Coalition of Faith-Based Organizations

Ukraine Prosecution Project

Report n°2

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9 September 2022
INTERNATIONAL WAR PROSECUTION SUPPORT

INTERNATIONAL TRIBUNAL DEVELOPMENT

5 September 2022. Conference on war crime accountability (Brussels): seeking a special international tribunal

The Hague-based ICC launched its own investigation into alleged crimes against humanity and war crimes days after Moscow's Feb. 24 invasion, but it does not have jurisdiction to prosecute aggression in Ukraine, despite the crime's recognition under international law.

Ukraine's government sought political backing in Brussels for the creation of a special international tribunal to prosecute Russian military and political leaders it holds responsible for starting the war. Several Ukrainian leaders attending a conference on war crimes accountability in the European capital argued for a court dedicated to prosecuting high-level Russian perpetrators, in addition to the International Criminal Court.

The European Parliament, "will continue to be one of the biggest supporters for setting up a special international tribunal".

25 August 2022. International treaty drafted

Six months into Russia's invasion, Ukrainian officials are drawing up plans to make sure Russian President Vladimir Putin and his top military commanders will be tried for launching the war. The plan for a special international tribunal to investigate Russia's alleged "crime of aggression" is being spearheaded by Andrii Smirnov, deputy head of Ukraine's presidential administration. Ukrainian prosecutors have identified some 600 suspects in the aggression so far, including senior military officials, politicians and commentators.

An international treaty to set up the tribunal has been drafted, ready to be signed by governments. The court's decisions would then be recognised on the territory of the signatory countries, which means that any convicted offenders

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could be arrested there. Smirnov said several countries are set to sign the document before the end of the year and negotiations are ongoing with "several European partners (who) are willing to host the tribunal." While Poland and the Baltic states -- Ukraine's closest partners -- have been very supportive of the proposals, Germany and France have given more measured reactions.

The European Parliament called for a special international tribunal for crimes of aggression on May 19.

7 July 2022. Global Accountability Network - White Paper

The Global Accountability Network (GAN) released a white paper Wednesday carving out a detailed path to prosecute Russia, and even its standing leader Vladimir Putin, for the international crime of aggression.

WHITE PAPER: Consideration for the setting up of “The Special Tribunal for Ukraine on the Crime of Aggression”. Global Accountability Network 3

While the International Criminal Court (ICC) has jurisdiction over the crime of aggression, this jurisdiction is limited in a variety of ways. Most importantly with respect to the Ukraine crisis, the ICC cannot exercise its jurisdiction over crimes of aggression against nationals of states that are not party to the Rome Statute, except when authorized to do so by the United Nations Security Council (UNSC). Given the fact that neither Russia nor Ukraine is party to the Rome Statute, and that Russia — as a permanent member of the UNSC — has veto power over Council decisions, the ICC lacks any clear path to prosecuting Russia for the crime of aggression.

It is in this context that GAN, an organization led by former Chief Prosecutor for the Special Court for Sierra Leone David Crane, proposed the establishment of a novel mechanism for justice in the case of the Ukraine invasion. Specifically, the organization proposes the establishment of an international tribunal for Ukraine, similar to the model used in Sierra Leone, where during Crane’s tenure, former Liberian president Charles Taylor was convicted of war crime in 2012.

INTERNATIONAL SUPPORT FOR WAR CRIMES PROSECUTION IN UKRAINIAN TERRITORY

2 September 2022: COUNCIL OF EUROPE OFFICE IN UKRAINE-
Peculiarities of proving war crimes – topical issues for prosecutors and investigators

Today's online seminar for prosecutors of the Office of the Prosecutor General (OPG), investigators and operative staff of the State Bureau of Investigation (SBI) focused on the specifics of proving war crimes.

