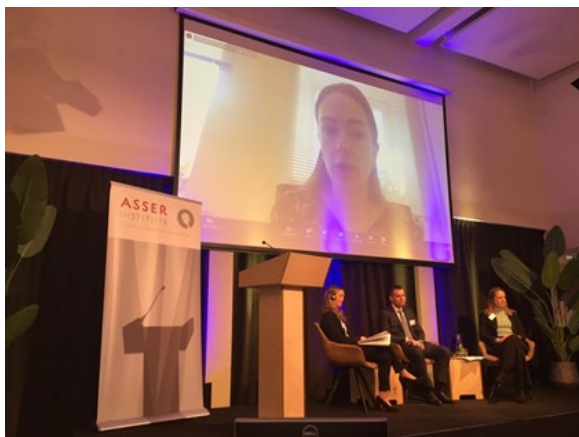


MATRA-Ukraine Conference ‘Strengthening Ukraine’s national efforts to investigate, prosecute, adjudicate and report on international crimes’ report

The MATRA-Ukraine mid-term conference ‘*Strengthening Ukraine’s national efforts to investigate, prosecute, adjudicate and report on international crimes*’ was held on 14 November 2022 at Beeld & Geluid in The Hague and online. The aim of the conference was to listen to Ukrainian perspectives and re-assess their needs, identify the main challenges, learn best practices from (inter)national experts, and share ideas and insights on how the Ukrainian national authorities could proceed going forward. The conference was opened by **Christophe Paulussen, Senior Researcher at the T.M.C. Asser Institute** and **Ruby Axelson, Senior Legal Adviser at Global Rights Compliance**, who led the [MATRA-Ukraine project](#). Further opening remarks were made by **Myroslava Krasnoborova, Counsellor of the Ukrainian Embassy in The Hague** and **Mauritz Verheijden of the Netherlands Ministry of Foreign Affairs**, which funds the project.

Panel 1: Strengthening and Coordinating Investigations and Prosecutions

The first panel ‘**Strengthening and Coordinating Investigations and Prosecutions**’ was moderated by **Victoria Kerr, Consultant to the T.M.C. Asser Institute**. It began with an overview of the developments in terms of international crimes investigations and prosecutions at the national level in Ukraine, and a reminder that while there are now a plethora of actors working on this, the task ahead remains huge.



Oleksandra Matviichuk, from 2022 Nobel Peace Prize laureate Center for Civil Liberties (CCL).

To set the legislative scene underpinning the investigations and prosecutions in Ukraine, **Oleksandr Bakumov MP (Chairman of the Temporary Special Commission of the Verkhovna Rada of Ukraine on international humanitarian law (IHL) and international criminal law (ICL))** described the extent of the crimes occurring, and that the initial priority was to ensure that law enforcement bodies were stabilised and functioning. He emphasised that the Parliament did not stop its work even under the threat of missile attacks and that now, the will of the Ukrainian people is to hold Russia to account as an aggressor. He invited the international community to participate in the creation of an international tribunal for this purpose. Mr Bakumov explained that the Commission he chaired was set up in order to recognise the importance of adherence to humanitarian principles, and to pursue accountability.

Zera Kozlieva (Former Deputy Head of the War Crimes Department of the Office of the Prosecutor General of Ukraine (OPG) and currently Head of the Department for International Legal Cooperation (OPG) covering international cooperation in the investigation of core international crimes) then explained some of the developments in terms of international crimes investigations and prosecutions since 2014. She explained that the occupation of Crimea and Donbas since 2014 resulted in the relocation of the Crimean prosecutorial office to Kyiv, and later the establishment of the War Crimes Unit. She described the wide range of war crimes and crimes against humanity which have been committed,



and the conduct which may amount to genocide, and that with the number only increasing, the War Crimes Unit has been transformed into a larger War Crimes Department. Ms. Kozlieva shared the difficulties investigators and prosecutors face in terms of working during ongoing conflict, and that she is grateful for the steps that international actors have taken in terms of initiating investigations elsewhere.

Wayne Jordash KC (British lawyer and Managing Partner of Global Rights Compliance (GRC)) offered insights into the work of the Atrocity Crimes Advisory Group and Mobile Justice Teams (MJTs), which he leads. While GRC has been working in Ukraine since 2016, he stressed the importance of respect for the OPG's and CSOs' mandate, as they have the primary obligation and duty to investigate, and therefore GRC should help only where needed. The MJTs are comprised of specialists in international law, and investigative specialists. Mr. Jordash explained that the enormity of the task ahead for investigators, prosecutors and CSOs is frightening, but efforts are now being made to strategise towards building cases against the highest level perpetrators. While the international response may be unprecedented, he expressed that the OPG and CSOs are ultimately carrying the burden, and the only way to provide consistent support is for concrete assistance to be provided to them on the ground.

