elected Ukrainian authorities in Kyiv ordered an "anti-terrorist operation" and regained control of several rayons of Donetska and Luganska oblasts.

On 11 May 2014 pro-Russian separatists in the Donetsk and Luhansk regions held unrecognized referendums, declared independence as the Donetsk Peoples' Republic and the Luhansk Peoples' Republic, and drafted new constitutions. Fighting soon ensued throughout the east of the Donbas region that encompasses Luhansk and Donetsk. Casualties, including civilian casualties, began to mount.

On 17 July 2014 the civilian passenger jet Malasia Airlines flight MH17 en route from Amsterdam to Kuala Lumpur was shot down in rebel-held territory, claiming 298 lives.

Heavy fighting took place in and around Donetsk at the end of July 2014, with the Ukrainian government offensive making good progress. The cities of Sieverodonetsk, Lysychansk, Shakhtarsk, Popasnaya and smaller towns in the area were re-taken by government forces, isolating the insurgents in the centre of Donetsk and cutting off supply routes between the self-proclaimed Luhansk People's Republic (LPR) and Donetsk People's Republic (DPR). By 28 July, the strategic heights of Savur-Mohyla were under Ukrainian control, along with the town of Debaltseve, an important railroad hub connecting the self-proclaimed republics.

The Ukrainian army closed in on Luhansk and Donetsk on 3 August 2014, prompting Igor Girkin, insurgent commander for the DPR, to call openly for Russian military intervention. Intense fighting between insurgents and government forces continued around Donetsk in the first weeks of August, with cross-fire, heavy shelling and artillery causing dozens of civilian deaths and injuries, as well as damage to hospitals and residential buildings.

On 14 August, a convoy of some 20 armored personnel carriers and other vehicles with official Russian military plates reportedly entered Ukraine near the insurgent-controlled Izvaryne border crossing point. NATO Secretary General Anders Fogh Rasmussen called the incident a "Russian incursion" into Ukraine, while the Russian Defence Ministry denied the existence of any such convoy. By 19 August the Ukrainian Army had moved into the city of Luhansk and shelled the DPR headquarters in Donetsk.

Between 22 and 25 August Russian artillery, personnel, and what Russia called a "humanitarian convoy" were reported to have crossed the border into Ukrainian territory without the permission of the Ukrainian government. Crossings were reported to have occurred both in areas under the control of pro-Russian forces and areas that were not under their control, such as the south-eastern part of Donetsk Oblast, near the town of Novoazovsk

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

After days of peace talks in Minsk under the auspices of the Organization for Security and Co-operation in Europe (OSCE), Ukraine, Russia, the DPR, and the LPR agreed to a ceasefire on 5 September 2014. However, despite the ceasefire, heavy fighting continued across the Donbas region throughout October, causing numerous military and civilian casualties. On 24 January 2015 Grad rockets fired from rebel-controlled territory onto the residential district of Mariupol left more than 30 civilians dead and nearly 100 wounded.

Minsk II, the new package of peacemaking measures, was signed on 11 February 2015. However, despite the ceasefire the rebels continued their assault, attacking Mariupol. The rebels also attacked the headquarters of the government's anti-terrorist operation (ATO), located far outside the conflict zone, hitting residential districts and killing civilians in the process. Minor violations of the ceasefire continued throughout March and April, although the ceasefire was largely observed throughout the conflict zone. Both sides withdrew heavy weaponry from the frontline. However the fighting continued to occasionally break out from time to time.

Analysis of the shelling of villages in Luhansk province in summer 2014

Kolesnykivka and Komyshne settlements, Luhansk province, Ukraine

Yuhanivka, Kolesnykivka and Komyshne – Ukrainian settlements that were subjected to cross-border attacks in summer 2014

An IPHR field mission carried out a total of three visits to the villages Yuhanivka, Kolesnykivka and Komyshne, Luhansk province, Ukraine. The first trip took place between 6-15 September 2015, with the international monitoring group[1] and a report was published[2] on the findings which highlighted clear evidence that the villages were attacked from the territory of the Russian Federation. Two subsequent field missions found further evidence which confirmed these findings. During all three field missions testimonies were collected confirming the fact of shelling of the area of Kolesnykivka and Komyshne from 14 local residents and 12 Ukrainian soldiers with the border guards who served in the area in summer 2014. In addition to the testimonies, IPHR documented the locations and points of shelling by rocket and tube artillery and analyzed data from satellite images.

Based on the data collected we were able to recreate the sequence of events that took place in the area around the villages of Kolesnykivka and Komyshne in summer 2014.

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

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

On 2 June 2014, a Luhansk border guard unit was assaulted by separatists from the so-called LPR[3] and had to relocate personnel and military equipment to a field camp in a pine forest near the village of Kolesnykivka about 300 meters away from the nearest inhabited house[4]. Soon the camp was strengthened by consolidated border guard groups temporary relocated from other areas, volunteer battalions and units of the Ukrainian armed forces. Over the summer of 2014 the total number of combatants in the camp reached approximately 300. The Ukrainian military was also present at two other locations in the area: at the border position "Mountain"[5] and the checkpoint on the road leading to Nyzhnia Vilhova[6].

In the summer of 2014, the only part of the Russian-Ukrainian border in the Luhansk province controlled by Ukraine was by the "Illinka" railway crossing[7]. The demarcation line between Ukraine and so called LPR followed the river Siversky Donets[8].

Shelling of the field camp started in the first week of July 2014. At first, 82mm mortars were fired. According to testimony from the border guards, the attackers' firing positions were located on the territory of Ukraine a few dozen meters from the border with Russia. Traces of the installation of six mortar plates were found on the shore of the Derkul river, where a steel cable had been run through the river[9]. The shelling intensified and by August 2014 Ukrainian military positions and the villages of Kolesnykivka and Komyshne and summer houses in Yuhanivka were being shelled

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

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

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

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

7 (48°38'26.13»N 39°41'39.12»E)

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

9 Witness statements: 0205K867, 0205K831

almost daily. According to local residents[10] and testimonies from soldiers of the border guards[11] the perpetrators' artillery was located on the territory of the Russian Federation south of the village of Manotskyy at a distance of approximately 500-1000 meters from the border. Each time before the shelling started military equipment was driven forward into position. Specific sounds could be heard and a dust cloud was visible when this happened. Shelling began in the evenings. During the shelling witnesses heard sounds and saw flashes from the shots of the multiple rocket launcher -launcher system (hereinafter MRLS). After the shelling, the equipment was driven back.[12] Later that summer the firing positions relocated deeper into Russian territory.[13] Satellite images from Google Earth, taken on 6 September 2014, clearly captured numerous traces of truck movements and U-turns south of Manotskyy (in the Russian Federation).[14] These pictures were compared to images taken before the start of the intense shelling. For instance the images of the same area from 17 July 2014 do not display any such traces.

Comparison of satellite images of the area to the south from Manotskyy village (Russian Federation) on 17 July 2014 (left) and 6 September 2014 (right). The right picture shows clearly visible traces of truck movements and U-turns.

IPHR obtained a detailed description of the shelling which took place during the night of 23 July 2014, when tube and reactive artillery systems were used particularly intensively. As a result of the shelling, witness 0205K855's [15] house was completely destroyed, and the witness suffered a brain contusion. Buildings and other property in Kolesnykivka was also damaged and the forest near the village was set on fire.[16] Also, on 2 August 2014 the camp at the "Mountain" position and the checkpoint were shelled intensively resulting in the deaths of four border guards.[17] The shelling stopped on 5 September 2014 - the day of the truce, in accordance with the first protocol of Minsk agreements.[18]

According to information obtained from the state administrations in the three villages 29 houses were damaged in total, two of which were completely destroyed and irreparable, five were significantly damaged, while other buildings suffered broken windows or damaged roofs and structural damage.

