

Eastern Ukraine, Attacks Against and Military Use of Schools

INTRODUCTORY TEXT: *Does International Humanitarian Law protect schools and educational facilities as civilian objects or as specifically protected objects? Buildings dedicated to education are often attacked or used to carry out hostile acts. This case examines the challenges of respecting schools and educational facilities in the context of the conflict in Eastern Ukraine.*

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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Human Rights Watch, Studying under Fire; Attacks on Schools, Military Use of Schools During the Armed Conflict in Eastern Ukraine

[**Source:** Human Rights Watch, “Studying Under Fire; Attacks on Schools, Military Use of Schools During the Armed Conflict in Eastern Ukraine,” 11.02.2016. Available at: <https://www.hrw.org/report/2016/02/11/studying-under-fire/attacks-schools-military-use-schools-during-armed-conflict> (footnotes omitted)]

[...]

I. Background

The Armed Conflict in Eastern Ukraine

[1] Following the February 21, 2014 ousting of President Viktor Yanukovich, [...] violence sporadically raged in several cities in eastern Ukraine between crowds of people who supported the uprising in Kiev and crowds who opposed it.

[2] By mid-March, groups of armed militants, initially calling themselves “self-defense units,” seized and occupied administrative buildings in several cities, particularly Donetsk and Luhansk. Their demands ranged from making Ukraine a federation, to separation of their regions from the rest of Ukraine, to joining Russia.

[3] In April 2014, the militants that occupied the regional administration building in Donetsk announced the establishment of the “Donetsk People’s Republic” (DPR). The militants in Luhansk declared the establishment of the “People’s Republic of Luhansk” (LPR). Armed militants set up dozens of checkpoints and established armed presences of various degrees in and around several other cities, towns, and villages in the Luhansk and Donetsk regions.

[4] In mid-April 2014, the Ukrainian government’s State Security Service and Interior Ministry began counterinsurgency operations, which the government called an “anti-terrorist operation.” On May 11, anti-Kiev groups proclaimed victory in referenda they organized on the independence of the Donetsk and Luhansk regions. On May 17, Ukraine’s prosecutor general designated the “Donetsk People’s Republic (DPR)” and the “People’s Republic of Luhansk (LPR)” and all their “structures” as “terrorist organizations” under Ukrainian law.

[5] In the lead-up to Ukraine’s May 25, 2014 presidential election, DPR and LPR militants issued “decrees” forbidding the vote in those regions and threatening to execute anyone who took part in the elections there. In the weeks before the vote, armed militants in both regions raided and seized district election offices, destroyed equipment and paperwork, and abducted and threatened electoral commission staff and members of their families.

[6] The Ukrainian government’s counter-insurgency operations intensified after the election, followed by an escalation in ongoing hostilities and expansion of sporadic armed clashes into other areas of Donetsk and Luhansk regions.

[7] Since the beginning of armed clashes in eastern Ukraine, the Russian government made clear its political support for the militants and clearly exercised influence over them. Mounting evidence, including reports and satellite images from NATO and the capture of Russian soldiers within Ukraine, exposed Russian forces’ direct involvement in military operations, constituting an international armed conflict between Russia and Ukraine.

[8] After months of intensive fighting and following a September 2014 ceasefire agreement, parliament passed a law granting three years of semi-autonomy to rebel-controlled areas. In November, after insurgents organized elections in the Donetsk and Luhansk regions, which the Ukrainian government deemed illegal,

President Petro Poroshenko requested that parliament repeal the law.

[9] Hostilities hit a peak when pro-Russian militants seized control of the strategically important town of Debaltseve and its vicinity. After new rounds of negotiations, in February 2015 the Minsk II accords established another ceasefire which also ultimately did not hold.

[10] Intense fighting led to the complete collapse of law and order in rebel-controlled areas. Militants attacked, beat, and threatened anyone that they suspected of supporting the Ukrainian government, including journalists, local officials, and political and religious activists, and carried out several summary executions. They also subjected detainees to forced labor and kidnapped civilians for ransom, using them as hostages.

[11] In November 2014, the government of Ukraine withdrew social services support—including budgets for schools, hospitals, pensions, and social security—in rebel-controlled areas. Between July and December 2015, militants who exercised effective control over parts of the Donetsk and Luhansk regions denied authorization to most humanitarian agencies and human rights groups and expelled leading humanitarian groups from the DPR and the LPR. The majority of humanitarian groups that had worked in areas not controlled by the government had to suspend their operations in those areas, so people still residing in those areas had even more limited access to assistance. The fighting interrupted access to water and heating, and in January 2016 the UN children's agency UNICEF estimated that some 2.9 million people, including many children, are at risk due to a lack of heating and drinking water as the result of damaged infrastructure.

[12] Between April 2014 and November 2015, mortar, rocket, and artillery attacks killed over 9,000 people—including civilians, Ukrainian government forces, and rebel fighters—in the Donetsk and Luhansk regions and injured at least 20,000. Both armed insurgents and government forces violated the laws of war by using weaponry indiscriminately, including unguided rockets in civilian areas. Both sides fired salvos of Gradrockets into heavily populated civilian areas. Both sides have used cluster munition rockets, banned by 116 countries for the danger they pose to civilians.

