



### Speech Christophe Paulussen

#### Conference 'Justice in the Domestic Adjudication of War Crimes Cases'

#### Panel 9: 'Raising Public Awareness to Promote Fair Trial Rights in International Crimes Cases'

22 October 2023

Thank you for that kind introduction Ghenadie, and thank you again so much to the organisers, my dear friends from USAID, for the invite to come to, and speak in Lviv. I am very happy and honoured to be here in person.

About the MATRA-Ukraine project: this is a multi-annual capacity building project funded by the Dutch MFA and implemented by Asser and Global Rights Compliance (or GRC) since 2020. The project aims to strengthen the capacity of Ukrainian actors in investigating, prosecuting, adjudicating and reporting on international crimes. Hence, we work not only with criminal justice professionals, but also with the actors that have to critically follow the proceedings, such as CSOs, defence counsel and journalists.

In all our work, we are guided by international law, as it is the Asser Institute's mission, and the Dutch government's constitutional obligation, to contribute to the development of international law.

And we hope that our fair trial indicators, a tool that we are currently developing and that I would like to briefly and provisionally present to you here today, can assist in this effort.

But before I go into the substance I would like to take this opportunity to thank GRC and my Asser colleagues Victoria Kerr, Gabriela Radu, Belén Guerrero and Ana-Maria Negri, who have done an impressive job in developing a first version of the indicators.

The fair trial indicators aim to assist court monitors, namely journalists and CSOs, in assessing the fairness of international crimes cases in Ukraine.

The document, an initial draft of which has been circulated to various stakeholders for feedback, consists, among other things, of a list of 20 indicators that will help court monitors in their assessment of the fairness of the trials broadly conceived, hence from the investigation phase to the appeal stage. There is also a commentary to the indicators describing some of the legal standards, as well as case law and practical examples.

These practical examples do not only include the many, many human rights violations that have been identified in the occupied territories by Russia-affiliated authorities. It also includes situations that have raised or could raise human rights concerns in proceedings conducted by Ukrainian authorities, including with respect to *in absentia* trials or legality issues in the context of the law on collaborative activities with the Russian Federation.

And it's these that we focus on, as we are here to assist not the Russian, but the Ukrainian authorities.

In view of the limited time at my disposal, I would like to focus this morning on just one indicator, Indicator 8, which stipulates: did the accused receive a fair and public hearing before an independent and impartial court?

One possible human rights concern I see here, and that we have already discussed during this conference (but that is worth repeating nonetheless, also because it connects to the theme of our panel), is that all Ukrainians are victims of the ongoing armed conflict. And the judges are not excluded from this group either of course: they suffer as well. But how can one apply justice in an impartial manner when you yourself are affected by the war, when you may know people who have died or whose houses have been destroyed, and when the public will put pressure on you to deliver harsh sentences and not pay too much attention to the human rights of Russian suspects or people collaborating with the Russians?

This will be a huge challenge, and the first mentimeter results prior to session 8 yesterday, my own encounters with some Ukrainian criminal justice professionals, and the comments from the judge in the audience during this session confirm this.

But this challenge must be overcome. Not only because Ukraine has committed itself to international law, but also because several of the conference participants have rightly said that Ukraine is different from Russia.

We will want to read in the history books 50 years from now, that Ukraine, even though it became the victim of a war of aggression and countless violations of IHL and international human rights law, was victorious, not only militarily, but also legally and morally.

This long-term goal must be kept in mind. Ruby already mentioned yesterday the importance of taking a sustainable approach. Of course, it's difficult to keep focused while you have this 'avalanche' of cases to deal with, but Ukraine's legacy, how this country will be remembered in history, is at stake. And it will be determined by all of you, and your commitment to long-lasting justice, not just quick convictions.

Mark Ellis yesterday spoke about Goldstone and the legacy of the ICTY. I could also refer to Robert Jackson here, Chief Prosecutor of the IMT in Nuremberg, at the opening of the trial against the Nazi leaders. He said, and the quote is too beautiful not to share with you here:

-“We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well. We must summon such detachment and intellectual integrity to our task that this Trial will commend itself to posterity as fulfilling humanity’s aspirations to do justice.”

I will conclude. As international partners striving for the same cause, I think we should do everything to relieve the Ukrainian criminal justice actors from their extraordinary burden. And this can be done in several ways. We should not only assist them in strengthening their knowledge and capacity in the fields of IHL, ICL and international human rights law, but we should also assist in the creation of an environment in which these professionals can actually *apply* the law.

And with this I do not mean having those beautiful court rooms that David has promised he will be building for you – although that is of course also extremely important, as we have seen yesterday in session 7 – but by educating the general public, through CSOs and journalists but also through courts themselves: they have to communicate what their mandates are, including their limitations – Ivana already spoke about managing expectations – and what international law is and why it is important to follow it.

If Ukrainian citizens realise what a fair trial *really* means and thus accept that this may lead to the conviction of a Ukrainian soldier or the acquittal of a Russian soldier for international crimes, then the chance is also bigger that criminal justice professionals will more readily do what they know deep inside is the right thing. For there will be less backlash towards a rational and legally correct, but unpopular decision.

This will be a long and difficult process, but rest assured that we are committed to helping you along the way. And if there is one people that can take on this task, it will be the resilient and brave people of Ukraine.

Thank you for your attention and I look forward to the discussion!