

Eastern Ukraine, OHCHR Report on the Situation: November 2016 - February 2017

INTRODUCTORY TEXT: *This report by the Office of the United Nations High Commissioner for Human Rights outlines some challenges to both international human rights law and international humanitarian law posed by the situation in Ukraine, including issues dealing with conduct of hostilities, detention, humanitarian access and the impact of armed group structures on the human rights of affected persons.*

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

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[**Source:** Office of the United Nations High Commissioner for Human Rights, "Report on the human rights situation in Ukraine: 16 November 2016 to 15 February 2017", Available at: http://www.ohchr.org/Documents/Countries/UA/UARepor17th_EN.pdf (footnotes omitted)]

[...]

1. Executive summary

[...]

3. Since the conflict broke out in eastern Ukraine in the Donetsk and Luhansk regions in April 2014, it has been exacerbated by the inflow of foreign fighters, and supply of ammunition and heavy weaponry, reportedly from the Russian Federation. From mid-April 2014 to 15 February 2017, OHCHR recorded 33,146 casualties in the conflict area in eastern Ukraine, among civilians, Ukrainian armed forces and members of the armed groups, as well as extensive damage to property and critical civilian infrastructure. Countless families have

lost members, had members injured, and lost property and their livelihoods as parties to the conflict continued to disregard and violate international humanitarian law and human rights law. As the armed conflict continues, its effects are being felt throughout Ukraine, as combatants return home from the front, displacement continues for many, and relatives grieve the loss of loved ones who have died, are detained or remain missing.

4. Spikes in hostilities in November and December 2016, and the drastic escalation over a very short time span at the end of January through the beginning of February 2017 caused damage to critical civilian infrastructure, including schools and medical facilities, further endangering civilians and disrupting essential water, electricity and heating services amid freezing temperatures. [...]

[...]

7. Government forces and armed groups continued to violate and abuse the rights to life, liberty, security and physical integrity. In addition to cases that surfaced during the reporting period, OHCHR continued to document summary executions, disappearances, arbitrary deprivation of liberty, torture and ill-treatment that occurred in 2014, 2015 and earlier in 2016. The documentation of past and recent cases remains critical for the purpose of future accountability and for the memory of victims.

[...]

9. Accountability is critical and depends on the functioning of an independent and robust judiciary. While some progress has been observed in the investigations and proceedings related to the violence on Maidan in 2014, OHCHR is concerned that more than two and a half years since the violence in Odesa in 2014, no one has been held accountable for the death of 48 people. OHCHR has observed low levels of trust in the judiciary, mostly resulting from frequent abuses of due process, including undue delays, and a failure to ensure proceedings that comply with fair trial guarantees, including interferences with the judicial process. These findings stem from unfettered access to Government detention facilities, where OHCHR has been able to conduct numerous confidential interviews with detainees in various detention facilities over the reporting period.

10. Armed groups of the self-proclaimed 'Donetsk people's republic' and the self-proclaimed 'Luhansk people's republic' continued to detain individuals. During two permitted visits to places of deprivation of liberty, OHCHR was not given the opportunity to conduct confidential interviews with detainees, despite explicit requests to do so. This heightens concerns that the conditions in which individuals are deprived of their liberty by armed groups may amount to ill-treatment and that they may be subjected to torture, including sexual and gender-based violence. OHCHR emphasizes that any future visits must be conducted in line with international standards. OHCHR has noted the persistent vulnerability of people living in territory controlled by armed groups to arbitrary and selective sanctions through an expanding system of what the armed groups

refer to as 'courts', 'judges', and 'prosecutors'. With the 'all for all' exchange process stalled, it is critical that rights of all people detained in connection with the conflict and of the nearly 9,000 pre-conflict detainees who languish in detention facilities now under the control of armed groups be respected, including their requests to be transferred to Government custody.

[...]