Schools: Destruction, Damage, and Renovation

[13] According to Ukraine's Ministry of Education and Science, 119 schools and kindergartens were damaged by the fighting in government-controlled territory between April 2014 and November 2015. Additionally, 675 schools and kindergartens in the rebel-controlled parts of the Donetsk region, and approximately 200 in the rebel-held Luhansk region, have been damaged or destroyed, according to the de facto rebel authorities.

[...]

[14] Renovation efforts in non-government controlled areas are hindered by lack of funding and ongoing restrictions on travel between rebel-controlled and government-controlled areas, imposed both by the government of Ukraine in January 2015 and by the de facto rebel authorities.

[...]

II. Attacks on Schools

[15] Human Rights Watch documented 15 attacks on schools that were not being occupied or used by the military and therefore did not appear to constitute military objectives. Targeted attacks on educational institutions that do not constitute military objectives and indiscriminate attacks that fail to distinguish civilian objects such as schools, are prohibited under international criminal law and the laws of war, and can be prosecuted as war crimes. It is also prohibited to launch an attack that may be expected to cause harm to civilians or civilian objects such as places of education that would be excessive in relation to the concrete and direct military advantage anticipated.

[16] No students or other civilians were killed or injured in the attacks documented below. In many cases the attacks took place at times when the schools were closed either for summer holidays or due to fighting in the area. When attacks took place while schools were in session, students in both government-controlled and rebel-controlled areas had to learn how to respond. For example, at one school in government-controlled Avdiivka, students were trained to evacuate to the school's basement shelter in one minute and forty-six seconds, and twice during 2014 had to do so as their town came under fire.

[...]

School Number 14, Horlivka

[17] On August 25, 2015, a shelling attack damaged School Number 14 in DPR-controlled Horlivka. One of the school's teachers told Human Rights Watch that during the attack, eight shells struck the building or fell in the school yard. Human Rights Watch visited the school on September 3 and saw the damage from direct hits to the roof and damage to the walls facing north and west, caused by shrapnel. The blast wave blew out the main entrance doors and all the windows in the building. According to the OSCE Special Monitoring Mission report, the shells most likely were fired from 120mm caliber mortars.

[18] At the time of Human Rights Watch's visit, the school was not functioning and was under renovation. The teacher said that no military personnel used or were based in the school at any point.

[...]

School Number 3 and School Number 5, Krasnohorivka

[19] Early in the morning of June 3, 2015, the day after classes ended, heavy artillery fire from the direction of

rebel-held territory began striking School Number 3 in government-controlled Krasnohorivka. According to the school's principal, the building sustained 12 direct hits; damage from four of which were still evident when Human Rights Watch visited in November, five months after the attacks. There were at least seven additional hits on the school grounds, according to the school principal and school administrator.

[20] Although there was a military checkpoint around 700 meters from the school, it appears likely that the rebels' target was the school. As the school's administrator Tatiana Petrovna put it: "If there are 12 shells falling one after another, it's clearly not connected to the checkpoint, or it's very bad aim." Local residents living on the same street as the school confirmed to Human Rights Watch that there was no military in the school that day or at any point earlier.

[21] Krasnohivka's School Number 5 sustained a direct hit on the night of January 7, 2015. Three of the school's teachers told Human Rights Watch that there were no military in the school before or during the attack but that some days before the attack there were rumors, including in local online forums that military personnel were going to be based in the school.

[...]

III. Military Use of Schools and Orphanages

[22] Throughout the conflict, Ukrainian government forces and Russia-backed militants alike have deployed military forces in and near schools. Occupying a school can turn it into a legitimate military target and can put students at risk in violation of the laws of war. Deploying military in and near schools exposes important education infrastructure to damage and destruction.

[23] Officials from the Ministry of Education and Science acknowledged that they were aware Ukrainian government forces have used schools for military purposes but said they did not collect data on it. It is therefore difficult to obtain a full picture of the number of affected schools, their location, and how long they were used by the military.

School Number 42, Vuhlehirsk

[24] School Number 42 in Vuhlehirsk, now controlled by rebel forces, was struck six times in January and February of 2015, according to the school principal. When Human Rights Watch visited the school on September 2, 2015, it was still not open for classes.

[25] The principal said that at different times Ukrainian government and rebel forces both occupied the school and stored weapons inside it[.]

[...]

[26] In September 2015, Human Rights Watch saw significant structural damage to the school building's roof and walls. Inside the school, Human Rights Watch researchers saw ammunition boxes left behind used for storage and transportation of weapons, as well as gas masks and bullet casings. A school guard, who was also the father of one of the students, said that the school staff were still finding bullet casings and shell fragments around the school.

[27] The school guard also showed Human Rights Watch bullet holes which destroyed locks on classroom doors: "When soldiers came, they fired at the locks [even though] [t]he doors to most classrooms were not even locked."

[...]

