

Current Realities of Investigation and the Possibility of Bringing to Justice Those Guilty of Committing War Crimes on the Territory of Ukraine

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Current Realities of Investigation and the Possibility of Bringing to Justice Those Guilty of Committing War Crimes on the Territory of Ukraine

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Abstract

Throughout the 20th century, international humanitarian law (IHL) underwent significant evolution in combating crimes against peace (aggression), crimes against humanity, war crimes, and genocide. The armed aggression of the Russian Federation against Ukraine has led to the temporary occupation of about 20% of the internationally recognized territory of Ukraine (as of 2025), which is accompanied by large-scale violations of human rights and the commission of war crimes. In the context of active hostilities, the absence of legal jurisdiction and the inability of the law enforcement system to function in the occupied territories have created a legal vacuum that complicates the effective investigation of crimes. This poses serious challenges in bringing war criminals to justice, taking into account the norms of IHL, inter-state cooperation, and the use of modern digital forensic technologies. Methodologically, the study employs an interdisciplinary approach that combines content analysis, historical and legal methods, case studies, and legal modeling. Materials and judicial practice of international tribunals, including the ICC, are studied. In this case, particular attention should be paid to the use of artificial intelligence, satellite analytics, 3D modeling, OSINT, and remote collection of digital evidence. Based on international experience and lessons learned from other armed conflicts, the article offers practical recommendations aimed at improving investigation methods and mechanisms for bringing to justice those guilty of committing war crimes. Practical examples of integrating such tools into the investigation process are also considered, in particular, the use of virtual modeling by the Bavarian police. The evolution of IHL in the context of state responsibility, as well as the legal assessment of crimes committed in occupied territories, is also analyzed.

Keywords: war crimes; armed conflict; combatant; genocide; ecocide; occupied territories; digital evidence; artificial intelligence.

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Realidades actuales de la investigación y la posibilidad de llevar ante la justicia a los culpables de cometer crímenes de guerra en el territorio de Ucrania

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Resumen

A lo largo del siglo XX, el derecho internacional humanitario (DIH) experimentó una evolución importante en la lucha contra los crímenes contra la paz (agresión), los crímenes contra la humanidad, los crímenes de guerra y el genocidio. La agresión armada de la Federación de Rusia contra Ucrania ha dado lugar a la ocupación temporal de aproximadamente el 20% del territorio internacionalmente reconocido de Ucrania (al año 2025), lo que ha estado acompañado de violaciones a gran escala de los derechos humanos y de la comisión de crímenes de guerra. En el contexto de las hostilidades activas, la ausencia de jurisdicción legal y la incapacidad del sistema de aplicación de la ley para operar en los territorios ocupados han generado un vacío legal que dificulta la investigación eficaz de los delitos cometidos. Esto plantea serios retos para llevar ante la justicia a los criminales de guerra, teniendo en cuenta las normas del DIH, la cooperación interestatal y el uso de tecnologías forenses digitales avanzadas. Desde el punto de vista metodológico, el estudio se basa en un enfoque interdisciplinario que combina el análisis de contenidos, métodos históricos y jurídicos, estudios de casos y modelos jurídicos. Se estudian los materiales y la práctica judicial de los tribunales internacionales y de la CPI. En este caso, se debe prestar especial atención al uso de la inteligencia artificial, al análisis satelital, al modelado 3D, a la OSINT y a la recopilación remota de pruebas digitales. Con base en la experiencia internacional y en las lecciones aprendidas de otros conflictos armados, el artículo ofrece recomendaciones prácticas para mejorar los métodos y mecanismos de investigación destinados a llevar ante la justicia a los responsables de crímenes de guerra. También se examinan ejemplos prácticos de integración de estas herramientas en el proceso de investigación, en particular, el uso de modelos virtuales por parte de la policía bávara. También se analiza la evolución del DIH en el contexto de la responsabilidad del Estado y de la evaluación jurídica de los crímenes cometidos en territorios ocupados.

Palabras clave: crímenes de guerra; conflicto armado; combatiente; genocidio; ecocidio; territorios ocupados; pruebas digitales; inteligencia artificial.

Introduction

The armed aggression of the Russian Federation (hereinafter Russia) against Ukraine, which began in 2014 and escalated into a full-scale invasion on February 24, 2022, resulted in the annexation of the Autonomous Republic of Crimea and the city of Sevastopol, as well as the occupation of part of the territory by the aggressor country. As of 2025, approximately 20% of Ukraine's internationally recognized territory remains under Russia's military and administrative control.¹ This occupation led to systematic human rights violations, the establishment of a repressive regime, and the de facto suspension of legal protection for the civilian population.

The international community has recognized the Russian annexation of the Autonomous Republic of Crimea and the occupation of Ukrainian lands as illegal, as established by UN General Assembly Resolution 68/262 (2014), which confirms the territorial integrity of Ukraine within its internationally recognized borders. At the same time, according to Article 42 of the Hague Convention IV of 1907, a territory is considered occupied if it is under the power of an enemy army. Ukrainian legislation, namely the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" (2014), stipulates that such territories remain integral parts of Ukraine despite temporary occupation.

