

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION
OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION
ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

(UKRAINE V. RUSSIAN FEDERATION)

VOLUME I OF THE ANNEXES TO THE REPLY

SUBMITTED BY UKRAINE

29 APRIL 2022

TABLE OF CONTENTS
OF THE VOLUME I OF THE ANNEXES TO THE REPLY

I. WITNESS STATEMENTS AND EXPERT REPORTS

A. ICSFT

1. Expert Reports

	<i>Page</i>
Annex 1. Second Expert Report of Lieutenant General Christopher Brown (21 April 2022)	<u>1</u>
Annex 2. Expert Report of Catherine Gwilliam and Air Vice-Marshal Anthony Sean Corbett (21 April 2022)	79

B. CERD

1. Witness Statements

	<i>Page</i>
Annex 3. Second Witness Statement of Refat Chubarov (21 April 2022)	<u>171</u>
Annex 4. Witness Statement of the Metropolitan of Simferopol and Crimea Klyment (29 March 2022)	183

2. Expert Reports

	<i>Page</i>
Annex 5. Second Expert Report of Sandra Fredman (21 April 2022)	<u>197</u>
Annex 6. Second Expert Report of Paul R. Magocsi (14 April 2022)	227
Annex 7. Expert Report of Martin Scheinin (14 April 2022)	261

II. ICSFT ANNEXES

A. UKRAINIAN GOVERNMENT DOCUMENTS

Annex 8. Ministry of Interior of Ukraine Order No. 317 (14 April 2014)	<u>293</u>
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Annex 9.	Search and Seizure Report, drafted by Senior Lieutenant of Justice O.B. Butyrin, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (16 November 2014)	299
Annex 10.	Report on Examination of Things Seized from Marina Kovtun, drafted by Senior Lieutenant of Justice D.S. Gnatushko, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (16 November 2014)	305
Annex 11.	Report of Presentation of a Person for Identification by Photos, drafted by Major of Justice O.S. Zagumennyi, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (18 November 2014)	311
Annex 12.	Report of Presentation of a Person for Identification by Photos, drafted by Senior Lieutenant of Justice O.B. Butyrin, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (19 November 2014)	315
Annex 13.	Report of Presentation of a Person for Identification by Photos, drafted by Lieutenant Colonel I.V.Mezionov, Special Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (22 November 2014)	321
Annex 14.	Record of Review, drafted by O.V. Martyniuk, Senior Investigator of the Security Service of Ukraine (16 January 2015)	327
Annex 15.	Security Service of Ukraine, ATO Regulation Governing Checkpoints (22 January 2015)	341
Annex 16.	Report No. 1 of Presentation of a Person for Identification by Photos, drafted by Senior Lieutenant K.O. Pidgirnyi, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (26 February 2015)	349
Annex 17.	Report No. 2 of Presentation of a Person for Identification by Photos, drafted by Senior Lieutenant K.O.Pidgirnyi, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (26 February 2015)	355
Annex 18.	Report No. 3 of Presentation of a Person for Identification by Photos, drafted by Senior Lieutenant K.O. Pidgirnyi, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (26 February 2015)	361
Annex 19.	Ruling Granting Recording of V. Dvornikov’s Conversations, drafted by Investigating Judge R.M. Piddubnyi, the Court of Appeal in Kharkiv District (27 February 2015)	367
Annex 20.	Ruling Granting Recording of V. Tetutskiy’s Conversations, drafted by Investigating Judge R.M. Piddubnyi, the Court of Appeal in Kharkiv District (27 February 2015)	371

Annex 21.	Report No. 3 of Presentation of a Person for Identification by Photos, drafted by Captain of Justice A.O. Prośniak, Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (5 March 2015)	375
Annex 22.	Report No. 1 of Presentation of a Person for Identification by Photos, drafted by Captain of Justice A.O. Prośniak, Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (5 March 2015)	379
Annex 23.	Report No. 2 of Presentation of a Person for Identification by Photos, drafted by Captain of Justice A.O. Prośniak Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (5 March 2015)	383
Annex 24.	Expert Conclusion No. 5, drafted by the Forensic Research Center, Ministry of Internal Affairs of Ukraine, Main Directorate of the Ministry of Internal Affairs of Ukraine in Kharkiv Region (16 March 2015)	387
Annex 25.	Ukrainian Border Guard Service Letter No. 51/442 to Major of Justice A.V. Ryzhylo, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region, dated 16 March 2015	391
Annex 26.	Report of Identification of Dvornikov's Car, drafted by Senior Lieutenant of Justice K.O. Pidgirnyi, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (19 March 2015)	397
Annex 27.	Expert Conclusion No. 17 drafted by the Forensic Research Center, Ministry of Internal Affairs of Ukraine, Main Directorate of the Ministry of Internal Affairs of Ukraine in Kharkiv Region (20 March 2015)	401
Annex 28.	Expert Conclusion No. 16, drafted by the Forensic Research Center, Ministry of Internal Affairs of Ukraine, Main Directorate of the Ministry of Internal Affairs of Ukraine in Kharkiv Region (20 March 2015)	405
Annex 29.	Expert Opinion No. 1975, drafted by the Forensic Research Center in Kharkiv Named After M.S. Bokarius, Ministry of Justice of Ukraine (1 April 2015)	409
Annex 30.	Ukrainian Border Guard Service Letter No. 51/680 to Lieutenant Colonel I.V. Selenkov, Deputy Head of the Investigations Department, Directorate of the Security Service of Ukraine in the Kharkiv Region, dated 16 April 2015	415
Annex 31.	Expert Opinion of Forensic Psychological Examination Commission No. 1632/222, drafted by the Forensic Research Center in Kharkiv Named After M.S. Bokarius, Ministry of Justice of Ukraine (20 February 2017)	421

Annex 32.	Expert Opinion No. 8-ZVZ drafted by the Kharkiv Centre for Forensic Science and Investigations, Ministry of Internal Affairs of Ukraine (21 February 2017)	427
Annex 33.	Expert Opinion of Forensic Psychological Examination Commission No. 1793/223, drafted by the Forensic Research Center in Kharkiv Named After M.S. Bokarius, Ministry of Justice of Ukraine (21 February 2017)	433
Annex 34.	Expert Opinion of Forensic Psychological Examination Commission No. 1794/224, drafted by the Forensic Research Center in Kharkiv Named After M.S. Bokarius, Ministry of Justice of Ukraine (22 February 2017)	439
Annex 35.	Case No. 645/3612/15-k, Judgment of Conviction and Sentencing of 28 December 2019 of the Frunze Municipal Court of the City of Kharkiv	445
Annex 36.	Intentionally Omitted	

Annex 1

Second Expert Report of Lieutenant General Christopher Brown
(21 April 2022)

INTERNATIONAL COURT OF JUSTICE

**APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE
SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL
FORMS OF RACIAL DISCRIMINATION**

between

UKRAINE

and

THE RUSSIAN FEDERATION

SECOND EXPERT REPORT OF LIEUTENANT GENERAL CHRISTOPHER BROWN

TABLE OF CONTENTS

I.	Summary.....	1
II.	Shelling of Civilian Checkpoint Near Volnovakha — 13 January 2015	2
III.	Shelling of Residential Area of Mariupol — 24 January 2015	25
IV.	Shelling of Residential Area of Kramatorsk — 10 February 2015.....	46
V.	Shelling of Civilian Areas of Avdiivka — January to March 2017.....	63

I. SUMMARY

1. I have reviewed both General Samolenkov and Colonel Bobkov's expert reports, as well as Chapter VII of the Counter-Memorial submitted by the Russian Federation. My overall conclusion is that General Samolenkov's contribution to the Russian Counter-Memorial seeks to undermine Ukraine's case based on tenuous hypotheses of technical error or inevitable, and therefore lawful, collateral damage, rather than offering plausible alternatives based on fact. Colonel Bobkov's report is based on a limited set of imagery that does not provide a balanced picture of events on the ground. Moreover, Chapter VII of the Counter-Memorial draws conclusions above and beyond the underlying analysis in its two expert witness supporting reports.¹ More generally, the recurring suggestion by the Russian Federation that Ukraine provided me with insufficient evidence² to make valid rounded conclusions in the context of the overall fighting between the Ukrainian Armed Forces ("UAF") and DPR fighters is not borne out by my experience in such cases. My experience is that collection of evidence in conflict situations is seldom comprehensive and will inherently include witnesses' specific perspectives of events at the time, given ongoing attacks. But in contrast to the evidence upon which I based my opinions, much of the reports by General Samolenkov and Colonel Bobkov is based on academic arguments that obfuscate rather than clarify the actual situation on the ground.

2. Russia also argues that indiscriminate shelling of populated areas has occurred on both sides.³ Such comparisons tend to be generic; there are important factual differences; each incident merits analysis in its own right.

3. Expert Report by General Samolenkov. The overall context of the fighting between DPR fighters and the UAF, as put forward by General Samolenkov, is interesting; it

¹ Expert Report of Colonel Alexander Alekseevich Bobkov (8 August 2021) [hereinafter Bobkov Report] (Russia's Counter-Memorial Part I, Annex 1); Expert Report of Major General Valery Alexeevich Samolenkov (8 August 2021) [hereinafter Samolenkov Report] (Russia's Counter-Memorial Part I, Annex 2).

² See e.g., Russia's Counter-Memorial Part I, para. 358.

³ See e.g., *ibid.*, para. 376; see also Samolenkov Report, paras. 360–361 (covering alleged UAF shelling opposite Avdiivka).

may even shed light on specific incidents, but it cannot explain or justify the attacks in this case from a military perspective. The imbalance of General Samolenkov’s interpretation is evident; this report attempts to restore some equilibrium.

4. Expert Report by Colonel Bobkov. I have used imagery extensively in every operational theatre in which I have been involved. Colonel Bobkov’s report is a thorough analysis of specific but limited imagery. He appears to have been given clear parameters for the scope of his analysis, much of which is peripheral, rather than being free to analyse imagery which might have fallen out of his own assessment of the key issues. As a result, the gaps in his analysis offer more insight than the areas he has covered. While I do not opine on all of his specific factual conclusions related to particular images — I leave that to the report compiled by Ms. Gwilliam and Air Vice-Marshal Corbett of Geollect (“Geollect” or the “Geollect Report”)⁴ — based on my experience, some of his conclusions are subjectively narrow to the point of imbalance.

II. SHELLING OF CIVILIAN CHECKPOINT NEAR VOLNOVAKHA — 13 JANUARY 2015

5. Common Ground Between My First Report⁵ and Russia.

- a. The weapon system used in the attack on 13 January 2015 was BM-21 Grad firing conventional high explosive (HE) fragmentation munitions (designated “9M22” or “M-210F”).⁶
- b. As stated by General Samolenkov, “provided the DPR had a choice of artillery and was targeting the checkpoint, BM-21 Grad MLRS would not have been the most efficient weapon to use against such target.”⁷

6. The Wider Tactical Situation. My experience in similar situations and my interpretation of the evidence in this case, drawing on interviews with UAF commanders in

⁴ Expert Report of Catherine Gwilliam and Air Vice-Marshal Anthony Sean Corbett (21 April 2022) [hereinafter Gwilliam and Corbett Report] (Ukraine’s Reply, Annex 2).

⁵ Expert Report of Lieutenant General Christopher Brown (5 June 2018) [hereinafter Brown First Report] (Ukraine’s Memorial, Annex 11).

⁶ Samolenkov Report, Figure 8 (Russia’s Counter-Memorial Part I, Annex 2).

⁷ *Ibid.*, para. 58.

the field at the time and the imagery provided by both Colonel Bobkov⁸ and Geollect,⁹ confirm there was no monolithic front-line in the sense of unbroken defensive positions typical of the Western Front in the First World War. The situation in eastern Ukraine in 2015 was more fluid with dispersed combat positions able to cover the intervening open ground and a “no-man’s-land,” typically around 3 km wide in the Volnovakha sector.

⁸ Bobkov Report, Figure 23 (Russia’s Counter-Memorial Part I, Annex 2).

⁹ Gwilliam and Corbett Report, Figure 11 (Ukraine’s Reply, Annex 2).

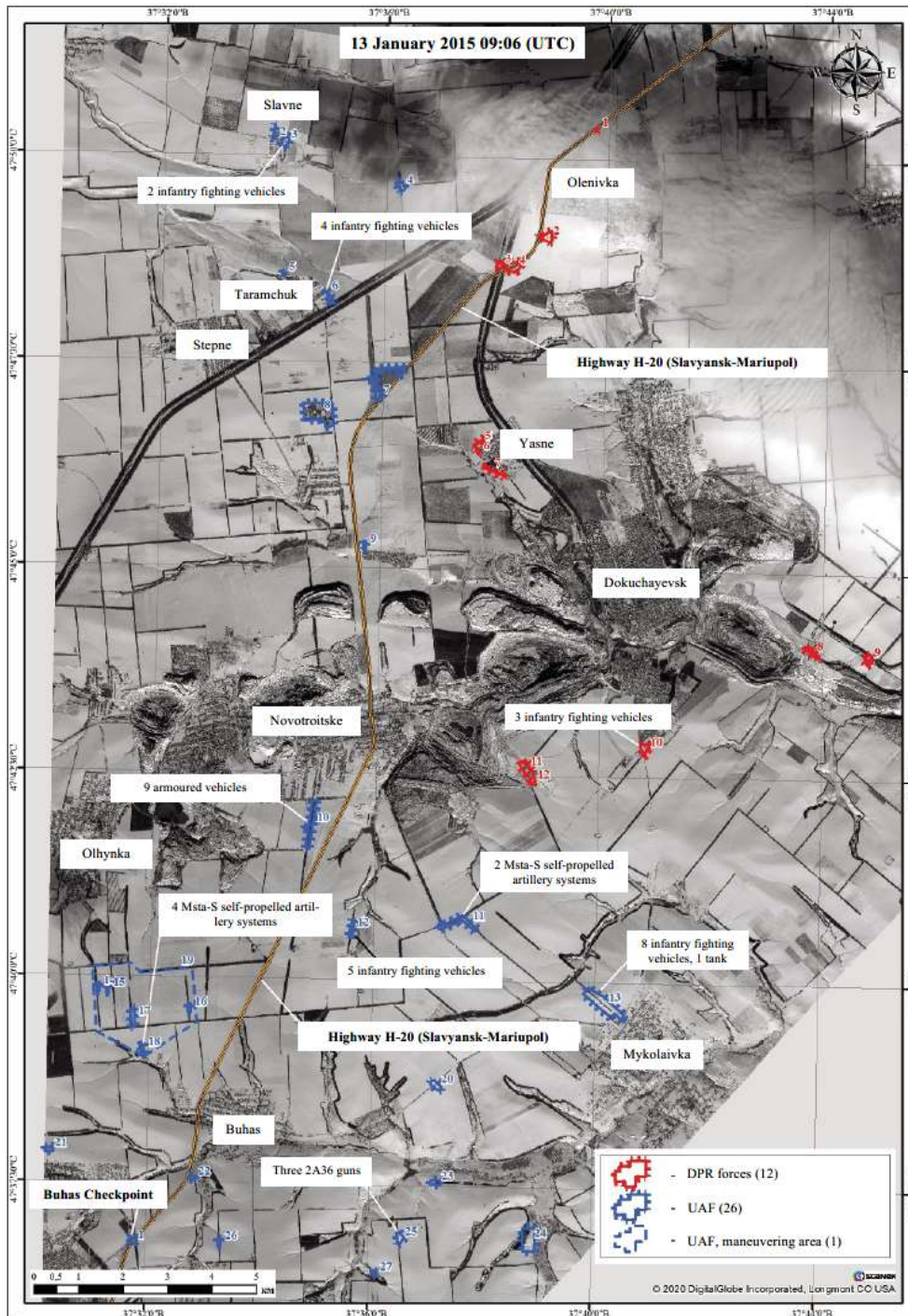


Figure 1. Tactical situation in the Volnovakha sector on the morning before the attack on the Buhas checkpoint (Bobkov Figure 23).¹⁰

¹⁰ Reproduced from Bobkov Report, Figure 23 (Russia's Counter-Memorial Part I, Annex 1).

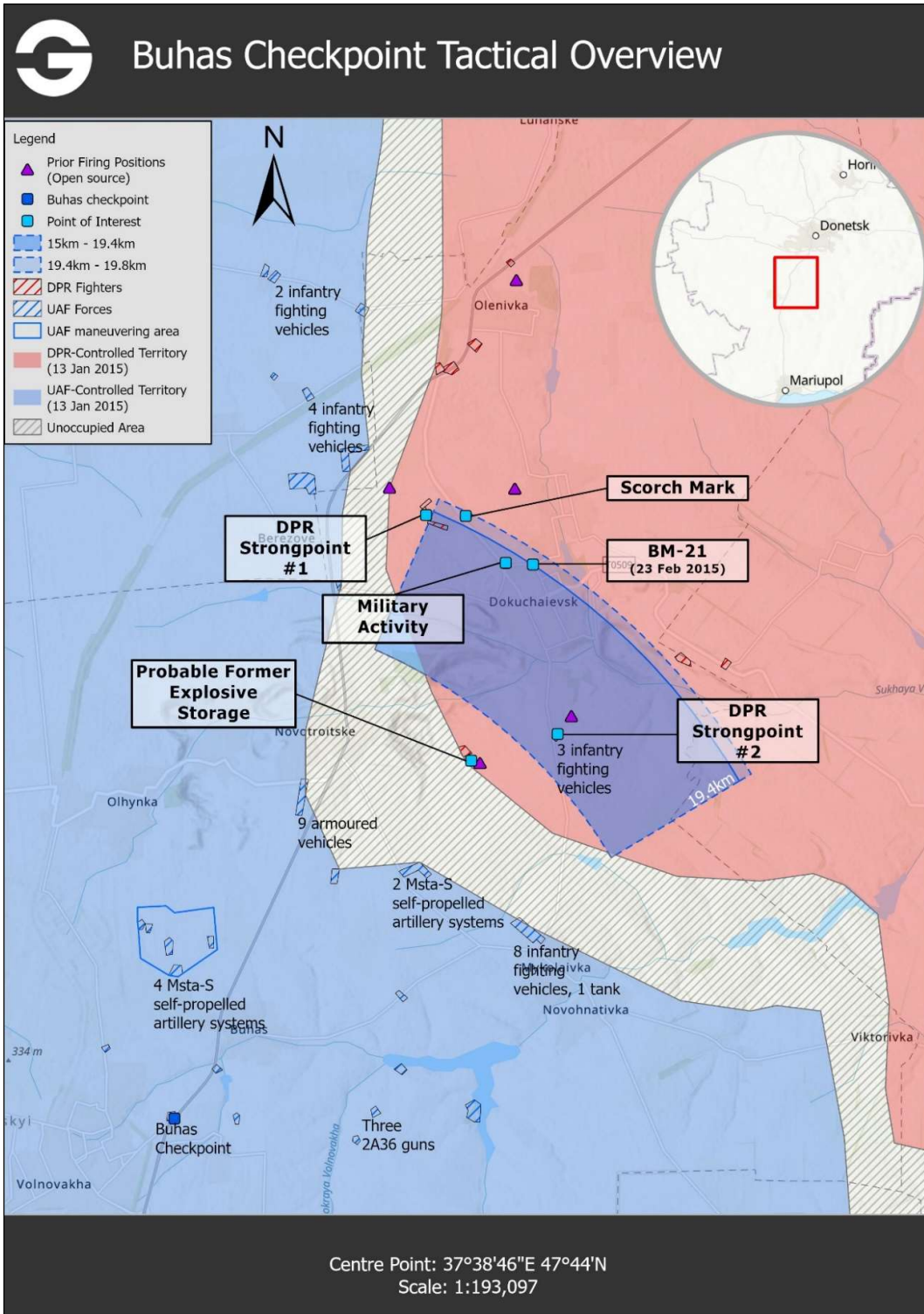


Figure 2. Tactical situation in the Volnovakha sector (Geollect Figure 11).¹¹

¹¹ Reproduced from Gwilliam and Corbett Report, Figure 11 (Ukraine's Reply, Annex 2).

7. In an attempt to show that the Volnovakha Ministry of Internal Affairs checkpoint (the “Buhas checkpoint”) was a legitimate target for the attack, the Counter-Memorial conflates it¹² with a UAF defensive position at Berezove,¹³ whereas the latter was clearly a front-line combat position, 17 km from the former. The Buhas checkpoint was at least 10 km behind the “no-man’s-land” on this section of the front.¹⁴ Moreover, the presence of at least four armoured vehicles at the UAF combat position at Berezove contrasts with the absence of armoured vehicles at the Buhas checkpoint. General Samolenkov offers no evidence to indicate the presence of an active, offensive military combat or reconnaissance unit operating out of the Buhas checkpoint at the time of the shelling or otherwise.¹⁵ The suggestion that the Buhas checkpoint was an integral element of the UAF defensive positions¹⁶ is therefore unsubstantiated and, based on the evidence I have seen, incorrect.

8. Nature and Role of the Checkpoint. The Counter-Memorial also conflates the Berezove combat position with the Buhas checkpoint in terms of its nature and role. The contrast between the armoured combat vehicles at the Berezove combat position, particularly their defensive orientation towards the DPR positions in Dokuchaevsk, and the lack of armoured vehicles at the Buhas checkpoint¹⁷ points not only to the geographical

¹² See Russia’s Counter-Memorial Part I, paras. 364–378; Samolenkov Report, para. 21 *et seq.* (Russia’s Counter-Memorial Part I, Annex 2); Bobkov Report, para. 47 *et seq.* (Russia’s Counter-Memorial Part I, Annex 1).

¹³ West of Dokuchaevsk and shown as Position 9 on Bobkov Figure 23. See Bobkov Report, Figure 23 (Russia’s Counter-Memorial Part I, Annex 1).

¹⁴ Colonel Bobkov’s Figure 23 is helpful in showing the Buhas checkpoint as the furthest from the front-line and at least 1.9 km from any other Ukrainian positions (the nearest appear to be two unoccupied positions, Numbers 22 and 26 in his Table 2 which interprets his imagery). See Bobkov Report, Figure 23 (Russia’s Counter-Memorial Part I, Annex 1).

¹⁵ See Samolenkov Report, paras. 42–57 (Russia’s Counter-Memorial Part I, Annex 2).

¹⁶ See Russia’s Counter-Memorial Part I, para. 374 (drawing on Samolenkov Report, para. 42 *et seq.*).

¹⁷ The single BRDM-2 shown on a 25 October 2014 image, seized on by Bobkov and Samolenkov as evidence that the Volnovakha checkpoint was taking an active role in hostilities, is very different in both its role and protection from the tanks and infantry fighting vehicles found in the front-line. General Samolenkov correctly describes the BRDM-2 as a “lightly armoured” vehicle, see Samolenkov Report, para. 51 (Russia’s Counter-Memorial Part I, Annex 2), used for scouting and typically internal

separation of these two positions as suggested above, but also to their different purposes. The separation of administrative functions from fighting that existed in this area in January 2015 is exemplified by the contrast in the nature and role of the two positions. Checkpoints where civilian movement can safely be controlled by internal security or police forces are routinely separated geographically and functionally from combat forces in armed conflict zones. The UAF combat forces at Positions 9 and 10 on Colonel Bobkov's Figure 23 image (Figure 1, above), at least 10 km to the northeast of the checkpoint, were providing the military defence of the road under the command of the UAF Anti-Terrorist Operation ("ATO"). The Kyiv-2 Battalion personnel and the Border Guard Service members based at the Buhas checkpoint had no combat role: they were well behind both the first and second UAF lines of defence and, as General Samolenkov acknowledges, were "Part of the Ministry of Internal Affairs."¹⁸ I therefore disagree with General Samolenkov's conclusion that "the Buhas checkpoint appears to have held an important place in the system of other positions."¹⁹

9. Layout and Equipment of the Checkpoint. Colonel Bobkov concludes that "[a]s at 09:08 (UTC) on 13 January 2015, the Buhas Checkpoint was equipped and adapted for accommodating military units. This is evidenced by trenches and fighting holes for personnel, dug-out positions for armoured vehicles, fortified and protected observation posts, two army tents, motor transport suitable for transporting personnel."²⁰ This is very different from saying that the checkpoint took an active role in hostilities or was part of the UAF defences. The trenches appear to be for individual protection. The "dug-out positions

security/policing roles, as shown by the image at Addendum 1, Figure 2, of his report. *See* Samolenkov Report, Addendum 1, Figure 2 (Russia's Counter-Memorial Part I, Annex 2).

¹⁸ Samolenkov Report, para. 53 (Russia's Counter-Memorial Part I, Annex 2). General Samolenkov's description of the Kyiv-2 Battalion as "Part of the Ministry of Internal Affairs" is accurate. *See* Ministry of Internal Affairs of Ukraine Order No. 317 (14 April 2014) (Ukraine's Reply, Annex 8).

¹⁹ Samolenkov Report, para. 53 (Russia's Counter-Memorial Part I, Annex 2).

²⁰ Bobkov Report, para. 38 (Russia's Counter-Memorial Part I, Annex 1).

for armoured vehicles” are not sited tactically: they are sited so that vehicles could park there, for which the earthworks provided limited protection.

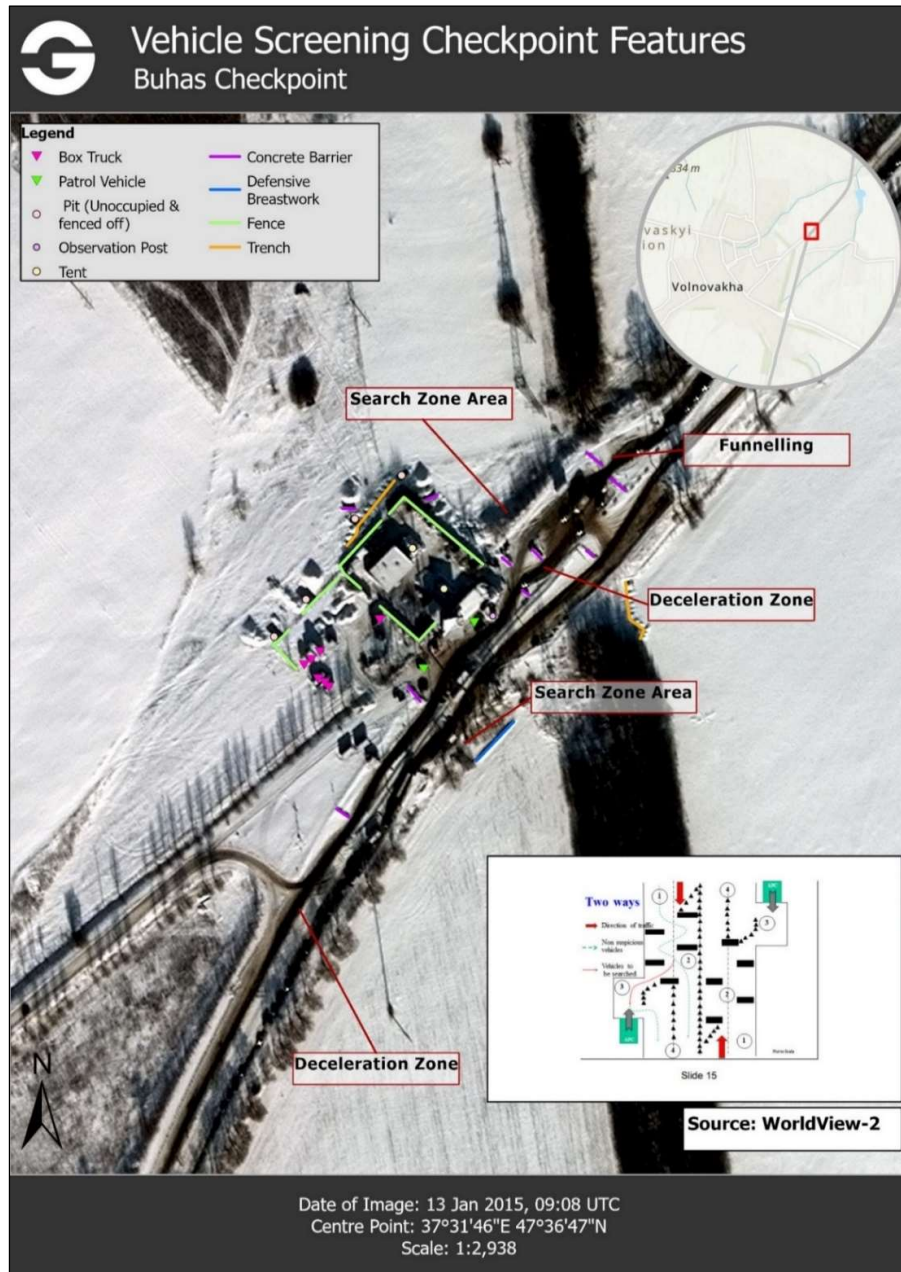


Figure 3. Layout of the Buhas checkpoint (Geollect Figure 2).²¹

²¹ Reproduced from Gwilliam and Corbett Report, Figure 2 (Ukraine’s Reply, Annex 2).

10. I visited the Buhas checkpoint in 2018. It appeared to have changed little since 2015 and is not unlike any such installation in similarly contested areas;²² it conducts a primarily administrative function in respect of civilian traffic; its organisation, manning and equipment are incapable of anything more than self-defence to protect personnel working there. It is not capable of combat operations.

11. Alleged Justification for Targeting the Checkpoint. General Samolenkov alleges three possible reasons for targeting the Buhas checkpoint:

- a. An Ongoing Artillery Campaign Against the Rear Area/Resupply. Based on unverified social media posts concerning random alleged shellings in the general area, General Samolenkov claims that the village of Buhas, 3 km from the checkpoint, had been shelled on 7 January 2015,²³ inferring that the 13 January 2015 shelling was part of an ongoing artillery campaign against targets in the rear area, but neither the targets nor the craters which would have resulted from this shelling appear to feature on Colonel Bobkov's analysis:

²² It conforms to the UN peacekeeping template, see U.N. Police, *Peacekeeping PDT Standards for Formed Police Units* (2015), Slide 15 (Ukraine's Reply, Annex 57), and is similar to examples from my own experience in Northern Ireland. See The Imperial War Museums, *Photographs: The British Army in Northern Ireland 1969 - 2007*, <https://www.iwm.org.uk/collections/item/object/205185235> (depicting a vehicle screening checkpoint on the road to Lifford).

²³ See Samolenkov Report, para. 13(e) (Russia's Counter-Memorial Part I, Annex 2) (citing a social media post on Vk.com).

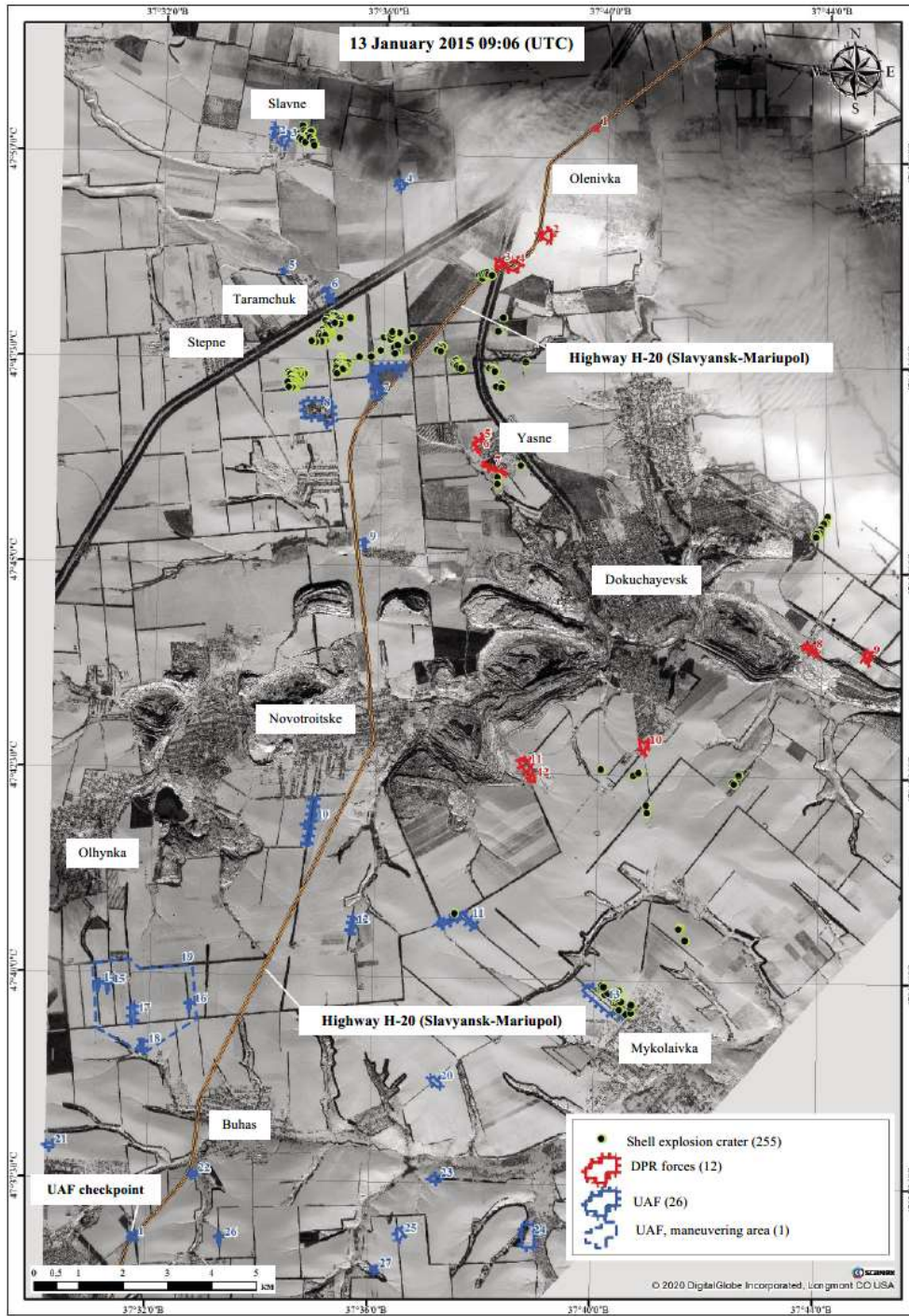


Figure 4: Location of shell explosion craters (as of 13 January 2015 09:06 (UTC)) (Bobkov Figure 24).²⁴

²⁴ Reproduced from Bobkov Report, Figure 24 (Russia's Counter-Memorial Part I, Annex 1).

All of the craters shown on Colonel Bobkov’s analysis are where I would expect: on the UAF front-line at least 10 km from the Buhas checkpoint. The Counter-Memorial further stretches the credibility of General Samolenkov’s tenuous point: craters from BM-21 rockets and artillery shells will normally persist for weeks, if not months, so the preponderance of the craters on the front-line between Yasne and Taramchak, 20 km from the Buhas Checkpoint, is not necessarily evidence of recent “intensive exchanges of fire”;²⁵ more importantly, the absence of craters in the Buhas area is evidence of the contrary. Although General Samolenkov admits he “cannot assess the reasons behind the shelling,”²⁶ he disagrees with my conclusion that “such an attack cannot have been necessary or reasonable.”²⁷ However, the road and the checkpoint “had military value”²⁸ (in the words of General Samolenkov) only if military convoys or reinforcements were transiting the checkpoint or if the DPR were intent on breaking through the UAF combat forces in order, say, to capture Volnovakha. There is neither evidence that the shelling was targeted against military supplies²⁹ nor that resupply convoys or UAF reinforcements were transiting the Buhas checkpoint at the time of the 13 January 2015 shelling. In any case, the Buhas checkpoint was approximately 14 km from the nearest DPR combat position which precluded direct observation and would have made it difficult to gather timely intelligence to target any UAF movement through the checkpoint.

- b. A Precursor to an Attack Towards Volnovakha. If, on the other hand, the DPR objective was to advance towards Volnovakha via the checkpoint, DPR fighters would have had to fight their way through numerous UAF combat positions, between 10 and 20 km to the northeast.³⁰ Doctrinally the attacking forces would have put together an artillery fire plan to neutralise the Ukrainian combat forces in order to facilitate such a breakthrough; there is no evidence of this. The nearest of the craters that Colonel Bobkov found was 10 km from the checkpoint.³¹ This reinforces my view that the attack on the Buhas checkpoint was an isolated operation; its separation from all other artillery attacks in the area makes it implausible that it was part of a coordinated fire plan with a common military purpose. I drafted this paragraph on receipt of Russia’s Counter-Memorial in late 2021. I now find myself finalising this report in March 2022 with Russian military forces attacking Volnovakha in exactly the way I suggested above, supported by massive artillery attacks. There was none of this in January 2015.

²⁵ Russia’s Counter-Memorial Part I, para. 377(b).

²⁶ Samolenkov Report, para. 57 (Russia’s Counter-Memorial Part I, Annex 2).

²⁷ *Ibid.*

²⁸ *Ibid.*, para. 50.

²⁹ See Russia’s Counter-Memorial Part I, para. 371 *et seq.*

³⁰ See *supra*, Figure 1 and Figure 2.

³¹ See Bobkov Report, Figure 24 and Table 4 (Russia’s Counter-Memorial Part I, Annex 1).

- c. A Justifiable Target in its Own Right. Colonel Bobkov accepts that “[a]s at 09:08 (UTC) on 13 January 2015, there was a queue of 87 cars (63 cars from the direction of Buhas and 24 cars from the direction of Volnovakha) on the motor road on both sides of the checkpoint,”³² stretching 485 metres northeast and 225 metres southwest of the checkpoint.³³ He also admits “I observed no armoured vehicles at the Buhas Checkpoint as at the time of satellite imagery.”³⁴ Nevertheless, he adduces evidence of a BRDM armoured scout vehicle, a rocket-propelled grenade and a machine gun which appear to have been taken on 25 October 2014.³⁵ His inference is that the presence of such equipment, albeit more than two months prior to the attack, reinforces the contention that targeting the checkpoint served a justifiable military purpose. The BRDM is a Soviet-era lightly armoured scout vehicle and no match for the heavy armour which was used by both the DPR fighters and the UAF. The rocket-propelled grenade, a hand-held weapon designed as a last-ditch defence against vehicles, and the machine gun would be part of the normal arsenal at such a checkpoint. As Colonel Bobkov’s analysis illustrates, there were numerous other targets in the area that offered a military advantage compared to the Buhas checkpoint.

12. I therefore do not see a plausible military reason for attacking the Buhas checkpoint in isolation,³⁶ let alone a reason for attacking the checkpoint when any military advantage was almost certainly going to be outweighed by the inevitable civilian casualties and damage.

13. Intercept Evidence. Russia’s reliance on communications intercepts as evidence appears to relate to incidents at least 25 km from the Volnovakha checkpoint,³⁷ particularly intercepts relied upon for the contention that the DPR fighters took care to avoid civilian casualties.³⁸ Therefore, the intercepts offer no evidence as to the intent of the DPR fighters who shelled the Buhas checkpoint.

³² Bobkov Report, para. 36(2) (Russia’s Counter-Memorial Part I, Annex 1).

³³ See *ibid.*, Figure 8.

³⁴ *Ibid.*, para. 36(5). This is consistent with the findings of Ms. Gwilliam and Air Vice-Marshal Corbett. See Gwilliam and Corbett Report, Figure 6 (Ukraine’s Reply, Annex 2).

³⁵ See Bobkov Report, para. 44 (Russia’s Counter-Memorial Part I, Annex 1).

³⁶ See Brown First Report, para. 27 (Ukraine’s Memorial, Annex 11).

³⁷ See Samolenkov Report, para. 26 *et seq.* (Russia’s Counter-Memorial Part I, Annex 2).

³⁸ See Russia’s Counter-Memorial Part I, paras. 391–392.

14. Intended Target. Having argued that the Volnovakha checkpoint was a legitimate target,³⁹ General Samolenkov suggests that it may not have been the intended target on the basis that the centre of the impacts was northeast of the checkpoint.⁴⁰ This is despite Colonel Bobkov’s analysis that shows there was no other potential military target within 1.9 km of the checkpoint⁴¹ and despite the video evidence showing that there was nothing in the area shelled except the checkpoint and the road.⁴² General Samolenkov cites artillery positions at 6 km⁴³ and 4.4 km⁴⁴ from the checkpoint and conflates these with further unverified social media posts to suggest potential intended targets without any evidence that these positions were occupied at the time of the attack.⁴⁵ Moreover, the centre of the area shelled was exactly where Colonel Bobkov concludes “at 09:08 (UTC) on 13 January 2015, there was a queue of . . . 63 cars from the direction of Buhas . . . on the motor road . . . (Figure 8).”⁴⁶ Given that General Samolenkov accepts that the area targeted was “not directly visible”⁴⁷ by DPR fighters and therefore that the attackers were unlikely to know how many vehicles were in the queue from the direction of Buhas, any suggestion that the intended target was 300 metres northeast of the checkpoint reinforces Ukraine’s claim that the attack was a deliberate targeting of civilians. If the attack had occurred at the time of the

³⁹ See Samolenkov Report, paras. 43–57 (Russia’s Counter-Memorial Part I, Annex 2).

⁴⁰ *Ibid.*, para. 59. Approximately 300 metres by my calculation using the crater map at Annex 89. See Map of Crater Impacts (Ukraine’s Memorial, Annex 89); see also Brown First Report, para. 30 (Ukraine’s Memorial, Annex 11).

⁴¹ See Bobkov Report, Figure 23 and Table 2 (Russia’s Counter-Memorial Part I, Annex 1). A “miss distance” similar to General Samolenkov’s purported target for the Mariupol attack below and similarly implausible for the reasons discussed in paragraph 30 below. See *infra*, para. 30.

⁴² See Footage from a Surveillance Camera at the Checkpoint (13 January 2015) (video) (Annex 695).

⁴³ See Samolenkov Report, para. 61 (Russia’s Counter-Memorial Part I, Annex 2).

⁴⁴ See *ibid.*, para. 62.

⁴⁵ See *ibid.*, paras. 63–64. Moreover, the “miss distance” involved in these suggestions would make the targeting of the attack even more indiscriminate than Ukraine is suggesting.

⁴⁶ Bobkov Report, para. 36(2) (Russia’s Counter-Memorial Part I, Annex 1). Bobkov Figure 8 shows that the line of cars stretched 485 metres northeast from the checkpoint. See *ibid.*, Figure 8; see also Gwilliam and Corbett Report, Figure 10 (Ukraine’s Reply, Annex 2).

⁴⁷ Samolenkov Report, para. 64 (Russia’s Counter-Memorial Part I, Annex 2).

satellite image or if there had been a similar number of vehicles queuing from the direction of Buhas at the actual time of the attack, the centre of the barrage (mean point of impact) would have been directly over the line of civilian vehicles. General Samolenkov concludes that “[i]f the person responsible for the shelling had intended to harm civilians, it is likely that [the settlements of Novotroitske and Olhynka to the southeast of Dokuchayevsk] would have been targeted, rather than the Buhas checkpoint or the road nearby.”⁴⁸ I disagree with General Samolenkov on this point, as this would not have had the same intimidation effect on the large number of civilians using the road running through the Buhas checkpoint.

15. BM-21 Firing Position. General Samolenkov attempts to cast doubt on my conclusions as to the attacking BM-21 firing position from the perspective of both crater analysis and dispersion.⁴⁹ The conclusion he reaches is “that the bearing was somewhere between north-north-east (OSCE analysis) and north-east (Ukraine’s analysis)”⁵⁰ and “the firing range was less than 14 kilometres.”⁵¹ The forward UAF positions in a northeast direction were 10 km from the Volnovakha checkpoint.⁵² The forward DPR positions in a northeast direction were 13 km from the checkpoint.⁵³ In between the respective positions lies the “no-man’s-land” described in paragraph 6 above. Any firing range between 10 and 13 km therefore puts the firing launchers in no-man’s-land: this would be tactical absurdity.⁵⁴ Any firing range greater than 13 km puts the firing launchers in DPR-held territory. The

⁴⁸ Samolenkov Report, para. 60 (Russia’s Counter-Memorial Part I, Annex 2).

⁴⁹ See *ibid.*, para. 66 *et seq.*

⁵⁰ *Ibid.*, para. 82.

⁵¹ *Ibid.*, para. 68.

⁵² See Bobkov Report, Figure 23 (Blue Positions 10 and 11) (Russia’s Counter-Memorial Part I, Annex 1).

⁵³ See *ibid.* (Red Positions 11 and 12); see also Gwilliam and Corbett Report, para. 45 (Ukraine’s Reply, Annex 2).

⁵⁴ BM-21 is not an armoured weapon system: it is essentially a civilian truck with rockets on the back. It is therefore vulnerable to attack from all weapon systems, from small arms upwards. Doctrinally therefore it would normally fire from a position well behind the front-line, out of sight of opposing weapon systems.

firing range would have to be less than 10 km to make credible any suggestion that the attack was not launched by DPR fighters. General Samolenkov claims that the dispersion of the known craters⁵⁵ indicates that “[i]f spoiler rings are used, the range would be even smaller: 9–10 km.”⁵⁶ No evidence of spoiler rings was found by the investigators. Even if there had been, General Samolenkov’s refusal to rule out “friendly fire from Ukraine”⁵⁷ implies that UAF BM-21 launchers could have been deployed alongside UAF forward defensive positions in order to fire back at the Volnovakha checkpoint (which was 10 km behind the forward positions): a ludicrous suggestion. General Samolenkov’s obfuscation is therefore academic: the only plausible explanation is that the attack was launched by DPR fighters. Nevertheless, to address his detailed arguments:

a. Crater Analysis

- i. Firing Range. On the basis of consistency across the six craters measured, I concluded that “the angle of descent calculated during the Ukrainian Security Service analysis (between 52 and 55 degrees) corresponds to a firing table range of between 19.4 and 19.8 kilometres.”⁵⁸ The Counter-Memorial infers my blind acceptance of Ukraine’s crater analysis⁵⁹ with General Samolenkov stressing “inherent limitations,”⁶⁰ “apparent deficiencies,”⁶¹ etc. when deducing the firing range by crater analysis. Crater analysis is not an exact science;⁶² however, his argument is academic. By General Samolenkov’s formula that “[e]ven an error of 5 degrees in determining the angle of descent will cause an error of 1 kilometre in determining the range of firing,”⁶³ the 9.5 km difference in range between my conclusion and a firing position within UAF-held

⁵⁵ Martyniuk’s report identifies 88 craters. See Record of Review, drafted by O.V. Martyniuk, Senior Investigator of the Security Service of Ukraine (16 January 2015), pp. 1–11 [hereinafter Martyniuk Report] (Ukraine’s Reply, Annex 14).

⁵⁶ Samolenkov Report, para. 88 (Russia’s Counter-Memorial, Annex 2).

⁵⁷ *Ibid.*, para. 91.

⁵⁸ Brown First Report, para. 26 (Ukraine’s Memorial, Annex 11).

⁵⁹ See Russia’s Counter-Memorial Part I, para. 381.

⁶⁰ Samolenkov Report, para. 71 (Russia’s Counter-Memorial, Annex 2).

⁶¹ *Ibid.*, para. 73.

⁶² I made the point in paragraph 25 of my first report that “it is not exact, but is generally reliable ± 20 degrees.” Brown First Report, para. 25 (Ukraine’s Memorial, Annex 11).

⁶³ Samolenkov Report, para. 70 (Russia’s Counter-Memorial Part I, Annex 2).

territory⁶⁴ would have resulted in angles of descent 45 degrees less⁶⁵ than those measured in the Romanenko report.⁶⁶ Even with less than theoretically perfect battlefield methodology, the likelihood of those measurements being consistently wrong by more than 20, let alone 45, degrees is minute. Irrespective of any expert witness academic debate about this esoteric subject, the conclusion is the same: the firing range deduced from crater analysis makes it implausible for the firing position to have been anywhere other than in DPR-held territory.

- ii. Firing Direction. General Samolenkov attempts to undermine the deductions as to firing direction on grounds of both imperfection and inconsistency between the Romanenko report and the OSCE SMM.⁶⁷ The consistency of the measurements in the Romanenko report, together with the equipment and methods used, are as good as might reasonably be expected in the circumstances. Nevertheless, if the conclusions as to range in sub-paragraph (i) above are accepted, it becomes academic whether the Court accepts the measurements in the Romanenko report⁶⁸ or the OSCE report⁶⁹ or a mean between the two.⁷⁰ At a firing direction anywhere between

⁶⁴ UAF forward positions were approximately 10 km from the Buhas checkpoint, *i.e.*, between 9.4 km and 9.8 km short of my deduced range. DPR forward positions were approximately 4 km further to the northeast, with the intervening “no-man’s-land” implausible as a firing position.

⁶⁵ In fact, General Samolenkov’s formula is too crude: from the official firing tables the angle of descent at a firing range of 10 km (the UAF front-line) is 15 degrees, *i.e.*, between 37 and 40 degrees different from the angles measured in the Romanenko report. *See* Record of Review, drafted by Captain of Justice V. Romanenko, Senior Investigator of the Security Service of Ukraine (16 January 2015), pp. 3–7 [hereinafter Romanenko Report] (Ukraine’s Memorial, Annex 87). Even with spoiler rings fitted, of which there is neither evidence nor tactical justification, a firing range of 10 km results in an angle of descent of 30 degrees, giving a difference of 22–25 degrees from the angles measured in the Romanenko report. *See ibid.*

⁶⁶ *See ibid.*

⁶⁷ *See* Samolenkov Report, para. 79 (Russia’s Counter-Memorial Part I, Annex 2).

⁶⁸ The firing directions from the six craters analysed varied between 37.68 and 40.32 degrees (628 and 672 mils). A range of between 19.4 and 19.8 km puts the firing position in the town of Dokuchaevsk.

⁶⁹ North-northeast = 22.5 degrees (375 mils). A range of between 19.4 and 19.8 km puts the firing position in the village of Yasnoe (“Yasne” on Colonel Bobkov’s figures above).

⁷⁰ The tactical situation, with the DPR fighters’ forward position around Yasne, favours the Romanenko measurements as doctrinally BM-21 would ideally not fire from positions so close to the front-line, whereas Dokuchaevsk offers greater protection and concealment, hence the conclusion in my first report. *See* Brown First Report, para. 26 (Ukraine’s Memorial, Annex 11). On the other hand, imagery analysis in the Geollect Report shows likely BM-21 movement between west of Dokuchaevsk, together with scorch marks and potential hiding places in and around Yasne. *See* Gwilliam and Corbett Report, Figures 12–14 (Ukraine’s Reply, Annex 2). Both options are plausible — neither changes the conclusion.

these reports, a range of between 19.4 and 19.8 km places the point of origin of the fire in DPR-held territory.⁷¹

- iii. Dispersion. The image initially provided to me in 2018 was overprinted with 50 craters.⁷² The Martyniuk report identified 88 crater sites.⁷³ Assuming, as I was told, that the data for the former was gathered by unmanned aerial vehicle (“UAV”), the discrepancy can be explained by the UAV sensor or the analyst not picking out some of the craters that Martyniuk was able to identify in person on the ground. Given that the Ukraine Security Service was primarily focused on identifying impacts that had caused injury or damage, once they had identified craters where the injury and damage had been caused, there was little reason for them to search for rockets that had landed harmlessly. Martyniuk’s two-day investigation on the ground is therefore more complete than the imagery initially provided to me. Tellingly, and unlike his analysis of the Mariupol shelling addressed below, Colonel Bobkov chose not to analyse post-incident imagery for craters, despite the fact that “between 13 January and 21 February 2015 . . . [i]n total, 44 images of the relevant territory were available.”⁷⁴ Such imagery, exemplified by Geollect’s analysis below, shows 92 craters with a range dispersion of 1,305 metres along the deduced direction of fire and a lateral dispersion of 1,300 metres:

⁷¹ If my conclusions as to range are not accepted, even the most extreme conclusion possible — that the firing direction was 22.5 degrees with a range of less than 19 km — would place the firing position in either no-man’s-land or the front-lines, both of which are tactically and doctrinally absurd. Any other plausible combination of range and direction places the firing position in DPR-held territory.

⁷² Ukraine’s Security Service claimed this was an OSCE product (purportedly the imagery gathered by UAV referred to in Ukraine’s Memorial, Annex 322, but unverified).

⁷³ Martyniuk Report, pp. 1–11 (Ukraine’s Reply, Annex 14).

⁷⁴ Bobkov Report, paras. 25–26 (Russia’s Counter-Memorial Part I, Annex 1).

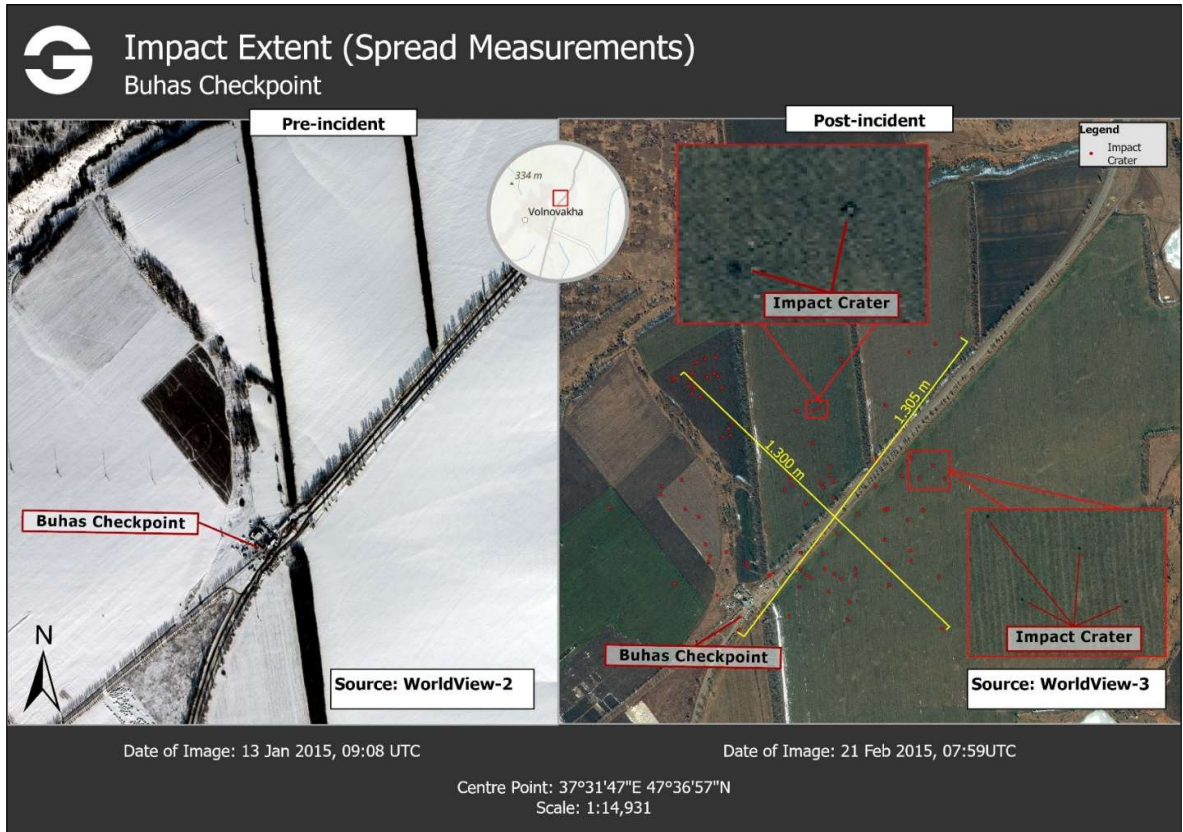


Figure 5: Impact craters at the Buhas checkpoint (Geollet Figure 9).⁷⁵

Each BM-21 launcher fires up to 40 rockets before needing to reload. The analysis by Martyniuk and Geollet shows that at least 92 rockets were fired in less than 30 seconds; we can therefore safely deduce that at least three launchers were used in the attack. However, 92 is a strange number of rockets to use; 80 rockets could be delivered by two launchers; the additional 15% of high explosive delivered by a further 12 rockets would not justify the use of a third launcher. If the attackers were going to use three launchers, the greatest effect would be achieved by firing full loads, a total of 120 rockets. It would be unsurprising if Martyniuk and satellite imagery failed to identify the craters of the remaining 28 rockets,⁷⁶ particularly any that landed in the woodland north and south of the checkpoint.⁷⁷ The Counter-Memorial conclusion that “there is plainly an inconsistency between the two sets of measurements; they cannot both be correct”⁷⁸ is simplistic and stretches General Samolenkov’s deductions beyond the underlying firing data: the

⁷⁵ Reproduced from Gwilliam and Corbett Report, Figure 9 (Ukraine’s Reply, Annex 2).

⁷⁶ Equating to 23% of a full load from three launchers.

⁷⁷ The 88 craters identified by Martyniuk average approximately 30 x 30 cm. See Martyniuk Report, pp. 1–11 (Ukraine’s Reply, Annex 14).

⁷⁸ Russia’s Counter-Memorial Part I, paras. 382–383 (referring to the discrepancy between the actual dispersion of the 50 craters on the original imagery and the firing table dispersion).

ellipse of 640 metres long x 580 metres wide, compiled from the original map provided to me in 2018 and used in my first report, would be expected to cover more than 96%⁷⁹ of the expected range spread and between 70 and 80%⁸⁰ of the expected lateral spread of rockets fired from a range of 19.6 km. The actual ellipse of the 92 craters from the 21 February 2015 satellite imagery above of 1,305 metres long x 1,300 metres wide covers 166% of the expected range spread and 100% of the expected lateral spread of rockets fired from a range of 19.6 km:

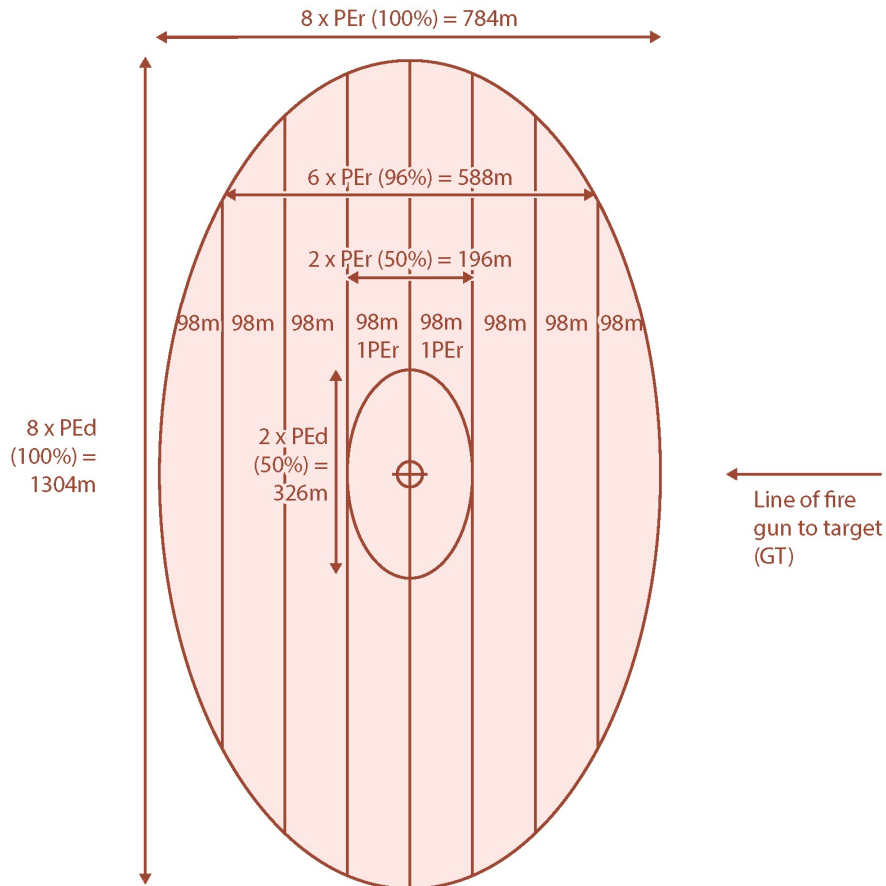


Figure 6: Diagram (to scale) showing fall of shot pattern created by 122mm rockets at 19.6 km range, using Firing Table data.⁸¹

⁷⁹ 96% of impacts (6 x PEr) at a firing range of 19.6 km = 588 metres.

⁸⁰ 82% of impacts (4 x PEd) at a firing range of 19.6 km = 652 metres.

⁸¹ Used in paragraph 31 of my first report and compiled from Ministry of Defence of the USSR, Firing Tables for High Explosive Fragmentation Projectiles M-21OF (1985) (Ukraine’s Memorial, Annex 599).

Given that the actual fall of shot pattern is almost circular, I have also compared it to the range at which the expected dispersion would be circular: at a range of 15.6 km the 100% ellipse would be 928 metres in circumference:

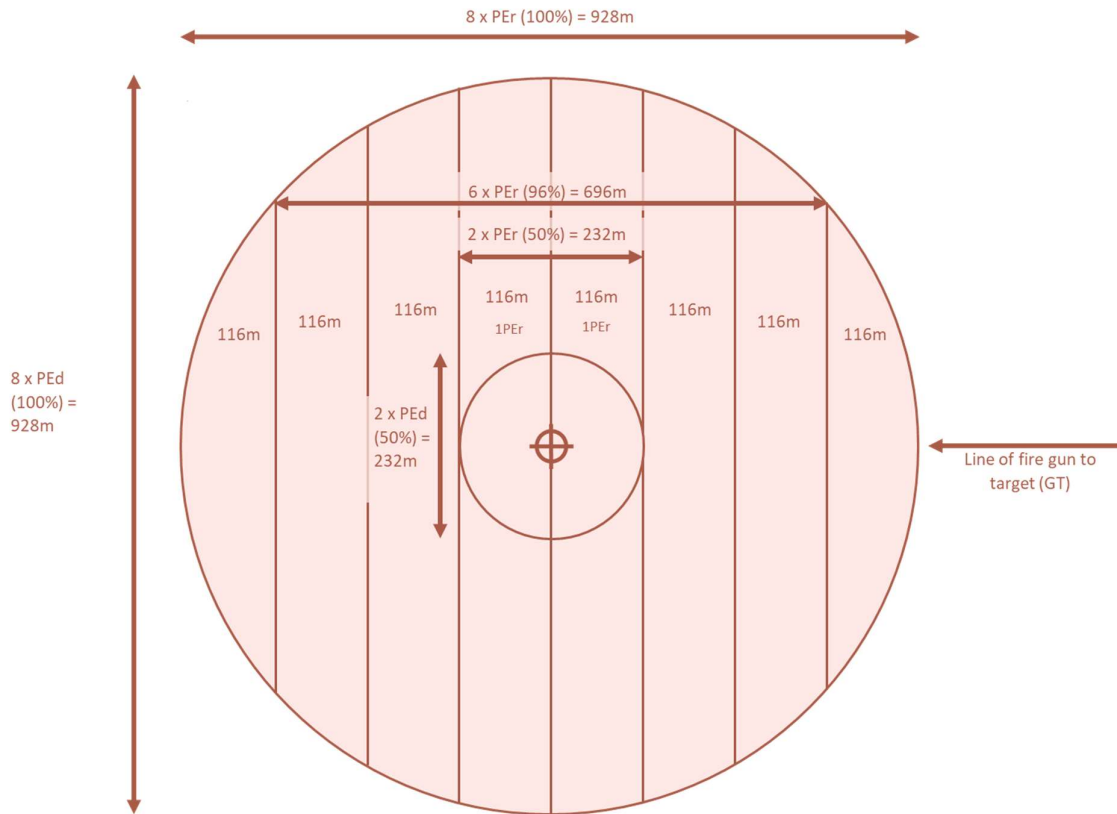


Figure 7: Diagram (to scale) showing fall of shot pattern created by 122mm rockets at 15.6 km range, using Firing Table data.

At a range of 15.6 km from the Buhas checkpoint, the firing point of origin of the attack in a direction of 38.68 degrees⁸² would be approximately 2 km southwest of Dokuchaevsk, still inside DPR-held territory. General Samolenkov’s conclusion that “the firing range was less than 14 kilometres”⁸³ fits neither the crater analysis nor the dispersion pattern of the fall of shot of the rockets.

⁸² The mean of the six craters analysed in the Romanenko Report. See Romanenko Report, pp. 3–7 (Ukraine’s Memorial, Annex 87).

⁸³ Samolenkov Report, para. 68 (Russia’s Counter-Memorial Part I, Annex 2).

16. Choice of Weapon System. Unsurprisingly, I have found no evidence that the DPR had developed its own doctrine or rules for artillery firing or control. Since Russian weapon systems were being used/supplied to DPR fighters, I would expect them to use Russian doctrine and rules. For BM-21 Grad the doctrinal “minimum dimensions of the target (front x depth) 400 x 400m.”⁸⁴ The size of the Buhas checkpoint is approximately 100 x 100m. BM-21 Grad is therefore inherently indiscriminate for a target of this size in that, even if the checkpoint had been accurately targeted, the fall of shot pattern would inevitably have resulted in more than 50% of the rockets falling outside their intended target. General Samolenkov accepts “that provided the DPR had a choice of artillery and was targeting the checkpoint, BM-21 Grad MLRS would not have been the most efficient weapon to use against such target. General Brown accurately describes the general characteristics of this weapon at paragraph 29 of his report. However, I do not know whether the militia had a choice either in terms of the weapons available to them at the relevant time or timing of the attack.”⁸⁵ However, he had previously concluded that intercepts which he analysed refer to artillery guns as opposed to rockets.⁸⁶ Given the deduction that the DPR fighters in the Dokuchaevsk sector did have artillery guns, even artillery guns with the shortest reach⁸⁷ would have been able to engage the Buhas checkpoint from firing positions in DPR-held territory shown on Colonel Bobkov’s figures above. In General Samolenkov’s lexicon, guns would have been more “efficient” than BM-21. In my view guns, by virtue of their tighter fall of shot pattern, might have given some credence to the claim that the attackers were at least trying to target the checkpoint, rather than aiming to obliterate 100 hectares and whatever happened to be in it. If the attackers’ intent had been to destroy the checkpoint for military reasons, with

⁸⁴ Ministry of Defense of the Russian Federation, *Manual for the Study of the Rules of Firing and Fire Control of Artillery (PSiUO-2011)* (2014), para. 409, Table 55 (Ukraine’s Reply, Annex 61).

⁸⁵ Samolenkov Report, para. 58 (Russia’s Counter-Memorial, Annex 2).

⁸⁶ See *ibid.*, paras. 27, 29, 30, 32.

⁸⁷ D-30 122mm with a maximum range of 15.4 km using conventional ammunition.

minimum damage to civilian traffic transiting along the road, guns would have been the clear choice of weapon system:⁸⁸

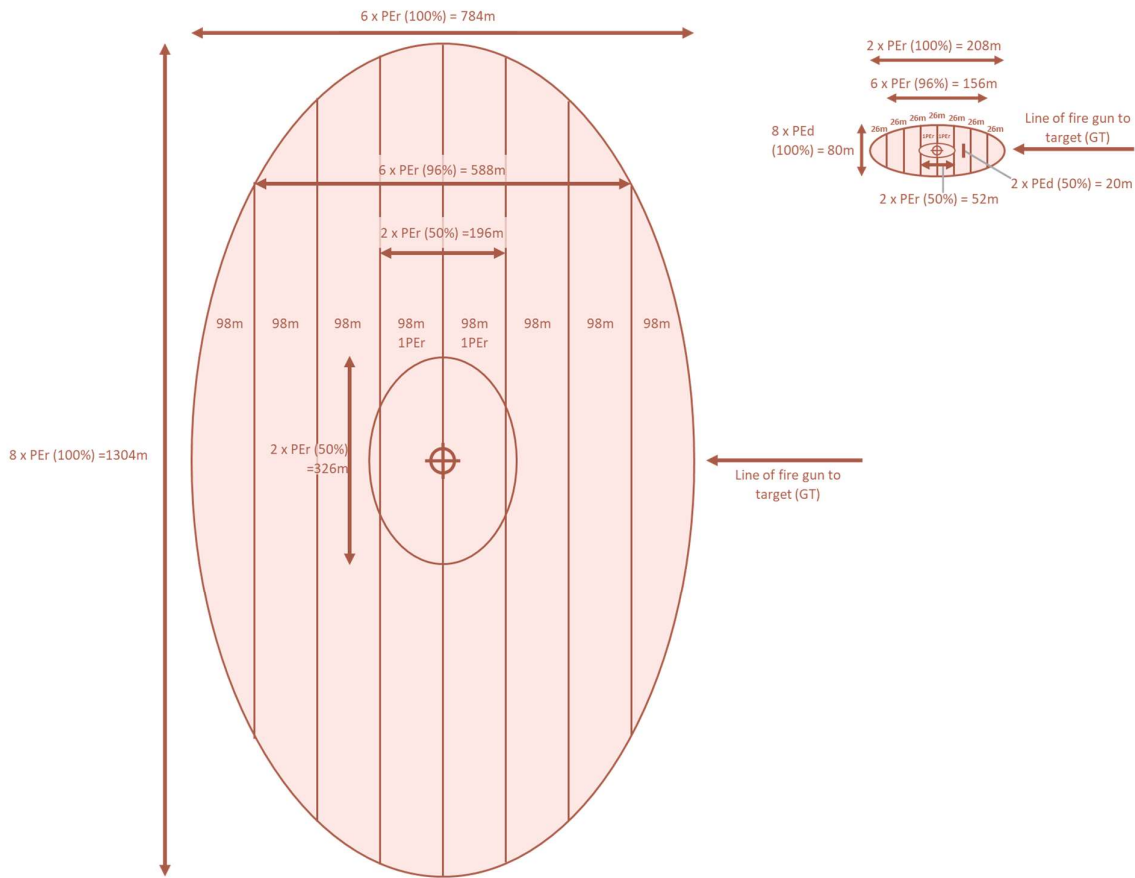


Figure 8: Comparison (to scale) of fall of shot pattern created by 122mm rockets at 19.6 km (left) versus patterns created by 122mm artillery gun at 15 km (right top).

As shown in the comparison of fall of shot patterns above and the satellite imagery at Figure 3, the firers of the attack on 13 January 2015 saturated with high explosive more than a square kilometre, in which there was no target other than the Buhas checkpoint. The attackers would have known that the inevitable outcome would be indiscriminate injury, death, and intimidation of the civilians transiting the checkpoint. It is hard to interpret the attackers' objective as otherwise.

17. Comparison with the DPR Checkpoint at Olenivka. As an example of the Counter-Memorial's theme of focusing on Ukrainian actions mentioned in paragraph 2

⁸⁸ Cf. OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Olenivka* (28 April 2016) (describing the alleged UAF shelling of a DPR checkpoint at Olenivka where the OSCE observed only seven craters and concluded that 122mm artillery guns had been used).

above, Russia compares the shelling of Volnovakha with Ukraine's shelling at a DPR checkpoint in Olenivka on 27 April 2016, in an attempt to demonstrate that both sides attacked checkpoints during the conflict.⁸⁹ However, the OSCE report of the incident⁹⁰ notes that only seven craters (north of the DPR checkpoint) were observed and concluded that 122mm artillery was used (as opposed to the volley of MLRS fire launched against the Buhas checkpoint).⁹¹ Moreover, the attack at Olenivka appears to have taken place in the night when civilian traffic would be minimal, if not non-existent.⁹² Above all, as demonstrated in the Geolcollect Report (Figure 9, below), the Olenivka position is a front-line combat position, whereas the Buhas checkpoint was 10 km behind UAF forward positions, as I have described above.⁹³ Attempting to portray all "checkpoints" in a simplistic generic manner is misleading. In this instance the Olenivka checkpoint is more akin to the UAF position at Berezove⁹⁴ than the Ministry of Internal Affairs checkpoint at Buhas.

⁸⁹ See Russia's Counter-Memorial Part I, para. 376.

⁹⁰ See OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Olenivka* (28 April 2016).

⁹¹ For analysis of relative weapon systems selection see *supra*, para. 16.

⁹² OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Olenivka* (28 April 2016).

⁹³ See *supra*, para. 7.

⁹⁴ See *ibid.*

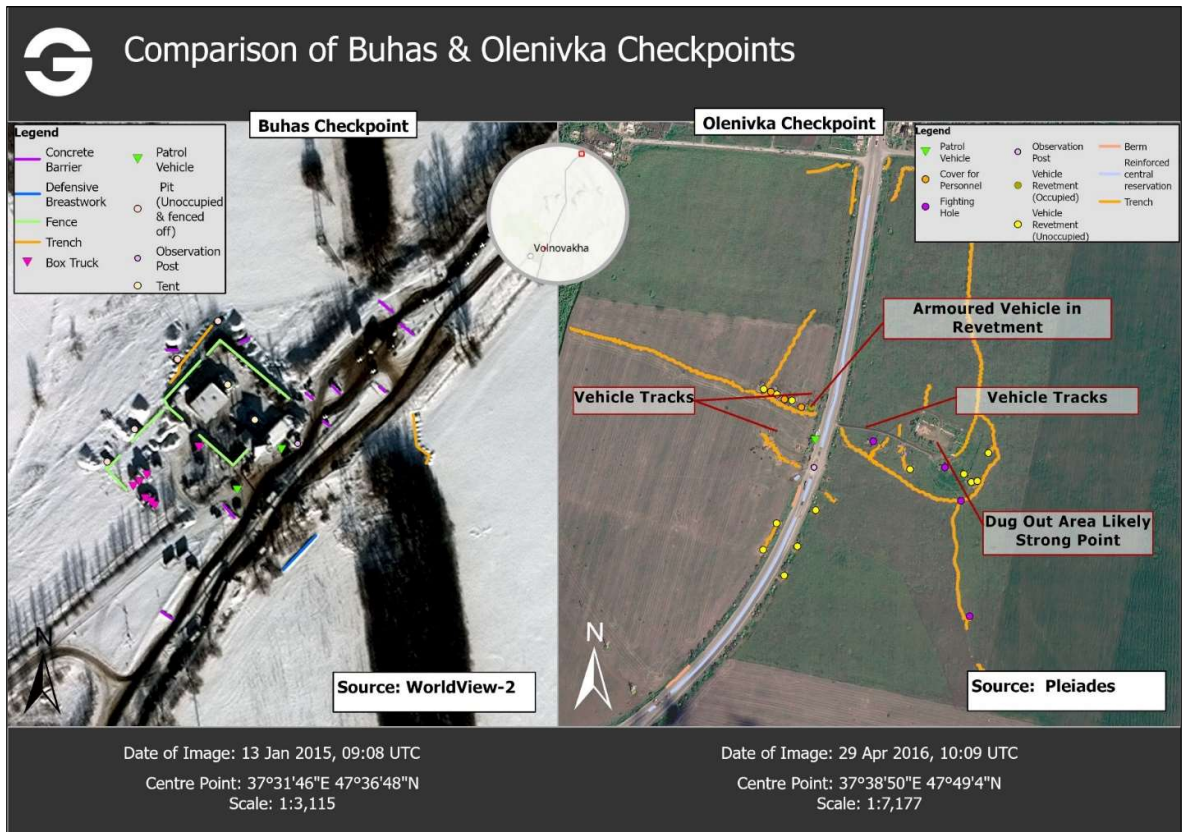


Figure 9: Comparison of the Buhas checkpoint with the DPR checkpoint at Olenivka (Geollect Figure 8).⁹⁵

18. Summary of Conclusions on the Volnovakha Shelling. As a result of the Counter-Memorial and the reports of General Samolenkov and Colonel Bobkov, the fundamental conclusions from my first report⁹⁶ have changed only in respect of adding the word “multiple” in sub-paragraph (a) below, reflecting the refined crater analysis conducted by Geollect:⁹⁷

- a. The Volnovakha shelling was carried out using multiple BM-21 Grad MLRS firing high explosive fragmentation rockets from DPR-held territory.
- b. There was no apparent military advantage in attacking the checkpoint.
- c. The choice of weapon system and its method of targeting were incapable of damaging the checkpoint without hitting the road and civilian traffic on it; indeed, the attackers would have known that their actions would

⁹⁵ Reproduced from Gwilliam and Corbett Report, Figure 8 (Ukraine’s Reply, Annex 2).

⁹⁶ See Brown First Report, paras. 37–40 (Ukraine’s Memorial, Annex 11).

⁹⁷ See Gwilliam and Corbett Report, Figure 9 (reproduced as Figure 5, above) (Ukraine’s Reply, Annex 2).

impact the road and any civilian traffic more than the checkpoint.

- d. The attackers appear to have made no effort to mitigate this inevitable result by using an alternative weapon system, more accurate methods of targeting or attacking at a time when civilian traffic was minimal.

III. SHELLING OF RESIDENTIAL AREA OF MARIUPOL — 24 JANUARY 2015

19. Common Ground Between My First Report and Russia.

- a. The weapon system used in the attack on the civilian residential area of Mariupol on the morning of 24 January 2015 was BM-21 Grad⁹⁸ firing high explosive (“HE”) fragmentation rockets.
- b. “[A]t least some of the shelling came from the DPR positions to the east or north east of Mariupol.”⁹⁹
- c. Evidence suggests that the previous day a BM-21 attack had been launched against a military target approximately 600 metres from the eastern extremity of the residential area.¹⁰⁰ Evidence also suggests that approximately four hours after the shelling of the civilian residential area, a separate BM-21 attack was launched onto another military target¹⁰¹ approximately 300 metres from the northern extremity of the residential area. The largest of the military targets to the east of the residential area¹⁰² was accurately shelled by BM-21 before the attack on the residential area.¹⁰³ All of these attacks confirm that DPR fighters were able to discriminate targets when firing BM-21 at targets to the east of the residential area of Mariupol.

20. Tactical Situation. As with the Volnovakha shelling, General Samolenkov’s description of the tactical background appears to be an attempt to show that the shelling of the Vostochniy civilian residential district was collateral damage from an attack on a military target and/or a mistake. General Samolenkov’s theme of attempting to undermine Ukraine’s

⁹⁸ See Samolenkov Report, para. 186 (Russia’s Counter-Memorial Part I, Annex 2).

⁹⁹ *Ibid.*, para. 187 (drawing on his conclusion in paragraph 151).

¹⁰⁰ See Russia’s Counter-Memorial Part I, para. 424 (citing Ukraine, Primorsky District Court of Mariupol, Case No. 265/4773/15-k, Judgment, 18 June 2019, <https://reyestr.court.gov.ua/Review/82431956> (Russia’s Counter-Memorial Part I, Annex 77)). There is some confusion over ATO position nomenclature: “4014” is used variously to describe both the “northern checkpoint” on the road (Checkpoint No. 4014/Bobkov Position 20) as well as the platoon position (Bobkov Position 25/Kirsanov Judgement, Point 6) which is also referred to as “4014A.”

¹⁰¹ Russia’s Counter-Memorial Part I, para. 412(a). The installation shelled was the Ukrainian National Guard Checkpoint No. 4014 (also known as the “northern checkpoint” and referred to as Position 20 in the Bobkov Report).

¹⁰² Company Position 4013 (or Position 17 in the Bobkov Report).

¹⁰³ See Bobkov Report, para. 82 (Russia’s Counter-Memorial Part I, Annex 2).

case on grounds of imperfect evidence¹⁰⁴ continues; as with the shelling at Volnovakha, it is not surprising that there is some discrepancy between maps and sources¹⁰⁵ and a lack of complete records on all sides given the ongoing conflict between the UAF and DPR fighters. Importantly, in this case any evidentiary gaps make no difference to the conclusions. As with Volnovakha, rather than attempting to pin-point an exact contact line,¹⁰⁶ I believe it is more important to understand that there existed a no-man's-land of between 4 and 10 km between the UAF and the DPR fighters in this sector, the control of which ebbed and flowed. Colonel Bobkov illustrates this well in Figure 25 of his Report, reproduced in Figure 10 below.

21. DPR Plans. Ukraine was in no doubt that the DPR objective, loudly trumpeted in the days leading up to the BM-21 attack on the civilian residential area, was to capture Mariupol, but not, as simplistically suggested by General Samolenkov, by a direct assault on the city. The value of capturing Mariupol lay in the seizure of its port and industry, not in reducing it to rubble. General Samolenkov himself stresses the strategic importance of Mariupol: every reason to avoid a frontal assault through the Vostochniy residential area.¹⁰⁷

¹⁰⁴ See Samolenkov Report, para. 98 (Russia's Counter-Memorial Part I, Annex 2).

¹⁰⁵ See Russia's Counter-Memorial Part I, para. 407; Samolenkov Report, paras. 99 *et seq.* (Russia's Counter-Memorial Part I, Annex 2).

¹⁰⁶ For example, the debate at paragraph 407 of the Counter-Memorial, while interesting, does not change the resulting conclusions. See Russia's Counter-Memorial Part I, para. 407.

¹⁰⁷ None of General Samolenkov's evidence in paragraphs 119 to 135 of his report add substance to his attempt to show that the Vostochniy shelling was part of the preparation for an attack on that part of the city. See Samolenkov Report, paras. 119–135 (Russia's Counter-Memorial Part I, Annex 2).

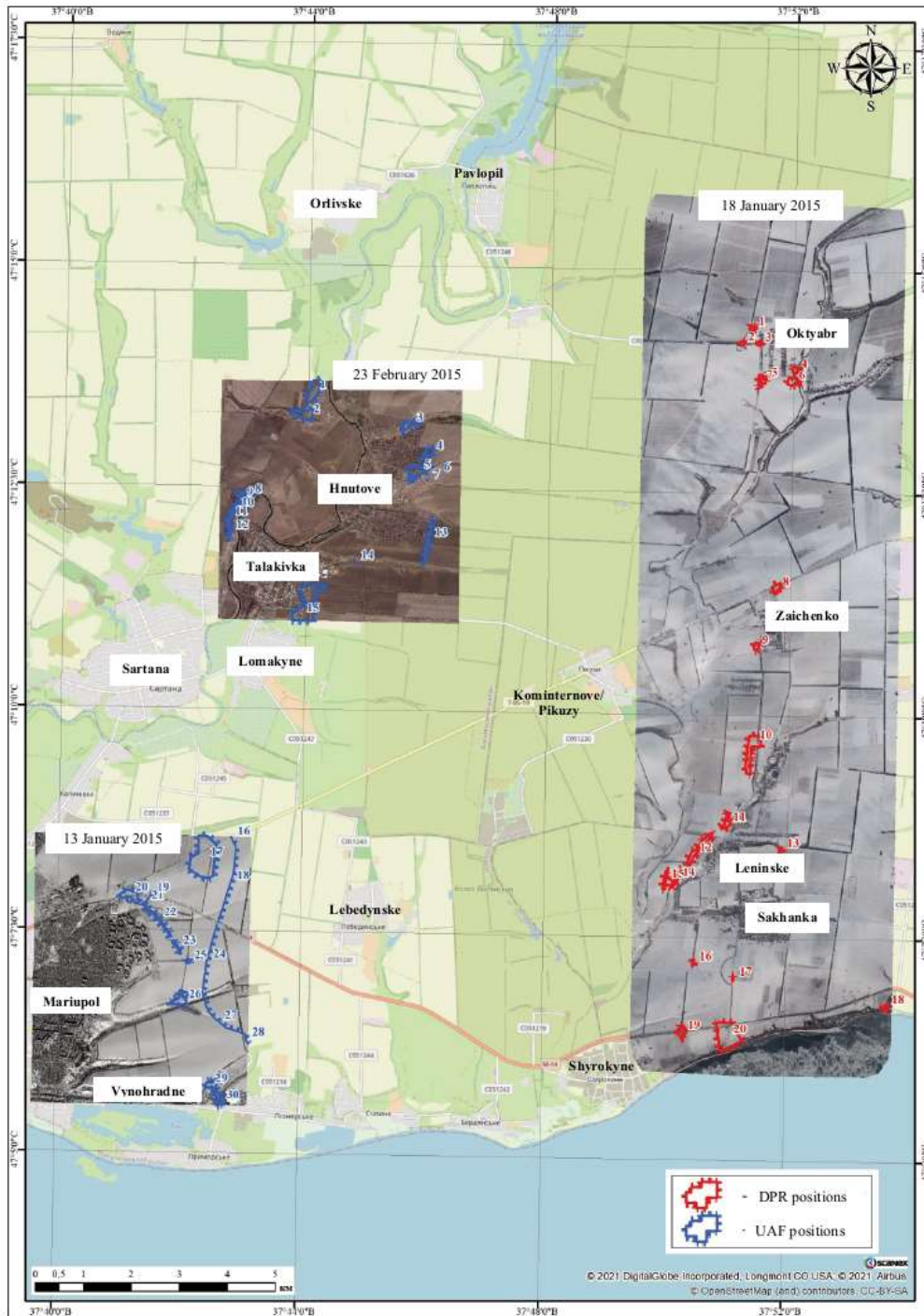


Figure 10: Location of the UAF and DPR Fighters (Bobkov Figure 25).¹⁰⁸

¹⁰⁸ Reproduced from Bobkov Report, Figure 25 (Russia's Counter-Memorial Part I, Annex 1).

22. Colonel Bobkov’s analysis clearly shows the UAF’s main defensive positions focused on the area of Hnutove and Talakivka (more than 5 km to the north of the 24 January shelling).¹⁰⁹ The UAF front-line was much stronger in that sector and consisted of regular army units, as opposed to the National Guard forces immediately to the east of Mariupol. Based on my discussions with UAF commanders, this disposition was founded on the UAF analysis that the DPR fighters’ most likely course of action would be an attempt to outflank Mariupol to the north, on an axis between Sartana and Orlovka. The ground here is much more open, lending itself to a rapid advance by armoured forces. This would effectively cut off the city and its defenders from the rest of Ukraine and would likely be an easier and less costly battle than fighting their way through the city itself.¹¹⁰ Russian doctrine, presumably followed by the DPR in the apparent absence of their own, stems from Sun-Tzu’s dictum that “[t]he best military policy is to attack strategies; the next to attack alliances; the next to attack soldiers; and the worst to assault walled cities. Resort to assaulting walled cities only when there is no other choice.”¹¹¹ From a historical perspective, Soviet urban operations of 1945 had shown that “it is crucial to ensure fighting outside built-up areas using pre-emption and dislocation through intelligent movement and threat of forces.”¹¹² The difficulty of fighting in urban areas had been painfully re-learned by Russian forces in Grozny between 1994 and 2000.¹¹³ Western doctrine is similar: urban combat

¹⁰⁹ See Bobkov Report, Figure 25, Figure 29, and Table 9 (Russia’s Counter-Memorial Part I, Annex 1).

¹¹⁰ Further evidence of this plan is contained in the intercepted conversation between Kirsanov and Ponomarenko (11:04:12, 24 January 2015). See Intercepted Conversation between Valeriy Kirsanov and Sergey Ponomarenko (24 January 2015) (referred to by General Samolenkov in paragraph 101 of his report: “column of our guys headed to Hnutove”) (Ukraine’s Memorial, Annex 415).

¹¹¹ Sun-Tzu, *The Art of Warfare* (Roger Ames., 1993), 111 (Ukraine’s Reply, Annex 80).

¹¹² Lt. Col. (Retired) Matthew Whittchurch, *Lessons from Soviet Urban Operations 1945*, British Army Review Special Report (Winter 2019), pp. 109–110 (Ukraine’s Reply, Annex 82). Examples include use of Soviet mobility to envelop and encircle Silesia, compelling the German defences to withdraw once outflanked.

¹¹³ A population of approximately 400,000 in 1994 compared with Mariupol’s population of 445,000 in 2015. See Ola Oliker, *Russia’s Chechen Wars 1994-2000 Lessons from Urban Combat*, Rand Corporation (2001).

should normally occur only when there is no bypass around a city.¹¹⁴ Both sides' understanding of this doctrine explains the relatively light Ukraine National Guard defence of the Vostochniy Road axis,¹¹⁵ in comparison with the UAF main defences at Hnutove and Talakivka, illustrated by Colonel Bobkov below:

¹¹⁴ "Tactical doctrine stresses that urban combat operations are conducted only when required and that built up areas are isolated and bypassed rather than risking a costly, time-consuming operation in this difficult environment." United States Department of the Army, *Military Operations on Urbanized Terrain (MOUT), Field Manual 90-10* (15 August 1979), p. 1 (Ukraine's Reply, Annex 64); see also United States Department of the Army, *An Infantryman's Guide To Combat In Built-up Areas, Field Manual 90-10-1* (12 May 1993), pp. 1–5 (Ukraine's Reply, Annex 65).

¹¹⁵ Illustrated by Figure 27 from the Bobkov Report, reproduced below.

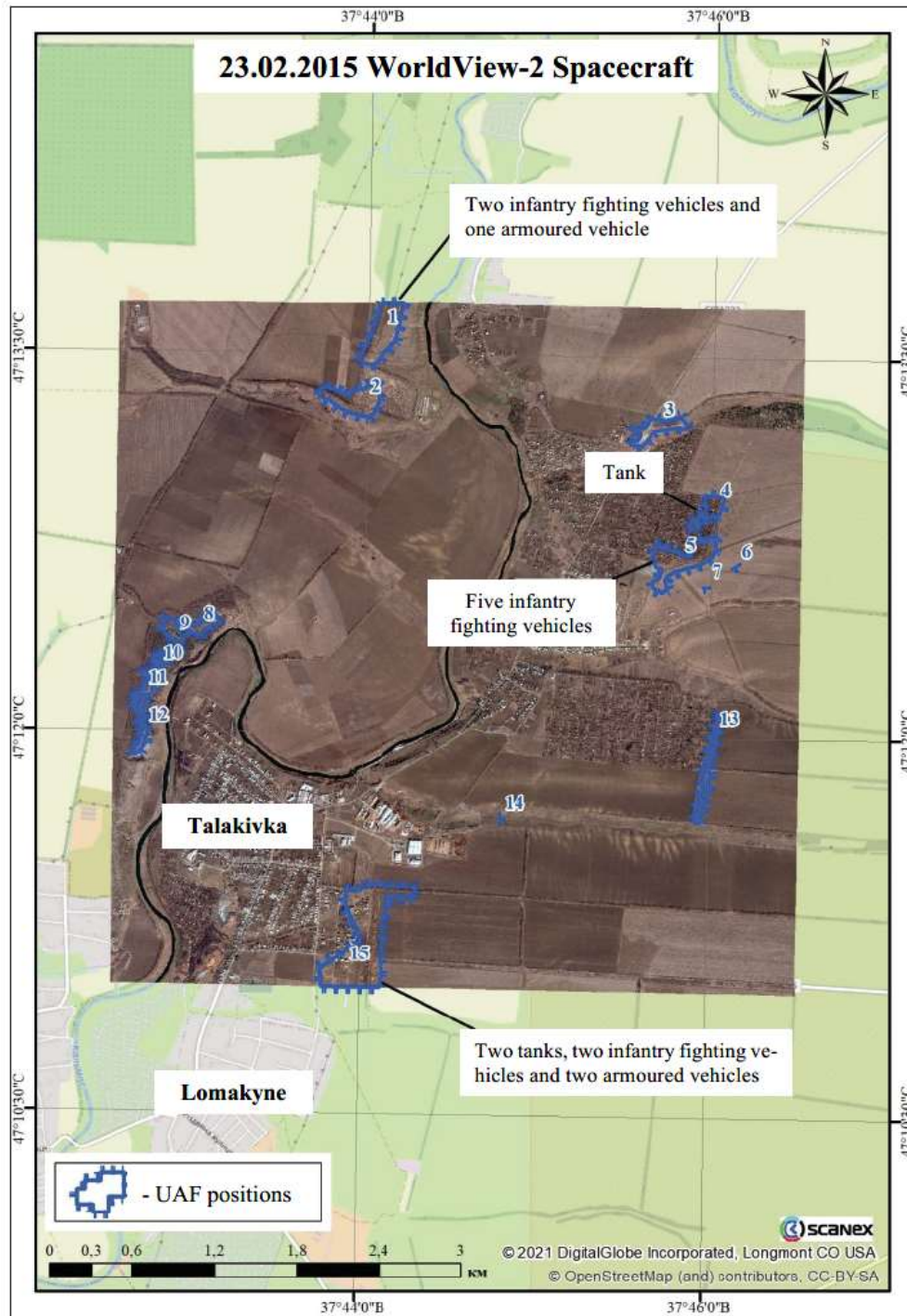


Figure 11: Location of UAF positions and forces identified in the area of Talakivka and Lomakyne (more than 5 km from the Vostochniy residential area) on 23 February 2015 (Bobkov Figure 29).¹¹⁶

¹¹⁶ Reproduced from Bobkov Report, Figure 29 (Russia's Counter-Memorial Part I, Annex 1).

23. General Samolenkov’s attempt to conflate the UAF main defensive positions in Hnutove and Talakivka with the defences in front of Vostochniy into one monolithic military objective¹¹⁷ is supported neither by doctrine nor Colonel Bobkov’s analysis. Moreover, as General Samolenkov notes, “[t]he Abroskin map . . . also indicates shellings of positions near Talakivka, Primorskoye and a road position to the east of the city. The tragic events in Mariupol may have understandably distracted attention from other shellings and generally from covering the overall military picture.”¹¹⁸ All of this suggests that any DPR attack on the eastern outskirts of the city itself was at most a subsidiary axis, but more likely a distraction or an attempt to frighten the citizens into fleeing their homes, thereby easing the DPR fighters’ anticipated task of having to take control of (or “clean up”) the city. The smaller the population, the easier to control the city.¹¹⁹ Intercept evidence adds credence to this: “So that I can f**king come in there and f**king clean it up. I don’t give a f**k, we don’t give a f**k whether we can, or cannot . . . we f**k them in their f**king ass! . . . [Laughing] . . . Take over and that’s f**king it . . . That’s the only way.”¹²⁰ I drafted this report in late 2021 on the basis of the evidence then available and the underpinning doctrine. I find myself finalising this report in March 2022 with Russian military forces trying to achieve in Mariupol exactly what I suggested above the DPR fighters were attempting in 2015: outflank, surround and cut off the city, whilst firing into the residential areas to terrorise the population into leaving and sap their support for the Ukrainian authorities.

¹¹⁷ See, e.g., Samolenkov Report, paras. 109–110, 123, 153–155, 164 (citing September 2014 OSCE reporting of UAF rocket artillery 500 metres from what appears to be Company Position 4013).

¹¹⁸ *Ibid.*, para. 124.

¹¹⁹ During the battles for Grozny (1994–2000), the city’s population dropped from 400,000 to 183,000. See UN-Habitat, *Grozny Project: Post-Conflict Restoration of the City of Grozny Program “The City Without Any Signs of War” (Application from the City of Grozny)*, p. 3.

¹²⁰ Intercepted Conversation between Sergey Ponomarenko and Oleksandr Evdotiy (23 January 2015), p. 2 (Ukraine’s Memorial, Annex 418).

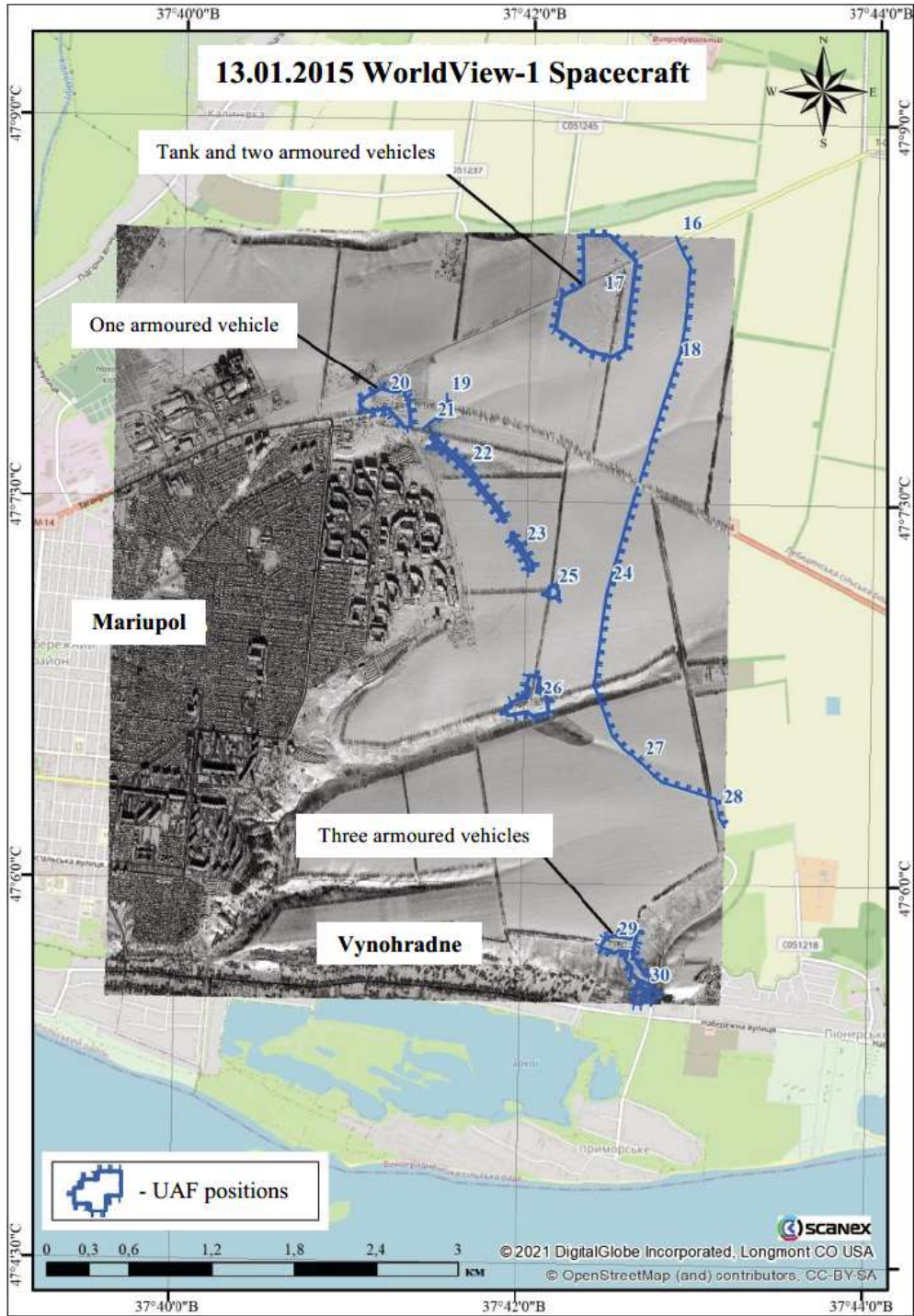


Figure 12: Location of Ukrainian National Guard positions and forces identified in the area of Mariupol and Vynohradne on 13 January 2015 (Bobkov Figure 27).¹²¹

¹²¹ Reproduced from Bobkov Report, Figure 27 (Russia’s Counter-Memorial Part I, Annex 1).

24. Military Targets to the East of the City. Colonel Bobkov's analysis makes the trench systems east of the shelled residential area appear to be strongly held, but the more detailed examination by Geolcollect in Figure 13 below shows the majority to be unmanned anti-tank ditches designed to channel armoured forces, rather than be defended by infantry.

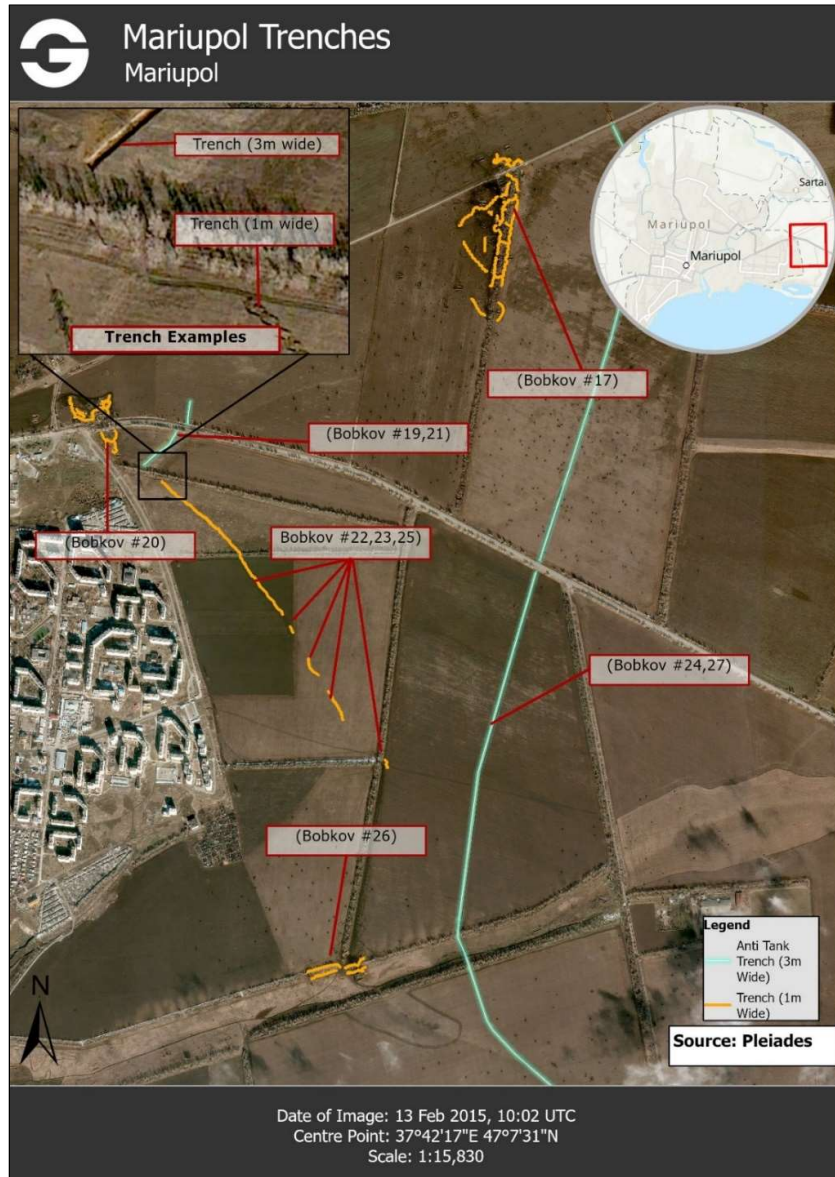


Figure 13: Trenches to the east of Mariupol (Geolcollect Figure 27).¹²²

¹²² Reproduced from Gwilliam and Corbett Report, Figure 27 (Ukraine's Reply, Annex 2).