1. Rights to life, liberty, security, and physical integrity

1. A. International humanitarian law in the conduct of hostilities

18. [...] The situation in Donetsk and Luhansk regions remained tense and dangerous for civilians as the parties to the conflict continued to maintain positions in close proximity to villages and towns near the contact line in violation of international humanitarian law. In particular, military and armed group personnel continued to embed their hardware in civilian neighbourhoods including homes, to carry out indiscriminate shelling and to use explosive weapons with wide-area effects in populated areas. [...]. Indiscriminate shelling had a serious impact on civilian infrastructure, depriving tens of thousands of people of life-saving services, including heating, water and electricity, and triggering additional humanitarian needs. While the majority of civilians, in the areas of combat, hid in their basements, up to 500 people were evacuated from affected areas on both sides of the contact line, including 125 children, 48 of whom were unaccompanied.

19. OHCHR observed the continued use of civilian property by Ukrainian Armed Forces with military positions in many residential areas along the contact line, endangering civilians in these populated areas. In November 2016, OHCHR visited Lopaskyne, for the fourth time in 2016, in response to residents' concerns that exchanges of fire had increased dramatically. Despite interventions with the head of the Civil Military Administration in Trokhizbenka, OHCHR observed that Ukrainian forces remained positioned in at least three homes and were using one house as an observation point.

20. OHCHR collected consistent testimonies from residents that Ukrainian Armed Forces had fired from positions inside villages and towns, often attracting return fire. Such conduct put civilians in the line of fire, and runs contrary to the obligation of the Ukrainian Armed Forces to take all feasible measures to spare civilians from harm.

21. In a few cases, local administrations have responded to concerns that military presence exposes civilians to danger and harm. For instance, after a serious shelling incident on 29 August 2016 in Kamianka, Ukrainian Armed Forces moved their military positions from the town to nearby fields. Residents told OHCHR during the reporting period that since then, shells no longer hit the village. A couple who had remained in Avdiivka was relocated to a dormitory by local authorities "for the duration of the security operation." On 27 December 2016, in Marinka, the military removed a checkpoint located 150 meters from School No. 2, following OHCHR and other actors' interventions with the Civil Military Administration. Such actions illustrate the concrete steps which Ukrainian authorities can take toward compliance with their obligations under international

humanitarian law.

22. In territory controlled by the armed groups, residents continued to express distress with shelling by armed groups from densely populated neighbourhoods of Donetsk city, inviting return fire which often harms civilian infrastructure. OHCHR expresses its deep concern that a number of positions of 'Donetsk people's republic' armed groups are located within or near densely populated areas, endangering the lives of civilians.

23. OHCHR witnessed the devastating impact of explosive weapons with wide-area effects, such as mortars and artillery, including multiple-launch rocket systems, used by both the Ukrainian Armed Forces and armed groups in residential areas. The OSCE Special Monitoring Mission, being tasked to verify their withdrawal from the contact line, continued to report that the sides do not cooperate by not providing baseline information. Moreover, the OSCE Special Monitoring Mission documented the presence of the aforementioned weapons in areas from which they should have been withdrawn.

24. During the escalation of hostilities between 29 January and 3 February, critical civilian infrastructure and facilities sustained heavy damage due to indiscriminate shelling of populated areas with explosive weapons with wide-area effects. OHCHR confirmed that two hospitals, a polyclinic, a dental clinic, and a kindergarten were damaged by shelling in Makiivka and Donetsk city. OHCHR staff in Donetsk heard explosions over five days, from 29 January through the night of 2 February, and on 2 February saw a clearly marked ambulance in Donetsk had been damaged by shrapnel.

25. Indiscriminate shelling against military targets in densely populated areas also damaged water and electrical facilities and their supply networks, with knock-on consequences to the centralized heating system. In Donetsk region, shelling in January and February 2017 cut off the power supply to four water filtration stations and damaged water pipes, depriving 1.1 million residents on both sides of the contact line of access to water for periods of between one and three days, and compromised the sustainable supply of clean water to Mariupol city. In Avdiivka, Donetsk city, Dokuchaievsk, parts of Makiivka, and Yasynuvata, many households had no heating during a period of below freezing temperatures and hospitals had no access to water, resulting in wide ranging humanitarian consequences and impacting residents' rights to health and an adequate standard of living.