Oleksandra Matviichuk (Kyiv-based human rights lawyer and civil society leader heading Center for Civil Liberties (CCL)) explained that the work of CSOs has increased exponentially throughout the conflict and since the invasion, resulting in the documentation of over 24,000 war crimes in a database which is designed to assist justice efforts. Ms. Matviichuk emphasised that the duty to investigate and prosecute all these cases does not rest with the ICC, which will only focus on high profile cases. The database which has been created has therefore been shared with the OPG, to discuss how it could be integrated into their efforts. In her view, the law enforcement and justice system needs to be enhanced and comprehensive to ensure justice for *all* victims. To do so, she recommended the involvement of specialists to assist in the field, the use of universal jurisdiction to bring cases in other states, and international tools and mechanisms such as the creation of a new tribunal. At the national level, she recommended the ratification of the Rome Statute and further specificity in the Criminal Code of Ukraine (CCU).

Dmytro Koval (Legal Director at Truth Hounds and Associate Professor at the National University of Kyiv-Mohyla Academy) emphasised that at the outset of the conflict in 2014, CSOs were one of the first responders to international crimes in Ukraine, mainly due to a significant delay on the part of domestic institutions as a result of a lack of expertise, but that their capacity was enhanced over the subsequent years. Mr. Koval explained that since 24 February 2022, the need for CSO support has increased dramatically because of the volume and geographical spread of war crimes; law enforcement agencies in regions not previously exposed to war are lacking specialisation; many victims of sexual and gender-based violence (SGBV) are reluctant to report to official institutions; and there is a need to communicate information to mobilise the international community. Mr. Koval also stressed the challenges related to witness fatigue, victim retraumatisation and evidence contamination due to repeated interviewing and overdocumentation, as well as to the difficulties in developing an overarching strategy to cooperate on documentation taking into account various CSOs' specialisations. Nonetheless, CSOs will continue to play a significant role for years to come.

Alix Vuillemin (Advocacy Director of Women's Initiatives for Gender Justice) expressed that conflict-related sexual violence (CRSV) is an issue which has been grossly overlooked for decades in many accountability efforts. She explained that where there is conflict, sexual violence will be prevalent, but that CRSV is not a by-product of war, rather deployed intentionally to attack a population. CRSV builds on pre-existing gender dynamics within a society, and therefore it is important to understand inequalities during peacetime. Ms. Vuillemin recommended that a survivor-centred approach is taken, and to shift thinking and create a sense of responsibility in terms of stigma and shame to improve access to justice. Issues such as a lack of medical, psychosocial and other care, and of confidence in the criminal justice framework should therefore be considered. In her view, recent efforts of the OPG in developing a collaborative victims and



witnesses orientated strategy for the prosecution of CRSV crimes are a crucial first step towards achieving accountability at a national level for these crimes.

The follow up Q&A session centred around how gender impacts the work being undertaken by the panellists, coordination efforts between the OPG and CSOs, and among CSOs themselves, and evidence gathering through the internet portal created by the OPG.

Panel 2: Strengthening the Judicial Capacity to Adjudicate International Crimes

The second panel ‘**Strengthening the Judicial Capacity to Adjudicate International Crimes**’ was moderated by **Marta Bo, Researcher at the Asser Institute, Associate Fellow at the Graduate Institute for International and Development Studies and Associate Senior Researcher at the Stockholm International Peace Research Institute.** Drawing from their experiences, the panellists shared valuable Ukrainian and international perspectives on accountability efforts in the context of Ukraine.

The first panellist, **Svitlana Yakovlieva (Justice of the Supreme Court, Criminal Cassation Court in Ukraine)** detailed the challenges of the Ukrainian judiciary since the Russian invasion. Justice Yakovlieva emphasised the Ukrainian judiciary’s obligation to continue administering justice even under martial law. In addition, she highlighted the issue of introducing legislative changes that will facilitate effective pre-trial investigation and judicial proceedings under martial law. With the expectation that a large number of war crimes cases will be heard in Ukrainian courts, Justice Yakovlieva urged the Ukrainian judiciary to ensure that international standards are upheld, and perpetrators are held to account. The Supreme Court has not reviewed a war crimes case yet, and challenges may be identified by the judges during their consideration, she argued. Nonetheless, the role of international experts, training for judges, and the readiness of the Ukrainian judiciary to the consideration of war crimes cases was emphasised.