25. Company Positions 4013¹²³ and 4015¹²⁴ were front-line defences. Checkpoint 4014 (or the “northern checkpoint”)¹²⁵ was effectively a second-line position, behind Company Position 4013; as stated in my first report, its manning and equipment and the trenches immediately to the east of the residential area¹²⁶ were “insufficient to conduct offensive operations” and “any military advantage from neutralizing the checkpoint would only accrue if followed up immediately by a ground assault. No ground assault was forthcoming.”¹²⁷ Moreover, for any shelling of Checkpoint 4014¹²⁸ and the trenches immediately to the east of the residential area¹²⁹ to make military sense, Company Position 4013¹³⁰ would have needed to have been attacked simultaneously or immediately beforehand.¹³¹ There is no evidence of this. General Samolenkov adduces numerous sources to suggest that an attack on the city was ongoing in the lead-up to the shelling of Vostochniy in order to justify shelling of targets close to the residential area,¹³² but all the references appear to be equally attributable to a DPR attempt to outflank¹³³ the city in the sector

¹²³ Bobkov Position 17. Colonel Bobkov was directed to analyze video of September 2014 shelling of this position. *See* Bobkov Report, para. 75 *et seq.* (Russia’s Counter-Memorial Part I, Annex 1). General Samolenkov picks up on this in paragraph 159 of his report. *See* Samolenkov Report, para. 159 (Russia’s Counter-Memorial Part I, Annex 2). Colonel Bobkov claims that his analysis of the 13 February 2015 imagery of Position 17 (Company Position 4013) shows “25 dug-out positions for armoured vehicles, a tank, two armoured vehicles, 1,900 m of trenches (fighting holes), and 623 impact craters left by artillery shells.” Bobkov Report, para. 84 (Russia’s Counter-Memorial Part I, Annex 1). I concur with his conclusion: this was a bona fide front-line military target, the impact craters presumably including those from the September 2014 shelling.

¹²⁴ Bobkov Positions 29 and 30.

¹²⁵ Bobkov Position 20.

¹²⁶ Bobkov Positions 19, 21–23, and 25.

¹²⁷ *See* Brown First Report, para. 49 (Ukraine’s Memorial, Annex 11).

¹²⁸ Bobkov Position 20.

¹²⁹ Bobkov Positions 19, 21–23, and 25.

¹³⁰ Bobkov Position 17.

¹³¹ The argument in paragraph 49 of my first report. *See* Brown First Report, para. 49 (Ukraine’s Memorial, Annex 11).

¹³² *See* Samolenkov Report, paras. 114–115 (Russia’s Counter-Memorial Part I, Annex 2).

¹³³ *I.e.*, to go around the city (in this case to the north), thereby cutting the city off from the rest of Ukraine.

between Sartana and Orlivska: at least 5 km, and in some cases more than 25 km,¹³⁴ to the north of the residential area. General Samolenkov also cites political statements from the DPR leadership,¹³⁵ including “no one is going to storm the city”¹³⁶ which he “find[s] it difficult to reconcile”¹³⁷ with his contention that the DPR planned a ground attack along the Vostochniy road; paradoxically, such statements are less difficult to reconcile with a DPR outflanking attack to the north of the city. General Samolenkov ultimately concedes that “I do not see sufficient evidence of the actual attempt to capture Mariupol.”¹³⁸ In that respect, we are in complete agreement.

26. BM-21 Firing Position. As with the attack at Volnovakha, the Counter-Memorial coverage of the BM-21 firing position is simply an attempt to cast doubt on the Ukrainian and OSCE reports and my resulting conclusions, rather than posit an alternative theory. General Samolenkov’s attempt to show that the shelling could have originated from UAF-held territory by citing intercept evidence is misleading, as the Kichiksu railway station¹³⁹ is beyond BM-21 range from Vostochniy, while the village of Vynohradne¹⁴⁰ is too close to be a plausible firing position. His suggestion that the “shelling could have come from various directions”¹⁴¹ with “shells fired potentially from different positions (data provided by the OSCE and the Ukrainian investigation implies that the shelling may have come from different positions)”¹⁴² adds weight to Ukraine’s position that this attack could

¹³⁴ See Samolenkov Report, para. 123, n.156 (referencing Kichiksu) (Russia’s Counter-Memorial Part I, Annex 2).

¹³⁵ See Samolenkov Report, paras. 116–117 (Russia’s Counter-Memorial Part I, Annex 2).

¹³⁶ Ria News, *Zakharchenko: The Militia Are Not Going to Assault Mariupol* (24 January 2015) (Russia’s Counter-Memorial Part I, Annex 106).

¹³⁷ Samolenkov Report, para. 117 (Russia’s Counter-Memorial Part I, Annex 2).

¹³⁸ *Ibid.*, para. 119.

¹³⁹ See *ibid.*, para. 142.

¹⁴⁰ See *ibid.*, para. 180. Parts of Vynohradne are less than the minimum range of BM-21 from the impact points.

¹⁴¹ *Ibid.*, para. 140.

¹⁴² *Ibid.*, para. 148.

not be attributed to technical error, since the likelihood of the same technical error being perpetrated across multiple firing units is significantly less than a technical error occurring within one firing unit. Notwithstanding any of the above, General Samolenkov's debate is academic as all plausible firing positions were in DPR-held territory.

27. Crater Analysis. General Samolenkov bemoans the inaccuracy and inconsistency of the Ukrainian and OSCE crater analysis,¹⁴³ but the simplicity of the process, illustrated in Figure 14 below and conducted in this case by an experienced artillery officer, should not detract from the conclusion that the attack was launched from DPR-held territory. Moreover, Colonel Bobkov appears not to have been tasked to conduct crater analysis on which General Samolenkov might be able to build plausible alternatives to Ukraine's case.



Figure 14: Deputy Commander M Sector, Colonel Viktor Shidlyukh, briefs the media on crater analysis following the attack on Mariupol.

¹⁴³ See Samolenkov Report, paras. 138–150 (Russia's Counter-Memorial Part I, Annex 2).

28. Intended Target. General Samolenkov argues that the intended target of the attack was likely Company Position 4013 (Bobkov Position 17) and that the intercept evidence citing Vostochniy, taken in the context of an additional intercept which was not included in Ukraine’s Memorial, supports this theory.¹⁴⁴ If that were the case and there was a genuine rationale to attack Company Position 4013, the realisation that the attack had catastrophically overshoot its intended target could have been rectified swiftly by adjusting the fire onto the target.¹⁴⁵ That did not happen.

29. Technical Error. General Samolenkov asserts that the reason the attack missed its intended target was “due to a miscalculated target or equipment malfunction.”¹⁴⁶ As demonstrated in Figure 15 below, the National Guard locations on the outskirts of the city were between 1.1 and 2.5 km from the mean point of impact in the Vostochniy neighbourhood.

¹⁴⁴ See Samolenkov Report, paras. 157–158 (Russia’s Counter-Memorial Part I, Annex 2). General Samolenkov returns to this theme in paragraphs 176 and 177 of his report.

¹⁴⁵ It takes 10 minutes to reload BM-21 from its accompanying ammunition vehicle.

¹⁴⁶ Samolenkov Report, para. 170 (Russia’s Counter-Memorial Part I, Annex 2).

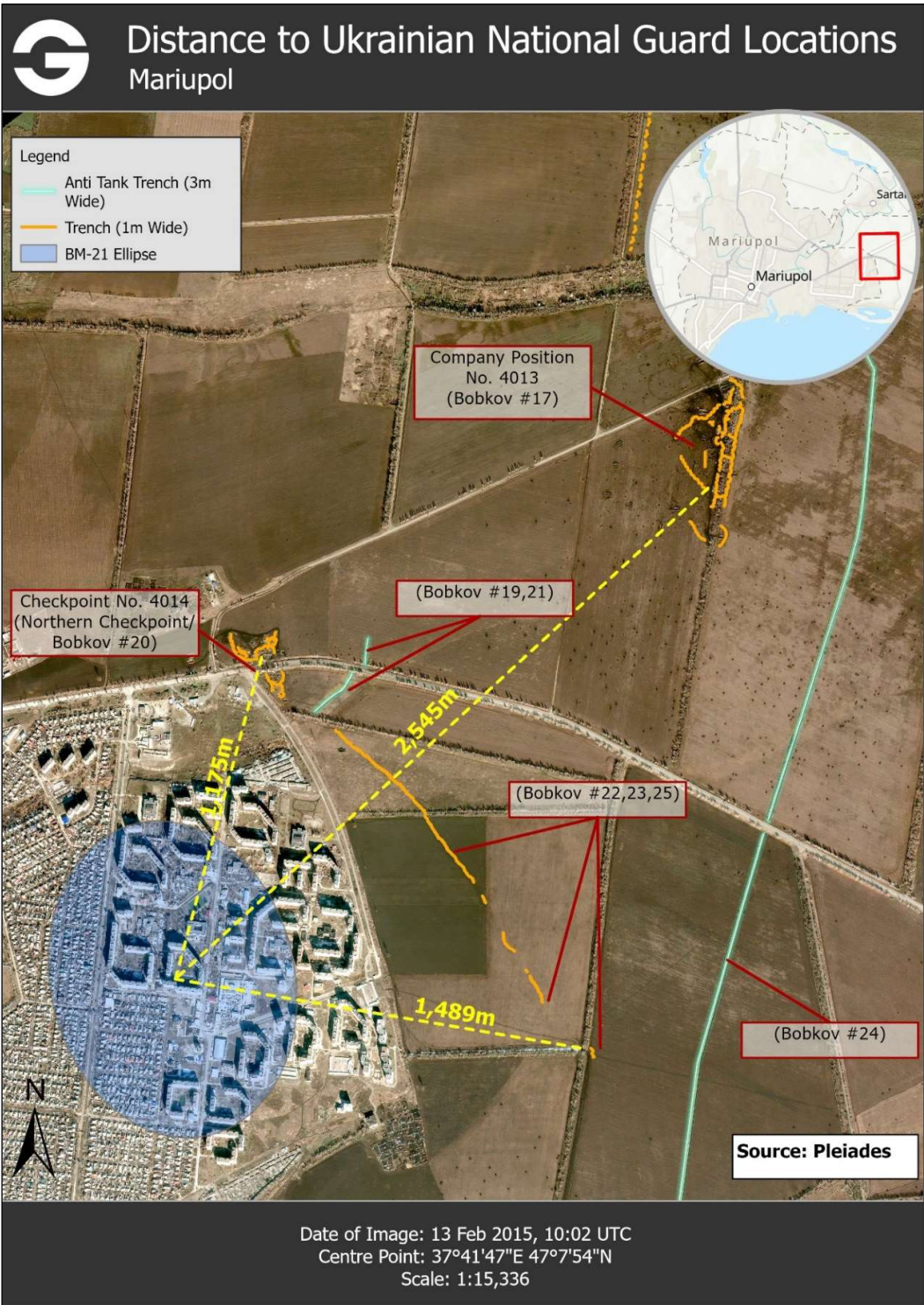


Figure 15. Distance from mean point of impact in the Vostochniy neighbourhood to Ukrainian National Guard locations (Geolcollect Figure 26).¹⁴⁷

¹⁴⁷ Reproduced from Gwilliam and Corbett Report, Figure 26 (Ukraine's Reply, Annex 2).

30. The shelling of the residential areas could not have been a discriminate attempt to target any of these nearby military positions, let alone Company Position 4013; the miss distance is too great to be put down to unfortunate technical error. In an attempt to break down the main components, or “error budget,”¹⁴⁸ of General Samolenkov’s hypothesis:

- a. Human Error (“Miscalculated Target”). General Samolenkov’s suggestion that the attack could be explained by an “error of fire preparation”¹⁴⁹ is implausible. As Russian artillery doctrine regarding the BM-21 emphasizes, the fundamental principle of fire preparation is that “[t]he accuracy of the fire depends on the timeliness, completeness and thoroughness of the execution[,] measures for the preparation of firing and fire control, on the method used determination of installations for firing and the possibility of their refinement in the course of firing.”¹⁵⁰ The potency of artillery weapons systems is such that this fundamental principle is hammered into artillerymen, irrespective of nationality, throughout their training. All the elements below are double- if not triple-checked in the firing process:
 - i. Incorrect Coordinates of the Firing Position. If incorrect coordinates for the firing position are used for the calculation of firing data, the error will be mirrored at the target end (*i.e.*, for every metre of error in the coordinates of the firing position, the shells or rockets will land a metre from the intended target). The mean point of the shelling of the residential area was approximately 200 metres northwest of the Kyivski market,¹⁵¹ 2.5 km from Company Position 4013; that implies a 2.5 km error in the battery commander’s coordinates of his own firing position. I have made such an error, pre-GPS, in the featureless terrain of arctic Norway; it was immediately picked up by the double-check procedures. The probability of such an error occurring in the terrain concerned in this attack is unconscionable, especially since the tactical situation had been relatively static for a considerable time, providing the opportunity, indeed requirement, to conduct full preparation, including accurate survey, of firing positions. General Samolenkov’s hypothesis on this issue¹⁵² is implausible. Even if the firing unit came in from outside the region immediately prior to the attack, properly conducted pre-firing double-checks should have alerted commanders to the potential error and corrected it.

¹⁴⁸ The components which account for the distribution of the fall of shot of any weapon system.

¹⁴⁹ Samolenkov Report, paras. 171(f)–172 (Russia’s Counter-Memorial Part I, Annex 2).

¹⁵⁰ Ministry of Defense of the Russian Federation, *Manual for the Study of the Rules of Firing and Fire Control of Artillery (PSiUO-2011)* (2014), Chapter 1, Art. 1 (Ukraine’s Reply, Annex 61).

¹⁵¹ At the intersection of Yasniy and Kyivska Boulevard.

¹⁵² See Samolenkov Report, para. 171(f) (Russia’s Counter-Memorial Part I, Annex 2).

- ii. Incorrect Coordinates of the Target. If Company Position 4013 was the intended target, the attackers would have had its precise coordinates as this target had been engaged by BM-21 on at least one previous occasion.¹⁵³ Similarly, if Checkpoint No. 4014 was the intended target, its successful engagement later on 24 January 2015¹⁵⁴ is evidence that DPR had its accurate coordinates. The suggestion that Kirsanov deliberately misled the DPR by providing incorrect target coordinates¹⁵⁵ should therefore not have swayed the attackers from coordinates they knew to be accurate from previous attacks. If Kirsanov was so callous as to provide target coordinates in the middle of a residential area, the double-checks required of the firing unit would in any case have highlighted the error.
- iii. Incorrect Firing Data. The 2.5 km distance between the centre of Company Position 4013 and the mean point of impact of the attack on the residential area equates to a difference in launcher elevation of 82 mils (5 degrees) at the firing range deduced from the Ukrainian Security Service crater analysis,¹⁵⁶ plus up to 122 mils (7.3 degrees) of line error if the deduced firing direction¹⁵⁷ is accepted. The reason modern artillery sights are calibrated in mils, rather than degrees, is that technical advances make these artillery systems capable of being accurate to a much greater extent. Moreover, such errors are easily visible in the pre-firing checks required of the battery commander.
- iv. Incorrect Meteorological Data. Meteorological conditions, including the wind, barometric pressure and temperature, affect the flight of a rocket. Preparation of fire requires the input of those conditions into the calculation of ballistic firing data. The fact that several other military targets were accurately engaged by BM-21 Grad on 24 January 2015 suggests that meteorological data was available to the firing units. The meteorological conditions on that day were not extraordinary: even if the attackers failed to input the meteorological data into the firing computation, which would itself be further evidence of knowingly indiscriminate action, the difference at the target end might be measured in tens or possibly hundreds of meters, rather than thousands.

¹⁵³ See Bobkov Report, para. 75 *et seq.* (the September 2014 video which Bobkov was directed to analyse) (Russia's Counter-Memorial Part I, Annex 1).

¹⁵⁴ See OSCE, *Spot report by the OSCE Special Monitoring Mission (SMM), 24 January 2014: Shelling Incident on Olimpiiska Street in Mariupol* (24 January 2015) (Ukraine's Memorial, Annex 328).

¹⁵⁵ See Samolenkov Report, para. 185(d) (citing Annex 213 to Ukraine's Memorial) (Russia's Counter-Memorial Part I, Annex 2).

¹⁵⁶ See Brown First Report, para. 47 (16.4 to 17.8 km) (Ukraine's Memorial, Annex 11).

¹⁵⁷ See *ibid.*, para. 46.

- b. Equipment Malfunction. The checking of sight alignment is a required element of preparation to fire. General Samolenkov’s suggestion that “not only that the operator may have made a mistake, but also machines may have been out of order”¹⁵⁸ merely adds weight to Ukraine’s claims of indiscriminate targeting or worse: it would mean that DPR commanders engaged targets on the outskirts of a city with equipment that was out of order or had not been calibrated, knowing that such errors could cause civilian casualties.
- c. Multiple Equipment Malfunction. If one launcher was malfunctioning, as suggested by General Samolenkov’s presentation of “intercept evidence that ‘Yugra’ informed the unit commander that one vehicle was overshooting,”¹⁵⁹ that could not account for the number of rockets that impacted the residential area. Moreover, if “one vehicle was overshooting,” the inference is that the other launchers were firing accurately; however, there appears to be no evidence of successful contemporaneous engagement of a military target. All the rockets from this attack appear to have landed in the residential area. All the launchers appear to have fired coherently, resulting in a fall of shot pattern consistent with firing tables: if launchers were “out of order,” the likelihood of the nature of their damage resulting in a single consistent error across at least four launchers¹⁶⁰ is implausible. An inconsistently large spread of the fall of shot would be expected.

31. Indeed, the more “error budget” factors involved, the wider the likely fall of shot pattern. But the attack on the residential area of Mariupol produced a normal, predictable fall of shot pattern. General Samolenkov’s logic¹⁶¹ therefore lacks technical rigour in this respect.

32. Avoidance of Civilian Casualties. Russian doctrine provides that casualties and damage outside the intended target area can be avoided, or at least minimised, by the adoption of several procedures:

- a. Observed and/or Adjusted Fire. Under Russian doctrine, “[z]eroing in on [adjusting] a target is the most accurate way to determine target shooting settings. Zeroing in is used in conditions of low enemy fire resistance, when hitting targets unable to change location in a short time.”¹⁶² It is necessary to make a clear distinction here between, on the one hand, an

¹⁵⁸ Samolenkov Report, para. 171(d) (Russia’s Counter-Memorial Part I, Annex 2).

¹⁵⁹ *Ibid.*

¹⁶⁰ See Brown First Report, para. 43 (Ukraine’s Memorial, Annex 11).

¹⁶¹ See Samolenkov Report, para. 172 (Russia’s Counter-Memorial Part I, Annex 2).

¹⁶² Ministry of Defense of the Russian Federation, *Rules of Firing and Fire Control of Artillery (PSiUO-2011)* (2011), Section 1, Chapter 1, para. 7 (Ukraine’s Reply, Annex 60).

observer who adjusts the fire onto a target and corrects fire that is inaccurate, and on the other hand, someone who merely reports the result of an attack.¹⁶³ If observers had adjusted the fire away from the residential area, it would be evidence of an attempt to avoid or minimise civilian casualties,¹⁶⁴ but I can see no evidence that adjustment was used in this attack: on the contrary, the suddenness of the attack is indicative of the failure to adjust fire. General Samolenkov suggests that spotters were used by the DPR but admits “it is difficult to say whether the spotters assisted in good faith.”¹⁶⁵ General Samolenkov also questions the availability of UAVs to observe and adjust the DPR fire, but it is clear from the evidence in the Kramatorsk attack just a few weeks later that such capability existed.

- b. “Danger Close” Procedure. If the BM-21 commander believed there was any danger to the civilian population, he could have used “Danger Close” procedures designed to minimise damage or casualties amongst friendly forces or non-combatants:

“To ensure the safety of his troops, when firing at targets located near them, the division (battery) commander must:

- apply the most accurate ways to determine the settings for shooting;
- appoint shells and charges that provide the least dispersion; . . .
- start zeroing in with the expectation of getting the deviation of the first explosion from the target in the direction opposite to own troops.”¹⁶⁶

There is no suggestion in the evidence or General Samolenkov’s report that any of these measures were taken in this attack.

- c. Converging the Fire. It is normal for the guns, mortars, or MLRS in a battery to fire in parallel, thereby achieving the optimum spread of fire consistent with the dimensions of the target and the lethal splinter distance of the munitions; however, where the target is smaller than the optimum size for the weapon system, the firing bearings of individual guns, mortars or launchers can be converged such that the fire is concentrated on a smaller area. As stated in Russian doctrine, “[w]hen firing at a target whose frontal and depth dimensions do not exceed the minimum, the battalion fires overlay batteries on one sight setting with a concentrated fan.”¹⁶⁷

¹⁶³ There is evidence of DPR informers inside Mariupol, but their role appears to be limited to reporting the results of attacks to DPR fighters.

¹⁶⁴ Observation is therefore an additional way of correcting technical errors such as described in paragraph 30 above, including the rectification of incorrect target coordinates such as Kirsanov suggests he provided.

¹⁶⁵ Samolenkov Report, para. 185(d) (Russia’s Counter-Memorial Part I, Annex 2).

¹⁶⁶ Ministry of Defense of the Russian Federation, *Rules of Firing and Fire Control of Artillery (PSiUO-2011)* (2011), Section 1, Chapter 1, para. 10 (Ukraine’s Reply, Annex 60).

¹⁶⁷ *Ibid.*, Section 6, Chapter XVII, para. 410.

33. We know that military targets close to the residential area¹⁶⁸ were accurately engaged without apparent civilian casualties both before and after the attack on the residential area. There appears to be no evidence to confirm whether the attackers used any of the methods above to avoid civilian casualties, but these other attacks show an ability to avoid civilian casualties. They also belie General Samolenkov's claim that "Checkpoint No. 4014 . . . was located in dangerous vicinity from the residential area"¹⁶⁹ and the resultant Counter-Memorial claim that "some of these positions are in close proximity to the Vostochniy residential area, in places as close as around 250 m, 450 m and 600 m (positions Nos. 22, 23 and 25 in the Bobkov Report, respectively). Based on the location of these objects, if shelling from a north-eastern or eastern direction was directed at these targets, it would follow that overshooting could have impacted the residential area beyond."¹⁷⁰ Checkpoint 4014 was only "dangerous" and "overshooting could have impacted the residential area beyond" only if the prescribed procedures were not followed. Conscious dispensation with these procedures equates to making no attempt to discriminate between military targets and civilian residential areas. Furthermore, the intercept evidence¹⁷¹ hardly suggests a careful military force committed to avoiding civilian casualties.

34. Choice of Weapon System Used. General Samolenkov contends that "[i]t also does not follow from any materials that I have reviewed that artillery guns (such as D-30 guns to which General Brown refers) were available to the DPR forces in that region (para 54 of the Brown Report)."¹⁷² However, the Geollect Report identifies three possible D-30 artillery guns within DPR-controlled territory on 18 January 2015, less than 19 km from the

¹⁶⁸ Including Checkpoint No. 4014 (the "northern checkpoint"/Bobkov Position 20) and the "Platoon Position" (Bobkov Position 25/Kirsanov Judgment Point 6).

¹⁶⁹ Samolenkov Report, para. 166 (Russia's Counter-Memorial Part I, Annex 2).

¹⁷⁰ Russia's Counter-Memorial Part I, para. 422.

¹⁷¹ Intercepted Conversation between Sergey Ponomarenko and Oleksandr Evdotiy (23 January 2015), p. 2 (quoted in paragraph 23 above) (Ukraine's Memorial, Annex 418).

¹⁷² Samolenkov Report, para. 185(b) (Russia's Counter-Memorial Part I, Annex 2).

Vostochniy neighbourhood.¹⁷³ Furthermore, Colonel Bobkov analyses two DPR artillery or mortar battery positions in the area¹⁷⁴ and, although no equipment is specified, the “Battery Position 250 m to the south of Leninske, artillery or mortar battery position”¹⁷⁵ is within D-30 range of the targets involved. If, for example, the intended target had been Checkpoint 4014,¹⁷⁶ approximately 150 x 100 metres in size, the more accurate gun artillery should have been the clear choice of weapon system given that Russian doctrine stipulates that “[t]he minimum dimensions of a group and individual target along the front and depth, when assigning the expenditure of shells and the method of shelling it, are taken equal to: . . . 400 m - for medium-range and long-range rocket artillery of medium calibre [BM-21].”¹⁷⁷ Company Position 4013¹⁷⁸ is the only target which could doctrinally have justified attack by BM-21; it covers approximately a square kilometre; however, its 2.5 km distance from the mean point of impact in the residential area makes it an implausible target for the reasons listed above.¹⁷⁹

35. Summary of Conclusions on the Mariupol Shelling. The reports of General Samolenkov and Colonel Bobkov and my subsequent discussions with UAF commanders at the time of the shelling suggest the following more specific conclusions, consistent with my first report:¹⁸⁰

- a. The shelling of civilian residential areas of Mariupol on 24 January 2015 was carried out using multiple BM-21 Grad MLRS firing high explosive fragmentation rockets fired from DPR-held territory.

¹⁷³ See Gwilliam and Corbett Report, para. 67 (Ukraine’s Reply, Annex 2); *ibid.*, Figure 30.

¹⁷⁴ See Bobkov Report, Figure 25 and Table 5 (Positions 5 and 13) (Russia’s Counter-Memorial Part I, Annex 2).

¹⁷⁵ Bobkov Report, Figure 25 and Table 5 (Serial 13) (Russia’s Counter-Memorial Part I, Annex 2).

¹⁷⁶ The “northern checkpoint”/Bobkov Position 20.

¹⁷⁷ Ministry of Defense of the Russian Federation, *Rules of Firing and Fire Control of Artillery (PSiUO-2011)* (2011), Section 6, Chapter XVII, para. 409 (Ukraine’s Reply, Annex 60).

¹⁷⁸ Bobkov Position 17.

¹⁷⁹ Figure 15 above gives a good feel for the dynamics of this point.

¹⁸⁰ See Brown First Report, paras. 56–59 (Ukraine’s Memorial, Annex 11).

- b. The main thrust of the planned DPR attack at Mariupol was not a direct assault on the city: attackers and defenders had concluded that the most efficient approach, in terms of the attackers' likely casualties and equipment damage, would be to outflank the city across the open ground to the north. In that context, any attack towards Vostochniy was inconsistent with the main effort of the DPR objective. Given that there was no simultaneous or prior artillery attack on the front-line defensive position¹⁸¹ forward of Checkpoint 4014¹⁸² and no ground assault towards Vostochniy, there was no military advantage in shelling Checkpoint 4014 or the surrounding positions¹⁸³ at that time.
- c. The National Guard positions which the evidence suggests, and the Counter-Memorial claims, were justifiable military targets are all well outside the maximum fall of shot pattern from the mean point of impact of the 24 January 2015 shelling of the residential area of Mariupol. The multiple errors, of whatever nature, required for the shelling of the residential area to be considered a targeting "mistake" would be egregiously indiscriminate beyond the bounds of technical error by any trained artillery unit intent on shelling the military targets, particularly the position believed by General Samolenkov to have been the intended target.¹⁸⁴ Indeed, the DPR fighters had demonstrated that they could accurately target the nearby military positions both before and after the shelling of the civilian area.
- d. The dispersion of the fall of shot of BM-21 Grad and its unadjusted method of fire in this attack were incapable of targeting Checkpoint 4014 without hitting the residential area even if the targeting process had been accurate.¹⁸⁵ The attackers would have known, or should reasonably have known, that their fire would impact the residential area.
- e. In my opinion there are three plausible explanations for the 24 January 2015 attack on the residential area of Mariupol:
 - i. The attackers deliberately targeted the civilian residential areas to terrify the population and/or cause evacuation of the city in order to facilitate its capture; or
 - ii. The attackers were unconcerned and indiscriminate as to what they hit on the eastern edge of the city even though it was obvious that it was a residential area: shelling of anything in that area would give the impression that an attack on the city was under way, thereby diverting attention from their likely objective, an outflanking manoeuvre around the northern outskirts of the city; or

¹⁸¹ Company Position 4013 (Bobkov Position 17).

¹⁸² The "northern checkpoint"/Bobkov Position 20.

¹⁸³ Bobkov Positions 19–23.

¹⁸⁴ Company Position 4013 (Bobkov Position 17) (2.5 km from the mean point of impact of the attack on the residential area).

¹⁸⁵ In fact, no rockets appear to have fallen closer than 575 metres from Checkpoint 4014 (the "northern checkpoint"/Bobkov Position 20).

- iii. The attackers targeted one of the military targets within a kilometre of the residential area, knowing that their weapon system and method of targeting could not avoid impacting the residential area (I assess this as the least likely explanation given that the mean point of impact of the attack was outside the maximum fall of shot pattern from these military targets, some of which were accurately targeted before and after the attack on the residential area, and would have involved multiple egregious failures to apply the rules for firing).

IV. SHELLING OF RESIDENTIAL AREA OF KRAMATORSK — 10 FEBRUARY 2015

36. Common Ground Between My First Report and Russia.

- a. The weapon used was BM-30 Smerch¹⁸⁶ firing 9M55K rocket munitions.¹⁸⁷
- b. The spread of the cluster munitions that impacted on Kramatorsk could not have come from a single 9M55K rocket: the impact pattern indicates that more than one rocket impacted on the civilian residential area of Kramatorsk.¹⁸⁸
- c. As stated by General Samolenkov, “the impact pattern suggests a general bearing from the south-east.”¹⁸⁹ There is no suggestion that the shelling could have been carried out by Ukraine. “On the assumption that the attack could only be organised by the DPR, [General Samolenkov] agree[s] that the range must have been more than 50 km.”¹⁹⁰
- d. General Samolenkov “agree[s] with [my] conclusion that ‘there is no evidence of any military targets in the residential area of Kramatorsk that would justify targeting it with a BM-30 salvo’¹⁹¹ . . . the police department (Mayakovskogo Street), conscription centre building (Druzhby Street) or the Border Service building (Heroev Ukrainy Street) do not appear to have been suitable targets for such attack.”¹⁹² Use against these minor installations in Kramatorsk would make no military sense.

¹⁸⁶ See Samolenkov Report, paras. 204, 234 (Russia’s Counter-Memorial Part I, Annex 2).

¹⁸⁷ See *ibid.*, para. 209.

¹⁸⁸ See Russia’s Counter-Memorial Part I, para. 465.

¹⁸⁹ Samolenkov Report, para 212 (Russia’s Counter-Memorial Part I, Annex 2).

¹⁹⁰ *Ibid.*, para. 219. Paragraph 65 of my first report concluded that the attack had been conducted “a firing range of between 50 and 70 km.” Brown First Report, para. 65 (Ukraine’s Memorial, Annex 11).

¹⁹¹ Samolenkov Report, para. 201 (quoting paragraph 67 of my first report) (Russia’s Counter-Memorial Part I, Annex 2).

¹⁹² Samolenkov Report, para. 236 (Russia’s Counter-Memorial Part I, Annex 2). In addition to their unsuitability, these installations are doctrinally too small to be engaged with BM-30 Smerch. See Ministry of Defense of the Russian Federation, *Rules of Firing and Fire Control of Artillery (PSiUO-2011)* (2011), Section 6, Chapter XVII, para. 409 (Ukraine’s Reply, Annex 60).

37. Russia's Thesis. Russia believes there is insufficient evidence to assess whether the shelling of the residential area was separate from the attack against Kramatorsk Airfield,¹⁹³ and General Samolenkov states that “the damage to civilian areas of Kramatorsk most likely resulted from mistakes in targeting and/or (more likely) malfunction or failure of the on-board range adjustment equipment”¹⁹⁴ or old/faulty munitions.¹⁹⁵ General Samolenkov also states that because he was not provided with any detailed account of the impact at the Kramatorsk airfield, he is unable to make an assessment regarding the targeting scheme and potential errors that could have led to the impact in the residential neighbourhood.¹⁹⁶

38. BM-30 Firing Position. Having conceded “that the impact pattern suggests a general bearing from the south-east,” General Samolenkov heaps academic obfuscation on the obvious conclusion: if the weapon system was BM-30, the origin of fire was southeast and the UAF did not shell their own higher headquarters, the shelling must have originated from DPR-held territory.¹⁹⁷

39. Analysis of the Shelling. The Counter-Memorial leverages General Samolenkov's comments on the discrepancy in the number of impact sites at the airfield and residential area of Kramatorsk¹⁹⁸ as “complicat[ing] any meaningful analysis at this stage.”¹⁹⁹ An exact reconstruction of this BM-30 Smerch attack, particularly in terms of numbers of rockets, is more difficult than BM-21 for the simple reason that the 1.75 kg BM-30 Smerch

¹⁹³ See Russia's Counter-Memorial Part I, para. 458.

¹⁹⁴ Samolenkov Report, paras. 192, 237 (Russia's Counter-Memorial Part I, Annex 2).

¹⁹⁵ See *ibid.*, paras. 225–227.

¹⁹⁶ See *ibid.*, para. 208.

¹⁹⁷ See *ibid.*, paras. 213–215. His comments on wind appear to ignore paragraph 68 of my first report. See Brown First Report, para. 68 (“The wind at the time of the attack was 3 metres/second from the south.”) (Ukraine's Memorial, Annex 11).

¹⁹⁸ See Samolenkov Report, para. 211 (Russia's Counter-Memorial Part I, Annex 2).

¹⁹⁹ Russia's Counter-Memorial Part I, para. 465.

cluster munition creates a smaller crater²⁰⁰ than the 18.4 kg warhead of a BM-21 Grad rocket. BM-30 Smerch cluster munition craters are therefore inherently more difficult to locate either by overhead imagery or inspection on the ground,²⁰¹ particularly in soft terrain. The vertical descent of the BM-30 cluster munitions, once released from the rocket, also makes deductions on the direction of fire less accurate than BM-21.²⁰² Having again questioned the Ukrainian Security Service and also eyewitnesses on the airfield at the time of the attack, I note the following:

- a. As with the attack at Volnovakha, the Ukrainian Security Service investigation was primarily focused on evidence of impacts that killed or injured civilians and damaged civilian property. Moreover, the investigation of the casualties and damage on the aerodrome appears to have been carried out separately by the military authorities.²⁰³ The Security Service report²⁰⁴ is therefore an incomplete picture. Video evidence confirms this.²⁰⁵ General Samolenkov makes the obvious and unremarkable conclusion that “neither of the impact sites in the

²⁰⁰ Even on hard surfaces, the typical BM-30 cluster munition crater is approximately 30 x 30 cm.

²⁰¹ Crater analysis of the attack on Kramatorsk is missing from Colonel Bobkov’s report, unlike Volnovakha where he selectively analyses craters around forward positions, but not around the Buhas checkpoint. Colonel Bobkov’s video footage of cluster munition impacts is all on hard surfaces at the Kramatorsk airfield where the “splash” is evident. *See* Bobkov Report, pp. 101–107 (Russia’s Counter-Memorial Part I, Annex 1). All of the evidence of craters in soft ground analysed by the Ukrainian Security Service appears to relate to carrier elements. *See* Record of Site Inspection Conducted by A.A. Kholin, Major of Justice and Senior Investigator with the Operative Unit of the Investigative Department of the Security Service of Ukraine in Donetsk Oblast (12 February 2015) [hereinafter Kholin Report] (Ukraine’s Memorial, Annex 105).

²⁰² The Ukrainian Security Service reached a similar conclusion. *See* Expert Opinion No. 193, drafted by Oleksiy Bordunos, drafted by the Ukrainian Scientific Research Institute of Special Equipment and Forensic Expert Examination, Security Service of Ukraine (24 April 2015), p. 116, Conclusion 6 (“Based on the inspection and the objects found during the inspection, it is not possible to draw any conclusions as to the angle of incidence of the munitions whose detonation was recorded during the inspection.”) (Ukraine’s Memorial, Annex 121). That said, as I explained in paragraphs 64 and 65 of my first report, the correlation between cluster munition craters and debris from the carrier elements of the rocket indicates the general direction of fire, albeit subject to the unpredictability of the flight of the carrier elements once the cluster munitions have been discharged. *See* Brown First Report, paras. 64–65 (Ukraine’s Memorial, Annex 11). None of my deductions on direction of fire in the attack on Kramatorsk rely solely on crater analysis.

²⁰³ *See* Witness Statement of Kyrilo Ihorevych Dvorskyi, para. 5 (Ukraine’s Memorial, Annex 3).

²⁰⁴ *See* Kholin Report (on which Ukraine’s Memorial, Annex 27 is based) (Ukraine’s Memorial, Annex 105).

²⁰⁵ *See* The Guardian, *Rockets Hit Residential Area in Kramatorsk, Ukraine* (video) (10 February 2015).

residential areas identified by Ukraine's inspection reports represents a full impact field for even a single rocket."²⁰⁶

- b. The estimate from the professional UAF rocket artillery battery commander stationed on the aerodrome at the time of the attack is that between six and 12 rockets²⁰⁷ landed within the perimeter of the aerodrome. This makes more sense doctrinally²⁰⁸ and makes reconciliation of the military casualty figures more credible.²⁰⁹

40. In 2018 I had insufficient independent information to substantiate the conclusion reached by the Ukrainian Security Service that "at least 16 [rockets] . . . were fired from two or more Smerch."²¹⁰ I could see clear evidence of between two and four rockets having impacted the residential area and, given that I then had no evidence of numbers of rockets impacting the aerodrome other than the Ukraine Security Service reports which accounted for no more than one rocket, I concluded that "[a]t least three, more likely five, of which at least two, more likely four, impacted in the residential area."²¹¹ This conclusion was supported by the evidence of five rocket tail fin elements found after the attack.²¹² Each rocket carries 72 sub-munitions (cluster munitions), so there should have been at least 360 impacts: the Ukraine Security Service map details only 71 impacts, 21 of which are carrier elements, leaving 50 sub-munition (cluster munition) craters, of which 39 impacted the residential area. Given that the BM-30 Smerch cluster munition is less than 10% of the

²⁰⁶ Samolenkov Report, para. 210 (Russia's Counter-Memorial Part I, Annex 2).

²⁰⁷ Carrying a total of between 432 and 864 cluster munitions.

²⁰⁸ A simplistic deduction that 58 impact points on the residential areas implies an attack by one rocket runs counter to doctrine as well as the ballistic characteristics of the 9M55K rocket. The doctrinal ammunition consumption rates for BM-30 are classified, but Table 16 of the Russian Federation Ministry of Defence Rules of Firing and Fire Control of Artillery document shows that 3 x BM-22 Urugan cluster munition rockets (the nearest comparable system) per hectare would be the norm for a target consisting of command posts such as existed on around 20 hectares of the aerodrome. See Ministry of Defense of the Russian Federation, *Rules of Firing and Fire Control of Artillery (PSiUO-2011)* (2011), Table 16 (Ukraine's Reply, Annex 60).

²⁰⁹ Eight deaths, 33 injuries and significant damage to military equipment.

²¹⁰ Expert Opinion No. 193/1, Ukrainian Scientific Research Institute of Special Equipment and Forensic Expert Examination of the Security Service of Ukraine (29 April 2015), p. 8 (Ukraine's Memorial, Annex 121).

²¹¹ Brown First Report, para. 60, n.68 (Ukraine's Memorial, Annex 11).

²¹² See Kholin Report, paras. 1, 4, 11, 15, 26 (Ukraine's Memorial, Annex 105).

weight of a BM-21 warhead, it should not be surprising that only 10% of the cluster munition craters were identified in the Ukraine Security Service analysis.

41. Spread of the Cluster Munitions. The Ukrainian Security Service's discovery of the tail fins of at least five rockets leads to the only plausible deduction that at least 321 cluster munitions landed harmlessly. The ground between the aerodrome and the residential area consists of open fields, garages and a cemetery; the further east you go, the more open the ground becomes. We know that rocket carrier elements landed in these areas²¹³ so it should be unsurprising that cluster munitions also landed here. Indeed, it is clear from video evidence that the Rybalko Street garage area was hit by many more cluster munitions²¹⁴ than the three shown in the Security Service report.²¹⁵ Moreover, if the fall of shot pattern for BM-30 Smerch firing at a range of 70 km²¹⁶ is compared to the lateral dispersion of the cluster munitions impacts in the residential area (0.6 km wide)²¹⁷ that were analysed in the Ukraine Security Service report, the spread of impact craters analysed in the Ukraine Security Service report would be expected to account for no more than 50% of the total.

²¹³ See *ibid.*, paras. 12, 17–19, 28.

²¹⁴ See The Guardian, *Rockets Hit Residential Area in Kramatorsk, Ukraine* (video) (10 February 2015).

²¹⁵ See Kholin Report, paras. 17–19 (Ukraine's Memorial, Annex 105).

²¹⁶ Figure 3 from my first report, reproduced here as Figure 16.

²¹⁷ See Brown First Report, para. 72 (Ukraine's Memorial, Annex 11).

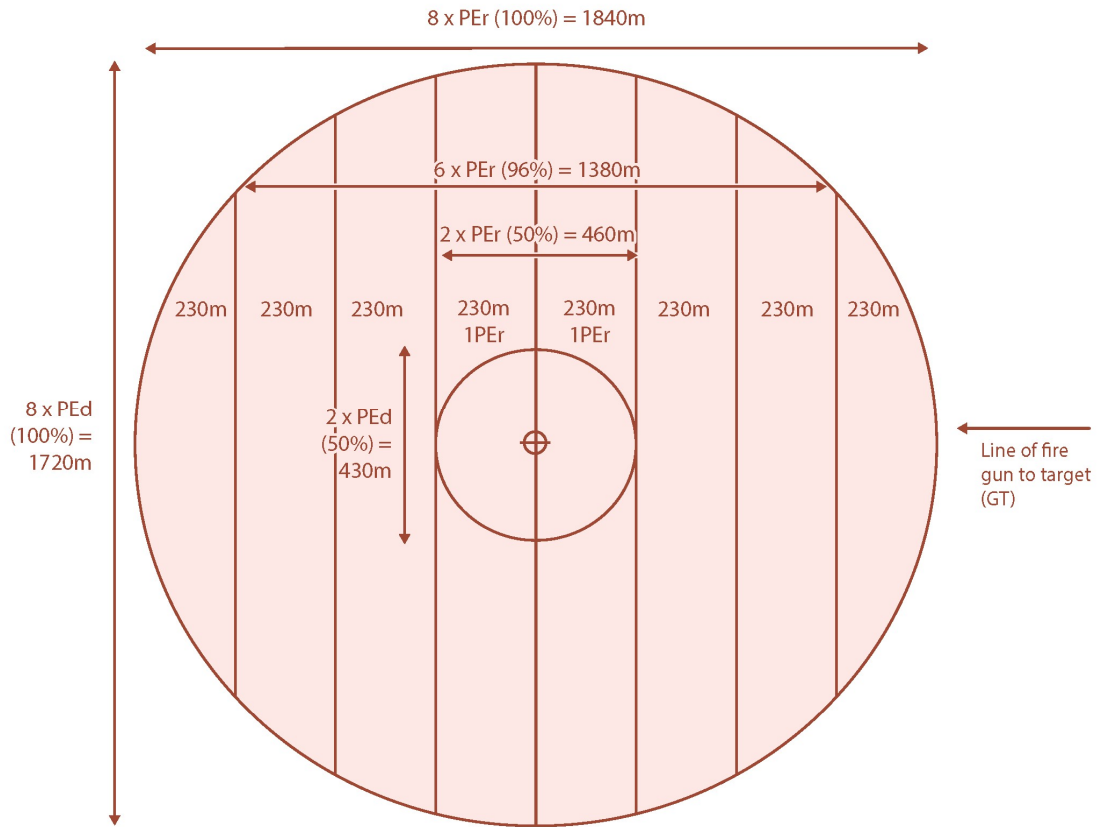


Figure 16. Diagram (to scale) showing fall of shot pattern created by 300mm 9M55K rockets at 70 km range using firing table data.²¹⁸

²¹⁸ See Extract of Smerch Firing Table, Ministry of Defense of Ukraine (March 2018) (Ukraine's Memorial, Annex 656).

42. Overlaying fall of shot ellipses onto satellite imagery of Kramatorsk with one ellipse over the centre of the aerodrome, a second ellipse centred on the dispersal area in the northwest sector of the aerodrome and a third ellipse over the residential area, illustrates three deductions:

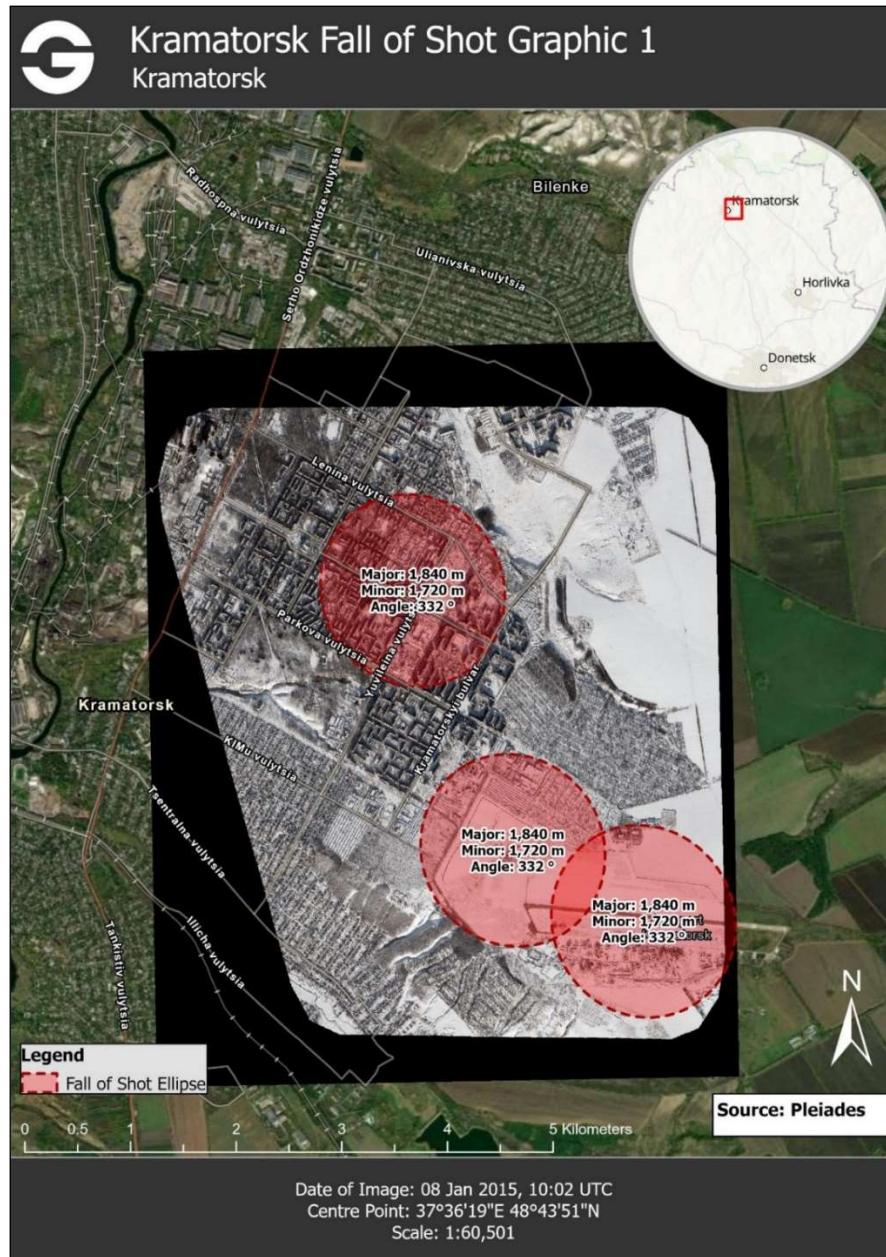


Figure 17. Graphic illustrating the maximum area of cluster munition damage that could have resulted from a single “rogue” rocket (Geollect Figure 39).²¹⁹

²¹⁹ Reproduced from Gwilliam and Corbett Report, Figure 39 (Ukraine’s Reply, Annex 2).

- a. The cluster munitions and rocket elements found among the garages on Rybalko Street²²⁰ could arguably be collateral damage from an attack on the northwest sector of the aerodrome. If this was the case, the damage to civilian property could nevertheless have been avoided, or at least mitigated, if the centre of the airfield, rather than the northwest sector, had been targeted²²¹ as is evident from the comparison of the spread of the two ellipses above. If the attackers had wanted to target the northwest sector of the airfield while minimising damage to the civilian residential area, this could have been achieved by careful targeting such that the ellipse covered the northwest sector of the airfield but did not impinge into the civilian residential area.
- b. The impacts further northwest in the residential area cannot be collateral damage from an attack on any part of the aerodrome. General Samolenkov accepts that “the sub-munitions from one salvo of BM-30 cannot fall 5 km from each other,”²²² but uses the discrepancy in impact/crater numbers in an attempt to undermine the consistency of Ukraine’s case without offering a plausible alternative. He simply states: “I do not understand why it is so.”²²³
- c. The group of cluster munition impacts on Druzhby (formerly Lenin) Street²²⁴ is approximately 2 km from the group on Kramatorsk Boulevard,²²⁵ greater than the 1,840 metre 100% range spread for a single rocket illustrated in Figure 17 above. This led to my conclusion that the cluster munitions in the residential area came from “at least two” rockets.²²⁶ This is illustrated in Figure 18 below:

²²⁰ See Kholin Report, paras. 17–19 (Ukraine’s Memorial, Annex 105). But it is clear that many more cluster munitions impacted in this area. See, e.g., The Guardian, *Rockets Hit Residential Area in Kramatorsk, Ukraine* (video) (10 February 2015).

²²¹ See paragraph 47(a) below.

²²² Samolenkov Report, para. 221 (Russia’s Counter-Memorial Part I, Annex 2).

²²³ *Ibid.*, paras. 210–211.

²²⁴ See Kholin Report, paras. 2–3 (Ukraine’s Memorial, Annex 105).

²²⁵ See *ibid.*, paras. 7, 14, 23.

²²⁶ Brown First Report, para. 60, n.68 (Ukraine’s Memorial, Annex 11).

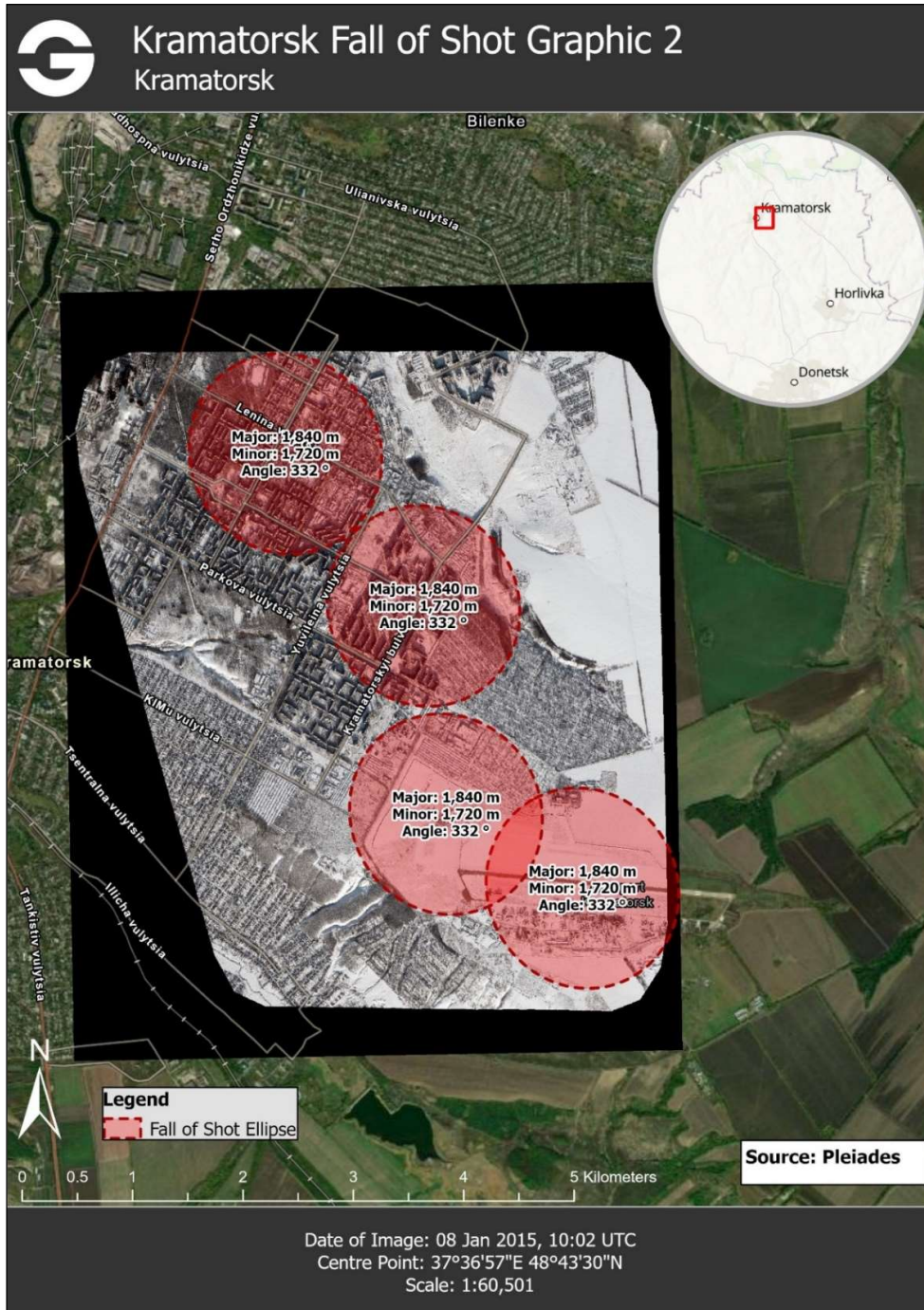


Figure 18. Graphic illustrating the plausible area of cluster munition damage that could have resulted from at least two rockets targeted at the residential area in addition to those targeted at the aerodrome (Geollect Figure 40).²²⁷

²²⁷ Reproduced from Gwilliam and Corbett Report, Figure 40 (Ukraine's Reply, Annex 2).

A BM-30 Smerch launcher is not capable of engaging different targets simultaneously with 9M55K rockets in the same salvo.²²⁸ There is evidence to suggest that the attack consisted of two salvos, five minutes apart.²²⁹ The potential deductions therefore are that:

- i. The attack on the residential area was perpetrated by a different launcher (or launchers) from the attack on the aerodrome; or
- ii. The launcher(s) engaged the residential area and the aerodrome sequentially; or
- iii. There was a common fault in more than one of the rockets targeted at the airfield such that it overflowed its intended target; however, I believe this is implausible as explained below.

43. Faulty Ammunition. My experience, and having questioned Ukrainian rocket artillery officers and munitions experts with extensive experience of the BM-30 Smerch 9M55K rocket and other Soviet-based MLRS systems, is that any obvious damage to a rocket when delivered to the launcher, including being beyond its shelf-life,²³⁰ is an immediate cause to reject the rocket. Specific areas of potential faults, none of which I believe are plausible in this case, are:

- a. Pre-Firing Diagnostic Checks. Once the rocket is prepared for firing in its launcher tube, BM-30 Smerch connects the individual rockets to a diagnostic and programming system designed to identify faults in the electronics. Any fault identified would be evident to the commander of the launcher and would prevent the rocket from firing. In the unlikely event that faults in the rocket escaped these visual and diagnostic checks, any unseen fault in the propellant or casing would typically cause the rocket to drop short of its intended target, in practice shortly after launch. There are no recorded or known incidents of a faulty rocket having overflowed its intended target — it would be ballistically implausible as argued below — let alone overfly its target and then successfully deploy its cluster munitions.
- b. The Timer Mechanism. A 9M55K rocket targeted at a range of 70 km is designed to open up and dispense its cluster munitions at a height of 4,847 metres.²³¹ At that point its descent angle is -48 degrees and it is 1,254 metres short of the target to take account of the forward momentum

²²⁸ A change of bearing and elevation to engage a different target takes time, particularly if the correct safety checks are carried out.

²²⁹ See Witness Statement of Kyrylo Ihorevych Dvorskyi (4 June 2018), para. 8 (Ukraine's Memorial, Annex 3).

²³⁰ See Samolenkov Report, para. 226 (Russia's Counter-Memorial Part I, Annex 2). Firing a rocket beyond its shelf-life would be knowingly indiscriminate.

²³¹ See Extract of Smerch Firing Table, Ministry of Defense of Ukraine (March 2018) (Ukraine's Memorial, Annex 656).

of the rocket which imparts forward movement to the cluster munitions when they are ejected from the rocket, such that they hit the ground on target. A timer mechanism could theoretically malfunction either pre-firing or in flight:

- i. Pre-Firing Diagnostic Check. The timer mechanism of a 9M55K rocket is part of the firing battery's ballistic computation and is automatically programmed by the launcher to open at the optimum point for distribution of the cluster munitions. Any fault in the timer mechanism would activate an alarm in the launcher cab such that the rocket could not be fired.
- ii. In-Flight. In the theoretically impossible event of a rocket with a faulty timer mechanism being launched, the most likely outcome, based on experience of electronic failures in other rocket fuse systems, would be a complete failure of the timer mechanism, resulting in the rocket continuing to the end its ballistic trajectory without opening to dispense its cluster munitions. In the apparently unprecedented event of a faulty timer mechanism causing the rocket to open up and dispense its cluster munitions early,²³² the cluster munitions would land short and the fall of shot pattern would be more scattered than optimal. If a faulty timer mechanism caused the rocket to open up late,²³³ the cluster munitions would land beyond the target in a more concentrated fall of shot pattern. Even if the rocket continued its descent at the same angle designed for optimum release²³⁴ it would fly a further 3,243 metres.²³⁵ Considering that the optimum opening point is 1,254 metres short of the target, as described above, the rocket would therefore impact the ground a maximum of 1,989 metres beyond the target. If it opened up and dispensed its cluster munitions after the optimum opening point but before it hit the ground, the design of the cluster munitions would ensure they fell short of this overfly distance.

44. General Samolenkov's proposition that the most likely cause of rockets impacting the residential area was "malfunction or failure of the on-board range adjustment equipment"²³⁶ is therefore ballistically implausible and unheard of in the experience of any of

²³² *I.e.*, at a greater than optimum height above the ground.

²³³ *I.e.*, at a lower than optimum height above the ground.

²³⁴ -48 degrees at 4,847 metres above ground level. In practice, the rocket would not continue its descent at the same angle: it would descend ballistically at an increasing angle such that the rocket and its cluster munitions would land shorter than the overfly distances shown above (which were presented purely to demonstrate that rockets properly targeted at the aerodrome could not have caused the casualties and damage in the residential areas).

²³⁵ $4847 \cos 48$ degrees.

²³⁶ Samolenkov Report, para. 237 (discussed further in paragraphs 225-230) (Russia's Counter-Memorial Part I, Annex 2).

the experts I have interviewed or my own experience. Given General Samolenkov's acceptance that more than one rocket impacted the residential area, the unpredictable nature of equipment failures, particularly due to old rockets not having been stored correctly, makes the possibility that "[s]everal rockets at once could have exhibited the same malfunctioning pattern, for instance, due to similar storage issues"²³⁷ incredibly unlikely.

45. Human Error. BM-30 is normally grouped into platoons of two or three launchers operating together with a command post vehicle for communications, command and control, including ballistic computation. This system allows a heavy weight of fire to be delivered and the flexibility to engage different targets simultaneously with different launchers within the platoon: flexibility which cannot be achieved with a single launcher. Doctrinally therefore, it is more likely that this shelling was carried out by more than one launcher, particularly for such a high-profile attack. As with faulty ammunition above, specific areas of potential faults, none of which I believe are plausible in this case, are:

- a. Pre-Firing Checks. Doctrine requires accuracy checks, often double-checks, at every stage of the firing process. For example, the alignment of launchers within a platoon or battery is achieved initially by individual artillery aiming circle compasses dedicated to individual launchers; a second aiming circle compass operated by the command post crew then double-checks the individual launchers and also ensures all launchers are aligned not only accurately, but in parallel.²³⁸ Firing data is calculated and cross-checked at command posts at both battery and battalion level.
- b. Firing Checks. Once a firing bearing and elevation are ordered, the application of that data is checked by the soldier on the launcher sight and the launcher commander; it is then checked again by the battery commander to ensure not only that it is correct, but also that all launchers firing on the same target are aligned in parallel, both for bearing and elevation.

46. Failure to conduct these checks in any of the nations with whose artillery systems I have worked would not only be unprofessional on the basis that it would inevitably lead to inaccurate and indiscriminate shelling; it would also be wasteful given the cost of the

²³⁷ *Ibid.*, paras. 229–230.

²³⁸ The Soviet, Russian, and Ukrainian doctrine is even more stringent than NATO, UK or US doctrine in this respect.

rockets; but most importantly, the failure in the duty of utmost accuracy on all those involved in the firing process of such a potent weapon system would automatically result in disciplinary proceedings against those responsible. It is therefore hardly surprising that General Samolenkov and I agree that unfortunate “human error in this case is less likely”²³⁹ on the basis that “the operators of the weapon systems could not normally have made that many errors while preparing and aiming the launcher to account for the increase in range by 5 km . . . the totality of various errors made in the process of firing . . . even if they happen at the same time, is very unlikely to lead to a cumulative increase in the distribution for range to so large an extent.”²⁴⁰ However, the conclusion that, because the attacks on the residential area occurred around the same time as the attack on the airfield, the attack on the airfield was not a separate attack²⁴¹ not only stretches the conclusion beyond General Samolenkov’s judgement,²⁴² it is also factually wrong. BM-30 platoons are perfectly capable of firing multiple launchers on two or more separate targets if that was their objective; even more so if, as the evidence suggests, there was a five minute gap between the attack on the residential area and the attack on the aerodrome: more than enough time to switch targets. It would therefore be easy to disguise an intention to fire on two relatively close targets and subsequently claim that the result was an unfortunate or inevitable error, particularly where the firing bearing remained unchanged and only the firing elevation needed to be altered.

47. Avoidance of Civilian Casualties in the Separate Attack on the Aerodrome.

There are two separate aspects of the avoidance of civilian casualties in the attack on the aerodrome:

²³⁹ Samolenkov Report, para. 224 (Russia’s Counter-Memorial Part I, Annex 2).

²⁴⁰ *Ibid.*, para. 223.

²⁴¹ *See* Russia’s Counter-Memorial Part I, para. 461.

²⁴² *See* Samolenkov Report, para. 203 (“It appears that the Kramatorsk airfield was shelled on 10 February 2015 at around the same time as the impact from Smerch rockets was registered in the residential areas.”) (Russia’s Counter-Memorial Part I, Annex 2).

- a. Carrier Elements. For each 9M55K rocket, the “carrier elements rain 447 kg of scrap metal several kilometres beyond the target.”²⁴³ These carrier elements can be as lethal and damaging as the cluster munitions. No figures are available in firing tables for the distances which the carrier elements travel once the rocket has discharged its cluster munitions because they are no longer aerodynamic: they are unstable.²⁴⁴ Nevertheless, the same calculation concerning overflight used in paragraph 43(b)(ii) above can be applied to these carrier elements to give an indication as to where they should land: “a maximum of 1,989 metres beyond the target” at a firing range of 70 km. Allowing for instability, it would be reasonable to deduce that the carrier elements are unlikely to land more than 2 km, and highly unlikely to land more than 3 km, from the cluster munitions. This is illustrated in Figure 19 below by overlaying this carrier element pattern onto Figure 18:

²⁴³ Brown First Report, para. 70 (Ukraine’s Memorial, Annex 11).

²⁴⁴ Hence the bearing and angle of impact of the nose cone or tail section/fins can be no more than an approximate guide to the direction and range of fire, as opposed to BM-21 where there is a direct and relatively accurate relationship between that data and the firing bearing and range.

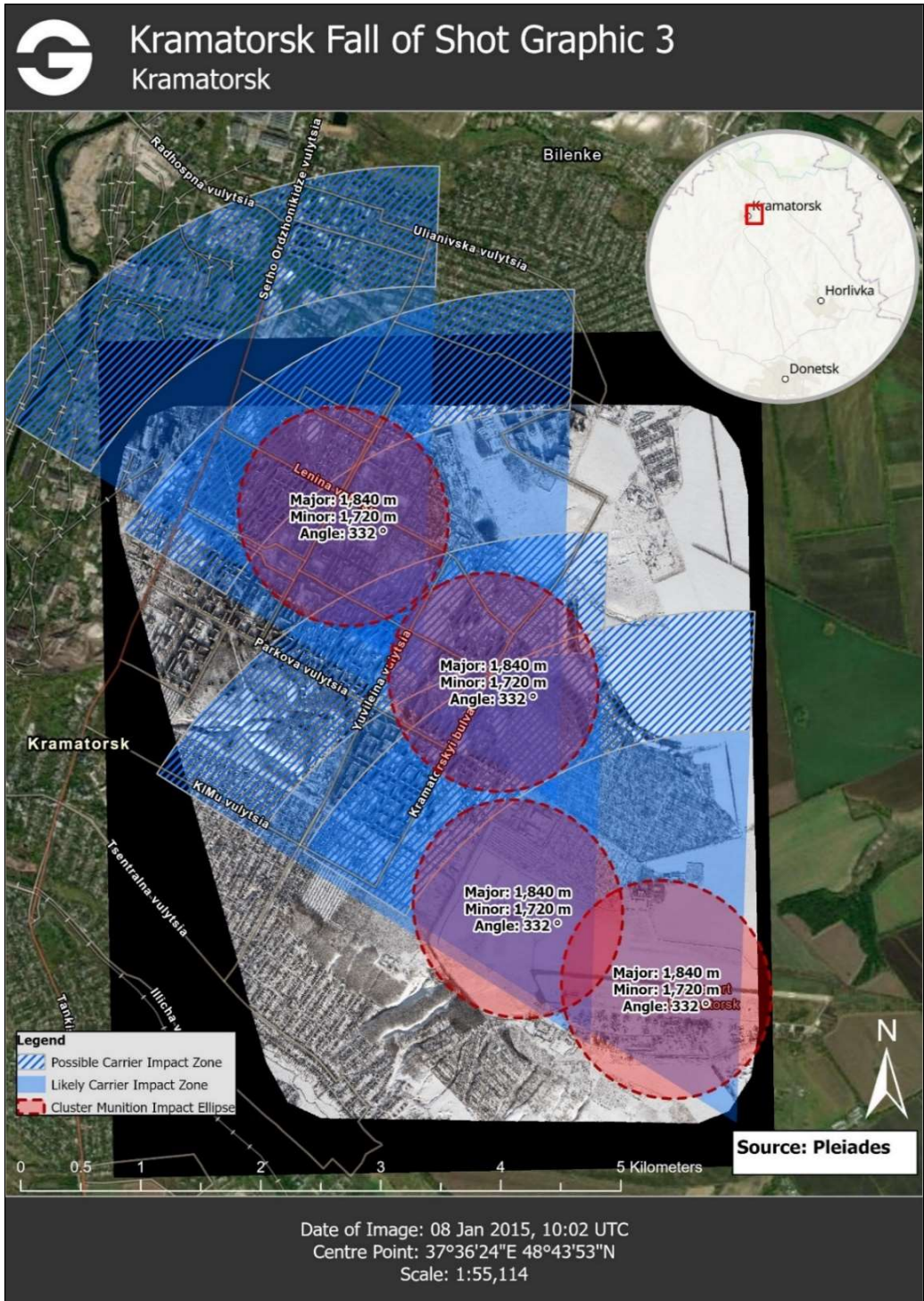


Figure 19: Fall of shot including carrier elements (Geollect Figure 41).²⁴⁵

²⁴⁵ Reproduced from Gwilliam and Corbett Report, Figure 41 (Ukraine's Reply, Annex 2).

In 2018 I was unable independently to substantiate the Ukrainian Security Service illustration²⁴⁶ showing a correlation between the cluster munitions and the carrier elements, not least because there were not enough cluster munition impacts to justify a correlation to five tail fin impacts.²⁴⁷ However, the calculation above shows that it is highly unlikely that any of the five tail fins accounted for by the Ukrainian Security Service in the residential area could have come from rockets targeted against the aerodrome. My conclusions are therefore that:

- i. At least five rockets were targeted at the civilian residential area; and
- ii. The Ukrainian Security Service illustration²⁴⁸ is a reasonable correlation between the cluster munitions and the carrier elements that impacted in the residential area.

The only recorded carrier element impacts within a 3 km range of the aerodrome are those in the southeast of the residential area.²⁴⁹ If those carrier elements were from rockets which targeted the aerodrome, the casualties and damage they caused in the civilian residential area were nonetheless deliberate because their impact area was not only predictable but also avoidable if areas other than the north western sector of the aerodrome had been targeted.

- b. Direction of Fire. The deduced firing bearing of 5,900 mils (332 degrees) is ideal if the attackers wanted to disguise an intention to target the civilian areas as well as the aerodrome by claiming it was an unfortunate overshoot or even if they did not care about the inevitable casualties and damage which would be caused by the carrier elements. General Samolenkov contends that my suggested measures to minimize civilian casualties and damage²⁵⁰ “could have attracted return fire from the UAF positions near the frontline . . . [and] even fire on a bearing of around 345 degrees would have still jeopardised the private houses (Figure 20), if the targets were close to the western part of the airfield.”²⁵¹
 - i. The first of these arguments is callous: the firers were more concerned for their own safety than for the safety of civilians. They chose a launch site which they knew would result in

²⁴⁶ Expert Opinion No. 193/1, Ukrainian Scientific Research Institute of Special Equipment and Forensic Expert Examination of the Security Service of Ukraine (29 April 2015), p. 122 (Ukraine’s Memorial, Annex 121).

²⁴⁷ See Kholin Report, paras. 1, 4, 11, 15, 26 (Ukraine’s Memorial, Annex 105).

²⁴⁸ Expert Opinion No. 193/1, Ukrainian Scientific Research Institute of Special Equipment and Forensic Expert Examination of the Security Service of Ukraine (29 April 2015), p. 122 (reproduced as Figure 17 of the Samolenkov Report) (Ukraine’s Memorial, Annex 121).

²⁴⁹ See Kholin Report, paras. 10, 12, 17–19 (Ukraine’s Memorial, Annex 105). The remainder of the carrier elements identified by the Ukraine Security Service are therefore likely to be from the rockets which actually targeted the residential area.

²⁵⁰ See Brown First Report, para. 74 (Ukraine’s Memorial, Annex 11).

²⁵¹ Samolenkov Report, paras. 232–233 (Russia’s Counter-Memorial Part I, Annex 2).

civilian casualties and/or damage when they could have chosen an alternative which would have mitigated, if not avoided, that outcome.

- ii. As to the second argument, even if the attack on the civilian areas could be attributed to something other than deliberate or indiscriminate targeting, which I do not believe is credible, civilian casualties and damage could have been mitigated or eliminated if the firing position had been further west²⁵² and/or target selection had been restricted to the centre or eastern end of the aerodrome. That approach, however, would have made it more difficult to disguise the shelling of the residential area by claiming it was an unfortunate overshoot from the attack on the airfield.

48. Summary of Conclusions on the Kramatorsk Shelling.

- a. The Kramatorsk residential area shelling was carried out using BM-30 Smerch MLRS firing at least five 9M55K high explosive cluster munition rockets from DPR-held territory.
- b. None of General Samolenkov's arguments plausibly explain any part of the rockets which landed in the city, particularly in the Druzhby Boulevard neighbourhood. In my view the most plausible explanation is that both the aerodrome and the residential area were the intended targets. When writing my first report and drafting this current submission, I was at pains to focus on the technical and doctrinal reasons why the attack on the residential area could not have resulted from technical errors in order to give the attackers the benefit of any doubt in the otherwise inevitable conclusion that the civilian casualties and damage in the residential area resulted from a deliberate callous attack. However, neither human error nor technical malfunction could plausibly explain multiple BM-30 rockets consistently overshooting their target by over 4 km or their cluster munitions impacting in the same area. It is unfortunately not dissimilar to the evidence emerging from the current war in Ukraine of liberal Russian military use of rockets and cluster munitions in similar attacks on residential areas.
- c. Even if General Samolenkov's thesis were true that "the damage to civilian areas of Kramatorsk most likely resulted from mistakes in targeting and/or (more likely) malfunction or failure of the on-board range adjustment equipment"²⁵³ or old/faulty munitions²⁵⁴ and even if the airfield had been the only intended target and that targeting had been done accurately, the choice of weapon system meant that, in General Samolenkov's words, "the risk of rocket sections falling within the city is actually considerable"²⁵⁵ given the direction of fire and the proximity of the

²⁵² Thereby resulting in a firing bearing greater than 332 degrees.

²⁵³ Samolenkov Report, para. 237 (Russia's Counter-Memorial Part I, Annex 2).

²⁵⁴ *See ibid.*, paras. 226–227.

²⁵⁵ I would argue inevitable.

airfield to the city.”²⁵⁶ This attack was therefore by definition indiscriminate, irrespective of the attackers’ intent, addressed above. Given that the carrier elements are as much a part of the rocket as the cluster munitions, the attackers would have known, or should reasonably have known, that the carrier elements would inevitably impact the southeast residential sector of the city. This outcome could have been mitigated by choosing a different launch site to attack the airfield.

V. SHELLING OF CIVILIAN AREAS OF AVDIIVKA — JANUARY TO MARCH 2017

49. Common Ground Between My First Report and Russia. As General Samolenkov states, “[i]t seems reasonable to assume, therefore, that the overwhelming majority of the shellings were aimed at military targets.”²⁵⁷ The obvious corollary, as General Samolenkov also acknowledges, is that there is evidence that “might indicate the non-discriminatory character of certain shellings.”²⁵⁸

50. Russia’s Thesis. Russia argues that because Ukraine failed to put into evidence relevant information, Russia is not able effectively to respond to the allegations regarding each shelling impact in my first report.²⁵⁹ The Counter-Memorial attempts to refute my first report in two respects:

- a. Lawful Collateral Damage. Russia claims that Ukraine was using civilian areas/buildings for military purposes; civilian deaths and injury were therefore inevitable, constituting lawful collateral damage.
- b. Discriminate/Proportionate. Russia asserts that there is “no clear evidence that a BM-21 was used in the shelling at the Khimik area of Avdiivka.”²⁶⁰ General Samolenkov states that “close study of [the] evidence does not confirm that those weapons [BM-21] were indeed used in the shellings.”²⁶¹

51. Tactical Situation. The fact that a battle was ongoing around Avdiivka in early 2017 is not in dispute. Much of the Counter-Memorial’s tactical scene-setting may be

²⁵⁶ Samolenkov Report, para. 231 (Russia’s Counter-Memorial Part I, Annex 2) (referencing paragraph 74 of my first report). Given that more than half the weight of the rocket consists of carrier elements, five rockets would have rained down over two tonnes of metal on the residential areas.

²⁵⁷ Samolenkov Report, para. 253 (Russia’s Counter-Memorial Part I, Annex 2).

²⁵⁸ *Ibid.*, para. 278.

²⁵⁹ See Russia’s Counter-Memorial Part I, para. 499.

²⁶⁰ *Ibid.*, para. 505(c).

²⁶¹ Samolenkov Report, para. 238(b) (Russia’s Counter-Memorial Part I, Annex 2).

interesting but it is peripheral to the shellings in civilian residential areas away from the battle. As General Samolenkov concedes, “[t]he shellings that I am invited to comment upon, however, are further away from these frontline positions.”²⁶²

52. I said in my first report: “As this incident occurred in early 2017, it is still the subject of ongoing investigations by Ukrainian authorities.”²⁶³ As further information has come to light over the last four years, it has become evident that some of what was reported in the immediate aftermath of the attacks is not as clear-cut as portrayed. Unlike the 2015 shellings of Volnavakha, Mariupol, and Kramatorsk where the military positions were evidently separate from civilian residential areas, in Avdiivka the delineation between UAF and civilian activity is more blurred. Colonel Bobkov has selected images which suggest that UAF were using 15 Vorobiova Street to shelter vehicles, including tanks, during January and February 2017. The then-commander of the 72nd Brigade, responsible for the defence of Avdiivka at the time, has confirmed to me that, while his main positions were on the eastern and southeastern edge of the town facing the threat across the industrial area and the main Donetsk–Horlivka highway, buildings in Vorobiova Street and the surrounding area were indeed used for his second echelon and reserves. Much time and effort could be spent in analysing whether the attacks on these areas that caused civilian casualties and deaths²⁶⁴ could have been avoided by effective discrimination in terms of targeting and weapon selection, but the outcome is likely to be a matter of opinion and conjecture rather than fact.

53. Nevertheless, the situation in Avdiivka cannot excuse indiscriminate shelling of civilian areas which were not involved in the hostilities. General Samolenkov appears to propose a blanket excuse for the civilian casualties and damage on the basis that “[i]n general terms, it is not surprising to me that collateral damage to civilian objects took place

²⁶² *Ibid.*, para. 268.

²⁶³ Brown First Report, para. 79 (Ukraine’s Memorial, Annex 11).

²⁶⁴ *See, e.g., ibid.*, para. 81(b).

given the total number of explosions registered by the OSCE SMM.”²⁶⁵ My review of Colonel Bobkov’s imagery shows no indication of military presence in significant parts of the city.

54. Shelling of Resupply Routes. Colonel Bobkov also adduces imagery suggesting that Hrushevskoho Street was used as a thoroughfare for armoured vehicles, presumably moving to and from the front-line. Having spoken with UAF commanders at the time, the obvious routes through the town shown below on the map used by General Samolenkov had been used to resupply and reinforce the front-line, but with unpredictable frequency in order to minimise vulnerability, as would be expected in such a situation.

²⁶⁵ Samolenkov Report, para. 253 (Russia’s Counter-Memorial Part I, Annex 2). “In general terms” is too crude a measure.

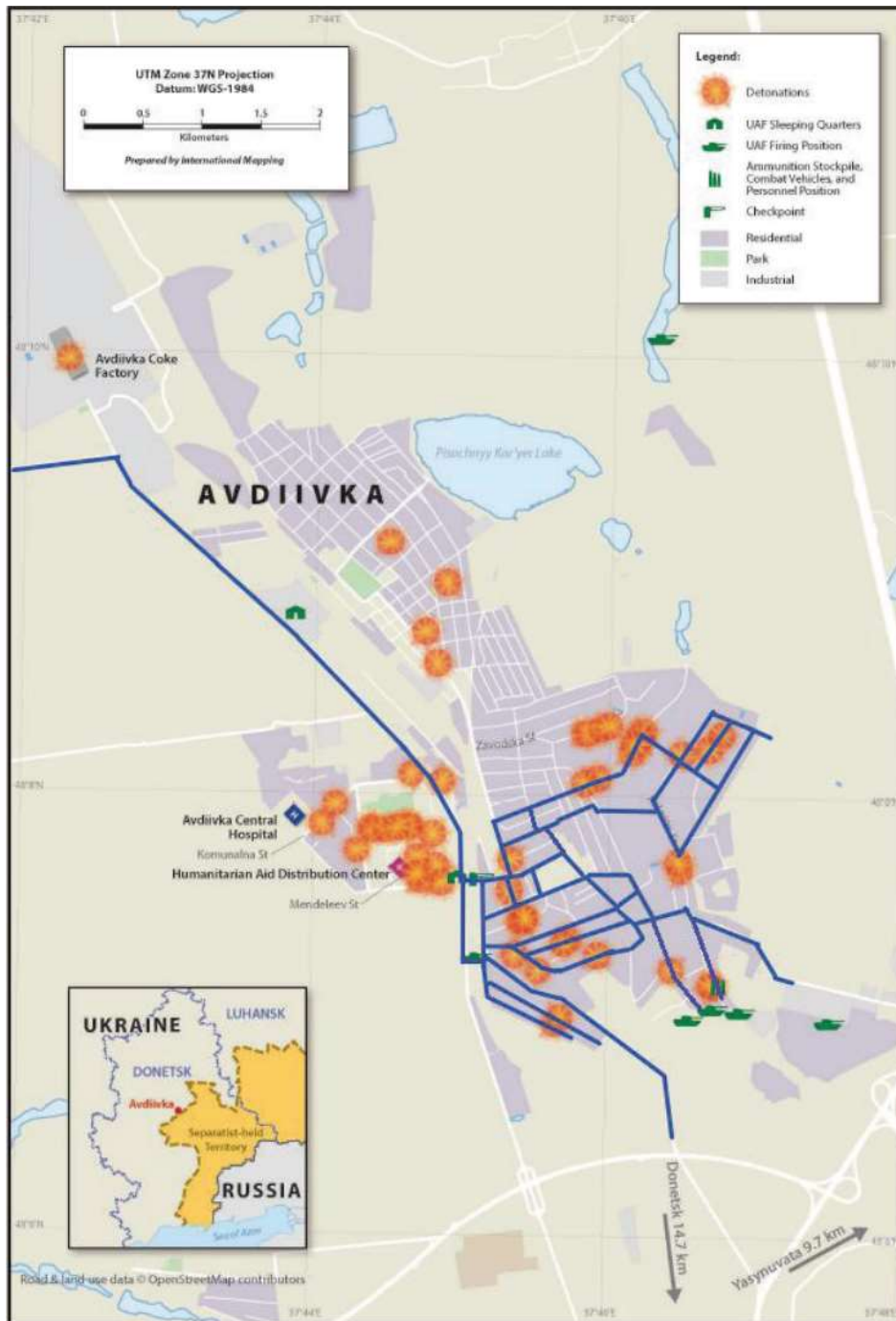


Figure 20: Alleged UAF resupply routes marked by General Samolenkov on Annex 28 to Ukraine’s Memorial (Samolenkov Figure 26).²⁶⁶

²⁶⁶ Reproduced from Samolenkov Report, Figure 26 (based on Annex 28 to Ukraine’s Memorial) (Russia’s Counter-Memorial Part I, Annex 2).

55. Accurate engagement of moving targets on resupply routes by artillery or rockets is particularly contentious and difficult at the best of times,²⁶⁷ all the more so when observation is restricted as it would have been in the urban environment of Avdiivka, even if the DPR had observers inside the town. General Samolenkov believes “[i]t appears likely that the DPR armed forces had the opportunity to detect military equipment supplying the UAF frontline positions on the way to these positions.”²⁶⁸ However, his statement that the “DPR armed forces could have received information about the movement of military equipment from local residents, from the activities of reconnaissance groups operating near the contact line or as a result of the use of UAVs”²⁶⁹ is not supported by the sources on which he relies. “[D]isclosing information about military equipment in Avdiivka”²⁷⁰ or UAV photographs of static vehicles does not amount to a capability to engage moving resupply vehicles.

56. The key issue is not whether UAF resupply efforts could be detected and reported: it is whether the DPR had the ability to target resupply convoys in a timely and effective manner. Effective targeting of moving vehicles in an urban environment would have required dedicated and well-practised observation, manned or unmanned, linked directly to the firing battery. General Samolenkov cites no evidence of such a capability nor of any successful engagement or disruption of UAF resupply. Absent that capability, trying to engage moving vehicles is not only a waste of time and ammunition, it is guaranteed to do

²⁶⁷ The subject merits a separate chapter in the Russian Federation Ministry of Defence Manual for the Study of the Rules of Firing and Fire Control of Artillery which acknowledges the requirement for “high density of fire” using “no less than an artillery battalion.” See Ministry of Defense of the Russian Federation, *Manual for the Study of the Rules of Firing and Fire Control of Artillery (PSiUO-2011)* (2014), Chapter VIII, Art. 241–252 (Ukraine’s Reply, Annex 61).

²⁶⁸ Samolenkov Report, para. 273 (purportedly supported by footnotes 373 and 374) (Russia’s Counter-Memorial Part I, Annex 2). I have little doubt that DPR supporters were making mobile phone calls from Avdiivka, reporting UAF activity, but that does not amount to the capability to engage moving resupply vehicles accurately.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*, para. 273, n.373.

more damage to civilian property along the routes than any unfortunate military vehicle that happened to be in the target area when the attack occurred. That makes no military sense.

57. General Samolenkov's conclusion that "General Brown does not consider the need of supplying the frontline positions near Avdiivka (including transporting military equipment through residential areas) and the deployment of military equipment in the residential areas of Avdiivka"²⁷¹ is therefore not true: on the contrary, my conclusion was that none of the shelling incidents in the areas where there were possible supply routes appeared from the evidence of their effect to have been sufficiently discriminatory to merit categorisation as inevitable collateral damage. The shellings along these potential resupply routes²⁷² appear indiscriminate and speculative, rather than targeted at justifiable specific military targets.

58. Shelling of Residential Areas Distant from UAF Positions or Resupply Routes. The map above serves to highlight residential areas of Avdiivka where there were neither UAF forces nor resupply routes. Colonel Bobkov's choice of imagery and General Samolenkov's contentions on collateral damage predictably focus on the Khimik area of western Avdiivka at the expense of other shelling incidents in civilian areas. General Samolenkov's claim that "only a relatively small number of explosions affected civilian areas"²⁷³ is a callous attempt to excuse the apparently indiscriminate damage to these civilian areas. Even a small number of rounds indiscriminately targeted at civilian areas can have a terrorising effect on the population. The question is whether the damage to civilian areas was unavoidable, both in terms of targeting and in choice of weapon system. There appears to be no attempt in the Counter-Memorial to justify the attacks on Krasna and Zavodska Streets or the suburbs further north (see Figure 21, below) on the grounds that they were

²⁷¹ *Ibid.*, para. 238(a); *cf. ibid.*, para. 256(b).

²⁷² *E.g.*, the incidents referred to in paragraph 275 of General Samolenkov's report. See Samolenkov Report, para. 275 (Russia's Counter-Memorial Part I, Annex 2).

²⁷³ *Ibid.*, para. 253.

close to UAF positions or resupply routes, even allowing for maximum errors of fire preparation, as addressed below.

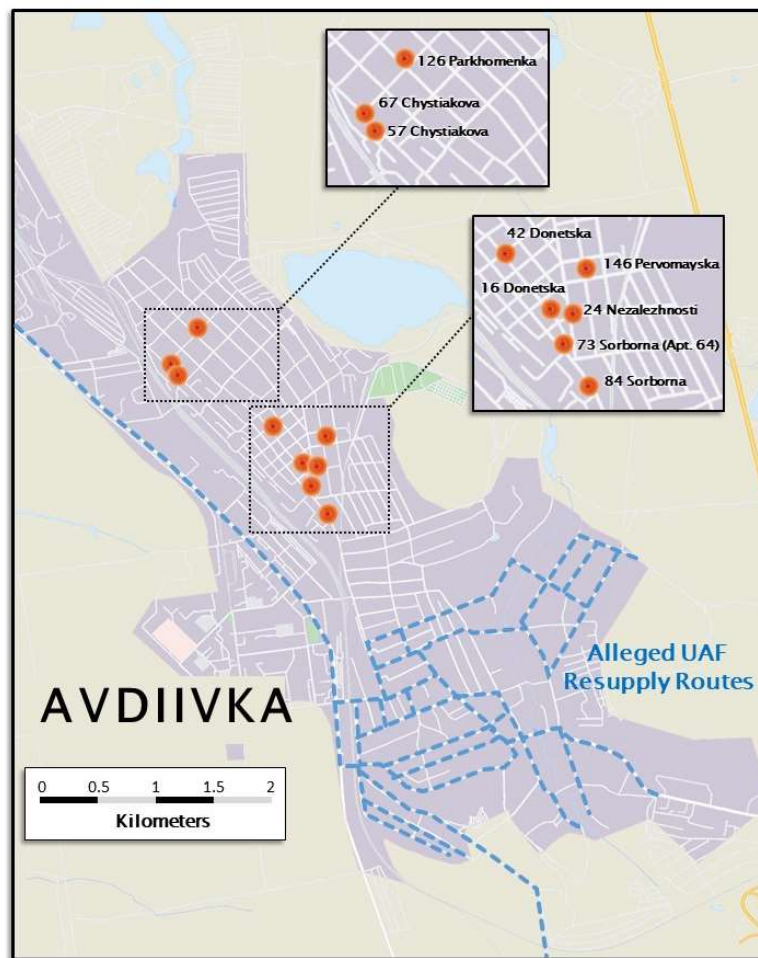


Figure 21: Shelling impacts documented in the northern residential area of Avdiivka.²⁷⁴

59. Indiscriminate Shelling. The Counter-Memorial offers several excuses for the DPR artillery’s indiscriminate shelling:

- a. Errors of Fire Preparation. General Samolenkov claims that “General Brown considers only errors of fire dispersion, but does not consider errors of fire preparation.”²⁷⁵ While I do not disagree with General Samolenkov’s calculations,²⁷⁶ I do disagree with the requirement that they should be applied in this situation. The tactical situation in the Avdiivka sector, particularly in respect of DPR artillery firing positions several kilometres behind the front-line, had been sufficiently stable for weeks, if not months. General Samolenkov states that “complete preparation takes

²⁷⁴ See Ukraine’s Reply, Annexes 44–49, 51–55.

²⁷⁵ Samolenkov Report, para. 256(a) (Russia’s Counter-Memorial Part I, Annex 2).

²⁷⁶ See *ibid.*, para. 258 *et seq.*

around one and a half to two hours (sometimes more).”²⁷⁷ Failure to conduct full firing preparations in such a stable tactical environment is therefore in itself an admission of indiscriminate targeting. Moreover, there was an even greater imperative to conduct full firing preparations in the knowledge that targets were in dense urban areas close to civilians.

- b. Observation of Fire. General Samolenkov accepts that “[t]argeting preparation errors could, of course, be reduced in case the fire is observed and adjusted. That, however, still implies that some shells will be fired before the errors are corrected.”²⁷⁸ He speculates that “[i]t may be that certain isolated hits resulted precisely from ranging before fire adjustment.”²⁷⁹ There are, however, well-practised procedures to obviate this. As Russian artillery doctrine lays down, “[t]o ensure the safety of his troops, when firing at targets located near them, the division (battery) commander must:

- apply the most accurate ways to determine the settings for shooting;
- appoint shells and charges that provide the least dispersion;
- avoid switching from one charge to another and firing different batches of charges;
- start zeroing in with a smoke projectile, if any;
- start zeroing in with the expectation of getting the deviation of the first explosion from the target in the direction opposite to own troops.”²⁸⁰

60. Weapon System Used. General Samolenkov claims “it is not clear to me why General Brown assumes that the DPR had a wide choice of weapons. It appears that alternatives (which are safer for the civilian population) should be considered in each case based on (1) positions of the parties, (2) objectives of the shelling, and (3) weapons actually available to the parties.”²⁸¹ All sources suggest that the DPR fighters had mortars, tube artillery, and BM-21 available in the Avdiivka sector and used all these weapon systems, as well as direct fire weapon systems such as tanks, in the attacks on the civilian areas of Avdiivka. Even the Counter-Memorial accepts that the DPR had howitzers available.²⁸² In

²⁷⁷ *Ibid.*, para. 262.

²⁷⁸ *Ibid.*, para. 266.

²⁷⁹ *Ibid.*, para. 370.

²⁸⁰ Ministry of Defense of the Russian Federation, *Rules of Firing and Fire Control of Artillery (PSiUO-2011)* (2011), Section 1, Chapter 1, para. 10 (Ukraine’s Reply, Annex 60).

²⁸¹ Samolenkov Report, para. 368 (Russia’s Counter-Memorial Part I, Annex 2).

²⁸² Russia’s Counter-Memorial Part I, para. 477 (citing OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30, 5 February 2017* (6 February 2017) (Ukraine’s Memorial, Annex 347)).

an effort to compare the ability of these weapon systems to discriminate between a legitimate target and the civilian population, I used the diagram below in my first report:

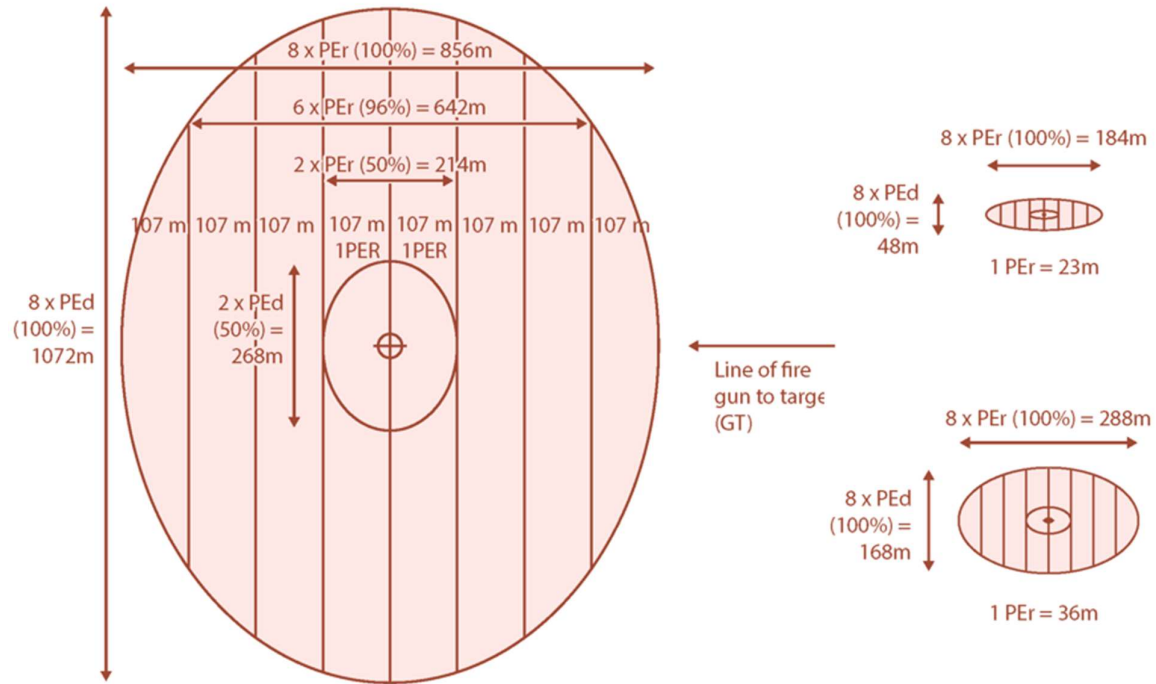


Figure 22: Comparison (to scale) of fall of shot pattern created by 122mm rockets at 17.4 km (left) versus patterns created by 122mm artillery gun at 10 km (right top) and 120mm mortar at 4 km (right bottom).²⁸³

- a. BM-21 Grad. Depending on the firing range, the fall of shot from BM-21 will cover approximately 100 hectares (1 square kilometre), more than 50 times the area covered by the example above of 122mm tube artillery firing at a range of 10 km. It is hard to imagine any circumstances in which BM-21 could be considered discriminate in the dense urban environment of Avdiivka with a civilian population. Any use of BM-21 in attacks on the residential area of Avdiivka, irrespective of whether the intended target was military, was guaranteed to damage anyone or anything, including civilians and civilian property, within its predictable fall of shot. There is clear evidence that BM-21 was used in attacks on the residential area of Avdiivka. General Samolenkov accepts that “in one instance²⁸⁴ (not marked on the map in Annex 28 [to Ukraine’s Memorial]) the expert report is provided with some photographs of the shell

²⁸³ Reproduced from Figure 7 of my first report. See Brown First Report, Figure 7 (Ukraine’s Memorial, Annex 11).

²⁸⁴ Expert Conclusion No. 77, drafted by M. Ustymenko and A. Pavlenko, Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (3 March 2017) (Ukraine’s Memorial, Annex 167).

fragments,”²⁸⁵ which the report describes as BM-21 projectiles.²⁸⁶ Other reports also provide evidence of BM-21 attacks.²⁸⁷ General Samolenkov attempts to cast doubt on these shellings with comments concerning dates mentioned in the reports, some of which, I accept, is contradictory; however, this is unsurprising given that the reports were compiled only when the respective investigation organisations deemed it safe to attend the sites of the shellings. The date issue does not make the observations in the reports unreliable. There is clear evidence that between 27 January and 1 February 2017²⁸⁸ Mendeleev,²⁸⁹ Kolosova,²⁹⁰ and Zavodska²⁹¹ Streets were attacked by BM-21 rockets, causing damage to civilian property and terrorising occupants.²⁹² Other reports of BM-21 involvement,²⁹³ including OSCE SMM and IPHR reporting,²⁹⁴ are contested by General Samolenkov,²⁹⁵ but I see no sound basis to reject the OSCE SMM and IPHR reporting.

- b. Guns/Mortars. It does not follow that civilian casualties and damage to civilian property are somehow discriminate just because systems other than BM-21 were used. The question with guns and mortars is whether the weapon used was least likely to result in civilian damage under the circumstances and whether it was used in a way which was designed to obviate or minimise civilian casualties.

²⁸⁵ Samolenkov Report, para. 296 (Russia’s Counter-Memorial Part I, Annex 2).

²⁸⁶ Expert Conclusion No. 77, drafted by M. Ustymenko and A. Pavlenko, Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (3 March 2017), p. 1 (describing “parts of a body of a 122 mm unmanaged high-explosive fragmentation projectile M-21 OF (product 9M22U)”) (Ukraine’s Memorial, Annex 167).

²⁸⁷ See Expert Conclusion Nos. 78–81 (Ukraine’s Memorial, Annexes 168-171).

²⁸⁸ Most likely the night of 30/31 January 17. See Signed Declaration of Hanna Mykolayivna Fandeeva, Witness Interrogation Protocol (15 February 2017), p. 1 (Ukraine’s Reply, Annex 50).

²⁸⁹ Expert Conclusion No. 81, drafted by M. Ustymenko and A. Pavlenko, Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (3 March 2017), p. 1 (Ukraine’s Memorial, Annex 171).

²⁹⁰ Expert Conclusion No. 77, drafted by M. Ustymenko and A. Pavlenko, Ukrainian Scientific Research Institute for Special Equipment and Forensic Expert Examinations, Security Service of Ukraine (3 March 2017), p. 1 (Ukraine’s Memorial, Annex 167).

²⁹¹ Expert Conclusions Nos. 78–80 (Ukraine’s Memorial, Annexes 168-170).

²⁹² See, e.g., Signed Declaration of Hanna Mykolayivna Fandeeva, Witness Interrogation Protocol (15 February 2017) (Ukraine’s Reply, Annex 50).

²⁹³ See Brown First Report, para. 80, n.86 (citing, *inter alia*, International Partnership for Human Rights, *Attacks on Civilian Infrastructure in Eastern Ukraine* (2017), pp. 48–50 [hereinafter IPHR Report] (Ukraine’s Memorial, Annex 454)) (Ukraine’s Memorial, Annex 11).

²⁹⁴ See, e.g., IPHR Report, p. 49 (“MLRS BM 21 Grad rockets fired from the east-south-east (Yakovlika) confirmed by witnesses and crater analysis.”) (Ukraine’s Memorial, Annex 454).

²⁹⁵ Samolenkov Report, paras. 295–311 (Russia’s Counter-Memorial Part I, Annex 2).

61. Conclusions on Avdiivka Shellings. As a result of greater clarity on issues that were still emerging in 2018 and in response to the Counter-Memorial, I now make the following further conclusions with regard to Avdiivka:

- a. I agree with General Samolenkov that “the overwhelming majority of the shellings were aimed at military targets”;²⁹⁶ however, “the non-discriminatory character of certain shellings”²⁹⁷ is evident, not just from the result that damage to civilian property was caused, civilians were killed, injured and terrified to the extent that they were evacuated from the town,²⁹⁸ but also because the location of some attacks was so far from UAF positions that I can find no military justification for the shelling.²⁹⁹ Civilian deaths, injury and damage could and should have been avoided.
- b. The targeting of civilian areas of Avdiivka, through which UAF resupply routes may have run, was speculative and indiscriminate by virtue of the DPR having insufficient ability to effect timely targeting of legitimate targets: they do not appear to have been capable of identifying resupply vehicles and accurately engaging them before they had exited the target area. As a result, civilians were killed and injured simply because they lived close to a route that the UAF might possibly use at a time unknown to the attackers: there appears no evidence of successful targeting of legitimate military targets along these routes.
- c. The attacks described in sub-paragraphs (a) and (b) above suggest that the attackers did not care what they hit: damage to Avdiivka would serve a purpose if it hit a military target, but it could also serve a purpose if it frightened the civilian population into fleeing or sapped their support for the UAF. I drafted this conclusion on receipt of Russia’s Counter-Memorial in late 2021. I have not altered it in light of the events of 2022, but its resonance in light of Russia’s tactics in Ukraine has been sickeningly reinforced.
- d. General Samolenkov’s suggestion that the DPR failed to conduct full preparation of artillery systems, omitted to observe and adjust fire wherever possible, and ignored “danger close” procedures where appropriate is further evidence of indiscriminate shelling of civilian areas.
- e. The use of BM-21 in attacks on the residential area of Avdiivka indicates deliberate targeting of anyone or anything, including civilians and civilian property, that the attackers knew, or might reasonably have known, lay within its predictable fall of shot.

²⁹⁶ *Ibid.*, para. 253.

²⁹⁷ *Ibid.*, para. 278.

²⁹⁸ See OSCE, *Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), Based on Information Received as of 19:30, 6 February 2017* (7 February 2017) (“Officials in the mayor’s office in Avdiivka told the SMM that 314 people had recently been evacuated from the town on 3 and 4 February.”) (Ukraine’s Memorial, Annex 348).

²⁹⁹ See Brown First Report, para. 95 (Ukraine’s Memorial, Annex 11).

I swear that the foregoing statement is true and accurate and agree to appear before the Court as needed to provide further testimony.

Signed in LYMINGTON, UK on 21 APRIL, 2022.

