

Kyiv, 8 November 2019

## **MEMORIAL ON ADMISSIBILITY ON BEHALF OF THE GOVERNMENT OF UKRAINE**

### **CHAPTER 1: INTRODUCTION**

1. The Russian Federation has consistently denied its involvement in the conflict in eastern Ukraine, and has sought to evade international legal responsibility by adopting a series of measures to disguise and “outsource” its military aggression in eastern Ukraine. The Kremlin’s denials of direct involvement were implausible from the outset, and were roundly rejected by the international community. All of the relevant international institutions rightly hold Moscow responsible for a pattern of conduct that has been designed to destabilise Ukraine by sponsoring separatist entities in the use of armed force against the legitimate Government and members of the civilian population. Almost from the outset, the United Nations, the Council of Europe, the European Union, and the G7 all re-affirmed Ukraine’s sovereignty and territorial integrity within its internationally recognised borders, and condemned the Russian Federation’s continuing proxy war in eastern Ukraine. As the conflict has continued, the evidence of Russia’s direct and indirect involvement in the violent rebellion in Donbass has become more and more apparent. Despite Russia’s crude attempts to conceal its involvement, the proof of Russian State responsibility has steadily mounted. In the face of the obvious truth, Russia’s policy of implausible deniability has fallen apart completely.

2. Ukraine submits that the human rights violations committed by Russian forces and their proxies, as particularised in this application, fall directly within Russia’s extra-territorial jurisdiction for the purposes of article 1 of the Convention. This is the result of the straightforward application of the Court’s well-settled principles governing extra-territorial jurisdiction and accountability for human rights violations committed by a Contracting State outside its national territory. Ukraine invokes both (a) the principle of effective control of territory (directly and through subordinate local forces); and (b) State agent authority and control over the victims of the violations alleged, as the legal basis for establishing Russian “jurisdiction” within the meaning of article 1 of the Convention.

3. The multiple violations alleged in this case plainly constitute a pattern or system: a series of violations of the same or similar character, connected by motivation, place and time. They reflect a joint enterprise amounting to an administrative practice for the purposes of Convention liability in inter-State proceedings. The purpose of the application is to vindicate the human rights of the victims; to bring these

administrative practices to an end; and to prevent a recurrence.

4. The international community has rightly categorised the conflict in eastern Ukraine as an international armed conflict to which the Russian Federation is a State party. In her regular reporting to the UN Security Council, the ICC Prosecutor has formally determined that “direct military engagement between the respective armed forces of the Russian Federation and Ukraine indicated the existence of an international armed conflict in eastern Ukraine from 14 July 2014”.<sup>1</sup> On 7 September 2014, echoing the Prosecutor’s analysis, Amnesty International categorised the conflict in eastern Ukraine as an international armed conflict involving both Russian regular and proxy forces<sup>2</sup>

5. The Council of Europe has also recognised the reality of Russian State responsibility for instigating the conflict. On 28 January 2015, the Parliamentary Assembly (PACE) adopted Resolution 2034 (2015) condemning Russia’s role in the conflict in eastern Ukraine, expressly recognising that Russia was responsible for *instigating* the conflict in the first place, as well for escalating it ever since. The resolution condemned Russia’s actions as a grave violation of international law, in general, and of the Statute of the Council of Europe, in particular.<sup>3</sup> The relevant passage reads:

“The Assembly is extremely concerned about the developments in eastern Ukraine and condemns Russia’s role in instigating and escalating these developments, including with arms supplies to insurgent forces and covert military action by Russian troops inside eastern Ukraine, which are a gross violation of international law, including the Statute of the Council of Europe as well as of the Minsk Protocol to which Russia is a party. In addition, the Assembly expresses its dismay about the participation of large numbers of Russian “volunteers” in the conflict in eastern Ukraine without any apparent action of the Russian authorities to stop this participation, despite it being in violation of the Criminal Code of the Russian Federation itself. It takes note of credible reports of burials of soldiers on Russian territory. The Assembly condemns the violation of the territorial integrity and borders of a Council of Europe member State by the Russian Federation.”

6. On 12 October 2016, PACE adopted Resolution 2133 (2016) which has a direct bearing on the issues before the Court. The resolution was concerned with the absence of effective legal remedies for human rights violations occurring on those parts of the territory of Ukraine that were no longer under effective Government control. The resolution reflects a clear conclusion of the Parliamentary branch of the Council of Europe that Russia bears legal responsibility for the widespread campaign of human rights violations in those parts of Donbass, and unequivocally concluded that the Russian Federation was in effective control of the territory occupied by the DPR and LPR.

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<sup>1</sup> [www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf](http://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf)

<sup>2</sup> <https://web.archive.org/web/20150912102834/https://www.amnesty.org/en/press-releases/2014/09/ukraine-mounting-evidence-war-crimes-and-russian-involvement/>

<sup>3</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21538&lang=en>

7. In reaching this conclusion, as one would expect, PACE faithfully applied the legal test for effective control laid down in this Court's caselaw:

"In the "DPR" and the "LPR", effective control is based on the crucial and well-documented role of Russian military personnel in taking over and maintaining power in these regions, against the determined resistance of the legitimate Ukrainian authorities, and on the complete dependence of these regions on Russia in logistical, financial and administrative matters...

Under international law, the Russian Federation, which exercises *de facto* control over these territories, is responsible for the protection of their populations. Russia must therefore guarantee the human rights of all inhabitants." <sup>4</sup>

8. Based on consistent international reporting, the resolution recorded that in the areas of the Ukrainian Donbass that were under Russia's effective control, there had been a widespread pattern of grave Convention violations:

"In the conflict zone in the Donbas region, the civilian population and a large number of combatants were subjected to violations of their rights life and physical integrity and to the free enjoyment of property, as a result of war crimes and crimes against humanity including the indiscriminate or even intentional shelling of civilian areas." <sup>5</sup>

9. The finding that war crimes and crimes against humanity had been committed by pro-Russian forces in Donbass necessarily amounts to a conclusion that these violations are legally attributable to the Russian Federation. In light of its findings that Ukraine had lost control of the territory, and that the "courts" of the *de facto* "administrations" in the DPR and LPR are illegal and illegitimate, the PACE resolution necessarily implies that there are no effective legal remedies potentially available in the national legal system. The European Court of Human Rights is thus the only avenue of effective legal redress available.

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<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

## CHAPTER 2: THE COURT'S QUESTIONS ON ADMISSIBILITY

### Question 1: Does the Court have “jurisdiction” to rule on the present case?

#### *Ukraine's answer*

10. Yes. The violations alleged in the present case all fall within the “jurisdiction” of the Russian Federation for the purposes of article 1 of the Convention. The Convention applies *ratione materiae*, *ratione temporis* and *ratione personae* to the violation alleged. Article 35 sets out the admissibility criteria to be applied by the Court in an inter-State case. The additional admissibility criteria applicable in an individual application (including the requirement to demonstrate that an application is not “manifestly ill-founded” or “an abuse of the right of individual petition”) have no application at the admissibility stage of an inter-State application.

#### *The Court's evidential standard*

11. Russia argues that the quality of the evidence adduced by the Ukrainian Government is inconclusive, and that this provides support for the argument that the application is inadmissible. The submission is inconsistent with the overwhelming body of evidence set out in Chapter 3 and Appendix 1 below and, in any event, does not amount to an admissibility objection in the context of an inter-State application. It is now well-settled that, in inter-State proceedings, the Court is not required to conduct a preliminary assessment of the evidential merits, of the kind that is routinely carried out when considering the admissibility of an individual application.

12. An inter-State application that has been brought within the six-month time limit is only to be declared inadmissible if it is incompatible with the provisions of the Convention, or if the allegations of the applicant Government are “wholly unsubstantiated” or are “lacking the requirements of a genuine allegation in the sense of Article 33 of the Convention”. That threshold is plainly surmounted. Beyond that, it is not for the Court to assess the weight of the evidence at the admissibility stage. As the Court ruled in *Georgia v. Russia (I)* 13255/07 (30 June 2009), a preliminary consideration of the merits is simply not part of the Court's function at the admissibility stage in an inter-State case:

“43. The Court reiterates at the outset that it is not its task, at the admissibility stage, “to carry out a preliminary examination of the merits”, since the provisions of Article 35 § 3 - empowering it to declare inadmissible any application which it considers either “incompatible with the provisions of the Convention” or “manifestly ill-founded or abusive” - apply, according to their express terms, to individual applications under Article 34 only. Consequently, any examination of the merits of the application must in inter-State cases be entirely reserved for the post-admissibility stage (...).

44. In determining the existence of *prima facie* evidence, the Court must ascertain – in the light of the criteria already applied by the Commission and the Court in inter-State cases – whether the allegations of the applicant Government are “wholly unsubstantiated” (“*pas du tout étayées*”) or are “lacking the requirements of a genuine allegation in the sense of Article 33 of the Convention” (“*feraient défaut les éléments constitutifs d’une véritable allégation au sens de l’article 33 de la Convention*”).”

#### *The relevance of international humanitarian law*

13. In *Georgia v Russia (II)*, application no, 38263/08, 13 December 2011, the Russian Federation argued that an inter-State application concerned with the conduct of the 2008 armed conflict in South Ossetia and Abkhazia was incompatible *ratione materiae* with the provisions of the Convention. Russia’s argument was that the provisions of international humanitarian law were *lex specialis* and, accordingly, that the maxim *lex specialis derogat generali* applied so as to render the inter-State application under the European Convention inadmissible.

14. Ukraine strongly disputes this proposition, if it is maintained. It is now well-settled that the provisions of international human rights law, including those of the European Convention, continue to apply during situations of armed conflict. International humanitarian law is undoubtedly a relevant source of guidance in determining whether a relevant Convention right is applicable and has been violated.<sup>6</sup> The suggestion that the existence of an armed conflict ousts the applicability of the human rights law obligations otherwise binding upon the parties to the conflict was roundly rejected by the International Court of Justice in the “*Case concerning armed activities on the territory of the Congo*” (*DRC v Uganda*), judgment of 19 December 2005, ICJ, para. 216. The “ouster” argument is also incompatible with a long line of Convention authority holding that in situations of armed conflict, the relationship between the two bodies of law is complimentary.

15. This Court has consistently recognised that international humanitarian law is to be treated as a relevant source of guidance in assessing the scope of the rights guaranteed by the Convention in the context of an armed conflict: *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 185, 18 September 2009; *Ergi v. Turkey*, 28 July 1998, §§ 79 and 82, *Reports of Judgments and Decisions* 1998-IV; *Isayeva v. Russia*, no. 57950/00, §§ 180 and 210, 24 February 2005; and *Al-Skeini and Others v. the United Kingdom* ([GC], no. 55721/07, 7 July 2011 ECHR 2011. The Court has routinely adopted the approach that the Convention should, so far as possible, be interpreted and applied in harmony with other rules of international law of which it forms part (see, *mutatis mutandis*, *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55,

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<sup>6</sup> For example, the question whether a deprivation of life is to be regarded as “arbitrary” for the purposes of article 2 will usually be determined by an application of the relevant rules of humanitarian law concerning targeting and the treatment of civilians, prisoners of war and combatants who are *hors de combat*.

ECHR 2001-XI). Those rules include the provisions of international humanitarian law.

16. Russia's implicit suggestion that questions of public international law, including international humanitarian law, are somehow outside the Court's competence or mandate is equally unfounded. In previous cases, where it has been necessary and appropriate to do so, the Court has examined and resolved disputed questions of public international law that have a bearing on the exercise of its functions. It has an evolved body of jurisprudence to guide its deliberations on the relationship between the Convention and other principles of public international law (see, among many others *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§59 and 68, ECHR 2001-VIII, *Medvedyev and Others v. France* [GC], no. 3394/03, § 101, ECHR 2010).

17. No international body has ever concluded that international human rights law is overridden by international humanitarian law. On the contrary, all the international courts and committees that have dealt with these matters have always applied the human rights treaties to the armed forces of a State engaged in an armed conflict. Accordingly, in *Georgia v Russia (II)*, application no, 38263/08, 13 December 2011, the Court expressly rejected Russia's invitation to declare the case inadmissible on the basis of the maxim *lex specialis derogat generali*, holding that the precise interplay between the two bodies of law on the facts of the case was a matter to be determined in light of the evidence adduced during the merits phase of the proceedings.

#### *Suggested "political" motivation*

18. The Russian Government has in the past sought to argue that Ukraine's inter-State applications against the Russian Federation should be struck out as inadmissible because they have been brought for a political purpose which exceeds the Court's legitimate mandate, and that this amounts to an abuse of the Court's process. This argument was recently reiterated by the Russian Government's agent at an oral hearing on 11 September 2019 on the admissibility of Ukraine's linked inter-State application regarding Russia's human rights violations in Crimea (application 209568/14).

19. Russia's argument involves an entirely misplaced analysis of the Court's function at the admissibility stage of an inter-State case. The Court is invited to accept that the Government of Ukraine has brought both sets of proceedings in order to vindicate the human rights of certain sections of its population, namely those living in a part of its sovereign territory that has been unlawfully occupied by the Russian Government and its proxies by force. Moreover, as a matter of principle, Ukraine submits that the issue of alleged political motivation is simply not relevant to the question of admissibility. The approach advocated by Russia would require the Court to introduce a new admissibility criterion for inter-State applications – one which would necessitate an almost impossible examination of a State's supposed or imputed motivation for bringing an otherwise admissible claim before the Court. Such a test would

frustrate the express right of Contracting States to make a valid inter-State application by reference to an imagined underlying collateral or political purpose, and begs the question of how a State's motivation is to be examined and proved.

20. The Convention makes it clear that any Contracting State has the right to bring an inter-State case before the Court providing it meets the admissibility criteria laid down in Article 35. That is part of the series of mutual undertakings that States enter into when signing and ratifying the Convention. If an application meets the admissibility criteria, then it must be allowed to proceed. A Contracting State cannot be prevented from making legitimate use of the Convention's enforcement machinery by reference to an analysis of imputed political motivation. The Russian Government's approach is inconsistent with the express terms of the Convention. Supposed political motivation is simply not one of the admissibility criteria by which Contracting States agreed to limit the Court's jurisdiction.

21. Unsurprisingly, it has long been settled that the alleged political motivation of an applicant State is immaterial to the admissibility of an inter-State application. In *Denmark, Norway, Sweden and the Netherlands v. Greece* ("The Greek case", nos. 3321/67, 3322/67, 3323/67 and 3344/67) the former Commission observed that "the alleged political element of the allegations, even if established, is not such as to render them "abusive" in the general sense of the word". The Russian objection on grounds of bad faith is thus completely unarguable.

#### *The International Court of Justice*

22. In addition to the present inter-State application, Ukraine has instituted proceedings before the International Court of Justice which concern certain events in Donbass. However, that application relates to alleged breaches of the International Convention for the Suppression of the Financing of Terrorism. Whilst there is some factual overlap, the two cases are legally quite different. As this Court held in its admissibility decision in *Georgia v Russia (II)*, application no, 38263/08, 13 December 2011, the rule in article 35(2)(b) that the Court cannot deal with a matter that is "substantially the same" as a matter that has already been submitted to another international mechanism for dispute resolution, applies only to individual applications, and not to inter-State cases brought between Contracting Parties to the European Convention on Human Rights. Even if article 35(2)(b) applied to inter-State proceedings (which it does not) the two sets of international proceedings at issue here are substantially different.

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**Question 2 The basis for extra-territorial jurisdiction of the Russian Federation: (a) Does the matters complained of come within the “jurisdiction” of the Russian Federation? (b) In the affirmative, is the said “jurisdiction” grounded on (i) effective control by the Russian Federation through its own forces, of the parts of eastern Ukraine in which the Ukrainian Government is prevented from exercising the sovereignty of the Republic of Ukraine (see *Al-Skeini*, paras. 138-140, with further references); (ii) effective control exercised by the Russian Federation through a subordinate administration, of the parts of eastern Ukraine in which the Ukrainian Government is prevented from exercising the sovereignty of the Republic of Ukraine (see *Al-Skeini, ibid.*); or State agent authority and control by, or attributable to, the Russian Federation (see *Al-Skeini*, paras. 134-137, with further references)?**

*Ukraine’s answer*

23. Yes (to all questions). Ukraine invokes both (a) the principle of effective control of territory (directly and through subordinate local forces); and (b) the principle of State agent authority and control over the victims of the violations committed against people deprived of their liberty, as the legal basis for establishing Russia’s extra-territorial “jurisdiction” within the meaning of article 1 of the Convention.

24. The Court has held that at the admissibility stage of an inter-State case, its assessment of Article 1 jurisdiction is limited to “the question whether its competence to examine the applicant Government’s complaints is excluded on the grounds that they concern matters which *cannot* fall within the jurisdiction of the respondent Government” (*Georgia v Russia (II)*, Admissibility decision of 13 December 2011, Application 38263/08, § 64). The operative question, therefore, is whether the alleged violations are *capable* of falling within Russian jurisdiction.

25. At the admissibility stage, both of the bases of extra-territorial jurisdiction invoked by Ukraine require the Court to conduct a *preliminary* evaluation of the extent of Russian State involvement in, and responsibility for, the establishment and activity of the pro-Russian armed groups operating in eastern Ukraine. The evidence set out in Chapter 3 below demonstrates beyond any doubt that the Russian Federation effectively instigated the conflict, and supported the pro-Russian armed groups throughout by supplying (and facilitating the supply of) funds, weapons, ammunition, “volunteers” and mercenaries, and by providing direct military and political support for the separatist forces and their “administrative” entities. Russia is therefore liable under the Convention for the criminal acts and human rights violations committed by its proxies, as well those committed by its own forces, during the conflict.

*Russia’s effective control of the territory*

26. The evidence in Chapter 3 provides overwhelming support for the proposition that Russia had effective control of the relevant territories, directly and through its subordinate administrations, from March 2014, so as to give rise to jurisdiction under the Convention, and that this remained the position to this day. That is sufficient to show that the acts complained of are *capable* of falling within Russian



jurisdiction. Any more detailed examination of the basis for jurisdiction is thus to be reserved for the merits phase of the case (see *Georgia v Russia (II)* as above, §§ 66-68).

27. The vast majority of Convention violations alleged in the present application occurred in territory controlled at the relevant time by the so-called “Donetsk People’s Republic” and “Luhansk People’s Republic”, and their associated paramilitary formations, acting with military support from “volunteers” and mercenaries recruited and armed by the Russian Federation, and (during various phases of the conflict) with the direct intervention and participation of the official Russian armed forces on the ground in those territories.

28. The “effective control” test for the recognition of a States’ Article 1 jurisdiction beyond its national borders was first articulated by the former Commission in *Cyprus v. Turkey* (nos. 6780/74 and 6950/75). Since then, it has been honed by the Court for over forty years, and was clarified in the definitive *Al-Skeini* judgment. The Convention principles governing extra-territorial jurisdiction are now familiar and well-settled.

29. Whilst a State’s jurisdictional competence under Article 1 is primarily territorial, there are exceptional circumstances under which a State’s “jurisdiction” will extend to acts which occur or produce an effect outside its national territory. As the Court made plain in *Al-Skeini*, a Contracting State will exercise “jurisdiction” within the meaning of article 1 of the Convention, where its authorities are in effective control of an area of territory outside its national boundaries (whether the human rights violation alleged were caused directly by the agents of the occupying State or by those of a subordinate local administration which depends for its existence on the military, economic or political support of the occupying power).

30. In determining whether effective control of territory exists, the Court will primarily have reference to the strength of the State’s military presence in the area (*Ilaşcu and Others*, cited above, § 387). Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region. The evidence demonstrates clearly that Russia’s subordinate local administration (and their paramilitary forces) were in effective control of the relevant parts of Donbass, from early March 2014 onwards. It also demonstrates beyond a shadow of a doubt that these entities were operating under the decisive influence, operative direction, and military support of the Russian Federation.

31. The relevant principles of Convention caselaw thus apply directly on the facts of this case. Where a Contracting Party has taken effective control of a portion of another State’s sovereign territory, directly or through proxies or subordinates, then it will be liable for the actions of its own agents in violation of the Convention, and also for the actions of the agents of any subordinate local administration or

paramilitary force which it has established, or which depends for its existence and survival on the support of the Respondent State. It is unnecessary to show that the occupying State actually exercises detailed control over the policies and actions of the authorities of the subordinate administration. Liability arises by virtue of the relationship of dependency between the subordinate local administration and the Contracting State (see *Al-Skeini and Ors.*, cited above § 139; *Cyprus v. Turkey* [GC], no. 25781/94, § 76, ECHR 2001-IV, citing *Loizidou v. Turkey* judgment of 18 December 1996 (merits), Reports of Judgments and Decisions 1996-VI, p. 2236, § 56).

32. In light of the evidence adduced in Chapter 3, the Court can be quite sure that the “Donetsk People’s Republic”, the “Luhansk People’s Republic”, the “Donbass Militia” and the various other paramilitary and “administrative” entities operating in the pro-Russian alliance in eastern Ukraine were proxies of the Russian Federation. They depended entirely on Russia for funding (which was provided by individuals close to President Putin initially, and later out of State funds). They also depended upon Russia for military and political support, through the infiltration of Russian special force operatives that instigated the armed rebellion in the first place; through the steady cross-border supply of heavy weapons emanating from the Russian armed forces; through the recruitment, training and transfer of “volunteers” and mercenaries; through the selection, appointment, operational direction, and dismissal of the political and military leadership of the armed groups and “administrative entities” of Donetsk and Luhansk; through the conduct of cross-border artillery attacks on Ukrainian forces in an effort to support the armed groups; through direct land invasion of the sovereign territory of Ukraine by the conventional forces of the Russian army in support of the armed groups; and through the central co-ordination of the pro-Russian forces throughout the entire conflict.

33. In May 2015, the Atlantic Council published a report entitled *Hiding in Plain Sight: Putin’s War in Ukraine* which reviewed Russian military conduct over the first 12 months of the conflict.<sup>7</sup> The report reviewed satellite imagery and publicly available photographic evidence assessed with geolocation analysis by open source researchers.<sup>8</sup> Ukraine submits that the Atlantic Council accurately summarised

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<sup>7</sup> <https://www.atlanticcouncil.org/in-depth-research-reports/report/hiding-in-plain-sight/>

<sup>8</sup> As the report explains: “Digital forensic techniques involve verifying the locations of where videos and photographs were taken in a process known as “geolocating.”<sup>23</sup> Geolocation...allow[s] an investigator to firmly establish the location of recorded images even without an embedded geotag. Using photographs posted on various social media sites, in combination with satellite imagery and “street view” images from services such as Google Earth and Yandex Maps, investigative geolocation techniques pinpoint the coordinates of where photographs were taken. Geolocation is thus a powerful and effective tool for tracking individuals and the images they produce. The geolocation methodology used in this report combines multiple sources of open domain information to track the movement of soldiers, vehicles, and cross-border shelling from Russia to Ukraine. All the sources used in this report are publicly available to anyone with access to the Internet, and the techniques used are documented throughout. The aspect of Russian involvement in Ukraine with the widest breadth of open source information is the movement of heavy military equipment across the border, with hundreds of videos and photographs uploaded by ordinary Russians and Ukrainians who have witnessed direct Russian support of the hostilities in eastern Ukraine.” A comprehensive list of geolocation reports prepared by the open source research group Bellingcat is set out (and hyperlinked) at Appendix 2 to this submission. These reports demonstrate beyond doubt the direct

the situation when it concluded that the war in eastern Ukraine is “a Kremlin-manufactured conflict.”<sup>9</sup> The report succinctly identifies the basis for Russian State effective control of the armed groups and the territory they have occupied in Donetsk and Luhansk:

“Weeks after Russia’s annexation of Crimea in March 2014, Kremlin-directed Russian military personnel, intelligence operatives, and public relations consultants began to organize a so-called separatist movement to oppose the Ukrainian government by force. With an interim government in Kyiv, this Kremlin-directed operation took control of government buildings and launched an offensive in eastern Ukraine’s Luhansk and Donetsk regions.

When newly elected President Petro Poroshenko began a successful counter-offensive in June, the Kremlin sent in more sophisticated arms and more soldiers, some from the Chechen Vostok Battalion. When that did not stop the Ukrainian military’s advance, in August, the Kremlin sent in regular troops, who inflicted a serious defeat on the Ukrainians. Without Kremlin leadership, money, modern weapons, recruits, and at times cohesive Russian army units, there would be no rebellion, no war, and no occupation of territories in eastern Ukraine.

The evidence that this is a Kremlin-directed war is overwhelming. The initial leaders of the so-called separatists were primarily Russian citizens, many of whom served in Russian intelligence services. Following the downing of Malaysian Airlines Flight 17 over eastern Ukraine on July 17, 2014, a Dutch government investigation of the crash pointed to a Russian-produced surface-to-air missile system (Buk) as the cause of the downing. Prodigious amounts of Russian-made military equipment have been collected from battles in Ukraine’s east. Cross-border artillery attacks from Russian to Ukrainian territory have provided cover at key moments of fighting. Russian soldiers on active duty have fought and died in Ukraine only to return to their families in unmarked coffins.”<sup>10</sup>

34. Applying the Court’s consistent caselaw, it is overwhelming obvious that the armed formations and their “administrative authorities” have succeeded in gaining effective overall control over parts of Donetsk and Luhansk. It is equally undeniable that these entities depend for their continued existence on the military, political and economic support of the Russian Federation. It is clear beyond question that Russia has controlled the armed groups from the outset, built and supplied their military capabilities, funded their activities and engaged Russian armed forces directly in an effort to control the direction of the conflict. Accordingly, the violations described in this application plainly fall within Russia’s extra-territorial “jurisdiction” within the meaning of article 1, as the relevant principles have been interpreted and applied in the jurisprudence of this Court.

35. Nonetheless, in the course of Ukraine’s inter-State claim concerning Russia’s invasion and occupation of Crimea, the Russian Government sought to argue that the Court should abandon its established approach to extra-territorial jurisdiction and responsibility for subordinate armed

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Russian State intervention in the conflict in Ukraine, including military land invasions into Ukrainian territory by Russian armed forces

<sup>9</sup> <https://www.atlanticcouncil.org/in-depth-research-reports/report/hiding-in-plain-sight/>

<sup>10</sup> <https://www.atlanticcouncil.org/in-depth-research-reports/report/hiding-in-plain-sight/>

formations. Instead, Russia argued in favour of an entirely different formulation, drawn from the public international law principles applicable to State responsibility for internationally wrongful acts. However, Russia's attempts to change the Court's direction in this way have already been roundly rejected by the Grand Chamber in *Catan and others v Moldova and Russia*, 43370/04, 8252/05 and 18454/06, 19 October 2012. At § 115 of its Judgment, a case concerned with Russian aggression in Transnistria. The relevant passage reads:

"The Government of the Russian Federation contend that the Court could only find that Russia was in effective control if it found that the "Government" of the "MRT" could be regarded as an organ of the Russian State in accordance with the approach of the International Court of Justice in the Case Concerning the Application of the Convention on the Prevention and Punishment of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro* (see paragraph 76 above). The Court recalls that in the judgment relied upon by the Government of the Russian Federation, the International Court of Justice was concerned with determining when the conduct of a person or group of persons could be attributed to a State, so that the State could be held responsible under international law in respect of that conduct. In the instant case, however, the Court is concerned with a different question, namely whether facts complained of by an applicant fell within the jurisdiction of a respondent State within the meaning of Article 1 of the Convention. As the summary of the Court's case-law set out above demonstrates, the test for establishing the existence of "jurisdiction" under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under international law".

#### *State agent authority*

36. In its *Al-Skeini* judgment, at paragraphs 134 to 136, the Grand Chamber laid down the parameters of extra-territorial jurisdiction that apply where the agents of a Contracting State, or the agents of a subordinate administration for which a contracting State is responsible, take an individual into their custody outside the national borders of the State concerned. In those circumstances, the Contracting State is responsible for guaranteeing the Convention rights of the detainee. The infliction of torture, unlawful violence, inhuman and degrading treatment or summary execution will amount to violations of the Contracting State's obligations under the Convention, even when they are committed on the sovereign territory of another State. The Court formulated the relevant legal rule in these terms:

"[T]he Court's case-law demonstrates that, in certain circumstances, the use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction. This principle has been applied where an individual is taken into the custody of State agents abroad... What is decisive in such cases is the exercise of physical power and control over the person in question.

It is clear that, whenever the State, through its agents, exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual.

37. In the present case, a consistent and widespread practice of abductions, torture and murder of civilians, and the torture and extrajudicial execution of Ukrainian service personnel who were prisoners of war or *hors de combat*, is clearly established on the evidence. There are numerous records by OHCHR and the OSCE attesting to this pattern of violations: see Chapter 3 and Appendix 1. These crimes were perpetrated by Russian regular and proxy forces, acting separately or in conjunction with one another. All the perpetrators were either agents or proxies of the Russian State for the purposes of the Convention.

38. In each case involving human rights violations of people taken captive, the victims were under the complete physical control of the perpetrators at the time the respective violations occurred. For this category of violations, it is immaterial whether the events occurred in territory that was under the effective control of the Russian Federation and its proxies, in contested territory, or (exceptionally) in territory that was under Ukrainian Government control. In cases involving the principle of “state agent authority”, article 1 jurisdiction is premised upon the physical control exercised by State agents over the victim’s person, rather than upon the overall control of the territory in which the violation occurred. In every such case, even in contested territory, the principle of extra-territorial jurisdiction through State agent authority is established. This is because the victims were *a fortiori* under the physical control of agents of the Russian Federation at the time of the violation. Given the levels of essential military, economic and political support provided by the Russian Federation, agents of the various pro-Russian paramilitary formations are to be treated as Russian State agents for the purposes of article 1 of the Convention.

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**Question 3: Is there *prima facie* evidence of the administrative practice alleged by the applicant Government to give rise to violations of the Convention? Are their allegations in this respect “wholly unsubstantiated” or “lacking the requirements of a genuine allegation in the sense of article 33 of the Convention” (see *Georgia v Russia (I)* (dec) no 13255/07, paras. 40-44, 30 June 2009?**

*Ukraine’s answer*

39. Yes. There is clear evidence of the existence of a widespread practice of repeated violations of the same or similar character, occurring over a period of years, and linked by time, place and the motivation and affiliations of the perpetrators. The proof of this administrative practice is overwhelming and comfortably exceeds the *prima facie* threshold set out in the Court’s caselaw. Moreover, there is clear evidence of the complete “collapse” of the rule of law in the affected territories, the absence of any avenues of legal redress for victims of the armed groups controlling those territories, and an overwhelming practice of official tolerance towards the crimes and violations committed by Russian

forces and their paramilitary proxies.

#### *Administrative practice*

40. In *Georgia v Russia (I)* (dec) no 13255/07, paras. 40-44, the Court endorsed the approach of the former Commission to the assessment of an alleged administrative practice of Convention violations at the admissibility stage of an inter-State case (as set out in *France, Norway, Denmark, Sweden and the Netherlands v Turkey*, 9940-9944/82, 6 December 1983, 19 DR 35). The Court held that an “administrative practice” consists of two elements: a “repetition” of acts in violation of the Convention and “official tolerance” of such acts.

41. A “repetition”, for this purpose was defined by the Court as “an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected not to amount to merely isolated incidents or exceptions, but to a pattern or system”.

42. A practice of “official tolerance” will be found to exist where “illegal acts are tolerated in that the superiors of those immediately responsible, though cognizant of such acts, take no action to punish them or to prevent their repetition; or that a higher authority, in the face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings a fair hearing is denied”. In addition, the Court endorsed a proportionality principle, requiring that “any action taken by the higher authority must be on a scale which is sufficient to put an end to the repetition of acts or to interrupt the pattern or system”. It also endorsed the proposition that superior authorities are “strictly liable for the conduct of their subordinates” and “are under a duty to impose their will on subordinates, and cannot shelter behind their inability to ensure that will is respected.”

43. At the admissibility stage of inter-State proceedings, it is not sufficient for an applicant State merely to allege the existence of an administrative practice, but nor is it necessary for the applicant State to prove the existence of the practice. At the admissibility stage, the burden resting on the applicant State is to adduce *prima facie* evidence which is interpreted to mean that “the allegations are sufficiently substantiated, considered as a whole and in the light of the submissions of both the applicant and the respondent”.

#### *The effect of the evidence*

44. In the present case, the evidence summarised in Chapter 3 and Appendix 1 is sufficient to establish the existence of the administrative practices alleged. There is compelling evidence compiled by the OHCHR and the OSCE attesting to a widespread pattern of human rights violations by Russia’s armed forces and their proxies. That pattern included the targeting of civilians for direct military attacks; a wide and systematic campaign over a period of years involving the abduction, and unlawful detention of

civilians, public officials and international observers; the infliction of torture and other forms of grave physical ill-treatment of civilian detainees; summary execution of civilians; the looting and destruction of private property; the torture and summary execution of prisoners of war and Ukrainian soldiers who were *hors de combat*; suppression and attacks on the independent media in violation of the press freedoms; the deliberate disruption of Ukraine's Presidential elections and the intimidation of the civilian population in order to prevent them from exercising their right to vote in those elections; consistent and unlawful obstruction of citizens' freedom of movement, particularly across the contact line separating the armed group from the Government-held positions; and the perpetration of attacks on religious congregations other than the Russian Orthodox church.

45. The instances of these violations are far too numerous to list in this Chapter, but the OHCHR's regular reporting establishes that over a period of several years, the rule of law and the protection of human rights has completely "collapsed" in the territories that have been under separatist control and a disturbing pattern of human rights violations of every kind has been allowed to flourish. OHCHR has also emphasized the complete absence of any effective system of accountability in territory held by the armed groups who have been able to commit the gravest of crimes with complete impunity. There has been no system of independent or impartial courts, and no legal remedies available in these territories that would enable victims to seek accountability against members of the armed groups or any form of effective legal redress. According to OHCHR, law enforcement by official Government agencies had become "a dead letter in territories controlled by the armed groups".<sup>11</sup> Indeed, two and a half years after the conflict began, the OHCHR observed that the "courts" and "prosecutors" of Russia's subordinated administrations in Donetsk and Luhansk were still completely incapable of providing a minimum level of due process necessary to qualify as an effective domestic legal remedy:

"These structures do not comply with the right 'to a fair and public hearing by a competent, independent and impartial tribunal established by law' as enshrined in article 14 of the ICCPR. OHCHR notes that both international human rights and humanitarian law incorporate a series of judicial guarantees, such as trial by an independent, impartial and regularly constituted court. These structures in the 'Donetsk People's Republic' and 'Luhansk People's Republic', *prima facie*, do not meet these requirements."<sup>12</sup>

46. As recently as November 2017, the OHCHR was reporting the complete absence of any semblance of due process, or any effective legal remedy for human rights violations in the territory occupied by Russia's proxy forces:

"Within structures in territory controlled by armed groups, arbitrary detentions and 'prosecutions' were compounded by the lack of recourse to effective remedy. This is of particular concern given the 'pronouncement' of a second 'death penalty' by the 'supreme

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<sup>11</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

<sup>12</sup> [https://www.ohchr.org/Documents/Countries/UA/UARep16th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UARep16th_EN.pdf)

court' of the 'Donetsk people's republic' in November. The practice of incommunicado detentions, which often amounted to enforced disappearance, also persisted.”<sup>13</sup>

47. The evidence as a whole clearly establishes the existence of a widescale administrative practice and a complete absence of any form of official accountability. Indeed, so widespread have these violations become that the OHCHR has considered the actions of the armed groups to potentially amount to crimes against humanity (i.e. a widespread or systematic attack on a civilian population). In the absence of any functioning independent judicial system, or any reliable system of military discipline among the armed groups, the Council of Europe's Parliamentary Assembly has also endorsed the view that there are no effective remedies available for the victims of these violations. Indeed, the expression “official tolerance” is a mild way of describing the dystopian conditions of civilian life inflicted by Russia's proxies in the territories concerned.

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**Question 4: (a) Bearing in mind the answers to be given to question 3 above, does the rule on exhaustion of domestic remedies (article 35(1)) apply (see *Georgia v Russia (II)* (dec), paras. 84-86; (b) In the affirmative, (i) did effective domestic remedies exist; and if so, (ii) what are/were they; and (iii) have they been exhausted: (a) Are there examples of persons who have tried to have recourse to such remedies; (b) Were investigations carried out with respect to the alleged violations?**

*Ukraine's answer*

48. Ukraine submits that in light of the widespread administrative practice established on the evidence, the absence of any effective system of legal investigation, accountability or redress, and the obvious pattern of official tolerance in operation, there is no obligation to demonstrate the exhaustion of domestic remedies. Alternatively, Ukraine submits that there were no domestic legal remedies available in the territories controlled by Russia's paramilitary proxies that were sufficiently practical and effective to require attempts at exhaustion by the victims of violations committed by the armed groups that were in control of these territories.

*The exhaustion rule is inapplicable*

49. Article 35(1) provides that the Court may only deal with a matter after all domestic remedies have been exhausted. In principle, this applies to inter-State cases. However, the Court has consistently held that the rule on exhaustion of domestic remedies does not apply where, taken together, the violations (and the lack of an effective official response) amount to an administrative practice (*Ireland v. the United Kingdom* nos. 5310/71 and 5451/72, Commission Decision of 1 October 1972 15 YB 80). This was

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<sup>13</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport20th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport20th_EN.pdf)



recently restated in *Georgia v. Russia (I)* ([GC], no. 13255/07, § 40 where the Court held that:

“The rule of exhaustion of domestic remedies as embodied in article 35(1) of the Convention applies to State applications (article 33), in the same way as it does to “individual” applications (article 34), when the applicant State does no more than denounce a violation or violations allegedly suffered by “individuals” whose place, as it were, is taken by the State. On the other hand, and in principle, the rule does not apply where the applicant State complains of a practice as such, with the aim of preventing its continuation or recurrence, but does not ask the Court to give a decision on each of the cases put forward as proof or illustrations of that practice.”

50. Accordingly, it is Ukraine’s primary position that the rule requiring the exhaustion of domestic remedies does not apply. As a matter of principle, Ukraine submits that the Court should not accord any legal recognition to the “courts” and “administrative mechanisms” of the subordinate local administration in the occupied parts of eastern Ukraine. The OHCHR reporting set out in Chapter 3 consistently emphasises the complete absence of any functioning system of independent and impartial courts, and the total subordination of all “administrative institutions” to the whims of the very armed groups that were responsible for perpetrating the violations in the first place. The Court should not afford them with legal recognition by imposing an obligation on individual victims to make use of the “domestic courts” of these unlawful entities as a threshold requirement for the admissibility of an inter-State application. The entire thrust of the independent reporting confirms the absence of any effective rule of law in the territories under the control of Russia’s proxy forces. In light of this, and the existence of the clearest possible evidence of an administrative practice of Convention violations and official indifference, Ukraine submits that article 35(1) does not apply so as to require Ukraine to establish that the numerous victims in this case (many of whom are dead) have sought to make use of the “domestic courts” or “administrative organs” of the unlawful *de facto* “governing entities”.

*There were no effective remedies available to the victims*

51. In answer to the second limb of the Court’s question, the burden is on the Russian Federation to demonstrate the existence of practical and effective legal remedies in the territories concerned. Ukraine denies that realistic remedies were either available or liable to be effective in practice, and asks the Court to find that the prospect of any practical and effective remedy for the violations alleged in this application is wholly unrealistic.

52. Such “courts”, “judges” and “prosecutors” as have been appointed since Russia’s proxies assumed effective control of the territory in March 2014 are, in practice, ineffective, biased, inaccessible, powerless, and in every respect unavailable to the victims of the violations alleged. In particular, in Resolution 2133(2016) “Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities” Parliamentary Assembly of the Council of Europe noted, inter

alia, that “7. Victims of human rights violations have no effective internal legal remedies at their disposal: 7.1. as far as the residents of the “DPR” and “LPR” are concerned, local “courts” lack legitimacy, independence and professionalism; the Ukrainian courts in the neighbouring government-controlled areas, to which jurisdiction for the non-controlled areas was transferred by Ukraine, are difficult to reach, cannot access files left behind in the “DPR” or “LPR” and cannot ensure the execution of their judgments in these territories”. In the face of widespread reports of serious and systematic human rights violations, the Court is entitled to expect Russia to be in a position to demonstrate clearly the steps that have been taken to investigate and hold accountable the numerous public officials and paramilitaries implicated in these violations. Yet there is a deafening silence from the Russian side. The Court should infer (at least at the admissibility stage) that, in the absence of clear evidence of practical and effective remedies being available and granted, there is a systemic failure to provide effective remedies for violations of the rights of the civilian population.

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**Question 5: Do the matters complained of in the supplement to the original application of 13 March 2014, submitted by the applicant Government on 14 May 2014, and as further supplemented on 12 June 2014, 8 September 2014 and 20 November 2014 and in the application submitted by the applicant Government on 27 August 2015, in so far as they concern events having taken place outside the Crimean peninsula and appertaining to sea airspace, give rise to violations of (a) article 2 of the Convention; (b) article 3 of the Convention; (c) article 5 of the Convention; (d) article 9 of the Convention; (e) article 10 of the Convention, both taken alone and in conjunction with article 17; (f) article 11 of the Convention; (g) article 1 of Protocol no. 1; (h) article 2 of Protocol no. 1; and (i) article 3 of Protocol no. 1?**

*Ukraine's answer*

53. In order to avoid duplication, the evidence proving the pattern of violations alleged in this case is set out in broadly chronological order, as it arises in the narrative recorded in Chapter 3. That enables the Court to view the progress of these violations, against the background of the burgeoning armed conflict, and to place the events in the context of the emerging evidence of Russian State responsibility. However, in order to give the Court a representative picture of the individual violations recorded by OHCHR and other international organisations, a detailed summary of the corroborated reports of violations committed on persons deprived of their liberty is set out, without comment, in Appendix 1. These documents should be read together for a complete picture.

54. In summary, however:

Article 2	There are numerous reports of unlawful military attacks by Russian forces and their armed proxies against civilians and civilian objects which caused many fatalities. These include the shooting down of Malaysian Airlines flight MH17 on
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17 July 2014, and numerous instances where civilians were shot dead on the ground. There are also multiple instances of civilians and Ukrainian soldiers who were prisoners of war or *hors de combat* being summarily executed, or otherwise tortured or beaten to death.

- Article 3                      Reports of the torture of civilians and Ukrainian soldiers who were prisoners of war or otherwise *hors de combat* have been frequently documented and verified throughout the conflict. These include many instances of sexual violence and rape. There have also been consistent reports that prisoners (particularly civilians) were held by the armed groups in conditions amounting to inhuman and degrading treatment.
- Article 4                      There are numerous reports and the statements of the victims that the “DPR” and “LPR” Russian proxies use forced labour of the Ukrainian prisoners of war and civilians for the digging of the trenches and other fortifications.
- Article 5                      Abductions, kidnapping for ransom, unlawful arrests and lengthy detentions became a key part of the armed groups’ methods of conflict. OHCHR and the SMM (OSCE) have recorded countless cases of such detentions. At one point, one of the leaders of the armed groups admitted that his unit alone was detaining more than 600 people. The number and length of time of these unlawful detentions is almost unimaginable, and OHCHR has identified patterns and motivations which make it quite clear that there was a pattern or system in operation, almost from the outset.
- Article 9                      Chapter 3 contains reports of a number of instances of deliberate attacks on, and intimidation of, various religious congregations not conforming to the Russian Orthodox tradition.
- Article 10                     Throughout the conflict, the armed groups have targeted independent journalists, both from the international and the Ukrainian media. Journalists have been prevented from reporting on “elections”, shot dead, arrested and detained. The armed groups also blocked Ukrainian broadcasters in the areas under their control.
- Article 11                     Membership of political organisations supporting Ukrainian territorial integrity was violently suppressed by the armed groups. Those involved in such

organisations were targeted for assassination or arrest, and these groups were prevented from meeting or operating in territory under the control of the armed groups.

- Article 1 of Protocol 1    The destruction of private property by Russian forces and their proxies in the local armed groups, including civilian homes and vehicles has been commonplace throughout the conflict. There have also been numerous reported instances of theft and looting of private and commercial property throughout the areas under their control. Large swathes of private property have been unlawfully appropriated without compensation.
- Article 2 of Protocol 1    Numerous schools and educational facilities have been destroyed by the armed groups. Education in the Ukrainian language has been prohibited, and teachers have been harassed, arrested and in some instances killed.
- Article 3 of Protocol 1    The right to free and fair elections in the territory under the control of Russia's paramilitary proxies has been comprehensively disrupted. Local citizens were prevented from voting in the Ukrainian Presidential elections, through acts of intimidation and violence.

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**Question 6: (a) Have there been violations of Article 14 of the Convention taken together with any of the articles mentioned in the preceding question? (b) If so (i) what are the relevant comparators or persons in relevantly similar situations; and (ii) on what grounds has there been “discrimination”?**

55. Virtually all of the violations alleged in this application were committed *because of* the ethnicity or perceived political affiliation of the victim. The armed groups systematically attacked civilians of Ukrainian ethnicity, or citizens who supported Ukrainian territorial integrity. That was the *motivation* behind nearly all of the violations alleged. Nationality and political opinion are relevant characteristics for the purpose of the article 14 analysis, and the relevant comparators are those of Russian ethnicity or pro-Russian political sympathies. It follows that nearly all of the violations of substantive Convention rights alleged in this case, also constitute violations of article 14 because the victims were *singled out* for attack by reason of a protected characteristic.

56. Thus, in December 2014, OHCHR reiterated that “[p]ersecution and intimidation of people suspected of supporting Ukrainian forces or merely holding pro-Ukrainian sympathies (or perceived as such) remains widespread.”<sup>14</sup> And in May 2016, the OHCHR observed:

“43. The armed groups started resorting to summary executions and killings as early as in April 2014. They mainly executed individuals, who had vocal ‘pro-unity’ views or were believed to have such views, or provided or were believed to have provided support to Ukrainian forces. Some of the executions were allegedly carried out upon the imposition of a death sentence following the semblance of a judicial process. In at least one case, the victims may have been executed out of racial hatred.”<sup>15</sup>

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<sup>14</sup> See [Tab 1] OHCHR, *Report on Human Rights Situation in Ukraine* (15 December 2014), para. 41, in Appendix 4;

<sup>15</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

### **CHAPTER 3: THE CHRONOLOGY OF THE CONFLICT; THE EVIDENCE OF RUSSIAN STATE RESPONSIBILITY; AND THE PATTERN OF HUMAN RIGHTS VIOLATIONS**

57. The events with which this inter-State case is concerned began in early 2014 and are still continuing today. The most intense period of the human rights abuse occurred in the first two years of the conflict. Although the scale and nature of the violations has become less intense since then, reports of grave human rights abuse by the armed groups continue.

58. In order to present the evidence concerning this pattern of human rights violation in its context, Ukraine has set out the key evidence in a broadly chronological order, so that the violations can be seen against the background of a clear picture of the progress of the conflict, the involvement and responsibility of the Russian Federation, and the response of international organisations monitoring the situation.

#### **Political background**

59. Since the dissolution of the Soviet Union, the Russian Government has pursued a relentless political strategy of seeking to maintain economic and political influence over the former Soviet republics. One aspect of this policy has been to disrupt efforts at closer integration between former Soviet States and western political alliances, such as the European Union and NATO. In addition to the use or threat of force against its near neighbours, and the exertion of economic influence, one way of achieving Russian regional hegemony has been through the promotion of the Eurasian Customs Union (EACU), a common customs area currently comprising Russia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan. Modelled on the European Union (EU), the EACU provides a means by which Moscow can maintain political and economic influence over Russia's "near abroad", its neighbours and former satellites.

60. When Ukraine declared its independence from the Soviet Union in 1991 and began to chart its own sovereign course, the Russian Federation committed, formally at least, to respect Ukraine's sovereignty and territorial integrity within its settled borders. It has become clear, however, that Russia is only prepared to honour that commitment if Ukraine agrees to remain subject to Russian political, economic, cultural and military control.

61. Ever since 1991, Ukraine sought to maintain a "multi-vector" foreign policy, building closer ties with the EU and NATO, whilst at the same time seeking to maintain a stable relationship with the Russian Federation. Ukraine never joined the EACU, and sought to plot its own course for the future. In recent years, Russia has come to view the ambitions of Ukraine and its people as a direct challenge to Russia's role as the dominant power in the region. Ukraine has pursued an approach to international affairs in which it is not beholden to Russia. And Russia has responded with punitive trade sanctions and threats

to Ukraine's territorial integrity. Perhaps less visibly, Russia mounted a campaign of ideological propaganda, funding pro-Russian organizations in eastern Ukraine, and spreading false information through media and other outlets.

62. The election of Viktor Yanukovych as President of Ukraine in 2010 was perceived in Moscow as an opportunity to achieve greater control over Ukraine's affairs. Under Moscow's influence, Yanukovych distanced Ukraine from plans for NATO integration. However, his administration was unable to ignore a strong tide of popular opinion in favour of closer economic integration with the EU, and reluctantly entered negotiations for an EU-Ukraine Association Agreement. In November 2013, shortly before the agreement was due to be signed, Yanukovych yielded to pressure from the Kremlin to abandon the process, and announced instead an intention to begin talks for accession to the EACU.

63. This step was deeply unpopular in Ukraine, especially amongst the younger generation, who saw the trade deal with the EU as a significant step towards greater economic and political integration with the liberal democracies of western Europe. Yanukovych's capitulation to Moscow sparked an uprising which quickly spread. Popular protests began in Kyiv, with people taking to the streets in ever-increasing numbers, setting up a "tent city" in an effort to influence Government policy. These street protests came to be known as the *Revolution of Dignity* or *Euromaidan*.

64. The Yanukovych administration responded with increasingly violent attacks on the protestors. More than a hundred unarmed civilians were killed between the last week of January and the first week of February 2014, many of them shot dead when members of the *Berkut* police opened fire on the crowd with live rounds. Others were beaten by organized groups of pro-Russian agitators.

65. Far from subduing the protests, however, the use of unrestrained violence against unarmed civilians inflamed public sentiment. Popular support for the protests intensified, as people of all ages, and from all walks of life, took to the streets.

66. The position of President Yanukovych eventually became untenable. On the night of 21 February 2014, he fled from Kyiv under cover of darkness, accompanied by a Russian military escort. He initially made his way in secret to Kharkiv, close to Ukraine's eastern border with Russia. The next day, the Ukrainian Parliament voted by a majority of 328 MPs to 119 (73%) to remove him from office. Yanukovych fled to Moscow, where he sought political asylum. On 4 March 2014, Russia's Permanent Representative to the United Nations, Vitaly Churkin, reportedly produced a letter from Yanukovych dated 1 March which called for Russian military intervention in Ukraine to "restore law and order".

67. Russia responded with military aggression in two regions close to its borders, each of which had significant numbers of ethnic Russians among their population. Using propaganda dating back to the Second World War, Russian media sought to portray the developments in Ukraine as anti-Russian and ultra-right movements. President Putin set about a policy that was designed to change the international borders between the two States. Harking back to the 18<sup>th</sup> century notion of Novorossiia<sup>16</sup>, the Kremlin fanned the flames and imperialist ambitions of ultra-nationalist Russian elements.

68. At the outset, the aim was to ensure that if Ukraine was determined to pursue the path of independence, it would lose a significant part of its territory in the east and south-east of the country, adjacent to the border with Russia. The first and most immediate target was the unlawful invasion, occupation and purported annexation of Crimea. The human rights violations that were perpetrated on the Ukrainian and Tartar population of the Crimea are the subject of a separate inter-State case before this Court and are not, therefore, addressed in the present submission.

69. The present case concerns the pattern of human rights violations committed by Russian State agents and their proxies during the Russian-backed conflict in eastern Ukraine. This conflict began as the result of Russian ambitions for the annexation of the territories in eastern Ukraine that were adjacent to the international border between the two States. Whether that remains the ambition of the Russian Government five years later is beside the point. What is certain is that Russia initiated, instigated, promoted and participated directly in this conflict, with the purpose of de-stabilising Ukraine.

70. As the Court will be aware, efforts are currently underway between Ukraine and Russia to secure a lasting peace, and a successful re-integration of the conflict-affected territories into Ukraine. But the eventual peaceful resolution of the conflict does not affect the importance of holding the Russian Federation accountable for the pattern of grave human rights violations inflicted by its forces and their proxies during a conflict that had cost more than 10,000 lives, injured more than 30,000 people, and resulted in a humanitarian disaster which will take many years to recover from. It is essential that Russia is held accountable for inflicting widespread human misery and a pattern of grave human rights violations committed on a mass scale. To leave such actions without a legal remedy would be the very

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<sup>16</sup> The supposed historical justification for these separatist ambitions was based on the proposition that the 18<sup>th</sup> century governate of Novorossiia (which had been conquered from the Ottoman Empire, and included Donetsk and Luhansk) had not originally been part of Ukraine, but had been illegally annexed to the Ukrainian Soviet by the Bolsheviks. At his annual press conference on 17 April 2014, President Putin publicly adopted and expounded this theory, fanning the flames of the separatists' ambitions. This political concept became the rallying call for separatist entities in the Donbass, and was the ultimate pretext for the formation of the so-called Novorossiia Confederation, and its constituent elements the Donetsk People's Republic (DPR) and the Luhansk Peoples Republic (LPR).



antithesis of the values that the Council of Europe stands for.

### **The start of the unrest**

71. Donbass (the Donetsky Bassein) is an area of territory in Eastern Ukraine that roughly corresponds to the coal deposits in the basin of the Siverskyi Donets river. The geological area of this coal basin spans 60,000 square kilometres, and straddles both sides of the international border between Ukraine and the Russian Federation. It includes the Donetsk and Luhansk oblasts of Eastern Ukraine, and the Rostov region of the Russian Federation. The international border runs for almost a thousand kilometres through Donetsk and Luhansk, and reflects the administrative boundary of the former Ukrainian Soviet Socialist Republic. To the south, the territory of Donetsk extends to the Sea of Azov, which provides the region with direct access to important international trade routes.

72. Donetsk and Luhansk are among the most densely populated and industrialised regions of Ukraine. There are 89 cities in the two regions combined, with sprawling areas of urban development, built around coal mines and other heavy industrial plants. At the outbreak of hostilities in 2014, the population living in these two border regions was ethnically mixed. Although ethnic Russians were a minority in Donbass, they were present in significantly higher numbers than in other regions of Ukraine. Most people in Donetsk and Luhansk spoke both languages, although Russian was the native language for the majority.

73. As part of its policy of influencing Ukraine, Moscow had, for many years, fostered pro-Russian political groupings that pursued a broadly separatist agenda in these regions<sup>17</sup>. This movement consisted of political parties and non-governmental organisations that promoted regional autonomy and a policy of national federalisation in Ukraine. Their collective aim was to weaken the ties between Kyiv and the border regions (the Ukrainian Donbass and the Crimea peninsula), and thereby to facilitate Russian influence over Ukrainian territory adjacent to the border. These groups also advocated Ukraine's integration into the EACU, arguing that this would benefit the industrialised regions of the Ukrainian Donbass.

74. Russian media portrayed the *Euromaidan* protests as an existential threat to the ethnic Russian minorities living in Ukraine. In a deliberate attempt to stir up historic enmities, Russian media sought to portray the *Euromaidan* movement as pro-Nazi, and suggested that there was a real risk of genocide against ethnic Russians. A counter-movement came into existence, calling itself the *Antimaidan*, which attracted support from Russian speaking Ukrainians. It was also supported by Russian citizens who travelled to Ukraine to foment the unrest.

75. On 26 January 2014, whilst the *Euromaidan* protests were ongoing, a political conference was held at the Eva Hotel in Donetsk to launch the so-called “Russian Spring” movement. The conference was sponsored by the National Liberation Movement, a pro-Russian political grouping led by Yevhen Fedorov, a member of the Russian Duma. It resulted in the establishment of the “Donbass People’s Militia”, an illegal paramilitary formation.