Building on the topic of Ukraine’s substantive criminal law, **Ganna Maina (Investigating judge of Novomoskovsk city-district court of Dnipropetrovsk region)** described the common practice of national courts to categorise conflict-related cases under ordinary crimes, especially related to terrorism. She also highlighted some practical difficulties in establishing the fact of death under occupied territories, and accessing documents in this regard, which could be useful in supporting international crimes cases. Judge Maina stressed that cases resulting from the conflict must be assessed individually and appropriately adjudicated within the framework of ICL. According to her, expert knowledge of international law is required as early as from the collection of evidence stage for comprehensive trials within the framework of ICL. There should also be a clear stipulation of specialised investigative judges and adjudication of international crimes cases without creating specialised courts, by providing a sufficient number of judges in order to ensure sufficient time for an effective trial and the guaranteed right to a fair trial.

David Vaughn (Chief of Party for the USAID Justice for All Activity) began with a reminder that despite difficulties, the Ukrainian judiciary remains largely operational and has already heard 12 cases under Article 438 of the CCU since the invasion, and it is inevitable that the workload of courts will increase going forward. Mr. Vaughn’s work focuses on: (1) strengthening the legal framework in line with international law; (2) building the capacity of judges through the development of an educational plan with the National School of Judges comprising a benchbook on international crimes adjudication, together with training on ICL, IHL, and practical issues, and building a platform to facilitate knowledge-exchange and an advisory group; and (3) assisting with the management of cases in courts. Infrastructure is needed for secure environments for criminal justice actors and for the protection of victims and witnesses. This also involves the need for IT tools to secure and digitalise case files. Finally, Mr. Vaughn stressed that courts must engage the public and work with the media to increase confidence in them.



Based on her extensive experience as an international judge, **Christine van den Wyngaert (Judge at the Kosovo Specialist Chambers (KSC))** highlighted Ukraine's exceptional willingness and capacity to advance judicial accountability for international crimes, which is very important when deliberating international judicial models. A national court or chamber within a court embedded in the Ukrainian judicial system with international judges, similar to the KSC, was particularly advocated as an effective option to share the burden with other judicial mechanisms, ensure impartiality, and allow for smooth proceedings. While acknowledging there may be some potential advantages, Judge Van den Wyngaert expressed her scepticism in terms of the added value of an international Special Tribunal for the Crime of Aggression, highlighting issues of selectivity, legitimacy, and overlapping jurisdiction with the International Criminal Court (ICC) (including the issue of *ne bis in idem*). She argued that a tribunal as part of the Council of Europe (CoE) would be favourable over one created in agreement with part of the UN which includes the United States, for instance. In any event, such a court would need to be in sync with the ICC.

Sergey Vasiliev (Associate Professor at the Department of Criminal Law at the University of Amsterdam), emphasised the need to respect domestic ownership of the accountability process and focus on supporting existing institutions and building capacity rather than 're-inventing the wheel.' In this regard, a case prioritisation strategy is key, as it will be impossible to try all suspects, with consideration of whether it is worth spending resources on *in absentia* trials. Financial assistance is needed urgently to rebuild destroyed infrastructure as this affects the courts' work. Dr. Vasiliev suggested that expertise could be built horizontally, including through panels of experts, as opposed to focusing on a specialised chamber which could reach a bottleneck. On the topic of a Special Tribunal, he emphasised careful reflection to avoid the creation of a 'paper tiger', which may not overcome personal immunity issues and be able to secure top leaders. Ultimately, Dr. Vasiliev advised listening to the needs of Ukrainian actors.

The following Q&A centred around issues such as the importance of including the voice of the defence in capacity building efforts, the possibility of applying command responsibility as defined in Articles 86 and 87 of Additional Protocol I to the Geneva Conventions through Article 438 of the CCU, measuring the success in terms of adjudication of international crimes in Ukraine, and the need for judicial interpretation of existing provisions using international precedents.

Panel 3: Enhancing the Fairness of the Justice Process

The third and final panel on 'Enhancing the Fairness of the Justice Process', moderated by **Ruby Axelson (Senior Legal Advisor at GRC)**, began with the reminder that international law provides (imperfect) judicial tools for holding perpetrators to account and for establishing the truth. In this sense, the need to discuss the importance of ensuring victim-centred justice was highlighted.