26. On 22 November 2016, damage to a water pipeline running through the 'no-man's land' left 40,000 residents of the Government-controlled town of Toretsk with no access to water for 10 days. Exchange of fire between Government forces in Avdiivka and the 'Donetsk people's republic' armed groups in Yasynuvata repeatedly disrupted the services of the Donetsk Filter Station which serves 345,000 people on both sides of the contact line. Also, continuous shelling has obstructed the restoration of gas supplies for about 15,000 people living in the Government-controlled Marinka and Krasnohorivka. The gas supply to the two towns stopped more than two years ago due to shelling damage.

27. OHCHR is concerned that the Government forces and armed groups position themselves near water

facilities in Donetsk region. During the reporting period, OHCHR documented military or armed group presence about 200 meters from Donetsk Filter Station, and in the immediate proximity of the water treatment facilities in Dokuchaievsk, at the pumping station in Maiorsk, and in close proximity to the backup reservoir in Avdiivka. This heightens the risk of damage of these objects, which are indispensable for the survival of the civilian population, as they provide water to 3.5 million people on both sides of the contact line. There has also been shelling in the vicinity of five water facilities close to the contact line that store, between them, almost 350 metric tons of chlorine, posing a major threat to public safety.

[...]

D. Summary executions, disappearances, arbitrary detention, and torture and ill-treatment

[...]

37. During the reporting period, OHCHR continued to receive and verify allegations of summary executions, disappearances, unlawful and arbitrary detention and torture and ill-treatment of Ukrainian soldiers, civilians and individuals associated with armed groups, committed in 2014, 2015 and 2016. These allegations referred to the armed groups and Government armed forces and law enforcement agents as perpetrators. Several victims and witnesses interviewed by OHCHR either did not want to share essential information, or did not consent to their accounts being publicly reported for fear of reprisals against their relatives or friends living on the opposite side of the contact line.

[...]

3. Unlawful and arbitrary detention, torture and ill-treatment

42. In the course of prosecuting individuals for conflict-related charges, Ukrainian authorities continued to detain people arbitrarily. [...]

[...]

Armed groups

45. During the reporting period, armed groups of 'Donetsk people's republic' and 'Luhansk people's republic' continued to detain individuals whom they suspected of affiliation with the Ukrainian Armed Forces or law enforcement institutions, or for having 'pro-Ukrainian' views. [...]

[...]

47. Patterns of detention by the armed groups differ. The 'Donetsk people's republic' armed groups initially hold some individuals for 10 to 30 days in so-called 'administrative detention' in ITT and release them after finding them 'non-complicit', while others are detained for longer, often indefinite, periods of time and placed either in ITT, SIZOs, or other places of detention. The 'Luhansk people's republic' 'ministry of state security' holds individuals for an initial period, prior to transferring them to SIZOs. [...]

[...]

4. Access to places of detention

51. During the reporting period, OHCHR continued to advocate for full and unhindered access to places of deprivation of liberty and for opportunities for repeated confidential interviews with detainees by international monitors in accordance with international human rights law and international humanitarian law.

52. In the territory controlled by the Government, OHCHR continued to enjoy access to 51 official places of detention. During the reporting period, OHCHR thus visited SIZOs in Bakhmut, Dnipro, Kharkiv, Kyiv, Mariupol, Mykolaiv, Odesa, Poltava, Starobilsk, Vilniansk and Zaporizhzhia and interviewed in private 73 conflict-related detainees.

53. In territory controlled by armed groups, OHCHR was only allowed to visit the Seleznivka women's penal colony (Perevalskyi district, Luhansk region) and Luhansk SIZO, on 19 November 2016 and 7 February 2017 respectively. Although OHCHR was able to talk to several detainees during those visits, confidential interviews in line with international standards were not allowed. Visits to other detention facilities, requested by OHCHR, and specific requests to visit a number of conflict-related detainees were also not satisfied. Lack of access to persons detained prevents any independent oversight, and makes it impossible to assess the possible occurrence and extent of ill-treatment, acts of torture and sexual and gender-based violence in places of deprivation of liberty operated by armed groups. OHCHR emphasizes that any future visits must be conducted in line with international standards and OHCHR methodology.

