

THE DONBAS CONFLICT: RUSSIA'S CULPABILITY UNDER INTERNATIONAL LAW

During the ongoing armed conflict between Ukrainian government forces and pro-Russian separatist insurgents in the Donbas region of Ukraine (the Donetsk and Lugansk Oblasts) that began in April 2014, numerous human rights violations and violations of international law have been noted on the part of the separatists affiliated with the so-called Donetsk People's Republic (DPR) and Lugansk People's Republic (LPR). In a report from the UN Human Rights Monitoring Mission, Ivan Šimonović, UN Assistant Secretary General for Human Rights, wrote about targeted killings, torture, abduction, illegal detention, and intimidation of election officials in the self-proclaimed pro-Russian republics, and called for urgent action to prevent a Balkans-style war. He also warned of a humanitarian crisis due to a failure of social services in the region, and an exodus of people from affected areas. The UN also reported threats against, attacks on, and abductions of journalists and international observers, as well as the beatings and attacks on supporters of Ukrainian unity.

A similar report by Human Rights Watch said: "Anti-Kiev forces in eastern Ukraine are abducting, attacking, and harassing people they suspect of supporting the Ukrainian government or consider undesirable...anti-Kiev insurgents are using beatings and kidnappings to send the message that anyone who doesn't support them had better shut up or leave".

The use of abductions as a method to maintain political power and to terrorize the local population into submission appears to have been one of the preferred abusive techniques utilized by the pro-Russian separatist leadership. In early July, 2014, Amnesty International published a report based upon evidence of beatings, torture, and abduction of activists, protesters and journalists by insurgents in the Donbas region. It said that "while most abductions appear to have

a 'political' motivation', there is clear evidence that abduction and torture is being used by armed groups to exert fear and control over local populations". The report also said that some people had been abducted for ransom. The report summarized its finding by stating that "the bulk of the abductions are being perpetrated by armed separatists, with the victims often subjected to stomach-turning beatings and torture."

A report by the United Nations OHCHR that was released on July 28, 2014 said that insurgent groups continued "to abduct, detain, torture and execute people kept as hostages in order to intimidate and to exercise their power over the population in raw and brutal ways". The report documents that at least 812 people have been abducted by the insurgents since mid-April, and said that "the majority are ordinary citizens, including teachers, journalists, members of the clergy and students".

A statement released on August 22, 2014 by the Lithuanian foreign minister said that the Lithuanian honorary consul in Luhansk, Mykola Zelenec, was abducted by pro-Russian insurgents and killed.

A report by Human Rights Watch said that the insurgents had been "running amok...taking, beating and torturing hostages, as well as wantonly threatening and beating people who are pro-Kiev". It also said that the insurgents had destroyed medical equipment, threatened medical staff, and occupied hospitals. A member of Human Rights Watch witnessed the exhumation of a "mass grave" in Sloviansk that was uncovered after separatists retreated from the city.

Captured Ukrainian soldiers have been subjected to public humiliation and other abuses in violation of international law. Insurgents with bayonet-equipped automatic rifles in the city of Donetsk paraded captured Ukrainian soldiers through the streets on August 24, 2014,

the Independence Day of Ukraine. During the parade, Russian nationalistic songs were played from loudspeakers, and members of the crowd jeered at the prisoners with epithets like "fascist". Street cleaning machines followed the protesters, "cleansing" the ground they were paraded on. Human Rights Watch said that this was in clear violation of the common article 3 of the Geneva Conventions. The article forbids "outrages upon personal dignity, in particular humiliating and degrading treatment". They further said that the parade "may be considered a war crime." On the following day, the insurgents tied a woman accused of being a spy to a lamppost. They wrapped her in a Ukrainian flag, and had passers-by spit her, slap her, and throw tomatoes at her.

In October 2015, the DPR and LPR banned non-governmental organizations such as Doctors Without Borders and World Food Program from the territory that they control. A report released on March 3, 2016 by the Office of the United Nations High Commissioner for Human Rights (OHCHR) said that people that lived in separatist-controlled areas were experiencing "complete absence of rule of law, reports of arbitrary detention, torture and incommunicado detention, and no access to real redress mechanisms".

According to the United Nations Children's Fund (UNICEF), "The results of a psychosocial assessment of children in Donetsk Oblast in Eastern Ukraine are deeply troubling ... and indicate that about half of all children aged 7-18 have been directly exposed to adverse or threatening events during the current crisis." OSCE monitors spoke to refugees from Donetsk city in Zaporizhia. They said that men were "often not allowed" to leave the city, but were instead "forcibly enrolled in 'armed forces' of the so-called 'Donetsk People's Republic' or obliged to dig trenches".

By June 2015, the conflict had created 1.3 million internally displaced people (IDPs). According to the OHCHR, this number had grown to 1.6 million people by early March 2016.

As the shaky ceasefire implemented by the Minsk Protocol became increasingly untenable in early November 2014, it was reported that the number of people that had fled insurgent-held areas of Donbas had reached one and a half million. Those forced to stay in the region were largely elderly, destitute, or otherwise unable to flee. Schools had been abandoned, and many had been converted into weapons depots or unlawfully used for other military purposes, as roughly half of the pre-war population of school-age children had left Donbas.

A map of human rights violations committed by the separatists, called the "Map of Death", was published by the Security Service of Ukraine (SBU) in October 2014. The reported violations included detention camps and mass graves. Subsequently, on October 15, 2014, the SBU opened a case on "crimes against humanity" perpetrated by insurgent forces.

Amnesty International reported evidence of summary killings of Ukrainian soldiers on April 9, 2015. Having reviewed video footage, it determined that at least four Ukrainian soldiers had been shot dead "execution style". The AI deputy director for Europe and Central Asia said that "the new evidence of these summary killings confirms what we have suspected for a long time". AI also said that a recording released by *Kyiv Post* of a man, allegedly separatist leader Arseny Pavlov, claiming to have killed fifteen Ukrainian prisoners of war was a "chilling confession", and that it highlighted "the urgent need for an independent investigation into this and all other allegations of abuses".

Russia and its leadership bear substantial responsibility for the War Crimes and human rights abuses committed by the insurgent forces in Donbas, since the insurgents are basically nothing more than proxies for Russia, in its attempt to carve off a large chunk of Ukraine close to

its borders. Since Russia aided and abetted the violations of international law committed by the insurgent forces, it may be held legally responsible in U.S. courts and in various international courts for the loss of human life and destruction of property caused by the insurgent forces. Plaintiffs in such a case could be either Ukrainian or other non-U.S. citizens, who could utilize the Alien Tort Statute (28 U.S. 1350), or they could be U.S. citizens or refugees currently within the United States who could seek jurisdiction in the U.S. courts under federal common law, which incorporates customary international law.