[28] Although the school staff, parents, and pupils were advocating for the school to be renovated, the DPR was not willing to fund the repairs, the principal said, adding that the authorities also planned to close down two of Vuhlehirsk's kindergartens damaged in the fighting.

[...]

School Number 14, Ilovaïsk

[29] On August 18, 2014, Ukrainian government forces entered School Number 14 in Ilovaïsk and set up a headquarters there. The school principal told Human Rights Watch that the soldiers remained in the school building for two weeks.

[30] During their stay, the principal said, the soldiers damaged the school furniture, broke all the doors and smashed 11 school computers. Neighbors and a school caretaker told Human Rights Watch that government forces fired at rebel forces from positions in the field near the school. Researchers found several unexploded landmines on the school grounds, apparently ejected from the supply truck they were stored on when the truck was attacked while parked in the schoolyard.

[31] When Human Rights Watch visited more than a year later in September 2015, the school had not been renovated. The principal said that the renovations were delayed due to the lack of funding and was not sure when the school would reopen. One hundred thirty-two children who had attended the school were studying in School Number 13 in two shifts.

[...]

Discussion

I. Classification of the Situation and Applicable Law

1. (Paras [1]-[12])

a. How would you classify the situation in Eastern Ukraine? (GC I-IV, Arts 2 (1) and Art. 3; P II, Art. 1)
b. Who are parties to the conflict? Can Russia be regarded as a party to the conflict? Should it be the case, would such involvement internationalize the conflict?
c. Which law must those fighting on behalf of the self-proclaimed 'Donetsk People's Republic' and 'Luhansk People's Republic' respect?

2. (Paras [11] and [14])

a. If Ukraine considers parts of its territory occupied by Russia, does it have obligations towards this territory and its inhabitants? Under IHL? Under IHRL?
b. If the conflict is not of an international character, does Ukraine have obligations towards territory controlled by the "Donetsk People's Republic" and "Luhansk People's Republic" and the inhabitants therein? Under IHL? Under IHRL?

II. Conduct of Hostilities: Educational facilities

3. (Paras [21]-[27]) Can schools be attacked under IHL? Are schools specially protected? When is a school considered to be a military objective? Does the presence of soldiers in schools suffice to make a school a military objective? In case of doubt that a school is being used to make an effective contribution to military action, can it still be attacked? Are there any circumstances under which a school may lawfully be attacked? May schools be considered cultural property? Is attacking a school a war crime? Under what circumstances? (P I, Art. 52; CIHL, Rules 8, 38, 39, 40; ICC Statute, Arts 8(2)(b)(ix) and 8(2)(e)(iv))

4. (Paras [22]-[31]) What constitutes military use of schools? When a school is used for temporary accommodation, military training or stockpiling of military resources? For a long or short period of time? Does IHL prohibit the military use of civilian objects? Specifically of schools? Do you agree with Human Rights Watch's claim in para. [22]: "Occupying a school can turn it into a legitimate military target and can put students at risk in violation of the laws of war"? What principles of IHL could be applied to prevent the military use of schools? If the school is only partially occupied after school hours, is that prohibited by IHL? (P I, Art. 58; P II, Arts 4(2)(g) and 4(3)(a)); CIHL, Rules 22, 23, 24 and 52)

5. (Para. [16]) Does the fact that the attacks that were investigated by Human Rights Watch produced no casualties and were conducted mostly when schools were closed or out of session affect the legality of such attacks? Of the military occupation of schools?

6. Why does Human Rights Watch consider it important to discourage military use of schools? Do you agree? What would you say to the argument that discouraging military use of schools tips the balance between humanity and military necessity unfairly towards the side of the former?

7. (*Para. [23]*) Given the importance IHL attaches to protecting civilians and civilian objects, do you think that there is an obligation on fighting forces to record data on whether and how they might use civilian facilities for military purposes during armed conflicts? Why/Why not?

8. Are armed forces allowed to use schools as their military basis, when they managed to capture it from the adversary party who was using it as a military basis before? (*Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, Guideline 4 (b)*)

III. Protection of Children

9. Are children specially protected under IHL? In the conduct of hostilities? When in the power of a party? Does IHL guarantee a right for children to receive an education during armed conflicts? Do you believe there is an obligation for belligerents to provide education during armed conflicts? If so, do you think this obligation applies to both States and armed groups? (*GC IV, Arts 23-24, 38, 50, 76 and 89; P I, Art. 70, 77-78; P II, Art 4 (3) and 6 (4); CIHL, Rule 135*)

IV. Implementation

10. (*Paras [31]-[38]*) The Ukrainian Military Manual notes that “during combat in an urban environment [...] special attention shall be paid to the prevention of targeting the civilian population and indiscriminate attacks” and that “the right of children to receive an education shall be guaranteed”. Nonetheless, government troops were reported to have attacked and used school premises for military purposes. In your opinion, what made them disregard these provisions? How could these provisions be enforced?

V. Reparations

11. (*Paras [28] and [31]*) On what grounds could the Ukrainian government or the forces of the “Donetsk People’s Republic” and “Luhansk People’s Republic” have an obligation to repair schools? IHRL? IHL? *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict? (CIHL, Rule 150)*