The village most affected was Kolesnykivka. Although no civilians died as a result of the attack several civilians suffered shrapnel wounds. 13 border guard soldiers were killed and approximately 40 were wounded as a result of

10 Video evidence from IPHR database: Лето в Колесниковке в подвале под российскими градами, Timing: 01:00-02:00
11 Witness statements: 0205K828
12 Witness statements: 0205K828, 0205K833, 0205K827; Video evidence from IPHR database: Лето в Колесниковке в подвале под российскими градами
13 Video evidence from IPHR database: Лето в Колесниковке в подвале под российскими градами
14 Points: 48°39'4.34»N; 39°43'45.35»E та 48°39'19.89»N; 39°44'14.88»E
15 Witness statements: 0205K855; Video evidence from IPHR database: 150910_Kolesnikovka7_ul. Peschanaya_13_intervyu; 150910_Kolesnikovka70_ul. Peschanaya_4_voronka
16 Video evidence from IPHR database: «Лето в Колесниковке в подвале под российскими градами», timing: 05:00-15:00
17 Witness statements: 0205K844
18 Permanent link: ***http://www.osce.org/ru/home/123807?download=true***

artillery shelling and battles with secret subversive groups in the region.[19]

Local residents[20] and border guards testified that prior to and during the shellings they observed drones flying above the terrain in question. These drones were reported to have flown out from and returned to the territory of the Russian Federation. The border guards stationed at "Mountain" position testified that the drones were launched from the outskirts of the Manotskyy settlement (in the Russian Federation) by people who had arrived there in a white van and a black SUV.[21] Several witnesses also stated that the border of Ukraine was illegally crossed by Mi-24 and Mi-8 fully-armed military helicopters bearing military identification marks of the Russian Federation. They flew two kilometers into Ukraine and then flew away.[22] Other testimonies relate to border infringement by groups of armed fighters who engaged with Ukrainian border guards and returned to the territory of Russian Federation afterwards.[23]

Photo of the crater created as a result of MLRS "Grad BM-21" explosion in the area of Yuhanivka and Kolesnykivka (coordinates 48.671845 39.699222) collected by IPHR team.

During the inspection of shelling sites, the field missions identified and documented several craters caused by artillery ammunition. One of the craters was located in a suburban area between Yuhanivka and Kolesnykivka [24] and was well preserved, which made it possible to determine that it was made by MLRS BM-21 "Grad" shell fired from the territory of the Russian Federation (azimuth 120°).[25] Many buildings in this suburban area were completely destroyed by the shelling. The owner of a house in Kolesnykivka[26] showed members of the field mission a projectile "Grad" in the garden near his house. An elongated crater stretched from east to west and the remains of the shell

19 Witness statements: 0205K844
20 Video evidence from IPHR database: "Лето в Колесниковке в подвале под российскими градами", timing: 02:00-03:00
21 Witness statements: 0205K828; Photo evidence: map written by the witness 0205K828
22 Witness statements: 0205K828, 0205K829
23 Witness statements: 0205K844, 0205K842
24 (coordinates 48.671845 39.699222)
25 Video evidence from IPHR database: VID_20150910_105723
26 Witness statement: 0205K856-2

tilted to the southeast.[27] The field mission also documented an unexploded howitzer shell (122-mm caliber)[28] and an unexploded MLRS BM-21 "Grad" shell sticking vertically out of the ground.[29]

Ukrainian military field camp in Kolesnykivka with numerous visible craters of artillery shells explosions captured by Google Earth.

Google Earth images from 6 September 2014 demonstrate that near to the village of Kolesnykivka there are at least 150 craters from artillery shells, most of them concentrated in the area of the field camp. At the "Mountain" outpost where the border guards were based there are at least 70 craters. Several dozen craters can be seen at the checkpoint. Based on the satellite images of the craters, we can conclude that the camp was shelled with different types of artillery, but that the "Mountain" outpost and the checkpoint were shelled mostly with the same caliber artillery. These conclusions are confirmed by the testimonies from local residents and border guards.[30] In addition, the images of the craters show that the camp was shelled from one direction - the southeast (azimuth 120°). Located along the approximate line of shelling 3.6 km from the craters made by the exploding shells is the area south of Manotskyy (Russian Federation) where numerous traces of military equipment are visible.

Further analysis of the satellite images from Tarasovskiy district in the Rostov region (Russian Federation) taken in summer 2014 made it possible to identify a military camp and artillery positions near the Ukrainian border. In the area around the point 48°38'10.88"N, 39°44'53.72"E taken on 6 September 2014 a fortified camp can be seen, and a large number of tracks indicate active movement and maneuvering of equipment. The images from 26 May 2014, show no such tracks.

A second, larger military camp is located to the east from the village of Duby, 12 km from Ukrainian border.[31] Satellite images from 6 September 2014 show substantial amounts of military equipment.

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27 Video evidence from IPHR database: VID_20150910_104635
28 In point (48°40'25.76»N; 39°41'35.02»E)
29 In point (48°40'24.59»N; 39°41'43.86»E)
30 Witness statement: 0205K828; Video evidence from IPHR database: "Лето в Колесниковке в подвале под российскими градами"
31 48°38'16.70»N; 39°53'0.84»E

Tentative direction of artillery shelling of the Ukrainian military camp in Kolesnykivka area.

Over 40 covered trucks are seen parked in the camp. Four pieces of equipment are in open areas, a few are on the edge of the forest to the south of the camp. To the east of the camp, in the fields across the road, military equipment and tents are visible. The photo from 25 July 2014 shows four units of self-propelled artillery near the camp[32], most likely 2S19 "Msta-S" with the barrel of the self-propelled artillery (hereinafter SPA) directed towards the village of Herasymivka in Ukraine. The distance between this position and the border with Ukraine along the direction of artillery barrel is 18.5 kilometres. The maximum shooting range of the "Msta-S" is 25 km [33]. Some 200 metres south-southwest of the SPA eight military vehicles are visible, four of which are likely to have been MRLS. Their launchers face in the same direction as the barrel of the SPA. On photos taken by employees of the Russian Federation army, geotagged to the area of the second camp[34] and posted on social media a battery of self-propelled 2S19 "Msta-S" howitzers is easily visible in the background. Furthermore, the images from 6 September 2014 show a column of military vehicles[35] and a military helicopter in flight.[36] According to tower location, dimensions and length of the SPA barrels, we can conclude that the column consisted of self-propelled artillery of the type SPA 2S3 "Acacia".

Another Russian artillery position was located 4 km southwest of the small village of Patronivka.[37] The size of the vehicles and length of the barrels on the image suggest that it is of type 2S19 "Msta-S". The barrels face Ukraine in the direction of the villages of Makarovo and Stanytsia Luhanska. Numerous similar traces of the military vehicles represent repeated firing of batteries on these positions, which are situated at 1.3km from the Ukrainian border.