76. Organised protests became more frequent during February, and it became increasingly clear as these events progressed that Russia was instigating, organising, and financing anti-government protests across cities in eastern Ukraine with significant Russian-speaking populations,<sup>18</sup> supporting separatist movements to proclaim “people’s republics” across a wide swathe of territory.

77. Further protests occurred throughout the Donbass region during March, demanding that Ukraine should join Russia’s EACU and adopt a federalized system of autonomous regional government.<sup>19</sup> During this period:

- (a) Even before Russia had fully consolidated its military control over Crimea (in March 2014), it was already taking systematic measures to destabilise the situation in southern and eastern oblasts of Ukraine. This was partly in order to divert attention from the annexation of Crimea, and also to create the impression of a “popular resistance”, giving the appearance that widespread acts of “civil disobedience were taking place, so as to provide a pretextual justification for Russia’s aggression in eastern and southern Ukraine. The Kremlin had a “maximal” strategic plan, with a “minimal” strategic alternative as a fallback position. The “maximal” objective would have resulted in the complete destabilisation of ten Ukrainian regions (Odessa, Mykolaiv, Kherson, Donetsk, Luhansk, Dnipropetrovsk, Zaporizhia, Kharkiv, Sumy, Chernihiv). This was to be achieved by the Federal Security Service (FSB) operating Russia’s strategy of “hybrid warfare”<sup>20</sup>. The fallback position would involve the intensive targeting of at least five priority regions (Odessa, Mykolaiv, Kherson, Donetsk, and Luhansk).
- (b) Crimea received 90 percent of its electric power and agricultural water supplies from southern Ukraine. Accordingly, Russia’s most pressing strategic priority was to establish effective control, at a minimum, over the eastern part of Donetsk oblast (and at least part of

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<sup>18</sup> Putin-advisor Sergey Glazyev discussed providing funds to pro-Russian organizations in Ukraine, mobilizing Russians or pro-Russian Ukrainians to join demonstrations, and encouraging takeovers of regional councils.

See [Tab 39] Expert opinion on phonoscopic examination intercepted communication of Glaziev, Advisor to Russian President Putin (12 June 2014), pp. 10–14; [Tab 40] Witness Statement of Andrii Tkachenko (5 June 2018), para. 14–17 in Appendix 4.

<sup>19</sup> See witness statements of [Tab33] Besperstova O.O., [Tab34] Zarovna T., [Tab35] Kravchenko A.V., [Tab36] Kovalenko A., [Tab37] Kirikova I., [Tab38] Kravchenko A.V. and [Tab 16] Chub S. in Appendix 4;

<sup>20</sup> See [Tab 2] in Appendix 4;

Zaporizhzhia) in order to secure a land corridor between mainland Russia and the Crimean peninsula<sup>21</sup>.

- (c) Accordingly, the Russian Federation began its de-stabilisation operations in eastern and southern Ukraine whilst pursuing the occupation and purported annexation of Crimea. Local pro-Russian activists were reinforced, at this time, by trained militants from the Russian territory. Russian authorities organised the regular trafficking of people from Belgorod and Kursk regions of the Russian Federation to Kharkiv in Ukraine; from the Rostov Region of the Russian Federation to Luhansk and Donetsk; and from occupied Transnistria to Odessa Region.<sup>22</sup>
- (d) The first orchestrated mass actions took place on 1 March 2014. Civil unrest was instigated simultaneously in the cities of Kharkiv, Donetsk, Dnipropetrovsk, and Odessa, as well as across a number of other regions in eastern Ukraine. These took the form of mass strikes rights across the targeted territories, that were systematically organised by pro-Russian elements, who commandeered “anti-fascist” slogans and sentiments to inflame unrest. There were also calls for federalisation of Ukraine, the promotion of Russian as an official language, the entry of Ukraine into the EACU (in accordance with the Yanukovych political agenda that sparked the *Euromaidan* protests in the first place).
- (e) It was in this context that the first attempts were made to take control of local government and administrative buildings in Donetsk and Luhansk oblasts. Armed and organised pro-Russian elements “occupied” these buildings and replaced local symbols with Russian flags. From 2 to 15 March 2014, a series of public “actions” were synchronised by pro-Russian elements. The most intense series of “actions” were focussed on the Donetsk oblast, which witnessed the arrival of numerous “tourists” from Russia.
- (f) On 16 March 2014, the day of the “referendum” in Crimea, pro-Russian elements staged a series of co-ordinated and simultaneous “mass actions” in Donbass, ostensibly in “solidarity” with the events taking place in Crimea. Marches and demonstrations were held in Kharkiv, Dnipropetrovsk and Odessa. In Mykolayiv, pro-Russian groups attempted to stage a so-called “referendum” in support of annexation with Russia.
- (g) By this time, the infiltration of armed Russian militants was becoming clearly visible throughout the regions targeted by the Russian Federation. On 14 March 2014, a group of armed fighters attacked the premises of pro-Ukrainian organizations on Rimarskaya Street in Kharkiv. The attackers included Arseniy Pavlov aka “Motorola” (a Russian national and

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<sup>21</sup> See [Tab 2] in Appendix 4;

<sup>22</sup> See [Tab 2] in Appendix 4;

militant leader)<sup>23</sup>. Pavlov was also caught on video footage participating in an “action” near the Russian consulate in Kharkiv.

- (h) As the International Crisis Group (ICG) has observed, the unrest in April and May 2014 was officially led by local residents, but they were “joined by activists and volunteers from Moscow, in a movement that came to be known as the ‘Russian Spring’.”<sup>24</sup> The involvement of Kremlin backers in fomenting the unrest was well-known and sometimes publicly acknowledged. According to the ICG:

“The Kremlin had an interest in keeping Ukraine within its sphere of influence and establishing a protectorate over Russian-speaking people outside its borders. Moreover, it saw its objectives aligning with the pro-Russia Donbas groups. In the early months of 2014, Novorossiia proponents developed a scenario that in many ways mimicked Russia’s annexation of Crimea... Local militias in Donetsk, Luhansk, Kharkiv, Dniepropetrovsk, Odessa, Zaporozhye and other parts of Donbas would seize government buildings and then, supported by undercover Russian forces, hold a referendum to demonstrate popular backing for either independence or unification with Russia...[Russian Government] advisers and businessmen appear to have acted on their own initiative, without much effort to work together. One such businessman was Konstantin Malofeyev, who allegedly financed the first leaders of the nascent “people’s republics” in Donbas. Meanwhile, increasing numbers of Russian irregulars, encouraged by state propaganda and what they regarded as the government’s tacit approval, made their way to Ukraine.

The chief backer of annexation appears to have been Kremlin adviser Sergey Glazyev, an outspoken champion of Novorossiia. A former Kremlin official said Glazyev based his plan on the premise that pro-Russian sentiment was so strong and widespread in eastern Ukraine that, together with hatred for Kyiv’s new government, it would deliver the area into Moscow’s hands. Evidence, including telephone conversations intercepted and recorded by Ukrainian intelligence, suggests that he gave direct instructions to the lead organisers of the Donbas uprisings, and talked of financial and military support pending the insurgents’ success. Pavel Gubarev, a Ukrainian who was one of the first self-proclaimed leaders of Novorossiia, cited a telephone call from Glazyev in which the Russian congratulated him after he and others seized administration buildings in Donetsk on 5 March 2014.”<sup>25</sup>

78. The crowds attending these demonstrations included groups of professional agitators from the Russian Federation.<sup>26</sup> The United Nations Office of the High Commissioner for Human Rights (OHCHR) documented numerous reports confirming that “people were brought in buses and paid to take part in

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<sup>23</sup> See para. 134 *et seq.*, *post.*

<sup>24</sup><https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/254-rebels-without-cause-russias-proxies-eastern-ukraine>

<sup>25</sup><https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/254-rebels-without-cause-russias-proxies-eastern-ukraine>

<sup>26</sup> *Ibid.*

protests and conduct them according to specific scenarios, including causing violent incidents.”<sup>27</sup> As the Atlantic Council pointed out in its 2015 Report:

“As Ukrainians struggled to build a new, democratically elected government, mysterious “little green men” began to appear, first in Crimea and later in eastern Ukraine. To local residents and independent observers, the origins of the “little green men” were far from mysterious; their unmarked Russian military uniforms, Russian regional accents, and Russian-made weapons gave them away at first glance. In Ukraine’s eastern Donbas region, “little green men” appeared in the guise of local “separatists.” While the Kremlin and its sprawling media apparatus maintains that the turmoil in the Donbas is a civil war, Russian leadership was evident from the beginning. For example, the proclaimed President of the “Donetsk People’s Republic” in the spring of 2014 was Aleksander Borodai, a Russian political consultant from Moscow, and his Defense Minister was Igor Girkin, a Federal Security Service (FSB) Colonel also known as “Strelkov.”<sup>28</sup>

### **The build-up of Russian troops along the border**

79. Whilst the paramilitary unrest in eastern Ukraine was being fomented from Moscow, the Russian Federation was deploying a substantial conventional military force on Ukraine’s border. Figures compiled by the Ukrainian Security Service indicate that there were more than 26,000 combat-ready Russian military personnel stationed close to Ukraine’s eastern border by the beginning of 9 March 2014. The Russian Ministry of Defence announced on 13 March that these units would commence training manoeuvres close to the border.

80. Within a month, a further 14,000 Russian troops had been deployed to the border region, in a show of force that was plainly intended to embolden Russia’s proxies in eastern Ukraine, and further instigate unrest. On 10 April, NATO Secretary General Anders Fogh Rasmussen issued a statement in which he said this:

“As I speak, some 40,000 Russian troops are massed along Ukraine’s borders. Not training, but ready for combat. We have seen the satellite images, day after day. Russia is stirring up ethnic tensions in eastern Ukraine and provoking unrest. And Russia is using its military might to dictate that Ukraine should become a federal, neutral state.”<sup>29</sup>

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<sup>27</sup> See [Tab 3] OHCHR, *Report on Human Rights Situation in Ukraine* (15 April 2014), para. 68 (describing demonstrations in early March) in Appendix 4;

<sup>28</sup> Claire Bigg, “Vostok Battalion, a Powerful New Player in Eastern Ukraine,” Radio Free Europe/Radio Liberty, May 30, 2014, <http://www.rferl.org/content/vostok-battalion-a-powerful-new-player-in-easternukraine/25404785.html>.

<sup>29</sup> [http://www.nato.int/cps/en/natolive/opinions\\_109010.htm](http://www.nato.int/cps/en/natolive/opinions_109010.htm)

## International reaction

81. In light of these developments, on 7 April, US Secretary of State John Kerry spoke to the Russian Foreign Minister Sergei Lavrov by telephone, expressing the view that in light of the apparent co-ordination of the protests, the events “did not appear to be spontaneous”. He called on Russia to “publicly disavow the activities of separatists, saboteurs and provocateurs”.<sup>30</sup>

82. On 13 April, Samantha Power, the US Ambassador to the United Nations, issued a statement saying that the events in Ukraine bore “the tell-tale signs of Moscow’s involvement”.<sup>31</sup> The US State Department also issued an official briefing on Russian State involvement in fomenting the unrest in eastern Ukraine:

“On April 12, armed pro-Russian militants seized government buildings in a coordinated and professional operation conducted in six cities in eastern Ukraine. Many of the militants were outfitted in bullet-proof vests and camouflage uniforms with insignia removed and carrying Russian-origin weapons. These armed units, some wearing black and orange St. George’s ribbons associated with Russian Victory Day celebrations, have raised Russian and separatist flags over the buildings they seized, and called for referendums and union with Russia.

Even more so than the seizure of main government buildings in Ukrainian regional capitals Donetsk, Luhansk, and Kharkiv last weekend, these operations bear many similarities to those that were carried out in Crimea in late February and culminated in Russia’s illegal military intervention and purported annexation of Crimea...

The Ukrainian Government has reporting indicating that Russian intelligence officers are directly involved in orchestrating the activities of pro-Russian armed resistance groups in eastern Ukraine. In addition, the Ukrainian Government detained an individual who said that he was recruited by the Russian security services and instructed to carry out subversive operations in eastern and southern Ukraine, including seizing administrative buildings. All of this evidence undercuts the Russian Government’s claims that Ukraine is on the brink of ‘civil war’...

The events of April 12 strongly suggest that in eastern Ukraine Russia is now using the same tactics that it used in Crimea in order to foment separatism, undermine Ukrainian sovereignty, and exercise control over its neighbor in contravention of Russia’s obligations under international law.”<sup>32</sup>

83. The following day, the US Ambassador to Ukraine, Geoffrey Pyatt described the unrest being fomented by Russia as state-sponsored acts of terrorism:

“Again, you have people in cities across eastern Ukraine, some of them heavily armed with Russian weapons, including state-of-the art sniper rifles, Russian inventory automatic machine guns with grenade launchers. These are not peaceful protesters, this is an armed

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<sup>30</sup> <https://www.bbc.co.uk/news/world-europe-26919928>

<sup>31</sup> <https://af.reuters.com/article/worldNews/idAFBREA3709020140413>

<sup>32</sup> <https://2009-2017.state.gov/r/pa/prs/ps/2014/04/224762.htm>

force.”<sup>33</sup>

84. Similarly, the UK Foreign Secretary, William Hague, said that he did not think “denials of Russian involvement have a shred of credibility.”<sup>34</sup>

85. On 27 March 2014, the UN General Assembly adopted Resolution 68/262 on the Territorial Integrity of Ukraine.<sup>35</sup> Following the undemocratic and unlawful referendum in Crimea, the resolution affirmed the UN’s commitment to the sovereignty and territorial integrity of Ukraine within its internationally recognized borders, and called on “all States” to “desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine, including any attempts to modify Ukraine’s borders through the threat or use of force or other unlawful means”.

86. It was against this developing background that on 10 April 2014, NATO called on Russia to stop “stirring up ethnic tensions” and “provoking unrest” in eastern Ukraine<sup>36</sup>

### **From civil unrest to paramilitary action**

87. Over the same period (March and April), these illegal armed groups began to occupy public and administration buildings in Donetsk and Luhansk,<sup>37</sup> whilst Russian Special Forces engaged in acts of sabotage inside Ukrainian territory.<sup>38</sup> On 7 April, local armed groups, supported by Russian Special Forces and Cossack paramilitaries, took control of the Donetsk Regional State Administration, declared independence from Ukraine and announced the establishment of the “Donetsk People’s Republic” (DPR). Their leader, Pavel Gubarev, was installed as “People’s Governor” and they announced that an independence referendum would be held in Donetsk on 11 May 2014.

88. The International Crisis Group describes how the ideological foundation for these protests emanated from Moscow. It was based on the notion of Novorossiia (or New Russia), a neo-imperialist concept of Russian territorial expansion which was actively encouraged by President Putin:

“Think-tanks like the Russky Mir Foundation and the Russian Institute for Strategic Studies, headed at the time by former Foreign Intelligence Service agent Leonid Reshetnikov, promoted the increasingly popular idea of “the Russian world”, a cultural, religious and sometimes political concept which “reconnects the Russian diaspora with its homeland” – a homeland representing “much more than the territory of the Russian Federation and the 143 million people living within its borders”. In Donbas, “Russian world” proponents saw

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<sup>33</sup><https://web.archive.org/web/20140419003855/http://www.voanews.com/content/q-and-a-with-us-amb-geoffrey-pyatt-ukraine-crisis-escalates-as-war-fears-grow/1893136.html>

<sup>34</sup> <https://www.reuters.com/article/us-ukraine-crisis-idUSBREA3A1B520140414>

<sup>35</sup> A/68/L.39 and Add.1

<sup>36</sup> See para. 80, *ante*; and see [http://www.nato.int/cps/en/natolive/opinions\\_109010.htm](http://www.nato.int/cps/en/natolive/opinions_109010.htm)

<sup>37</sup> See [Tab 4] OHCHR, *Report on Human Rights Situation in Ukraine*, (15 May 2014), para. 90, in Appendix 4;

<sup>38</sup> See [Tab 2] in Appendix 4;

an opportunity to capitalise on Russian nationalist sentiment among Russian-speaking Ukrainians...In line with the “Russian world” concept, they built a case for historical Russian claims to parts of eastern Ukraine, even occasionally referring to these lands as Novorossiia, or New Russia..[T]his thinking found its way into the Kremlin. In the spring of 2014, for instance, Vladimir Putin referred to Donbas regions as being historically separate from Ukraine:

“I’ll remind you: this is Novorossiia. Kharkov, Luhansk, Donetsk, Kherson, Nikolayev and Odessa were not part of Ukraine during Tsarist times. These were all territories given to Ukraine in the 1920s by the Soviet government. Why [the Soviets] did that, only God knows”.<sup>39</sup>

89. It was apparent to international observers that Russia was directly responsible for inciting and coordinating the armed uprising that was beginning to take hold in eastern Ukraine: see para. 81 *et seq, ante*.<sup>40</sup>

90. On 10 April 2014, the Parliamentary Assembly of the Council of Europe adopted Resolution 1990 (2014) which determined that the Russian Federation’s actions in annexing Crimea were unlawful as a matter of international law and in clear contradiction to the Statute of the Council of Europe, and to Russia’s accession commitments, and resolved to suspend Russia’s voting rights, and its right to be represented on the Bureau, Presidential Committee and Standing Committee of the Council of Europe. Concerned at the escalation of tensions in eastern Ukraine, and the build-up of Russian military forces close to the border, the Parliamentary Assembly also expressed its concern about Russia’s intentions in Donbass.<sup>41</sup>

91. Armed engagements in Donbass began on 12 April, when Russian Special Forces, acting under the guise of local separatists, took control of the towns of Slovyansk, Kramatorsk and Druzhkivka.<sup>42</sup> The following day, Samantha Power, the US Ambassador to the United Nations, and Geoffrey Pyatt, the US State Department, the US Ambassador to Ukraine, publicly accused Moscow of manipulating the situation and infiltrating heavily armed operative in the “actions” taking place “in cities across eastern Ukraine”, a view endorsed by the United Kingdom: see paras. 82 to 85, *ante*.<sup>43</sup>

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<sup>39</sup><https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/254-rebels-without-cause-russias-proxies-eastern-ukraine>

<sup>40</sup> <https://www.bbc.co.uk/news/world-europe-26919928>

<sup>41</sup> See [Tab 5] Parliamentary Assembly Resolution 1990 (2014), paras. 3 and 4. in Appendix 4;

<sup>42</sup> See [Tab 6] Expert opinion on Forensic Commission Military Examination, 6 October 2017 in Appendix 4;

<sup>43</sup><https://web.archive.org/web/20140419003855/http://www.voanews.com/content/q-and-a-with-us-amb-geoffrey-pyatt-ukraine-crisis-escalates-as-war-fears-grow/1893136.html>



92. According to OHCHR;

“[T]he conflict broke out in spring 2014, with the influx of foreign fighters, including citizens of the Russian Federation, ammunition and heavy weaponry into east Ukraine from across the border with the Russian Federation.”<sup>44</sup>

93. A group of masked and armed men under the command of Igor Girkin (a former FSB officer) took control of public buildings in Sloviansk and appointed Vyacheslav Ponomarev as “People’s Mayor”. At the same time, a group of Ukrainian soldiers in the vicinity of Sloviansk were ambushed and there was an exchange of fire. There was a further armed engagement near Sloviansk the next day. Over the following two weeks, municipal buildings across eastern Ukraine were seized by armed gangs, amid sporadic armed skirmishes. After a number of failed attempts, the administrative offices of Luhansk were seized on 27 April, and the “Luhansk People’s Republic” (LPR) was established, under the “People’s Governor” Valery Bolotov.

94. From the outset, these groups pursued a campaign of deadly violence against perceived Ukrainian loyalists, that has been described by the OHCHR as a “reign of intimidation and terror.”<sup>45</sup> In a widespread pattern of linked violations, civilians were systematically abducted by pro-Russian armed groups, and summarily executed, tortured or gravely ill-treated. This pattern of violations plainly amounts to an administrative practice in breach of articles 2, 3 and 5 of the Convention, for which the Russian Federation is answerable.

### **Russia’s effective control of the separatist leadership**

95. There has never been a clear distinction between the political leadership of the separatist entities and the military leadership of the militias that took up arms in eastern Ukraine. The two are effectively inter-changeable, with individuals being appointed amongst themselves as “People’s Mayor”, “Prime Minister”, or “Minister of Defence”, whilst at the same time organising and commanding irregular paramilitary formations. From the very outset, the appointment, direction and removal of these individuals from positions of power has been subject to the patronage of the Kremlin. They serve, in effect, subject to the approval of Moscow.

*Pavel Gubarev, Vyacheslav Ponomaryov and Denis Pushilin*

96. The “first wave” of political leadership approved by Moscow were Ukrainian nationals of Russian ethnic extraction: Pavel Gubarev, Vyacheslav Ponomaryov and Denis Pushilin. As will become apparent, former FSB officer Igor “Strelkov” Girkin was instrumental in their initial appointment and in their

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<sup>44</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_14th\\_HRMMU\\_Report.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf)

<sup>45</sup> See [Tab 7] OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014), para. 26. in Appendix 4;

removal.

97. When heavily armed pro-Russian fighters initially seized control of the eastern city of Sloviansk in April 2014, Girkin and his men installed Vyacheslav Ponomaryov as the self-proclaimed “People’s Mayor” of Sloviansk.<sup>46</sup> A former member of the Russian Army, Ponomaryov was a veteran of the Soviet–Afghan War, and had served in a “special operations unit” of the Arctic-based Northern Fleet.<sup>47</sup> Almost immediately, he issued a call for support to his former military colleagues from the Russian armed forces. He was quoted in the media as saying:

“When I called on my friends, practically all of whom are ex-military, they came to our rescue, not only from Russia but also from Belarus, Kazakhstan and Moldova”.<sup>48</sup>

98. In an interview with *Reuters* on 23 April 2014 in Sloviansk, Ponomaryov claimed to be commanding approximately 2,500 heavily armed men he described as “volunteers from Russia” and other former Soviet States.<sup>49</sup> According to *Reuters*:

“Where Ponomaryov’s authority seems less certain, however, is among the brisk, clearly professional soldiery concentrated at the headquarters of the SBU security service, men with better weapons and less of a line in chat for reporters or local kids. It is these masked men, some sporting Cossack lambskin hats or unruly beards, who draw comparisons to the “little green men” who appeared in uniforms lacking insignia in Crimea last month...Monitors from Europe’s OSCE security body say they see signs of a Russian troop presence.”<sup>50</sup>

99. Ponomaryov was later to become notorious for the violent ill-treatment (including torture and murder) of detainees in Sloviansk, and for holding four members of the OSCE SMM captive.<sup>51</sup> However, he was deposed and arrested in June 2014, on instructions from Moscow’s representative on the ground Igor “Strelkov” Girkin. According to one report:

“Ponomaryov’s power-mad behavior caught up with him in the end. On June 10, amid rumors of child rape, looting, and a rampant drug problem, he was detained by his own forces on the command of the DPR’s defense minister Igor Strelkov. The ostensible reason given for his arrest by the DPR was “engaging in activities incompatible with the goals and tasks of the civil administration,” but most likely it was just because his psychopathic habits were getting out of hand.”<sup>52</sup>

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<sup>46</sup><https://www.bloomberg.com/news/articles/2014-04-23/in-the-center-of-eastern-ukraines-separatist-movement-the-peoples-mayor-speaks-out>

<sup>47</sup> <https://www.reuters.com/article/us-ukraine-crisis-leaders-insight/ukraine-revolt-shows-faces-but-whose-are-the-brains-idUSBREA3M26120140423>

<sup>48</sup> <https://www.pravda.com.ua/news/2014/04/14/7022375/>

<sup>49</sup> <https://www.reuters.com/article/us-ukraine-crisis-leaders-insight/ukraine-revolt-shows-faces-but-whose-are-the-brains-idUSBREA3M26120140423>

<sup>50</sup> <https://www.reuters.com/article/us-ukraine-crisis-leaders-insight/ukraine-revolt-shows-faces-but-whose-are-the-brains-idUSBREA3M26120140423>

<sup>51</sup> [https://www.vice.com/en\\_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic](https://www.vice.com/en_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic)

<sup>52</sup> [https://www.vice.com/en\\_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic](https://www.vice.com/en_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic)

100. Pavel Gubarev was appointed so-called “People’s Governor” of the newly-formed “Donetsk People’s Republic” on 3 March 2014. He was “elected” by a show of hands from among a small group of people gathered in Donetsk City. Gubarev supported the holding of a referendum on the territorial status of the region. However, he was arrested by Ukrainian law enforcement soon after his “election,” and held in custody on charges relating to armed separatism. By the time he was released on 7 May 2014, as part of a prisoner exchange, the “Deputy People’s Governor”, Denis Pushilin, had assumed effective control.

101. Pushilin was a local politician in Donetsk who came to prominence at the beginning of March 2014 when he was initially given the title of “Deputy People’s Governor”. During Gubarev’s detention, he assumed political and military control of the “Donetsk People’s Republic”. Like Gubarev, he was an early advocate of holding independence referendums in Donetsk and Luhansk.<sup>53</sup> Following the referendums on 11 May, his designation changed to that of “Chairman of the Supreme Soviet”.<sup>54</sup> Gubarev had close ties to Moscow, and was an associate of the high-profile Russian nationalist politician Vladimir Zhirinovsky, who was then the Deputy Speaker of Russia’s Lower House of Parliament.<sup>55</sup>

102. It soon became apparent to seasoned political observers, however, that Ponomaryov and Pushilin were local “front men” whose actions were being directed by more powerful figures close to the Kremlin itself. As early as April 2014, *Reuters* was reporting that the two men seemed to be controlled from outside Ukraine:

“But many in the Donetsk region, including officials who have negotiated with the activists, see the pair as mere fronts for brains behind the scenes: a “puppeteer” in the words of one local Ukrainian mediator; or Vladimir Putin in the eyes of Kiev, which says Russian special forces are orchestrating events...Ponomaryov and Pushilin do not look like masters of their own destiny. Some observers say that, as in Crimea, those in the spotlight have been drawn from the obscure wings of an existing pro-Russian political camp to speak lines dictated by Moscow...“They are well-known marginal forces...that are now being used as functional figures to voice and represent the positions of the organizers of this separatist spectacle,” said Volodymyr Kipen, a leading political analyst in Donetsk. “They have long been kept around to carry out the more radical work...But now they have new owners outside the country.”

Party of Regions official Alexei Granovsky, who has tried to negotiate with the overt separatist leaders for the regional council, said he did not believe they were really in charge. “There is some kind of puppeteer behind them - I don’t know who,” Granovsky said. “Someone is managing some of these people from outside...They can’t make decisions right away. They say, ‘Let’s go ask the people. We’re only their mouthpiece.’ It shows they can’t

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<sup>53</sup><https://www.reuters.com/article/us-ukraine-crisis-leaders-insight/ukraine-revolt-shows-faces-but-whose-are-the-brains-idUSBREA3M26120140423>

<sup>54</sup> [https://www.vice.com/en\\_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic](https://www.vice.com/en_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic)

<sup>55</sup> [https://www.vice.com/en\\_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic](https://www.vice.com/en_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic)

make decisions. They need to check with someone.”<sup>56</sup>

*Alexander Borodai, Vladimir Antyufeyev and Igor Girkin*

103. Between April and August 2014, the real power behind the Russian military-political movement in eastern Ukraine lay with three Russian nationals who had much closer ties to the Kremlin, and who assumed direct power over the movement during the succeeding weeks: Alexander Borodai, Vladimir Antyufeyev and Igor Girkin. Borodai and Girkin were both formerly associated with Russian Military Intelligence (the GRU)<sup>57</sup>, who reportedly met during the Russian military conflict in Transnistria and worked together in Crimea, Chechnya, and other conflict zones prior to taking up arms together in Ukraine.

104. Since their period of active military service, Borodai and Girkin worked together as “consultants” for a Russian oligarch called Konstantin Malofeyev. Based in Moscow, Malofeyev is a private equity billionaire who funded the early stages of the uprising in eastern Ukraine. He is close to the Kremlin, and is part of the circle around Russian President, Vladimir Putin. Malofeyev’s involvement as financier of the movement operated as a “cut-out” (a device adopted with the aim of shielding the Kremlin from direct political accountability for financing the separatist rebellion in eastern Ukraine). The role of Malofeyev as financier, with his two paid “consultants” as the key political and military operatives behind the separatist movement, provided a thin veneer of apparent independence from Moscow for a military uprising that was conceived and controlled by the Kremlin from the start. As a result of Malofeyev’s activities, he was charged by the Ukrainian Interior Ministry on 22 July 2014 with “the creation of illegal militarized or armed groups” and “being an accomplice in a crime”.<sup>58</sup>

105. Alexander Borodai (who described himself as a “political scientist”) had a long history of ultra-nationalist political activism promoting the Kremlin’s interests in the near-abroad. During the 1990’s, Borodai worked as an editor at the Russian ultra-nationalist newspaper *Zavtra*. Immediately before arriving in Donetsk, Borodai had been working as an adviser to Sergey Askyonov in Crimea. Askyonov was the political leader of the Moscow-backed puppet regime, having been installed as Prime Minister at the point of a gun on 27 February 2014, when Russian special forces mounted a military coup and seized control of the Crimean Parliament. Borodai was thus deeply and directly involved in Russia’s expansionist policies in eastern and south-eastern Ukraine. He was nothing more or less than a tool of the Kremlin’s neo-imperialist ambition’s in Russia’s near-abroad; an advocate and activist for President

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<sup>56</sup><https://www.reuters.com/article/us-ukraine-crisis-leaders-insight/ukraine-revolt-shows-faces-but-whose-are-the-brains-idUSBREA3M26120140423>

<sup>57</sup> Girkin is sometimes reported as a former senior officer of both the GRU and the FSB. Most observers believe that he worked for both organisations at various times, but he had certainly been involved in Russian special services for many years, and was employed in that capacity at the beginning of 2014.

<sup>58</sup> <https://en.interfax.com.ua/news/general/215454.html>

Putin's ambition to establish Russian military and political control of the territory he claimed as "Novorossiya". As Putin himself had made very clear, that territory included Donetsk and Luhansk oblasts, as well as Crimea. Soon after his arrival in Donetsk, Borodai assumed effective control of the "Donetsk People's Republic", and was later appointed as its "Prime Minister".

106. Igor "Strelkov" Girkin was also a Russian national, and retired officer of the GRU who had formerly served in Chechnya.<sup>59</sup> Prior to his arrival in Donbass, Girkin had been directly involved in the military coup in Crimea and the seizure of the Crimean Parliament building on 27 February 2014. He was involved in bringing the deputies of Supreme Council to the enforced Parliamentary session of 27 February 2014, where they were forced at gunpoint to vote for the installation of Sergii Aksionov as the new Russian-backed puppet leader in Crimea. Girkin was also responsible for negotiating with the headquarters of the Ukrainian Navy, and exercised very considerable political and military influence prior to and during the "referendum" in Crimea, co-ordinating the actions of the so-called Crimean "self-defence" units.

107. Girkin arrived in Sloviansk in early April, and quickly appointed Ponomaryov as "People's Mayor" of the town. At the same time Ponomaryov endorsed Girkin as the leader of the rebel fighters in that area. There was no semblance of democratic process about any of these appointments. They were pre-agreed by Moscow, and implemented by Igor Girkin and his group of heavily armed special force operatives, who arrived in Sloviansk in order to act as the Kremlin's military representatives on the ground. Girkin was initially designated as so-called "Commander of the 1<sup>st</sup> Sloviansk Brigade", and later expanded his sphere of control as "Defence Minister of the "People's Republic of Donetsk" and then as overall "Commander of the Donbass Militia" (an umbrella grouping which incorporated not only the forces fighting in Donetsk oblast, but also the forces of the so-called "South Eastern Army" in Luhansk that was under the command of Valeriy Bolotov).<sup>60</sup>

108. Acting together with other members of the Russian GRU and the *spetsnaz* special operations units that he had brought with him, Girkin immediately set about neutralising or eliminating his perceived opponents. On 17 April 2014, the Ukrainian intelligence services recorded taped telephone calls proving the direct involvement of Girkin and his subordinate, Igor Bezler, another former GRU officer, in the abduction and murder of Volodymyr Rybak (a local politician) and Yury Popravko (a student and *Euromaidan* activist) in Horlivka.<sup>61</sup> Bezler, who had been a Lieutenant Colonel in the Russian Army and a member of *spetsnaz*, can be clearly heard on the tape recording, issuing instructions to an accomplice to abduct and torture Mr. Rybak. The two victims were held together in the basement of Girkin's

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<sup>59</sup><https://tsn.ua/politika/glavarem-diversantiv-na-shodi-ukrayini-viyavivsya-specnazivec-iz-rosiyi-sbu-345381.html>

<sup>60</sup> <https://www.osce.org/ukraine-smm/119858>

<sup>61</sup><https://www.reuters.com/article/us-ukraine-crisis-politician-video/murdered-ukraine-politician-faced-hostile-mob-video-shows-idUSBREA3M0EX20140423>

headquarters in Sloviansk. At the time, the “People’s Mayor” of Sloviansk, Vyacheslav Ponomaryov, was also based in the same building which acted as a “nerve centre” for the pro-Russian elements. On 20 April, Girkin can be heard on a recorded call ordering Ponomaryov to dispose of Mr. Rydak’s body which is “lying here and beginning to smell”.<sup>62</sup> The power relationship between Girkin (the Russian Government’s agent on the ground) and Ponomaryov (the local politician) is quite obvious from this tape. A few days later, the discarded corpses of both victims were discovered in different public locations in the town.

109. Ten days after this abduction, on 27 April 2014, Alexander Borodai expanded Igor Girkin’s area of military responsibility, as part of Moscow’s efforts to consolidate its control over the rebel movement. Girkin was appointed overall military commander of the separatist forces in the whole Donbass region (including both the Donetsk and Luhansk oblasts). Leaflets were circulated proclaiming Girkin as overall leader of the “Donbass People’s Militia”. Within days of this development, the Ukrainian intelligence service obtained and published transcripts of intercepted telephone communications between Girkin and his superiors in the Kremlin. These transcripts clearly demonstrate Moscow’s direct influence on and control of the newly-formed “Donbass People’s Militia” under Girkin’s command.<sup>63</sup>

110. The calls took place on May 1 and 2 between Girkin and Vladimir Lukin, President Putin’s special envoy. In their calls, Lukin gives Girkin instructions about how to carry out certain actions, and refers to “verification from the highest levels” in the Kremlin. It is plain from the transcripts that the two men were liaising closely about covert operational activities in eastern Ukraine, which had been authorised at the “highest level” in the Kremlin. It was also clear from the transcripts that Girkin was preparing for a visit by Lukin to the rebel-held territory in eastern Ukraine.<sup>64</sup>

111. Two weeks after this series of calls, on 15 May 2014, Alexander Borodai assumed the title of “Prime Minister” of the “Donetsk People’s Republic”, and appointed Girkin as “Defence Minister”. From the outset, Borodai and Girkin publicly called for armed Russian intervention in eastern Ukraine. Almost immediately, their appeals resulted in a steady stream of Russian fighters and weaponry, including RPGs and tanks, that flowed into Ukraine across the increasingly porous eastern border. According to Borodai himself, the total number of Russian nationals fighting among the Pro-Russian armed groups in eastern Ukraine during the first two years of the conflict amounted to approximately 50,000:

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<sup>62</sup><https://www.kyivpost.com/article/opinion/op-ed/paul-roderick-gregory-putins-ukrainian-executioners-worse-than-stalins-345887.html>

<sup>63</sup><https://www.forbes.com/sites/paulroderickgregory/2014/05/04/intercepted-phone-calls-show-putin-called-shots-on-international-hostages/#53a26d871740>

<sup>64</sup><https://www.forbes.com/sites/paulroderickgregory/2014/05/04/intercepted-phone-calls-show-putin-called-shots-on-international-hostages/#53a26d871740>

“Around 50 thousand Russian citizens have fought for the separatist army in the first two years of the war, according to Aleksandr Borodai, a former so-called “Prime Minister” of the separatist “Donetsk People’s Republic” in the summer of 2014 and himself a Russian citizen living in Moscow and a political consultant.”<sup>65</sup>

Girkin claimed in the media that one third of the fighters in his unit were Russian combat veterans. The actual figure of Russian-backed forces operating inside Ukraine is likely to be much higher.

112. By this time, Girkin and Borodai had been joined in the new Russian leadership of the armed groups by Vladimir Antyufeyev (aka Vadim Shevtsov) who was appointed as Borodai’s “Deputy Prime Minister” on 10 June 2014. Antyufeyev was another Russian national with a strong background in national security. Born in Siberia, he was a veteran of the conflicts in Transnistria, South Ossetia and Abkhazia. In Transnistria, he had served as the head of Russian security and intelligence operations for 20 years, and was a staunch ultra-nationalist and Kremlin loyalist. He had been sanctioned by the EU over his role in Transnistria. Thereafter, the three men worked in close collaboration at the very apex of the separatist movement, in order to put Russia’s military and political plans into effect in eastern Ukraine. The Kremlin had taken decisive and direct control of both the political and the military leadership of the separatist militias.

113. According to the Open Russia report *Putin. War*, (compiled by opposition politician Boris Nemtsov prior to his assassination), Borodai made no secret of his close working relationship with the Kremlin:

“Borodai did not conceal that he was regularly in Moscow and coordinated his activities on the territory of Ukraine with Russian officials. On June 16, 2014, he bluntly stated:

“I can assure you that the Russian leadership understands absolutely correctly how to solve the problems of “DNR”, it is ready to contribute to it at a very high level. I have also known for a time and I respect the assistant of the president, Vladislav Surkov, who always shows a strong support to “DNR”. Without exaggeration, Surkov is our man in the Kremlin.”<sup>66</sup>

114. Igor Girkin commanded the area in which Malaysian Airlines flight MH17 was shot down by forces under his direct command and control on 17 July 2014, killing all those on board. Following a lengthy international investigation, Dutch Prosecutors announced, on 19 June 2019, that Girkin was one of three Russian nationals charged in connection with the murder of those on board the plane.<sup>67</sup> According to the Dutch Prosecutor, Girkin and his co-accused “formed a chain linking the DNR with the Russian Federation”. This link was how the separatists obtained heavy equipment from Russia, including the Buk launcher which was used to fire at MH17 with “terrible consequences”. The accused did not “push the button” themselves, according to the Dutch Prosecutor, but were responsible for bringing the anti-

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<sup>65</sup> <http://euromaidanpress.com/2016/07/30/96047/>

<sup>66</sup> <https://openrussia.org/s/tmp/files/Putin-War.pdf>

<sup>67</sup> <https://www.theguardian.com/world/2019/jun/19/mh17-criminal-charges-ukraine-russia>

aircraft system to eastern Ukraine. The other two Russian nationals accused of involvement in the attack are Sergey Dubinskiy (who was also employed by Russia's GRU military intelligence agency); and Oleg Pulatov (a former soldier with the GRU's special forces *spetsnaz* unit). All were Russian soldiers who had previously served abroad. The evidence proving direct Russian military involvement in the supply of the Buk TELAR missile system used in this attack is set out at paragraph 207 *et seq. post*.

115. On 24 July 2014, after re-taking control of the city of Sloviansk, where Girkin had his headquarters, Ukrainian forces discovered a mass grave containing the remains of 14 people of people summarily executed by Girkin's men.<sup>68</sup> Numerous written orders which purportedly authorised the summary execution of detainees were found in Girkin's abandoned headquarters, bearing his personal signature. Some were accompanied protocols of "hearings" of a "military tribunal" convicting people and sentencing them to death.<sup>69</sup> One example is recorded by OHCHR in its June 2014 report:

"Reportedly, on 26 May, by order of Igor Strelkov, Dmytro Slavov ('commander of a company of the people's militia') and Mykola Lukyanov ('commander of a platoon of the militia of 'Donetsk People's Republic') were 'executed' in Slovyansk, after they were 'sentenced' for 'looting, armed robbery, kidnapping and abandoning the battle field'. The order, which was circulated widely and posted in the streets of Slovyansk, referred to a decree of the Presidium of the Supreme Council of the USSR of 22 June 1941 as the basis for the execution."<sup>70</sup>

116. On 14 January 2016, in an interview with *Komsomolskaya Pravda Radio*, Girkin admitted ordering summary executions in Sloviansk. According to OHCHR:

"The former "Minister of Defence" of the "Donetsk People's Republic: stated the following regarding events that occurred in Sloviansk between April and July 2014: "[w]e had an acting martial court, and legislation of 1941 was introduced... And based on this legislation we judged, held courts, and we executed by shooting... In total, four people were executed by shooting during my presence in Sloviansk: two for looting among servicemen, one local resident for looting, and one for killing a serviceman, he was a committed pravosek". OHCHR obtained copies of the 'judgements' delivered by the 'martial court' which sentenced four individuals to death."<sup>71</sup>

117. On 25 July 2014, Girkin made a public appeal to President Putin to send further heavy weapons into eastern Ukraine. According to contemporary reports:

"An article published by Strelkov's adviser, Igor Druz, on Wednesday laid out the case that Putin, today, is facing the same choice that ousted Ukrainian President Viktor Yanukovich faced a few months ago: either send in the army and win control over the territories of Novorossiia in eastern Ukraine—or lose his presidency. "I hope that the Ukrainian tragedy will neither become the tragedy of Russia nor the personal tragedy of Putin," wrote

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<sup>68</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>69</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

<sup>70</sup> <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UAREports.aspx>

<sup>71</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)



Strelkov's adviser."<sup>72</sup>

In response, the Ukrainian Ministry of Defence pointed out that conclusive proof already existed that Russia had supplied its proxy forces with fighters, Grad Missile systems, tanks and armoured personnel carriers, and pointed out that these deployments could not have occurred without the express approval of President Putin.<sup>73</sup>

118. The installation of Russian nationals with a security background into key leadership positions in the armed groups effectively consolidated Kremlin control over the rebels. On 27 July 2014, *Reuters* published an article examining the reasons for the sudden change in leadership, under the banner headline "*Pushing locals aside, Russians take top rebel posts in east Ukraine*". It provides a useful summary of the power play:

"Vladimir Antyufeyev was named "deputy prime minister" by Borodai on July 10, one of several native Russians to have taken charge of the separatist rebellion in Ukraine's eastern regions. Joining Borodai and rebel commander Igor Strelkov, Antyufeyev's arrival underlines a change at the top of the separatist movement, highlighting Moscow's involvement in the conflict, Western officials say...

There has been a dramatic change in the leadership of the Donetsk People's Republic over the past weeks, which certainly gives the impression of a much more hands-on Russian directive role," said Geoffrey Pyatt, the U.S. Ambassador to Kiev. "These individuals are in regular touch with authorities in Russia.

Ukrainian-born rebel leaders have been eased out, causing rifts among increasingly nervous separatists since a Malaysian airliner was downed over rebel-held territory just over a week ago. Antyufeyev replaced Donetsk native, Alexander Khodakovsky, as the top security person in the self-proclaimed Donetsk People's Republic. Denis Pushilin, another local once titled the republic's president, was dismissed...

Washington says the influx of Russians into the upper ranks of the separatists is matched by an increased number of [items of] heavy weaponry coming across the Russian border into Ukraine, a response to advances made by the Ukrainian army on the ground. Though Borodai insists the separatists' weaponry comes from depots they overran while seizing territory, he admits "volunteers" from Russia keep on reinforcing the rebels' ranks. He calls his Russian trio volunteers and says their presence in the Donetsk region, or Donbass, is proof of the Russian nation's support for the separatists' cause.

"The people of Donbass rose on their own. It is normal and natural that we ended up heading this movement because of certain competences, our abilities," he told a news conference in Donetsk earlier this month. "There will be more and more people from Moscow in the DNR (Donetsk People's Republic)," said Borodai, flanked by Strelkov and Antyufeyev.

He and Strelkov say they first met in 1996 in the Russian region of Chechnya, where Moscow has waged two wars against Islamist separatists since 1994. Borodai says Strelkov has long been his "very good acquaintance". Both said they served in Transnistria and, more recently, in Crimea. The West says they were aides to the pro-Russian separatist leader of the Black Sea peninsula who was instrumental in Moscow's annexation earlier this year. The two are

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<sup>72</sup> <https://www.thedailybeast.com/putins-number-one-gunman-in-ukraine-warns-him-of-possible-defeat>

<sup>73</sup> <https://www.thedailybeast.com/putins-number-one-gunman-in-ukraine-warns-him-of-possible-defeat>

on both the EU and U.S. sanctions list. Kiev and the European Union say Strelkov, whose real name is Igor Girkin, in fact served in Russia's GRU military intelligence. Strelkov says he served at the rank of colonel in Russia's FSB security service until quitting at the end of March, and has had battlefield experience in Transnistria, in Bosnia's conflict and in both Chechen wars.

119. The International Crisis Group has identified Igor Girkin as a paradigm of Russian Government control of the rebel militias:

"Strelkov is a good example of the Russian strategy. The most senior Russian officer to work on the ground, Strelkov turned out to be a major headache for separatist leaders and Moscow. A former colonel in the Federal Security Service (better known by its Russian initials FSB), with several tours in Chechnya and stints as a volunteer fighting in Bosnia and Transnistria in the 1990s, he is a cranky monarchist and admirer of the anti-communist White movement during the Russian Civil War. He is adored by radical nationalists in Moscow and some key DNR and LNR military commanders, but now increasingly described by the current DNR leadership as a deeply negative influence on the separatist revolt, who toward the end of his brief stay was "insubordinate". After involvement in Crimea in March, he arrived in Donetsk with about 50 men, seizing Slavyansk in northern Donetsk oblast on 12 April and several nearby towns soon after. A senior DNR security officer says that Strelkov's arrival marked the transition from demonstrations and building seizures to violence and disorder."<sup>74</sup>

120. Similarly, the Open Russia report, *Putin.War*, identifies the key role played by Girkin and other former members of Russian intelligence:

"Among such gunmen, there were many former employees of the Russian Special Forces and military personnel, including people with combat experience in hot spots, and with criminal records. Often these citizens became the key figures in the armed forces of the separatists, such as the former officer of special forces, Igor Girkin [Strelkov], veteran of the "Chechen war" Arseny Pavlov (pseudonym - Motorola) as well as Alexander Mozhaev (pseudonym - Babai), who was accused of an attempted murder by the prosecutor's office of Krasnodar."<sup>75</sup>

121. On 7 August 2014, in anticipation of the Minsk dialogue, Alexander Borodai stepped down as "Prime Minister", in order to make way for Alexander Zakharachenko, the Commander of the locally-based "Oplot Battalion". The obvious motivation for this purely nominal change of leadership was that Zakharachenko was Ukrainian, and was therefore thought to present the international community with a more acceptable face of the separatist leadership than Borodai (a Russian former GRU officer). However, as demonstrated by subsequent events, Borodai retained effective influence over the movement on behalf of his masters in Kremlin, taking the role of "Deputy Prime Minister" instead.

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<sup>74</sup><https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/254-rebels-without-cause-russias-proxies-eastern-ukraine>

<sup>75</sup> <https://openrussia.org/s/tmp/files/Putin-War.pdf>

122. Borodai himself acknowledged that he had been asked to step aside in order to assist Moscow's presentation of the situation at Minsk as an internal Ukrainian conflict. According to the Open Russia report *Putin.War*:

"Alexander Borodai, who left the leadership of "DNR" in August 2014, explained his and Girkin's resignations in the following way:

"I became myself an ardent supporter of the withdrawal of Strelkov from "DNI", as I understand that there would come a period when there would be a fragile façade of peace and such people like me or Strelkov would no longer be needed. Imagine how it would look, if I had put my signature on the "Minsk" agreements, a native of Moscow. That political structure would not last long."<sup>76</sup>

123. So it was that, during the first two weeks of August, the Kremlin decided to change the leadership of the DPR and LPR, paradoxically in order to create the impression, to the internationals at least, of greater distance from Moscow. According to the International Crisis Group, in addition to demoting Borodai, the Kremlin also issued instructions for Girkin to step down from his role as "Defence Minister". These developments, instigated by the Russian Government directly, provide further confirmation (if it is needed) of Russian State control over the leadership of the paramilitary groups and their "executive authorities". As the International Crisis Group observed:

"Reflecting its shifting calculus, Moscow reportedly eased out the leaders, Ukrainian and Russian, who had led the initial fight with figures it found more manageable. One of the first out was Strelkov. On 14 August 2014, Russian state media reported that the DPR's leadership had let the commander go at his own request. But a former Kremlin official suggested that Moscow had grown frustrated with Strelkov's activities... A fellow Russian combatant told Crisis Group that the Kremlin pressured Strelkov to leave Donbass in exchange for a promise that Moscow would reinforce and resupply the DPR forces. The D/LPR leadership also changed hands as Moscow sought to establish more order. In early August, Aleksandr Zakharchenko took over the DPR and Igor Plotnitsky the LPR; widespread reports suggest both were appointed on Moscow's orders."<sup>77</sup>

*Alexander Khodakovsky*

124. On 29 May 2014, the so-called "Vostok Battalion" arrived in Donetsk, and immediately pledged allegiance to Igor Girkin. As the Atlantic Council report points out:

"The Kremlin took the opportunity of the MAY 11 referendum vote to increase its intervention in Ukraine: in late spring, it sent in the Chechen "Vostok" (East) Battalion and amassed troops along the border."<sup>78</sup>

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<sup>76</sup> <https://openrussia.org/s/tmp/files/Putin-War.pdf>

<sup>77</sup> <https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/254-rebels-without-cause-russias-proxies-eastern-ukraine>

<sup>78</sup> Claire Bigg, "Vostok Battalion, a Powerful New Player in Eastern Ukraine," Radio Free Europe/Radio Liberty, May 30, 2014, <http://www.rferl.org/content/vostok-battalion-a-powerful-new-player-in-easternukraine/25404785.html>.

125. The Vostok Battalion was led by Alexander Khodakovsky, another Russian Army veteran, and was comprised of Russian, North Ossetian and Chechen fighters. International analysts considered it to be a private army with direct links to Russian intelligence.<sup>79</sup> Its membership incorporated former members of the GRU special forces that fought with Russian troops in the Chechen and Georgian wars, and it is believed to have been either created by the GRU directly, or sanctioned by it. On 30 May 2014, the SMM (OSCE) observed the Vostok Battalion participating in a joint public meeting in Kharkiv, alongside the LDPR, an ultra-nationalist Russian political party led by Vladimir Zhirinovskiy (the Deputy Speaker of Russia's Lower House of Parliament)<sup>80</sup> The SMM (OSCE) also recorded reports that the Vostok Battalion had forcibly ousted local separatists from the regional administration building in Donetsk at this time, further consolidating Moscow's direct control over the separatist militias: see para. 177 *post*.

126. Journalists who interviewed fighters from the Vostok Battalion at the beginning of June 2014, described it as a "heavily armed well-organised fighting group" with "fighters from Russia and other parts of the former Soviet space" in the Russian Caucasus region of North Ossetia, the Russian occupied parts of Georgia, and from Chechnya.<sup>81</sup> One Armenian volunteer who joined the Vostok Battalion in May 2014, and took part in the first battle for Donetsk Airport, estimated that as many as 80% of the fighters in the Battalion were from various parts of Russia.<sup>82</sup> Based on the outskirts of Donetsk, it was equipped with heavy weaponry from Russia, and emerged as a key force in the conflict.

127. Chechen paramilitaries were observed in Sloviansk from early May 2014. On 7 May, Chechnya's Moscow-backed President, Ramzan Kadyrov, pledged to "send tens of thousands of Chechen volunteers to southern and eastern Ukraine".<sup>83</sup> Recruitment centres were set up across Chechnya.<sup>84</sup> A large contingent of apparently Chechen recruits arrived in eastern Ukraine on 24 and 25 May in two convoy of lorries.<sup>85</sup> Many confirmed to international journalists directly that they had been sent as reinforcements from Chechnya,<sup>86</sup> and some (who spoke Chechen) said they had been sent by President Kadyrov to serve in Ukraine.<sup>87</sup> Ukraine invites the Court to infer that such an arrangement for mutual military assistance between the Russian authorities in Grozny and Moscow would inevitably have

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<sup>79</sup><https://www.theguardian.com/world/2014/jun/06/the-vostok-battalion-shaping-the-eastern-ukraine-conflict>

<sup>80</sup> [https://www.vice.com/en\\_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic](https://www.vice.com/en_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic)

<sup>81</sup> <https://web.archive.org/web/20140602100857/https://www.reuters.com/article/2014/06/01/us-ukraine-crisis-vostok-idUSKBN0EC1LL20140601>

<sup>82</sup> <https://www.rferl.org/a/ukraine-i-was-a-separatist-fighter/25455466.html>

<sup>83</sup> <https://www.unian.net/politics/914777-sredi-terroristov-v-slavyanske-zamechenyi-chechenskie-boeviki-smi.html>

<sup>84</sup> <http://www.interpretermag.com/grozny-forcing-chechens-to-fight-for-russian-side-in-ukraine/>; "Russia This Week: Surge of Nationalism on Victory Day (5–9 May) | The Interpreter"

<sup>85</sup> "Ukraine fails to prevent illegal border crossing by a group of armed men"

<sup>86</sup> <https://www.abc.net.au/news/2014-05-25/pro-russian-separatists-from-the-22east22-battalions-speak-wi/5476714>

<sup>87</sup> "Chechens join pro-Russians in battle for East Ukraine"

required the approval of both President Kadyrov and President Putin. According the Open Russia report *Putin.War*, the first Chechens to arrive in eastern Ukraine joined Khodakovsky's Vostok Brigade at the beginning of June.<sup>88</sup> However, after suffering significant losses during the first battle for Donetsk Airport, many of them left, taking their wounded with them.<sup>89</sup> This has been confirmed by other independent reporting.<sup>90</sup>

128. In an interview published on 6 June 2014, Khodakovsky acknowledged that the Vostok Battalion "does include Russian fighters", and "the bodies of 31 members were sent back to Russia last week" after a battle at Donetsk airport. This has been independently corroborated by journalists who chronicled the collection of the human remains and their repatriation to Russia.<sup>91</sup> Denis Pushilin (the People's Governor" of the "Donetsk People's Republic") also confirmed this information to the media:

"The separatist leader Denis Pushilin said after the battle for the airport, which is now controlled by the Ukrainian army, that the bodies of "volunteers" from Russia would be returned home, openly acknowledging involvement from across the border."<sup>92</sup>

129. On 29 July 2014, *Reuters* published a detailed report on Russian arms supplies to its proxies in eastern Ukraine, in which Alexander Khodakovsky effectively admitted that the Buk TELAR missile system that was used to shoot down flight MH17 had come from Russian military shortly before the attack, and had been sent back to hide the evidence of Russian involvement in the atrocity:

"In an interview with *Reuters* last week, a separatist leader said that Russia may have supplied the separatists with BUK rockets, which were used to shoot down Malaysia Airlines flight MH17. The destruction of the civilian passenger plane over eastern Ukraine on July 17 killed nearly 300 people. Alexander Khodakovsky, commander of the Vostok Battalion, told *Reuters*: "I knew that a BUK came from Luhansk (in east Ukraine). I heard about it. I think they sent it back. Because I found out about it at exactly the moment that I found out that this tragedy (of MH17) had taken place. They probably sent it back in order to remove proof of its presence."<sup>93</sup>

Khodakovsky's suprisingly frank admission has since been independently corroborated by international investigators: see para. 207 *et. seq, post*.