Beginning the discussions, Ukrainian lawyer **Kateryna Busol (specializing in international humanitarian and criminal law and Academy Associate at Chatham House)** described sociological data demonstrating the growing Ukrainian preference for holistic justice approaches even amid ongoing conflict. Reaching peace and achieving justice and accountability without the concession of territory was of the highest priority. Dr. Busol explained that the Ukrainian government is united in their transitional justice (TJ) strategy, with the Working Group implementing the TJ roadmap being very committed. However, she stressed that a rebalancing is needed from accountability towards a survivor-centric approach and reparations. In her view, victims and witnesses should be engaged in TJ policy creation and implementation to ensure targeted considerations for victims, especially of CRSV. Dr. Busol emphasised the need for targeted psychosocial support for victims as well as the importance of considering individuals as victims of the crime of aggression. A truly holistic approach includes all individuals victimised by both Russian and Ukrainian perpetrators since 2014.



Based on her extensive experience in working on defence teams before international(ised) criminal courts and tribunals, **Marie O'Leary (Attorney-at-law in the United States and Counsel and Legal Adviser for the Office of Public Counsel for the Defence at the ICC)** underscored that defence structures are needed at both national and international justice mechanisms to achieve equality of arms. Ms. O'Leary highlighted the historical lack of valuable defence perspectives on investigations, victim outreach and reparations. Defence is often only considered at a later stage of the justice process, but detention issues such as safety, financing of family visits, and interim and final release are all very relevant and to be considered at an early stage. She recommended that at the domestic level, defence lawyers should be trained 'in sync' with other criminal justice actors and provided the same networks available to the prosecution. According to Ms. O'Leary, addressing these issues are inherent to the fairness, validity, legacy, and sustainability of judicial mechanisms dealing with the conflict in Ukraine and long-term peace.

Gaiane Nuridzhanian (Associate Professor at the National University of Kyiv-Mohyla Academy in Ukraine and a postdoctoral research fellow at UiT-Arctic University of Norway) expressed that fair war crimes trials in Ukraine are a test for the judicial system, where much work has been done to understand and implement human rights standards, would enhance legitimacy and acceptance by the international community, and also are of historical importance. Dr. Nuridzhanian recognised that Ukrainian judicial authorities are well-versed in fair trial and human rights law standards, but suggested that improvements could still be made and that creating a knowledge-exchange forum on this matter with experts from other states, further legal certainty in terms of domestic law provisions on international crimes, effective legal aid or assistance for defendants, and further awareness of the importance of the defence in rule of law based societies for the wider public could all be useful. She highlighted the immense public interest in judicial efforts in response to the conflict in Ukraine, and that public scrutiny is an important part of fair trial obligations. In this sense, well-organised, transparent, and publicly available judicial processes and judgements are critical.

Iryna Saliy (Journalist and founder of Court Reporter) discussed her experiences as a Ukrainian journalist monitoring and reporting on international crimes cases. Journalists have had to adapt their monitoring and reporting methods due to the difficult circumstances caused by the ongoing conflict impacting the recording of international crimes, and availability of relevant information. For instance, prior to the conflict, Ms. Saliy explained there was an online database to track decisions, however now journalists have resorted to physically travelling to local courts to collect information. As the conflict continues, Ms. Saliy remarked that as trials are heard in courts in de-occupied territories, the resources of local courts to accommodate journalists, and to ensure safety and security, will be limited. Organising a network of journalists and training them on how to monitor trials, as well as cooperating with civil society were suggested as helpful initiatives. For Ms. Saliy, the bravery of judges, prosecutors, and journalists despite these uncertain circumstances is not to be overlooked.

The following discussion and Q&A centred around issues such as balancing public scrutiny of trials with protective measures for vulnerable victims and witnesses, the need to ensure that outreach is sensitive and does not cause further re-traumatisation, and the conflicts between prisoner exchanges and ensuring justice.

Finally, **Christophe Paulussen (Senior researcher and T.M.C Asser Institute and coordinator of its research strand 'In the public interest: accountability of the state and the prosecution of crimes', coordinator of the inter-faculty research platform 'International Humanitarian and Criminal Law Platform' and associate fellow rule of law responses to terrorism at the International Centre for Counter-Terrorism)** concluded the conference, by summarising the main outcomes, by thanking all of those involved in (the organisation of) the conference, and by hoping that the conference, even if only to a small extent, has assisted, in a very concrete manner, to the important effort of making sure that perpetrators of international law will realise that the law is there and in play, namely: by identifying problems, both legal and more of a practical nature, by linking up experts from different backgrounds to



facilitate coordination and cooperation, and by suggesting international law-compliant solutions on the way forward towards accountability.