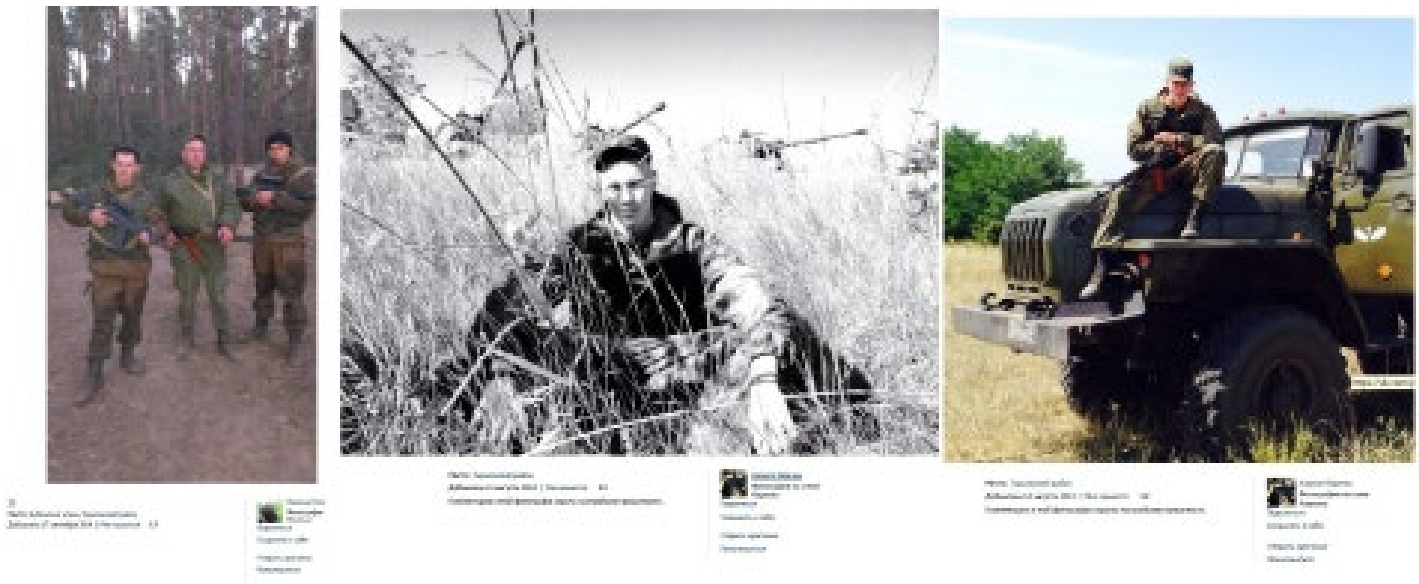
An analysis of posts on social networks demonstrated that some of the pictures posted at the time of the events and geotagged to the area belong to accounts of soldiers located in Tarasivskiy area of the Rostov region of the Russian Federation. The soldiers who were in the Tarasivskiy area in the summer and autumn of 2014 were serving in military unit (hereinafter m/u) 30683 (288th artillery brigade) and in m/u 43533 (681st regional training center for combat

32 48°38'13.86»N; 39°53'24.05»E
33 Permanent link: ***http://wartools.ru/sau-russia/sau-msta-s-2s19***
34 List of evidences: 0205_military_on_the_border
35 48°36'55.97»N 39°50'35.37»E
36 48°37'55.76»N 39°50'57.61»E
37 48°37'53.71»N 39°42'36.03»E; Picture GoogleEarth on 06.09.2014

Self-propelled artilleries with barrels directed towards Ukraine. Tarasovskyy district, Rostov region, Russia, 1.3 kilometers to the border with Ukraine. Screenshot of Google Earth on September 6, 2014

training of missile troops and artillery). Both units were located near Mulino city in the Nizhny Novgorod region of Russia. Photos from the area were also posted by soldiers of the m/u 64055 (electronic war-fare battalion), m/u 31135 (1st Mechanized Regiment of Taman Division), and m/u 31134 (15th Mechanized Regiment Kalininets of the Taman Division).[38]

Those images demonstrate that in summer 2014 a large number of Russian soldiers and significant amounts of equipment were situated in the Rostov region less than 15km from the border with Ukraine. They periodically moved forward to the border with Ukraine, it is likely that this was in order to conduct shelling of the territory of Ukraine.



Photos from social networks' profiles of soldiers of Russian regular army. Posted in summer 2014 and geotagged in Tarasovskyy district, Rostov region, Russia

38 List of evidences: 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).

Witnesses interviewed by members of the field missions also testified that the shelling positions situated near a tree farm by the village of Derkul (Russian Federation)[39], , and by the river Siversky Donets (the stretch of the river that runs through the Russian Federation) were used for MRLS BM-21 "Grad", which was used to shoot the military camp and village of Kolesnykivka.[40] Five MRLS BM-21 "Grad" were also situated to the west of the village of Parkhomenko (in Ukraine, on the territory of the so-called LPR). Regular shelling was conducted from this position.[41] The field mission confirmed the presence of shell craters near the village of Kolesnykivka, indicating a direction of fire from the south (azimuth measurements taken by members of field missions - 170 degrees[42] and 155 degrees[43]). The bearing (azimuth) of the village of Parkhomenko is - 173 degrees.

Tentative direction of LPRs' artillery shelling

One of the shells hit the south side of a house on Soniachna Street in Kolesnykivka.[44] Local residents testified that attacks from Russian territory were more accurate than those from LPR. The craters described above were caused by shells fired from a distance of not less than 1100 meters from the camp, which was likely to be the target. This information is supported by witness statements.

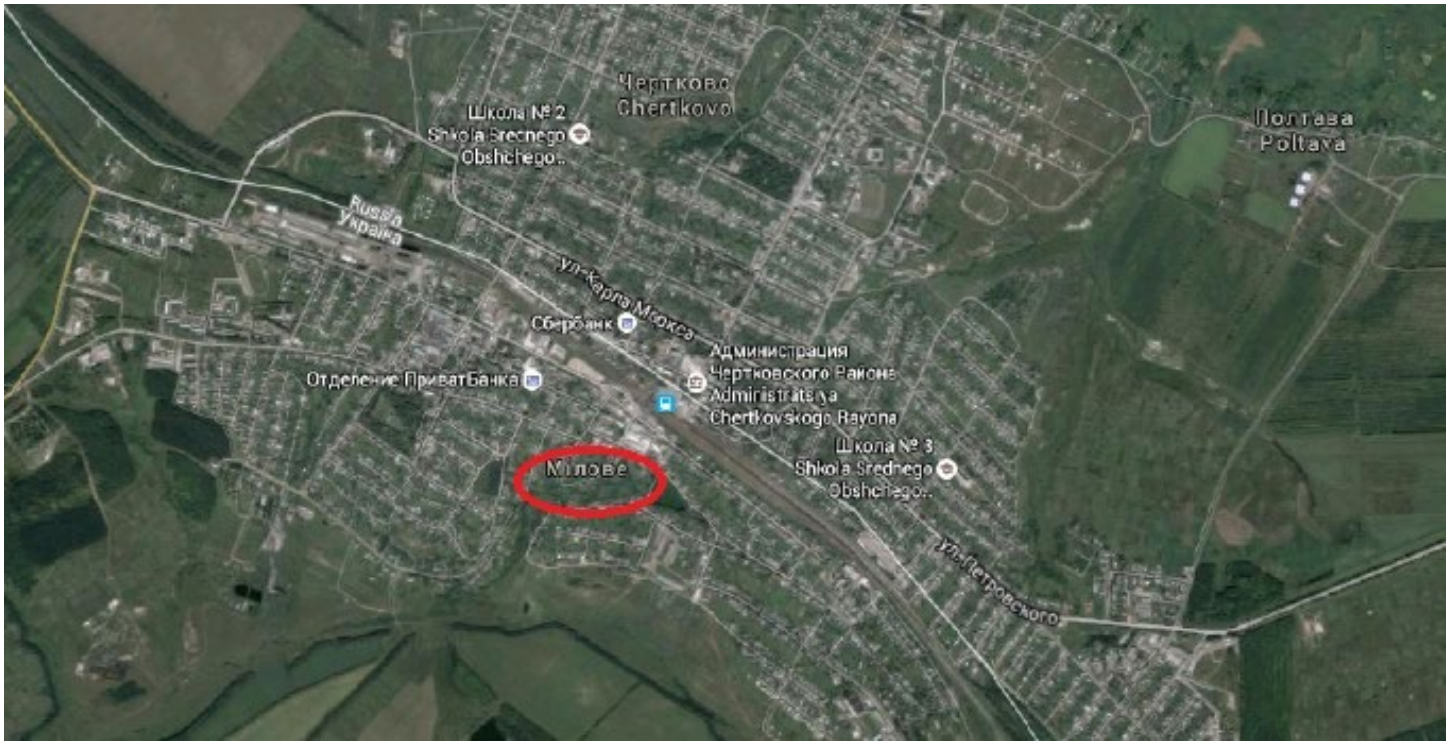
According to testimonies from local residents and border guards,[45] MRLS missiles launched from Russian territory were often directed at the villages of Makarovo, Nyzhnia Vilhova, Verhnia Vilhova, Harasymivka, Schastia in Ukraine.[46] One civilian from Kolesnykivka village, in whose yard several composite pipes of shells MLRS "Grad" were found, confirmed that he and his sister had witnessed the attack from Russia in the summer of 2014.[47] According to him, every time they heard a volley they hid in the cellar, but one time they did not have time to take shelter. When they ran out