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<sup>88</sup> <https://4freerussia.org/putin.war/>

<sup>89</sup> <https://4freerussia.org/putin.war/>

<sup>90</sup> <https://web.archive.org/web/20140531111818/https://news.vice.com/article/ice-cream-corpses-and-the-big-bear-repatriating-dead-russians-from-ukraine>

<sup>91</sup> <https://web.archive.org/web/20140531111818/https://news.vice.com/article/ice-cream-corpses-and-the-big-bear-repatriating-dead-russians-from-ukraine>

<sup>92</sup> <https://www.reuters.com/article/us-ukraine-crisis-vostok/more-foreign-fighters-break-cover-among-ukraine-separatists-idUSKBN0EC1LL20140601>

<sup>93</sup> <https://www.reuters.com/article/us-ukraine-crisis-arms-specialreport/special-report-where-ukraines-separatists-get-their-weapons-idUSKBN0FY0UA20140729?feedType=RSS&feedName=worldNews>

130. In May 2018, Khodakovsky moved to Moscow. According to the International Crisis Group, the Russian authorities have since prevented his return to eastern Ukraine to take part in recent elections.<sup>94</sup>

*Alexander Zakharachenko*

131. The “Oplot Battalion” (later the Oplot Brigade) was initially formed in April 2014 under the leadership of Alexander Zakharachenko. Following the resignation of Alexander Borodai as “Prime Minister” of the “Donetsk People’s Republic” on 7 August 2014, Zakharachenko was appointed as his replacement. As noted above, this transfer of power was carefully stage-managed by the Kremlin, in an attempt to create the impression that the separatist political leadership in eastern Ukraine was “home-grown”, so as to disguise Moscow’s overarching control of the situation during the planned Minsk talks in September.

132. Since Borodai was a Russian citizen, a Moscow resident who was reputedly associated with the GRU and FSB, and was a close associate of Sergey Aksyonov (the pro-Moscow politician who had been installed by the Kremlin as Prime Minister of Crimea) he was unlikely to command the confidence of Russia’s interlocutors in the Trilateral Contact Group meeting in Minsk. He therefore had to be replaced with a politician of apparently local origin, and with less obvious ties to the Kremlin. In appointing Zakharachenko, the Kremlin’s intention was to disguise the hand of Moscow in the subordinate local administration. However, Borodai would retain important political and military influence as Deputy Prime Minister, initially at least.<sup>95</sup>

133. In September 2014, Zakharachenko led the DPR delegation at the Minsk talks. He again led the delegation at the Minsk II talks in February 2015, after which he issued a number of bellicose threats.<sup>96</sup> When the DPR forces immediately violated the Minsk II ceasefire by attacking Debaltseve, Zakharachenko sought to justify this on the ground that the conflict zone around Debaltseve was outside the terms of the ceasefire agreement.<sup>97</sup> Zakharachenko is personally responsible for a large number of abductions and kidnappings, and has said publicly that his forces detained up to five “Ukrainian subversives” every day. According to OHCHR, forces under his command and control were unlawfully detaining an estimated 632 people at the beginning of December 2014.<sup>98</sup> Zakharachenko was

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<sup>94</sup><https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/254-rebels-without-cause-russias-proxies-eastern-ukraine>

<sup>95</sup> <https://life.pravda.com.ua/>

<sup>96</sup><https://www.unian.info/politics/1044542-cameron-britain-to-support-new-sanctions-if-minsk-agreements-fail.html>

<sup>97</sup><https://www.unian.info/politics/1044542-cameron-britain-to-support-new-sanctions-if-minsk-agreements-fail.html>

<sup>98</sup><https://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf#sthash.HFQs2pv2.dpuf>

assassinated by a bomb explosion in a café in Donetsk on 32 August 2018.<sup>99</sup>

*Arsen Pavlov ("Motorola") and Mikhail Tolstykh ("Givi")*

134. Arsen Pavlov (aka "Motorola"), another citizen of the Russian Federation, was Commander of the so-called "Sparta Battalion", which fought closely alongside the so-called "Somali Battalion" commanded by Mikhail Tolstykh (aka "Givi"). Pavlov was a Russian national with military service experience in the Russian armed forces. Pavlov was originally despatched by Moscow to foment the "uprising" in Kharkiv in mid-March 2014: see para. 77(g), *ante*. He was extremely close to the Kremlin GRU operative Igor Girkin. Indeed, Girkin attended Pavlov's wedding on 11 July 2014, along with Pavel Gubarev.<sup>100</sup> Given his background, his connections and his very early involvement in attempting to foment the unrest, it can safely be inferred that Pavlov was another instrument of Moscow's strategy for exercising effective control over the separatist militias. Pavlov's operating expenses are known to have been facilitated by ultra-nationalist Russian politician Vladimir Zhirinovskiy, based in Moscow.<sup>101</sup>

135. Tolstykh (aka Givi), was a citizen of Abkhazia who had fought on the side of Russian troops during the 2008 invasion of Georgia. During the conflict in eastern Ukraine, he made no attempt to hide his affiliation to the Russian Federation, and openly wore a military uniform that bore Russian insignia, despite having the status of a paramilitary, rather than an enlisted soldier.<sup>102</sup> His "Somali Battalion" ("the 1<sup>st</sup> Separate Tank Battalion") was closely affiliated with (and fought alongside) Arsen Pavlov's "Sparta Battalion", the two men having arrived in eastern Ukraine together.

136. The two battalions participated jointly in the Battle of Ilovaisk in August 2014;<sup>103</sup> in the second Battle of Donetsk Airport in October 2014;<sup>104</sup> and in the Battle of Debaltseve in January and February 2015.<sup>105</sup> During the Battle of Debaltseve, the "Somali Battalion" used Russian T72-B3 main battle tanks that had been exclusively supplied by the Russian Federation. Tolstykh was seen in footage broadcast in January 2015 physically abusing captured service personnel. After identifying himself in the video, he is

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<sup>99</sup><https://www.rferl.org/a/ukrainian-separatist-leader-zakharchenko-reported-killed-in-donetsk-cafe-blast/29464119.html>

<sup>100</sup> "A 'Separatist Wedding' in Donetsk"

<sup>101</sup> <https://en.interfax.com.ua/news/general/215454.html>

<sup>102</sup> [https://news.yahoo.com/rebel-commander-wages-fight-death-east-ukraine-airport-073451740.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly9lb3JnLW&guce\\_referrer\\_sig=AQAAAKCzVHthKkL9EDi8hV0G4vvSUFOUOMsH30ZCqkmlVGDJKRHEDK9rg\\_HNm2tcklm8drZTOZxlc5GvUKcxmLOmby0FYUDs8-68ihpx6onyH3EDcuu23feugPoF9Pw7m-UJenXQZjppRG1CyvlbsuXyRHc1PZXcTMcbtHQQpyiXHRLO](https://news.yahoo.com/rebel-commander-wages-fight-death-east-ukraine-airport-073451740.html?guccounter=1&guce_referrer=aHR0cHM6Ly9lb3JnLW&guce_referrer_sig=AQAAAKCzVHthKkL9EDi8hV0G4vvSUFOUOMsH30ZCqkmlVGDJKRHEDK9rg_HNm2tcklm8drZTOZxlc5GvUKcxmLOmby0FYUDs8-68ihpx6onyH3EDcuu23feugPoF9Pw7m-UJenXQZjppRG1CyvlbsuXyRHc1PZXcTMcbtHQQpyiXHRLO)

<sup>103</sup> "Полевой командир "Моторола": от Чечни до Донбасса". [www.depo.ua](http://www.depo.ua)

<sup>104</sup> [https://news.yahoo.com/rebel-commander-wages-fight-death-east-ukraine-airport-073451740.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly9lb3JnLW&guce\\_referrer\\_sig=AQAAAKCzVHthKkL9EDi8hV0G4vvSUFOUOMsH30ZCqkmlVGDJKRHEDK9rg\\_HNm2tcklm8drZTOZxlc5GvUKcxmLOmby0FYUDs8-68ihpx6onyH3EDcuu23feugPoF9Pw7m-UJenXQZjppRG1CyvlbsuXyRHc1PZXcTMcbtHQQpyiXHRLO](https://news.yahoo.com/rebel-commander-wages-fight-death-east-ukraine-airport-073451740.html?guccounter=1&guce_referrer=aHR0cHM6Ly9lb3JnLW&guce_referrer_sig=AQAAAKCzVHthKkL9EDi8hV0G4vvSUFOUOMsH30ZCqkmlVGDJKRHEDK9rg_HNm2tcklm8drZTOZxlc5GvUKcxmLOmby0FYUDs8-68ihpx6onyH3EDcuu23feugPoF9Pw7m-UJenXQZjppRG1CyvlbsuXyRHc1PZXcTMcbtHQQpyiXHRLO)

<sup>105</sup> [Новый командир батальона «Спарта» сообщил подробности гибели Моторолы](#)

seen cutting military insignia off the captives' uniforms and forcing the prisoners to eat them.

137. Pavlov also became notorious as a self-confessed war criminal, after admitting the torture and summary execution of Ukrainian prisoners of war. On 21 January 2015, according to OHCHR, a group of fighters from the Sparta Battalion captured 12 members of the Ukrainian military following an armed engagement at the heavily contested Donetsk airport. According to reports received by OHCHR, the prisoners were subjected to torture and one of them was summarily executed:

“The [OHCHR] interviewed a number of witnesses and relatives in the case of Ukrainian soldier Ihor Branovytskyi, who was allegedly summarily executed on 21 January while in captivity of the armed groups of the ‘Donetsk People’s Republic’. According to them, when the Ukrainian military retreated from the Donetsk airport, a group of 12 soldiers, including Mr. Branovytskyi, was captured by the armed groups of the ‘Donetsk People’s Republic’. En route to the former SBU premises in Donetsk, members of the armed groups took the captives to the former military base currently used by the so-called ‘Sparta battalion’. They were repeatedly beaten and subjected to interrogation under torture and ill-treatment. All captives were allegedly lined up along a wall and beaten one after the other for a few hours by some 20 people with metal pipes, wooden batons and butts of rifles. Perpetrators were reportedly looking for a machine gunner and when Mr. Branovytskyi said that he was the one they were looking for, he was separated from the other captives, beaten with a blunt hard object and sustained shot wounds with a traumatic gun, according to a forensic examination received by [OHCHR]. After Mr. Branovytskyi collapsed and fainted, the commander of the ‘Sparta battalion’ reportedly refused to call an ambulance and fired two shots in the head of the victim. In addition to physical torture, the other captives were subjected to mock executions with members of the ‘Sparta battalion’ firing shots above their heads.”<sup>106107</sup>

138. In a subsequent report, published in November 2016, OHCHR noted that Ukrainian prosecuting authorities had identified sufficient evidence to charge Pavlov with the abduction and murder of Mr. Branovtskyi:

“On 14 September [2016], the Office of the Chief Military Prosecutor reported that a preliminary investigation against the commander of the ‘Sparta’ battalion of the ‘Donetsk People’s Republic’ had been completed, finding grounds to charge him with abduction, unlawful deprivation of liberty, and violations of the laws of warfare. He is accused of ill-treating captured Ukrainian soldiers, including Igor Branovtskyi, who according to witnesses was executed on 21 January 2015 by a citizen of the Russian Federation, the commander of the ‘Sparta battalion’ of the ‘Donetsk People’s Republic’ [i.e. Pavlov].”<sup>108</sup>

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<sup>106</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHRReportUkraine.pdf>

<sup>107</sup> These facts also are the matter of case no. 12683/15 “*Branovytska v. Ukraine and Russia*” pending before the Court

<sup>108</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport16th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf)



139. Pavlov publicly admitted the torture and summary execution of 15 prisoners of war, during a taped interview with journalists<sup>109</sup> that was published in April 2015.<sup>110</sup> He was personally responsible for the murder of Ihor Branovytsky. Amnesty International condemned the violations and called for Pavlov to be held accountable for his crimes:

“The torture, ill-treatment and killing of captured, surrendered or wounded soldiers are war crimes. These claims must be promptly, thoroughly and impartially investigated, and the perpetrators prosecuted in fair trials by recognized authorities. Footage reviewed by Amnesty International shows Ukrainian soldier Ihor Branovytsky, one of the defenders of Donetsk airport, taken captive and interrogated. The video, posted on YouTube, shows signs that he was hit in the face. He remained in captivity until he was killed. A number of individuals claim to have seen Ihor Branovytsky being shot and killed point-blank by a separatist commander.

The revelation follows a report by the Ukrainian newspaper Kyiv Post on 6 April featuring a phone interview, allegedly made by Arseniy Pavlov, better known by his nom-de-guerre “Motorola”. Pavlov, reportedly a Russian national and the leader of the pro-Russian armed group known as “Sparta Battalion” operating in eastern Ukraine, claimed he had “shot dead” 15 soldiers captured from the Ukrainian armed forces. He is alleged to have killed Ihor Branovytsky.”<sup>111</sup>

140. Pavlov was assassinated in October 2016, and replaced as Commander of the Sparta Battalion by Vladimir Zhoga. Tolstykh was killed in 2017.

#### *Nikolai Kozitsyn and Rashid Shakirzanov*

141. Nikolai Kozitsyn commanded the Cossack National Guard from May to November 2014, when he was forcibly deposed and replaced by Rashid Shakirzanov. Operating together with numerous other “Cossack” formations, the Cossack National Guard is estimated to have deployed more than 4,000 fighters with access to heavy armour and artillery from the Russian Federation. The group, whose headquarters was in Antratsyt, has been identified by the US State Department as an organisation established by Russian special forces.<sup>112</sup> Commenting on photographs showing members of the CNG, the US State Department spokesperson said:

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<sup>109</sup> The recording is available here: <https://www.kyivpost.com/article/content/war-against-ukraine/kremlin-backed-fighters-confession-of-killing-prisoners-might-become-evidence-of-war-crimes-audio-385532.html?cn-reloaded=1>

<sup>110</sup> ["Russian fighter's confession of killing prisoners might become evidence of war crimes \(AUDIO\)](#)

<sup>111</sup> <https://www.amnesty.org/en/latest/news/2015/04/ukraine-new-evidence-of-summary-killings-of-captured-soldiers-must-spark-urgent-investigations/>

<sup>112</sup> <https://www.theguardian.com/world/2014/apr/22/-sp-does-us-evidence-prove-russian-special-forces-are-in-eastern-ukraine>

“There has been broad unity in the international community about the connection between Russia and some of the armed militants in eastern Ukraine, and the photos presented by the Ukrainians last week only further confirm this, which is why US officials have continued to make that case.”<sup>113</sup>

### *Other forces*

142. Numerous other irregular formations have operated in eastern Ukraine during the conflict, with significant numbers of Russian nationals among their ranks<sup>114</sup>. Many of these groups were subsumed into the 1<sup>st</sup> Army Corps (DPR) or the 2<sup>nd</sup> Army Corps (LPR).<sup>115</sup> All of the Pro-Russian military formations operating in Donetsk and Luhansk had a significant military, economic and/or political connection to the Russian Federation. In addition, as demonstrated from the evidence summarised below, enlisted members of the Russian armed forces entered Ukraine covertly. These fighters posed as “volunteers”, mercenaries or “tourists, wearing irregular uniforms, concealing any identifying insignia and abandoning their identification documents at military camps on the Russian side of the border. These “irregulars” brought Russian heavy weaponry with them. Detailed information on Russian Armed Forces and Army Corps operating inside Ukraine is provided in *Informational Report concerning Russian Armed Forces and Army Corps* and *Information on Russian weapon and equipment*<sup>116</sup> attached to this submission.

### *Russia's continuing control of the leadership*

143. In a report published in January 2019, the International Crisis Group analysed recent political developments, and explained the means by which Moscow continues to maintain effective political control over the separatist movements, even now:

“The *de facto* D/LPR leadership is financially and politically beholden to Moscow, which, as of the spring of 2019, has further solidified its control over the statelets... But if the movement's leaders are now firmly under Moscow's influence, those who emerged from grassroots separatist movements in Donbas have effectively been sidelined. In the fall of 2017, the LPR's “security minister” Leonid Pasechnik replaced LPR head Igor Plotnitsky in what was reported to have been a Russian security services-backed coup. Then, in August 2018, DPR chief Alexander Zakharchenko, whose relationship with Moscow had grown increasingly tense, was killed by a bomb in Donetsk, with both Moscow and Kyiv exchanging blame over his murder

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<sup>113</sup><https://www.theguardian.com/world/2014/apr/22/-sp-does-us-evidence-prove-russian-special-forces-are-in-eastern-ukraine>

<sup>114</sup> For more detailed information see [Tab 8] StopTerror Report 'PMC as an instrument of Russian aggression', [Tab 9] “Units of the Irregular Armed Forces of the Russian Federation on the territory of Ukraine Part 1”, [Tab 10] “The Cossacks as a tool of aggression of the Russian Federation part I”, [Tab 11] Military servicemen and mercenaries of Russia in Donbas Part 1, [Tab 12] InformNapalm and NGO Prometheus Report for ECHR in Appendix 4;

<sup>115</sup> See [Tab 6] in Appendix 4;

<sup>116</sup> See in Appendix 4

On 11 November 2018, following Zakharchenko's assassination, the D/LPR held new elections. Moscow appears to have forced the exclusion of popular leaders and Novorossiia idealists like Aleksandr Khodakovsky and Pavel Gubarev. Khodakovsky was the former commander of the Vostok Battalion – an irregular regiment that rivalled Strelkov's in the early days – and DPR "security minister". Russian border guards barred his entry into Ukraine ahead of the vote. For his part, Pavel Gubarev, a former DPR leader, was prevented from registering his candidacy by DPR's election authorities, on what were widely reported to be the Kremlin's orders. Moscow backed Denis Pushilin... He ran against lesser-known candidates and won with 60.8 per cent of the vote. In the LPR, the Kremlin continued to support Pasechnik, who prevailed."<sup>117</sup>

144. In July 2019, the Royal United Services Institute published a further report entitled *The Surkov Leaks: The Inner Workings of Russia's Hybrid War in Ukraine*.<sup>118</sup> The report is based on three tranches of leaked emails that were obtained by independent hacking groups, and subsequently released into the public domain in 2016 and 2017. The leaks comprised thousands of emails from Kremlin officials, including Vladislav Surkov, a close associate of President Putin, who was directly involved in liaising with the "authorities" of the separatist entities in Donetsk and Luhansk. The authenticity of the emails was verified to RUSI's satisfaction, for reasons that are convincingly explained in the report, which is annexed to these submissions.

145. The first tranche of emails released in 2015 date back to the early period of the "uprising" in eastern Ukraine. They confirm Surkov's involvement in the funding and administration of the "governing" entities in Luhansk and Donetsk, and outline the Kremlin's military and political tactics for the de-stabilisation of Ukraine, as part of the Russian Federation's foreign relations policy of promoting "soft federalisation" of the States comprising its near-abroad.

146. A further tranche of emails, released in 2017, include correspondence with Surkov's first deputy, Inal Ardzinba, as well as the head of the Kharkiv Communist Party, Alia Aleksandrovska. These emails reveal details of the Kremlin's day-to-day involvement in operations aimed at the destabilisation of Ukraine using hybrid warfare techniques. In particular, they describe research into Ukraine's operational vulnerabilities, and the recruitment of individuals who could help to expose and exploit any weaknesses. They also provide details of financial support to local groups in the occupied areas of Ukrainian Donbass, for the purpose of promoting inter-ethnic tension and conflict, and the sponsorship of "front organisations" posing as independent civil society groups, but with the express purpose of furthering Moscow's military and political goals in eastern Ukraine. They also reveal Russian Government funding of disinformation campaigns targeting Ukraine as part of a broader strategy to spread false and misleading information into the political discourse. In the context, the Court's attention

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<sup>117</sup><https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/254-rebels-without-cause-russias-proxies-eastern-ukraine>

<sup>118</sup> See [Tab 13] *The Surkov Leaks: The Inner Workings of Russia's Hybrid War in Ukraine*, Royal United Services Institute, July 2019 in Appendix 4;

is drawn to the additional information provided in the briefing documented annexed to this submission (entitled *Informational note concerning Russia's continuing control of the leadership*).<sup>119</sup>

### **Russia's role in the recruitment of "volunteers"**

147. During March and April 2014, as it was becoming clear to Moscow that the carefully choreographed protests it had sponsored in eastern Ukraine had failed to coalesce into a general uprising, Russia began supplying military personal and equipment in ever-increasing volumes. It was at this time that Igor Girkin and Alexander Borodai were sent to eastern Ukraine to take effective control of the movement on behalf of the Kremlin. Soon after they arrived, Russia began a steady supply of weapons to loosely affiliated groups of pro-Russian paramilitaries, whose leadership had close and enduring ties to the Russian security authorities and special services.<sup>120</sup> As noted above, many of these formations were comprised of Russian nationals who entered Ukraine as "volunteers" from the territory of the Russian Federation, often fresh from service in other theatres of conflict. Logistics were put in place by Russian authorities for the transfer of "volunteers" into Ukraine from the Russian regions of Belgorod, Kursk, and Rostov-on-Don, as well as from Transnistria, Chechnya and the Russian-occupied parts of Georgia (Abkhazia and South Ossetia).<sup>121</sup> Training in the border camps is carried out by the Russian army, while the FSB was tasked with recruitment, and with the operation of the training camps.

148. The recruitment of fighters from Russia was typically organised through a number of publicly available websites that were clearly permitted to operate openly, with the consent and acquiescence of the authorities in Moscow. "Volunteers" were also registered at military enlistment offices in various Russian cities, where they would receive instructions to travel to one of the border camps, mostly in the area of Rostov-on-Don. Many were former police or military officers and these "volunteers" were paid for their services from Russian State funds.

149. On 9 June 2014, the *New York Times* published an article describing the extent of reliance on Russian "volunteers" recruited via public enlistment offices in various Russian cities, and public access websites openly operating in Russia:

"Yet it is clear that numerous Russians, most of them war veterans, Cossacks or ultranationalists, have signed up to fight in Ukraine in recent weeks, either with recruiters or through one of several websites established expressly for enrolling them. In one indication, after a particularly intense battle last month, a leader of the self-proclaimed Donetsk People's Republic said 31 of the 40 or so fighters killed were Russians, their bodies subsequently returned for burial in their homeland."

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<sup>119</sup> See Appendix 4

<sup>120</sup> See *Ukraine Crisis: Key Players in Eastern Unrest*, BBC News (28 August 2014); Council of the European Union, *List of Persons and Entities Under EU Restrictive Measures Over the Territorial Integrity of Ukraine* pp. 17, 19 (2017).

<sup>121</sup> See [Tab 2] in Appendix 4;

150. According to the Atlantic Council:<sup>122</sup>

"There have been hundreds, likely thousands, of Russian citizens who have voluntarily crossed the border into Ukraine on their own accord. Putin has confirmed this, and many eager Russians even filled out online applications to join the separatist ranks—that is how easy it is to become a separatist fighter in Ukraine."<sup>123</sup>

151. The Open Russia report *Putin.War* provides a highly detailed account of the recruitment processes in operation inside the Russian Federation, drawn from numerous interviews with individuals who had been recruited in this way. It explains the arrangements for enlistment, as well as the role of the Russian Government in paying for the travel expenses and salary of these "volunteers". Their participation was voluntary, in the sense that they were not conscripts, but they were nonetheless officially recruited to perform active military service on behalf of the Russian Federation:

"In August 2014, Prime minister of ["Donetsk Peoples' Republic"], Alexander Zakharchenko said: "We have never concealed the fact that there are many Russians among us, without the help of whom we would have had a lot of difficulties and it would have been much more difficult to fight." According to Zakharchenko's confession, there were about 3-4 thousand Russian volunteers among the separatists. A State Duma deputy, member of the Committee on Defense, Vyacheslav Tetekin, estimated the number of the "volunteers", who had taken part and those who were still participating in the combat actions in Donbass, to amount to 30 thousand people. "Some fought there for a week, some fought for several months, but according to the authorities of Donetsk and Lugansk People's Republics themselves, around 30 thousand volunteers took part in the combat actions," - he stressed. The same deputy introduced a bill to the State Duma on providing the "volunteers" statuses of participants of combat actions with all relevant benefits<sup>124</sup>.

The process of involving and sending "volunteers" to Donbass is organized on the basis of non- governmental organizations that are loyal to the Kremlin. In particular, the head of the Russian Union of Veterans and State Duma deputy from the party "United Russia", Franz Klintsevich publicly confirmed his role in this process. As evidenced by the "volunteers" themselves, the collection points for future fighters are just the military enlistment offices in Russian cities.

A Russian citizen, fighting in the ranks of the separatists in the Donbass, in September 2014, gave details of the organization of the collection of the "volunteers." According to his testimony, the recruitment of the Russians in the ranks of the "militia" of DNI and LC is done in Russian cities through military enlistment offices, veterans and Cossack organizations, which organize a centralized transfer of the fighters to the conflict zone. The citizens who are willing to go to the territory of the Ukraine voluntarily, are sent in an individual order to Rostov-on-Don, where they are offset the cost of the tickets. Also, in the Rostov region is set the material base and the system of training of the fighter before they are in arms in the

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<sup>122</sup> <https://www.atlanticcouncil.org/in-depth-research-reports/report/hiding-in-plain-sight/>

<sup>123</sup> See also Andrew E. Kramer, "Russians Find Few Barriers to Joining Ukraine Battle," New York Times, June 9, 2014, [http://www.nytimes.com/2014/06/10/world/europe/russians-yearning-to-join-ukraine-battle-find-lots-ofhelping-hands.html?\\_r=0](http://www.nytimes.com/2014/06/10/world/europe/russians-yearning-to-join-ukraine-battle-find-lots-ofhelping-hands.html?_r=0). Some examples include: Novorossia, <http://novorossia.su/join>; [http://antimaydan.info/2014/06/vstupaj\\_v\\_narodnoe\\_opolchenie\\_donbassa\\_100956.html](http://antimaydan.info/2014/06/vstupaj_v_narodnoe_opolchenie_donbassa_100956.html) (in Russian); Newsli.ru, <http://www.newsli.ru/news/ussr/politika/11091> (in Russian); VKontakte, [https://vk.com/topic-67059574\\_29521374](https://vk.com/topic-67059574_29521374) (in

<sup>124</sup> <https://openrussia.org/s/tmp/files/Putin-War.pdf>

ranks of the separatists.

The direction, combat mission and armored vehicles they get just before crossing the border. The main contingent of "volunteers" are former military and police officers, i.e. people who have experience with weapons. The recruiters tend to recruit middle-aged people. Young people are not included in the priority list of the recruiters as they still retain a strong connection with family: the death of "volunteers" creates a risk of public expression of discontent on the part of their parents. The Russian "volunteers" in the Donbass receive material compensation. Money to provide the fighters comes from Russian funds, which are filled with the active support of the Russian authorities."

152. Radyuk Volodymyr Valeriyovych<sup>125</sup> is a Russian citizen and a former member of the Russian armed services. He has made a signed witness statement dated 2 August 2017 that is appended to this submission. Between 1992 and 1995 he performed military service in the Northern Fleet, and subsequently served on a naval minesweeper. He was then sent to prison. After his release, he was visited at his home in Omsk by two members of the FSB who informed him that they had come to recruit him to join the armed groups in Ukraine. They directed him to travel to Rostov-on-Don for induction and training. He was given two weeks to report there, and told that non-compliance with this order was not an option.

153. When he arrived in Rostov-on-Don, he was required to surrender his identification documents. He was given an irregular uniform and some very basic military training with other Russians. They were shown propaganda videos and introduced to representatives of the DNR. In early June, together with a large contingent of other irregular soldiers, he was ordered to cross the border into Ukraine. They were driven to Izvarino in Luhansk. He was then attached to one of the paramilitary formations. He explains that his commander was a major in the Russian army. He was allocated to a unit operating Russian army Man-PADs. He observed a large number of exclusively Russian tanks and military vehicles, as well as Grad missile systems and other complex weapons that were being handled by members of the Russian armed forces. He says:

"I should note that in staying on the territory of the Donetsk and Luhansk regions in the summer of 2014, I have repeatedly seen the presence of Russian military personnel in the ranks of the separatists. All the so-called 'Military Enlistment Offices' were attended by representatives of the FSB – they were, in fact, controlling all processes in the DNR – they were such a guiding link, actively participated in personnel work. I also saw many regular tankmen from the armed forces of the Russian Federation, mainly from the south of Russia."

154. Between April and June 2014, the armed groups relied heavily on these so-called "volunteers". However, the available evidence clearly proves the deployment of enlisted Russian troops of the regular armed forces in the conflict, to fight alongside the "volunteer" army inside Ukraine, from the summer of 2014 onwards.

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<sup>125</sup> See [Tab 14] Witness statement of Radyuk Volodymyr Valeriyovych in Appendix 4;

## The chronology of the conflict

155. On 21 March 2014, the Organization for Security and Co-operation in Europe (OSCE) deployed a Special Monitoring Mission (SMM) to Ukraine, following a request by the Government of Ukraine and a consensus decision by all 57 OSCE participating States. The SMM (OSCE) has been present on the territory of Ukraine ever since then. It is an unarmed civilian mission, present on the ground in all regions of Ukraine, with the function of observing and reporting in an impartial and objective way on the situation in Ukraine, and facilitating dialogue.<sup>126</sup>

156. Following the outbreak of hostilities, a pattern of abduction and murder of pro-Ukrainian civilians became well-entrenched. This pattern of abduction, torture and summary execution, was accompanied by indiscriminate military attacks on civilian targets, on protected objects and on members of the Ukrainian military who were prisoners of war or otherwise *hors de combat*, in flagrant violation of the applicable rules of international humanitarian law. Monitors from the Office of the High Commissioner for Human Rights (“OHCHR”) have reported on the systematic campaign of violence against civilians perpetrated by Russia’s proxies in eastern Ukraine, as well as Russia’s role in arming them. The SMM (OSCE) has also documented these groups’ responsibility for attacks on civilians. These acts were part of a continuing pattern and are constituent elements of the administrative practice alleged in this inter-State application.

157. An overview of these events (together with some selected examples) is set out in the present chapter. In addition, a systematic collection of illustrative cases recorded by the OSCE and the OHCHR is collected together, in chronological order, in **Appendix 1** to these submissions. From a brief perusal of these carefully verified and evidenced reports, it is immediately apparent that an administrative practice consisting of numerous Convention violations, linked in place and time, and by the motives of the perpetrators, is clearly established on the evidence. This is a classic case of joint criminal enterprise.

158. Despite a substantial counter-terrorism operation by the Ukrainian security services, the capture of administrative buildings across the region continued during March and April, and the armed engagements intensified. By this time, the insurgents were fully staffed, armed and funded by the Russian Federation, which continued to recruit and pay “volunteers” and mercenaries to join their ranks. As noted above, this recruitment drive for Russian “volunteers” involved a complex network of logistics inside Russia, operated with the knowledge and approval of the Russian Government, and administered through Russian officials stationed at border camps run by the Russian armed forces: see para. 147 *et seq*, *ante*. These recruits began arriving in ever-increasing numbers, and the rebel leaders themselves

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<sup>126</sup> <https://www.osce.org/pc/116747?download=true>

have estimated that more than 30,000 such “volunteers” served for tours of duty of varying lengths in eastern Ukraine, armed and salaried from the coffers of the Russian Government.

159. Between 2 and 5 May 2014, intense fighting occurred in the areas around Slovyansk and Kramatorsk. During these engagements, pro-Russian forces shot down three Ukrainian military helicopters, using anti-aircraft weapons supplied by the Russian Federation. Intense fighting spread to Mariupol between 3 and 10 May, resulting in significant casualties and serious damage to public property. By this time, the conflict was escalating on a daily basis.

160. On 11 May 2014, the DPR and LPR held purported “independence referendums” that were largely boycotted by Ukrainians, and condemned as unlawful and undemocratic by the international community.<sup>127</sup> The OHCHR observed that these so-called “referendums” were “neither in accordance with the Constitution of Ukraine nor with effect under international law”, and reported numerous irregularities and acts of intimidation during the referendum, particularly against independent journalists:<sup>128</sup>

“On 11 May, it was reported that Ukrainian journalists were not allowed to photograph or film the voting process during the ‘referenda’ in the Donetsk and Luhansk regions.”

161. According to the insurgents, there was a high turnout (among ethnic Russians), resulting in a 90% vote in favour of independence from Ukraine. Shortly thereafter, Aleksandr Borodai (a Russian citizen with connections to the FSB) was anointed as so-called “Prime Minister” of the newly-formed “Donetsk People’s Republic”. Igor Girkin (a former FSB officer) was named as “Minister of Defence”. Valery Bolotov (another former Russian army officer) was named as “President” of the “Luhansk People’s Republic”.

162. Although the referendums were legally meaningless, the results undoubtedly emboldened the rebels to ever more vicious policies of violence and repression. As OHCHR pointed out:

“In the aftermath of the ‘referendum’ of 11 May, the level of violence by armed groups intensified. At the same time, a new ‘government’ was formed, and Alexander Borodai, a Russian citizen, nominated as ‘prime minister’ of the ‘Donetsk People’s Republic’. A call was made for Ukrainian troops to leave the region.”<sup>129</sup>

163. As for the impact on the human rights of the citizens in the territories that were under the effective control of these armed groups, the OHCHR said this:

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<sup>127</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

<sup>128</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

<sup>129</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>



“As law and order increasingly broke down, so more human rights abuses, such as killings, torture, abduction for ransom and forced labour started to be committed by members of armed groups, supported by increasing numbers of foreign fighters. On 14 April, the Government launched a security operation to re-establish control over these territories. By the end of April, the self-proclaimed ‘Donetsk People’s Republic’ and the self-proclaimed ‘Luhansk People’s Republic’ were announced as having been established, which was furthered by the 11 May so-called ‘referendum’ on self-rule, contravening the constitution of Ukraine and international norms and standards.”<sup>130</sup>

164. In the immediate aftermath of the referendums, the SMM (OSCE) status report for 15 May 2014, described the situation on the ground in Luhansk and Donetsk as volatile, with armed groups exercising control of large swathes of territory:

“In Luhansk region the situation remained volatile. The Head of Regional Police Department informed the Special Monitoring Mission (SMM) that the Regional Police can only enforce law and order in the northern parts of Luhansk region. According to him the remaining territory is under control of several irregular armed groups. According to the Head of the Regional Police, the irregular armed groups comprise approximately 1,000 individuals armed with a variety of weapons ranging from Kalashnikov assault rifles to anti-aircraft missile launchers. Seventy illegal checkpoints have been established throughout the region.

In Donetsk the situation remained volatile. The SMM observed that at both the Donetsk Military Prosecutor’s Office and the Donetsk Television Broadcasting Centre the “Donetsk People’s Republic” flag was flying. The latter also had the flag of forces opposed to the government, the “OPLOT” organization. The television station was barricaded and guarded by about ten OPLOT members, who were on high alert. Close to the barracks in Donetsk Military Unit 3037, concrete block barricades were observed on both roadsides. In addition, the barracks was flying the flags of the “Donetsk People’s Republic” and “People’s Militia of Donbas”.<sup>131</sup>

On 15 May 2014, the “Donetsk People’s Militia” sent an ultimatum to Kyiv, ordering the withdrawal of all Ukrainian troops from the Donetsk oblast.

165. The international community condemned the referendums as a violation of Ukraine’s sovereignty and an escalation of the conflict. Nonetheless, the Ministry of Foreign Affairs of the Russian Federation published an official statement on its website, on 12 May, in which it expressed Russia’s “respect” for the results. The SMM (OSCE) found evidence that Russian Government support for the referendum results was being used by the militias as a rallying call for recruitment to violent rebellion:

“On 18 May the SMM observed in the centre of Donetsk city a rally of approximately 400-500 supporters of the so called ‘Donetsk People’s Republic’... A number of different flags were displayed by the participants, including the ones of ‘Donbass Peoples’s Militia’, Russian Federation, ‘Donetsk People’s Republic’ and ‘Russian Block’. The separatist leaders, when addressing the crowd, openly complained about insufficient numbers of volunteers for their armed units and claimed that the Russian Federation had recognized the ‘referendum’ as legitimate. They called for a boycott of the presidential election [scheduled for 25 May 2014] and opening of the border with the Russian Federation for humanitarian aid to be delivered

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<sup>130</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHR\\_eighth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHR_eighth_report_on_Ukraine.pdf)

<sup>131</sup> <https://www.osce.org/ukraine-smm/118648>

to the region. The crowd applauded or chanted slogans such as ‘Donbas’ or ‘Russia’ when incited by the speakers.”<sup>132</sup>

166. After the referendums, the fighting intensified. On 20 May 2014, the SMM (OSCE) noted the presence of armed members of the *Berkut*, the special forces loyal to former President Yanukovych, carrying Russian military issue automatic weapons in Luhansk:

“SMM observed a group of heavily armed uniformed men with St George ribbon insignia entering the rear of the hotel “*Druzhba*” in Luhansk together with four men in civilian suits. The uniforms appeared similar to “*Berkut*” and “*Speznas*” (Special Military) border guards, they were carrying Russian style PKM Machine Guns and AK-74M’s.”<sup>133</sup>

Two days later, the so-called “President” of the LPR declared “martial law”. According to the SMM:

“A so-called ‘martial law’ was announced on 22 May by Valeriy Bolotov, the ‘President’ of the ‘People’s Republic of Luhansk’. SMM noted that an estimated 70% of shops, cafes and banks have closed in Luhansk city centre. Some products of first necessity are sold out. Shops that are still open had removed their most valuable items. There is no fuel available. There is a noticeable decrease in the number of people and cars on the streets.”<sup>134</sup>

167. On 25 May 2014, Ukraine held nationwide Presidential elections. These were boycotted by the armed groups in eastern Ukraine, and the OHCHR noted that the official Presidential elections were disrupted by acts of intimidation, voter suppression, the abduction of electoral officials and political corruption:

“Election commission members also faced attacks, with many abducted and detained. On 9 May, an armed group abducted a member of the DEC in Kramatorsk, He was taken to the occupied City Council and released after being interrogated. On 20 May, a member of the PEC in Mariupol was detained by armed persons, beaten up and then released.

On the election day, five election commission members from Donetsk were detained by armed persons and taken to the SBU building. Following an intervention by the [OHCHR] with representatives of the ‘Donetsk People’s Republic’ at the SBU building, they were released the next day.

Such attacks prevented the DEC’s and PEC’s to continue their preparations for the Presidential election, which led to widespread limitations to exercise the right to vote in eastern Ukraine, notably in the regions of Donetsk and Luhansk.”<sup>135</sup>

OHCHR noted that independent journalists were harassed by separatist militias, and prevented from recording the preparations for (and the conduct of) the Presidential elections “prior and during the election day on 25 May”. As an example, “the journalists of the *Voice of America* were warned not to film

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<sup>132</sup> <https://www.osce.org/ukraine-smm/118701>

<sup>133</sup> <https://www.osce.org/ukraine-smm/118856>

<sup>134</sup> <https://www.osce.org/ukraine-smm/119021>

<sup>135</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARReports.aspx>

the seizure of one of the polling stations in Donetsk".<sup>136</sup> There were numerous official reports of electoral officials and employees being threatened, detained and even tortured by armed groups in "DPR" and "LPR"<sup>137</sup>.

168. The direct involvement and influence of the Russian Federation in these events was underscored on 26 May 2014, when the "speaker" of the "Donetsk People's Republic", Denis Pushilin, announced that a visit by the newly elected President Poroshenko to the Donbass region would "heat up" the situation, emphasising that "dialogue was possible only through mediation by the Russian Federation".<sup>138</sup>

169. Throughout the month of May 2014, the OHCHR recorded the increasingly damaging impact of the separatists' actions on the protection of the human rights of the civilian population:

"With the demise of security, the rule of law and governance, the protection gap is widening. Armed groups physically occupy key public and administrative buildings in many cities and towns of the Donetsk and Luhansk regions, and have declared virtual 'independence'. However, they are not undertaking any governing responsibilities. In addition, the atmosphere of fear and intimidation particularly following the abductions and killing of town councillors and public civil servants, prevent many local officials from going to work.

Of particular concern is the continued erosion of the rule of law and the limited capacity of the Government to protect residents from the ever-increasing acts of violence. Many of the attacks and abductions by armed groups target journalists, elected representatives and civil society activists. The number of armed robberies and shootings of residents has also been increasing."<sup>139</sup>

170. The OHCHR also recorded a widespread pattern of abductions during this period, which seriously imperilled the right to life for members of the civilian population:

"In the regions of Donetsk and Luhansk, a reported escalation of violence and violations of international law (abductions and acts of arbitrary detention targeting persons not involved in the fighting, intimidation and harassment, torture and killings) by armed groups illustrated the growing erosion of law and order. The [OHCHR] is increasingly concerned about guarantees for the protection of human rights of the general population. According to the MoI, from April to 7 June 2014, armed groups in the eastern regions abducted 387 people, among them 39 journalists.

From its own records, the [OHCHR] is aware of 222 cases of abductions and detentions by armed groups since 13 April. Of these, 4 were killed; 137 released; and 81 remain detained as of 7 June."<sup>140</sup>

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<sup>136</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

<sup>137</sup> See [Tab 15] Letter of Central Electoral Commission of 29 May 2017 and [Tab 16] in Appendix 4;

<sup>138</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

<sup>139</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

<sup>140</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

Throughout May 2014, the OHCHR received “several reports of killings at checkpoints held by armed groups.”<sup>141</sup> On 8 May, for example, the OHCHR reported that “an Orthodox priest was shot dead at a checkpoint near his hometown of Druzhivka.”<sup>142</sup>

171. During this period, armed groups abducted two teams of OSCE monitors (a total of eight people) and held them captive. They also abducted numerous public officials, including two SBU officers, five police officers, and three deputy prosecutors.<sup>143</sup> OHCHR noted “a growing pattern of the systematic persecutions against civil society”:<sup>144</sup>

“Among cases brought to the attention of the [OHCHR], on 14 May, four armed men in camouflage reportedly abducted the principal of a school in Luhansk from the school premises. Allegedly, she had opposed holding the ‘referendum’ on the school premises. The same day, in Kramatorsk, armed men came to the apartment of an employee and reportedly abducted him. Reportedly, they were looking for his 16-year old son, allegedly because of his active ‘Pro-Ukrainian’ position, including in the social media. Since the son was not to be found, they took the father to the occupied building of the Kramatorsk City Council where he was beaten.”

172. The OHCHR also recorded an emerging pattern of murder and extra-judicial execution of non-combatants during May and early June:

“Increasingly residents have been killed by armed groups. On 8 May, the burned body of Valeriy Salo, a farmer and head of a local cultural organisation known as a ‘Pro-Maidan’ activist, was found a day after he had been abducted by armed persons from his village.

The [OHCHR] is also concerned about reports of ‘summary executions’ by representatives of the ‘Donetsk People’s Republic’.”<sup>145</sup>

173. In addition to these cases of extra-judicial “executions”, the OHCHR recorded numerous allegations of torture perpetrated by separatist militias on people they had unlawfully detained:

“The [OHCHR] has been following cases of individuals who have been abducted and detained by armed groups in eastern Ukraine. Several interviews conducted with persons who were abducted provide vivid accounts of human rights abuses committed by representatives of the ‘Donetsk People’s Republic’ and the ‘Luhansk People’s Republic’, including beatings, psychological torture and mock executions. There are instances of relatives of detained persons, including women and children, having been threatened and terrorised.”<sup>146</sup>

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<sup>141</sup> See [Tab 17] OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014), para. 209, in Appendix 4;

<sup>142</sup> *Ibid.*

<sup>143</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

<sup>144</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

<sup>145</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

<sup>146</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

174. OHCHR also recorded a discernible pattern of targeting journalists, in an effort to suppress independent reporting:

“The working environment for journalists has become increasingly dangerous, with the threat of abduction and illegal detention by armed groups. The [OHCHR] interviewed many of the released journalists, who reported ill-treatment, beatings, and sexual harassment (of women).”<sup>147</sup>

175. During this period, the number of mercenaries and “volunteers” crossing the border from Russia rose dramatically. Many of them reportedly had prior experience of serving with Russian Special Forces.<sup>148</sup> As with the initial round of recruits, Russian authorities were closely involved in the appointment and training of these foreign fighters. They were typically recruited through military commissariats operating in southern Russia. From the end of May 2014, forces from a private military contractor called the Wagner Group began to arrive. The Wagner Group is controlled by Evgeniy Prigozhin, a close associate of President Putin<sup>149</sup>. The presence of Wagner Group mercenaries in Ukraine is confirmed in the testimony of Druik Svitlana Mykolaivna: see para. 388, *post*. Other professional mercenaries operating in Donetsk and Luhansk included ENOT Corp, a private military company registered in Moscow<sup>150</sup>; MAR, a company registered in St. Petersburg<sup>151</sup>; and several other Russian private military groups.<sup>152</sup>

176. On 26 May 2014, fierce fighting broke out for control of the Donetsk airport between armed groups and the Ukrainian military. The SMM (OSCE) reported that 35 people had been killed and up to 20 people injured in these clashes.<sup>153</sup> Based on information from multiple sources, the OHCHR concluded that the majority of those killed or injured were Russian nationals:

“[A]ccording to various sources, the 30 armed groups suffered over 50 casualties, of these at least 31 volunteers were reportedly from the Russian Federation, including from Chechnya and other republics in the Northern Caucasus”.<sup>154</sup>

This conclusion is consistent with the statements made at the time by Alexander Khodakovsky, the Commander of the Vostok Battalion which led the attack on Donetsk Airport in May 2014<sup>155</sup> and by Denis Pushilin;<sup>156</sup> see para, 207 *ante*.

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<sup>147</sup> <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>

<sup>148</sup> See [Tab 2] in Appendix 4;

<sup>149</sup> See [Tab 18] Letter of Security Service of Ukraine of 12 September 2017 in Appendix 4;

<sup>150</sup> See [Tab 8] in Appendix 4;

<sup>151</sup> <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>

<sup>152</sup> *Ibid*.

<sup>153</sup> <https://www.osce.org/ukraine-smm/119189>

<sup>154</sup> <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>

<sup>155</sup> <https://web.archive.org/web/20140531111818/https://news.vice.com/article/ice-cream-corpses-and-the-big-bear-repatriating-dead-russians-from-ukraine>

<sup>156</sup> <https://www.reuters.com/article/us-ukraine-crisis-vostok/more-foreign-fighters-break-cover-among-ukraine-separatists-idUSKBN0EC1LL20140601>

177. By the end of May 2014, the SMM (OSCE) was reporting intense fighting on a daily basis.<sup>157</sup> On 30 May, the OSCE recorded the presence of the LDPR in Kharkiv, operating alongside the “Yugo-Vostok Movement” (an organization closely associated with Alexander Khodakovsky’s “Vostok Battalion”, which had close links to the Russian GRU and was comprised of veterans from the conflicts in Chechnya and Georgia). The LDPR is a nationalist Russian political party led by Vladimir Zhirinovsky, the Deputy Speaker of Russia’s Lower House of Parliament.<sup>158</sup> The SMM (OSCE) observed the two organisations co-ordinating activities at a public demonstration in Kharkiv, on 30 May 2014. At about the same time, the SMM (OSCE) received reports that the Moscow-backed “Vostok Battalion” had taken over control of the central administration building in Donetsk, ousting local armed rebels:

“The overall security situation in Donetsk region remains very volatile, with sporadic infighting between various groups. Public security and safety is of the highest concern...Due to security restrictions, SMM was not able to carry out duties and monitor the situation in both Donetsk and Luhansk areas of responsibility. SMM observed 5-6 trucks with armed and uniformed men driving towards the Donetsk Region Administration Building. According to media, the so-called “Battalion Vostok” took control of the Regional Administration Building, previously controlled by ‘Donetsk People’s Republic’ in the centre of Donetsk.”<sup>159</sup>

178. Throughout May 2014, the forces of the DPR and LPR mounted sustained military operations against Government border checkpoints, in an effort to gain control of sections of the international border between Ukraine and Russia. The purpose of these operations was to facilitate the free flow of weapons, ammunition and military personnel from the Russian Federation to the areas under insurgent control. By the end of the month, significant parts of the border were under insurgent control.<sup>160</sup> The Border Guard garrison of Luhansk was overrun on 1 June,<sup>161</sup> and further checkpoints along the Luhansk section of the border fell to the insurgents over the next few days.<sup>162</sup> A similar pattern occurred at various points along the Donetsk section of the border. On 4 June 2014, the SMM (OSCE) recorded continuing engagements in Luhansk between separatist forces and border guards defending their headquarters in Mirny. In the Donetsk region there was “intense fighting in and around Sloviansk”.<sup>163</sup> Over the following days, the armed groups mounted further attacks on Ukrainian border posts. Hostilities intensified during the early part of June, typically involving the exchange of fire between Government forces and insurgents armed with small arms, grenade launchers, mortars and Man-PAD’s (Portable Air Defence systems).<sup>164</sup>

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<sup>157</sup> <https://www.osce.org/ukraine-smm/119299>

<sup>158</sup> [https://www.vice.com/en\\_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic](https://www.vice.com/en_us/article/ev7kke/whos-who-in-the-donetsk-peoples-republic)

<sup>159</sup> <https://www.osce.org/ukraine-smm/119353>

<sup>160</sup> See [Tab 18] Letter of the Administration of State Border Guard Service of Ukraine of 7 September 2017 with annexes in Appendix 4;

<sup>161</sup> See [Tab 6] in Appendix 4;

<sup>162</sup> The SMM reported a 17 hour battle on the south-west outskirts of Luhansk, ending on 3 June: <https://www.osce.org/ukraine-smm/119515>

<sup>163</sup> <https://www.osce.org/ukraine-smm/119565>

<sup>164</sup> See [Tab 6] in Appendix 4;

There were multiple insurgent attacks on Government border points, in order to keep open the weapons supply routes from the Russian Federation.

179. Open source researchers, Bellingcat, have used photographs and videos posted to social media, and modern geolocation analysis to pinpoint a number of cross-border supply routes used by the Russian armed forces to smuggle fighters, heavy weapons and ammunition into Ukraine<sup>165</sup> The report's findings are summarised in this passage from the introduction:

“Using satellite imagery, this report’s assessment of the border area in the conflict zone shows that there are at least 60 tracks crossing the border. Four to five border crossings are of a scale not seen along the border before, and roughly two dozen are assessed as being closely related to the Russian army. Two different types of border crossings were identified: tracks crossing the border to launch attacks from inside Ukraine and tracks crossing the border to enter Ukraine and reach – in most cases – an unknown target inside Ukraine. New tracks were documented for July, August, and September 2014, the months that saw the most intense fighting along the border last summer. The key findings and results of this report include:

A description of approximately 30 of the visible border crossings and the close relationship – both in place and time – between all major border crossings and major battles in the border area of Eastern Ukraine.

New visual evidence documenting the border crossings, including military vehicles and equipment stationed along the border and large groups of military hardware traveling on paths clearly related to border crossings

An assessment establishing or strengthening (as the case may be) the links between the border crossings and Russia’s armed forces through the documentation of Russian bases via satellite imagery and/or photographs uploaded to social media by Russian soldiers

The evidence presented [in the report] confirms that Russia’s armed forces participated in the war throughout the entire summer of 2014. Moreover, it is further shown that this participation by Russia decisively changed the course of the war.”

The report itself can be accessed via the link below.<sup>166</sup>

180. At the G7 Summit in Brussels on 4 and 5 June 2014, US President Barak Obama emphasised that in light of the recent election of President Poroshenko, Russia had “a matter of weeks” to stop de-stabilising Ukraine, and seek a settlement with his new counterpart in Kyiv, or face much more wide-ranging economic sanctions. President Obama stressed that:

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<sup>165</sup> <https://www.bellingcat.com/news/uk-and-europe/2015/09/21/bellingcat-investigation-russias-paths-to-war/>

<sup>166</sup> <https://www.bellingcat.com/news/uk-and-europe/2015/09/21/bellingcat-investigation-russias-paths-to-war/>

“Given its influence over the militants in Ukraine, Russia continues to have a responsibility to convince them to end their violence, lay down their weapons and enter into a dialogue with the Ukrainian government. If Russia's provocations continue, it's clear from our discussions here that the G7 nations are ready to impose additional costs on Russia.”<sup>167</sup>

181. In open defiance of this ultimatum, on 12 June 2014, the Russian military authorities began the transfer of heavy armoured vehicles, artillery, tanks and Grad rockets systems across the newly opened sections of the border, and into Ukrainian territory. A column of Russian tanks was delivered to Snizhne in Donetsk; and a column of multiple-launch Grad BM-21 rocket launchers was transferred through Luhansk. These were used by LPR forces in combat operations the following day. On 13 June 2014, the US State Department confirmed that it had been monitoring the accumulation of a large number of decommissioned Russian Army tanks at a site in south-west Russia, and that these had recently crossed the border into Ukraine and had been recorded on video passing through Snizhne, Torez and Makiyivka. The State Department also announced that Russian forces had accumulated a large quantity of multiple rocket launchers in the same location which had also recently been smuggled into Ukraine and had been observed travelling through Luhansk oblast.<sup>168</sup>

182. On 14 June, the SMM (OSCE) took part in a joint meeting between the Ukrainian and Russian Ombudspersons, and various civil society representatives, aimed at establishing a joint human rights mission and to address the continuing problem of arbitrary detentions. The participants appealed for “the immediate and unconditional release of all unlawfully detained civilians”.<sup>169</sup> On the same day, the SMM (OSCE) recorded that armed separatists shot down a Ukrainian military transport plane as it approached Luhansk airport, killing 40 soldiers and nine crew. This attack was a direct and immediate result of the very recent transfer of Russian Grad BM-21 rocket launchers, which had been accumulated by the Russian armed forces at a camp in south-west Russia, and then smuggled across the border two days previously: see para. 181 *ante*. At a press conference the following day, Valeriy Bolotov, the so-called “People’s Governor” of the LPR claimed responsibility for the shooting down of the plane by the “South Eastern Army”.<sup>170</sup> At the same time, Bolotov made a public appeal for further “volunteers” with military experience of handling mortars, heavy machine guns and APC’s to join the “South Eastern Army”, no doubt to operate the heavy weapons that the Russian Government was by then supplying in significant quantities.<sup>171</sup>

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<sup>167</sup> <https://www.theguardian.com/world/2014/jun/05/g7-leaders-russia-ukraine-sanctions>

<sup>168</sup> <https://www.foxnews.com/world/us-separatists-in-eastern-ukraine-have-weapons-military-equipment-from-russia>

<sup>169</sup> <https://www.osce.org/ukraine-smm/119858>

<sup>170</sup> <https://www.osce.org/ukraine-smm/119858>

<sup>171</sup> <https://www.osce.org/ukraine-smm/119945>



183. On 15 June 2014, the Office of the United Nations High Commissioner for Human Rights (OHCHR) published its regular monthly report chronicling the impact of the conflict on the human rights situation in the region.<sup>172</sup> The report noted “a significant deterioration in the security situation” in eastern Ukraine during the period between April and mid-June 2014. OHCHR had “received credible reports illustrating an escalation of abductions, arbitrary detentions, ill-treatment, looting, as well as occupation of public and administrative buildings” by separatist militias:

“Violence and lawlessness have spread in the regions of Donetsk and Luhansk. Having gained access to deposits of weapons, including from the SBU building, the armed groups increasingly started spreading violence. Abductions of persons not involved in any fighting and related acts of arbitrary detentions, looting, and killings of persons not involved in any fighting and other activities in violation of international law have been carried out by armed groups.”

184. The OHCHR noted the direct involvement of Russian nationals in these activities:

“[T]he proliferation of armed groups has clearly exacerbated threats to the security of the population, posing a further challenge in ensuring the rule of law and accountability for the numerous illegal acts committed. The ‘Donetsk People’s Republic’ has reported the presence among them of citizens of the Russian Federation, including from Chechnya and other republics in the North Caucasus.”