By: _____


Lieutenant General Christopher Brown

Annex 2

Expert Report of Catherine Gwilliam and Air Vice-Marshal
Anthony Sean Corbett (21 April 2022)

INTERNATIONAL COURT OF JUSTICE

**APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE
SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL
FORMS OF RACIAL DISCRIMINATION**

between

UKRAINE

and

THE RUSSIAN FEDERATION

**EXPERT REPORT OF CATHERINE GWILLIAM AND
AIR VICE-MARSHAL ANTHONY SEAN CORBETT**

TABLE OF CONTENTS

I.	Introduction.....	1
	A. Qualifications and Experience.....	1
	B. Instructions.....	1
	C. Methodology	2
II.	Shelling of the Checkpoint Near Volnovakha – 13 January 2015.....	5
	A. Impact Location	6
	1. Characteristics of the Buhas Checkpoint	6
	2. Comparison with the DPR Checkpoint Near Olenivka.....	17
	3. Impact Analysis.....	21
	B. Potential Point of Origin	24
	C. Conclusions.....	34
III.	Shelling of the Residential Area of Mariupol – 24 January 2015.....	34
	A. Impact Location	35
	1. Damage to the Vostochniy Residential Neighbourhood	35
	2. Analysis of Ukrainian National Guard Locations Near Mariupol	46
	B. Potential Point of Origin	52
	1. Pre-Incident Point of Origin Analysis.....	55
	2. Post-Incident Point of Origin Analysis	59
	C. Conclusions.....	62
IV.	Shelling of the Residential Area of Kramatorsk – 10 February 2015	62
	A. Impact Location	63
	1. Damage to Kramatorsk Residential Area	63
	B. Potential Point of Origin	72
	1. Possible Firing Position 1.....	74
	2. Possible Firing Position 2	77
	C. Conclusions.....	80
V.	Statement of Truth.....	81

LIST OF FIGURES

Figure No.	Title	Page
<i>Shelling of the Checkpoint Near Volnovakha - 13 January 2015</i>		
1	Features of the Buhas Checkpoint Identified on Satellite Imagery	8
2	Law Enforcement Vehicle Screening Features of the Buhas Checkpoint	11
3	Images of Law Enforcement Presence at the Buhas Checkpoint	12
4	Open Source Images Corroborating Law Enforcement Vehicles at the Buhas Checkpoint	13
5	Law Enforcement Vehicles Observed in Satellite Imagery of the Buhas Checkpoint and Corroborated with CCTV and Open-Source Video	14
6	Equipment Observed in Open-Source Imagery of the Buhas Checkpoint that Is Not Evident in Satellite Imagery on the Day of the Attack	16
7	Identifiable Features in Satellite Imagery of the DPR Checkpoint at Olenivka	19
8	Comparison of the Buhas Checkpoint and the DPR Checkpoint at Olenivka	20
9	Impact Craters Visible After the 13 January 2015 Attack on the Buhas Checkpoint	22
10	Civilian Vehicles at the Buhas Checkpoint Waiting to Be Screened on the Morning of the Attack	23
11	Overview of the Tactical Situation in the Volnovakha Region	25
12	DPR Strongpoint No. 1 Near Dokuchayevsk	28
13	Assessed BM-21 Operating Near Dokuchayevsk	29
14	Tyre Tracks Indicative of Military Activity and Georeferenced Open Source Video of MLRS Launch Near Dokuchayevsk	30
15	DPR Strongpoint No. 2 Near Dokuchayevsk	32
16	Probable Explosive Storage Area West-Southwest of DPR Strongpoint No. 2 Near Dokuchayevsk	33
<i>Shelling of the Residential Area of Mariupol – 24 January 2015</i>		
17	Overview of Damage to Vostochniy Neighbourhood	36
18	Overview of Damage to Vostochniy Neighbourhood with BM-21 Ellipse Plotted at the Assessed Mean Point of Impact	37
19	Mariupol Damage Graphic No. 1 (Satellite Imagery)	39
20	Mariupol Damage Graphic No. 2 (Satellite Imagery)	40

Figure No.	Title	Page
21	Mariupol Damage Graphic No. 3 (Open Source)	41
22	Mariupol Damage Graphic No. 4 (Open Source)	42
23	Mariupol Damage Graphic No. 5 (Open Source)	43
24	Mariupol Damage Graphic No. 6 (Open Source)	44
25	Mariupol Damage Graphic No. 7 (Open Source)	45
26	Distance from the Mean Point of Impact in the Vostochniy Neighbourhood to Ukrainian National Guard Locations	49
27	Trenches to the East of Mariupol	50
28	Checkpoint 4014 (or the “Northern Checkpoint”)	51
29	Mariupol Point of Origin Analysis Overview	54
30	Mariupol Point of Origin Analysis Area A (Pre-Incident)	56
31	Mariupol Point of Origin Analysis Area B (Pre-Incident)	57
32	Mariupol Point of Origin Analysis Area C (Pre-Incident)	58
33	Mariupol Possible Firing Position 1	60
34	Mariupol Possible Firing Position 2	61
<i>Shelling of the Residential Area of Kramatorsk – 10 February 2015</i>		
35	Fragments from BM-30 Cluster Sub-Munitions Collected at Kramatorsk	64
36	Tail Fin Identified in Kramatorsk Residential Area	65
37	Distance from Assessed Tail Fin Location in Kramatorsk Residential Area to Kramatorsk Airfield	66
38	Documented Shelling Impacts at Kramatorsk	68
39	Kramatorsk Fall of Shot Graphic 1	69
40	Kramatorsk Fall of Shot Graphic 2	70
41	Kramatorsk Fall of Shot Graphic 3	71
42	Kramatorsk Point of Origin Analysis Overview	73
43	Kramatorsk Possible Firing Position 1	75
44	Kramatorsk Possible Firing Position 1 (Measurements)	76
45	Kramatorsk Possible Firing Position 2	78
46	Kramatorsk Possible Firing Position 2 (Measurements)	79

I. INTRODUCTION

A. Qualifications and Experience

1. The Curricula Vitae for Ms. Catherine Gwilliam and Air Vice-Marshal Anthony Sean Corbett are attached to this report as Annex 1 and Annex 2, respectively.

2. Ms. Gwilliam has over 18 years of experience as a certified Geospatial Intelligence Officer with the National Geospatial-Intelligence Agency (“NGA”). This includes holding positions across multiple U.S. government agencies and military commands, as well as experience working in commercial organizations.

3. Air Vice-Marshal Corbett is a retired Royal Air Force Officer with over 30 years of active-duty experience as an Intelligence Officer. This includes positions as the Head of Intelligence at the UK’s Permanent Joint Headquarters and the Chief of UK Intelligence in Afghanistan. Air Vice-Marshal Corbett’s career includes operational experience in Northern Ireland, Iraq, Afghanistan, Somalia, the Balkans, Libya, and Central America.

4. Since leaving the NGA, Ms. Gwilliam co-founded Geollect, a geospatial intelligence company that applies geospatial expertise and commercial knowledge across public and private sectors. Air Vice-Marshal Corbett is a senior board member at Geollect, specialising in the provision of strategic advice, commercial intelligence, and the space sector.

B. Instructions

5. The completion of this report was instructed by Covington & Burling LLP, acting on behalf of the Ministry of Foreign Affairs of Ukraine, to provide an expert opinion in the case *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russia)* before the International Court of Justice (“ICJ”).

6. We were instructed to provide satellite imagery expertise within the context of military operations, including the processing of geospatial data and the production of associated imagery intelligence products and assessments. This analysis includes

assessments on shelling attacks against civilian areas in eastern Ukraine in January and February 2015, near Volnovakha, Mariupol and Kramatorsk. Included within this, we will assess any evidence of civilian presence or damage to civilian structures, evidence of military or law enforcement presence, impact craters, vehicles or personnel presence, and weapon systems used and their points of origin for launch.

7. We have been provided with the following reports:
 - a. The First Expert Report of Lieutenant General Christopher Brown, dated 5 June 2018.¹
 - b. The Second Expert Report of Lieutenant General Christopher Brown, dated 21 April 2022.²
 - c. The Expert Report of Colonel Alexander Alekseevich Bobkov, dated 8 August 2021.³
 - d. The Expert Report of Major General V.A. Samolenkov, dated 8 August 2021.⁴

C. Methodology

8. In order to conduct the analysis required to satisfy these instructions, we approached various commercial satellite imagery vendors and searched various satellite imagery databases to find the most relevant imagery coverage for the time period and locations in question. This included a search of imagery from the following satellites: WorldView-1, -2, and -3, SPOT 6/7, Pleiades 1 and 2, GeoEye-1, KazEOSat-1, KazEOSat-2, RADARSAT, RADARSAT-2, Gaofen-2, SIIS, DMC-3 and 31AT. The metadata for the imagery we purchased for this report is attached as Electronic Addendum 1.

¹ Expert Report of Lieutenant General Christopher Brown (5 June 2018) [hereinafter Brown First Report] (Ukraine's Memorial, Annex 11).

² Second Expert Report of Lieutenant General Christopher Brown (21 April 2022) [hereinafter Brown Second Report] (Ukraine's Reply, Annex 1).

³ Expert Report of Colonel Alexander Alekseevich Bobkov (8 August 2021) [hereinafter Bobkov Report] (Russia's Counter-Memorial Part I, Annex 1).

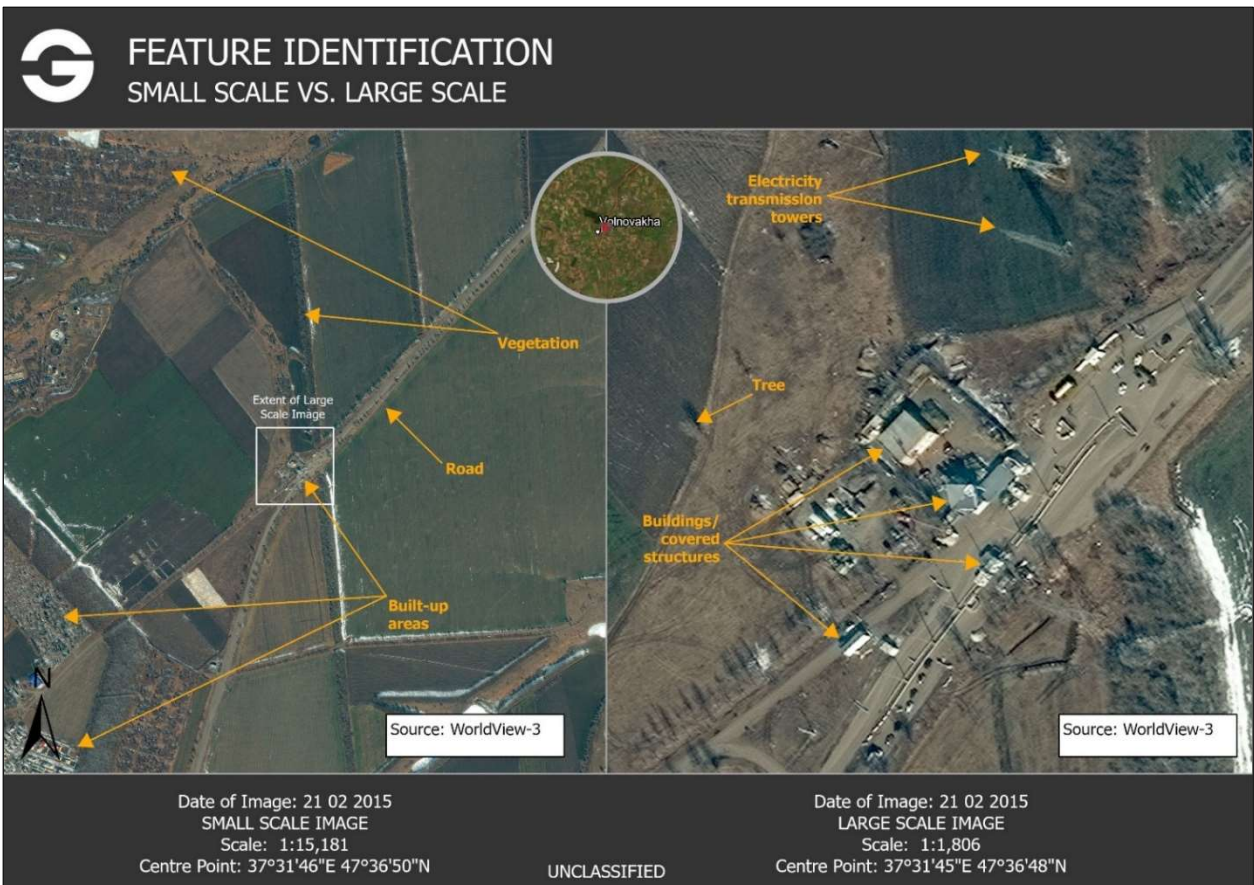
⁴ Expert Report of Major General Valery Alexeevich Samolenkov (8 August 2021) [hereinafter Samolenkov Report] (Russia's Counter-Memorial Part I, Annex 2).

9. The following hardware was used for analysis:
 - a. DELL Inspiron with Intel® Core™ i7-8565U processor, 8GB RAM, and Intel® UHD Graphics 620
 - b. Acer Nitro AN 515-54 with Intel® Core™ i7-9750H processor, 8GB RAM, and Intel® UHD Graphics 630
10. The following software was used:
 - a. ArcGIS Pro 2.9.0 and 2.9.1 – Esri. This software is used for mapping, visualizing, and analysing geographic information, including satellite imagery. Analysis includes calculating image statistics, rendering images, measuring distances and areas, counting features, and creating distance buffers. This software was also used to create all of the Figures included in this report. Of particular note, ArcGIS Pro automatically writes coordinates in the format of longitude, latitude; so the format we use throughout this report is Degrees, Minutes, Seconds with longitude listed first, and latitude listed second.
 - b. Google Earth Pro 7.3.4.8248 (64-bit) Build date: 16 July 2021 9:27:35 PM UTC
 - c. GNU Image Manipulation Program – 2.10.14 (GIMP)
 - d. Sentinel Application Platform – 7.0 (SNAP)

11. The steps for analysis include the pre-processing of the imagery in order to orthorectify and pan-sharpen the images to the highest level of accuracy and spatial resolution possible. Orthorectification is a type of georeferencing, or the process of converting satellite images to a format suitable to layer on top of maps. Pan-sharpening the images is the process of using spatial information from the high-resolution greyscale bands in an image to create higher resolution colour images. When the software ArcGIS Pro ingested images, statistics were calculated and reprocessed to increase visibility of smaller features in the images. Once images are processed and layered into ArcGIS Pro, analysis of

features of the images begins. Features are drawn onto the image in order to take measurements.

12. The software used enables us to zoom in on an image to measure, assess, and identify various features. The spatial resolution of the images analysed ranged from 40- to 50-cm. As an example, a 40-cm spatial resolution image means that each pixel within the image is equivalent to a 40-centimetre distance on the ground. As you zoom into a large scale on the image map, more features become identifiable. The image below provides an example of a small-scale map (zoomed out) on the left and a large-scale map (zoomed in) on the right. Each map contains the same exact image, but at different zoom levels. As evidenced in the example, more features can be distinguished and identified on the large-scale map such as individual trees, building structures, electricity transmission towers, and vehicles. Each of these features and their shadows can be measured to true distance on the ground based on the processing of the image as described above (georeferencing). The feature identification procedures include using shapes, colour, shadows, measurements, and orientation to identify features such as buildings, vehicles, vegetation, burn marks, vehicle revetments, damaged areas, tire marks, road networks, etc. As trained imagery analysts, identification of these features on satellite imagery is also based on experience identifying and corroborating similar features using other image sources such as ground photos. Here is an example image:



Example Image

13. The spatial resolution and angle of collection of images can present analytical limitations. As stated above, spatial resolution of the images we used throughout the analysis ranged from 40-cm to 50-cm. The angle in which the image is collected can sometimes obscure features, particularly when coupled with shadows cast due to the time of the day the image is collected.

14. Knowledge and experience mitigate the risk of misidentification of features. As trained imagery analysts, the angle of the collection of the image and the shadows cast from the position of the sun in the sky help to build the understanding of the characteristics of certain features. Knowledge and experience also mitigate the limitations of the satellite imagery. As trained open-source intelligence analysts, we can also corroborate what we see in satellite imagery with ground photos.

II. SHELLING OF THE CHECKPOINT NEAR VOLNOVAKHA — 13 JANUARY 2015

15. We sourced the highest resolution of imagery available in order to make effective assessments and conduct credible analysis of the shelling near Volnovakha. The

resolution we used was 0.5 metres within the high-resolution category, which is an appropriate resolution to conduct in-depth analysis. The dates of images we used were the closest available pre- and post-incident, between 13 January 2015 and 21 February 2015 for the geographical area of interest.

16. 63 images were sourced as available and relevant for the shelling near Volnovakha, taking into account the Buhas checkpoint location and potential points of origin. Many of these images were discounted because of cloud cover and environmental elements obscuring the image clarity. In total, 13 images were purchased and used for analysis, covering the dates 31 December 2014 to 23 February 2014. One additional image was purchased to analyse the DPR checkpoint at Olenivka, dated 29 April 2016.

A. Impact Location

1. Characteristics of the Buhas Checkpoint

17. We conducted an initial analysis of the impact location to understand the physical characteristics of the Buhas checkpoint. We achieved this by corroborating open-source reporting and accessible information with satellite imagery of 13 January 2015, 12 February 2015, and 21 February 2015. The analysis confirmed the location of the checkpoint at coordinates 47°36'48"N 37°31'46"E (latitude, longitude). This location is consistent with that highlighted by Colonel Bobkov in Figure 1 of his expert report.⁵ Our analysis of the Buhas checkpoint features is contained in Figure 1 (below).

18. The baseline assessment identifies a number of features associated with the checkpoint on the day of attack, with a satellite image of the same date (13 January 2015), taken a number of hours before the attack.⁶ The distinguishable features of the checkpoint are outlined below:

- 7 box trucks
- 2 patrol vehicles

⁵ See Bobkov Report, Figure 1 (Russia's Counter-Memorial Part I, Annex 1).

⁶ WorldView-2 13 January 2015 09:08 UTC, the same image of the Buhas checkpoint analysed by Colonel Bobkov in his report. See, e.g., Bobkov Report, Figure 7 (Russia's Counter-Memorial Part I, Annex 1).

- 2 tents
- 4 pits (unoccupied and fenced off)
- Trenchwork
- Concrete barriers
- Defensive breastwork
- 1 observation post
- Fence perimeter with ingress/egress points



Buhas Checkpoint Volnovakha Region

Legend		
▼ Box Truck	○ Observation Post	— Fence
▼ Patrol Vehicle	○ Tent	— Trench
○ Pit (Unoccupied & fenced off)	— Concrete Barrier	
	— Defensive Breastwork	



Date of Image: 13 Jan 2015, 09:08 UTC
Centre Point: 37°31'46"E 47°36'48"N
Scale: 1:1,532

Figure 1. Features of the Buhas Checkpoint Identified on Satellite Imagery.

19. Imagery analysis of the Buhas checkpoint indicates that, on 13 January 2015, the construction and layout was consistent with that of a law enforcement configuration designed for screening vehicles — it was not a fortified military installation. Two pits were highlighted to the western side of the checkpoint, but these were unoccupied in all imagery assessed in January and February 2015 and were located outside the fence line.

20. The trench systems identified are rudimentary in nature and do not offer adequate protection for arcs of fire and defensive posturing, as would be expected at a fortified military checkpoint. The trenches to the northwest of the checkpoint are outside the fences, with one point of entry two metres away from the trench by means of a break in the fence line. In addition, as Colonel Bobkov states in his report at paragraph 52, the Ukrainian Armed Forces (“UAF”) defensive positions closer to the contact line were orientated towards the east, north-east and north towards the DPR frontline.⁷ Some of the rudimentary trenches at the Buhas checkpoint faced northwest, away from known DPR positions.

21. We found the car park area to the southwest of the checkpoint only contained civilian vehicles, with no clear markings, including six trucks and one passenger truck. We found no evidence to suggest that these vehicles were of the type used for troop movements. In all of the imagery we examined, the positioning of these vehicles remains the same, with snow cover apparent in front of the vehicles in the CCTV footage of the attack,⁸ suggesting that the usage of these vehicles might be uncommon.

22. The tree lines to the northeast and southwest of the checkpoint appear to be pre-existing treelines that delineate between fields. These treelines do not appear to have been altered in any way for defensive posturing, or removed to enable line of sight for firing positions. We therefore conclude that these are natural features and cannot be described as protective in nature.

⁷ See Bobkov Report, para. 52 (Russia’s Counter-Memorial Part I, Annex 1).

⁸ See Military.com, *Huge MLRS Attack on Ukrainian Checkpoint* (16 January 2015).

23. Figure 2 (below) highlights features at the checkpoint that are consistent with 2015 UN peacekeeping guidance on the setup of police checkpoints.⁹ The deceleration zones, search zones, and concrete barrier funnelling for traffic calming — all features outlined in the UN guidance — are immediately apparent at the Buhas checkpoint.

⁹ See U.N. Police, *Peacekeeping PDT Standards for Formed Police Units* (2015) (Ukraine’s Reply, Annex 57).

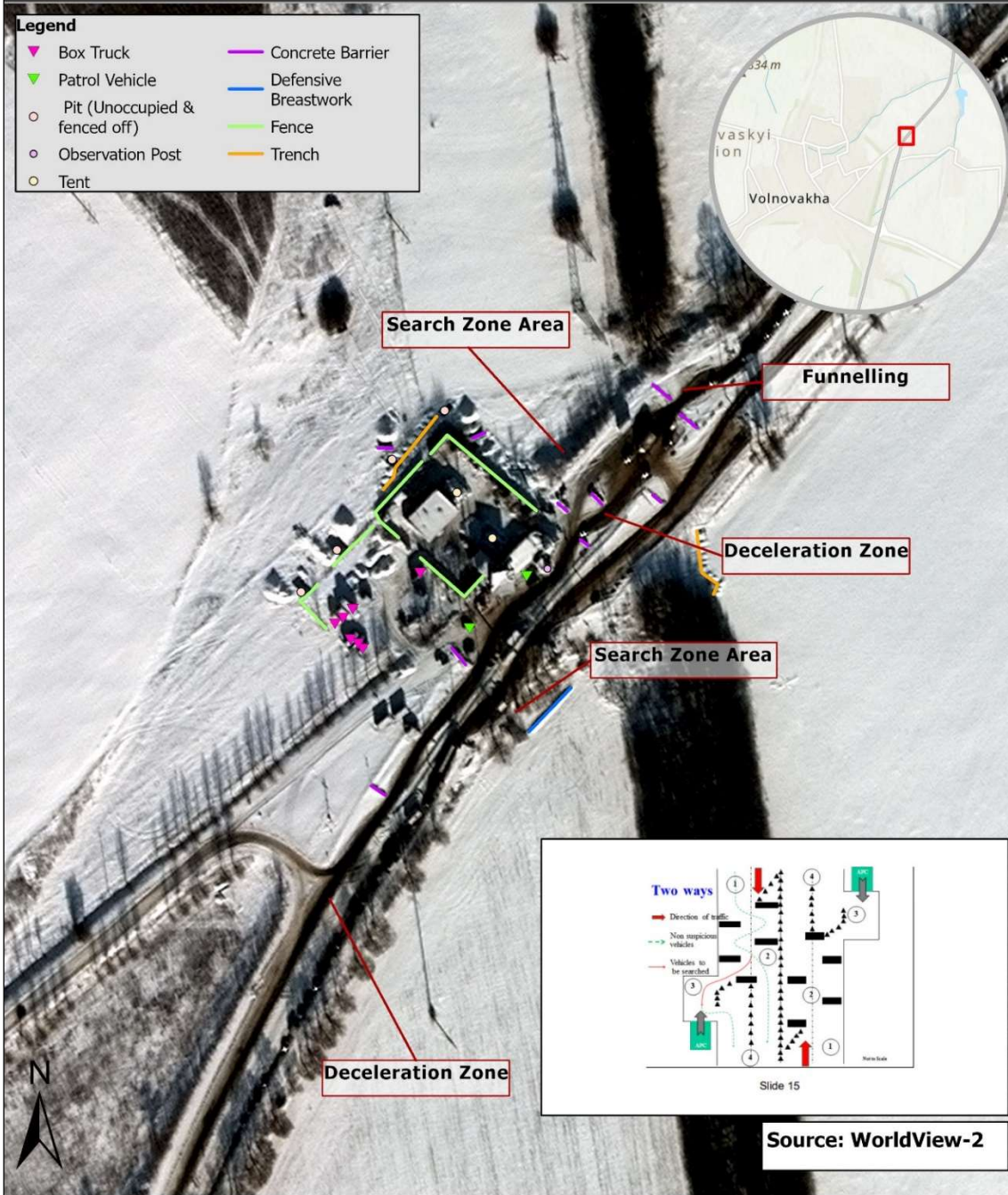


Vehicle Screening Checkpoint Features

Buhas Checkpoint

Legend

▼ Box Truck	Concrete Barrier
▼ Patrol Vehicle	Defensive Breastwork
○ Pit (Unoccupied & fenced off)	Fence
○ Observation Post	Trench
○ Tent	



Source: WorldView-2

Date of Image: 13 Jan 2015, 09:08 UTC
Centre Point: 37°31'46"E 47°36'47"N
Scale: 1:2,938

Figure 2. Law Enforcement Vehicle Screening Features of the Buhas Checkpoint.

24. CCTV footage of the Buhas checkpoint on 13 January 2015, the day of attack, shows a 360 degrees sweep of the area,¹⁰ which we analysed and corroborated with other open-source information and satellite imagery to understand the characteristics of the checkpoint. Two vehicles are evident in the footage and annotated in Figure 3 (below). The vehicles are assessed to be patrol vehicles, operated by and associated with the group Kyiv-2. The consistent features highlighted on the vehicles included a distinctive white striped marking down the centre of the vehicle, the large grill on the front of the vehicle, and two red and blue police sirens evident on either side at the front of the vehicle. An open-source search found a news report on the Kyiv-2 group that corroborated these vehicles at Figure 4 (below). The still images further highlight the features of the vehicle, including red and blue sirens. These vehicles are more commonly associated with law enforcement and do not appear to be military-grade equipment. No vehicles of a military nature were evident in satellite imagery on the day of attack.

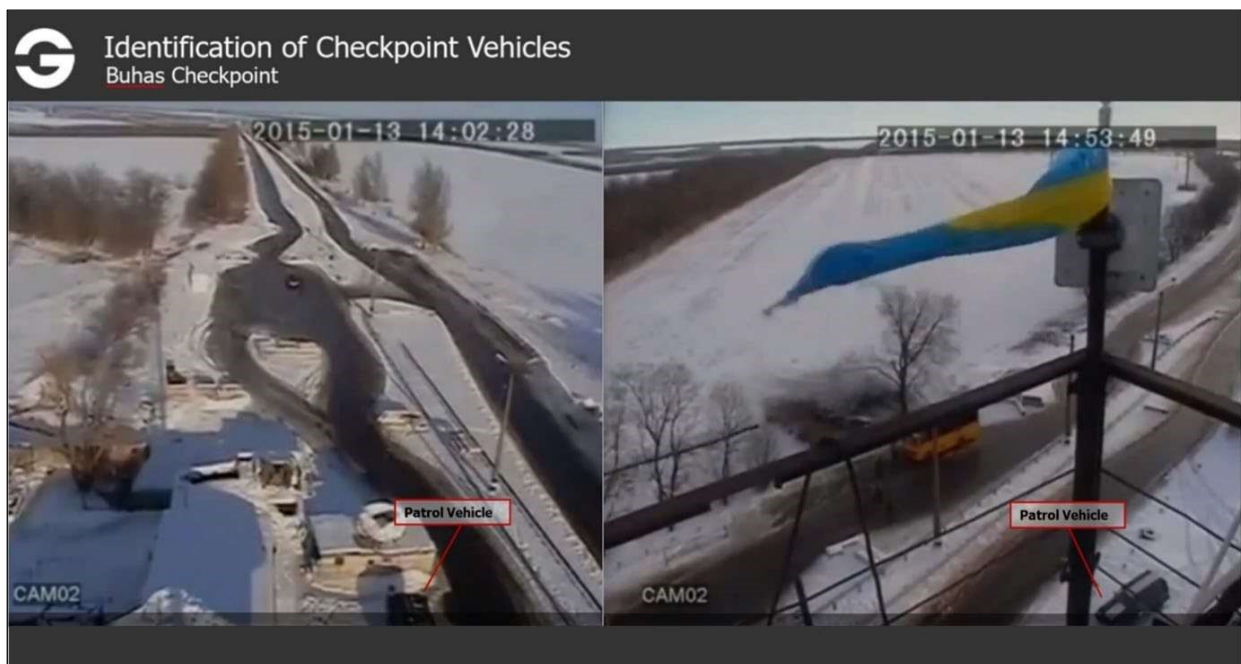


Figure 3. Images of Law Enforcement Presence at the Buhas Checkpoint.¹¹

¹⁰ See Military.com, *Huge MLRS Attack on Ukrainian Checkpoint* (16 January 2015).

¹¹ See Footage from a Surveillance Camera at the Checkpoint (10 January 2015) (video) (Ukraine's Memorial, Annex 695).



Figure 4. Open Source Images Corroborating Law Enforcement Patrol Vehicles at the Buhas Checkpoint.¹²

25. Satellite imagery analysis as shown in Figure 5 (below) corroborated the location of the two patrol vehicles evident in the CCTV footage on 13 January 2015, based on the location and measurements of the vehicles. Colonel Bobkov does not identify these law enforcement patrol vehicles in Figure 7 of his report, which analyses the same satellite imagery of the Buhas checkpoint.¹³

¹² YouTube, *У селищі Кримське стоїть батальйон «Київ-2»* (18 March 2015), <https://www.youtube.com/watch?v=g5pDj8Fapko>.

¹³ See Bobkov Report, Figure 7 (Russia's Counter-Memorial Part I, Annex I).

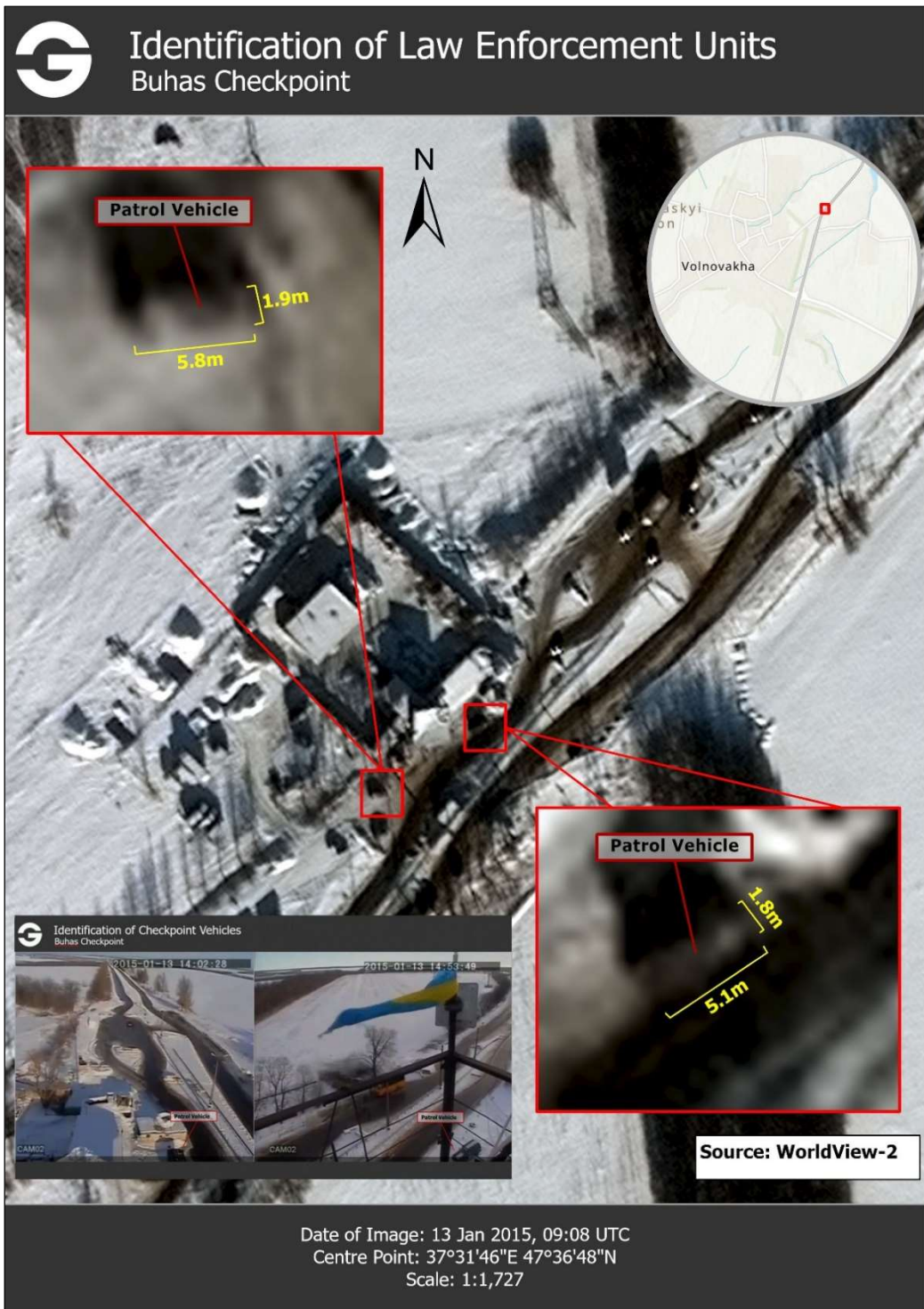


Figure 5. Law Enforcement Vehicles Observed in Satellite Imagery of the Buhas Checkpoint and Corroborated with CCTV and Open-Source Video (Figures 3 and 4, above).¹⁴

¹⁴ Measurements are derived from satellite imagery and thus are subject to a small margin of error due to the resolution of the imagery.

26. Open source images identified by Colonel Bobkov in Figure 10 and Figure 11 of his report (Bobkov Photo No. 1 and Bobkov Photo No. 2)¹⁵ were processed through a reverse image search using RevEye, which located the images on Yandex (a Russian-language search engine). Bobkov Photo No. 1 (dated 2 October 2014) and Bobkov Photo No. 2 (dated 20 January 2015) show the equipment outlined by Colonel Bobkov in his report (a BRDM-2 armoured reconnaissance vehicle and a MT-12 anti-tank gun, among other equipment) as present at the Buhas checkpoint on those respective dates. However, based on our analysis of available satellite imagery (see Figure 6, below), this equipment was not evident at the Buhas checkpoint on 13 January 2015, the day of attack. Bobkov Photo No. 1 was taken significantly before the attack (2 October 2014) and Bobkov Photo No. 2 was taken one week after the attack (20 January 2015).

¹⁵ See Bobkov Report, Figures 10-11 (Russia's Counter-Memorial Part I, Annex I).



Lack of Observed Equipment (Day of Attack) Buhas Checkpoint



Figure 6. Equipment Observed in Open-Source Imagery of the Buhas Checkpoint that Is Not Evident in Satellite Imagery on the Day of the Attack.

2. Comparison with the DPR Checkpoint Near Olenivka

27. The DPR checkpoint near Olenivka (centred at position 47°49'3"N, 37°38'46"E, and depicted in Figure 7, below) was assessed in order to compare the features of this location with the Buhas checkpoint; a comparative analysis was conducted at Figure 8 (below). This DPR checkpoint near Olenivka was allegedly targeted by the UAF on 27 April 2016, at approximately 02:45 A.M. local time according to reporting by the OSCE Special Monitoring Mission to Ukraine.¹⁶ The satellite image used to assess the DPR checkpoint near Olenivka was taken on 29 April 2016, two days after the alleged attack.

28. Figure 8 shows a comparison of the two checkpoints side by side. What is immediately apparent is the more elaborate and sophisticated nature of the Olenivka checkpoint trench system. Totalling approximately 3,055 metres, the checkpoint near Olenivka has around 2,955 metres more in total length of trenches than the Buhas checkpoint, which has approximately 100 metres.¹⁷ The trench system at the Olenivka checkpoint provides coverage on all sides of the perimeter and encircles the main defensive position, which is more consistent with military doctrine for a defensive installation. In contrast to the Buhas checkpoint, the Olenivka checkpoint has a clear ingress and egress into the trench systems. These appear to be reinforced by protective materials, possibly sandbags on either side of the trench. The trench system allows full view and coverage of the area.

29. At the Olenivka checkpoint, an area approximately 30 x 70 metres has been dug out and surrounded by the trench system with heavy tyre tracks leading into this area. We assess this as a likely strong point for personnel and equipment at the checkpoint. A similar feature is not identifiable at the Buhas checkpoint.

30. At the Olenivka checkpoint, a total of 15 positions were identified as vehicle revetments for armoured vehicles. Vehicle revetments are dug out areas that provide greater protection from fragmentation and high walls for protection that vehicles can be stored in,

¹⁶ See OSCE, *Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Olenivka* (28 April 2016).

¹⁷ Measurements are derived from satellite imagery and thus are subject to a small margin of error due to the resolution of the imagery.

and are a feature consistent with a defensive military position. Not all of these vehicle revetments were occupied in the image assessed and sourced at Figure 8, but one position is highlighted and shown in Figure 7 to contain a likely infantry fighting vehicle. The revetments are co-located within the trench system and face either the direction of opposition forces or the main highway. This provides the armoured vehicles with multiple protected locations and allows for established routes for ease of access. This is in contrast to the pits highlighted at the Buhas checkpoint, which face away from the highway and have no clear access points. The number and positions of the revetments at the Olenivka checkpoint suggest a continued military presence, and clear and distinguishable vehicle tracks throughout the area indicate continued and regular usage. Figure 7 also highlights a number of grey/green coloured vehicles operating at the checkpoint matching the dimensions and characteristics of military vehicles, likely to be infantry fighting vehicles or armoured personnel carriers.

Olenivka Checkpoint
Olenivka

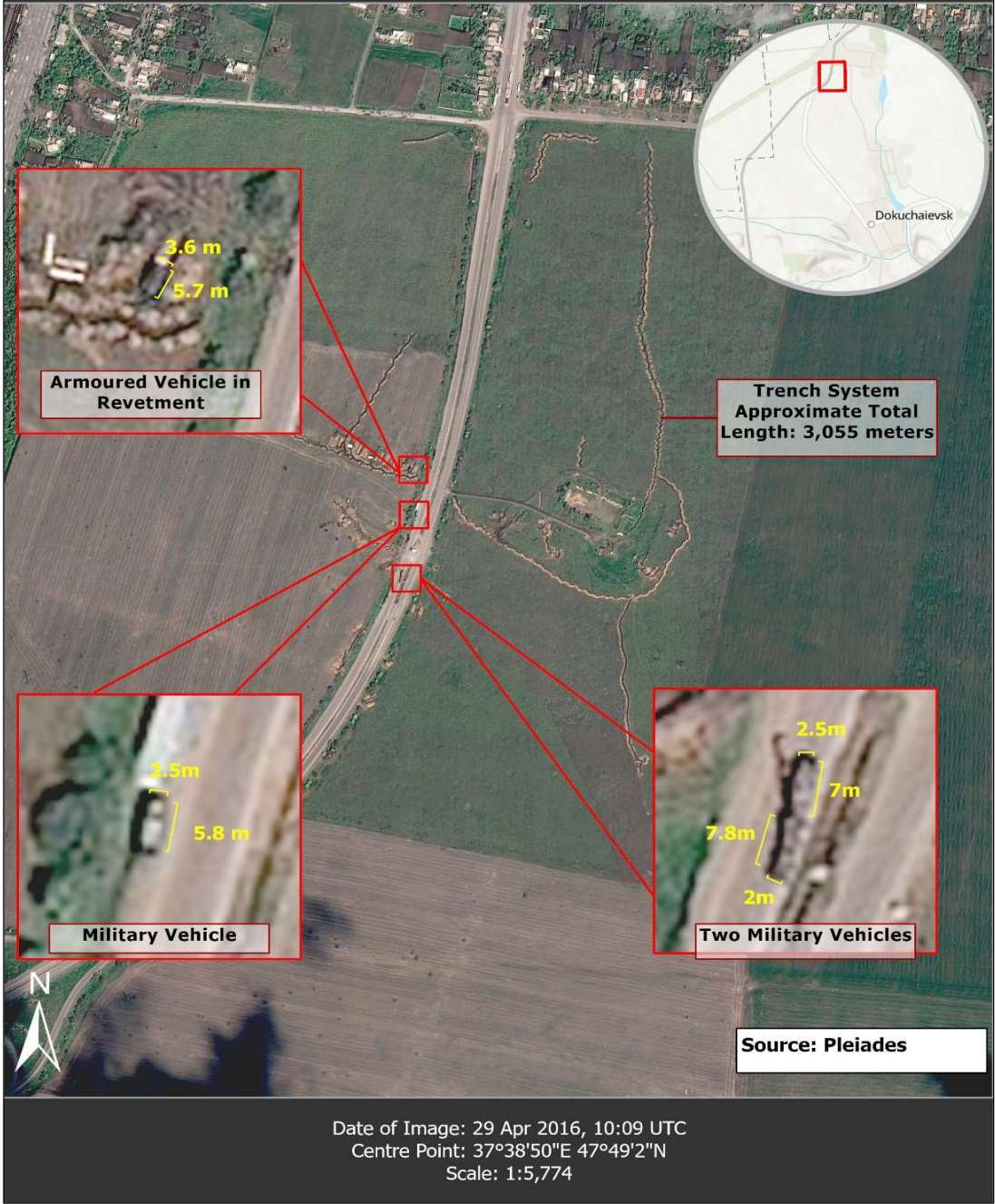


Figure 7. Identifiable Features in Satellite Imagery of the DPR Checkpoint at Olenivka.¹⁸

¹⁸ Measurements are derived from satellite imagery and thus are subject to a small margin of error due to the resolution of the imagery.



Comparison of Buhas & Olenivka Checkpoints

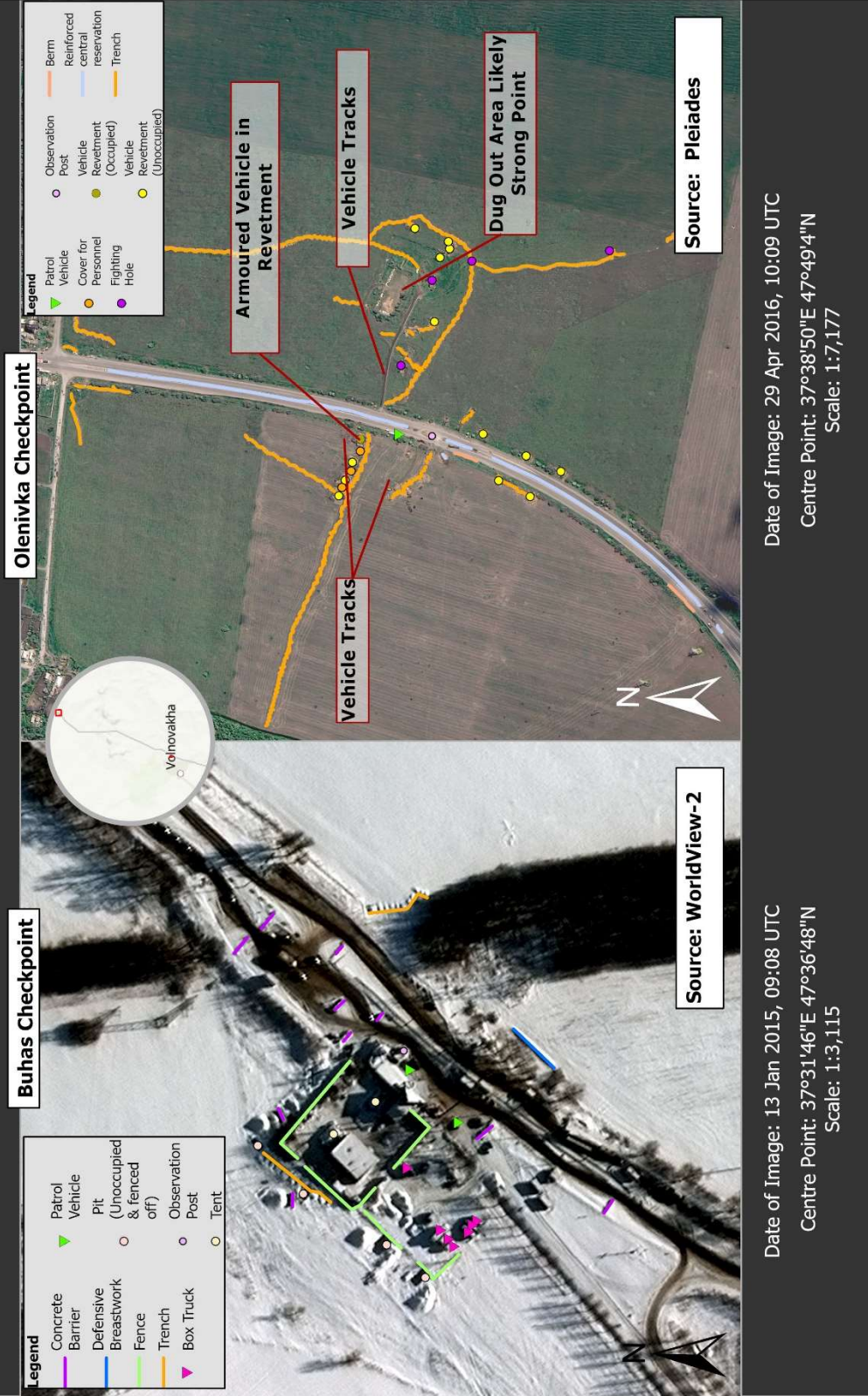


Figure 8. Comparison of the Buhas Checkpoint and the DPR Checkpoint at Olenivka.

3. Impact Analysis

31. We analysed the extent of impacts in the vicinity of the Buhas checkpoint. In pre-incident imagery of 13 January 2015 09:08 UTC, as shown in Figure 9 (below), no impact craters are visible. We conducted post-incident imagery analysis on imagery dated 21 February 2015 07:59 UTC. This image was used due to heavy snow cover obscuring the ground in imagery on 12 February 2015. This imagery was otherwise the first available high-resolution image available after the attack date. The greater image clarity on 21 February helped us complete the impact analysis.

32. In order to verify that these craters were the result of the 13 January attack on the Buhas checkpoint, the location of the impacts visible in the CCTV footage of the attack¹⁹ were cross-referenced with the location of the impact craters on satellite imagery.

33. Figure 10 (below) shows evidence of a long line of civilian vehicles in the vicinity of the Buhas checkpoint on the morning of the attack, 13 January 2015 at 09:08 UTC. We found that 87 vehicles were present waiting to be screened, 63 from the direction of Buhas and 24 from the direction of Volnovakha. This is consistent with Colonel Bobkov's analysis in paragraph 36 of his report.²⁰

¹⁹ See Military.com, *Huge MLRS Attack on Ukrainian Checkpoint* (16 January 2015).

²⁰ See Bobkov Report, para. 36(2) (Russia's Counter-Memorial Part 1, Annex 1).

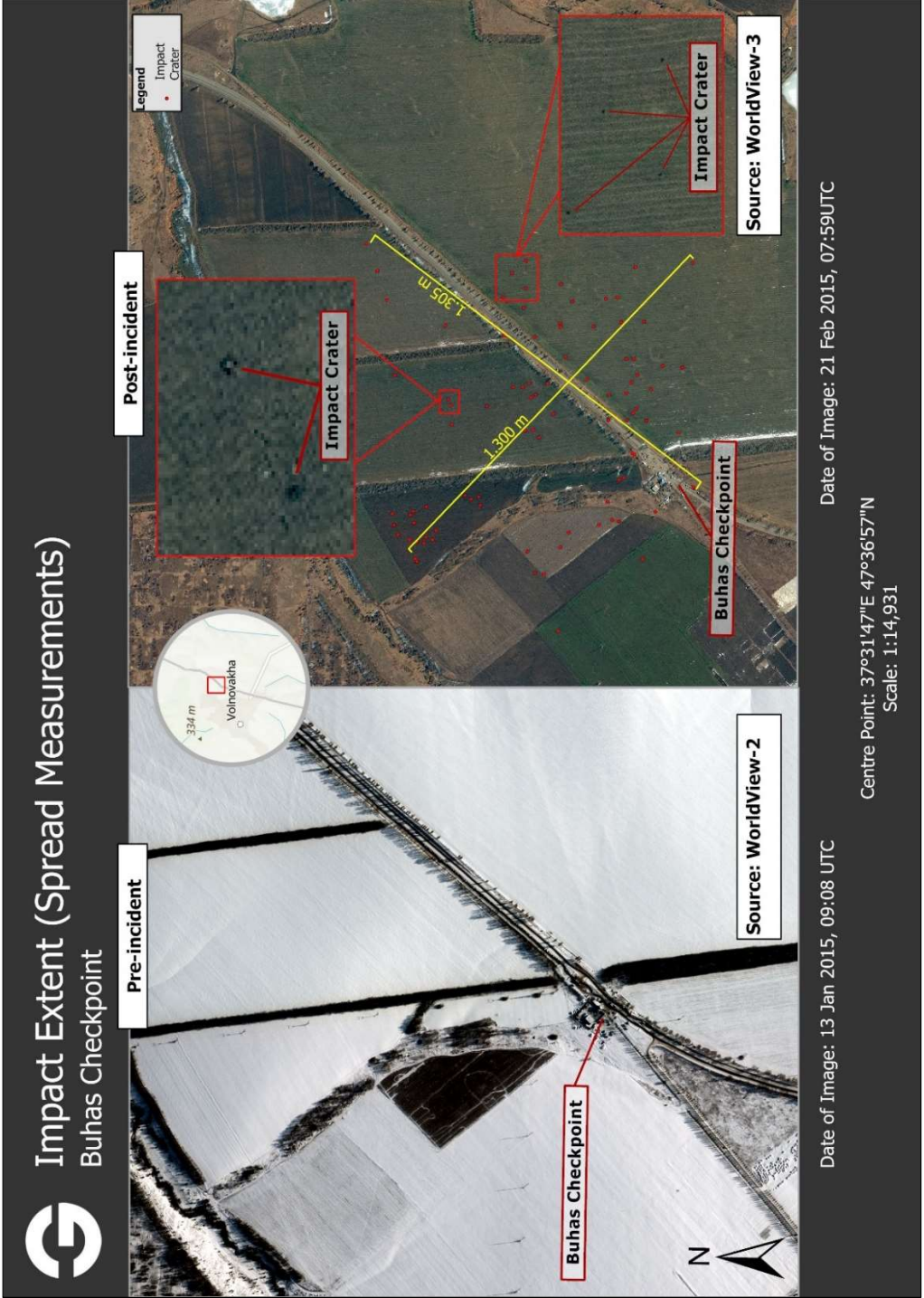


Figure 9. Impact Craters Visible After the 13 January 2015 Attack on the Buhas Checkpoint.²¹

²¹ Measurements are derived from satellite imagery and thus are subject to a small margin of error due to the resolution of the imagery.

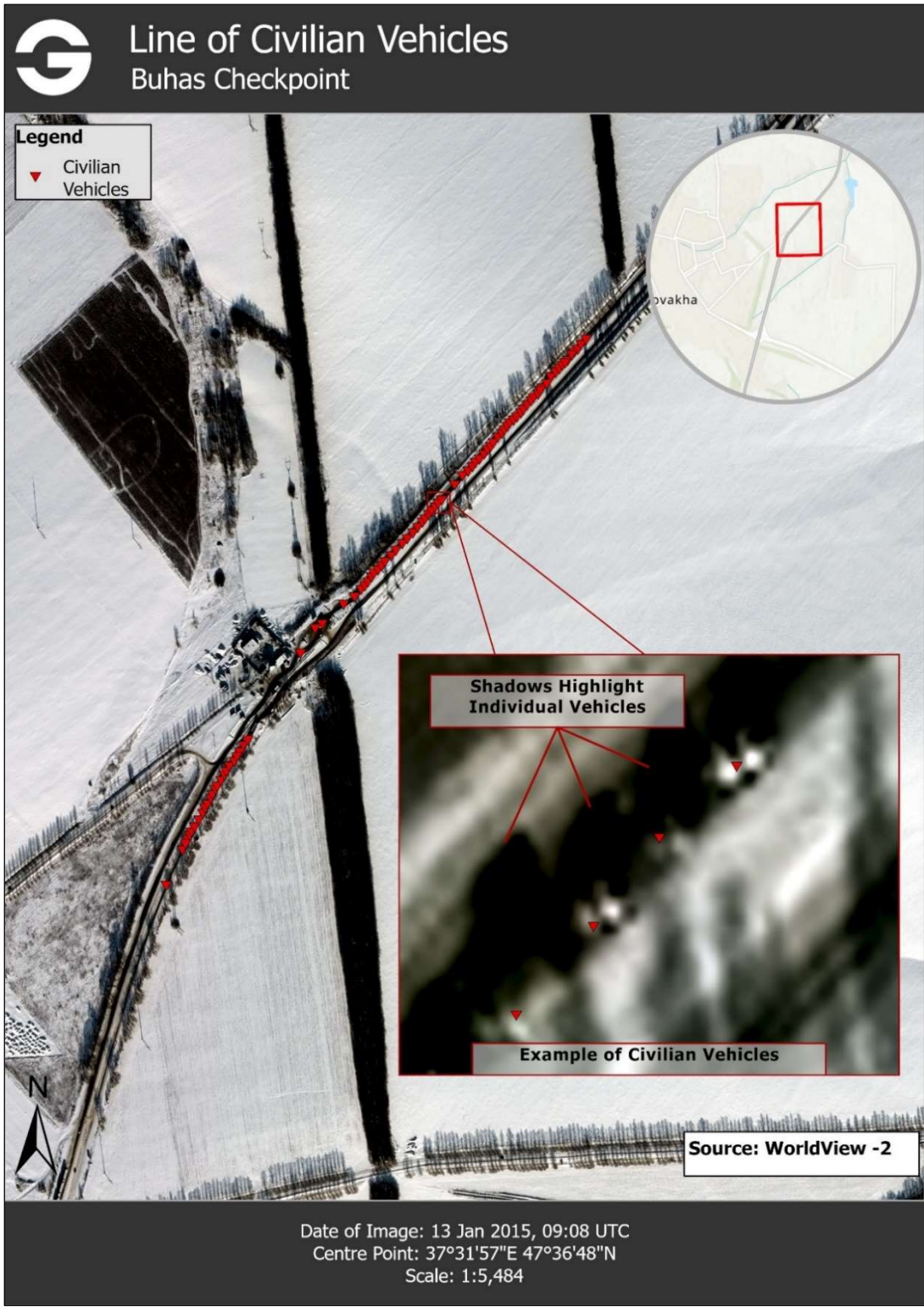


Figure 10. Civilian Vehicles at the Buhas Checkpoint Waiting to be Screened on the Morning of the Attack.

B. Potential Point of Origin

34. We also conducted imagery analysis to ascertain a potential point of origin for the attack on the Buhas checkpoint. General Brown's analysis identifies that the attack came from a north to north-eastern direction.²² He also assessed that the firing range was between 19.4 and 19.8 km, which places the point of origin in the vicinity of the town of Dokuchayevsk.²³ Additionally, a number of open source entities suggest that the launch range was within 15 to 20 km from the Buhas checkpoint,²⁴ which we also factored into our imagery analysis. These ranges are all within DPR-controlled territory, so our analysis aimed to understand DPR strongpoints and activity in this area around the time of event. While there is no single image at the time of the attack identifying the point of origin, the imagery evidence appears consistent with General Brown's conclusions, in light of significant military activity in the area of Dokuchayevsk; and in particular evidence of BM-21 presence in the area of Dokuchayevsk.

35. An overview graphic is displayed at Figure 11 (below) to visualise and simplify the key details and areas assessed. Limitations with available imagery meant that the only imagery of a resolution high enough to assess this region was on 13 February 2015, 21 February 2015, and 23 February 2015 (*i.e.*, after the attack on the checkpoint).

²² See Brown First Report, para. 25 (Ukraine's Memorial, Annex 11).

²³ See *ibid.*, para. 26.

²⁴ See, e.g., Putin@War, *Possible Launch Location Determined for Volnovakha Attack*, <http://ukraineatwar.blogspot.com/2015/01/possible-launch-location-determined-for.html> (17 January 2015); Putin@War, *Dokuchajevsk GRAD Video Was Filmed at SAME TIME as Volnovakha Attack*, <http://ukraineatwar.blogspot.com/2015/01/dokuchajevsk-grad-video-was-filmed-at.html> (21 January 2015).



Buhas Checkpoint Tactical Overview

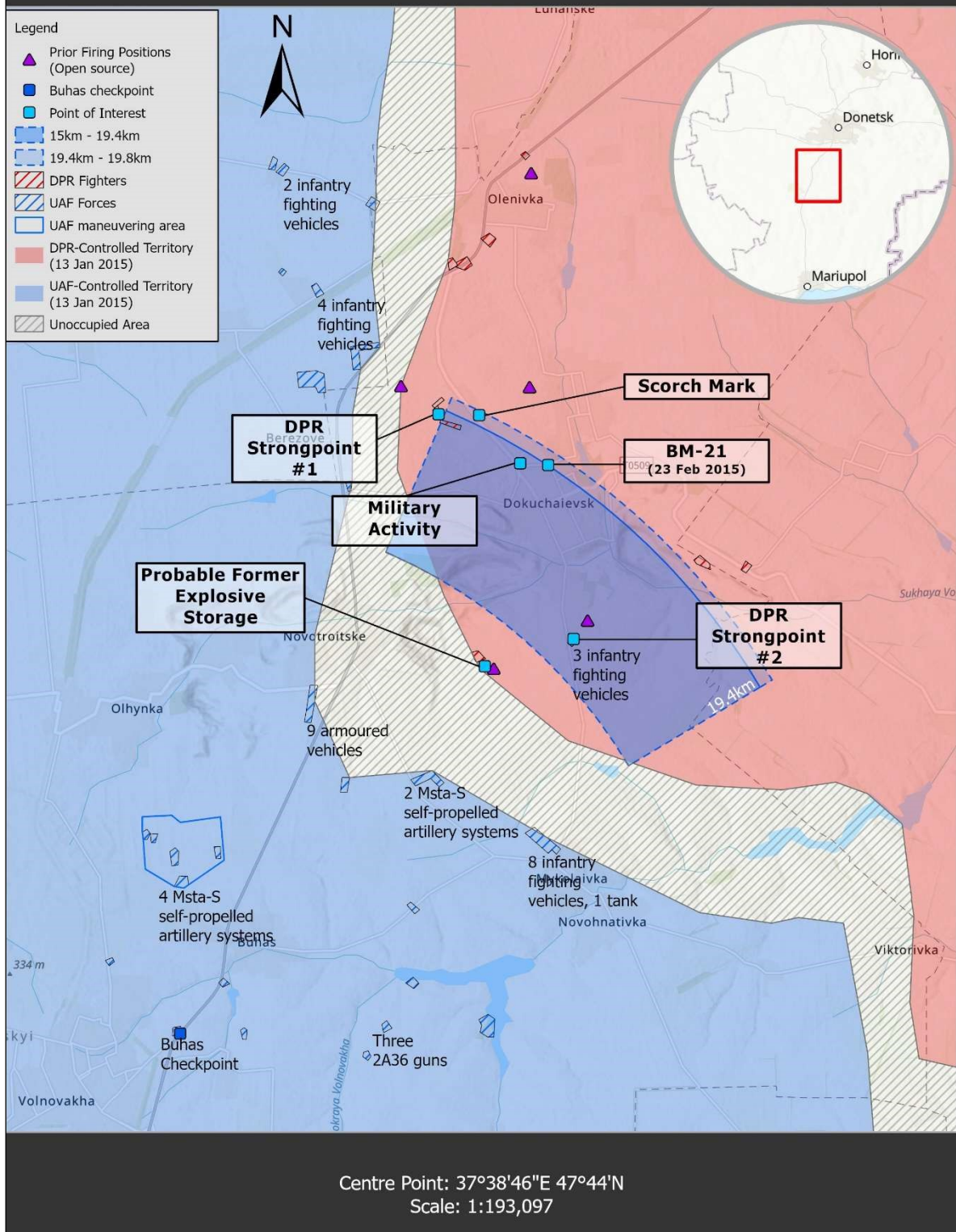


Figure 11. Overview of the Tactical Situation in the Volnovakha Region.

36. DPR Strongpoint No. 1 (see Figure 12, below) was highlighted to the northwest of Dokuchayevsk near Yasne in vicinity of position 47°46'26"N, 37°37'59"E. Colonel Bobkov highlighted this strongpoint in his report at Figure 23, positions 5, 6, and 7.²⁵ This location is on the borderline of the 19.4 to 19.8 km firing range that General Brown assessed in his first report.²⁶

37. Identifiable features at the strongpoint include vehicle revetments, trench systems, concrete barriers, and impact craters in the vicinity. This position is approximately 3.6 km northwest of the town of Dokuchayevsk.

38. To the east of the area, in a field on the eastern side of the T0509 road in vicinity of position 47°46'20"N, 37°39'01"E is a large scorched area, within General Brown's assessed 19.4 to 19.8 km range from the Buhas checkpoint. The firing of a Multiple Launch Rocket System ("MLRS") leaves visible burn (or "scorch") marks on the ground which point in the direction of the target of the attack. Any rocket that is launched will leave an exhaust trail where the propellant ignites in line with the direction that the missile is firing. While the cause of this particular scorched area cannot be determined based on the imagery alone, and it is possible that this is unrelated to DPR MLRS activity, circumstantially the proximity to DPR Strongpoint No. 1 and the geographical positioning within the 19.4 to 19.8 km range from the Buhas checkpoint is of interest.

39. A probable BM-21 was identified on imagery dated 23 February 2015, travelling east into the town of Dokuchayevsk (see Figure 13, below). The approximate dimensions and the shadow characteristics of a long bonnet and raised cab, with an additional raised area to the rear, are consistent with identifiable features of a BM-21 MLRS system. This aligns with General Brown's assessment that BM-21 systems were operating in Dokuchayevsk around the period of the attack.²⁷

²⁵ See Bobkov Report, Figure 23 (Russia's Counter-Memorial Part I, Annex 1).

²⁶ See Brown First Report, para. 26 (Ukraine's Memorial, Annex 11).

²⁷ See Brown First Report, para. 26 (5 June 2018) (Ukraine's Memorial, Annex 11).

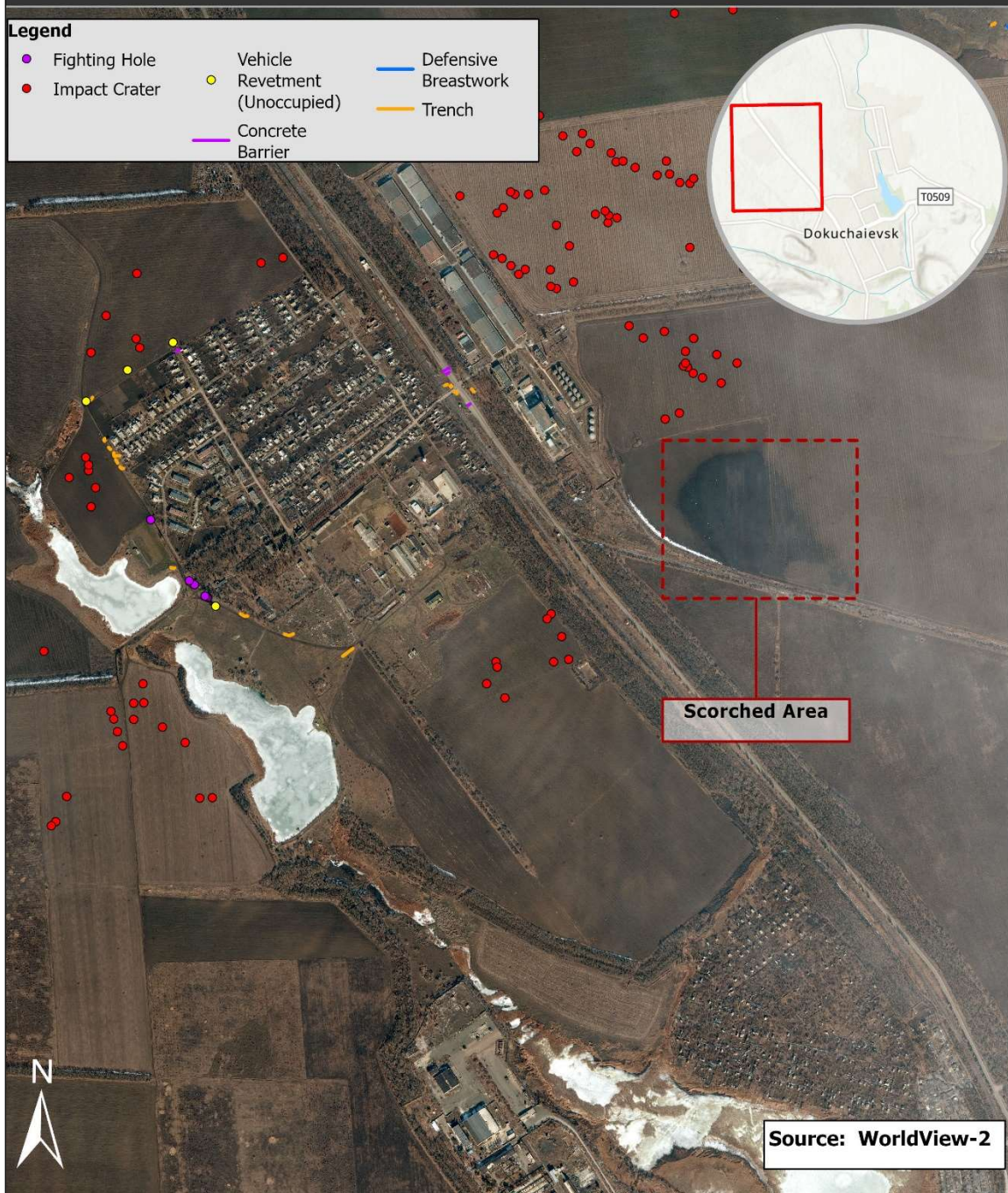
40. A video capture (see Figure 14, below), claimed to be taken on the day of the Buhas checkpoint attack, was geo-located to be in a residential area approximately 0.5 km to the southwest of the assessed BM-21 driving near Dokuchayevsk. In the video, audible weapon system fire is apparent, suggesting a launch from a nearby location. The lack of suitable imagery precluded the identification of a firing position at the time of attack or in the hours afterwards; however, tyre tracks of interest were highlighted in a field to the north of the position which indicate a likely firing position within audible range of the video capture. This would align with the range analysis conducted by General Brown.



DPR Strongpoint #1 Yasne

Legend

- | | | |
|---------------|--------------------------------------|-------------------------|
| Fighting Hole | Vehicle
Revetment
(Unoccupied) | Defensive
Breastwork |
| Impact Crater | Concrete
Barrier | Trench |



Date of Image: 23 Feb 2015, 08:54 UTC
Centre Point: 37°38'33"E 47°46'14"N
Scale: 1:12,533

Figure 12. DPR Strongpoint No. 1 Near Dokuchayevsk.



Figure 13. Assessed BM-21 Operating Near Dokuchayevsk.²⁸

²⁸ Reference image captured by OSCE unmanned aerial vehicle system. See *Military*, OSCE Demonstrated Russian Grad-K MLRS in Donbas (23 November 2021).



Figure 14. Tyre Tracks Indicative of Military Activity and Georeferenced Open Source Video of MLRS Launch Near Dokuchayevsk.²⁹

²⁹ YouTube, *Volnovakha Attack on Bus 13-1 Compilage of Three Videos* (17 January 2015), https://www.youtube.com/watch?v=x_G_dCApelw (imagery from this video has been analysed and geo-located on the above satellite imagery).

41. DPR Strongpoint No. 2 (see Figure 15, below) was identified approximately 1.5 km to the south of Stara Koloniya in vicinity of position 47°42'51"N, 37°40'49"E. Colonel Bobkov highlighted this strongpoint in his report at Figure 23, position 10.³⁰ This strongpoint is within the 15 to 20 km range of interest highlighted from the Buhas checkpoint and is a possible firing area.

42. Identifiable features at the strongpoint include occupied and unoccupied vehicle revetments. The occupied revetments are assessed to contain infantry fighting vehicles. There are also trench systems, concrete barriers, defensive breastwork, and significantly visible vehicle tracks. Some of these vehicle tracks show utilisation of two warehouses that would be capable of housing larger equipment, such as MLRS systems, in positions 47°42'49"N, 37°40'43"E and 47°42'47"N 37°40'44"E.

43. Approximately 2.3 km west-southwest of this strongpoint is a probable disused explosives storage area at position 47°42'25.00"N, 37°39'3.88"E (see Figure 16, below). This area was not highlighted in Colonel Bobkov's report, although he does highlight the trenches, dug out positions, fighting vehicles, artillery systems and fighting holes in the vicinity at Figure 23 of his report, positions 11 and 12.³¹ Our assessment that this is a probable explosives storage area is based on the fenced perimeter around the outside of the area restricting access and bunding around key buildings. Bunding is used as a constructed retaining wall around storage of potentially hazardous materials to contain any escape of the material within. The site appears to have been an industrial explosives storage area for the Dokuchayevsk flux-dolomite plant, but the fortification around the immediate area indicates that it was possibly under DPR control during this time period. Given the close proximity of this location to the DPR front-line, we assess that it was unlikely the DPR was using this location as an explosive storage facility at the time of the attack on the Buhas checkpoint.

³⁰ See Bobkov Report, Figure 23 (Russia's Counter-Memorial Part I, Annex 1).

³¹ See *ibid.*

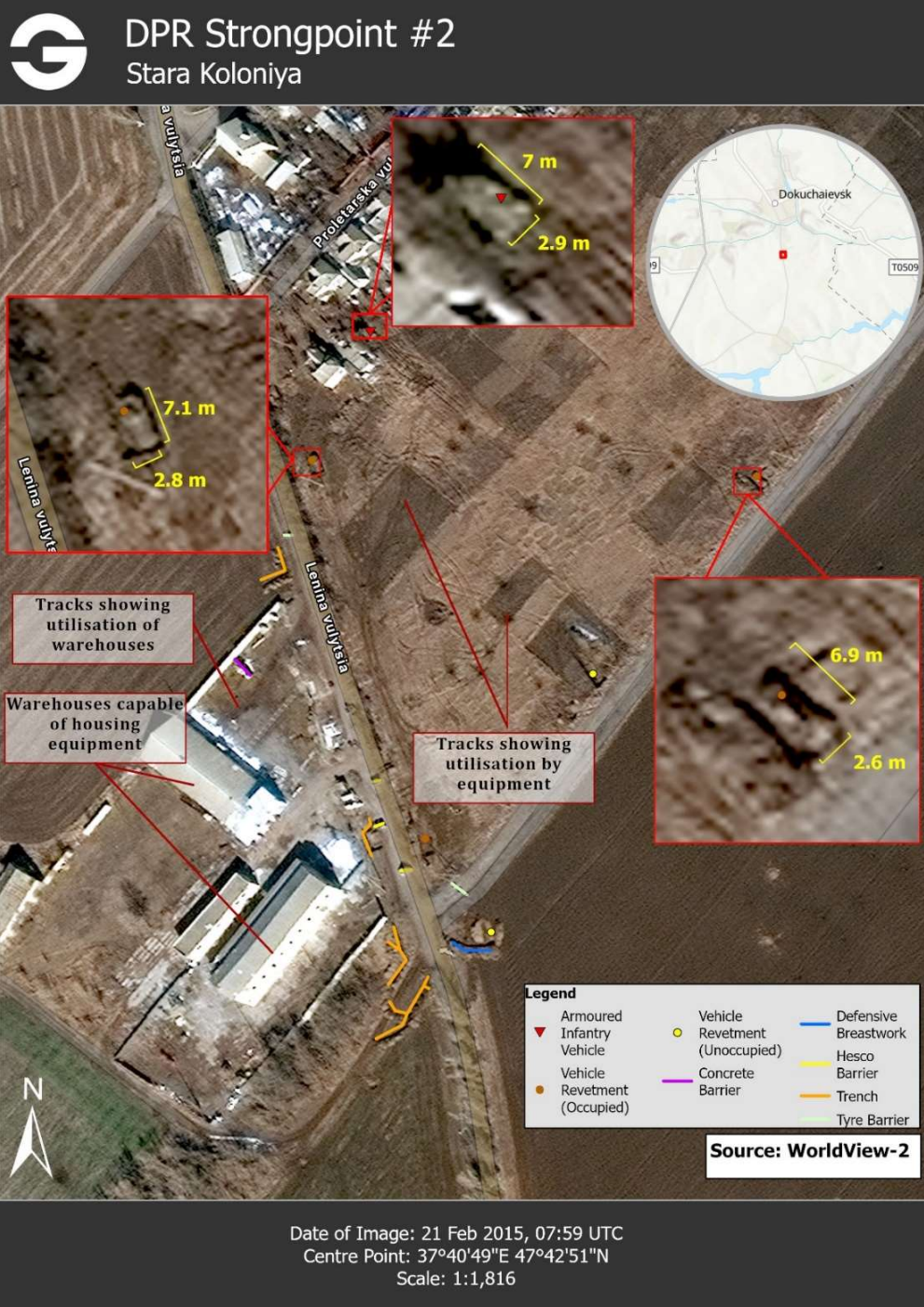


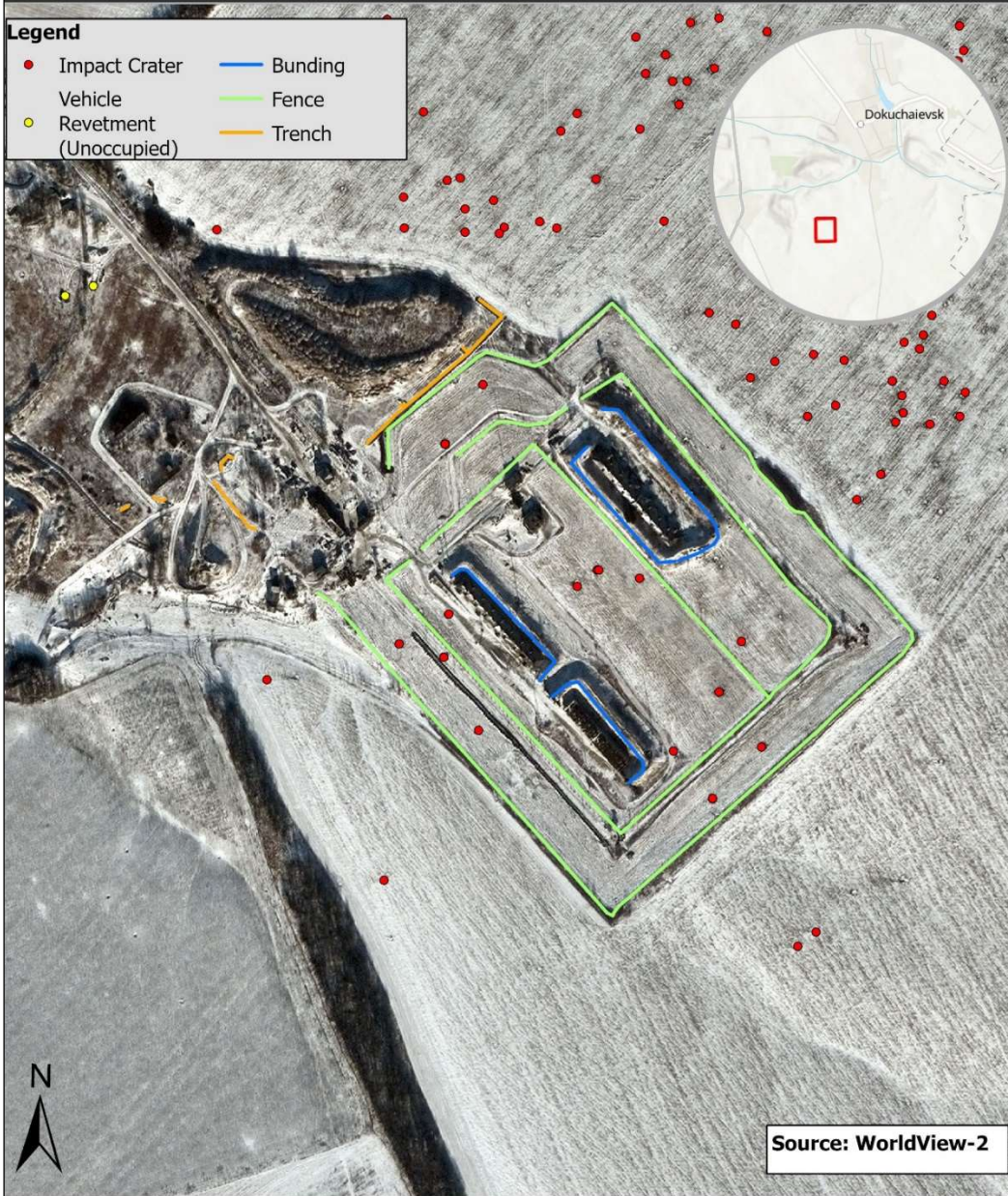
Figure 15. DPR Strongpoint No. 2 Near Dokuchayevsk.³²

³² Measurements are derived from satellite imagery and thus are subject to a margin of error due to the resolution of the imagery.



Probable Explosive Storage Area Stara Koloniya

- Legend**
- Impact Crater
 - Vehicle
 - Revetment (Unoccupied)
 - Bunding
 - Fence
 - Trench



Date of Image: 31 Dec 2014, 08:48 UTC
Centre Point: 37°39'E 47°42'25"N
Scale: 1:4,238

Figure 16. Probable Explosive Storage Area West-Southwest of DPR Strongpoint No. 2 Near Dokuchayevsk.

C. Conclusions

44. Our analysis of the Buhas checkpoint indicates that at the time of the attack it was non-military in nature. As demonstrated above (see Figure 2), the construction and layout was consistent with a law enforcement configuration designed for screening vehicles – it was not a fortified military installation. There were no apparent military targets within the immediate vicinity of the checkpoint, and all of the associated infrastructure at the checkpoint was consistent with normal security measures at a vehicle screening installation. Furthermore, given the checkpoint’s location on an operating highway, the likelihood that civilian vehicles would be present waiting to be screened at the time of the attack was high (see Figure 10, above).

45. Finally, as demonstrated above, the Buhas checkpoint was located behind UAF military positions in the region, and approximately 13.6 km from DPR-controlled territory (see Figure 11, above). There is no indication in the satellite imagery taken on the morning of the attack that the DPR was preparing for a ground offensive on the Buhas checkpoint.

III. SHELLING OF THE RESIDENTIAL AREA OF MARIUPOL — 24 JANUARY 2015

46. This imagery analysis uses available commercial satellite imagery of 0.5 metre or better as close as possible to the reported events (before and after) to assess damage to the Vostochniy residential neighbourhood and to analyse the situation in the vicinity of Mariupol leading up to and following the shelling attack on 24 January 2015.

47. 101 images were sourced as available and relevant for the shelling in the Vostochniy neighbourhood, taking into account the Vostochniy neighbourhood location and potential points of origin. Many of these images were discounted because of cloud cover and environmental elements obscuring the image clarity. In total, 13 images were purchased covering the dates 13 January 2015 to 21 February 2015.

48. Pleiades imagery of 13 February 2015 was used to assess damage within Mariupol. Pleiades imagery of 18 January 2015, World View 1 Imagery of 13 January 2015 and World View 2 imagery of 13 February 2015, augmented by imagery available through

Google Earth, has been used to identify and characterise Ukrainian defensive positions to the east of Mariupol. This imagery was also used to assess likely DPR firing positions.

A. Impact Location

1. Damage to the Vostochniy Residential Neighbourhood

49. We have been asked to assess the extent of damage to the Vostochniy residential neighbourhood as a result of the attack on Mariupol on 24 January 2015.

50. The closest available imagery of sufficient resolution post-incident was Pleiades imagery of 13 February 2015. This imagery was used to identify impact points and to geo reference open source footage of damage. The imagery was analysed against pre-incident World View 2 imagery of 13 January 2015 to corroborate the resulting damage.

51. In addition to the damage immediately identifiable in satellite imagery, open source content contains post-incident photos and videos of damaged areas that could not be directly identified in satellite imagery due to the small size of individual impact points, azimuth of the satellite, and long shadows cast by objects. These areas were georeferenced to understand where they were located within the Vostochniy neighbourhood.

52. Figure 17 (below) shows a satellite image overview of the assessed damage within the Vostochniy neighbourhood. The neighbourhood is primarily residential, with associated commercial and civilian infrastructure in a densely populated area.

53. Figure 18 (below) shows the same satellite image overview of assessed damage with a BM-21 ellipse plotted, based on General Brown's calculations. According to General Brown, the ellipse corresponds to the area in which 100% of rockets from a single launcher should land, based on 122mm rockets being fired at a 17.4 km range³³ and a mean point approximately 200 metres northwest of Kyivski Market.³⁴

³³ See Brown First Report, para. 51 (Ukraine's Memorial, Annex 11).

³⁴ General Brown's assessed mean point of impact for the attack on the Vostochniy neighbourhood. See Brown Second Report, para. 30(a)(i) (Ukraine's Reply, Annex 1).



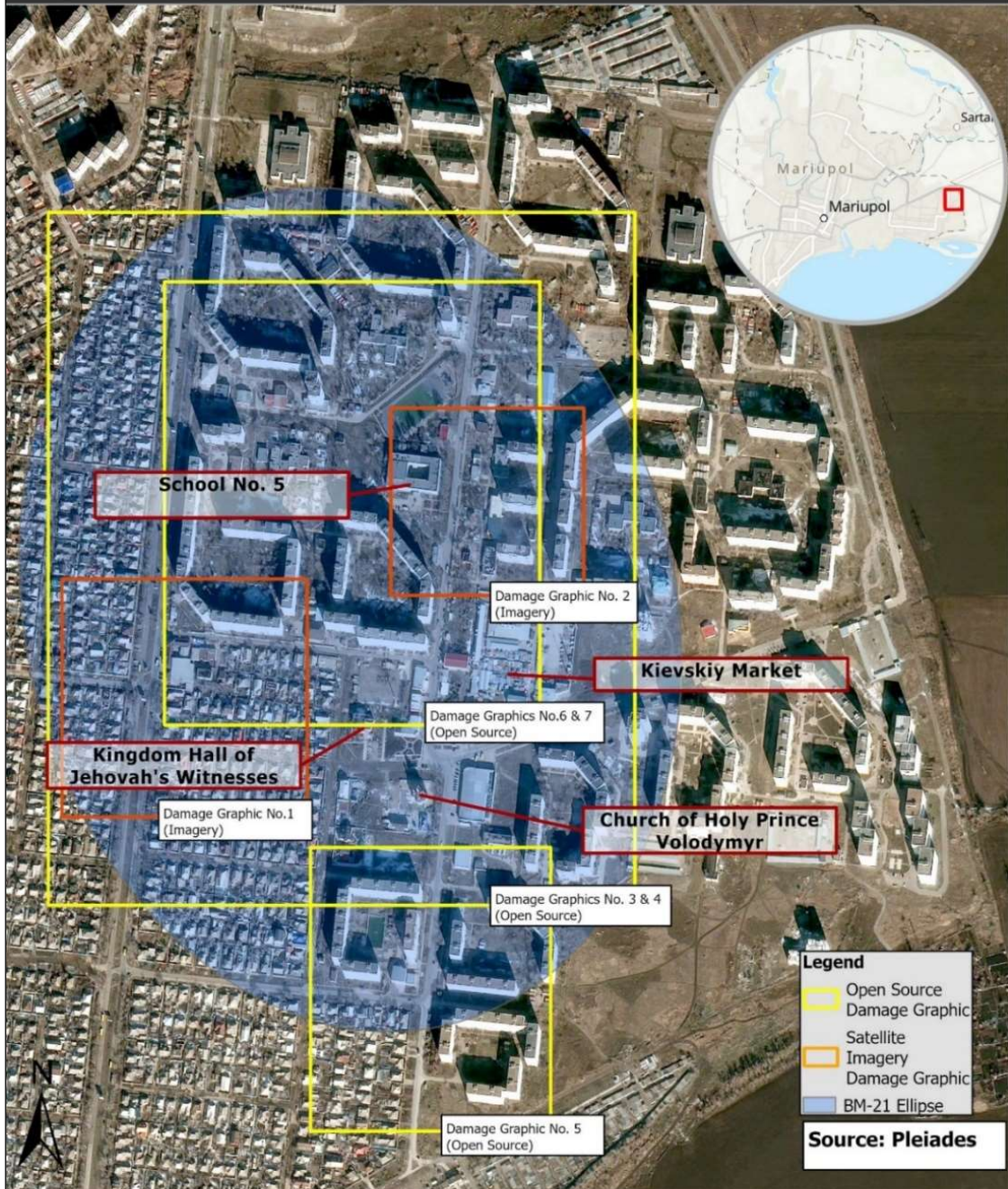
Overview of Damage to Vostochniy Neighborhood Mariupol



Date of Image: 13 Feb 2015, 10:02 UTC
Centre Point: 37°41'10"E 47°7'17"N
Scale: 1:6,281



Overview of Damage to Vostochniy Neighborhood Mariupol



Date of Image: 13 Feb 2015, 10:02 UTC
Centre Point: 37°41'10"E 47°7'17"N
Scale: 1:6,281

35

³⁵ See Brown Second Report, para. 30(a)(i) (assessing the mean point of impact approximately 200 metres northwest of the Kyivski market) (Ukraine's Reply, Annex 1).

54. Figures 19 and 20 (below) show evidence of damage to civilian infrastructure and residential areas visible on satellite imagery.

55. Figure 19 shows residential houses with roofs intact pre-incident. In post-incident imagery, the same houses have collapsed roofs.

56. Figure 20 shows fire damage and structural damage to civilian and commercial infrastructure in the vicinity of Kyivski Market. This image is further corroborated with georeferenced open source video footage, images, and drone footage at Figures 21 and 22 (below).

57. Figures 23 - 25 (below) show additional damage highlighted in open source video footage that was georeferenced in satellite imagery, including an impact crater visible in a school courtyard in Figure 25.



Damage Graphic No. 1 (Imagery)

Mariupol



Date of Image: 13 Jan 2015, 09:06 UTC

Date of Image: 13 Feb 2015, 10:02 UTC

Centre Point: 37°40'50"E 47°7'12"N

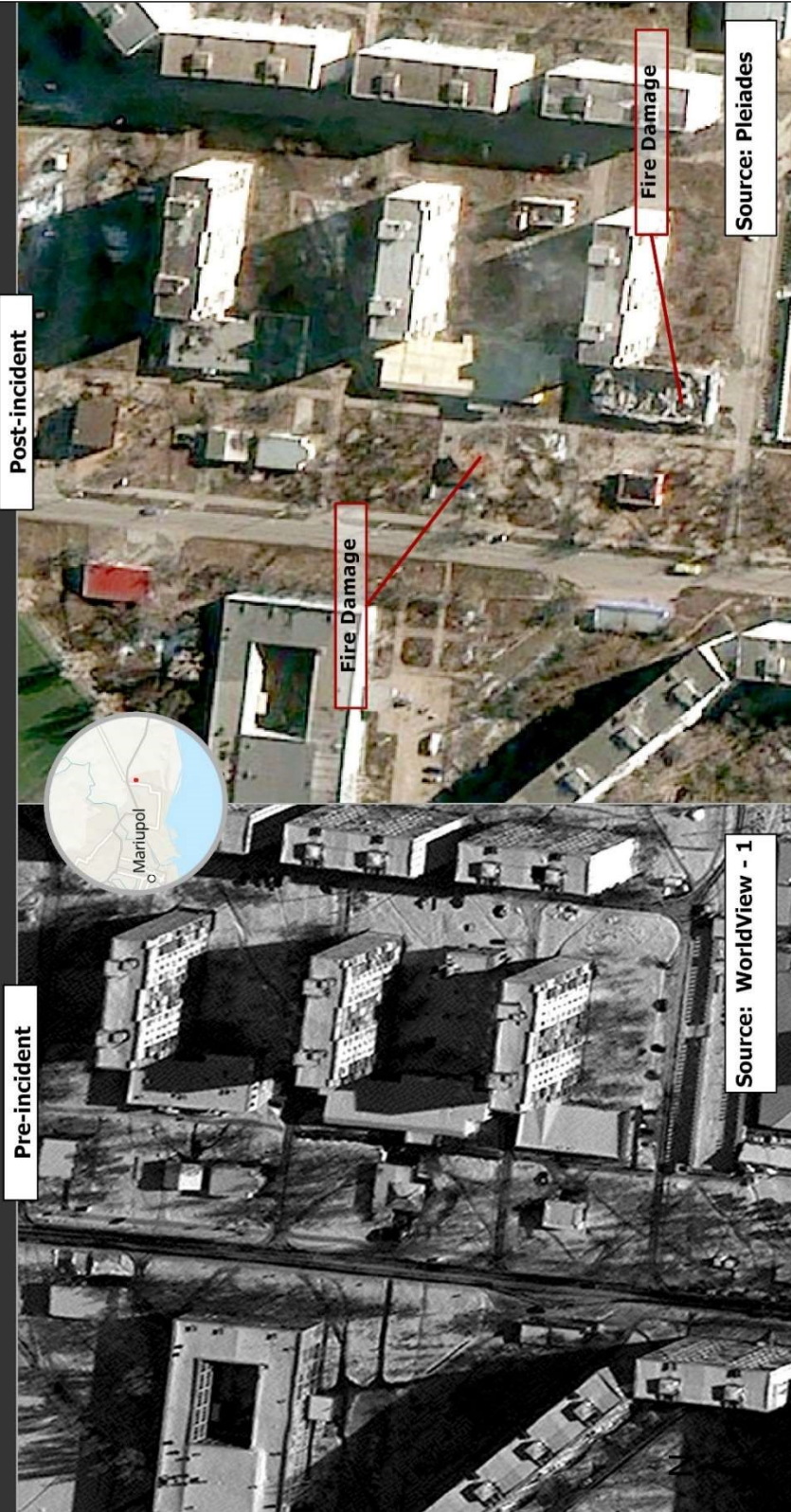
Scale: 1:2,256

Figure 19. Mariupol Damage Graphic No. 1 (Satellite Imagery).



Damage Graphic No. 2 (Imagery)

Mariupol



Post-incident

Pre-incident

Source: WorldView - 1

Source: Pleiades

Date of Image: 13 Jan 2015

Date of Image: 13 Feb 2015, 10:02 UTC

Centre Point: 37°41'8"E 47°7'20"N
Scale: 1:1,743

Figure 20. Mariupol Damage Graphic No. 2 (Satellite Imagery).



Figure 21. Mariupol Damage Graphic No. 3 (Open Source).³⁶

³⁶ YouTube, *Mariupol Ukraine 24.01.2015* (24 January 2015), <https://www.youtube.com/watch?v=zI4ItiLoUVY> (imagery from this video has been analysed and geo-located on the above satellite imagery).



Figure 22. Mariupol Damage Graphic No. 4 (Open Source).³⁷

³⁷ YouTube, *Evidence of Russian Militaries Involvement in Shooting in Mariupol* (7 May 2018), https://www.youtube.com/watch?v=K5qS9m5_QTE (imagery from this video has been analysed and geo-located on the above satellite imagery).



Damage Graphic No. 5 (Open Source) Mariupol



Figure 23. Mariupol Damage Graphic No. 5 (Open Source).³⁸

³⁸ YouTube, *Мариуполь 24 января 2015 год. Последствия обстрела.* (24 January 2015), <https://www.youtube.com/watch?v=FXB9yoZTpqg> (imagery from this video has been analysed and geo-located on the above satellite imagery).



Damage Graphic No. 6 (Open Source) Mariupol



Figure 24. Mariupol Damage Graphic No. 6 (Open Source).³⁹

³⁹ YouTube, *Мариуполь 24 января* (24 January 2015), https://www.youtube.com/watch?v=_WVfmMZPSng (imagery from this video has been analysed and geo-located on the above satellite imagery).



Damage Graphic No. 7 (Open Source)

Mariupol



Figure 25. Mariupol Damage Graphic No. 7 (Open Source).⁴⁰

⁴⁰ YouTube, *Кто обстрелял Мариуполь 24 01 15 Анализ видеофактов* (10 February 2015), <https://www.youtube.com/watch?v=oPgB6yiQjIQ> (imagery from this video has been analysed and geo-located on the above satellite imagery).

2. Analysis of Ukrainian National Guard Locations Near Mariupol

58. We were asked to conduct an assessment on the nearest Ukrainian National Guard positions to the Vostochniy residential area. It should be noted that limitations with available imagery and cloud cover obscuring imagery meant that a full assessment of presence or activity could not be made within nine days of the attack. However, the general disposition of all positions over a period of several weeks before and after the attack are defensive and there is no evidence on imagery of any build-up of Ukrainian forces that could be constituted as an increase in defensive posture leading up to the date of the attack.

59. As demonstrated in Figure 26 (below), General Brown's assessed mean point of impact in the Vostochniy neighbourhood was between 1.1 and 2.5 km away from all Ukrainian National Guard locations on the outskirts of the city.

60. As demonstrated in Figure 27 (below), the line of trenches to the east of the city were for the most part anti-tank ditches designed to prevent tanks from advancing on the city. The trenches appear unmanned in available satellite imagery.

61. In paragraph 169 of his report, General Samolenkov refers to Bobkov Positions 20 to 25 as a "line of reinforcements."⁴¹ Based on available satellite imagery, there is nothing that suggests there was a line of forces running between these positions. Bobkov Position 20 is Checkpoint 4014 (or the "northern checkpoint") (see Figure 28, below). Bobkov Positions 21 to 24 are trenches and fortified pieces of land that appear unoccupied in available satellite imagery. Bobkov Position 25 is a dug-out position for armoured vehicles, which appears empty in available satellite imagery. Furthermore, there are no vehicle tracks evident on satellite imagery that would suggest continued usage of Bobkov Positions 21 to 25 by Ukrainian National Guard forces in the area. Cloud cover and available imagery limitations preclude any further evaluation.

⁴¹ Samolenkov Report, para. 169 (Russia's Counter-Memorial Part I, Annex 2).

62. Overall, all Ukrainian positions appear to be defensive in nature and there is no evidence on imagery of any build-up of Ukrainian forces before the date of the attack that could be constituted as a strengthening of Ukraine's defensive posture.

Ukrainian National Guard Locations in the Vicinity of Mariupol				
Reference	Bobkov Reference	Description	Location	Comments
1	Table 5. #20	Defensive Position at the NE edge of Mariupol, comprising 2 trench complexes (North and South of the E58/M14 highway), 8 x vehicle revetments and a possible checkpoint building.	47°07'52.17 "N, 37°41'15.15 "E	Imagery resolution precludes the identification of personnel or military activity although Imagery of 23/11/2014 indicates probable vehicles in 2 of the revetments. Construction of the complex was begun sometime between 30/05/2014 and 27/07/2014 and completed by 11/10/2014.
2	Table 5. #19,21	Earth Berms either side of E58/M14, directly East of Ref 1.	Centre at 47°07'51.91 "N, 37°41'30.33 "E	The position of these berms makes it likely they are designed as protection for Ref 1.
3	Table 5. #22,23	These are a series of personnel trenches oriented NW to SE outside of the city boundaries on the eastern side of the Marshala Zhukova Street.	Centre of trench-line at 47°07'52.17 "N, 37°41'15.15 "E	These trenches are oriented to protect the eastern approaches to Mariupol and were constructed between 05/09/2014 and 19/09/2014. Imagery cannot determine whether these trenches are occupied and no related activity is observable.
4	Table 5. #26	Defensive Position to the SE of Mariupol, comprising a series of trenches, fighting positions and berms, including a bermed vehicle parking area.	47°06'42.41 "N, 37°42'02.0 3 "E	Imagery of 23/02/2015 shows evidence of shelling immediately to the N, E and SE of this defensive position, although there is no evidence of impact points on the position itself.
5	Table 5. #17,18	Defensive Position centred 2km to the NE of Mariupol, comprising substantial trench complexes either side of the E58, at least 18 vehicle revetments to the south of the road and 20 vehicle revetments to the north of the road. The trench-line extends NE for over 2.5 km and numerous unconnected	Checkpoint at 47°08'25.95 "N, 37°42'31.63 "E	Construction of this position commenced between 30/05/2014 and 05/09/2014, completed by 11/10/2014. Imagery of 11/10/2014 shows evidence of shelling of the position.

		fighting positions. The centre of the complex is on the E58 and includes a vehicle checkpoint.		
6	Table 5. #29,30	Defensive Position, Vynohradne. Comprising defensive positions, vehicle revetments, trenches, extending North-South for approximately 800m.	47°05'46.35 "N, 37°42'30.8 6 "E	Defensive Position has been in place since at least 05/09/2014, although trenches were constructed sometime between this date and 19/09/2014.
7	Table 5. #16,18,24,27,28	Series of Earth Berms and trenches, extending North-South to Lomakyne.		This defensive line may represent the Ukrainian Forward Line of Troops ("FLOT") at the time of the incidents.



Distance to Ukrainian National Guard Locations Mariupol

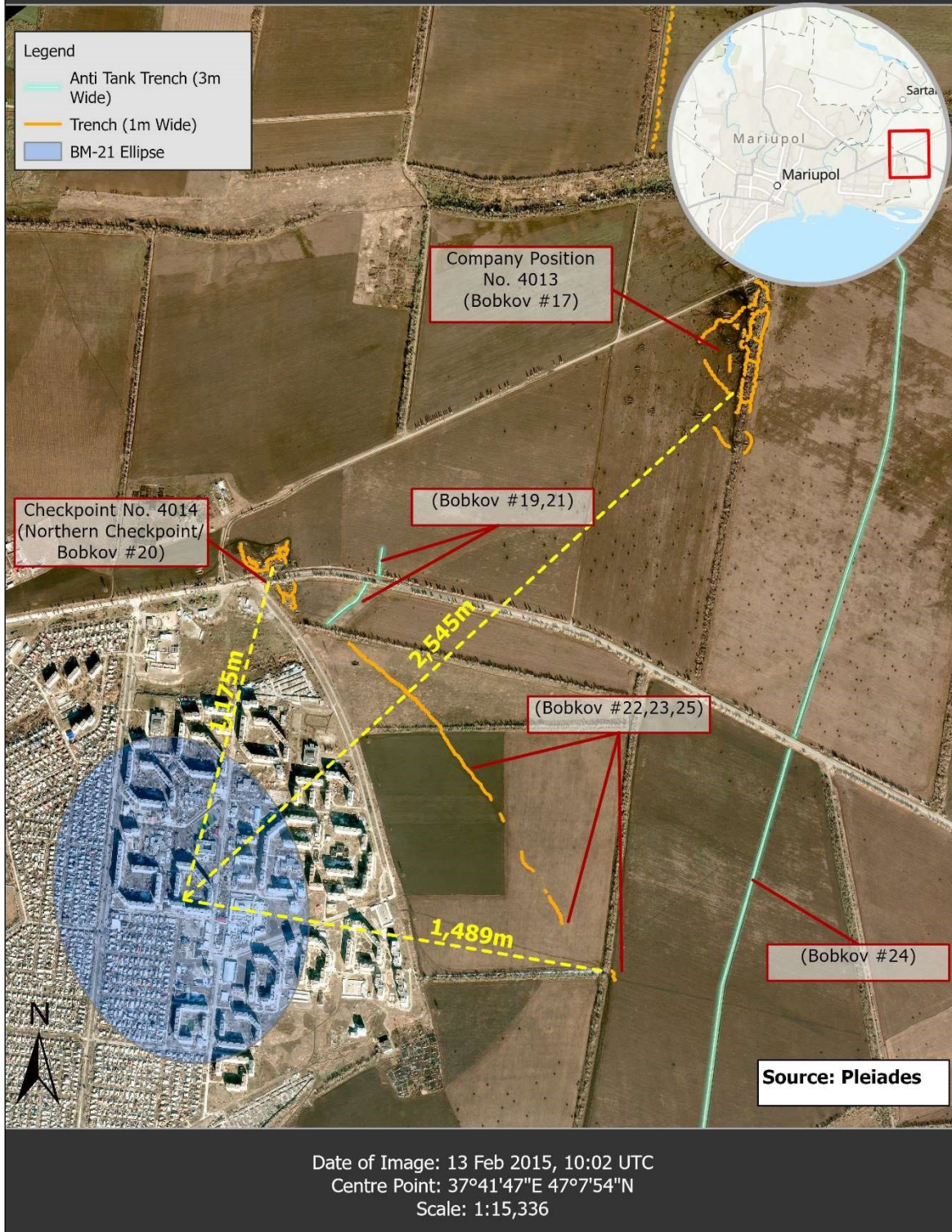


Figure 26. Distance from the Mean Point of Impact in the Vostochniy Neighbourhood to Ukrainian National Guard Locations.⁴²

⁴² Measurements are derived from satellite imagery and thus are subject to a small margin of error due to the resolution of the imagery.

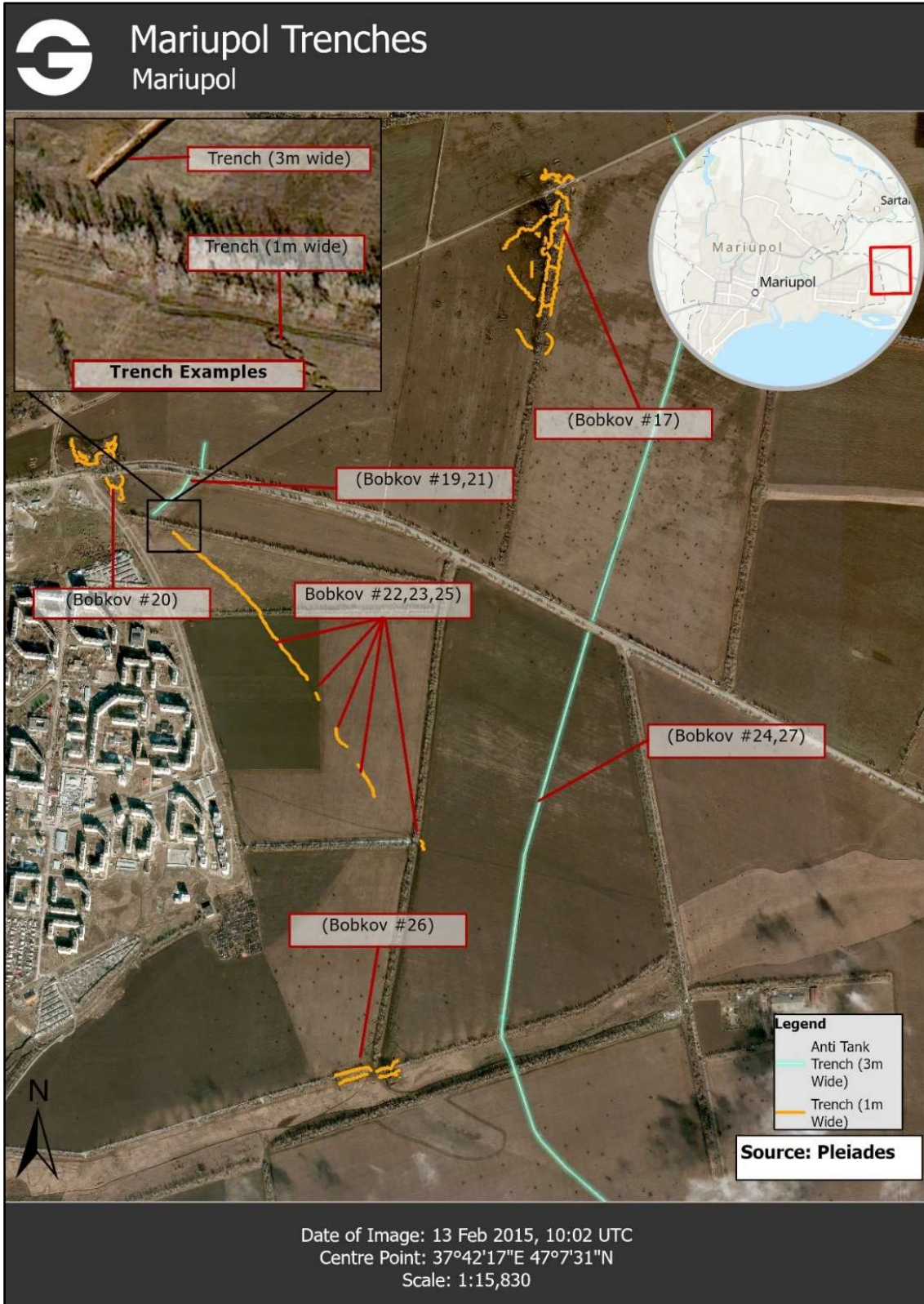


Figure 27. Trenches to the East of Mariupol.⁴³

⁴³ Measurements are derived from satellite imagery and thus are subject to a small margin of error due to the resolution of the imagery.

