

NO COUNTRY FOR YOUNG:

MONITORING OF ATTACKS ON CHILDREN AND SCHOOLS DURING THREE YEARS OF THE WAR AT DONBAS



ПОСОЛЬСТВО ФІНЛЯНДІЇ
В УКРАЇНІ



EXECUTIVE SUMMARY

Introduction

Non-Governmental organization Truth Hounds provides its final report – “No country for young: monitoring of attacks on children and schools during three years of the war at Donbas”. This report includes the documented evidence of crimes committed on the territory of Donetsk and Luhansk regions of Ukraine for the period of 2014-2017 and directed against children and educational institutions that belong to the list of objects protected by the international humanitarian law (IHL). The evidence collected by the Truth Hounds is presented and analysed in accordance with the principles of the international criminal law *stricto sensu* and the international human rights law. Our goal was to examine whether the requirements of the IHL relating to the protection of children, educational institutions and the provision of the inaccessibility of the educational process are being adhered to. The Truth Hounds’ team has ascertained that despite the special status of children and educational institutions in armed conflicts, gross violations of international standards systematically occur on the territory of Donetsk and Luhansk region of Ukraine being provoked by both parties.

FACTUAL BACKGROUND

In the second half of February 2014, after the Euromaidan in Ukraine, the armed forces of the Russian Federation with the support of the paramilitary forces invaded the Crimean Peninsula, the sovereign territory of Ukraine, as a result violating the prohibition of the use of force enshrined in the United Nations Charter. After the annexation of Crimea by the Russian Federation, pro-Russian separatists began to make attempts to establish control over the industrial regions of Eastern Ukraine. As a response to the increase in the number of Russian troops on the border, the Ukrainian government issued a decree about the launch of the "anti-terrorist operation" (ATO). On May 11th, 2014 pro-Russian separatists in Donetsk and Luhansk regions held unrecognized referendums, declared independence of the so-called "Donetsk People's Republic" (DPR) and "Luhansk People's Republic" (LPR) and issued drafts of new constitutions. The fight quickly escalated on the territory of Donbas. Losses, including among the civilian population started to increase. On July 17, 2014 the passenger Boeing of Malaysia airlines, which was operating the flight MH17 from Amsterdam to Kuala Lumpur was shot down on the territory controlled by separatist, taking 298 lives. Despite peace negotiations, which were held in Minsk, the fighting in Eastern Ukraine continued and is still going on, causing the death among civilian population and the destruction of civilian infrastructure. On February 2nd, 2017 one of the bloodiest days of the war in the East of Ukraine has occurred – an indiscriminate attack of Avdiivka city, which resulted in civilian losses and damages to a large number of civilian objects.

A BRIEF DESCRIPTION OF THE FINDINGS

This report documents:

- 5 wilful killings of children;
- 6 illegal detentions of children with the use of torture;
- 8 cases of child deaths caused by indiscriminate attacks on civilian areas;
- 19 cases of injury of children caused by indiscriminate attacks on civilian areas;
- 12 cases of indiscriminate attacks on civilian areas as a result of which children were left orphans;
- 6 cases when combatants were intimidating parents with the use of threats directed against their children;
- Attack on 58 educational institutions in 20 cities of Donetsk region. Among them 7 cases of taking possession and the establishment of military bases or prisons on the territory of educational institutions by the combatants of the Armed Forces of Ukraine; 4 cases of similar acts conducted by combatants in the so-called DPR;
- Attacks on 21 educational institutions in 14 cities of Luhansk region. Among them, 2 case of the taking possession and the establishment of military bases or prisons on the territory of educational institutions by the combatants of the Armed Forces of Ukraine; 4 cases of similar acts conducted by combatants in the so-called LPR.

ELEMENTS OF CRIMES UNDER THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT

To classify the mentioned acts under the Article 5 of the Statute of the International Criminal Court, it shall contain all the constituent elements of international crimes defined by the Statute and Elements of crimes.