185. Between 12 and 20 June 2014, Ukrainian forces took steps to recapture parts of the border area, in an effort to control the flood of weapons entering Ukraine from Russia.<sup>173</sup> Intense fighting centred on the areas around Sloviansk and Semyonovka.<sup>174</sup> However, the Ukrainian military operation was interrupted on 20 June 2014, when President Poroshenko announced a unilateral ceasefire for a ten-day period.<sup>175</sup> On the day the ceasefire was announced, the SMM (OSCE) recorded another military convoy of tanks and armoured vehicles entering Luhansk from the direction of the Russian border. The convoy passed through Luhansk, travelling through Alchevsk in the direction of Donetsk.<sup>176</sup>

186. No doubt emboldened by the continuing influx of Russian weapons and personnel, the DPR told the SMM (OSCE), on 21 June 2014, that it rejected the terms of the proposed mutual ceasefire, and insisted instead on the complete withdrawal of Ukrainian forces, and the recognition of DPR independence.<sup>177</sup> A similar position was taken by the LPR.<sup>178</sup> According to OHCHR and the SMM (OSCE), during the ceasefire period, pro-Russian forces carried out 108 armed attacks on Ukrainian positions<sup>179</sup> killing 27 members

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<sup>172</sup> <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>

<sup>173</sup> See [Tab 6] in Appendix 4;

<sup>174</sup> <https://www.osce.org/ukraine-smm/119858>; <https://www.osce.org/ukraine-smm/119945>

<sup>175</sup> See [Tab 6] in Appendix 4.

<sup>176</sup> <https://www.osce.org/ukraine-smm/120062>

<sup>177</sup> <https://www.osce.org/ukraine-smm/120113>

<sup>178</sup> <https://www.osce.org/ukraine-smm/120584>

<sup>179</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf);  
<https://www.osce.org/ukraine-smm/120665>

of the Ukrainian armed forces, and injuring a further 69. At least nine civilians were killed by separatists during this time,<sup>180</sup> and a significant number of Ukrainian military personnel were taken prisoner.

187. Ukraine resumed military engagements at the end of June, re-launching a major operation with the objective of recapturing a 15 kilometer stretch of the border which controlled by the insurgents. By this time, however, they were facing an increasingly well-equipped military force of Russian “volunteers” and mercenaries armed with a huge arsenal of highly destructive Russian military hardware. On 30 June 2014, US Air Force General Philip M Breedlove, NATO’s Supreme Allied Commander for Europe, issued a statement in which he described “the aggressive actions of Russia” as having produced an unprecedented crisis in European security. According to an official report of his presentation:

“About seven Russian battalion task groups remain on the border with Ukraine, he said, as well as numerous special operations forces. “That’s not a helpful development in what it brings to the problem,” the general said. Russian regular military forces are facilitating the movement of forces, equipment and finances across the Ukrainian border, he said. “Russian irregular forces are very active inside eastern Ukraine. Russian-backed forces are active inside eastern Ukraine. And Russian financing is very active inside eastern Ukraine,” Breedlove said.”<sup>181</sup>

188. On 1 July 2014, insurgent forces took control of Luhansk Airport, and intense fighting ensued for several days. On 4 July, the SMM (OSCE) reported these armed clashes across various parts of Luhansk and Donetsk, and noted that “[t]he UN states that there were numerous reports of death of people due to intensified security operations in Donetsk and Luhansk”.<sup>182</sup>

189. On 2 July 2014, the Parliamentary Assembly of the OSCE adopted the Baku Declaration expressing concern that “the Russian Federation continues to violate international commitments” in making “illegitimate claims in the eastern part of Ukraine”. The Assembly condemned Russia’s “clear, gross and uncorrected violation of the Helsinki [Accords]” including “egregious violation of [Ukraine’s] sovereignty and territorial integrity”; and deplored “the armed intervention by forces under the control of the Russian Federation in Ukraine, and the human rights violations that they continue to cause”.<sup>183</sup>

190. On 4 July 2014 the U.N. Human Rights Chief Navi Pillay gave a public briefing on the situation in eastern Ukraine, in which she noted a “disturbing” message on the website of one leader of the self-proclaimed “Donetsk People’s Republic”, which stated that “underage children and women are legitimate targets and that the goal is to ‘immerse them in horror’.”<sup>184</sup>

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<sup>180</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

<sup>181</sup> <https://web.archive.org/web/20140713152755/http://www.defense.gov/news/newsarticle.aspx?id=122576>

<sup>182</sup> <https://www.osce.org/ukraine-smm/120862>

<sup>183</sup> <https://www.oscepa.org/meetings/annual-sessions/2014-baku-annual-session/2014-baku-final-declaration>

<sup>184</sup> OHCHR, *Intensified Fighting Putting at Risk Lives of People in Donetsk and Luhansk* — Pillay (4 July 2014)

191. On 5 July 2014 Ukrainian forces regained control of Sloviansk and Kramatorsk, Dryzhivka, Kostyantynivka<sup>185</sup>. On 6 July 2014, the SMM (OSCE) recorded this.<sup>186</sup> This marked the start of a reversal of fortunes for the Ukrainian forces. According to the SMM (OSCE), fighting intensified during 10 and 11 July in and around Donetsk airport, with the access roads blocked by DPR forces.<sup>187</sup>

192. On 11 July 2014, as a result of Ukraine's operation to re-take control over sections of the international border, Russian conventional forces engaged directly for the first time, shelling Ukrainian positions near the border town of Zenelopillya with Grad BM-21 rocket launchers from inside the territory of the Russian Federation.

193. In a signed witness statement attached to this submission, Kolenynyk Semen Andriyovych<sup>188</sup> (a Lieutenant Colonel in the Ukrainian armed forces) explains his role in border operations over the summer of 2014. At the time, he was Deputy Commander of the 2<sup>nd</sup> Tank Battalion of the 79<sup>th</sup> separate airmobile brigade. In early July 2014, his battalion was deployed in the vicinity of Saur Mogyla, with the aim of advancing towards the border, and recapturing a section that was under the control of armed insurgents. In the vicinity of the border, his unit discovered boxes with mines, mortar parts and cold rations produced in Russia, as well as pieces of equipment for mortar-firing that was exclusive to the Russian army. His unit was subsequently deployed to an elevated position near Marynivka, approximately 600 metres from the Russian border. From this position, his spotters had good visibility of the border and surrounding terrain. In early July 2014, Russian forces began to shell the position at which Lieutenant Andriyovych and his men were deployed. The shelling came from the opposite side of the border. Russian UAVs (drones) were regularly seen circling the area, just prior to each artillery barrage. Between 15 and 16 July 2014, his unit's border position was subjected to an uninterrupted artillery barrage for 19 hours from inside Russian territory. At the same time, a group of separatist paramilitaries attacked them in APCs inside Ukraine. The local paramilitaries used the Russian artillery barrage as cover in their attempt to re-take the border position. Lieutenant Andriyovych subsequently learned from a video posted on the internet that the ground assault had been led by Igor Girkin personally.<sup>189</sup> The Russian cross-border artillery attacks continued and with air support from Russian military aircraft. Lieutenant Andriyovych's unit came under regular fire from a variety of weapons at this time, including Grad rockets. He personally witnessed flight MH17 being hit. From the location of the explosion, he immediately realised the rocket must have been launched from inside Ukraine. Since it was

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<sup>185</sup> See [Tab 6] in Appendix 4;

<sup>186</sup> <https://www.osce.org/ukraine-smm/120941>

<sup>187</sup> <https://www.osce.org/ukraine-smm/121174>

<sup>188</sup> See [Tab 19] Witness statements of Koleynyk S.A. in Appendix 4;

<sup>189</sup> <https://www.youtube.com/watch?v=Sep1oQhuDdQ>

<https://www.youtube.com/watch?v=WB-mWUc4GEA>

<https://www.youtube.com/watch?v=DSmsFnawsUw>

obviously a large airplane that had been hit, he also realised the attackers must have used a Russian Grad missile, or something similar, because the Ukrainian military did not possess anti-aircraft munitions capable of hitting a large plane flying at high altitude. Eventually, on 24 July 2014, Lieutenant Andriyovych received orders to withdraw, partly because his unit had suffered sustained heavy attacks, and many of his men had been injured. As his soldiers left their positions to evacuate, they were attacked by Russian artillery and tank fire.

194. Over the following eight weeks, Russia intensified the supply of heavy weaponry and personnel across the border. Its conventional forces also mounted a series of covert special operations, crossing into Ukraine with their official military insignia concealed, in an effort to blend with the paramilitaries. The aim was to bolster the armed groups in their efforts to control and reverse the continuing advance of the Ukrainian military. In order to provide military cover for this campaign, Russian conventional forces also conducted frequent cross-border artillery attacks on Ukrainian forces, from firing positions on the Russian side of the border. Eventually, in the last week of August, the conventional Russian army mounted a full-scale land invasion into eastern Ukraine.

195. Two days later, on 13 July, the SMM (OSCE) reported further cross-border troop movements from the Russian Federations into Ukraine:

“There was a reported movement of a significant amount of military hardware across the Russian-Ukrainian border. A senior military Ukrainian officer speaking to the SMM on 13 July, stated that a column of tanks and other military hardware had entered Ukraine from the Russian Federation at Zelenopolie border crossing point on that day. The officer claimed that the artillery pieces (MT12 ‘Rapira’) and trucks (KAMAS, URAL), captured in a video image, were not issued to the Ukrainian army. The column, according to the military officer, was later seen in Luhansk city and was on the move, in the direction of Donetsk city.”<sup>190</sup>

196. On 15 July 2014, the OHCHR published its regular monthly report on the human right situation, which recorded that separatist militias had begun deliberately targeting essential public utilities, such as water and electricity, in order to shut down supplies to parts of the civilian population.<sup>191</sup> The report documented the fact that during the previous month, homes had been destroyed, banks had been robbed, railways had been bombed, and hospitals had been forcibly closed down by the separatist groups.<sup>192</sup> The OHCHR assessed the overall situation for the civilian population in the areas under separatist control in these terms:

“The increased level of fear, intimidation, harassment and fighting inflicted on the population of the region resulted in an ever-growing flood of internally displaced persons.”<sup>193</sup>

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<sup>190</sup> <https://www.osce.org/ukraine-smm/121255>

<sup>191</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

<sup>192</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

<sup>193</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

197. According to OHCHR, the worsening human rights situation was due, in large part, to the uncontrolled influx of Russian nationals, including combatants formerly involved in the conflicts in Chechnya and Transnistria, and the transfer of heavy weapons from the Russian Federation:

“The professionalisation of the armed groups in the east has become openly acknowledged and self-evident. Their leadership, many of whom are nationals of the Russian Federation, are trained and hardened by experience in conflicts, such as in Chechnya (Russian Federation) and Transnistria (Republic of Moldova). What was previously something of a rag tag of armed groups with different loyalties and agendas is now being brought together under the central command of these men. Heavy weaponry including mortars and anti-aircraft guns, tanks and armoured vehicles, and landmines now being used by them.”<sup>194</sup>

198. The process of professional military organization noted by the OHCHR, and the consolidation of political power and control, was orchestrated directly by agents and proxies acting on behalf of the Russian Federation. The new leadership of the “movement” was directly sponsored by the Russian Federation, and was recorded on telephone intercepts taking operational orders directly from President Putin’s special envoy, Vladimir Lukin. The Moscow-backed leadership was systematically taking over all the main political and military leadership positions, one by one. This was being achieved partly because they brought Russian special forces personnel with them. The professionalization of their military operations was due to the vast army of “volunteers” provided by the sophisticated recruitment operation set up and run by the Russian Government and its proxies. They were funded directly by a small group of ultra-nationalist oligarchs, who acted as the Kremlin-backed financiers of the armed separatists. In addition, the “volunteers” were paid out of State funds. They were heavily armed with sophisticated and powerful military equipment, a significant part of which was exclusively available to the Russian armed forces, and had been accumulated in the Russian military border camps and then smuggled across the border into eastern Ukraine. All of this led to a major intensification of hostilities, correlating in time and place to this massive influx of heavy weaponry from the Russian Federation. Russian nationals who had previously served in the Russian military embedded within the DPR and LPR in increasing numbers, in order to provide advice, assistance, and add manpower.

199. In July 2014, the OHCHR recorded that “[e]gregious human rights abuses have been committed in the Donetsk and Luhansk regions of eastern Ukraine, where armed groups supporting the self-proclaimed ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’ (DPR and LPR respectively)” operate.<sup>195</sup> OHCHR continued that “[t]here have been hundreds of abductions with many victims

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<sup>194</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

<sup>195</sup> See [Tab 7], para. 2 *See ibid.* para. 38 (“Intimidation and violence by the armed groups against civilians in the east has continued, with people being abducted and detained often for purposes of hostage taking. The armed groups also carry out acts of ill-treatment, torture and murder.”) in Appendix 4;

tortured. Increasing numbers of civilians have been killed.”<sup>196</sup> According to OHCHR, it was apparent that the separatist and pro-Russian groups were conducting hostilities in violation of the rules of humanitarian law, resulting in significant numbers of civilian casualties. This was partly due the conduct of indiscriminate military actions, in violation of the humanitarian law principles of distinction, precaution and proportionality. However, as the evidence summarised below plainly demonstrates, there were a number of instances in which it was plain that the “rebels” were deliberately targeting civilians. According to OHCHR:

“However, not all of the [civilian] deaths and injuries can be attributed to reported shelling or air strikes of towns/villages. Some deaths had other causes. For example, anti-personnel landmines have killed at least three and injured two others; people have been killed when the passenger buses they were travelling in were shot at; and people have been killed when travelling in their car. Three traffic policemen were killed at close range and without warning, according to an eyewitness, in Donetsk city on 3 July... A motorist was killed when armed groups stole the car he was driving in Noviy Svit (Donetsk region). There have been reports of people being used as ‘human shields’ by the armed groups, as for example in Horlivka on 14 June. In this incident, after two people were killed and eight injured, reportedly during an airstrike, the armed group then threatened to organise ‘human shields’ by placing detainees on the roof of a city municipal building.”

200. The use of anti-personnel land mines by the separatist militias was first recorded in the OHCHR’s July 2014 report. It is apparent that these indiscriminate weapons were deployed in civilian areas, and resulted in numerous civilian casualties, in breach of the applicable principles of international humanitarian law:

“The first indication of the use of landmines by the armed groups came on 2 July when Ukrainian forces regained control of the border area in Luhansk... Anti-personnel mines killed three civilians and wounded two more in separate incidents near Luhansk and Kramatorsk; both towns were at that time controlled by armed groups.

On 4 July, the Ministry of the Interior informed the [OHCHR] that the armed groups have been using two types of blast land mines. One of the types is an anti-personnel non-removeable land mine complex with two wires between the mines which makes it almost impossible to safely de-activate. It was also reported that anti-tank mines are used in combination with anti-personnel mines, which make them more dangerous, not only for the armed forces but also for residents not involved in the fighting.

After Ukrainian forces regained control of Slovyansk, they discovered explosive remnants on many roads, enterprises and buildings. The Ukrainian Defence Minister reportedly said on 8 July that many highways were mined, in particular the routes from Slovyansk to Kramatorsk, and from Slovyansk to Donetsk, saying ‘a lot of landmines and unexploded shells lie on the sides of the roads’ and that they were working to dispose of them. There were reports of more civilian deaths from landmines on the outskirts of Donetsk city.”<sup>197</sup>

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<sup>196</sup> *Ibid.* para. 2., See OHCHR, *Accountability for Killing in Ukraine from January 2014 to May 2016* (2016), para. 37 (reporting that “[a] considerable number of bodies bearing signs suggesting summary executions were found in the territories controlled by the armed groups”);

<sup>197</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

201. The OHCHR noted that the widespread practice of abductions, torture and murder had intensified throughout June and July:

“Intimidation and violence by the armed groups against civilians in the east has continued, with people being abducted and detained often for purposes of hostage taking. The armed groups also carry out acts of ill-treatment, torture and murder.”

Testimonies regarding killing, abduction, illegal deprivation of liberty, intimidation and tortures, property confiscation in May-July 2014 were also provided by witnesses<sup>198</sup>.

202. According to OHCHR, these crimes had become part of a co-ordinated policy or practice on the part of the separatist armed groups, which was being perpetrated with clearly identifiable motives and objectives. Ukraine submits that this commonality of purpose is clear evidence of a joint criminal enterprise for the purposes of international criminal law, and more than sufficient to establish an administrative practice for the purposes of the Convention:

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“The motivation for the abduction and detentions by the armed groups appears to be: (a) exchange with detainees held by the Government; (b) gain some influence on the situation; (c) extortion of property or money; (d) source of labour for digging trenches and preparing military barricades; (e) opportunistic ‘arrests’ of people; and (f) ‘internal discipline’ of the armed groups themselves. With these acts, the armed groups continued to exercise their power over the population in raw and brutal ways.”<sup>199</sup>

203. The OHCHR also reported the continuing practice of torture by the separatist militias, perpetrated against those that were detained during June and July 2014, sometimes coupled with enforced conscription, all in breach of the applicable principles of humanitarian law:

“In discussions with [OHCHR] following their release, many detainees who were held by armed groups report beatings, ill-treatment, sleep deprivation and very poor conditions while in detention, and forced labour including digging trenches on the front lines. As an ‘alternative’ to torture and ill-treatment, it was suggested that detainees join the ranks of those fighting for the armed groups.”<sup>200</sup>

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<sup>198</sup> See witness statements of [Tab 20] Andreiev Yuriy Mykhailovych, [Tab 21] Iryna Mykolayivna Kirikova, [Tab 22] Rizaeva Hayde Adylivna, [Tab 23] Krychuk Serhii Borysovych, [Tab 24] Khaletskyi Andrii Viktorovych, [Tab 25] Kovalchuk Vitalii Mykhailovych, [Tab 26] Stepanova Olena Oleksandrivna, [Tab 27] Kolesnikov Ruslan Mykolaiovych in Appendix 4;

See testimonies of Sergey Kosyak, Gennady Lysenko, Anatoly Onishchenko, Alexey Demidovich, Viktor Kotsarenko, Father Tikhon (Sergey Kulbaka), Aleksandr Khomchenko, Oleg Shtein, Nikolai Kalinichenko, Elena Velichko, Natalya Bradarskaya, Yelisei Pronin, Gennady Kitaigora, Muslim Mernik, Anatoliy Karpenko, Sergey Levkovich, Petr Martyschenko, Aleksandr Reshetnik, Tatiana Nosacheva collected in Eurasia’s in [Tab 28] Report “*Religious Persecution in Eastern Ukraine and Crimea 2014* in Appendix 4;

<sup>199</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

<sup>200</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

204. There were also reports of further summary executions:

“Written records of execution orders authorised and signed personally by the Commander-in-Chief of the armed groups, Igor Girkin (known and Strelkov), as well as protocols of hearings of a ‘military tribunal’ convicting people to death, were found in Slovyansk by a journalist on 7 July.

On 18 May, in a village near Slovyansk an elderly farmer was accused of bringing food to the Ukrainian forces, taken out of his home into the yard, where according to witnesses, a ‘sentence’ was read in the name of the ‘Donetsk People’s Republic’ and shot dead, in front of his family and neighbours.”<sup>201</sup>

Overall, the OHCHR concluded that by the middle of July 2014, the rule of law had “collapsed” in the areas under the control of the DPR and LPR. The local police were under the *de facto* control of the armed groups, and did not investigate crimes that were perpetrated by the militias. Public buildings associated with law enforcement agencies were “occupied and often used to detain and torture civic activists, journalists and political opponents”. Law enforcement by official Government agencies had become “a dead letter in territories controlled by the armed groups”.<sup>202</sup>

205. In 15 July 2014 report, OHCHR put the position bluntly:

“The armed groups fighting in the east must abide by international law but unfortunately this has not been the case. Grave human rights abuses have been committed by those armed groups. And it must be remembered that these groups have taken control of Ukrainian territory and inflicted on the populations a reign of intimidation and terror to maintain their position of control.”<sup>203</sup>

206. The SMM (OSCE) recorded intense fighting in the area around Luhansk,<sup>204</sup> and Donetsk<sup>205</sup> between 13 and 16 July 2014. In her regular reporting to the UN Security Council, the ICC Prosecutor has determined that the “direct military engagement between the respective armed forces of the Russian Federation and Ukraine indicated the existence of an *international armed conflict* in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict”.<sup>206</sup> She is continuing her investigations into the question whether the extent of Russian State’s overall control of the separatist

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<sup>201</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

<sup>202</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

<sup>203</sup> See [Tab 7], para. 26 See also [Tab 29] OHCHR, *Report on Human Rights Situation in Ukraine* (19 September 2014), para. 16 (“The reign of fear and intimidation by the armed groups has been well-documented in the reports of the Human Rights Monitoring Mission in Ukraine. Forced mobilization and threats of the death penalty were additional means to terrorize the population in the territory under the control of the armed groups.”) in Appendix 4;

<sup>204</sup> <https://www.osce.org/ukraine-smm/121255>

<sup>205</sup> <https://www.osce.org/ukraine-smm/121389>

<sup>206</sup> [www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf](http://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf)



armed groups is such that the paramilitary formations are to be regarded as Russia's agents for the purposes of international criminal law, and are therefore participating in a "single international armed conflict in eastern Ukraine".<sup>207</sup>

207. During the afternoon of 17 July 2014, DPR forces shot down Malaysia Airlines Flight MH17, a civilian aircraft flying in civilian airspace over eastern Ukraine. The flight came down near Hrabove (about 80 km east of Donetsk). The SMM (OSCE) was able to gain only limited access to the crash site on the day of the crash. They noted dead bodies marked at the scene, but exposed to the elements. There was no process of debris collection underway and the DPR forces guarding the scene were "visibly intoxicated and aggressive".<sup>208</sup>

208. All 298 civilians on board were killed, including three infants, 280 other passengers, four flight crew members, and 11 cabin crew members. Many of those onboard were Dutch tourists heading to vacation destinations on the Kuala Lumpur-bound flight. More than 30 nationalities were onboard, including a significant number of Malaysian and Australian nationals. The armed groups used a 9M38 series missile, launched from a Buk TELAR that had been delivered by the members of a Russian military brigade to DPR-controlled territory in Ukraine<sup>209</sup>.

209. On 21 July 2014, the UN Security Council adopted Resolution 2166 (2014) condemning the downing of MH17 "in the strongest possible terms" and expressed its "grave concern" that DPR forces were obstructing access to the crash site and impeding international investigators. The Security Council demanded the immediate cessation of all military activities in the vicinity of the crash site, and demanded that the DPR and other armed groups in control of the site and the surrounding area:

"...refrain from any actions that may compromise the integrity of the crash site, including by refraining from destroying, moving, or disturbing wreckage, equipment, debris, personal belongings, or remains, and immediately provide safe, secure, full and unrestricted access to the site and surrounding areas for the appropriate investigating authorities, the OSCE Special Monitoring Mission and representatives of other relevant international organisations according to ICAO and other established procedures."

210. The evidence establishes beyond any doubt that the armed groups used a 9M38 series missile, launched from a Buk TELAR that had been delivered by the members of a Russian military brigade to DPR-controlled territory in Ukraine. The DPR deployed this weapon despite the fact that it could not reliably distinguish between military and civilian targets, and that civilian airspace was open. As part of

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<sup>207</sup> [www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf](http://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf)

<sup>208</sup> <https://www.osce.org/ukraine-smm/121431>

<sup>209</sup> These facts are the matter of examination within cases No 25714/16 "*Ayley and Others v. Russia*" and No. 56328/18 "*Angline and Others v. Russia*" pending before the Court

this international response, the Dutch Safety Board (“DSB”) conducted an independent investigation into the causes of the crash.<sup>210</sup> At the same time, a criminal investigation was launched by a Joint Investigation Team (“JIT”), comprised of the Netherlands Public Prosecutor’s Office, the Dutch National Police, and law enforcement authorities from Australia, Belgium, Malaysia, and Ukraine.<sup>211</sup>

211. Forensic examinations have established conclusively that Flight MH17 was destroyed by a 9N314M warhead as carried on a 9M38-series missile and launched by a Buk TELAR surface-to-air missile system. Based on missile trajectory analysis it was possible to isolate the launch zone to within an area of 320 square kilometres near the towns of Snizhne and Pervomaisky in Donetsk oblast, an area that was under the control of the forces of the “Donetsk People’s Republic”, commanded by Igor Girkin. On a closer examination, it was possible to determine the exact location of the launch site with certainty, in a field which showed signs of scorching and had been recently ploughed. Satellite imagery showed that on the 16 July, the day prior to the attack, the surface of the field had been intact and undisturbed.

212. Using modern “open source research” technology, investigators discovered that numerous people had taken photographs or videos of the Buk TELAR system after its arrival in Snizhne on 17 July, and posted these to various social media sites. Intercepted telephone calls between members of the DPR armed groups, together with cell site analysis, confirmed that the Buk TELAR had indeed been delivered to Snizhne on the 17 July. On further research, it became apparent that there were numerous photographs available of the Buk TELAR being transported. Some had been taken by civilians along the route; others by Russian servicemen. Geolocation analysis of these images enabled a complete reconstruction of the route by which the weapons system had arrived in Snizhne, and of the route by which it departed after the attack. Much of this research was conducted by the open source research group *Bellingcat*. A full list of their reports on MH17, with hyperlinks, is attached at Appendix 3 to this submission.

213. The evidence established that between 23 and 25 June 2014, a convoy of the 53<sup>rd</sup> RAF Brigade transported several military systems, including six Buk TELARs, through western Russia from Kursk to the Millerovo military airbase in Rostov oblast. The convoy attracted significant local attention. A number of Russian servicemen published photographs on the Internet taken in the course of this operation, from which it has been possible to prove conclusively that the Buk TELAR system used in Snizhne was one of those that were transported by the 53<sup>rd</sup> RAF Brigade.<sup>212</sup>

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<sup>210</sup> See [Tab 30] Dutch Safety Board, *Crash of Malaysia Airlines Flight MH17* (17 July 2014) with annexes, p. 7 in Appendix 4;

<sup>211</sup> Gerardus Wilhelmus Christiaan Thiry, chief inspector with the National Crime Squad of the Dutch National Police, has produced two official reports proving Russian State responsibility for supplying the Buk TELAR that was used to shoot down Flight MH17.

<sup>212</sup> See JIT Presentation (with accompanying video, JIT MH17 Witness Appeal About 53<sup>rd</sup> Brigade, mm 00:02:20–00:02:45), 24 May Dutch National Police Report, (“Soldiers who could be linked to the 53<sup>rd</sup> [Anti-Aircraft Missile

214. The Joint Investigation Team compared number plates and other relevant characteristics of the vehicles in the convoy, analyzed visible characteristics of the surroundings of the places that the convoy passed, and compared the objects to Google Street View in order to validate each location. In this way, they were able to conduct a thorough geolocation analysis and reconstruct the journey of the Buk TELAR system.

215. Shortly before the attack, the Ukrainian authorities intercepted a telephone call between the “Defence Minister” of the “Donetsk People’s Republic”, Ivor Girkin, and a military associate in Russia, in which Girkin requested the transfer of an “air defence system”. On 16 July, another DPR member was heard during an intercepted call specifically requesting to “receive a Buk in the morning”. That night, Russian forces clandestinely transported the Buk TELAR from the territory of the Russian Federation into Luhansk oblast in Ukraine. An intercepted conversation from 09:22 on 17 July 2014 indicates that the Buk had already crossed the border.

216. The Buk was caught on video and photographed several times as it was transported from Luhansk to the launch site, on a Volvo low-loader truck and escorted by a Volkswagen transporter and a UAZ jeep, carrying four missiles under a camouflage net. At around 08:00 local time on 17 July 2014, it arrived in Yenakiieve, Ukraine. It then moved on to Donetsk, where witnesses who saw the Buk posted pictures, and videos on the Internet. At around 11:00 the convoy travelled from Donetsk to Snizhne, passing Makeevka, Zuhres, and Torez, with several more photographs and videos being recorded along the route. Around 13:00, it arrived in Snizhne, Ukraine. It then drove on its own to the launch site. Shortly thereafter, the Buk deployed a missile and shot down Flight MH17, killing 298 civilians.

217. After the attack the Buk was returned to Russia. It was traced from Snizhne to the Russian border in Luhansk Oblast, passing Krasniy Lutch and Debaltsevo. On 18 July, at around 04:00 or 05:00, the Volvo truck transporting the Buk was witnessed in Luhansk, heading in the direction of Krasnodon/Sjeverne and to the Russian border. A video shows the Buk in Luhansk - missing a missile. At around 08:00, another intercepted conversation confirmed that the Buk had left Ukraine and crossed the border back into Russia.

218. Based on a close comparison of all of the imagery, taken in conjunction with the intercepted telephone calls, the JIT investigators conclusively established that the Buk in Russia and the one in Ukraine share the same unique identification features. Accordingly, it is established beyond doubt that the Buk TELAR that shot down Flight MH17 came from Russia, specifically the 53<sup>rd</sup> Anti-Aircraft Missile Brigade of the Russian Armed Forces, and was returned to Russia immediately after the attack.

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Brigade] through open-source investigation posted messages during and about the convoy: the photos and videos of the convoy show soldiers wearing the uniform of the 53<sup>rd</sup> [Anti-Aircraft Missile Brigade]  
<https://www.om.nl/onderwerpen/mh17-crash/press-meeting-juni/narrative-conference/>,  
<https://www.politie.nl/themas/flight-mh17/witness-appeal-crash-mh17.html>

219. According to the Dutch National Police, the investigation has therefore shown conclusively that the Buk TELAR used in the attack on MH17 came from the 53<sup>rd</sup> Anti-Aircraft Missile Brigade, based in Kursk in the Russian Federation; that it was transferred across the border and travelled to the launch site on the morning of 17 July 2014; and that it returned to the Russian Federation overnight on 17-18 July 2014.<sup>213</sup>

220. In light of the overwhelming evidence of Russian State responsibility for this atrocity, NATO issued an official statement in July 2018 calling on Russia to acknowledge its responsibility, and assist efforts at establishing accountability:

“We fully support UNSCR 2166 concerning the downing of civilian flight MH17 and call on the Russian Federation to accept its responsibility and to fully co-operate with all efforts to establish truth, justice, and accountability.”<sup>214</sup>

221. Igor “Strelkov” Girkin, the “Defence Minister” of the “Donetsk People’s Republic” (and former FSB officer with direct ties to President Putin’s special envoy, Vladimir Lukin) commanded the area in which Malaysian Airlines flight MH17 was shot down, by forces under his direct command and control. He was also heard on intercepted calls asking his Russian contacts to supply the weapon, which was then situated at the Millerovo military airbase in Rostov. On the basis of this evidence, Dutch Prosecutors have recently charged Girkin together with two other two Russian nationals (Sergey Dubinskiy, and Oleg Pulatov) both former officers of the GRU’s special forces *spetsnaz* unit, with criminal responsibility for the murder of all those who lost their lives in this shocking tragedy.<sup>215</sup>

222. Shortly after the attack on MH17, *Reuters* published a detailed report on Russian arms supplies to its proxies in eastern Ukraine, in which Alexander Khodakovsky effectively admitted that the Buk missile system that was used to shoot down flight MH17 had come from Russian military shortly before the attack, and had been sent back to hide the evidence of Russian involvement in the atrocity:

“In an interview with *Reuters* last week, a separatist leader said that Russia may have supplied the separatists with BUK rockets, which were used to shoot down Malaysia Airlines flight MH17. The destruction of the civilian passenger plane over eastern Ukraine on July 17 killed nearly 300 people. Alexander Khodakovsky, commander of the Vostok Battalion, told *Reuters*:

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<sup>213</sup> See [Tab 30] p. 138 (attaching as Appendix T the Dutch Review Committee on the Intelligence and Security Services, *Review Report* (8 April 2015) in Appendix 4;

<sup>214</sup> [https://www.nato.int/cps/en/natohq/official\\_texts\\_156624.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/official_texts_156624.htm?selectedLocale=en)

<sup>215</sup> <https://www.theguardian.com/world/2019/jun/19/mh17-criminal-charges-ukraine-russia>

"I knew that a BUK came from Luhansk (in east Ukraine). I heard about it. I think they sent it back. Because I found out about it at exactly the moment that I found out that this tragedy (of MH17) had taken place. They probably sent it back in order to remove proof of its presence."<sup>216</sup>

223. As the Atlantic Council Report, *Hiding in Plain Sight*, makes clear, satellite imagery analysis provides objective confirmation of the build-up of Russian troops along the border during the first year of the conflict, the operation of training camps for recruits and the transfer of weapons and military personnel across the border and into Ukraine under the supervision of the Russian armed forces.<sup>217</sup> The evidence examined in the report leaves no room for doubt about the number, size, location and activities carried out in these military training camps. They were used as a location to store military equipment destined for cross-border supply to the rebels, and also acted as military training grounds for "volunteers" and others who could be inducted by the Russian military into the conflict. After 11 July, nearby locations were also frequently used for cross-border artillery attacks. As the Atlantic Council concludes from the available evidence:

"Several Russian training camps stationed along the Ukrainian border are the launching points of Russia's war in Ukraine, in plain view for anyone with access to Google Earth or Google Maps. These camps are the gathering points for Russian military equipment transported into Ukraine, soon to join the separatist arsenal, and for Russian soldiers mobilized from the far reaches of the country to cross into Ukraine.

Satellite images show the rapid establishment and expansion of those training sites just days after the annexation of Crimea. A number of these camps were set up alongside Russia's border with Ukraine shortly after the beginning of the war in Donbas. Most of them are in the Rostov and Belgorod oblasts, with clear passage into separatist-held territory. They house thousands of Russian soldiers and pieces of military equipment, including equipment and arms that later appear in Ukraine. From these camps, hundreds of Russian troops have travelled in large convoys into eastern Ukraine. In addition to the satellite images, details of Russian troop deployments on the Ukrainian border can be gleaned from accounts of Russian soldiers who were injured or killed in Donbas and their families."<sup>218</sup>

224. The report details the precise co-ordinates and documents the military activities at three such sites:

- (a) The Pavlovka Camp was established two kilometres from the border and became the storage site for dozens of military vehicles. Satellite imagery comparison shows that the camp did not exist prior to April 2013. Images show that the camp rapidly expanded in scale over the Summer of 2014, whilst the 7<sup>th</sup> Airborne Division was deployed there. It has been possible to establish from forensic photo-analysis that Grad rocket launchers stationed approximately one kilometre from the camp were used to launch cross-border artillery strikes on Ukrainian forces during the Summer 2014 offensive.

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<sup>216</sup> <https://www.reuters.com/article/us-ukraine-crisis-arms-specialreport/special-report-where-ukraines-separatists-get-their-weapons-idUSKBN0FY0UA20140729?feedType=RSS&feedName=worldNews>

<sup>217</sup> <https://www.atlanticcouncil.org/in-depth-research-reports/report/hiding-in-plain-sight/>

<sup>218</sup> <https://www.atlanticcouncil.org/in-depth-research-reports/report/hiding-in-plain-sight/>

- (b) The Kuybshevo Camp was located three kilometres from the border and became a staging post for numerous cross-border artillery attacks. It rapidly expanded during the conflict and housed a range of heavy artillery. A position west of the nearby town of Kuybshevo was used for launching cross-border Grad missile attacks during July 2014. There are numerous photographs available showing Russian soldiers firing artillery from the vicinity of the Kuybshevo Camp towards Ukraine. The 291<sup>st</sup> Artillery Brigade were stationed at the camp, and engaged in cross-border artillery attacks between 21 and 26 July 2014. These attacks are recorded in photographs taken by the soldiers themselves and in satellite imagery revealed by the US State Department.<sup>219</sup>
- (c) The Atlantic Council was also able to trace the journey of Russian army T-72B battle tanks from the Kuzminsky border camp into Ukraine, where they participated in the Battle of Debaltseve:

“Not only are these pieces of military equipment transferred from Russia to Ukraine, they are also used by Russians, as in the case of the T-72B tanks used by members of the 5th Tank Battalion who departed from the Kuzminsky border camp in Russia in mid-February of 2015 to engage in the Battle of Debaltseve.”<sup>220</sup>

225. The Atlantic Council report was also able to precisely identify a number of the specific sites, often close to Russian border camps, from which cross-border artillery attacks had been launched, particularly during the second half of 2014, when Russian conventional forces provided artillery cover for the combat operations of their proxy forces inside Ukraine. These cross-border artillery attacks are credited with having turned the tide of the conflict, preventing the Ukrainian forces from re-taking control of the areas held by the rebel armed groups, and enabling the rebels to seize control of large sections of the border.<sup>221</sup>

As the report explains:

“During key offensives, Russian forces in Ukraine have received cover from Russian territory. A combination of satellite data, crater analysis, and open source materials confirms that many attacks originated in Russia, not in the separatist controlled areas of Ukraine... Despite Russian government denials, with a combination of satellite data, crater analysis, and open source materials, one can establish that many of these attacks originated in Russia and not in the separatist controlled areas of Ukraine. Using satellite map imagery of craters left behind by artillery shells in Ukraine, it is possible to determine attack trajectories and origins.

Cross-border attacks served as cover for the renewed military incursion in the summer of 2014. Attacks originating in border towns like Gukovo allowed Russian forces operating inside Ukraine to reverse the tide of the conflict when the Ukrainian military was making

<sup>219</sup> The 291<sup>st</sup> Artillery Brigade were stationed at the camp.

<sup>220</sup> <https://www.atlanticcouncil.org/in-depth-research-reports/report/hiding-in-plain-sight/>

<sup>221</sup> The Ukrainian government reports were collected by Bellingcat in a database:

[https://docs.google.com/spreadsheets/d/1FxrMBTanKcVff6gcljr-](https://docs.google.com/spreadsheets/d/1FxrMBTanKcVff6gcljr-kZSkwlfY8GnikejdbCOh3RQ/edit?usp=sharing)

[kZSkwlfY8GnikejdbCOh3RQ/edit?usp=sharing](https://docs.google.com/spreadsheets/d/1FxrMBTanKcVff6gcljr-kZSkwlfY8GnikejdbCOh3RQ/edit?usp=sharing); Pablo Gutierrez, Paul Torpey, and Bellingcat, “How Digital Detectives Say They Proved Ukraine Attacks Came from Russia,” Guardian, February 17, 2015,

<http://www.theguardian.com/world/2015/feb/17/ukraine-russia-crossborder-attacks-satellite-evidence>; For collected reports see <https://docs.google.com/spreadsheets/d/1FxrMBTanKcVff6gcljr-kZSkwlfY8GnikejdbCOh3RQ/edit#gid=535700578>.

headway. On the verge of defeat, Russian forces turned the tide to recapture a large amount of territory, including Slovyansk and Donetsk.

Ukrainian armed forces positioned near the Russian-Ukrainian border were attacked by artillery fire in the summer of 2014. Between July 9 and September 5, 2014, the Ukrainian Border Service and the National Security and Defense Council reported more than 120 artillery attacks from Russia.

The pressure of sustained artillery attacks through early August led Ukrainian armed forces to lose control of hundreds of kilometres of border territory. Satellite images of eastern Ukraine from July, August, and September of 2014 have enabled the report team to find evidence of these artillery attacks, determine their origin, and compare them with local sources.”<sup>222</sup>

226. The Atlantic Council Report provides unassailable photographic and satellite evidence of several instances during the Summer of 2014, in which it is clearly established that Russian forces launched the following cross-border attacks on Ukrainian Government positions. For example:

- (a) On 14 July 2014, Russian forces launched multiple rockets from a BM-21 Grad/Tornado from a location north of Seleznev. Burn marks and crater analysis pinpointed the likely trajectory of the attack, which was targeted on Ukrainian Government positions near Amvrosiyyka.
- (b) On 28 July 2014, a video showed a crater field with over 200 impact craters close to the village of Khmelnytskyi, south of Sverdlovsk. The crater trajectories pointed east and south-east, and all of them indicated a firing position inside Russia, at a location close to the Pavlovka training camp.

227. During late July and throughout August 2014, there was thus a dramatic escalation in the amounts of military equipment and troops crossing the border from Russia into southern Donetsk. Western officials described this new offensive as a "stealth invasion" by the Russian Federation. US State Department spokesman Jen Psaki was more direct, saying that "these incursions indicate a Russian-directed counter-offensive is likely underway".<sup>223</sup> As the International Crisis Group has pointed out,

"In the summer of 2014 and in early 2015, Moscow covertly sent troops to help the *de facto* leadership secure positions it had taken and prevent their recapture by Ukrainian forces."<sup>224</sup>

228. On 29 July 2014, *Reuters* published a detailed report on Russian arms supplies to its proxies in eastern Ukraine, in which it recorded numerous sources that confirmed a major influx of heavy weaponry in the aftermath of the 'referendums' in mid-May:

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<sup>222</sup> <https://www.atlanticcouncil.org/in-depth-research-reports/report/hiding-in-plain-sight/>

<sup>223</sup> <https://in.reuters.com/article/ukraine-crisis-russia-soldiers/ukraine-president-accuses-russian-soldiers-of-backing-rebel-thrust-idINKBN0GS0X220140828>

<sup>224</sup> <https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/254-rebels-without-cause-russias-proxies-eastern-ukraine>

"Three U.S. government officials said the weapons flow from Russia increased dramatically several weeks ago in response to successes by Ukrainian government forces, including the recapture of Sloviansk, a separatist stronghold in eastern Ukraine. The new shipments included anti-aircraft systems designed to combat Ukraine's air power, those officials said: "If you trace the increase in supplies and materials ... we've seen in the last few weeks culminating in this tragic incident, it's clearly in the face of successes by the Ukrainian forces," said a senior U.S. official, who like the others spoke on condition of anonymity.

A diplomat said that arms had started to come in from Russia regularly around the time of the independence vote in Crimea in May. In the past couple of weeks an increasing amount of material had arrived "in reaction to the collapse of Sloviansk," he said. That included T64 tanks from stocks of old weapons discarded after the collapse of the Soviet Union. Anton Lavrov, an independent Russian military analyst said: "It would be stupid to deny that Russia supports the separatists. The main question is only the scale of this support." He said pro-Russian separatists have been found in possession of a Kamaz Mustang military transport vehicle that is not used in Ukraine and cannot be bought there... "There was a serious escalation in the middle of June, when heavy weapons began to appear among the separatists, including tanks and artillery in such quantities that it would be hard to attribute it to seizures from Ukrainian stockpiles."

Another independent Russian military analyst, Alexander Golts, also said the rebels had received arms from Russia. He described it as "all old Soviet weaponry." He said rocket launchers were spotted in April or the beginning of May very early in the conflict.

Washington is in no doubt Russia is the source of many of the weapons. At least 20 tanks and armored personnel carriers have crossed the border from Russia since the downing of Malaysia Airlines MH17, a senior U.S. intelligence official said. In a media briefing on July 22, U.S. intelligence officials also released satellite photographs of what they said was a training site for Ukrainian separatists near the Russian city of Rostov. The photographs appear to show increased activity at the site between June 19 and July 21...

Olexander Motsyk, Ukraine's ambassador to the United States, told *Reuters* in an interview that his country has evidence Russia is preparing to supply separatist rebels with a powerful new multiple-rocket system known as the Tornado. According to military websites, the system first saw service earlier this decade and is an improvement on Russia's older Grad missile launcher. The evidence for this, Motsyk said, includes satellite photographs as well as intercepts of telephone conversations... Referring to the flow of weapons from Russia into eastern Ukraine, he said: "Nothing has changed after the downing of the civilian airliner." <sup>225</sup>

229. Numerous instances have been recorded of the use by separatist militias of weapons that were in the exclusive possession of the Russian armed forces. Such weapons and equipment have included Russian modifications of tank T-72 (particularly T-72B3 and T-72BA) which had been destroyed in battle by Ukrainian forces;<sup>226</sup> specially adapted infantry vehicles (the BTR-82AM);<sup>227</sup> Russian modifications of MT-LB, rocket-propelled flamethrower MRO-A, anti-tank missile Kornet, anti-materiel

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<sup>225</sup><https://www.reuters.com/article/us-ukraine-crisis-arms-specialreport/special-report-where-ukraines-separatists-get-their-weapons-idUSKBN0FY0UA20140729?feedType=RSS&feedName=worldNews>

<sup>226</sup> "ARES Research Report No.3 "Raising Red Flags: An Examination of Arms & Munitions in the Ongoing Conflict in Ukraine""

<sup>227</sup> <http://bmpd.livejournal.com/957262.html>; "ARES Research Report No.3 "Raising Red Flags: An Examination of Arms & Munitions in the Ongoing Conflict in Ukraine""



rifle ASVK, and suppressed sniper rifle VSS Vintorez;<sup>228</sup> sophisticated anti-aircraft system Pantsir-S1;<sup>229</sup> armored personnel carriers BPM-97;<sup>230</sup> and the multi-purpose vehicle GAZ Vodnik.<sup>231</sup> Through systematic analysis of open source material, the Atlantic Council investigation team has been able to determine the movements of military equipment of various types that are not used by Ukrainian armed forces across the border from Russia to Ukraine. According to their report, examples of this equipment include the T-72B3 main battle tank; the Pantsir-S1 (SA-22) anti-air system; the KamAZ-43269, "Dozor" variant; and the KamAZ-5350, nicknamed "Grad-K".<sup>232</sup>

"A variety of Russian manufactured arms and munitions not used by the Ukrainian military have appeared in the hands of separatists groups, including shoulder launched surface-to-air missiles (Man-PADs), various types of rocket launchers, anti-tank guided missiles (ATGMs), landmines, and various small arms.<sup>233</sup> Some of these arms have been captured by the Ukrainian government, including weapons used exclusively by Russian special forces. This physical evidence was on public display in Kyiv in February and March of 2015."<sup>234</sup>

230. The annexes to this submission include a document listing over 100,000 items of physical evidence of Russian equipment in use inside Ukraine, as recorded in the judicial record of criminal proceedings No. 4201400000000457 (also indicated in the *Informational report concerning Russian weapon and equipment*<sup>235</sup>) concerning the waging of a war of aggression against Ukraine. The items are listed and described and many of them are recorded in original photographs. This provides a compelling body of physical evidence establishing direct Russian responsibility.<sup>236</sup>

231. The photographic and geolocation evidence evaluated by the Atlantic Council establishes the presence and use within Ukraine of weaponry that was supplied by the Russian Federation, including the following:

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228 Ferguson, Jonathan; Jenzen-Jones, N.R. (18 November 2014). "ARES Research Report No.3 "Raising Red Flags: An Examination of Arms & Munitions in the Ongoing Conflict in Ukraine""

229 Smallwood, Michael (5 February 2015). "Russian 96K6 Pantsir-S1 air defence system in Ukraine". Armament Research Services (ARES). Retrieved 20 February 2015.

230 <http://lugansk-news.com/russian-army-bpm-97-vystrel-and-gaz-39371-vodnik-in-krasnodon-ukraine/>

231 "Russian Army BPM-97 "Vystrel" and GAZ-39371 "Vodnik" in Krasnodon Ukraine"

232 <https://www.atlanticcouncil.org/in-depth-research-reports/report/hiding-in-plain-sight/>

233 Jonathan Ferguson and N.R. Jenzen-Jones, Raising Red Flags: An Examination of Arms & Munitions in the Ongoing Conflict in Ukraine, 2014 (Australia: Armament Research Services (ARES), November 18, 2014), <http://armamentresearch.com/Uploads/Research%20Report%20No.%203%20-%20Raising%20Red%20Flags.pdf>.

234 "Russian Army's Military Equipment Captured by Ukrainian Forces Showcased in New Kyiv Exhibition," Ukraine Today, February 21, 2015, <http://uatoday.tv/politics/russian-army-s-military-equipment-captured-byukrainian-forces-showcased-in-new-kyiv-exhibition-410910.html>.

235 See in Informational report concerning Russian weapon and equipment in Appendix 4;

236 See [Tab 31] Material evidence in criminal case no. 4201400000000457 – military equipment, weapons and heavy armoured vehicles, trucks of the RFAF in Appendix 4;

- (a) T-72B3 battle tanks have been sighted in Ukraine since the Autumn of 2014, but there is unassailable evidence proving their deployment during the Battle of Debaltseve.<sup>237</sup>
- (b) Dozor Armoured Vehicles have been sighted and photographed in Luhansk oblast. These particular vehicles have specifications designed for the Russian armed forces and have not been exported to other theatres of conflict.<sup>238</sup>
- (c) The Pantsir-S1 Air Defence System has been captured on video-recordings in Luhansk and Donetsk. This has been corroborated by pictures posted by Russian service personnel on social media accounts.<sup>239</sup>
- (d) The Grad-K Rocket System (a modernised Grad multiple rocket system mounted on KamAZ-5350 chassis) has been seen in video footage posted by separatists showing volleys of rockets being fired.<sup>240</sup> The video has been reliably geolocated to the Kirovskiy district of Donetsk, and shows a firing position in commercial property located in the city.

232. The Open Russia report *Putin.War* independently summarises some of the evidence establishing that heavy weapons used during the conflict must have originated from within the Russian armed forces:

“The presence of the tanks T-72B3 in Donbass is proved. This latest modernized model of a quite old tank was completed in Russia in 2013 and has never been exported. In particular, the proof that separatists had under their deployment the tank T-72B3 dates to August 27, 2014, when a video was published in which the Ukrainian military showed a tank T-72B3 which was captured near Ilovaisk and there were documents in it, confirming that it had belonged to the Russian army.

Another indication of the presence of Russian military equipment on the territory of the Ukraine became the video, made in the city of Lugansk, which is under the control of the separatists. In mid-February 2015, the video registrar stated the movement of the self-propelled anti-aircraft defense missile-gun complex (ZRPK) “Pantsir S1”

The complex was developed by the Russian military industry and is exported to some countries in the world. However, apart from Russia, none of the countries that has ZRPK “Pantsir S1” border with the Ukraine. It is quite obvious that this equipment could enter Donbass only through the Russian-Ukrainian border.<sup>241</sup>”

<sup>237</sup> Graham Phillips, “Updates (#17) Leaving NAF Positions by Debaltsevo Today,” YouTube, February 15, 2015, <https://www.youtube.com/watch?v=rkbVnpEbVwY>. According to the Atlantic Council, the self-reported description of the video makes reference to Debaltseve, and geolocation yields a strong possible match in the village of Sanzharivka, ten kilometers north of Debaltseve.

<sup>238</sup> Graham Phillips, “Updates (#17) Leaving NAF Positions by Debaltsevo Today,” YouTube, February 15, 2015, <https://www.youtube.com/watch?v=rkbVnpEbVwY>. According to the Atlantic Council, the self-reported description of the video makes reference to Debaltseve, and geolocation yields a strong possible match in the village of Sanzharivka, ten kilometers north of Debaltseve.

<sup>239</sup> Nicholas de Larrinaga, “Russian TOS-1 and Pantsyr-S1 Systems Reported in East Ukraine,” IHS Jane’s Defence Weekly, February 4, 2015, <http://www.janes.com/article/48685/russian-tos-1-and-pantsyr-s1-systemsreported-in-east-ukraine>; choSec and Yomapic are tools used for locating geotagged content.

<sup>240</sup> Youtube, <https://www.youtube.com/watch?v=UXSyU3ais08>.

<sup>241</sup> <https://openrussia.org/s/tmp/files/Putin-War.pdf>

233. The International Crisis Group has suggested that Russian military aid is unevenly distributed among the various armed groups, according to the extent of their political connection with (and loyalty to) the Kremlin. The smaller formations that remain semi-independent of Kremlin control are thought much less likely to be supplied with Russian heavy weaponry than others who took orders directly from Moscow (a group that would include Girkin, Borodai, Antyufeyev, Ponomaryov, Pushilin, Gubarev, Zakharachenko, Khodakovsky, Pavlov and Tolstykh):

“Russian military assistance has been intermittently generous, separatist militia members say. The “voentorg” tap... was turned on and off, based perhaps on Russia’s level of satisfaction with the separatist leadership, or possibly to maintain a veneer of deniability. Russia has provided substantial amounts of heavy weaponry. The clearest sign of Russian assistance was the group of 1,200 fighters who returned last August after four months of training in Russia. Aid seems to at times be distributed on the basis of political loyalty. Zakharchenko’s own military force, the Oplot (Stronghold) battalion, is extremely well-equipped; so is the Vostok (East) brigade, which many officials say is supported by the Russian Federal Security Service (FSB). By contrast more unruly units such as Alexei Mozgovoy’s Prizrak (Ghost) brigade complained in November they had not even received food.”<sup>242</sup>

234. The Atlantic Council report provides specific and verifiable evidence of a number of cross-border arms transfers during July 2014:

“In July 2014, a video was uploaded to YouTube showing the movement of a military convoy in Rostov-on-Don, Russia, heading west. The coordinates were verified through geolocation, using satellite and ground imagery available through a Russian online map service. Later in September 2014, an Al Jazeera news crew filmed the movement of Msta-S system through Novoazovsk in Ukraine, again heading west. In both these videos, a particular unit can be seen with a number of distinctive features: the same overall camouflage pattern, white paint blotch on the turret, discoloration in the same spots, and a unique, hand-painted rail cargo marking. Taken together, these features strongly suggest that the same unit is present in both videos, and that the unit would have been transferred across the border.”<sup>243</sup>

Similarly;

“In another case, a convoy of vehicles was filmed moving through Staraya Stanitsa, Russia in August 2014. The location of the video has been verified using overhead satellite imagery and the unique landmarks visible in the video. In the convoy, a BMP-2 infantry fighting vehicle with the painted text “ЛАВИНА”—lavina, meaning “avalanche”— can be seen on a trailer. In February 2015, a YouTube channel associated with the pro-Russian separatists posted a video from Vuhlehirsk, Ukraine, showing combatants sweeping the town. In the video, a BMP-2 with the same painted text is visible, along with other features of the unit, like a painted green area and physical damages, which makes it possible to link the two videos together. These two sightings demonstrate that the unit in question moved across

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<sup>242</sup><https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/254-rebels-without-cause-russias-proxies-eastern-ukraine>

<sup>243</sup> YouTube video of military convoy in Rostov-on-Don, <https://www.youtube.com/watch?v=cyr1rwS-YiY>; “Ukraine Rebels Advance towards Mariupol,” Al Jazeera English, September 2014, <https://www.youtube.com/watch?v=ocfxP-lerAY>. This video is no longer viewable in the United States.

the border from Russia to Ukraine.”<sup>244</sup>

235. Between 17 and 20 July, intense fighting was continuing in Luhansk.<sup>245</sup> The SMM (OSCE) recorded that Ukrainian forces had re-taken Rubezhnoe in the northern Luhansk region on 20 July, and overrun nearby Severodonetsk on 21 July.<sup>246</sup> In their regular reporting, the SMM (OSCE) recorded evidence that these irregular forces had been detaining people in the State Security Service (SBU) building in Severodonetsk. A number of the detainees had been summarily executed and their bodies were discovered inside the building. Two survivors informed the SMM (OSCE) that they had been held captive in the building for 10 days without food, during which time they had been beaten.<sup>247</sup>

236. On 24 July, after re-taking control of the city of Sloviansk, Ukrainian forces discovered a mass grave containing the remains of 14 people of people summarily executed, or tortured to death, by Igor Girkin’s forces, who were based there:<sup>248</sup>

“On 5 July 2014, Ukrainian armed forces regained control of the town. On 24 July 2014, 14 bodies (13 men and one woman) were exhumed from the mass grave and transferred to the town morgue where photos of the bodies were taken and handed out to the local police department. The bodies of Viktor Bradarskyi, Albert Pavenko and Ruvim Pavenko were identified by their relatives. The body of Volodymyr Velichko could not be identified on the spot and was taken to Kharkiv forensic examination bureau. The bodies of Viktor Bradarskyi, Albert Pavenko and Ruvim Pavenko displayed multiple gunshot wounds and signs of torture. The other bodies belonged to victims of executions ordered by the ‘martial court’ of the ‘Donetsk people’s republic’ in Sloviansk and individuals who either died or was killed during the armed hostilities in the town. Some executions were allegedly carried out by elements of armed groups, following a semblance of a judicial process and the imposition of a death sentence by armed groups.”