[...]

III. Accountability and administration of justice

A. Accountability for violations and abuses in the east

[...]

64. On 13 December 2016, the SBU [Security Service of Ukraine] reported that since the beginning of the conflict they interviewed almost 1,500 soldiers detained and released by the armed groups. According to the SBU, a majority testified to being subjected to torture and ill-treatment (including "amputation of limbs,

strangling, electrocution, infliction of burning wounds, forcing under penalty of death to kill other captives, permanent beatings"). On 14 February 2017, the SBU reported detaining a member of the "Donetsk people's republic" armed groups suspected of torturing Ukrainian soldiers. However, such cases remain rare, with most individuals detained by the Ukrainian authorities in connection with the conflict prosecuted for their affiliation with the armed groups.

65. The Military Prosecutor's Office has also stepped up its investigations of armed group abuses, and is currently conducting an investigation into alleged killings and ill-treatment of detainees and civilians, including acts that may amount to torture, forced labour and pillage in Donetsk and Luhansk regions perpetrated by members of the 'Donetsk people's republic' and 'Luhansk people's republic' armed groups, under Ukrainian criminal law, international humanitarian law, and international criminal law. The Military Prosecutor's Office has identified over 3,000 and interviewed over 800 victims of armed group conduct in eastern Ukraine, most of whom were subject to ill-treatment in the course of detention. In the course of the investigation, the Military Prosecutor's Office charged a 'Donetsk people's republic' armed group commander who has since been killed, and a commander of the "All-Great Army of Don" armed group of the 'Luhansk people's republic' for issuing orders to inflict bodily injuries, torture and abuse on detainees.

66. OHCHR welcomes the Government's efforts to investigate allegations of arbitrary

detention and ill-treatment allegedly committed by SBU officers in Odesa and Zaporizhzhia, but notes that out of thirteen incidents of ill-treatment investigated, only one has led to an indictment. OHCHR recalls that the Government bears primary responsibility to conduct full-scale investigations into human rights violations and prosecute their perpetrators, particularly when they have allegedly been committed by the security forces. Since its deployment in Ukraine in 2014, OHCHR has observed that allegations of arbitrary detention, torture and ill-treatment by SBU officials perpetrated in the course of pre-trial investigations are often disregarded by prosecutors. In one such case monitored by OHCHR, the Office of the Military Prosecutor said that there was insufficient information to launch an investigation. In another case, although an investigation was launched by the Office of the Military Prosecutor, no concrete investigative steps have been taken.

67. OHCHR also takes note of ongoing investigations and prosecutions of alleged

abduction, torture and ill-treatment of civilians by members of the voluntary battalions, including the special police patrol company 'Tornado', 24th separate storm battalion 'Aidar' and 2nd special battalion 'Donbas'. There are, however, serious concerns that the superiors who ordered, facilitated or otherwise contributed to the commission of the alleged crimes by the 'Aidar' and 'Donbas' battalions will continue to evade justice, while they enjoy impunity as acting Members of Parliament. OHCHR urges the Government to take all possible steps to ensure the victims' right to an effective remedy, as well as the rights of the accused to a fair trial.

68. OHCHR continued to monitor the trial of two SBU officers accused of killing Oleksandr Ahafonov on 14 August 2014. Despite the involvement of police officers in the arbitrary arrest and transfer of Ahafonov to the SBU, none of the investigations conducted examined their culpability. As of 15 February 2017, both accused continued to serve as SBU officials. The case also raises concerns regarding command responsibility, as to date no charges have been brought against their superiors.