«I urge my colleagues, investigators and prosecutors, to make the most of this opportunity to interact with leading experts in the field of human rights and international humanitarian law, because most of us have professionally encountered the category of war crimes for the first time. Therefore, we have to be in the constant learning process. Mistakes at the stage of investigation and documentation might lead to the loss of important evidence for national and international courts, as well as to a situation when people who commit these terrible crimes would not be brought to justice. War crimes are recorded daily. As of today, we have more than 31,000 war crimes registered in Ukraine. The workload lies with all the bodies of pre-trial investigation. As the Department of War, we work with the Security Service of Ukraine, the National Police, the State Bureau of Investigation, and the National Anti-Corruption Bureau of Ukraine. I hope the cooperation will continue» – stated Yurii Belousov, Head of the Department for Combating Crimes Committed During Armed Conflict of the Office of the Prosecutor General.

Seminar trainers – Council of Europe experts, judge of the Supreme Court, international humanitarian law specialists, representatives of the Department for Combating Crimes Committed During Armed Conflict of the OPG – pursued the following goals:

- explain specifics of proving war crimes
- draw attention to the need to prove the contextual element in war crimes
- explain the specifics of qualification under Article 438 of the Criminal Code of Ukraine
- explain the importance of investigation on national level and cooperation with international jurisdictions
- draw attention to the investigation effectiveness
- explain the most problematic proving issues on the basis of current practice.

The event was held within the framework of the Council of Europe project “Supporting Institutions to Combat Ill-Treatment in Ukraine, Phase II” in cooperation with the SBI and OPG.

5 September 2022: COUNCIL OF EUROPE OFFICE IN UKRAINE - CEPEJ will develop a Practical guide on the remote court hearings in cooperation with Ukrainian judicial authorities

The European Commission for the efficiency of justice (CEPEJ), the Supreme Court, the High Council of Justice and the Council of Judges of Ukraine will jointly develop a Practical guide on the remote court hearings in the context of the ongoing war based on the CEPEJ Guidelines on videoconferencing in judicial proceedings.

The Practical guide aims to provide answers to concrete questions that legal practitioners may have when organising online hearings in civil, criminal or administrative court proceedings, in matters concerning the respect of the right to a fair trial as well as technical and organisational requirements.

The Supreme Court of Ukraine requested CEPEJ’s assistance for improving the remote hearings legal framework and practice in line with European standards, which includes an expertise on a draft law on the conduct of proceedings under martial law or state of emergency and the preparation of a Practical Guide for Ukrainian legal professionals.

This support to Ukrainian judicial authorities taking place from July to September 2022 is implemented in the framework of the Council of Europe project “Support for judicial institutions and processes to strengthen access to justice in Ukraine”. The second meeting of the Working Group will take place on 5 September 2022.

6 September 2022 - COUNCIL OF EUROPE OFFICE IN UKRAINE - The Council of Europe supports Training on OSINT tools for prosecutors and investigators of Ukraine

Trainers of the Prosecutors Training Centre of Ukraine (PTCU), which included prosecutors, detectives of the Anti-Corruption Bureau of Ukraine, police officers, and employees of the PTCU (12 trainers: 9 female and 3 male) increased their knowledge on Open-Source Intelligence (OSINT) tools by

participating in a five-day online training of trainers (ToT) during 29 August – 2 September 2022. The ToT was co-organised by the PTCU and the Council of Europe in cooperation with European Union Agency for Law Enforcement Training (CEPOL) as part of the joint European Union and Council of Europe capacity building efforts to support the process of investigating gross human rights violations in the context of the full-scale military aggression of the Russian Federation against Ukraine.

The ToT aimed at improving the practical skills of the participants to use OSINT tools and understanding the methodological process behind any use of such tools. During the event participants learned how to conduct effective searches on social media platforms for users; acquire social media profile data including posts and connections; forensically secure image and video-based evidence as well as gain other practical knowledge and skills useful for their professional and training activities. The participants of the ToT are to deliver further training to the prosecutors and investigators working on the investigation of the gross human rights violations in the context of the ongoing war in Ukraine.