See also paras 115 *ante*, and. 327 *et seq, post*.

237. Ukraine re-took the town of Lysichansk, 91 km north of Luhansk city, on 25 July. On the same day, Ukrainian positions in the nearby towns of Shastye and Verhnayaya Olkhova came under fire from GRAD BM-21 rockets supplied by the Russian Federation.<sup>249</sup> Over the following weeks, Russian forces maintained continuous artillery attacks on the Ukrainian border positions. Control of the border was an essential military objective of the Russian side, in order to maintain the continued flow of weapons and fighters from the Russian Federation.<sup>250</sup>

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<sup>244</sup> YouTube video from Staraya Stanitsa, Russia, <https://www.youtube.com/watch?v=CJm5bjM3Z5c>.

<sup>245</sup> <https://www.osce.org/ukraine-smm/121431>; <https://www.osce.org/ukraine-smm/121485>

<sup>246</sup> <https://www.osce.org/ukraine-smm/121675>

<sup>247</sup> <https://www.osce.org/ukraine-smm/121675>

<sup>248</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

These statements are also corroborated by affidavits of Elena Velichko and Natalya Bradarska on pages 94 – 105 in [Tab 28] in Appendix 4;

<sup>249</sup> <https://www.osce.org/ukraine-smm/121834>

<sup>250</sup> See [Tab 6] in Appendix 4;

238. Government forces in positions close to the border found themselves trapped between hostile fire from insurgents on one side and the cross-border artillery attacks from Russian military on the other.<sup>251</sup> By the end of July, the National Security and Defence Council of Ukraine had recorded 153 attacks on Ukrainian border positions.<sup>252</sup> By the end of the first week of August, Ukrainian forces had been driven back from large stretches of the border area, leaving several hundred kilometers entirely unprotected on the Ukrainian side. Thereafter, pro-Russian forces maintained continuous pressure on Government positions along the remaining sections of the border. Attacks on the Ukrainian Border Guards were a key military priority.

239. The SMM (OSCE) recorded the aftermath of some of these attacks:

“On 6 August the SMM visited a Ukrainian Border Guard encampment located less than one km from the Russian border, in the vicinity of Krasnyi Derkul village (54km north-east of Luhansk), which reportedly came under artillery fire in the night between 5 and 6 August, and early in the same morning on 6 August. The SMM saw smouldering forest and shrapnel fragments around the area, where the Border Guard unit had built underground shelters, and four shell craters in an open field on the edge of the camp. The SMM monitors with a military background assessed - based on the trajectories - that 122mm and 152mm cannons had been used.”<sup>253</sup>

240. During late July and early August 2014, the insurgents focussed their efforts on consolidating their control of a defined area of territory in Donetsk and Luhansk. Expansion was confined by the Ukrainian military, with fierce fighting between the two sides continuing along the perimeter line. Ukrainian forces were re-deployed from the northern flank of the Donetsk region, moving southwards towards Ilovaik in an effort to encircle the insurgents. The object of these engagements was to break the areas of insurgent control into smaller “pockets”, encircled by the Ukrainian forces, and thereby to cut them off from weapons supply lines, and reinforcements from Russia.

241. Ukrainian forces succeeded in breaking through the insurgents’ lines, and effectively surrounded DPR positions near the town of Horlivka. These territorial gains left the DPR forces defending several areas that were isolated from each other, and from the supply lines to the Russian border. They were also cut off from the area of Luhansk that was still under the control of the LPR forces.

242. The Russian Federation initially responded to this situation with a dramatic infiltration of “volunteers” and mercenaries from among its own former military personnel. As before, this new wave

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<sup>251</sup> See [Tab 6] in Appendix 4;

<sup>252</sup> "Seventeen civilians, including three children, killed in gunfire in Horlivka in past 24 hours"

See also [Tab 32] Letter of State Border Guard Service Administration of Ukraine of 21 September 2015 in Appendix 4;

<sup>253</sup> <https://www.osce.org/ukraine-smm/122495>

of “volunteers” had been recruited in Russia, and trained at Russian military camps close to the border before being sent to Donbass. Intense fighting continued around the towns of Donetsk, Luhansk, Gorlovka, Pervomaisk, and Ilovaisk. Between 3 and 6 August 2014, Ukrainian forces began closing in on the insurgents in Luhansk and Donetsk.

243. On 7 and 8 August, Ukrainian forces moved to encircle DPR forces inside the town of Ilovaisk. They took strategic positions on the outskirts of the town, with a view to closing in and re-establishing Government control over the town. Overall, the Ukrainian offensive was achieving its military objective of re-taking territory from the armed groups. The Russian Federation immediately reinforced its own military capacity along the border, and continued providing intelligence and logistical support to the insurgents. This was accompanied by a surge in the amount of heavy weapons and equipment being transferred across the border to the DPR and LPR positions in Ilovaisk and other towns in Donetsk oblast. During this period, fighting intensified across the region.<sup>254</sup>

244. During a briefing to the U.N. Security Council on 8 August 2014, the Assistant Secretary-General for Human Rights, Ivan Simonović, warned of the existence of “what amounts to a reign of fear and terror in areas under control of the armed groups, twinned with the breakdown of law and order.”<sup>255</sup>

245. On 12 August 2-14, a fierce battle for control of Ilovaisk began in earnest, and lasted for more than a week. Ukrainian Government forces made substantial gains, and on 20 August 2014, announced that they had re-taken the town. However, fierce armed engagements continued throughout Ilovaisk over the following days, as the DPR forces refused to lay down their arms. Rightly perceiving that the DPR forces were being over-run, the armed forces of the Russian Federation took the decision to invade the sovereign territory of Ukraine. From their border positions, the Russian armed forces launched an all-out land invasion, deep into Ukrainian territory.

246. The available evidence conclusively establishes that a large contingent of regular Russian soldiers crossed the border in early August, and engaged in direct combat operations against Ukrainian armed forces. Using social media posts by Russian military personnel, and modern geolocation techniques, the Atlantic Council was able to plot the deployment of Russian troops across the border and inside Ukraine. One example was the case of Anton Tumanov (21), a member of the Russian 18<sup>th</sup> Motorized Brigade (Unit 27777). He was an enlisted soldier in the Russian army and had been stationed with his Brigade at a training camp close to the border. Together with approximately a thousand other Russian soldiers, he was deployed on active service in Ukraine. Prior to leaving, according to social media posts, he and his

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<sup>254</sup> <https://www.osce.org/ukraine-smm/122578>

<sup>255</sup> Statement to the Security Council by Ivan Šimonović, Assistant Secretary-General for Human Rights on the Human Rights Situation in Ukraine (8 August 2014),

colleagues were ordered to surrender their mobile phones and remove all identifying marks from their uniforms. They crossed the border into Ukraine on 11 August 2014. Tumanov was photographed, as one of a large convoy of troops, passing through Torez and Snezhnoe on 13 August 2014. Later that day, Tumanov was killed in action at Snezhnoe.

247. A further convoy of 23 Russian armoured personnel carriers was observed crossing the border on 14 August 2014, “supported by fuel trucks and other logistics vehicles with official Russian military plates”.<sup>256</sup> According to an independent journalist monitoring movements across the border:

“[T]here were several military transporters loaded with artillery and tanks visible on the main M4 road during the day. Locals say the sightings have been ever more frequent in recent months, with Ukraine accusing Moscow of shelling its territory from inside Russia, and transporting heavy weaponry across the border, including perhaps the BUK missile system which is believed to have been used to shoot down a Malaysian Airlines passenger jet last month.”<sup>257</sup>

These troop movements were confirmed on 16 August 2014, when the “Donetsk People’s Republic” released a video in which the “Prime Minister”, Alexander Zakharchenko, announced that 30 tanks, 120 armoured vehicles, and 1,200 “foreign fighters” had very recently crossed the border into Ukraine from the Russian Federation. They arrived “at a decisive moment” he said.<sup>258</sup> As the Open Russia report *Putin.War* observed:

“The decisive role of the reinforcements [that] arrived from Russia, [was] also confirmed [by] former Minister of DNI Igor Girkin (Strelkov) in an interview with the newspaper *Tomorrow*. Aligning the fronts and, in particular, [the] assault on Mariupol, he said, were realized “mainly by vacationers and individual militia units that were subordinated to them”. “Vacationers”, in Girkin’s terminology, are members of the Russian military personnel, who arrived in arms on the territory of Ukraine, formally being on vacation.

The version that the Russian soldiers and officers fought in Donbass in the summer of 2014, being on a “legal holiday”, [was] also actively supported [by] the leader of the DNI, Alexander Zakharchenko. “A lot of military arrive here from Russia, who prefer to spend their holidays not on the beaches, but in the same regime with their brothers, who fight for the freedom of Donbass”, Zakharchenko said at a program on *Russia-24* TV channel.”<sup>259</sup>

248. On 17 August, the OHCHR published its monthly report on the human rights situation, covering the period since mid-July.<sup>260</sup> The report highlighted the increased flow of ever more powerful weapons, noting that “the armed groups are now professionally equipped and appear to benefit from a steady supply of sophisticated weapons and ammunition, enabling them to shoot down Ukrainian military

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<sup>256</sup><https://www.theguardian.com/world/2014/aug/14/russian-military-vehicles-enter-ukraine-aid-convoy-stops-short-border>

<sup>257</sup><https://www.theguardian.com/world/2014/aug/14/russian-military-vehicles-enter-ukraine-aid-convoy-stops-short-border>

<sup>258</sup><https://www.vox.com/2014/8/16/6023605/30-tanks-and-1200-troops-just-crossed-from-russia-into-ukraine>

<sup>259</sup> <https://openrussia.org/s/tmp/files/Putin-War.pdf>

<sup>260</sup> <https://www.ohchr.org/Documents/Countries/UA/UkraineReport28August2014.pdf>

aircraft such as helicopters, fighter jets and transport planes".<sup>261</sup> The report noted that:

"In addition to the fighting, the armed groups continued to commit killings, abductions, physical and psychological torture, ill-treatment, and other serious human rights abuses, and violations of international humanitarian law continued to be committed by the armed groups."<sup>262</sup>

249. The OHCHR also concluded that the practice of targeting independent and pro-Ukrainian journalists had by then become a clear pattern or system:

"Abductions, threats, harassment and intimidation of foreign and Ukrainian journalists by armed groups continued to take place in the east of Ukraine. For example, on 19 July, 10 foreign journalists, who had been attempting to report on the MH17 crash, were detained by armed groups in Donetsk. All were released several hours later after interrogation. On 22 July, a CNN freelance journalist and field producer was abducted from the Donbas Palace Hotel in Donetsk and accused of being a Ukrainian spy. He was released on 26 July after being severely beaten. On 31 July, two Ukrainian freelance journalists were detained by the armed groups in the Luhansk region and on 2 August, the operator of the NTN channel was abducted in Donetsk. The whereabouts of all three remain unknown. On 31 July, the NGO Institute of Mass Information (IMI), which monitors violations of journalists' rights in Ukraine, published an overview of its study covering the cases of 51 journalists who have been abducted and held as hostages by armed groups in the Donetsk and Luhansk regions from April to the end of July. It provides examples of abducted journalists who against their will were forced to give false statements to the Russian media, in particular, *LifeNews*. It appears that co-operation with Russian or pro-Russian media was sometimes a pre-requisite for ending or lessening their inhuman treatment and, in some cases, release."<sup>263</sup>

Testimonies regarding killing, abduction, illegal deprivation of liberty, intimidation and tortures, property confiscation and seizure of premises<sup>264</sup> in August 2014 were also provided by witnesses<sup>265</sup>.

250. On 21 August 2014, the SMM (OSCE) received reports from the head of Luhansk regional police that a column of approximately 50 "separatist" T-64 tanks had been observed deploying in Luhansk over the previous few days.<sup>266</sup> On 22 August 2014, Ukraine's Defence Minister, Valeriy Heletei issued a statement confirming that the armed groups operating in eastern Ukraine were in possession of Russian-made weapons that have never been in service with the Ukrainian army. This was cited as yet further proof of Russian military support to the militants. In particular, he pointed out:

"[T]errorists have BTR-80A and BTR-82 fighting vehicles, which have never been in service with the Ukrainian Armed Forces and other military formations of our state. Among the weapons and explosives seized from terrorists there are also many samples of Russian

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<sup>261</sup> <https://www.ohchr.org/Documents/Countries/UA/UkraineReport28August2014.pdf>

<sup>262</sup> <https://www.ohchr.org/Documents/Countries/UA/UkraineReport28August2014.pdf>

<sup>263</sup> <https://www.ohchr.org/Documents/Countries/UA/UkraineReport28August2014.pdf>

<sup>264</sup> See Sergey Kazmenko, Yelisei Pronin collected in Eurasia's Report "Religious Persecution in Eastern Ukraine and Crimea 2014"

<sup>265</sup> See [Tab 41] witness statements of Potiomkin Serhii Serhiiiovych in Appendix 4; also see testimonies of Aleksandr Khomchenko, Viktor Cherniyavsky, Anatoly Onishchenko (2d abduction) in [Tab 28] in Appendix 4;

<sup>266</sup> <https://www.osce.org/ukraine-smm/122920>



weapons that are not used by the Ukrainian army. The issue concerns AK-100s, ManPADs, Shmel flamethrowers, new sniper rifles, anti-personnel mines etc."<sup>267</sup>

251. On the same day, 22 August 2014, the Secretary-General of NATO issued a statement condemning the influx of Russian troops onto the territory of Ukraine, dismissing claims of humanitarian purposes:

"I condemn the entry of a Russian so-called humanitarian convoy into Ukrainian territory without the consent of the Ukrainian authorities and without any involvement of the International Committee of the Red Cross. This is a blatant breach of Russia's international commitments, including those made recently in Berlin and Geneva, and a further violation of Ukraine's sovereignty by Russia. It can only deepen the crisis in the region, which Russia itself has created and has continued to fuel. The disregard of international humanitarian principles raises further questions about whether the true purpose of the aid convoy is to support civilians or to resupply armed separatists.

These developments are even more worrying as they coincide with a major escalation in Russian military involvement in Eastern Ukraine since mid-August, including the use of Russian forces. In addition, Russian artillery support – both cross-border and from within Ukraine – is being employed against the Ukrainian armed forces. We have also seen transfers of large quantities of advanced weapons, including tanks, armoured personnel carriers, and artillery to separatist groups in Eastern Ukraine. Moreover, NATO is observing an alarming build-up of Russian ground and air forces in the vicinity of Ukraine.

Instead of de-escalating the situation, Russia continues to escalate it, despite the efforts of the international community to find a political solution to the crisis. This can only lead to Russia's further isolation. I strongly urge Russia not to take further provocative actions, to stop destabilising Ukraine and to take genuine steps to resolve this dangerous situation with full respect of Ukraine's sovereignty and territorial integrity and international law."

252. In the early hours of 24 August 2014, in total disregard of these appeals for de-escalation, a further contingent of more than 3,500 Russian forces crossed the border into the Starobeshevsky district of Donetsk, and advanced towards Ilovaisk. The invasion force included 400 paratroopers (from the Guards Parachute Regiment, 98<sup>th</sup> Airborne Division), together with other formations. They were equipped with 60 tanks, 320 armoured vehicles, 60 pieces of artillery equipment, and 45 mortars.<sup>268</sup> Identification marks on the Russian military vehicles used in this operation were either obscured or painted over, in an apparent effort to maintain official deniability of the operation. The Head of the Ukrainian Security Service characterised these events as a "direct invasion by Russia of Ukraine".<sup>269</sup> On 27 August 2014, three days after this contingent of Russian forces entered Ukraine, Alexander Zakharchenko confirmed on Russian TV that 3-4000 Russian citizens were by then fighting in the ranks of the rebel forces, including former service personnel or current personnel on leave.<sup>270</sup>

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<sup>267</sup> <https://en.interfax.com.ua/news/general/219481.html>

<sup>268</sup> See [Tab 6] in Appendix 4;

<sup>269</sup> "Russia Moves Artillery Units into Ukraine, NATO Says"

<sup>270</sup> <https://www.bbc.co.uk/news/world-europe-28963310>

253. A Human Rights Watch report, released on 28 August 2014, documented that since April 2014 there had been, “over two dozen of cases of insurgents torturing political activists they detained in Donetsk, Sloviyansk, Makiyivka, and Luhansk.”<sup>271</sup>

254. Between 24 and 28 August, the Ukrainian forces in Ilovaik were engaged in fighting on two fronts, and were effectively surrounded by the combined forces of the Russian military and the DPR insurgents. Despite implausible and repeated denials by the Russian Federation, the evidence establishing the presence and official involvement of the Russian military in this battle is unequivocal. Indeed, on 24 August, Ukrainian forces captured a number of Russian soldiers, including ten members of the 331<sup>st</sup> Guards Airborne Regiment; one member of the 8<sup>th</sup> Guards Mountain Motor Rifle Brigade; and two members of the 6<sup>th</sup> Tank Brigade.<sup>272</sup> The capture of these prisoners was confirmed by OHCHR.<sup>273</sup> Having advanced 20 kilometers into Ukrainian territory, they were detained near Zerkalnoe. Their identities were recorded and made public.<sup>274</sup> The Russian Federation claimed that the soldiers had lost their way and wandered into Ukrainian territory by mistake. This was directly contradicted by two of the captured officers who were recorded on video as saying that they had been ordered into Ukraine. Another group of four soldiers of the Russian army were also detained during August inside Ukraine. Their identities were also made public.<sup>275</sup> These captured Russian soldiers were subsequently acknowledged by Russian Government, in direct contradiction to its official denials of military involvement.<sup>276</sup>

255. Over the following days, intense fighting continued throughout the region.<sup>277</sup> At an overwhelming military disadvantage, the Ukrainian forces in Ilovaik began planning for a ceasefire and a managed withdrawal. Negotiations for the Ukrainian retreat began on 27 August 2014. The negotiations were conducted between Ukrainian military commanders and the Command of the General Staff of the Russian armed forces. The proposal was for the establishment of a “humanitarian corridor” for the withdrawal of the Ukrainian forces. Russian forces took up positions along the planned route (which was to be from Ilovaik to Starobeshevo, and then to Novokaterynivks).<sup>278</sup>

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<sup>271</sup> Human Rights Watch, *Ukraine: Rebel Forces Detain, Torture Civilians* (28 August 2014), p. 10

<sup>272</sup> <https://openrussia.org/s/tmp/files/Putin-War.pdf>

<sup>273</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik_EN.pdf)

<sup>274</sup> Senior Sergeant Generalov Alexei Nikolayevich - Deputy Commander of the Platoon; Lance Sergeant Savosteev Vladimir Vyacheslovich - Squad Commander; and Lance-Corporal Mitrofanov Artem Vasilyevich – thrower. Also detained were the following regular soldiers Romantsev Ivan Igoryevich; Goryashin Andrey Valerevich; Melchakov Ivan Vasilyevich; Pochtoev Yegor Valerevich; and Smirnov Sergey Alekseyevich.

<sup>275</sup> Ivan Aleksandrovich, born in Vologda in 1988, was a soldier of 54096 unit, 6<sup>th</sup> independent tank brigade; Evgeni Yurevich, born in Kaluga in 1995, was a soldier of 54096 unit, 6<sup>th</sup> independent tank brigade; Nikita Genadevich, born in Yaroslavl in 1993, was from 31<sup>st</sup> Airborne Assault Brigade of 73612 unit; Evgeni Ashotov, born in 1994, was from 73612 unit, 1<sup>st</sup> Guards Brigade 57.

<sup>276</sup> See [Tab 42] Records of Interrogation of Russian paratroopers detained in Appendix 4;

[https://www.youtube.com/watch?annotation\\_id=annotation\\_3994783705&feature=iv&src\\_vid=P1TOBQ\\_R9Sw&v=tFbSPyyTQ3Q](https://www.youtube.com/watch?annotation_id=annotation_3994783705&feature=iv&src_vid=P1TOBQ_R9Sw&v=tFbSPyyTQ3Q)

<sup>277</sup> <https://www.osce.org/ukraine-smm/123030>

<sup>278</sup> See [Tab 6] in Appendix 4;

256. On 28 August 2014, agreement was reached with the Russian General Staff for the withdrawal to proceed at dawn the following day. Confirming Russia's direct engagement in the conflict, and its control of the armed forces on the ground, President Putin publicly endorsed the proposal for opening up a "humanitarian corridor for encircled Ukrainian servicemen to avoid unnecessary victims and to allow them to leave the area of hostilities without impediment". In the early hours of 29 August, a statement to this effect was published on the Presidential website of the Russian Federation<sup>279</sup> In apparent obedience to this orders from their effective Commander-in-Chief, the pro-Russian forces around Ilovaisk agreed to open a route for safe passage. Accordingly, at about 05:00 on 29 August, Ukrainian forces began the withdrawal operation. However, despite the fact that the Ukrainian forces were *hors de combat* and in retreat, Russian forces opened fire on them, killing 366 men. A further 429 were seriously injured, and approximately 300 were taken prisoner.<sup>280</sup> Some of those involved in perpetrating these dishonourable and brutal attacks were disguised in uniforms intended to make them appear as Ukrainian troops. Such "false flag" operations constitute a clear war crime. Moreover, the Russian forces committed an act of mass slaughter on troops who had surrendered and were in territory that by then was under the effective overall control of the Russian Federation and its local proxy forces. A large number of Ukrainian service personnel were initially taken prisoner by regular Russian army units, but then handed into the custody of brutal DPR paramilitary formations, who subjected them to torture and inhuman or degrading treatment of various kinds.<sup>281</sup>

257. The Office of the Prosecutor (OTP) of the International Criminal Court (ICC) has identified the military engagements around Ilovaisk at the end of August as the first "particularly intense" battle of the conflict, noting that the "increased intensity of fighting" was "attributed to alleged corresponding influxes of troops, vehicles and weaponry from the Russian Federation to reinforce the positions of the armed groups"<sup>282</sup>. Following a preliminary assessment of the evidence, the Prosecutor opened an investigation into the criminal liability of Russian forces for "treacherous killing", a war crime under the Rome Statute of the International Criminal Court:

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<sup>279</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

<sup>280</sup> See [Tab 6] in Appendix 4;

<sup>281</sup> For more detailed information see witness Statements of [Tab 43] Derevianko Vitalii Sergiiiovych, [Tab 44] Knysh Tymur Stanislavovich, [Tab 36] Kovalenko Artem Mykhailovych, [Tab 45] Andrushko Oleksiy Oleksandrovych, [Tab 46] Bayrak Ihor Volodymyrovych, [Tab 47] Didukh Volodymyr Petrovych, [Tab 48] Dudarenko Oleksandr Dmytrovych, [Tab 49] Furaiev Serhii Volodymyrovych, [Tab 50] Holikov Mykola Yuriiovych, [Tab 51] Holovchyts Viktor Hryhorovych, [Tab 52] Kharko Artem Vitaliiiovych, [Tab 53] Khoruzhnyi Artem Oleksandrovych, [Tab 54] Kozhanov Yurii Oleksiyiovych, [Tab 55] Levchuk Bohdan Vasyliovych, [Tab 56] Igor Mykolayovych Mishchuk, [Tab 57] Oleshko Vitaliy Olehovych, [Tab 58] Olimpiyuk Artem Olegovych, [Tab 59] Ostapkovych Oleksandr Mykolaiovych, [Tab 60] Ponomarenko Yosyp Vasylovich, [Tab 61] Sakhnevych Volodymyr Dmytrovych, [Tab 62] Smolyanyi Ivan Mykolayovych, [Tab 63] Synenko Andriy Petrovich, Talimonchuk Mykhailo Bogdanovych, Tsiopa Taras Ivanovych, Venher Sergiy Volodymyrovyc, [Tab 64] Vietrov Oleksander Serhiovych, [Tab 65] Vorobyov Yehor Oleksiyovich, [Tab 66] Sobol Oleksandr Ivanovych, [Tab 35] Kravchenko Artem Vadymovych, [Tab 67] Buchkovskiy Oleksandr Dorelovych, [Tab 68] Bieliyevtsov, [Tab 69] Deineha Oleksandr Hryhorovych, [Tab 70] Teteruk Andriy Anatoliyovych in Appendix 4;

<sup>282</sup> [www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE-Ukraine\\_ENG.pdf](http://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE-Ukraine_ENG.pdf)

“The battle of Ilovaisk in August 2014 was one of the deadliest periods of the armed conflict, and allegedly resulted in the deaths of approximately 1000 Ukrainian servicemen. It is alleged that Ukrainian troops were killed as they attempted to retreat from the area, when they came under fire from anti-government entities and armed forces of the Russian Federation troops, some of whom were disguised as Ukrainian troops. The Office analysed whether any alleged conduct at Ilovaisk may amount to the war crime of killing or wounding treacherously, under article 8(2)(b)(xi) or 8(2)(e)(ix); making improper use of the flag, insignia or uniform of the enemy, under article 8(2)(b)(vii); or attacks against objects bearing the distinctive emblems of the Geneva Conventions, under article 8(2)(b)(xxiv) or 8(2)(e)(ii).”<sup>283</sup>

258. OHCHR documented numerous detailed reports of human rights violations amounting to war crimes during this period. Some involved close collaboration between Russian armed forces and local pro-Russian militias. For example:

“A former Ukrainian soldier reported about his detention in the conflict zone, in August 2014, allegedly by fighters from the Russian Federation who then handed him over to the armed groups. He reportedly spent six months held by the armed groups on the territory of the ‘Donetsk People’s Republic’ where he was subjected to beatings and forced labour.”<sup>284</sup>

259. Commenting on the escalation of hostilities during August, OHCHR pointed to the direct involvement of Russian service personnel among the armed formations responsible for the infliction of civilian casualties, and noted the supply of sophisticated weapons entering from the Russian Federation:

“Most importantly, the intensification of hostilities led to a dramatic increase in casualties. The sharp increase in civilian casualties over the past month was largely due to the intensified fighting, including the use of heavy weaponry and indiscriminate shelling in densely populated areas. Given the presence of an increasing number of foreign fighters, including citizens of the Russian Federation, who were allegedly ‘former servicemen’ or active duty personnel on ‘leave’, sophisticated and heavy weaponry – including tanks, artillery and missiles in areas of the Donetsk and Luhansk regions seized by the armed groups... the [OHCHR] registered an average of at least 11 persons killed daily between mid-April and mid-July 2014, and an average of 36 persons per day in the period from 16 July to 17 August 2014.”<sup>285</sup>

260. On 28 August 2014, as the Minsk talks were approaching, NATO released a statement, accompanied by satellite images, that confirmed the invasion by Russian troops and the movement of large quantities of advanced weaponry (including air defence systems, artillery, tanks and armoured personnel carriers) from Russia into eastern Ukraine.<sup>286</sup> Based on the published satellite imagery, the statement by NATO’s Allied Command was unequivocal:

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<sup>283</sup> [www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf](http://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf)

<sup>284</sup> <https://www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf>

<sup>285</sup> Report of the UN High Commissioner for Human Rights to the 27<sup>th</sup> session of the Human Rights Council.

<sup>286</sup> [http://www.nato.int/cps/en/natohq/news\\_112193.htm](http://www.nato.int/cps/en/natohq/news_112193.htm)

“Over the past two weeks we have noted a significant escalation in both the level and sophistication of Russia’s military interference in Ukraine. The satellite images released today provide additional evidence that Russian combat soldiers, equipped with sophisticated heavy weaponry, are operating inside Ukraine’s sovereign territory. We have also detected large quantities of advanced weapons, including air defence systems, artillery, tanks, and armoured personnel carriers being transferred to separatist forces in Eastern Ukraine. The presence of these weapons along with substantial numbers of Russian combat troops inside Ukraine make the situation increasingly grave. Russia is reinforcing and resupplying separatist forces in a blatant attempt to change the momentum of the fighting, which is currently favouring the Ukrainian military. Russia’s ultimate aim is to alleviate pressure on separatist fighters in order to prolong this conflict indefinitely, which would result in further tragedy for the people of Eastern Ukraine.”

261. *Reuters* published an article recording international reaction to the NATO statement:

“British Prime Minister David Cameron said: “It is simply not enough to engage in talks in Minsk, while Russian tanks continue to roll over the border into Ukraine. Such activity must cease immediately.” Poland’s foreign minister said Russian “aggression” had created the most serious security crisis in Europe for decades. A top NATO official said Russia had significantly escalated its “military interference” in Ukraine in the past two weeks. “We assess well over 1,000 Russian troops are now operating inside Ukraine,” said Dutch Brigadier-General Nico Tak, head of NATO’s crisis management centre. “They are supporting separatists (and) fighting with them.”<sup>287</sup>

262. Around the time of the Ilovaik operation, Russian troops invaded deep into Ukrainian territory, taking up positions in a series of towns several kilometers from the border. There, they conducted direct military engagements with Ukrainian Government forces, driving the Border Guards westwards, away from their border positions.<sup>288</sup> Meanwhile, Russian forces inside Ukraine began an offensive against the Government forces in Luhansk oblast, with the objective of reversing their territorial gains in the region. The Russian military objective was to break the encirclement of Luhansk by Ukrainian forces. Government forces were eventually driven to withdraw from Novosvitlivla on 29 August, and to surrender control of Luhansk Airport on 1 September, after coming under direct military attack from Russian tanks and artillery on Ukrainian territory.<sup>289</sup> Substantial forces of the Russian army engaged in this operation, and intense fighting around Luhansk continued until 5 September.<sup>290</sup>

263. Given the scale and gravity of war crimes and human rights violations committed by the Russian armed forces and their proxies during the August events in the area around Ilovaik, OHCHR set up a specific investigation, and later published a detailed report recording the scale of the violations.<sup>291</sup> OHCHR recorded evidence of a number of war crimes by Russian forces and their paramilitary proxies after the Ukrainian forces had confirmed their withdrawal. These included armed attacks on wounded

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<sup>287</sup><https://in.reuters.com/article/ukraine-crisis-russia-soldiers/ukraine-president-accuses-russian-soldiers-of-backing-rebel-thrust-idINKBN0GS0X220140828>

<sup>288</sup> See [Tab 6] and [Tab 32] in Appendix 4;

<sup>289</sup> "Rescue under way after separatists claim first attack on Ukrainian ship"

<sup>290</sup> See [Tab 6] in Appendix 4;

<sup>291</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik_EN.pdf)

personnel who were *hors de combat*; treacherous killing of retreating formations in violation of agreed withdrawal arrangements; and the torture and murder of prisoners of war. The following passages reflect some of the OHCHR's key findings:

"On 28 August, [at] 7 p.m., vehicles carrying wounded soldiers, marked with white flags bearing a red cross, departed from the villages of Ahronomichne and Mnohopillia, but came under fire and had to return. The emblems were clearly visible as it is still light at that time in the middle of August, which makes attack against a protected vehicle a violation of the customary rule of the international humanitarian law."<sup>292</sup>

"During the morning of 29 August 2014, having rejected proposals of armed groups and reportedly Russian Federation military to withdraw without their weapons, Ukrainian forces began to leave Ilovaik in a southerly direction. Ukrainian soldiers maintain that as they retreated, they were attacked by regular troops of the Russian Federation. By 31 August, at least 366 Ukrainian soldiers were killed and at least 429 were wounded; hundreds others were captured."<sup>293</sup>

"Torture was used during interrogations of captured soldiers to extract information, to punish them for joining a volunteer battalion or to compel them to join the armed groups. The most common forms of torture were beatings, mock executions and threats of physical violence. Members of the volunteer battalions who originated from Donetsk, Luhansk and Kharkiv regions were deemed "traitors" by armed groups and subjected to harsher physical treatment."<sup>294</sup>

"Armed groups used torture during the interrogation of the captured soldiers to extract information, to punish them for joining the volunteer battalions, or to try to compel them to join armed groups. The most common forms of torture were beatings, including with elements of sexual violence; mock executions; and other threats of physical violence. The most systematic torture was used in the seized building of the SBU regional department in Donetsk city."<sup>295</sup>

"OHCHR received allegations of the killing of Ukrainian soldiers after they had surrendered on 29 August 2014. Further allegations have suggested that some wounded Ukrainian soldiers were killed while being *hors de combat*, after the hostilities were over."<sup>296</sup>

264. OHCHR also documented a body of evidence confirming the direct involvement of Russian armed forces in the military engagements in and around Ilovaik:

"The Government of Ukraine maintains that Russian Federation regular troops attacked the Ukrainian forces withdrawing from Ilovaik on 29 and 30 August. According to the Office of the Prosecutor General of Ukraine, 3,500 strong nine battalion-tactical groups of the Armed Forces of the Russian Federation equipped with tanks, armoured vehicles and artillery penetrated the territory of Ukraine on 24 August 2014... On 27 August 2014, the 'prime-minister' of the 'Donetsk people's republic', Alexandr Zakharchenko, stated that "during all this time [of the conflict], there were 3,000-4,000 of them [Russians] in our ranks". Further he was quoted as saying, "alongside with us, current [Russian] military are fighting; instead

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<sup>292</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik_EN.pdf)

<sup>293</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik_EN.pdf)

<sup>294</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik_EN.pdf)

<sup>295</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik_EN.pdf)

<sup>296</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaik_EN.pdf)

of going on vacation, they came to us”.

Most of the Ukrainian soldiers captured during the Ilovaisk events and interviewed by OHCHR maintain that they were attacked and captured by Russian Federation soldiers. They highlighted: 1) the distinct accent of their captors, which was not typical for Russian-speaking residents of Ukraine; 2) the type of uniform their captors wore (“Russian digital camouflage”, “digital camouflage”) which, according to them, was typical for the Armed Forces of the Russian Federation and was not broadly available in Ukraine; 3) conversations with their captors who introduced themselves as belonging to certain units of the Armed Forces of the Russian Federation (“Pskov Airborne Division”, “Pskov Brigade”<sup>139</sup>, “25th Airborne Brigade”, “Russian contracted soldiers”, “Tula paratrooper”; “from Kostroma”, “VDV [airborne] hospital of the Russian Federation in Rostov region”, “I am a paratrooper from Pskov”), or otherwise affiliated with the Russian army; 4) overheard conversations between captors (who compared regular army salary with triple pay for undertaking armed action in Ukraine); 5) as detainees, they were taken across the border to the Russian Federation before being transported back to Ukraine to detention facilities near or in Donetsk city; 6) weapons and equipment used by captors were produced in the Russian Federation and not used by the Ukrainian Armed Forces before the conflict. Ukrainian soldiers interviewed by OHCHR maintain that they could clearly distinguish between regular troops of the Russian Federation, whom they fought on 29 and 30 August, and members of armed groups who controlled the broader perimeter around Ilovaisk, and whom they fought before 29 August and to whom they were handed over on 31 August 2014 and during the following days.”<sup>297</sup>

265. The International Crisis Group’s investigation of the Ilovaisk events confirms the decisive involvement of Russian regular armed forces:

“Other officials maintain that the largest numbers of Russian regular troops, mostly airborne, were deployed in Donetsk oblast during the Ilovaisk operation. They arrived in mid-August and were usually known, half in jest, as the “holiday makers” – a reference to then-Prime Minister Zakharchenko’s claim that several thousand Russian servicemen had spontaneously gone to Donetsk in their vacation time to fight alongside separatists, bringing all their equipment with them. The holiday makers were regular troops who had been ordered to remove personal insignia and identification marks, and had in some cases been required to hand over their mobile phones before being deployed to Donetsk. A separatist military official who said he had for a time liaised with the Russian military estimated their strength as that of roughly one brigade, probably 3,500-4,000. He claimed that a Russian force of this size could routinely be deployed in Donetsk oblast with very little advance notice. Other officials mentioned the presence of Russian advisers, both from the military and state security”<sup>298</sup>

“Ukrainians taken prisoner during the battle recount conversations with Russian airborne troops stationed in the Russian cities of Pskov and Kostroma, as well as soldiers from a motorised infantry brigade based in Shatoi, Chechnya. Several senior Ukrainian officers retreated with wounded Russian troops in their vehicles, a fact that eased their passage out of the Russian military encirclement. Ilovaisk inhabitants also later recalled that the fighting in their town had been between Russian and Ukrainian regular forces. Chechnya-based Russian troops told a prisoner that they had been required to sign demobilisation forms before being deployed in Ukraine.”<sup>299</sup>

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<sup>297</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

<sup>298</sup> <https://web.archive.org/web/20141220075521/http://www.crisisgroup.org/~media/Files/europe/ukraine/235-eastern-ukraine-a-dangerous-winter.pdf>

<sup>299</sup> <https://web.archive.org/web/20141220075521/http://www.crisisgroup.org/~media/Files/europe/ukraine/235-eastern-ukraine-a-dangerous-winter.pdf>

266. The object and effect of the Russian military invasion was to halt the territorial gains that were being made by the Ukrainian military forces, and to reverse the balance of military power in the region. As a result, whilst the fighting was ongoing, efforts began to negotiate a multilateral ceasefire. On 1 September 2014, the Trilateral Contact Group (TCG) met in the city of Minsk (Belarus) with representatives of the DPR and LPR. The TCG comprised senior representatives of Ukraine, the Russian Federation and the OSCE. The discussions focused on (a) the establishment of an inclusive process for political dialogue; (b) a sustainable ceasefire; (c) restoration of border control; (d) humanitarian assistance and reconstruction in the areas affected by the conflict; and (e) the release of prisoners of war.<sup>300</sup> The DPR and LPR delegations took the opportunity to articulate their key political demands: that the Ukrainian government should recognize the special status of their territories, granting them greater autonomy and the right to independent economic relations with Russia.<sup>301</sup>

267. On 5 September 2014, the Minsk Protocol was signed. This made provision for an immediate ceasefire, an exchange of prisoners and the establishment of effective border control, all to be monitored by the OSCE.<sup>302</sup> At 18:00 that day, the ceasefire came into effect. At that point, Russian forces were deployed in various locations across the Donetsk and Luhansk oblasts, and along the international border. The forces of the DPR and LPR controlled significant parts of the territory in Donbass (six districts in the Donetsk region, and five districts in the Luhansk region). A few days after the Minsk Protocol was signed, on 8 September 2014, the EU Council adopted further sanctions against Russian officials and others concerned with the efforts to destabilise Ukraine in Regulation 959-860/2014.<sup>303</sup>

268. On 10 September 2014, President Poroshenko announced that approximately 70% of the Russian troops had withdrawn from Ukrainian territory.<sup>304</sup> However, the armed groups almost immediately began a campaign of military engagements in violation of the ceasefire. As a result, on 19 September 2014, the parties signed a Memorandum “outlining the parameters for the implementation of the commitments of the Minsk Protocol of 5 September 2014”.<sup>305</sup> This agreement established a ceasefire boundary line between opposing armed forces, and required the withdrawal of all military personnel and equipment to a distance of 15 kilometres on either side of the boundary line. It also required the complete withdrawal of all foreign armed formations (i.e. Russian forces) from the territory of Ukraine, and prohibited any form of offensive military action by any of the parties to the conflict. Compliance with

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<sup>300</sup> <http://www.osce.org/home/123124>

<sup>301</sup> MKRU, *The DPR and LPR Promise Kiev That They Will Remain Part of Ukraine in Exchange for Recognition of Their Status* (1 September 2014); Petyr Kozlov & Alexey Nikolsky, *The Self-Proclaimed Republics in the East of Ukraine Put Forward their “Negotiation Demands” to Kiev*, *Vedomosti* (2 September 2014).

<sup>302</sup> <https://www.osce.org/home/123257>

<sup>303</sup> <http://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CELEX:32014R0959>

<sup>304</sup> “Ukraine truce shaken by new shelling”

<sup>305</sup> <https://www.osce.org/home/123806>



these commitments on the ground was to be monitored by the OSCE Special Monitoring Mission.<sup>306</sup>

269. On the same day, 19 September 2014, the Committee of Ministers of the Council of Europe adopted Decision 1207 (2014) concerning the situation in Ukraine. Recalling the report of the Council of Europe's Secretary-General concerning his visits to Kyiv and Moscow between 2 and 4 September, the Committee of Ministers stressed that the conflict could only be resolved by peaceful means that fully respected the territorial integrity of Ukraine within its internationally recognized borders. They welcomed the Minsk Protocol as a first step towards a durable ceasefire and a long-term solution to the crisis in eastern Ukraine, and called on all parties to strictly observe its conditions.<sup>307</sup> As regards the actions of the Russian Federation, the Committee of Ministers specifically:

*"Called upon the Russian Federation to use its influence over the separatist movement in eastern Ukraine with a view to de-escalating tensions and facilitating dialogue in the search for a peaceful and negotiated outcome to the crisis"; and*

*"Urged the Russian Federation to withdraw all its troops from Ukraine and refrain from any further military interference on Ukraine, including the supply of military assets to other parties; and to secure the border to avoid the illegal transfer of such assets, in full respect of the United Nations Charter and its commitments within the Council of Europe, regarding in particular the principles of the peaceful settlement of disputes and the full respect of the territorial integrity, sovereignty and independence of States, rejecting any forms or threats of force."*

270. In a statement issued on 20 September 2014, General Philip Breedlove, NATO's Supreme Allied Commander, described the result of the Minsk agreement as a "ceasefire in name only". He noted that by continuing to enable the "free flow of weapons and fighters across the border", the Russian Federation had made it "nearly impossible for outsiders to determine how many of its troops are operating inside Ukraine". NATO "put the main blame on Russia for the continuing conflict". He said that there was no doubt that Russian troops were still operating inside Ukraine, but said that the precise numbers could not be pinpointed:

*"Right now, the border is being maintained open by Russian forces and Russian-backed forces and the fluidity of Russian forces and Russian-backed forces back and forth across that border makes it almost impossible to understand the numbers".<sup>308</sup>*

Nonetheless, on 25 September 2014, the Trilateral Contact Group issued a statement describing the situation along the buffer zone as calm, and noting that the fighting had "subsided in recent days".

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<sup>306</sup> *Ibid.*

<sup>307</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c566b](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c566b)

<sup>308</sup> <https://www.cbc.ca/news/world/ukraine-crisis-ceasefire-in-name-only-says-nato-chief-1.2772932>

271. Approximately a month into the Minsk ceasefire period, on 16 October 2014, the Council of Europe's Congress of Local and Regional Authorities adopted Declaration 3 (2014) concerning "separatist tensions in Ukraine and neighbouring countries" in which it condemned Russia's actions towards a number of its States on its borders. The Congress "condemn[ed] Russia's military intervention in the east of Ukraine, and condemn[ed] all forms of pressure by Russia on its neighbours", observing that "the security of this continent is seriously threatened by the Russian Federation's repeated failure to comply with international rules and the principles and values of the Council of Europe that it signed up to when it joined the Organisation". Specifically, it placed Russia's actions in eastern Ukraine in the context of a wider pattern of analogous bellicose conduct and armed aggression against States in the region:

"The principles of international law, such as territorial integrity, sovereignty and the inviolability of the internationally recognized borders of states are imperative for the peaceful settlement of conflicts in Georgia, Ukraine, Azerbaijan and the Republic of Moldova faced with separatist movements. Armed separatism, supported by mercenaries and the intervention of foreign troops, is the antithesis of all that the Congress stands for and has created a humanitarian crisis that the national authorities and the international community must resolve together.

What has taken place in the Crimea (Ukraine), in South Ossetia and Abkhazia (Georgia), and in Transnistria (Republic of Moldova), and what is happening today in the east of Ukraine is totally contrary to the 'Europe of the Regions' that we are striving to achieve. At the same time, the Congress reaffirms its commitment to a peaceful dialogue on the basis of European values, especially the respect for human rights, including language rights of national minorities. With regard to the east of Ukraine, a ceasefire has been agreed in Minsk between the different parties concerned by the conflict. This ceasefire must be effectively and comprehensively implemented and must be followed by a political dialogue to enable Ukraine to recover its territorial integrity."<sup>309</sup>

272. On 23 and 24 October, the European Union responded to the adoption of the Minsk Protocol. The Conclusions adopted by the European Council (169/14) emphasised the imperative need for the Russian Federation to prevent the flow of weapons and fighters from Russian territory into Ukraine:

"The European Union expects the Russian Federation to respect Ukraine's national sovereignty and territorial integrity and to contribute to the political stabilisation and economic recovery of Ukraine... The Russian Federation should assume its responsibilities for the full implementation of the Minsk Agreements. In particular, Russian authorities should prevent any movement of military, weapons or fighters from its territory into Ukraine. They should exercise their influence to ensure that the separatists implement in good faith the obligations assumed in Minsk. The Russian Federation should also support OSCE verification efforts."

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<sup>309</sup><https://wcd.coe.int/ViewDoc.jsp?p=&id=2247205&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C&direct=true>

273. Throughout the period following the Minsk ceasefire, there were numerous reports of arbitrary detention by Russian proxy forces, and frequent torture of detainees.<sup>310</sup> On 2 November 2014, the DPR and LPR used the cover provided by the ceasefire period to further its separatist agenda, by organising “elections” to the local “administrations”. As the OHCHR pointed out soon afterwards, these “elections” were conducted “in violation of the legislation of Ukraine and the Minsk Protocol”.<sup>311</sup> The OSCE also condemned the decision to hold elections as “not in line with the Minsk Protocol”.<sup>312</sup> After an illegal and undemocratic voting procedure, Aleksandr Zakharchenko and Ihor Plotnitskyi were proclaimed “Presidents” of Donetsk and Luhansk respectively. The following day, the Russian Ministry of Foreign Affairs published the results on its website, and pledged to “respect the will of the people”.<sup>313</sup> As the OHCHR noted, the DPR and LPR then “continued to set up parallel governance systems, forming ‘executive bodies’ of ‘ministers’ and claiming to have enacted laws”.<sup>314</sup>

274. A few days after these “elections”, on 7 November 2014, the Government of Ukraine’s Cabinet of Ministers, approved a list of settlements which were temporarily outside (or partly outside) the control of the state authorities.<sup>315</sup> This was a formal recognition of the practical reality on the ground. Despite these developments and in flagrant breach of the terms agreed at Minsk, the Russian Federation continued to flood Ukraine with troops and weapons.

275. OSCE monitors reported on 8 November 2014 that they had observed large-scale movements of unmarked heavy equipment in separatist-held territory, including armoured personnel carriers, lorries, petrol tankers, and tanks, which were being manned and escorted by soldiers in dark green uniforms without insignias.<sup>316</sup> Following these reports, NATO General Philip Breedlove announced on 12 November 2014 that NATO could confirm that Russian troops and heavy equipment had crossed into Ukraine during the preceding two days.<sup>317</sup> He said that NATO had observed columns of Russian armour and combat troops entering Ukraine and observed: “There is no question any more about Russia’s direct military involvement in Ukraine”.<sup>318</sup> In response, the Ukrainian Defence Ministry said that it was preparing for a renewed offensive by pro-Russian forces.<sup>319</sup>

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<sup>310</sup> <https://www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf> (para.48)

<sup>311</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHR\\_eighth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHR_eighth_report_on_Ukraine.pdf)

<sup>312</sup> <https://www.osce.org/cio/126242>

<sup>313</sup> See [Tab 71] Statement of Ministry of Foreign Affairs of the Russian Federation of 3 November 2014 in Appendix 4

<sup>314</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHR\\_eighth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHR_eighth_report_on_Ukraine.pdf)

<sup>315</sup> Resolution No. 1085-P.

<sup>316</sup> <https://www.osce.org/ukraine-smm/126483>

<sup>317</sup> <https://www.bbc.co.uk/news/world-europe-30025138>

<sup>318</sup> <https://www.reuters.com/article/us-ukraine-crisis-military/ukraine-redeploys-troops-fearing-new-rebel-offensive-idUSKCN0IW16T20141112>

<sup>319</sup> <https://www.reuters.com/article/us-ukraine-crisis-military/ukraine-redeploys-troops-fearing-new-rebel-offensive-idUSKCN0IW16T20141112>

276. On 15 November, OHCHR published an updated report on the human rights situation, covering the period from 17 September to the end of October 2014, which documented “almost daily” breaches of the 5 September ceasefire agreement by the separatist militias at various “flashpoints”. These included the Donetsk airport and the surrounding north-west suburbs of the city; the areas under Government control intersecting the main road and rail links between Donetsk and Luhansk; and the area around Smile. The OHCHR recorded more than 2000 instances of shelling and armed attacks by separatist militias on Ukrainian Government positions during the period between 5 September and 15 November, although the frequency and intensity of these attacks reportedly decreased in the run-up to planned ‘parliamentary elections’ in the areas under separatist control, which had been scheduled to take place on 2 November.<sup>320</sup>

277. Despite the supposed ceasefire, the OHCHR’s November report painted an extremely bleak picture of life for the civilian population and widespread human rights abuse, in the areas under separatist control. The OHCHR considered that the scale of the attacks on the civilian population in these territories was “widespread and systematic”, so as to raise a serious question whether the armed groups were guilty of committing crimes against humanity during this period of the conflict:

“In the territories under the control of the ‘Donetsk People’s Republic’ and the ‘Luhansk People’s Republic’, there continues to be a total breakdown in law and order and a lack of any human rights protection for the population under their control. In addition, parallel governance structures are being set up, with so-called ‘ministries’, as well as legislative and administrative procedures being established. Both ‘republics’ announced plans to hold ‘presidential and parliamentary elections’ on 2 November, outside the legal framework of Ukraine. There were strong objections to these initiatives from the Government of Ukraine, some Member States and international organisations, including the United Nations.

In territories under the control of both ‘republics’, cases of serious human rights abuses by the armed groups continued to be reported, including torture, arbitrary and incommunicado detention, summary executions, forced labour, sexual violence, as well as the destruction and illegal seizure of property. These violations are of a systematic nature and may amount to crimes against humanity.”<sup>321</sup>

278. In Donetsk oblast, OHCHR noted that the “Donetsk People’s Republic acknowledged that it was holding “about 600 Ukrainians” in official and *ad hoc* detention facilities. Despite the ceasefire, the pattern of abductions, torture and arbitrary killing by armed groups was continuing unabated:

“On 8 October, the [OHCHR] was informed about the deprivation of liberty of the head of the independent Miners Trade Union of the Kalinin mine, and of his two sons. Allegedly, on 6 October, his private apartment was stormed by eight armed men who introduced themselves as the ‘Donetsk People’s Republic’ police. They reportedly claimed having received a complaint that an ‘enemy of the republic’ was living in the apartment, and that they had to detain him to ‘clarify circumstances’. When contacted by his wife, neither the

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<sup>320</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHR\\_sixth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf)

<sup>321</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHR\\_sixth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf)

local ‘police department’ where he and his sons were supposedly taken, nor the ‘state security committee’ of the ‘Donetsk People’s Republic’ had any information about the individual.”<sup>322</sup>

279. In addition, OHCHR documented multiple reports of heavy weapons and military personnel crossing the border from the Russian Federation into Ukraine during September and October 2014, despite the ceasefire:

“There are credible reports from different sources, including the OSCE Observer Mission, that hundreds of people in military-style clothing have been observed crossing the two border crossing points of Gukovo and Donetsk in both directions. The Ukrainian Government and some civic groups report the delivery of weapons from the Russian Federation to the eastern regions. On 19 September and 31 October, two further convoys were sent by the Russian Federation to territory under the control of the ‘Donetsk People’s Republic’ and the ‘Luhansk People’s Republic’. As on the previous occasions, the convoys crossed at the Izvaryne border crossing point without the authorisation of Ukraine and were not inspected.”<sup>323</sup>

280. In its end of year report, published on 15 December 2014, OHCHR reflected on the scale of human rights violations committed by Russia’s proxies throughout the conflict, and summarised the situation as it stood at the year’s end:

“The breakdown of law and order in the conflict zone has resulted in killings, abductions, torture, ill-treatment, sexual violence, forced labour, ransom demands and extortion of money by the armed groups which have been reported during the whole conflict period. Persecution and intimidation of people suspected of supporting Ukrainian forces or merely holding pro-Ukrainian sympathies (or perceived as such) remains widespread and has included deprivation of liberty and property, humiliation in public places and mock executions. Conditions of detention, especially for civilians, were often inhuman and degrading: people were kept in overcrowded basements or other ad hoc detention facilities without separate detention for men and women; supply of food and water was insufficient or irregular; and opportunities to maintain personal hygiene and contacts with the outside world were largely absent. Some detainees were subjected to torture and ill-treatment, which included verbal assaults, physical beatings, including [with] various objects (rifle butts, wooden bats and metal and rubber sticks); cutting with knives and other sharp objects; sexual assaults; threats of death and of persecution of relatives”.<sup>324</sup>

281. The report also recorded that in the territory that was outside Ukrainian Government control, residents were being routinely robbed by pro-Russian armed groups, and civilians fleeing the conflict were frequently fired upon. The OHCHR also found that children housed in care institutions in occupied parts of Donbass were being illegally transported to the territory of the Russian Federation:

“Sixty children were abducted from the Luhansk orphanage on 26 July 2014, and eight children with cerebral paralysis were kidnapped from the same facility on 8 August 2014. Prior to that, on 12 June 2014, 16 institutionalised children and two accompanying persons had been abducted by armed representatives of the so-called ‘Donetsk Peoples Republic’

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<sup>322</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHR\\_sixth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf)

<sup>323</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHR\\_sixth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf)

<sup>324</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHR\\_eighth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHR_eighth_report_on_Ukraine.pdf)

and taken to the Russian Federation.”<sup>325</sup>

282. OHCHR also documented regular attacks on Ukrainian and international media, as part of an active propaganda campaign aimed at stoking tensions and fuelling inter-ethnic violence:

“The media, and, at times, lack of professionalism, is playing an increasing role in fueling conflict, dividing society and causing tensions. The deterioration of the situation has been accompanied by disinformation, incitement to hatred and propaganda, carried out predominantly by the Russian-language media. Foreign and domestic journalists have been threatened, abducted and killed. The Donetsk and Luhansk self-proclaimed ‘people’s republics’ have unlawfully prevented the broadcasting of Ukrainian channels in the territory under their control.”<sup>326</sup>

283. In January 2015, the ceasefire broke down completely. At approximately 14:30 on 13 January 2015, a Grad rocket struck a civilian bus which had stopped at a Ukrainian army checkpoint approximately 2 kilometres north of Volnovakha (35 kilometres south-west of Donetsk).<sup>327</sup> The SMM (OSCE) arrived at the site of the attack soon after, and observed shrapnel damage consistent with an explosion 12 to 15 metres from the bus. Ten of the passengers died instantly and two died later in hospital. Another 17 passengers were gravely injured.<sup>328</sup> Subsequent investigations established conclusively that DPR militants committed the attack, using three BM-21 Grad MRLS (multiple-launch rocket systems) supplied by the Russian Federation to shell the civilian checkpoint. At least 88 rockets volleys struck the area around the checkpoint.

284. The U.N. Security Council issued a statement condemning the “shelling of a passenger bus in Volnovakha,”<sup>329</sup> and demanding an investigation to bring the perpetrators to justice. Independent expert analysis of the crater and debris at the scene has confirmed that the attack was carried out using BM-21 Grad MLRS, firing high explosive rockets, and that the attack was launched from a range of 19.4 to 19.8 kilometers. The town of Dokuchayevsk, controlled by the DPR, is within the appropriate firing range. Intercepted phone conversations between DPR members on 13 January 2015 confirm that the attack was launched by the DPR from the town of Dokuchayevsk. This attack was, on any view, directed at a non-military target, and was therefore a war crime.

285. On 15 January 2015, the European Parliament adopted Resolution 2965/2014 in which it recorded that since the Minsk Protocol was signed on 5 September 2014, the ceasefire had been “violated by the separatist and Russian forces on a daily basis”, and that the main points of the Memorandum

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<sup>325</sup> Report of the UN High Commissioner for Human Rights to the 27<sup>th</sup> session of the Human Rights Council.