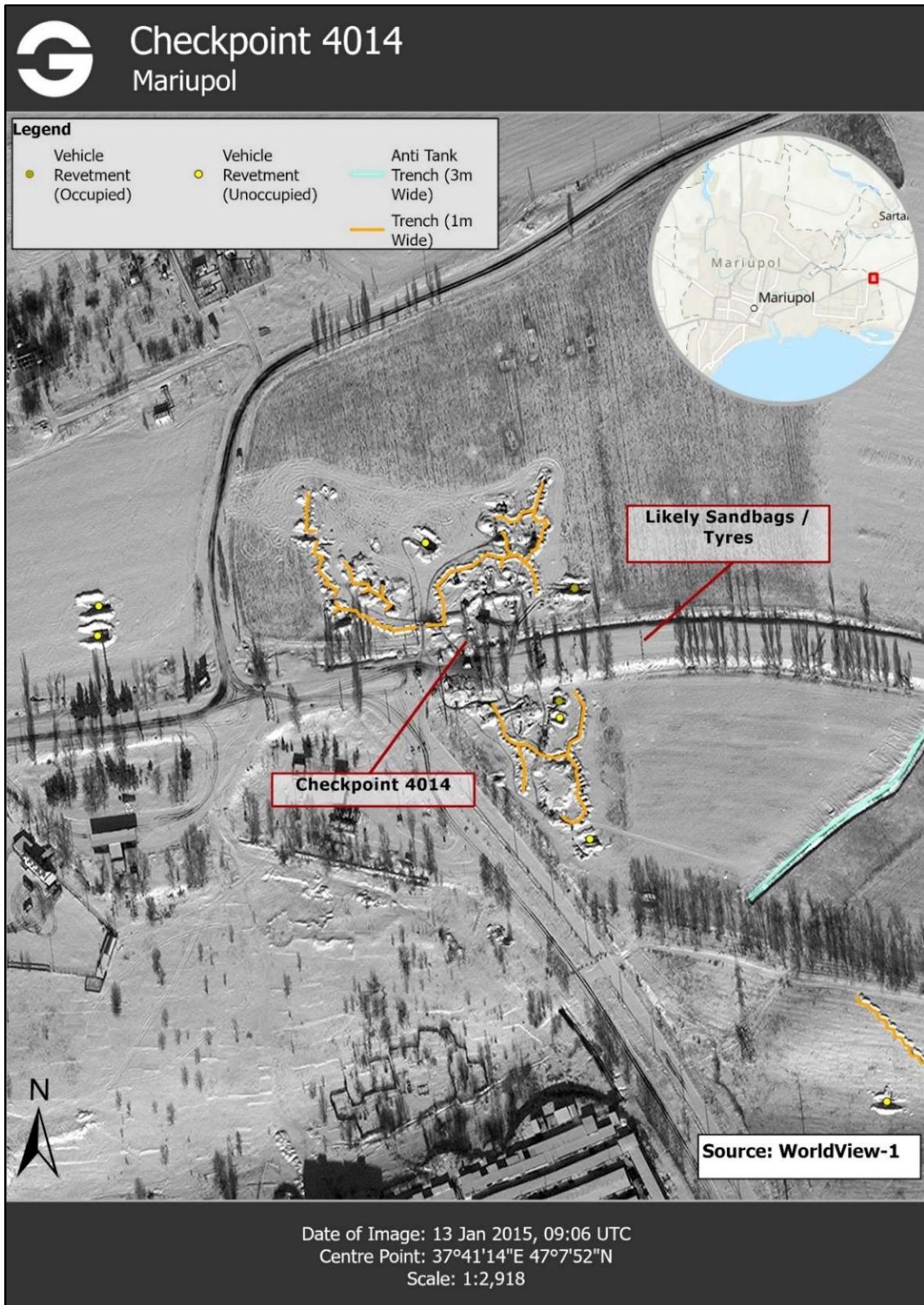


Figure 28. Checkpoint 4014 (or the “Northern Checkpoint”).⁴⁴

⁴⁴ Bobkov Position 20. See Bobkov Report, Figure 26 (Russia’s Counter-Memorial Part I, Annex 1).

B. Potential Point of Origin

63. We were also asked to conduct imagery analysis in order to ascertain a potential point of origin for the attack on Mariupol. We were asked to investigate three areas of interest. The first two areas of interests were based on OSCE reporting of firing positions during this period at Verkhnohyrokiwske (formerly “Oktyabr”) in the vicinity of 47°14’4.08”N 37°51’41.80”E (“Point of Origin Analysis Area A”), and Zaichenko in the vicinity of 47°11’0.89”N 37°51’39.41”E (“Point of Origin Analysis Area B”).⁴⁵ In addition to these two areas of interest based on OSCE reporting, we were also provided with a third area of interest north of Bezimenne (47°6’33.28”N 37°56’4.58”E) and east/northeast of Sakhanka (47°7’43.11”N 37°51’35.53”E) and Leninske (47°8’30.85”N 37°51’6.91”E) (“Point of Origin Analysis Area C”). This allowed us to analyse three areas of interest with satellite imagery.

64. General Brown also assesses in his report that the firing direction was from the east or north-east to a distance of around 15 to 19 km.⁴⁶ We corroborated this assessment based on Figure 24 (above), which depicts an impact crater in the side of a residential building facing east.

65. All of the above allowed for a more refined search area to assess any associated military activity or likely DPR firing positions. Figure 29 (below) is a consolidated overview of this information plotted for context and reference. Limitations of available imagery precluded an analysis immediately before or after the attack. Pleiades imagery of 18 January 2015 was used for pre-incident patterns of life and World View 2 imagery of 13 February 2015 was used for analysis after the event. These were the closest images available to the attack.

66. We identified probable historical DPR MLRS firing positions on the pre- and post-strike imagery of 18 January 2015 and 13 February 2015 (Figures 31 to 34, below). The dates of this imagery preclude the establishment of a direct link between the identified likely

⁴⁵ See 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) (Ukraine’s Memorial, Annex 328).

⁴⁶ See Brown First Report, para. 47 (Ukraine’s Memorial, Annex 11).

launch points and the attack on Mariupol; however, they demonstrate that these areas were used over this period of time by the DPR for launches towards Ukraine government-controlled territory. The “shoot and scoot” tactics likely to be employed by MLRS operators (in which the launchers spend a minimum amount of time at a launch site to prevent counter-targeting), makes it unlikely that launch vehicles would be evident on imagery on the day of attacks unless the satellite pass coincided with the launch period. Following a launch, these vehicles are highly likely to rapidly depart the launch location and withdraw out of range of counter-fire, or at least head under cover where they cannot be located.



Mariupol Tactical Overview

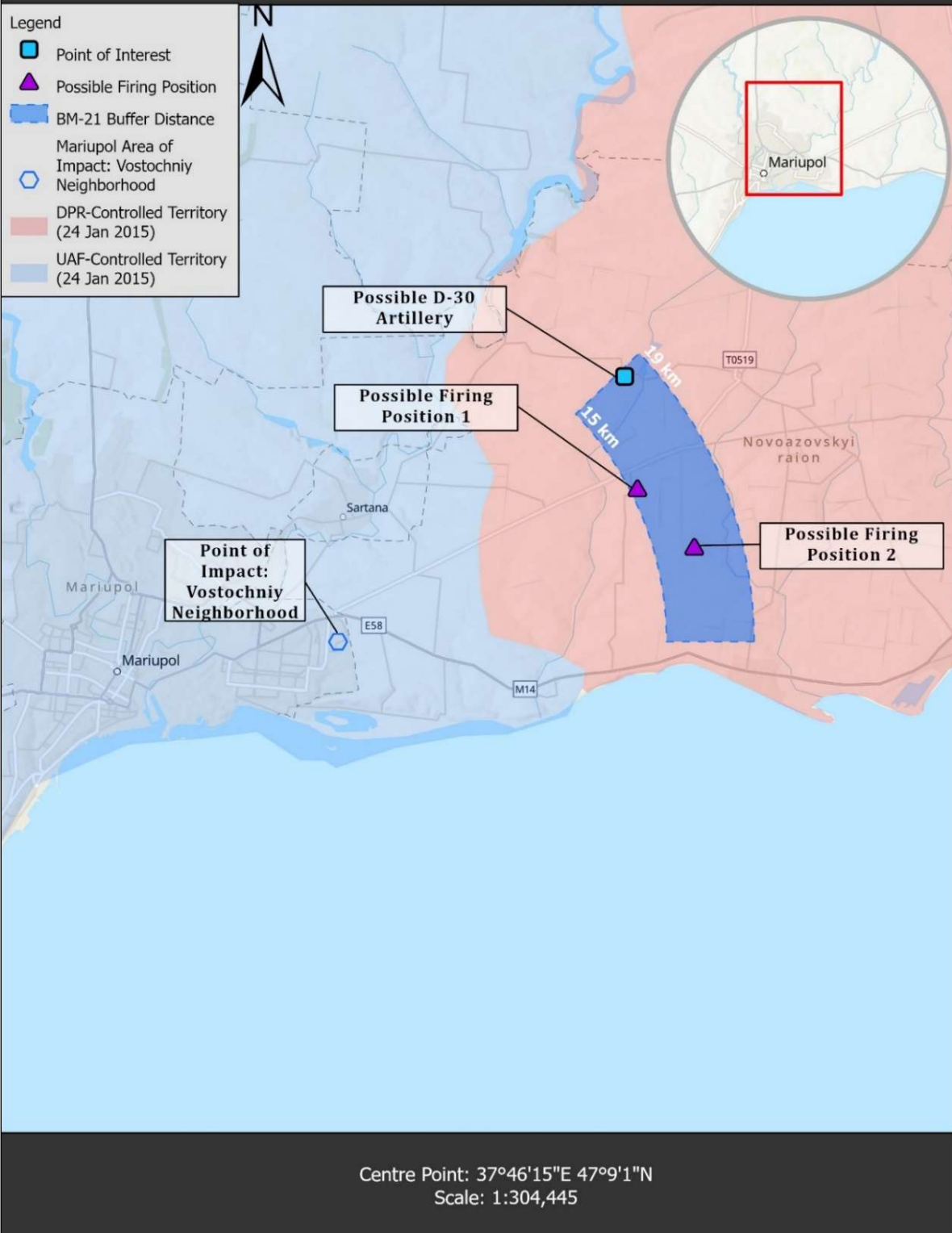


Figure 29. Mariupol Point of Origin Analysis Overview

1. Pre-Incident Point of Origin Analysis

67. Pre-incident imagery for Point of Origin Analysis Area A evidenced three vehicles assessed to be possible D-30 (“Howitzer”) artillery (see Figure 30, below). The size and shape of the vehicles is more consistent with a Howitzer shape than what would be expected from box bodied vehicle features associated with MLRS weapon systems. This suggests that a D-30 Howitzer artillery weapon system was operating within DPR-controlled territory at least one week prior to the attack on the Vostochniy neighbourhood.

68. Scorch marks consistent with what would be expected from a BM-21 weapon system were found in Point of Origin Analysis Areas B and C (see Figures 31 and 32, below), however, this imagery was captured pre-incident so the scorch marks cannot be attributed to the attack on Mariupol. That said, our assessment based on the pattern of images over time is that this area was commonly used for MLRS launches and the direction of scarring suggests launches directly to the west in the direction of Ukraine government-controlled territory and Mariupol.



Point of Origin Analysis Area A (Pre-Incident)

Verkhnohyrokiivske

Legend

— Trench



Date of Image: 18 Jan 2015, 17:59 UTC
Centre Point: 37°51'40"E 47°14'1"N
Scale: 1:10,530

Figure 30. Point of Origin Analysis Area A (Pre-Incident).



Point of Origin Analysis Area B (Pre-Incident)

Zaichenko

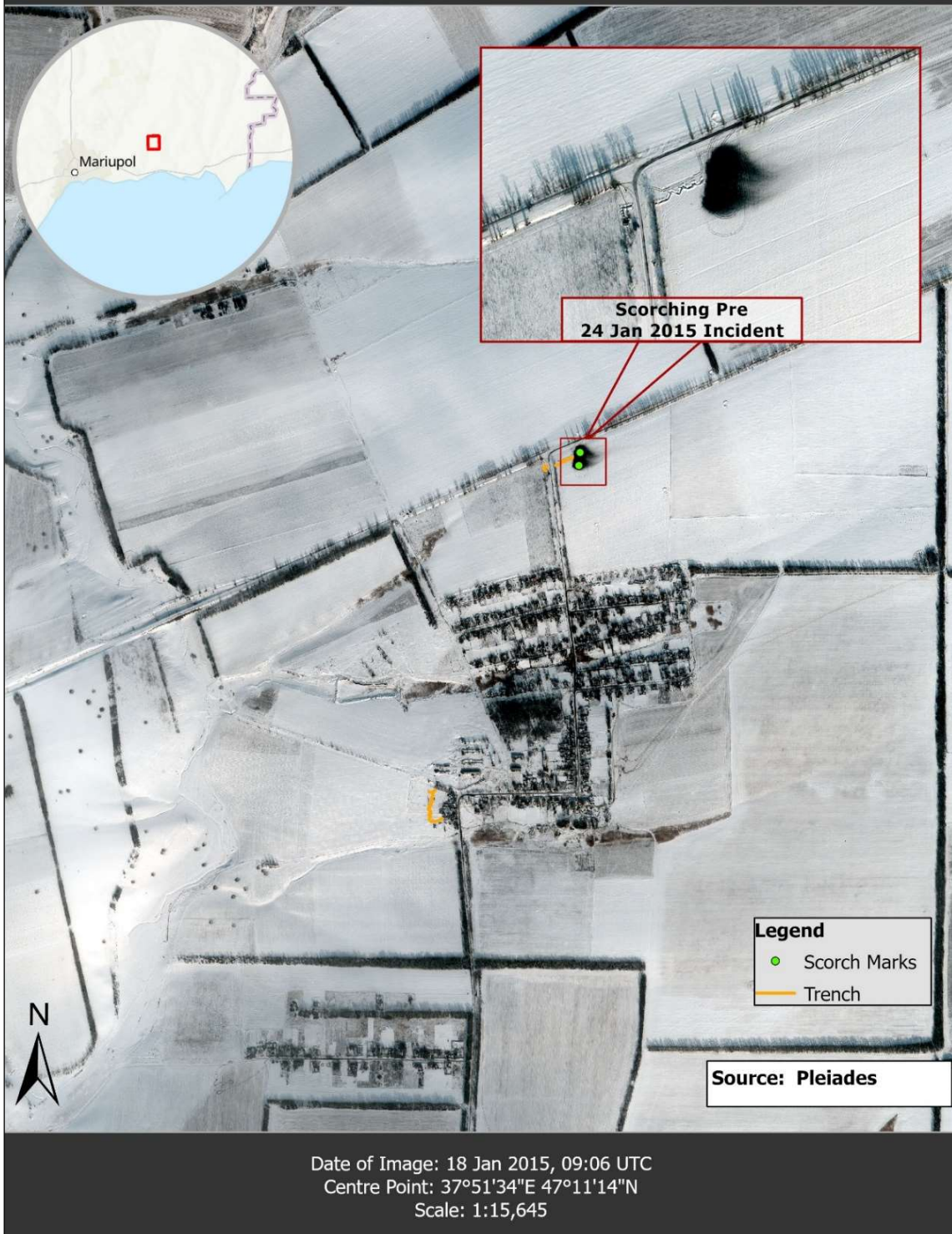
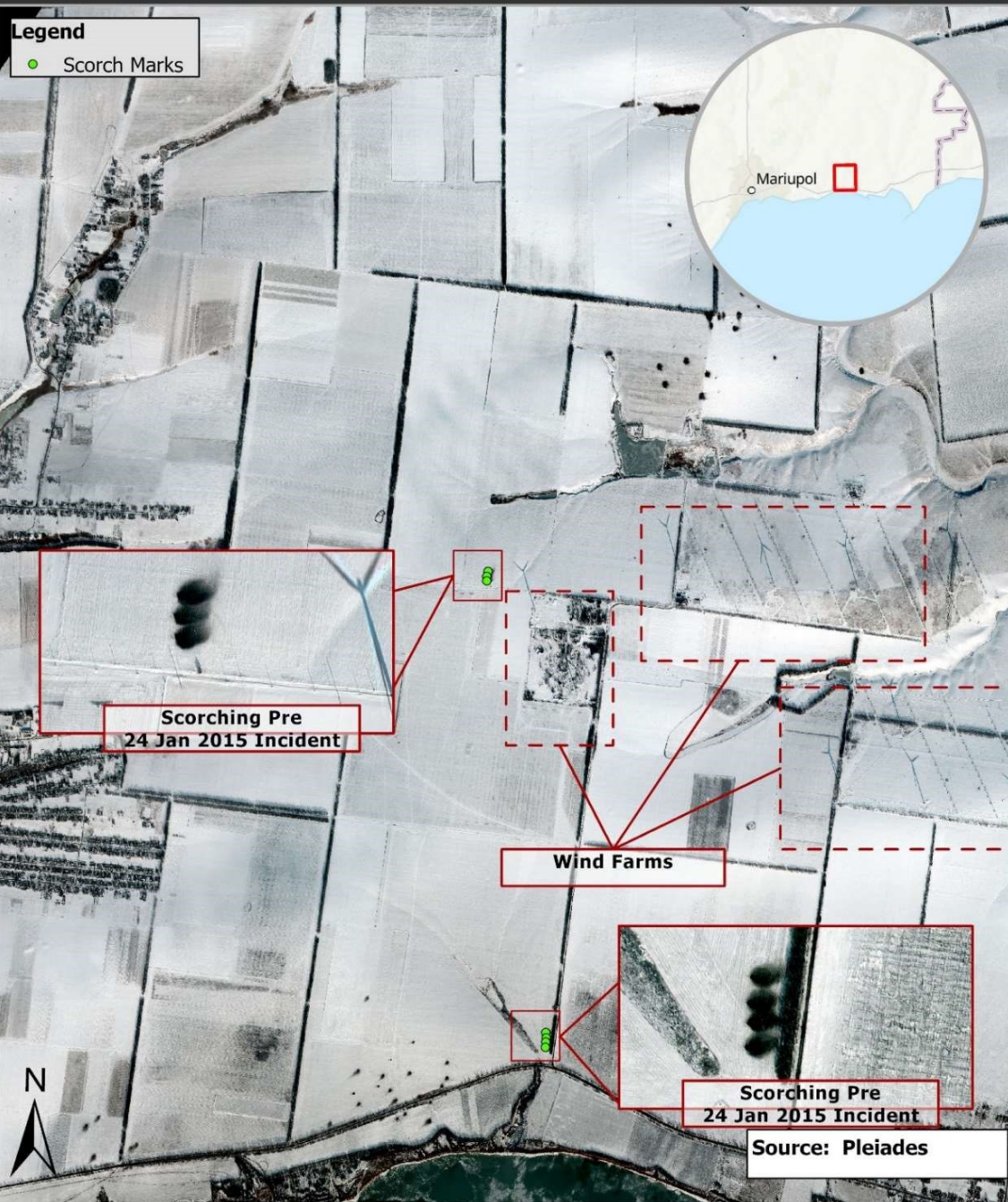


Figure 31. Point of Origin Analysis Area B (Pre-Incident).



Point of Origin Analysis Area C (Pre-Incident) Novoazovs'kyi District



Date of Image: 18 Jan 2015, 17:59 UTC
Centre Point: 37°53'38"E 47°8'23"N
Scale: 1:27,895

Figure 32. Point of Origin Analysis Area C (Pre-Incident).

2. Post-Incident Point of Origin Analysis

69. Two likely BM-21 firing positions were found in post-incident imagery with distinctive vehicle tracks and fading remnants of scorch marks visible (see Figures 33 and 34, below). Since the attack on Mariupol occurred on 24 January 2015 and the available imagery is from 18 February 2015, the imagery cannot be used to identify a precise date when each of the additional firing positions was used. However, we can assess that both of these locations were used to carry out MLRS attacks in the direction of Ukraine government-controlled territory around the time of the attack on Mariupol.

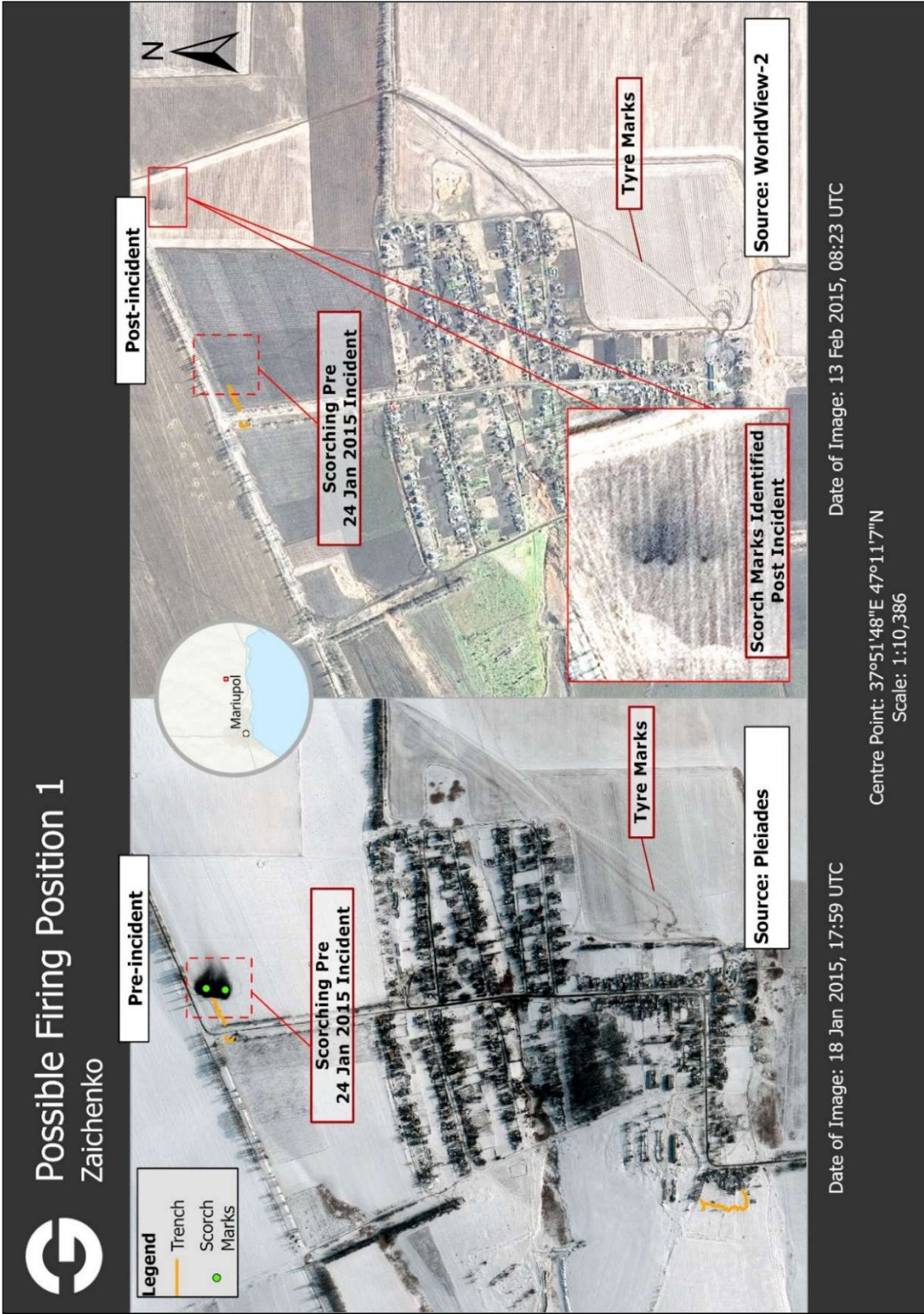


Figure 33. Mariupol Possible Firing Position 1.



Possible Firing Position 2

Novoazovs'kyi District

Source: Pleiades

Pre-incident



Source: WorldView-2

Post-incident

Date of Image: 18 Jan 2015, 17:59 UTC

Date of Image: 13 Feb 2015, 08:23 UTC

Centre Point: 37°54'2"E 47°09'27"N

Scale: 1:16,679

Figure 34. Mariupol Possible Firing Position 2.

C. Conclusions

70. Our analysis of available satellite and open-source imagery of the attack on Mariupol indicates extensive damage to the Vostochniy neighbourhood. As demonstrated above (see Figure 26), the Ukrainian National Guard locations on the outskirts of the city were between 1.1 to 2.5 km from the mean point of impact in the Vostochniy neighbourhood, and there is no evidence in available satellite imagery that the trenches east of the city were occupied or continually used by National Guard personnel. Furthermore, as stated above, there is no evidence of any strengthening of Ukraine's defensive posture on the outskirts of the city before the date of the attack.

71. Finally, as demonstrated above, we identified MLRS firing locations in DPR-controlled territory east of the city in the 15 to 19 km firing range assessed by General Brown. We also identified possible D-30 Howitzer artillery within DPR-controlled territory on satellite imagery dated 18 January 2015 (see Figure 30, above), which suggests this more precise weapon system was available to DPR fighters in the region at least one week prior to the attack.

IV. SHELLING OF THE RESIDENTIAL AREA OF KRAMATORSK — 10 FEBRUARY 2015

72. 30 images were sourced as available and relevant for the shelling in Kramatorsk, taking into account the Kramatorsk residential area, the airfield, and potential points of origin. In total, five images were purchased covering the dates 8 January 2015 to 18 February 2015.

73. The closest useable satellite imagery of Kramatorsk, for both point of origin and the residential area, available pre-incident was from 8 January 2015. As this was over a month before the attack, no appropriate analysis of the attack could be identified from the capture itself. The intervening imagery leading up to the attack on 10 February 2015 was obscured by heavy cloud cover and unusable for analysis, and the closest date of imagery of Kramatorsk post-attack, of a resolution high enough for meaningful analysis, was 13 April

2015.⁴⁷ For these reasons, we relied on handheld open-source imagery for our analysis of damage to the Kramatorsk residential area.

A. Impact Location

1. Damage to Kramatorsk Residential Area

74. We relied on handheld open-source imagery to view areas of the Kramatorsk residential area that had been hit by projectiles. We understand, based on General Brown's assessment, that the attack on Kramatorsk was conducted using a BM-30 "Smerch" deploying cluster munitions.⁴⁸ As explained in a report from the International Partnership for Human Rights regarding the attack on Kramatorsk, BM-30 cluster munitions typically deploy small fragments (see Figure 35, below).⁴⁹ As each individual piece of metal is small in diameter, much of the damage to the Kramatorsk area would not have been immediately detectable on satellite imagery even if it had been available during the relevant time period.

⁴⁷ The length of time between the attack and the available imagery meant that we could not rely on satellite imagery to conduct accurate and credible damage analysis of the residential area after the attack on 10 February 2015.

⁴⁸ See Brown First Report, para. 61 (Ukraine's Memorial, Annex 11).

⁴⁹ See International Partnership for Human Rights, *Rockets Hit Residential Area in Kramatorsk, Ukraine* (2015), p. 4.

 **BM-30 Cluster Sub-Munitions**
Kramatorsk



Figure 35. Fragments from BM-30 Cluster Sub-Munitions Collected at Kramatorsk.⁵⁰

75. We did locate several open source images identifying the tail section of a BM-30 rocket in the Kramatorsk residential area. Figure 36 (below) displays a BM-30 rocket tail fin identified on 43 Lenin Street in Kramatorsk.⁵¹ Lenin Street is located north of the central street in Kramatorsk and has residential buildings along the length of the street. Figure 37 (below) demonstrates the distance from the assessed location of the tail fin to the Kramatorsk airfield.

⁵⁰ International Partnership for Human Rights, *Rockets Hit Residential Area in Kramatorsk, Ukraine* (2015), p. 4.

⁵¹ The location of the tail section was geo-located to 43 Lenin Street by identifying key characteristics in satellite imagery, notably the residential buildings in the background of the photo, as well as the street junction in the upper-left corner of the image.



Tail Fin in Residential Area (Open Source) Kramatorsk

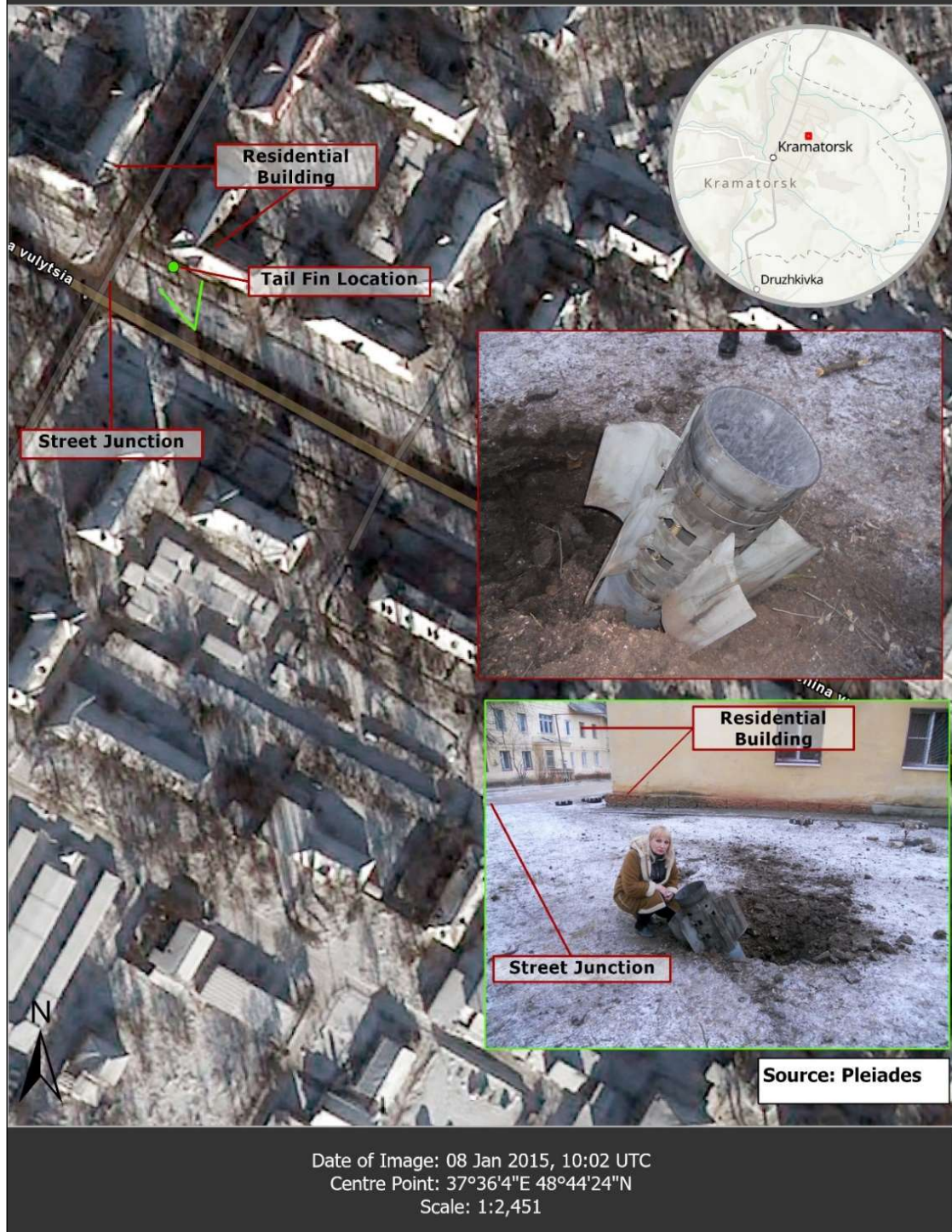


Figure 36. Tail Fin Identified in Kramatorsk Residential Area.⁵²

⁵² Twitter, *Попадание снаряда возле дома по ул. Ленина 43*, https://twitter.com/kramatorsk_ukr/status/565176911845134339 (10 February 2015).



Tail Fin in Residential Area (Open Source) Kramatorsk



Figure 37. Distance from Assessed Tail Fin Location in Kramatorsk Residential Area to Kramatorsk Airfield.⁵³

⁵³ Measurements are derived from satellite imagery and thus are subject to a small margin of error due to the resolution of the imagery.

76. Based on the impacts documented at the Kramatorsk airfield and residential area by Ukrainian investigators (see Figure 38, below), General Brown identified potential BM-30 fall of shot patterns for the attack.⁵⁴ We plotted these potential fall of shot patterns as ellipses on satellite imagery. These ellipses are oriented on a line of fire to target of 5900 mils (332 degrees) (General Brown's assessed direction of fire for the 10 February 2015 attack on Kramatorsk). The findings demonstrate an impact spread at Kramatorsk that exceeds the shot pattern from one volley of BM-30 rockets. The graphics illustrating these potential BM-30 fall of shot patterns for the attack on Kramatorsk can be found at Figures 39 to 41 (below).

⁵⁴ See Brown Second Report, para. 42 (Ukraine's Reply, Annex 1).

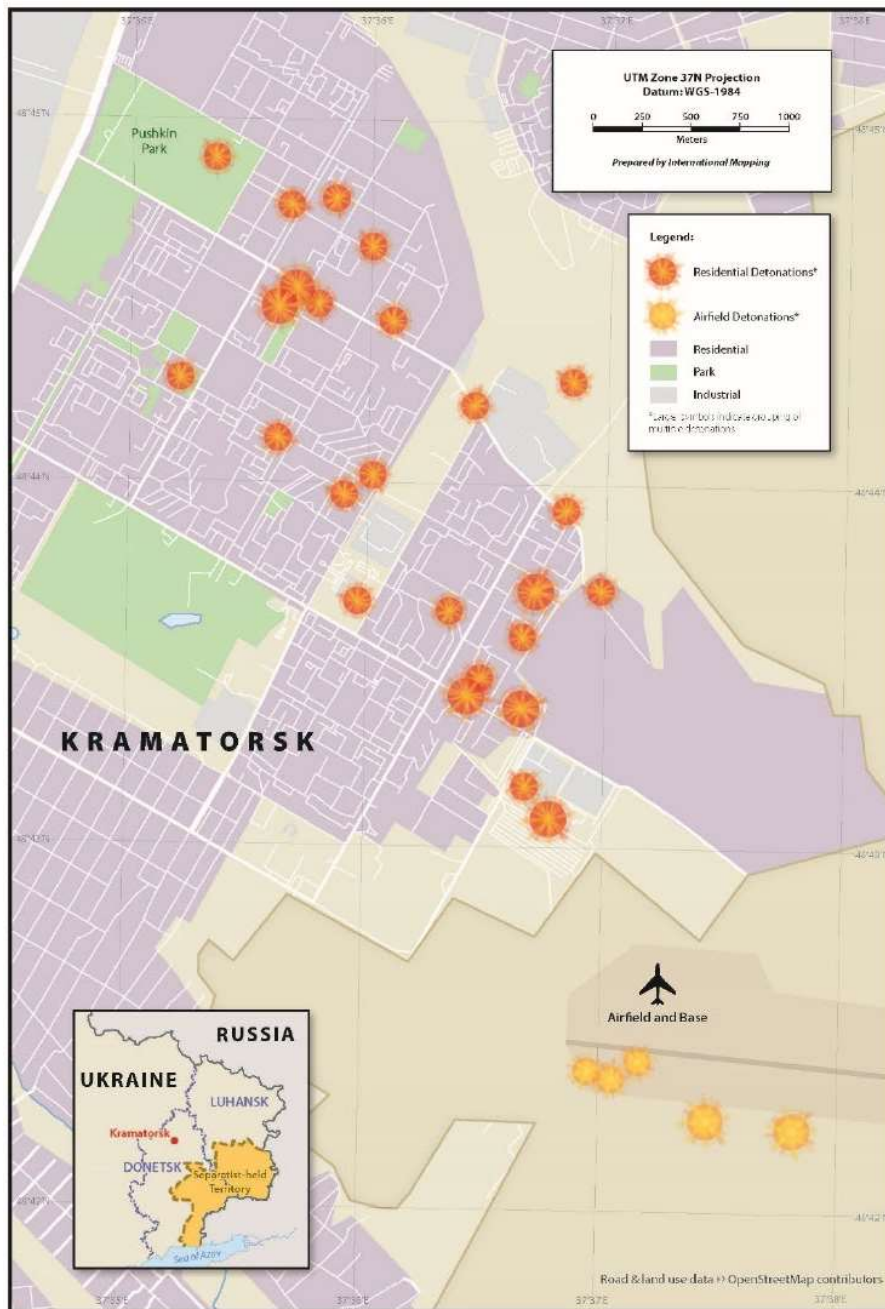


Figure 38. Documented Shelling Impacts at Kramatorsk (Ukraine’s Memorial, Map 5).⁵⁵

⁵⁵ Ukraine’s Memorial, Map 5 (demonstrating an approximately 5 km spread of impacts between the Kramatorsk airfield and the residential area).



Kramatorsk Fall of Shot Graphic 1

Kramatorsk

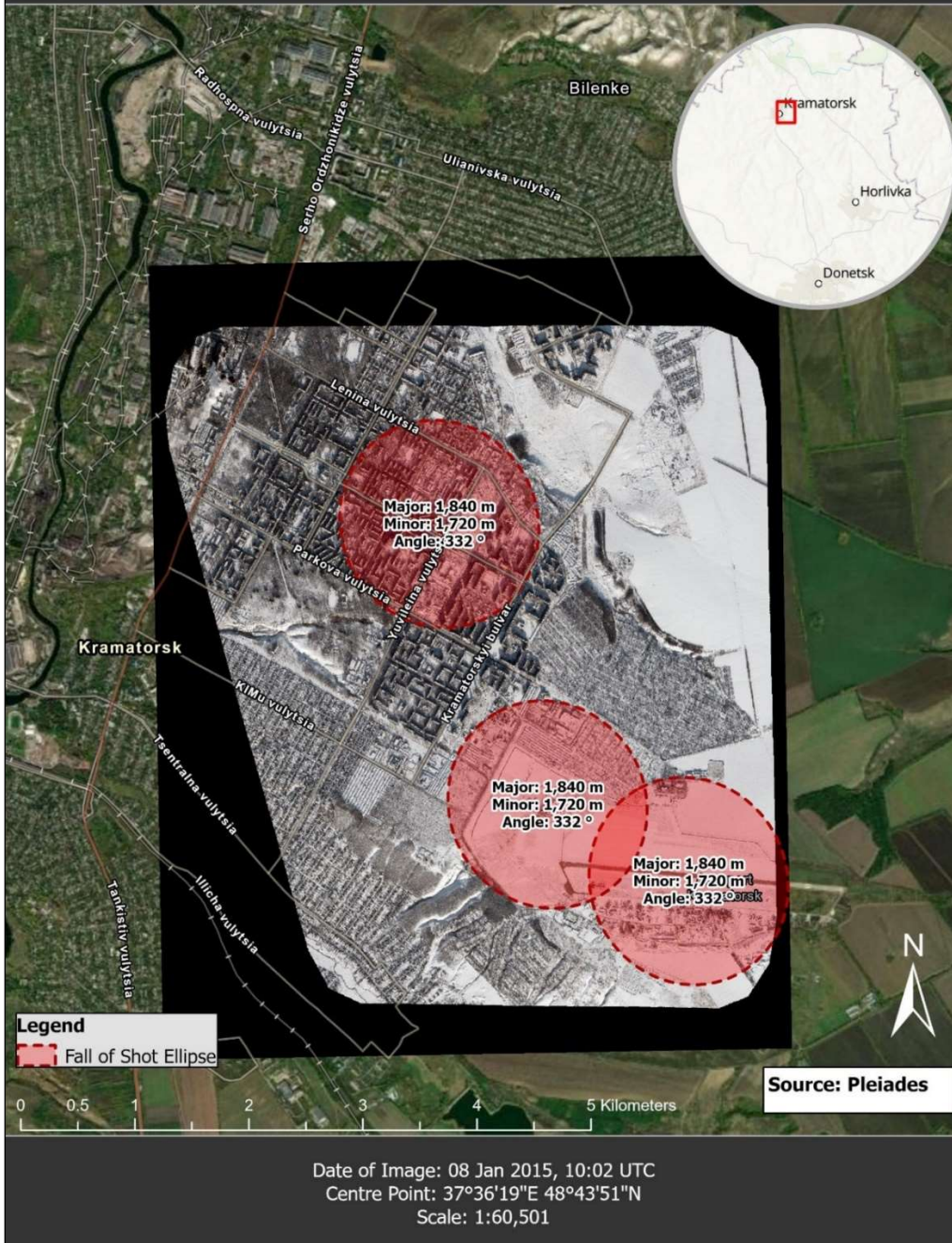


Figure 39. Kramatorsk Fall of Shot Graphic 1.⁵⁶

⁵⁶ Ellipse size is based on the fall of shot pattern created by one volley of BM-30 rockets at 70 km range. See Brown Second Report, Figure 16 (Ukraine's Reply, Annex 1).



Kramatorsk Fall of Shot Graphic 2

Kramatorsk

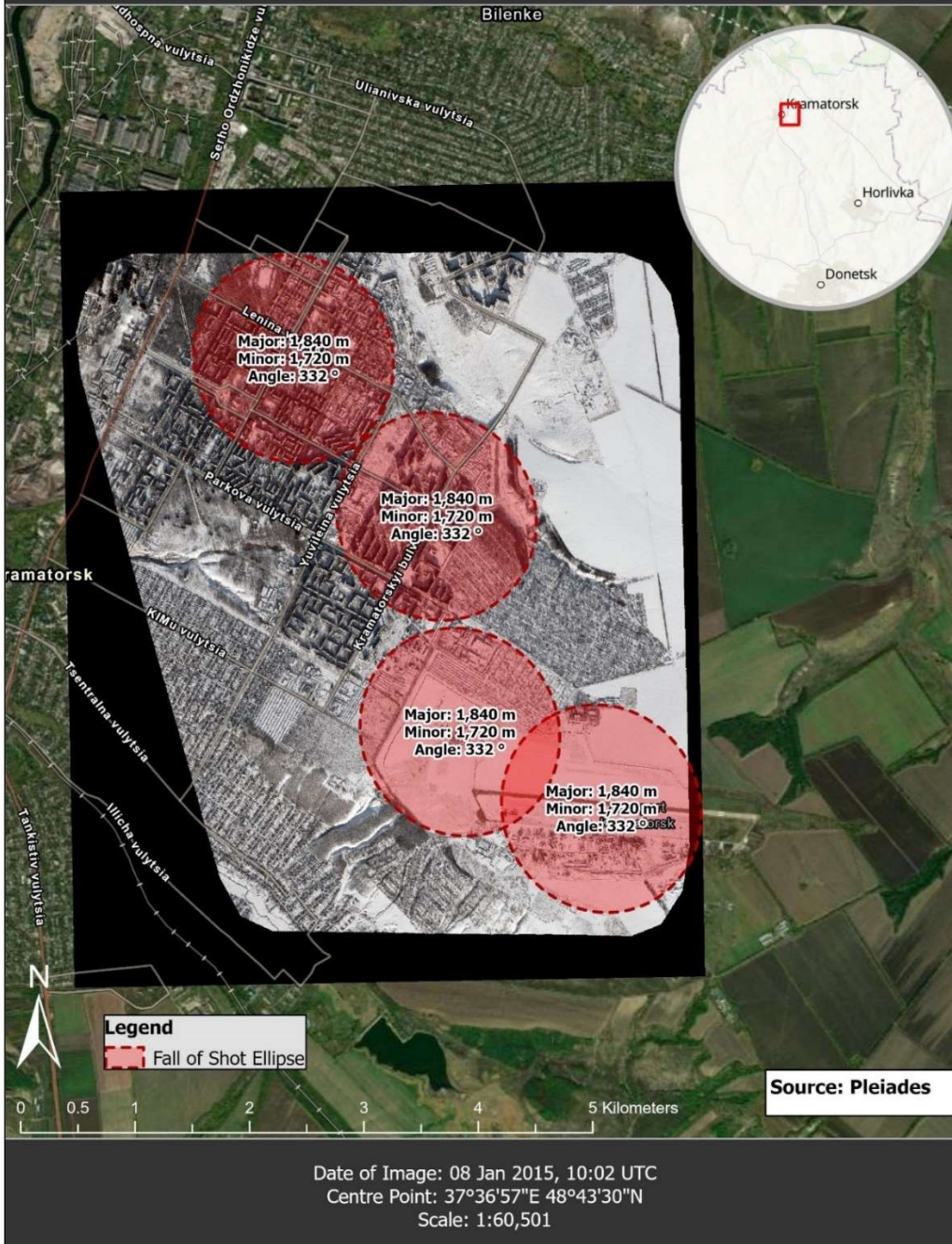


Figure 40. Kramatorsk Fall of Shot Graphic 2.⁵⁷

⁵⁷ Ellipse size is based on the fall of shot pattern created by one volley of BM-30 rockets at 70 km range. See Brown Second Report, Figure 16 (Ukraine's Reply, Annex 1).



Kramatorsk Fall of Shot Graphic 3

Kramatorsk

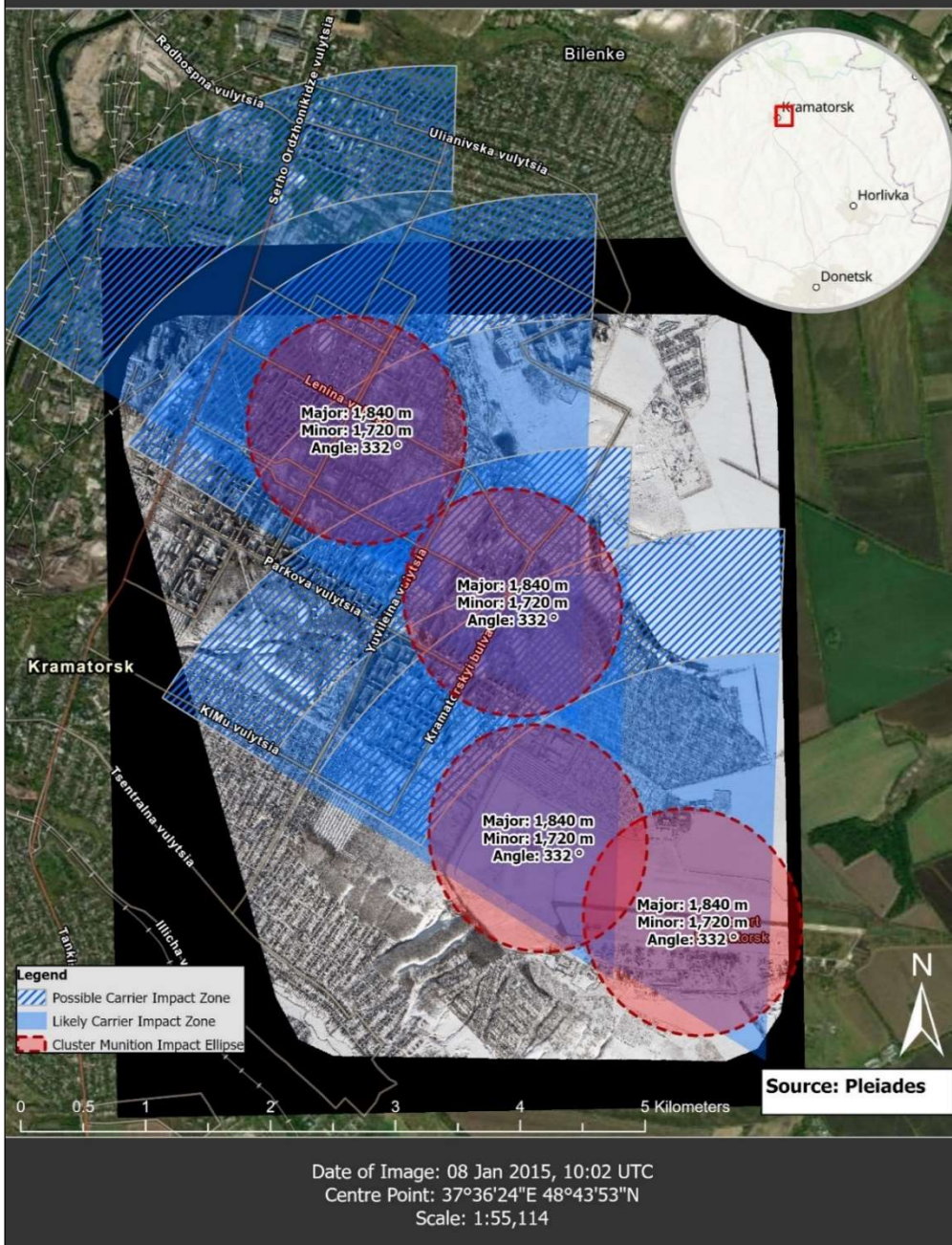


Figure 41. Kramatorsk Fall of Shot Graphic 3.⁵⁸

⁵⁸ Ellipse size is based on the fall of shot pattern created by one volley of BM-30 rockets at 70 km range. See Brown Second Report, Figure 16 (Ukraine’s Reply, Annex 1). The carrier element impact zones are based on General Brown’s calculations regarding the distance carrier elements would travel once a rocket fired at 70 km range has discharged its cluster munitions. See Brown Second Report, para. 47(a) (Ukraine’s Reply, Annex 1).

B. Potential Point of Origin

77. We were also asked to conduct imagery analysis in order to ascertain a potential point of origin for the attack on Kramatorsk. General Brown assessed a potential point of origin within a 10 km radius of the city centre of Horlivka, 50 to 70 km away from Kramatorsk.⁵⁹ Based on this assessment, we utilized 21 February 2015 Google Earth imagery around the city of Horlivka to locate indications of potential MLRS firing positions.

78. In proximity to Horlivka's city centre, we identified two positions that contained key characteristics indicative of a probable firing position of a MLRS system.⁶⁰ These positions were located at 48°18'20"N 38°8'2"E (Possible Firing Position #1) and 48°18'28"N 38°14'31"E (Potential Point of Origin #2).

79. Figure 42 (below) is a consolidated overview of this information plotted for context and reference. Limitations of available imagery precluded an analysis within hours of the attack, however they demonstrate that these areas within DPR-controlled territory were used for probable MLRS launches towards Ukraine government-controlled territory. Pre-incident Pleiades imagery of 18 January 2015 was used to assess patterns of life and to conduct comparative analysis in order to detect vehicle tracks and scorch marks before and after the attack. Post-incident World View 2 imagery from 13 February 2015 and Maxar Google Earth imagery from 27 February 2015 was the nearest available imagery to analyse after the attack.

⁵⁹ Brown First Report, para. 65 (Ukraine's Memorial, Annex 11).

⁶⁰ We also identified other indications of BM-30 operating in the region, as well as another possible BM-30 firing position, although we did not assess that this location was associated with the attack on Kramatorsk.



Kramatorsk Tactical Overview

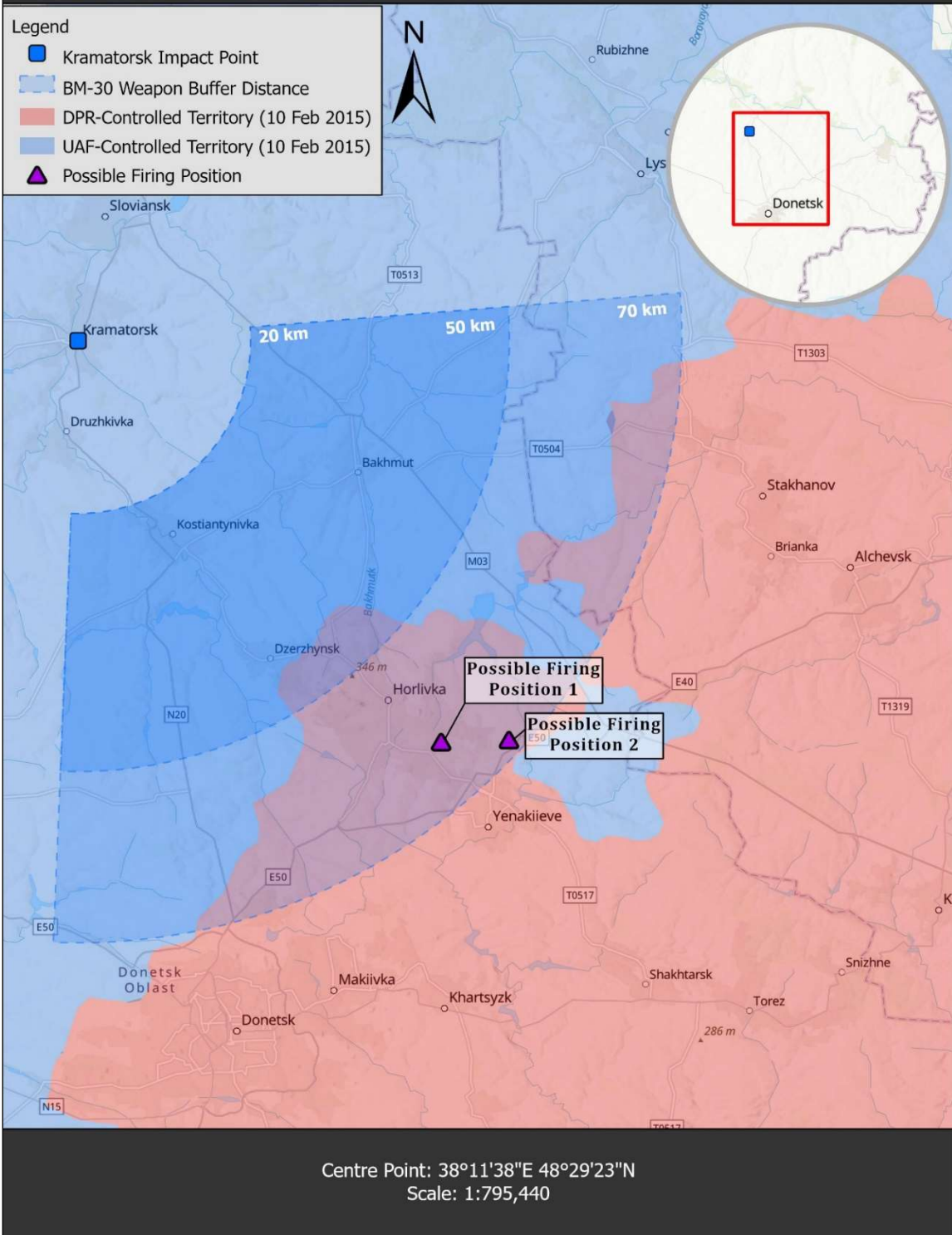


Figure 42. Kramatorsk Point of Origin Analysis Overview.

1. Possible Firing Position 1

80. Possible Firing Position 1 was located within General Brown's assessed 10 km radius from the centre of Horlivka. At Possible Firing Position 1 (see Figure 43, below), defined tyre tracks almost certainly identify vehicle movements in the field. Multiple sets of tyre tracks suggest that several vehicles were active in this position. Each set of tracks conducts a sharp turn, heading back to the outskirts of a field.

81. Within each set of tracks we identified an area of ground disturbance associated with MLRS firing activity (assessed as ground scarring or scorching). Each area of disturbance correlated to a set of tracks, which led us to assess this location as a probable MLRS launch area. Each set of tracks indicate that the vehicles were facing in a northern direction. As Kramatorsk is north to northwest of this firing position, there is a realistic possibility that this position could have been used to target Kramatorsk on the day of attack.

82. Each set of tracks identified in this position were located approximately 20 metres apart (see Figure 44, below). A level of separation is often seen by MLRS units in order to avoid damage to surrounding units when firing. It is likely that due to the close proximity of each set of tracks, each vehicle would have been operating independently. The size of the rocket fired by a BM-30 would require a larger safe separation distance if firing at the same time, with 20 metres likely being too small of a distance for multiple BM-30 launchers to be operating at once. Analysis of the width of each set of tracks resulted in a measurement of approximately 3 metres, allowing a small margin of error for satellite imagery measuring software. The width of a BM-30 system is 3.1 metres,⁶¹ which is consistent with the measurement of the track widths in the potential firing position.

⁶¹ See Bellingcat, *Bellingcat Report - Origin of Artillery Attacks on Ukrainian Military Positions in Eastern Ukraine Between 14 July 2014 and 8 August 2014* (17 February 2015).

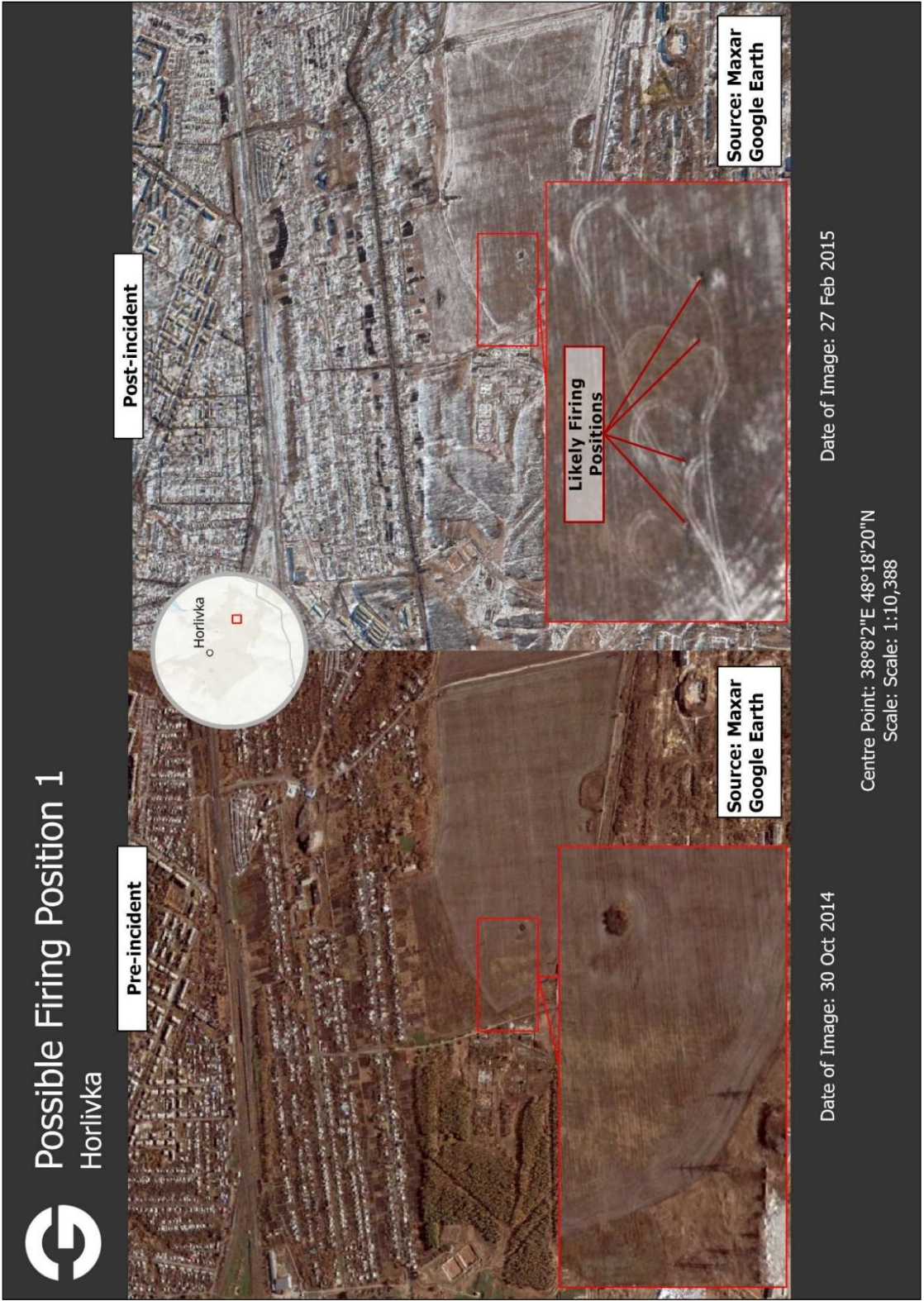


Figure 43. Kramatorsk Possible Firing Position 1.



Figure 44. Kramatorsk Possible Firing Position 1 (Measurements).⁶²

⁶² Measurements are derived from satellite imagery and thus are subject to a small margin of error due to the resolution of the imagery.

2. Possible Firing Position 2

83. Possible Firing Position 2 was located within General Brown's assessed firing area, 15 km from the centre of Horlivka. The possible firing position was located in a field on the city outskirts of Horlivka, with multiple areas identified indicative of a probable MLRS firing position.

84. Figure 45 (below) shows evidence of multiple vehicles operating in the field. Each set of tracks is located 18 to 30 metres apart. As with Figure 44 (above), this is likely indicative of units keeping a safe separation distance when firing, so they do not damage surrounding vehicles.

85. Each set of tracks also face in a north to northwest direction. Kramatorsk is located northwest of this position so it is a realistic possibility that this firing position could have been used for the attack on Kramatorsk. The faded scorch marks are almost certainly because of the elapsed time between the MLRS launch and the capture of the satellite image.

86. Analysis of the width of each set of tracks resulted in a measurement of approximately 3 metres (see Figure 46, below). As stated above, the width of a BM-30 system is 3.1 metres which is consistent with the track width measurements observed in imagery.



Figure 45. Kramatorsk Possible Firing Position 2.

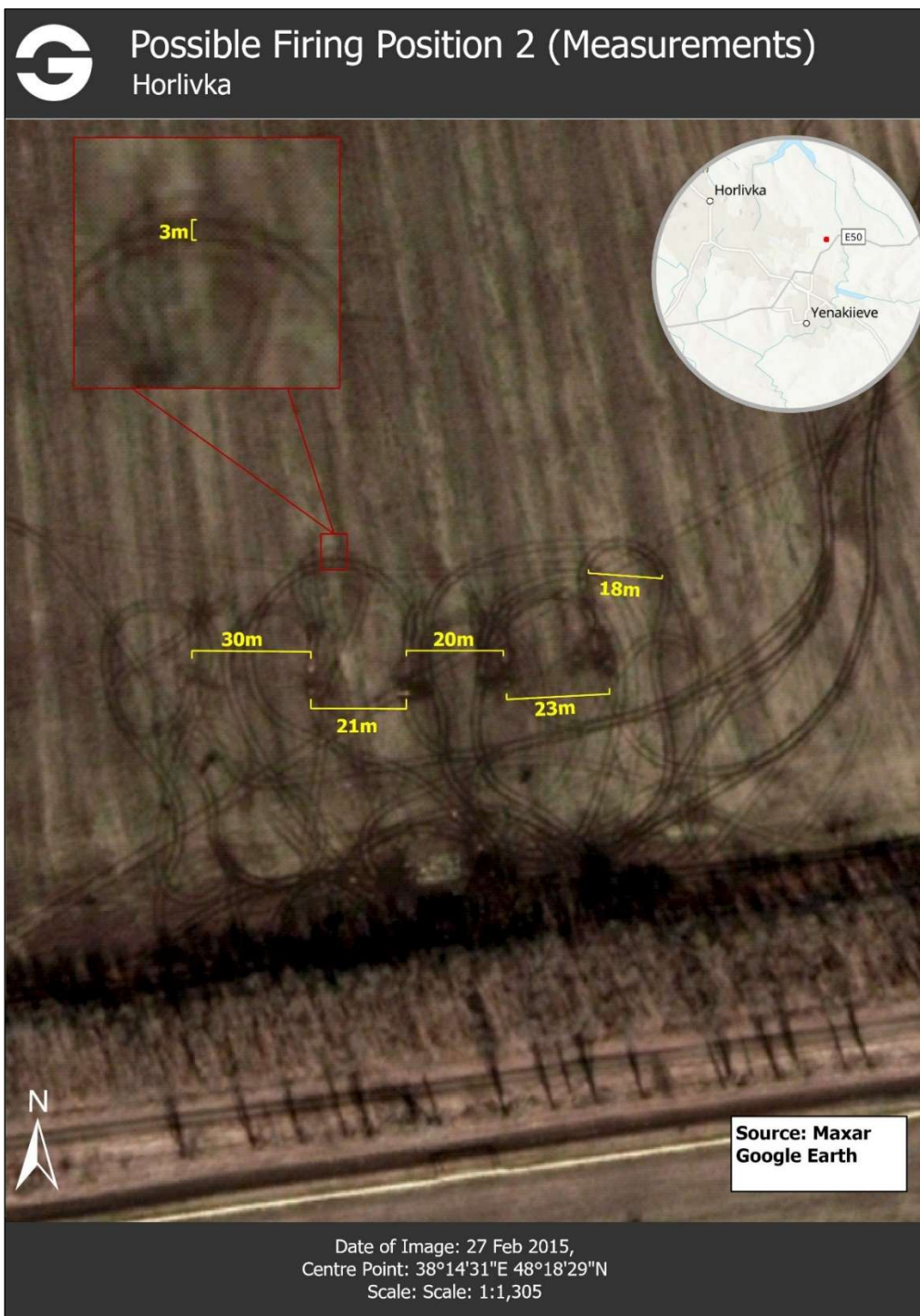


Figure 46. Kramatorsk Possible Firing Position 2 (Measurements).⁶³

⁶³ Measurements are derived from satellite imagery and thus are subject to a small margin of error due to the resolution of the imagery.

C. Conclusions

87. Our analysis of the shelling attack on Kramatorsk demonstrates that the documented spread of cluster munition impacts at the airfield and the residential area exceeds the coverage area from one volley of BM-30 rockets, which supports General Brown's assessment that the airfield and the residential area were attacked separately.⁶⁴ Additionally, we found evidence of a tail fin in the residential area 6.8 km from the centre of the airfield (see Figure 37, above). As General Brown explains in his second report, given the distance from the airfield to the location of the tail fin in the residential area it is highly unlikely that this tail fin came from a BM-30 rocket targeted at the airfield.⁶⁵

88. Finally, our point of origin analysis identified two possible BM-30 firing positions in the vicinity of Horlivka and within General Brown's assessed firing range of 50 to 70 km. These findings demonstrate that this area around Horlivka was used by the DPR for likely MLRS launches towards Ukraine government-controlled territory around the time of the attack on Kramatorsk.

⁶⁴ Brown Second Report, para. 48(b) (Ukraine's Reply, Annex 1).

⁶⁵ *Ibid.*, para. 47(a).

V. STATEMENT OF TRUTH

89. We understand that our duty in giving evidence in this case is to assist the ICJ in deciding the issues in respect of which expert evidence is adduced. We have complied with, and will continue to comply with, that duty.


90. We confirm that this report contains our impartial, objective, and unbiased opinion, which has not been influenced by the pressures of the dispute resolution process or by any party to the proceeding.

91. We confirm that all matters upon which opinions have been expressed are within our areas of expertise.

92. We confirm that, at the time of providing this written opinion, it is considered to be complete and accurate and constitute our true, professional opinion.

93. We confirm that if, subsequently, these opinions require any correction, modification or qualification, we will notify the parties associated to this case forthwith.

Signed in Bristol, United Kingdom on April 19th, 2022.

By:  _____

Ms. Catherine Gwilliam

Signed in Digby, United Kingdom on April 20th, 2022.

By:  _____

Air Vice-Marshal Anthony Sean Corbett

Annex 1

Catherine Gwilliam Geollect CEO/Co-Founder

Over 18 years' experience as a Geospatial Intelligence Specialist with vast involvement across multiple US government and commercial sectors. Served in the US Intelligence Community with the National Geospatial-Intelligence Agency (NGA) as a specialist embedded within the US Secret Service, US Navy Central Command, and US Department of Homeland Security. Provided geospatial products in support of top-level protective operations, military and diplomatic operations, disaster relief operations and critical infrastructure protection missions. As CEO/Co-Founder of Geollect Limited, applying geospatial expertise and commercial knowledge across public and private sectors with great success.

Career Summary

Chief Executive Officer/Co-Founder, Geollect Limited – Bristol, UK Jan 2017 - present

One of two co-founders of Geollect – a geospatial intelligence and data analytics company. Developed the business strategy and carried the business from a concept phase to start-up phase with an established customer base.

Head of Pre-Sales, Rezatec Ltd. – Harwell, Oxfordshire, UK Jan 2016 – Jan 2017

Lead for all pre-sales activity to include technical development, project management, marketing, product demonstration, writing business proposals and developing pricing strategies for geospatial data services for water utilities, energy infrastructure and agriculture.

Branch Chief/Geospatial Analyst, NGA – Washington, DC, USA Jan 2011 – Dec 2015

Served various roles at NGA Headquarters and detailed to US Military, Intelligence, Homeland Security and Law Enforcement agencies. Provided regionally focused custom GIS products and analysis, structured data management, services, and training. Collaborated with and supported US Federal, State and Local agencies, US Intelligence Agencies, and Coalition partners globally to create geospatial products for military operations, homeland security, law enforcement operations, protective security operations, counterterrorism, and disaster relief operations. Received awards and recognition from the US Ambassador to Bahrain, Naval Criminal Investigative Service (NCIS) leadership, and the Director of NGA.

NGA Headquarters – Springfield, VA, USA

- As Branch Chief, responsible for supervising analysts' tasking and production, and reviewing intelligence products before publication. Coordinated asset tasking based on incoming intelligence requirements for a team of 10 imagery and geospatial analysts.
- As Lead GEOINT Analyst (GA) on a regionally focused team, implemented instrumental changes to the way geospatial data was captured and visualized, resulting in more substantive analytic assessments. Using data mining techniques and multiple datasets from various platforms, identified correlations in 3D space and time, decreasing the time necessary to analyze specific patterns of activity or changes in activity. Responsible for interpreting optical and synthetic-aperture radar (SAR) imagery to identify specific assets within military targets, and track changes to targets over time. Ensured the team followed data and metadata capture standards and conducted quality control on all geospatial datasets. Using new online mapping

capabilities, changed the way regional events were captured from collection of imagery over specific target sets, displayed and disseminated to customers, which included the major US Intelligence agencies.

US Navy Fifth Fleet Headquarters – Manama, Bahrain

- Supported US Navy Fifth Fleet Headquarters, Combined Maritime Forces Central Command, United Kingdom Maritime Component Command, NCIS, CIA, DIA, Diplomatic Security Regional Security Office, and other US Federal Agencies. As the sole GA in a fast-paced command environment, balanced multiple competing tasks with short deadlines, prioritized tasks based on customer's needs, integrated multiple geospatial and image data sources to create fused analytic products that had a direct impact on mission success and enabled customers to create and maintain their own GEOINT capabilities. Production included ad-hoc situational awareness map products, exploitation of remote-sensing data, customized GEOINT charts and maps and geospatial data packages in support of operations and strategic planning and decision making. Key production efforts had major impacts on force protection and protective security operations, as well as fleet intelligence indications and warning.

United States Secret Service (USSS) – Washington, DC, USA

- Provided geospatial products and services in support of security planning for global travel of USSS protectees and the security operations of National and International Security Special Events between 2012 to 2013. During the events, played a pivotal role in establishing the use of a geospatial mobile application which tracks locations of assets and captures events from the field into a geospatial data service and viewer. Additionally, coordinated data requirements across NGA and US Federal, State and Local agencies, created geospatial products, briefed USSS Field Offices, and ran NGA operations during events.

US Department of Homeland Security (DHS) Office of Intelligence & Analysis – Washington, DC, USA

- Played an integral role in helping develop, refine, and manage the geospatial imagery and data requirements and standards for DHS. Provided geospatial support to emergency management operations and analyzed effects on critical infrastructure for various levels of manmade and natural disasters using remote sensing techniques. Implemented a new standard for critical infrastructure mapping in preparation of hurricane season, helping policy makers better plan disaster relief operations.

Geospatial Analyst, US Department of Homeland Security *Jul 2009 – Jan 2011*
Arlington, VA, USA

- As part of the DHS Office of Infrastructure Protection (IP), provided tailored geospatial visualization and spatial analysis support focused on critical infrastructure protection to the homeland security community at the local, state and federal level. Collaborated with state and agency partners to share critical infrastructure data to facilitate data exchange efforts and maintain accuracy in geospatial production efforts. Served as the Project Lead, Geospatial Analyst, and Cartographer on various GIS products provided to homeland security mission partners to refine their strategic

requirements and enhance their operations. As Project Lead, managed a team of 10 analysts on the production of a situational awareness map book for the 2010 Vancouver Olympics.

- Served as the Geospatial Analyst detailee to the DHS IP Incident Management Cell. Created short-suspense geospatial products using GIS, remote sensing, and social and physical sciences that fused critical infrastructure, intelligence and incident-specific data in support of major incident reporting for the Daily Update Brief to the Assistant Secretary for IP.
- Served as a GIS facilitator for emergency management training to over 30 individuals from 4 nations for the US Army Corps of Engineers Civil Military Preparedness Program in Kyiv, Ukraine.

Staff Officer, NGA – Reston, VA USA

Apr 2008 – Jan 2011

Senior Consultant, Booz Allen Hamilton – Norfolk, VA USA

Jul 2004 - Apr 2008

Certifications

National System for GEOINT: GEOINT Professional Certification - Fundamentals

Annex 2

Air Vice-Marshal Anthony Sean Corbett CB MBE MA RAF

Anthony Sean Corbett retired from the Royal Air Force in September 2018 after a 30-year career as a professional intelligence officer, where he reached the pinnacle of his profession. He then established a Defence, Security and Intelligence Directorate within a new-space geospatial intelligence company, where he advanced innovative AI applications to earth observation data in support of the defence and security sector. A long-term champion of Open-Source Intelligence, he instigated the concept of 'intelligence as a service', leveraging a wide spectrum of publicly available information to answer challenging questions for the community. In October 2019, he set up his own business as a consultant specialising in the provision of strategic advice, commercial intelligence, the space sector, and the optimisation of organisational leadership and change management.

Sean has a wealth of operational experience and a deep understanding of the global intelligence community from his time in the military, having served tours of duty in Northern Ireland, Iraq, Afghanistan, Somalia, the Balkans, Libya and Central America. He has commanded at every rank level, including a tour as Commander of the Joint Service Signals Organisation, the Head of Intelligence at the UK's Permanent Joint Headquarters and as the Chief of UK Intelligence in Afghanistan, and has held leadership positions in a number of single-source intelligence disciplines, (IMINT, GEOINT, SIGINT and OPINT).

He also has strong international credibility, having held the influential roles of Principal Staff Officer to NATO's Deputy Supreme Commander, Europe, and as the deputy UK Military Representative to NATO. He also led the NATO Targeting Cell within the CAOC, Vicenza, during the Kosovo crisis. Continuing the theme of working closely with allies and partners, his last appointment in the military was two years in Washington DC as the first non-US Deputy Director of a major US Intelligence Agency. His primary role here was to optimise intelligence sharing with the 'Five Eyes' community, other US allies and partners, by developing and implementing a transformational change programme throughout the US intelligence community.

Sean was awarded an MBE in 1999 for his role in the Kosovo crisis and in 2018 was made a CB. He is a senior associate fellow of the Royal United Services Institute (RUSI), the oldest independent defence and security think-tank in the UK, where he acts as the geospatial intelligence subject matter expert and is a member of the US Cipher Brief experts.

Annex 3

Second Witness Statement of Refat Chubarov (21 April 2022)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

**APPLICATION OF THE INTERNATIONAL CONVENTION FOR
THE SUPPRESSION OF THE FINANCING OF TERRORISM AND
OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION
OF ALL FORMS OF RACIAL DISCRIMINATION**

**UKRAINE
v.
RUSSIAN FEDERATION**

WITNESS STATEMENT OF REFAT CHUBAROV

A. Introduction

1. I submitted a witness statement relating to my work as Chairman of the Mejlis of the Crimean Tatar people during the provisional measures phase of these proceedings. I provide this second witness statement to respond to Russia's mischaracterization of the Citizens' Blockade of 2015 and its claim that the Blockade justified Russia's ban of the Mejlis.

B. The Purpose of the Citizens' Blockade of 2015

2. The Citizens' Blockade refers to a peaceful, non-violent, open-to-the Ukrainian and international public, civil action at the administrative border with Crimea, on the mainland Ukrainian side, intended to stop the delivery of goods and services from the mainland to the temporarily-occupied Autonomous Republic of Crimea and the City of Sevastopol, which, in turn, contributed to the strengthening of the Russian occupation power in Crimea, including its militarization.

3. The high-level objectives of the movement were: (1) to prevent actions by the Government of Ukraine in the maintenance of economic, including energy, links with Crimea that could cast doubt on Ukraine's continuing sovereignty over the peninsula; (2) to put the problem of Russian-occupied Crimea back on the agenda of Ukraine and the international community with a view to achieving de-occupation and the restoration of Ukraine's territorial integrity; (3) to deter Russian efforts to colonize Crimea with its own citizens by raising the cost to Russia of maintaining the occupation; and (4) to put pressure on the

Russian occupation authorities of Crimea to observe elementary human rights in relation to the inhabitants of Crimea.

4. The immediate aims of the Civil Blockade were approved by participants in the action at a meeting on 21 September 2014 and announced in an official statement of the headquarters of the action on the same day.¹ Noting that de-occupation would require special conditions, the participants in the Civil Blockade declared that their actions would be aimed at achieving the following specific goals:

- Effective protection of the rights and freedoms of citizens of Ukraine who live in the territory of the temporarily occupied Crimea;
- Immediate cessation of repression and discrimination carried out by the Russian occupation authorities in Crimea against the citizens of Ukraine — residents of Crimea, activists of the Crimean Tatar national movement, members of the Mejlis of the Crimean Tatar people and of local bodies of national self-government of the Crimean Tatars;
- Immediate release of political prisoners: Akhtem Chiygoz, Ali Asanov, Rustem Vaitov, Mustafa Degermendzhi, Ruslan Zeytullayev, Oleksandr Kolchenkp, Nuri Primov, Ferat Sayfullayev, Nadezhda Savchenko, Oleg Sentsov;
- Lifting the ban on entry into Crimea on the leader of the Crimean Tatar people, Mustafa Dzhemilev; the Chairman of the Mejlis of the Crimean Tatar people, Refat Chubarov; public activists, Ismet Yuksel and Sinaver Kadirov;
- Cancellation of falsified criminal cases against Crimean residents — activists of social movements;
- Ensuring conditions for the permanent presence on the territory of the temporarily-occupied Crimea of international missions, in particular the U.N. mission.²

5. In addition, the participants of the Civil Action called on the Verkhovna Rada of Ukraine to cancel the Law of Ukraine “On Establishment of Free Economic Zone of Crimea and Special Aspects of Economic Activity in the Temporarily Occupied Territory of

¹ Facebook Post by Refat Chubarov (23 Sept. 2015) (Official Statement of the Headquarters of the “Public Blockade of Crimea”) (Ukraine’s Reply, Annex 139).

² *Ibid.*

Ukraine,” No. 1636-VII dd. 12.08.2014 (the “Law on FEZ”),³ as one that does not meet the goals and objectives of the de-occupation of Crimea and the restoration of the territorial integrity of Ukraine. This Ukrainian legislation offered tax preferences and continued trade and business opportunities to Ukrainian companies doing business in, and / or engaging in trade with, Crimea, which in turn benefited the occupying authorities.

6. The Law on FEZ, which took effect on 27 September 2014, provided for tax and customs benefits for enterprises engaging in commercial transactions between mainland Ukraine and Crimea. Essentially, it enabled supplies of goods, on preferential terms, to occupied Crimea, and, in my view, not only was indirectly sponsoring the Russian military stationed in Crimea through the lucrative business between mainland Ukraine and the peninsula that continued as usual, but contributed to the establishment of corrupt ties between Kyiv and Simferopol, which was extremely unsafe in the conditions of the Russian-Ukrainian war. The Law on FEZ did not serve any humanitarian purpose. In fact, data suggested that 80 per cent of the goods delivered from mainland Ukraine to Crimea were re-sold into Russia across the Kerch Bay. This was confirmed by Sergey Aksyonov, the Head of the so-called Republic of Crimea, who stated that any blockade would not have an impact on Crimea, as less than five percent of its supplies came from mainland Ukraine.

C. The Preparation for and the Initiation of the Citizens’ Blockade

7. In the weeks leading up to the initiation of the Civil Blockade, its organizers held press conferences and consultations with stakeholders in the Ukrainian government to ensure that our specific demands were clearly communicated. The initial announcement of the plan was made in a press conference on 8 September 2015, where the original initiators of the Blockade — Mustafa Dzhemilev, Lenur Islyamov, and myself — explained our specific

³ Law of Ukraine No. 1636-VII “On Establishing Free Economic Zone ‘Crimea’ and on Specifics of Conducting Economic Activity in the Temporarily Occupied Territory of Ukraine” (12 August 2014) (Ukraine’s Reply, Annex 90).

demands to the Ukrainian society and the government of Ukraine. Of the three initiators — Dzhemilev, Islyamov, and Chubarov — only I was, and am, a member of the Mejlis of the Crimean Tatar people, while we all acted in our personal capacity. This point was reflected in the Ukrainian press coverage of the announcement of the Blockade.⁴

8. After the initial announcement at a press conference and numerous subsequent briefings on various TV channels and Internet resources, I once again made an official announcement about the upcoming peaceful, non-violent Civil Blockade action on 14 September 2015 at a meeting of the conciliation council of parliamentary factions and groups of the Verkhovna Rada of Ukraine, which is a body of the Parliament of Ukraine, uniting the leaders of the Verkhovna Rada of Ukraine, heads of deputy groups and factions, and chairmen of Committees. The initiators also discussed the demands with then-President of Ukraine, Petro Poroshenko, and then-Prime Minister of Ukraine, Arseniy Yatsenyuk.

9. The initiators of the Civil Blockade hoped to garner broad public support, both within Ukraine and from international observers. We made public the location of the headquarters of the Blockade, and welcomed anyone who wished to join the initiative. Messages began to arrive from different places in Ukraine about the desire to participate in the announced action. Already on the first day of the action, 20 September 2015, its participants, along with the Crimean Tatars, were representatives from many Ukrainian public organizations. People's deputies of Ukraine attended the Civil Blockade action occasionally, while on the first day of the action, 20 September 2015, people's deputies of Ukraine of the eighth convocation — S. Semenchenko, I. Lutsenko, and V. Parasyuk — attended the action. The role of people's deputies was limited to communication with participants of the action and explanatory conversations with drivers of vehicles crossing the administrative line between the mainland of Ukraine and the temporarily-occupied Crimea.

⁴ See, e.g., Valentina Samar, *Zone of Special Inattention*, ZN.UA (11 September 2015) (Ukraine's Reply, Annex 186).

10. Notably, while the Civil Blockade was an initiative consisting of a wide range of individuals and organizations, the Mejlis did not play any separate role in it, or its preparation. It did not make particular statements or decisions concerning the Blockade as an institution. In fact, I consciously did not involve my fellow members of the Mejlis in the discussion of the preparation and conduct of the Civil Blockade action, since I had every reason to believe that the Russian occupation authorities would try to use the very fact of holding a peaceful, non-violent action as a pretext for persecuting and repressing members of the Mejlis of the Crimean Tatar people living in the occupied Crimea, as well as to compromise the Mejlis as the highest representative body of the indigenous Crimean Tatar people. As noted above, while I was among the initiators of the Civil Blockade, I did so in my individual capacity, and not as Head of the Mejlis⁵ — or, for that matter, as member of the Verkhovna Rada. Further, Mr. Dzhemilev, as a national leader of the Crimean Tatar people, and I were committed to doing everything in our ability to keep the Blockade peaceful and measured. The principle of non-violence, which is the fundamental principle of the Crimean Tatar national movement for many decades of struggle against the totalitarian Soviet regime, is extremely important for us even today, given our goal to ultimately bring meaningful changes through legislative and / or administrative means.

11. It is dishonest for Russia to point to the Blockade as a basis to ban the Mejlis. Russia's heavy reliance on things that had allegedly been said and done by another organizer of the Civil Blockade, Lenur Islyamov, who is not and has never been a member of the Mejlis, further shows the baselessness of Russia's claims.

D. The “Goods” and “Power” Blockades

12. The Citizens' Blockade was intended to be, and was implemented as, a peaceful and principled protest, within the territory of Ukraine. Starting on 20 September 2015, Blockade participants stood and marched at least several hundred meters away from

⁵ *Ukrainska Pravda, Chubarov: Mejlis Did Not Make a Decision on Blockade of Crimea* (19 February 2016) (Ukraine's Reply, Annex 140).

the demarcation line with Crimea on the mainland Ukrainian side, near the checkpoints in Kalanchak, Chaplinka, and Chongar. There were no interactions with Russian enforcement officers, border authorities, or any other Russian representatives. In order to ensure human rights to free movement, and in accordance with our goals, the Blockade participants ensured the unimpeded movement of cars and passenger buses without interruption and restricted only freight traffic. After the initial phase of the Blockade focusing on movement of wholesale lots began, I and other initiators of the Civil Blockade and other civil activists and reporters urged the Ukrainian government numerous times, both in their personal requests and statements to the media, to introduce regulatory or legislative measures to halt electricity supplies to the peninsula. Below, you may watch my speech at a meeting of the Verkhovna Rada of Ukraine on 09 December 2015, which I conclude with the following words: “I think this very hall, my colleagues, will not allow anyone now, not a single minister, not a single government to sign an agreement on the supply of electricity, even if they have to, until it says ‘Autonomous Republic of Crimea, Ukraine.’”⁶

13. As with the “Goods” Blockade, the “Power” Blockade consisted of a range of individuals and organizations that voluntarily participated in their individual capacity. My statements in support of the Blockade were made in my individual capacity — except when I was acting in my capacity as a member of the Verkhovna Rada of Ukraine to introduce a bill that would restrict the power supply from mainland Ukraine to Russian-occupied Crimea. The Mejlis did not play any role in this phase of the Blockade, or its preparation. It did not make official statements or decisions as an institution and no other members of the Mejlis, besides Mr. Dzhemilev and myself, issued a statement on the Blockade, whether in support or not.

⁶ Refat Chubarov, Speech given at Meeting 38, Session Hall of the Verkhovna Rada of Ukraine (09 December 2015) (Video), at <https://www.rada.gov.ua/meeting/stenogr/show/6064.html> (Ukraine’s Reply, Annex 188).

14. My immediate outrage concerning the power issues was prompted by a clear misstatement (whether deliberate or accidental) in the text of the agreement for the supply of energy to Russian temporarily-occupied Crimea, which defined Crimea in accordance with Russian terminology, i.e., the “Crimean Federal District” of the Russian Federation. On 23 November 2015, Prime Minister of Ukraine Arseniy Yatsenyuk called on the Prosecutor General’s Office to investigate possible violations by those responsible for signing the agreement. As with the “Goods” Blockade, my focus was on bringing changes through legislative and / or administrative means. On 9 December 2015, I, along with other members of the Verkhovna Rada, registered a bill that would, among other things, ban the supply of fuel and energy sources to the occupied territories.

15. The demand for the energy embargo was also aimed at ensuring that Russia direct its limited resources not at war, but at people’s lives. The electricity, produced in Crimea, was more than enough for the hospitals, schools, and kindergartens in the peninsula, but Russia was allocating a large share of the electricity supplies to its military units, as well as for the electrification of housing, massively erected for the movement of citizens of the Russian Federation to the territory of the occupied Crimea. Further, Russia was boasting about its impending plans to replace energy supplies from mainland Ukraine with its own supplies from mainland Russia.

16. When the overhead transmission pylons near Chaplinka, in the Kherson region of Ukraine, were damaged on 21 and 22 of November 2015, participants of the Blockade had varying views on whether it was appropriate to immediately resume the power supply by the government of Ukraine. Some believed that no repair works should be allowed until the occupying authorities accepted at least one of the Blockade’s demands. Some believed that the repair operations should be allowed as a gesture of goodwill, but that the supply to Crimea should not resume immediately.

17. My immediate reaction was that we should do everything possible to grant unobstructed access to all required services to repair damaged power transmission lines in

the Kherson region. When some of the Blockade participants did not accept this approach, Mr. Dzhemilev and I communicated with the Blockade participants at the border, and with the Ukrainian President, to clear up any misunderstanding on both sides and to prevent any escalations. The compromise we found then allowed us to continue working on finding legal solutions to the issue of cutting off the supply of electricity to the territory of the temporarily-occupied Crimea.

18. Complex discussions involving participants of the Blockade, government stakeholders, and repair operation personnel ensued in the following days. Ultimately, the repair crews began work on the Kakhovska-Tytan power line on 7 December 2015. Some of the Blockade participants disagreed with the decision to allow the supply to resume and withdrew from the Blockade. Looking ahead, I note that it was found, on the night of 31 December 2015 until 1 January 2016, the supply of electricity from the mainland of Ukraine to the territory of Crimea was stopped. Russia's suggestions that I, or the Mejlis, directed this later damage inflicted upon the transmission lines is baseless and not true.

19. Eventually, on 16 December 2015, the Cabinet of Ministers of Ukraine adopted Decree No. 1035, which limited passage of certain goods through the border between Ukraine and the temporarily-occupied territory of Crimea.⁷ With the Blockade's stated goal accomplished by the end of 2015, the organizers thereafter announced the end of the Blockade, which formally ended on 16 January 2016.⁸

20. I swear that the foregoing statement is true and accurate and agree to appear before the Court as necessary to provide further testimony.

⁷ Decree No. 1035 of the Cabinet of Ministers of Ukraine, 16 December 2015 on restriction of supply of certain goods (works, services) from the temporarily occupied territory to the other territory of Ukraine as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267 to Russia's Counter-Memorial), pp. 65-66.

⁸ Facebook Post of Rustem Irsay (16 January 2016) ("Last day of the civil blockade of occupied Crimea. Now it's the government responsibility to take care of it. We won!") (Ukraine's Reply, Annex 187).

Signed in Kyiv, Ukraine, on ___ April 2022.

By: [signature]
Refat Chubarov

Annex 4

Witness Statement of the Metropolitan of Simferopol and Crimea
Klyment (29 March 2022)

*This document has been translated from its original language
into English, an official language of the Court, pursuant to
Rules of the Court, Article 51.*

**APPLICATION OF THE INTERNATIONAL CONVENTION
FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM AND THE
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF
RACIAL DISCRIMINATION**

**UKRAINE
versus
THE RUSSIAN FEDERATION**

**WITNESS STATEMENT OF THE METROPOLITAN OF SIMFEROPOL AND
CRIMEA KLYMENT**

1. My secular name is Pavlo Mykolaiovych Kushch, although usually, according to the church tradition and rules, I am referred to as the Metropolitan of Simferopol and Crimea Klyment as the head of the Crimean eparchy of the Orthodox Church of Ukraine. I graduated from Kyiv Theological Seminary in 1997. I was ordained a priest of the Ukrainian Orthodox Church of Kyiv Patriarchate. Since 2000, I have been the head of the Crimean eparchy.¹ I had the rank of a bishop from 2000 to 2012, and since 2012 I have the rank of a metropolitan. Since 2020, I have the rank of the Metropolitan of Simferopol and Crimea. I worked closely with the Ukrainian community of Crimea before, during, and after the occupation of the peninsula by the Russian Federation. I have agreed to give this statement to present my view of the discrimination faced by this community under Russian rule.

**The Importance of the Ukrainian Orthodox Church for the Ukrainian
Community in Crimea**

2. For a long time, the Orthodox Church was the main embodiment of Christianity in Crimea as well as throughout Ukraine. After decades of persecution by the communist authorities in the Soviet Union, in Crimea Orthodoxy appeared again in the early 1990s as a strong spiritual force for the formation of Ukrainian statehood and

¹ Certificate of the Ukrainian Orthodox Church of Kyiv Patriarchate No. 390 (3 July 2017) (Ukraine's Reply, Annex 180).

did it with a special Ukrainian flavor. For the past several centuries, the Orthodox Church was under the control of Moscow Patriarchate throughout the region. While Ukraine gained its independence from the Soviet Union, many adherents of Orthodoxy in the country wanted their Church to have similar autonomy. Ukrainian Autocephalous Orthodox Church was restored in 1990, about 60 years after it was banned by the Soviet authorities in 1930. Ukrainian Orthodox Church of Kyiv Patriarchate (abbreviated as UOC-KP) was founded separately as a component of supporting the spiritual life of the Ukrainian people who wished to be free from the rule of Moscow. The desire of Ukrainian churches for local control over their affairs was fiercely opposed by Moscow Patriarchate which still seeks to defend its hegemony over the centralized Russian Orthodox Church.

3. During the Russian occupation of Crimea in the spring of 2014, I was the head of Kyiv Eparchy of UOC of Kyiv Patriarchate in the Autonomous Republic of Crimea and served as a bishop within the eparchy. The Unified Local Ukrainian Orthodox Church was established at the Unification Council on 15 December 2018 by merging Ukrainian Orthodox Church of Kyiv Patriarchate, Ukrainian Autocephalous Orthodox Church, and part of Ukrainian Orthodox Church of Moscow Patriarchate into a unified Local Church which on 6 January 2019 received the Patriarchal and Synodal Tomos of the Ecumenical Patriarchate on autocephaly. Since 15 December 2018 I am the head of the Crimean eparchy of the Orthodox Church of Ukraine in the Autonomous Republic of Crimea. After the Unification Council held on 15 December 2018 and the beginning of the Russian occupation in Ukraine, most parishioners elect the Orthodox Church of Ukraine not only because of their faith in God, but also because of the national identity, wishing not to deal with the Ukrainian Orthodox Church of Moscow Patriarchate which supports Russian aggression in Ukraine.

4. After the first parish of the Ukrainian Orthodox Church of Kyiv Patriarchate (since 2018 — the Orthodox Church of Ukraine) was formed in the

Autonomous Republic of Crimea in 1995, the Church became the center of Ukrainian culture and spirituality in Crimea. For the ethnic Ukrainians of Crimea, the Church promotes the Ukrainian language and national traditions, in particular during divine services in the churches where the clergy pray and preach in Ukrainian. For the parents who want their children to be educated in Ukrainian or to study Ukrainian history and culture in general, the Orthodox Church of Ukraine in Crimea is a Ukrainian national and cultural center that provides children with the opportunity to get Ukrainian education, in particular, through the functioning of Sunday schools, libraries, study groups. The Church also broadly supports Ukrainian culture. For example, about 50 paintings by Ukrainian artists and about 300 Ukrainian icons and handmade towels are kept in the cathedral of St. Volodymyr and Olha in Simferopol.

5. After Russia's occupation of Crimea, I believe that the Church has a special mission — to unite the Ukrainian community in Crimea and preserve the national identity by providing assistance and support. One of the tasks assigned to me as the head of the Crimean eparchy was to assist Ukrainian political prisoners who were kidnapped, convicted and stay in Russian prisons and colonies. I know some political prisoners who were the founders and promoters of Ukrainian cultural projects personally. Among them are Andrii Shchekun and Anatolii Kovalskyi who were kidnapped in 2014 during the annexation of the Crimea by the Russian Federation.

Russian occupation authorities offer protection subject to my support for the annexation.

6. Together with Andrii Shchekun and Anatolii Kovalskyi, I participated in the organization of a rally in Simferopol on 9 March 2014 to support the continuation of the existence of Crimea as part of independent Ukraine. Two of my colleagues were kidnapped on the way to that rally when they stopped at Simferopol station to pick up the materials for the meeting. Given the above, it is quite natural that I became the first and obvious critic of the Russian plan of annexation of Crimea which

became apparent after the establishment of the regional government by the Russian armed forces on 27 February 2014.

7. On 20 March 2014, I gave an interview to Echo of Moscow Radio, in which I opposed Russia's annexation of Crimea again. On 21 March 2014, I received a call from Igor Strelkov (also known as Girkin), who introduced himself as an adviser on security and defense of the Council of Ministers of the Republic of Crimea. Strelkov asked if we could meet, and at 16:00 I was with him in office No. 222 on the second floor of the Council of Ministers building in Simferopol. Strelkov started the meeting by saying that he was meeting with me as agreed with Patriarch Kirill of Moscow and All Russia. Strelkov told me that I would be safe, and my church would be protected if I agreed to sign the document, to be published in press, confirming that in Crimea everything was calm and quiet, and no illegal actions were taken against Kyiv Patriarchate. I pointed out that I was ready to do so, and during the meeting Strelkov printed out and then signed and stamped a document in which he called me the person responsible for preserving the property of the Ukrainian Orthodox Church of Kyiv Patriarchate in Crimea and said that I had the right to apply directly to the Head of the Republic of Crimea Serhii Aksenov in the event of a conflict.² The document was printed using an official pre-printed form, although, ironically, that form was a form of the Autonomous Republic of Crimea, i.e. the Republic of Crimea not controlled by Russia. It was agreed that Strelkov's assistant would agree with me the text of the statement which I had to make in response.

8. I received the draft statement on 21 March 2014 at 18:12 from Serhii Kovtan, Strelkov's assistant, who sent it to me by email (kavtan7@gmail.com). The text was mostly neutral. I was concerned about the very end of the appeal: "as it happens now in the Crimea". I was worried that by signing this appeal, I would be perceived as someone who supported the annexation of the peninsula by Russia. I consulted with

² Certificate of the Cabinet of Ministers of the Autonomous Republic of Crimea No. 064-3 (20 March 2014) (Ukraine's Reply, Annex 181).

my colleague in Ukrainian Orthodox Church of Kyiv Patriarchate, Archbishop Yevstratii of Chernihiv and Nizhyn (Zorya), who agreed that this sentence should be deleted from the text.

9. In a further telephone conversation with Strelkov, he made it clear that this sentence was the crucial point in the text from his point of view. Although I had further communication with Strelkov and his assistant on the text, we never agreed on a text I could sign, and the idea eventually disappeared when Strelkov left Crimea later that spring. I did not sign any letter or appeal in support of the annexation of Crimea and the new "government", but I attached to this statement an e-mail that I still have, which sets out the text of the statement that Girkin wanted me to make.³

10. There was another impressive aspect of my meeting with Strelkov in the building of the Council of Ministers on 20 March 2014. As I have already mentioned, my colleagues Andriy Shchekun and Anatolii Kovalskyi were kidnapped on 9 March 2014, and since then there has been no information about their place of stay or condition. Naturally, I was worried about their safety, especially given the terrible consequences of other recent disappearances committed against members of the Crimean Tatar community. I considered a meeting with Strelkov as an opportunity to speak out for their defense, and, accordingly, at the end of the conversation with him asked what would happen to them. Strelkov replied without hesitation: "Don't worry, they will live." Later that day, I learned that both men were released from custody and returned to their families. It was then clear to me that Strelkov was fully informed of their place of stay and the conditions in which they were held.

Persecution of the Ukrainian Church in Crimea Since 2014 and Its Impact on the Rights of the Ukrainian Community

11. I believe that my unwillingness to have my name mentioned in the statement in support of the annexation is the reason for the current campaign of the Crimean and Russian authorities aimed at closing Ukrainian Orthodox Church in

³ Electronic message from S. Kavtan (21 March 2014) (Ukraine's Reply, Annex 189).

Crimea. This campaign had a large impact on the life of the Ukrainian community, depriving it of the protection of the institutional structure that previously provided meeting places where the community members could gather, as well as educational and cultural programs focused on their shared Ukrainian identity.

12. The attack on the Ukrainian church began shortly after the events described in the previous Section. The Church of the Holy Apostles Peter and Paul and Nicholas the Wonderworker, Archbishop of Myra of Lycia was located at the training center of the Naval Forces of Ukraine at: 1 Lazarevska Street, Square 27, in Sevastopol. The church was used by the Crimean eparchy of Kyiv Patriarchate to perform divine services and meet the religious needs at the military base of both military servicemen and parishioners of Kyiv Patriarchate living in Sevastopol. On 21 April 2014, the command of the Black Sea Fleet of the Russian Federation informed the administration of the Crimean eparchy about the closure of the church in Sevastopol and offered them to remove all property. On 1 June 2014, at the request of the Captain of the First Rank Leonid Zinchenko (commander of the Russian military base that took control of the Training Centre), access control was introduced on the territory of the base, preventing access to the senior priest, other clergy, and parishioners. This made divine services impossible.

13. Later, in June 2014, a second church was taken away from Kyiv Patriarchate, when the Church of the Intercession of the Blessed Virgin Mary in Perevalne was seized by the Russian military servicemen and transferred for use to a priest representing Moscow Patriarchate.⁴ I filed a lawsuit with the court seeking to return ownership of this church. The case was considered by the Supreme Court of the Russian Federation, but its outcome was unsuccessful.⁵

⁴ M. Kanarskaya, *The temple of the Ukrainian Orthodox Church of the Kyiv Patriarchate in Perevalne was taken away. In whose favor?*, Krym.Realii (1 June 2014) (Ukraine's Reply, Annex 174).

⁵ Ruling of the Supreme Court of the Russian Federation No. 310-ES19-8542 (19 June 2019) (Ukraine's Reply, Annex 99).