The ToT was conducted by European Union funded CoE Project CyberEast in cooperation with CEPOL and was facilitated by the CoE Project “Human Rights Compliant Criminal Justice System in Ukraine”, which is part of the CoE Action Plan for Ukraine 2018-2022.

INTERNATIONAL SUPPORT FOR WAR CRIMES PROSECUTION OUTSIDE UKRAINIAN TERRITORY


In its resolution 49/1, the Human Rights Council decided to urgently establish an Independent International Commission of Inquiry on Ukraine, comprising three human rights experts, to be appointed by the President of the Council for an initial duration of one year, and requested the Commission of Inquiry to present to the Council, at its fifty-first session, an oral update, followed by an interactive dialogue. In its resolution S-34/1, the Council requested the International Commission of Inquiry to conduct an inquiry, consistent with its mandate and international standards, and in coordination with other national and international mechanisms, to address the events that had occurred in late February and March 2022 in the areas of the Kyiv, Chernihiv, Kharkiv and Sumy regions, including their gender dimension, with a view to holding those responsible to account, and to provide a briefing to the Council on the progress of that inquiry,

7 https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session51/regular-session
8 https://www.ohchr.org/en/hr-bodies/hrc/iichr-ukraine/index
as part of its oral update to the Council at its fifty-first session. The Council will hear the oral update of the Commission of Inquiry.  

**HRC51 Agenda**

- **Wednesday, September 21 at 15:00 CEST:** Informal consultations - Permanent Mission of Ukraine on behalf of Australia, Hungary, the Maldives, Morocco, Poland and Uruguay
- **Thursday, September 22 at 10:30 CEST:** Informal consultations - Permanent Mission of Ukraine on behalf of Australia, Hungary, the Maldives, Morocco, Poland and Uruguay
- **Friday, September 23 at 10:00 CEST:** ID with Commission of inquiry on Ukraine
- **Tuesday, October 4 at 11:00 CET:** ID on HC oral update on Ukraine

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**23 August 2022. European Union Agency for Criminal Justice Cooperation – JOINT PAPER**

Eurojust and its eight partners in the Justice and Home Affairs agencies’ network (JHAAN) publish a Joint Paper highlighting the broad spectrum of their activities in relation to the war in Ukraine. The document provides an overview of the agencies' support to EU Member States and institutions in responding to the conflict and helping people affected and displaced by the war.

Central preservation, analysis and storage of core international crime evidence (Joint Paper p.14)

Evidence of core international crimes is located in many different jurisdictions and there are many different stakeholders involved in the collection process, including states, the ICC, NonGovernmental Organisations (NGOs), and Civil Society Organisations (CSOs). Meanwhile, refugees who can provide crucial witness or victim statements continue to spread globally. It is against this background that on 1 June 2022, after a legislative procedure of unprecedented speed and unity, an amendment to the Eurojust Regulation entered into force that allows Eurojust to centrally preserve, analyse and store evidence relating to genocide, crimes against humanity, war crimes and related criminal offences, including photographs, satellite images, videos and audio recordings. With this new mandate, Eurojust will move from a scattered to a structured approach, providing prosecutors with a detailed analysis of the available evidence that will directly assist them in building their case. This will serve both the JIT supported by Eurojust, criminal cases before national jurisdictions and the possible prosecution by the ICC.

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10 [https://hrc51.sched.com/](https://hrc51.sched.com/)
CRIMINAL INVESTIGATIONS & WAR CRIMES DOCUMENTATION:

UKRAINE

11 September 2022. New general prosecutor in Ukraine

President Volodymyr Zelenskyy dismissed Irina Venediktova, then prosecutor general of Ukraine, from her position on 17th July 2022. On the same day, the president gave a speech in which he stated:

Six-hundred cases of collaboration and treason have been opened against law enforcement officials. More than sixty employees of the prosecutor's office and the Security Service of Ukraine remained in the occupied territory and are working against our state.