39 Witness statements: 0205K827
40 Witness statements: 0205K828, Photo evidence from IPHR database: map drawn by the witness 0205K828, point «14» on the map (Annex 1)
41 Witness statements: 0205K845, 0205K828
42 Video evidence from IPHR database: VID_20151217_151725
43 Video evidence from IPHR database: VID_20151217_152235
44 Witness: 0205K868; Video evidence from IPHR database: VID_20151217_150410; VID_20151217_151208;
45 Witness statements: 0205K5845, 0205K831
46 Video evidence from IPHR database: "150909_Kolesnikovka20_dom1_intervyu 2.MOV"
47 Video evidence from IPHR database: "150909_Kolesnikovka20_dom1_intervyu 2.MOV"

of the house, he heard the sounds of "Grad" launch systems and saw flaming projectiles flying from the direction of the river Derkul. The man and his sister ducked down close to the wall of the house to shelter from the attack, and the projectiles flew above them. They remember the sound of shells shaking the walls of the house. The shells flew far into Ukrainian territory.

The above facts provide conclusive evidence that between July-August 2014 the Russian Federation shelled the positions of Ukrainian soldiers and civilian objects in the villages of Kolesnykivka and Komyshne from its territory, deploying tube and reactive artillery, causing death and injury to at least 13 Ukrainians, and destroying and damaging their property. Russia also used drones for reconnaissance purposes and to adjust fire targets and invaded Ukrainian airspace with military helicopters.

Milove Settlement, Luhansk province, Ukraine



Villages Melove (UA) and Chertkovo (RF) are essentially part of the same settlement. The border between two countries runs down "Druzhby Narodiv" street.

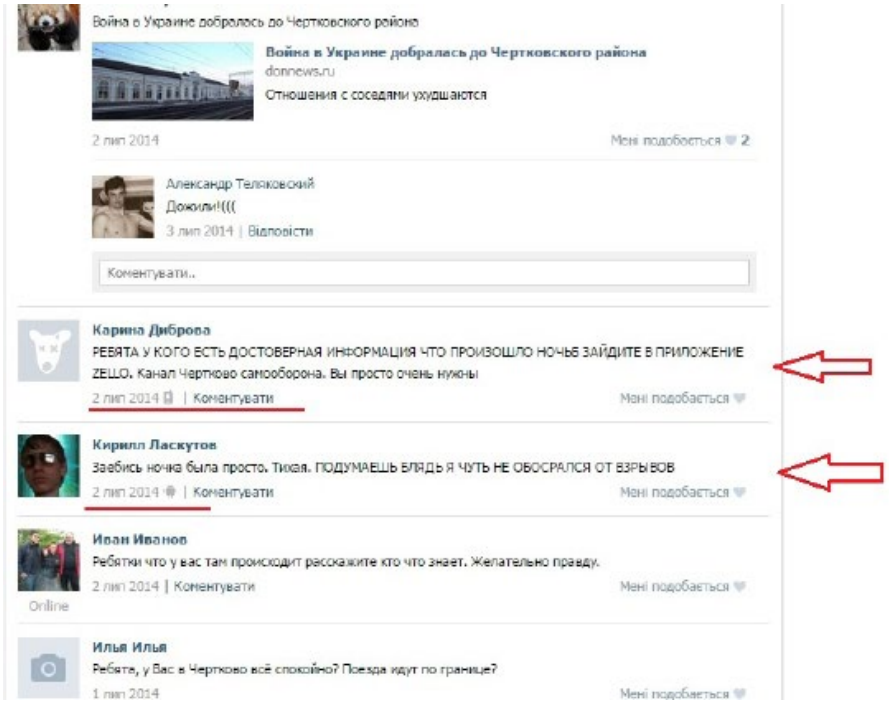
Milove is a village close to the Ukrainian-Russian border located in the far east of Ukraine and borders the Russian village of Chertkovo. In fact, those two villages are part of the same settlement - the border between two countries runs down "Druzhby Narodiv" street, which separates the settlement in two. During summer 2014 when the events described below took place, the areas not controlled by the government of Ukraine were at least 80 km from Milove. Currently the demarcation line is even further from the village. However, Ukrainian military facilities in this area were shelled in July and August 2014.

The first shelling occurred on the night of 1-2 July 2014.[48] The target of the attack was a unit of the Ukrainian Air Defence Force, located 1.5 kilometres from the border with the Russian Federation.[49] The shelling lasted from half past

48 Witness statement: 0205K849
49 Handwritten map by 0205K849 witness

midnight to 01:30 am. It was launched from the area of the village of Yasnoprominske (Ukraine) using two 82 mm mortars, which, judging by track traces (probably mortar plates) were moved to the firing position from the Russian Federation and transported back after the shelling.[50] Based on the number of mine caps found at the firing position site some 48 shots were fired.[51] The time between shots and explosions was no more than five seconds, indicating close-range fire.[52]

Several comments posted on the social network group "Chertkovo"[53] (Vkontakte) on 2 July 2014 confirmed the night-time shelling: One comment read: *"It was a peaceful night. Quiet. I nearly **** myself because of the explosions"*[54], and another: *"Guys if you've got credible info on what happened at night please get to the application ZELLO - Chertkovo self-defence channel. We really need you".*[55] Local media also published reports of the shelling.[56]



Screenshot of comments posted on the social network group "Chertkovo" (Vkontakte) on 2 July 2014

On 8 August 2014 at 03:30 am a border service department in Milove was shelled by RPO "Shmel" flamethrowers, and SPG and GP-25 grenades.[57] The first two shots from RPO "Shmel" were fired from a distance of 50 meters from the building of the border service department (Ukrainian territory) and hit the facade and the roof of a building facing the Russian Federation, followed by two more shells fired from a distance of 150 meters which also hit the roof.[58] Abandoned rocket launchers indicated the launch sites.[59] The SPGs were fired from the rooftop of an abandoned

50 Witness statement: 0205K833
51 Witness statement: 0205K835, 0205K849
52 Video evidence from IPHR database: "Звуки артподготовки под Украинским селом Меловое или Российским селом Чертково 2 ночи 02.07.14.mp4"
53 Permanent link to social network page: ***https://vk.com/p_chertkovo***
54 Photo evidence from IPHR database: "VK-4ertkovo.jpg"
55 Photo evidence from IPHR database: "VK-4ertkovo.jpg"
56 Permanent link: ***http://www.donnews.ru/Voyna-v-Ukraine-dobralas-do-Chertkovskogo-rayona_15960***
57 Witness statement: 0205K835
58 Witness statement: 0205K849
59 Photo evidence from IPHR database: "DSC_0337.jpg", "Двигатель ШМЕЛЯ.jpg", "Реактивний Двиг ШМЕЛЯ.jpg", "Реактивний двигатель Шмель.jpg", "Реактивний дигатель.jpg"

factory on Russian territory.[60] When the field mission visited the border service department the factory building had been pulled down but no other places were found from where the shells could have been launched, or where it would have been possible to install an SPG. There were several GP-25 hits on the garage of the border department facility.[61]

