



Image: CHRISTOPHER MILLER,
MASHABLE

Rockets hit residential area in Kramatorsk, Ukraine

Civic Solidarity Platform field mission for documentation of war crimes

February 2015

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Cover photo by Christopher Miller for Mashable: Woman in her thirties lies dead in one of Kramatorsk residential districts that came under shell fire on February 10, 2015, Kramatorsk, Ukraine

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EXECUTIVE SUMMARY

On 10 February 2015, at least nine civilians were killed and another 35 injured in a rocket attack on the city of Kramatorsk, in eastern Ukraine. Eight Ukrainian soldiers were also killed and 29 injured as a result of the shelling of the military headquarters at the airbase near Kramatorsk. Residential buildings, the city hospital and the children's hospital also came under fire.

The International Partnership for Human Rights (IPHR) field mission in Ukraine dispatched a special field mission team to investigate the circumstances of the attack and its aftermath. Team members interviewed witnesses and victims, gathered evidence and examined the crime scene. The findings of the mission are outlined in this report.

LOCATION OF THE INCIDENT

The city of Kramatorsk in the northern part of Donetsk Region has been the provisional capital of the Donetsk region following the events surrounding the war in Donbas. The city is situated 44 km from the agreed borderline between Ukrainian authorities and the self-proclaimed Donetsk Peoples Republic (DPR) occupying the territories in eastern Ukraine. Since the Ukrainian army took control of the city in July 2014, Kramatorsk became the administrative center of the Donetsk region and military headquarters of the frontline. The Ukrainian Anti-Terrorist Operation (ATO) command center and compound) are situated at an airbase 4.5 km from the city. Several battalions of National Guard and Ukrainian Army are stationed in the Kramatorsk military base. Ukrainian troops conduct regular launches of tactical missiles («Tochka-U») and multiple missile launch systems («Smerch») from the airbase in the direction of the pro-Russian rebel occupied territories of Donetsk and Horlivka. The Ukrainian anti-missile defense system is also located at the airbase and around the city.

EVIDENCE

The field mission team arrived at the scene of the shelling two hours after the attack took place and were able to inspect the exact sites where the missiles and cluster munitions exploded and hit the ground and the buildings in the area. The team documented the death of a civilian man in one of area hit by the missiles, and collected fragments of cluster submunitions, gunpowder and remnants of missiles from the area. In order to establish the direction and the distance from which the attack took place, the team studied the craters and measured the angles at which the rockets made impact and made the necessary calculations to assess the trajectories of the projectiles using a compass.

Members of the team gathered testimony from six civilian victims who were receiving treatment for their shrapnel wounds and skin burns in the city hospital, examined the victims' injuries studied medical reports and spoke with doctors and medical staff.

Furthermore, team members took photographs and shot videos of the sites where the explosions took place.

SEQUENCE OF EVENTS ON 10 FEBRUARY 2015

Based on cross referencing of witness testimony, the physical location of the event and analysis of the evidence, the following sequence of events has been established.

On Tuesday, 10 February, 2015 at around 12.30 local time the headquarters of the Anti-Terrorist Operation at the airbase on the outskirts of the city and residential areas in the north-east came under shell fire with cluster munitions from the multiple missile launch systems «Smerch». A total of 32 rockets hit an area of approximately 15 km from the airbase across central parts of the city towards the city's northern residential neighborhoods.

As the result of the shelling nine civilians and eight Ukrainian soldiers were killed. Another 35 residents, five of whom are children, received injuries of various severity. All the deaths and injuries of the civilian population were caused by fragments of exploded cluster munitions, which was evident from the many fragments and casing found around the places where the victims' bodies were found and the traces of damage around the areas which were hit. Military objects sustained damage as well as residential buildings and medical institutions within the city.



Cluster sub munitions collected from a wall in the garage complex Venera.
Numerous munitions of this type were found in all locations visited.