Such an array of crimes against the foundations of the national security of the state and the connections detected between the employees of the security forces of Ukraine and the special services of Russia pose very serious questions to the relevant leadership. Each of these questions will receive a proper answer.

Venediktova was relieved of her position by the president, not because she herself had been accused of committing treason, but rather because she had had oversight of several of the organs in which significant numbers of personnel had been accused of such. The president spoke of sixty individuals thought to have collaborated with Russian occupying forces, portraying a security service and prosecutor general’s office heavily infiltrated by the enemy. These were pressing questions for the SBU head and the prosecutor general.

Andriy Kostin has been Venediktova’s successor as prosecutor general since 28th July 2022. Kostin has said that he expects an enlargement in the number of countries involved in the joint investigation team (JIT), which is currently investigating criminal allegations made against the Russian Federation. In his view, this is likely to occur at the JIT’s summit in October, at which ways of making the JIT’s common work more effective will also be discussed. Kostin said:

I welcome the interest in getting more countries involved in this format (JIT). I am confident that the JIT members at the meeting in October will allow us to discuss this. As well as other topics that will improve the effectiveness of our efforts in a detailed format.

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In Kostin’s view, the participation of the International Criminal Court in investigating war crimes is of great importance at both the national and international levels.\footnote{Interfax-Ukraine. (2022, 5. September). Український генпрокурор сподівається на розширення JIT щодо розслідування злочинів РФ. Інтерфакс-Україна. Abgerufen am 11. September 2022, von https://ua.interfax.com.ua/news/general/856715.html}

July 2022. Some organizations gathering evidences in Ukraine:

Open Society Foundations\footnote{https://www.opensocietyfoundations.org/explainers/how-to-hold-russia-accountable-for-war-crimes-in-ukraine} support international and Ukrainian organizations working to gather evidence of war crimes, aggression, and crimes against humanity committed during Russia’s war against Ukraine and advocate for accountability, including:

- The 5 AM Coalition, a partnership uniting dozens of Ukrainian human rights organizations to document and share information publicly on war crimes and crimes against humanity, as well as to advocate for effective and coordinated international justice efforts
- Truth Hounds, a Ukrainian organization documenting and archiving evidence
- The Ukrainian Healthcare Center, a think tank based in Kyiv documenting cases of health care facilities damaged in the war
- Mnemonic, an international organization created by the Ukraine Archive to preserve, verify, and investigate human rights violations through open-source documentation
- Bellingcat, an international investigative collective documenting and verifying allegations of war crimes
- UC Berkeley Human Rights Center, a university center that trains Ukrainian advocates to investigate and document human rights violations and plan effective action for accountability
- International Partnership for Human Rights, an organization that supports Ukrainian activists in war-affected areas in their documentation efforts
- Physicians for Human Rights (PHR), a human rights nongovernmental organization that uses medicine and science to document and advocate against mass atrocities and severe human rights violations around the world

Ukraine app captures thousands of videos that could help prosecute Putin. EyeWitness to Atrocities enables timed and dated recordings that cannot be edited, enhancing their evidential value.

EyeWitness Ukraine Resource Hub contains key resources to help documenters in Ukraine capture relevant and reliable audio-visual evidence that can lead to justice.

INTERNATIONAL

15 September 2022. Conflict Observatory. Recent reports on post-invasion Impact Assessment

A central hub to capture, analyze, and make widely available evidence of Russia-perpetrated war crimes and other atrocities in Ukraine.

The Conflict Observatory will analyze and preserve publicly and commercially accessible information, including satellite imagery and information shared via social media, consistent with international legal standards for use in ongoing and future accountability mechanisms. This includes maintaining rigorous chain-of-custody procedures for future civil and criminal legal processes under appropriate jurisdictions. This is a new collaborative endeavor with Esri, Alcis, and Quiet Professionals LLC, and with research, analysis, and documentation provided by Yale University’s Humanitarian Research Lab, the Smithsonian Cultural Rescue Initiative, and PlanetScape Ai. As research is performed and completed, new reports will be published to the site.