The shells completely burned the roof of the building, damaging the facade and the interior and breaking the windows.[62]

After the shelling, two or three "POM-2" antipersonnel fragmentation mines were found on the street near the fence of the border service department building.[63] One of them exploded at around 7:00 am and injured four guards.[64]

Immediately after the shelling of the border service building, at 4:00 to 4:30 am [65] the shelling of the air defence unit of Ukrainian Armed Forces by large-caliber artillery began.[66] There are two videos[67] of the attack available in open sources, filmed by a resident of Chertkovo from the roof of his house which is located near the school №3[68] (coordinates 49.375236, 40.162382). On the video car alarms and then a powerful explosive sound and after 27 seconds a remote explosive sound can be heard.[69] The second video captured three consecutive powerful explosive sounds, the last of which was preceded by a flash (15th second of video) and after 26 seconds three remote explosive sounds.[70] At that time the sun had not yet risen (sunrise was at 5:01), and the dawn was just visible to the northeast, meaning that the flash visible on the video was towards the east.[71] This is also supported by the fact that the person filming the video directed the camera to the east, from where the powerful sounds were heard. In addition, the video shows 1.2 seconds passing between the flash and the sound, meaning that if the flash was due to artillery shelling then its position was approximately 411 metres from the place where the video was shot.

It is thus possible to conclude that the shelling was carried out from the territory of the Russian Federation to the east of Chertkovo. This is also confirmed by witness testimony. One witness reports[72] hearing shelling coming from the direction of Mankovo-Kalytvenskoe.[73] Another local resident[74] told us that he heard from colleagues that the windows and fences of houses situated on the edge of the village of Poltava were broken by shots fired during the night.[75] The shelling lasted until 05:40 am.[76] In places shells left craters of about 2.5 metres in diameter and 1 metre deep.[77] The shelling also destroyed a Ukrainian military radar station.[78]

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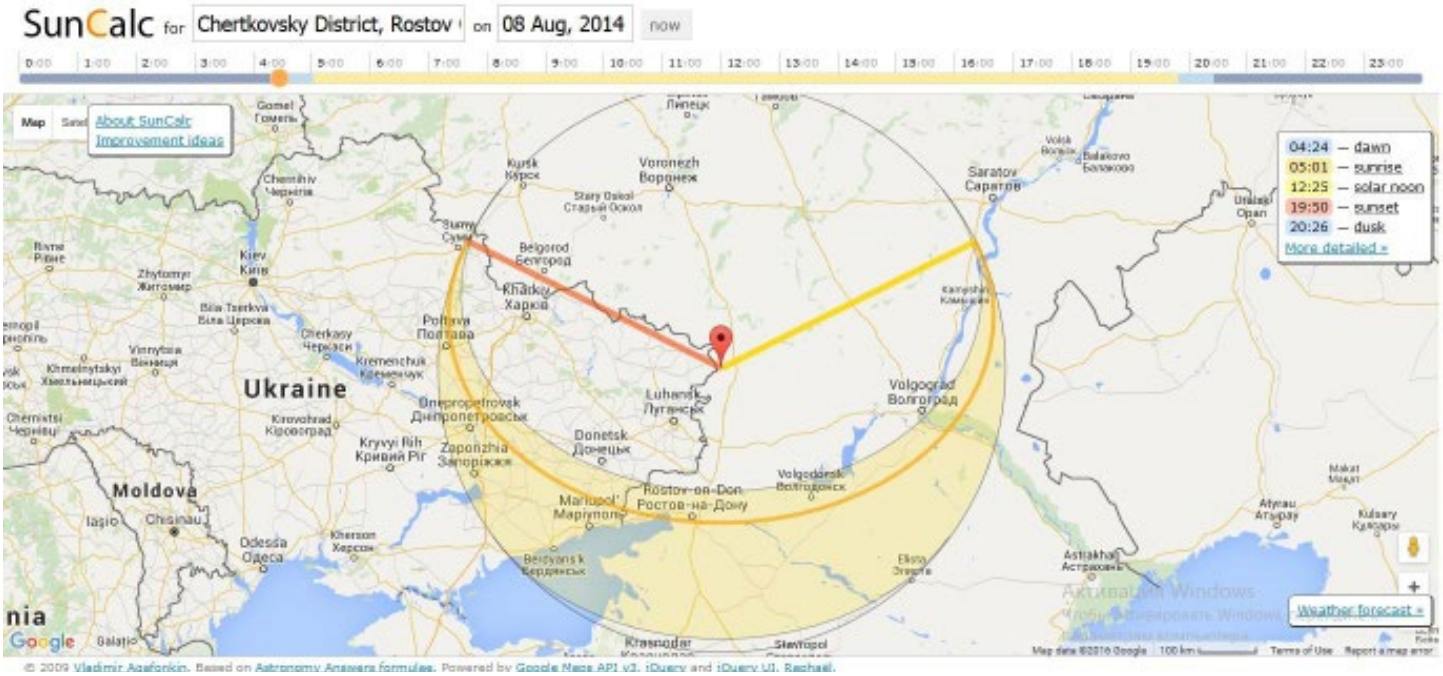
60 Witness statement: 0205K849
61 Witness statement: 0205K833; Video evidence: "VID_20160330_163417[1].3gp"
62 Photo and video evidence from IPHR database: group of photos and video collected by the field mission with a group name "фото здания + шмель и противопихотная мина"; Permanent link to videos from Open source: ***https://www.youtube.com/watch?v=vZO2zuJaZPw ; https://www.youtube.com/watch?v=rHzHRmMHId0***
63 Photo evidence from IPHR database: "DSC_0366.jpg", "Міна ПОМ-2.jpg", "ПОМ-2.jpg", "Противо-пехотная осколочная мина.jpg",
64 Witness statement: 0205K849
65 Photo evidence from IPHR database: "Shelling-time.jpg"
66 Video evidence from IPHR database: "Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014", "Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014 (1)"
67 Video evidence from IPHR database: "Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014", "Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014 (1)"
68 Photo evidence from IPHR database: "Location-shooting.jpg"
69 Video evidence from IPHR database: "Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014" (1)
70 Video evidence from IPHR database: "Стрельба и взрывы на границе рядом с Чертково-Меловое. 4 утра 08.08.2014"
71 Permanent link: ***http://suncalc.net/#/49.2957,40.3047,6/2014.08.08/04:28***
72 Witness statement: 0205K833
73 49.393316, 40.263309
74 Witness statement: 0205K849
75 49.387765, 40.177408
76 Photo evidence from IPHR database: "Shelling-time.jpg"
77 Witness statement: 0205K849
78 Witness statement: 0205K849



Sunlight phases during the day of August 8 at the location of Chertkovo. The same day and place where the video of artillery shelling was cut off

Analysis of evidence and findings from a field mission to Milove and to the border service unit led us to conclude that the attacks described above were committed with the use of hand carried weapons, artillery systems and mortars from the territory of the Russian Federation, by people who had illegally crossed the border with Ukraine and who returned to Russian territory after the attack.