14. Elsewhere in Crimea the presence of the Ukrainian church was reduced due to other acts of discrimination against the Ukrainian community. One of our priests, Yaroslav Hontar, was forced to leave Crimea with his family after his children, who studied in the Ukrainian class at Yevpatoria School No. 13, were physically abused by ethnic Russians, who studied at the same school. In April 2014, the Ukrainian language class was disestablished because the parents of the children who attended it were not ready for their children to live under the threat of violence, which the teachers turned a blind eye to. Only after moving to mainland Ukraine could this priest continue educating his children in Ukrainian. Another priest, Ivan Katkalo, who served in the church of the military complex in Simferopol, was evicted from his home together with his family, including his daughter with cerebral palsy, by Russian cossacks. This family also had no choice but to move to mainland Ukraine.

15. At the end of the first year of the occupation, 34 out of 45 parishes of Kyiv Patriarchate ceased to exist (11 ones continued to exist), and only 9 out of 14 priests were able to perform divine services. Because of these acts of intimidation and inability of the Russian occupation authorities to protect the rights of the church and its clergy after 2014, the activities of Kyiv Patriarchate were largely focused on Simferopol and, in particular, its main church — Cathedral of Equal-to-the-Apostles St. Prince Volodymyr and St. Princess Olha located at 17A Sevastopolska St. in Simferopol.

16. The main cathedral of the Crimean eparchy has undergone increasing pressure from the Russian occupation authorities. The church is used on the basis of a lease agreement entered into for the term of 50 years with the State Property Fund of the Autonomous Republic of Crimea in 2000.⁶ However, the Ministry of Property and Land Resources of the Republic of Crimea is currently trying to cancel the lease

⁶ Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea No. 1801-2/01 “On transfer to the Crimean Eparchy of the Ukrainian Orthodox Church of the Kyiv Patriarchate of part of the building located at 17 Sevastopolskaya St., in the city of Simferopol” (16 May 2001) (Ukraine’s Reply, Annex 190). Contract of lease of real property that belongs to the Autonomous Republic of Crimea (13 November 2002) (Ukraine’s Reply, Annex 191).

agreement on the grounds that the church is not registered under Russian law. In 2017, the employees of the ministry based on the eviction order seized the first floor of the building occupied by the cathedral. The physical strength of the Russian occupation forces was such that my arm was broken and my back was injured during the operation. While the cathedral retains ownership of the second and third floors of the building where the collection of Ukrainian paintings and icons mentioned earlier in this statement is stored, the ministry continues its campaign in Russian courts, using the absence of registration of the Ukrainian Orthodox Church to ensure rendering of court decisions in their favor, including the decisions of the Supreme Court of the Russian Federation.⁷

17. At the time of submitting and signing of my witness statement for the court, on 17 February 2022 the Ukrainian Parliament (Verkhovna Rada) adopted Resolution No. 2077-IX "On Certain Issues of Protection of the Right to Freedom of Conscience and Religion of Believers of the Crimean Eparchy of the Ukrainian Orthodox Church (Orthodox Church of Ukraine) and Preservation of the Premises of the Cathedral of St. Volodymyr and St. Olha."⁸

18. The registration requirements established by the Russian occupation authorities will require the church to recognize the legitimacy of the Russian rule in Crimea. For this reason, in 2014 I made a fundamental decision not to apply for registration or re-registration of the parishes of the Crimean eparchy. However, as the pressure on the clergy of the Crimean eparchy intensified, and the fact of the absence of its registration was used against it by the Russian judicial system, we have no choice but to proceed with the process of registering the religious communities under Russian

⁷ Ruling of the Supreme Court of the Russian Federation No. 310-ES18-18876 (23 November 2018) (Ukraine's Reply, Annex 100).

⁸ Resolution of the Verkhovna Rada of Ukraine No. 2077-IX "On Certain Issues of Protection of the Right to Freedom of Conscience and Religion of Believers of the Crimean Eparchy of the Ukrainian Orthodox Church (Orthodox Church of Ukraine) and Preservation of the Premises of the Cathedral of St. Volodymyr and St. Olha" (17 February 2022) (Ukraine's Reply, Annex 93).

law. Like many other Ukrainian organizations in Crimea, we have since then found how the Russian authorities use the complexity of their registration procedures to arbitrarily deny legal protection to disadvantaged groups. For religious organizations, for example, Russian laws require 10 sponsoring Russian citizens to submit their personal information along with an application for registration. This is a difficult barrier for us, given that our supporters are generally reluctant to become Russian citizens, despite the Russian government's efforts to impose this on them. Another example of the arbitrary nature of the registration system is the requirement for the applicants to complete a questionnaire on their confession of faith, with written answers to 50 questions to be submitted to the Ministry of Justice of Crimea.

19. These extremely complex procedures provide the authorities with enormous opportunities for arbitrary denial of registration. Thus, the Ministry of Justice dismissed our first application and recommended that we supplement it with one paragraph when making our next attempt. Having added this paragraph, when dismissing our third application, the ministry stated that we should remove the same paragraph. Following the failure of our fourth application, the ministry informed us that we would never be registered unless we reached an agreement with the Russian authorities.

20. As a result of these bureaucratic games, the Russian authorities and "Crimean authorities" may continue to use the fact of the absence of our registration against us as a ground for confiscating or destroying church property. Without registration, the church is not recognized as a legal entity, which prevents us from entering into agreements, opening bank accounts, renting the premises necessary for the joint divine services for our parishioners.

21. For example, in Yevpatoria before the Russian occupation the church built a wooden chapel in the typical Ukrainian style, which was completed in 2013. Now the Russian authorities ordered to destroy it because it was allegedly built without permit, despite the fact that the building is located on a land-plot owned by the

community with which we reached an agreement, and the Ukrainian authorities have never objected to this construction.⁹ The land occupied by the church is not needed for any other purpose, so I can only interpret this action as punishing the Ukrainian community for refusing to agree to Russia's control over Crimea.

22. As I have already explained in this witness statement, the impact of these repressions on the Ukrainian community goes far beyond religion. For many Ukrainians in Crimea, their commitment to the doctrine of Ukrainian Orthodox Church is an important element of their identity as Ukrainians. Therefore, the attempts of the Russian occupation authorities to destroy this church are a direct attack on their identity. The repressions have a number of other direct practical implications for the continued viability of the Ukrainian community, depriving its members of a safe space to meet and honor their Ukrainian values, further limiting Ukrainian education, which is already severely constrained in the public sphere and threatening important Ukrainian cultural heritage, such as the one kept in the Cathedral of St. Volodymyr and St. Olha in Simferopol.

23. The contrast of this growing exclusion of Ukrainian culture from social life in Crimea is the propaganda of Russian culture and values by the authorities. In my experience, an example of this process is the growing dominance of Moscow Patriarchate of the Orthodox Church in Crimea. The hand of Moscow Patriarchate is clearly visible in my description of the statement which I was offered to sign by Igor Strelkov, allegedly with the consent of Patriarch Kirill. At a more practical level, churches and other property seized from Ukrainian Orthodox Church in Crimea have consistently been transferred into the possession of priests and other officials representing Moscow Patriarchate.

⁹ Default judgement of Yevpatoria City Court in Case No. 2-2176/2019 (6 November 2019) (Ukraine's Reply, Annex 101).

24. I swear that the above witness statement and explanations are true and accurate, and I agree to appear before the Court if necessary to provide additional statements.

Signed in Kyiv, Ukraine, on __ March 2022.

Signature: _____

Metropolitan of Simferopol and Crimea
Klyment (secular name: Pavlo Mykolaiovych
Kushch)

Annex 5

Second Expert Report of Sandra Fredman (21 April 2022)

INTERNATIONAL COURT OF JUSTICE

**APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE
SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF
RACIAL DISCRIMINATION**

between

UKRAINE

and

THE RUSSIAN FEDERATION

SECOND EXPERT REPORT OF PROFESSOR SANDRA FREDMAN

I. Introduction

1. I have been asked by counsel to Ukraine to address certain points of disagreement with my initial report in this case arising from Russia's Counter-Memorial and supplementary materials.

2. I first consider, in Section II, Russia's contention that Ukraine must show that Russia intended to discriminate in order to establish a claim of discrimination. Based on an analysis of the International Convention on the Elimination of All Forms of Racial Discrimination (the CERD or the Convention),¹ and in particular, the Convention's express language allowing claims based on "purpose *or effect*," I conclude that proof of intent is not necessary for a claim under the Convention.

3. In Section III, I address whether an underlying political motivation for racial discrimination renders a claim one of political discrimination that is outside the scope of the CERD. I conclude that a respondent's underlying motivation for discrimination, including a motivation based on purportedly "political" considerations, cannot serve to remove a discrimination claim from the ambit of the CERD, as long as all other requirements are met.

4. In Section IV, I analyse Russia's claim that ethnicity is immutable and cannot be defined, even in part, by shared beliefs or outlooks. I review the analysis from my previous report, concluding that ethnicity is a dynamic concept that is capable of evolving over time, including in response to significant political and social upheaval, and I examine the role of shared beliefs or outlooks in defining ethnicity, finding that such beliefs can be a relevant factor in demarcating a particular ethnic group.

5. Finally, in Section V, I discuss Russia's claim that no specific right to education in one's own language is protected by the CERD. I conclude that, even if Russia's

¹ UN Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), 660 U.N.T.S. 195 (1965), entered into force 4 January 1969.

premise is correct, this does not preclude a violation of the right to enjoy education without distinction as to ethnic origin, as protected by Article 5 of the CERD.

II. Russia’s attempt to require Ukraine to show proof of intent ignores the fact that the CERD embraces both intentional and effects-based claims.

6. In my first report, I examined the concept of indirect, or effects-based, discrimination in international human rights law, and I concluded that a showing of intent to discriminate is not required in order to establish such claims of discrimination. In its Counter-Memorial, Russia argues that, because Ukraine has characterized Russia’s conduct as constituting a systematic campaign of racial discrimination, Ukraine must prove intent as to each element of Russia’s discriminatory conduct. In Section A, I will demonstrate that effects-based discrimination claims are permitted by the CERD and do *not* require a showing of intent to discriminate, and that Ukraine’s reference to a systematic campaign of racial discrimination does not require a different evidentiary standard for such claims. In Section B, I will set forth the proper framework for evaluating such claims under the CERD.

A. The CERD’s definition of discrimination expressly includes both intentional and effects-based discrimination.

7. Article 1(1) of the CERD defines “racial discrimination” as a distinction, exclusion, restriction or preference based on race which has “*the purpose or effect*” of nullifying or impairing the enjoyment of rights and freedoms. The reference to “purpose or effect” demonstrates that discrimination can be based on *either* purpose *or* effect. This interpretation was recently affirmed by the International Court of Justice (“ICJ”) in *Qatar v. United Arab Emirates* (“*Qatar v. UAE*”), where the Court stated that racial discrimination is prohibited, “whether arising from the purpose of a given restriction or from its effect.”²

² *Qatar v. United Arab Emirates*, International Court of Justice, Preliminary Objections, Judgment, 4 February 2021, para. 112.

Given that the phrase “purpose or effect” is clearly disjunctive, there is no need to establish purpose to establish discrimination based on “effect.”

8. This conclusion is supported by General Recommendation 14 of the CERD Committee (“GR 14”), which states that “[a] distinction is contrary to the [CERD] if it has either the purpose or the effect of impairing particular rights and freedoms,” and that conduct will violate the CERD if it “has an unjustifiable disparate impact upon a group distinguished by” criteria in Article 1 of the CERD.³ To establish a breach of the CERD therefore requires a showing either of purpose or of unjustifiable disparate impact on a protected group.

9. The separation of purpose from effect in the definition of discrimination further entails that, where discriminatory effect is at issue, there is no requirement to prove that the perpetrator has a discriminatory intent. In its Opinions in individual complaints, the CERD Committee has regularly affirmed in particular that “presumed victims of racial discrimination are not required to show that there was discriminatory intent against them.”⁴ Instead, once a pattern of behaviour is shown which raises a *prima facie* case of discrimination, the burden shifts to the respondent to show that this was not discriminatory.

10. In *Gabaroum v. France*, the petitioner gave many examples of behaviour by the respondent which he alleged were based on his race or ethnic origin. The CERD Committee held that France was wrong to require him to prove intent.⁵ The same is true of *V.S. v. Slovakia*, where the petitioner suspected that she had been discriminated against because of her Roma origin, when she was denied a teaching position at a school. The

³ UN Committee on the Elimination of Racial Discrimination (“CERD Committee”), General Recommendation No. 14 (1993), paras. 1-2 (Ukraine’s Memorial, Annex 788).

⁴ CERD Committee, Opinion Concerning Communication No. 52/2012 (*Gabaroum v. France*), decided 10 May 2016, para. 7.2; *see also* CERD Committee, Opinion Concerning Communication No. 56/2014 (*V.S. v. Slovakia*), decided 4 December 2015, para. 7.4.

⁵ *Gabaroum v. France*, para. 7.2.

Committee declared in its opinion: “The Committee considers that the courts’ insistence that the petitioner prove discriminatory intent is inconsistent with the Convention’s prohibition of conduct having a discriminatory effect.”⁶

11. This interpretation of effects-based discrimination in the CERD is consistent with that in other international human rights instruments. For example, the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”),⁷ like the CERD, defines discrimination as a “distinction, exclusion or restriction made on the basis of sex which has the *effect or purpose* of” restricting certain rights and freedoms.⁸ Further, the Human Rights Committee (“HRC”) has drawn on the definition of discrimination in Article 1 of the CERD and Article 1 of CEDAW to conclude that “discrimination” in the International Covenant on Civil and Political Rights (“ICCPR”) should be understood to mean distinctions based on impermissible grounds which have “the purpose or effect” of restricting certain rights and freedoms.⁹ Similarly, the International Covenant on Economic, Social and Cultural Rights Committee (“ICESCR Committee”) has defined discrimination as any restriction “that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of” limiting the relevant rights.¹⁰

12. Therefore, the CERD’s plain language, along with the interpretation of the Convention espoused by both the ICJ and the CERD Committee, make clear that a

⁶ *V.S. v. Slovakia*, para. 7.4.

⁷ UN Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), 1249 U.N.T.S. 13 (1979), entered into force 3 September 1981.

⁸ *Ibid.*, Article 1 (emphasis added).

⁹ HRC, ICCPR General Comment No. 18 (1989), paras. 6-7 (Ukraine’s Memorial, Annex 787).

¹⁰ ICESCR Committee, General Comment No. 20 (2009), para. 7 (Ukraine’s Memorial, Annex 755).

discrimination claimant may allege effects-based discrimination and, in such cases, need not show intent or purpose.

B. The purported requirements to establish a discrimination claim set out in Russia’s Counter-Memorial fail to recognize the distinction between claims of intentional and effects-based discrimination.

13. In its Counter-Memorial, Russia argues that, because Ukraine has labelled its conduct a systematic campaign of racial discrimination, Article 1(1) of the CERD requires three elements to be cumulatively proven: (A) the systematic nature of any distinction; (B) the disproportionate effect on Crimean Tatar or Ukrainian communities as compared to persons of other ethnic origin or other residents in a similar situation; and (C) that the distinction is a “result of the intent to specifically and ‘directly target’ these communities ‘as such’ (in other words, the victims must be ‘targeted by reason of their membership’ in a national or ethnic group).”¹¹

14. To the extent that Russia is arguing that Ukraine’s reference to a systematic campaign requires application of a different evidentiary standard than usual, I disagree. The CERD does not contain language defining systematic campaigns of racial discrimination as a distinct breach, or defining evidentiary standards particular to allegations of systematic discrimination. I accordingly understand Ukraine’s case to be that Russia has committed multiple violations of the CERD which, viewed in the aggregate, constitute a systematic campaign of racial discrimination. It follows that the correct approach is to assess each of Ukraine’s claims under the standards set forth in the Convention and, if necessary, for the Court to take a view on Ukraine’s characterization of the aggregate impact of any violations only once it has ruled on the individual claims.

¹¹ Counter-Memorial of the Russian Federation, Part II, 9 August 2021 (“Russia’s CERD Counter-Memorial”), para. 93, *et seq.* (internal emphasis and footnotes omitted).

15. The framework proposed by Russia for assessing Ukraine’s claims is not applicable to effects-based claims. There is no authority for step (A), that is, the need to prove the systematic nature of a distinction. Rather, there should be a law, practice or policy which appears neutral on its face but which has a disparate impact.¹² Nor is there a need, as claimed in step (C), to establish intent to specifically and directly target these communities. As demonstrated above, this would negate the difference between a claim based on purpose and one based on effect.

16. Russia relies on the CERD Committee’s Opinion in *A.W.R.A.P. v Denmark*¹³ for the proposition that Article 1(1) requires that the effect of the action be a result of the intent to specifically and directly target a particular community as such.¹⁴ However, this was a complaint under Article 4(a) of the Convention, which refers to hate speech on racist grounds. The petitioner claimed that a particular politician had used hate speech directed against Muslims and Muslim culture.¹⁵ The complaint was therefore not an effects-based

¹² This elaboration of the steps needed to establish effects-based discrimination is well established in international, regional, and domestic human rights law. See, e.g., ICESCR General Comment No. 20, para. 10(b); *Case of D.H. & Others v. The Czech Republic*, ECtHR Application No. 57325/00, Grand Chamber Judgment (13 November 2007), para. 184 (Ukraine’s Memorial, Annex 1001); Council of the European Union, Directive 2000/43/EC (“Race Directive”) (29 June 2000), Article 2(2)(b) (Ukraine’s Memorial, Annex 827); U.K. Equality Act of 2010, § 19, accessed at <https://www.legislation.gov.uk/ukpga/2010/15/section/19>; U.S. Civil Rights Act of 1964, Title VII, 42 U.S.C. §§ 2000e-2(k); *Griggs v. Duke Power Co.*, 401 U.S. 424, 430-436 (1971) (U.S. Supreme Court), accessed at <https://www.freedomforuminstitute.org/wp-content/uploads/2019/07/Griggs-v.-Duke-Power.pdf>; *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 53, para. 18 (Supreme Court of Canada), accessed at <https://www.canlii.org/en/ca/scc/doc/1985/1985canlii18/1985canlii18.html>; *Nitisha v. Union of India* [Writ Petition No. 1109/2020], 25 March 2021, paras. 49-71 (Indian Supreme Court), accessed at <https://indiankanoon.org/doc/190567716/>.

¹³ CERD Committee, Opinion Concerning Communication No. 37/2006 (*A.W.R.A.P. v. Denmark*), decided 8 August 2007 (Ukraine’s Memorial, Annex 799).

¹⁴ Russia’s CERD Counter-Memorial, para. 93 & fn. 182.

¹⁵ *A.W.R.A.P. v. Denmark*, paras. 2.1-3.2.

claim, but one based on purpose. The Committee declared the complaint inadmissible because the speech was against Muslims on grounds of their religion, and religion is not protected under the Convention.¹⁶ The Committee observed as follows:

The Committee notes the State party's objection that the petitioner's claims fall outside the scope of the Convention, because the statements in question are directed at persons of a particular religion or religious group, and not at persons of a particular "race, colour, descent, or national or ethnic origin". It also takes note of the petitioner's contention that the statements in question were indeed aimed at persons of Muslim or Arab background. The Committee observes, however, that the impugned statements specifically refer to the Koran, to Islam and to Muslims in general, without any reference whatsoever to any race, colour, descent, or national or ethnic origin. While the elements of the case file do not allow the Committee to analyse and ascertain the intention of the impugned statements, it remains that no specific national or ethnic groups were directly targeted as such by these oral statements as reported and printed. In fact, the Committee notes that the Muslims currently living in the State party are of heterogeneous origin. They originate from at least 15 different countries, are of diverse national and ethnic origins, and consist of non-citizens, and Danish citizens, including Danish converts.¹⁷

17. It can be seen from this paragraph, read in its entirety, that it is not authority for the proposition that in all cases, the applicant must prove an intent to specifically and directly target a particular community. Instead, the complaint was declared inadmissible because the act in question was targeted at individuals on grounds of their religion, and religious discrimination is clearly excluded from the CERD. On the other hand, as shown above, the CERD Committee has consistently, in a series of Opinions directly on point, stated expressly that the CERD does not require intent to be proved.

18. Russia asserts that Ukraine must establish a differentiation of treatment and an unjustifiable disparate impact, citing GR 14 paragraph 2 as authority.¹⁸ However, as demonstrated above, this is not the import of GR 14 or the paragraph in question. As

¹⁶ *Ibid.*, paras. 6.2-7.

¹⁷ *Ibid.*, para. 6.2.

¹⁸ Russia's CERD Counter-Memorial, para. 97 & fn. 193.

explained in the preceding section, it is clear that the CERD prohibits two different types of discrimination, one based on purpose and the second on impact. So far as effect is concerned, GR 14 states: “In seeking to determine whether an action has an effect contrary to the Convention, [the CERD Committee] will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.”¹⁹

19. Russia’s assertion that Ukraine must prove both a differentiation in treatment and a disparate impact therefore is not grounded in established law regarding effects-based discrimination claims. Instead, for effects-based claims, Ukraine is required to show only the existence of a practice or policy that has a disparate impact on, or disproportionately disadvantages, a racial group.

III. The existence of an underlying political motivation to discriminate is irrelevant when determining whether certain acts constitute racial discrimination under the CERD.

20. In its Counter-Memorial, Russia incorrectly posits that a claim of discrimination falls outside of the CERD when such discrimination was based on an underlying political motivation.²⁰ Specifically, Russia asserts that Ukraine’s claim that the Crimean Tatar and Ukrainian communities in Crimea have been subjected to discrimination because of their opposition to the annexation of that territory by Russia amounts to a claim of political discrimination that falls outside the scope of the Convention.²¹ In this section, I will demonstrate why that position has no basis in the CERD.

21. For conduct to qualify as racial discrimination that is prohibited by the CERD, the conduct in question must satisfy the definition of racial discrimination set out in

¹⁹ CERD Committee, General Recommendation No. 14, para. 2.

²⁰ Russia’s CERD Counter-Memorial, paras. 115–117.

²¹ *Ibid.*, para. 115.

Article 1(1) of the Convention and not fall within any of the limited exclusions described in Article 1(2), 1(3) and 1(4).

22. Starting with Article 1(1), that provision defines discrimination as a distinction based on race that has the purpose or effect of nullifying or impairing a protected group's human rights. It follows from this that the existence of a distinction based on race accompanied by a purpose or effect of nullifying or impairing human rights on a group-wide basis is sufficient to constitute racial discrimination within the meaning of Article 1(1)'s definition. Crucially, Article 1(1) contains no qualifying language capable of taking conduct that satisfies these conditions outside the scope of the definition depending on the ultimate motivation behind the distinction. Accordingly, if a distinction is introduced with the purpose or effect of restricting the human rights of a protected group, it does not matter for the purposes of the CERD definition whether the ultimate reason for introducing that distinction was political, economic or cultural. Where actions are taken that constitute racial discrimination under the CERD, the underlying motivation for that discrimination is irrelevant as a matter of law.

23. Turning next to the exclusions found elsewhere in Article 1, it quickly becomes apparent that none of these assist Russia's argument. Article 1(2) relates to distinctions between citizens and non-citizens.²² Ukraine's claims fall outside this exclusion because they allege distinctions between, on the one hand, two ethnic groups forming part of the Crimean population (the Crimean Tatar and Ukrainian communities) and, on the other hand, the other ethnic groups within the population (primarily the ethnic Russian community). Although, as I understand, Ukraine alleges that Russia has forcibly changed the

²² CERD Article 1(2) provides in full: "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."

citizenship of persons residing in Crimea and subjected individuals to detriment based on their citizenship decisions, with a disproportionate effect on ethnic Ukrainians and Crimean Tatars, this is not the same as the differentiation between citizens and non-citizens which is permitted by Art 1(2).²³ This is borne out by Article 1(3), which, while allowing legal provisions differentiating on grounds of nationality, citizenship and naturalisation, does not permit discrimination against any particular nationality.

24. As just noted, Article 1(3) excludes distinctions arising from the operation of legal provisions concerning nationality, citizenship and naturalisation, provided that, in the service of this distinction, it is clear that such provisions do not discriminate against any particular nationality.²⁴ Again, while I understand that certain of Ukraine's allegations relate to the operation of nationality and citizenship provisions, the gravamen of those allegations is that the provisions have been employed specifically with the purpose or effect of burdening the human rights of the two protected groups at issue in this case, i.e., of discriminating against particular ethnicities. Accordingly, Article 1(3) does not appear to apply in this case.

25. The final exclusion from the definition of racial discrimination is set out in Article 1(4) and relates to "[s]pecial measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups"²⁵ This exclusion clearly is not

²³ See Ukraine's Memorial, Part II, Chapter 9, Section D.

²⁴ CERD Article 1(3) provides in full: "Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality."

²⁵ CERD Article 1(4) provides in full: "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

applicable in this case, where Ukraine alleges discrimination to the detriment, not the advantage, of the Crimean Tatar and Ukrainian communities.

26. It follows from the foregoing analysis that there is no textual basis in the CERD for Russia's claim that discriminatory conduct falls outside the scope of the CERD if that conduct is ultimately motivated by political considerations. This conclusion is hardly surprising when considered in the light of some real-world practical examples.

27. Appropriately enough, the expulsion of the Crimean Tatar people from Crimea in 1944, along with certain other ethnic groups inhabiting the peninsula, provides a good illustration of the principle embodied in Article 1 of the CERD. The motivation for that expulsion – Stalin's false accusation that the Crimean Tatars had collaborated with the Nazis²⁶ – could be characterized as political, in much the same way that Russia has attempted to portray Ukraine's allegation in the present case that the Crimean Tatar and Ukrainian communities have been targeted for racial discrimination on account of their opposition to Crimea's annexation. Yet, had the CERD been in force in 1944, it is clear that the expulsion – a distinction based on race which had the purpose or effect of nullifying or impairing the human rights of an entire people – would have qualified as racial discrimination prohibited by the Convention.

28. A second factual example of politically-motivated racial discrimination is provided by the South African government's apartheid policy between 1948 and 1994. Among many other discriminatory policies, as part of the policy of separate development, Black people in South Africa were deprived of their South African citizenship and compelled to become citizens of "homelands" or "Bantustans," such as the Transkei and Ciskei. Here

²⁶ See State Defense Committee of the Soviet Union Decree No. 589, "On the Crimean Tatars" (11 May 1944) (ordering the Crimean Tatars "to be banished from the territory of the Crimea") (Ukraine's Memorial, Annex 871).

the motive could be said to be political: to create a political system based on racial hierarchies. But no-one would doubt that this amounted to racial discrimination against South African Black people.²⁷

29. In conclusion, the CERD does not preclude a finding of racial discrimination merely because the respondent acted on the basis of an underlying political motivation.

IV. The concept of ethnicity in the CERD is dynamic and reflective of social circumstances.

30. In my first expert report, I examined the meaning of ethnicity and concluded that ethnic identity is a dynamic concept that is capable of evolution. I also concluded that both objective and subjective criteria are relevant to determining whether a group shares an ethnic identity, and that the specific criteria that may be considered in this analysis include language, religion, culture, social identity, and political identity. In its Counter-Memorial, Russia disputes these conclusions, contending that ethnicity is static and immutable, and cannot encompass shared beliefs regarding political and social circumstances.²⁸

31. Below, in Section A, I further examine the meaning of ethnicity, building on the analysis in my previous report, to show that ethnicity can evolve over time. In Section B, I analyse how shared beliefs and outlooks regarding membership in a political community, including the belief in a present or future national identity, can be a relevant aspect of ethnicity.²⁹

²⁷ As with Ukraine's allegations concerning the operation of Russia's nationality and citizenship laws, these measures would not have been excluded from the scope of the Convention pursuant to Article 1(3) because they clearly discriminated against whole peoples based on their race or ethnicity.

²⁸ Russia's CERD Counter-Memorial, paras. 120-121.

²⁹ The Court's recent decision in *Qatar v. UAE*, which addressed issues of nationality rather than ethnicity, does not affect the analysis of ethnicity contained in my first report and expanded upon below. I understand that Ukraine will address *Qatar v. UAE* in more detail in its Reply.

A. Ethnicity is a concept capable of evolution and change.

32. Article 1(1) of the CERD states that “the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” No further definition of “ethnic” is given.

33. Although the meaning of “ethnic” has not been elaborated by the CERD Committee, the guiding principle has always been that of self-identification, which is necessarily subject to evolution and change. In its General Recommendation 8 (“GR 8”) concerning the interpretation of Article 1, the CERD Committee has opined that, “[h]aving considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic group or groups, [it is] of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.”³⁰ The CERD Committee has also suggested that a group may be identified by the dominant population in a country as ethnically different, even if it does not regard itself as such.³¹

34. Moreover, as my first report demonstrated, the concept of ethnicity as evolving rather than static has been expressly recognized in international criminal law, which, like Article 7 of the CERD, includes a concept of ethnical groups. Even though international

³⁰ CERD Committee, General Recommendation No. 8 (1990) (Ukraine’s Memorial, Annex 791).

³¹ R. Wolfrum, *The Committee on the Elimination of Racial Discrimination*, 3 Max Planck Yearbook of United Nations Law 489, 498 (1999) (Ukraine’s Memorial, Annex 1012).

criminal law has a different purpose than international human rights law,³² and therefore the concept of “ethnic” and “ethnical” is not identical in both systems, the Rome Statute of the International Criminal Court (“ICC”) expressly states that its terms must be interpreted “consistent with internationally recognized human rights,”³³ and the notion that human rights jurisprudence is persuasive and relevant in the international criminal law context is generally accepted. International criminal law is therefore a relevant source for defining ethnicity in international human rights law, including the CERD.

35. The Convention on the Prevention and Punishment of the Crime of Genocide of 1948³⁴ (“Genocide Convention”) provides that genocide encompasses certain “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”³⁵ The same definition is found in a variety of international criminal law statutes, including the Rome Statute,³⁶ the Statute of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”),³⁷ and the Statute of the International Criminal Tribunal for

³² See, e.g., International Criminal Tribunal for the Former Yugoslavia (“ICTY”), *Prosecutor v. Kunarac et al.*, Case No. IT-96-23/1-A, Appeals Chamber Judgment (12 June 2002), paras. 147-148.

³³ Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9 (17 July 1998) (“Rome Statute”), Article 21(3) (Ukraine’s Memorial, Annex 749).

³⁴ UN Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (1948). Both Russia and Ukraine are parties to the Genocide Convention.

³⁵ *Ibid.*, Article II.

³⁶ Rome Statute, Article 6. Russia has signed but not ratified the Rome Statute, and accordingly is obligated to refrain from acts which would defeat the object and purpose of that treaty under Article 18 of the Vienna Convention on the Law of Treaties. Ukraine has not signed the Rome Statute, but Ukraine has lodged two declarations under Article 12(3) of the Rome Statute accepting the ICC’s jurisdiction over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014, and from 20 February onward. See International Criminal Court, Preliminary Examination: Ukraine, *accessed at* <https://www.icc-cpi.int/ukraine>.

³⁷ Statute of the International Criminal Tribunal for the Former Yugoslavia, UN Doc. S/25704 (1993), Article 4.

Rwanda (“ICTR”).³⁸ The Genocide Convention and the other statutes mentioned above do not include a definition of any of these groups. Nevertheless, tribunals interpreting these provisions have acknowledged that ethnicity is shaped by the specific political, social and cultural context involved in a particular case.³⁹

36. Though Russia contests the interpretation of ICTR case law set forth in Ukraine’s Memorial and in my earlier report, Russia cites the very same quote that was used in footnote 15 of that report, from *Prosecutor v. Jean-Paul Akayesu*.⁴⁰ However, Russia ignores the argument made in subsequent paragraphs of that report: that although the Genocide Convention originally conceived of ethnicity as fixed and stable, this conception has necessarily evolved to reflect the realities of the conflicts addressed by the relevant tribunals. This evolution is demonstrated in the cases of *Rutaganda* (ICTR) and *Tolimir* (ICTY).

37. The ICTR, in the *Rutaganda* case, concluded that the existence of such groups must be “assessed in the light of a particular political, social and cultural context,” as “there are no generally and internationally accepted precise definitions” of these concepts.⁴¹ While the Chamber stated that a certain degree of stability is necessary,⁴² the question of whether a

³⁸ Statute of the International Criminal Tribunal for Rwanda, UN Doc. S/RES/955, Annex (1994), Article 2(2) (Ukraine’s Memorial, Annex 747).

³⁹ See ICTR, *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Judgment (6 December 1999), para. 56 (“[T]he concepts of national, ethnical, racial and religious groups have been researched extensively and . . . at present, there are no generally and internationally accepted precise definitions thereof. Each of these concepts must be assessed in the light of a particular political, social and cultural context.”) (Ukraine’s Memorial, Annex 990).

⁴⁰ Russia’s CERD Counter-Memorial, para. 121 & fn. 257 (citing ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment (2 September 1998) (Ukraine’s Memorial, Annex 988)).

⁴¹ *Prosecutor v. Rutaganda*, para. 56.

⁴² *Ibid.*, para. 57 (“It appears, from a reading of the *travaux préparatoires* of the Genocide Convention, that certain groups, such as political and economic groups, have

specific group is protected should be determined “on a case-by-case basis, taking into account both the relevant evidence proffered and the political and cultural context.”⁴³ The ICTY subsequently endorsed this case-by-case approach in the *Tolimir* case.⁴⁴

38. The facts at issue in these particular cases further demonstrate the evolving and changing nature of ethnicity. In *Rutaganda*, the ICTR concluded that although the Tutsi population did not have its own language or a distinct culture from the rest of the Rwandan population, the identification of persons belonging to the groups of Hutu or Tutsi or Twa had become embedded in Rwandan culture, and by 1994, the Tutsis could be regarded as an ethnic group.⁴⁵ In the earlier case of *Akayesu*, the ICTR Trial Chamber emphasized that the Hutus and Tutsis had been made distinct by the Belgian colonizers, and the distinction was confirmed by the self-perception of the members of each group.⁴⁶

39. Darfur provides a further demonstration of the evolving nature of ethnicity. The Darfur Commission noted that the various tribes who had been victims of attacks did not appear to constitute ethnic groups distinct from the groups who were attacking them.⁴⁷ They spoke the same language (Arabic), shared the same religion (Islam), and due to inter-

been excluded from the protected groups, because they are considered to be ‘mobile groups’ which one joins through individual, political commitment.”)

⁴³ *Ibid.*, para. 58.

⁴⁴ ICTY, *Prosecutor v. Tolimir*, Case No. IT-05-88/2-T, Trial Chamber II Judgment (12 December 2012), para. 735 (“While the criteria for identifying the group are not specified in the Genocide Convention, the jurisprudence of the Tribunal states that the determination of the group is to be made on a case-by-case basis, using both objective and subjective criteria.”) (Ukraine’s Memorial, Annex 1004). This was upheld on appeal. ICTY, *Prosecutor v. Tolimir*, Case No. IT-05-88/2-A, Appeals Chamber Judgment (8 April 2015), para. 185 (Ukraine’s Memorial, Annex 1005).

⁴⁵ *Prosecutor v. Rutaganda*, para. 374.

⁴⁶ *Prosecutor v. Akayesu*, para. 702.

⁴⁷ Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General Pursuant to UNSC Resolution 1564 (25 January 2005) (“Darfur Commission”), para. 508 (Ukraine’s Memorial, Annex 753).

marriage, could not be distinguished in their outward physical appearance.⁴⁸ Nevertheless, using the criteria of whether they perceived themselves and each other as constituting distinct groups, the Commission found that over the years, the perception of differences had heightened. Most saliently, it found that “the political polarization around the rebel opposition to the central authorities has extended itself to issues of identity. Those tribes in Darfur who support rebels have increasingly come to be identified as ‘African’ and those supporting the government as ‘Arabs.’”⁴⁹ This, together with other issues such as conflict over access to grazing lands and an insistence in the media on such a divide, gradually created a clear polarization in the self-perception of the groups concerned and the perception of other groups as locating their identity as either “African” or “Arab.”⁵⁰

40. Taking these aspects of identity in Darfur into account, the Darfur Commission found that it would be “erroneous” to overlook “the process of formation of a perception and self-perception of another group as distinct (on ethnic, or national, or religious or racial ground),” which the Commission found to be the “crucial factor.”⁵¹ The Darfur Commission therefore concluded that the differentiation of groups “gradually hardens and crystallizes into a real and factual opposition,”⁵² such that those groups “are no longer identified only by their objective connotations but also on the basis of the subjective perceptions of members of groups.”⁵³ This “interpretation and expansion” of the concept of

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, para. 510.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, para. 500.

⁵² *Ibid.*

⁵³ *Ibid.*, para. 501.

ethnicity, which “has become part and parcel of international customary law,” clearly envisions that ethnicity is a dynamic concept capable of evolution.⁵⁴

41. Similarly, the European Court of Human Rights (“ECtHR”), in *Timishev v. Russia*,⁵⁵ stated as follows: “Ethnicity and race are related and overlapping concepts. Whereas the notion of race is rooted in the idea of the biological classification of human beings into subspecies according to morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds.”⁵⁶

42. Russia acknowledges that ethnicity can refer to shared cultural characteristics and a way of life.⁵⁷ No-one could suggest that culture and a way of life are frozen at birth, particularly given the intrinsically group nature of cultural characteristics. While a person might be born into an ethnic group, the content of the group’s ethnicity can change and evolve over time.

43. Therefore, as discussed in my first expert report, the term “ethnic” in the CERD should be interpreted consistently with other international law instruments and decisions construing ethnicity as not fixed and permanent, but rather as fluid and capable of change.

⁵⁴ *Ibid.*

⁵⁵ *Timishev v. Russia*, ECtHR App. Nos. 55762/00 & 55974/00, Judgment (13 December 2005).

⁵⁶ *Ibid.*, para. 55.

⁵⁷ Russia’s CERD Counter-Memorial, para. 120.

B. Shared beliefs and outlooks regarding membership in a political community can be a relevant aspect of ethnicity.

44. As noted above, my first report explained that the criteria that may be considered in determining whether a group shares an ethnic identity include language, religion, culture, social identity, and political identity. However, Russia's Counter-Memorial denies that shared beliefs and outlooks regarding political and social circumstances can be a relevant aspect of ethnicity.

45. As an initial matter, Russia mischaracterizes the conclusions of my first report.⁵⁸ In that report, I concluded that a common sentiment, such as the belief in a future national identity, can create a group identity which binds a group in a way which is analogous to culture or social identity, and that, in this way, ethnic groups can evolve. I also concluded that the shared culture and heritage of an ethnic group can include, particularly in the context of this case, stances regarding issues that some may deem to be political in nature, including sentiments against Russian annexation.

46. Shared beliefs and outlooks — including the belief in a present or future national identity — can form part of an ethnic group's identity. Further, although a person may inherit an ethnic origin at birth, the meaning and content of that ethnic identity can evolve over time, in response to particular circumstances. For example, as was described above with respect to the Darfur Commission, one of the most salient aspects of the evolving identity of groups in Darfur was the way in which the political polarization in relation to opposition to the central authorities extended to issues of identity, with tribes supporting rebels identified as "Africans" and those supporting the government as "Arabs."⁵⁹ These

⁵⁸ *Ibid.*, para. 119.

⁵⁹ Darfur Commission, para. 510.

shared beliefs regarding the proper governing authorities was key to the finding of the Commission that these groups could now be considered to be distinct ethnic groups.

47. I understand that Ukraine argues that one component of ethnic Ukrainians' shared identification as Ukrainians is a desire to live within a common Ukrainian state. While this belief might be labelled by some as "political," that is merely due to the specific circumstances in which the Ukrainian community in Crimea found itself from February 2014 onwards, following the occupation and then the annexation of the peninsula by Russia. This common belief has been on even greater public display every day since 24 February 2022, when Russia launched its most recent invasion of Ukraine, as Ukrainians fight for the continued existence of their state and of their own ethnic identity. Regardless of its label as "political," "social," or otherwise, this shared attachment to Ukrainian statehood forms a part of the common identity of ethnic Ukrainians in Crimea. Pursuant to international law concepts of ethnicity, this belief, particularly in the context of Crimea, is thus a relevant aspect of defining the ethnic Ukrainian community.

* * *

48. In conclusion, ethnicity is an evolving concept, which is not fixed at birth, but rather can develop and adapt in response to significant disruptions in social and political conditions. Self-identification is a recognized and important aspect of ethnic identity, which must be assessed against the background of an ethnic group's unique political and social circumstances. Shared beliefs regarding social and political matters, including the belief in a present or future national identity and affinity with a political community, can be a salient aspect of ethnic identity.

V. Removal of pre-existing provision for minority language education can violate CERD Article 5 as it relates to the right to education.

49. Russia claims that the "CERD does not provide for a right to education in the native language of national minorities and that therefore, Ukraine cannot, as a matter of

jurisdiction and applicable law, claim that Russia has violated ‘minority rights in relation to education’ under CERD in respect of Crimean Tatars and ethnic Ukrainians in Crimea.”⁶⁰

Whether or not there is an independent right to education in a minority language, however, the CERD was violated since the existing provision of minority language education to Crimean Tatars and Ukrainians was removed in a discriminatory fashion.

50. Article 5(e)(v) of the CERD “guarantee[s] the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . [t]he right to education and training.”⁶¹ This provision protects individuals from both purpose discrimination and effect discrimination in the enjoyment of their right to education. As demonstrated above, equal treatment can lead to a disparate impact, which is a breach of the right to equality in effect. Equal access of all children to Russian-speaking education has an unjustified disparate impact on Ukrainian and Crimean Tatar children as compared to children whose first language is Russian in circumstances where it replaces pre-existing provision for each to be taught in their native languages. This in itself constitutes a breach of the right to enjoy the right to education without distinction as to ethnic origin protected by Article 5 of the CERD.

51. Russia claims that there is no right to instruction in a minority language. However, it is well established that regardless of whether there is a right to such instruction, a

⁶⁰ Russia’s CERD Counter-Memorial, para. 253.

⁶¹ The other relevant provision of the CERD, Article 7, requires States Parties to enact measures “in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups.” This provision ensures that States Parties encourage education systems and individual classrooms to foster a sense of community and work to root out biases and prejudices amongst ethnic groups. As I understand Ukraine’s allegations, Russia’s teaching of history from a specifically Russian perspective, and its removal of Ukrainian and Crimean Tatar literature and Ukrainian and Crimean Tatar culture from the curriculum, constitutes a breach of Article 7.

State will be acting in a discriminatory manner if it removes existing provision of such instruction from some ethnic groups and not from others. I understand that since March 2014, Russia has introduced a number of measures in Crimea that significantly inhibit the education and training of Ukrainians and Crimean Tatars. At the same time, it has given greater emphasis to Russian as the dominant language of tuition and reoriented the curriculum towards Russia. Ukraine also alleges that Russia has significantly decreased the number of schools in Crimea that currently serve the Ukrainian population, with the number of students receiving general education in the Ukrainian language plummeting. Crimean Tatar schools are being starved of resources, such as textbooks. In addition, I understand that Russia ended a number of teacher-training programmes that had graduated Ukrainian-language and Crimean Tatar-language teachers. Instead, it ordered Ukrainian language and literature teachers to be retrained to teach Russian. According to Ukraine, therefore, Russian speaking children have not had their access to Russian education removed, while the ability of Crimean Tatar and ethnic Ukrainian children to receive an education in their languages has been significantly restricted. In my opinion, these alleged facts are capable of violating a State's duty under Article 5(e)(v) of the CERD to guarantee the enjoyment of the right to education and training without distinction as to ethnic origin.

52. It is relevant for the Court to consider, in this context,⁶² the Advisory Opinion of the Permanent Court of Justice in the *Minority Schools in Albania* case.⁶³ In that case,

⁶² Statute of the International Court of Justice, Article 38(1)(d) (“The Court . . . shall apply. . . judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”). For the status of Advisory Opinions, see A. Peters, *Has the Advisory Opinion's Finding that Kosovo's Declaration of Independence was not Contrary to International Law Set an Unfortunate Precedent?*, in *The Law and Politics of the Kosovo Advisory Opinion* 295-297 (OUP, M. Milanović & M. Wood, eds. 2015) (Ukraine's Reply, Annex 123). It is generally accepted that, where relevant, this applies too to Advisory Opinions of the PCIJ.

⁶³ *Minority Schools in Albania*, Advisory Opinion, 6 April 1935, P.C.I.J. Rep. Series A/B – No. 64.

private schools in Albania were closed, including private schools of the minority population, such as those using the Greek language. These minority-language schools had previously been permitted by the Albanian government.⁶⁴ Like Russia in the current case, the Albanian government submitted that all children were treated equally under this new measure since it was of general applicability, ending all private schools for students learning in the majority language, as well as the minority.⁶⁵ The Court recognized, however, that this impacted minority communities far more heavily, as the majority would continue to have their needs supplied by public institutions created by the State, whereas in effect the minority groups were deprived of institutions which were indispensable to their special requirements.⁶⁶

53. The Declaration at issue in the *Minority Schools of Albania* case stated: “Albanian nationals who belong to racial, religious or linguistic minorities will enjoy the same treatment and security in law and in fact as other Albanian nationals.”⁶⁷ The Permanent Court of Justice recognized that equality in law is not the same as equality in fact, holding: “It is easy to imagine cases in which equality of treatment of the majority and of the minority, whose situation and requirements are different, would result in inequality in fact.”⁶⁸ The reference to inequality in fact is analogous to the reference in the CERD to the disparate effect of apparently equal treatment. As the CERD Committee stated in its opinion in *L.R. v. Slovakia*: “[T]he definition of racial discrimination in article 1 expressly extends beyond measures which are explicitly discriminatory, to encompass measures which are not

⁶⁴ *Ibid.*, para. 21.

⁶⁵ *Ibid.*, para. 1.

⁶⁶ *Ibid.*, para. 67.

⁶⁷ *Ibid.*, para. 1.

⁶⁸ *Ibid.*, para. 65.

discriminatory at face value but are discriminatory *in fact and effect*, that is, if they amount to indirect discrimination.”⁶⁹

54. In addition, the Court in *Minority Schools in Albania* stated that the “equal right” to education means that the right “conferred on members of the minority cannot in any case be inferior to the corresponding right of other Albanian nationals.”⁷⁰ This demonstrates that in appropriate circumstances, the right to equal enjoyment of education without distinction based on ethnic origin in Article 5 of the CERD requires the provision of education in the language of a minority ethnic group where education is provided to the majority ethnic group in the majority language. At the very least, this requires that the existing provision of minority language education should not be removed in a discriminatory fashion. Since the majority population has not had the access to education in their own language restricted, but the minority ethnic population had access to quality education in their own language severely restricted, there is discrimination in effect on grounds of ethnic origin in the enjoyment of the right to education, in breach of the CERD.

55. The principle that the discriminatory removal of existing entitlements can be a breach of the right to non-discrimination regardless of whether the entitlement is itself protected under the human rights instrument can also be found in other international and regional human rights documents. It is well established under the European Convention on Human Rights that the prohibition of discrimination extends to rights, falling within the general scope of any article of the Convention, which the State has decided voluntarily to provide.⁷¹ Thus in *Stec v. United Kingdom*, the ECtHR held that there was no right to social

⁶⁹ CERD Committee, Opinion Concerning Communication No. 31/2003 (*L.R. v. Slovakia*), decided 7 March 2005, para. 10.4 (emphasis added).

⁷⁰ *Minority Schools in Albania*, para. 70.

⁷¹ *Stec v. United Kingdom*, ECtHR App. Nos. 65731/01 & 65900/01, Grand Chamber Decision (6 July 2005), para. 39; *E.B. v. France*, ECtHR App. No. 43546/02, Judgment (22 January 2008), para. 48; *Sejdić v. Bosnia & Herzegovina*, ECtHR App. Nos.

security within the Convention. However, if a State does decide to create a benefits scheme, it must do so in a manner which does not contravene the right not to be discriminated against in ECHR Article 14.⁷² In *E.B. v. France*, the ECtHR reiterated that there was no right to adoption under the Convention. However, where a State has gone beyond its obligations in creating such a right, it cannot take discriminatory measures in the application of that right.⁷³

56. Most saliently, in the *Belgian Linguistics* case, the ECtHR stated: “[P]ersons subject to the jurisdiction of a Contracting State cannot draw from Article 2 of the Protocol (P1-2) the right to obtain from the public authorities the creation of a particular kind of educational establishment; nevertheless, a State which had set up such an establishment could not, in laying down entrance requirements, take discriminatory measures within the meaning of Article 14.”⁷⁴ In that case, although the Court held that there was no duty under the Convention to provide instruction in a particular language, there was nevertheless discrimination in that Dutch-speaking children resident in the French unilingual region enjoyed access to Dutch-language schools in the six communes. By contrast, French-speaking children living in the Dutch unilingual region were refused access to French-language schools in those communes.⁷⁵ The Court held that the enjoyment of the right to education was not secured to everyone without discrimination.⁷⁶

* * *

27996/06 & 34836/06, Judgment (22 December 2009), para. 39; *Case ‘Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium’ v. Belgium* (“*Belgian Linguistics Case*”), ECtHR App. Nos. 1474/62 et al., Judgment (23 July 1968), pp. 30-31, 33-34.

⁷² *Stec v. United Kingdom*, para. 53.

⁷³ *E.B. v. France*, para. 49.

⁷⁴ *Belgian Linguistics Case*, p. 30.

⁷⁵ *Ibid.*, pp. 65-67.

⁷⁶ *Ibid.*

57. In my opinion, Russia violated Article 5(e)(v) of the CERD based not on a supposed right to an education in the minority language, but based on the removal of existing minority language education in a discriminatory manner. The Court in *Minority Schools in Albania* emphasized that the disparate effect of apparently equal treatment can actually result in inequality in fact, amounting to discrimination.

Signed in Oxford on 21 April 2022

Sandra Fredman

Sandra Fredman

Annex 6

Second Expert Report of Paul R. Magocsi (14 April 2022)

INTERNATIONAL COURT OF JUSTICE

**APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE
SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF
RACIAL DISCRIMINATION**

between

UKRAINE

and

THE RUSSIAN FEDERATION

SECOND EXPERT REPORT OF PROFESSOR PAUL ROBERT MAGOCSI

I. Introduction

1. I submitted an initial expert report in these proceedings on 4 June 2018, accompanying Ukraine's Memorial. In that report, I provided historical context for the existence of distinct Crimean Tatar and Ukrainian communities among the population of Crimea. Counsel for Ukraine have asked me to prepare this second report to provide the Court with additional historical context on the relationship between Ukrainian statehood and the current manner in which the inhabitants of Ukraine, including Crimea, self-identify as Ukrainians.

2. At counsel's request, I have reviewed the relevant parts of Russia's Counter-Memorial and supporting materials addressing the nature of self-identity among the Ukrainian and Crimean Tatar communities in Crimea. I understand from that review that Russia contests the role that identification with, and a desire to live within the boundaries of, the Ukrainian state plays in defining inhabitants of Crimea as members of the Ukrainian community. Russia's Memorial misleadingly labels this element of self-identification as "political opinion" concerning the desirability of Russia's annexation of Crimea. In this report, I offer a fuller description of the development of aspirations for a specifically Ukrainian state since the mid-seventeenth century, and the subsequent manifestations of such a state, as well as the relationship between the notion of Ukrainian statehood and the nature of Ukrainian identity up to the present day.

3. It is a sad irony that this assignment coincides with a full-scale Russian invasion of Ukraine launched on the back of pronouncements by Russia's president denying the historical right of the Ukrainian people to a state of their own, and even denying that the Ukrainian people are ethnically distinct from their Russian neighbors. It may be thought that the brave and

effective resistance of virtually the entire Ukrainian population to Russia's military invasion provides sufficient demonstration that a core component of Ukrainian self-identity is a staunch desire to live peacefully within the borders of the Ukrainian state, free from interference from an overbearing and aggressive neighbor. Nonetheless, this report will show that the attachment of Ukrainians to statehood did not materialize out of a vacuum in February 2022, or earlier in February 2014, when Russia commenced its occupation of Crimea. Rather it is in fact the product of an organic development spanning nearly four centuries.

4. In August 1991 Ukraine declared its independence, and before the end of that year, following the dissolution of the Soviet Union, it began functioning as a fully sovereign state within the international community. Independent statehood was not, however, something new. In fact, during the twentieth century alone, independence was proclaimed for all or part of Ukrainian territory no less than five times before 1991. Nor was the idea of statehood in Ukraine limited to the twentieth century. Three centuries earlier Ukrainians created a state which existed in some form from the mid-seventeenth to late eighteenth centuries.

5. This report will review the heritage of statehood in Ukraine and the various forms that it has taken both before and after the most recent declaration of independence on 24 August 1991. It will also discuss how the inhabitants of the country define themselves and their relationship to the state of Ukraine in terms of an ethnic or a civic nationality.

6. Section II of this report traces the historical basis for the idea of Ukrainian statehood up to the end of the twentieth century, and Section III discusses the flourishing of

Ukrainian identity and statehood since Ukrainian independence in 1991. Finally, Section IV offers a few concluding remarks.

II. Historical Basis for the Idea of Ukrainian Statehood

7. Long before the emergence of the modern Ukrainian state with the collapse of the Soviet Union in 1991, there was a Ukrainian national movement, made up largely of intellectuals, that helped to spread the idea that Ukrainians were a distinct people or ethnic group. This section traces the role played in that movement by the idea of Ukrainian statehood and how the emergence of a Ukrainian political unit in various guises following the First World War has interacted with the evolving Ukrainian self-identity over the last century.

A. The Nineteenth Century

8. Like the proponents of many other national movements in Europe, Ukrainian intellectuals were inspired by two phenomena: the French Revolution with its emphasis on the people as the source of political legitimacy; and the views of the Enlightenment German philosopher Johann Gottfried Herder, who argued that all peoples throughout the world, regardless of their political status, are carriers of a unique culture, and that every culture (best represented by a people's native language) has its own particular worth and value.

9. During the first phase of the national movement, Ukrainian activists (Mykola Kostomarov, Panteleimon Kulish, and Taras Shevchenko, among others) were concerned primarily with cultural activity: describing the ethnographic characteristics and defining the geographical extent of the Ukrainian people, and codifying a written form of their language. During the second phase, a new generation of activists (Mykhailo Drahomanov, Ivan Franko,

and Mykhailo Hrushevskyy) looked to the historical past to justify the existence of a distinct Ukrainian people and its right for cultural and political autonomy.

10. It was in this context that great emphasis was put on earlier examples of statehood on Ukrainian lands. The medieval entity known as Rus', which functioned as a loosely-knit conglomerate of principalities from the ninth to fourteenth centuries, was the first example to be mentioned. This was inevitable, considering the fact that the political, socioeconomic, and cultural center of Rus' was the city of Kyiv in the very heart of Ukraine. Kyivan Rus', however, extended beyond present-day Ukraine and included all of Belarus and much of European Russia.

11. In terms of territory, a much more specifically Ukrainian state was the Army of Zaporozhia, or Hetmanate, created in 1649 under the Zaporozhian Cossack leader Bohdan Khmelnytskyi, among whose most illustrious successors at the turn of the eighteenth century was Ivan Mazepa. The Hetmanate (also called Little Russia) functioned as a largely self-governing entity in central Ukraine for well over a century until it was abolished in the 1780s by the Russian imperial authorities under Catherine II. Despite the demise of the Cossack Hetmanate, its existence inspired the work of an ever growing number of the nineteenth-century Ukrainian belletrists, artists, historians, and civic activists, and it provided them with a concrete example of a self-governing political entity that might be restored in one form or another in the future.

12. When the ideology of nationalism reached Ukraine's intellectuals during the first decades of the nineteenth century, Ukrainian lands were divided between the Russian Empire in the "East" and the Austrian (later Austro-Hungarian) Empire in the "West." The attitude of those two states toward Ukrainian aspirations differed greatly, especially during the second half of the

century. The rulers of Habsburg Austria tolerated and even encouraged the national movement among Ukrainians (officially called Ruthenians at the time) based in the “western” city of Lviv, while the tsarist Russian authorities aggressively attempted to suppress the Ukrainian national movement among Ukrainians (officially called Little Russians) based in the “eastern” city of Kyiv.¹

13. Nonetheless, by the 1890s, specifically Ukrainian political parties functioned in both the Russian and Austro-Hungarian Empires. This was also a time when certain leaders—Iuliian Bachynskyi (*Ukraina irredenta*, 1895) and Mykola Mikhnovskyi (*Samoostiina Ukraïna/Independent Ukraine*, 1900)—put forward the idea of an independent state which would include Ukrainian-inhabited lands from both empires. Less than two decades later, seemingly far-fetched ideas became reality.

B. The Twentieth-Century Revolutionary Era

14. From the very beginning of the revolutionary era that began with the collapse of the tsarist Russian Empire and ended with the establishment of Soviet rule (1917-1921), Ukrainians set out to achieve self-rule and eventually independent statehood. Already in March 1917 a body called the Ukrainian Central Rada (council) was established in Kyiv. It comprised between 800 to 900 elected delegates who represented a broad spectrum of Ukrainian society: rural dwellers, factory workers, soldiers, and civic associations. Before the year ended the

¹ See Paul Robert Magocsi, *History of Ukraine: The Land and Its Peoples*, 2nd revised and expanded ed. (Toronto, Buffalo, and London: University of Toronto Press, 2010), p. 407 (Annex 118).

Central Rada called into being the Ukrainian People's/National Republic, which in January 1918 became an "independent, subject to no one, Free, Sovereign State of the Ukrainian People."²

15. From the very beginning the Central Rada defined the concept "Ukrainian People." It meant the "entire population of our land"—ethnic Ukrainians and "other peoples [of] Ukraine."³ Moreover, all peoples had the "right of national-personal autonomy."⁴

16. In actual practice, thirty percent of the Central Rada's members were reserved for the republic's numerically largest peoples: ethnic Russians, Poles, and Jews. Each of the peoples had government ministers representing their interests in the Central Rada's General Secretariat for Nationality Affairs, and a special Ministry of Jewish Affairs was created to oversee autonomy for Jewish communities. Symbolic of the multinational nature of the Ukrainian People's Republic was its paper currency on which languages other than Ukrainian appeared: Russian, Polish, and Yiddish.

17. The Ukrainian People's/National Republic was able to rally a national army to defend the territory it claimed: Ukrainian-inhabited lands in the former Russian Empire. Independent Ukraine was recognized by the Central Powers through the Treaty of Brest Litovsk

² "Fourth Universal of the Ukrainian Central Rada, 9 January 1918," in Taras Hunczak, ed., *The Ukraine, 1917-1921: A Study in Revolution* (Cambridge, Mass.: Harvard University Press, 1977), p. 392 (Annex 109).

³ "Second Universal of the Ukrainian Central Rada, 3 July 1917," in *ibid.*, p. 386.

⁴ "Fourth Universal," in *ibid.*, p. 394.

(February 1918), and Germany and Austria-Hungary accepted an invitation from Ukraine to send troops to protect it from Soviet Russia.

18. When the Central Powers became displeased with what they considered the ineffectiveness of the Central Rada, they helped to install in Kyiv a pro-German leader, Hetman Pavlo Skoropadskyi, to head what was formally called the Ukrainian State. Skoropadskyi's very title recalled the long tradition of Ukrainian statehood dating back to the Cossack Hetmanate in the seventeenth and eighteenth centuries.

19. After Germany surrendered to the Allies in November 1918, their Hetmanate client state collapsed. Nevertheless, Ukrainian statehood survived with the immediate restoration of the Ukrainian National Republic, this time under the leadership of an executive body, the Directory, headed by Symon Petliura. In the context of civil war, peasant uprisings, and foreign invasions that characterized Ukraine in 1919-1920, the Directory-led Ukrainian National Republic managed to survive, although with great difficulty, until its forces were finally driven from Ukraine in November 1920.

20. Despite the turbulent environment in the post-tsarist Russian Empire, a Ukrainian state, whether in the form of a national republic or hetmanate, managed to survive in some form during the revolutionary era, 1917-1920. Evidence of its existence was confirmed on the international stage. Ukraine was recognized de jure or de facto by 25 countries, and as an

independent state it was accepted into several international organizations (maritime navigation, postal, telegraph, and radio union).⁵

21. Very much aware of the reality and strength of the Ukrainian national movement and the importance of Ukrainian statehood as a unifying force for people who identified as Ukrainian, the Bolsheviks responded by creating in December 1917 a rival entity, the Ukrainian Republic of Councils, based in Kharkiv. The alleged need to protect the Republic of Councils and its successor, the Soviet Ukrainian Republic, later provided the “legal” justification for Bolshevik Russia to send its Red Army into Ukraine in order to drive out the forces of its rival, the Ukrainian National Republic.⁶

22. Meanwhile, in Ukrainian/Ruthenian-inhabited lands in the Austro-Hungarian Empire (which ceased to exist in late October 1918), a West Ukrainian Peoples’ National Republic based in the former Austrian province of Galicia was established in Lviv on 1 November 1918. Two months later the West Ukrainian Republic declared its unification with the Ukrainian Peoples’ National Republic in Kyiv. Like its counterpart in Kyiv, the West Ukrainian Republic understood the term “Ukrainian” in a civic sense; that is, as encompassing all the

⁵ Vasyl Markus, “International Legal Status of the Ukrainian State,” in *Ukraine: A Concise Encyclopedia*, Vol. 2 (Toronto: University of Toronto Press, 1971), pp. 67-68 (Annex 110).

⁶ Jurij Borys, *The Sovietization of Ukraine, 1917-1923* (Edmonton: Canadian Institute of Ukrainian Studies, 1980), pp. 184-185 (Annex 111).

peoples living on its territory. In the republic's proposed parliament, thirty percent of the deputies were reserved specifically for Poles, Jews, and Austro-Germans.⁷

23. Despite the declaration of unity, the West Ukrainian Republic maintained its own Ukrainian Galician Army. The operationally distinct armies of both republics were constantly engaged in a struggle for survival. The West Ukrainian National Republic fought against Poland (which eventually defeated it in July 1918). The Ukrainian National Republic fought against Bolshevik-led Soviet Russia, anti-Bolshevik White Russian forces, and several insurgent peasant "armies" operating on Ukrainian lands in the former Russian Empire. Even though both the Kyiv-based Ukrainian National Republic and the Lviv-based West Ukrainian National Republic were eventually defeated, they managed to mobilize tens of thousands of troops to fight and die for their country—Ukraine.

24. It was the strength of belief in Ukrainian statehood, which played itself out during the revolutionary era (1917-1921), that convinced the Bolshevik leadership in Moscow (Lenin and Stalin) that Soviet Russia could only hope to maintain control over Ukraine if it sent the Red Army to invade and occupy the country. Such tactics reflected the views of a wide range of Bolshevik political (Trotsky, Manuilskyi, Rakovskii) and military (Muraviev, Antonov-Ovseenko) leaders, and military operations were carried out in tandem and cooperation with a

⁷ Vasyl Kuchabsky, *Western Ukraine in Conflict with Poland and Bolshevism, 1918-1923* (Edmonton and Toronto: Canadian Institute of Ukrainian Studies Press, 2009), p. 57 (Annex 117).

distinct Ukrainian Communist party (Bolshevik) governing a Soviet Ukrainian state closely allied but nonetheless administratively separate from Soviet Russia.

C. The Soviet Era

25. The Ukrainian Republic of Councils, renamed in January 1919 the Ukrainian Socialist Soviet Republic, had all the trappings of statehood. It made Kharkiv the republic's capital and adopted its own constitution (March 1919) which provided for a parliament (Congress of Soviets of Workers', Peasants' and Soldiers' Deputies) and governmental executive body (Council of People's Commissars). Its first major international act was a treaty of union (December 1920) concluded by the representatives of two separate states, the Russian S.F.S.R. (henceforth: Soviet Russia), and the Ukrainian S.S.R. (henceforth: Soviet Ukraine).⁸ Even though the treaty provided for a military and economic union, Soviet Ukraine remained for a while a "sovereign state," with control of its agricultural sector, justice, education, and foreign affairs.

26. In effect, during the period 1920-1923, Soviet Ukraine functioned—and was perceived in the outside world—as an independent state. It maintained diplomatic representation and/or was a party to treaties with several postwar countries (Poland, Czechoslovakia, Austria,

⁸ "Treaty of Union Between the Russian Soviet Socialist Republic and the Ukrainian Soviet Socialist Republic, 28 December 1920," in Magocsi, *History of Ukraine*, pp. 563-564 (Annex 118).

Lithuania, Latvia, Estonia, and Turkey), and it concluded bi-lateral agreements with several other countries.⁹

27. As part of the transformation of the former imperial Russian territorial space, Soviet Ukraine's "sovereignty" came to an end in December 1922. By that time Bolshevik ideologists put aside their long-term goal of world revolution and, under the direction of the All-Union Communist party General Secretary Joseph Stalin—someone who understood very well the on-going strength of ethnic nationalism—decided to create a federation of "national" republics. The 1922 treaty of union brought together Russia, Belorussia, Ukraine, and Transcaucasia to form the Union of Soviet Socialist Republics (henceforth: the Soviet Union). To this federal state structure could be added on a "voluntary" basis other Soviet republics, something that indeed took place during the 1920s with the creation from Soviet Russia of three republics in Central Asia (Turkmenistan, Uzbekistan, and Kirgizistan) and the reconfiguration of Transcaucasia into another three republics (Georgia, Armenia, and Azerbaijan). Within this albeit nominal federal state structure, Soviet Ukraine functioned as a common political space in which residents were identified (and identified themselves) with an entity called Ukraine that continued to enjoy some degree of autonomy.

28. For example, Soviet Ukraine continued for a while to maintain control over its education system and cultural development. With the encouragement of the All-Union authorities in Moscow, Soviet Ukraine's government initiated in 1923 a program known as

⁹ Borys, *Sovietization of Ukraine*, pp. 309-311 (Annex 111).

Ukrainianization.¹⁰ The program's strategic goal was to legitimize the authority of the Communist party (Bolshevik) of Ukraine by attracting to its ranks a broader spectrum of the local population. Recognizing the actual and latent strength of Ukrainian national feelings, the party hoped to attract support and new members by promoting the Ukrainian language and all forms of Ukrainian culture.

29. The Ukrainianization program turned out to be remarkably successful, so that by 1929, three-quarters of the republic's students attended schools in which Ukrainian was the language of instruction. There was also an enormous increase in the number of publications and cultural institutions (scientific bodies, libraries, theaters, and museums) using the Ukrainian language.

30. So successful was the Ukrainianization program that the All-Union Communist authorities in Moscow (after 1929 under the increasing authority of Joseph Stalin) feared that they inadvertently were contributing to Ukrainian nationalism, which was always viewed as a threat to Soviet rule. At the very same time, Stalin initiated the Soviet Union's First Five Year Plan in order more rapidly to industrialize the country and collectivize the agricultural sector, if necessary, by force. Ukraine especially felt the brunt of forced collectivization, which led to the deportation of over a million private farmers (kulaks) and the imposition of an artificial famine,

¹⁰ Terry Martin, *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923-1939* (Ithaca and London: Cornell University Press, 2001), p. 80 (Annex 113).

known as the Holodomor (Death by Hunger) or Great Famine, that in 1932-1933 alone accounted for nearly four million deaths.¹¹

31. These tragic developments were accompanied by the full dismantlement of the Ukrainianization program and a frontal attack on Ukrainian intellectual and cultural leaders. The concerted simultaneous assault on Ukrainian agriculturalists and urban intellectuals did not eliminate Ukrainian national feelings. In a real sense the positive results of Ukrainianization and, in particular, the shared suffering during the Great Famine (Holodomor) provided a store of common memories that would resurface in the future whenever changed political circumstances allowed for a revival of the Ukrainian national movement.

32. Not all ethnic Ukrainians lived within the borders of Soviet Ukraine during the interwar years of the twentieth century. Over 7.2 million (1930) lived beyond Soviet rule in their age-old homelands ruled by neighboring Poland, Romania, and Czechoslovakia. The vast majority (5.9 million) who lived in Poland (historic Galicia) were among the most fervently patriotic component of all Ukrainians. After the defeat of the West Ukrainian National Republic by Polish armies recounted above, Galician Ukrainians formed the background of several underground political and military movements (Ukrainian Military Organization—UVO, Organization of Ukrainian Nationalists—OUN, and Ukrainian Insurgent Army—UPA) that from the 1920s through the 1940s fought against Poland, Nazi Germany, and the Soviet Union. Their

¹¹ Oleh Wolowyna, “The Famine-Genocide of 1932-33: Estimation of Losses and Demographic Impact,” in Bohdan Klid and Alexander J. Motyl, eds., *The Holodomor Reader* (Edmonton and Toronto: Canadian Institute of Ukrainian Studies Press, 2012), p. 63 (Annex 120).

goal was to create a non-Soviet, independent Ukrainian state. For example, Ukrainian statehood was proclaimed on the eve of and during World War II—in eastern Czechoslovakia (Carpatho-Ukraine, November 1938-March 1939) and in former Polish-ruled Galicia (the Act of Renewal of Ukrainian State, 30 June 1941). Although both entities were short-lived, they enriched the population with historical memories about a once and possible future independent state.

33. The victory of the Soviet Union along Europe's World War II eastern front and Stalin's insistence on extending his country's borders farther to the west had a direct impact on Soviet Ukraine. Ukrainian-inhabited territories in interwar Poland (eastern Galicia and western Volhynia), Romania (northern Bukovina and parts of Bessarabia), and Czechoslovakia (Subcarpathian Rus'/Transcarpathia)—a total of 165,000 square kilometers with eleven million inhabitants—were added to Soviet Ukraine.¹² This represented one-quarter of the postwar country's territory. For the first time in history, the vast majority of ethnic Ukrainian-inhabited lands (as defined by Ukrainian scholars) were within the borders of a single Ukrainian, albeit Soviet, state. Moreover, these were the lands (especially historic Galicia) where the Ukrainian national movement had its earliest beginnings and where ethnic national identity was still at its strongest and most widespread.

34. Although it became clear that by the late 1940s the goal of Ukrainian independence was not achieved, the concept of Ukrainian statehood did not disappear and, in a

¹² Magocsi, *History of Ukraine*, p. 688 (Annex 118).

real sense, was given a new lease on life. In 1945, the Ukrainian Soviet Socialist Republic (Soviet Ukraine) became one of the 51 founding members of the United Nations.

35. To be sure, Soviet Ukraine remained a part of the Soviet Union, but it did function *de jure* as a distinct state that included: its own Permanent Mission to the United Nations where its ambassadors represented Soviet Ukraine as distinct from the Soviet Union; membership in a wide range of United Nations agencies (Atomic Energy, Labor, Telecommunication, UNESCO, and World Health Organization, among others); and signatory to over 120 international treaties, conventions, and declarations (the Paris Peace Treaties (1947), Universal Declaration on Human Rights (1948), and the Moscow Treaty on the Limitation of Nuclear Weapons (1963), among others).¹³

36. It is certainly true that Soviet Ukraine's actions on the international stage could only be undertaken in full cooperation and accord with the central government of the Soviet Union. Nevertheless, Soviet Ukraine acted as a state and was perceived as such in several international settings.

37. Even at home, Communist party leaders in Kyiv tried to enhance the interests of Soviet Ukraine by lobbying the central government in Moscow for more investments from the central budget in their republic. One example of such concern was Crimea. After it was "ceded"

¹³ Theofil I. Kis, *Nationhood, Statehood and the International Status of the Ukrainian SSR/Ukraine* (Ottawa, London, and Paris: University of Ottawa Press, 1989), pp. 57, 59 (Annex 112).

by Soviet Russia in 1954, the Soviet Ukrainian government took this matter seriously and did its best to improve the economy of its new territorial acquisition.

38. Meanwhile, the idea of statehood independent of the Soviet Union lived on. Dreams they may have been, but they remained alive throughout the 1960s and 1970s in the writings of a wide range of persecuted and dissident intellectuals in Soviet Ukraine (Ivan Dziuba, Valentyn Moroz, Ivan Svitlychnyi, and Soviet General Petro Grigorenko) and among the large Ukrainian diaspora living in many countries worldwide, in particular the United States and Canada.

III. Ukrainian Identity and Statehood Since Independence

39. As explained in the previous section, in the brief periods before 1991 in which an independent Ukrainian state has existed, it has always comprised a population of various ethnic and national backgrounds extending beyond the specifically Ukrainian ethnographic and linguistic characteristics used by intellectuals to define the Ukrainian national movement in the early nineteenth century. The earlier twentieth-century Ukrainian states accordingly adopted a civic form of nationalism, capable of encompassing citizens who might self-identify as something other than Ukrainian. As will be described below, the same is true of the independent Ukrainian state that emerged from the collapse of the Soviet Union in 1991. However, the long-lived nature of that state compared to its progenitors of the early twentieth century, and the regional environment in which it finds itself, have contributed to an evolution in Ukrainian identity. Younger people who have grown up in independent Ukraine are now more likely to identify as Ukrainian based on the civic values embodied in that state, regardless of whether they

are native Ukrainian speakers or exhibit other markers of ethnic Ukrainianism prized by the nineteenth-century intellectuals. As so powerfully illustrated by current events, the experience of living under threat from an aggressive Russian neighbor has been another factor in forging a common Ukrainian identity in contra-distinction to Russia, based on civic values such as freedom, democracy, and protection of human rights.

A. Ukrainian Identity as a Civic Identity

40. On 24 August 1991 Soviet Ukraine’s elected parliament (Verkhovna Rada) declared Ukraine an “independent democratic state.”¹⁴ This latest movement toward independent statehood was a gradual process connected to the reforms and transformation of Soviet society initiated after 1985 by the chairman of the All-Union Communist party, Mikhail Gorbachev.

41. Changes in Soviet Ukraine did not begin in earnest until 1989 and were spearheaded by a civic organization called Rukh—the Popular Movement for Restructuring Ukraine. Rukh supporters were elected deputies to parliament and they, in cooperation with some Communist deputies, led that body to declare Ukraine a sovereign state (July 1990). The next step toward statehood was triggered by unexpected events in Moscow: an attempted coup (August 1991) to overthrow Gorbachev. In the wake of the coup’s failure Ukraine’s parliament declared independence (24 August).

42. To legitimize further that declaration, the parliament called for a national referendum to be held three months later on 1 December. Citizens eligible to vote were asked to

¹⁴ “Resolution of the Supreme Soviet of the Ukrainian S.S.R. on the Declaration of Independence of Ukraine, 24 August 1991,” in Magocsi, *History of Ukraine*, p. 723 (Annex 118).

approve or disapprove the parliament's declaration. The results were unexpected even among the most fervent supporters of independence. No less than 90 percent of the electorate approved the declaration. Even in those areas of the country that seemed less likely to support Ukraine's independence, well over half of the voters did so (Donetsk oblast 84%; Luhansk oblast 84%; Crimea 54%).¹⁵

43. Within a few weeks of the 1 December referendum, the Soviet Union ceased to exist (26 December 1991). During the next several months Ukraine's independence was recognized by most countries worldwide, by the United Nations, and by its post-Soviet neighbors, the Russian Federation and Belarus.

44. As a typical European country, Ukraine was ethnically diverse. In the past, all Soviet censuses recorded—actually required—that each inhabitant (including all children regardless of age) indicate his or her nationality, usually the same as listed in personal identification documents (so-called internal passports). The nationality designation (Ukrainian, Russian, Polish, etc.) was distinct from citizenship (Soviet or in some cases “foreign”).¹⁶

45. According to the last Soviet census (1989), of Ukraine's total population of 51.4 million nearly 73 percent were ethnic Ukrainians. The remaining 27 percent were among the country's over 100 national minorities. The numerically largest minority comprised 11.3 million

¹⁵ *Atlas istoriï ukrains'koi derzhavnosti* (L'viv: Naukove tovarystvo imeni Shevchenka, 2013), pp. 120-121 (map setting forth percentages of “persons who voted ‘for’” the referendum, by oblast) (Annex 121).

¹⁶ Dominique Arel, “Demography and Politics in the First Post-Soviet Censuses,” *Population*, Vol. 57, No. 6 (2002), pp. 812-813 (Annex 114).

ethnic Russians (22 percent of Ukraine’s total population), followed by much smaller numbers (all less than one percent) of Belarusians, Moldovans, Crimean Tatars, Bulgarians, Hungarians, Romanians, Poles, Jews, and Armenians. Despite their small numerical size, some of these minorities bordered on being a local “majority” if they happened to be concentrated in certain areas such as the Hungarians in Transcarpathia, the Moldovans in Kherson oblast, the Bulgarians along the Sea of Azov, the Crimean Tatars in Crimea, and the Greeks in and around the Azov port city of Mariupol. The numerically largest national minority, ethnic Russians, actually did comprise the majority of the inhabitants in several parts of eastern and southern Ukraine (Chernihiv, Kharkiv, Donetsk, and Kherson oblasts, and Crimea).¹⁷

46. For the most part, the above mentioned “national minorities” are descendants of Russians, Poles, Hungarians, etc. who have been living for centuries in the same place. In other words, their ancestral homes are in present-day Ukraine; their motherland or homeland is Ukraine, not Russia, Poland, Hungary, Romania, Moldova, Bulgaria, or somewhere else.

47. It is also important to distinguish between native language (also recorded in censuses) and nationality. Not all Ukraine’s inhabitants who report Russian as their native language/everyday language/language of convenience are ethnic Russians. Historically, a significant percentage of self-identifying ethnic Ukrainians (formerly Little Russians) were Russian speakers. This language phenomenon was strengthened during the seven decades of Soviet rule (1921-1991), when Russian was given pride of place as the most important language

¹⁷ Magocsi, *History of Ukraine*, Table 53.3, p. 745 (Annex 118).

in the country. Moreover, many of the national minorities, in particular Jews (whose numbers were much greater in the past), Belarusians, Crimean Tatars, Bulgarians, and Greeks, were and still are Russian speakers.

48. With the achievement of Ukrainian statehood in 1991, the question arose as to whether this new political entity should encompass a population whose common national identity is based on civic or ethnic principles. In other words, a civic-based national identity based on association with a state representing a community of people linked by common citizenship who live in a specific territory and are aware of being subject to a common body of laws and political institutions? Or an ethnic-based national identity in which the state is associated primarily with a particular ethnicity/nationality defined by its language, historical traditions, and cultural values?

49. The 1996 constitution responded clearly to that question by defining “the Ukrainian people” as “citizens [] of all nationalities.”¹⁸

B. Civic Identity as a Complement to Traditional Notions of Ukrainian Identity

50. The constitutional emphasis on a civic identity did not eliminate more traditional notions of what constitutes a Ukrainian identity. The constitution also called on “[t]he State [to] promote[] the consolidation and development of the Ukrainian nation, [and] of its historical consciousness, traditions and culture.”¹⁹ An especially important consolidating element was to be

¹⁸ *Constitution of Ukraine*: Preamble, p. 1, accessed at <https://rm.coe.int/constitution-of-ukraine/168071f58b>.

¹⁹ *Constitution*: Article 11, p. 2.

the state's sole official language, Ukrainian, whose "comprehensive development" was to be promoted "in all spheres of social life."²⁰

51. While the Ukrainian language was to be given greater prominence, especially in the state-controlled national education system, the "languages of national minorities" were guaranteed "free development."²¹ Of most concern was Russian, the mother tongue of 30 percent of Ukraine's inhabitants (2001 census).²² Although many of its speakers often expressed dissatisfaction with the classification "minority language," in practice Russian remained the exclusive medium of instruction in 1,275 of the country's elementary/high schools.²³ At least until the outset of the twenty-first century, Russian was the language of instruction in most schools of higher learning (universities, colleges, and technical institutes) and it dominated the print and especially non-print media throughout Ukraine.

52. Reforms in the school curriculum since independence have facilitated the emergence of a new younger generation with a shared historical frame of reference and with the shared Ukrainian experience at its core. The history of Ukraine was made a required subject beginning at the upper level of elementary school, throughout high school, and in colleges,

²⁰ *Constitution*: Article 10, p. 2.

²¹ *Ibid.*

²² Svitlana Mel'nyk and Stepan Chernychko, *Etnichne ta movne rozmaïttia Ukraïny* (Uzhhorod: PoliPrint, 2010), p. 12 (Annex 119).

²³ State Statistical Services of Ukraine, "Zahal'noosvitni navchal'ni zaklady Ukraïny na pochatok 2013/14 navchal'noho roku," sheet 64 (Annex 182).

universities, and technical schools regardless of a student's specialization. The former Soviet-Marxist version of history was replaced by the Ukrainian national schema formulated already before World War I by Mykhailo Hrushevskiy, the country's most renowned historian and its first president (1918). According to the Hrushevskiy schema, the medieval polity Kyivan Rus' is considered a proto-Ukrainian state, but the greatest emphasis is given to the seventeenth- and eighteenth-century Cossack state which is understood to have struggled for independence from—and not for unification with—Muscovy/Russia. As for the twentieth century Soviet era, it is no longer depicted solely as a period of social and economic achievements, but also one of widespread human suffering epitomized by the repression of the Ukrainian national idea and the horrific death toll of the Holodomor (Death by Hunger) imposed on Ukraine during the Great Famine of 1932-1933.

53. The formation of a shared Ukrainian sensibility has been further encouraged by the efforts of local communities to transform their public spaces. Symbols of Soviet rule—in particular statues of the Soviet founding father Lenin—were removed from squares in many cities, towns, and villages, and usually replaced by monuments to the nineteenth-century Ukrainian national bard, Taras Shevchenko. Events and personages suppressed by the Soviet regime in the twentieth century were rehabilitated through a wide range of activity by: university scholars and writers of school textbooks; various institutes of the National Academy of Sciences of Ukraine; and the newly created Institute of National Memory. Ukraine's public space was simultaneously enriched by public monuments to commemorate the Great Famine (Holodomor) and to honor figures (Andrei Sheptytskyi, Mykhailo Hrushevskiy, Mykola Skrypnyk, and

Stepan Bandera, among others) who were opposed to aspects—or to the very premise—of Soviet rule. Soviet-inspired names of several towns and cities were changed (Dnipropetrovsk became Dnipro; Kirov became Kropyvtskyi) as were names of streets and squares, while the country's paper currency featured portraits of Ukrainian patriotic heroes (Taras Shevchenko, Bohdan Khmelnytskyi, Ivan Mazepa, and Mykhailo Hrushevskyi).

54. On the one hand, the new emphases in the teaching of history and the re-imagining of the public space seemed to emphasize ethnic nationalism. On the other hand, Ukraine's de-Sovietization also reflected principles of civic nationalism in that there was an effort to give voice to all Ukraine's peoples.

55. New histories of Ukraine, especially required textbooks used in elementary and high schools, gradually adopted a multicultural approach with greater attention given to the achievements of non-ethnic Ukrainian individuals and communities. For example, special programs organized by the Ministry of Education and Science provided training and awareness about the Holocaust and its Jewish victims in Ukraine.

56. In the public sphere, places with concentrations of national minorities got street names named after their own prominent figures. This is particularly evident in the number of streets that now carry Jewish names (in Lviv, Chernivtsi, and Uman), Greek names (in Mariupol), and Hungarian names (throughout southern Transcarpathia).

57. Ukraine's state and local authorities provided direct support and encouraged foreign investment to build new or restore existing secular and religious monuments representative of the country's various peoples. Prominent among many examples are: for Jews,

the Holocaust killing sites in Kyiv (Babyn Yar) and Kharkiv (Drobytskyi Yar), the Menorah community center and TKUMA museum in Dnipro, the old Jewish quarter and Yanovsky labor camp in Lviv, and numerous synagogues throughout the country; for Crimean Tatars, the Khan's Palace in Bakhchysarai, mosques throughout Crimea, and statues of cultural and political activists; and university level institutions for Greeks (in Mariupol) and for Hungarians (in Berehovo). In particular, multicultural Odessa was encouraged to create civic and cultural centers devoted specifically to the city's Greek, German, Jewish, Armenian, and Bulgarian communities. There were even monuments restored or newly erected to satisfy the nostalgic longing of some citizens for iconic figures from the pre-World War I empires that once ruled Ukraine, whether Austria-Hungary (Habsburg Emperor Franz Joseph in Chernivtsi) or Russia (Romanov Empress Catherine II in Odessa and her favorite minister Gregory Potemkin in Kherson).

58. As the foregoing sections have explained, the modern sense of Ukrainian identity is a complex and evolving phenomenon. Ethnic markers of Ukrainian identity, such as language and culture, have been overlaid in recent decades by a civic identity that both informs how ethnic Ukrainians think about the Ukrainian state and allows residents of Ukraine who lack those markers to embrace their membership in that political community. At the same time, these ethnic and civic Ukrainian identities have co-existed with other worldviews held by particular segments of Ukrainian society, often dictated by age and geographical location.

59. For analytical purposes one might speak of four "national" identities organized according to either ethnic or civic principles. In reality, however, these identities are not discrete

or mutually exclusive and two or more of them typically combine in the self-identity of any given Ukrainian.

1. Ethnic Ukrainian Identity

60. The ethnic Ukrainian identity is determined by the belief that a person is Ukrainian if she or he speaks the Ukrainian language and believes in the idea of Ukraine as a viable nation-state. Before independence ethnic Ukrainianism was strongest among the population in western Ukraine, in particular the historic regions of Galicia and Volhynia. Since independence, increasing numbers of young people throughout all parts of Ukraine (born or largely acculturated in post-Soviet times) have embraced the ethnic approach to their “national” identity.

2. Ethnic Russian Identity

61. The ethnic Russian identity applies to those citizens whose ancestors were ethnic Russians who lived for generations, even centuries, in Ukraine, mostly although not exclusively in the eastern and southern regions of the country. Not only is Russian their primary, often exclusive language of communication, but their cultural affinity (often expressed through adherence to the Moscow Patriarchate of the Orthodox Church) is to Russia, of which they (or their forebears) were a part, whether in the form of the Russian Empire or the Soviet Union.

3. Soviet Civic Identity

62. The Soviet civic identity refers to people (often called Sovoks) who were born, raised, and educated anywhere in the Soviet Union. Their language of communication is Russian, which was the most prestigious language in that former state. As a corollary, they look down at

Ukrainian as little more than peasant speech, not a language at all, and refuse (often demonstratively) to speak it despite language laws and guidelines adopted by the Ukrainian authorities which they openly resent.

63. These Soviet (Sovok) types did have a nationality designation in their Soviet-era identification documents, but it was for the most part a nominal identity. This was because nationality, whether Russian or any other, was not considered important. Hence, association with the Soviet state and its cultural and political values became the main characteristic of the Soviet civic identity. In the absence of the Soviet Union, Ukraine's Sovoks have looked to its successor, the Russian Federation, as their ancestral homeland to which they again might one day belong politically. Sovoks are mostly of the older generation (today fifty years plus) and found throughout Ukraine, but mostly in the eastern and southern parts of the country, in particular Crimea.

4. Ukrainian Civic Identity

64. The Ukrainian civic identity views the state as defined by a set of shared values to which people of all ethnicities may subscribe. Key among those shared values is loyalty to the state regardless of a citizen's nationality and language. Hence, Russian or Crimean Tatar language speakers are as Ukrainian as Ukrainian speakers. It is in this context that one can speak of a modern multinational, multicultural Ukrainian state comprised of ethnic Ukrainians, Russian Ukrainians, Polish Ukrainians, Jewish Ukrainians, Crimean Tatar Ukrainians, etc.

65. Also of crucial importance are shared values about what kind of state deserves the loyalty of its citizens. In contrast to Russians (whether citizens of the Russian Federation or

Sovoks living in Ukraine and various parts of the post-Soviet space) who view the state as an end in itself, citizens who espouse a Ukrainian civic identity generally expect their state to abide by democratic principles, including the rule of law and the protection of human rights, and are supportive of the European integration process as a way of embedding these values in the country's institutions.

C. The Impact of Recent Events on Notions of Ukrainian Identity and Statehood

66. There is no question that recent events have had a profound impact on notions of civic Ukrainian identity and statehood. The first of these was the Orange Revolution of 2003-2004. The significance of this event was not only that it resulted in a second presidential election overturning the results of the first, but that it demonstrated the power of the people. For societies like Ukraine, used to authoritarian and dictatorial rule, the Orange Revolution transformed the national psyche of large segments of the population. Ordinary citizens could not only take to the streets and protest, but they could also effect real change. Moreover, their personal sacrifice over several weeks (in the face of mid-winter freezing temperatures) was done in order to protect the interests of the state—"their" state.

67. The second event that ultimately sealed the civic aspect of Ukrainian national identity was the Revolution of Dignity. It played itself out over four months (November 2013-February 2014) on the central square of the country's capital Kyiv, known as the Maidan, after Ukraine's president at the time, Viktor Yanukovich, refused to sign a memorandum of agreement with the European Union. The protests this time were related to the interests of Ukraine as a state and its geopolitical status, particularly as, ever since the Orange Revolution

ten years earlier, Ukrainian society and identity had become increasingly oriented toward the European Union. Ultimately, the protestors defeated the government's special forces and drove President Yanukovich from office. A new pro-European government, with the enthusiastic support of Ukraine's citizenry, now ruled the country.

68. The victory was bittersweet, however, because in the immediate wake of the Revolution of Dignity, Russia invaded (late February) and annexed Crimea (24 March) and supported separatists in the Donbas (the eastern part of the country comprised of the Donetsk and Luhansk oblasts) to secede from Ukraine. After eight years of conflict in the east with separatist forces assisted by Russia, over 13,000 Ukrainians were killed and many more driven from their homes in the Donbas to other parts of the country.²⁴

69. The forcible annexation of Crimea and the war with Russia and pro-Russian separatists in the Donbas has done more than anything else to enhance a civic state identity among Ukrainians, regardless of their ethno-national background. The majority of soldiers in the Ukrainian Army fighting against pro-Russia separatists in eastern Ukraine turned out to be local Russian-speaking inhabitants. It is clear that the protestors on the Maidan and the Russian-speaking soldiers in the east were speaking, fighting, and dying for their state—Ukraine.

70. The newest war with Russia (February 2022) has shown how strong and widely shared the Ukrainian identity, whether ethnic or civic, has become. The valiant resistance of

²⁴ Radio Svoboda, *The UN has counted the number of victims of hostilities in Donbass* (19 February 2021), accessed at <https://www.radiosvoboda.org/a/news-oon-kst-gerty-boyovyh-donbas/31110937.html> (Annex 170).

Ukrainians from all walks of life to the Russian invasion is thus both evidence of, and will further reinforce, the trend in Ukrainian self-identity to define itself in contradistinction to Russia and in alignment with European values.

IV. Conclusion

71. The idea of Ukrainian statehood has a long tradition that dates back at least to the mid-seventeenth century. The Ukrainian national movement kept the idea of statehood alive during the nineteenth century. Statehood was eventually, if briefly, realized during the post-World War I revolutionary era (1917-1920) that witnessed the establishment of no less than four Ukrainian states under five different regimes. Only one of these republics survived, Soviet Ukraine, which joined with Soviet Russia in December 1922 to form the Union of Soviet Socialist Republics—the Soviet Union.

72. After gaining its independence, the modern Ukrainian state adopted a constitution in 1996 which outlined its structure as a centralized (not federal) state. The question nevertheless remained open as to whether Ukraine was to be a state based on ethnic or civic principles; in other words, a state defined by the cultural values of ethnic Ukrainians, or a state defined by the common identity of all citizens regardless of their nationality or language.

73. The evolution of Ukraine since its establishment in 1991, and in particular following two social upheavals—the Orange Revolution (2003-2004) and the Maidan Revolution of Dignity (2013-2014)—has shown that Ukraine is moving more and more in the direction of becoming a nation-state where Ukrainianness is defined (and Ukrainians self-identify as such) primarily by the civic principle enunciated in its constitution: “the Ukrainian people” are

“citizens of Ukraine of all nationalities.”²⁵ Among the shared aspirations of the Ukrainian civic identity is a commitment to a state governed by European democratic values with an emphasis on freedom of expression, human rights, and the rule of law. The strength of the civic principle has been proven beyond all expectations by the reaction to “Putin’s War,” the current Russian invasion (February 2022), during which Ukrainian citizens of all regions, nationalities, gender, and language have stood up, fought, and died defending the state with which they fully identify—Ukraine.

²⁵ *Constitution*: Preamble, p. 1.

Signed in Toronto on 14 April 2022



Paul Robert Magoesi

Annex 7

Expert Report of Martin Scheinin (14 April 2022)

INTERNATIONAL COURT OF JUSTICE

**APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE
SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF
RACIAL DISCRIMINATION**

between

UKRAINE

and

THE RUSSIAN FEDERATION

EXPERT REPORT OF PROFESSOR MARTIN SCHEININ

I. Scope of This Report

1. This Expert Report pertains to the case currently pending before the International Court of Justice, initiated by Ukraine against the Russian Federation and concerning Ukraine's claims that the Russian Federation has breached its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD or Convention), as well as under the International Convention for the Suppression of the Financing of Terrorism. I have been asked by counsel to Ukraine to comment on Russia's claim that its conduct Ukraine alleged to be in violation of the ICERD may be justified as a legitimate restriction of human rights on national security grounds. Counsel have asked me to consider, in particular, whether the implementation of Russia's anti-extremism laws constitutes a valid defence to a claim of a breach of ICERD obligations.

2. In this report, I first conclude that while the presence of a genuine legitimate aim, such as national security or public order, may under certain circumstances justify restrictions on underlying substantive human rights, this can never obviate the need to assess whether those restrictions nevertheless constitute racial discrimination. To the contrary, compliance with the ICERD is one of the preconditions for any restriction passing the permissible limitations test in respect of those underlying substantive rights that are subject to some permissible limitations. Hence, the claim by Russia that a verified national security aim would, by definition, exclude a finding of racial discrimination, is erroneous.

3. I further conclude that, even if countering extremism was accepted as a legitimate aim that *per se* could justify restrictions upon some substantive human rights — a proposition that is questionable at best — the above conclusion would apply, i.e., its invocation would be no excuse for racial discrimination. In the current context that, however, is not even the case. In my view, the framework of Russia's 2002 Federal Law on countering extremism and Article 280.1 of the Criminal Code, together with their extension to Crimea and amendment, entail a

discriminatory purpose, or at least a discriminatory effect, within the meaning of Article 1, paragraph 1, of the ICERD. Hence, no further assessment pursuant to the permissible limitations test is needed regarding whether the application of this framework might in some instances have met some of the other requirements for the permissibility of restrictions on other human rights. The extensive reliance by the Russian Federation on its anti-extremism law for its measures that have adverse effect upon the enjoyment of any human right by Crimean Tatars or ethnic Ukrainians in Crimea, and for justifying those measures, demonstrates a breach of ICERD simply because of the presence of a purpose that is discriminatory, or because of the discriminatory effect of the measures in question.

II. Qualifications and Credentials of the Expert

4. I was educated as a lawyer in Finland, graduating with a Master's degree from the University of Turku in 1982. After some years in public service focused on Finnish constitutional law, I returned to academia and completed my doctoral degree in 1991 at the University of Helsinki with a PhD thesis entitled 'Human Rights in Finnish Law: A Study in Constitutional Law of the Domestic Validity of International Human Rights Treaties and the Applicability of Human and Constitutional Rights in the Finnish Legal Order'.

5. One main strand of my academic and professional career has been related to constitutional law, and in particular the status and implementation of international human rights norms in domestic legal systems. Constitutional law was the field of my first professorial position at the University of Helsinki (1993-1998) and was included in the scope of my Chair as Armfelt Professor of Constitutional and International Law that I thereafter held at Åbo Akademi University (1998-2008). I have been active in the International Association of Constitutional Law since 1987, culminating as serving as its President in 2010-2014. In that capacity, I also participated as a permanent invited Observer in the sessions of the Venice Commission of the Council of Europe. In Finland, I have since the 1980s in various expert

capacities contributed to the drafting of constitutional amendments or other statutes related to constitutional law or the implementation of international human rights norms, most importantly a comprehensive reform of the constitutional rights chapter of the Finnish Constitution that was completed in 1995. My most recent engagement of that type related to membership of a Government Commission that in 2021 produced a proposal for improvements in the statutory framework for the recognition of the rights of the indigenous Sámi people in Finland. Currently I serve as a member of the Scientific Committee of the Fundamental Rights Agency of the European Union.

6. A second and main strand of my academic and professional career has been related to international human rights law and, in particular, to human rights treaties with global reach, adopted by the United Nations General Assembly. I have published extensively articles, book chapters and books, including with Oxford University Press and Cambridge University Press. In 1997-2004 I served as a member of the Human Rights Committee, the treaty body established under the International Covenant on Civil and Political Rights, including as the main author of the Committee's General Comment No. 29 on states of emergency. Parallel to membership of the Human Rights Committee, I was the Chairperson of the International Law Association's Committee on Human Rights Law and Practice. In 2005-2011 I was the first holder of the mandate of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism which mandate included review of national counter-terrorism laws and their application, as to their compatibility with international human rights law. Between 2008 and 2015 I was either the leader or a contributor in three consecutive collaborative research projects funded by the European Union's Seventh Framework Program for research and development, all related to the interface between security and human rights, especially in the context of the threats of terrorism or other serious crime. Much of my academic writing has focused on the assessment

of the compatibility of security-based restrictions upon human rights as to their permissibility under international law. This line of academic research coincided with my position in 2008-2020 as Professor of International Law and Human Rights at the European University Institute in Florence where I also served as the Dean of Graduate Studies in 2016-2018. Since August 2020 I am British Academy Global Professor at the University of Oxford, conducting research on the capability of international human rights law to address the multiple human rights challenges that emerge in the digital realm.

7. During my career, I have served as expert witness in cases before the Inter-American Court of Human Rights and in one investor-state arbitration case, as well as co-counsel in some individual cases before the European Court of Human Rights.

III. The ICERD Prohibition Against Racial Discrimination Is Absolute and Allows No Exception for Measures Taken on National Security Grounds

8. Article 1 of the ICERD includes a comprehensive definition of what the Convention through its subsequent provisions addresses and prohibits as ‘racial discrimination’:

In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹

9. Judged by the ordinary meaning of its text, this provision forms a definitional basis for an absolute and unconditional prohibition against any differentiations that would have the purpose or effect of nullifying or impairing the enjoyment of human rights based on any of the characteristics of an individual or a group as listed in the provision. Notably, discriminatory ‘purpose’ and ‘effect’ will be prohibited in equal terms, and no distinction is made between the ground of ‘race’ as compared to any of the other, equally prohibited, grounds of differentiation.

¹ U.N. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 660 U.N.T.S. 195 (entered into force 4 January 1969), art. 1(1).

Hence, for instance discrimination on account of ethnicity, more precisely ethnic origin, constitutes ‘racial discrimination’ for purposes of the ICERD.

10. It is clear from the wording of the provision that there is no requirement that ‘racial discrimination’ could only occur where there is a violation of another (so-called substantive) human right. For ‘racial discrimination’ in the meaning of Article 1, paragraph 1, it is sufficient that the ‘enjoyment or exercise’ of another human right is subject to being impaired.

11. Finally, the wording of the above-quoted definition is disjunctive: racial discrimination is prohibited irrespective of whether it manifests itself as a discriminatory purpose or in the form of discriminatory effect. The presence of either one on its own amounts to racial discrimination. While the words ‘exclusion’ and ‘restriction’ in paragraph 1 carry a negative connotation, the same cannot be said about the terms ‘distinction’ and ‘preference’ which do not carry any such connotation. Therefore, a natural and literal reading of the Convention is that either a purpose to differentiate or an effect that differentiates between individuals or groups on any of the grounds listed in Article 1, paragraph 1, may equally amount to racial discrimination and therefore are prohibited under the Convention.

12. Beyond the qualifying provisions of paragraphs 2 to 4 in Article 1 which are a part of the definition of racial discrimination, ICERD does not include any clauses concerning limitations or exceptions. Neither is there is any provision about a possibility to derogate from the Convention on national security grounds, such as during a state of emergency that threatens the life of the nation. Here, it is indicative that the International Covenant on Civil and Political Rights (ICCPR) in its derogation clause of Article 4, paragraph 1, explicitly affirms that the core content of the Covenant’s multiple prohibitions against discrimination in Articles 2, 3, 14, 23, 24, 25 and 26 is absolute and non-derogable in respect of any discrimination based solely

on 'race, colour, sex, language, religion or social origin'.² This non-derogable nature of the core components of the prohibition against discrimination was clarified in the Human Rights Committee's General Comment on states of emergency, as follows:

According to article 4, paragraph 1, one of the conditions for the justifiability of any derogation from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Even though article 26 or the other Covenant provisions related to non-discrimination (articles 2, 3, 14, paragraph 1, 23, paragraph 4, 24, paragraph 1, and 25) have not been listed among the non-derogable provisions in article 4, paragraph 2, there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances. In particular, this provision of article 4, paragraph 1, must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant.³

13. Reference is also made to General Comment No. 24 by the Human Rights Committee, where reservations to obligations of non-discrimination are deemed as contrary to the object and purpose of the ICCPR and hence impermissible.⁴ The impermissibility of reservations and the absolute and non-derogable nature of the prohibition against racial discrimination support the contentions that this norm is both an *erga omnes* obligation of States and a peremptory (*jus cogens*) norm of customary international law.

14. The ICERD prohibition against racial discrimination is absolute, subject only to the qualifying provisions found in Article 1 itself. Hence, the Convention allows for carefully designed special measures to the benefit of underprivileged groups and for *bona fide* differentiations between citizens and non-citizens, or between various categories of non-citizens, that do not deviate from the general norm of racial discrimination being prohibited in

² U.N. International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171 (entered into force 23 March 1976), art. 4(1); *see also id.*, arts. 2(1), 3, 14(1) & 23-26.

³ Human Rights Committee (HRC), General Comment No. 29: Art. 4: Derogations during a State of Emergency, CCPR/C/21/Rev.1/Add.11 (2001), para. 8.

⁴ HRC, General Comment No. 24: Issues Relating to Reservations, CCPR/C/21/Rev.1/Add.6 (1994), para. 9.

absolute terms.⁵ These qualifying provisions must be understood in their context and in light of the object and purpose of the Convention, so that their application preserves the integrity of the main clause in paragraph 1, including in respect of an absolute and unconditional prohibition against ‘racial discrimination’ as defined by the Convention.