B. Human rights impact of armed group structures

69. OHCHR continued to monitor the human rights impact of what the armed groups refer to as 'courts', 'judges', and 'prosecutors' in territory they control. OHCHR recalls that both 'Donetsk people's republic' and 'Luhansk people's republic' armed groups are bound by international humanitarian law, and *prima facie* run afoul of rules prohibiting sentencing and carrying out of executions without previous judgment pronounced by a regularly constituted court, offering essential guarantees of independence and impartiality.

70. In December 2016, the 'Luhansk people's republic' announced that it was going to establish a 'supreme court' in early 2017. According to reports of the 'supreme court' of the 'Donetsk people's republic', in 2016 'courts of general jurisdiction' took up 16,919 criminal cases against 18,725 individuals (including 5,876 people deprived of their liberty) and 'decided' on 12,994 of these cases against 13,847 individuals. In 2016, each 'judge' of 'courts of general jurisdiction' of 'Donetsk people's republic' heard an average of 1,594 cases. Number of 'judges' in 'courts of general jurisdiction' has reportedly increased from 32 in 2015 to 47 in 2016. In view of the limited number of 'judges' the total number of 'cases' heard raises concerns that essential guarantees and human rights standards pertaining to fair trial were not upheld.

71. Through interviews with civilians and military persons detained by the armed groups in relation to the conflict during the reporting period, OHCHR noted that legal counsel was not provided timely and on a systematic basis. The office of the 'prosecutor general' of 'Donetsk people's republic' reported that they had 'convicted' three civilians accused of espionage for transmitting information on the fortifications and checkpoints of the armed groups to Government forces, and 'sentenced' them to up to 12 years in prison.

72. OHCHR is concerned that 'sentences' imposed may amount to the war crime of sentencing without due process as these structures do not comply with the prohibition of sentences passed by a regularly constituted court affording all judicial guarantees.

[...]

V. Economic and social rights

[...]

A. Impact of restrictions on humanitarian access

110. The denial of access and adverse environment for humanitarian workers has severely limited their ability to implement humanitarian programmes, including income generating activities and protection. This has exacerbated access to livelihoods and employment in territory controlled by armed groups. According to the UN World Food Programme, up to 3.2 per cent of the population in territory controlled by armed groups have turned to high risk jobs such as illegal mining or have joined the armed groups to secure their livelihood.

111. Due to restricted access for humanitarian workers to certain places and their inability to conduct demining activities, residents in the conflict-affected areas have been unable to undertake farming and agricultural activities due to unexploded ordnance (UXO) and ERW contamination and the constant risk of shelling and sniper fire. Some people have been injured while undertaking such activities.

112. Those displaced and living near the contact line and in the territory controlled by armed groups have been particularly affected by restrictions on humanitarian assistance. Due to the low presence of humanitarian organizations and severely limited employment opportunities in rural areas, IDPs living in non-urban zones face substantially greater difficulties than those residing in cities.

113. Armed groups have taken steps to expel humanitarian actors and limit their activities. OHCHR is concerned that by banning the activities of a large international NGO, confiscating its property and humanitarian goods, 'Donetsk people's republic' armed groups have denied humanitarian relief to 140,000 beneficiaries. OHCHR recalls that denying humanitarian access and relief operations restricts or prevents the enjoyment of relevant economic, cultural and social rights, such as the rights to food and water and to health resulting in serious human rights violations that can lead to international legal repercussions.

114. On 17 January 2017, the 'Luhansk people's republic' adopted 'regulations' introduced limitations on the transportation of goods. Unclear rules and lack of communication between the armed groups of the self-proclaimed 'republics' have already resulted in the delay of humanitarian deliveries to territory controlled by 'Luhansk people's republic' armed groups through territory controlled by 'Donetsk people's republic' armed groups. On 26 January, a humanitarian convoy of 23 trucks loaded with medicines and construction materials was denied passage at Novotroitske checkpoint for a day. Another humanitarian convoy, also of 23 trucks, could not enter the armed groups controlled territory from 3 to 14 February. OHCHR recalls the obligation by all parties to a conflict to allow and facilitate rapid and unimpeded passage of humanitarian assistance to civilians in need.