ARMS AND FIRE LINE

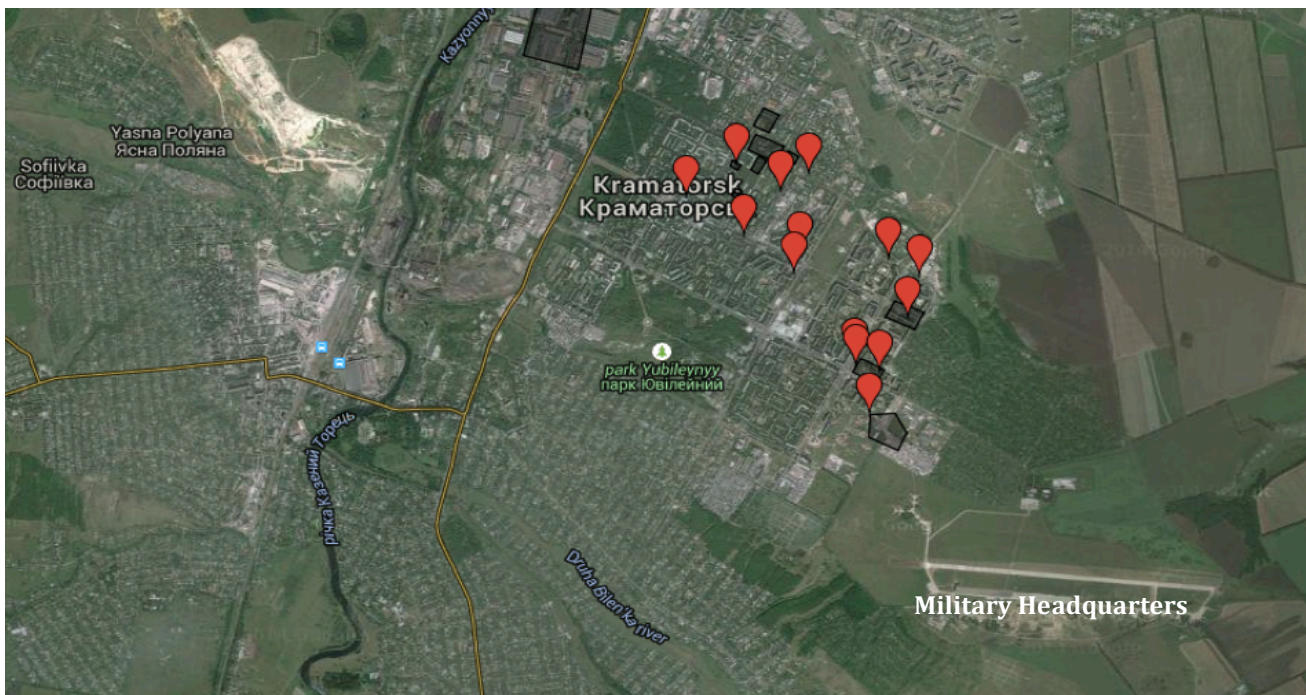
According to information from the ATO headquarters the shelling consisted of 32 projectiles fired from four multiple missile launch systems «Smerch» in one shoot.

The evidence collected by the mission team on the ground confirms the official position of the Ukrainian military. The team established that rockets from the multiple missile launch system «Smerch» were equipped with cluster munitions. The team found and collected numerous fragments and casings of cluster munitions from the ground where the munitions landed. Cluster munitions are packed inside rocket containers that open up after being fired and disperse the sub munitions, which are designed to explode when they hit the ground.

The following table lists the addresses visited by the mission team, the damage recorded and the distance from the Ukrainian military headquarters:

Location	Casualties and damages	Distance
Garage cooperative Venera	One civilian killed. Extensive damage from cluster munitions explosions	1.8 km
Parkova St. 99	Two women killed, one child injured (torn limb). Damage to the area adjacent to kindergarten	2.6 km
Dvortsova St. 50	Woman injured	3.0 km
Dvortsova str 57	Damage to school territory (children were in school at the moment of the blast)	3.4 km
Marata str, 14	Man killed. Extensive damage to residential buildings	4.8 km
Lenina St.	Several civilians injured. Extensive damage to residential buildings	5.0 km
Newkramatorsk machine building factory	Damage to factory building and grounds (workers were present in the factory)	6.5 km

The places where cluster munitions exploded and where the “SMERCH” missiles hit are marked on the map: https://www.google.com/maps/d/edit?mid=zOpD4yJ1C5PI.kgHo-MOMOH_s:



The mission team examined nine points of impact where the «SMERCH» missiles hit. Mine clearing specialists from the Ukrainian armed forces had extracted missile fragments from three of the craters, therefore it was not possible to measure the angle at which the rocket hit the ground in those particular locations. However, at the rest of the locations the group collected fragments of the rockets as evidence, measured the angle at which the missile hit the ground and confirmed the direction from which the missiles were shot through the examination of surrounding damage such as broken tree branches, destroyed balconies, traces on the walls, etc.

The investigation establishes firmly that the shelling came from the South-East direction, azimuth 115-160 degrees. Given the fact that long-range Tornado rockets have a range of over 80 km, they could very well have been fired from the Horlivka area controlled by the pro-Russian combatants.