Krasna Talivka settlement, Luhansk province, Ukraine

The village of Krasna Talivka is located in the Stanitsa Luhanska region of Luhansk province, Ukraine, and is surrounded on three sides by the border with the Russian Federation. Ukrainian-Russian border checkpoint and the border security department are situated in Krasna Talivka. The checkpoint is now closed. In summer 2014 the village was about 30 kilometres as the crow flies from the nearest battlefield.[79]

On 27 of June 2014 from 11:00 am to 14:00 pm the observation tower and the border guard station near Krasna Talivka were shelled by anti-tank missiles known as ПТРК in Russian (hereinafter "TOW") possibly fired by Russian troops from the Ukrainian side of the border.[80] Two shells were fired in the space of 10 minutes[81] with an action radius of 1.5 kilometres and after the shelling a witness[82] found long thin copper conductors leading in the direction of Russia. According to witness statements, after carrying out this shelling, Ukrainian border guards found the location of the intelligence group on the territory of Ukraine and their escape route back to Russian territory with the TOW weapon system.[83] The likelihood that fire was opened by separatist forces from so called LPR, or DPR is minimal given the long distance of Krasna Talivka from the separatist-controlled area. The shelling resulted in two border guard

79 Permanent link: ***http://korrespondent.net/ukraine/3412779-karta-ato-na-1-sentiabria***
80 Witness statement: 0205K839, 0205K840, 0205K838
81 Witness statement: 0205K838
82 Witness statement: 0205K839
83 Witness statement: 0205K839, 0205K838

fighters being wounded and the destruction of the observation tower and border guard post.[84] After the incident, Ukrainian border guards initiated negotiations with the Russian border guards in the city of Blagoveshchenskoe, but on the day of the meeting the Ukrainian delegates came under mortar fire organized in a similar fashion to the previous incident (shelling from Ukrainian territory and escape into Russian Federation).[85]

On 25 August 2014 the Ukrainian border team codenamed "Secret" (comprised of 3 combatants) was situated at point "Ghost" near the village of Krasna Talivka, Luhansk province, with the task of watching and protecting that segment of the border with the Russian Federation.[86] Point "Ghost" was situated on Ukrainian territory 3 kilometres from the border close to the village of Derkul (Russian Federation)[87] on the route from Krasnovka (Russian Federation) to Talove (Ukraine). At approximately 03:10 am, the "Secret" team were targeted in a surprise attack from Ukrainian territory by unknown fighters.[88] As a result of the attack two members of the "Secret" border team were killed and a third managed to call for help.[89]

At 03:25 am fighters from the border department in Krasna Talivka (11 combatants) came to rescue the "Secret" team but were ambushed by unknown fighters in the forest.[90] Groups were called to aid "Secret" – the border security team included fighters from Millerove (14 combatants), the Lviv motorised group (7 people)[91] and a group from Talove (4 people).[92] The fighting lasted for approximately 60 minutes.[93]

The unknown fighters fought professionally and forced some of the Ukrainian border servicemen to retreat to the forest.[94] At the same time, two MI-24 war helicopters and three BTR-82A armored transport vehicles (hereinafter ATC-BTR-82A) crossed the Ukrainian border from Russia.[95] According to witness statements, helicopters began patrolling the border from the Russian side at the end of winter 2014.[96] One witness reported that the heavy weapons came from the Russian Federation because there were no Ukrainian heavy vehicles in that part of the controlled territory.[97]

After the fighting ended Ukrainian fighters found two cartridges for a Kalashnikov machine gun, a sleeping bag with traces of blood, a C-ration produced in the RF, binoculars, a thermal imager, a cape with medicines from Pskov division at the site.[98]

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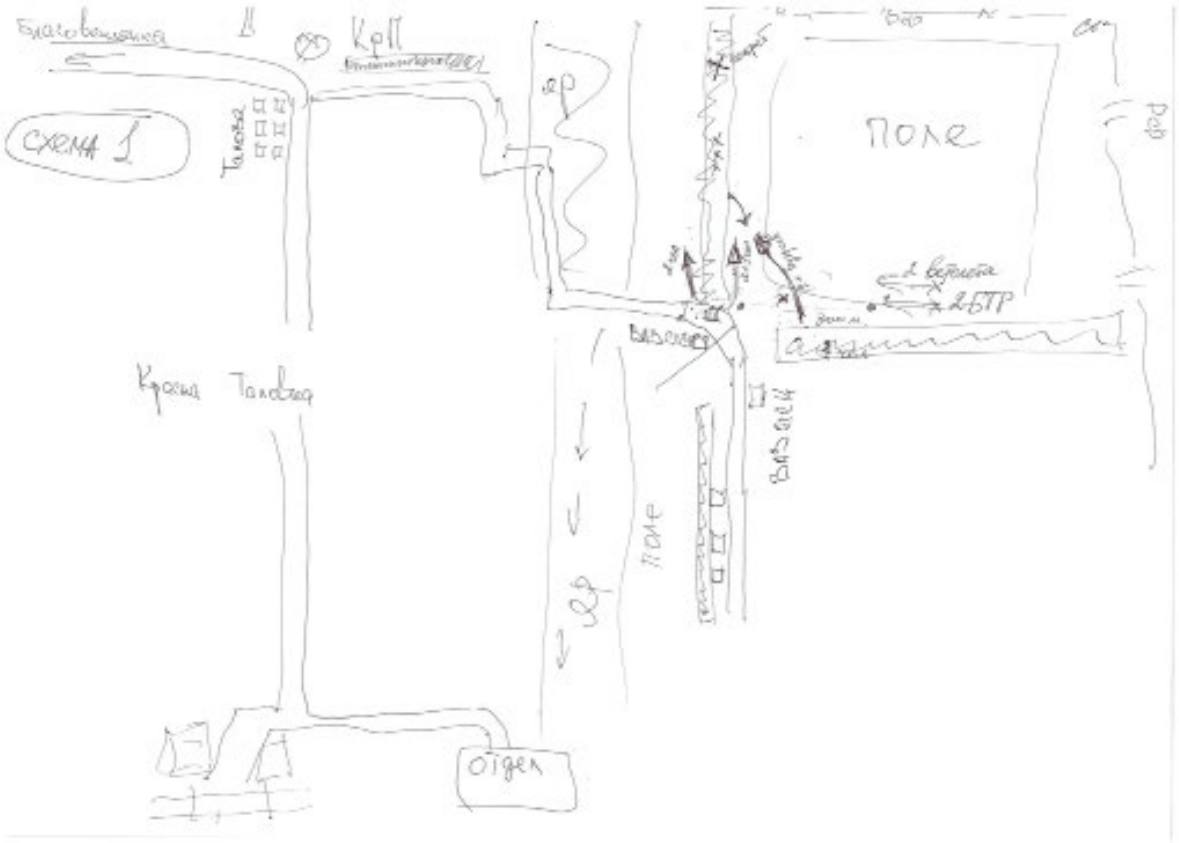
84 Witness statement: 0205K839,0205K840; Video evidence from IPHR database: VID_20160401_110843[1]; VID_20160401_113120[1]
85 Witness statement: 0205K838
86 Witness statement: 0205K839, 0205K840, 0205K838, 0205K834
87 Witness statement: 0205K834
88 Witness statement: 0205K839, 0205K840, 0205K838, 0205K834
89 Witness statement: 0205K834, 0205K839, 0205K840
90 Witness statement: 0205K834, 0205K839, 0205K838
91 Witness statement: 0205K834
92 Witness statement: 0205K838
93 Witness statement: 0205K834, 0205K839
94 Witness statement: 0205K834, 0205K838
95 Witness statement: 0205K834, 0205K838; Article "БТР 82А" фото новый бронетранспортер России, Permanent link: ***http://toparmy.ru/rossijskaya-armiya/novoe-rossijskoe-vooruzhenie/btr-82a-foto-novyj-bronetransporter-rossii.html***
96 Witness statement: 0205K840
97 Witness statement: 0205K839
98 Witness statement: 0205K834, 0205K840



Handwritten map of the battlefield in Krasna Talivka area made by 0205K838 witness.

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

In addition, one witness testified that in January 2015 he saw two combatants wearing Russian-style camouflage jackets at the "Ghost" point near Krasna Talivka. After being spotted by Ukrainian combatants these fighters returned to Russian territory. In February 2015, the same witness testified that he noticed a sniper's hide-out and footprints in the area of Krasna Talivka (close to Ukrainian checkpoint on the way to Gerasimovka). Witnesses also testified that multiple secret subversive groups had infiltrated onto the territory of Krasna Talivka and set landmines.[99]

Burned military bag found in the area of Krasna Talivka.