Under the occupation of Ukrainian territories, legal jurisdiction has been actually destroyed, creating a "legal vacuum" that prevents Ukrainian law enforcement agencies from effectively performing their functions in the occupied territories, contributing to a deterioration in the crime situation, an increase in organized crime, deterioration of public safety, and an increase in property and violent crimes against the civilian population. All this once again proves that the Russian invasion is an act of aggression, a crime against peace and security, a form of state crime accompanied by serious international crimes, including genocide, crimes against humanity, and war crimes. At the same time, in the territories liberated from Russian troops, Ukrainian law enforcement agencies, with the participation of international experts and observers, have discovered 104 torture chambers and 21

¹ Ministry for Communities and Territories Development of Ukraine, "Order No. 376 of 28 February 2025 on the Approval of the List of Territories Where Hostilities Are (Were) Taking Place or Temporarily Occupied by the Russian Federation," 2025, <https://zakon.rada.gov.ua/laws/show/z0380-25>.

mass graves containing the bodies of civilians and prisoners of war.² According to Dmytro Lubinets, the Ukrainian Parliament Commissioner for Human Rights, as of December 2024, there were 177 documented cases of extrajudicial executions of Ukrainian prisoners of war, which is a violation of the provisions of the Third Geneva Convention on the treatment of prisoners of war (1949).³ UN reports for February 2025 officially confirm the deaths of 12,654 civilians and injuries to more than 29,392 people, including 673 children killed and 1,865 injured.⁴ Since the beginning of the full-scale military aggression of Russia, prosecutors have documented 392 facts of Conflict-Related Sexual Violence (CRSV).⁵ At the same time, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has documented 664 cases of CRSV perpetrated by Russian officials against 523 men, 124 women, 15 girls, and 2 boys, including 449 Ukrainian prisoners of war (POWs), 135 civilian detainees, and 84 civilians in residential areas.⁶

Meanwhile, despite the growing body of evidence, Ukrainian law enforcement agencies lack the necessary training and methodological resources to investigate crimes committed under military occupation. For the most part, academic publications on this issue remain fragmented, but scholars have increasingly sought ways to overcome existing gaps. For example, Shepitko and others⁷ investigated the role of artificial intelligence (AI) in the criminal process. Pereira and others⁸ studied the value of remote sensing technologies in documenting war crimes, and

² Olena Shevchenko, "104 Russian Torture Chambers Discovered in De-occupied Territories of Ukraine – Prosecutor General," *Online.ua News*, December 8, 2023, <https://news.online.ua/104-rosiiski-kativni-viavleno-na-deokupovanix-teritoriiakh-ukrayini-genprokuror-869161/>; Zmina, "Since the Beginning of Russia's Invasion, More Than 16,000 People Have Died – Response to the Request," January 10, 2023, <https://zmina.info/news/z-pochatku-vtorgnennya-rf-zagynulo-ponad-16-tysyach-osib-vidpovid-na-zapyt/>.

³ *Ukrainska Pravda*, "Executions of Prisoners. Torture in Captivity. Abducted Children. Complaints About Territorial Recruitment Centres – Lubinets | Wednesday Evening," *You Tube*, December 18, 2024, <https://www.youtube.com/watch?v=ZtWssl0zFGk>.

⁴ United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), "3 Year Update: Ukrainian," February 17, 2025, <https://hrmmu-3-year-update.my.canva.site/ukrainian>.

⁵ Kateryna Kulyk, "Corruption crimes in Ukraine and Lithuania under martial law and the state of emergency: situation and trends," *Humanities and Social Sciences Communications* 13 (2026): 440, <https://doi.org/10.1057/s41599-026-06547-y>.

⁶ United Nations High Commissioner for Human Rights (OHCHR), "Report on the human rights situation in Ukraine, 1 June – 30 November 2025," December 9, 2025, <https://ukraine.ohchr.org/uk/Report-on-the-Human-Rights-Situation-in-Ukraine-1-June-30-November-2025>.

⁷ Valery Shepitko et al., "Artificial Intelligence in Crime Counteraction: From Legal Regulation to Implementation," *Social Legal Studies* 7, no. 1 (2024): 135–44, <https://doi.org/10.32518/sals1.2024.135>.

⁸ Paulo Pereira et al., "Russian-Ukrainian War Impacts the Total Environment," *Science of The Total Environment* 837 (September 2022): 155865, <https://doi.org/10.1016/j.scitotenv.2022.155865>.

Sokurenko and others⁹ examined the operational challenges for investigators in extreme conditions. Other studies focus on specific categories of crime, including Pipia,¹⁰ who investigated animal cruelty during armed conflict, and Filho and others,¹¹ who analyzed eco-crimes in protected areas.