Discussion

I. Classification of the Situation and Applicable Law

1. (*Para. 3*) How would you classify the situation in Eastern Ukraine? If IHL applies, would you consider that there is one conflict or several parallel conflicts to be analysed separately? Based on the information in *para. 3*, what criteria need to be met in order for the conflict to be governed by IHL of IACs? Are then the 'Luhansk

people's republic' and the 'Donetsk people's republic' also bound by IHL of IACs? Are they able to comply with those rules? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1)

2. (*Paras 7, 20-21, 27, 51, 65, 69, 70 and 72*)

a. What legal regimes are applicable to this situation? For each of the legal regimes you list, are they equally binding on all the parties involved in the conflict? What bodies of law does OHCHR invoke in the paragraphs referenced? Is it competent to invoke all these bodies of law? Why/Why not?

b. (Para. 7) The report reads, "Government forces and armed groups continue to violate and abuse the rights to life, liberty, security and physical integrity" (emphasis added). Why do you think the phrase in italics has been used in this case?

II. Conduct of Hostilities

3. (*Paras 18, 23*) Does IHL impose any particular obligations on parties engaged in fighting in densely populated areas? If so, what are these? Does IHL prohibit the use of explosive weapons with wide-area effects in densely populated areas? How is the use of such weapons regulated by IHL? Do you think that the way IHL presently regulates this issue is sufficient? (P I, Arts 51(4) - 51 (8) and 58(b); CIHL, Rules 12-24)

4. (*Paras 18-20, 22*) Does IHL prohibit armed forces or armed groups from stationing themselves "in close proximity to villages and towns"? Does it prohibit armed forces or armed groups from using civilian property for military purposes? Houses as observation posts? What are the consequences incurred if civilian property is used for military purposes? If a Party chooses to locate military objectives in or near civilian areas, does this liberate its adversary from complying with the principles of precaution and proportionality in targeting those objectives? (P I, Arts 51(7) and (8), 58(b), CIHL, Rule 23)

5. (*Para. 21*) What does the fact that attacks ceased after armed forces withdrew from the centre of villages indicate about the respect of IHL by the attackers?

6. (*Paras 18, 24-27*) Is the disruption of critical services as described in these paragraphs a violation of IHL? IHRL? Both? Do the existing rules of IHL extend to cover "knock-on consequences" (*para. 25*) or reverberating effects of shelling? What rules of IHL do you think we can use to analyse the legality of the conduct described? (P I, Arts 51(5)(b) and 57(2)(a); CIHL, Rules 14, 15, 17-19)

7. (*Para. 27*) Please state the IHL rule that is in danger of being violated by shelling in the vicinity of water facilities that store between them almost 350 metric tons of chlorine. Is this rule applicable in NIACs?

III. Deprivation of Liberty

8. (*Paras 42, 45 and 47*) Does IHL of NIACs authorize detention by armed groups? In the case of crimes committed? For preventive purposes (i.e., administrative detention)? Do you think that detention of persons who have "pro-Ukrainian views" (*para. 45*) is in keeping with IHL? How else can an armed group prevent inhabitants of a territory it controls from transmitting information to the government? Is it realistic that IHL or Human Rights do not allow it to prevent such transmission? (GC I-IV, Art. 3; P II, Arts 5 and 6)

9. (*Paras 10, 51-53, 64-65*)

a. In NIACs, are all parties to the conflict obliged to allow access to persons deprived of their liberty for reasons related to the armed conflict? If so, to whom must such access be granted? In favour of whom must such access be granted? Fighters? Civilians? Both? Would your responses to any of the above questions be different if the situation was an IAC instead of a NIAC? (GC III, Arts 125 and 126; GC IV, Arts 76(6), 116, 142 and 143; P II, Arts 4 and 5; CIHL, Rules 124 and 126)

b. Why does OHCHR insist that access to persons deprived of their liberty should be guaranteed? Why does

it insist that visits to such persons be conducted on the basis of international standards (e.g., possibility to conduct confidential interviews, as mentioned in *para. 53*)? Where do you find those international standards? Can they be found anywhere in IHL? (P II, Arts 4 and 5; GC III, Art. 126; GC IV, Art. 143; CIHL, Rules 124 and 126)

c. Why was OHCHR able to see the detainees of the armed groups in East Ukraine? Do they have a right to a visit? Who has a right to see detainees during an armed conflict according to IHL? (GC III, Art. 126; GC IV, Art. 143; CIHL, Rules 124 and 126)

d. Why was it important to conduct confidential interviews with the detainees?