15. The fact that the ICERD does not include a permissible limitations clause, in turn, entails that where another human rights treaty, including the ICCPR, does include such clauses, these clauses provide no justification whatsoever for limitations that would have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights on account of any of the grounds listed in ICERD Article 1, paragraph 1. The relevance of this principle in the context of restrictions upon other, so-called underlying or substantive human rights, often on national security grounds, will be addressed in the following section.

IV. To the Extent Russia Argues That Its Restrictions on Underlying (Substantive) Human Rights Are Justified on National Security Grounds or Other Internationally Recognized Legitimate Aims, Such Restrictions Are Subject to Strict Substantive and Procedural Requirements

16. A central tenet in Russia’s response to Ukraine’s claims of breaches of the ICERD is that, as many human rights allow for permissible limitations and the application of a proportionality test when assessing whether conduct that prima facie interfered with the enjoyment of the human right in question constituted a violation of it, the claims by Ukraine could fall under such permissible limitations of those rights and, as a consequence, would not violate the ICERD either. As an example of how Russia frames this argument, reference is made to its Counter-Memorial where Russia explains:

[I]nasmuch as a measure can be reasonably justified or deemed legitimate, it does not qualify as discriminatory. Possible justifications include, among others, reasonable limitations to human and/or civil rights as may be necessary in a democratic society, provided for under applicable law and subject to due

⁵ See ICERD, art. 1(2)-(4).

process, in order to protect public order from acts such as terrorism, extremism, etc.⁶

17. Elsewhere in its Counter-Memorial, Russia seeks to justify its measures in respect of the *Mejlis* as follows:

As has been noted, individual rights are “not unlimited.” The principle that legitimate limitations may be placed to human rights in certain specific circumstances is a well-established principle of international law and forms an intrinsic component of these rights. Such limitations may be legitimately placed on the exercise of human rights for instance in cases of threat to essential interests pertaining to national security, public safety, public order, health and morals, or the free exercise of other citizens’ human rights and fundamental freedoms. Legitimate limitations also contribute to the protection of the human rights and freedoms of others. Since legitimate limitations placed on the exercise of human rights do not entail a violation, impairment or nullification of such rights, it follows that – to the extent that such legitimate limitations give rise to a differential treatment – they constitute an objective and reasonable justification that excludes by definition any discriminatory treatment under CERD.⁷

18. Similarly, in a concluding section of its Counter-Memorial, Russia argues that its measures in respect of the *Mejlis* and its leaders

constitute legitimate limitations permissible in a democratic society for the purpose of protecting the State’s essential interests of national security, public order and safety, other citizens’ lawfully protected rights and interests as well as the integrity and constitutional order of the Russian Federation. These grounds are provided under the Russian Federation’s domestic law and comply with international law. Since they are based on an objective and reasonable justification, these measures cannot constitute discrimination in comparison with standard practice. In addition, they do not suggest any racially-oriented discriminatory or arbitrary application of the legal framework – let alone a campaign of systematic racial discrimination. The measures that the Russian Federation has adopted against the *Mejlis* and its leaders manifestly do not come under nor violate CERD.⁸

19. As explained in the preceding section of this report, the ICERD itself is not subject to derogation or limitation on national security or other grounds. Therefore, the only understandable interpretation of the passages quoted above is that Russia is claiming that it was

⁶ Russia’s Counter-Memorial on the ICERD, para. 98 (footnotes omitted).

⁷ *Id.*, para. 154 (footnotes omitted).

⁸ *Id.*, para. 249.

entitled to restrict the underlying substantive rights in question (for example, freedom of assembly or freedom of speech), either through a derogation from such human rights treaties that allow for it, or, more likely, in the form of permissible limitations pursuant to the same treaties. The quoted passages could therefore be understood as implied references to the ICCPR and to the European Convention on Human Rights (ECHR).⁹

20. Before delving into the more likely option that Russia is referring to permissible limitations, I want to address the unlikely alternative that Russia seeks to justify its measures as derogations from the ICCPR and the ECHR. It needs to be noted that Russia has not invoked the existence of a state of emergency threatening the life of the nation that would justify derogations from some human rights under the framework of the ICCPR or ECHR. Had it sought to justify its measures as derogations from human rights, justified by the existence of a threat to the life of the nation, it would have been under a procedural obligation officially to declare a state of emergency and to notify other Parties to the human rights treaty subject to any derogation, through the intermediary of the Secretary-General of the United Nations as far as the ICCPR is concerned¹⁰ and the Secretary-General of Council of Europe as far as the ECHR is concerned.¹¹ This has not happened. Had it happened, any derogations from human rights would still be subject to international scrutiny, including under the requirements of necessity and proportionality and, as explicitly spelled out in ICCPR Article 4, paragraph 1, a non-derogable prohibition against racial discrimination. And, in any case, even a state of emergency and derogations from the ICCPR and ECHR would not justify any conduct that amounts to racial discrimination under the ICERD.

⁹ *See, generally*, ICCPR; Council of Europe, European Convention on Human Rights (ECHR), E.T.S. 5 (entered into force 3 September 1953).

¹⁰ ICCPR, art. 4(3).

¹¹ ECHR, art. 15(3).

21. In the absence of a declaration of a state of emergency and accompanying notification of other Parties, Russia's invocation of national security grounds as justifying restrictions upon some human rights must therefore be assessed through the permissible limitations test, as applicable under those human rights treaties that do include rights that are qualified by limitations clauses. Again, the ICCPR and the ECHR provide the pertinent frame of reference. Yet, even this line of argument fails because Russia has not explained how its conduct would meet the well-established cumulative requirements for permissible limitations that apply under the framework of the underlying substantive human rights in question (see, paragraphs 22 to 27, below).

22. The below analysis will focus on the ICCPR due to its close interrelationship with the ICERD as two central United Nations human rights treaties.¹² The purpose of the analysis is not to pronounce on what measures are permissible under the ICERD but on what is the role of the prohibition against racial discrimination in assessing the permissibility of limitations upon ICCPR rights. An elaborate and complete framework for a permissible limitations test under the ICCPR has been articulated in General Comments by the Human Rights Committee. Particularly two of them, which although they expressly apply only to the ICCPR, have made a lasting contribution to international human rights law as a whole: General Comments No. 27 (freedom of movement, ICCPR Article 12)¹³ and No. 37 (freedom of assembly, ICCPR Article

¹² The CERD Committee itself has made references to the Twin Covenants of 1966 (the International Covenant on Economic, Social and Cultural Rights and the ICCPR) as a general human rights framework underlying the ICERD. *See* CERD Committee, General Recommendation No. 11 on Non-citizens (Forty-second Session 1993), contained in U.N. Doc. No. A/48/18, para. 3; CERD Committee, General Recommendation No. 30 on Discrimination against Non-citizens (Sixty-fourth Session 2004), CERD/C/64/Misc.11/Rev.3, para. 2.

¹³ HRC, General Comment No. 27: Article 12 (Freedom of Movement), CCPR/C/21/Rev.1/Add.9 (1999).

21).¹⁴ Seven elements of such a rigorous permissible limitations test can be distilled from these texts to guide the assessment of national law and its application. These elements, applicable in respect of not only Articles 12 and 21 but generally the ICCPR provisions with permissible limitations clauses, can be summarized as follows:

- (1) Any human rights intrusion must be ‘provided by the law’, i.e., have a legal basis that meets certain conditions of ‘the quality of the law’ (e.g., proper enactment and publication, precision and foreseeability in application);¹⁵
- (2) The inviolability of human rights is not limited to non-derogable or *jus cogens* rights, such as the prohibition against racial discrimination, alone, but also extends to include ‘essential core’ aspects of other human rights that otherwise would allow for permissible limitations, but not in respect of their essential core content;¹⁶
- (3) Human rights intrusive measures must be necessary in a democratic society, also entailing an obligation to choose the least intrusive measure from amongst equally effective ones;¹⁷
- (4) There must not be unfettered (administrative) discretion in the application of intrusive measures;¹⁸

¹⁴ HRC, General Comment No. 37: On the Right of Peaceful Assembly, CCPR/C/GC/37 (2020).

¹⁵ See, e.g., HRC, General Comment No. 27, paras. 11-12; HRC, General Comment No. 37, paras. 36 & 39.

¹⁶ See, e.g., HRC, General Comment No. 27, para. 13; HRC, General Comment No. 37, para. 36.

¹⁷ See, e.g., HRC, General Comment No. 27, paras. 11, 14; HRC, General Comment No. 37, paras. 37 & 40.

¹⁸ See, e.g., HRC, General Comment No. 27, para. 13; HRC, General Comment No. 37, paras. 38-39.

- (5) Any intrusive measure must have a genuine and identifiable legitimate aim (such as ‘national security’ or ‘public order’);¹⁹
- (6) Intrusive measures must conform to the (strict) principle of proportionality in that the expected or actual benefit obtained towards serving the legitimate aim invoked outweighs any adverse impact upon human rights;²⁰ and
- (7) Intrusive measures must not amount to a breach of other human rights obligations than the one under which the scrutiny is performed, including not only ICCPR rights but also human rights protected by other treaties, including the ICERD and its non-derogable *jus cogens* prohibition against racial discrimination.²¹

23. As is reflected in item (5) of the above formulation of the permissible limitations test, the existence of a legitimate aim, sometimes referred to as ‘pressing social need’, is a factor that may justify interferences in the enjoyment of those human rights that do allow for permissible limitations. It provides no justification for exceptions from, or limitations upon, those human rights that are absolute, including the prohibition against racial discrimination. In respect of rights that do allow for restrictions, the existence of a legitimate aim is but one of the seven cumulative requirements and, as item (6) explicates, the mere invocation of a legitimate aim is not sufficient but what matters is a demonstrated benefit towards meeting the legitimate aim without human rights intrusions that would be disproportionate compared to that benefit.

24. The concept of ‘national security’ is recognized in international human rights law as a legitimate aim that may justify necessary and proportionate restrictions upon many human

¹⁹ See, e.g., HRC, General Comment No. 27, para. 11; HRC, General Comment No. 37, paras. 36 & 40-47.

²⁰ See, e.g., HRC, General Comment No. 27, paras. 14-15; HRC, General Comment No. 37, paras. 36 & 40.

²¹ See, e.g., HRC, General Comment No. 27, paras. 11 & 18.

rights.²² Other *per se* legitimate aims of public safety, public order, (public) health or morals, or the rights of others appear in varying constellations in the limitations clauses of various ICCPR articles.²³

25. One notable area where States have sought to justify their human rights intrusive measures through a reference to national security is counter-terrorism. This context constitutes a *prima facie* legitimate invocation of national security as a legitimate aim under item (5) of the permissible limitations test, allowing for a step-by-step assessment of whether the other requirements for permissible limitations also were met. There is a large number of international conventions and protocols that impose upon States international legal obligations in the field of counter-terrorism. The compatibility of any human rights intrusive measures taken by States in the implementation of these obligations will be assessed under the framework provided by human rights treaties concerning permissible limitations, most often but not exclusively by addressing such application under the recognized legitimate aim of protecting national security.

26. Russia has not presented in its Counter-Memorial the necessary facts and arguments needed to demonstrate that its measures meet the cumulative requirements of permissible limitations on the basis of national security or related aims. The invocation of a legitimate aim is but one such requirement. The validity of such an invocation must also be assessed on the basis of the demonstrated benefit that was obtained towards meeting the legitimate aim through human rights intrusions. Further, those intrusions must be minimized to a degree shown to be necessary and must remain proportionate in comparison with the benefit obtained for meeting the legitimate aim.

²² See ICCPR, arts. 12, 13, 14, 19, 21 & 22 (explicitly mentioning national security as a legitimate aim that may justify restrictions).

²³ See *id.*, arts. 12(3), 14(1), 18(3), 19(3)(a)-(b), 21 & 22(2).

27. Russia has demonstrated none of this. Rather, it has sought to explain its conduct through references to its own domestic statutes or case law, something that constitutes neither a proper justification under international law nor a proper application of the permissible limitations test.²⁴ Therefore, its references to national security or another *per se* legitimate aim cannot provide proper justification in respect of any intrusions into so-called underlying substantive rights. For example, regarding the ban on the *Mejlis*, Russia's Counter-Memorial recapitulates the reasons for the ban as presented in the 2016 judgment of the Supreme Court of Crimea, including several items without a national security basis, such as using the fact of organising 'unauthorized events' as a reason for a ban based on 'extremism' as covered by Russia's anti-extremism statute.²⁵

28. More importantly, even assuming that Russia could demonstrate that its measures meet all other requirements of the permissible limitations test except compliance with other human rights (item 7 in the list presented in paragraph 22, above), Russia's argument still fails, because a reference to national security or another *per se* legitimate aim cannot justify a deviation from ICERD and its absolute prohibition against racial discrimination. It is a precondition for the permissibility of any limitations under the human rights treaties in question – typically the ICCPR – that the conduct in question must not amount to a violation of other human rights. My conclusion is that Russia's invocation of national security or other aims recognized as *per se* legitimate in the ICCPR, or international human rights law more generally, cannot justify any conduct that would amount to a violation of the prohibition against racial discrimination as defined in ICERD Article 1.

29. The prohibition against discrimination based on any of the factors listed in ICERD Article 1, paragraph 1, is absolute. There is no derogations clause or limitations clause in the

²⁴ See, e.g., Russia's Counter-Memorial on the ICERD, paras. 98, 154–156.

²⁵ See *id.*, paras. 166–170.

Convention. As the prohibition against racial discrimination is understood as an absolute treaty norm binding upon all Parties of the Convention, this absolute nature of the treaty norm extends to any discrimination based on ‘race, colour, descent, or national or ethnic origin’. The Convention does not include, and does not allow for, a general proportionality or reasonability assessment of whether certain conduct by a State amounts to discrimination. Further, there is no room for considerations of whether, for instance, another, presumably legitimate, aim existed that made it necessary and proportionate to engage in some degree of racial discrimination. Therefore, compliance with the prohibition against racial discrimination remains as an independent requirement for the permissibility under international law of any restrictions upon so-called underlying substantive human rights. Russia’s line of argument, cited verbatim in paragraphs 16 to 18 above, is erroneous.

V. Russia’s Anti-Extremism Laws Do Not Satisfy the Requirements for Permissible Restrictions on Underlying (Substantive) Human Rights

30. Counsel for Ukraine have specifically asked me to address whether the implementation of Russia’s anti-extremism laws constitutes a valid defence to Ukraine’s claims concerning Russia’s breach of its ICERD obligations. Based on my review of Ukraine’s Memorial and Russia’s Counter-Memorial, I note that both Parties have made numerous references to the concept of ‘extremism’ as enshrined in the domestic law of the Russian Federation, in particular Federal Law No. 114-FZ of 25 July 2002 ‘On Combating Extremist Activities’, as subsequently amended.²⁶ The application and enforcement by Russian authorities of this piece of federal statutory law was in 2014 extended to Crimea. I further note that the Russian Federation seeks to dismiss Ukraine’s claims of racial discrimination by seeking to justify its actions as measures

²⁶ See, e.g., Ukraine’s Memorial, paras. 385-386, 510; Russia’s Counter-Memorial on the ICERD, paras. 156-159, 371. Note that the title of the law is translated by different sources as ‘On Combating Extremist Activity,’ ‘On Combating Extremist Activities,’ and ‘On Counteracting Extremist Activity’.

taken in the application of national legislation in force, specifically its federal framework of anti-extremism law.²⁷

31. The immediately preceding section of this report addressed Russia's invocation of aims that *per se* are legitimate as objectives that may justify certain limitations upon specific substantive human rights, including under the ICCPR. The concept of national security had a prime place there. Here, attention shifts to the prominent role of 'combating extremism' in Russia's effort to justify its conduct that may have caused adverse effect upon the enjoyment of human rights by members of two ethnic communities in Crimea, Crimean Tatars and ethnic Ukrainians. Similar to what was done in the preceding section in respect of 'national security' and other aims that *per se* are recognized as legitimate under international human rights law, I wish to quote how Russia in its Counter-Memorial invokes combating extremism as an allegedly legitimate aim – recognized in its domestic law – that justifies restrictions on human rights:

The decision at issue was adopted and upheld by the Russian courts in 2016, following a thorough investigation and a series of warnings served on the Mejlis and its members over the two preceding years. The decision of the Supreme Court of the Republic of Crimea has been confirmed by the Supreme Court of the Russian Federation, on the basis of a thorough and detailed reasoning that confirmed the legitimate nature of the ban, which has nothing to do with racial discrimination. The justification for the ban, that is to say the fight against extremist activities that pose a threat to national security, to citizens' rights, public order and other legitimate considerations, is an objective and reasonable ground that, moreover, reflects a general practice in all democratic States.²⁸

32. At the outset, I wish to refer back to closing paragraphs 26 to 29 of the preceding section, the conclusions of which would relate also to this kind of invocation of the notion of 'extremism': even if human rights intrusions justified as measures to counter extremism were shown to meet all other requirements for permissible limitations, they would still need to be

²⁷ See, e.g., Russia's Counter-Memorial on the ICERD, paras. 98, 154-156, 161, 371-372.

²⁸ *Id.*, para. 133.

assessed separately as to whether they also are nondiscriminatory. As will be explained below, my conclusion is that here Russia's effort to justify its conduct independently fails for a different reason, namely that its anti-extremism statute, or at least its extension to Crimea in the context of the purported annexation of Crimea into the Russian Federation, in itself entails a discriminatory 'purpose', or at least its application has resulted in discriminatory 'effect', both equally incompatible with the ICERD.

33. As was noted in the preceding section, the concept of 'national security' is recognized in international human rights law as a legitimate aim that may justify necessary and proportionate restrictions upon many human rights, providing all other stringent requirements for permissible limitations are met. In contrast, neither the ICCPR nor other human rights treaties refer to countering 'extremism' as a legitimate aim that would justify restrictions on human rights. There is a fundamental difference between countering terrorism and countering 'extremism', as there is a large number of international conventions and protocols that impose upon States legal obligations in the field of counter-terrorism.²⁹ The compatibility of any human rights intrusive measures taken by States in the implementation of these obligations will be assessed under the framework provided by human rights treaties concerning permissible limitations, most often but not exclusively by addressing their application under the recognized legitimate aim of protecting national security and not by treating counter-terrorism itself as a legitimate aim. In principle, the same might apply for national laws that base themselves on the notion of 'extremism': they and their application would also need to be assessed under the framework of permissible limitations to human rights. Because of the absence of underlying

²⁹ Notably, the Shanghai Convention, to which the Russian Federation is a party, is not an instrument comparable to global conventions and protocols against terrorism. *See* SCO, Shanghai Convention on Combating Terrorism, Extremism and Separatism (entered into force 29 March 2003). It is of regional nature and primarily related to extradition and other forms of mutual cooperation between the Parties. Further, its definition of 'extremism' is clearly more narrow than the one found in Russia's anti-extremism statute. *See id.*, art. 1(1)(3).

international obligations of wide global acceptance, national anti-extremism laws, however, require even closer human rights scrutiny than counter-terrorism laws, and not only for their practical application in individual cases but also as to their abstract compatibility with international human rights law. International treaty monitoring bodies will need to assess both the framework of a national anti-extremism statute and its practical application as to whether they represent permissible limitations of human rights, or violations of them.

34. It is not my view that any national law, however formulated, that includes the notion of ‘extremism’ would, by definition, be incompatible with international human rights law, or that every application of such national law in respect of a member of a non-dominant ethnic group would automatically constitute racial discrimination. The word ‘extremism’ has gradually made its way into international policy documents, usually in the qualified form of ‘violent extremism’ or, as a more complete formulation, ‘violent extremism which can be conducive to terrorism’³⁰ or ‘violent extremism that can lead to terrorism’.³¹ What matters here is that national laws on ‘extremism’ and their application must be subject to scrutiny as to whether they genuinely and in a non-discriminatory manner contribute towards national security or another objective recognized as a legitimate aim under human rights law, or whether their actual purpose or their practical application is incompatible with human rights. In that context, the main question under the ICERD will be whether a State’s reliance on a domestic piece of legislation amounts to racial discrimination when the law in question targets the enjoyment of human rights by persons belonging to non-dominant ethnic groups. As ‘extremism’ is a notion that finds frequent application in situations of inter-ethnic tension or as a justification for States’ measures to counter protest by ethnic communities, the mere resorting to an anti-extremism

³⁰ See U.N. Security Council Resolution No. 2178 on threats to international peace and security caused by terrorist acts, S/RES/2178 (2014), para. 15 (internal punctuation omitted).

³¹ This notion is used, inter alia, by the United Nations Office on Drugs and Crime. See U.N. Office on Drugs and Crime, UNODC Strategy 2021-2025, pp. 4, 11, & 21-22.

law in a situation of ethnic tension may demonstrate the presence of a discriminatory ‘purpose’ or result in discriminatory ‘effect’ within the meaning of Article 1, paragraph 1, of ICERD.

35. I understand that this question is applicable to the current case. As I explain in greater detail below, it is my conclusion that Federal Law No. 114-FZ of 25 July 2002 of the Russian Federation ‘On Combating Extremist Activities’ (as subsequently amended), and a related provision of the Criminal Code, Article 280.1, are not pieces of national legislation that would serve the implementation of international obligations, for instance relating to counter-terrorism, or that would otherwise enjoy legitimacy in the eyes of the international community. This conclusion is supported by the many international human rights expert bodies that have repeatedly expressed their serious concerns about the law when examining the law or practice of the Russian Federation.

36. In June 2012, i.e., before Russia’s purported annexation of Crimea and the extension of the application of the federal anti-extremism statute there, the European Commission for Democracy through Law (the Venice Commission) published an extensive Opinion on Russia’s anti-extremism law.³² This Opinion includes, inter alia, the following characterizations of the statute:

[7] The broad interpretation of the notion of “extremism” by the enforcement authorities, the increasing application of the Law in recent years and the pressure it exerts on various circles within civil society, as well as alleged human rights violations reported in this connection have raised concerns and drawn criticism both in Russia and on the international level. . . .

[31] The Commission however has strong reservations about the inclusion of certain activities under the list of “extremist” activities. Indeed, while some of the definitions in Article 1 refer to notions that are relatively well defined in other legislative acts of the Russian Federation, a number of other definitions listed in Article 1 are too broad, lack clarity and may open the way to different interpretations

[33] . . . The Commission underlines that advocacy of the right to self-determination of peoples or peacefully advocating a different territorial

³² Venice Commission, Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation, No. 660/2011 (2012) (Ukraine’s Memorial, Annex 817).

arrangement within a country are generally not considered to be criminal actions, and may on the contrary be seen as a legitimate expression of a person's views. . . .

[35] Extremist activity under point 3 is defined in a less precise manner than in a previous version of the Law (2002). In the 2002 Law the conduct, in order to fall within the definition, had to be "associated with violence or calls to violence". However the current definition ("stirring up of social, racial, ethnic or religious discord") does not require violence as the reference to it has been removed. . . .

[39] It therefore appears that under the extremist activity in point 4, not only religious extremism involving violence but also the protected expressions of freedom of conscience and religion may lead to the application of preventive and corrective measures. This seems to be confirmed by worrying reports of extensive scrutiny measures of religious literature having led, in recent years, to the qualification of numerous religious texts as "extremist material". . . .

[49] Considering the broad and rather imprecise definition of "extremist documents" (Article 1.3), the Venice Commission is concerned about the absence of any criteria and any indication in the Law on how documents may be classified as extremist and believes that this has the potential to open the way to arbitrariness and abuse. . . .

[50] The definition of an extremist organisation contained in Article 1.2 is circular. . . .

[66] Article 16 of the Extremism law prohibits extremist activity during the holding of assemblies. Apart from the difficulties that arise in relation to the definition of "extremist activity" addressed above, this article imposes on organisers of assemblies the obligation of the "timely suppression" of any extremist activity. The article also imposes obligations and liabilities on organisers of an assembly to take steps to eliminate the involvement of extremist organisations, use of their symbols or emblems and the dissemination of extremist materials. Failure to do so shall involve the halting of the assembly. . . .

[74] . . . [T]he manner in which this aim is pursued in the Extremism Law is problematic. In the Commission's view, the Extremism Law, on account of its broad and imprecise wording, particularly insofar as the "basic notions" defined by the Law - such as the definition of "extremism", "extremist actions", "extremist organisations" or "extremist materials" - are concerned, gives too wide discretion in its interpretation and application, thus leading to arbitrariness.³³

³³ *Id.*, paras. 7, 31, 33, 35, 39, 49, 50, 66 & 74.

37. These several critical remarks are non-exhaustive examples of expressions of concern by the Venice Commission which is only one of the expert bodies that have criticized Russia's anti-extremism statute. What is most relevant in the context of the current case, is that the text of the statute itself, and of the related Article 280.1 of the Criminal Code, carry clear signs of the purported or enabled use of the framework of this Russian federal statute to target groups characterized by their 'race, colour, descent, or national or ethnic origin', to use the language of ICERD Article 1, paragraph 1. The definition of extremist activity in Article 1(1) of the anti-extremism statute includes the 'stirring up of social, racial, ethnic or religious discord' or certain (impermissible) actions or expressions related to a person's 'social, racial, ethnic, religious or linguistic affiliation or attitude to religion'.³⁴ This provision is followed in Article 1(2) and (3), by, respectively, definitions of 'extremist organisation' and 'extremist materials' which build upon the preceding definition of extremist activity.³⁵

38. In December 2013, on the eve of the purported annexation of Crimea, Article 280.1 of the Criminal Code was amended to include the crime of '[p]ublic calls to carry out actions aimed at violating the territorial integrity of the Russian Federation'.³⁶ Subsequently, in 2014, the territorial scope of application of both the anti-extremism statute and Article 280.1 of the Criminal Code was extended to include Crimea, as part of its purported annexation into the Russian Federation. These statutes were imposed upon the inhabitants of Crimea, including upon persons belonging to the distinct ethnic communities of Crimean Tatars and ethnic Ukrainians in Crimea. While many Russian-speakers or persons with a Russian ethnic identity may have felt loyalty towards Ukraine, even more so members of the Ukrainian ethnic

³⁴ Russian Federation, Federal Law No. 114-FZ of 25 July 2002, 'On Combating Extremist Activities' (Ukraine's Memorial, Annex 876), art. 1(1).

³⁵ *Id.*, arts. 1(2)-(3).

³⁶ Russian Federation, Federal Law No. 433-FZ of 28 December 2013, 'On Amendments to the Criminal Code of the Russian Federation' (Ukraine's Reply, Annex 94).

community and of the Crimean Tatars in Crimea would naturally have had a moral obligation of loyalty towards Ukraine. The December 2013 amendment of the Criminal Code, together with the purported annexation, effectively made it a crime to publicly state that Crimea is a part of the internationally recognized territory of Ukraine, a reaction that Russia's purported annexation of Crimea would legitimately trigger among many inhabitants of Crimea and particularly members of the two ethnic communities of Crimean Tatars and ethnic Ukrainians in Crimea. The December 2013 amendment, along with the inclusion of 'actions aimed at violating the integrity of the Russian Federation' (later rephrased to include the phrase '*territorial* integrity') as part of the definition of extremist activity in the anti-extremism law,³⁷ provide further support to an assessment that those statutes themselves, or at least their extension to include Crimea and its inhabitants, demonstrate a discriminatory 'purpose' in the meaning of ICERD Article 1, paragraph 1. Again, it is worth recalling that even in the absence of such a purpose, mere discriminatory effect would equally amount to a breach of the ICERD.

39. In its 2017 Concluding Observations, when considering a periodic report by the Russian Federation, the CERD Committee explicitly addressed the anti-extremism law of the Russian Federation and identified it as a framework that may result in breaches of the ICERD: the law was characterized as 'vague and broad', as lacking 'clear and precise criteria on how materials may be classified as extremist' and as containing broad definitions that could 'be used arbitrarily to silence individuals, in particular those belonging to groups vulnerable to discrimination, such as ethnic minorities, indigenous peoples or non-citizens'.³⁸ This assessment under the ICERD of Russia's anti-extremism law provides further support to

³⁷ Russian Federation, Federal Law No. 299-FZ of 31 July 2020, 'On Amendments to Article 1 of the Federal Law "On Counteracting Extremist Activity"' (replacing the phrase 'violating the integrity of the Russian Federation' with 'violating the *territorial* integrity of the Russian Federation' (emphasis added)) (Ukraine's Reply, Annex 95).

³⁸ CERD Committee, Concluding Observations on the Russian Federation, CERD/C/RUS/CO/23-24 (20 September 2017) (Ukraine's Memorial, Annex 804), para. 11.

conclude that, since 2014, the law had become a tool for suppressing protest and dissent by Crimean Tatars and members of the Ukrainian ethnic community in Crimea.

40. When in 2015 dealing with a periodic report under the ICCPR by the Russian Federation, the Human Rights Committee explicitly referred to Crimea when assessing the anti-extremism law, as follows:

The Committee remains concerned (see CCPR/C/RUS/CO/6 and Corr.1, para. 25, and CCPR/CO/79/RUS, para. 20) that the vague and open-ended definition of “extremist activity” in the Federal Law on Combating Extremist Activity does not require any element of violence or hatred to be present and that no clear and precise criteria on how materials may be classified as extremist are provided in the law. The Committee expresses concern about numerous reports indicating that the law is increasingly used to curtail freedom of expression, including political dissent, and freedom of religion, targeting, inter alia, Jehovah’s Witnesses. It also expresses concern at the adverse impact of the July 2014 amendment to the Criminal Code (art. 280.1) introducing the offence of public calls for action aimed at violating the territorial integrity of the State and at reports that the law has been applied, for example, against the editor-in-chief of the Crimean Tatar Avdet newspaper (arts. 2, 9, 18, 19 and 26).³⁹

41. There is a large number of cases where the European Court of Human Rights has dealt with individual complaints related to the application of Russia’s anti-extremism statute. Notably, violations of the ECHR have been established in more than three dozen cases under ECHR Articles 8 to 11, i.e., the provisions that include permissible limitations clauses, with no judgment finding an absence of violation.⁴⁰ The Court has steered clear of pronouncing that ‘combating extremism’ in the meaning of Russia’s anti-extremism statute would meet the

³⁹ HRC, Concluding Observations Report Regarding Russia’s Compliance with the ICCPR, CCPR/C/RUS/CO/7 (28 April 2015), para. 20.

⁴⁰ See, e.g., *Mukhin v. Russia*, ECtHR App. No. 3642/10, Judgment (Merits) (14 December 2021) (finding a violation of ECHR Art. 10 on the freedom of expression); *Yefimov & Youth Human Rights Group v. Russia*, ECtHR App. Nos. 12385/15 & 51619/15, Judgment (Merits) (7 December 2021) (finding a violation of ECHR Art. 11 on the freedom of assembly and association); *Ibragim Ibragimov and Others v. Russia*, ECtHR App. Nos. 1413/08 & 28621/11, Judgment (Merits) (28 August 2018) (finding a violation of ECHR Art. 10).

ECHR requirement of legitimate aim for permissible limitations.⁴¹ The Court has rejected Russia's preliminary objections that individual complaints should be declared inadmissible on account of Article 17 of the ECHR as abuse of rights because of the applicant having engaged in activity aimed at the destruction of human rights.⁴² Notably, that provision has been applied in several cases concerning counter-terrorism measures by other countries. The Court has avoided statements that would have implied that the anti-extremism statute meets the 'provided by law' or 'legitimate aim' requirements for permissible limitations and has instead usually made its findings of a violation of the ECHR directly under the 'necessary in a democratic society' requirement.⁴³

42. I understand that Ukraine alleges that the Russian Federation has used its anti-extremism statute to discriminate against Crimean Tatars and ethnic Ukrainians in Crimea in numerous aspects of public life, ranging from public safety, through political expression and police searches and detentions, to the right to gather in public, freedom of media, cultural preservation and education.⁴⁴

⁴¹ See, e.g., *Yefimov*, para. 74 (holding that its 'finding that the interference was not "prescribed by law" dispenses the [ECtHR] from examining whether it also pursued a legitimate aim').

⁴² See *Mukhin*, paras. 81-84 (finding that Russia's characterization of certain materials as extremist was insufficient to implicate Art. 17, and that it was 'not immediately clear that the applicant's editorial choices in the present case' constituted a use of his right to freedom of expression 'for ends clearly contrary to the values of the [ECHR]'); *Ibragimov*, paras. 61-63 & 123-124 (finding that the decisive point under ECHR Art. 17 'overlaps' with the question of necessity as to the interference with the applicant's rights, such that the question of whether Art. 17 applies 'must be joined to the merits of the applicant's complaints under [Arts. 9 & 10]' and ultimately rejecting Russia's preliminary objection under Art. 17, having found a violation of Art. 10).

⁴³ See, e.g., *Mukhin*, paras. 112 & 146 (finding that, in view of the ECtHR's holding that the challenged interference was not necessary in a democratic society, there was no need to analyze whether the interference was 'prescribed by law'); *Yefimov*, para. 74 (holding that its 'finding that the interference was not "prescribed by law" dispenses the [ECtHR] from examining whether it also pursued a legitimate aim').

⁴⁴ See, e.g., Ukraine's Memorial, paras. 385-388.

43. My conclusion is that Russia's Federal Law No. 114-FZ of 25 July 2002 (as subsequently amended) 'On Combating Extremist Activities', and Article 280.1 of the Criminal Code, together with their extension to Crimea in 2014, should not enjoy the benefit of being treated as a neutral legal framework which is being applied in good faith to the benefit of good order. Instead, the statutes should be regarded as suspect, due to their inherent features that make them into a mechanism for targeting not only violent or dangerous actions but also any mobilization or activity of ethnic communities that could be perceived to indicate disloyalty to the central government. This conclusion is based on studying the arguments made by the Parties and my experience, including in assessing the counter-terrorism law of numerous countries, and on the above reported highly critical remarks by the Venice Commission, CERD and Human Rights Committee, as well as the case law of the European Court of Human Rights, concerning Russia's anti-extremism statute.

44. Article 1 of the anti-extremism law carries clear signs of the intended or likely use of its framework to target with adverse effect groups characterized by their 'race, colour, descent, or national or ethnic origin', in breach of Article 1 of ICERD. For example, the vague references to 'social, racial, ethnic, religious or linguistic affiliation' in the definition of extremist activity⁴⁵ are formulated in a manner that represents intended or at least likely application of the clauses to restrict the peaceful ways through which groups based on their ethnic origin express their ethnic identity and their commitment to maintaining it.

45. The intensity with which the Russian Federation has relied on Article 280.1 of the Criminal Code and the anti-extremism law to execute the annexation of Crimea into the Russian Federation, despite local opposition and protest by the ethnic communities of Crimean Tatars and ethnic Ukrainians there, is suggestive of a 'purpose' that is incompatible with the ICERD

⁴⁵ Russian Federation, Federal Law No. 114-FZ of 25 July 2002, 'On Combating Extremist Activities' (Ukraine's Memorial, Annex 876), art. 1(1).

and equally of discriminatory ‘effect’. In the context of the purported annexation of Crimea, the statutes, their geographical extension to Crimea and the Criminal Code’s amendments in 2013 entail the use of the framework of the 2002 anti-extremism statute as an instrument of the purported annexation of Crimea and of the consolidation of power into the hands of Russian Federal authorities and their eventual local supporters. The statute allows subjecting ethnic communities deemed disloyal – since 2014 the Crimean Tatars and ethnic Ukrainians – to harsh administrative and penal measures, including for actions that do not involve the use of violence or the commission of any underlying crime.

46. The argument presented in Russia’s Counter-Memorial that conduct by *Mejlis* leaders ‘undoubtedly meet the criteria of extremism that are uniformly applied by the [Russian] Supreme Court in all cases without distinction’⁴⁶ is irrelevant if the anti-extremism statute is inherently discriminatory, or at least allows for its discriminatory application by targeting groups based on their ethnic origin, or targeting their members, for anti-extremism measures because the criteria for its application are discriminatory or allow for discriminatory application.

47. An effort to justify the approach and application of Russia’s anti-extremism statute is made in Annex 22 of Russia’s Counter-Memorial, written by Mr. Valery V. Engel.⁴⁷ This document does not demonstrate that the statute would serve a legitimate aim or that the benefit obtained through its application towards a legitimate aim would have been proportionate in comparison to the degree of resulting intrusions into people’s substantive human rights. Moreover, the document does not dispel the above conclusion that the statute carries clear signs of the intended or foreseen use of its framework to target with adverse effect groups

⁴⁶ Russia’s Counter-Memorial on the ICERD, para. 179.

⁴⁷ Expert Report of Valery Viktorovich Engel (21 June 2021), Russia’s Counter-Memorial on the ICERD, Annex 22.

characterized by their ‘race, colour, descent, or national or ethnic origin’, in breach of Article 1 of ICERD. Instead, the document explicitly advocates for a ‘choice between democratic values and security interests’, with the suggestion that the only right choice is ‘to temporarily strengthen special measures to counter extremism and control the activities of radical groups’.⁴⁸ The document also makes a suggestion that choosing, instead, to prioritize democratic liberal values, paraphrased as ‘setting different value priorities’, would lead to the growth of extremist sentiments and extremist crimes.⁴⁹ Further, the document claims that other countries would have failed in countering extremism, and that a liberalization of Russia’s anti-extremism law would have negative consequences.⁵⁰ These statements are highly contentious and also speculative. Notably, the author makes clear that in Crimea, Russia’s anti-extremism law has concerned Crimean Tatars in particular but then seeks to dispel any issue of discrimination with an incorrect statement that ‘[t]hey also become defendants in criminal or administrative cases, including under anti-extremist articles, only if they commit relevant offences’.⁵¹ The provisions of the anti-extremism statute and their application, however, are often preventive and forward-looking in nature and do not require that any crime has been committed. The quoted sentence therefore not only is factually incorrect, but it also appears incompatible with human rights. Its author appears to suggest that mere suspicion by authorities could define a person’s conduct as criminal in the application of the statute. This suggested interpretation of the statute in fact further supports the hypothesis of a discriminatory purpose, rather than excluding that possibility.

48. In my assessment Russia’s federal anti-extremism statute of 2002 and the related Article 280.1 of the Criminal Code may in themselves represent a discriminatory purpose. That

⁴⁸ *Id.*, para. 464 (emphasis omitted).

⁴⁹ *Id.*, para. 465.

⁵⁰ *Id.*, paras. 474-475.

⁵¹ *Id.*, para. 479.

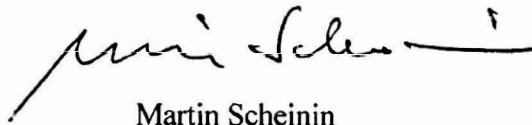
is because they can be applied anywhere within the Russian Federation to target groups, based on their ethnic or national origin, that are perceived by the central authorities of the Russian Federation as potentially disloyal to Russia. There is, however, no need for pronouncing such a general conclusion in the current case. Instead, my conclusion is that irrespective of whether such an overall discriminatory purpose of the statutes themselves can be established, at least in the context of Russia's purported annexation of Crimea, extending the application of the anti-extremism statute and Article 280.1 of the Criminal Code to Crimea appears to have a discriminatory purpose in respect of the two ethnic communities of the Crimean Tatars in Crimea and ethnic Ukrainians in Crimea. For that reason alone, Russia's conduct addressed through the claims presented by Ukraine in the current case would entail a breach of its obligations under the ICERD Convention. Should the presence of a discriminatory purpose not be established, a breach of the ICERD could in any case be established because of the discriminatory effect the application of the anti-extremism statute has had upon the enjoyment and exercise of human rights by the members of the two ethnic communities of Crimean Tatars and ethnic Ukrainians in Crimea.

49. Notably often, the Russian Federation has not disputed the factual claims by Ukraine but has, instead, relied on its anti-extremism statute as if it would preclude the existence of racial discrimination. In light of the materials examined for this report, however, the application of the anti-extremism statute in Crimea in the context of the purported annexation of a part of Ukraine's internationally recognized territory, and in respect of members of the two ethnic communities of Crimean Tatars and ethnic Ukrainians in Crimea, should be taken as proof of, and admission of, the presence of a discriminatory purpose or effect in the meaning of ICERD Article 1, paragraph 1, and therefore of a breach of the obligations of the Russian Federation as a party to this treaty.

VI. Declaration by the Expert

50. I confirm that all the matters in respect to which I expressed my opinion are within my competence and professional knowledge. I understand that I have an obligation to assist the International Court of Justice with resolving the matters covered by this Expert Report. I have fulfilled my obligation and will continue to do so in future. I confirm that the conclusions in this Expert Report are unbiased, objective and impartial; they were not led by the influence of the proceedings, nor of any party thereto.

Signed in Florence, Italy, on 14 April 2022,

A handwritten signature in black ink, appearing to read 'Martin Scheinin', with a long horizontal stroke extending to the right.

Martin Scheinin

Dr. iuris (Helsinki 1991), British Academy Global Professor,
Bonavero Institute of Human Rights, University of Oxford

Annex 8

Ministry of Interior of Ukraine Order No. 317 (14 April 2014)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

[Symbol of Ukraine]

THE MINISTRY OF INTERIOR OF UKRAINE

ORDER

14.04.2014

the city of Kyiv

No. 317

On the establishment of
special police patrol units
of the Main Department of the Ministry of Interior
of Ukraine in the city of Kyiv

With the purpose of defending and protecting lives, rights, freedoms and legal interests of citizens, society and the state from the criminal and other unlawful threats, and in order to ensure civil order and civil security,

I ORDER:

1. To establish special police patrol units of the Main Department of the Ministry of Interior of Ukraine in the city of Kyiv

2. To approve the personnel of units established based on this order (attached).

Minister

[Signed]

A.B. Avakov

Same as the original

**Deputy Directors of Department -
Head of the Division
of Documentation of Official Activities
of the Ministry of Interior of Ukraine
10.12.2021
Bachynskyi**

[Singed]

Serhiy

[Stamp of the Ministry of Interior of Ukraine
Division of Recording of Service Activities]

Ukraine

APPROVED

Order of the Ministry of Interior of

of 14.04.2014 No. 317

PERSONNEL

of "Kyiv-2", a special police patrol squadron
of the Main Department of the Ministry of Interior of Ukraine in the city of Kyiv

Name of the entity, unit and position	Special rank (personnel category)	Number of positions	Pay	Sources of support, other notes
Squadron commander	Major of police, Lieutenant Colonel of police	1	850- 970	
Deputy squadron commander	Captain of police, Major of police	2	808- 922	
Policeman	Sergeant of police	97	580	
		100		

[Signed] V.R. Slivinskyi

[Signed] M.G. Verbenskyi

[Signed] O.V. Takhtay

[Signed] S.V. Chernikov

[Symbol of Ukraine]

THE MINISTRY OF INTERIOR OF UKRAINE

ORDER

16.06.2014

the city of Kyiv

No. 576

On organizational and personnel changes
in special police patrol units

With the purpose of defending and protecting lives, rights, freedoms and legal interests of citizens, society and the state from the criminal and other unlawful threats, and in order to ensure civil order and civil security,

I ORDER:

1. To reorganize:

1.1. The special police patrol squadron “Kyiv-2” of the Main Department of the Ministry of Interior of Ukraine in the city of Kyiv into the special police patrol battalion “Kyiv-2” of the Main Department of the Ministry of Interior of Ukraine in the city of Kyiv;

1.2. The special police patrol battalion “Luhansk-1” of the Main Department of the Ministry of Interior of Ukraine in Dnipropetrovsk region into the special police patrol squadron “Luhansk-1” of the Main Department of the Ministry of Interior of Ukraine in Luhansk region;

1.3. The special police patrol battalion “Artemivsk” of the Main Department of the Ministry of Interior of Ukraine in Dnipropetrovsk region into the special police patrol squadron “Artemivsk” of the Main Department of the Ministry of Interior of Ukraine in Dnipropetrovsk region;

1.4. The special police patrol battalion “Sicheslav” of the Main Department of the Ministry of Interior of Ukraine in Dnipropetrovsk region into the special police patrol squadron “Sicheslav” of the Main Department of the Ministry of Interior of Ukraine in Dnipropetrovsk region;

1.5. The special police patrol battalion “Sumy” of the Main Department of the Ministry of Interior of Ukraine in Sumy region into the special police patrol squadron “Sumy” of the Main Department of the Ministry of Interior of Ukraine in Sumy region;

2. Dissolve the special police patrol battalion “Zoloti Vorota” of the Main Department of the Ministry of Interior of Ukraine in the city of Kyiv.

3. Approve:

3.1. The personnel of special police patrol units (attached).

3.2. List of changes in the Ministry of Interior personnel (attached).

Minister

[Signed]

A.B. Avakov

Same as the original

**Deputy Directors of Department -
Head of the Division
of Documentation of Official Activities
of the Ministry of Interior of Ukraine
10.12.2021
Bachynskyi**

[Signed]

Serhiy

[Stamp of the Ministry of Interior of Ukraine
Division of Recording of Service Activities]

Annex 9

Search and Seizure Report, drafted by Senior Lieutenant of Justice O.B. Butyrin,
Senior Investigator, Investigations Department of the Directorate of the Security
Service of Ukraine in the Kharkiv Region (16 November 2014)

*This document has been translated from its original language
into English, an official language of the Court, pursuant to
Rules of the Court, Article 51.*

SEARCH AND SEIZE REPORT

the city of Kharkiv

16 November 2014

[. . .]

Senior Investigator of the Investigations Department, the Directorate of the Security Service of Ukraine in the Kharkiv Region, senior lieutenant of justice O.V. Buturin, . . .

in presence of Maryna Anatolievna Kovtun born on 3 June 1967 (Kovtun uses the searched premises for storage), and Artem Sergiyovych Mineev born on 9 July 1984, the owner of the searched premises

carried out search and seizure in garage cooperative located near house No. 9 on Laputova Street

[. . .]

THE SEARCH AND SEIZURE ESTABLISHED

[. . .]

5) Two bags of rectangular shape were discovered. In one bag two objects were retreated; in other – one:

- Assault Kalashnikov – 74, 5.45 caliber, serial number “4292512” with grenade launcher attached (GP-25) No. 982524
- AK-74, 5.45 caliber, serial number “3780057”;
- AK-74, 5.45 caliber, serial number “3759198”;

[. . .]

Annex 10

Report on Examination of Things Seized from Marina Kovtun, drafted by Senior Lieutenant of Justice D.S. Gnatushko, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (16 November 2014)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

**REPORT ON EXAMINATION
of things**

the city of Kharkiv

16 November 2014

[. . .]

Senior Investigator of the Investigations Department, the Directorate of the Security Service of Ukraine in the Kharkiv Region, senior lieutenant of justice D.S. Gnatushko, . . .

carried out examination of things that were seized on 16 November 2014 during search of suspect M.A. Kovtun who was arrested according to art. 208 of the Criminal Procedures Code of Ukraine.

[. . .]

EXAMINATION HAS DETERMINED

[. . .]

During the examination, things to be examined were unpacked. The following things were recovered from the package:

[. . .]

- USB – thumb drive of black color. To examine the USB drive, it was connected to a working PC using a USB cable. The USB drive of black color contains four folders, including the folder named “000” (to preserve the content of the folder on the USB drive, the instigator made a screenshot). The folder contains three electronic documents named “MON-50,” “OZM-72, MON-50” and “Limpet mine” (to preserve the content of the folder on the USB drive, the instigator made a screenshot). Content of these documents include tactical and technical characteristics and instructions of how to deploy anti-personnel mines MON-50, OZM-72, and “Limpet mine UMP.”

[. . .]

[. . .]

A video file 00023 of 66,1 MB is discovered in the folder “PRIVATE\AVCHD\BDMV\STREAM” on a memory card that was created on 9 November 2014 at 22:51:48. The video file contains recoding showing a big gathering of people near the Rock Pub Stena aftermath of the bombing attack and ambulance moving on Rymarskaya Street towards the bar to provide first aid to injured.

A video file 00024 of 29,5 MB is discovered in the folder “PRIVATE\AVCHD\BDMV\STREAM” on a memory card that was created on 9 November 2014 at 22:54:56. The video file contains recoding showing the consequences of the bombing attack on the Rock Pub Stena and ambulance doctors providing medical assistance to injured, as well as big gathering of people.

A video file 00025 of 21,6 MB is discovered in the folder “PRIVATE\AVCHD\BDMV\STREAM” on a memory card that was created on 9 November 2014 at 22:54:56. The video file contains recoding of a firefighting car, ambulance, and big gathering of people after the bombing attack on the Rock Pub Stena.

Annex 11

Report of Presentation of a Person for Identification by Photos, drafted by Major of Justice O.S.Zagumennyi, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region
(18 November 2014)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

REPORT

of presentation of a person for identification by photos

the city of Kharkiv

18 November 2014

Started at 18:20

Finished at 18:51

Senior investigator in the Internal Affairs of the Investigations Department of the Directorate of the Security Service of Ukraine in Kharkiv oblast major of justice O.S.Zagumennyi in the premises №12 of the Investigative Department, in the presence of a lawyer Zueva L.V., in connection with the proceeding №2201422000000283, in the presence of the concepts:

1. Dumenko Dmytro Sergiyovych, born on 21 November 1995, lives at the address: the city of Kharkiv, 44 Tselinogradska, app. 96;
2. Glushchenko Maksym Sergiyovych, born on 15 March 1995, lives at the address: the city of Kharkiv, 44 Tselinogradska, app. 96.

with the participation of the suspect Varva Mykola Vasylovych, born on 05 February 1955...

on page №3 he cannot recognize anyone; on page №4 he cannot recognize anyone; on page №5 in photo №2 he recognizes a person known as "Maryna (Zed)" by the general features of the face, whom he since April 2014, and with whom he had military training in the camp in the city of Tambov.

CERTIFICATE

to the protocol of presentation of a person for identification by photos dated

18.11.2014

In the photo charts to the protocol of presentation for identification dated 18.11.2014 in the criminal proceeding №2201422000000283 the following people are presented:

- photo chart №5, photo №2 - Kovtun Maryna Anatoliivna, born on 03 June 1967;

Annex 12

Report of Presentation of a Person for Identification by Photos, drafted by Senior Lieutenant of Justice O.B.Butyrin, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region
(19 November 2014)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

REPORT
of Presentation of a Person for Identification by Photos

the city of Kharkiv

19 November 2014

[. . .]

. . . with participation of a suspect Kostiantyn Volodymyrovych Morev, born on 22 February 1974
....

[. . .]

On photo No. 2 on page No. 4, he recognizes a person known to him under the name "Maryna."
He recognized the person by her district futures like her haircut, face shape, and chin shape.

[. . .]

PHOTO BOOK

DESCRIPTION
of Photos Used During the Photographic Identification of a Person
of 19 November 2014

The table of photos used during identification on 19 November 2014 in the criminal investigation No. 22014220000000283 includes:

[. . .]

- page No. 4, photo No. 2 depicts Maryna Anatolievna Kovtun born on 3 June 1967.

[. . .]

Individuals depicted on other photos have no relation to this criminal investigation.

Annex 13

Report of Presentation of a Person for Identification by Photos, drafted by Lieutenant Colonel I.V.Mezionov, Special Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region
(22 November 2014)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

REPORT
of Presentation of a Person for Identification by Photos

the city of Kharkiv

22 November 2014

[. . .]

. . . with participation of a suspect Igor Vitiliovych Boiko, born on 25 March 1972

[. . .]

Prior to the commencement of the proceedings, the suspect was asked whether he could identify the person described by him during the interrogation report of the suspect dated 21 November 2014, who handed him a shopping bag in Kharkiv in September 2014. The bag contained a rectangular device of green color about 4x10x20 centimeters in size, in which a fuse with a ring was installed. In addition, there was a small metal object with a thread.

I.V. Boyko said that he could recognize the person by a set of features, namely: a man aged about 35 - 38 years, height about 180 cm, with short blond hair.

Examining the table of photos provided to him, the suspect stated that in photo № 3 he recognized the above-mentioned person by the above-mentioned features.

PHOTO BOOK

DESCRIPTION
of Photos Used During the Photographic Identification of a Person
of 22 November 2014

The table of photos used during identification on 22 November 2014 in the criminal investigation No. 22014220000000283 includes: - table No. 1, photo No. 3 depicts Vacheslav Vadymovych Monastyrev born on 10 March 1992.

Individuals depicted on other photos have no relation to this criminal investigation.

Annex 14

Record of Review, drafted by O.V. Martyniuk, Senior Investigator of the Security Service of Ukraine (16 January 2015)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

**RECORD
of review**

Donetsk

January 16, 2015

Review started at: 11:25 AM January 16, 2015

Review ended at: 4:55 PM January 17, 2015

Senior investigator at the Internal Affairs Agency of the investigations department of the Directorate of the Security Service of Ukraine in the Donetsk region Lt. Colonel Oleksiy Volodymyrovych Martyniuk, having reviewed the materials of criminal proceedings No. 2201505000000021 entered into the Unified Register of Pre-trial Investigations of January 13, 2015, on the grounds of commission of crimes as stipulated by part 3, article 258 of the CC of Ukraine, in accordance with articles 104, 105, 106, 237, 223 of the CPC of Ukraine, conducted a review of the scene (territory) located around the checkpoint of the Armed Forces of Ukraine on highway N-20 "Slov'yansk-Mariupol," located at the site of fixed post No. 5 UDAI GUMBS of Ukraine in the Donetsk area at the exit from Volnovakha in the direction of Buhas of the Donetsk area in order to search for craters after an attack on the checkpoint from a multiple rocket launcher system (MRLS) BM-21 "GRAD", which took place on January 13, 2015.

The review was conducted under daytime natural light using photos on a "Sony-Cyber-Shot" camera with a 2 GB "Transcend" memory card with automatic settings.

The conduct of the review established:

The review started on the territory which is located to the right of the checkpoint (the eastern part with respect to the "Slov'yansk-Mariupol" highway on the checkpoint site). In this case, the crater was not reviewed that had been examined earlier and was closest to the checkpoint, near which on January 13, 2015 the shuttle bus "I-VAN A0718," state license number AN0985AA, was hit by shrapnel on the road from "Zlatoustivka to Donetsk," killing 12 passengers and injuring 19. The crater is conditionally designated as No. 1.

The following craters were also reviewed, (which were respectively numbered according to the review schedule which is attached to the record):

No. 2: at a distance of 265 m from crater No. 1 along the "Slov'yansk-Mariupol" highway, along the center divider (the crater reviewed with the removal of remnants of ammunitions according to the review record of January 14, 2015);

No. 3: at a distance of 17 meters from crater No. 2 along the highway and 35 meters deep crater found perpendicular to the road 25 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 4: at a distance of 29 meters from crater No. 3 in a direction perpendicular to the road a crater was found that is 27 x 30 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 5: at a distance of 19 meters from crater No. 4 perpendicular to the road a crater was found that is 25 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 6: No. 4: at a distance of 47 meters from crater No. 5 in a direction towards the road at an angle of approximately 20° to the conventional line of the road in the direction of the plane towards

Volnovakha a crater was found that is 25 x 27 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 7: at a distance of 144 meters from crater No. 6 in a direction towards the road at an angle of approximately 45° to the conventional line of the road in the direction of the plane towards Volnovakha a crater was found that is 24 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 120 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 8: at a distance of 78 meters from crater No. 7 in a direction towards the road at an angle of approximately 40° to the conventional line of the road in the direction of the plane towards Buhas a crater was found that is 32 x 35 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 9: at a distance of 108 meters from crater No. 8 in a direction towards the road at an angle of approximately 45° to the conventional line of the road in the direction of the plane towards Buhas a crater was found that is 35 x 40 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 10: at a distance of 100 meters from crater No. 9 in a direction towards the road at an angle of approximately 30° to the conventional line, perpendicular to the road in the direction of the plane towards Buhas a crater was found that is 22 x 24 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 11: at a distance of 67 meters from crater No. 10 in a direction towards the road at an angle of approximately 60° to the conventional line, parallel to the road in the direction of the plane towards Buhas a crater was found that is 23 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 100 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 12: at a distance of 83 meters from crater No. 11 in a direction towards the road at an angle of approximately 40° to the conventional line, perpendicular to the road in the direction of the plane towards Volnovakha a crater was found that is 28 x 30 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 13: at a distance of 36 meters from crater No. 12 in a direction along the road in the direction of the plane towards Buhas a crater was found that is 30 x 30 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 14: at a distance of 38 meters from crater No. 13 in a direction towards the road at an angle of approximately 30° to the conventional line, parallel to the road in the direction of the plane towards Buhas a crater was found that is 32 x 35 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 15: at a distance of 31 meters from crater No. 14 in a direction towards the road at an angle of approximately 25° to the conventional line, perpendicular to the road in the direction of the plane towards

Volnovakha a crater was found that is 25 x 27 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 16: at a distance of 38 meters from crater No. 15 in a direction towards the road at an angle of approximately 15° to the conventional line, perpendicular to the road in the direction of the plane towards Volnovakha a crater was found that is 25 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 17: at a distance of 56 meters from crater No. 16 in a direction towards the road at an angle of approximately 55° to the conventional line, parallel to the road in the direction of the plane towards Buhas a crater was found that is 22 x 21 cm wide (diameter at the intersection along the inner part), with a depth of approximately 130 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 18: at a distance of 104 meters from crater No. 17 in a direction from the road at an angle of approximately 35° to the conventional line, perpendicular to the road in the direction of the plane towards Buhas a crater was found that is 25 x 24 cm wide (diameter at the intersection along the inner part), with a depth of approximately 120 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 19: at a distance of 25 meters from crater No. 18 in a direction from the road at an angle of approximately 45° to the conventional line, perpendicular to the road in the direction of the plane towards Volnovakha a crater was found that is 23 x 24 cm wide (diameter at the intersection along the inner part), with a depth of approximately 125 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 20: at a distance of 125 meters from crater No. 19 in a direction from the road at an angle of approximately 30° to the conventional line, perpendicular to the road in the direction of the plane towards Buhas a crater was found that is 21 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 120 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 21: at a distance of 75 meters from crater No. 20 in a direction towards the road at an angle of approximately 45° to the conventional line, parallel to the road in the direction of the plane towards Buhas a crater was found that is 25 x 23 cm wide (diameter at the intersection along the inner part), with a depth of approximately 120 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 22: at a distance of 82 meters from crater No. 21 in a direction from the road at an angle of approximately 50° to the conventional line, parallel to the road in the direction of the plane towards Buhas a crater was found that is 24 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 23: at a distance of 115 meters from crater No. 22 in a direction from the road at an angle of approximately 15° to the conventional line, perpendicular to the road in the direction of the plane towards Buhas a crater was found that is 25 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 55 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 24: at a distance of 145 meters from crater No. 23 in a direction towards the road at an angle of approximately 15° to the conventional line, perpendicular to the road in the direction of the plane towards Buhas a crater was found that is 25 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 25: at a distance of 100 meters from crater No. 25 in a direction towards the road at an angle of approximately 20° to the conventional line, perpendicular to the road in the direction of the plane towards Volnovakha a crater was found that is 22 x 21 cm wide (diameter at the intersection along the inner part), with a depth of approximately 130 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 26: at a distance of 106 meters from crater No. 25 in a direction towards the road at an angle of approximately 15° to the conventional line, parallel to the road in the direction of the plane towards Buhas a crater was found that is 27 x 28 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 27: at a distance of 87 meters from crater No. 26 in a direction towards the road at an angle of approximately 90° to the road, a crater was found that is 29 x 30 cm wide (diameter at the intersection along the inner part), with a depth of approximately 120 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 28: at a distance of 45 meters from crater No. 26 in a direction from the road at an angle of approximately 10° to the conventional line, parallel to the road in the direction of the plane towards Buhas a crater was found that is 25 x 23 cm wide (diameter at the intersection along the inner part), with a depth of approximately 130 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 29: at a distance of 103 meters from crater No. 28 in a direction towards the road at an angle of approximately 45° to the conventional line, parallel to the road in the direction of the plane towards Buhas a crater was found that is 25 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 135 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 30: at a distance of 94 meters from crater No. 29 in a direction from the road at an angle of approximately 40° to the conventional line, parallel to the road in the direction of the plane towards Buhas a crater was found that is 17 x 20 cm wide (diameter at the intersection along the inner part), with a depth of approximately 130 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 31: at a distance of 65 meters from crater No. 30 in a direction towards the road at an angle of approximately 50° to the conventional line, perpendicular to the road in the direction of the plane towards Buhas a crater was found that is 21 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 35 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction; In this case, it was established that the distance from the specified conventional boundary perpendicular to the highway sign "177th km" along the highway is 65 meters.

No. 32: at a distance of 90 meters from crater No. 31 in a direction towards the road at an angle of approximately 20° to the conventional line, perpendicular to the road in the direction of the plane towards Volnovakha a crater was found that is 32 x 35 cm wide (diameter at the intersection along the inner part),

with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 33: at a distance of 100 meters from crater No. 32 in a direction from the road at an angle of approximately 30° to the conventional line, parallel to the road in the direction of the plane towards Volnovakha a crater was found that is 35 x 35 cm wide (diameter at the intersection along the inner part), with a depth of approximately 125 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 34: at a distance of 107 meters from crater No. 33 in a direction towards the road at an angle of approximately 35° to the conventional line, parallel to the road in the direction of the plane towards Volnovakha a crater was found that is 28 x 30 cm wide (diameter at the intersection along the inner part), with a depth of approximately 105 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 35: at a distance of 12 meters from crater No. 34 in a direction towards the road at an angle of approximately 40° to the conventional line, parallel to the road in the direction of the plane towards Buhas, at a distance of 2.5 m to a tree with a number of green branches, planted along the road, and 12.5 meters from the edge of the roadway part of the road, a crater was found that is 20 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 105 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction. Also on the specified tree there are fresh ragged wounds to the bark, at a height of 25 cm from the ground from the northeast side.

No. 36: at a distance of 132 meters from crater No. 34 in a direction towards the road at an angle of approximately 10° to the conventional line, parallel to the road in the direction of the plane towards Volnovakha a crater was found that is 29 x 30 cm wide (diameter at the intersection along the inner part), with a depth of approximately 35 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction.

No. 37: at a distance of 30 meters from crater No. 34 in a direction from the road at an angle of approximately 30° to the conventional line, perpendicular to the road in the direction of the plane towards Volnovakha a crater was found that is 23 x 24 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 38: at a distance of 80 meters from crater No. 36 in a direction from the road at an angle of approximately 45° to the conventional line, perpendicular to the road in the direction of the plane towards Volnovakha a crater was found that is 21 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 112 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 30: at a distance of 43 meters from crater No. 38 in a direction towards the road at an angle of approximately 20° to the conventional line, perpendicular to the road in the direction of the plane towards Volnovakha a crater was found that is 22 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 105 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 40: at a distance of 23 meters from crater No. 40 in a direction towards the road at an angle of approximately 40° to the conventional line, parallel to the road in the direction of the plane towards Volnovakha a crater was found that is 28 x 30 cm wide (diameter at the intersection along the inner part), with a depth of approximately 155 cm, penetrating the center of the crater towards the probable axis of

entry of the metal scrap shell, apparent approximate northeast direction;

No. 41: at a distance of 15 meters along the conventional perpendicular to the road, an 67 meters for the specified perpendicular in the direction from the checkpoint to the "DAI" "90" speed limit sign, a crater was found that is 30 x 35 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 42: at a distance of 3 meters along the conventional boundary perpendicular to the roadway part of the road, and 7 meters from the specified perpendicular in the direction from the checkpoint to "DAI" "90" speed limit sign, a crater was found that is 30 x 40 cm wide (diameter at the intersection) with a depth of approximately 20 cm.

The review is interrupted at 4:45 PM on January 16, 2016 and continued at 10:35 AM on January 17, 2015.

The review continues from the territory which is located to the left of the checkpoint (western part with respect to the "Slov'yansk-Mariupol" road on the site of the checkpoint). In this case, a crater was found (with continuation of review numbering):

No. 43: at a distance of 630 meters along the road from the checkpoint in a direction from Buhas and 2 meters from the roadside a crater was found that is 18 x 20 cm wide (diameter at the intersection along the inner part), with a depth of approximately 65 cm, penetrating the center of the crater towards the probable axis of entry of the metal scrap shell, apparent approximate northeast direction;

No. 44: at a distance of 160 meters from crater No. 43 along the road from the checkpoint in a direction from Buhas and 10 meters from the "177th km" road sign exactly in the center of the roadway from the direction of Buhas-Volnovakha, a crater is found in the asphalt that is 50 x 40 cm (diameter at the intersection) with a depth of approximately 3-5 cm, behind the crater (from the northeast) there are many chips in the asphalt. The narrowed part of the plane of the crater also travels in the same direction.

No. 45: at a distance of 150 meters from crater No. 44 along the road from the checkpoint in a direction from Buhas and 15 meters from the roadside in the forest right of way a crater was found that is 35 x 45 cm wide (diameter at the intersection along the inner part), with a depth of approximately 35 cm;

No. 46: at a distance of 35 meters from crater No. 44 along the road to the checkpoint from Volnovakha and 124 meters along the perpendicular from the roadside in a deep field a crater was found that is 25 x 30 cm wide (diameter at the intersection along the inner part), with a depth of approximately 75 cm penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction.

No. 47: at a distance of 5 meters from crater No. 43 along the road from the checkpoint in a direction from Buhas and 55 meters along the perpendicular from the roadside in a deep field a crater was found that is 27 x 30 cm wide (diameter at the intersection along the inner part), with a depth of approximately 100 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction.

No. 48: at a distance of 10 meters from crater No. 47 in a direction from the road at an angle of approximately 40° to the conventional boundary, parallel to the road, in the direction of the plane to Volnovakha, a crater was found that is 20 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 90 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 49: at a distance of 70 meters from crater No. 43 along the road to the checkpoint in the direction of Volnovakha and 15 meters along the perpendicular from the roadside, in a deep field, 4 meters from a separate strip of forest between the fields, a crater was found that is 45 x 50 cm wide (diameter at the intersection), with a depth of approximately 20 cm;

No. 50: at a distance of 5 meters from crater No. 49 in a western direction (from the road) along a separate strip of forest between the fields and 7 meters from the strip of forest in a deep field along the conventional boundary perpendicular, in the direction of the plane towards Volnovakha, a crater was found that is 27 x 28 cm wide (diameter at the intersection along the inner part), with a depth of approximately 120 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 51: at a distance of 87 meters from crater No. 50 in a western direction (from the road) along a separate strip of forest between the fields and 2 meters from the strip of forest in a deep field along the conventional boundary perpendicular, in the direction of the plan to Volnovakha, a crater was found that is 24 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 52: at a distance of 340 meters from crater No. 51 in a western direction (from the road) along a separate strip of forest between the fields and 48 meters from the strip of forest in a deep field along the conventional boundary perpendicular, in the direction of the plane to Volnovakha, a crater was found that is 27 x 32 cm wide (diameter at the intersection along the inner part), with a depth of approximately 105 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 53: at a distance of 218 meters from crater No. 52 in the direction of the road from an angle of 40° to the conventional boundary, parallel to a separate strip of forest between the fields in the direction of the plane to Volnovakha, a crater was found that is 25 x 26 cm wide (diameter at the intersection along the inner part), with a depth of approximately 125 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 54: at a distance of 21 meters from crater 53 parallel to the road in the direction of the plane to Volnovakha, a crater was found that is 25 x 26 cm wide (diameter at the intersection along the inner part), with a depth of approximately 125 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 55: at a distance of 68 meters from crater No. 54 at an angle of 15° to the conventional boundary, parallel to the road in the direction of the plane to Volnovakha, a crater was found that is 24 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 130 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 56: at a distance of 122 meters from crater No. 55 in the direction of the road at an angle of 25° to the conventional boundary, parallel to a separate strip of forest between the fields in the direction of the plane to Volnovakha, a crater was found that is 27 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 57: at a distance of 30 meters from crater No. 56 in the direction of the road at an angle of 30° to the conventional boundary, parallel to a separate strip of forest between the fields in the direction of the plane to Volnovakha, a crater was found that is 25 x 26 cm wide (diameter at the intersection along the inner part), with a depth of approximately 120 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 58: at a distance of 70 meters from crater No. 57 in the direction of the road at an angle of 30° to the conventional boundary, parallel to a separate strip of forest between the fields in the direction of the plane to Volnovakha, as well as at a distance of 70 meters closer to the checkpoint of the strip of forest, a was found that is 22 x 24 cm wide (diameter at the intersection along the inner part), with a depth of approximately 130 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 59: at a distance of 68 meters from crater No. 58 and 45 meters along the conventional boundary perpendicular from the strip of forest, nearer to the checkpoint, in a deep field in the direction of the plane to Buhas, a crater was found that is 26 x 27 cm wide (diameter at the intersection along the inner part), with a depth of approximately 130 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 60: at a distance of 60 meters from crater No. 56 in the direction of the road at an angle of 25° to the conventional boundary, perpendicular to the separate strip of forest, nearer to the checkpoint, in a deep field in the direction of the plane to Buhas, a crater was found that is 23 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 132 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 61: at a distance of 105 meters from crater No. 60 in the direction from the road at an angle of 10° to the conventional boundary, parallel to the road, in the direction of the plane to Buhas, and at a distance of 39 meters from the strip of forest farthest from the checkpoint, a crater was found that is 23 x 21 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 62: at a distance of 135 meters from crater No. 61 in the direction to the road at an angle of 15° to the conventional boundary, parallel to the strip of forest, in the direction of the plane to Volnovakha, a crater was found that is 20 x 19 cm wide (diameter at the intersection along the inner part), with a depth of approximately 100 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 63: at a distance of 36 meters from crater 62 in the direction to the road at an angle of 15° to the conventional boundary, parallel to the strip of forest, in the direction of the plane to Volnovakha, a crater was found that is 22 x 24 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 64: at a distance of 25 meters from crater No. 63 in a direction perpendicular to the road, a crater was found that is 25 x 24 cm wide (diameter at the intersection along the inner part), with a depth of approximately 120 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 65: at a distance of 46 meters from crater No. 63 in a direction parallel to the road in the direction of the plane to Volnovakha, a crater was found that is 21 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 66: at a distance of 20 meters from crater No. 65 in a direction perpendicular to the road, a crater was found that is 22 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 55 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 67: at a distance of 94 meters from crater No. 66 in a direction to the road at an angle of 29° to the conventional boundary, parallel to the road, in the direction of the plane to Volnovakha, a crater was found that is 23 x 24 cm wide (diameter at the intersection along the inner part), with a depth of approximately 130 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 68: at a distance of 95 meters from crater No. 67 in the direction from the road at an angle of 45° to the conventional boundary, parallel to the road, in the direction of the plane to Volnovakha, a crater was found that is 21 x 20 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 69: at a distance of 9 meters from crater No. 68 in a direction to the road at an angle of 30° to the conventional boundary, parallel to the road, in the direction of the plane to Volnovakha, and at a distance of 77 meters along the perpendicular to the strip of forest nearest to the checkpoint, a crater was found that is 20 x 19 cm wide (diameter at the intersection along the inner part), with a depth of approximately 120 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 70: at a distance of 29 meters from crater No. 68 in a direction to the road at an angle of 50° to the conventional boundary, parallel to the road, in the direction of the plane to Buhas, a crater was found that is 20 x 21 cm wide (diameter at the intersection along the inner part), with a depth of approximately 95 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 71: at a distance of 25 meters from crater No. 70 in a direction to the road at an angle of 20° to the conventional boundary, perpendicular to the road, in the direction of the plane to Volnovakha, a crater was found that is 22 x 23 cm wide (diameter at the intersection along the inner part), with a depth of approximately 105 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 72: at a distance of 80 meters from crater No. 69 in the direction of the road and along a strip of forest nearest to the checkpoint, in the direction of the road, at 2 meters to the specified strip of forest, a crater was found that is 25 x 24 cm wide (diameter at the intersection along the inner part), with a depth of approximately 95 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 73: at a distance of 34 meters from the road and 7 meters along the road towards the checkpoint to the "DAI 90" road sign, a crater was found that is 21 x 21 cm wide (diameter at the intersection along the inner part), with a depth of approximately 120 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 74: at a distance of 12 meters from crater No. 73 parallel to the road in a direction from the checkpoint, a crater was found that is 20 x 18 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 75: at a distance of 10 meters from the road and 9 meters along the road in a direction from the checkpoint to the "DAI 90" road sign, a crater was found that is 19 x 20 cm wide (diameter at the intersection along the inner part), with a depth of approximately 95 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 76: at a distance of 50 meters from crater No. 75 parallel to the road in the direction of the checkpoint and 8 meters from the road, in a strip of forest along the road, a crater was found that is 24 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 125 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 77: at a distance of 15 meters from crater No. 76 parallel to the road in the direction of the checkpoint and 8 meters from the road, in a strip of forest along the road, a crater was found that is 20 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 78: at a distance of 28 meters from crater No. 76 perpendicularly from the road and 63 meters perpendicularly to a strip of forest nearest to the check point, a crater was found that is 19 x 20 cm wide (diameter at the intersection along the inner part), with a depth of approximately 130 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 79: at a distance of 200 meters along the road from crater No. 1, in a strip of forest along the road, a crater was found that is 20 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 95 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 80: at a distance of 55 meters from crater No. 79 in a direction along the road in the direction of the checkpoint, in a strip of forest along the road, a crater was found that is 22 x 23 cm wide (diameter at the intersection along the inner part), with a depth of approximately 105 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

Furthermore, the territory was examined which is located to the left of the checkpoint (southwestern part with respect to the "Slov'yansk-Mariupol" road at the site of the checkpoint) behind a strip of forest (in the direction of the review towards the checkpoint), which separates the field from the craters found above, and in this case the craters found:

No. 81: at a distance of 110 meters from the checkpoint and 25 meters from the strip of forest, a crater was found that is 21 x 22 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 82: at a distance of 20 meters from crater No. 81 in the direction from the checkpoint along the strip of forest, under an electric power line, perpendicular to the strip of forest, a crater was found that is 25 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 135 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 83: at a distance of 50 meters from crater No. 82 in a direction from the road at an angle of 45° to the conventional boundary, perpendicular to the road, in a direction of the plain to Volnovakha, a crater was found that is 21 x 20 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail, apparent approximate northeast direction;

No. 84: at a distance of 82 meters from crater No. 83 and in a direction along an electric power line, perpendicular to a strip of forest, in the direction of the plane to Volnovakha, a crater was found that is 20 x 18 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm, penetrating the center of the crater towards the probable axis of entry of the shell, a wooden rail,

apparent approximate northeast direction;

No. 85: at a distance of 50 meters from crater No. 84 in a direction from the road at an angle of 60° to an electric power line, perpendicular to a strip of forest, in the direction of the plane to Volnovakha, in a corn field, a crater was found that is 45 x 30 cm wide (diameter at the intersection along the inner part), with a depth of approximately 40 cm;

No. 86: at a distance of 140 meters from a second electric power line in the direction of an electric power line perpendicular to a strip of forest in a direction to the road, at an angle of 45° to an electric power line in the direction of the plane to Volnovakha, a crater was found that is 20 x 19 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm;

No. 87: at a distance of 85 meters from crater No. 86 in the direction of the checkpoint parallel to the road, a crater was found that is 18 x 20 cm wide (diameter at the intersection along the inner part), with a depth of approximately 110 cm;

No. 88: at a distance of 46 meters from crater No. 87 in the direction of the checkpoint at an angle of 15° to the conventional boundary of the parallel road, a crater was found that is 22 x 25 cm wide (diameter at the intersection along the inner part), with a depth of approximately 115 cm;

During this investigative act a diagram (map) of sites was drawn up where craters were found that were named in the record, which is attached to this record as addendum No. 1.

While conducting this review a “Sony-Cyber Shot” camera was used with a 2 GB “Transcend” memory card with automatic settings, the photos of which will be attached to this record after they are produced in the form of a photo board (addendum No. 2).

**Senior investigator at the Internal Affairs Agency
of the investigations department of the Directorate
of the Security Service of Ukraine in the Donetsk region
Lt. Colonel of Justice**

[signature]

O.V. Martyniuk



Annex 15

Security Service of Ukraine, ATO Regulation Governing Checkpoints
(22 January 2015)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.



**FIRST DEPUTY HEAD OF THE ANTI-TERRORISM CENTER OF THE
SECURITY SERVICE OF UKRAINE
(HEAD OF ANTI-TERRORISM OPERATION ON THE TERRITORY OF
DONETSK DONETSK)**

ORDER

22.01.2015 № 27og

**About approval of the Temporary order of control over
movement of persons, vehicles and freights along the line of
collision within Donetsk and Luhansk areas**

In accordance with Articles 12, 13, 14, 15 of the Law of Ukraine "On Combating Terrorism", the third paragraph of item 8 of the Regulation on the Operational Headquarters for Anti-Terrorist Operation Management, approved by the Cabinet of Ministers of Ukraine dated May 12, 2004 № 611-11, **ORDER:**

1. To approve the Temporary order of control over movement of persons, vehicles and freights along the line of contact within Donetsk and Luhansk areas (further - the Order), which is added.
2. The Procedure approved by this order shall be applied until the end of the anti-terrorist operation on the territory of Donetsk and Luhansk oblasts or the adoption of the Law of Ukraine "On Temporary Measures to Ensure the Anti-Terrorist Operation".
3. Order of the First Deputy Head of the Anti-Terrorist Center of the Security Service of Ukraine (Head of the Anti-Terrorist Operation in Donetsk and Luhansk oblasts) № 144og of 29.12.2014 Luhansk region "to be considered invalid.
4. Responsibility for the execution of the order shall be assigned to the Chief of Staff - First Deputy Chief of the Anti-Terrorist Operation in the Donetsk and Luhansk regions.
5. The order to bring to the personnel in the part concerning it, heads of Donetsk and Luhansk regional state administrations.

**First Deputy Head of the
Anti-Terrorist Center
of the Security Service of Ukraine
(Head of the Anti-Terrorist
Operation in Donetsk
and Luhansk Oblasts)
Lieutenant General**

S.M. Popko

AGREED:

Chief of Staff - First Deputy Chief of the
Anti-Terrorist Operation in Donetsk
and Luhansk oblasts
Major General

O.S. Syrian

Calculation of proof

№ s / n	To whom the order was brought	Note
1	To the head of sector "A"	
2	To the head of sector "B"	
3	To the head of sector "C"	
4	To the head of sector "M"	
5	Senior Task Force of the NMU	
6	Senior Task Force of the State Traffic Police	
7	Senior Task Force of the Ministry of Internal Affairs	
8	Senior Task Force SBU	
9	To the chief of VSP in ZSU - the chief of GU VSP ZSU	
10	Chairman of the Donetsk region state administration	
11	The head of the Luhansk region. state administration	

Addendum
to the order of the First Deputy Head of the
Anti-Terrorist Center
of the Security Service of Ukraine
(Head of the Anti-Terrorist Operation
in the Donetsk
and Luhansk regions)
22.01.2015 № 27og

TEMPORARY PROCEDURE for control over the movement of persons, vehicles and goods along the line of contact within the Donetsk and Luhansk regions

I. General provisions

1.1. This Interim Procedure (hereinafter - the Procedure) defines certain issues of control over the movement in the area of the anti-terrorist operation in Donetsk and Luhansk regions (hereinafter - ATO), as well as along the line of contact within Donetsk and Luhansk regions, persons, vehicles and cargo, as well as types of checkpoints, entry-exit checkpoints, the order of their operation, the rules of their crossing.

1.2. In this Procedure, the terms are used in the following meaning:

uncontrolled territory - a territory in which public authorities temporarily do not exercise or do not exercise in full the powers provided by the legislation of Ukraine;

Coordination Center (hereinafter - CC) is a unit for regime and economic activities in the territories adjacent to the security strip along the demarcation line, which is established at the operational headquarters of the ATO, and which includes representatives of the Security Service of Ukraine (hereinafter - SBU), Of the Armed Forces of Ukraine (hereinafter - the Armed Forces), the Ministry of Internal Affairs of Ukraine (hereinafter - MIA), the National Guard of Ukraine (hereinafter - NMU), the State Border Guard Service of Ukraine (hereinafter - SBGS), the State Fiscal Service of Ukraine (hereinafter - SFSU) activities of coordination groups and organization of issuance of passes for individuals and legal entities (hereinafter - persons), vehicles and cargo;

Coordination group (hereinafter - CG) is a unit on regime and economic activity in the territories adjacent to the security strip along the demarcation line, which is created under the departments (divisions) of the Ministry of Internal Affairs of Ukraine districts (cities), and which includes representatives of SBU, ZSU, MVSU, NMU, SBGS, SFSU, other forces and means of the subjects of fight against terrorism, and also the enterprises, establishments, the organizations which are involved in anti-terrorist operation for the purpose of timely and qualitative check of the persons who have expressed desire to cross a line of contact within Donetsk, Luhansk regions and the organization of the issuance of passes for individuals and legal entities, vehicles and goods.

pass - a document granting the right of entry, passage (hereinafter - entry) into uncontrolled territories and exit, exit (hereinafter - exit) from them;

checkpoint - a barrier point in a certain place (on the site, in a building or complex) in the area of anti-terrorist operation, designed to control the movement of people, vehicles, verification of identity documents, personal care and inspection of things that they inspect vehicles and items transported in order to prevent unauthorized entry of persons into uncontrolled territory, intrusion of terrorists and their accomplices from uncontrolled territory, as well as import (export) to (from) the area of anti-terrorist operation of objects and substances withdrawn from civil circulation or restricted in circulation; protection of forces and means involved in the anti-terrorist operation from illegal encroachments by terrorists and illegal armed (paramilitary) formations;

entry-exit checkpoint (hereinafter - checkpoint) - a specially designated area of the second border checkpoint on highways, railway stations with a complex of buildings, special, engineering, fortifications and technical facilities, where certain types of state control by control authorities, services Ukraine and admission to and from the uncontrolled territory of persons, vehicles, cargo and other property;

control bodies and services - subdivisions of the SBGS and other bodies exercising state control at checkpoints;

competent authorities - units of counter-terrorism entities;

permit - a document of the established sample, which gives the right to transport goods (cargo) from temporarily uncontrolled territories to another territory of Ukraine and from the territory of Ukraine to temporarily uncontrolled territories (Annex 1);

application with appendices - an application for a permit to move goods to (from) certain territories in which public authorities temporarily do not exercise or do not exercise in full the powers provided by the legislation of Ukraine (Annex 2);

Other terms in this Procedure are used in the meaning given in the Criminal Procedure Code of Ukraine, the Customs Code of Ukraine, the laws of Ukraine "On Combating Terrorism", "On the Unified State Demographic Register and documents proving Ukrainian citizenship, identity or special status", "On the legal status of foreigners and stateless persons", "On border control" and other regulations.

1.3. Citizens of Ukraine have the right to free and unimpeded entry into and exit from the area of the anti-terrorist operation through checkpoints and checkpoints, subject to presentation of passport documents proving identity and citizenship of Ukraine and a permit issued by the CC and CG (defined places). Passes are signed by the heads of the CC and CG.

1.4. The Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime or Terrorist Financing" applies to individuals entering and leaving the area of the anti-terrorist operation .

1.5. Entry of foreigners and stateless persons into the area of the anti-terrorist operation and departure from it is allowed only with a passport and a permit issued by the CC and KG (certain places).

1.6. Customs procedures related to the movement of goods, commercial vehicles and citizens to and from the area of the anti-terrorist operation are carried out at the relevant checkpoints in accordance with current legislation of Ukraine.

1.7. The procedure for entering and leaving the area of the anti-terrorist operation, the procedure for crossing the line of contact shall be promulgated through the state media by the operational headquarters for the management of the anti-terrorist operation and local authorities.

1.8. Checkpoints are formed as checkpoints of the first frontier and checkpoints of the second frontier.

1.9. At the checkpoints of the first frontier is carried out:

control and admission to and from the uncontrolled territory of persons, vehicles, cargo and other property;

receipt and registration of applications from persons who have expressed a desire to cross the line of contact in the controlled area and submit them to the CG;

receiving passes from the CG, their registration and issuance to persons (within 10 days after receipt of the application) who have expressed a desire to cross the line of contact in the controlled area in the presence of identity documents;

the passage of persons during the day in a controlled or uncontrolled area, in case of death of close relatives, family members or illness of loved ones, as evidenced by relevant documents (telegram certified by health care institutions, death or illness of loved ones; confirms the place of burial of relatives) in the presence of identity documents and with the written (oral) consent of the head of the CG;

withdrawal of passes from persons who have expressed a desire to cross the line of contact into uncontrolled territory, in the presence of identity documents. Keeping records of issued passes, their storage and reconciliation with the issuance of passes with CG;

checking the availability of a permit issued by the SFSU for the transportation of cargo and other property;

preliminary control over the movement of people, vehicles, things, preliminary inspection of vehicles moving through the checkpoint for the presence of prohibited items and substances (weapons, ammunition, explosives, drugs, etc.);

preventing terrorists from leaving the ATO area and infiltrating their accomplices;

prevention of terrorist acts and other illegal acts;

temporary restriction (prohibition) of traffic and people;

cessation of any attempts to illegally change the line of demarcation.

1.10. At the checkpoints of the second border, certain checkpoints are carried out:

state control over the movement of people, vehicles, things; inspection of vehicles moving through the checkpoint for the presence of prohibited items and substances (weapons, ammunition, explosives, drugs, etc.);

control over the movement of vehicles, goods (cargoes) transported by vehicles, the presence of the relevant permit for the carriage of goods (goods), its compliance with the data specified in such permit, as well as the presence of prohibited items and substances;

identification and detention of persons suspected of committing criminal offenses or hiding from the bodies of pre-trial investigation, investigating judge, court or evading criminal punishment, and stolen vehicles;

preventing the exit of prohibited goods (cargo) from the temporary uncontrolled territory and, accordingly, the transportation of such goods (cargo) to such territory;

verification of identity documents, permits;

preventing terrorists from leaving the ATO area and infiltrating their accomplices;

prevention of terrorist acts and other illegal acts;

temporary restriction (prohibition) of traffic, goods (goods), and people.

1.11. The checkpoints of the first and second frontiers of the designated checkpoints interact and exchange information.

1.12. Entry into the uncontrolled territory and exit from it is carried out through checkpoints, taking into account the features defined by this Procedure:

citizens of Ukraine (except for persons involved in the anti-terrorist operation) - subject to the presentation of any document specified in Article 5 of the Law of Ukraine "On Citizenship of Ukraine" or Article 2 of the Law of Ukraine "On Procedure for Leaving Ukraine and Entering Ukraine" Ukraine ", and those who have not reached 16 years of age in compliance with the requirements provided for such persons by the Rules of crossing the state border by citizens of Ukraine , approved by the Cabinet of Ministers of Ukraine of January 27, 1995 № 57, and pass;

foreigners and stateless persons - on a passport and pass.

1.13. Movement to temporarily uncontrolled territories and from them goods (cargoes) by legal entities and individuals is carried out through entry-exit checkpoints taking into account the features determined by this Procedure, provided that the carrier or its owner (authorized person) presents such special cargo permission issued by the SFSU.

1.14. Movement of goods (goods) is allowed only to business entities that are registered with the SFSU and pay taxes to the State Budget of Ukraine in the manner and amounts established by the legislation of Ukraine, according to the lists approved by the Procedure.

1.15. In case of violation of the ceasefire (unauthorized opening of fire, small arms fire, artillery systems, rocket-propelled grenades, information on the actions of sabotage and reconnaissance groups) by illegal armed groups at a distance of 30 km from transport corridors to move population, transport means or direct shelling of the transport corridor, checkpoints, checkpoints, the direction of movement is blocked.

Checkpoints, checkpoints, by order of the head of the sector with the notification of the operational headquarters of the ATO, temporarily suspend their work on registration of documents for admission to the controlled territory of Ukraine, personnel are circular defense, the population at checkpoints are evacuated to safe places (dugouts, ceilings, etc.), vehicles are not allowed.

II. Composition and number of checkpoints

2.1. The decision on the organization and termination of checkpoints, their number, personnel and location of checkpoints is made by the head of the operational headquarters for ATO management.

2.2. A unit from a platoon (group) or more is assigned to serve at the checkpoint, from among the persons involved in the anti-terrorist operation, which can be reinforced with weapons, military equipment, units of anti-terrorism entities, etc.

2.3. The number of personnel involved in the service at the checkpoint is determined by the senior commander, taking into account the situation in the area of tasks, the scope of combat missions, and the ability of the unit to maintain a circular defense.

2.4. According to the decision of the senior manager, an officer is appointed senior at the checkpoint, all personnel are subordinated to him (including from other structures whose representatives are involved in the service). He is responsible for the successful completion of tasks, compliance with the law by personnel during their service, as well as their compliance with personal safety measures.

2.5. The equipment of checkpoints and logistical support is carried out in accordance with the decision of the head of the operational headquarters for ATO management.

2.6. Roadblocks are marked with road signs and markings in accordance with the **Rules of the Road**, approved by the Cabinet of Ministers of Ukraine dated October 10, 2001 № 1306, in order to prevent collisions with vehicles.

III. Rights and responsibilities of personnel

3.1. Personnel serving at the checkpoint have the right to:

stop and inspect vehicles, paying special attention to the detection of weapons, ammunition, explosives, drugs, etc. ;

to check from drivers and passengers identity documents, passes and documents confirming the right of ownership of vehicles and number plates to them, the right to use and drive vehicles, waybills and compliance of goods transported, goods transport and other documents, as well as check their availability in the databases of automated information retrieval systems;

in the presence of the bases determined by the current legislation to carry out detention and personal search of citizens, inspection of their things, vehicle and cargo, and also if necessary to withdraw things which can be tools of commission of a criminal or administrative offense, contain traces or signs of such offense 'people;

to keep persons detained in administrative order in premises specially designated for these purposes;

apply to offenders measures of physical influence, special means and weapons in cases and in the manner prescribed by law (Articles 12, 13, 14, 15 of the Law of Ukraine "On Police" and Articles 20, 21, 22, 24 of the Statute of the Internal Service of the Armed Forces of Ukraine approved by the Law of Ukraine);

to carry out the seizure of goods (goods) and other property in accordance with the requirements of applicable law, within its competence;

to use in the established order special technical and vehicle means for detection and fixing of offenses;

to carry out in the established order photographing, sound recording, video recording for detection and fixing of illegal actions;

to carry out automated exchange of information about vehicles that have crossed the border.

Additionally, at the first border checkpoint:

receive applications, issue and withdraw passes when moving persons who have expressed a desire to cross the line of contact.

3.2. The senior checkpoint is obliged to:

to organize service at the checkpoint (order of combat duty, duty and order of rest);

check the presence of a pass for persons who have expressed a desire to cross the line of contact;

to keep the Book of records of passes and applications, the Journal of control over the passage of vehicles at the checkpoint (**Annex 1**);

Annex 16

Report No. 1 of Presentation of a Person for Identification by Photos, drafted
by Senior Lieutenant K.O.Pidgirnyi, Senior Investigator, Investigations
Department of the Directorate of the Security Service of Ukraine in the Kharkiv
Region (26 February 2015)

*This document has been translated from its original language
into English, an official language of the Court, pursuant to
Rules of the Court, Article 51.*

**REPORT [No. 1]
of Presentation of a Person for Identification by Photos**

The city of Kharkiv

26 February 2015

[...]

with participation of Oleksiy Oleksiyovych Chernikov, born on 20.02.1983, who lives at the address: the city of Kharkiv, 47-A Rybalko St., ap. 36

[...]

O.O. Chernikov, having reviewed the photographs presented to him, stated that he recognizes the person depicted in photograph № 3 by eye opening, head shape, chin, and facial features combined.

[...]

PHOTO BOOK

[Photo Pictures]

**Memorandum to the Record of presenting a person for recognition
based on photographs
of 26 February 2015**

A photo of Volodymyr Mykolayovych Dvornikov, born on June 13, 1978, was presented in the record of presenting a person for recognition based on photographs to witness Oleksiy Oleksiyovych Chernikov in the photograph № 3, in the criminal proceedings № 4201522000000115 of 22.02.2015. Photographs № 1, 2, 4 show persons not related to the criminal proceeding.

[...]

Annex 17

Report No. 2 of Presentation of a Person for Identification by Photos, drafted
by Senior Lieutenant K.O.Pidgirnyi, Senior Investigator, Investigations
Department of the Directorate of the Security Service of Ukraine in the Kharkiv
Region (26 February 2015)

*This document has been translated from its original language
into English, an official language of the Court, pursuant to
Rules of the Court, Article 51.*

**REPORT [No. 2]
of Presentation of a Person for Identification by Photos**

The city of Kharkiv

26 February 2015

[...]

with participation of Andriy Oleksiyovych Chernikov who lives at the address: the city of Kharkiv, 48 Hrishchevtsa St., ap. 37

[...]

A.O. Chernikov, having reviewed the photographs presented to him, stated that he recognizes the person (man) depicted in photograph № 3 by his chin, eye opening, head shape and general facial features combined

[...]

PHOTO BOOK

[Photo Pictures]

**Memorandum to the Record of presenting a person for recognition
based on photographs
of 26 February 2015**

A photo of Volodymyr Mykolayovych Dvornikov, born on June 13, 1978, was presented in the record of presenting a person for recognition based on photographs to witness Andriy Oleksiyovych Chernikov in the photograph № 3, in the criminal proceedings № 4201522000000115 of 22.02.2015. Photographs № 1, 2, 4 show persons not related to the criminal proceeding.

[...]

Annex 18

Report No. 3 of Presentation of a Person for Identification by Photos, drafted by Senior Lieutenant K.O.Pidgirnyi, Senior Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region
(26 February 2015)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

**REPORT [No. 3]
of Presentation of a Person for Identification by Photos**

The city of Kharkiv

26 February 2015

[...]

with participation of Andriy Oleksiyovych Chernikov who lives at the address: the city of Kharkiv, 48 Hrishchevtsa St., ap. 37

[...]

A.O. Chernikov, having reviewed the photographs presented to him, stated that he recognizes the person depicted in photograph № 1. He recognizes him by head shape, eye opening, and chin.

[...]

PHOTO BOOK

[Photo Pictures]

**Memorandum to the Record of presenting a person for recognition
based on photographs
of 26 February 2015**

A photo of Viktor Viktorovich Tetytskyi, born on May 5, 1982 was presented in the record of presenting a person for recognition based on photographs to witness Andriy Oleksiyovych Chernikov in the photograph № 1, in the criminal proceedings № 4201522000000115 of 22.02.2015. Photographs № 2, 3, 4 show persons not related to the criminal proceeding.

[...]

Annex 19

Ruling Granting Recording of V.Dvornikov's Conversations, drafted by Investigating Judge R.M. Piddubnyi, the Court of Appeal in Kharkiv District (27 February 2015)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

**RULING
IN THE NAME OF UKRAINE**

February 27, 2015

Kharkiv

Investigating Judge of the Court of Appeal in Kharkiv District the R.M. Piddubnyi, having reviewed the petition of Major of Justice A.V. Ryzhylo, a senior special investigator with the Investigations Department at the Kharkiv Regional Directorate of the SBU [Security Service of Ukraine], requesting authorization to conduct covert investigative activity in criminal proceeding No. 4201522000000115 under Article 258(3) of the Criminal Code of Ukraine,

FOUND:

According to the petition, the Investigations Department of the Kharkiv Regional Directorate of the SBU is conducting a pre-trial investigation in criminal proceeding No. 4201522000000115 under Article 258(3) of the Criminal Code of Ukraine.

It was established in the course of the pre-trial investigation that on February 22, 2015, at around 1:10 PM, opposite the five-story residential building located at 9/1 Prospekt Marshala Zhukova, Kharkiv, an unidentified explosive device exploded, resulting in the deaths of four persons. According to preliminary information, the unidentified explosive device was detonated during a peaceful civil protest march dedicated to the "Anniversary Commemoration of Those Who Died During the Peaceful Euromaidan Protests."

The pre-trial investigation found that Ukrainian citizen Volodymyr Mykolayovych Dvornikov, born in Kharkiv on 06/13/1978 and residing at Apt. 193, 32 vul. Simnadtsyatoho Partiynoho Zvizdu, Kharkiv, was directly involved in the commission of said crime. This person was detained as a suspect pursuant to Article 208 of the Criminal Procedure Code of Ukraine.

At the same time, the person's conversations and conduct may reveal information about the circumstances surrounding the commission of the crime, the location of evidence in the case, and information about the person and his contacts, including those who were involved in committing the crime.

Thus, in the course of the pre-trial investigation, in order to elucidate the circumstances surrounding the commission of the crime, locate and record evidence in the case, verify information about the person and his conduct, and ascertain information about the person's contacts, including the possibility of identifying other persons involved in committing the serious crime provided for by Article 258(3) of the Criminal Code of Ukraine, the need has arisen to make an audio/video recording of a place, specifically a hidden recording using audio and video recording devices in the following publicly accessible places:

premises of the Temporary Detention Center, a unified special institution of the Main Directorate of the Ministry of Internal Affairs of Ukraine for the Kharkiv Region, and the Kharkiv Pre-Trial Detention Center without the knowledge of the persons present therein.

For these reasons, the prosecution has petitioned the court to authorize covert investigative activity in the form of audio and video surveillance of the location. As a result of this procedural step, the investigation expects to obtain information

Incoming ref. 509t dated 02/27/2015

regarding the conversations and conduct of V.M. Dvornikov through the use of audio and video recording in publicly accessible places. This information will make it possible to ascertain the circumstances surrounding the commission of the crime, the location of evidence in the case, and information about the person and his contacts, including those involved in the commission of the serious crime provided for by Article 258(3) of the Criminal Code of Ukraine.

The court, having thoroughly examined the file of the criminal proceeding and heard the arguments of the investigator, finds that the prosecution has proven there are sufficient grounds to believe that a serious crime was committed and that conducting the aforementioned covert investigative action could help obtain evidence that may be materially relevant to ascertaining the circumstances surrounding the crime and identifying persons who may have been involved in committing it.

Furthermore, the court agrees with the investigator's argument that obtaining such evidence by any other means does not appear possible.

Based on the foregoing and pursuant to Articles 246, 248, 249, and 270 of the Criminal Procedure Code of Ukraine, the court

HEREBY RULES:

To grant Major of Justice A.V. Ryzhylo, a senior special investigator with the Investigations Department at the Kharkiv Regional Directorate of the SBU, permission for a period of two months to perform covert investigative activity in the form of audio and video surveillance and make audio and video recordings of the following publicly available place: premises of the Temporary Detention Center, a unified special institution of the Main Directorate of the Ministry of Internal Affairs of Ukraine for the Kharkiv Region (35 vul. I. Kamysheva, Kharkiv) and the Kharkiv Pre-Trial Detention Center (99 Poltavskiy Shlyakh, Kharkiv) without the knowledge of the persons located therein, in relation to Ukrainian citizen Volodymyr Mykolayovych Dvornikov, d.o.b. 06/13/1978

This ruling shall be valid until April 27, 2015.

Investigating Judge

[signature]

R.M. Pidubnyi

Kharkiv Regional Court of Appeal, Ukraine, Identification code 0289413

Outgoing ref. No. 2712G

02/27/2015

[stamp:]

_____ Department of the Kharkiv Regional Directorate of the SBU Register No. <u>70/6/4004</u> <u>11/23/16</u>
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Annex 20

Ruling Granting Recording of V. Tetutskiy's Conversations, drafted by Investigating Judge R.M. Piddubnyi, the Court of Appeal in Kharkiv District (27 February 2015)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

Declassified [illegible]

Secret

(upon completion)

Counterpart No. 2

**RULING
IN THE NAME OF UKRAINE**

February 27, 2015

Kharkiv

Investigating Judge of the Court of Appeal in Kharkiv District the R.M. Pidubnyi, having reviewed the petition of Major of Justice A.V. Ryzhylo, a senior special investigator with the Investigations Department at the Kharkiv Regional Directorate of the SBU [Security Service of Ukraine], requesting authorization to conduct covert investigative activity in criminal proceeding No. 4201522000000115 under Article 258(3) of the Criminal Code of Ukraine,

FOUND:

According to the petition, the Investigations Department of the Kharkiv Regional Directorate of the SBU is conducting a pre-trial investigation in criminal proceeding No. 4201522000000115 under Article 258(3) of the Criminal Code of Ukraine.

It was established in the course of the pre-trial investigation that on February 22, 2015, at around 1:10 PM, opposite the five-story residential building located at 9/1 Prospekt Marshala Zhukova, Kharkiv, an unidentified explosive device exploded, resulting in the deaths of four persons. According to preliminary information, the unidentified explosive device was detonated during a peaceful civil protest march dedicated to the "Anniversary Commemoration of Those Who Died During the Peaceful Euromaidan Protests."

The pre-trial investigation found that Ukrainian citizen Viktor Viktorovych Tetyutskiy, born in Zhovte, Slavyanoserbisk District, Luhansk Region on 05/05/1982 and residing at 20 vul. Batytskoho, Kharkiv, was directly involved in the commission of said crime. This person was detained as a suspect pursuant to Article 208 of the Criminal Procedure Code of Ukraine.

At the same time, the person's conversations and conduct may reveal information about the circumstances surrounding the commission of the crime, the location of evidence in the case, and information about the person and his contacts, including those who were involved in committing the crime.

Thus, in the course of the pre-trial investigation, in order to elucidate the circumstances surrounding the commission of the crime, locate and record evidence in the case, verify information about the person and his conduct, and ascertain information about the person's contacts, including the possibility of identifying other persons involved in committing the serious crime provided for by Article 258(3) of the Criminal Code of Ukraine, the need has arisen to make an audio/video recording of a place, specifically a hidden recording using audio and video recording devices in the following publicly accessible places:

Temporary Detention Center, a unified special institution of the Main Directorate of the Ministry of Internal Affairs of Ukraine for the Kharkiv Region (45 vul. Ivana Kamysheva, Kharkiv) and the Kharkiv Pre-Trial Detention Center (99 Poltavskiy Shlyakh, Kharkiv)

without the knowledge of the persons present therein.

For these reasons, the prosecution has petitioned the court to authorize covert investigative activity in the form of audio and video surveillance of the location. As a result of this procedural step, the investigation expects to obtain information

Incoming ref. 508t dated 02/27/2015

regarding the conversations and conduct of V.V. Tetyutskiy through the use of audio and video recording in publicly accessible places. This information will make it possible to ascertain the circumstances surrounding the commission of the crime, the location of evidence in the case, and information about the person and his contacts, including those involved in the commission of the serious crime provided for by Article 258(3) of the Criminal Code of Ukraine.

The court, having thoroughly examined the file of the criminal proceeding and heard the arguments of the investigator, finds that the prosecution has proven there are sufficient grounds to believe that a serious crime was committed and that conducting the aforementioned covert investigative action could help obtain evidence that may be materially relevant to ascertaining the circumstances surrounding the crime and identifying persons who may have been involved in committing it.