In order to qualify the mentioned acts as war crimes, it is required to prove that they were committed in the context of an armed conflict or occupation. To qualify those acts as crimes against humanity, the crime has to be a part of a widespread or systematic attack directed against any civilian population pursuant to a state or organizational policy.

The Truth Hounds' report demonstrates that the armed confrontation on the territory of Luhansk and Donetsk regions of Ukraine since 2014 reached the certain level of intensity and widespreadness of violence that are typical for an armed conflict. Given the numerous evidence presented by Truth Hounds earlier, there is a certainty about the international character of an armed conflict.

Articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Rome Statute criminalize intentionally directed attacks against buildings intended for educational purposes provided that they are not used as military facilities. Attacks against mentioned buildings can constitute an international war crime regardless of whether such attacks are carried out in the framework of an international or non-international armed conflict. Separate attacks on schools that were documented by the Truth Hounds are regarded by us as international crimes under the Article 8(2)(b)(ix) in terms of the proof of attack, the existence of an armed conflict in which they occurred and the existence of the intent of perpetrators at least in the form of understanding that the consequences of the damage to educational institutions will occur in the ordinary course of events.

The use of schools for military purposes, which was documented by the Truth Hounds, constitutes a violation of IHL. The same can be said about individual cases of looting or destruction of property of educational institutions. However, those actions of looting and destruction do not constitute war crimes under the Rome Statute.

Such use also prevents the provision of education to children, which is considered to be one of the priorities of the Treaty law, customary IHL and IHRL.

WILFUL KILLINGS, TORTURE AND OTHER FORMS OF INHUMAN TREATMENT OF CHILDREN:

This report has documented 5 wilful killings of children and 6 illegal detentions of children with the use of torture and inhuman treatment.

Considering the available evidence there are reasons to believe that the mentioned actions can be classified as international crimes based on:

- Article 7 paragraph 1 (a), crime against humanity «wilful killing»
- Article 7 paragraph 1 (e), (f) and (k), crime against humanity «torture» or «other inhuman act»
- Article 8 paragraph 2a (i) or paragraph 2c (i), war crime «wilful killing» of the Rome Statute of the International Criminal Court; and Articles 3 (a), 31 i 32 of the Geneva Convention of 1949 regarding the protection of civilian persons in time of war.
- Article 8 paragraph 2 (i), (ii), (iii) or paragraph 2c (i), (ii), (iii), crime against humanity «torture» or «other inhuman acts»

THE DEATH AND INJURY OF CHILDREN CAUSED BY INDISCRIMINATE ATTACKS ON CIVILIAN AREAS

This report documented 8 cases of death of children and 19 cases of injury of children caused by indiscriminate attacks on civilian areas. Considering the available evidence there are reasons to believe that the mentioned actions can be classified as international crimes based on:

- Article 8 paragraph 2b (i), (ii), (iv), (v), (xx) or paragraphs 2c (i), 2e (i), war crime

ATTACKS ON EDUCATIONAL INSTITUTIONS IN DONETSK AND LUHANSK REGIONS

This report documented 79 attacks on educational institutions in 34 cities of Donetsk and Luhansk region. Among them, 9 cases of seizure and the establishment of military bases or prisons on the territory of educational institutions by the combatants of the Armed Forces of Ukraine; 8 cases of seizure and the establishment of military bases or prisons on the territory of educational institutions by the combatants of the so-called DLPR.

Considering the available evidence there are reasons to believe that the mentioned actions can be classified as the following international crimes (according to the Rome Statute of the International Criminal Court):

1. Article 8 paragraph 2 (b) (ix), war crime «intentionally directing attacks against buildings dedicated to education»

RESUME

Evidence of criminal acts and human rights violations documented in this report constitute crimes under the Statute of the International Criminal Court, namely war crimes and crimes against humanity. Given the general desire for peace, security and justice, it is necessary to conduct a full and thorough investigation of the described events and bring perpetrators of international crimes to justice before the independent and fair trial to ensure the respect for fundamental human rights (including the right of victims to justice).



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