99 Witness statement: 0205K842

Dmytrivka and Pobieda settlements, Luhansk province, Ukraine

Dmytrivka and Pobieda are villages in the Luhansk province of Ukraine. On 1-4 September, the territory closest to these villages not under Ukrainian government control was some 35 kilometres to the south of Dmytrivka and 45 kilometres from Pobieda.[100] The border with the Russian Federation is about 40 kilometres directly to the East of Dmytrivka and 40 kilometres from Pobieda.

From July 2014[101] a Ukrainian battalion of rocket launchers, the 1st tank brigade and battalion Kyiv-12 were located in Dmytrivka. [102].

On 3 September 2014 at around 10:00-11:00 pm the Ukrainian forces post was shelled with MRLS "SMERCH" artillery loaded with "Tornado-S" shells which differ from the shells used by Ukrainian forces.[103] According to a 2015 report by the Finnish Institute of International Affairs "Tornado-S" is a unique Russian weapon adopted by the Russian army in 2012. This type of weapon has never been sold abroad by the Russian Federation.[104]

The shelling lasted until 07:00 am on 4 September 2014.[105] One of the projectiles failed to explode and stuck in the ground close to a civilian car ZIL-131. According to civilian witness statements the shell was angled at 80 degrees to the ground with the shank facing southeast[106] (azimuth 110-130[107] a fact which was also confirmed by the IPHR field mission). The shelling was guided by a GPS tracker system.[108]

There were four bouts of shelling,[109] the third of which was the most powerful. The shells made a distinctive hissing noise as they flew. After the third series of shelling the fire started at the place of dislocation of Ukrainian forces.[110]

Most of the shelled area was burnt. Fifteen Ukrainian combatants died, and much equipment was destroyed as was

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

an ammunition park which set off Ukrainian shells which flew to the village.[111] Moreover, many civilian buildings were damaged (roofs and windows were destroyed, house fronts were damaged by shrapnel).[112]

Prior to the shelling on 2-3 of September the Ukrainian military had warned some locals about the possibility of shelling.[113]

Witnesses testified about the usage of cluster munitions during the shelling in Dmytrivka. One witness reported: *"I left the house and heard a rumble, like it was a jet idling. I used to live near the airfield and often heard such a sound. Then an explosion in the sky and in a few moments a series of cracks in the earth. The holes were of a blue color. I also saw a glow in the sky, but it is difficult to say on which side".*[114]

On 4 September 2014, the village of Pobieda, Luhansk province, was heavily shelled by MRLS "SMERCH".[115] The military objects situated in the area at that time included the headquarters of "A" sector[116], units of the rocket artillery, five helicopters (four Mi-24 and one Mi-8), an air defence system, a repair depot and a field hospital.[117]

The shelling was possibly carried out from the vicinity of Stanitsa Mitiakinskaya (the Russian Federation), where the military base of Russian forces was established. Witnesses had seen this.[118]

The incident began on 1-3 September 2014 with preliminary single shots fired by MRLS "SMERCH". The first of them landed in an unpopulated area of the village and did not cause harm. Four empty shells of 30 cm diameter with stabilizing fins were subsequently found.[119] Some witnesses testified that they smelled sulphur and saw smoke.[120] Witnesses testified that shells were fired from the direction of the Ukrainian-Russian border (40-50 kilometres from Pobieda village). Later the same day a witness testified that he saw "a shell salute" in Pobieda.[121]

The next day[122] one rocket stuck in the ground and failed to explode. An eyewitness testified that the rocket was at an angle of 20 degrees to the normal and the shank faced in the direction of Stanitsa Mitiakinskaya (Russian Federation).[123] Another shell fell into the command station building and library but did not explode.[124]

On the evening of 4 September the shelling of the base began. A witness testified that he heard the hissing of the rockets and deafening explosions from Koliadovka village (15 kilometres from Pobieda village); he also saw 10 columns of smoke rising from the area.[125] The shelling was accompanied by the sound of "falling planes"[126] and loud explosions. Some of the shells got into the ammunition depot and caused large explosions which continued until

111 Video evidence from IPHR database: "обстрел лагеря украинских военных в поселке Дмитровка"
112 Witness statement: 0205K862
113 Witness statement: 0205K859, 0205K862
114 Witness statement: 0205K864
115 Witness statement: 0205K869, 0205K862, 0205K863, 0205K873
116 Permanent link: ***http://hromadskeradio.org/ru/programs/hroniky-donbasu/poselok-pobeda-posle-raketnogo-obstrela-fotoreportazh***
117 Witness statement: 0205K869, 0205K862, 0205K863, 0205K873
118 Witness statement: 0205K869, point 48.639242, 39.747818
119 Witness statement: 0205K869, 0205K857, 0205K865
120 Witness statement: 0205K858
121 Witness statement: 0205K858
122 Witness statement: 0205K858
123 Witness statement: 0205K869
124 Witness statement: 0205K857
125 Witness statement: 0205K869
126 Witness statement: 0205K858, 0205K865

21:00 pm.[127]

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

According to the OSCE monitors' report from the beginning of September 2014, they heard shooting from the Russian side of the border: "In the past weeks, artillery detonations and shootings had been heard only from western and northern directions; but throughout the week for the first time Observer Teams of the OSCE reported light and heavy calibre shootings from the east and south-east areas which are also bordering Ukraine".[129] The OSCE does not confirm that the shelling of Dmitrivka and Pobieda originated from the territory of the Russian Federation, but they confirm the use of heavy weapons in that area at the time of 3 September 2014. Representatives of the Ukrainian authorities however do confirm that the shelling of Dmytrivka and Pobieda was conducted from the territory of the Russian Federation.[130]

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

Legal Assessment

i) Qualification of the armed conflict

The attacks on the settlements of Kolesnikivka, Komyshne, Milove, Krasna Talivka, Dmytrivka and Pobeda in Luhansk province indicate an armed conflict of international character, as defined in Article 2 of common to the Geneva Conventions of 1949. According to this article, recognition or non-recognition of the existence of an armed conflict that is international in nature does not affect the applicability of the conventions. The Commentary to the Geneva Conventions of 1949 unequivocally supports the generally accepted view that an international armed conflict starts from the moment when military intervention of the armed forces of one state takes place on the territory of another state.[131] In this case, the duration of the conflict / attacks and casualties is not relevant.[132] As shown above, in the cases of the attacks on Kolesnykivka, Komyshne, Milove, Krasna Talivka, Dmytrivka and Pobeda, the Ukrainian state border was illegally crossed (in terms of the Commentary on the Geneva Conventions - intervention), and subsequently attacks were made on the military infrastructure, state border units and civilian objects (confirmed attacks on the latter took place in Kolesnikivka and Komyshne villages). Abandoned personal belongings near Krasna Talivka, traces of movement of artillery units, movement of Russian military units on the territory of the Russian Federation and

127 Video evidence from IPHR database: Победа после "Смерча"
128 Witness statement: 0205K858, Video evidence from IPHR database: video_pobieda_smerch1
129 Weekly update from the OSCE Observer Mission at the Russian Checkpoints Gukovo and Donetsk, 28 August until 08:00, 3 September 2014. Permanent link: ***http://www.osce.org/om/123151***
130 Current information from Dmytrivka-Pobieda on 04.09.2014, Permanent link ***http://www.rnbo.gov.ua/news/1802.html***
131 J. Pictet, Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ICRC, Geneva, 1952, p. 32.
132 Ibid

across the border of Ukraine indicate that the border crossings and attacks on Ukrainian territory could not have been organized without the participation of military units of the Russian Federation. Thus, the illegal crossing of the state border by persons related to the military units of the Russian Federation, and attacks on objects on Ukrainian territory can be equated to the start of an armed conflict of international character.