Furthermore, the court agrees with the investigator's argument that obtaining such evidence by any other means does not appear possible.

Based on the foregoing and pursuant to Articles 246, 248, 249, and 270 of the Criminal Procedure Code of Ukraine, the court

HEREBY RULES:

To grant Major of Justice A.V. Ryzhylo, a senior special investigator with the Investigations Department at the Kharkiv Regional Directorate of the SBU, permission for a period of two months to perform covert investigative activity in the form of audio and video surveillance and make audio and video recordings of the following publicly available place: premises of the Temporary Detention Center, a unified special institution of the Main Directorate of the Ministry of Internal Affairs of Ukraine for the Kharkiv Region (35 vul. I. Kamysheva, Kharkiv) and the Kharkiv Pre-Trial Detention Center (99 Poltavskiy Shlyakh, Kharkiv) without the knowledge of the persons located therein, in relation to Ukrainian citizen Viktor Viktorovych Tetyutskiy, d.o.b. 05/05/1982

This ruling shall be valid until April 27, 2015.

Investigating Judge [signature] R.M. Pidubnyi

Kharkiv Regional Court of Appeal, Ukraine, Identification code 0289413

Outgoing ref. No. 2713G
02/27/2015

[stamp:]

_____ Department of the Kharkiv
Regional Directorate of the SBU
Register No. 70/6/4003
11/23/16

Annex 21

Report No. 3 of Presentation of a Person for Identification by Photos, drafted by Captain of Justice A.O.Prozniak, Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (5 March 2015)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

Report No. 3
of Presentation of a Person for Identification by Photos

the city of Kharkiv

05 March 2015

Started at 16:40

Finished at 17:15

with the participation of the witness Lvov Oleksiy Leonidovych, born on 13 February 1989, registered at the address: the city of Kharkiv, 191 Nemyshlianska Str., being governed by the requirements of the articles 103-105, 107, 223, 228 and 231 of the Criminal Procedure Code of Ukraine...

recognizes under the full face, large bodyweight, studied demolition; on page №4 in photo №2 he recognizes a person named Maryna who was a leader of one of the groups which visited the military camp in the city of Tambov, the Russian Federation, had a call sign "Zed", had a military training in the speciality - sniper, recognizes under the full face, full lips; on page №5 in photo №2, he recognizes a person whom he has seen in composition of the group headed by Maryna in the military camp in the city of Tambov....

CERTIFICATE
to the protocol of presentation of a person for identification by photos №3 dated
05.03.2015

In the photo charts to the protocol of presentation for identification №2 dated 05.03.2015 in the criminal proceeding №2201422000000283 the following people are presented:

- photo chart №4, photo №2 - Kovtun Maryna Anatoliivna, born on 03 June 1967;

Annex 22

Report No. 1 of Presentation of a Person for Identification by Photos, drafted by Captain of Justice A.O.Prozniak, Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (5 March 2015)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

Report No. 1
of Presentation of a Person for Identification by Photos

the city of Kharkiv

05 March 2015

Started at 15:30
Finished at 15:55

with the participation of the witness Pislak Maksym Oleksandrovysh, born on 26 August 1993, registered at the address: the city of Kharkiv, 295 Kliuchkivska Str., app. 113, being governed by the requirements of the articles 103-105, 107, 223, 228 and 231 of the Criminal Procedure Code of Ukraine...

on page №3 in photo №4 he recognizes a person whom he had seen in Maryna's group in the military camp in the city of Tambov, the RF, recognizes under the full face, he also had a training in the speciality - demolition worker; on page №4 in photo №2 he recognizes a person named Maryna who was a leader of another group which visited the military camp in the city of Tambov, the RF, had a call sign "Zed", had an individual training in the speciality - sniper, recognizes under the full face, lips and the hairstyle; on page №5 in photo №2, he recognizes a person whom he had seen in composition of Maryna's group in the military camp in the city of Tambov, the RF.....

CERTIFICATE
to the protocol of presentation of a person for identification by photos №1 dated
05.03.2015

In the photo charts to the protocol of presentation for identification №2 dated 05.03.2015 in the criminal proceeding №2201422000000283 the following people are presented:

- photo chart №4, photo №2 - Kovtun Maryna Anatoliivna, born on 03 June 1967;

Annex 23

Report No. 2 of Presentation of a Person for Identification by Photos, drafted by Captain of Justice A.O.Prosniak, Investigator, Investigations Department of the Directorate of the Security Service of Ukraine in the Kharkiv Region (5 March 2015)

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

Report No. 2
of Presentation of a Person for Identification by Photos

the city of Kharkiv

05 March 2015

Started at 16:00
Finished at 16:30

with the participation of the witness Bunchikov Vitaliy Yuriyovich, born on 03 May 1984, registered at the address: Kharkiv oblast, Dvorichanskyi region, the village of Kolodizne 31 Molodizhna Str., being governed by the requirements of the articles 103-105, 107, 223, 228 and 231 of the Criminal Procedure Code of Ukraine...

... recognizes under the full face, he also had a military training in the speciality - demolition worker; on page №4 in photo №2 he recognizes a person named Maryna who was a leader of the identified group who visited the military camp in the city of Tambov, the RF, had a call sign "Zed", had a military training in the speciality - sniper, recognizes under the full face, wide lips and the hairstyle; on page №5 in photo №2, he recognizes a person whom he has seen in composition of another group who had also visited the training in the military camp in the city of Tambov, the RF.....

CERTIFICATE

to the protocol of presentation of a person for identification by photos №3 dated
05.03.2015

In the photo charts to the protocol of presentation for identification №2 dated
05.03.2015 in the criminal proceeding №2201422000000283 the following people are
presented:

- photo chart №4, photo №2 - Kovtun Maryna Anatoliivna, born on 03 June 1967;

Annex 24

Expert Conclusion No. 5, drafted by the Forensic Research Center, Ministry of Internal Affairs of Ukraine, Main Directorate of the Ministry of Internal Affairs of Ukraine in Kharkiv Region (16 March 2015)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

**THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
MAIN DIRECTORATE OF THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
IN KHARKIV REGION
FORENSIC RESEARCH CENTER**

61036, the city of Kharkiv, 34 Kovtun St.,
tel. (057) 721-15-90, eku22@eku.xark.ua

EXPERT CONCLUSION

16.03.2015

the city of Kharkiv

No. 5

[...]

CONCLUSIONS

1. Layers of soil removed from the entrenching shovel of V.M. Dvornikov and from the car mats of the Ford Siera state license plate 970-01 AA, and soil samples taken at the right side of the site of explosion and through the paved entrance to the garage cooperative “Za rulem” [At the Wheel], provided in packages №№ 7, 12 have a common property.

Other soil samples from the scene, provided in packages №№ 2-11 to the inspection report of 03.03.2015 and soil layers, removed from the entrenching shovel and from the car mats of the Ford Siera state license plate 970-01 AA, do not have a common property.

2. It is not possible to answer the question regarding the origin of soil layers extracted from the entrenching shovel of V.M. Dvornikov and from the car mats of the Ford Siera state license plate 970-01 AA, coming from the area adjacent to the epicenter of the explosion, for the reasons listed in the research part of the report.

3. It is not possible to answer the question regarding the nature of the area from which the soil layers, extracted from the entrenching shovel of V.M. Dvornikov and from the car mats of the Ford Siera state license plate 970-01 AA originate, for the reasons listed in the research part of the report.

Expert

[Signed]

O.O. Klestakova

Annex 25

Ukrainian Border Guard Service Letter No. 51/442 to Major of Justice A.B. Ryjylo,
Senior Investigator, Investigations Department of the Directorate of the Security
Service of Ukraine in the Kharkiv Region, dated 16 March 2015

*This document has been translated from its original
language into English, an official language of the Court,
pursuant to Rules of the Court, Article 51.*

**STATE BORDER GUARD OF UKRAINE
Eastern Regional Department
Khrakiv Border Guard Unit**

61045, the city of Kharkiv, 228 Klochkivska St., p/o 11122 (057) 340-55-92

16.03.2015

51/442

**To the Senior Investigator of the Specially
Important Cases of the Investigations Department
of the Directorate of the Security Service of
Ukraine in the Kharkiv region
Major of justice A.V. Ryzhylo**

61002, the city of Kharkiv, 2 Myronosytska St..

[...]

I am sending to your address an excerpt from the “Information On Persons Who Crossed the State Border of Ukraine” database in relation to the citizen of Ukraine Volodymyr Volodymyrovych Dvornikov, born on June 13, 1978.

[...]

Date of crossing	Direction	Name	Date of birth	Citizenship	Passport number	Place of crossing	Vehicle
12.02.2015 13:34:23	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	By foot
24.01.2015 12:01:27	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Pletynivka	Sedan VAZ AX5350CE
22.01.2015 14:28:39	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan VAZ AX5350CE
21.01.2015 15:48:56	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan VAZ AX5350CE
21.01.2015 8:20:54	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan VAZ AX5350CE
20.01.2015 13:02:46	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan VAZ AX5350CE
14.01.2015 18:09:30	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan VOLKSVAGEN AX4989BB
13.01.2015 9:13:04	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	By foot
23.12.2014 17:16:51	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	By foot
23.12.2014 9:13:52	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	By foot
03.12.2014 19:31:09	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan OPEL AX0379EC
03.12.2014 12:27:57	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Minivan GAZ K569YO
22.11.2014 18:21:12	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan HYUNDAI AX2359EA
20.11.2014 16:55:04	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Minivan MERCEDES H895OH
23.10.2014 16:17:24	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan OPEL AX7412EK
23.10.2014 9:57:27	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan OPEL AX7412EK
25.09.2014 17:38:22	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan VOLKSVAGEN B1840BT
25.09.2014 10:48:20	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan RENAULT AX7949EA

13.09.2014 20:37:44	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	By foot
13.09.2014 12:34:39	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Bus GAZ H04100
08.09.2014 17:15:47	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan DODGE AX7595EC
08.09.2014 9:00:20	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan RENAULT AX5242CT
20.08.2014 18:48:07	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Cargo truck MERCEDES BC6011EE
20.08.2014 10:21:59	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Minivan MERCEDES H974ME
14.08.2014 13:15:09	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	By foot
14.08.2014 8:26:40	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	By foot
11.08.2014 14:14:20	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Pletynivka	By foot
02.08.2014 8:34:32	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	By foot
01.07.2014 17:41:11	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	By foot
01.07.2014 10:37:02	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan VOLKSVAGEN AX0034BB
19.06.2014 14:22:28	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan CHEVROLET AX5984CM
19.06.2014 8:10:22	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Minivan VOLKSVAGEN B18408BT
06.06.2014 15:42:59	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Minivan VOLKSVAGEN P414YO
06.06.2014 10:03:45	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Bus NEOPLAN AX3468CI
02.06.2014 15:48:31	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Minivan VOLKSVAGEN M710MC
02.06.2014 10:07:38	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan VOLKSVAGEN AX9371CO
26.05.2014 13:15:24	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Minivan GAZEL M715AM
26.05.2014 8:12:03	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Sedan VOLKSVAGEN AX0817AI
12.05.2014 9:56:22	Entry	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Kozacha Lopan	Rail transportation

							Local train 6334 K. Lopan- Belgorod
12.05.2014 18:41:28	Exit	VOLODYMYR DVORNIKOV	13.06.1978	UKRAINE	[...]	Hoptivka	Minivan MERCEDES AX6060CM

[...]

Annex 26

Report of Identification of Dvornikov's Car, drafted by Senior Lieutenant of Justice
K.O.Pidgirnyi, Senior Investigator, Investigations Department of the Directorate of the
Security Service of Ukraine in the Kharkiv Region (19 March 2015)

*This document has been translated from its original language
into English, an official language of the Court, pursuant to
Rules of the Court, Article 51.*

REPORT
of presenting objects for recognition based on photographs

The city of Kharkiv

19 March 2015

[...]

with the participation of witness Henbach Bohdan Valeriiovych, born on December 5, 1993, who lives at the address: the city of Kharkiv, 17 Tarasivska St., apt. 275, guided by the requirements of articles 103-105, 107, 223, 229 and 231 of the Criminal Procedure Code of Ukraine, presented Annex № 1 to this protocol - a photo table, where color copies of photographs of blue “Opel Omega” cars are listed under numbers 1-12 to B.V. Henbach for identification.

[...]

Later, B.V. Henbach, having reviewed the photographs presented to him, stated that *in the photo under № 5 and in the photo under № 9 I recognize an Opel Omega car, which I saw on February 22, 2015 in the court yard of the house № 9/1 on Marshal Zhukov Avenue and house № 3 on Yuriev Boulevard, immediately after the explosion during a procession dedicated to the Anniversary of Honoring the Victims of Peaceful Euromaidan Rally, on Marshal Zhukov Avenue in the city of Kharkiv. I noticed the specified car in the specified court yard, as after the explosion I ran into this court yard for rendering of medical aid to lightly wounded participants of procession.*

[...]

In the record of presenting objects for recognition based on photographs to witness Henbach Bohdan Valeriiovych, born on December 5, 1993, in the criminal proceedings № 42015220000000115 of 22.02.2015, photographs № 5 and № 9 contain photographs of a blue “Opel Omega” sedan, registration number AH 5266 EN, which belongs to V.V. Tetyutskyi.

[...]

Annex 27

Expert Conclusion No. 17, drafted by the Forensic Research Center, Ministry of Internal Affairs of Ukraine, Main Directorate of the Ministry of Internal Affairs of Ukraine in Kharkiv Region (20 March 2015)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

**THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
MAIN DIRECTORATE OF THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
IN KHARKIV REGION
FORENSIC RESEARCH CENTER**

61036, the city of Kharkiv, 34 Kovtun St.,
tel. (057) 721-15-90, eku22@eku.xark.ua

EXPERT CONCLUSION

20.03.2015

the city of Kharkiv

No. 17

[...]

CONCLUSIONS

1. On the provided for research Samsung phone, IMEI - 356561/06/502104/1, which was seized on February 26, 2015 during a personal search of V.V. Tetyutskyi, namely: on washes from the outer and inner surfaces of the phone, SIM card and the battery to it (objects №№ 2, 3) cells with nuclei were found.

The identified genetic traits (DNA profiles) of the saliva sample of citizen V.V. Tetyutskyi (object № 1) and cells with nuclei found on the inner surface of the phone, SIM card and the battery to it (object № 3) are listed in the table of results (Table 1.1, Annex 1).

The genetic characteristics of cells with nuclei detected in flushing from the outer surface of the phone (object № 2) are mixed, contain genetic characteristics of more than two people, and are not identifiable.

2. Genetic traits of cells with nuclei detected in the wash from the inner surface of the phone, SIM card and the battery to it (object № 3) coincide with the genetic traits of the saliva sample of citizen V.V. Tetyutskyi (object № 1). Probability of accidental coincidence of genetic traits found in the wash from the inner surface of the phone, SIM card and the battery to it (object № 3) and saliva sample of citizen V.V. Tetyutskyi (object № 1) is 7.65×10^{-25} . The set of genetic traits found in these objects is experienced in no more than 1 in 1.3×10^{24} (i.e., no more than 1 in 1 septillion people).

Judicial expert

[Signed]

Ya. O. Sinitsyna

[Stamp of the Ministry of Interior of Ukraine
Main Department in Kharkiv region
Science and Research Criminalistics Expert Center No. 14]

Annex 28

Expert Conclusion No. 16, drafted by the Forensic Research Center, Ministry of Internal Affairs of Ukraine, Main Directorate of the Ministry of Internal Affairs of Ukraine in Kharkiv Region (20 March 2015)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

**THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
MAIN DIRECTORATE OF THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
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EXPERT CONCLUSION

20.03.2015

the city of Kharkiv

No. 16

[...]

CONCLUSIONS

1. The identified genetic traits (DNA profile) of the saliva sample of citizen V.M. Dvornikov are provided in the table of research results (Table 1, Annex 1).

On the washings from mobile phones provided for research: NOKIA IMEI 352294/01/963386/9 with SIM card (objects №№ 2, 3), Samsung IMEI: 356561/06/894258/1 with SIM card (objects №№ 4, 5), Samsung IMEI: 355569/02/188904/8 (objects №№ 6, 7), Nokia IMEI: 357276/05/950506/0 with SIM card (objects №№ 8, 9), MAXVI IMEI: 357225049858477 (objects № № 10, 11), Samsung IMEI: 356561/06/777717/8 with SIM card (objects №№ 12, 13) cells with nuclei were detected.

2. The identified genetic traits (DNA profile) of cells with nuclei detected in washes from the inner surface of the Samsung IMEI phone: 356561/06/894258/1, SIM card and the battery (objects № 5) and from the inner surface of the Samsung IMEI phone: 355569/02/188904/8 and the battery (objects № 7) coincide with each other and coincide with the genetic characteristics of the saliva sample of citizen V.M. Dvornikov.

Judicial expert

[Signed]

O.V. Matarykina

[Stamp of the Ministry of Interior of Ukraine
Main Department in Kharkiv region
Science and Research Criminalistics Expert Center No. 14]

Annex 29

Expert Opinion No. 1975, drafted by the Forensic Research Center in Kharkiv Named
After M.S. Bokarius, Ministry of Justice of Ukraine (1 April 2015)

*This document has been translated from its original language
into English, an official language of the Court, pursuant to
Rules of the Court, Article 51.*

**MINISTRY OF JUSTICE OF UKRAINE
FORENSIC RESEARCH CENTER IN KHARKIV NAMED AFTER M.S. BOKARIUS**

**8-a vul. Zolochivska, Kharkiv, 61177, tel. (057) 372-12-20, tel./fax (057) 372-20-01,
Email: hniise@hniise.gov.ua, Web: http://hniise.gov.ua
Unified State Register of Enterprises and Organizations of Ukraine code 02883133**

EXPERT OPINION No. 1975

of an integrated forensic criminal examination of video and audio recordings
in Criminal Proceeding No. 22014220000000283

Dated 1 April 2015

INTRODUCTION

[. . .]

The expert was asked to answer the following questions:

1. Did M.A. Kovtun and O.V. Sobchenko participate in the telephone conversation recorded in the following files:

10_11_2014__14_05_20__4194680_(СБД)165812930_00.wav (Cd No.1550/GVZHD dated 18 November 2014, report on wiretapping HCPD No.70/5-22293, the intercept dated 10 November 2014 at 2:05:20 p.m.);

10_11_2014__14_05_21__4194680_(СБД)165813851_00.wav (Cd No.1550/GVZHD dated 18 November 2014, report on wiretapping HCPD No.70/5-22293, the intercept dated 10 November 2014 at 2:07:21 p.m.);

[. . .]

CONCLUSIONS

1. Words (phrases, speech) in conversations recorded on examined audio tracks Nos. 1, 2 (audio files “10_11_2014_14_05_20_4194680_(СБД)165812930_00.wav,” “10_11_2014_14_05_21_4194680_(СБД)165813851_00.wav”), and identified in transcripts as “Unknown 1” correspond to M.A. Kovtun and as “Unknown 2” correspond to O.V. Sobchenko.

Forensic Expert

L.U. Fateev

[. . .]

**Transcript of the conversation recorded on the CD “Verbatim” DVD-R
No.MFP667RC312252645**

Track No. 1, audio recording 10_11_2014__14_05_20__4194680_(СБД)165812930_00.wav

[. . .]

Unknown 1: Yes, I read it. But he does not call.

Unknown 2: Wait, wait, wait, there is a different issue. The issue is that I wanted to ask you, do you have any baguettes left?

Unknown 1: Have one left.

Unknown 2: How strong do you need it for dinner?

Unknown 1: Not really. Do you want something that he wanted to do?

Unknown 2: Well, we can try.

Unknown 1: Well, I don't know. I saw there is now, there is a video from the bar. Have you seen it in the Internet, the video inside?

Unknown 2: I checked. Nothing.

Unknown 1: Nothing?

Unknown 2: No.

Unknown 1: Okay, well, I just wanted (illegible)

Unknown 2: Well, I need this, he will call and you should immediately transport him to the holiday house.

[. . .]

[. . .]

Track No. 2, audio recording 10_11_2014__14_05_21__4194680_(СБД)165813851_00.wav

[. . .]

Unknown 1: Yes.

Unknown 2: Will you then call me and tell me at what time approximately we should be catching a crane.

Unknown 1: Aaaa, where are you going to catch?

Unknown 2: You mean crane, him.

Unknown 1: I understood, where are you going to catch him and at what time?

Unknown 2: You should give me approximate time.

Unknown 1: Okay, that is it, I understood, well.

Unknown 2: Okay.

Unknown 1: You will be catching on another side, right?

Unknown 2: Yes.

[. . .]

Annex 30

Ukrainian Border Guard Service Letter No. 51/680 to Lieutenant Colonel I.V. Selenkov, Deputy Head of the Investigations Department, Directorate of the Security Service of Ukraine in the Kharkiv Region, dated 16 April 2015

This document has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51.

STATE BORDER SERVICE OF UKRAINE
East Regional Department
Kharkiv Border Unit

16 April 2015

51/680

To the Deputy Head of the Investigation
Department of the Security Service of Ukraine
in Kharkiv Region, Lieutenant Colonel
Salenkov I. V.

I am sending to your address an excerpt from the database "Information on persons who crossed the state border of Ukraine" regarding citizens of Ukraine Chekhovskiy Vadym Mykolayovych, born on 02 January 1967, Kovtun Maryna Anatoliivna, born on 03 June 1967, Babaievskiy Anatoliy Sergoyovych, born on 07 June 1967, within the period from 01 June 2014 to the current time

An excerpt from the database “Information on persons who crossed the state border of Ukraine”

Date of crossing	Direction	Full name	Date of birth	Citizenship	Passport #	Checkpoint	Means of transport
07.11.2014 17:16:25	Entrance	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	pedestrian
07.11.2014 9:14:38	Exit	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	Car RenoAX5242CT
29.10.2014 21:14:27	Entrance	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	Car VolkswagenAX498 9BB
29.10.2014 11:56:03	Exit	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	pedestrian
09.10.2014 15:55:19	Entrance	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	pedestrian
09.10.2014 10:08:53	Exit	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	minibus MercedesAX2109C T
30.09.2014 10:26:59	Exit	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	pedestrian
25.09.2014 21:10:13	Entrance	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	pedestrian
24.09.2014 10:22:37	Exit	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Kozacha Lopan	Railway City train 6334

												K.Lopan-Belgorod
06.09.2014 2:10:17	Entrance	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	Gontivka	MH080290	Gontivka	Car Minibus Neoplan AX1113AA		
22.08.2014 10:47:08	Exit	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	Gontivka	MH080290	Gontivka	minibus MercedesAX0187H C		
16:08:2014	Entrance	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Kharkiv Pasazhyrskyyi	Railway Train 73 Moscow-Kryvyi Rig	MH080290	Gontivka	pedestrian		
13.08.2014 19:27:03	Exit	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	Gontivka	MH080290	Gontivka	Car Reno AX1577EB		
23.07.2014 17:55:06	Entrance	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	Gontivka	MH080290	Gontivka	Car VolkswagenAX725 5EB		
18.07.2014 17:59:24	Exit	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	Gontivka	MH080290	Gontivka	Bus Skania AT015		
20.06.2014 14:28:54	Entrance	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Gontivka	Gontivka	MH080290	Gontivka	Railway Train 45 Minsk-Min.Vody		
04:06:2014 22:28:36	Exit	Kovtun Maryna	03.06.1967	Ukraine	MH080290	Ilovaisk - Pasazhyrskyyi park	Ilovaisk - Pasazhyrskyyi park	MH080290	Ilovaisk - Pasazhyrskyyi park			

Head of the Department for Investigative (Search) Operations of the Operational Search Department of the Kharkiv Border Detachment

signature D. E. Melnychenko

Annex 31

Expert Opinion of Forensic Psychological Examination Commission No. 1632/222,
drafted by the Forensic Research Center in Kharkiv Named After M.S. Bokarius,
Ministry of Justice of Ukraine (20 February 2017)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

MINISTRY OF JUSTICE OF UKRAINE
FORENSIC RESEARCH CENTER IN KHARKIV NAMED AFTER M.S. BOKARIUS

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Unified National Registry of Companies and Organizations Code - 02883133

Expert Opinion of Forensic Psychological Examination Commission
No. 1632/222

Based on the records of criminal case No. 645/3612/15-k
(No. 1-kp/645/48/17)

Drafted on 20.02.2017

I. INTRODUCTION

On [illegible] 2017 [illegible] Professor M.S. Bocarius Kharkiv Research Institute Of Forensic Examinations, pursuant to the ruling of 07.02.2017 issued by Frunze District [illegible] in Kharkiv (presiding judge: Gorpynych O.V., bench judges: Bondareva I.V., [illegible] G.S.), received 2 (two) CDs and a mini DV video tape [illegible] of crime reconstructions, in which the accused Bashlykov S.O., Dvornikov V.M., and Tetyutsky V.V. took place, dated 27.02.2015.

The objects to be examined were received by the lab from the clerk office. [illegible] was not compromised.

The objects to be examined are placed in sealed white paper envelopes bearing accompanying inscriptions in blue ink. The texts of the accompanying inscriptions are provided below and shown on photographs No. 1, 2, 3, 4, 5, and 6.

(taken from the court order)

At the court hearing, the prosecutor filed a motion with the court [illegible] to appoint two forensic examinations in the case: forensic voice analysis and psychological analysis. The [illegible] motion stated that on February 27, 2015 a crime reconstruction was performed involving the accused [illegible] Tetyutsky V.V., Dvornikov V.M., and Bashlykov S.O. The said investigative actions were [illegible] on video media. During the pre-trial investigation, the suspects did not deny their guilt in committing the crimes they are accused of committing. At the court hearing, however, they claimed they were pressured during the crime reconstruction by the staff of the Security Service of Ukraine in Kharkiv Province and they were forced into self-incrimination. In order to clarify whether there are any signs of psychological pressure exerted on the suspects during the crime reconstruction, and whether their testimony during the crime reconstruction were made under duress, the court has decided to appoint psychological examination experts from Kharkiv Research Institute of Forensic Examinations...

Furthermore, the court has now completed the examination of evidence in the criminal trial, which included information contained on the electronic media. Other [illegible] contained in the criminal case record that have not been examined will not be used as evidence in the criminal trial and the prosecutor does not plan to examine them.

Based on the above, the prosecutor requested an urgent order to be issued, while this hearing is in session, to review the matter of forensic examination.

Golovkov O.M., a counsel for the victims, and the victims Sukhorukova [illegible], Tolmacheva M.R., and Didyk A.V. have supported the motion filed by the prosecutor.

Defense counsel Tikhonenkov D.A. has objected to granting the motion...

The defense counsel Shapovalov M.V. asked to deny the request noting that the discs in the criminal case record are not the originals that were used by investigators to make the recordings.

When discussing the prosecutor's motion to appoint the aforesaid examinations, all parties involved in the criminal trial had the right to pose [illegible] questions to the experts but they didn't use that right.

Upon hearing the parties in the criminal case, and having reviewed the case record, the court decided as follows:

Article 1 of the Ukrainian law *On Forensic Examination* provides that forensic examination is an investigation conducted by an expert, based on his/her special knowledge of physical objects, phenomena or processes that contain information regarding facts existing in a case pending in a court or pre-trial investigation.

In accordance with Part 1, Article 332, Part 1.2, Article 242 of the Code of Criminal Procedure of Ukraine, a court may, upon receiving a [illegible] motion, order a forensic examination by an expert institution, if special skills are required to clarify facts that are [illegible] to criminal proceedings.

According to Parts 1, 2, Article 22 of the Code of Criminal Procedure of Ukraine, criminal proceedings are general and adversarial, which allow to have independent [illegible] by the prosecution and defense to support their legal positions, rights, [illegible], and legitimate interests, as set forth in the Code. [illegible] in criminal proceedings have equal rights to collect and present to [illegible] things, documents, other evidence, motions, complaints, and also to exercise [illegible] procedural rights provided under this Code.

Part 6 of the said article stipulates that a court, while maintaining objectivity and impartiality, should create conditions needed for parties to exercise [illegible] procedural rights and perform their procedural duties...

The matters of forensic psychological examination.

Forensic psychological examination is an independent branch of forensic examination, which involves the use of special (professional) knowledge in psychology to establish actual facts to be included in the arguing process in a criminal case.

Forensic psychological examination encompasses a range of aspects that characterize the subjective side of an act, the existence, degree of awareness, and management of behavior (ability to control) in criminal [illegible] situations, and also the state of mind and characteristics of an individual, which are significant for individualizing responsibility and punishment.

Objects of forensic psychological examination are sources of information about psychological human activities, results of experimental-and-psychological examination of parties involved in criminal proceedings, criminal case records, including transcripts of interrogations, letters and other documents, which can be subjected to psychological expert evaluation, and are material to a criminal case.

According to Parts 6.3-6.4 of the Instructions for Appointing and Carrying out Judicial Forensic Examination and Expert Reviews, and Scientific Recommendations Regarding Preparation Matters and Appointing Forensic Examiners and Expert Examinations, psychological examination determines specific features of mental state and their exhibitions in personal behavior that are material in law and lead to certain consequences in law. The key goal of psychological examination is to determine the following in an examined person: individual psychological characteristics, character traits, key personality traits; motivating factors in one's mental life and behavior; emotional reactions and states; patterns of mental processes, degree of their development, and their individual characteristics.

Specifically, during the crime reconstruction performed in the presence of the suspects, Tetyutsky V.V., Dvornikov V.M., and Bashlykov S.O., they provided information regarding the facts surrounding the commission of the terrorist act, which occurred on 22.02.2015 at: Kharkiv, Marshal Zhukov Avenue, during a peaceful rally/processions of people ("March to Honor Victims Killed in Peaceful Euromaidan"). Also, they have admitted their guilt during the said process. However, during the court review of crime reconstruction transcripts and electronic media with such recorded crime reconstructions, Dvornikov V.M., Tetyutsky V.V. have withdrawn the said statements by explaining that they didn't commit the crime they were charged with under Part 3, Article 258 of the Criminal Code of Ukraine; they claimed that during the investigative actions they provided informative statements that were not based on what really happened but they were pressured into making such statements by officers of the Field Office of the Security Service of Ukraine in Kharkiv Province, who forced them into confessions.

Given the fact that information obtained during the crime reconstruction is material to this case because, according to the statements made by Dvornikov V.M. and Tetyutsky V.V. during the said investigative actions, it appears that they did commit the criminal offense they are charged with, and also because special skills are needed to determine whether any psychological pressure was exerted when Dvornikov V.M. and Tetyutsky V.V. were reconstructing the crime, the judicial panel has found that a forensic psychological examination is needed.

The following questions were posed to the experts:

"1. Are there any psychological features in the behavior of Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M. indicating that they acted independently/non-independently during the reconstruction of the event, the terrorist act, which was committed on 22.02.2015 at: Kharkiv, Marshal Zhukov Avenue, during a peaceful rally/processions of people ("March to Honor Victims Killed in Peaceful Euromaidan"), and which involved their participation in the reconstruction of the said crime on 27.02.2015?

2. Does the video of the crime reconstruction, which is dated 27.02.2015 and involves Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M., exhibits any signs of psychological pressure exerted on them by those who conducted the said investigative action?

3. Could psychological influence, if any, have significantly changed the free will of the accused Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M.?

4. What specific psychological features did the crime reconstruction had, which was performed on 27.02.2015 and involved the accused Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M., based on the video record of the crime reconstruction?

This opinion will deal with matters related to **Tetyutsky V.V.**

Matters related to Bashlykov S.O. will be addressed in opinion No. 17 [illegible] of 21.02.2017. Matters related to Dvornikov V.M. will be addressed in opinion No. 1794/224 of 22.02.2017.

OPINION

1. When Tetyutsky, Viktor Viktorovich, was taking part in the videotaped crime reconstruction, acting as a suspect, on 27.02.2015, his communicative behavior exhibited psychological features indicating that he was [illegible] to independently reconstruct the events of the terrorist attack [illegible] occurred on 22.02.2015 at: Kharkiv, Marshal

Zhukov Avenue, during a peaceful rally/processions of people ("March to Honor Victims Killed in Peaceful Euromaidan").

2. The video of the crime reconstruction, dated 27.02.2015, which was conducted with the involvement of Tetyutsky V.V. acting as a suspect, exhibits no signs of psychological pressure exerted by those who took part in the said investigative action.

3. The video of the crime reconstruction, dated 27.02.2015, which was conducted with the involvement of Tetyutsky V.V. acting as a suspect, exhibits no signs of psychological pressure exerted on him.

4. When Tetyutsky V.V. was taking part in the videotaped crime reconstruction, acting as a suspect, on 27.02.2015, his psychological features were [illegible] by signs of communicative interaction, which indicates that his individual psychological features were "guarded" in communications. During the crime reconstruction, Tetyutsky V.V. was for the most part, asked open-ended questions formulated by a scenario of plot fragments outlining their contextual direction and directing the construction of the key algorithms in the suspect's messages in accordance with the specifics of the investigative action, and alternative questions took the form of clarification for the information provided by the suspect. Leading questions comprise a very small portion of the total posed questions and they didn't have impact on the reconstructive efforts by Tetyutsky V.V.

In the process of reconstructing the events during the aforementioned videotaped investigative action, which were related to the crimes he is charged with, communicative activities of Tetyutsky V.V. were characterized by [illegible] behavioral manifestations. Tetyutsky V.V. was meaningful, extensive and [illegible] and clearly reconstructed routes, visual signs [illegible] of the area, specific actions taken by Dvornikov V.M. and Bashlykov S.O. during [illegible] planting and arming the explosive device [illegible] circumstances surrounding the movement of rally; situation and circumstances regarding the departure [illegible]. In the reconstruction of V.V. Tetyutsky's own actions during [illegible] before planting and arming the explosive device [illegible], and during the reconstruction of his own actions related to [illegible] mobile phone, in the communicative activities of the suspect [illegible] pronounced reduction of details, meaningful restriction of judgments, [illegible] indicative facial expressions and pantomime, references to [illegible] visual perception of the explosive device by him.

[illegible] these differences in the verbal and nonverbal products by Tetyutsky V.V., his communicative behavior during this investigative [illegible] indicate arbitrary adjustment of his reconstructive [illegible] and tentative communicative behavior, which is a variety of [illegible] actions.

Court-appointed expert

[Signature]

T.M. Egorova

Court-appointed expert

[Signature]

T.V. Savkina

Court-appointed expert

[Signature]

O.O. Slipets

[Seal: Ministry of Justice of Ukraine; No. 02883133; Honorable Professor M.S. Bocarius Kharkiv Research Institute Of Forensic Examinations]

Addenda: Appendix A - (typed text of the video recording of the crime reconstruction held on 27.02.2015, which was conducted at the detention center of the Police Field Office in Kharkiv Province and involved the participation of Tetyutsky V.V., the suspect) on 3 pages;

Appendix B - (typed text of the video recording of the crime reconstruction held on 27.02.2015, which was conducted at the crime scene and involved the participation of Tetyutsky V.V., the suspect) on 7 pages.

Reference: The forensic examination opinion is returned with the materials that were provided for the investigation: DVD-R RIDATA compact disk, 16x 4.7 Gb 120 min, 1 piece, in a paper envelope with the accompanying text on one side describing the envelope contents, and also signatures of forensic experts and a square stamp imprint: "Kharkiv Research Institute Of Forensic Examinations; Examined material No. 11". The envelope is sealed with three prints of the same stamp.

[Seal: Ministry of Justice of Ukraine; No. 02883133; Honorable Professor M.S. Bocarius Kharkiv Research Institute Of Forensic Examinations]

Annex 32

Expert Opinion No. 8-ZVZ, drafted by the Kharkiv Centre for Forensic Science and Investigations, Ministry of Internal Affairs of Ukraine (21 February 2017)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
KHARKIV CENTRE FOR FORENSIC SCIENCE AND INVESTIGATIONS
34 Kovtun St., 1/29 Yaroslavska St., Kharkiv, 61036, tel/fax (057)721-15-90, (0572) 7308-402,
expert_center_01@ukr.net

21.02.2017

EXPERT OPINION

The city of Kharkiv

No. 8-ZVZ

On February 7, 2017, Audio and Video Investigations Group of the Information Technology Research Department at Kharkiv Center for Forensic Science and Investigations of the Ministry of Internal Affairs of Ukraine received an order issued by Frunze District Court in Kharkiv, which included a cover letter dated February 7, 2017, No. G-08, regarding an [illegible] forensic examination. The order was issued by the court panel comprised of: Presiding Judge Gorpynych O.V., bench judges Bondareva I.V., and Shevchenko G.S., in the presence of court reporter Denysenko O.I., in the criminal matter recorded on February 22, 2015 in the Unified Registry of Pre-Trial Investigations under No. 4201522000000115.

The forensic examination was assigned to Leonid Viktorovych Dombrovsky, Deputy Head of the Department, and the Head of the Computer and Technical Research Sector of Information Technology Research Department at Kharkiv Center for Forensic Science and Investigations of the Ministry of Internal Affairs of Ukraine. Mr. Dombrovsky has a technical degree, a legal degree, and forensic expert qualifications. He is authorized to perform forensic examination of audio and video recordings for the following examiner specialties: 7.1 "Technical examination of video and sound recording media and devices," 7.2 "Speaker examination based on physical speech parameters, acoustic channels, and environment," which was granted by EKK of the Ministry of Internal Affairs of Ukraine on 15.04.2005 (certificate No. [illegible], confirmed on 21.05.2010 (certificate No. 264), confirmed on 21.04.2015 (certificate No. 367); forensic examiner experience - since 1995.

I have been advised about penalties for knowingly falsifying opinions or refusing, without [illegible] excuse, to perform my duties under Articles 384, 385 of the Criminal Code of Ukraine.

[Signature] L.V. Dombrovsky

[Seal: Ministry of Internal Affairs of Ukraine; Kharkiv Centre for Forensic Science and Investigations No. 31]

Facts in the case (as known from the investigation request):

The aforementioned criminal case is pending before Frunze District Court in Kharkiv.

At the court hearing, the prosecutor filed a motion with the court seeking to appoint two forensic examinations in the case: forensic voice analysis and psychological analysis. The [illegible] motion stated that on February 27, 2015 a crime reconstruction was performed involving the accused (suspects) Tetyutsky V.V., Dvornikov V.M., and Bashlykov S.O. The said investigative actions were recorded on video media. During the pre-trial investigation, the suspects did not deny their guilt in committing the crimes they are accused of committing. At the court hearing, however, they claimed they were pressured during the crime reconstruction by the staff of the Security Service of Ukraine in Kharkiv Province and they were forced into self-incrimination. In order to clarify whether there are any signs of psychological pressure exerted on the suspects during the crime reconstruction, and whether their testimony during the crime reconstruction were made under duress, the court has decided to appoint psychological examination experts from Kharkiv Center for Forensic Science and Investigations to address the following matters:

1) 1) are there any psychological features in the behavior of Bakshlykov S.O., Tetyutsky V.V., and Dvornikov V.M. indicating that they acted independently/non-independently during the reconstruction of the event, the terrorist act committed on February 22, 2015, when such crime reconstruction was performed with their involvement on February 27, 2015;

2) 2) does the video of the crime reconstruction, which is dated 27.02.2015 and involves Bashlykov S.O., Tetyutsky V.V., and Dvorinkov V.M., exhibit any signs of psychological pressure exerted on them by those who conducted the said investigative action.

For the purposes of forensic examination, a videotape was provided with a video record of the crime reconstruction (p. 76, volume 8), and a videotape with a video record of the crime reconstruction contained in p. 52 and p. 9, volume No. 8.

Also, the pre-trial investigation included undercover investigative actions focused on the suspects Tetyutsky V.V. and Dvorinkov V.M. pursuant to the order of the Court of Appeals in Kharkiv Province, dated 27.02.2015.

The results of undercover investigative actions are provided in the transcripts of volume 8, p. 215-220, 222-223, and discs with audio files are also added in volume 8, p. 221, 224.

When audio files were played at the trial, the accused Tetyutsky V.V. and Dvorinkov V.M. claimed that the voices in the audio recordings are not theirs. In order to determine whose voices are represented in the text typed in the

undercover investigation transcripts, the court has decided to conduct a forensic voice analysis in the pending trial, which was assigned to experts from Kharkiv Center for Forensic Science and Investigations of the Ministry of Internal Affairs of Ukraine in Kharkiv Province.

The following questions were posed to the experts:

- 1) Are the audio recordings contained on the disks and in audio files, which were obtained in the course of undercover investigation and provided for forensic examination, suitable to establish the identity of a person who speaks the text provided in the transcript?
- 2) Do the voices in the audio files, which were recorded as text in the undercover investigation transcripts and purportedly belong to Tetyutsky V.V. and Dvornikov V.M., really belong to Tetyutsky V.V. and Dvornikov V.M.?
- 3) Are there any signs of editing, selective overlays or voice changes in the audio provided for forensic examination?

The prosecutor has noted that such forensic examinations were not performed during the investigation because, at that time, the suspects Tetyutsky V.V., Dvornikov V.M., and Bashlykov S.O. have been admitting their guilt in the crimes and did not dispute the information provided by them during the crime reconstruction conducted with their involvement.

Furthermore, the court has now completed the examination of evidence in the criminal trial, which included information contained on the electronic media. Other [illegible] contained in the criminal case record and have not been examined, is not used as [illegible] in the criminal trial and the prosecutor does not [illegible] to examine them.

Based on the above, the prosecutor requested an urgent order to be issued, while this hearing is in session, to review the matter of forensic examination.

Golovkov O.M., a counsel for the victims, and the victims Sukhorukova T.M., [illegible] M.R., and Didyk A.V. have supported the motion filed by the prosecutor.

The defense counsel Tikhonenkov D.A. has objected to granting the motion and also requested a break in the hearing to prepare for arguments regarding this motion.

The defense counsel Shapovalov M.V. asked to deny the request noting that the discs in the criminal case record are not the originals that were used by investigators to make the recordings.

When discussing the prosecutor's motion to appoint the aforesaid examinations, all parties involved in the criminal trial had the right to pose their questions to the experts but they didn't use that right.

Given the fact that information obtained during the crime reconstruction is material to this case because, according to the statements made by Dvornikov V.M. and Tetyutsky V.V. during the said investigative actions, it appears that they did commit the criminal offense they are charged with, and also because special skills are needed to determine whether any psychological pressure was exerted when Dvornikov V.M. and Tetyutsky V.V. were reconstructing the crime, the judicial panel has found that a forensic psychological examination is needed.

The following questions were posed to the experts:

1. Are there any signs of editing, selective overlays or voice changes in the audio records submitted for the examination?
2. Are the audio recordings contained on the disks and in audio files, which were obtained in the course of undercover investigation and provided for forensic examination, suitable to establish the identity of a person who speaks the text provided in the transcript?
3. Does the audio recording provided for forensic examination, which was recorded on a DVD-R laser disc No. 2925/GVZND (number of files on the disc - 11, disc capacity - 66.4 MB), contain the voice of Dvornikov V.M., as it is identified in the transcript produced by the undercover audio surveillance in a public place, dated 25.03.2015, and designated as "O"?
4. Does the audio recording provided for forensic examination, which was recorded on a laser disc No. 2922/GVZDN (number of files on the disc - 6, disc capacity - 87.4 MB), contain the voice of Tetyutsky V.V., as it is identified in the transcript produced by the undercover audio surveillance in a public place, dated 25.03.2015, and designated as "O"?

In order to determine the matters presented for forensic examination, and in accordance with Article 69 of the Code of Criminal Procedure of Ukraine, ref. No. 19/121/13-562, dated 08.02.2017 and the order of Frunze District Court in Kharkiv regarding forensic examination, the expert No. 8 filed a motion to obtain samples of Tetyutsky V.V. and Dvornikov V.M. voices and speech.

OPINIONS:

1. There are no signs of editing, selective [illegible] or voice changes in the audio records submitted for examination.

2. The audio recordings submitted for examination are contained in the following audio files: 201503041009060049300m18.wav, 1503051848210012520m18.wav, 201503051903200012540m18.wav, 201503051930000012580m18.wav, 201503051958540012620m18.wav, 201503052043540012680m18.wav on a laser disk RIDATA DVD-R labeled 2925/GVZND sealed, 27.02.15, and 2015030521233500313120m18.wav on a laser disk RIDATA DVD-R labeled 2922/GVZND sealed, 27.02.15, which were obtained in the undercover investigation, are suitable for identifying a speaker by his voice and by the text provided in the transcripts: undercover investigation transcript of recording made in a public place, dated 25.03.2015, No. 70/5-5967, of 26.03.2015, and undercover investigation transcript of recording made in a public place, dated 25.03.2015, No. 70/5-5966, of 26.03.2015.

3. The audio recordings provided for forensic examination, which were made on a RIDATA DVD-R laser disc labeled No. 2925/GVZND (number of files on the disc - 11, disc capacity - 66.4 MB), specifically the files 201503041009060049300m18.wav, 1503051848210012520m18.wav, 201503051903200012540m18.wav, 201503051930000012580m18.wav, 201503051958540012620m18.wav, and 201503052043540012680m18.wav, contain the voice of Dvornikov V.M., who was identified as such in the transcript produced by the undercover audio surveillance in a public place, dated 25.03.2015, and designated as "O."

4. The audio recordings provided for forensic examination, which were made [illegible] on a RIDATA DVD-R laser disc labeled No. 2922/GVZDN (number of files on the disc - 6, disc capacity - 87.4 MB), specifically the file 2015030521233500313120m18.wav, contains the voice of Tetyutsky [illegible], who was identified as such in the transcript produced by the undercover audio surveillance in a public place, dated 25.03.2015, and designated as "O."

Image 15. General view of special package No. 2316964 (front side) of the Expert Service of the Ministry of Internal Affairs of Ukraine.

Image 16. General [illegible] of special package No. 2316964 (back side) of the Expert Service of the Ministry of Internal Affairs of Ukraine.

Annex 33

Expert Opinion of Forensic Psychological Examination Commission No. 1793/223,
drafted by the Forensic Research Center in Kharkiv Named After M.S. Bokarius,
Ministry of Justice of Ukraine (21 February 2017)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

MINISTRY OF JUSTICE OF UKRAINE
FORENSIC RESEARCH CENTER IN KHARKIV NAMED AFTER M.S. BOKARIUS

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E-mail: hniise@hniise.gov.ua, Web: <http://hniise.gov.ua>,
Unified National Registry of Companies and Organizations Code - 02883133

Expert Opinion of Forensic Psychological Examination Commission
No. 1793/223

Based on the records of criminal case No. 645/3 612/15-k
(No. 1-kp/645/48/17)

Drafted on 21.02.2017

I. INTRODUCTION

On 08.02.2017 Honorable Professor M.S. Bocarius Kharkiv Research Institute Of Forensic Examinations, pursuant to the ruling of 07.02.2017 issued by Frunze District Court in Kharkiv (presiding judge: Gorpynych O.V., bench judges: Bondareva I.V., Shevchenko G.S.), received 2 (two) CDs and a mini DV video tape containing video recording of crime reconstructions, in which the accused Bashlykov S.O., Dvornikov V.M., and Tetyutsky V.V. took place, dated 27.02.2015.

The objects to be examined were received by the lab from the clerk office. The packaging was not compromised.

The objects to be examined are placed in sealed white paper envelopes bearing accompanying inscriptions in blue ink. The texts of the accompanying inscriptions are provided below and shown on photographs No. 1, 2, 3, 4, 5, and 6.

Summary of the case facts
(taken from the court order)

"... At the court hearing, the prosecutor filed a motion with the court seeking to appoint two forensic examinations in the case: forensic voice analysis and psychological analysis. In support of the motion, it was stated that a crime reconstruction was performed on 27.02.2015 involving the accused (suspect) Tetyutsky V.V., Dvornikov V.M., and Bashlykov S.O. The said investigative actions were recorded on video media. During the pre-trial investigation, the suspects did not deny their guilt in committing the crimes they are accused of committing. At the court hearing, however, they claimed they were pressured during the crime reconstruction by the staff of the Security Service of Ukraine in Kharkiv Province and they were forced into self-incrimination. In order to clarify whether there are any signs of psychological pressure exerted on the suspects during the crime reconstruction, and whether their testimony during the crime reconstruction were made under duress, the court has decided to appoint psychological examination experts from Kharkiv Research Institute of Forensic Examinations...

Furthermore, the court has now completed the examination of all evidence in the criminal trial, which included information contained on the electronic media. Other disks contained in the criminal case record that have not been examined will not be used as evidence in the criminal trial and the prosecutor does not plan to examine them.

Based on the above, the prosecutor requested an urgent order to be issued, while this hearing is in session, to review the matter of forensic examination.

Golovkov O.M., a counsel for the victims, and the victims Sukhorukova T.M., Tolmacheva M.R., and Didyk A.V. have supported the motion filed by the prosecutor.

Defense counsel Tikhonenkov D.A. has objected to granting the motion...

The defense counsel Shapovalov M.V. asked to deny the request noting that the discs in the criminal case record are not the originals that were used by investigators to make the recordings.

When discussing the prosecutor's motion to appoint the aforesaid examinations, all parties involved in the criminal trial had the right to pose their questions to the experts but they didn't use that right.

Upon hearing the parties in the criminal case, and having reviewed the case record, the court decided as follows:

Article 1 of the Ukrainian law *On Forensic Examination* provides that forensic examination is an investigation conducted by an expert, based on his/her special knowledge of physical objects, phenomena or processes that contain information regarding facts existing in a case pending in a court or pre-trial investigation.

In accordance with Part 1, Article 332, Part 1.2, Article 242 of the Code of Criminal Procedure of Ukraine, a court may, upon receiving a prosecutor motion, order a forensic examination by an expert institution, if special skills are required to clarify facts that are material to criminal proceedings.

According to Parts 1, 2, Article 22 of the Code of Criminal Procedure of Ukraine, criminal proceedings are general and adversarial, which allow to have independent arguments by the prosecution and defense to support their legal positions, rights, freedoms, and legitimate interests, as set forth in the Code. Parties in criminal proceedings have equal rights to collect and present to a court things, documents, other evidence, motions, complaints, and also to exercise other procedural rights provided under this Code.

Part 6 of the said article stipulates that a court, while maintaining objectivity and impartiality, should create conditions needed for parties to exercise their procedural rights and perform their procedural duties...

The matters of forensic psychological examination.

Forensic psychological examination is an independent branch of forensic examination, which involves the use of special (professional) knowledge in psychology to establish actual facts to be included in the arguing process in a criminal case.

Forensic psychological examination encompasses a range of aspects that characterize the subjective side of an act, the existence, degree of awareness, and management of behavior (ability to control) in criminal [illegible] situations, and also the state of mind and characteristics of an individual, which are significant for individualizing responsibility and punishment.

Objects of forensic psychological examination are sources of information about psychological human activities, results of experimental-and-psychological examination of parties involved in criminal proceedings, criminal case records, including transcripts of interrogations, letters and other documents, which can be subjected to psychological expert evaluation, and are material to a criminal case.

According to Parts 6.3-6.4 of the Instructions for Appointing and Carrying out Judicial Forensic Examination and Expert Reviews, and Scientific Recommendations Regarding Preparation Matters and Appointing Forensic Examiners and Expert Examinations, psychological examination determines specific features of mental state and their exhibitions in personal behavior that are material in law and lead to certain consequences in law. The key goal of psychological examination is to determine the following in an examined person: individual psychological characteristics, character traits, key personality traits; motivating factors in one's mental life and behavior; emotional reactions and states; patterns of mental processes, degree of their development, and their individual characteristics.

Specifically, during the crime reconstruction performed in the presence of the suspects, Tetyutsky V.V., Dvornikov V.M., and Bashlykov S.O., they provided information regarding the facts surrounding the commission of the terrorist act, which occurred on 22.02.2015 at: Kharkiv, Marshal Zhukov Avenue, during a peaceful rally/processions of people ("March to Honor Victims Killed in Peaceful Euromaidan"). Also, they have admitted their guilt during the said process. However, during the court review of crime reconstruction transcripts and electronic media with such recorded crime reconstructions, Dvornikov V.M., Tetyutsky V.V. have withdrawn the said statements by explaining that they didn't commit the crime they were charged with under Part 3, Article 258 of the Criminal Code of Ukraine; they claimed that during the investigative actions they provided informative statements that were not based on what really happened but they were pressured into making such statements by officers of the Field Office of the Security Service of Ukraine in Kharkiv Province, who forced them into confessions.

Given the fact that information obtained during the crime reconstruction is material to this case because, according to the statements made by Dvornikov V.M. and Tetyutsky V.V. during the said investigative actions, it appears that they did commit the criminal offense they are charged with, and also because special skills are needed to determine whether any psychological pressure was exerted when Dvornikov V.M. and Tetyutsky V.V. were reconstructing the crime, the judicial panel has found that a forensic psychological examination is needed.

The following questions were posed to the experts:

"1. Are there any psychological features in the behavior of Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M. indicating that they acted independently/non-independently during the reconstruction of the event, the terrorist act, which was committed on 22.02.2015 at: Kharkiv, Marshal Zhukov Avenue, during a peaceful rally/processions of people ("March to Honor Victims Killed in Peaceful Euromaidan"), and which involved their participation in the reconstruction of the said crime on 27.02.2015?

2. Does the video of the crime reconstruction, which is dated 27.02.2015 and involves Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M., exhibits any signs of psychological pressure exerted on them by those who conducted the said investigative action?

3. Could psychological influence, if any, have significantly changed the free will of the accused Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M.?

4. What specific psychological features did the crime reconstruction had, which was performed on 27.02.2015 and involved the accused Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M., based on the video record of the crime reconstruction?

This opinion will deal with matters related to **Bashlykov S.O.**

Opinion

1. For the most part, when Bashlykov, Sergiy Oleksandrovych was taking part in the videotaped crime reconstruction, acting as a suspect, on 27.02.2015, his communicative behavior exhibited psychological features indicating that he was able to independently reconstruct the events of the terrorist attack that occurred on 22.02.2015 at: Kharkiv, Marshal Zhukov Avenue, during a peaceful rally/processions of people ("March to Honor Victims Killed in Peaceful Euromaidan").

The only exception was the reconstruction of the object (trash can) by Bashlykov S.O. as the place where he threw away the Samsung mobile phone. In this instance, Bashlykov S.O. did not act independently when he reconstructed the place.

2. For the most part, the video of the crime reconstruction, dated 27.02.2015, which was conducted with the involvement of Bashlykov S.O. acting as a suspect, exhibits no signs of psychological pressure exerted by those who took part in the said investigative action.

The only exception was the reconstruction of the object (trash can) by Bashlykov S.O. as the place where he threw away the Samsung mobile phone. In this instance, Bashlykov S.O. did not act independently when he reconstructed the place. It was created by a leading question.

3. For the most part, the video of the crime reconstruction, dated 27.02.2015, which was videotaped and conducted with the involvement of Bashlykov S.O. acting as a suspect, exhibits no signs of psychological pressure exerted on him.

The only exception was the reconstruction of the object [illegible] by Bashlykov S.O. as the place where he threw away the Samsung mobile phone. In this instance, Bashlykov S.O. did not act independently when he [illegible] the place. It was created by a suggestive question and, therefore, it was not independent.

4. When Bashlykov S.O. was taking part in the videotaped crime reconstruction, acting as a suspect, on 27.02.2015, his psychological features were characterized by signs of communicative interaction, which indicates that S.O. Bashlykov's individual psychological features were restrictively communicative. During the crime reconstruction, the suspect was, for the most part, asked open-ended questions formulated by a scenario of plot fragments outlining their contextual direction and directing the construction of the key algorithms in the S.O. Bashlykov's messages in accordance with the specifics of the investigative action, and alternative questions took the form of clarification for the information provided by the suspect. There were no leading questions. Leading questions make up a very small portion of the total number of posed questions and they did not have any significant impact on the key reconstructive actions of Bashlykov S.O.

In the process of reconstructing the events related to the crimes he is accused of, and during the aforesaid videotaped investigative action, S.O. Bashlykov's communicative activities, for the most part, were characterized by an established volitional control over his communicative behavior, active attention, emotionally restrained involvement in the self-guided reconstruction process, proactive use of words to deliver specific details, clarifications, references to immediate sensations, and references to his own awareness of the reconstructed events. Nonverbal reactions exhibited by Bashlykov S.O. during the reconstruction of events have some meaning and they are congruent with his verbal messages.

When reconstructing the environment and circumstances surrounding the events related to his own actions when sending an SMS message to V.V. Tetyutsky's mobile phone, and especially the self-awareness of his role and the result of his actions; the disassembly and disposal of the mobile phone, such communicative activities of Bashlykova S.O. indicate object-oriented communicative behavior, as a subtype of independent activity.

Court-appointed expert	[Signature]	T.M. Egorova
Court-appointed expert	[Signature]	O.O. Slipets
Court-appointed expert	[Signature]	T.V. Savkina

[Seal: Ministry of Justice of Ukraine; No. 02883133; Honorable Professor M.S. Bocarius Kharkiv Research Institute Of Forensic Examinations]

Addenda: Appendix A - a working transcript (typed text of the video recording of the crime reconstruction held on 27.02.2015, which was conducted at the crime scene and involved the participation of Bashlykov S.O., the suspect) on 9 pages.

Reference: The forensic examination opinion is returned with the materials that were provided for the investigation: DVD-R RIDATA compact disk, 16x 4.7 Gb 120 min, 1 piece, in a paper envelope with the accompanying text on one side describing the envelope contents, and also signatures of forensic experts and a square stamp imprint: Kharkiv Research Institute Of Forensic Examinations; Examined material No. 11. The envelope is sealed with three prints of the same stamp.

[Seal: Ministry of Justice of Ukraine; No. 02883133; Honorable Professor M.S. Bocarius Kharkiv Research Institute Of Forensic Examinations]

Annex 34

Expert Opinion of Forensic Psychological Examination Commission No. 1794/224,
drafted by the Forensic Research Center in Kharkiv Named After M.S. Bokarius,
Ministry of Justice of Ukraine (22 February 2017)

This excerpt has been translated from its original language into English, an official language of the Court, pursuant to Rules of the Court, Article 51. A copy of the whole document has been deposited with the Registry.

**MINISTRY OF JUSTICE OF UKRAINE
ORENSIC RESEARCH CENTER IN KHARKIV NAMED AFTER M.S. BOKARIUS**

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Unified National Registry of Companies and Organizations Code - 02883133**

Expert Opinion of Forensic Psychological Examination Commission
No. 1794/224

Based on the records of criminal case No. 645/3612/15-k
(No. 1-kp/645/48/17)

Drafted on 22.02.2017

I. INTRODUCTION

On 08.02.2017 Honorable Professor M.S. Bocarius Kharkiv Research Institute Of Forensic Examinations, pursuant to the ruling of 07.02.2017 issued by Frunze District Court in Kharkiv (presiding judge: Gorpynych O.V., bench judges: Bondareva I.V., Shevchenko G.S.), received 2 (two) CDs and a mini DV video tape containing video recording of crime reconstructions, in which the accused Bashlykov S.O., Dvornikov V.M., and Tetyutsky V.V. took place, dated 27.02.2015.

The objects to be examined were received by the lab from the clerk office. The packaging was not compromised.

The objects to be examined are placed in sealed white paper envelopes bearing accompanying inscriptions in blue ink. The texts of the accompanying inscriptions are provided below and shown on photographs No. 1, 2, 3, 4, 5, and 6.

Summary of the case facts
(taken from the court order)

"... At the court hearing, the prosecutor filed a motion with the court seeking to appoint two forensic examinations in the case: forensic voice analysis and psychological analysis. In support of the motion, it was stated that a crime reconstruction was performed on 27.02.2015 involving the accused (suspect) Tetyutsky V.V., Dvornikov V.M., and Bashlykov S.O. The said investigative actions were recorded on video media. During the pre-trial investigation, the suspects did not deny their guilt in committing the crimes they are accused of committing. At the court hearing, however, they claimed they were pressured during the crime reconstruction by the staff of the Security Service of Ukraine in Kharkiv Province and they were forced into self-incrimination. In order to clarify whether there are any signs of psychological pressure exerted on the suspects during the crime reconstruction, and whether their testimony during the crime reconstruction were made under duress, the court has decided to appoint psychological examination experts from Kharkiv Research Institute of Forensic Examinations...

Furthermore, the court has now completed the examination of all evidence in the criminal trial, which included information contained on the electronic media. Other disks contained in the criminal case record that have not been examined are not used as evidence in the criminal trial and the prosecutor does not plan to examine them.

Based on the above, the prosecutor requested an urgent order to be issued, while this hearing is in session, to review the matter of forensic examination.

Golovkov O.M., a counsel for the victims, and the victims Sukhorukova T.M., Tolmacheva M.R., and Didyk A.V. have supported the motion filed by the prosecutor.

Defense counsel Tikhonenkov D.A. has objected to granting the motion...

The defense counsel Shapovalov M.V. asked to deny the request noting that the discs in the criminal case record are not the originals that were used by investigators to make the recordings.

When discussing the prosecutor's motions to appoint the aforesaid examinations, all parties involved in the criminal trial had the right to pose questions to the experts but they didn't use that right.

Upon hearing the parties in the criminal case, and having reviewed the case record, the court decided as follows:

Article 1 of the Ukrainian law *On Forensic Examination* provides that forensic examination is an investigation conducted by an expert, based on his/her special knowledge of materials in objects, phenomena or processes that contain information regarding facts existing in a case pending in a court or pre-trial investigation.

In accordance with Part 1, Article 332, Part 1.2, Article 242 of the Code of Criminal Procedure of Ukraine, a court may, upon receiving a prosecutor motion, order a forensic examination by an expert institution, if special skills are required to clarify facts that are [illegible] to criminal proceedings.

According to Parts 1, 2, Article 22 of the Code of Criminal Procedure of Ukraine, criminal proceedings are general and adversarial, which allow to have independent [illegible] by the prosecution and defense to support their legal positions, rights [illegible] legitimate interests, as set forth in the Code. [illegible] in criminal proceedings have

equal rights to collect and present [illegible] things, documents, other evidence, motions, complaints, and also to exercise [illegible] procedural rights provided under this Code.

Part 6 of the said article stipulates that a court, while maintaining objectivity and impartiality, should create conditions needed for parties to exercise their procedural rights and perform their procedural duties...

The matters of forensic psychological examination.

Forensic psychological examination is an independent branch of forensic examination, which involves the use of special (professional) knowledge in psychology to establish actual facts to be included in the arguing process in a criminal case.

Forensic psychological examination encompasses a range of aspects that characterize the subjective side of an act, the existence, degree of awareness, and management of behavior (ability to control) in criminal [illegible] situations, and also the state of mind and characteristics of an individual, which are significant for [illegible] responsibility and punishment.

[illegible] in forensic psychological examination are sources of information about [illegible] human activities, results of experimental-and-psychological [illegible] parties involved in criminal proceedings, criminal case records, [illegible] in interrogations, letters and other documents, which can be subjected to psychological [illegible] evaluation, and are material to a criminal case.

According to Parts 6.3-6.4 of the Instructions for Appointing and Carrying out judicial [illegible] and expert reviews, and Scientific Recommendations Regarding [illegible] Matters and Appointing Forensic examiners and expert examinations, [illegible] determines specific features of mental state and their [illegible] in personal behavior that are material in law and lead to certain [illegible] consequences. The key goal of psychological examination is to determine [illegible] in a person: individual psychological characteristics, character traits, [illegible] personality traits; motivating factors in one's mental life and [illegible]; emotional reactions and states; patterns of mental [illegible], degree of their development, and their individual characteristics.

Specifically, during the crime reconstruction performed in the presence of the suspects, Tetyutsky V.V., Dvornikov V.M., and Bashlykov S.O., they provided information regarding the facts surrounding the commission of [illegible] act, which occurred on 22.02.2015 at: Kharkiv, Marshal Zhukov Avenue, during a peaceful rally/processions of people ("March to Honor Victims Killed in Peaceful Euromaidan"). Also, they have admitted their guilt during the said process. However, during the review in a court [illegible] of crime reconstruction transcripts and electronic media with such recorded crime reconstructions, Dvornikov V.M., Tetyutsky V.V. [illegible] the said statements by explaining that they didn't commit the crime they were charged with under Part 3, Article 258 of the Criminal Code of Ukraine; they claimed that during the investigative actions they provided informative statements that were not based on what really happened but they were pressured into making such statements by officers [illegible] of the Security Service of Ukraine in Kharkiv Province, who forced them into confessions.

Given the fact that information obtained during the crime reconstruction is material to this case because, according to the statements made by Dvornikov V.M. and Tetyutsky V.V. during the said investigative actions, it appears that they did commit the criminal offense they are charged with, and also because special skills are needed to determine whether any psychological pressure was exerted when Dvornikov V.M. and Tetyutsky V.V. were reconstructing the crime, the judicial panel has found that a forensic psychological examination is needed.

The following questions were posed to the experts:

"1. Are there any psychological features in the behavior of Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M. indicating that they acted independently/non-independently during the reconstruction of the event, the terrorist act, which was committed on 22.02.2015 at: Kharkiv, Marshal Zhukov Avenue, during a peaceful rally/processions of people ("March to Honor Victims Killed in Peaceful Euromaidan"), and which involved their participation in the reconstruction of the said crime on 27.02.2015?

2. Does the video of the crime reconstruction, which is dated 27.02.2015 and involves Bashlykov S.O., Tetyutsky V.V., and Dvorinkov V.M., exhibits any signs of psychological pressure exerted on them by those who conducted the said investigative action?

3. Could psychological influence, if any, have significantly changed the free will of the accused Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M.?

4. What specific psychological features did the crime reconstruction had, which was performed on 27.02.2015 and involved the accused Bashlykov S.O., Tetyutsky V.V., and Dvornikov V.M., based on the video record of the crime reconstruction?

This opinion will deal with matters related to **Dvornikov V.M.**

Opinion

1. When Dvornikov Volodymyr Mykolayovych was taking part in the videotaped crime reconstruction, acting as a suspect, on [illegible].02.2015, his communicative behavior exhibited psychological features indicating that he was able to independently reconstruct the events of the terrorist attack that occurred on 22.02.2015 at: Kharkiv, Marshal Zhukov Avenue, during a peaceful rally/processions of people ("March to Honor Victims Killed in Peaceful Euromaidan").

2. The video of the crime reconstruction, dated 27.02.2015, which was conducted with the involvement of Dvornikov V.M. acting as a suspect, exhibits no signs of psychological pressure exerted by those who took part in the said investigative action.

3. The video of the crime reconstruction, dated 27.02.2015, which was conducted with the involvement of Dvornikov V.M. acting as a suspect, exhibits no signs of psychological pressure exerted on him.

4. When Dvornikov V.M. was taking part in the videotaped crime reconstruction, acting as a suspect, on 27.02.2015, his psychological features were characterized by signs of communicative interaction, which indicates that his individual psychological features were actively communicative. During the crime reconstruction, Dvornikov V.M. was, for the most part, asked open-ended questions formulated by a scenario of plot fragments outlining their contextual direction and directing the construction of the key algorithms in the suspect's messages in accordance with the specifics of the investigative action, and alternative questions took the form of clarification for the information provided by the suspect. There were no leading questions.

In the process of reconstructing the events during the aforementioned videotaped investigative action, which were related to the crimes he is charged with, communicative activities of Dvornikov V.M. were characterized by richness of verbal production with specific details, consistency, and active behavioral (nonverbal) manifestations: he reconstructs the environment and facts related to the events when the explosive device was received with meaningful and non-verbal expressions; he reconstructs the routes in detail, specifies visual features (landmarks) in the area, and features of reconstructed objects; he provides a detailed description of specific actions taken by Tetyutsky V.V. and Bashlykov S.S. during the time period when the explosive device was planted and armed; he provides a detailed description of his own actions during the time period when the explosive device was planted and armed; he reconstructs in detail the situation and circumstances surrounding the events during the departure from the explosion site. Means of non-verbal communication exhibited by Dvornikov V.M. are not typical for forced communications. Throughout the entire crime reconstruction, verbal and nonverbal production of Dvornikov V.M. show pronounced signs of psychological coherence (congruence) and independent reproduction of events.

Court-appointed expert

[Signature]

T.M. Egorova

Court-appointed expert

[Signature]

O.O. Slipets

Court-appointed expert

[Signature]

T.V. Savkina

[Seal: Ministry of Justice of Ukraine; No. 02883133; Honorable Professor M.S. Bocarius Kharkiv Research Institute Of Forensic Examinations]

Addenda: Appendix A - a working transcript (typed text) of the video recording of the crime reconstruction held on 27.02.2015, which was conducted at 35 Ivan Kamyshev St. and involved the participation of Dvornikov V.M., the suspect, on 6 pages. Appendix B - a working transcript (typed text) of the video recording of the crime reconstruction held on 27.02.2015, which was conducted at the crime scene and involved the participation of Dvornikov V.M., the suspect, on 8 pages.

Reference: The forensic examination opinion is returned with the materials that were provided for the investigation: Panasonic MiniDV videotape (DVM60), 1 piece, in a paper envelope with the accompanying text on one side describing the envelope contents, and also signatures of forensic experts and a square stamp imprint: "Kharkiv Research Institute Of Forensic Examinations; Examined material No. 11". The envelope is sealed with three prints of the same stamp.

[Seal: Ministry of Justice of Ukraine; No. 02883133; Honorable Professor M.S. Bocarius Kharkiv Research Institute Of Forensic Examinations]

Annex 35

Case No. 645/3612/15-k, Judgment of Conviction and Sentencing of 28 December
2019 of the Frunze Municipal Court of the City of Kharkiv

*This document has been translated from its original
language into English, an official language of the Court,
pursuant to Rules of the Court, Article 51.*

[...]

found:

PERSON_5, during the events that took place in November 2013 – February 2014, was a supporter of the “Anti-Maidan” social movement, and on February 18, 2014, being in Kyiv during street clashes between supporters of the “Euromaidan” and “Anti-Maidan” social movements, suffered bodily injuries, as a result of which he felt a persistent animosity toward supporters of the Euromaidan movement, as well as national and local government officials who took office after 02/23/2014.

While receiving treatment at the Prof. O.I. Meshchaninov Kharkiv City Clinical Hospital of Urgent and Emergency Medical Care during the period February 20-24, 2014, PERSON_5 made the acquaintance of Kharkiv residents PERSON_4 and PERSON_6, who, as supporters of the Anti-Maidan movement, had also suffered bodily injuries during the civil protests in Kyiv from supporters of the Euromaidan movement and also harbored persistent animosity toward supporters of the Euromaidan.

In the course of their communication, PERSON_5, PERSON_6, and PERSON_4 decided to stay in touch using mobile phones specially allocated for this purpose, including phones with subscriber numbers NUMBER_1, which was used by PERSON_5; NUMBER_2, which was used by PERSON_6; and NUMBER_3, which was used by PERSON_4, i.e., to create a “closed communication group.”

PERSON_5 held pro-Russian views and supported the idea of certain territories of Ukraine becoming part of the Russian Federation (hereinafter “RF”), as well as the idea of a violent struggle against Ukraine’s joining the European Union and NATO.

In or around November 2014 (the exact date and time were not determined during the trial), PERSON_5 decided to make contact with representatives of the Russian special services and to assist them in carrying out subversive activity against Ukraine. In November 2014, to further his criminal plan, PERSON_5 departed for the RF, where he established contact with certain individuals who were not identified in the course of the pretrial investigation, going by the names of PERSON_8 and PERSON_9, who introduced themselves as officers of the Russian special services.

In the course of their communication, these persons assigned PERSON_5 the task of monitoring the movement of military hardware and then informing them about such movements, damaging the property of PrivatBank Commercial Bank PJSC, and sending them information about the sociopolitical sentiments of residents of Kharkiv and the Kharkiv Region. To fulfill his assigned task, PERSON_5 made video recordings of the movement of military hardware and sent the information he gathered to the aforementioned persons in exchange for monetary reward.

In February 2015 (the exact date and time were not determined during the trial), PERSON_5 once again traveled to the city of Belgorod, RF, where he met with the aforementioned representatives of the Russian special services. At this meeting, PERSON_8 and PERSON_9 proposed to PERSON_5 that he carry out sabotage and terrorist activity in Kharkiv using, among other things, a MON-100 anti-personnel mine. For this purpose they gave PERSON_5 documentation in electronic form concerning the procedures for handling such a mine. At the same time, PERSON_5 was supposed to determine on his own the specific place and method of carrying out the terrorist act.

The above circumstances, particularly the fact that a MON-100 mine constitutes an explosive device designed to injure personnel, gave PERSON_5 a basis to realize that PERSON_8 and PERSON_9 were in fact proposing that he cause an explosion that posed a danger to human life and health.

After returning from Belgorod, RF, to Kharkiv, one day in February 2015, but no later than 02/21/2015 (the exact date and time were not determined during the trial), PERSON_5 received via email account INFORMATION_9, which he was using, information from the aforementioned officers of the Russian special services regarding the location of a cache with a MON-100 mine, located in a strip of woods near the village of Zatyshshya, Kharkiv District, Kharkiv Region.

One day in February 2015 (the exact date and time were not determined during the trial, but not later than 02/21/2015), continuing to implement his criminal plan, with a view to using the explosive device to carry out his terrorist activity, PERSON_5 drove in a greyish-blue Ford Sierra with license plate number NUMBER_4, which was in constant use by him, and collected from the aforementioned cache a plastic bag with a MON-100 mine and electric detonator, which he took home with him to the following address: ADDRESS_3.

In order to achieve his goal of carrying out a terrorist act, in the course of monitoring social media on the internet, specifically the social network Facebook, PERSON_5, learned about a peaceful assembly and march to be organized and held by the Euromaidan Kharkiv social movement on the occasion of "Honoring the Memory of Those Who Died in Kyiv in January-February 2014," which was to be held on 02/22/2015 by the Palace of Sports located at 2 Marshal Zhukov Avenue, Kharkiv.

Thus, knowing full well that causing an explosion with an explosive device based on a MON-100 anti-personnel directional fragmentation mine during the aforementioned peaceful assembly would produce victims among activists of the Euromaidan Kharkiv social movement, against whom PERSON_5 harbored persistent personal animosity due to their patriotic beliefs, with the goal of disturbing public safety, terrorizing the population, and drawing the public's attention to his own political views vis-à-vis his disagreement with the political course of the current Ukrainian government, PERSON_5 selected the aforementioned event "Honoring the Memory of Those Who Died in Kyiv in January-February 2014" as a target for fulfilling the assignment he had received from PERSON_8 and PERSON_9 to carry out a terrorist act. PERSON_5 informed PERSON_8 and PERSON_9 about the selected target and about his plan to use the MON-100 mine during the aforementioned peaceful assembly, and the latter approved it. In exchange for carrying out the attack, PERSON_5 was supposed to receive from the aforementioned representatives of the Russian special services a cash reward in the amount of USD 10,000. PERSON_5 agreed to this proposal.

Realizing how hard it would be to prepare and carry out the planned terrorist act on his own and that he would need the help of third parties to facilitate the terrorist act, PERSON_5, on one day during the period February 16-19 February, 2015 (the exact date and time were not determined during the trial), recruited his acquaintances, PERSON_6 and PERSON_4, to prepare and carry it out, explaining to them in full detail the essence of his plan and telling them about the monetary reward for their assistance in carrying out the terrorist act. The latter, harboring a persistent animosity toward the pro-Ukrainian activists belonging to the Euromaidan social movement, fully realizing that PERSON_5 was actually proposing that they assist in carrying out a terrorist act by providing the instruments and means of committing the crime, as well as advice, eliminating obstacles, and in other ways, acting with a view to disrupting public security, terrorizing the population, and drawing the public's attention to their political views vis-à-vis their disagreement with the political course of the current Ukrainian authorities, motivated by a persistent animosity toward pro-Ukrainian activists, including representatives of the Euromaidan Kharkiv social movement, and acting out of mercenary motives, voluntarily agreed to this, thereby entering into a conspiracy with each other.

PERSON_5, intending to detonate the MON-100 remotely, then searched the internet and studied diagrams of the remote detonation of a mine, which consisted in using a modified mobile phone for this purpose, which,

upon receiving an incoming call to the number of the SIM card installed on the mobile phone, gives a positive command pulse from the lead-out electrical conductor to the output contact of the thyristor switch, which opens the thyristor, closes the "Initiator – additional power supply unit" electrical circuit, and triggers the electric detonator, thereby detonating the charge and launching the fragments of the MON-100 mine.

In order to carry out the planned terrorist act, at around 3:00 PM on 02/19/2015, PERSON_5 and PERSON_6 purchased at a mobile phone and accessory shop located in the underpass of the Kharkiv metro's Proletarska station, a SIM card with subscriber number NUMBER_5 and a new Samsung E1200 headset, which they planned to use later to make a remote control system for an explosive device. Later, on the evening of 02/21/2015, PERSON_5, at his home located at ADDRESS_3, using schematics he had obtained from the internet and his previously acquired knowledge of the use of explosives, as well as a toggle switch, 9-volt battery and thyristor he had purchased at the radio market in Kharkiv, disassembled the Samsung E1200 telephone that he and PERSON_6 had obtained on 02/19/2015, took out the vibration motor, and soldered two wires to the "+" and "-" contacts on the board located beneath the vibration motor, then made a hole in the side of the phone case, pulled the two wires soldered to the board through the holes, and connected them to the thyristor, a power supply unit (9-volt battery) and the toggle switch, thus modifying the Samsung E1200 mobile phone he had purchased and using it to manufacture a remote control system for an explosive device to be used in combination with the electric detonator and MON-100 anti-personnel directional fragmentation mine.

At around 1:00 PM on 02/21/2015, with a view to making an outgoing call to the modified phone comprising part of the remote control system of the explosive device based on a MON-100 anti-personnel directional fragmentation mine, and thus to activate the explosive device, PERSON_5 purchased at a mobile phone and accessory shop located in the underpass of the Kharkiv metro's Proletarska station, a Nokia 1110 mobile phone and a SIM card with subscriber number NUMBER_6, from which he planned to make a call to the Samsung E1200 mobile headset with subscriber number NUMBER_5 installed in the explosive device's remote control system.

Continuing to take active steps to carry out the terrorist act planned for 02/22/2015, in order to scope out the locations where the terrorist act was to be carried out and choose a place to plant the explosive device, PERSON_5, on the afternoon of 02/21/2015 (the exact date and time were not determined during the trial), driving the Ford Sierra with license plate number NUMBER_4, which was in constant use by him, drove along Marshal Zhukov Avenue in Kharkiv, where he chose a snowdrift on the corner of the road's right shoulder, at the intersection with the exit from the Za Rulem [Behind the Wheel] Garage Cooperative located opposite house No. 9/1 Marshal Zhukov Avenue, Kharkiv, as the spot in which to lay the explosive device.

That same day, 02/21/2015 (the exact date and time were not determined during the trial), PERSON_5 discussed with PERSON_4 and PERSON_6 their criminal roles in preparing to commit the planned terrorist act. On the night of February 21-22, 2015, PERSON_4 and PERSON_6 were supposed to contribute to the commission of said crime by keeping watch near the place where the explosive device was to be laid by PERSON_5 to ensure the safety of the latter's actions, i.e., to ensure that there were no law-enforcement officers or passers-by in the vicinity and, if any such persons were detected near the place where the mine was to be laid by PERSON_5, to inform the latter of the danger of being exposed, thereby eliminating obstacles to the commission of the terrorist act.

At around 2:00 AM on 02/22/2015, implementing their criminal intent, acting on their previously devised plan for committing the terrorist act, PERSON_5, PERSON_4, and PERSON_6 met near the residence of PERSON_5 at ADDRESS_3 and proceeded to the planned location of the terrorist act at ADDRESS_6. PERSON_4 and PERSON_6 drove in a blue Opel Omega with state license plate NUMBER_7, which belongs to PERSON_6, and kept watch according to the plan described above, while PERSON_5 drove in

a greyish-blue Ford Sierra with state registration number NUMBER_4, which was in constant use by PERSON_5, with the explosive device based on a MON-100 anti-personnel directional fragmentation mine and the remote control system for said explosive device based on the Samsung E1200 mobile telephone with SIM card NUMBER_5, which he himself had prepared in advance at his place of residence.

Between the hours of 02:00 and 02:30 AM on 02/22/2015, after arriving in the area where the terrorist act was to be carried out, in the courtyard of ADDRESS_6, PERSON_5 prepared for use the explosive device's remote control system by enabling a component of the remote system – the Samsung E1200 mobile phone with SIM card NUMBER_5 that had earlier been modified by PERSON_5 – and connected the electric detonator to the explosive device's remote control system. PERSON_5 then proceeded with said explosive device to the right side of the intersection of the exit from the Behind the Wheel Garage Cooperative and Marshal Zhukov Avenue, Kharkiv, where he screwed in the electric detonator connected to the remote control system for detonating the MON-100 anti-personnel directional fragmentation mine. Between the hours of 02:30 and 03:00 AM, using a sapper shovel he had on his person, PERSON_5 proceeded to lay the fully assembled improvised explosive device based on a MON-100 anti-personnel directional fragmentation mine, radio-controlled by telephone and ready for use, in the snowdrift he had previously selected on the corner of the right shoulder of Marshal Zhukov Avenue, Kharkiv, at the intersection with the exit from the Behind the Wheel Garage Cooperative, next to the "Yield" sign, with its warhead at a 30-degree angle pointing at the roadway of Marshal Zhukov Avenue, Kharkiv.

At the aforementioned time, on 02/22/2015, continuing to take active steps to facilitate the commission of the planned terrorist act, with the aim of eliminating obstacles to committing the planned terrorist act, PERSON_6 and PERSON_4, kept visual watch on Marshal Zhukov Avenue, Kharkiv, over the area adjacent to the spot where PERSON_5 was laying the explosive device. PERSON_6 kept watch from his vehicle near the Kyiv movie theater located at 1 Bulvar Yuryeva, Kharkiv, while PERSON_4 was at the trolleybus stop opposite house No. 5 on Marshal Zhukov Avenue, Kharkiv. In the event that they detected any law-enforcement officers or passers-by near the place where PERSON_5 was laying the explosive device, PERSON_4 and PERSON_6 were supposed to inform PERSON_5 of the danger of being exposed, thereby eliminating obstacles to the commission of the pre-planned terrorist act.

As a result of the aforementioned steps taken by PERSON_5, PERSON_6, and PERSON_4 between the hours of 02:00 and 03:40 AM on 02/22/2015 according to the plan developed by PERSON_5, the radio-controlled improvised explosive device based on a MON-100 anti-personnel directional fragmentation mine that had been laid in the snowdrift on the corner of the right shoulder of Marshal Zhukov Avenue, Kharkiv, at the intersection with the exit from the Behind the Wheel Garage Cooperative, next to the "Yield" sign, was set to explode after receiving an incoming call to the mobile phone of the explosive device's remote control system with SIM card NUMBER_8 from the Nokia 1110 mobile phone with SIM card NUMBER_6, to be made by PERSON_5 during the procession of the column of participants in the peaceful assembly and march on the occasion of "Honoring the Memory of Those Who Died in Kyiv in January-February 2014," planned for 02/22/2015.

At around 03:00 AM on 02/22/2015, after PERSON_5 laid the explosive device and they made sure that their criminal actions has not been noticed by anyone and that the laid explosive device could not be discovered in any other way, PERSON_5 and PERSON_4 departed in the greyish-blue Ford Sierra with license plate number NUMBER_4, which was in constant use by PERSON_5, from the place where the explosive device was laid, while PERSON_6, after making sure that the explosive device laid by PERSON_5 was not visible, left after 03:41 AM on 02/22/2015 in the blue Opel Omega with state license plate NUMBER_7 from the place where the explosive device had been laid, having agreed to meet up at PERSON_5's home address later the same day, 02/22/2015, before the start of the peaceful assembly on the occasion of "Honoring the Memory of Those Who Died in Kyiv in January-February 2014."

Continuing to pursue their criminal intent, aimed at carrying out a terrorist act, acting in collusion, at approximately 11:00 AM (the exact time has not been determined) on 02/22/2015, PERSON_5, PERSON_4 and PERSON_6 met at PERSON_5's place of residence at ADDRESS_3.

At that meeting, PERSON_5, PERSON_6 and PERSON_4 divided up their roles in committing the terrorist act. According to their criminal conspiracy to commit the terrorist act, PERSON_6 was supposed to provide the means of committing the crime, specifically a motor vehicle – the blue Opel Omega with state license plate NUMBER_7 belonging to PERSON_6, in which PERSON_5, PERSON_6 and PERSON_4 were supposed to depart from the aforementioned place of residence of PERSON_5 after 12:30 PM on 02/22/2015. As they headed in the direction of Marshal Zhukov Avenue in the Opel Omega with state license plate NUMBER_7, PERSON_6 was supposed to drop PERSON_4 off by Imeni O.S. Maselskoho metro station and proceed with PERSON_5 to house No. 9/1 on Marshal Zhukov Avenue, Kharkiv. To avoid drawing the attention of the mass rally participants and law-enforcement officers, they were supposed to enter the courtyard of the aforementioned building from Mezhlauka St., Kharkiv. In the courtyard of said building, PERSON_6 and PERSON_5 were supposed to wait for an SMS message with the words “I’m on my way” from PERSON_4. At that time, in order to maintain secrecy, PERSON_4 was supposed to enter Imeni O.S. Maselskoho metro station, travel to Marshala Zhukova metro station, and then proceed on foot to the Kyiv movie theater located opposite the Palace of Sports – the location of the peaceful assembly on the occasion of “Honoring the Memory of Those Who Died in Kyiv in January-February 2014” – where he was to take up a position next to the Kyiv movie theater building, monitor the activity of the rally participants, and help PERSON_5 carry out the planned crime by providing instructions, specifically: when the rally participants passed through the destruction zone of the pre-laid explosive device, PERSON_4 was supposed to send a text message with the words “I’m on my way” from his Samsung E1200 mobile phone with subscriber number NUMBER_10 to PERSON_6’s Samsung E1200 mobile phone with subscriber number NUMBER_11, which was supposed to serve as an instruction for PERSON_5 to activate the explosive device. At that time, according to the plan they had developed, PERSON_5, sitting in PERSON_6’s vehicle, upon being instructed by PERSON_6 that the text message with the words “I’m on my way” had been received from PERSON_4, was supposed to perform the role of the direct perpetrator of the crime, activating the explosive device by making a telephone call from the Nokia 1110 with subscriber number NUMBER_6 to the Samsung E1200 mobile phone with subscriber number NUMBER_5, which had been installed in the remote control system of the explosive device based on a MON-100 anti-personnel directional fragmentation mine.

Pursuant to their agreement, acting in accordance with the developed plan and the allocation of roles among the group members, with the intent of carrying out a terrorist act, at around 12:40 PM on 02/22/2015, PERSON_5, PERSON_6 and PERSON_4 departed in the blue Opel Omega with state license plate NUMBER_7 belonging to PERSON_6 from the place of residence of PERSON_5, heading toward Marshal Zhukov Avenue, Kharkiv, where the rally was being held. PERSON_6 stopped the car next to Imeni O.S. Maselskoho metro station, where PERSON_4 got out of PERSON_6’s car, went into Imeni O.S. Maselskoho metro station at 12:49 PM, and set out for Marshala Zhukova metro station. Upon arriving at Marshala Zhukova metro station, at around 1:03 PM, PERSON_4 exited the metro and proceeded on foot directly to the location of the rally, where he took up a position near the Kyiv movie theater located at 1 Bulvar Yuryeva, Kharkiv, with a view to visually monitoring the assembly participants and sending the pre-arranged SMS message to PERSON_6’s phone. At that time, PERSON_5 and PERSON_6, traveling in the latter’s car, entered the courtyard of house No. 9/1 on Marshal Zhukov Avenue, Kharkiv, and house No. 3 on Bulvar Yuryeva, Kharkiv, stopping at a site from where they could see the roadway of Marshal Zhukov Avenue, along which the peaceful march of participants in the peaceful assembly on the occasion of “Honoring the Memory of Those Who Died in Kyiv in January-February 2014” was supposed to pass.

At 1:10:22 on 02/22/2015, PERSON_4, executing the arrangement he had made earlier with PERSON_5 and PERSON_6 with respect to the allocation of roles and each person’s involvement in carrying out the terrorist

act, being in the immediate vicinity of the assembly participants, seeing that the column of rally participants had started to move along the roadway of Marshal Zhukov Avenue, Kharkiv, in the direction of Moskovsky Avenue, Kharkiv, and was approaching the destruction zone of the explosive device, in order to execute the plan of action he had developed with PERSON_5 and PERSON_6 for the commission of the terrorist act, acting deliberately in collusion with PERSON_5 and PERSON_6, being fully aware that receiving the pre-arranged SMS message from him with the words "I'm on my way" would constitute an instruction for PERSON_5 to remotely detonate the explosive device based on a MON-100 anti-personnel directional fragmentation mine, motivated by personal animosity toward the participants in said mass event, knowing full well that his next actions would cause an explosion that would endanger the lives and health of those participants and could possibly result in their deaths, sent the pre-arranged text message with the words "I'm on my way" from his mobile phone with subscriber number NUMBER_10 to PERSON_6's mobile phone with subscriber number NUMBER_11, thereby taking all the necessary active steps to aid in the commission of a terrorist act, i.e., he facilitated the commission of a terrorist act by his co-conspirators by giving instructions and eliminating obstacles.

PERSON_6, for his part, at 01:10:22 PM on 02/22/2015, sitting in the blue Opel Omega with state license plate NUMBER_7 in the courtyard of 9/1 Marshal Zhukov Avenue, Kharkiv, having received on his mobile phone with subscriber number NUMBER_11 a text message with the words "I'm on my way" from PERSON_4's mobile phone with subscriber number NUMBER_10, executing the arrangement he had made earlier with PERSON_5 and PERSON_6 with respect to the allocation of roles and each person's involvement in carrying out the terrorist act, acting deliberately to implement the plan of action he had developed with PERSON_5 and PERSON_4, knowing full well that receiving the aforementioned pre-arranged SMS message with the words "I'm on my way" and passing it on to PERSON_5 constituted an instruction for PERSON_5 to remotely activate the explosive device based on a MON-100 mine, motivated by personal animosity toward participants in said mass event, knowing full well that his next actions would cause an explosion that would endanger the lives and health of those participants and could possibly result in their deaths, and would also cause panic, terrorize the population, and draw attention to the co-conspirators' pro-Russian views, informed PERSON_5 that he had received an SMS message with the words "I'm on my way" from PERSON_4, thereby taking all the necessary active steps to aid in the commission of a terrorist act, i.e., he facilitated the commission of a terrorist act by his co-conspirators by giving instructions, eliminating obstacles, and providing means to commit the crime.

After receiving said message, PERSON_5, acting deliberately, as agreed in advance with PERSON_4 and PERSON_6, to execute their jointly developed plan of action, acting out of mercenary motives, and also motivated by personal animosity toward the participants in said mass event, knowing full well that his immediate next actions would cause an explosion that would endanger the lives and health of those participants and could possibly result in their deaths, and would also cause panic, terrorize the population, and draw attention to the co-conspirators' pro-Russian views, having made sure that the column of participants marching in the peaceful assembly on the occasion of "Honoring the Memory of Those Who Died in Kyiv in January-February 2014" was within the destruction zone of the explosive device based on a MON-100 anti-personnel fragmentation mine, which he had installed, while sitting in the blue Opel Omega with state license plate NUMBER_7 belonging to PERSON_6 in the courtyard of the building located at ADDRESS_6, at 01:14:40 PM on 02/22/2015, made a telephone call from the Nokia 1110 with subscriber number NUMBER_12 that was previously purchased specifically for use in committing the planned terrorist act, to the specially modified Samsung E1200 mobile phone with subscriber number NUMBER_5, which was a component of the remote control system for the explosive device based on a MON-100 anti-personnel directional fragmentation mine.

As a result of the outgoing call made by PERSON_5 at 01:14:40 PM on 02/22/2015 from the Nokia 1110 with subscriber number NUMBER_12 and, accordingly, the incoming call to the modified Samsung E1200 mobile phone with subscriber number NUMBER_5, a positive command pulse was given from the lead-out electrical conductor of said modified mobile phone to the output contact of the thyristor,

which opened the thyristor, closed the "initiator – additional power supply unit" electrical circuit, and triggered the electric detonator, thereby detonating the charge and launching the fragments of the MON-

100 mine that had been laid by the aforementioned group of persons in the snowdrift on the corner of the right shoulder of Marshal Zhukov Avenue, Kharkiv, at the intersection with the exit from the Behind the Wheel Garage Cooperative, next to the “Yield” sign, turned with its warhead at a 30-degree angle pointing in the direction of the roadway of Marshal Zhukov Avenue, Kharkiv.

As a result of the aforementioned deliberate actions by PERSON_5, PERSON_6 and PERSON_4, aimed at carrying out a terrorist act, at 01:14 PM on 02/22/2015, at the intersection of the exit from the “Behind the Wheel” Garage Cooperative and Marshal Zhukov Avenue in Kharkiv, the explosive device based on the MON-100 anti-personnel directional fragmentation mine, which was radio-controlled by telephone, exploded, resulting in the death of PERSON_10 (Kharkiv Regional Bureau of Forensic Medical Expert Assessment [KRBFMEA] Expert Report No. 582-Dm/15 dated 03/06/2015), PERSON_11 (KRBFMEA Expert Report No. 583/DM/15 dated 03/06/2015), PERSON_12 (KRBFMEA Expert Report No. 65/At/15 dated 03/05/2015), and PERSON_13 (KRBFMEA Expert Report No. 66-At/15 dated 03/05/2015), as well as injuries of varying degrees of severity to the following persons: PERSON_14 (KRBFMEA Expert Report No. 564-aya/15 dated 03/16/2015) - blunt firearm shrapnel wound to the upper third of the left shoulder, firearm shrapnel exit wound to the soft tissues of the left lumbar region, firearm shrapnel exit wound to the upper third of the left thigh with an exit hole in the left sciatic region); PERSON_15 (KRBFMEA Expert Report No. 664-aya/15 dated 03/18/2015) – blunt shrapnel wound to the suprapubic area; PERSON_16 (KRBFMEA Expert Report No. 159-A/15 dated 03/02/2015 – light bodily injuries); PERSON_17 (KRBFMEA Expert Report No. 160-A/15 dated 03/06/2015 – moderate injuries); PERSON_18 (KRBFMEA Expert Report No. 565-aya/15 dated 03/16/2015 – injuries to soft tissue); PERSON_19 (KRBFMEA Expert Report No. 562-aya/15 dated 03/17/2015 – moderate injuries); PERSON_20 (KRBFMEA Expert Report No. 567/Aya/15 dated 03/18/2015 – blunt shrapnel wounds to the anterior outer surface of the lower third of the left thigh with partial crushing of the muscles); PERSON_21 (KRBFMEA Expert Report No. 561-aya/15 dated 03/17/2015 – explosive trauma, shrapnel wounds to the lower extremities and left hand); PERSON_22 (KRBFMEA Expert Report No. 563-aya/15 dated 03/18/2015 – blunt firearm shrapnel wound to the soft tissues of the upper third of the left thigh); PERSON_23 (KRBFMEA Expert Report No. 566-Aya/15 dated 03/18/2015 – blunt shrapnel wound to the lower part of the anterior surface of the right thigh with damage to the soft tissue); PERSON_24 (KRBFMEA Expert Report No. 568-Aya/15 dated 03/18/2015 – light bodily injuries).

According to Expert Report No. 37/2015 of 03/22/2015 of the Scientific Research Center for Expert Criminalistics of the Main Directorate of the Ministry of Internal Affairs of Ukraine for the Kharkiv Region [SRCEC MD MIAU for the Kharkiv Region], at the scene of the incident on 02/22/2015, opposite the five-story building at 9/1 Marshal Zhukov Avenue there was an explosion of an improvised explosive device radio-controlled by telephone and based on a MON-100 anti-personnel directional fragmentation mine. The explosive device probably consisted of the following products and components: 1) a MON-100 anti-personnel directional fragmentation mine (industrially-produced housing without a device for installation and mounting); 2) an initiator (detonator) – industrially-produced electric detonator, probably an EDP, EDP-R, ED-8, etc.; 3) remote explosion control system: radio signal reception and electric pulse control unit - a mobile phone, probably a Samsung E1200 indigo blue with a SIM card, probably MTS or LIFE, etc.; an additional electric power supply unit – a 9V power unit (battery), 6F22-type (salt), NASHA SILA brand, model series X2 NASHA SILA 6F22 1 tray G3 * double power, and probably one or several 9V 6F22 or 6LR61 batteries of an undetermined model (alkaline); initiating pulse control and unauthorized detonation prevention (electric key) – probably a low-power thyristor; 4) fastening elements for components and assemblies of the explosive device: electrical connection elements – electric copper multi-wire conductors in black polymer insulation casing; fastening component material – black PVC electrical insulation tape; electrical connection insulation (splice joints) – blue PVC electrical insulation tape; 5) means of transportation and camouflage (probably) – white plastic bag.

The aforementioned explosion damaged a GAZ 3302-14 automobile with state license plate NUMBER_13. According to Forensic Automotive Expert Report No. 2822 of the Prof. Em. M.S. Bokarius Kharkiv Scientific Research Institute of Forensic Expert Assessment [KSRIFEA] dated 03/16/2015, the amount of material losses caused to the owner of the Gaz 3302-14 automobile with state license plate NUMBER_13,

which was damaged on 02/22/2015 at the scene of the terrorist act, is UAH 12,984.76, and the cost of the relevant repair is UAH 29,039.92.

According to Expert Report No. 16 of the SRCEC MD MIAU for the Kharkiv Region dated 03/20/2015, wipe samples from the Samsung phone IMEI – NUMBER_14 with SIM card and battery and from the inner surface of the Samsung phone IMEI-NUMBER_15 and battery revealed cells with nuclei that match the genetic markers from PERSON_5's saliva sample. The specified phones were used by PERSON_5 to communicate and maintain contact with his co-conspirators in the commission of the terrorist act.

According to Expert Report No. 5 of the SRCEC MD MIAU for the Kharkiv Region dated 03/16/2015, the layer of soil removed from PERSON_5's sapper shovel and from the mats of the Ford Sierra automobile with state registration number NUMBER_4 and the soil samples taken to the right of the explosion site and across the paved entrance to the "Behind the Wheel" Garage Cooperative have a common generic affiliation.

In addition, under unknown circumstances and at a date and time that was not determined during the trial, but no later than 02/26/2015, unlawfully, in violation of the requirements of the Instruction on the Procedures for the Manufacture, Acquisition, Storage, Tracking, Transportation and Use of Firearms, Pneumatic, Cold and Inert Weapons, Domestically Produced Devices for Shooting Cartridges Equipped with Rubber or Similar Non-Lethal Projectiles and Cartridges Thereof, as well as Ammunition for Weapons, Basic Parts, and Explosives, approved by Order No. 622 of the Ministry of Internal Affairs of Ukraine dated 08/21/1998, PERSON_5 acquired two F-1 grenades with fuses, one electric detonator, and an explosive (1,309 grams of plastic explosive), after which he stored them at his place of residence until 02/26/2015. These two F-1 grenades with fuses, one electric detonator, and 1,309 grams of explosives were later found during a search of PERSON_5's place of residence at ADDRESS_3 on 02/26/2015 and were seized by officers of the Kharkiv Regional Directorate of the SBU.

According to Expert Reports of the SRCEC MD MIAU for the Kharkiv Region No. 49 dated 03/05/2015 and No. 81/2015 dated 03/19/2015, the following items were discovered and seized during a search of PERSON_5's place of residence on 02/26/2015: 1) two F-1 grenade bodies bearing no sign of interference with their structure, which include a high-explosive substance – 50-56 grams of TNT, suitable for causing an explosion; 2) two UZRGM-type (UZRGM-2) industrially-produced hand grenade fuses containing a charge of a combined explosive – 0.1-02 grams of TNRS + lead azide and 1 gram of explosion-resistant TEN or RDX. When the F-1 grenade bodies are combined with said UZRGM-2 fuses, they form industrial explosive devices – F-1 hand fragmentation grenades, which constitute munitions. The object that looks like a detonator is an electrical initiator – an EDP electric detonator, the casing of which contains a charge of combined explosive – 0.1-0.2 grams of TNRS + lead azide and 1 gram of TEN or RDX. The plastic substance is an RDX-based explosive with a mass of 1,309 grams.

In addition, at a time that was not determined during the trial, but no later than 02/26/2015, in a place that was not determined during the trial, unlawfully, in violation of the Instruction on the Procedures for the Manufacture, Acquisition, Storage, Tracking, Transportation and Use of Firearms, Pneumatic, Cold and Inert Weapons, Domestically Produced Devices for Shooting Cartridges Equipped with Rubber or Similar Non-Lethal Projectiles and Cartridges Thereof, as well as Ammunition for Weapons, Basic Parts, and Explosives, approved by Order No. 622 of the Ministry of Internal Affairs of Ukraine dated 08/21/1998, PERSON_6, acquired two F-1 grenades with fuses, two electric detonators, and an explosive substance – about 1 kg of plastic explosive.

During a search of PERSON_6's place of residence (ADDRESS_5) on 02/26/2015, the aforementioned two F-1 grenades with fuses, two electric detonators, and explosive substance (around 1 kg of plastic explosive), which PERSON_6 had illegally acquired under unknown circumstances and stored at his place of residence, were found and seized by officers of the Kharkiv Regional Directorate of the SBU.

^According to Expert Reports of the SRCEC MD MIAU for the Kharkiv Region No. 49 dated 03/05/2015 and No. 81/2015 dated 03/19/2015, the following items were discovered and seized during a search of

PERSON_6's place of residence on 02/26/2015: 1) two F-1 grenade bodies bearing no sign of interference with their structure, which include a high-explosive substance – 50-56 grams of TNT, suitable for causing an explosion; 2) two UZRGM-type (UZRGM-2) industrially-produced hand grenade fuses containing a charge of a combined explosive – 0.1-0.2 grams of TNRS + lead azide and 1 gram of explosion-resistant TEN or RDX. When the F-1 grenade bodies are combined with said UZRGM-2 fuses, they form industrial explosive devices – F-1 hand fragmentation grenades, which constitute munitions. The object that looks like a detonator is an electrical initiator – an EDP electric detonator, the casing of which contains a charge of combined explosive – 0.1-0.2 grams of TNRS + lead azide and 1 gram of TEN or RDX. The plastic substance is an RDX-based explosive with a mass of 1,010 grams, and the two objects with wires similar in appearance to initiation devices are the firing mechanism of the MVE-72 fuse.