Latest news: Ukraine’s Crop Storage Infrastructure: Post-Invasion Impact Assessment

18 https://www.eyewitness.global/ukraine-resources-hub
19 https://hub.conflictobservatory.org/portal/apps/sites/#/home/
20 https://hub.conflictobservatory.org/portal/apps/sites/#/home/pages/grain-1
7 September 2022. The Dutch forensic investigation team will continue its investigation into war crimes in Ukraine \(^\text{21}\)

Under the banner of the International Criminal Court, three more teams will be deployed this year and next.

Defence ministers discuss new EU training mission for Ukrainian personnel and increased joint investment.

The situation in Ukraine and the training of Ukraine military personnel in EU countries: these are some of the topics Minister Kasja Ollongren and her European colleagues discussed in Prague. They had gathered there for the EU informal meeting of defence ministers. The Ukrainian Minister of Defence Aleksi Reznikov attended by video link.

26 August 2022. US DEPARTMENT OF STATE: Accountability for War Crimes and Other Atrocities in Ukraine \(^\text{22}\)

In this on-the-record, virtual briefing, research experts from the Yale Humanitarian Lab (Yale HRL) discuss recent research and evidence of Russia-perpetrated war crimes and other atrocities in Ukraine, as posted on ConflictObservatory.org.

Briefers:

- Dr. Kaveh Khoshnood is an associate professor at Yale School of Public Health. He is the co-founder of Yale Violence and Health Study Group and a faculty member of the program on conflict, resiliency and health at the Yale MacMillan Center, and the faculty director for Humanitarian Research Lab.

- Nathaniel Raymond is executive director of Yale’s Humanitarian Research Lab, and lecturer in the department of Epidemiology of Microbial Diseases at Yale School of Public Health.

- Caitlin Howarth serves as the director of operations for the Conflict Observatory team based at the Yale Humanitarian Research Lab.

Previous Briefing: War Crimes and Accountability in Ukraine - June 25, 2022. \(^\text{23}\)

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18 August 2022. Complaint filed over attack on Swiss journalist in Ukraine 24

The Ukrainian NGO Truth Hounds said on Thursday that it has submitted evidence of a war crime with the Swiss Office of the Attorney General (OAG).

Swiss freelance journalist Guillaume Briquet was injured in the arms and head when his car came under fire in the Mykolaiv region of southern Ukraine in March. His vehicle had Geneva number plates and was marked with the word ‘Press’ on both sides.

The OAG has vowed to help track down and prosecute the perpetrators of war crimes in Ukraine. Federal prosecutors have formed a taskforce25 to collect evidence from refugees arriving in Switzerland to pass on to the International Criminal Court in The Hague.


2nd OSCE Report 27

With Ukraine’s assent, the United States and 44 other countries invoked the OSCE Moscow Mechanism for a second time on June 2, establishing an expert mission to examine the further human rights abuses and humanitarian impacts of Russia’s war of aggression in Ukraine.

Two reports have been released. The 2nd report, like its predecessor, also documents evidence of direct targeting of civilians, attacks on medical facilities, rape, torture, executions, looting, and forced transfer of civilians to Russia-controlled parts of Ukraine and forced deportations to Russia itself. It further identifies two new “alarming phenomena,” namely the “establishment and use of so-called filtration centers” and the “tendency of the Russian Federation to bypass its international obligations by handing detained people over” to its proxies in eastern Ukraine to let them “engage in problematic practices, including the imposition of the death penalty.”

