Office of the United Nations High Commissioner for Human Rights

Report on the human rights situation in Ukraine
16 November 2018 to 15 February 2019
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100. OHCHR notes that by virtue of the continued occupation of Crimea by the Russian Federation, an international armed conflict continues to exist between the two States in Crimea and international humanitarian law continues to apply there. As such, a single hostile encounter between the armed forces or assimilated armed units of two sovereign states, as the 25 November 2018 incident, suffices to trigger the application of international humanitarian law, irrespective of the pre-existence of an armed conflict. Consequently, the rules of international humanitarian law that are applicable to international armed conflict continue to apply.

101. All 24 crew members, including those who had reportedly sustained injuries during the incident, have been charged with illegal crossing of the Russian border, a criminal offence punishable by up to six years of imprisonment, and remanded in custody. Between 29 and 30 November 2018, the Russian Federation authorities reportedly transferred all 24 crew members from Simferopol to Moscow, where they placed them in SIZOs.

102. The Ukrainian Government considers the apprehended crew members to be prisoners of war. Similar statements were made by the crew members and their lawyers, including during court hearings on the measure of restraint. Nevertheless, as of 15 February 2019, the Russian Federation authorities refuse to apply international humanitarian law provisions to the incident and deny the detained crew members the status of prisoners of war.

103. OHCHR notes that based on the provisions of international humanitarian law, the 24 detained crew members could be considered as prisoners of war and protected by the Third Geneva Convention. In any case, they shall enjoy the status of a prisoner of war until a competent tribunal determines otherwise.

119 Article 4 (A) (1) and 4 (A) (4) of the Third Geneva Convention and Articles 43 and 44 of Additional Protocol I.

120 Article 5 of the Third Geneva Convention.

121 Judgment of the Kyivskyi district court of Simferopol, 7 December 2018, Case No. 5-1148/2018.

122 This may be viewed as a violation of Article 70, Geneva Convention IV.

123 OHCHR interview, 7 December 2018.

124 Earlier, on 26 January 2017, Emil Kurbedinov was sentenced to ten days of administrative detention on similar charges, see OHCHR report on the human rights situation in Ukraine, 16 November 2016 - 15 February 2017, para. 128.