<sup>326</sup> See [Tab 73] Report of the UN High Commissioner for Human Rights to the 27<sup>th</sup> session of the Human Rights Council in Appendix 4;

<sup>327</sup> <https://www.osce.org/ukraine-smm/134636>

<sup>328</sup> <https://www.osce.org/ukraine-smm/134636>

<sup>329</sup> See [Tab 72] U.N. Security Council, *Security Council Press Statement on Killing of Bus Passengers in Donetsk Region, Ukraine* (13 January 2015) in Appendix 4;

signed on 19 September 2014 had “not been implemented by the Russian-backed separatists”. In addition to ceasefire violations by the Russian forces themselves, the European Parliament relied on “credible sources” to conclude that “Russia continues to support the separatist militias through a steady flow of military equipment, mercenaries and regular Russian units, including main battle tanks sophisticated anti-aircraft systems and artillery”.<sup>330</sup>

286. On the basis of its evaluation of the prevailing situation on the ground, the European Parliament called on the Russian to cease its efforts to destabilise Ukraine through hybrid warfare, describing Russia’s actions as a threat to peace and security in Europe. The resolution states that the European Union:

*“Strongly condemns Russia’s aggressive and expansionist policy, which constitutes a threat to the unity and independence of Ukraine and poses a potential threat to the EU itself, including the illegal annexation of Crimea and waging an undeclared hybrid war against Ukraine, including information war, blending elements of cyber warfare, use of regular and irregular forces, propaganda, economic pressure, energy blackmail, diplomacy and political destabilisation; stresses that these actions are in breach of international law and constitute a serious challenge to the European security situation; emphasizes that there is no justification for the use of military force in Europe in defence of so-called historical and security motives or for the protection of one’s so-called ‘compatriots living abroad’; calls on Moscow to stop escalating the situation by immediately halting the flow of weapons, mercenaries and troops in support of the separatist militias and to use its influence with the separatists to convince them to engage in the political process.”*

287. In addition, the European Parliament decided to maintain the existing range of sanctions against Russia until it “delivers on its Minsk obligations”, and threatened to impose further and deeper sanctions “in the case of any further Russian actions destabilizing Ukraine”. It also committed the EU to exploring ways to support Ukraine by “enhancing its defence capabilities and the protection of Ukraine’s external borders”; noted that the EU embargo on supplying arms to Ukraine had been lifted on 16 July 2014; and stressed that “there are thus no objections or legal restrictions to prevent Member States from providing defensive arms to Ukraine”.

288. During the second half of January 2015, DPR forces, with Russian military support, mounted a sustained attack on Donetsk Airport, in an effort to re-take control of the facility from the Ukrainian armed forces. The DPR forces included the “Sparta Battalion” led by Arsen Pavlov (“Motorola”) and the “Somali Battalion” led by Mikhail Tolstykh (“Givi”). Both men had close links to the Russian armed forces. They were supported in this military campaign by troops of the regular Russian armed forces, with heavy weaponry. This marked the start of a major new Russian offensive in eastern Ukraine.

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<sup>330</sup><http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0011+0+DOC+XML+V0//EN>

289. OHCHR recorded that on 21 January 2015, a group of fighters from the “Sparta Battalion” captured 12 members of the Ukrainian military following an intense armed engagement at Donetsk airport. According to reports received by OHCHR, the prisoners were subjected to torture and one of them was summarily executed.<sup>331</sup> Following a criminal investigation, it was determined that there was sufficient evidence to charge Arsen Pavlov with the abduction and torture of Ukrainian prisoners of war and with the murder of Mr. Branovtskyi.<sup>332</sup> See further, para. 137 *et seq, ante*.

290. On 24 January 2015, Russia’s proxies used BM- 21 Grad MLRS multiple rocket launchers supplied by Russia against the city of Mariupol, attacking the Vostochniy neighborhood<sup>333</sup>, a densely populated residential area.<sup>334</sup> According to eyewitness testimony and expert analysis, the perpetrators discharged at least 154 rocket volleys, killing 30 civilians, including a child, and seriously injuring a further 118 civilians. The attack caused explosive damage to more than 50 residential buildings, four schools, and numerous shops and businesses. During intercepted telephone conversations the day before, the DPR members discussed their intention to “crush” their target. On the day of the attack, they communicated with each other over the extent of the damage inflicted during their initial barrage, but then immediately proceeded to carry out further attacks.

291. OSCE monitors investigated the scene of the attack. Based on an examination of the impact craters they concluded that rockets originated from a location approximately 15 to 9 kilometers away, in an easterly or north-easterly direction.<sup>335</sup> All the areas identified by the OSCE and the Ukrainian investigators were controlled by the DPR at the time of the attack.<sup>336</sup> There was no plausible military target in the vicinity of the attack. While a National Guard Battalion had its headquarters in eastern Mariupol, the building was located more than three kilometers south-west of the site of the attack.

292. The U.N. Secretary-General immediately condemned the launching of rockets “indiscriminately into civilian areas.”<sup>337</sup> Shortly thereafter, the Under-Secretary-General for Political Affairs concluded that the attackers “knowingly targeted a civilian population” in a city that “lies outside of the immediate conflict zone.”<sup>338</sup> On the 24 January 2015, the Secretary-General of NATO issued a statement, in response

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<sup>331</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHRReportUkraine.pdf>

<sup>332</sup> [https://www.ohchr.org/Documents/Countries/UA/UARepor16th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UARepor16th_EN.pdf)

<sup>333</sup> The Vostochniy “microdistrict” is part of the larger Ordzhonikidze district (renamed the Livoberezhnyi district in 2016). The shelling fell not just in the Vostochniy District but also further west, past Olimpiiska Street

<sup>334</sup> OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol* (24 January 2015).

<sup>335</sup> OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol* (24 January 2015).

<sup>336</sup> OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol* (24 January 2015).

<sup>337</sup> See [Tab 74] U.N. Secretary-General, Statement Attributable to the Spokesman for the Secretary-General on Ukraine (24 January 2015) in Appendix 4;

<sup>338</sup> U.N. Security Council, Official Record, 7368th mtg., U.N. Doc. S/PV.7368 (26 January 2015), p. 2 (statement of Jeffrey Feltman, U.N. Under-Secretary-General for Political Affairs).



to the attack on Mariupol, in which he emphasised that the perpetrators were receiving direct military support from the Russian Federation:

“Fighting in eastern Ukraine has sharply escalated, with indications of a large-scale offensive by Russian-backed separatists at multiple locations in the Donetsk and Luhansk oblasts as well as against the city of Mariupol. This is in utter disregard of the ceasefire. The shelling of residential areas in the city of Mariupol from separatist-controlled territory has cost the lives of at least 20 civilians, and injured many more.

For several months we have seen the presence of Russian forces in eastern Ukraine, as well as a substantial increase in Russian heavy equipment such as tanks, artillery and advanced air defence systems. Russian troops in eastern Ukraine are supporting these offensive operations with command and control systems, air defence systems with advanced surface-to-air missiles, unmanned aerial systems, advanced multiple rocket launcher systems, and electronic warfare systems.

I strongly urge Russia to stop its military, political and financial support for the separatists, stop destabilising Ukraine and respect its international commitments.”<sup>339</sup>

293. Three days later, on 27<sup>th</sup> January 2015, PACE adopted Resolution 2028 (2015) on the humanitarian situation of Ukrainian refugees and internally displaced persons, in which it expressed “deep concern” about the “ongoing instability” in parts of Donetsk and Luhansk oblasts. PACE recorded “the direct involvement of the Russian Federation in the emergence and worsening of the situation in these parts of Ukraine”, which it found “particularly disturbing”. It called on Russia to “refrain from destabilising Ukraine and financing and providing military support to illegal armed groups, and to use their influence on them to make them fully respect and implement the provisions of the Minsk agreements”.<sup>340</sup>

294. On the following day, 28 January 2015, PACE adopted Resolution 2034 (2015) condemning Russia’s role in the conflict in eastern Ukraine. The relevant passage of the resolution confirms the Parliamentary Assembly’s assessment that Russia was responsible not only for escalating the conflict, but also for *instigating* it. The Assembly condemned Russia’s actions as a grave violation of international law, in general, and of the Statute of the Council of Europe, in particular.<sup>341</sup> The relevant passage reads:

“The Assembly is extremely concerned about the developments in eastern Ukraine and condemns Russia’s role in instigating and escalating these developments, including with arms supplies to insurgent forces and covert military action by Russian troops inside eastern Ukraine, which are a gross violation of international law, including the Statute of the Council of Europe as well as of the Minsk Protocol to which Russia is a party. In addition, the Assembly expresses its dismay about the participation of large numbers of Russian “volunteers” in the conflict in eastern Ukraine without any apparent action of the Russian authorities to stop this participation, despite it being in violation of the Criminal Code of the Russian Federation itself. It takes note of credible reports of burials of soldiers on Russian territory. The Assembly condemns the violation of the territorial integrity and borders of a Council of Europe member State by the Russian Federation.”

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<sup>339</sup> [https://www.nato.int/cps/en/natohq/news\\_116852.htm?selectedLocale=enn](https://www.nato.int/cps/en/natohq/news_116852.htm?selectedLocale=enn)

<sup>340</sup> <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21480&lang=en>

<sup>341</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21538&lang=en>

295. In light of these findings, PACE called on the Russian Federation (a) to “withdraw all its troops, including covert forces, from Ukrainian territory”; (b) to “refrain from supplying weapons to the insurgent forces”; (c) to “take credible measures to end the influx of Russian ‘volunteers’ into the conflict in eastern Ukraine; (d) to criminalise and prosecute those Russian civilians that had engaged in the armed conflict in eastern Ukraine; (e) to “give its full co-operation to the investigations into the downing of Malaysia Airlines flight MH17”; (f) to restore effective joint control of the international border; and (g) to “release all hostages, prisoners of war and illegally held persons”.<sup>342</sup>

296. Throughout the period between mid-January and 18 February 2015, Russian ground troops and their paramilitary support formations mounted a major offensive to re-take control of the strategically significant city of Debaltseve, which had been under Government control since July 2014. The Battle of Debaltseve began on 17 and 18 January, when Russian forces attacked. Ukrainian forces defended their positions, however, and successfully repelled successive Russian assaults during the following two weeks. Three civilians were killed during the Russian offensive in Debaltseve in the second half of January.<sup>343</sup> At this time, approximately 8,000 Ukrainian troops remained in the city, defending their position against escalating attacks from the combined Russian forces.

297. OHCHR recorded the details of one Ukrainian soldier who was captured near the town of Vuhlehirsk (Donetsk oblast) on 29 January 2015, and detained for over two months in a very small cell with three other Ukrainian soldiers in the basement of a building designated as the “Ministry of State Security” office in the city of Horlivka. He described being subjected to acts of torture, and being beaten with rifle butts. One of the soldiers detained with him was badly beaten during an interrogation on the night of 30 January, and died from his injuries the following morning.<sup>344</sup>

298. On 30 January 2015, seven civilians were killed when a Grad rocket struck a block of flats in Debaltseve. The following day, another 12 civilians were killed by Russian Grad rocket attacks. The Russian forces carried out heavy shelling of a densely populated urban area, forcing thousands of residents to flee the town. According to OHCHR, the fighting continued causing significant civilian casualties.<sup>345</sup> In this context, the OHCHR report noted:

“Reports of sophisticated heavy weaponry and fighters being supplied from the Russian Federation persisted”.<sup>346</sup>

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<sup>342</sup> *Ibid.*

<sup>343</sup> *"Death toll mounts in intense clashes in east Ukraine"*

<sup>344</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHRReportUkraine.pdf>

<sup>345</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHRReportUkraine.pdf>

<sup>346</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHRReportUkraine.pdf>

299. At the very beginning of February 2015, the Russian troops advanced into the city, whilst the civilian population attempted to evacuate. Aid workers reported that Russian forces were deliberately targeting buses in which civilians were trying to escape,<sup>347</sup> and Amnesty International described the humanitarian situation as “catastrophic”.<sup>348</sup> On 6 February 2015, the two sides agreed to open a humanitarian corridor to allow residents to leave in relative safety. However, intense fighting resumed the following day, and continued over the following weeks. On 14 February 2015, the US State Department formally accused the Russian Federation of deploying “a large amount of artillery and multiple rocket launcher systems around Debaltseve”, and specifically alleged that the regular Russian army was responsible for shelling the city.<sup>349</sup>

300. On 10 February 2015, Russia’s proxies used BM-30 Smerch rocket system to bombard a residential neighbourhood in the city of Kramatorsk with cluster munitions. Kramatorsk is located about 50 kilometres northeast of the contact line, and had a residential population of nearly 200,000 people. There were two strikes, approximately 5 minutes apart, which detonated multiple submunitions, causing more than 50 crater impacts in various parts of the city. There were no significant military targets in the vicinity. Although there was a police station and two administrative buildings in the city, none of these had any combat function, or any significant military value. The bombardment fell indiscriminately on a civilian residential neighbourhood, hitting apartment buildings, schools, and hospitals. The attack was carried out in total disregard of the humanitarian law principles of distinction, precaution and proportionality. Seven civilians were killed and 26 people were seriously injured.<sup>350</sup>

301. Based on impact craters analysis, the SMM (OSCE) concluded that the shelling had been launched from a south-south-easterly direction, and that the “strike was fired by one single launcher system - probably a BM-30 Smerch or Tornado” equipped with cluster sub-munitions.<sup>351</sup> Further analysis confirmed that the attack was launched from Horlivka, a town under DPR control. The OSCE Chief Monitor in Ukraine condemned the attack as another instance in which “innocent civilians are bearing the brunt of a violent conflict characterized by [an] increasing . . . death-toll and indiscriminate shelling”.<sup>352</sup> Ukraine contends that, as with the attacks on Volnovakha and Mariupol, the attack on Kramatorsk was intended to target the civilian population.

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<sup>347</sup><https://www.kyivpost.com/article/content/war-against-ukraine/volunteers-evacuate-residents-from-debaltseve-under-shelling-379238.html>

<sup>348</sup><https://web.archive.org/web/20150218001019/http://www.amnesty.org/en/news/ukraine-debaltseve-s-residents-reaching-breaking-point-2015-02-03>

<sup>349</sup> <https://www.nytimes.com/2015/02/14/world/europe/ukraine-fighting-escalates-ahead-of-truce.html>

<sup>350</sup> <https://www.bbc.co.uk/news/world-europe-31357588>

<sup>351</sup> OSCE, *Latest from OSCE Special Monitoring Mission (SMM) to Ukraine Based on Information Received as of 18:00 (Kyiv Time)* (11 February 2015); OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Kramatorsk, 10 February 2015* (10 February 2015);

<sup>352</sup> OSCE, *Statement by OSCE Chief Monitor in Ukraine on Situation in Kramatorsk* (10 February 2015);

302. On 12 February 2015, whilst the Battle of Debaltseve was ongoing, Government representatives of Ukraine, Russia, France and Germany re-convened in Minsk, and agreed a further “Package of Measures” for the implementation of the Minsk Agreements.<sup>353</sup> On the eve of the negotiations, leaders of the DPR and LPR released a detailed list of political demands that included “constitutional reforms in Ukraine, including extensive decentralization by granting individual areas of the Donbass autonomous status”.

303. On 13 February 2015, *Gazeta.ru* published a report of an order issued by Lieutenant Colonel Vyacheslav Okanev given in a speech to members of the 536<sup>th</sup> Independent Coastal Defence Missile-Artillery Brigade of Unit 10544, in Murmansk. During the speech, which had been covertly recorded by one of soldiers present, the Lieutenant ordered his men to a forward position close to the Ukrainian border, telling them that although there was no official state of war between the two countries, they may nonetheless be required to take part in combat missions inside Donetsk and Luhansk. The authenticity of the recording has not been questioned.

304. The Minsk II agreement came into effect at midnight on the night of 14/15 February 2015. Whilst armed hostilities ceased in most areas of the combat zone, the pro-Russian forces renewed their assault on Debaltseve, claiming that this was outside the terms of the ceasefire agreement

305. Between 16 and 18 February 2015, the Russian armed forces, supported by the insurgents, mounted an intense military bombardment to dislodge Government positions in Debaltseve.<sup>354</sup> The intense engagement of Russian forces in the resumed fighting around Debaltseve that followed the Minsk II agreement is recorded in detail in the Atlantic Council report:

“Moscow’s agents immediately broke the second ceasefire in order to gain Debaltseve: the ceasefire went into effect February 15, and Debaltseve was taken on February 18. After that, fighting quieted down and Moscow used this lull to bring in more arms. Starting in late April 2015, Moscow’s surrogates have begun to ratchet up the violence once more. Shortly after the signing of the Minsk II agreements, what appeared to be separatist forces routed the Ukrainian army and took the city of Debaltseve, a key central location linking the railways between Luhansk and Donetsk. These forces contained some separatist soldiers, but the reason for the overpowering victory was a combination of enlisted Russian soldiers and their heavy machinery, including the 5<sup>th</sup> Tank Brigade from Ulan-Ude, Buryatia and the 37<sup>th</sup> Motorized Infantry Brigade from Kyakhta, Buryatia.”<sup>355</sup>

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<sup>353</sup> <http://www.osce.org/cio/140156>

<sup>354</sup> <https://www.bbc.co.uk/news/world-europe-31519000>

<sup>355</sup> Neil Buckley, Roman Olearchyk, and Courtney Weaver, “Fierce Battle for Debaltseve Ends in Ukraine Withdrawal” *Financial Times*, February 18, 2015, <http://www.ft.com/cms/s/0/470b14da-b785-11e4-981d-00144feab7de.html>; Kostyuchenko, “We Were Fully Aware of What We Brought Ourselves to and What Could Happen,”

306. The OHCHR found evidence of numerous war crimes committed by the Russian forces during this phase of the operation, including the summary execution of Ukrainian soldiers who were *hors de combat*:

“OHCHR also continued to gather information related to violations of international humanitarian law during the hostilities in Debaltseve in February 2015, such as the alleged execution of an injured *hors de combat* Ukrainian soldier by members of armed groups on 17 February 2015, or the alleged execution of several *hors de combat* Ukrainian soldiers after their vehicle was ambushed on the road near the village of Lohvynove (Donetsk region) on 9 February 2015.”<sup>356</sup>

307. Amongst the human rights and humanitarian law violations recorded by OHCHR in connection with the hostilities at Debaltseve, were the following:

“OHCHR interviewed a Ukrainian soldier who was captured by members of an armed group during hostilities around Debaltseve in February 2015. During interrogation, he had some of his teeth knocked out. According to him, several other Ukrainian soldiers were subjected to beating, both during their capture and while in detention, and one soldier reportedly had his jaw fractured. He also reported that some soldiers were forced to ingest their insignia and any item bearing Ukrainian symbols.”<sup>357</sup>

And in a subsequent report:

“OHCHR obtained more details on the case of 13 Ukrainian soldiers captured by armed groups near Debaltseve in February 2015. The victims were struck in the head with rifle butts, forced to remove their jackets despite the very low temperatures, and ordered to kneel for four hours in the snow, causing their legs to go numb. Some members of the armed groups put knives to their faces and threatened: “What do you want me to cut off, an eye or an ear?” All the victims were subsequently transferred to a building in Luhansk, allegedly housing the ‘separate commandant’s regiment’ of the ‘2nd army corps’ of ‘Luhansk people’s republic army’. During interrogations, the soldiers were severely beaten. One soldier was held in a cell with a civilian whose body was completely blue, ostensibly as a result of severe beatings. The civilian stated that he was accused by armed groups of being a spotter and was tortured until he ‘confessed’. The soldiers were later released while the fate of the civilian remained unknown.”<sup>358</sup>

308. The presence of armed Russian soldiers during the Battle of Debaltseve is also confirmed by numerous other sources. According to the Atlantic Council:

“Before fighting in Ukraine, Bato Dambayev trained at a large camp near the Russian city of Kuzminka, just like Dorzhi Batomunkuyev, the Buryat soldier of the 5th Tank Brigade who gave a now infamous interview with the Russian independent newspaper *Novaya Gazeta* detailing his involvement in Debaltseve. In his interview, Batomunkuyev specifically mentioned that contract soldiers from Kyakhta joined him when crossing the border to fight in Debaltseve.”<sup>359</sup>

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<sup>356</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf)

<sup>357</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf)

<sup>358</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport18th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf)

<sup>359</sup> Neil Buckley, Roman Olearchyk, and Courtney Weaver, “Fierce Battle for Debaltseve Ends in Ukraine Withdrawal” *Financial Times*, February 18, 2015, <http://www.ft.com/cms/s/0/470b14da-b785-11e4-981d-00144feab7de.html>;

309. According to the Open Russia report *Putin.War*, on 19 February 2015, Dorzhi Batomunkuev, a soldier in the 5<sup>th</sup> Independent Tank Brigade (Ulan-Ude) of the Russian army, was injured in combat during a direct military engagement with Ukrainian forces near Debaltseve. He was interviewed by a journalist from *Nova Gazeta* whilst being treated for his injuries at the Donetsk Regional Hospital. During the interview, he said his unit had been instructed to protect the position of the separatist armed groups. He also said that his unit had previously been ordered to conceal or remove all identifying marks and insignia on their tanks so that their origin could not be identified.<sup>360</sup>

310. On 16 February 2015, the European Union formally recognised for the first time that Russian military involvement in Ukraine extended beyond the provision of support to armed groups, and included direct military deployments on Ukrainian soil. In its Official Journal for 16 February 2015 the EU added the Russian Deputy Defence Minister, Anatoly Antonov, and the First Deputy Defence Minister, Arkady Bakhin, to the list of sanctioned individuals on the ground that they were “involved in supporting the deployment of Russian troops in Ukraine”. It also listed Andrei Kartapolov, a senior Russian military commander, for being “involved in shaping and implementing the military campaign of the Russian forces in Ukraine”. The spokesperson for the High Representative for Foreign Affairs and Security Policy told reporters that the new language was deliberate, and reflected the “mounting evidence, underlining Russia’s responsibility for the conflict”.<sup>361</sup>

311. On 17 February 2015, the UN Security Council adopted Resolution 2202 (2015) in which it reaffirmed its full respect for the sovereignty and territorial integrity of Ukraine. The Security Council expressed its “grave concern” about the escalation of violence in eastern Ukraine and endorsed the “Package of Measures for the Implementation of the Minsk Agreements” adopted in Minsk on 12 February 2015. Resolution 2202 (2015) calls on all parties to fully implement the comprehensive ceasefire provided for in the Package of Measures.

312. On 18 February 2015, the Ukrainian military was forced to withdraw from the area. On the same day, Ukraine’s Cabinet of Ministers adopted a resolution closing a number of border crossing points in Donetsk, Luhansk and neighbouring territories.<sup>362</sup>

313. Civilians who were perceived to be supporters of Ukrainian sovereignty were subjected to a campaign of collective punishments, harassment and intimidation by Russia’s proxy forces in the region. The following description (recorded and verified by OHCHR) is typical:

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<sup>360</sup> <https://openrussia.org/s/tmp/files/Putin-War.pdf>

<sup>361</sup> <https://euobserver.com/foreign/127667>

<sup>362</sup> Resolution No 106-R;

“In territory controlled by the armed groups, a family was subjected to harassment, threats and a mock execution .... On 2 February 2015, some 20 armed people surrounded their house, burst in and put a gun to the forehead of the father. The family was forced outdoors and told they would be shot dead. An armed man loaded the gun several times, shouting at the family and insulting them with derogatory names. The adults were taken to a commandant’s base but released soon afterwards. The victims informed OHCHR that another family was forced to leave the village for openly expressing views supporting Ukrainian unity and rejecting the authority of the armed groups.”<sup>363</sup>

314. OHCHR received numerous reports relating to the abduction, torture and murder of individuals by the Russian proxy forces during February 2015. One such case involved a pro-Ukrainian soldier (a member of the Azov regiment) who was captured in Shyrokyne in February 2015. He was subjected to electric shock and his teeth were pulled out.<sup>364</sup>

315. OHCHR also recorded the grave ill-treatment of serving prisoners detained in prisons in Donetsk and Luhansk during February 2015. The victims were in an especially vulnerable position, because they were serving sentences of imprisonment for ordinary crimes in penal colonies located in the territory occupied by Russia’s proxy forces and the subordinate local administrations:

“OHCHR continues to receive reports of human rights abuses committed in penal colonies in the territory controlled by the ‘Donetsk People’s Republic’. For instance, OHCHR interviewed a man sentenced to life imprisonment prior to the conflict, who was formerly held in penal colony No. 52, in the city of Yenakiieve (Donetsk region) under the control of armed groups. In February 2015, several such prisoners in Yenakiieve were reportedly subjected to mock executions for their alleged pro-unity Ukrainian views. The first deputy of the head of the penal colony allegedly carried out the mock execution. Several detainees were forced to kneel in the ‘square’ near the administration building. After a short speech on ‘proper political views’, the first deputy reportedly fired shots above the heads of the detainees.”<sup>365</sup>

316. On 17 March 2015, the Ukrainian Parliament (the *Verkhovna Rada*) adopted Resolution 254-VIII, designating certain areas of Donetsk and Luhansk as temporarily occupied territories, subject to time-limited special arrangements for local self-government, pending the withdrawal of armed forces of the DPR, the LPR and the Russian Federation. This resolution came into force on 24 March 2015. The Verkhovna Rada also adopted a resolution approving an application to the UN Security Council and the Council of the European Union concerning the deployment of an international peacekeeping force, and a security operation in Ukraine.

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<sup>363</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf)

<sup>364</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf)

<sup>365</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_14th\\_HRMMU\\_Report.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf)

317. In its tenth report on the situation in Ukraine, the OHCHR noted that the ceasefire was generally observed between mid-February and mid-April 2015. There had been some minor skirmishes and exchanges of fire with small arms, but heavy weaponry was reported to have been withdrawn by both sides from the contact line. Nonetheless, the OHCHR continued to receive “reports of sophisticated heavy weaponry and fighters being supplied from the Russian Federation”.<sup>366</sup>

318. In March 2015, the Atlantic Council reflected the assessment of the Ukraine and western States that the inflow of weapons from Russia was still ongoing at that time:

“Both Ukrainian and Western officials as well as independent Ukrainian researchers reported that a significant influx of military hardware and equipment, including T-64 and T-72 tanks as well as armored personnel carriers, continues. It is estimated that up to 200 tanks and 525 armored fighting vehicles as well as 145 artillery systems and 83 MLRS are currently in use. Further, Ukrainian forces continue to observe significant Russian use of unmanned aerial vehicles (UAVs) for surveillance and targeting purposes, but lack not only the adequate tools to interfere with the Russian UAVs, but also their own UAVs. Ukrainian forces frequently rely on donated UAVs or improvised UAVs built by citizen groups.”<sup>367</sup>

319. The report also quoted US military and independent experts’ assessments that at that time there were estimated to be approximately 12,000 Russian soldiers inside Ukraine (a combination of “military advisers, weapons operators and combat troops”) and approximately 50,000 Russian troops stationed in camps along the border.<sup>368</sup> The report noted that:

“Ukrainian sources confirmed previous estimates that the total number of Russian troops and separatist fighters in the Donbas came close to thirty-six thousand along the line of contact, including an estimated eight to ten thousand Russian regular troops among them. According to Ukrainian intelligence services, an estimated eight to fourteen airborne and mechanized battalion tactical groups, each with a battalion tactical group comprising six hundred to eight hundred officers and soldiers, are known to be operating on Ukrainian territory.”<sup>369</sup>

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<sup>366</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHReportUkraine.pdf>

<sup>367</sup> Graham Phillips, “Updates (#17) Leaving NAF Positions by Debaltsevo Today,” YouTube, February 15, 2015, <https://www.youtube.com/watch?v=rkbVnpEbVwY>. According to the Atlantic Council, the self-reported description of the video makes reference to Debaltseve, and geolocation yields a strong possible match in the village of Sanzharivka, ten kilometers north of Debaltseve.

<sup>368</sup> Sabine Siebold and Caroline Copley, “Some 12,000 Russian Soldiers in Ukraine Supporting Rebels: U.S. Commander,” Reuters, March 3, 2015, <http://www.reuters.com/article/2015/03/03/us-ukraine-russia-soldiers-idUSKBN0LZ2FV20150303>; Mstyslav Chernov, “Misery, Tuberculosis in Prisons of War-Torn East Ukraine,” Associated Press, April 8, 2015, [http://www.nytimes.com/aponline/2015/04/08/world/europe/ap-eu-ukraine-tuberculosis-prisons-.html?\\_r=0](http://www.nytimes.com/aponline/2015/04/08/world/europe/ap-eu-ukraine-tuberculosis-prisons-.html?_r=0); Jeremy Bender, “Former NATO Commander: A New Russian Offensive in Eastern Ukraine Is ‘Imminent,’” Business Insider, April 7, 2015, <http://www.businessinsider.com/new-russian-offensive-in-ukraine-isimminent-2015-4>.

<sup>369</sup> Graham Phillips, “Updates (#17) Leaving NAF Positions by Debaltsevo Today,” YouTube, February 15, 2015, <https://www.youtube.com/watch?v=rkbVnpEbVwY>. According to the Atlantic Council, the self-reported description of the video makes reference to Debaltseve, and geolocation yields a strong possible match in the village of Sanzharivka, ten kilometers north of Debaltseve.



320. On 31 March 2015, Dmitry Sapozhnikov, a former Commander with an irregular paramilitary formation in Donetsk, gave an interview in which he confirmed that his group received direct military assistance from Russian armed forces during the Battle of Debaltseve. The Russian military he encountered told him that they had been instructed to say they were on a training operation, but had entered Ukraine covertly for the purpose of active military service.

321. During the period between February and May 2015, the OHCHR recorded a continuing pattern of human rights violations in areas under the control of pro-Russian armed groups:

“Serious human rights abuses, intimidation and harassment of the local population perpetrated by the armed groups continued to be reported. The [OHCHR] received new allegations of killings, torture and ill-treatment, as well as cases of illegal deprivation of liberty, forced labour, looting, ransom demands and extortion of money on the territories controlled by the armed groups. Persecution and intimidation of people suspected of supporting the Ukrainian armed forces or being pro-Ukrainian remained widespread. At times, the armed groups did not permit [OHCHR] to access areas where violations of human right have reportedly been taking place, or it was not possible for security reasons.”<sup>370</sup>

322. OHCHR also recorded the details of other acts of torture perpetrated against detainees during this period. By way of example:

“On 5 May the [OHCHR] interviewed a woman, who had been abducted on 22 May 2014 and illegally deprived of her liberty for five days by the ‘traffic police’ and members of the armed groups of ‘Donetsk People’s Republic’ for assisting the Ukrainian armed forces. She reported having been blindfolded and beaten every two hours on the head and the legs, including with a blunt object which she could not identify. During her interrogation, she was reportedly tied to a chair, with her arms twisted behind the back of the chair. She claims that her captors beat another detainee to death in her presence. They also reportedly subjected her to a mock execution twice: once she was shot with a blank cartridge; another time, shots were fired above her head while she stood against a wall; and she was forced to play ‘Russian roulette’. She also reported an attempted rape by a group of men.”<sup>371</sup>

And:

“On 6 May, the [OHCHR] interviewed a man who had been illegally deprived liberty in a ‘base’ of a ‘Cossack’ armed group in Donetsk from 1 to 28 February. He reportedly witnessed other captives being beaten, including with rifle butts. His cellmate told him he had been tortured with electric current and had his ears cut. Some captives reportedly told him that another detainee (with whom he shared a cell) was taken for interrogation and probably tortured to death.”<sup>372</sup>

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<sup>370</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHRReportUkraine.pdf>

<sup>371</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHRReportUkraine.pdf>

<sup>372</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHRReportUkraine.pdf>

323. Despite the Russian Federation's continuing and wholly implausible denials of direct involvement in the military conflict in eastern Ukraine, a Russian Major was detained near Donetsk in May 2015, while driving an ammunition truck<sup>373</sup>. There was no comment on his arrest from the Russian Government and no attempt by the Russian military to explain or justify his presence on the sovereign territory of Ukraine, whilst in possession of ammunition re-supplies for the fighters. Nonetheless, in a prisoner exchange, the Russian army Major was later acknowledged by the Russian Government and exchanged for captured Ukrainian soldiers.<sup>374</sup> According to the *Putin.War* report, two suspected Russian GRU agents were detained by Ukrainian forces during May 2015. On this occasion, Russia's Ministry of Defense stated the men were former soldiers who were not on active duty at the time of capture. The two men were later exchanged for captured Ukrainian pilot Nadiya Savchenko.<sup>375</sup>

324. In the period between May and August 2015, OHCHR noted that ongoing armed hostilities were "fuelled by the presence and continuing influx of foreign fighters and sophisticated weapons and ammunition from the Russian Federation".<sup>376</sup> Also, during this three month period, the OHCHR "continued to receive and verify allegations of killings, abductions, torture and ill-treatment, sexual violence, forced labour, ransom demands and extortion of money on the territories controlled by the 'Donetsk Peoples Republic' and the 'Luhansk People's Republic'." <sup>377</sup> It also "received reports of isolated incidents where armed groups disrupted religious services and intimidated several religious communities". <sup>378</sup>

325. During the second half of 2015 (from August to November) OHCHR recorded that the Russian Federation "continued to send white-truck convoys without the full consent or inspection of Ukraine" and noted that "their exact destination and content could not be verified". <sup>379</sup> OHCHR concluded that the absence of Ukrainian Government control over sections of the border in Donetsk and Luhansk oblasts "continued to facilitate an inflow of ammunition, weaponry and fighters from the Russian Federation to the territories controlled by the armed groups, which carries latent risks of a resurgence of hostilities". <sup>380</sup> During this time, the OHCHR also recorded that:

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<sup>373</sup> See [Tab 75] Judgment against Yerofeyev Ye.V. and Aleksandrov A.A. in Appendix 4;

<sup>374</sup> <https://www.themoscowtimes.com/2015/12/01/captured-russian-major-pardoned-by-kiev-a51010>

<sup>375</sup> <https://openrussia.org/s/tmp/files/Putin-War.pdf>

<sup>376</sup> <https://www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf>

<sup>377</sup> <https://www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf>

<sup>378</sup> <https://www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf>

<sup>379</sup> <https://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

<sup>380</sup> <https://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

“Serious human rights abuses against the population residing in the territories controlled by the self-proclaimed ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’ continued to be reported, with new allegations of killings, torture and ill-treatment, illegal detention and forced labour received by the [OHCHR]. Local residents continued to remain without any effective protection of their rights.”<sup>381</sup>

326. In terms of legal responsibility for the pattern of violations, the OHCHR position was clear and unambiguous:

“[OHCHR] reiterates that the ‘officials’ of the ‘Donetsk People’s Republic’ and the ‘Luhansk People’s Republic’ are responsible and shall be held accountable for human rights abuses committed on territories under their control. This particularly applies to people bearing direct command responsibility for the actions of perpetrators.”

327. During this reporting period, OHCHR also received further detailed reports of torture and ill-treatment in the custody of Russian proxies in Donetsk oblast. There were reports of severe ill-treatment, forced labour and torture by mock execution, beatings and electrocution. The victims were non-combatants, including women and, in one instance, a man with a mental disability. In August 2015, a mass grave was discovered in Brianka, which the OHCHR recorded:<sup>382</sup>

“In August 2015, 17 bodies were reportedly recovered in the town of Brianka (Luhansk region). The bodies were allegedly victims of the so-called ‘Brianka SSSR’ battalion, an armed group which has been controlling the town since April 2014. According to a former member of the battalion who fled to the Russian Federation, fearing for her life, the battalion was stationed some four kilometres from the contact line, and was never involved in direct hostilities. It reportedly kept the entire town under terror as its members reportedly targeted everyone – civilians (for instance because they were drunk or violated curfew), members of other armed groups, or of their own fellows. There were reportedly no requirements set for recruiting new members in the battalion. Whoever was coming would receive meals and weapons. Members of the battalion reportedly committed grave human rights abuses, including executions, rapes, abductions, torture and ill-treatment.”

328. Since that time, there have been numerous reports of extrajudicial executions, unlawful abductions and disappearances, acts of torture and inhuman treatment, constituting a pattern (or administrative practice) of violations of articles 2, 3 and 5 of the Convention. In these regions, those supporting Ukrainian sovereignty have been subjected to a campaign of persecution, and their political rights to freedom of expression and association have been comprehensively suppressed.

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<sup>381</sup> <https://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

<sup>382</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

329. On 25 June 2015, the Parliamentary Assembly of the Council of Europe adopted Resolution 2067 (2015) concerning the fate of killed and missing persons. The Assembly recorded the official estimate of 1300 people who had been reported missing, noting that this included not only members of the Ukrainian military who were unaccounted for, but also “civilians, including volunteers who were helping victims of the conflict”. The Assembly concluded that the actual figure was likely to be “certainly higher”.<sup>383</sup>

330. Consistent with the Russian Government’s stance of maintaining false denials of involvement in the conflict, President Putin classified information on the number of Russian special forces killed in the conflict as a state secret. In its 25 June Resolution, the Parliamentary Assembly “deplored” this decision, and called upon the Russian Federation to provide “accurate information on the fate and whereabouts” of the missing Russian personnel. It also called on Russia to release all prisoners illegally captured in Ukraine; to exert pressure on the separatist groups to do the same; and to establish effective accountability mechanisms to investigate and prosecute those responsible for “abduction, enforced disappearances, torture and politically motivated killings”.<sup>384</sup>

331. A new ceasefire was announced on 1 September 2015<sup>385</sup>, but armed groups almost immediately began to violate it. In its report covering the period from November 2015 to February 2016, the OHCHR noted that the absence of Government control over the international border running through regions occupied by Russia’s proxies in the DPR and LPR continued to facilitate “an inflow of ammunition, weaponry and fighters from the Russian Federation to the territories controlled by the armed groups”.<sup>386</sup> The OHCHR adopted and endorsed the assessment of the OSCE concerning the extent of Russian military interference across the border:

“According to the OSCE, men and women in military-style clothing have continued to daily cross the border between Donetsk and the Russian Federation. The Government of Ukraine did not have effective control over considerable parts of the border with the Russian Federation (in certain districts of Donetsk and Luhansk regions). Reportedly, this allowed for transfers of arms and ammunition. The continued occurrences of indiscriminate shelling and presence of anti-personnel mines that cause civilian casualties in the conflict affected area raise concerns about the inflow of weapons. OHCHR recalls that arms should not be transferred in situations where there is a substantial risk that they could be used in serious violations or abuses of international human rights or humanitarian law.”<sup>387</sup>

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<sup>383</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21970&lang=en>

<sup>384</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21970&lang=en>

<sup>385</sup> “Ukraine and rebels to implement Minsk deal by September 1”; “Ukraine ceasefire talks ‘make significant progress’”

<sup>386</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf)

<sup>387</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf)

332. Reports of human rights violations in the occupied territory continued unabated:

“Residents of territories under the armed groups’ control are particularly vulnerable to human rights abuses, which are exacerbated by the absence of the rule of law and any real protection. OHCHR continued to receive and verify allegations of killings, arbitrary and incommunicado detention, torture and ill-treatment in the ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’... OHCHR is concerned about the situation of individuals deprived of their liberty in the territories controlled by armed groups, due to the complete absence of due process and redress mechanisms.”<sup>388</sup>

333. On 17 December 2015, President Putin stated in a response to a question about the detained Russian GRU agents held in Ukraine that Russia had “people (in Ukraine) who work on resolving various issues there, including in the military sphere.” However, he went on to state “that doesn’t mean there are regular Russian troops there.”

334. On 5 February 2016, the International Crisis Group published a report entitled *Russia and the Separatists in Eastern Ukraine*. The report documented the continuing relationship of economic, political and military dependency:

“Moscow has begun in the past four or five months to bankroll pensions, social benefits and salaries to local officials and the separatist military forces. If consistently maintained, this will cost it over \$1 billion a year, a substantial sum for the Russian treasury in straitened economic times.

Meanwhile, in addition to the many troops Russia retains on its side of the border who can deploy quickly throughout the DNR and LNR, separatist sources and Western officials say, it has a number of units inside the entities. One of the most useful steps Moscow could take to demonstrate its willingness to help resolve the conflict would be to quietly withdraw those units. This would substantially increase Ukrainian and Western confidence that it is indeed committed to Minsk.

Another important step for Russia would be to reduce military supplies to the entities. Cuts in fuel, lubricants and ammunition for artillery and other heavy weapons would gradually diminish their forces’ mobility and effectiveness.

Until there is a clearly positive change in the core Russian approach, the international community needs to build its policy toward Moscow over eastern Ukraine on the assumption that anything, including more serious fighting, is possible.

[L]arge Russian units have already fought twice in Ukraine, once (February 2015) even during peace talks. Moscow could resort to such means again should the lower-cost, lower-visibility approach of supporting the entities in a protracted conflict fail.”<sup>389</sup>

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<sup>388</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf)

<sup>389</sup> <https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/russia-and-separatists-eastern-ukraine>

335. On 21 April 2016, the Parliamentary Assembly of the Council of Europe adopted Resolution 2221 (2016) addressing the humanitarian situation of people taken prisoner during the conflict. The Assembly noted that “hundreds of Ukrainian servicemen and civilians have been reported captured or abducted” as the result of “the Russian military aggression in Ukraine”. PACE urged the authorities of the Russian Federation to “use their influence over the separatist groups which control the occupied territories in the Donetsk and Luhansk regions to urge them to release all Ukrainian captives”. The Assembly also urged the DPR and the LPR to release those being held and to “stop all violations of human rights, in particular the abduction, torture and politically motivated killing of Ukrainian citizens”.<sup>390</sup>

336. In its 14<sup>th</sup> Report, published in May 2016, OHCHR summarised the overall human rights situation in eastern Ukraine over the period since the conflict began in these terms:

“The self-proclaimed ‘Donetsk People’s Republic’ and self-proclaimed ‘Luhansk People’s Republic’ have undermined the human rights of an estimated 2.7 million people residing under their control. They have imposed an arbitrary system of rules, established a network of places of deprivation of liberty where detainees are tortured and ill-treated, and cracked down on dissent. The ‘ministry of state security’ of the ‘Donetsk People’s Republic’ has emerged as the main entity responsible for carrying out repressive house searches, arrests, and detentions. Many depend on humanitarian assistance, which has been severely curtailed following the decisions of the ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’ to deny the majority of humanitarian actors access to territories under their control, particularly those conducting protection activities.”<sup>391</sup>

The report noted that OHCHR continued to receive information about “poor conditions of detention, arbitrary and incommunicado detention, torture and ill-treatment” and the detention by armed groups of civilians seeking to cross the contact line.<sup>392</sup>

337. On 25 May 2016, OHCHR published a separate report into questions of accountability for violations of the right to life in Ukraine since the conflict began.<sup>393</sup> The report concluded that:

“The armed conflict in certain districts of Donetsk and Luhansk regions, which has been ongoing since mid-April 2014 and which is fuelled by the inflow of foreign fighters and weapons from the Russian Federation, including former servicemen and servicemen on leave, accounts for the majority of violations of the right to life in Ukraine over the last two years. OHCHR estimates that between mid-April 2014 and 31 May 2016, at least 9,404 people, of which up to 2,000 are civilians, have been killed as a result of the conflict.”<sup>394</sup>

OHCHR identified several Russian-backed armed groups as responsible for arbitrary killings.

“OHCHR was able to establish incidents of arbitrary killings allegedly committed by armed groups, either under effective control of the self-proclaimed ‘Donetsk people’s republic’ or

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<sup>390</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=22750&lang=en>

<sup>391</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_14th\\_HRMMU\\_Report.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf)

<sup>392</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_14th\\_HRMMU\\_Report.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf)

<sup>393</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>394</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

the self-proclaimed 'Luhansk people's republic', or by those which acted independently (such as Cossack groups). In some cases, presented in this report, members of the following armed groups were allegedly involved: 'Brianka SSSR', 'International Piatnashki battalion', 'Kerch', 'Odessa', 'Rus', 'Somali', 'Sparta', 'Vostok' and 'Zaria'." <sup>395</sup>

338. On 2 August 2016, the SMM (OSCE) encountered a contingent of Russian military forces guarding a DPR weapons holding area:

"The SMM found that all weapons previously recorded at three "DPR" sites were *in situ*. An armed man guarding the facility at one of the sites claimed that he and those present at the site were part of the 16th airborne brigade from Orenburg, Russian Federation. They did not wear identifying insignia." <sup>396</sup>

339. During the second half of 2016, OHCHR noted an escalation of military exchanges along the contact line, observing that the "inflow of ammunition, weaponry and fighters from the Russian Federation continues to fuel the conflict". In particular, the OHCHR expressed its "serious concerns that the proliferation of arms and ammunition facilitates human rights violations or abuses and violations of international humanitarian law". <sup>397</sup> The OHCHR noted that during the period (between 16 May and 15 August 2015):

"Civilians living in the conflict-affected area continued to be deprived of much needed protection, access to basic services and humanitarian aid, aggravated by restrictions in freedom of movement. Those living in areas controlled by the armed groups are subject to arbitrary rule and various human rights abuses. Parallel structures developed by the armed groups affect the inalienable rights of people living under their control. There is no mechanism for victims of these structures to secure protection or redress. This is rarely articulated due to the lack of space for civil society actors and for people to exercise their rights to freedom of peaceful assembly, association, opinion and expression in armed group controlled areas". <sup>398</sup>

Later the OHCHR documented:

"In October 2016, a man was detained at a checkpoint controlled by armed groups in Donetsk region and brought to a 'police unit' in Donetsk. He was interrogated on three occasions, and severely kicked and beaten with fists and a truncheon while handcuffed. Three 67 HRMMU interview, 13 April 2017. 68 HRMMU interview, 21 February 2017. 69 HRMMU interview, 21 February 2017. 70 See OHCHR report OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 66. 14 or four times, a plastic bag was put over his head, causing him to suffocate. One of the interrogators threatened to cut off one of his fingers, and made him believe this act was imminent. Another perpetrator threatened him with a gun, saying his body would be found in the river. The victim was also subjected to electric shocks on his back, head and the flank of his body. He was released in December 2016." <sup>399</sup>

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<sup>395</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>396</sup> <https://www.osce.org/ukraine-smm/175736>

<sup>397</sup> <https://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf>

<sup>398</sup> <https://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf>

<sup>399</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport18th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf)

340. On 12 October 2016, the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 2133 (2016) concerning the availability of legal remedies for human rights violations on the territory of Ukraine that was outside Government control. The PACE resolution reflects a clear conclusion of the Parliamentary branch of the Council of Europe that Russia bears legal responsibility for a widespread campaign of human rights violations in Donbass, and that the only potential legal remedy lies with the jurisdiction of the European Court of Human Rights.

341. That proposition is spelled out in three stages. PACE first declared the occupation of Donbass illegal and invalid, and reaffirmed its position that “the military intervention by Russian forces in eastern Ukraine” violated international law and the principles upheld by the Council of Europe. It went on to state that the DPR and LPR had been “established, supported and effectively controlled by the Russian Federation” and that they “are not legitimate under Ukrainian or international law”. PACE explicitly resolved that the “institutions” of those two entities (including the “courts” established by their *de facto* authorities) are equally illegitimate.<sup>400</sup>

342. Secondly, PACE unequivocally concluded that the Russian Federation was in effective control of the territory occupied by the DPR and LPR. In reaching this conclusion, the Assembly faithfully applied the legal test for effective control laid down in this Court’s caselaw:

“In the “DPR” and the “LPR”, effective control is based on the crucial and well-documented role of Russian military personnel in taking over and maintaining power in these regions, against the determined resistance of the legitimate Ukrainian authorities, and on the complete dependence of these regions on Russia in logistical, financial and administrative matters.”<sup>401</sup>

343. On this basis, PACE concluded that:

“Under international law, the Russian Federation, which exercises *de facto* control over these territories, is responsible for the protection of their populations. Russia must therefore guarantee the human rights of all inhabitants... of the ‘DPR’ and ‘LPR’.”

344. Thirdly, the Assembly declared that in the areas of the Ukrainian Donbass that were under Russia’s effective control, there had been a widespread pattern of grave Convention violations:

“In the conflict zone in the Donbas region, the civilian population and a large number of combatants were subjected to violations of their rights life and physical integrity and to the free enjoyment of property, as a result of war crimes and crimes against humanity including the indiscriminate or even intentional shelling of civilian areas.”<sup>402</sup>

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<sup>400</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23167&lang=en>

<sup>401</sup> *Ibid.*

<sup>402</sup> *Ibid.*



345. In view of its prior conclusion on Russia's effective control of these territories, the Assembly's finding that war crimes and crimes against humanity had been committed by pro-Russian forces on Donbass necessary amounts to a conclusion that these violations are legally attributable to the Russian Federation. And in light of its findings that Ukraine had lost control of the territory, and that the "courts" of the *de facto* "administrations" in the DPR and LPR are illegal and illegitimate, the Assembly resolution carries the necessarily implication that the European Court of Human Rights is the only effective legal remedy available.

346. The continuing absence of the effective operation of the rule of law in the occupied territories was described in the OHCHR's 16<sup>th</sup> report, covering the period between August and November 2016:

"The 'Donetsk People's Republic' and 'Luhansk People's Republic' armed groups continue to deprive of liberty an unknown number of people. During the reporting period, despite repeated requests, armed groups continued to deny OHCHR unfettered access to places of deprivation of liberty... OHCHR monitoring has highlighted the vulnerability of persons living in armed groups controlled territories to arbitrary and selective sanctions from what the armed groups refer to as 'courts', 'judges' and 'prosecutors'."<sup>403</sup>

347. OHCHR concluded that the "judicial" institutions set up by the Russian subordinate local administrations failed to meet any recognisable standard of due process, and expressed the view that tens of thousands of citizens had been subjected to summary justice without due process:

"OHCHR continued to monitor the human rights impact of what the armed groups refer to as 'courts', 'judges' and 'prosecutors'. These structures do not comply with the right 'to a fair and public hearing by a competent, independent and impartial tribunal established by law' as enshrined in article 14 of the ICCPR. OHCHR notes that both international human rights and humanitarian law incorporate a series of judicial guarantees, such as trial by an independent, impartial and regularly constituted court. These structures in the 'Donetsk People's Republic' and 'Luhansk People's Republic', *prima facie*, do not meet these requirements. ... In two years, these 'courts' have heard 57,119 cases. If accurate, tens of thousands of people living in the 'Donetsk People's Republic' have been subject to what appears to be summary decisions without access to legal remedy'.<sup>404</sup>

Indeed, OHCHR concluded that criminal charges were also being pursued against Ukrainian service personnel in the "courts" established in the DPR and LPR, and observed that these irregular "legal proceedings" may, in themselves, constitute the commission of a war crime:

"OHCHR was informed that Ukrainian soldiers captured in the course of hostilities are also 'prosecuted' in 'Donetsk People's Republic' 'courts'... OHCHR recalls that the sentencing of an individual by the 'Donetsk People's Republic' without due process or basic judicial guarantees including trial by an independent, impartial and regularly constituted court,

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<sup>403</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport16th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf)

<sup>404</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport16th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf)

may amount to a war crime and violations of international human rights law.”<sup>405</sup>

348. According OHCHR, the inflow of foreign fighters, ammunition and heavy weapons continued steadily throughout the period between November 2016 to February 2017.<sup>406</sup> The practice of unlawful abduction continued, and the OHCHR recorded that those living in areas controlled by the DPR and LPR were persistently vulnerable to “arbitrary and selective sanctions”.<sup>407</sup> OHCHR noted the adverse impact on citizen’s freedom of movement across the contact line during this period.

“Through undermining freedom of movement, the contact line continued to isolate and divide communities in conflict-affected areas. On a daily basis, on average between 16,000 and 25,000 civilians wait for hours in degrading conditions to cross one of only five available checkpoints in freezing temperatures. Long queues in heavily mined and poorly marked areas endanger civilians. These disproportionate restrictions, which affect more than 700,000 people per month, impact the ability of families and communities to maintain links, obtain basic goods, access public services and livelihoods, and check on their property. The divisive effect of these restrictions may hamper efforts to establish lasting peace in Ukraine. Limitations on freedom of opinion and expression in territory controlled by armed groups were tightened during this reporting period and exacerbated the isolation and division.”

349. OHCHR was also gravely concerned about the continuing pattern of abductions nearly three years after the conflict had begun, and drew certain conclusions about the patterns of conduct of the various armed groups in detaining and ill-treating civilians at the end of 2016 and the beginning of 2017. In particular, OHCHR noted that certain armed groups were operating a database of civilians who were perceived to have pro-Ukrainian sympathies and targeting people on the database for arbitrary arrest and detention:

“During the reporting period, armed groups of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ continued to detain individuals whom they suspected of affiliation with the Ukrainian Armed Forces or law enforcement institutions, or for having ‘pro-Ukrainian’ views. Current and former civil servants, including justice officials and representatives of local administrations from territory controlled by the Government, were often targeted. With the establishment of a database of ‘pro-Ukrainian’ individuals, the number of individuals detained at checkpoints staffed by armed groups known to OHCHR increased during the reporting period.

In November 2016, a woman, the acting head of a Government-controlled village close to the contact line, was detained at a checkpoint controlled by armed groups of ‘Donetsk people’s republic’. She was released after being held for 30 days in temporary detention facility (ITT) in Donetsk. A man who used to work as a prosecutor in Luhansk before the conflict, and had moved to territory controlled by the Government to continue working as prosecutor, had recently retired and returned to Luhansk. There he informed the ‘ministry of state security’ of his return. When he did, in mid-November 2016, he was questioned for three hours. On 23 November, he was again called by the ‘ministry’ to answer additional questions, where he was detained and his family did not

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<sup>405</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport16th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf)

<sup>406</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf)

<sup>407</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf)

receive any information about his whereabouts until 18 December 2016, when he was released, but strongly ‘advised’ to leave territory controlled by the ‘Luhansk people’s republic’.

Patterns of detention by the armed groups differ. The ‘Donetsk people’s republic’ armed groups initially hold some individuals for 10 to 30 days in so-called ‘administrative detention’ in ITT and release them after finding them ‘non-complicit’, while others are detained for longer, often indefinite, periods of time and placed either in ITT, SIZOs, or other places of detention. The ‘Luhansk people’s republic’ ‘ministry of state security’ holds individuals for an initial period, prior to transferring them to SIZOs. Several victims were subjected to intimidation and physical abuse, especially immediately after their apprehension. In the absence of effective access to places of detention in territory controlled by armed groups, OHCHR was not in a position to comprehensively monitor the situation of people detained by armed groups and had to rely on the accounts of those released. The lack of access to detainees heightens concerns that they may be subjected to torture and ill-treatment.”<sup>408</sup>

350. Ukrainian civilians were subject to continued military attacks, particularly during the relentless and indiscriminate shelling of Avdiivka in January and February of 2017. On 31 January 2017, the President of the UN Security Council, Olof Skoog, issued a press statement expressing grave concern about the recent deterioration of the situation in Donetsk:

“The members of the Security Council expressed grave concern about the dangerous deterioration of the situation in eastern Ukraine and its severe impact on the local civilian population. The members of the Security Council condemned the use of weapons prohibited by the Minsk Agreements along the contact line in the Donetsk region that led to deaths and injuries, including among civilians. The members of the Security Council expressed their full support for the sovereignty and territorial integrity of Ukraine and underlined the need for strict compliance with resolution 2202 (2015), which endorsed the “Package of measures for the implementation of the Minsk Agreements”. The members of the Security Council called for an immediate return to a ceasefire regime”<sup>409</sup>

351. On 16 February 2017, OHCHR published a report into the use of conflict-related sexual violence during the conflict in eastern Ukraine.<sup>410</sup> The report noted:

“According to allegations recorded, men are subjected to more severe and prolonged torture than women. At the same time, women deprived of their liberty by armed groups have been more vulnerable to becoming victims of rape and gang rape often as a result of general lawlessness, the overall climate of impunity, the lack of a clear chain of command and clear orders and instructions prohibiting sexual violence, armed group members having unrestricted access to people deprived of liberty, and the absence of independent oversight or monitoring. Sexual violence occurred particularly often in the early stages of the conflict in 2014, when different armed groups each administered various places of deprivation of liberty.”