In addition, PERSON_4, at an unknown time, but no later than 02/26/2015, in an unknown place, unlawfully, in violation of the Instruction on the Procedures for the Manufacture, Acquisition, Storage, Tracking, Transportation and Use of Firearms, Pneumatic, Cold and Inert Weapons, Domestically Produced Devices for Shooting Cartridges Equipped with Rubber or Similar Non-Lethal Projectiles and Cartridges Thereof, as well as Ammunition for Weapons, Basic Parts, and Explosives, approved by Order No. 622 of the Ministry of Internal Affairs of Ukraine dated 08/21/1998, acquired two F-1 grenades with fuses, an electric detonator, an explosive substance (1,060 grams of plastic explosive), gunpowder weighing a total of 371 grams, and 46 units of ammunition for rifled weapons, after which he stored them at PERSON_4's place of residence until 02/26/2015. The aforementioned two F-1 grenades with fuses, one electric detonator, and 1,060 grams of plastic explosives, 371 grams of gunpowder, and 46 units of ammunition consisting of 5.45 mm cartridges for rifled weapons were later found and seized during a search of PERSON_4's place of residence (ADDRESS_2) on 02/26/2015 and were seized by officers of the Kharkiv Regional Directorate of the SBU.

According to Expert Report of the SRCEC MD MIAU for the Kharkiv Region No. 111 dated 02/28/2015, the following items were seized during a search of PERSON_4's place of residence (ADDRESS_2) on 02/26/2015: forty-six 5.45x39AK 5.45 mm caliber intermediate combat cartridges designed for firing from rifled weapons of the appropriate caliber and standard chamber size (submachine guns and Kalashnikov machine guns), which constitute munitions.

According to Expert Reports of the SRCEC MD MIAU for the Kharkiv Region No. 49 dated 03/05/2015 and No. 81/2015 dated 03/19/2015, the following items were discovered and seized during a search of PERSON_4's place of residence on 02/26/2015: 1) two F-1 grenade bodies bearing no sign of interference with their structure, which include a high-explosive substance – 50-56 grams of TNT, suitable for causing an explosion; 2) two UZRGM-type (UZRGM-2) industrially-produced hand grenade fuses containing a charge of a combined explosive – 0.1-0.2 grams of TNRS + lead azide and 1 gram of explosion-resistant TEN or RDX. When the F-1 grenade bodies are combined with said UZRGM-2 fuses, they form industrial explosive devices – F-1 hand fragmentation grenades, which constitute munitions. The object that looks like a detonator is an electrical initiator – an EDP electric detonator, the casing of which contains a charge of combined explosive – 0.1-0.2 grams of TNRS + lead azide and 1 gram of TEN or RDX. The plastic substance is an RDX-based explosive with a mass of 1,060 grams. The loose substance similar in appearance to gunpowder is a propellant explosive – smokeless gunpowder with a mass of 201 grams and 170 grams.

At the court hearing, the accused PERSON_4, PERSON_5 and PERSON_6 pleaded not guilty to the charges.

PERSON_4 exercised his right not to testify under Article 63 of the Criminal Code of Ukraine.

The accused PERSON_5 explained at the hearing that he is a private businessman and has an impeccable reputation in his line of business. He did not commit any acts aimed at undermining peace in the country. His frequent travels to Russia, specifically to the city of Belgorod, were due exclusively to his desire to find a well-paying job. At the time of the events of 2013 and 2014 in Ukraine, he did not participate in any mass protests. On February 26, 2015, he was awakened by the screeching of metal of his front door. When he asked who was trying to break down the door, he heard that it was the SBU, and if he did not open the door, then they would blow it up for him. He opened it, and they immediately put him face down on the floor and started conducting a search. After these actions, he was tortured for a long time and was forced to sign all the procedural documents as demanded by the operational officers and the prosecutor in accordance with the instructions provided. As a result of the torture, he indicated and recounted his involvement in causing the explosion according to the scenario indicated to him. PERSON_5 states that no evidence in the case can be recognized by the court as proper and admissible as it was obtained in flagrant violation of the law and the Constitution of Ukraine. He noted that he was not involved in committing the terrorist act that occurred on 02/22/2015 in the city of Kharkiv.

The accused PERSON_6 claimed during the hearing that the evidence in these criminal proceedings was falsified. He argues that the prosecutor ignored the commission of a crime against him by SBU officers as a result of what he considers to be unlawful actions. Pre-trial investigators used unlawful methods against him and thus obtained his signature on each procedural document, but he did not sign any of them in his own hand. PERSON_6 believes that the indictment does not contain any evidence of his involvement in the commission of the specified criminal offenses. All of the prosecutor's arguments are unfounded and unsubstantiated, based on personal speculation, and are not supported by any evidence in the case. The references in the indictment to meetings with PERSON_4 and PERSON_5 by Hospital No. 25, where it was agreed that each of them would receive USD 1,000 for carrying out the terrorist act, are absurd and illogical. This assertion, in the opinion of PERSON_6, is refuted by the printout of the detailed description of the telephone calls from the telephones used by PERSON_4 and PERSON_5, which was examined at the hearing. As for the laying of the explosives, PERSON_6 says that PERSON_5 could not have done this as he lacks the necessary skills, and that the assertion that PERSON_6 directed his actions is completely absurd. As for the expert soil, DNA and firearms reports that were obtained, PERSON_6 believes that these reports do not support but actually refute the charges and should be dismissed as improper evidence. The accused states that on February 26, 2015, he was detained at his place of residence by armed persons without any explanation and that he was told with threats that he needed to go with them, during which time, about one kilometer from the Kharkivsky and Volchansky district, the car made a right turn onto off-road terrain, he was pulled out of the car and forced to kneel in the snow, and they started hitting kicking him and hitting him with their rifle butts. At the same time, they constantly threatened him and said that he was only alive because his daughter had been present when he was taken into custody. He reported all of these events and submitted the relevant notes, statements, testimony, and forensic medical reports, but a decision was issued to terminate the criminal proceedings over his alleged torture. In the opinion of the accused, the prosecutor's assertions that he, PERSON_4, and PERSON_5 were involved in the commission of the crime are trumped-up and fabricated, and the evidence submitted in the case is improper and inadmissible. The accused PERSON_6 asks the court to dismiss as inadmissible evidence Expert Reports of the SRCEC No. 49 dated 03/05/2015 and No. 81/2015 dated 03/19/2015 concerning the two grenade bodies, two detonators, one electric detonator, two detonator mechanisms, and plastic explosives seized at his place of residence, as they were obtained during an illegal search. Regarding the testimony of the Chernykov brothers and the identification report, the accused believes this evidence was flagrantly falsified and cannot be included in the indictment. In light of the testimony of expert PERSON_25 at the hearing, the accused asks the court to take into account that installing explosives requires special skills that the accused do not have. He noted that he was not involved in committing the terrorist act that took place in Kharkiv on 02/22/2015.

Although the accused PERSON_4, PERSON_5 and PERSON_6 have not admitted their guilt, their guilt is supported by the following evidence, which was examined by the court:

- the testimony of victim PERSON_18, who explained that on February 22, 2015, his unit was protecting public order at the March of Dignity. This event started near the Palace of Sports. They arrived at the event two hours before it started. Before the event, they walked around and inspected the surrounding area where there were crowds of people, inspected any large bags, inspected people in large coats who may have been carrying concealed firearms or other objects that might have endangered Ukrainian citizens. The route of the march was partially known to them. When the march began, their unit formed a single line and stood at the head of the column to ensure public safety and prevent collisions. After they walked 200-300 meters, leaving behind the Kyiv movie theater and the Palace of Sports, and as they approached the garage cooperative, which was on their left, there was an explosion. People panicked and started running. At the time of the explosion, the victim managed to turn his back to the epicenter of the explosion and saw people falling and heard screaming. The victim was in shock but pulled himself together and started giving first aid to the injured people and pulling people aside for fear of another explosion. After running about 100 meters to the building opposite the epicenter of the explosion in search of shelter, the victim collapsed, as his strength had left him and he felt as if something had happened to his back. The victim then started receiving first aid and was taken to the hospital, where he underwent surgery. The victim has a total of three operations. That same day, the victim also saw his colleague, PERSON_26 and PERSON_3;

the testimony of PERSON_19, who explained that on February 22, 2015, due to the nature of his job, he was monitoring the passage of a column of police officers who were protecting public order near the Palace of Sports. The victim was in front of the column and, according to his job duties, was supposed to monitor the police officers walking behind him to encircle the column and ensure public order. The column was moving toward Moskovsky Avenue along Marshal Zhukov Avenue. After they crossed the intersection with the Kyiv movie theater, there was an explosion, as a result of which the victim was turned to the right toward the movie theater, jumped up a little, and saw that he was bleeding below the waist. The victim sat down and took out his mobile phone to call his superiors at once. At that moment, people in camouflage clothing ran up to him, dragged him aside, and put a tourniquet on him, after which they called an ambulance, which came and took him to the hospital. The victim was treated at Hospital 25, where he was diagnosed with "explosive shrapnel wound to the leg with damage to the tibia," which, in terms of severity, constitutes moderate bodily injuries. On that day, the victim was also accompanied by his colleagues, PERSON_18 and PERSON_10, who perished.

- the testimony of PERSON_15, who explained that on February 22, 2015, there was a rally by the Palace of Sports, and he and his friends heard about it and decided to attend. The victim went to the Kyiv movie theater, where he met up with his acquaintances, PERSON_28 and PERSON_29, and several other guys. They stood there talking for a bit, and then the column set out from the Kyiv movie theater, heading toward Marshala Zhukova metro station. The victim was walking in the first row of the column. After they walked about 150 meters, there was an explosion to the left column. As a result of the explosion, the victim received a shrapnel wound to the abdomen and spent almost a month in the hospital. After the explosion, there was chaos in the crowd. People were running in different directions, shouting. After the explosion the victim went into the courtyard of a building and sat on the first bench, where victim PERSON_16 washed his wound with water, after which he waited for help. After a short time, some cars arrived, and they put the victim into one of them and drove him to the hospital. As a result of the explosion, PERSON_12 and PERSON_30 were also wounded;

- the testimony of PERSON_21, who explained during the hearing that on February 22, 2015, he was serving as a policeman in the Kharkiv-1 voluntary police patrol service, and they were assigned to protect public order near the Palace of Sports, where a rally was being held, followed by a march, which they escorted as police officers to protect public order. At about 01:00 PM, the column set out from the Palace of Sports, heading toward the Marshala Zhukova metro station. About 5-10 minutes later, on the left side of the route, shortly before they reached the garage cooperative, there was an explosion. The victim was walking in front of the column on the left side. After the explosion, the victim heard

screaming and saw that people were running in every direction. As a result of the explosion, the victim received penetrating wounds to his knee and left thigh, for which the victim received medical treatment. The victim stated that the column consisted of civilians, including women and children, and that during these events his colleagues PERSON_23, PERSON_18 and PERSON_14 were also wounded. The victim gave himself first aid and saw that his colleague PERSON_18 was given first aid. First aid was given by both police officers and civilians. The victim knows PERSON_26, as they served in the same battalion. On that day, the victim saw PERSON_26 before the explosion, but he does not remember if he was there after the explosion or gave anyone first aid. The victim saw a Gazel vehicle standing in the roadway. The column was also escorted by a patrol car. The victim does not remember whether or not he saw a blue Opel Omega that day;

- the testimony of PERSON_24, who explained at the hearing that on February 22, 2015 he participated in a march, the name of which he does not remember. The victim was walking on the right side of the column along Marshal Zhukov Avenue toward an intersection. After they crossed the intersection, to the left of the column, about two minutes later, after the words "Glory to Ukraine! Glory to the heroes!" there was an explosion. The victim blacked out, but then, when he came to, he heard screaming and saw that everyone was running. He and some other people were being given first aid. As a result of the explosion, the victim received a shrapnel wound to his ankle. The victim does not know who carried out the terrorist act. When the victim was walking in the column he did not see an Opel Omega or any other suspicious vehicles. All he saw was a parked Gazel;

- the testimony of victim PERSON_32, who explained at the hearing that on February 22, 2015, at around 12:00 PM, he was driving in a Gazel automobile from Prospekt Heroiiv Stalinhradu along Marshal Zhukov Avenue in the direction of Moskovsky Avenue. By the Palace of Sports, the victim saw a large group of protesters. The police showed him where he could pass, after which the victim started moving from the right lane to the left oncoming lane in order to go around the people. The car traveling at a speed of around 20 km/h. But as he was driving in the oncoming lane, an explosion occurred to his left. His car windows were damaged. The victim got out of the car, then saw that it was rolling, so he went back and stopped it. After the explosion, the victim saw protesters running in every direction. He then saw a dead man near his car. The victim ran toward a courtyard, where people were sitting on benches. Within five minutes, ambulances arrived on the scene and gave people first aid. The victim did not notice whether any cars were leaving the courtyard. The victim explained that he had paid for his vehicle and received a technical certificate for it, which meant that he was its owner, but this was never documented. During the explosion, the vehicle was damaged on the left side and in front, specifically: there was damage to the canopy, which was covered in small holes; the radiator was also damaged, as it was punctured, resulting in a major leak; the windows were damaged; there were holes in the hood; and the right and left mirrors were shattered;

- the testimony of victim PERSON_33, who explained at the hearing that on February 22, 2015, she met with her acquaintance, PERSON_13, after which they met up with a group of his friends and headed over to the Palace of Sports. They then began to form a column, in which they stood on the left-hand side toward the front, with PERSON_13 standing next to her, PERSON_12 in front of her, and PERSON_15 next to him. The column walked for about 20 meters, and there was an explosion. When the victim regained consciousness, she saw that she was bleeding and started to run toward a five-story building. PERSON_15, who was wounded in the abdomen, ran next to her. PERSON_12 fell down in front of her. After running into the courtyard, she lay down on a bench, and someone tried to bind her wound. PERSON_15 also sat opposite her on a bench. The witness does not recall what kind of assistance was provided to him. The witness cannot say how long she was on the bench, as she had lost a lot of blood and was drifting in and out of consciousness. A paramedic then came into the courtyard with a stretcher, which they lifted her onto and took her to the ambulance. As a result of the explosion, the victim received a shrapnel wound to the lower left thigh, for which she received medical treatment. The victim does not remember what her friends were wearing;

- the testimony of victim PERSON_20, who explained at the hearing that on February 22, 2015, there was a celebration to mark the anniversary of the “Revolution of Dignity”, and she was there as part of the Right Sector. They started out close to the stage. Then the march began, during which she was on the left side of the column, a bit toward the rear. A few minutes after they departed from the Palace of Sports, there was an explosion. After the explosion, everyone ran to the right side of the road. The victim did not run anywhere at first, as she was afraid that there might be another explosion. After the victim saw that everything was all right on the right side of the road, where people were running to, she also started to move in that direction. Running across the road, the victim saw PERSON_36 fall into a puddle. She stopped and saw that people were already running up to him. Then she saw that he was wounded and bleeding, and she also went up to everyone where PERSON_36 was located. People from Right Sector also approached him and started giving him first aid. Then an ambulance worker approached and offered to help her, but she refused. Then a lot of ambulances arrived, and they found that a lot of people were wounded. Two were killed on the spot, and two boys were rushed to the hospital. She went to the metro station, receiving assistance on the way, as she was in pain and discomfort, and together they went to the office. Upon arriving there, she took a turn for the worse, and they called an ambulance for her, which took her to the hospital. The victim was wearing a bulletproof vest that day. She does not remember if anyone else was wearing one;

- testimony of PERSON_2, who explained at the hearing that she is the sister of PERSON_10, who died in the incident on February 22, 2015. At that time, he was working as deputy head of the Pervomaisky District Police Department, and was on duty that day, escorting the column of peaceful protesters. The victim also explained that her brother, PERSON_10, often came to the city of Kharkiv to escort various demonstrations and protect public order. Her brother’s death was caused by fatal injuries sustained in the explosion, which were recorded in the forensic medical report, specifically: “explosive injuries, brain damage, and other bodily injuries.” The victim also indicated that she was not an eyewitness to the terrorist attack and that she arrived at the crime scene afterwards;

- the testimony of victim PERSON_3, who explained that on February 22, 2015, as the column moving from the Palace of Sports toward Moskovsky Avenue, a mine explosion occurred, wounding his son, PERSON_12, who died a day later, as the wound had been fatal. His son was there because he loved his country. The victim did not know that his son was going there. He only knew that PERSON_12 was going to meet up with his friend, PERSON_15. As a result of the explosion, his son received an exit wound to the head;

- the testimony of victim PERSON_14, who explained at the hearing that on February 22, 2015, he was working as a field officer for the Criminal Investigation Division of the Pervomaisky District. At around 11:00 AM, they arrived at the Palace of Sports intending to maintain public order during the rally and march dedicated to the anniversary of the “Revolution of Dignity”. First there was a rally near the Palace of Sports, and then the assembled crowd started moving from the Palace of Sports toward the Marshala Zhukova metro station. The victim was walking on the left-hand side of the column, toward the front. Victim PERSON_10 was walking about 10-15 meters away from him, and somewhere around 01:00 PM there was an explosion, as a result of which he lost consciousness for a few seconds. After he came to, he saw the deceased PERSON_10, who had a hole in his head. The victim himself felt a pain in his leg and went to the bus, where his colleagues gave him first aid and discovered that he had an exit wound to the leg, an exit wound to the abdomen, and a wound on the left arm, which, as it later turned out, was broken. The victim was then taken to the hospital. The victim also pointed out that there were no aggressive persons at the march. Everyone was patriotic with patriotic symbols;

- the testimony of victim PERSON_16, who explained at the hearing that on February 22, 2015, he met with his friends PERSON_15 and PERSON_12 near the Kyiv movie theater and went with them to the march to commemorate the “Revolution of Dignity”, which was being held near the Palace of Sports. The victim had learned of the march about a day beforehand from his friends. After the rally, the column set out from the Palace of Sports in the direction of Moskovsky Avenue. The victim was walking somewhere in the third row of the first column, on the left-hand side. At around 01:00 PM, there was an explosion to the victim’s left. As a result of the explosion, the victim received injuries to the soft tissues of the leg, for which he was taken to the hospital;

- the testimony of victim PERSON_17, who explained at the hearing that on February 22, 2015, at around 11:00 AM, he met with his friends PERSON_28 and PERSON_13 by the Kyiv movie theater, and they went to the rally that was being held by the Palace of Sports. After the rally, at around 12:00 PM, a march started. The victim, together with PERSON_12 and PERSON_13, got in the first row of the column, on the left-hand side. They were walking in the direction of Marshala Zhukova metro station. After walking up ahead a bit and coming to the intersection, they stopped to wait for the column that was coming up from behind, and at that moment there was an explosion, as a result of which he lost sight of his friends. The victim did not immediately understand that an explosion had occurred. At first he thought that it was a firecracker. Then the victim went out onto the sidewalk, where an unknown woman came up to him and examined his hand, as his finger was beginning to go numb, though he did not know why, and proceeded to apply a tourniquet. After that, the victim waited for an ambulance, in which he also saw his friends PERSON_39, PERSON_40, and PERSON_41, with whom he traveled to the hospital. As a result of the explosion, the victim received shrapnel wound to the left arm, shoulder and pelvis;

- the testimony of victim PERSON_23, who explained at the hearing that on February 22, 2015 he was serving in the Kharkiv-1 Special Police Battalion. They received an order that day to protect public order at an event that was supposed to take place by the Palace of Sports. It was a rally of right-wing democratic forces. The victim and his colleagues arrived at the scene of the tragedy at around 11:00 AM. The rally started at around 12:00 PM, after which the organizers decided to march from the Palace of Sports toward Moskovsky Avenue and beyond. After they walked about 100-200 meters from the Palace of Sports, at around 01:00 PM, an improvised explosive device exploded in front of the column about 20 meters from the victim. He did not see the blast his own eyes due to a Gazel vehicle that obstructed his view. The victim learned about the characteristic features of the blast later, while at work. As a result of the explosion, the victim received a shrapnel wound to part of his thigh. Also, as a result of the explosion, his colleague died, as well as PERSON_11, whom he had known before the tragedy. In addition, the victim stated that after he was wounded he remained on duty for more than an hour, after which he was taken away in an ambulance. The victim noted that there were no calls to commit violence against anyone, and there were no Nazi symbols, only patriotic symbols of Ukraine. Before the ambulance arrived, first aid was provided by medics from his battalion and other police officers;

- the testimony of victim PERSON_42, who explained at the hearing that he worked at a kiosk located in the underpass at Proletarska metro station, where he saw PERSON_5, who had purchased from him a Samsung E1200 mobile phone, an MTS operator starter pack, and a top-up to the phone account some four days prior to the terrorist act. The witness was summoned to the SBU, where he was questioned and was then asked to identify the suspect. The witness recognized PERSON_5. The witness also recognized PERSON_6 during the identification process, as he had seen him at the kiosk that day when PERSON_5 was buying a phone from him. The witness could not tell investigators the IMEI number of the purchased mobile phone or the phone number of the purchased starter package, as a lot of time had passed since then, but all of this information was recorded in his notebook and was provided to the investigation. The witness was questioned by the SBU 4-5 days after the phone was purchased from him. His brother was also questioned by the SBU that day. The witness stated that he was not summoned to the SBU for questioning, that he left home for work in the morning, and some SBU officers approached him, introduced themselves, and asked him to go for a drive with them to shed light on the facts. Before being asked to identify the suspects, the witness was questioned. This was in the morning. After that, he was asked to identify the suspects. The witness was given four photographs, among which he identified PERSON_5. After that, he was asked a second time to identify any suspects. Once again, he was shown four photographs, among which he identified PERSON_6. The witness noted that he recognized PERSON_5 and PERSON_6 by their general facial features, and he does not recall what they were wearing. When PERSON_5 bought the phone from him, the witness was working by himself. He does not know where his brother was. The documents for the purchased phone were seized from his brother. The witness does not recall if he is issued a receipt for the purchased phone. The witness signed an identification report, which was also signed by two witnesses who were present during the identification process. The witness did not tell his brother which questions he had been asked under questioning. The witness noted that a lot of time had passed since that moment, so he does not remember all the details;

- the testimony of victim PERSON_43, who explained at the hearing that as of February 22, 2015 he was working as a salesman at a kiosk in the underpass at Proletarska metro station, where he sold mobile phones, accessories, and starter packs, and helped people top up their accounts. He made around 60-70 sales a day, most of which were mobile phone top-ups, as well as 2-3 sales of mobile phones and 2-3 sales of starter packs. On the afternoon of February 21, 2015, PERSON_5 purchased from him the cheapest used Nokia mobile phone, which cost around UAH 200, plus a starter pack. A purchase certificate was drawn up for the sale. The witness does not remember whether it was seized by the investigator. No warranty was provided when purchasing a used phone. No receipt was issued either, since no one asked for one. About a week after the phone was purchased, the witness was summoned to the SBU one afternoon for suspect identification, where he was given three or four photographs with images of different men, among whom the witness recognized and identified PERSON_5 by his general features and light hair color. The witness cannot say the IMEI number of the purchased mobile phone or the mobile phone number of the purchased starter pack, as a lot of time has passed, but all of this information is written down in his notebook and was provided to the investigation. When PERSON_5 purchased the phone, the witness was working alone. He does not know where his brother was. During the identification process, the witness and his brother were kept in separate offices. The witness was not asked prior to the identification process by what features he would identify the person. The witness was advised of his rights during the identification process. After the identification process, the witness signed the identification report. He does not remember who else signed it. The witness also pointed out that he was first questioned, and only then did they proceed to the identification process. The witness noted that a lot of time has already passed since that moment, so he does not remember all the details;

- the testimony of victim PERSON_26, who explained that on February 22, 2015, a protest for the impeachment of former president PERSON_45 was announced on Marshal Zhukov Avenue in Kharkiv, outside the Palace of Sports, and the witness went there to take photographs with a view to posting them on the internet. The witness arrived at the Palace of Sports, where the protest was taking place, after which a march was planned, which would retrace the route taken one year before to Freedom Square. The witness was walking ahead of the procession, about three meters away from the police officers who were escorting the people, and when the march reached the intersection where there was a turn to the garage cooperative, there was a popping sound to the right of the witness, after which the witness was thrown sideways, and he immediately realized that there had been an explosion. After regaining his orientation, the witness saw two police officers injured on the grass beside the road. The witness ran up to one of the police officers and saw that his leg had been punctured. The witness had a tourniquet in his backpack, which he took out and gave to the office, since it was the kind you could apply yourself. The witness stated that he always used to carry emergency supplies in his backpack. The witness then saw that people had moved toward a courtyard on Marshal Zhukov Avenue. Realizing that the police officers could give themselves first aid, the witness went to inquire after the wellbeing of the people who had moved deeper into the courtyard, passing by the kiosk that is situated between two buildings and stands parallel to Marshal Zhukov Avenue. After going around the kiosk, the witness encountered a blue Opel Omega, in which two people were sitting, and which he had to go around in order to reach the people who were sitting on benches at the end of the courtyard so that he could assist them or redirect them to the ambulances, which had not yet arrived at that time. The witness concluded that the individuals in the car were men, since their silhouettes were large and they had short haircuts. As he approached the people, the witness saw that they were merely frightened, not injured, and did not need any help. He headed back to the site of the explosion to find out if anyone else needed help. When the witness turned to go back to the site of the explosion, the blue Opel Omega was no longer there. The witness also noted that about a minute and a half had passed from the moment he had approached the people in the courtyard and realized that they were not injured until he headed back to the site of the explosion. He was summoned to the SBU to identify the car, where he was shown photos of various cars (he does not remember how many), which were similar in appearance. The witness recognized the car by its characteristic wheels, which were unusual, with something resembling small cobwebs, tinted windows, and the color of the car. The witness noted that the SBU officers and prosecutor's office employees did not exert any physical or psychological pressure on him. The witness gave more detailed statements under examination in court because he was asked more questions than during the pre-trial investigation. When the witness entered the courtyard of the building, there were 3-4 other parked cars there. The witness remembered the blue Opel Omega because it left almost immediately, which was suspicious. The witness took several photos before the explosion

but could not take any after the explosion because the lens was damaged by the blast wave. The witness handed over the photos he took to an SBU officer. The witness had learned about the march from the internet. He was not aware of the existence of any terrorist threats during the march. The witness also noted that he did not say he had seen the blue Opel Omega, since his first interview was conducted on the day of the explosion, in the evening, after he had already heard about the number of people killed or wounded, and he was tired and not in a very good emotional state, and could not remember what had happened that day, did not really want to give a statement, as he wanted to go home. The next day, however, when the witness realized what had happened, he remembered all the details, which he reported to the investigator;

- the testimony of victim PERSON_1, who reported at the hearing that she had lost her husband in the terrorist act committed in Kharkiv on 02/22/2015;

- the testimony of PERSON_25, who explained at the hearing that as of February-March 2015 he was working at the Scientific Research Center for Expert Criminalistics of the Ministry of Internal Affairs of Ukraine. As part of these criminal proceedings, he performed an expert review, the findings of which he fully supports. Under interrogation, PERSON_5 drew a diagram of the explosive device, claimed that he was the one who made it, that he knew its schematics, and that he committed this crime. The following persons were present during PERSON_5's interrogation: the investigator, PERSON_5 himself, his defense attorney, and the expert. No one else was present at the interrogation. During the interrogation, PERSON_5 claimed that he was the one who did it. PERSON_5 provided explanations confidently, without hesitation. He drew the diagram himself. At the time of PERSON_5's interrogation, the expert already had the results of an inspection of the incident scene and understood that it was a MON-100 mine that had exploded. The diagram drawn by PERSON_5 completed supported this, with the exception of a drawn switch that was not found at the scene of the incident inspection. The files of expert assessment contain a comparative table. Pages 69 and 70 show fragments, the most identifiable features of which are MON-100 mine fragments, specifically cylindrical fragments with a diameter of 10x10 mm, as well as their mass, which is characteristic only for the MON-100 mine and which were affected by the close contact impact of the explosive. Moreover, cylindrical fragments similar in appearance and composition were also removed from the bodies of the victims. The expert also noted that apart from said cylindrical fragments measuring 10x10 mm, no fragments of a different shape, size or origin were removed from either the bodies of the victims or the crime scene. A MON-100 mine consists of a casing, to the compound of which these fragments are attached, and an explosive is placed behind them. As a result of all this, it is possible to conclude that the remains of a MON-100 mine, which exploded in normal fashion, were found at the site of the scene inspection. The diagram drawn by PERSON_5 is typical for a MON-100 mine, as it shows the characteristic contact thyristor, which is essentially a key that prevents detonation in the event of accidental electrical action and allows one to supply additional power to an electric-type initiator (electric detonator) when a corresponding signal is received from a mobile phone, walkie-talkie, alarm block, etc. Also, the drawn diagram is characterized by the presence of mobile phone, or rather fragments thereof, which were found at the scene, along with the remains of a single-wire copper wire, which remained from the explosion of the electric detonator. The expert explained that he had not seen any injuries on PERSON_5 during the latter's interrogation. The expert also noted that there is no crater at the explosion site, since the mine was placed on a layer of snow, rather than on the ground, and it is also a directional mine, the action of which was focused in a forward direction. Moreover, the expert noted that there is no unique number for a specific MON-100 mine. The expert pointed out that the expert report lays out absolutely everything that can be laid out on the basis of the items that were provided to them for examination. The expert also noted that PERSON_5's claim that the expert himself drew the diagram of the explosive device for the investigator is untrue, since PERSON_5 gave his testimony voluntarily, and no pressure was exerted on him.

In addition to the testimony of the victims and the witnesses, the guilt of the accused is also supported by the following written evidence, which was examined by the court:

- the report of the Main Department for the Defense of National Statehood of the Kharkiv Regional Directorate of the Security Service of Ukraine [MD DNS of the Kharkiv Regional Directorate of the SBU] dated 02/26/2015 regarding the commission of a criminal act bearing elements of a criminal offense under Article 263(1) and 258(3) of the Criminal Code of Ukraine, in relation to PERSON_5 (case file v. 1, p. 8);

- the report of the MD DNS of the Kharkiv Regional Directorate of the SBU dated 02/26/2015 regarding the commission of a criminal act bearing elements of a criminal offense under Article 263(1) and 258(3) of the Criminal Code of Ukraine, in relation to PERSON_6 (case file v. 1, p. 15);

- the report of the MD DNS of the Kharkiv Regional Directorate of the SBU dated 02/26/2015 regarding the commission of a criminal act bearing elements of a criminal offense under Article 263(1) and 258(3) of the Criminal Code of Ukraine, in relation to PERSON_4 (case file v. 1, p. 22);
- the report on the inspection of the incident scene – the site of the explosion on Marshal Zhukov Avenue in Kharkiv – dated 02/22/2015 with a diagram, photo table, and transfer certificate (case file v. 4, pp. 31-97);
- the report on checking objects found and seized at the explosion site and adjacent territory on Marshal Zhukov Avenue in Kharkiv for the presence of explosive devices, explosives, or structurally similar items dated 02/22/2015 (case file v. 1, p. 98);
- order dated 03/13/2015 to admit the Gazel automobile with license plate number NUMBER_13, which was damaged in the explosion of the explosive device on Marshal Zhukov Avenue in Kharkiv on 02/22/2015, as physical evidence in the criminal proceedings (case file v. 1, p. 105);
- response to the instruction to the MD DNS of the Kharkiv Regional Directorate of the SBU, verifying the phone numbers of the accused PERSON_5, PERSON_6 and PERSON_4, which they used in committing the terrorist act on Marshal Zhukov Avenue in Kharkiv on 02/22/2015 and on the eve of said terrorist act, and verifying by investigative means said persons' involvement in the terrorist act and the vehicles they used to prepare and commit the act, including the circumstances that contributed to the formation of said persons' intent to commit this terrorist act and their persistent animosity to the current authorities, which was recorded on a storage medium in the form of a PT disk and printed photographs from the internet (case file v. 1, pp. 177-180, 182-187, 187, 188-192);
- report dated 02/22/2015 on an inspection of the incident scene, during which the explosion site on Marshal Zhukov Avenue in Kharkiv and an examination of the body of citizen PERSON_11 were inspected, accompanied by diagrams and photo tables (case file v. 2, pp. 1-15);
- report dated 02/22/2015 on an inspection of the incident scene, during which the explosion site on Marshal Zhukov Avenue in Kharkiv and an examination of the body of citizen PERSON_10 were inspected, accompanied by diagrams and photo tables (case file v. 2, pp. 17-21);
- order dated 03/12/2015 to admit physical evidence in the criminal proceedings, specifically the personal belongings of PERSON_10 with traces of the explosion and damage resulting from the explosion (case file v. 2, p. 22);
- autopsy report on the body of PERSON_11 dated 02/03/2015, accompanied by a photo table (case file v. 2, pp. 32-36);
- order dated 03/13/2015 to admit physical evidence in the criminal proceedings, specifically the personal belongings of PERSON_11 with traces of the explosion and damage from the explosion (case file v. 2, p. 37);
- autopsy report on the body of PERSON_13 dated 02/24/2015 (case file v. 2, pp. 39-40);
- autopsy report on the body of PERSON_12 dated 02/24/2015 (case file v. 2, p. 41);
- report dated 02/22/2015 on an inspection of the incident scene, during which the undergarments of PERSON_13, PERSON_12, and PERSON_17 were seized (case file v. 2, pp. 43-46);
- order dated 03/13/2015 to admit physical evidence in the criminal proceedings, specifically the personal belongings of PERSON_17, PERSON_13, and PERSON_12 (case file v. 2, pp.

47, 49, 51);

- report dated 02/22/2015 on an inspection of the incident scene, during which the personal belongings of PERSON_23, PERSON_14, PERSON_22, PERSON_18, and PERSON_21 with trace of the explosion (case file v. 2, p. 57);
- report dated 02/24/2015 on an examination of objects, specifically the personal belongings of PERSON_23, PERSON_14, PERSON_22, PERSON_18, and PERSON_21 (case file v. 2, pp. 58-59);
- order dated 03/04/2015 on admitting the personal belongings of PERSON_23 as physical evidence in the criminal proceedings (case file v. 2, p. 60);
- reports dated 02/24/2015 on the examination of objects, specifically the personal belongings of PERSON_14, PERSON_22, PERSON_18, and PERSON_21 (case file v. 2, pp. 65, 68, 74, 77);
- order dated 03/04/2015 on admitting the personal belongings of PERSON_14, PERSON_22, PERSON_18, and PERSON_21, which bear traces of the explosion, as physical evidence in the criminal proceedings (case file v. 2, pp. 66, 69, 75, 79);
- report dated 02/22/2015 on an inspection of the incident scene, specifically the area located along the roadway of Marshal Zhukov Avenue in Kharkiv, where the explosion occurred (case file v. 2, pp. 81-83);
- report dated 02/22/2015 on an inspection of the incident scene, specifically the area near the garage cooperative (case file v. 2, pp. 84-85);
- report dated 02/23/2015 on the results of removing information from electrical information systems, with an appendix in the form of a disk with photo and video files concerning the commission of the terrorist act on Marshal Zhukov Avenue in Kharkiv on 02/22/2015 (case file v. 2, pp. 89-91);
- report dated 03/13/2015 on an examination of video materials, specifically a disk with photo and video files concerning the commission of the terrorist act on Marshal Zhukov Avenue in Kharkiv on 02/22/2015, with appendices in the form of photo tables (case file v. 2, pp. 92-101);
- order dated 03/20/2015 to admit physical evidence in the criminal proceedings, specifically the aforementioned compact disc with photo and video files concerning the commission of the terrorist act on Marshal Zhukov Avenue in Kharkiv on 02/22/2015 (case file v. 2, pp. 102-103);
- report dated 02/23/2015 on an examination of video recordings from a video recording device seized from the "Behind the Wheel" Garage Cooperative, with appendices (case file v. 2, pp. 105-110);
- order dated 03/13/2015 to admit as a document the compact disc with video files from the video recording device installed at the entrance to the "Behind the Wheel" Garage Cooperative (case file v. 2, p. 111);
- report dated 02/22/2015 on an inspection of the incident scene, during which fragments were removed from the body of PERSON_20, with an appendix in the form of a photo table (case file v. 2, pp. 115-116);
- report dated 02/23/2015 on an inspection of the incident scene, during which objects were removed from the bodies of PERSON_18 and PERSON_23 (case file v. 2, p. 117);
- report on an inspection dated 03/03/2015, during which soil samples were removed from the area adjacent to the explosion site (case file v. 2, pp. 124-131);
- order dated 03/27/2015 to admit physical evidence in the criminal proceedings, specifically soil samples taken from near the explosion site, as well as the Ford Sierra vehicle with license plate number NUMBER_16 and accretions from the sapper shovel (case file v. 2, p. 132);

- order dated 03/22/2015 to admit physical evidence and determine its place of storage with respect to the remnants from the detonation of grenades, explosives, and explosion initiators (case file v. 2, p. 134);
- order dated 03/24/2015 to admit physical evidence in the criminal proceedings, specifically shrapnel and fragments of the explosive device seized during the inspection of the incident scene and fragments removed from the bodies of the wounded and deceased (case file v. 2, pp. 135-136);
- order dated 03/25/2015 to admit physical evidence in the criminal proceedings, specifically ammunition seized during a search of the PERSON_4's place of residence (case file v. 2, p. 137);
- order dated 03/26/2015 to admit physical evidence in the criminal proceedings, specifically an RGD-5 grenade with an UZRGM fuse, seized during a search of PERSON_5's place of residence (case file v. 2, p. 138);
- order dated 03/27/2015 to admit physical evidence in the criminal proceedings, specifically biological samples of PERSON_6 (case file v. 2, p. 140);
- order dated 03/27/2015 to admit physical evidence in the criminal proceedings, specifically biological samples of PERSON_5 (case file v. 2, p. 142);
- video recording from the video surveillance cameras at Kharkiv metro stations saved to a compact disc, as well as a map of im. O.S. Maselskoho and im. Marshala Zhukova metro stations, which contain video images of PERSON_4, who enters the im. O.S. Maselskoho metro station at 12:49 PM on 02/22/2015 and exits the im. Marshala Zhukova metro station at 01:03 PM on 02/22/2015 (case file v. 2, pp. 147-149);
- report dated 03/12/2015 on the examination of video files, specifically video recordings from the video surveillance cameras of the Kharkiv metro system, from the im. O.S. Maselskoho and im. Marshala Zhukova metro stations, with appendices in the form of photo tables (case file v. 2, pp. 150-154);
- temporary access protocols for items and documents and a search and seizure from MTS Ukraine PrJSC dated 03/11/2015, from Kyivstar PrJSC dated 03/11/2015, and from Astelit LLC dated 03/12/2015, with appendices in the form of compact discs (case file v. 2, pp. 162-164, 170-172, 178-180);
- reports dated 03/25 – 03/27/2015 on the examination of compact discs obtained via temporary access from MTS Ukraine PrJSC, Kyivstar PrJSC, and Astelit LLC, with information concerning the identification of mobile phones, as well as the mobile operator numbers used by the accused, with appendices in the form of a detailed list of mobile phone contacts, as well as diagrams and breakdowns. According to the detailed list of connections:
 - from No. **NUMBER_17** (a Samsung GT-E1200I mobile headset: IMEI: NUMBER_14, belonging to PERSON_5) contact was only made with No. NUMBER_18 (PERSON_6) and No. NUMBER_19 (PERSON_4).
 - from No. **NUMBER_18** (a Samsung GT-E1200I mobile headset: IMEI: NUMBER_20, belonging to PERSON_6) contact was only made with No. NUMBER_17 (PERSON_5) and No. NUMBER_19 (PERSON_4).
- PERSON_6, for his part, made contact from Nos. NUMBER_21 and NUMBER_22 (CAT B25 DualSim Black mobile headset, IMEI_1: NUMBER_23, IMEI_2: NUMBER_24) with numbers used by PERSON_5 (NUMBER_1, NUMBER_25, NUMBER_26, and NUMBER_27) and PERSON_4 (NUMBER_28, NUMBER_29) (case file v. 2, 2, pp. 181-222);

- report dated 02/26/2015 on the arrest of suspect PERSON_5 (case file v. 3, pp. 1-4);
- video recording of the interrogation of PERSON_5 dated 03/06/2015, with the participation of an explosives specialist, during which PERSON_5 explained and showed how and according to which schematics he assembled the remote control system for the MON-100 mine, which was used by him, PERSON_6, and PERSON_4 in committing the terrorist act on 02/22/2015. The explosives expert later confirmed the viability schematics shown by PERSON_5 and their consistency with the schematics used in the explosive device based on a MON-100 mine that exploded on 02/22/2015 on Marshal Zhukov Avenue in Kharkiv, with an appendix in the form of a compact disc (case file 3, pp. 70-74);
- report dated 02/26/2015 on the arrest of PERSON_4 (case file v. 3, pp. 96-99);
- report on the inspection of the Samsung GT-E1232B Duos mobile phone IMEI NUMBER_30 seized from PERSON_4, containing the telephone numbers of PERSON_5 and 06, which he concealed under the names of PERSON_57 (NUMBER_31, NUMBER_32) and MY VITEK (NUMBER_33) (case file v. 3, pp. 101-102);
- order dated 03/02/2015 to admit physical evidence in the criminal proceedings, specifically the mobile phone of PERSON_4 (case file v. 3, p. 103);
- report dated 02/26/2015 on the arrest of PERSON_6 (case file v. 3, pp. 205-211);
- report dated 03/21/2015 on the inspection of PERSON_6's Samsung E1200I mobile phone No. NUMBER_34, with SIM card NUMBER_2, which he used to communicate exclusively within the so-called "closed group" with PERSON_46 [sic] and PERSON_5. This telephone contains the contacts details of only the two aforementioned persons. In the interest of secrecy, these contacts were recorded as "ANTON" NUMBER_1, which was used by PERSON_5, and "SMALL-FRY" [MELKIY] NUMBER_3, which was used by PERSON_4. The telephone also contains SMS correspondence with PERSON_5 and PERSON_4, which, when analyzed together with information about the mobile subscribers' connections obtained from operator MTS Ukraine PrJSC, i.e., the telephone connection traffic of these numbers, and an inspection of the Samsung E1200I mobile phone with number NUMBER_35 (PERSON_5), confirm that PERSON_6 and PERSON_4, together with PERSON_5, were involved in laying the explosive device based on a MON-100 mine and subsequently checking the location where it was laid on Marshal Zhukov Avenue on the night of 02/22/2015 between the hours of 02:00 AM and 03:40 AM, and that this group agreed to meet up and did in fact meet up at PERSON_5's home after 10:30 AM on 02/22/2015 before the final step of implementing their criminal plan: heading out to Marshal Zhukov Avenue to activate the explosive device they had laid (case file v. 3, pp. 213-214);
- order dated 03/23/2015 to admit as physical evidence and transferring it for safekeeping, specifically: the GT-E1200I Samsun mobile phone, IMEI NUMBER_20 with battery and MTS SIM card (case file v. 3, p. 215);
- report by the deputy chief of the 3rd Section of the Main Department for Counterintelligence Protection of the Economy of the Kharkiv Regional Directorate of the SBU concerning PERSON_5's involvement in the terrorist act and the presence of weapons at his home (case file v. 4, p. 1);
- report on a search of PERSON_5's place of residence (ADDRESS_3), during which munitions and explosives were seized (case file v. 4, pp. 2-6);
- ruling of the investigating judge of the Kyivsky District Court of Kharkiv dated 02/26/2015 authorizing a search at PERSON_5's place of residence (case file v. 4, pp. 9-10);
- report dated 03/25/2015 on the inspection of a flash drive seized during a search of PERSON_5's apartment, with appendices, concerning preparations for the terrorist act (case file 4, pp. 11, 19, 21);
- report dated 03/20/2015 on the examination of items seized during a search from PERSON_5 (case file 4., pp. 22-23);

- report dated 03/21/2015 on the examination of items seized from PERSON_5 during a search, specifically PERSON_5's computer, including the electronic mailbox INFORMATION_9, which PERSON_5 used to correspond with officers of the Russian special services regarding the preparations for and commission of the terrorist act on 02/22/2015 (case file v. 4, pp. 24-29);
- report dated 03/02/2015 on the examination of items and documents, including the PERSON_5's sapper shovel, which he used to lay the explosive device based on a MON-100 mine on Marshal Zhukov Avenue on 02/22/2015 (case file v. 4, pp. 32-33);
- report dated 03/21/2015 on the examination of PERSON_5's mobile phones and mobile operator cards, specifically PERSON_5's Samsung E1200I mobile phone No. NUMBER_36 with SIM card number NUMBER_1, which he used to communicate within the so-called "closed group" with PERSON_46 [sic] and PERSON_6. In addition, the telephone contains SMS correspondence with PERSON_6 and PERSON_4, which, when analyzed together with information about the mobile subscribers' connections obtained from operator MTS Ukraine PrJSC, i.e., the telephone connection traffic of these numbers, and an inspection of the Samsung E1200I mobile phone with number NUMBER_2 (PERSON_6), confirm that PERSON_6 and PERSON_4, together with PERSON_5, were involved in laying the explosive device based on a MON-100 mine and subsequently checking the location where it was laid on Marshal Zhukov Avenue on the night of 02/22/2015 between the hours of 02:00 AM and 03:40 AM, and that this group agreed to meet up and did in fact meet up at PERSON_5's home after 10:30 AM on 02/22/2015. The examination also revealed that the phone contains PERSON_5's correspondence during the period when he was preparing to commit the crime from 02/19/2015 to 02/22/2015 with telephone numbers from the closed communication group that were used by PERSON_6 (NUMBER_2) and PERSON_4 (NUMBER_3) (case file v. 4, pp. 34-45);
- report by the deputy chief special investigator of the Main Department for Counterintelligence Protection of the Economy of the Kharkiv Regional Directorate of the SBU concerning PERSON_5's involvement in the terrorist act and the presence of weapons at his home (case file v. 4, p. 71);
- report dated 02/26/2015 on a search of PERSON_4's place of residence (ADDRESS_2), during which officers seized ammunition and explosives, which PERSON_4 had acquired and stored without the permit required by law (case file v. 4, pp. 72-78);
- ruling of the investigating judge of the Kyivsky District Court of Kharkiv dated 02/26/2015 authorizing a search at the place of residence of PERSON_4 (case file v. 4, p. 81);
- report by the deputy chief investigator of the Information Security Counterintelligence Department of the Kharkiv Regional Directorate of the SBU concerning PERSON_6's involvement in the terrorist act and the presence of weapons at his home (case file v. 4, p. 165);
- report dated 02/06/2015 on a search of PERSON_6's place of residence (ADDRESS_5). during which officers seized ammunition and explosives that PERSON_6 had acquired and stored without the permit required by law, as well as other items that have evidentiary value in the proceedings (case file v. 4, pp. 166-169);
- ruling of the investigating judge of the Kyivsky District Court of Kharkiv dated 02/26/2015 authorizing a search at PERSON_6's place of residence (case file v. 4, pp. 172. 173);
- report dated 03/17/2015 on an examination of a laptop computer, mobile phone with SIM cards, and data storage media, and the order dated 03/17/2015 to admit them as physical evidence (case file v. 4, pp. 174-178);
- report dated 02/26/2015 on an examination of explosive items (with appendices and a photo table) seized from PERSON_5 (case file v. 4, pp. 185-191);
- report dated 02/26/2015 on an examination of explosive items (with appendices and a photo table) seized from PERSON_6 (case file v. 4, pp. 192-198);

- report dated 02/26/2015 on an examination of explosive items (with appendices and a photo table) seized from PERSON_4 (case file v. 4, pp. 199-208);

- `ruling of the Kyivsky District Court of Kharkiv dated 02/27/2015 authorizing a search of the Ford Sierra automobile belonging to PERSON_5 and report dated 03/03/3015 on a search of the Ford Sierra automobile with state registration number NUMBER_4, from which a flash drive was recovered, as well as soil samples from the materials (case file v. 4, pp. 212-220);

- report dated 03/27/2015 on an examination of the Lenovo A369i mobile phone seized during a search of PERSON_4, during which its serial number was determined, as well as the SIM cards with number NUMBER_37 and number NUMBER_38 (case file v. 4, pp. 248-249);

- findings of the forensic comprehensive expert examination of explosives and the expert examination of explosive substances, products of explosion and firearm discharge No. 37/2015 dated 03/23/2015, according to which an improved explosive device based on a MON-100 anti-personnel directional fragmentation mine, radio controlled by telephone, exploded at the scene of the incident on 02/22/2015 opposite the five-story building at ADDRESS_6. The explosive device probably consisted of the following products and components: an industrially-produced MON-100 anti-personnel directional fragmentation mine (housing without a device for installation and mounting); an initiator (detonator) – industrially-produced electric detonator, probably an EDP, EDP-R, ED-8, etc.; a remote explosion control system: radio signal reception and electric pulse control unit - a mobile phone, probably a Samsung E1200 indigo blue with a SIM card, probably MTS or LIFE, etc.; an additional electric power supply unit – a 9V power unit (battery), 6F22-type (salt), NASHA SILA brand, model series X2 NASHA SILA 6F22 1 tray G3 * double power, and probably one or several 9V 6F22 or 6LR61 batteries of an undetermined model (alkaline); initiating pulse control and unauthorized detonation prevention (electric key) – probably a low-power thyristor; fastening elements for components and assemblies of the explosive device: electrical connection elements – electric copper multi-wire conductors in black polymer insulation casing; fastening component material – black PVC electrical insulation tape; electrical connection insulation (splice joints) – blue PVC electrical insulation tape; 5) means of transportation and camouflage (probably) – white plastic bag. The likely composition of the IED could include additional elements such as electrical switches (fuses), operating check elements (low-power bulbs), shunt resistors and capacitors, current and voltage amplifiers, etc. At the same time, no clear and definite traces or fragments of such additional elements were found in the materials and objects submitted for examination. Graphic illustrations of the structure of the IED that exploded on Marshal Zhukov Avenue on 02/22/2015 – a schematic diagram and sketch – are shown in diagrams 1 and 3. The principle and procedure for the operation of the examined improvised explosive device are as follows: in the “ready” position, the mobile phone is in “on” mode and the “initiator – additional power supply unit – thyristor” electrical circuit is open. According, no current is applied to the initiator or the control contact of the thyristor. When a call is made to the SIM card number installed in the mobile phone, a positive command pulse is given to the control contact of the thyristor, which opens the thyristor (“anode-cathode” section), closes the “Initiator – additional power supply unit” electrical circuit, and triggers the electric detonator, thereby detonating the charge and launching the fragments of the MON-100 mine. The purpose of explosive devices is generally defined by their ability to strike certain objects. Therefore, the purpose and strike capabilities of the examined IED are defined by the characteristics of the MON-100 mine and the explosion execution system. The MON-100 mine is designed for controlled, targeted (directional) destruction of personnel and unarmored vehicles. The destructive capabilities of the MON-100 mine are described in Table 6 and in Diagram 3. The radio-controlled improvised explosive device that exploded at 9/1 Marshal Zhukov Avenue on 02/22/2015 had the function of controlling the time of execution of the explosion and thus had the functions of target selection and trigger time selection. The explosive device was placed in a snowdrift on the right side of the road (on the corner) at the intersection of the exit from the Behind the Wheel Garage Cooperative and Marshal Zhukov Avenue. The

explosive device was probably placed in a white plastic bag, which may have served the functions of masking and transportation. Manufacturing and using the explosive device that went off at the scene of the incident required a knowledge of the schematic diagram of said explosive device and the ability to do basic electric work, such as tinning and soldering. It should be noted that this knowledge and skill-set does not necessarily require special professional knowledge, special education, or special training in mines and explosives, but can be obtained independently from open sources that are readily accessible to the public. As for designing (drawing up the basic and functional schematics of) explosive devices, this requires a fundamental knowledge of the theory of electric and radio circuits, demolition and/or sapper engineering training at the level of an officer of engineering troops, as well as practical experience in blasting operations and combat use of explosive devices (case file v. 5, pp. 10-73);

- findings of the forensic comprehensive expert examination of explosives and the expert examination of explosive substances, products of explosion and firearm discharge No. 49 dated 03/05/2015, according to which the six objects similar in appearance to the casings of F-1 grenades are in fact the casings of F-1 hand grenades (groups of examined objects Nos. 1-3), which do not bear any traces of interference with their structure, which probably means that they contain a high-explosive substance – 50-56 grams of TNT; the six items that appear to be detonator fuses are in fact UZRGM-type (UZRGМ-2) industrially-produced hand grenade fuses (groups of examined objects No. 4-6) which probably contain a charge of a combined explosive – 0.1-0.2 grams of TNRS + lead azide and 1 gram of explosion-resistant TEN or RDX. When the groups of examined objects Nos. 1-3 (the six F-1 fragmentation grenade bodies) are combined with the groups of examined objects Nos. 4-6 (the six UZRGM (UZRGМ-2) hand grenade fuses), they form industrial explosive devices – six F-1 hand fragmentation grenades, which constitute munitions. The three objects with wires that look like detonators are electrical initiators – an EDP-r electric detonators (examined object No. 7) and EDP electric detonator (examined object Nos. 8 and 9). They do not constitute munitions. The electric detonator's casing contains a charge of combined explosive – 0.1-0.2 grams of TNRS + lead azide and 1 gram of TEN or RDX. The two objects with wires that look like initiators (group of examined objects No. 10) are the firing mechanism of the MVE-72 fuse and do not constitute munitions. The plastic substance (examined objects Nos. 11-13) is an RDX-based explosive with a mass of 1,060, 1,309 grams, and 1,010 grams respectively.

The metal object that looks like the body of an RGD-5 grenade (examined object No. 14) is a training body of an RGD-5 hand grenade and does not contain an explosive charge. The object that looks like a fuse (examined object No. 15) is a UZRGM (UZRGМ-2)-type training fuse, which does not contain an explosive charge. When examined object No. 15 (training body of an RGD-5 hand grenade) is combined with examined object No. 15 (UZRGМ (or UZRGM-2) training fuse, the resulting device does not constitute a type of munitions. The loose substance similar in appearance to gunpowder (examined objects No. 16.1 and No. 16.2) is a propellant explosive – smokeless gunpowder with a mass of 201 grams and 170 grams, respectively (case file v. 5, pp. 143-162);

- findings of the forensic comprehensive expert examination of explosives and the expert examination of explosive substances, products of explosion and firearm discharge No. 81/2015 dated 03/19/2015, according to which the objects submitted for examination – six F-1 grenade bodies (group of examined objects No. 1), six UZRGM (UZRGМ-2) detonator fuses (group of examined objects No. 2), EDP-R electric detonator (object No. 3) and two EDP electric detonators (group of examined objects No. 4) do not constitute munitions in isolation from each other; the six F-1 grenade bodies (group of examined objects No. 1) and six UZRGM (UZRGМ-2) detonator fuses (group of examined objects No. 2) in the standard combined state form six hand-held defensive fragmentation F-1 grenades, which constitute munitions. The items submitted for examination – the six F-1 grenade bodies (group of examined objects No. 1), six UZRGM (UZRGМ-2) detonator fuses (group of examined objects No. 2), EDP-R electric detonator (object No. 3) and two EDP electric detonators (group of examined objects No. 4) are suitable for causing an explosion (case file v. 5, pp. 166-175);

- findings of the soil science expert examination No. 5 dated 03/16/2015, according to which the layers of soil taken from PERSON_5's sapper shovel and from the materials of the Ford Sierra car with state license plate NUMBER_4, and the soil samples collected to the right of the explosion site and across the paved entrance to the "Behind the Wheel" Garage Cooperative, submitted in packets Nos. 7 and 12, have a common generic affiliation. The other soil samples from the incident site, submitted in packets Nos. 2-11 for the examination report dated 03/03/2015 and the layers of soils removed from the sapper shovel and from the materials of the Ford Sierra automobile with state license plate NUMBER_4 do not have a common general affiliation (case file v. 5, pp. 179-189);
- ballistic expert report No. 111 dated 02/28/2015, according to which the 130 rounds seized during a search of PERSON_4's place of residence constitute ammunition: 46 5.45x39 AK 5.45 mm caliber combat intermediate cartridges designed to be fired from rifled combat weapons of the appropriate caliber and chamber size (submachine guns, Kalashnikov machine gun systems); 56 12-caliber hunting cartridges designed for shooting from 12-caliber smoothbore hunting rifles; 28 16-caliber hunting cartridges designed for shooting from 16-caliber smoothbore rifles; 77 spent cartridges (20 5.45x49 AK, 39 12-caliber, and 18 16-caliber), suitable for firing. The remaining 53 rounds of ammunition are also probably suitable for shooting (case file v. 5, pp. 193-195);
- report dated 03/05/2015 on obtaining samples from PERSON_6 for expert examination (case file v. 5, pp. 196-197);
- report dated 03/05/2015 on obtaining samples from PERSON_5 for expert examination (case file v. 5, pp. 198-199);
- report dated 03/05/2015 on obtaining samples from PERSON_4 for expert examination (case file v. 5, pp. 200-202);
- according to Expert Report No. 17 of the SRCEC MD MIAU for the Kharkiv Region dated 03/20/2015, cells with nuclei that matched the genetic markers from PERSON_6's saliva sample were found on the Samsung phone, IMEI – NUMBER_20 with mobile operator NUMBER 11, which was seized on 02/26/2016 during a personal search of PERSON_6, specifically: on wipe samples from the exterior and interior surfaces of the telephone, SIM card and battery (case file v. 5, pp. 206-214);
- according to Expert Report No. 16 of the SRCEC MD MIAU for the Kharkiv Region dated 03/20/2015, cells with nuclei that matched the genetic markers from PERSON_5's saliva sample were found on wiper samples from the Samsung phone, IMEI – NUMBER_14 and its SIM card and battery, and from the interior surface of the Samsung phone, IMEI – NUMBER_15 and battery (case file v. 5, pp. 217-230);
- forensic medical report No. 159-a/15, according to which minor PERSON_16 suffered abrasions and bruises of the upper third of the right shin in connection with the events of 02/22/15. The existing injuries were caused by the action of blunt solid objects, possibly from the action of an explosive device, which is indicated in the investigator's order. In terms of degree of severity, these are light injuries (case file v. 6, pp. 2-3);
- forensic medical report No. 160-a/15, according to which PERSON_17 suffered the following injuries in connection with the events of 02/22/15: an exit wound to the soft tissues of the left forearm, which constitutes a minor bodily injury that caused a short-term health disorder at the time of the forensic medical examination; a blunt wound to the soft tissues of the posterior surface of the chest on the left side with a comminuted fracture of the left scapula and the presence of a foreign body of metallic density up to 13 mm in diameter located between the scapula and the second rib, which constitute moderate injuries based on the duration of the health disorder; a blunt injury to the soft tissues of the lumbar region on the left side a comminuted fracture of the left ilium with the displacement of small bone fragments into the iliac muscle and the presence of a foreign body with a metal density up to 11 mm in diameter, located in the iliac region on the left, which constitute moderate injuries based on the duration of the health disorder. The listed injuries were caused by the action of objects with a limited area of traumatic surface that had significant energy,

such as could be factors of an explosion. The formation of these injuries could have been caused by the destructive elements (fragments) resulting from an explosion (case file v. 6, pp. 19-20);

- forensic medical report No. 565-aya/15, according to which PERSON_18 had one firearm shrapnel blunt wound to the soft tissue in the lumbar region on the right and left sides and around the right shoulder, which were formed within the period indicated in the investigator's order (case file v. 6, pp. 50-51);

- forensic medical report No. 562-aya/15, according to which PERSON_19 was found to have the following injuries: explosive trauma. Shrapnel exit wound to the right shin with damage along the wound channel to the soft tissue and the right fibula at the level of the middle third in the form of an open comminuted fracture. This damage was caused by the shock of traumatic impact of a blunt, hard object with limited traumatic surface (a fragment that most likely formed as a result of the detonation of an explosive device) and could have been received during the period indicated in the investigator's order. As for the severity of the explosive trauma, the shrapnel exit wound to the right shin with damage along the wound channel to the soft tissues and the right fibula at the level of the middle third in the form of an open comminuted fracture was not life-threatening at the time when it was inflicted but caused a long-term health disorder lasting more than 3 weeks (21 days), and for his region constitutes a moderate injury. Wounds (in the area of the exit wound to the right lower leg) are located on the medial surface at the border of the middle and lower third and on the lateral surface in the upper third (case file v. 6, pp. 82-83);

- forensic medical report No. 567-aya/15, according to which PERSON_20 suffered: a blunt shrapnel wound to the anterior outer surface of the lower third of the left thigh with partial crushing of the muscles along the wound channel, with the presence of a foreign body (a rectangular cylindrical shape measuring about 12x0.8 cm, which was removed). This injury was caused by the action of a blunt, solid object with a limited impact surface, which could have been a fragment formed in the explosion of an explosive device, and could have been caused within the time period specified in the investigator's order (case file v. 7, pp. 92-93);

- forensic medical report No. 561-aya/15, according to which PERSON_21 was found to have the following bodily injuries: explosive trauma. Shrapnel wounds to the lower extremities and left hand: exit wound to the right knee; penetrating blunt wound to the left thigh with damage along the course of the wound channel to the soft tissue; superficial laceration of one finger on the left hand. These injuries were formed as a result of the traumatic impact of blunt, hard objects with a limited traumatic surface (fragments that were most likely formed as a result of the detonation of an explosive device) and could have been received within the time period specified in the constituent part of the investigator's order (case file v. 6, pp. 111-112);

- forensic medical report No. 563-aya/15, according to which PERSON_22 had a firearm shrapnel blunt wound to the soft tissues of the upper third of the left thigh, which was formed within a period that matches the one indicated in the investigator's order (case file v. 6, pp. 142-143);

- forensic medical report No. 566-aya/15, company to which PERSON_47 suffered the following injuries: a blunt shrapnel wound of the anterior surface of the right thigh in the lower third, with soft tissue damage along the wound channel, with the presence of a foreign body blindly ending in the muscles and subcutaneous fat. This damage was formed as a result of the action of a blunt, hard object with a limited impact surface, which could also be a fragment formed during the explosion of an explosive device and could have been caused within the time limit specified in the investigator's order (case file v. 6, pp. 182-183);

- forensic medical report No. 568-aya/15, according to which PERSON_24 suffered the following injuries: a shrapnel tangential superficial wound to the inner surface of the right foot. This damage resulted from the action of a blunt hard object with a limited impact surface, which could also be a fragment formed during the explosion of an explosive device and could have been caused within the period specified in the investigator's order. As for the degree of severity, this is a light bodily injury (case file v. 7, pp. 210-211);

- forensic medical report No. 66-at/15, according to which, in connection with the events of 02/22/2015, PERSON_13 suffered chest injuries in the area of the costal arch on the left side along the mid-clavicular line, penetrating into the chest cavity, then through the left dome of the diaphragm, penetrating into the abdominal cavity with damage to the liver (marginal), stomach (through), tail of the pancreas, spleen, left kidney, then the body of the 2nd lumbar vertebra, where the fragment was found; wound to the right iliac region, penetrating into the abdominal cavity, with damage to the ileum (through), then the sacrum on the left. Injuries suffered by PERSON_13, in relation to a living person, are classified as serious bodily injuries according to the criterion of danger to life. The cause of death of PERSON_13 was a severe cumulative explosive injury to the internal organs and bones of the skeleton and complications thereof (traumatic shock) (case file v. 7, pp. 2-5);

-forensic medical report No. 582-DM/15, according to which person_10 was found to have suffered one penetrating blunt wound to the head, one penetrating blunt wound to the left buttock, one non-penetrating blunt wound to the chest on the left side, and bruises on the upper eyelid of the right eye, along the inner surface of the left shoulder, and a bruised wound on the left thigh. The cause of death of PERSON_10 was the above-mentioned penetrating shrapnel wounds to the head and torso. All these injuries were formed while PERSON_48 was still alive, shortly before death, in one short period of time. These injuries were formed as a result of the action of destructive factors of the explosion and the piercing action of fragments, while the victim was located a short distance from the center of the explosion (case file v. 2, pp. 14-20);

- forensic medical report No. 65-at/15 according to which, in connection with the events of 02/22/2015, in PERSON_12 suffered a head injury with the presence of a slaughter-laceration in the frontal area on the left side and a slaughter-laceration in the parietal-occipital region on the right, bruising of the soft integuments of the head from their inner surface in the projection of these wounds, multi-splinter fractures of the bones of the cranial vault with the transition of fractures to the base of the skull, rupture of the dura mater with damage to the upper one sagittal sinus, hemorrhages above and below the dura mater (epidural and subdural hemorrhage), hemorrhage under the soft meninges, and brain contusion with large areas of contusion (crushing of the brain substance). The cause of death of PERSON_12 was severe traumatic brain injury and complications that developed as a result of edema - swelling-dislocation of the brain, hemorrhagic shock. In terms of severity, the head injury to PERSON_12 constitutes a serious bodily injury according to the criterion of danger to life, in relation to living persons.

Taking into account the nature of the injuries and the known circumstances of the case, the expert believes that the formation of this injury could have been caused by a destructive element (fragment) as a result of the explosion (case file v. 7, pp. 28-32);

- forensic medical report No. 564-aya/15, according to which PERSON_14 suffered: a firearm shrapnel blunt wound to the upper third of the left shoulder; an exit firearm shrapnel wound to the soft tissues of the left lumbar region; and a firearm shrapnel exit wound to the upper third of the left thigh with an exit hole in the left sciatic region, which were formed within the time period specified in the investigator's order (case file v. 7, pp. 28-32);

- forensic medical report No. 583 DM/15, according to which the following injuries were found in PERSON_11: blunt chest wound from the entrance wound in the projection of the 1st intercostal space on the left side along the clavicular line, which penetrates into the chest cavity with the formation of an indirect fracture of the 2nd left rib on the border of the costal cartilage and the bone part of the rib, with through damage to the upper lobe of the left lung, trachea, and upper lobe of the right lung, which extends beyond the chest cavity in the 2nd intercostal space on the right along the scapula line with the formation of a perforated fracture of the right scapula, blindly ending in the back muscles in the supraspinatus fossa of the right scapula, where a silver-black metal fragment of approximately cylindrical shape measuring about 1.4x1x0.8 cm with pointed, deformed, slightly melted edges was found; an abrasion in the projection of the anterior surface of the right knee. The penetrating blunt wound to the chest of PERSON_49 was formed while he was still alive, shortly before the onset of his death; taking into account the nature of the entrance wound and the nature of the metal fragment found in the muscles of the back at the end of the wound channel, it should be assumed that said wound was formed as a result of the piercing action of the fragment of an explosive projectile when the victim was found

a long distance from the epicenter of the blast. The abrasion in the projection of the anterior surface of the right knee, taking into account its nature, was formed from the action of a blunt object, the individual characteristics of the traumatic surface of which were not reflected in the damage, by the mechanism of friction-sliding shortly before the death of PERSON_49 or, more likely, in the process of dying. The cause of death of citizen PERSON_49 was a penetrating shrapnel wound to the chest with damage to internal organs, complicated by acute blood loss. In terms of degree of severity, the explosive injury in the form of a penetrating shrapnel wound to the chest constitutes a serious bodily injury according to the criterion of danger to life. The abrasion in the projection of the cervical surface of the right knee constitutes mild bodily injury (case file v. 7, pp. 79-83);

- forensic medical report No. 664-aya/15, according to which PERSON_15 suffered: a shrapnel blunt wound to the suprapubic region with the presence of a foreign body of metallic density (size 15x12x30 mm) in soft tissues, which was not removed during the operation. This damage was formed as a result of the impact of a blunt hard object with a limited impact surface, which may be a fragment formed during the explosion of an explosive device, and could have been caused within the time period specified in the investigator's order (case file v. 7, pp. 99-100);

- inspection report and order dated 03/11/2015 or admit the personal belongings of PERSON_15 as physical evidence (case file v. 7, pp. 107-108);

- report on the presentation of photographs to a person for identification dated 02/26/2015, specifically the identification of PERSON_5 by PERSON_43, and report on the presentation of photographs to a person for identification dated 02/26/2015, specifically the identification of PERSON_5 by PERSON_42. During these investigative actions, PERSON_43 and PERSON_42 identified PERSON_5 as the person who, on February 19 and 21, 2015, purchased at the mobile phone and accessory sales point located in the underpass of the Kharkiv metro system's Proletarska metro station, where the witnesses work as salesmen, SIM card NUMBER_8, together with a Samsung E1200 mobile phone, which he used to make the remote control system for the explosive device based on a MON-100 mine, as well as a Nokia 1110 mobile phone and a SIM card with number NUMBER_6, which PERSON_5, PERSON_6, and PERSON_4 subsequently used to make a call to the Samsung E1200 mobile terminal with number NUMBER_8, installed in the remote control system of the MON-100 mine (case file v. 8, pp. 20-23, 24-27);

- report on the presentation of photographs to a person for identification dated 02/26/2015, specifically the identification of PERSON_6 by PERSON_42. During this investigative action, PERSON_42 identified PERSON_6 as the person next to PERSON_5 when the latter was purchasing mobile phones and accessories on February 19, 2015, at the mobile phone and accessory sales point located in the underpass of the Kharkiv metro system's Proletarska metro station, where the witness works as salesman, SIM card NUMBER_8, together with a Samsung E1200 mobile phone, which was used in the manufacture of a remote control system for an explosive device based on a Mon-100 (Vol. 8, A. s. 28-31);

- report dated 02/27/2015 on an investigative experiment involving PERSON_6, with corresponding appendices and a video recording of the investigative action, during which, with the participation of the defense attorney, he spoke about the circumstances under which he prepared and committed the terrorist act on 02/22/2015 (case file v. 8, pp. 48-55);

- report dated 02/27/2015 on an investigative experiment involving PERSON_5, with corresponding appendices and a video recording of the investigative action, during which, with the participation of the defense attorney, he told about the circumstances under which he prepared and committed the terrorist act on 02/22/2015 (case file v. 8, pp. 56-76);

- report dated 02/27/2015 on an investigative experiment involving PERSON_4, with corresponding appendices and a video recording of the investigative action, during which, with the participation of the defense attorney, he told about the circumstances under which he prepared and committed the terrorist act on 02/22/2015 (case file v. 8, pp. 77-96);

- report dated 02/27/2015 on an investigative experiment involving PERSON_4, with corresponding appendices, conducted at the site of preparations for committing the terrorist act in the city of Kharkiv, during which, with the participation of the defense attorney, he spoke about the circumstances under which he prepared and committed the terrorist act on 02/22/2015 (case file v. 8, pp. 97-105);

- order to stop covert investigative activity and declassify files dated 03/27/2015 (case file v. 8, pp. 211-212);

- report No. 70/5-5967t dated 03/26/2015, DVD-R No. 2925/BD ZND and report No. 70/5-5966t dated 03/26/2015, DVD-R No. 2922/GV ZND on the results of covert investigative activity (audio and video surveillance conducted in a publicly accessible place) dated 03/25/2015 with appendices, in relation to PERSON_5 and PERSON_6 (case file v. 8, pp. 215-224. During said investigative activity, PERSON_5 and PERSON_6 told persons who were being held with them 1at the pre-trial detention center about their involvement in committing the terrorist act on 02/22/2015;

- Phonoscope expert report No. 8-3V3 dated 02/21/2017 on the results of covert investigative activity contained on discs DVD-R No. 2925/GV ZND and DVD-R No. 2922/GV ZND and transcripts No. 70/5-5966t and No. 70/5-5967t dated 03/26/2015. According to the expert findings, the phonograms submitted for examination show no signs of editing, selective overlay of recordings, or voice changes. The phonograms submitted for examination that are contained in the audio files on a disc for laser reading systems No. 2925/GV ZND and No. 2922/GV ZND, based on the results of covert investigative activity, are suitable for identification of the person speaking based on the voice and text according to the transcripts. The audio recordings submitted for examination, which were recorded on data medium No. 2925/GV ZND, contain the voice of PERSON_5. The audio recordings submitted for examination, which were recorded on data medium No. 2922/GV ZND, contain the voice of PERSON_6 (case file v. 6, pp. 68-81);

- rulings of the investigating judge of the Kharkiv Regional Court of Appeal Nos. 2712T and 2713T dated 0/27/22015 [sic] authorizing covert investigative activity – audio and video surveillance and recording in a publicly accessible place (the premises of the Temporary Detention Center Unified Special Institution of the Main Directorate of the Ministry of Internal Affairs of Ukraine for the Kharkiv Region and the Kharkiv Pre-Trial Detention Center) in relation to PERSON_5 and PERSON_6 (case file v. 6, pp. 92-95);

- DVD disc with a video recording from the surveillance cameras of the DIGMA store (case file v. 9, p. 245);

- report on the examination of said DVD disc with a video recording from the surveillance cameras of the DIGMA store (case file v. 9, pp. 246-251), which contains files with a video recording of an Opel Omega driving up to the DIGMA store at 01:24:44 PM on 02/22/2015, and PERSON_5 getting out of the vehicle;

- report on the presentation of items for identification from photographs, with the participation of witness PERSON_26, during which the witness identified the blue Opel Omega belonging to PERSON_6, which the witness saw in the courtyard of building No. 9/1 on Marshal Zhukov Avenue in Kharkiv on 02/22/2015 immediately after the terrorist act (case file v. 8, pp. 8-11).

The court also examined the following physical evidence containing information on the accused's involvement in committing the criminal offense, which the court has used as evidence of the facts established during these criminal proceedings:

- personal belongings of PERSON_10 with traces of the explosion and damage caused by the explosion;

- service certificate of the deceased officer of the Main Directorate of the Ministry of Internal Affairs of Ukraine for the Kharkiv Region PERSON_10;

- personal belongings of PERSON_11 with traces of the explosion and damage caused by the explosion;

- personal belongings of PERSON_17 with traces of the explosion and damage caused by the explosion;

- personal belongings of PERSON_12 with traces of the explosion and damage caused by the explosion;

- personal belongings of PERSON_23, PERSON_14, PERSON_22, PERSON_18, and PERSON_21 with traces of the explosion;

- soil samples taken from near the site of the explosion and from the Ford Sierra automobile with state registration number NUMBER_4 and accretions from the sapper shovel (case file v. 2, p. 132);

- remnants from the detonation of grenades, explosives, and explosion initiators (case file v. 2, p. 134);
- shrapnel and fragments of the explosive device from the inspection of the incident scene and fragments from the bodies of the wounded and deceased;
- ammunition seized during a search of the place of residence of PERSON_4;
- RGD-5 grenade with an UZRGM fuse, seized during a search of PERSON_5's place of residence, according to the order to admit physical evidence in the criminal proceedings dated 03/26/2015 (case file v. 2, p. 138);
- mobile phones, mobile operator cards, and a laptop computer;
- biological samples from PERSON_5, PERSON_4 and PERSON_6.

Based on the physical evidence examined by the court at the hearing pursuant to Chapter 4 § 4, i.e., the material objects that were the instrument used to commit the criminal offence, that retained traces of it, or that contain information that the court has used as evidence of a fact or circumstances established during the criminal proceedings, including items that were objects of the criminal offense.

The court deems it necessary to point out that the immediacy of the examination of evidence means that the court is required by law to examine all of the evidence gathered in a particular criminal proceeding by questioning the accused, the victims, the witnesses, and the experts, examining the physical evidence, reading out documents, playing back audio and video recordings, etc. This fundamental principle of criminal proceedings is important for the full elucidation of facts in the criminal proceedings and for their impartial resolution. The direct perception of evidence allows the court to properly examine and verify it (both each piece of evidence individually and in conjunction with other pieces of evidence), to evaluate it according to the criteria set out in Article 94(1) of the Criminal Procedure Code, and to form an impartial view of the actual facts of a specific criminal proceeding.

Article 337 of the Criminal Procedure Code of Ukraine defines the scope of court proceedings and establishes that court proceedings shall only be conducted in relation to the accused persons and only within the scope of the charges brought against them, formulated and set out in the indictment, which is an essential guarantee of a fair trial and resolution of the case.

If a person is found guilty, the court shall indicate in the reasons section of the verdict the wording of the charges that the court deems to have been proven, with an indication of the place, time, method of commission, and effects of the criminal offense, the forms of guilt, and the motives of the criminal offense.

The court can only base its findings on evidence that it has directly perceived during the trial.

After examining the evidence during the trial, the court may modify the legal qualification of a criminal offense committed by a person if the new charge is not more serious, or may change the wording of the factual side of a charge without modifying the legal qualification, if as a result of such change the wording of the factual side of the charge is not materially altered or is closely associated with the original charge, provided that such change is not detrimental to the accused's position or his right to a defense.

According to the requirements of Article 94 of the Criminal Procedure Code of Ukraine, the court shall evaluate the evidence according to its inner convictions based on a comprehensive, full and impartial examination of all the facts of the criminal proceeding, in accordance with the law, and shall evaluate the evidence in terms of its reliability, admissibility, accuracy, and the totality of the gathered evidence – in terms of its sufficiency and relevance for issuing the relevant procedural decision. The evidence examined and verified by the court in this case, which supports

the guilt of PERSON_4, PERSON_5 and PERSON_6 of the charges brought against them, is verified and consistent, and the court has no doubts as to its relevance and admissibility.

The defense's motions with respect to each piece of evidence submitted by the prosecutor are clearly inadmissible and are denied by the court for the following reasons:

The procedures for obtaining evidence set out in Article 84(2) of the Criminal Procedure Code of Ukraine provide for adhering to the following requirements: 1) the obtaining evidence by the proper subject; 2) the lawfulness of the procedural source of the evidence; 3) adherence to the procedural steps for obtaining evidence; 4) adherence to the rules for recording the progress and results of investigative and covert investigative activity.

The burden of proving the facts that form the basis for excluding evidence lies with the party that files such a motion. The claim by the defense attorneys and the accused that all of the evidence should be dismissed as inadmissible do not have a clearly formulated basis (the evidence is improper, was obtained in violation of the procedures established by the Criminal Procedure Code, was obtained from an unlawful source, was obtained by an improper subject, etc.).

In light of the foregoing, the court finds that no violations of the Criminal Procedure Code of Ukraine were committed during the pre-trial investigation in this instance.

In accordance with Article 22 of the Criminal Procedure Code of Ukraine, the court has created all the conditions for realizing the principle of adversarial proceedings, which requires the independent assertion by both the prosecution and the defense of their legal positions, rights, freedoms and legitimate interests in the manners provided for by the Criminal Procedure Code of Ukraine, and equal rights to gather and submit items, documents, and other evidence to the court.

The argument of the accused and their defense attorneys as to the invalidity of the testimony by PERSON_26, PERSON_42, and PERSON_43 due to the existence of certain inconsistencies in their statements, which they gave during the pre-trial investigation and in court, is untenable, as these inconsistencies are due to the passage of a significant amount of time since the events in question, as a result of which a person might not remember certain details.

The lack of information about the official employment of witnesses PERSON_42, PERSON_43 at the kiosk belonging to sole proprietor PERSON_50 and located in the underpass of Imeni O.S. Maselskoho metro station, in the opinion of the court, does not constitute grounds to doubt their testimony, since these witnesses were warned about their potential criminal liability and were sworn in by the court, and the court found no reasons why they would give false testimony against the accused.

As for the defense's argument regarding the bias of witness PERSON_26, who, in the defense's opinion, should be testifying as a victim, since he was wounded, this fact has not been documented, rendering these arguments untenable.

The positions of the accused PERSON_6, PERSON_5, PERSON_4 regarding the non-admission of their guilt are unsubstantiated, not supported by any proper and admissible evidence in the sense of Article 84 of the Criminal Procedure Code of Ukraine, and are refuted by the above information and the facts established during the trial. The court is of the opinion that the accused's assertions regarding their non-involvement in committing the crimes of which they stand accused are motivated by a desire to avoid in any way possible the criminal liability for what they have done. The court deems the evidence that was examined at the hearing to be proper and admissible, as it meets the requires of the Criminal Procedure Code of Ukraine, and the court did not find, nor did the parties prove, that it violates the requirements of Articles 87 or 101-102 of the Criminal Procedure Code of Ukraine.

No other evidence was presented during the trial by the parties to the criminal proceeding, including the defense, which was free to exercise its rights within the scope and in the manner provided by the Criminal Procedure Code of Ukraine, taking into account that the court, while maintaining its objectivity and impartiality in the course of hearing this criminal proceeding, created the necessary conditions for the parties to exercise their procedural rights and perform their procedural duties. Moreover, the court created the appropriate conditions for the accused and their defense attorneys to submit evidence; in particular, from February 2019 onward they were given the opportunity to request this, but the accused, abusing their procedural rights

(Changing defense attorneys, filing unsubstantiated request for the recusal of judges and the prosecutor, and repeatedly filing motions on the same grounds), did not exercise their rights according to the requirements of the Criminal Procedure Code of Ukraine.

Article 91 of the Criminal Procedure Code of Ukraine defines the facts that must be proven in a criminal trial, specifically: the occurrence of a criminal offence (time, place, method and other circumstances of the commission of the criminal offence), the accused person's guilt in committing the criminal offence, the form of guilt, and the motive and purpose of committing the criminal offense. Proof consists in gathering, verifying and evaluating evidence in order to establish facts that have a bearing on the criminal proceedings. The evidence examined and verified by the court in this case, which supports the guilt of PERSON_4, PERSON_6 and PERSON_5 of the charges brought against them, is verified and consistent, and the court has no doubts as to its relevance and admissibility.

According to Article 86 of the Criminal Procedure Code of Ukraine, evidence is admissible if it is obtained in accordance with the procedures provided by said Code. Article 87 of the Criminal Procedure Code of Ukraine provides an exhaustive list of the ground on which evidence may be found inadmissible. The court has no doubt as to the accuracy and objectivity of the aforementioned evidence, as it was obtained without violating the law, is internally consistent, relevant, admissible, and sufficient, as a result of which the court deems it possible to accept that evidence. In accordance with the requirements of Articles 85 and 86 of the Criminal Procedure Code of Ukraine, the court finds the directly examined evidence to be proper, admissible, reliable, and sufficient in its totality for a proper legal assessment of the accused's actions and for finding him guilty.

The court recognizes the examined physical evidence to be proper and admissible, since it meets the requires of the Criminal Procedure Code of Ukraine, and the court did not find, nor did the parties prove, and violations of the requirements of Articles 87 or 101-102 of the Criminal Procedure Code of Ukraine. This physical evidence was obtained in accordance with the proper procedures, i.e., according to the legal requirements for conducting the relevant procedural step and recording its progress and results.

According to Article 17 of the Criminal Procedure Code of Ukraine, no one is obligated to prove his innocence of a criminal offence and may be acquitted if the prosecution fails to prove the person's guilt beyond a reasonable doubt.

According to paragraph 43 of the judgment of the European Court of Human Rights dated February 14, 2008, in the case of *Kobets v. Ukraine*, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact, in the absence of which it cannot be asserted that the guilt of the accused has been proven beyond a reasonable doubt. A reasonable doubt is one based on specific facts and admissible information, accepted as evidence, or the absence of such information, and one that would compel a person to refrain from making a decision on matters of the most importance to him.

According to the precedents of the European Court of Human Rights, the criterion for proving a person guilty of the criminal offense of which he stands accused is that the prosecutor himself must prove the guilt of the accused beyond a reasonable doubt. In issuing its judgment, the court must be convinced beyond a reasonable doubt that each of the material elements of the alleged criminal offense has been proven (*J. Murray v. The United Kingdom*).

The court takes into account the judgment of the European Court of Human Rights in the case of *Scoppola v. Italy* dated 09/17/2009 (application No. 10249/03), which states that a constituent element of the principle of rule of law is the expectation that the court will apply to each criminal the penalty that the legislature deems proportionate.

In the case of *Izmailov v. Russia* (paragraph 38 of the judgment dated 10/16/2008), the European Court of Human Rights established that "in order to be considered proportionate, the interference should correspond to the gravity of the infringement" and should not impose an "individual and excessive burden."

In its judgment dated June 09, 2005 in the case of Baklanov v. Russia and its judgment dated March 24, 2005 in the case of Frizen v. Russia, the European Court of Human Rights stated that “achieving a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual’s fundamental rights only then becomes significant if it is found that the principle of ‘legality’ was observed during the relevant interference and it was not arbitrary.” In order for an interference to be considered proportionate, it must correspond to the gravity of the infringement and not impose an individual and excessive burden on a person, the European Court stated in its judgment of October 16, 2008 in the case of Izmailov v. Russia.

The Constitution of Ukraine states that a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value (Article 3). In addition, Article 27 of the Basic Law of the state guarantees a person’s inalienable right to life, and it is the state’s responsibility to protect this right. These provisions of the Constitution of Ukraine are rooted in provisions of international law, particularly Article 2(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), which states: “Everyone’s right to life shall be protected by law.” A similar provision is contained in Article 6(1) of the International Covenant on Civil and Political Rights (1966): “Every human being has the inherent right to life. This right shall be protected by law.”

At the hearing, the accused claimed that during the pre-trial investigation they were subjected to improper methods of conducting a pre-trial investigation.

However, investigator K.O. Alekhina of the First Investigative Division of the Investigations Department of the Territorial Directorate of the State Bureau of Investigations, located in the city of Poltava, issued an order dated 12/26/2019 terminating the criminal proceeding that had been entered into the Unified Register of Pre-Trial Investigations under No. 4201522000000899 dated October 22, 2015, over alleged criminal offenses provided for by Article 365(1), Article 365(2), and Article 374(2) of the Criminal Code of Ukraine, on the basis of Article 284(1)(2) of the Criminal Procedure Code of Ukraine on the grounds that the actions by officers of the Kharkiv Regional Directorate of the SBU and the Kharkiv Regional Prosecutor’s Office lacked the objective side of the criminal offenses provided for by Article 365(1), Article 365(2) and Article 374(2) of the Criminal Code of Ukraine, i.e., lacked elements of these criminal offenses.

In addition, the judicial panel scheduled a forensic psychological examination of the accused PERSON_4, PERSON_5, and PERSON_6.

According to forensic psychological expert report No. 1632 dated 02/20/2017, in the communicative behavior of PERSON_6 during the video-recorded investigative experiment of 02/27/2015 with his participation as a suspect, there are psychological features inherent to his independent reproduction of the events surrounding the commission of the terrorist act that took place on Marshal Zhukov Avenue in Kharkiv on 02/22/2015 during the peaceful rally/march of citizens “Commemorating the Anniversary of Those Who Died During the Peaceful Euromaidan Protest.” In the video recording of the investigative experiment of 02/27/2015, conducted with the participation of PERSON_6 as a suspect, there are no signs of psychological pressure being exerted on the latter by the persons who took part in this investigative action. In the video recording of the investigative experiment dated 02/27/2015, conducted with the participation of PERSON_6 as a suspect, there are no signs of psychological influence on the latter. The psychological aspects of the video-recorded investigative experiment of 02/27/2015, with the participation of PERSON_6 as a suspect, are characterized by signs of communicative interaction, which is consistent with the individual psychological features of the “closed” communicative position of PERSON_6. In the course of the investigative experiment, PERSON_6 was asked predominantly open-ended questions formulated according to a story comprised of plot fragments, outlining their content direction and directing the construction of the basic algorithms of the latter’s messages according to the specific nature of the investigative action; alternative questions constituted clarifications of the information provided by the suspect; and suggestive questions made up a tiny share of the total number of formulated questions and did not affect the course of reconstructive activity of PERSON_6. In the process of PERSON_6’s recreation of events related to his alleged crimes, during the aforementioned video-recorded investigative action, the latter’s communicative activity is characterized by a difference in behavioral manifestations. PERSON_6 reconstructs in a substantially expansive and nonverbally expressive manner the routes, visual signs (landmarks) of the area, specifics of PERSON_5’s and PERSON_4’s actions during the period relevant to laying and activating the explosive device; the circumstances surrounding the movement of the column; and the situation and circumstances surrounding their departure from the site of the explosion. In the instances where PERSON_6 reconstructs his own actions in the period of time related to laying and activating the explosive device, and in

the instance where he reconstructs his own actions associated with throwing out the mobile phone, the suspect's communicative activity shows a pronounced decrease in detail, substantial convolution of judgments, a decrease in the illustrative nature of facial and pantomime manifestations, and a reference to his lack of visual perception of the explosive device. Taking into account these differences in PERSON_6's verbal and nonverbal production, his communicative behavior in the course of this investigative experiment shows indications of willful adjustment of his reconstructive activity and orientational-adjustive communicative behavior, which is a kind of independent activity (case file v. 7, pp. 113-136).

According to forensic psychological expert report No. 1794/224 dated 02/22/2017, in the communicative behavior of PERSON_5 during the video-recorded investigative experiment of 02/27/2015 with his participation as a suspect, there are psychological features inherent to his independent reproduction of the events surrounding the commission of the terrorist act that took place on Marshal Zhukov Avenue in Kharkiv on 02/22/2015 during the peaceful rally/march of citizens "Commemorating the Anniversary of Those Who Died During the Peaceful Euromaidan Protest." In the video recording of the investigative experiment of 02/27/2015, conducted with the participation of PERSON_5 as a suspect, there are no signs of psychological pressure being exerted on the latter by the persons who took part in this investigative action. In the video recording of the investigative experiment dated 02/27/2015, conducted with the participation of PERSON_5 as a suspect, there are no signs of psychological influence on the latter. The psychological aspects of the video-recorded investigative experiment of 02/27/2015, with the participation of PERSON_5 as a suspect, are characterized by signs of communicative interaction, which is consistent with the individual psychological features of the latter's active communicative position. In the course of the investigative experiment, PERSON_5 was asked predominantly open-ended questions formulated according to a story comprised of plot fragments, outlining their content direction and directing the construction of the basic algorithms of the suspect's messages according to the specific nature of the investigative action; alternative questions constituted clarifications of the information provided by the suspect; and there were no suggestive questions. In the process of PERSON_5's recreation of events related to his alleged crimes, during the aforementioned video-recorded investigative action, the latter's communicative activity is characterized by a richness of verbal production with specific details, consistency, and active behavioral (nonverbal) manifestations; he reconstructs in a substantially expansive and nonverbally expressive manner situation and circumstances related to obtaining the explosive device; reconstructs routes in detail; defines visual signs (landmarks) and features of reconstructed areas; provides a detailed description of PERSON_6's and PERSON_4's specific actions during the period related to laying and activating the explosive device; provides a detailed description of his own actions during the period related to installing and activating the explosive device; reconstructs in detail the situation and circumstances surrounding his departure from the site of the explosion. PERSON_5's nonverbal means of communicative activity is not typical for manifestations of forced motivation to communicate. PERSON_5's verbal and nonverbal production throughout the investigative experiment is expressed by signs of psychological consistency (congruence) and independent reproduction of events during the investigative experiment (case file v. 7, pp. 139-169).

According to forensic psychological expert report No. 1793/223 dated 02/21/2017, throughout the vast majority of the investigative activity, in the communicative behavior of PERSON_4 during the video-recorded investigative experiment of 02/27/2015, with his participation as a suspect, there are psychological features inherent to his independent reproduction of the events surrounding the commission of the terrorist act that took place on Marshal Zhukov Avenue in Kharkiv on 02/22/2015 during the peaceful rally/march of citizens "Commemorating the Anniversary of Those Who Died During the Peaceful Euromaidan Protest." The exception is a single instance where PERSON_4 reproduces the object (trash can) where he threw out his Samsung mobile phone. In this instance, PERSON_4's identification of this place is not

independent. In the video recording of the investigative experiment of 02/27/2015, conducted with the participation of PERSON_5 as a suspect, there are no signs of psychological pressure being exerted on the latter by the persons who took part in this investigative action, for the most part. The exception is a single instance where PERSON_4 reproduces an object (trash can) as the place where he threw out his Samsung mobile phone. In this instance, PERSON_4's identification of this place is formulated under the influence of a suggestive question. In most of the video-recorded investigative experiment dated 02/27/2015, conducted with the participation of PERSON_5 as a suspect, there are no signs of psychological influence on the latter. The exception is a single instance where PERSON_4 reproduces an object (trash can) as the place where he threw out his Samsung mobile phone. In this instance, PERSON_4's identification of this place is formulated under the influence of a suggestive question, and is therefore not independent. The psychological aspects of the video-recorded investigative experiment of 02/27/2015, with the participation of PERSON_5 as a suspect, are characterized by signs of communicative interaction, which is consistent with the individual psychological features of the PERSON_4's restrained communicative activity. In the course of the investigative experiment, the suspect was asked predominantly open-ended questions formulated according to a story comprised of plot fragments, outlining their content direction and directing the construction of the basic algorithms of the suspect's messages according to the specific nature of the investigative action; alternative questions constituted clarifications of the information provided by the suspect; and suggestive questions made up a tiny share of the total number of formulated questions and did not affect the course of reconstructive activity of PERSON_4. In the process of PERSON_5's recreation of events related to his alleged crimes, during the aforementioned video-recorded investigative action, the latter's communicative activity is characterized by a well-established volitional control of his own communicative behavior, active attention, emotionally restrained involvement in the process of his own reproduction, proactive dissemination of verbal messages with specific details, clarifications, references to direct perceptions, indications of his own awareness of the events being reproduced. PERSON_4's nonverbal reactions during the reconstruction of events perform a semantic function and are congruent with his verbal message. In the instances where he reconstructs the situation and circumstances of events related to his own actions when sending the SMS message to PERSON_6's mobile phone, especially understanding his own role and the results of these actions, and disassembling and throwing out the mobile phone, PERSON_4's communicative activity shows signs of orientation-adjusting communicative behavior, which is a type of independent activity (case file v. 7, pp. 172-193).

[...]

After analyzing the evidence presented in this criminal case and evaluating them in aggregate, the court finds unfounded defendants,' PERSON_4, PERSON_5, PERSON_6, allegations about their non-admission of guilt in committing the criminal offense incriminated, as they are refuted by the evidence stated in the sentence, which are objectively consistent with circumstances of the case.

The court, taking into account the above evidence, which was provided to the court and examined during the proceedings, considers the arguments of the defendants' innocence unfounded. Arguments of the accused PERSON_4, PERSON_5, PERSON_6 regarding non-involvement in the crime incriminated, the court regards as a way of defense and an attempt to avoid criminal responsibility for a serious and especially grave crimes, because their arguments are refuted by the above evidence, reviewed during the trial.

Court costs shall be collected from the accused.

In light of the foregoing and pursuant to Articles 349, 369-371, 373, 374, 394, and 395 of the Criminal Procedure Code of Ukraine, the judicial panel

HEREBY RULES:

To find **PERSON_5** guilty of the criminal offenses provided for by Article 263(1) and 258(3) of the Criminal Code of Ukraine, and to sentence him:

- to 7 (seven) years in prison under Article 263(1) of the Criminal Code of Ukraine;

- to life in prison with confiscation of all assets that are his personal property, under Article 258(3) of the Criminal Code of Ukraine.

Pursuant to Article 70(1) of the Criminal Code of Ukraine, by way of absorbing a less severe punishment into a more severe one, to hand PERSON_5 a final sentence for the totality of his crimes in the form of life in prison with the confiscation of all assets that are his personal property.

According to Article 72(5) of the Criminal Code of Ukraine (as amended by Law of Ukraine No. 838-VIII of 11/26/2015), time spent in pretrial detention from 02/26/2015 to 12/28/2019 inclusive shall be counted as time served at the ratio of one day of pretrial detention for two days of imprisonment.

To find **PERSON_6** guilty of the criminal offenses provided for by Article 263(1), Article 27(5) and 258(3) of the Criminal Code of Ukraine, and to sentence him:

- to 7 (seven) years in prison under Article 263(1) of the Criminal Code of Ukraine;

- to life in prison with confiscation of all assets that are his personal property, under Article 27(5) and Article 258(3) of the Criminal Code of Ukraine.

Pursuant to Article 70(1) of the Criminal Code of Ukraine, by way of absorbing a less severe punishment into a more severe one, to hand PERSON_6 a final sentence for the totality of his crimes in the form of life in prison with the confiscation of all assets that are his personal property.

According to Article 72(5) of the Criminal Code of Ukraine (as amended by Law of Ukraine No. 838-VIII of 11/26/2015), time spent in pretrial detention from 02/26/2015 to 12/28/2019 inclusive shall be counted as time served at the ratio of one day of pretrial detention for two days of imprisonment.

To find **PERSON_4** guilty of the criminal offenses provided for by Article 263(1), Article 27(5) and 258(3) of the Criminal Code of Ukraine, and to sentence him:

- to 7 (seven) years in prison under Article 263(1) of the Criminal Code of Ukraine;

- to life in prison with confiscation of all assets that are his personal property, under Article 27(5) and Article 258(3) of the Criminal Code of Ukraine.

Pursuant to Article 70(1) of the Criminal Code of Ukraine, by way of absorbing a less severe punishment into a more severe one, to hand PERSON_4 a final sentence for the totality of his crimes in the form of life in prison with the confiscation of all assets that are his personal property.

According to Article 72(5) of the Criminal Code of Ukraine (as amended by Law of Ukraine No. 838-VIII of 11/26/2015), time spent in pretrial detention from 02/26/2015 to 12/28/2019 inclusive shall be counted as time served at the ratio of one day of pretrial detention for two days of imprisonment.

Pending the verdict's entry into legal force, to replace the pre-trial restriction imposed on:

- PERSON_5, INFORMATION_6, place of residence: ADDRESS_3;

- PERSON_6, INFORMATION_7, place of residence: ADDRESS_5;

- PERSON_4, INFORMATION_8, place of residence: ADDRESS_2,

with release on their own recognizance, effective immediately.

To inform PERSON_5, PERSON_6, and PERSON_4 that they must:

- appear before the prosecutor and the court upon the first summons;
- notify the prosecutor and the court of any change in their place of residence.

To task Prosecutor of the Kharkiv Regional Prosecutor's Office V.L. PERSON_54 with monitoring the convicts' compliance with the terms of their release on their own recognizance.

To take the following steps in relation to the physical evidence once this verdict enters into legal force:

- fragments of polymer material, soil samples, remnants from the explosion, shrapnel from the bodies of the victims, and biological samples of the convicts that are being stored in the physical evidence storage rooms of the Kharkiv Regional Directorate of the SBU (2 Myronosytska St., Kharkiv) – destroy
- ammunition, the RGD-5 grenade with a UZRGM fuse, shrapnel, fragments of explosive devices and substances that are being stored at the warehouse of the Anti-Terrorist Operation of the Kharkiv Regional Directorate of the SBU at 2 Myronosytska St., Kharkiv – destroy
- personal belongings that are now in the possession of the victims – deem them returned to their rightful owners;
- personal belongings of the victims and the service certificate of PERSON_10, which are being stored in the physical evidence storage rooms of the Kharkiv Regional Directorate of the SBU (2 Myronosytska St., Kharkiv) - destroy
- the GAZ 330214 automobile, state license plate NUMBER_40, which is in the possession of PERSON_32 – deem it returned to its rightful owner;
- the documents of officers of the Ministry of Internal Affairs of Ukraine that are held in the criminal case file – destroy
- discs and video materials, compact discs with the information of mobile phone operators, and the flash drive of PERSON_5, which are held in the criminal case file – continue to keep them there;
- the Ford Sierra automobile, state license plate number NUMBER_4, belonging to PERSON_55, which was used by PERSON_5 and is now in the garage of the SBU Directorate at ADDRESS_10 – return to owner; computer belonging to PERSON_5, which is being stored in the physical evidence storage room of the Kharkiv Regional Directorate of the SBU – return to state use by way of confiscation of property belonging to PERSON_5
- the Opel Omega automobile, state registration number NUMBER_7, belonging to PERSON_6, which is in the garage of the SBU Directorate at ADDRESS_10 – return to state use by way of confiscation of property belonging to PERSON_6
- six mobile phones (three Samsungs, two Nokias, one Maxvi) seized from PERSON_5, PERSON_6, and PERSON_4 and PERSON_6's laptop computer, seized from PERSON_4, which are being stored in the physical evidence storage room of the Kharkiv Regional Directorate of the SBU – return to state use by way of confiscation of property belonging to the convicted persons;
- other property seized during the search of PERSON_4 that is held in the criminal case file – continue to keep it there;
- black Transcend 2GB flash drive that is being stored in the physical evidence storage room of the Kharkiv Regional Directorate of the SBU – destroy.

To deny the petition of PERSON_6 to lift the attachment on his land.

To grant in full the civil claims of PERSON_24, PERSON_21, PERSON_14, PERSON_23, PERSON_18, PERSON_2, and PERSON_1.

To collect jointly from PERSON_5, PERSON_6, and PERSON_4, in favor of the state, the costs associated with conducting the forensic expert examinations, in the amount of UAH 95,338.62.

To collect UAH 100,000.00 in moral damages jointly from PERSON_5, PERSON_6, and PERSON_4 in favor of PERSON_24.

To collect UAH 300,000.00 in moral damages jointly from PERSON_5, PERSON_6, and PERSON_4 in favor of PERSON_21.

To collect UAH 200,000.00 in moral damages jointly from PERSON_5, PERSON_6, and PERSON_4 in favor of PERSON_14.

To collect UAH 23,300,000.00 in moral damages jointly from PERSON_5, PERSON_6, and PERSON_4 in favor of PERSON_23.

To collect UAH 18,200,000.00 in moral damages jointly from PERSON_5, PERSON_6, and PERSON_4 in favor of PERSON_18.

To collect UAH 2,600,000.00 in moral damages jointly from PERSON_5, PERSON_6, and PERSON_4 in favor of PERSON_2.

To collect UAH 1,2500,000.00 [sic] in moral damages and UAH 120,352.80 in legal costs jointly from PERSON_5, PERSON_6, and PERSON_4 in favor of PERSON_1.

This verdict may be appealed to the Kharkiv Court of Appeal by filing an appeal via the Frunzensky District Court of Kharkiv within 30 days from the date of its publication.

The verdict shall enter into legal force upon the expiry of the appeal period, if no appeal is filed. If an appeal is filed, this verdict, unless it is overturned, shall enter into legal force once the court of appeal issues its judgment.

To deliver a copy of the verdict to the accused persons and the prosecutor as soon as it is published.

Pursuant to Article 376(3) of the Criminal Procedure Code of Ukraine, the court hereby advises the accused, the defense attorneys, and the victims of their right to file a petition for clemency and their right to review the log of the court session and submit written comments on it.

Presiding Judge

O.V. Horpynych