LEGAL ASSESSMENT

(i) Indiscriminate attacks

An indiscriminate attack is defined as “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” According to international jurisprudence, this rule requires those who plan or launch an attack to take all feasible precautions to verify that the objectives attacked are neither civilians nor civilian objects, so as to spare civilians as much as possible. The indiscriminate nature of the attack relates to both the means and/or to the methods of combat. A weapon which is incapable of distinguishing between civilian and military targets, is by its’ nature indiscriminate. In the specific case of cluster bombs, the International Criminal Tribunal for the former Yugoslavia (ICTY) has held that their use is limited by the prohibition on indiscriminate attacks. In regard to their use in urban areas the ICTY concluded that “a direct attack against civilians can be inferred from the indiscriminate weapon used.” The indiscriminate character of such munitions is supported by the fact that 116 States have joined the Cluster Munitions Convention.

In this case, long range missiles along with unguided cluster submunition were used to attack the airbase and the city where 162 thousand¹ people reside, killing nine civilians and injuring many more. The evidence clearly suggests that the attack on Kramatorsk City by DPR forces on 10 February 2015 was indiscriminate, on the basis of both the nature of the weapon used and the way in which it was deployed. Such an attack is a ‘grave breach’ of the Geneva Conventions, engaging individual criminal responsibility for its perpetrators.

In the context of non-international armed conflicts, the prohibition on indiscriminate attacks is considered to be part of customary international law. Such attacks are also prohibited by Article 3(8) of Amended Protocol II to the Convention on Certain Conventional Weapons applicable to non-international armed conflicts, ratified by Ukraine and the Russian Federation. In addition, indiscriminate attacks are prohibited by the military manuals of both Ukraine and the Russian Federation.

The presence of isolated non-civilian persons amongst the civilian population does not change the civilian character of the population. There is no evidence to indicate that the civilian areas bombed in the attack on 10 February 2015 had lost their civilian status and legal protection from such an attack.

¹ State Statistics Service of Ukraine, Demographic Yearbook Population of Ukraine, 2013

(ii) Direct attack on civilians

Moreover, according to international jurisprudence, an indiscriminate attack of the type which occurred in Kramatorsk on 10 February 2015 may be qualified as a ‘direct attack on civilians, and as such is strictly prohibited and incurs individual criminal responsibility.

(iii) Area bombardment

In response to the argument that the city contained several military objectives – not only the Ukrainian Army ATO at the airport – the bombardment can be qualified as an ‘Area Bombardment’. According to Article 51(5)(a) of Additional Protocol I to the Geneva Conventions, an attack by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects, are indiscriminate and, as such, prohibited.

In the context of a non-international armed conflict, ‘Area Bombardment’ is prohibited by international customary law. This is supported by the fact that both Ukraine and Russia are State Parties to the Amended Protocol II to the Convention on Certain Conventional Weapons, Article 3(9) of which prohibits the use of ‘area bombardment’. This practice is also prohibited by the applicable military manuals of Ukraine and the Russian Federation.

(iv) Proportionality of the weapons used

The multiple missile launch systems «Smerch» are intended to defeat personnel, armored and soft skinned targets in concentrated areas, artillery batteries, command posts and ammunition depots with a maximum radius of impact. The rockets have a stabilization system, but not a guidance package as their design is intended to cover areas of up to 67 hectares and not to target specific points. Therefore, the technical characteristics indicate that MRLS is not precision ammunition and that the principle of proportionality in choosing a military weapon was also violated in the case of Kramatorsk shelling.

CONCLUSION

The IPHR field mission investigated the February 10, 2015 shelling of the residential areas in the city of Kramatorsk, as the result of which nine civilians died, and more than 30 injured.

By analyzing witness testimony, examining evidence including video and photo material, as well as surveying the site of the attack, the field mission team members concluded that the shelling originated from the south-east direction from the territory controlled by the pro-Russian combatants of the DPR. The evidence obtained suggests that the rebel militants used the multiple rocket launch system “SMERCH”, packed with cluster submunition. The line of fire extended from the military airbase through the city center and covered about 15 km of residential city area.

A legal assessment of the attack revealed several grave violations of international customary law: the indiscriminate nature of the attack, the direct attack on civilians and the violation of proportionality. The attack can thus be qualified as a war crime and should be investigated by the relevant authorities in the framework of international law on armed conflicts.

The war in eastern Ukraine has taken more than 6,000 lives and driven nearly a million people from their homes. The documented incident outlined in this report is one of dozens of recent attacks resulting in innocent civilian casualties. Not one of these incidents has resulted in the identification and punishment of the perpetrators.