Moreover, in international court practice[133] and under international humanitarian law[134] it has been established that an international armed conflict takes place in the case of any attacks by one state against another state. The carrying out of the attack (crime) against the territory of a state is well-known in international law as "Principle of Objective Territoriality", which for the first time was established at the international level by the decision of the Permanent Court of International Justice of the League of Nations in the Case of the S.S. Lotus in 1927.[135] According to this principle and its interpretations in international humanitarian law, an armed conflict of international character occurs when there is any attack from the territory of one state against the territory of the other state. The number of victims, the duration and intensity of the conflict or attacks are irrelevant. In regard to the attacks on the villages of Kolesnikivka, Komyshne, Milove and Pobeda in Luhansk province examined in this report, the facts of the shelling of the territory of Ukraine have been established. These attacks themselves are enough to demonstrate that the events amount to an armed conflict of international character. It should further be noted that, as confirmed by satellite images, eyewitness testimony and posts on social networks on the Web, the attacks originated from locations near Russian military units, thus eliminating the possibility of the attacks having been carried out by non-state military units, who somehow entered the territory of the Russian Federation.

ii) Causing excessive incidental death, injury or damage

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

THE MATERIAL ELEMENT: According to the "Elements of Crimes" under Article 8 (2) (b) (iv), the attack should be of such a nature that it will cause only incidental loss of life to civilians or damage to civilian objects. The attack should not be targeted solely at civilian objects and damage caused should be accidental. As this report demonstrates, during the attacks on Kolesnikivka and Komyshne damage was near to civilian objects. In the case of the shelling of the villages of Kolesnikivka and Komyshne which are situated five kilometres away from the dividing line with so-called LPR the border area attacked was not an area which would offer particular strategic military advantage.

THE MENTAL ELEMENT:. According to the "Elements of Crimes", the mental element under Article 8 (2) (b) (iv) concerns the awareness of the perpetrator (this term is used in a neutral sense) that the attack would lead to civilian casualties or damage to civilian objects, which are clearly excessive in relation to concrete and direct overall military advantage. The attacks described in this report were targeted at objects located close to civilian settlements. At the same time, the weapons chosen for the attack (mortars and the multiple launch rocket system GRAD) were not precision weapons by definition and their use causes damage to objects and manpower over significant areas.

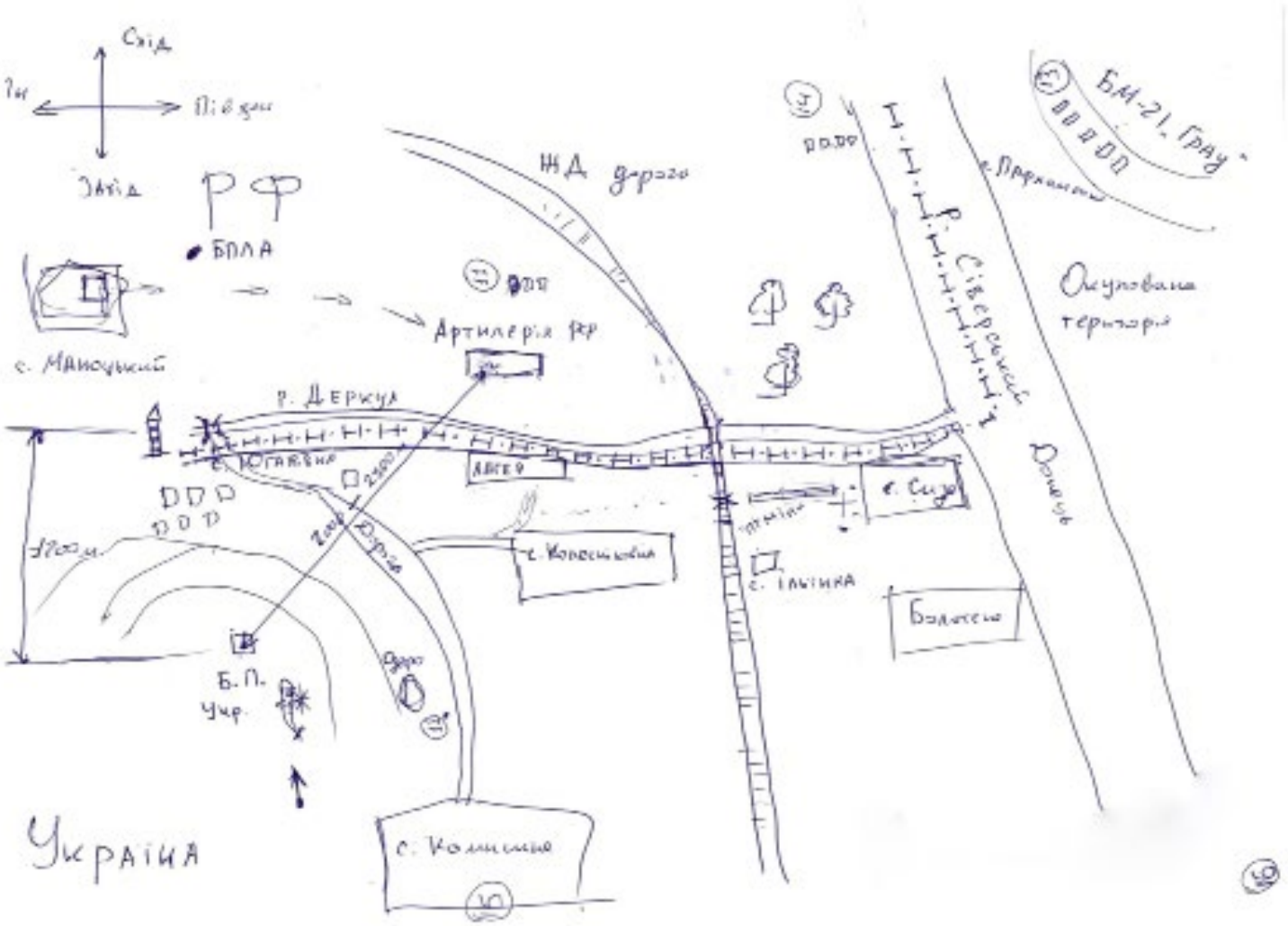
133 ICTY, The Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70.
134 See, for example, H.P. Gasser, International Humanitarian Law: an Introduction, in: Humanity for All: the International Red Cross and Red Crescent Movement, H. Haug (ed.), Paul Haupt Publishers, Berne, 1993, p. 510-511
135 S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7)

THE CONTEXTUAL ELEMENT: The contextual element of crimes under Article 8 (2) (b) (iv) and according to the "Elements of Crimes" is committing a crime within an armed conflict of international character and awareness on the part of the perpetrator (in the neutral sense of this word) of the existence of an armed conflict. Based on the qualification of the attacks on a number of settlements in Luhansk province (including Kolesnykivka and Komyshne) set out in the first paragraph of the legal assessment above, there was an on-going armed conflict of international character between the Russian Federation and Ukraine at the time of the attacks on civilian objects in Kolesnykivka and Komyshne. By carrying out attacks on military and civilian targets in these villages, it should have been clear to the perpetrator that the weapons used were forbidden outside military conflicts (in particular "BM-21 Grad", "BM-30 Smerch" with cluster and high-explosive munition) and that the attack was carried out on the territory of Ukraine. The attack itself pursued military advantage. This demonstrates the fulfillment of the Elements of Crimes requirement for awareness of the existence of an armed conflict. Thus, we can conclude that the attacks on Kolesnykivka and Komyshne villages of the Luhansk province can be qualified under the Article 8 (2) (b) (iv).

Annexes

Annex 1

Map drawn by the witness 0205K828 with the point “14”.



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