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<sup>408</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf)

<sup>409</sup> <https://www.un.org/press/en/2017/sc12700.doc.htm>

<sup>410</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportCRSV\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf)

352. In February 2017 the Deputy Head of the SMM (OSCE) in Ukraine Alexander Hug stated that he and other monitors had met separatist soldiers who identified themselves as soldiers of units of the Russian army. The following day, on 18 February 2017, President Putin signed a decree authorising Russian authorities to formally recognise and accept personal identification documents, and vehicle registration documents, that had been issued by the DPR and LPR. Ukraine strongly objected to the decree as a clear violation of the Minsk II agreement and that it "legally recognized" the status of the armed groups as "governmental" authorities in the region. The Secretary-General of the OSCE also criticized the development, stating on 19 February 2017 the decree implied recognition of the unlawful entities that were responsible for issuing the documents, which would make it more difficult to hold secure a lasting peaceful solution.<sup>411</sup>

353. On 19 April 2017, the International Court of Justice issued an Order on provisional measures in proceedings brought by Ukraine against the Russian Federation. Amongst other things, the Court ordered the State parties to work towards the full implementation of the "Package of Measures" agreed on 12 February 2015 in Minsk, in order to achieve a peaceful settlement of the conflict in eastern Ukraine.

354. However, as recently as May 2017, the DPR leader Oleksandr Zakharchenko made it clear that Russia's proxies were still aiming to secure the formal annexation of those parts of Donbass that were controlled by the paramilitaries to the territory of the Russian Federation. According to the International Crisis Group;

"Even long after Minsk II, Zakharchenko continued to espouse integration not with Ukraine but with Russia. "Russia is our motherland and everything that we are doing is so that we can ... become one people", he said in May 2017. "Unfortunately, history has divided us, but people change history. And we are all going to change history together. We have one aim – to return to our motherland".<sup>412</sup>

355. During the fourth summer of the conflict, "armed hostilities persisted in an unpredictable and fluctuating manner", according to OHCHR.<sup>413</sup> During this period:

"OHCHR documented new cases during the reporting period in which individuals have been subjected to enforced disappearance, particularly in territory controlled by armed groups. In many cases, individuals were held incommunicado for at least a month. One interlocutor told HRMMU this was an established practice used by the 'ministry of state security' ('MGB') in 'Luhansk people's republic' in order to hold a suspect until there was enough evidence to bring a 'charge'.

356. There were further attempts to secure a durable ceasefire in late June 2017, late August 2017, and late December 2017, all of which collapsed soon after they were announced, when armed groups

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<sup>411</sup> "Указ о признании документов, выданных гражданам Украины и лицам без гражданства, проживающим на территориях отдельных районов Донецкой и Луганской областей Украины"

<sup>412</sup> <https://www.youtube.com/watch?v=ayqTVhm4roY>

<sup>413</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf)

resumed active hostilities. In its 20<sup>th</sup> Report for the period August to November 2017, OHCHR recorded that:

“Within structures in territory controlled by armed groups, arbitrary detentions and ‘prosecutions’ were compounded by the lack of recourse to effective remedy. This is of particular concern given the ‘pronouncement’ of a second ‘death penalty’ by the ‘supreme court’ of the ‘Donetsk people’s republic’ in November. The practice of incommunicado detentions, which often amounted to enforced disappearance, also persisted.

The escalation that took place by the end of the reporting period, in the first two weeks of November, indicates that achieving a sustainable peace requires full compliance with the Minsk agreements. Meanwhile, sporadic and unpredictable spikes in the armed hostilities further exacerbated the situation of general insecurity for civilians living in conflict-affected areas, and in particular, those close to the contact line.”<sup>414</sup>

357. OHCHR also noted in this report the continuing repression of religious minorities, and the freedom of religion and belief, in clear and continuing violation of article 9 of the Convention:

“Freedom of religion or belief continued to be infringed upon in territory controlled by armed groups, with particular targeting of Jehovah’s Witnesses. OHCHR has been monitoring the implementation of a ‘law’ adopted in territory controlled by ‘Luhansk people’s republic’ on 2 February, which bans all “religious groups” not directly linked to “traditional” religions.”

358. On 18 January 2018, the Parliament of Ukraine adopted a law “on particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine”. Its aim was to provide a new legal framework to re-establish Ukrainian Government control over the regions. It formally recognized the areas controlled by Russia’s proxies as “temporarily occupied territories”, and labelled the Russian Federation as an “aggressor”. The legislation granted President Poroshenko the right to use military force inside the country, without consent from the Ukrainian parliament”. Under the legislation, the only separatist-issued documents that Ukraine would recognize are birth and death certificates. The new law entered into force on 24 February 2018.

359. On 23 January 2018, PACE adopted Resolution 2198 (2018) on the humanitarian consequences of the war in Ukraine. PACE attributed these consequences directly to the Russian State’s military aggression against Ukraine:

“The Parliamentary Assembly is alarmed by the humanitarian situation resulting from the ongoing Russian war against Ukraine, which is taking place in certain areas of the Donetsk and Luhansk regions... More than 4 million people are in need of humanitarian assistance. The armed conflict has taken the lives of more than 10,000 people. The number of people injured during the war has reached more than 24,000. In addition, more than 1.6 million

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<sup>414</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport20th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport20th_EN.pdf)

people are internally displaced.”<sup>415</sup>

360. In its report for the period February to May 2018, OHCHR documented the continuing practice of unlawful detentions in areas occupied by the armed groups:

In ‘Donetsk people’s republic’, the ‘ministry of state security’ (‘MGB’), ‘UBOP’84 and other structures continued applying ‘administrative arrest’, raising concerns of arbitrary incommunicado detention and other human rights abuses. As previously documented, civilians were most often detained at entry-exit checkpoints at crossing routes along the contact line. Within the reporting period, OHCHR documented seven cases (five of which occurred in 2018) involving eleven victims, who were detained while attempting to cross the contact line. Five cases occurred in territory controlled by armed groups of the ‘Donetsk people’s republic’. OHCHR also documented cases of three individuals detained in 2018 either at their homes, or near their workplace. In these cases, relatives could not receive information about the whereabouts of the detained person, particularly during the initial stage of detention, amounting to enforced disappearance.”

361. A further source of concern, according to OHCHR, was the continuing suppression of independent media reporting, in obvious violation of the right to freedom of expression:

“The space for freedom of expression and freedom of media remains highly restricted in territory controlled by armed groups. With few critical voices publicly expressed in this territory, OHCHR is concerned that they may have been silenced, including by means of intimidation, expropriation of property and deprivation of liberty. During the reporting period, OHCHR documented four cases when civilians were detained, in relation to expressing pro-Ukrainian views in public and in social media, or being critical towards the ‘authorities’.”<sup>416</sup>

362. On 11 July 2018, NATO adopted its Brussels Declaration, following a Summit Meeting of NATO Heads of State and Government.<sup>417</sup> In the Declaration, NATO condemned the Russian Federation’s “ongoing destabilisation of eastern Ukraine” and called on Russia to withdraw its forces illegally stationed on Ukrainian territory.<sup>418</sup> The statement emphasised that the route to a peaceful solution required Russia to cease the provision of economic and military support to its proxies, and to withdraw its troops from Ukrainian territory:

“We call for the full implementation of the Minsk Agreements by all sides, and support the efforts of the Normandy format and the Trilateral Contact Group. NATO’s response is in support of this overall effort, which includes sanctions as decided by the European Union (EU), the G7, and others, to promote a peaceful solution to the conflict and to address Russia’s actions. We urge Russia to cease all political, financial, and military support to militant groups and stop intervening militarily in the Donetsk and Luhansk regions and to withdraw troops, equipment and mercenaries from the territory of Ukraine, and return to the Joint Centre for Control and Co-ordination. We are deeply concerned by the use of torture and the transfer of Ukrainian citizens to prisons in Russia. We stress the importance of the safety and full and unhindered access for the Organisation for Security

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<sup>415</sup> <https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=24432&lang=en>

<sup>416</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018_EN.pdf)

<sup>417</sup> [https://www.nato.int/cps/en/natohq/official\\_texts\\_156624.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/official_texts_156624.htm?selectedLocale=en)

<sup>418</sup> [https://www.nato.int/cps/en/natohq/official\\_texts\\_156624.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/official_texts_156624.htm?selectedLocale=en)

and Co-operation in Europe (OSCE) Special Monitoring Mission, up to and including the Russia-Ukraine border.”<sup>419</sup>

363. The following day, the Chairman of NATO issued a statement underscoring Russia’s responsibility for the conflict, and for resulting the humanitarian disaster. He called on Russia to withdraw its troops and to cease providing financial and military support to its proxies in the region:

“The ongoing conflict in eastern Ukraine, instigated and perpetuated by Russia, remains a major challenge to Euro-Atlantic security, and has produced a humanitarian catastrophe in the Donbas. This has led to the loss of more than 10,000 lives and displaced over 1.5 million Ukrainian citizens. Allies and Ukraine reaffirmed their support for the settlement of the conflict by diplomatic means in accordance with the Minsk Agreements and welcomed the efforts of the Normandy format in this regard. They urged all parties to comply fully with the commitments to which they signed up. Russia, as a party to the Minsk Agreements, bears significant responsibility in this regard. NATO and Ukraine called on Russia to withdraw its forces and to cease all political, financial and military support to the Russian-led militants in the Donetsk and Luhansk regions.”<sup>420</sup>

364. In August 2018, a drone belonging to the SMM (OSCE) filmed a large military convoy crossing at night the border in both directions through an unguarded dirt track near Manych village.

“The Mission’s long-range unmanned aerial vehicle spotted convoys of trucks entering and exiting Ukraine via a dirt track where there are no border crossing facilities in a nongovernment-controlled area of Donetsk region in the middle of the night”

365. According to one report in October 2018, Russian military forces disabled an SMM (OSCE) observation drone:

“A drone used by the OSCE’s Special Monitoring Mission in Donbas was ‘lost’ during the early hours of 27 October, soon after experiencing signal interference, or ‘jamming’, as it reported movement of a Russian convoy of trucks and of a surface-to air missile system in non-government-controlled area. While there is no proof that the drone was brought down deliberately, this is not the first time that jamming has been used to prevent the equipment recording the movement of Russian convoys, including one mounted with an anti-aircraft gun, travelling at night on dirt roads to or from the border with the Russian Federation where there is no official border crossing.”<sup>421</sup>

366. However, the SMM (OSCE) aerial monitoring has continued, with reports of cross-border night-time traffic carrying on well into 2019:

“Another convoy of military trucks has been spotted near the Russian Federation’s border with non-government-controlled Donbas. Since the trucks were travelling by night on an unpaved road where there is no official border crossing, it seems safe to conclude that the trucks themselves, as well as what they were carrying, were not supposed to be seen.”<sup>422</sup>

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<sup>419</sup> [https://www.nato.int/cps/en/natohq/official\\_texts\\_156624.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/official_texts_156624.htm?selectedLocale=en)

<sup>420</sup> [https://www.nato.int/cps/en/natohq/official\\_texts\\_156623.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/official_texts_156623.htm?selectedLocale=en)

<sup>421</sup> <http://khpg.org/en/index.php?id=1540757123>

<sup>422</sup> <http://khpg.org/en/index.php?id=1559781496>

367. On 11 November 2018, following the ‘elections’ in eastern Ukraine, NATO issued a public statement in which it said: “We continue to call on Russia to withdraw its forces and cease all support to militant groups in the Donetsk and Luhansk regions of Ukraine”.<sup>423</sup>

368. Nonetheless, the armed conflict has continued since then, with ongoing and unpredictable outbreaks of armed hostilities by Russia’s proxy forces in a number of areas along the contact line. Overall, there was a decreasing number of conflict-related civilian casualties. According to OHCHR there was a 53% drop in the number of civilian casualties during 2018, as compared with the previous year. The figures for conflict-related civilian loss of life were assessed by OHCHR to be at their lowest since the conflict began.

369. According to OHCHR’s recording, the total civilian death toll from the conflict, as at 15 February 2019, was assessed at 3,321 people. More than 80% of those civilian deaths had occurred before mid-February 2015, reflecting what the OHCHR described as the “long term positive impact of the Package of Measures to implement the Minsk Agreements on the decline of hostilities and civilian casualties since the adoption of the latter and the United Nations Security Council Resolution 2202 in February 2015”.<sup>424</sup>

#### **Further proof of Russian army engagements inside Ukraine**

370. In March 2015 the Royal United Services Institute published a report entitled *Russian Forces in Ukraine*, which estimated that approximately 42,000 Russian troops had been deployed in Ukraine over the year since the conflict began, and that there were between 9,000 and 12,000 Russian troops deployed in eastern Ukraine at the time of the report’s publication.<sup>425</sup> Its overall conclusion was that:

“There is evidence of Russian troops present in eastern Ukraine – not only in a command role and to operate advanced equipment, but as coherent fighting formations too. Those forces deployed to Ukraine, on or near the border, and in Crimea represent a serious and direct threat to Ukraine. That is due to the numbers of these Russian forces, which nearly matches that of all of Kiev’s available combat forces. Further, rebel forces more or less under Russian control number half the total of Russian troops. Hence, Kiev cannot generate or count on numerical superiority. The main strategic objective of Russian troops is to secure the continued existence of Russian-controlled ‘republics’ in eastern Ukraine. Yet Russia is having trouble sustaining its forces generated for the operation against Ukraine.”<sup>426</sup>

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<sup>423</sup> [https://www.nato.int/cps/en/natohq/news\\_160237.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/news_160237.htm?selectedLocale=en)

<sup>424</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019_EN.pdf)

<sup>425</sup> [https://www.webcitation.org/6Y4ei6Ide?url=https://www.rusi.org/downloads/assets/201503\\_BP\\_Russian\\_Forces\\_in\\_Ukraine\\_FINAL.pdf](https://www.webcitation.org/6Y4ei6Ide?url=https://www.rusi.org/downloads/assets/201503_BP_Russian_Forces_in_Ukraine_FINAL.pdf)

<sup>426</sup> [https://www.webcitation.org/6Y4ei6Ide?url=https://www.rusi.org/downloads/assets/201503\\_BP\\_Russian\\_Forces\\_in\\_Ukraine\\_FINAL.pdf](https://www.webcitation.org/6Y4ei6Ide?url=https://www.rusi.org/downloads/assets/201503_BP_Russian_Forces_in_Ukraine_FINAL.pdf)



371. The RUSI report plots the deployment of Russian troops in Ukraine from the time of the Summer offensive:

“The first operational successes of Ukrainian forces in late June and early July 2014 first prompted Russian artillery fire from within Russian territory, targeted against advancing Ukrainian troops on their own soil, from mid-July onwards. Direct intervention by Russian troops in combat roles then followed in the middle of August, when the prospect of rebel defeat had become realistic. The presence of large numbers of Russian troops on Ukrainian sovereign territory has, more or less, since become a permanent feature of the conflict. The first phase of large-scale incursions by regular Russian troops commenced on 11 August 2014 and has involved a substantial array of forces. Elements of some Russian reconnaissance and special operations units have operated on Ukrainian soil since 14 July (at the latest), comprising teams generated by six units. The Russian military operation against Ukraine is instructive, having been waged in accordance with the Gerasimov Doctrine of Ambiguous Warfare.<sup>1...</sup> Following their increasingly large-scale, direct and conventional involvement in combat against Ukrainian troops in the middle of August 2014, Russian troops in Ukraine numbered between 3,500 and 6,000–6,500 by the end of August 2014, according to different sources.”<sup>427</sup>

372. The report goes on to assess the fluctuation in Russian troop numbers inside Ukraine, and their rotation, before concluding that the number of Russian troops on Ukrainian territory by March 2015 was between 9,000 and 12,000. The report identifies a surge in Russian troop deployments over the period between December and January, followed by a major escalation of troop deployments in the immediate aftermath of the Minsk II agreement on 5 February 2015:

“[The] number fluctuated, reaching approximately 10,000 at the peak of direct Russian involvement in the middle of December 2014. The Russian Ministry of Defence (MoD) had to involve 117 combat and combat-support units to generate the approximately 42,000 troops rotating in the vicinity of the Russo-Ukrainian border: either stationed there, delivering artillery fire against Ukrainian territory from Russian soil, or directly participating in combat operations on Ukrainian sovereign territory. It is noteworthy that 104 of these 117 units have been involved in combat since autumn 2014 in either one of the two above mentioned forms – 3.5 times more than the number of military units involved in Crimea and in southeastern Ukraine over spring and summer 2014. The overall figure of Russian troops operating in eastern Ukraine reached approximately 9,000 by the last week of February 2015 and has increased by at least 1,500–2,000 personnel since then.

It is also worth noting that all but two of Russia’s ten field armies – the 35th and 5th Red Banner – contributed troops for the summer-autumn phase of the Ukrainian operation (military units from Ussuriysk and Vladivostok came from the Eastern Military District, not from the 5th Red Banner field army; see Figure 1). Military units from as far as Vladivostok and the Kuril Islands have been identified participating in the Ukraine operation. Furthermore, seven out of ten Russian field armies (namely, the 2nd Guards, 6th, 20th, 49th, 41st, 36th and 29th Field Armies) have had or still have all manoeuvre units within their commands mobilised in order to generate sufficient troops for the summer/autumn and winter stages of the Ukraine operation. The 58th Field Army mobilised all but one of its manoeuvre units, which is stationed abroad without direct

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<sup>427</sup>[https://www.webcitation.org/6Y4ei6Ide?url=https://www.rusi.org/downloads/assets/201503\\_BP\\_Russian\\_Forces\\_in\\_Ukraine\\_FINAL.pdf](https://www.webcitation.org/6Y4ei6Ide?url=https://www.rusi.org/downloads/assets/201503_BP_Russian_Forces_in_Ukraine_FINAL.pdf)

access to Russian territory (namely, the 102nd Military Base in Armenia...). It is illustrative that the 102nd Military Base is the Russian beachhead in Armenia, which has been involved in a conflict with neighbouring Azerbaijan over the disputed Nagorno-Karabakh area since late 1989; the conflict has shown signs of heating up in recent months. The other Russian military base without direct access to Russian territory – the 201st in Tajikistan – was reported to be sending troops to the Russo-Ukrainian border in late January 2015. The Russian MoD kept sending reinforcements to the east of Ukraine even after the ceasefire was signed in Minsk on 13 February. Indeed, two days later detachments of the 2nd Guards were detected in combat near Mariupol, where they arrived as a fresh reserve to replace the 138th Motor-Rifle Brigade, which had suffered serious manpower losses over a three-week period.

However, with a new round of fighting starting immediately after the ceasefire was signed, Russian units returned to prioritised forward locations, as the most capable strike force; rebel formations have in essence been used as cannon fodder. During the February fighting on the northern front, combined formations of Russian regulars have been detected on a number of occasions:

- On 1–2 February, a combined formation – consisting of the 8th Guards and 18th Guards Motor-Rifle brigades, 25th Spetsnaz Regiment, and elements of the 232nd MRL brigade – was involved in combat near Debaltseve
- At the same time, the 8th Guards Motor-Rifle Brigade deployed some of its personnel within a combined formation – of the 8th Guards Motor-Rifle Brigade and 5th Tank Brigade – to serve as infantry support to armoured forces near Gorlovka.
- A combined formation of the 27th Guards Motor-Rifle Brigade and 217th Guards Airborne Regiment (98th Guards Airborne Division) moved to Logvinovo on 14 February when the combined formation of 136th Guards Motor-Rifle Brigade and 25th Spetsnaz Regiment fighting there to close the corridor to Debaltsevo had to be withdrawn after severe manpower losses. (The combined formation of the 27th Guards and 217th Guards Airborne was itself established around the core of the latter's Battalion Tactical Group after it took heavy losses.)
- The 20th Guards Motor-Rifle Brigade's tactical group had to be reformed into a combined formation with 18th Guards Motor-Rifle Brigade elements after 13 February; the 20th Guards elements were a substitute for the elements of the 8th Guards Motor-Rifle Brigade due to the latter's substantial losses.
- Other combined formations – of 19th Motor-Rifle Brigade with 10th Spetsnaz Brigade; of the 13th Guards Tank Regiment (4th Guards [Kantemirovskaya] Tank Division) with the 32nd Motor-Rifle brigade; and of the 104th Guards Air-Assault Regiment (76th Guards Air-Assault Division) with the 'Kalmius' rebel formation – were also detected in combat in the Northern Operational Area in February
- The 9th Motor-Rifle Brigade operated in a combined formation with elements of an unidentified unit in the Southern Operational Area.

The wide geographic dispersion of the units involved in generating troops for the operation could be considered to reflect the typical desire of military planners to give troops experience in a combat environment whenever such an opportunity arises. But this is not the primary case for the current situation; there are indications of other reasons.

The units permanently located in the Russian MoD's Southern and Western military districts generated the Battalion Tactical Groups for the spring phase of the operation, yet

they were only able to supply Company Tactical Groups in the autumn and especially the winter periods. Some units struggled to meet even those lower requirements. For instance, the 536th Coastal Artillery Brigade had to temporarily assign some of its professional servicemen to serve in the 61st Marine Brigade to allow the latter to generate a tactical group to be sent to Ukraine.

At the same time, Siberian units have been ordered to generate much more than Battalion Tactical Groups; the 36th Guards Motor-Rifle Brigade's contribution was of nearly regimental size, with tank, motorised-infantry and artillery battalions, plus additional, smaller combat-support and combat service-support detachments. This appears to indicate a shortage of badly needed manpower, while the fact that the Siberian units have been transported into the Ukrainian area of operations with their own organic assets – instead of just ferrying their personnel into the area – implies a shortage of military hardware in theatre. Taken together, it suggests that enabling troops to train in realistic combat environments is certainly not the only reason for the participation of such remotely located units.”<sup>428</sup>

373. The annexes to this submission include the judgment of the Holosiivskiy District Court in Kyiv in the criminal prosecution of Yevgeniy Vladimirovich Yerofeyev (DOB 18 January 1985), a Russian national, and Captain in the Russian army). Aleksandrov Aleksander Anayolievich (DOB 7 January 1987), also a Russian national, and a Sergeant in the Russian army. Both were members of the special forces of the 3<sup>rd</sup> Special Purpose Guards Brigade of the Main Department of the Russian General Staff. They were convicted of promoting (together with numerous colleagues from their Brigade) acts of terrorism and acts of aggressive war on the territory of Ukraine, through their military operations aimed at building the capacity of paramilitary groups in the “Luhansk People’s Republic”. They were found guilty of carrying out intelligence actions to gather information to enable the targeting of opposition forces, and supplying funds and equipment to the LPR, and killing a member of the Ukrainian military with the use of small arms. Both men confessed their involvement as commanders of the combat group of the LPR. Both men had been wounded in a military engagement, taken to hospital as prisoners of war, and subsequently interviewed, charged and convicted.<sup>429</sup>

374. For the Court’s assistance, Ukraine has assembled a series of reports from an open source research organisation (Inform Napalm) which provide unassailable photographic evidence and locational analysis proving Russian State military equipment and troop deployments inside the territory of Ukraine. One such report confirms:

“In August, the battalion tactical groups (BTGs) made up mostly of the servicemen from infantry, armoured and air assault units of the Russian Armed Forces entered the territory of Ukraine and turned the situation in favour of the militants. They made a mark in the battles around Luhansk, surrounded the forces of the ATO under Ilovaisk... As Russian servicemen massively participated in the hostilities in August, some of them were taken prisoners of war (POWs). The Ukrainian side also received other physical evidence of Russia’s participation in the war in Donbas.”

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<sup>428</sup> [https://www.webcitation.org/6Y4ei6Ide?url=https://www.rusi.org/downloads/assets/201503\\_BP\\_Russian\\_Forces\\_in\\_Ukraine\\_FINAL.pdf](https://www.webcitation.org/6Y4ei6Ide?url=https://www.rusi.org/downloads/assets/201503_BP_Russian_Forces_in_Ukraine_FINAL.pdf)

<sup>429</sup> See [Tab 75] in Appendix 4;

375. The Ukrainian authorities have also compiled a substantial body of intelligence analysis which has been de-classified in order to make it available to the Court for the purposes of the present inter-State application. The evidence attached to this submission includes a letter from the Main Directorate of the Intelligence of the Ministry of Defence, dated 19 March 2018<sup>430</sup>. This letter provides a useful and detailed account of key Russian deployments. It also describes the structure and relationship of the combined official armed forces of the Russian Federation, and the proxy forces of the local paramilitaries, illustrated with an organogram. According to the report, as might be expected, the overall command of Russia's hybrid forces in eastern Ukraine is under the direct control of the General Staff of the Russian armed forces:

“General co-ordination of actions and combat launch of hybrid “corps” are assigned to the General Staff of the Armed Forces of the Russian Federation. Operational management and support is provided by the Center of Territorial Forces (Novocherkassk) of the 8<sup>th</sup> Army of the Southern Military District (Rostov-on-Don), the Armed Forces of the Russian Federation. Thus all parts and establishment of the illegal formations (to the ‘company’ level inclusive\_ are controlled and co-ordinated by advisers, curators and instructors from among the Russian native personnel who, using call signs and cover letters, work rotationally (from 4 to 6 months). Before leaving the temporary occupied territories of Donbas, they are enrolled in the Center of the Armed Forces of the RF Armed Forces, they hand over all personal documents of the Russian Federation and receive documents of citizens of the DPR/LPR.”<sup>431</sup>

376. Also appended to this submission is a supplementary letter from the Ukrainian Ministry of Defence, Directorate of Intelligence, dated 30 April 2018<sup>432</sup> which lists the names, rank and deployment of Russian service personnel captured or identified as operating inside the territory of Ukraine, together with each person's date and place of birth. This provides an unassailable record of individual Russian army personnel operating inside the territory of Ukraine. The Ministry of Defence, Directorate of Intelligence, has also published a report entitled Organizational Structure of the 1<sup>st</sup> and 2<sup>nd</sup> Army Corps of the Russian Occupation Forces in 2014 and 2015. This includes a useful series of organograms explaining the military command structure and organisation of the armed groups operating in eastern Ukraine. This document is also annexed to the present submission.<sup>433</sup>

377. In a further supplementary letter to the Deputy Minister of Justice dated 23 May 2018, prepared for the purposes of these proceedings, the Ministry of Defence, Directorate of Intelligence, has supplied a series of personnel records for members of the regular Russian army known to have engaged in active service inside Ukraine. These reports include photographic evidence showing the identified individuals

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<sup>430</sup> See [Tab 76] Letter of the Main Directorate of the Intelligence of the Ministry of Defence, dated 19 March 2018 in Appendix 4;

<sup>431</sup> See [Tab 76] in Appendix 4;

<sup>432</sup> See [Tab 77] Letter of the Ministry of Defence of Ukraine of 30 April 2018 in Appendix 4;

<sup>433</sup> See [Tab 77] in Appendix 4;

at various locations in the Ukrainian Donbass. It also explains their precise military deployments and attaches a detailed schedule of Russian military weapons seized or used inside Ukraine during the period between June 2015 and January 2017. Thus, for example, in the month of June 2015, there were a total of 458 Russian-owned and operated tanks inside Ukraine, together with 198 multiple rocket-launchers.<sup>434</sup>

378. The Ukrainian Government has prepared and published a brochure entitled *Command Personnel of the Russian Occupation Forces*, which is appended to this submission. This identifies all the senior military officers of the Russian army who commanded the combined forces that entered or participated in the conflict in eastern Ukraine, together with their photographs, rank, personal biography and deployments.<sup>435</sup>

379. An official letter from the Ukrainian Security Service to the Deputy Minister of Justice, dated 15 November 2018 (appended to this submission) lists all the items of military equipment seized or recorded as operating inside Ukraine which were exclusively available to the Russian armed forces including various identifiable types of battle tanks, armoured combat vehicles, artillery systems and armor-defeating weaponry. The report also contains an extremely detailed assessment of the importation of illegal weapons from the Russian Federation via various routes (including cross-border road and rail connections), concluding that Russia has continued a steady flow of weaponry in violation of the Wassenaar Arrangement on Export Control for Conventional Arms and Dual-Use Goods and Technologies, and other international commitments. The reports notes that the principal means of weapons-smuggling continues to be the misuse of so-called humanitarian convoys organised by the Ministry of Emergencies of the Russian Federation. In total, the Ukrainian Security Service has identified 47 different weapons types in use in Ukraine that are exclusively manufactured for the Russian armed forces, and exclusively used by them (in the sense that they are not exported to any other State or in use by the Ukrainian military).<sup>436</sup> This letter and its enclosures also record available dates and times of clandestine cross-border crossings of this equipment and accompanying personnel. Overall, the arms supplied by the Russian Federation to the military contingents in eastern Ukraine produce a force roughly equivalent in size and capability to the official armed forces of Romania or Sweden.

380. In addition, the report documents the arrangement for the financing of the pro-Russian armed groups operating in eastern Ukraine. Based on a detailed analysis of banking transfers, the report demonstrates the role of Moscow-backed financing:

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<sup>434</sup> See [Tab 78] Letter of Main Directorate of Intelligence of Ministry of Defense of Ukraine of 23 May 2018 in Appendix 4;

<sup>435</sup> *Command Personnel of the Russian Occupation Forces*,

<sup>436</sup> See [Tab 79] Letter of the Security Service of Ukraine of 15 November 2018 in Appendix 4;

“These facts indicate that the Russian financial institution, the Centre for International Settlements Bank LLC, in accordance with the power entrusted to it by the Russian authorities, actually performs the function of a supplier and regulator of cash coming from the aggressor country to banking institutions operating in the temporarily occupied territory of Donbass... According to the data received, the occupation administration of the Russian Federation continues to develop a separate credit and banking system for lending to business entities of [the] so-called LPR.”<sup>437</sup>

381. According to the financial analysis, a key source of finance for the “government” of the DPR and LPR comes “through external financial assistance from the Russian Federation”. From these funds, the “governments” fund the local paramilitary forces. For example, the most recent budgetary figures indicated that vast sums of Russian roubles have been allocated for local paramilitary groups. The report contains a detailed account of court judgments delivered by Ukrainian courts that have established Russian Government financing of armed groups in eastern Ukraine directly and the provision of Russian army weapons and personnel. It lists in detail certain military attacks that are proven to have been conducted with exclusively Russian army weapons (and the consequences of these attacks).

382. To bring the evidence assembled by the relevant authorities of the Ukrainian Government fully up to date, the Security Service of Ukraine (Counterintelligence Department) has assembled a volume of declassified evidence confirming in detail the information available that proves the presence and combat engagement of regular Russian armed forces in the conflict in eastern Ukraine. The file, which is substantial, is attached to a letter addressed to the Deputy Minister of Justice for the purpose of these proceedings, dated 10 September 2019. The letter and the file it encloses are attached to this submission and should be read as an integral part of it. The file of evidence provides considerable detail about Russian military presence and armed engagements on Ukrainian territory.<sup>438</sup>

383. A comprehensive analysis of Russian military deployments inside Ukraine has been prepared by the NGO *Security and Interaction in Ukraine*. The report entitled *War Crimes in Russia* is in two parts. Part one is attached to this submission. It is entitled *Military Servicemen and Mercenaries in Donbas*.<sup>439</sup> It provides a month-by-month analysis of Russian soldiers who were operating in Ukraine (including special forces, regular army units, “volunteers”, “vacationers” and mercenaries). It is illustrated with contemporaneous photographs and videos which provide compelling evidence which corroborates the report’s factual findings. As the report explains:

“The purpose of the report is to identify persons who belong to the Armed Forces of the Russian Federation, contract soldiers, volunteers (citizens of the Russian Federation, or citizens of other states) who were on the territory of Donetsk and Luhansk regions, as part of the units of the irregular and regular armed forces of the Russian Federation from Spring to Autumn 2014.”<sup>440</sup>

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<sup>437</sup> See [Tab 79] Letter of the Security Service of Ukraine of 15 November 2018 in Appendix 4;

<sup>438</sup> See [Tab 80] Letter of the Security Service of Ukraine of 10 September 2019 in Appendix 4;

<sup>439</sup> See [Tab 11] Report “Military Servicemen and Mercenaries in Donbas” in Appendix 4;

<sup>440</sup> See [Tab 11] in Appendix 4;

This detailed study will be a valuable source for the Court in assessing the nature and extent of Russian State control of the armed groups.

384. In a signed witness statement in the annexes to this submission, Semenchenko Sergey Nikolayovich, who joined a paramilitary formation in Luhansk in September 2015 (military unit 72428), describes his detailed knowledge of Russian army officers collaborating on the ground inside Ukraine. The statement is dated 11 September 2018. Nikolayovich worked as an artillery warehouseman between November 2015 and February 2017. From his own experience, he explains the categories of Russian military personnel engaged with the paramilitary forces in Luhansk. He describes the roles performed by regular soldiers, as well as more senior Russian army officers who “managed” the paramilitary units, and a group of specialist military intelligence officers (“Kupola”) who wore civilian clothing but had unfettered authority over “disciplinary” and “security” issues. He explains that during his period of service all the main leadership positions were occupied by serving members of the Russian armed forces, with “locals” serving as their deputies.

385. The numerous Russian officers Nikolayovich encountered were enlisted members of the Russian armed forces. He expressly dismisses the suggestion that they were “volunteers” or even “vacationers” from the armed forces. The local fighters were expressly subject to the command of the Ministry of Defence and special services of the Russian Federation. Many of the exclusively Russian heavy weapons supplied across the border to the Luhansk regions were reserved for use by Russian army officers, because of their complexity and the need for prior military training in their use. Most of the weapons were old stock, and the ammunition was supplied in boxes dispatched from Russia (with Russian language inscriptions indicating their origin). Nikolayovich’s commanding officer had served with the Russian armed forces in Chechnya and one of his colleagues was an army officer from Kaliningrad. The recruits had all signed service contracts in Novochoerkassk in Russia, before entering Ukraine. Before arriving in Ukraine, Russian servicemen were required to leave their identification documents and regular military uniform in Novochoerkassk, where they were issued with irregular combat gear and false papers so they could pass themselves off as local volunteers if they were killed or captured.

386. There are numerous reports confirming that enlisted Russian soldiers were required to conceal remove any visible insignia from their uniforms, and discard any identification documents, before entering Ukraine. For example, the Atlantic Council noted:

“As described in numerous interviews with Russian soldiers who have fought in Ukraine, commanders will order soldiers to conceal the identifying features of military vehicles, remove insignia from uniforms, and finally travel across the border to join separatist forces in eastern Ukraine.”<sup>441</sup>

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<sup>441</sup> Russian Soldiers Quit over Ukraine,” Reuters, May 10, 2015, <http://www.dailymail.co.uk/wires/reuters/article-3075397/Russian-soldiers-quit-Ukraine.html>.

387. In a signed statement prepared for the present proceedings, a former member of the “Donetsk People’s Republic” paramilitaries, Druik Svitlana Mykolaivna provides detailed evidence, including photographic evidence, of her deployment as a frontline combat medic, first in the Petrovsky District of Donetsk and then in the DPR headquarters in the city. Her commander was a Russian citizen called Fedir Tekliev who had previously served with Igor Girkin in Sloviansk. On one occasion, she described how one of the fighters lost a hand in an explosion and was immediately sent to the Russian Federation for emergency medical treatment. On 28 October 2014, she was appointed as “Chief of Staff” of the “7<sup>th</sup> Brigade rocket-launcher battalion”. She describes how, during December 2014, she requested additional personnel and weapons, which were immediately supplied across the border by Russian forces. The Russian army fighters who joined her battalion were described as “tourists” because they were members of the regular army who were ordered to enter Ukraine covertly (without official identification). The heavy weapons were delivered by a man called Olek Karahodin, an enlisted lieutenant colonel in the Russian armed forces who acted as “adviser” to the DPR forces on the use of rocket-launchers. She describes the transfer of other Russian military equipment across the border, including D-30 and 2S1 Gvozdika, GBM-21’s and more than 20 tanks of the T-72 and T-64 design. When these weapons arrived, they were always delivered by regular members of the Russian armed forces operating covertly, who would also provide instruction and training in their use.

388. During December, Mykolaivna received 12,500 artillery rockets from the Russian forces. In the early part of 2015, her battalion received weapons training from an enlisted Russian army officer (Major General Kuliev) and another Russian officer with the codename “Terek” who was an adviser to the DPR battalion commander. All of the visiting Russian soldiers concealed their true identities. During the Battle for Debaltseve in the early part of 2015, she was sent to Ilovaisk to collect a large quantity of artillery rockets to replenish supplies. She was met by a senior Russian officer (Alim Mahomedovych) who was a colonel in the Russian army and adviser to the commander of the artillery brigade. In February, during the hostilities around Debaltseve, she met Russian forces operating on the ground, and also met with mercenaries of the Wagner Corporation. She became aware that the commander of the Russian army’s second battalion of the 7<sup>th</sup> Brigade had been killed in action at Debaltseve. As she explains, enlisted members of the Russian army had initially acted as tactical advisers, but were subsequently appointed as commanders to professionalise the rebel military operations: “At that time, we (the local residents) held the positions of commanders and chiefs of staff, and the Russians (the so-called “tourists”) worked as “advisers” for those positions. After the Battle of Debaltseve, it was decided instead to appoint permanent officers of the armed forces of the Russian Federation to leadership positions or positions of their first deputies.” Like other local fighters, she was required to tender resignation documents to the new commanding officers from the Russian armed forces.



389. In August 2015, Mykolaivna was re-deployed on the orders of “Muscat”, the Chief of Staff of the First Army Corps of the Russian Federation. In May 2016, she was transferred to the Vostok Battalion, under the command of a Russian army officer called Renat Shalimov. He later arranged for her promotion and worked alongside a captain in the Russian army (Yuri Prylutsky) who had entered Ukraine along with Russian Major Ivanov (a division commander). She also worked alongside Oleh Oleksiiovych Kryvoruchko, codenamed “Kaspiy”). In September 2016, she began operating with forces stationed in Makiyivka under the command of Lieutenant Colonel Kamanev of the Russian armed forces. By March of the following year, she had been appointed as First Deputy Chief of Staff for the Mortar Artillery Self-Propelled Brigade. Her “adviser” at that time was Captain Volkov, an artilleryman with the Russian Federation armed forces. She has provided the details of various Russian servicemen acting as military advisers to the separatist forces in eastern Ukraine, and assisting then in the use of Russian-manufactured heavy weaponry. In addition to their full names, she has provided their military identification numbers and telephone numbers. In her witness statement, she carefully explains the structure of the Russian forces deployed in Ukraine and their close operational relationships with local militias.

### **Concealing deaths of Russian service personnel killed in Ukraine**

390. On 5 March 2014, Alexander Vershbow, the Deputy General Secretary of NATO drew international attention to the fact that despite Russia’s denials that its forces were directly engaged in the conflict, “Russian soldiers are fighting and dying in large numbers in eastern Ukraine”.<sup>442</sup> Despite the considerable lengths to which the Russian army has gone to conceal its war casualties in Ukraine, the OSCE has recorded a total of over 20 vehicles marked with the inscription “Cargo 200” being used to transport the bodies of Russian service personnel killed in action in Ukraine.<sup>443</sup>

391. The Atlantic Council report described the efforts of the Russian Federation to conceal the circumstances in which Russian soldiers died, since this would involve acknowledging that they were killed in action inside Ukraine:

“Concealing Kremlin involvement means concealing Russian deaths. But as the casualties continue to climb, keeping up the charade is becoming increasingly difficult for Putin’s government. Those who die in eastern Ukraine are not celebrated as heroes, but rather shipped home in body bags by night. Funerals take place in remote areas of the country in the hopes that they will not catch the public’s attention. However, the presence of Russian soldiers on Ukrainian territory has become undeniable following the steady stream of coffins returning to Russia under the label “Cargo 200.” A series of exposé reports from local Russian news outlets, and a number of cases in which Russian soldiers accidentally revealed their

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<sup>442</sup>“Russian Soldiers ‘Dying in Large Numbers’ in Ukraine—NATO,” BBC, March 5, 2015, <http://www.bbc.com/news/world-europe-31747754>.

<sup>443</sup><https://112.international/conflict-in-eastern-ukraine/osce-spotted-more-than-20-vehicles-with-cargo-200-caution-10675.html>

presence in Ukraine on social media, confirm that the regular Russian military is active in Ukraine. Both Western and Russian journalists have uncovered the troubling details of active Russian soldiers who have died or suffered serious injuries in Ukraine. These reports include not only eyewitness accounts and photographs of Russian soldiers in Ukraine, but also interviews with the grief-stricken parents whose sons died fighting among the so-called “local separatists” in eastern Ukraine.”<sup>444</sup>

Based on open source research, the Atlantic Council report published the names and details of numerous Russian military fatalities. They also cite the list of 273 Russian soldiers named in the Open Russia report, *Putin.War*, which includes both conscripts and mercenaries.

392. According to Open Russia, Boris Nemtsov received frequent complaints from the families of Russian service personnel who had died in combat in Ukraine, but who had received no acknowledgement or compensation. The first group of complainants approached Boris Nemtsov during 2014. The second group came in the early part of 2015, following the Battle of Debaltseve:

“The second wave of mass coffins went to Russia in January and early February 2015. According to our estimates, during this period at least 70 Russian soldiers were killed in eastern Ukraine. At least 17 Russian paratroopers, who came from Ivanovo, were killed in the territory of Ukraine...The mass deaths of the Russian soldiers were linked to the escalation of the conflict and the confrontation, in particular near the town of Debaltseve. Unlike the previous year, this time, before being sent to Donbass, the Russian soldiers were officially dismissed from the armed forces on the demand of the leadership. Thus, it was planned to conceal the participation of our army in the battles, presenting the military as volunteers. With the parole of honor of the commanders, the soldiers were assured that in case of injury or death, their relatives would get a compensation comparable to the amounts paid in the summer of 2014.”

393. The report describes Russian attempts to conceal the death toll:

“From the very beginning of the conflict the Russian authorities were carefully concealing the information about the killed citizens of the Russian Federation on the territory of the Ukraine, and especially the military servicemen of our country, who participated in the fighting. However, it was impossible to hide this information completely...The information about the killed Russian military servicemen in Donbass had long been kept closed. The military

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<sup>444</sup> RBK, <http://top.rbc.ru/politics/02/10/2014/542c0dcfcbb20f5d-06c1d87a> (in Russian); Kommersant, <http://www.kommersant.ru/doc/2671088> (in Russian); TV Rain <http://tvrain.ru/soldat/> (in Russian), Pskovaya Guberniya, [http://gubernia.pskovregion.org/number\\_706/00.php](http://gubernia.pskovregion.org/number_706/00.php) (in Russian); Kostyuchenko; Alec Luhn, “Russian Soldiers Have Given Up Pretending They Are Not Fighting in Ukraine,” Vice, March 31, 2015, <https://news.vice.com/article/russian-soldiers-have-given-up-pretending-they-are-not-fighting-inukraine>; Alec Luhn, “They Were Never There: Russia’s Silence for Families of troops Killed in Ukraine,” Guardian, January 19, 2015, <http://www.theguardian.com/world/2015/jan/19/russia-official-silence-for-families-troopskilled-in-ukraine>; Sam Masters, “Ukraine Crisis: Russian Mothers of Killed and Captured Soldiers Ask ‘Why Are Our Sons Fighting in Ukraine?’,” Independent, August 31, 2014, <http://www.independent.co.uk/news/world/europe/ukraine-crisis-russian-mothers-of-killed-and-captured-soldiers-askwhy-are-our-sons-fighting-in-ukraine-9701805.html>; Tatyana Volskaya and Claire Bigg, “‘He Was Just a Boy’—Russian Mother Grieves for Son Killed in Ukraine,” Radio Free Europe/Radio Liberty, April 23, 2015, <http://www.rferl.org/content/russia-son-killed-ukraine-mother-grieves/26651995.html>.

authorities of the Russian Federation stated that the soldiers were dead during the trainings in the Rostov region. The families of the killed military servicemen were also trying not to draw attention to the case.”

However, based on information collated from relatives and other sources, the report lists the names and service histories of numerous Russian service personnel who perished during armed engagements inside the territory of Ukraine

## **Conclusion**

394. Ukraine submits that the present inter-State application is supported by a wealth of compelling and meets the criteria for admissibility. The Court is invited to declare the application admissible and give directions for the presentation and assessment of evidence during the merits phase of the proceedings.



**Ivan Lishchyna**

Agent of the Government of Ukraine



**Ben Emmerson QC**

Counsel for Ukraine

8 November 2019

## APPENDIX 1 – Extracts from official reports by the OHCHR and OSCE

Note: This is a list of 70 extracts from the contemporary reports of the OHCHR and OSCE. It is intended to provide the Court with evidence of some concrete and reliable examples reflecting the administrative practice alleged in this case. These are only a small sample of the overall pattern recorded by these monitoring groups and other international organisations, but are sufficient to demonstrate the existence of a pattern or system of violations of the same or similar character, connected by time, place and motivation of the perpetrators. The methodology employed by OHCHR is explained in their reports. Incidents are only documented where allegations have been investigated and verified and corroborated by independent or multiple sources. The OSCE (SMM), on the other hand, report the observations of their own observers and reports received from apparently credible sources, without necessarily conducting a full examination to verify the information provided.

1. “On 18 April 2014, the bodies of Horlivka city councillor, Mr Volodymyr Rybak, and of a student and Maidan activist, Mr Yuriy Popravko, were found in the river of Kazennyi Torets, near the settlement of Raigorodok (Sloviansk district, Donetsk region), bearing signs of torture. According to the forensic expertise, before his death, Rybak was tied; his abdomen ripped off, and he was thrown into the water. On 28 April, the body of a student and Maidan activist, Mr Yuriy Diakovskiy, was recovered from the river at the same site, also bearing signs of torture. Volodymyr Rybak was last seen alive on 17 April, at approximately 6 p.m., on Peremohy Avenue, in the city of Horlivka (Donetsk region), controlled by the armed groups. According to a witness, unidentified people forcefully took him to a car and drove away. Earlier on that day, he had reportedly tried to replace the flag of the self-proclaimed ‘Donetsk people’s republic’ with the State flag of Ukraine near the building of the city council, but was rebuffed by supporters of the ‘Donetsk people’s republic’. On 16 April 2014, Yuriy Diakovskiy and Yuriy Popravko were travelling to the nearby town of Sloviansk, which since 12 April 2014, was under the control of the armed groups of the ‘Donetsk people’s republic’. They were last seen alive at the border of Kharkiv and Donetsk regions, from which they reportedly continued their travel to Sloviansk on their own. According to the relatives of Diakovskiy, his last telephone call was at about 1.30 p.m., on 17 April 2014. The Main Investigative Department of the Ministry of Internal Affairs established that all three men were kept at the premises of the SBU department of the town of Sloviansk.”<sup>445</sup>
2. “On 9 May 2014, residents of the town of Antratsyt (Luhansk region) Mr Oleh Burykhin and Ms Iryna Burykhina were killed while driving in two jeeps from their home town to the Russian Federation. At approximately 2 a.m., near the village of Novoborovytsi (Sverdlovsk district of Luhansk region), they went under submachine gun fire by the armed groups. Reportedly, they thought that it was the Right Sector members who were driving the cars, though no presence of Ukrainian forces was observed in the area. According to the forensic record, the cause of death of Burykhin was “trauma of the body with damage to bones”, and Burykhina died of a “gunshot wound of the heart”.<sup>446</sup>
3. “In the evening of 9 May 2015, three women and a man (reportedly, a member of an armed group) fell under submachinegun fire while driving in the town of Snizhne (Donetsk region), which was under the control of the armed groups since May 2014. Two of the three women were killed. They reportedly did not stop at the request of members of the local ‘military commandant’s office’ of the ‘Donetsk people’s republic’. A woman, who had been kidnapped on 22 May 2014 and deprived of liberty for five days by the ‘traffic police’ and members of the armed groups of ‘Donetsk people’s republic’ for assisting the Ukrainian armed forces, claimed that her captors beat another detainee to death in her presence.”<sup>447</sup>

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<sup>445</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>446</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>447</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

4. "The [OHCHR] is increasingly concerned about guarantees for the protection of human rights of the general population. According to the MoI, from April to 7 June 2014, armed groups in the eastern regions abducted 387 people, among them 39 journalists. From its own records, the [OHCHR] is aware of 222 cases of abductions and detentions by armed groups since 13 April. Of these, 4 were killed; 137 released; and 81 remain detained as of 7 June."<sup>448</sup>
5. "On 8 May, the burned body of Valeriy Salo, a farmer and head of a local cultural organisation known as a 'Pro-Maidan' activist, was found a day after he had been abducted by armed persons from his village."<sup>449</sup>
6. "According to local activists from Kramatorsk, on 9 May, about 40 residents of the city were abducted by the 'Donetsk People's Republic'. On 10 May, three 'Pro-Ukrainian' female activists not involved in any fighting were abducted and detained by armed persons in Kramatorsk. One of them was released the next day after being reportedly subjected to torture during interrogation. She was subsequently hospitalised in Slovyansk, suffering from broken ribs, a pierced liver, a head injury and multiple bruises. The other two women were released on 13 May and placed under so-called 'house arrest', reportedly prohibited from leaving Kramatorsk. On 8 May, a woman went to Slovyansk to try to secure the release of her son detained by the 'Donetsk People's Republic' and was reportedly abducted by the same armed persons. She has cancer and was undergoing chemotherapy. The whereabouts of a female interpreter was unknown from 4 to 18 May. Upon her release, she reported having been detained by armed groups in Donetsk and [having been] subjected ill-treatment and sexual assault".<sup>450</sup>
7. "Among cases brought to the attention of the [OHCHR], on 14 May, four armed men in camouflage reportedly abducted the principal of a school in Luhansk from the school premises. Allegedly, she had opposed holding the 'referendum' on the school premises... The same day, in Kramatorsk, armed men came to the apartment of an employee and reportedly abducted him. Reportedly, they were looking for his 16 year old son, allegedly because of his active 'Pro-Ukrainian' position, including in the social media. Since the son was not to be found, they took the father to the occupied building of the Kramatorsk City Council where he was beaten."<sup>451</sup>
8. "SMM [OSCE] spoke to the Regional Administration in order to get more information about two journalists reported missing in Kramatorsk. It was confirmed that the two journalists are from "LifeNews", and that they were detained in Kramatorsk on 18 May. SMM was informed that they were transferred to Kyiv, and are now in the SBU premises in Kyiv."<sup>452</sup>
9. "The [OHCHR] is also concerned about reports of 'summary executions' by representatives of the 'Donetsk People's Republic'. On 18 May, in a village near Slovyansk an elderly farmer was accused of bringing food to the Ukrainian forces, taken out of his home into the yard, where according to witnesses, a 'sentence' was read in the name of the 'Donetsk People's Republic' and shot dead, in front of his family and neighbours. Reportedly, on 26 May, by order of Igor Strelkov, Dmytro Slavov ('commander of a company of the people's militia') and Mykola Lukyanov ('commander of a platoon of the militia of 'Donetsk People's Republic') were 'executed' in Slovyansk, after they were 'sentenced' for 'looting, armed robbery, kidnapping and abandoning the battle field'. The order, which was circulated widely and posted in the streets of Slovyansk, referred to a decree of the Presidium of the Supreme Council of the USSR of 22 June 1941 as the basis for the execution."<sup>453</sup>

<sup>448</sup> <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>

<sup>449</sup> <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>

<sup>450</sup> <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>

<sup>451</sup> <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>

<sup>452</sup> <https://www.osce.org/ukraine-smm/118785>

<sup>453</sup> <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx>

10. "The SMM [OSCE] obtained information that local Maidan activist, Ilia Yefremov, had been beaten by armed separatists, after being abducted on 23 May from his home. He is believed to be currently held incommunicado in the occupied SBU building in Luhansk."<sup>454</sup>
11. "The SMM [OSCE] team in Luhansk was informed by police interlocutors that 12 high-ranking police officers from the region were abducted by armed separatists on 26 May, at the checkpoint in Shchastya (24 kilometres north of Luhansk), on their way back from Svatove (155 kilometres northwest of Luhansk) where they had participated in a working meeting with the Police Chief in Luhansk region. The SMM's interlocutors added that negotiations are being conducted with armed separatists controlling the city to have the officers released."<sup>455</sup>
12. "On 31 May 2014, near Luhansk, two civilian men were abducted and detained by five members of an armed group masked with balaclavas and armed with assault rifles. They were taken to a tent camp and separated. One victim, who was known for his pro-Ukrainian views, was brought inside a tent, where other members of armed groups beat him and subjected him to a mock execution before interrogating him. At one point, the interrogator kicked the victim in his testicles, which was extremely painful and resulted in residual injury. The victim was also beaten with a metal rod wrapped in a rag by different individuals, including a woman. The perpetrators forced the victim to open his social network accounts, which was followed by more beatings on different parts of his body, including his kidneys and the back of his head. The perpetrators threatened the second victim that his younger sister "may not come back home tonight"; they knew where she studied and what time she returned home. The victims also heard a man armed with a pistol ask the guards whether his friends could rape the 'detainees'."<sup>456</sup>
13. "On 8 June 2014, in the town of Sloviansk then controlled by armed groups, the parishioners of the evangelical church 'Transfiguration of Christ' were holding the Sunday worship. By the end of the worship, armed men arrived at the church yard, designated four cars, and ordered their owners to come forward and have a talk with them. The deacons, Mr Viktor Bradarskyi and Mr Volodymyr Velichko, and two sons of the church's Head – Mr Albert Pavenko and Mr Ruvim Pavenko – came forward. The armed men forced them to get into their own cars and drove away. In the morning of 9 June, local residents found a badly burnt body, allegedly that of Velichko, near a burnt car. The bodies of the Pavenko brothers were found next to the car on the same side, unburnt. Bradarskyi's body was found in the reeds, about 20 metres away from the car. Those who found the bodies did not know the victims and took them to the local morgue, where they were stored until 10 June 2014, when electricity supply was cut. The bodies (allegedly together with some other bodies then stored in the morgue) were buried in a mass grave in the old Jewish cemetery of Sloviansk."<sup>457</sup>
14. "On 15 June a Maidan activist, who had been held by the 'South Eastern Army' in the Ukrainian Security Service (SBU) building in Luhansk, died in hospital shortly after being released. His death was reported in the media and later confirmed by different sources to the SMM [OSCE]."<sup>458</sup>
15. "On 17 June [2014], a member of 24<sup>th</sup> territorial defence battalion 'Aidar', Mr Mykola Chepiha, was captured near the village of Metalist (Luhansk region), during a clash with the armed groups of the 'Luhansk people's republic'. He was kept for several days in the former premises of the regional military commissariat, in the city of Luhansk, and was eventually stabbed to death – allegedly in retaliation for the death of an armed group leader, Mr Serhii Niiesh Papa, who had died while in the Aidar battalion's captivity on the same day or several days before. In March 2016, a former commander of an armed group of the 'Luhansk people's republic' stated publicly that one of two Ukrainian servicemen, captured on 17 June 2014 near the village of Metalist, had been executed. The body of Chepiha was thrown on Krasnodonskaia Street, in the city of

<sup>454</sup> <https://www.osce.org/ukraine-smm/119166>

<sup>455</sup> <https://www.osce.org/ukraine-smm/119189>

<sup>456</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport20th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport20th_EN.pdf)

<sup>457</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>458</sup> <https://www.osce.org/ukraine-smm/119901>