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26 https://www.osce.org/odihr/522616
Taken together, the two reports comprise the most comprehensive accounting of evidence to-date of Russia’s human rights abuses, international humanitarian law violations, including potential war crimes, and other atrocities since President Putin launched his full-scale war against Ukraine on February 24. The United States and our partners will seek to hold accountable those responsible for all human rights abuses and violations of international humanitarian law, including war crimes, they commit in Ukraine.  

14 July 2022. Forty-five nations pledge to coordinate evidence of war crimes in Ukraine

On Thursday, 45 countries at the conference in The Hague - headquarters of the International Criminal Court (ICC) - signed a political declaration to work together on investigations into war crimes in Ukraine.

Those countries included European Union states as well as Britain, the United States, Canada, Mexico and Australia.

INTERNATIONAL HUMANITARIAN SUPPORT:

CENTRAL EUROPEAN INITIATIVE (CEI)

The Central European Initiative (CEI) is a regional intergovernmental forum of 17 Member States in Central, Eastern and South-Eastern Europe. It fosters European integration and sustainable development through regional cooperation. CEI work is focused on achieving two main goals: Green Growth & Just Societies.

The most recent activities within the Russian-Ukrainian war are related to humanitarian aid on Ukrainian territory and support for refugees in Poland.

1 August 2022 - Financial contribution for basic necessities in Kharkiv, Sumy and Poltava in Ukraine

Thanks to funds for international cooperation amounting to EUR 73,400 made available by the Friuli Venezia Giulia Autonomous Region and administered by the CEI-Executive Secretariat, the AVSI Foundation will contribute to alleviating the humanitarian emergency in Ukraine. Fondazione AVSI is an Italian no-profit

organization that has been working in Ukraine since 2014 (housing and support to young people and people with disabilities). Since the beginning of the war (February 2022) AVSI is supporting refugees in Poland, Romania, Moldova, Italy, and in Ukraine itself.

In particular, in collaboration with the NGO EMMAUS based in Kharkiv, AVSI will use the funds to purchase basic necessities and will distribute them to at least 400 beneficiaries in the territories of Kharkiv, Sumy and Poltava. The activity will be carried out until November 2022.

29 July 2022 - Contribution to set up a field hospital in the southern part of Ukraine 31

The CEI-Executive Secretariat has decided to financially contribute to the setting up of a field hospital in the Southern part of Ukraine. The camp hospital will be managed jointly by Fondazione Terre des Hommes Italia, together with the Polish Medical Mission Association.

It will be composed of 13 tents, accessories and medical equipment, with the aim of delivering emergency treatment and primary care to adults and children affected by the conflict. The camp hospital is supported by a formal request from the Mykolaiv regional administration and will meet all WHO requirements.

27 July 2022 - CEI-supported Ukrainian educational hub opens in Poland 32

Ukrainian Educational Hub opened in Poland, Warsaw, on 25 July to support the integration into the local community of the Ukrainian refugees. The Hub is part of the overall project “Creation of a network of Ukrainian Educational Hubs” promoted by the Ministry of Education and Science of Ukraine, the Institute for the Modernization of the Content of Education, and the Association of Innovative and Digital Education.

The Hub assists students in maintaining continuity with their education in line with the Ukrainian system and offers various training opportunities to young people and adults in areas such as languages (Ukrainian, Polish, English), soft skills, information technology, and career guidance. Considering the emergency, psychological aid to war-affected people is also offered by professionals.

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THE INTERNATIONAL COMMISSION ON MISSING PERSONS

30 August 2022 - Integrated Data Management System & Online Inquiry Center

The International Commission on Missing Persons (ICMP) is preparing to launch a major program in Ukraine. ICMP will work with government institutions and with families of the missing and civil society organizations to help the authorities develop a process that will make it possible to locate missing persons and reunite them with their families and also to identify human remains from mass and clandestine graves.

ICMP’s Integrated Data Management System (iDMS) enables the comprehensive processing of missing persons data globally, and the Online Inquiry Center.