IV. Judicial Guarantees

10. (*Paras. 69 – 72*)

a. Does IHL envisage detention, trial and sentencing of individuals in NIACs? Only by States? Also by armed groups?

b. The OHCHR report mentions ‘courts’, ‘judges’ and ‘prosecutors’ of the ‘Luhansk people’s republic’ and the ‘Donetsk people’s republic’ always between inverted commas. Why? Why do Art. 3 common to GC I-IV and Art. 6 of AP II not put the term court between inverted commas? May an armed group lawfully establish a court under IHL?

c. The OHCHR report is very critical of judicial structures set up by armed groups, noting that these fall foul of IHRL fair trial guarantees and essential safeguards. Do you agree with these criticisms? Are these human rights law standards applicable to armed groups?

d. Based on the wording of Common Article 3, what do you conclude about the ability of armed groups to establish courts? What guarantees must a court fulfill under GC I-IV, Art. 3? Could these conditions be satisfied by a court established by an armed group? What particular requirements would be difficult for courts established by armed groups to fulfill?

e. How are Art. 6 (2) AP II and Art. 75 AP I different from Common Article 3 as concerns the guarantees a court must fulfill? Do these provisions apply to the situation in Eastern Ukraine?

f. Could a government soldier ever be tried by a court established by an armed group? For the mere fact of having participated in hostilities? For violations of IHL? Does IHL prohibit parties to NIACs from trying members of the adverse armed forces for the mere fact of having participated in hostilities?

g. Bringing enemies to trial presupposes that they have been detained. Are non-State armed groups entitled to detain government soldiers? Does IHL authorize armed groups to detain enemies, or does it simply foresee that such detention will occur when it regulates treatment of detainees? (GC I-IV, Art. 3; P II, Art. 5)

h. (*Para. 72*) OHCHR mentions it is concerned that sentences imposed by courts of armed groups may amount to the war crime of sentencing without due process. Do you agree? In what ways could this conclusion clash with the obligations upon all parties to NIACs, including non-State parties, to comply with the obligations of Common Article 3?

V. Humanitarian Assistance

11. (*Paras 110-114*)

a. Do providers of humanitarian aid require permission to deliver their aid? In IACs? In NIACs? In NIACs, do

these entities have to ensure the consent of the territorial State or of the rebel group(s) in question? Of both? Only of the belligerent controlling the territory in question? (GC IV, Art. 59; GC I-IV, Art. 3; P II, Art. 18; CIHL, Rule 55)

b. Does an “obligation by all parties to a conflict to allow and facilitate rapid and unimpeded passage of humanitarian assistance to civilians in need” (*para. 114*) exist under IHL? What are the “international legal repercussions” (*para. 113*) of denying humanitarian access?

c. May the belligerents subject the delivery of assistance to conditions? If so, what are these conditions? What considerations might justify a denial of humanitarian aid? (GC IV, Art. 59; P II, Art. 18; CIHL, Rule 55)

VI. Respect

12. (*Paras 9, 66-68*) Are domestic Ukrainian courts obliged to prosecute IHL violations? (P I, Arts 80(1) and 86(1). See also GC I, Art. 49(2); GC II, Art. 50(2); GC III, Art. 129(2); GC IV, Art. 146(2))

13. (*Para. 21*) Although the OHCHR report documents many potential violations of international law, this paragraph also lists a few instances where the law was respected. In your opinion, what made the Ukrainian armed forces comply with the requests? Do you believe such examples of respect should be acknowledged and publicized? Why/Why not?

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