Luhansk. It was then taken to the regional morgue in Luhansk where it was kept until early July, when it was delivered to the territory controlled by the Government. According to forensic records obtained by OHCHR, “penetrating perforated injuries of the chest that injured the heart” caused Chepiha’s death.”<sup>459</sup>

16. “On 17 June 2014, the ‘martial court’ ‘sentenced’ Mr Oleksii Pichko, a Sloviansk resident, to death for looting. On 14 June 2014, the victim reportedly illegally entered a civilian residence in Sloviansk and stole a pair of pants and two T-shirts. He was deprived of liberty the same night after being identified by local residents. Referring to the Decree of the Presidium of the Supreme Council of the USSR “On martial law” of 22 June 1941, Pichko was “sentenced” to execution by shooting. His body was exhumed on 12 August 2014. On 24 July 2014, a criminal investigation was initiated into his death under article 115 (intentional homicide) of the Criminal Code.”<sup>460</sup>
17. “OHCHR documented the case of a woman who was gang-raped in June 2014, when her village was under the control of an armed group. According to witness accounts, she was attacked by three men who sprayed something in her eyes to obscure her vision and then anally raped her. She was severely injured, underwent surgery and was hospitalized for three weeks, with medical costs partially covered by the commander of the armed group that was stationed in her village. Whilst in hospital, she was questioned by ‘police’ and a ‘criminal investigation’ was opened, however, she never received a forensic examination, and the case was reportedly closed shortly after.”<sup>461</sup>
18. “Two directors of a local business [in Donetsk] were... kidnapped by unknown gunmen in Karlivka on 25 June [2014], according to SMM [OSCE] sources”.<sup>462</sup>
19. “Late on 26 June [2014] the SMM monitors from the Donetsk team were released after 32 days of detention. They were brought to Donetsk by ‘Donetsk People’s Republic’ representatives and transported onward by the SMM [OSCE].”<sup>463</sup>
20. “On 14 July 2014, Mr Oleksii Kudriavtsev, a member of the special police patrol battalion ‘Artemivsk’, was captured by the armed groups near the city of Horlivka (Donetsk region). He was taken to the building of the former Horlivka city department to combat organized crime, where he was interrogated by an armed group commander. The interrogation was videotaped and appeared online the following day. On the video, Kudriavtsev admits that as a police officer, he had been engaged in illegal practices, including torturing and killing civilians suspected of membership in the armed groups. On the same video, the commander states Kudriavtsev had been executed for the crimes he had admitted. The body of Kudriavtsev has not been found.”<sup>464</sup>
21. “A resident of Makeevka (16 km northeast of Donetsk city) – speaking to the SMM [OSCE] – alleged that her son had been taken hostage by the “DPR” on 8 August”.<sup>465</sup>
22. “On 13 August 2014, the Sloviansk police department opened a criminal investigation into the abduction and intentional homicide of Kudriavtsev. Having seen no progress in the investigation, the victim’s father found and interviewed nine people who were deprived of their liberty by the armed group on 14 and 15 July 2014, when his son was interrogated and allegedly executed. One former detainee stated that he had seen Kudriavtsev alive on 14 July when he was being brought to the building of the former department to combat organized crime. According to him, on 15 July, he and two other detainees were sent to the second floor of the building, where he saw a corpse which he recognized as being Kudriavtsev. They reportedly packed the body in a garbage

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<sup>459</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>460</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf)

<sup>461</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf)

<sup>462</sup> <https://www.osce.org/ukraine-smm/120473>

<sup>463</sup> <https://www.osce.org/ukraine-smm/120473>

<sup>464</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>465</sup> <https://www.osce.org/ukraine-smm/122920>

plastic bag and took it outside. The witness noticed a gunshot wound on the chest and that the scalp had been removed. The next day, he loaded the body onto a black Audi A6 without number plate but ignores where it was taken.”<sup>466</sup>

23. “Three traffic policemen were killed at close range and without warning, according to an eyewitness, in Donetsk city on 3 July... A motorist was killed when armed groups stole the car he was driving in Noviy Svit (Doetsk region).”<sup>467</sup>
24. “[OHCHR] interviewed the mother of a man who was abducted on 12 July 2014 near his home, in the city of Donetsk. On 16 July 2014, he was found in another district of the city, handcuffed, with gunshot wounds and blunt force trauma wounds on his head.”<sup>468</sup>
25. “On 5 July 2014, Ukrainian armed forces regained control of the town. On 24 July 2014, 14 bodies (13 men and one woman) were exhumed from the mass grave and transferred to the town morgue where photos of the bodies were taken and handed out to the local police department. The bodies of Viktor Bradarskyi, Albert Pavenko and Ruvim Pavenko were identified by their relatives. The body of Volodymyr Velichko could not be identified on the spot and was taken to Kharkiv forensic examination bureau. The bodies of Viktor Bradarskyi, Albert Pavenko and Ruvim Pavenko displayed multiple gunshot wounds and signs of torture. The other bodies belonged to victims of executions ordered by the ‘martial court’ of the ‘Donetsk people’s republic’ in Sloviansk and individuals who either died or was killed during the armed hostilities in the town.”<sup>469</sup>
26. “In July 2014, Mr Stepan Chubenko, a 16-year-old resident of the Government- controlled town of Kramatorsk (Donetsk region), told his mother of his intention to go to Kyiv to see his friends. The last time he called her was on 23 July. On 25 July, a man who introduced himself as a ‘rebel’ from the ‘Donetsk people’s republic’ called his mother and said that Chubenko was deprived of liberty in Donetsk (controlled by armed groups) and sent to dig trenches. His body was found in early October 2014, in the outskirts of the village of Horbachevo Mykhailivka, near the trenches of armed groups. According to the victim’s mother, the body has partially decomposed and she was unable to identify her son; a DNA test later confirmed his identity. Kramatorsk police established that on 27 or 28 July 2014, three members of the so- called ‘Kerch’ battalion of the ‘Donetsk people’s republic’ had taken Chubenko to a trench in the outskirts of the village and forced him on his knees. Two shot at his head while a third shot at him twice in the body. While the investigation falls short of providing a full account of the events, the pre-trial investigation is reportedly completed and the perpetrators are subject to trial in absentia as they are hiding.”<sup>470</sup>
27. “Another man claimed that he was deprived of his liberty for more than four months by the armed forces of the ‘Luhansk People’s Republic’ after being stopped at a checkpoint in July 2014, near the city of Luhansk, on suspicion of ‘subversive activities’. During interrogations, armed men beat him with rifle butts and a rod, and employed electric shock. Between the ‘interrogations’ he was made to hang from parallel bars, to which he was tied with handcuffs. Four days later, he was transferred to the ‘military commandant’s office’, where he was kept in a 16 square metres room in a basement, with up to 40 other individuals. All were forced to work at the training ground and in various localities where they discharged munitions and dug trenches.”<sup>471</sup>

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<sup>466</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>467</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_Report\\_15\\_July2014.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15_July2014.pdf)

<sup>468</sup> <https://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

<sup>469</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>470</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>471</sup> <https://www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf>



28. "Examples of detentions by the armed groups include the detention of a policeman and his father, a retired policeman, by the armed groups in Donetsk on 19 July. The alleged reason was that the police officer did not take an oath of loyalty to the armed groups. As of 11 August, their whereabouts were unknown. On 21 July, 29 employees of the Spetsselektrobud Company were abducted by armed groups in Donetsk on their way to the Russian Federation, reportedly for 'betrayal of the Fatherland', and urged to join the armed groups... On 31 July, it was reported that two volunteers from Kyiv who were delivering humanitarian assistance to the security operation area, went missing in the Donetsk region. Later the [OHCHR] learned that armed men who had taken the volunteers considered the abductees had assisted the Ukrainian military by directing airstrikes from the ground. On 1 August, armed men abducted a retired resident of Luhansk."<sup>472</sup>
29. "[O]n 19 July, 10 foreign journalists, who had been attempting to report on the MH17 crash, were detained by armed groups in Donetsk. All were released several hours later after interrogation. On 22 July, a CNN freelance journalist and field producer was abducted from the Donbas Palace Hotel in Donetsk and accused of being a Ukrainian spy. He was released on 26 July after being severely beaten. On 31 July, two Ukrainian freelance journalists were detained by the armed groups in the Luhansk region and on 2 August, the operator of the NTN channel was abducted in Donetsk. The whereabouts of all three remain unknown."<sup>473</sup>
30. "A former Ukrainian soldier reported about his detention in the conflict zone, in August 2014, allegedly by fighters from the Russian Federation who then handed him over to the armed groups. He reportedly spent six months held by the armed groups on the territory of the 'Donetsk People's Republic' where he was subjected to beatings and forced labour."<sup>474</sup>
31. Valentyn Minich remained in Ilovaisk while his family left on 17-18 August 2014. He reportedly wanted to look after their property, as many houses caught fire after being hit by shelling. A few days after leaving, his wife could no longer reach him. She returned to Ilovaisk on 1 September 2014 and learnt that his body had been found in a mass grave. According to a witness, their house had been looted and there were signs<sup>8</sup> of it having been used by the military. The forensic death certificate issued on 2 September 2014 in Khartsyzk indicates that Mr. Minich died on 26 August 2014 from a gunshot wound to his head. A witness, who had hidden in the basement of school No.14 from 8 to 28 August 2014, indicated that Mr. Minich had been there. On 26 August, he was reportedly informed that his house was on fire and went to check his property. Witnesses remember that he returned to the basement upset. The same day, Mr. Minich was summoned by a member of "Donbas" battalion, call sign Kat, who accused him of being a "spotter". This was the last time he was seen alive. Other witnesses heard Mr. Minich being taken to the sports hall in the school, from where they then heard screaming and choking. They reported seeing his body lying outside the school building the following morning. Reportedly, on 28 August, Mr. Minich's body was buried along with two others. According to a witness, he had bruises and lesions as if he had been dragged."<sup>475</sup>
32. "Since mid-July, Ihor Trufanov<sup>88</sup> and his wife were hiding every night from shelling in the basement of the railroad machine station<sup>89</sup>, along with approximately 20 other civilians. On 19 August 2014, the volunteer battalions "Donbas" and "Dnipro-1" entered the premises. After checking the site, they reportedly questioned all the men, and allowed the civilians to stay, providing them with food and water. On 25 August, a battalion member spotted that Mr. Trufanov had a cell phone and took him away in an unknown direction. On the same day, all the civilians were moved by car to school No.14. The witnesses recall that Mr. Trufanov's wife was constantly inquiring about her husband, as he was nowhere to be found. On 26 August, a witness saw the victim's body in the school yard; his fingers were all black, one leg was injured and there were bullet holes in his stomach and chest.<sup>91</sup> The forensic death certificate issued on 2

<sup>472</sup> <https://www.ohchr.org/Documents/Countries/UA/UkraineReport28August2014.pdf>

<sup>473</sup> <https://www.ohchr.org/Documents/Countries/UA/UkraineReport28August2014.pdf>

<sup>474</sup> <https://www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf>

<sup>475</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

September 2014 in Khartsyzk town indicates that Mr. Trufanov died on 26 August 2014 from a gunshot wound to his stomach which damaged his internal organs.”<sup>476</sup>

33. “OHCHR received information that during the morning of 29 August, some 20 Ukrainian soldiers loaded onto a truck as part of the column of vehicles with Ukrainian forces retreating from the village of Mnohopillia towards the village of Novokaterynivka. Some 30 minutes after departure, the truck went under fire, and most of those on board were killed or wounded. Seven survivors, many of whom had light wounds, hid on the roadside. After the fighting was over, they waived an improvised white flag indicating that they were surrendering. Armed men from a nearby hill shouted at them to lay down their weapons and to crawl onto the hill. When Ukrainian soldiers reached the top of the hill, the commander of the armed group stationed nearby – whom they learned later from their captors held the rank of senior lieutenant – ordered them to remove their bulletproof vests and helmets and to undress. According to one of the survivors, one soldier was taking off his clothes very slowly because he was wounded, which apparently infuriated the senior lieutenant. He began firing at the soldier from a distance of 15 metres, missing him. He then came closer and fired two shots into the victim’s back and head. Another witness told OHCHR that the senior lieutenant shouted at the soldier that he was undressing too slowly, and allegedly shot him first in the back and then in the head. The soldiers were then ordered to stand up and go. One of them, a sergeant, pleaded several times with the senior lieutenant not to kill his fellow soldiers as they were very young. Two witnesses told OHCHR they saw the senior lieutenant fire two shots from a Kalashnikov into the sergeant’s back and head. As the captives walked, a third soldier repeatedly asked the senior lieutenant if he could call his mother. Two witnesses, walking at a distance from him, heard two or three shots. When, they looked back they saw the man lying on the ground. A third witness told OHCHR he saw the perpetrator allowing the soldier to pass by, and then shot him in the back. When the group of captured soldiers reached a location where other soldiers were held, they witnessed a major rebuking the senior lieutenant; the major then assured them that nothing would happen to them.<sup>165</sup> The survivors were later handed over to Ukrainian forces.”<sup>477</sup>
34. “In one case, a Ukrainian soldier reported to OHCHR that he hid in a field near Novokaterynivka village, where many killed and wounded Ukrainian soldiers were lying. After the hostilities were over, he saw groups of armed men in camouflage combing the field. They reportedly approached the Ukrainian soldiers and took some of their belongings such as bullet-proof vests. He also heard them make single shots.<sup>166</sup> In another case, a wounded Ukrainian soldier was hiding in the forest after his vehicle came under fire on the road from Mnohopillia to Novokaterynivka. When the shooting ended, he heard several people scream “I am wounded!” followed by single shots.<sup>167</sup> In a third case, after fighting stopped along the road from Mnohopillia to Novokaterynivka, several Ukrainian soldiers hiding in a field nearby saw an airborne infantry fighting vehicle (BMD) 300-400 metres away, with soldiers sitting on it, moving slowly through the field. The Ukrainian soldiers heard single shots fired from the BMD. They also heard single shots being fired in the forest, about one kilometre away.”<sup>478</sup>
35. “[O]n 30 August 2014, a member of Ukrainian battalion “Kryvbas” was captured near Pokrovka, reportedly by three armed members of “Oplot” armed group. As he was escorted to the village, he was beaten with hands and guns and kicked, losing consciousness a few times. The victim was forced to undress above the waist and kneel. For a few hours he was interrogated while his hands were tied, and he was kicked in the head, resulting in a broken nose and several bruises on the face. Members of the armed groups also shot between his legs and around his head. They showed him a plastic bag containing human ears and said they belonged to a fellow soldier who had been shot dead. The perpetrators called the victim’s wife and demanded a ransom. The victim was fed and left for the night in the basement of the house of a local resident. In the morning, he was transferred to the building of the former Academy of the Ministry of Internal Affairs in Donetsk

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<sup>476</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

<sup>477</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

<sup>478</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

city.”<sup>479</sup>

36. “Three Ukrainian soldiers reported<sup>201</sup> that during their detention in Snizhne, they witnessed the killing of a local civilian, allegedly accused of looting by the armed groups. According to these witnesses, the civilian was kept in the open cabin of a vehicle parked in the yard of the ITT for more than a week. His hands were handcuffed to handles above the doors. His body was blue and his back was severely injured. He was denied food, water and medical aid. The witnesses heard his screams for days until he reportedly died on 13 September 2014. According to the witnesses, members of the armed groups put his body into a black plastic bag and took it away. All the soldiers were interrogated on the first day they were brought in, and each was questioned a few times on later days. Many were interrogated in a “torture room” near the archive; other detainees could hear their screams. Armed groups used torture during interrogations of Ukrainian soldiers to extract information or a confession, or to punish them for joining a battalion. According to the victims, the group of interrogators usually comprised two ex-officers of the Donetsk SBU working with the ‘Donetsk people’s republic’, and were led by an officer who was treated as a senior official and wore a military uniform bearing the Russian Federation flag.”<sup>480</sup>
37. “For example, a member of the “Donbas” battalion recalled being interrogated twice in early September 2014, and believes the interrogators were former SBU and Russian Federation intelligence officers. According to him, they were well-prepared and, by the second interrogation, had his detailed biography, including all personal information (family, place of residence, etc.). He was beaten with batons and kicked during both interrogations, and from one session, the beating was so severe to his legs, knees, coccyx and kidneys, that he could not walk by himself for three days. He was also forced to face a wall while his interrogators shot around his arms and legs with an air gun.”<sup>481</sup>
38. “Another “Donbas” battalion member was interrogated four times and each time subjected to torture. An armed group member with the call sign Baton kicked punched and hit him with a truncheon all over his body, particularly his heels, shanks and thighs, causing severe pain. Unlike most captured soldiers, who were released by the end of 2014, this victim was released in February 2015.”<sup>482</sup>
39. “Based on the interviews with the victims, it appears that the battalion members from Donetsk, Luhansk or Kharkiv regions were beaten more severely than others when interrogated, because armed groups deemed them as “traitors”. Soldiers with tattoos in the form of a trident or who spoke Ukrainian were also beaten more. For example, a member of “Donbas” battalion was interrogated two or three times and tortured by being forced to face a wall while being punched, kicked and hit with a truncheon in his back and legs. On 15 and 16 September 2014, after the victim revealed tattoos of the coat of arms and flag of Ukraine on his chest near his heart, guards with the call signs Adrenalin, Baton and Molchun punched him in the head and jaw, and struck his calves, buttocks and back with a truncheon. Afterwards, the victim was forced to do 1,000 squats.”<sup>483</sup>
40. “On 29 August 2014, Mr Hennadii Khitrenko, a retired policeman and a member of the village council of Krymske (Luhansk region), was murdered in his house. According to the forensic record, he died as a result of several gunshot wounds which caused damage to internal organs. According to the victims’ father, two local residents who had joined an armed group of the ‘Luhansk people’s republic’, came to his son’s house in the daytime, took him to the yard and shot him. The alleged perpetrators reportedly told the victim’s father not to do anything, threatening to otherwise massacre all his relatives in the village. According to the father, Khitrenko was killed because he was known to be a supporter of the territorial integrity of Ukraine. Several days

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<sup>479</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

<sup>480</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

<sup>481</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

<sup>482</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

<sup>483</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportOnIlovaisk_EN.pdf)

before, he had gone to the military commissariat of the town of Lysychansk (Luhansk region) to volunteer into the National Guard of Ukraine.”<sup>484</sup>

41. “First in the summer of 2014, then in autumn 2014, in Luhansk, a man was detained by the ‘Batman’ and ‘Leshii’ armed groups. The first time, he was kept in the basement of the Engineering Institute at Zhukova Block, where he was locked in a small cell without windows, toilet or air ventilation system with some other 35 captives who were sleeping in shifts. The man witnessed an armed group member beating two detainees with a rubber sledgehammer, and another member shooting detainees with rubber bullets. The man also saw the same members of the ‘Batman’ armed group severely beating and calling a young man “Ukrop”.<sup>48</sup> According to the witness, another young man was detained because he was wearing sneakers with blue and yellow (the colours of the Ukrainian flag) and was severely beaten.<sup>49</sup> The witness also once saw four young men and two young women who were bleeding, handcuffed, and hooded with plastic bags. He reportedly saw an ambulance car and heard paramedics stating that the victims were dead. In the autumn of 2014, in the basement of the former SBU building in Luhansk, which was controlled by ‘Leshii’ armed group, the man witnessed that detainees were being tortured and their tattoos were cut off with knives.”<sup>485</sup>
42. “On 22 August 2014, four residents of the village of Peremozhne (Lutuhinskyi district of Luhansk region) controlled by the armed groups – Serhii, Viktoria, Kateryna and Hryhorii Bochnevych – were executed by the armed groups. According to the victims’ relatives, they intended to flee the village, fearing reprisals from the armed groups for providing food to the Ukrainian military deployed to the Luhansk airport. The day of the killing, a relative had gone to the victims’ house and noticed yellow cargo minivan in front of it. She also noticed armed men in the yard. Seven armed men were seen at the Bochnevychs’ house on 22 August 2014, reportedly coming from the nearby village of Pershozvanika. In the evening of 22 August 2014, Hryhorii’s brother came to the house and found four bodies. According to the forensic record obtained by OHCHR, Hryhorii Bochnevych was shot. According to a neighbour, Kateryna was shot in the head. Viktoria was still alive for some time and a local resident living nearby tried to provide first medical aid but the armed men soon returned and killed her. Serhii’s body was found in one of the outbuildings with bullet wounds.”<sup>486</sup>
43. “HRMMU interviewed two Ukrainian soldiers who, on 5 September 2014, together with five other soldiers, were retreating through the corn fields around the villages of Kruta Hora, Raivka and Shyshkove (Slovianoserbskyi district, Luhansk region) after their unit was defeated by the armed groups. At approximately 7 or 8 p.m., the armed groups reportedly came across them and the group split. While the two witnesses and another soldier managed to hide in the grass, four others were captured – Mr Pavlo Kalynovskiy, Mr Andrii Malashniak (who had a shrapnel injury), Mr Andrii Norenko and Mr Dmytro Vlasenko. The witnesses heard members of the armed groups opening fire, ordering the four hidden soldiers to surrender. They also heard Kalynovskiy urging them not to shoot because one of the soldiers was wounded. The armed groups members reportedly said: ‘let us put bags on their heads’ and ‘take them to the dam’. Shortly thereafter, the witnesses noticed a KamAZ truck leaving the area. The following day, they returned to the place and found none of their fellow servicemen, and assumed they had been captured alive.”<sup>487</sup>
44. “On 4 June 2015, the bodies of four men were recovered from a mass grave located some 500 metres to the east from the village of Kruta Hora, on the road to the village of Raivka. They were transferred to the Government-controlled territory and underwent forensic examination in Dnipropetrovsk. According to DNA tests, the bodies of Malashniak and Vlasenko were identified. To date, the other two bodies have not been identified. In March 2016, HRMMU obtained a video footage showing the bodies of four killed Ukrainian soldiers. The video was made by members

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<sup>484</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>485</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf)

<sup>486</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>487</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

of the armed groups, allegedly in the morning of 6 September 2014. One of the witnesses in the case identified the bodies as belonging to Kalynovskyi, Malashniak, Norenko and Vlasenko.”<sup>488</sup>

45. “On 9 September 2014, Ms Margaryta Vidak, her six-year-old daughter Liana and her mother-in-law Maryna Fedorenko went to the village of Shchotove (Antratsyt district of Luhansk region) to check their property (they had left to the Russian Federation some time before). The same day, six armed Cossacks (most likely from the so-called ‘Rus’ armed group) arrived at the house, reportedly to check the local rumours that “those gipsies have gold hidden in their garden and that is why they keep coming back”. After the women got into an argument with the Cossacks, they (one of them with a call sign Pop) took them and the girl to the town of Antratsyt (then controlled by Cossacks) for “interrogation”. Reportedly, the ‘Rus’ commander was informed by phone about the deprivation of liberty of two Roma women and a girl who were “disobeying the authorities”, and ordered “to scare them well and let them go”.<sup>489</sup>
46. “On 18 September 2014, their relative posted an announcement on a social network, VKontakte, with a request to provide any information about the disappeared. In November 2014, their bodies were found in the forest belt near the village of Orikhivka (Lutuhinskyi district of Luhansk region). OHCHR obtained forensic data stating that the victims died on 10 September 2014 as a result of gunshot injuries to their heads. According to relatives of the victims, no action against the alleged perpetrators has been taken.”<sup>490</sup>
47. “A resident of Odesa region informed [OHCHR] that in September 2014, while he was a member of an armed group, he witnessed the execution of three captured Ukrainian soldiers. A resident of the city of Cherkasy, who had spent more than three months in the captivity of the armed groups in the Luhansk region, claimed that on 20 September 2014, while being kept in a basement in the town of Rovenky (Luhansk region), he witnessed the death of a detainee who had been beaten by members of the armed groups.”<sup>491</sup>
48. On 25 September 2014, in a village in Donetsk region, a woman and two of her colleagues (a man and a woman) were abducted at their workplace by armed men from the “Bezler group”, led by a local resident. They were taken to the seized administrative building of a coal mine in Horlivka, where one of the women saw signs like “Horlivka NKVD” and “Smersh”, referring to the groups using the site. After being “registered” in a journal, the three individuals were informed they were “arrested”. They were taken to another room which was covered in blood. The man was violently beaten in front of the women until he fainted. Then both women were raped by at least seven men and beaten, while interrogated about the whereabouts of their money and valuables. One of the victims was subjected to electroshocks with wires attached to her breast, after which she lost consciousness. She woke up from an injection into her arm. Through the open door, she saw a room full of valuables, among which she recognized some of her belongings. She later found out that while she and her colleagues were being tortured, the armed groups had robbed their houses. For the following 10 days, she was taken for “interrogation” almost every night, and was raped by intoxicated armed group members. One day, the perpetrators brought an attorney and forced the victim to rescind ownership of her apartment and land property to the perpetrators. For the following months she was forced to cook meals for the armed group members and for other people deprived of liberty (both civilians and Ukrainian army soldiers). On 7 November 2014, she was released and moved the following morning to territory under the control of the Government.”<sup>492</sup>

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<sup>488</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>489</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>490</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>491</sup> <https://www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf> (para. 39)

<sup>492</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportCRSV\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf)

49. "In October 2014, a resident of Antratsyt, in Luhansk region (controlled by armed groups) was summoned to the local "commandant's office" where he was reportedly beaten to death. His body was found in a coal mine one year later."<sup>493</sup>
50. "On 9 September 2014, two Roma women (28 and 50 years old) and a six-year-old girl came to Shchotove village to check on their property. Reportedly, six armed Cossacks (allegedly belonging to "Rus" division) arrived at their house, acting on rumours spread by villagers that they were hiding gold in their garden. They took the women and girl to Antratsyt town for interrogation at the local police department which, at the time, was run by Cossacks. Allegedly, the 'police' and the commander of the "Rus" division were informed by phone about their detention and told that the women were "disobeying the 'authorities'". On 10 September 2014, the victims were recorded as having been released from the 'police station' but they did not return home and their whereabouts remained unknown to their relatives. On 18 September 2014, the victims' relatives posted a call on a social network with a request to provide any information about the disappeared. The bodies of all three victims were found in November 2014, in a forest near Orikhove, Luhansk region, in Cossack-controlled areas. In the summer of 2015, OHCHR obtained forensic data that they had died on 10 September 2014 as a result of gunshot wounds to their heads."<sup>494</sup>
51. "[OHCHR] also interviewed a woman who had been held twice by the armed groups of the 'Luhansk People's Republic', from July to October 2014 and from February to July 2015. In July 2014, she was detained with three men at a checkpoint manned by the 'Cossacks Union' of the 'All-Great Don Army'. During her first two weeks of detention, she and others were interrogated and tortured. The woman was severely beaten with rifle butts and bullet proof vests until she lost consciousness. As a result, four ribs were fractured, and her nose and most of her teeth were broken. During interrogation, perpetrators were reportedly extinguishing cigarette butts against her wrist, and threatening the life of her child and mother. She also reportedly survived an attempted gang rape. She witnessed the summary execution of two Ukrainian soldiers – one was shot, a second was beaten to death on the head."<sup>495</sup>
52. "On 8 October [2014], the [OHCHR] was informed about the deprivation of liberty of the head of the independent Miners Trade Union of the Kalinin mine, and of his two sons. Allegedly, on 6 October, his private apartment was stormed by eight armed men who introduced themselves as the 'Donetsk People's Republic' police. They reportedly claimed having received a complaint that an 'enemy of the republic' was living in the apartment, and that they had to detain him to 'clarify circumstances'. When contacted by his wife, neither the local 'police department' where he and his sons were supposedly taken, nor the 'state security committee' of the 'Donetsk People's Republic' had any information about the individual."<sup>496</sup>
53. "On 7 January 2015, the daughter of Kulish, who then resided in Kyiv, was informed by the 'prosecutor's office' of the 'Luhansk people's republic' that two bodies found near the village Piatyhorivka could be her parents. In March 2015, Alekhin's mother and a friend of Kulish identified the bodies visually and the DNA expertise confirmed that the woman's body was Kulish. According to the forensic expertise, both victims died of several gunshots to the head. Alekhin bore signs of beating with a dull object, while his wife had fractures of the cranium. In June 2015, the bodies were handed over to the family for burial. The perpetrators allegedly belonged to the so-called separate special brigade 'Odessa' of the 'ministry of state security' of the 'Luhansk people's republic'. According to the 'prosecutor's office' of the 'Luhansk people's republic', they have been deprived of liberty in connection with an 'investigation' of the other

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<sup>493</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf)

<sup>494</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportCRSV\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf)

<sup>495</sup> <https://www.ohchr.org/Documents/Countries/UA/11thOHCHRreportUkraine.pdf> (para.48)

<sup>496</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHR\\_sixth\\_report\\_on\\_Ukraine.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf)

'case', but indicated the burial site."<sup>497</sup>

54. "The Donetsk international airport, controlled by Ukrainian forces since May 2014, was under constant attacks by the armed groups of the 'Donetsk people's republic'. On 20 January 2015, a massive explosion in the basement of the new terminal resulted in the demolition of its second, third and fourth floors, and in the deaths and injuries of many of Ukrainian soldiers. Some of those injured died overnight; at least three of them survived, including Mr Andrii Havryliuk, who could not move as one of his arms and right leg were most probably fractured. In the morning of 21 January, due to a lack of weapons, ammunition and medicine, one of the Ukrainian soldiers approached the armed groups to negotiate the evacuation of his injured colleagues. Sometime later, all Ukrainian military that remained in the building of the new terminal were captured by members of the so-called 'Sparta' battalion, loaded onto military trucks and taken to the 'Sparta' base in the city of Donetsk. After extracting two less heavily injured soldiers from the building, members of the 'Sparta' went back to take Havryliuk. An injured Ukrainian soldier, who witnessed the scene from the truck, heard three single shots and saw armed group members exited the building shortly afterwards. On 5 February 2015, after his transfer to Government-controlled territory, the witness was shown a video footage of the bodies of Ukrainian servicemen in the demolished airport terminal and recognized Havryliuk among dead soldiers. On the video, a gunshot wound is visible on the victim's forehead. The body of Havryliuk was transferred to the Government-controlled territory by mid-February 2015. According to the forensic report obtained by HRMMU, the death of Havryliuk was caused by brain tunic haemorrhage and numerous open wounds of the head, including a penetrating gunshot."<sup>498</sup>
55. "On 22 January 2015, the armed groups of the 'Donetsk people's republic' claimed gaining control over the village of Krasnyi Partyzan (30km north of Donetsk). A video footage made by the armed groups was disseminated through social media and formed the basis of allegations that several Ukrainian soldiers captured in the village had been executed. In February and March 2015, nine Ukrainian soldiers who had been captured by the armed groups in the village on 22 January, were released. Three of them confirmed to OHCHR earlier allegations of the summary execution of three of their fellow soldiers – Mr Albert Sarukhanian, Mr Roman Sekh and Mr Serhii Slisarenko. On 22 January 2015, the armed groups of the 'Donetsk people's republic' attacked an outpost of the Ukrainian Armed Forces in the village. A group of Ukrainian servicemen had to retreat to the two empty residential houses located nearby. After their surrender, four servicemen from one of the buildings were lined up along the wall of the neighbouring house. They were forced to sit on the ground and several members of the armed group approached them. A woman carrying a sniper rifle asked her fellow fighters if she could shoot, and made shot at Serhii Slisarenko several times, hitting his leg. As he was screaming with pain, another member of the armed group, shot him dead. The woman then reportedly fired two or three shots at Albert Sarukhanian, killing him, before shooting at Roman Sekh. Having injured another person deprived of his liberty, the members of the armed groups turned their attention to another group of seven Ukrainian military captured in the other building. A survivor of the events stated that the bloodshed ended when a member of the armed group asked his fellows to stop, adding "there would be plenty of time for this after securing the area". The witness believes that the killings were carried out by members of the so-called 'Vostok' battalion, stating that those involved in this incident were subordinates of a 'Vostok' commander. After the latter arrived at the scene, they started loading two wounded soldiers and six other servicemen onto a truck, but not Roman Sekh, arguing that he was not going to survive."<sup>499</sup>
56. "OHCHR interviewed a Ukrainian soldier who was captured by members of an armed group during hostilities around Debaltseve in February 2015. During interrogation, he had some of his teeth knocked out. According to him, several other Ukrainian soldiers were subjected to beating, both during their capture and while in detention, and one soldier reportedly had his jaw

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<sup>497</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>498</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>499</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

fractured. He also reported that some soldiers were forced to ingest their insignia and any item bearing Ukrainian symbols.”<sup>500</sup>

57. “OHCHR obtained more details on the case of 13 Ukrainian soldiers captured by armed groups near Debaltseve in February 2015.<sup>73</sup> The victims were struck in the head with rifle butts, forced to remove their jackets despite the very low temperatures, and ordered to kneel for four hours in the snow, causing their legs to go numb. Some members of the armed groups put knives to their faces and threatened: “What do you want me to cut off, an eye or an ear?” All the victims were subsequently transferred to a building in Luhansk, allegedly housing the ‘separate commandant’s regiment of the 2 nd army corps of ‘Luhansk people’s republic army’. During interrogations, the soldiers were severely beaten. One soldier was held in a cell with a civilian whose body was completely blue, ostensibly as a result of severe beatings. The civilian stated that he was accused by armed groups of being a spotter and was tortured until he ‘confessed’. The soldiers were later released while the fate of the civilian remained unknown.”<sup>501</sup>
58. “On 2 February 2015, some 20 armed people surrounded their house, burst in and put a gun to the forehead of the father. The family was forced outdoors and told they would be shot dead. An armed man loaded the gun several times, shouting at the family and insulting them with derogatory names. The adults were taken to a commandant’s base but released soon afterwards. The victims informed OHCHR that another family was forced to leave the village for openly expressing views supporting Ukrainian unity and rejecting the authority of the armed groups.”<sup>502</sup>
59. “OHCHR also documented the case of a man who was detained at a checkpoint run by an armed group in March 2015, and brought to Dokuchaievsk. He was tortured by armed men in uniforms of ‘Donetsk people’s republic’, beaten with truncheons until they broke, subjected to electric shocks, and smashed in the head. He was brought to a hospital and then transferred to the seized former SBU building in Donetsk city, where he was tortured again in the same manner. Later, the victim was tied to a chair, interrogated, and beaten with a plastic pipe. One of the perpetrators fastened a belt around his neck and tightened it until the victim lost consciousness. Electric shocks were used repeatedly. The perpetrators also threatened that he would be forced to blow himself up. The victim was released in April 2016.”<sup>503</sup>
60. “On 5 May [2015] the [OHCHR] interviewed a woman, who had been abducted on 22 May 2014 and illegally deprived of her liberty for five days by the ‘traffic police’ and members of the armed groups of ‘Donetsk People’s Republic’ for assisting the Ukrainian armed forces. She reported having been blindfolded and beaten every two hours on the head and the legs, including with a blunt object which she could not identify. During her interrogation, she was reportedly tied to a chair, with her arms twisted behind the back of the chair. She claims that her captors beat another detainee to death in her presence. They also reportedly subjected her to a mock execution twice: once she was shot with a blank cartridge; another time, shots were fired above her head while she stood against a wall; and she was forced to play ‘Russian roulette’. She also reported an attempted rape by a group of men.”<sup>504</sup>
61. “On 6 May [2015], the [OHCHR] interviewed a man who had been illegally deprived liberty in a ‘base’ of a ‘Cossack’ armed group in Donetsk from 1 to 28 February. He reportedly witnessed other captives being beaten, including with rifle butts. His cellmate told him he had been tortured with electric current and had his ears cut. Some captives reportedly told him that another detainee (with whom he shared a cell) was taken for interrogation and probably tortured to

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<sup>500</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf)

<sup>501</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport18th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf)

<sup>502</sup> [https://www.ohchr.org/Documents/Countries/UA/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](https://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf)

<sup>503</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport18th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf)

<sup>504</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHReportUkraine.pdf>



death.”<sup>505</sup>

62. “In May 2015, a woman from Donetsk was apprehended by the ‘Vostok battalion’ for violating the curfew. She was intimidated, forced into a car and brought to a place which, she thought, was a police department seized by the armed groups. She was beaten with metal sticks for three hours and raped by several men from the ‘Vostok battalion’ that night. She was released the next day.”<sup>506</sup>
63. “In August 2015, 17 bodies were reportedly recovered in the town of Brianka (Luhansk region). The bodies were allegedly victims of the so-called ‘Brianka SSSR’ battalion, an armed group which has been controlling the town since April 2014. According to a former member of the battalion who fled to the Russian Federation, fearing for her life, the battalion was stationed some four kilometres from the contact line, and was never involved in direct hostilities. It reportedly kept the entire town under terror as its members reportedly targeted everyone – civilians (for instance because they were drunk or violated curfew), members of other armed groups, or of their own fellows. There were reportedly no requirements set for recruiting new members in the battalion. Whoever was coming would receive meals and weapons. Members of the battalion reportedly committed grave human rights abuses, including executions, rapes, abductions, torture and ill-treatment.”<sup>507</sup>
64. “In October 2016, a man was detained at a checkpoint controlled by armed groups in Donetsk region and brought to a ‘police unit’ in Donetsk. He was interrogated on three occasions, and severely kicked and beaten with fists and a truncheon while handcuffed. Three or four times, a plastic bag was put over his head, causing him to suffocate. One of the interrogators threatened to cut off one of his fingers, and made him believe this act was imminent. Another perpetrator threatened him with a gun, saying his body would be found in the river. The victim was also subjected to electric shocks on his back, head and the flank of his body. He was released in December 2016.”<sup>508</sup>
65. “In November 2016, a woman, the acting head of a Government-controlled village close to the contact line, was detained at a checkpoint controlled by armed groups of ‘Donetsk people’s republic’. She was released after being held for 30 days in temporary detention facility (ITT)<sup>45</sup> in Donetsk. A man who used to work as a prosecutor in Luhansk before the conflict, and had moved to territory controlled by the Government to continue working as prosecutor, had recently retired and returned to Luhansk. There he informed the ‘ministry of state security’ of his return. When he did, in mid-November 2016, he was questioned for three hours. On 23 November, he was again called by the ‘ministry’ to answer additional questions, where he was detained and his family did not receive any information about his whereabouts until 18 December 2016, when he was released, but strongly ‘advised’ to leave territory controlled by the ‘Luhansk people’s republic’.<sup>509</sup>
66. “In 2016 a woman, ‘accused’ of ‘espionage’, was detained by armed groups in Luhansk region, she was deprived of liberty. During this time she was kept in Luhansk SIZO together with those who committed criminal offences. One evening in the beginning of August the guards brought her to the new officer on duty upon his demand. He told her that the “conditions in cells can be very different”, which she perceived as a threat of violence. Then he raped her. From then on, he called her to his office nearly once a week forcing her to perform oral sex. She did not complaint to anyone for the fear of retaliation. She was released several months later.”<sup>510</sup>

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<sup>505</sup> <https://www.ohchr.org/Documents/Countries/UA/10thOHCHReportUkraine.pdf>

<sup>506</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportCRSV\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf)

<sup>507</sup> [https://www.ohchr.org/Documents/Countries/UA/OHCHRTematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRTematicReportUkraineJan2014-May2016_EN.pdf)

<sup>508</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport18th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf)

<sup>509</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf)

<sup>510</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportCRSV\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf)

67. "In June 2017, OHCHR documented a case which demonstrates the recurrent character of killings and enforced disappearances in the conflict zone. A young man who made his living carrying luggage for people travelling across the contact line in Stanytsia Luhanska left for work on 27 April 2017, and never returned. On 2 May, his family saw a media report stating that his body had been found by an ambulance in Zhovtnevyi district, in Luhansk city (controlled by armed groups) on 27 April. According to the death certificate, the man died of haemorrhagic shock linked to a complex trauma to his head, limbs, and body bones, and multiple injuries of internal organs. The 'police' in Luhansk did not provide his relatives with any information on the circumstances of his death. The Troitske police department of the National Police in Luhansk region launched a criminal investigation into the case."<sup>511</sup>
68. "After nine months of detention by armed groups, a judge of the court of appeal of Luhansk region was released on 14 July 2017. Detained at the Stanytsia Luhanska checkpoint in October 2016, he was held incommunicado by the 'ministry of state security' of the 'Luhansk people's republic'. He spent 48 days in solitary confinement. The conditions of detention were poor, including insufficient food, cold temperatures, limited space and sanitary conditions. OHCHR considers that these conditions may amount to ill-treatment. During his detention, the victim heard other detainees taken for 'interrogation', who were apparently subjected to beatings and electric shocks. He was forced to record a propaganda video against Ukraine. During his detention, OHCHR repeatedly requested access to him. Until the day of his release, when he was presented to HRMMU, the 'Luhansk people's republic' refused to provide any information about his whereabouts or fate."<sup>512</sup>
69. "On 13 July 2017, a woman with a hearing disability, who had publicly criticized the 'Luhansk people's republic' on social media, was detained at a checkpoint controlled by armed groups at the Stanytsia Luhanska crossing route. She was held incommunicado for 16 days by the 'ministry of state security' of the 'Luhansk people's republic', during which time it consistently denied to her family that she was being detained. The woman was interrogated four times without legal representation. During one interrogation session, one of her fingers was dislocated with a pair of pliers. She was threatened to be moved to the basement with male detainees and told she would "have a fun night". On 29 July, she was brought back to the same checkpoint and told to cross to the government-controlled side. An investigation into this case was launched by the Luhansk regional department of the National Police."<sup>513</sup>
70. "During the reporting period, OHCHR received and followed up on accounts of seven individuals (three women and four men) who had been detained incommunicado in an armedgroup-controlled place of detention called "Izoliatsiia". Since at least 2016, the facility has been used by the 'MGB' and the 'UBOP' of the 'Donetsk people's republic' to detain men and women suspected of "treason", "subversive activities" or cooperation with SBU. Some members of the armed groups of the 'Donetsk people's republic' were also reportedly held in this facility. Detention periods varied from a few hours to over a year. The facility has cells used for punishment (e.g. one only for sitting, another only for standing) and a 'monitoring room' from which the cells could be watched 24 hours via video cameras. Guards wore camouflage without insignia and were armed with AK-47 assault rifles. To keep detainees in a state of exhaustion, the guards forced them to constantly perform physical work."<sup>514</sup>

<sup>511</sup> [https://www.ohchr.org/Documents/Countries/UA/ReportCRSV\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf)

<sup>512</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf)

<sup>513</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport19th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf)

<sup>514</sup> [https://www.ohchr.org/Documents/Countries/UA/UAReport20th\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/UAReport20th_EN.pdf)

## **APPENDIX 2**

### **Bellingcat reports proving Russian military presence in Ukraine**

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<https://www.bellingcat.com/news/uk-and-europe/2015/05/26/mamai-geolocation/>

<https://www.bellingcat.com/resources/2015/05/28/tankspotting-how-to-identify-the-t-72b3/>

<https://www.bellingcat.com/resources/case-studies/2015/05/28/geolocating-stanislav-tarasov/>

<https://www.bellingcat.com/news/uk-and-europe/2015/09/21/bellingcat-investigation-russias-paths-to-war/>

<https://www.bellingcat.com/news/uk-and-europe/2015/09/22/russias-6th-tank-brigade/>

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<https://www.bellingcat.com/news/2015/12/03/the-burning-road-to-mariupol/>

<https://www.bellingcat.com/news/uk-and-europe/2016/01/16/russias-200th-motorized-infantry-brigade-in-the-donbass/>

<https://www.bellingcat.com/news/uk-and-europe/2016/03/25/russian-prosecution-cites-bellingcat-methods-in-savchenko-trial/>

<https://www.bellingcat.com/news/uk-and-europe/2017/04/02/tankspotting-t-90as-donbass/>

<https://www.bellingcat.com/news/uk-and-europe/2018/05/10/full-report-russian-officers-militants-identified-perpetrators-january-2015-mariupol-artillery-strike/>

<https://www.bellingcat.com/news/uk-and-europe/2019/02/20/russias-anti-selfie-soldier-law-greatest-hits-and-implications/>

<https://www.bellingcat.com/news/uk-and-europe/2016/12/21/russian-artillery-strikes-against-ukraine/>

<https://www.bellingcat.com/news/uk-and-europe/2015/02/17/origin-of-artillery-attacks/>

## APPENDIX 3

### Bellingcat reports on Malaysian Airlines Flight MH17

<https://www.bellingcat.com/resources/case-studies/2014/07/17/geolocating-the-missile-launcher-linked-to-the-downing-of-mh17/>

<https://www.bellingcat.com/resources/case-studies/2014/07/18/identifying-the-location-of-the-mh17-linked-missile-launcher-from-one-photograph/>

<https://www.bellingcat.com/news/uk-and-europe/2014/07/21/the-russian-government-goes-back-to-parroting-dodgy-internet-rumours/>

<https://www.bellingcat.com/news/uk-and-europe/2014/07/22/evidence-that-russian-claims-about-the-mh17-buk-missile-launcher-are-false/>

<https://www.bellingcat.com/news/uk-and-europe/2014/07/24/caught-in-a-lie-compelling-evidence-russia-lied-about-the-buk-linked-to-mh17/>

<https://www.bellingcat.com/news/uk-and-europe/2014/07/28/two-more-key-sightings-of-the-mh17-buk-missile-launcher/>

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<https://www.bellingcat.com/news/uk-and-europe/2014/09/20/crowdsourced-investigation-was-the-mh17-linked-buk-sighted-in-ukraine-and-russia-unique/>

<https://www.bellingcat.com/news/uk-and-europe/2014/09/22/more-evidence-of-russia-supplying-the-buk-linked-to-the-downing-of-mh17/>

<https://www.bellingcat.com/news/uk-and-europe/2014/09/24/video-comparison-confirms-the-buk-linked-to-the-downing-of-mh17-came-from-russia/>

<https://www.bellingcat.com/resources/case-studies/2014/09/29/geolocating-the-mh17-buk-convoy-in-russia/>

<https://www.bellingcat.com/news/uk-and-europe/2014/10/11/russian-tv-inadvertently-demonstrates-mh17-wasnt-shot-down-by-aircraft-cannon-fire/>

<https://www.bellingcat.com/news/2014/11/07/geolocated-june-buk-convoy-videos-in-russia/>

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<https://www.bellingcat.com/resources/case-studies/2014/11/08/geolocating-the-russian-buk-convoy-in-millerovo/>

<https://www.bellingcat.com/news/uk-and-europe/2014/11/08/origin-of-the-separatists-buk-a-bellingcat-investigation/>

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<https://www.bellingcat.com/news/uk-and-europe/2015/01/02/did-this-ukrainian-soldier-prove-ukraine-shot-down-mh17/>

<https://www.bellingcat.com/news/uk-and-europe/2015/01/05/is-this-ukrainian-buk-a-clue-in-the-mh17-investigation-or-a-red-herring/>

<https://www.bellingcat.com/news/uk-and-europe/2015/01/10/su-25-mh17-and-the-problems-with-keeping-a-story-straight/>

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<https://www.bellingcat.com/news/2015/03/30/draft-new-facts-on-mh17-from-the-joint-investigation-teams-call-for-witnesses/>

<https://www.bellingcat.com/news/uk-and-europe/2015/05/13/tracking-the-trailers-investigation-of-mh17-buks-russian-convoy/>

<https://www.bellingcat.com/news/uk-and-europe/2015/05/31/mh17-forensic-analysis-of-satellite-images-released-by-the-russian-ministry-of-defence/>

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<https://www.bellingcat.com/news/uk-and-europe/2015/06/12/july-17-imagery-mod-comparison/>

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<https://www.bellingcat.com/news/uk-and-europe/2016/02/29/mh17-zaroshchenske-revisited-almaz-anteys-new-launch-areas/>

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<https://www.bellingcat.com/news/uk-and-europe/2017/12/08/russian-colonel-general-delfin/>

<https://www.bellingcat.com/news/uk-and-europe/2017/12/20/british-intelligence-report-confirms-russian-military-origin-mh17-murder-weapon/>

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<https://www.bellingcat.com/news/uk-and-europe/2018/08/08/addressing-aeroflot-mh17-conspiracy-theory/>

<https://www.bellingcat.com/news/uk-and-europe/2019/06/19/identifying-the-separatists-linked-to-the-downing-of-mh17/>

<https://www.bellingcat.com/news/uk-and-europe/2019/07/09/the-arrest-of-vladimir-tsemakh-and-its-implications-for-the-mh17-investigation/>

## APPENDIX 4

### Reports and documents from Ukrainian authorities, and witnesses testimony

Informational Report concerning Russian Armed Forces and Army Corps

Informational Report concerning Russian weapon and equipment

Informational Report concerning Russia's continuing control of the leadership

[Tab 1] OHCHR, *Report on Human Rights Situation in Ukraine* (15 December 2014)

[Tab 2] Informational note about the aggression of Russia on East and South Ukraine (March - middle of September 2014)

[Tab 3] OHCHR, *Report on Human Rights Situation in Ukraine* (15 April 2014)

[Tab 4] OHCHR, *Report on Human Rights Situation in Ukraine*, (15 May 2014)

[Tab 5] Parliamentary Assembly Resolution 1990 (2014)

[Tab 6] Expert opinion on Forensic Commission Military Examination, 6 October 2017

[Tab 7] OHCHR, *Report on the Human Rights Situation in Ukraine* (15 July 2014)

[Tab 8] StopTerror Report '*PMC as an instrument of Russian aggression*'

[Tab 9] StopTerror Report "*Units of the Irregular Armed Forces of the Russian Federation on the territory of Ukraine Part I*"

[Tab 10] StopTerror Report "*The Cossacks as a tool of aggression of the Russian Federation part I*"

[Tab 11] StopTerror Report, *Military servicemen and mercenaries of Russia in Donbas Part I*

[Tab 12] InformNapalm and NGO Prometheus Report for ECHR

[Tab 13] Report, *The Surkov Leaks: The Inner Workings of Russia's Hybrid War in Ukraine*

[Tab 14] Witness statement of Radiuk Volodymyr Valeriyovych

[Tab 15] Letter of Central Electoral Commission of 29 May 2017

[Tab 16] Witness Statements of Chub S.I.

[Tab 17] OHCHR, *Report on Human Rights Situation in Ukraine* (15 June 2014),

[Tab 18] Letter of the Administration of State Border Guard Service of Ukraine of 7 September 2017 with annexes

[Tab 19] Witness statements of Koleynyk S.A.

[Tab 20] Witness statements of Andreiev Yuriy Mykhailovych

[Tab 21] Witness statements of Iryna Mykolayivna Kirikova

[Tab 22] Witness statements of Rizaeva Hayde Adylyvna

[Tab 23] Witness statements of Krychuk Serhii Borysovyh

[Tab 24] Witness statements of Khaletskyi Andrii Viktorovych

[Tab 25] Witness statements of Kovalchuk Vitalii Mykhailovych

[Tab 26] Witness statements of Stepanova Olena Oleksandrivna



[Tab 27] Witness statements of Kolesnikov Ruslan Mykolaiovych

[Tab 28] Report “*Religious Persecution in Eastern Ukraine and Crimea 2014*”

[Tab 29] OHCHR, *Report on Human Rights Situation in Ukraine* (19 September 2014)

[Tab 30] Dutch Safety Board, *Crash of Malaysia Airlines Flight MH17* (17 July 2014) with annexes

[Tab 31] Material evidence in criminal case no. 42014000000000457 – military equipment, weapons and heavy armoured vehicles, trucks of the RFAF

[Tab 32] Letter of State Border Guard Service Administration of Ukraine of 21 September 2015

[Tab33] Witness statements of Besperstova O.O

[Tab34] Witness statements of Zarovna T.,

[Tab35] Witness statements of Kravchenko A.V.,

[Tab36] Witness statements of Kovalenko A.,

[Tab37] Witness statements of Kirikova I.,

[Tab38] Witness statements of Kravchenko A.V.

[Tab 39] Expert opinion on phonoscopic examination intercepted communication of Glaziev

[Tab 40] Witness statement of Andrii Tkachenko

[Tab 41] Witness statements of Potiomkin Serhii Serhiiovych

[Tab 42] Records of Interrogation of Russian paratroopers detained

[Tab 43] Witness statements of Derevianko Vitalii Sergiiovych

[Tab 44] Witness statements of Knysh Tymur Stanislavovich,

[Tab 45] Witness statements of Andrushko Oleksiy Oleksandrovych

[Tab 46] Witness statements of Bayrak Ihor Volodymyrovych,

[Tab 47] Witness statements of Didukh Volodymyr Petrovych

[Tab 48] Witness statements of Dudarenko Oleksandr Dmytrovych

[Tab 49] Witness statements of Furaiev Serhii Volodymyrovych

[Tab 50] Witness statements of Holikov Mykola Yuriiiovych

[Tab 51] Witness statements of Holovchyts Viktor Hryhorovych,

[Tab 52] Witness statements of Kharko Artem Vitaliiiovych,

[Tab 53] Witness statements of Khoruzhnyi Artem Oleksandrovych

[Tab 54] Witness statements of Kozhanov Yurii Oleksyiovych

[Tab 55] Witness statements of Levchuk Bohdan Vasyliovych

[Tab 56] Witness statements of Igor Mykolayovych Mishchuk

[Tab 57] Witness statements of Oleshko Vitaliy Olehovych

[Tab 58] Witness statements of Olimpiyuk Artem Olegovych

[Tab 59] Witness statements of Ostapkovych Oleksandr Mykolaiovych

[Tab 60] Witness statements of Ponomarenko Yosyp Vasylovich

[Tab 61] Witness statements of Sakhnevych Volodymyr Dmytrovych

[Tab 62] Witness statements of Smolyanyi Ivan Mykolayovych

[Tab 63] Witness statements of Synenko Andriy Petrovich, Talimonchuk Mykhailo Bogdanovych

[Tab 64] Witness statements of Vietrov Oleksander Serhiovych

[Tab 65] Witness statements of Vorobyov Yehor Oleksiyovich

[Tab 66] Witness statements of Sobol Oleksandr Ivanovych,

[Tab 67] Witness statements of Buchkovskyi Oleksandr Dorelovych

[Tab 68] Witness statements of Belevtsov M.S.

[Tab 69] Witness statements of Deineha Oleksandr Hryhorovych,

[Tab 70] Witness statements of Teteruk Andriy Anatoliyovych

[Tab 71] Statement of Ministry of Foreign Affairs of the Russian Federation of 3 November 2014

[Tab 72] U.N. Security Council, *Security Council Press Statement on Killing of Bus Passengers in Donetsk Region, Ukraine* (13 January 2015)

[Tab 73] Report of the UN High Commissioner for Human Rights to the 27<sup>th</sup> session of the Human Rights Council

[Tab 74] U.N. Secretary-General, Statement Attributable to the Spokesman for the Secretary-General on Ukraine (24 January 2015)

[Tab 75] Judgment against Yerofeyev Ye.V. and Aleksandrov A.A.

[Tab 76] Letter of the Main Directorate of the Intelligence of the Ministry of Defence of 19 March 2018

[Tab 77] Letter of the Ministry of Defence of Ukraine of 30 April 2018

[Tab 78] Letter of Main Directorate of Intelligence of Ministry of Defense of Ukraine of 23 May 2018

[Tab 79] Letter of the Security Service of Ukraine of 15 November 2018

[Tab 80] Letter of the Security Service of Ukraine of 10 September 2019

[Tab 81] Judgement against Russian national Daronin O.S.

[Tab 82] Witness statement of Miroshnychenko Yevheniy Serhiyovych

[Tab 83] Witness statement of Finogin M.

[Tab 84] Witness statement of Stebliuk Vsevolod Volodymyrovych

[Tab 85] Witness statements of Semenchenko S.N.

[Tab 86] Witness statements of Svitlana Druik

[Tab 87] InformNapalm *Report about weapon*

[Tab 88] Inspection record of weapon of 22.01.2015

[Tab 89] “*InformNapalm Report-Units*”