Despite the great relevance and importance of the topic under study, there is currently no integrated methodology for investigating crimes committed during armed aggression in the occupied territories of sovereign states in modern wartime conditions. Moreover, the effective prosecution of crimes committed in occupied territories remains limited by legal and procedural challenges, particularly in establishing jurisdiction, collecting admissible evidence, and identifying suspects. In this context, the activities of non-governmental organizations (NGOs), international expert missions, and the use of innovative forensic technologies are important.

Thus, this article aims to fill this gap by analyzing the experience of international criminal tribunals and the latest forensic practice in prosecuting crimes committed during occupation. Relevant legal mechanisms, inter-institutional cooperation, and innovations in forensic expertise are considered. Particular attention is paid to digital forensics, open-source intelligence (OSINT), remote sensing, satellite and geospatial technologies, virtual modeling, and AI-based software as tools for documenting international crimes. The study also assesses state and international crimes through the lens of international jurisprudence and offers practical strategies to strengthen Ukraine's and other states' capacities to investigate crimes under occupation.

Methodology

In the context of researching issues related to the investigation and prosecution of persons guilty of committing war crimes on the territory of Ukraine, the authors chose a comparative-analytical approach as a basis. With its help, legal texts and relevant judicial practice were carefully selected, studied, and analyzed. Given the highly relevant nature of the topic, the authors focused on practical cases that

⁹ Valerii Sokurenko et al., "The Legal Regime of the Martial State in Ukraine and Its Impact on the Conduct of Pre-Trial Investigation: New Challenges and Their Overcoming," *Via Inveniendi Et Iudicandi* 19, no. 2 (2024): 92–111, <https://doi.org/10.15332/19090528.10671>.

¹⁰ Saba Pipia, "The Effect of Russia's Invasion of Ukraine on Non-Human Animals: International Humanitarian Law Perspectives," *Israel Law Review* 57, no. 2 (2024): 265–87, <https://doi.org/10.1017/s0021223724000086>.

¹¹ Walter Leal Filho et al., "The Environment as the First Victim: The Impacts of the War on the Preservation Areas in Ukraine," *Journal of Environmental Management* 364 (July 2024): 121399, <https://doi.org/10.1016/j.jenvman.2024.121399>.

clearly demonstrate the criminal prosecution of Russian military personnel for crimes committed on the territory of Ukraine. The demonstration of court cases made it possible to identify possible mechanisms for collecting evidence of crimes committed by Russian military personnel on the territory of Ukraine, which ensured the unwavering proof of their guilt.

This methodological choice not only emphasizes the reality of bringing Russian criminals to criminal justice but also provides an opportunity to gain a deeper understanding of how fair criminal proceedings are ensured in accordance with national legislation and international humanitarian law (IHL). The authors tried to illustrate as clearly as possible, using practical case studies, that the issue of bringing to justice those guilty of war crimes should not be considered in isolation within the legislation of a single country, but contextualized within the framework of international law, since the investigation of such crimes requires effective international cooperation, the involvement of a wide range of experts, etc., which will significantly increase the accuracy of the reconstruction of events and the identification of those responsible.

Thus, the purpose of the article is to reflect the reality and possibility of effectively investigating and bringing to justice those guilty of committing war crimes on the territory of Ukraine.

Results and Discussion

International Prosecution for War Crimes: From Myths to Real Cases

Case 1. Downing of Flight MH17: The Hague Trial

One of the most high-profile examples of international criminal prosecution for crimes committed during the armed conflict in the temporarily occupied territory of Ukraine was the downing of Malaysia Airlines flight MH17 on July 17, 2014. This tragedy claimed the lives of 298 people, most of whom were citizens of European Union (EU) countries and Australia. This case was decisive in establishing the responsibility of persons involved in the illegal use of military force in territory de facto controlled by a foreign state. The Joint Investigation Team (JIT), which included law enforcement agencies in the Netherlands, Australia, Belgium, Malaysia, and Ukraine, concluded that the aircraft was shot down by a 9M38 missile

launched from the Buk TELAR “3X2” anti-aircraft missile system. The system was located near the village of Pervomaiske, in the Donetsk region—territory controlled by Russian-backed armed groups. Investigators established that the Buk system belonged to the 53rd anti-aircraft missile brigade of the Russian Armed Forces, based in the Kursk region, and was secretly transported across the Russia–Ukraine border. After the rocket’s launch, the system was returned to Russian territory.¹²

During the trial at the District Court of the Hague, a large amount of evidence was presented, including missile fragments with unique serial numbers, satellite images, radar data, CCTV footage, recordings of intercepted telephone conversations between the defendants, and photographs and videos documenting the transport of the Buk system to and from the launch site. Much of the evidence was obtained through OSINT methods, particularly through the Bellingcat investigation platform. Their findings were based on satellite images, posts on the social networks VKontakte and YouTube, intercepted communications, and Russian state media reports. Additional assistance in identifying the victims was provided by the Organization for Security and Co-operation in Europe (OSCE).

On November 17, 2022, the District Court of the Hague found three individuals—Igor Girkin (the so-called “Minister of Defense” of the self-proclaimed “Donetsk People’s Republic (DPR)”), Sergey Dubinsky (a colonel in the Russian GRU and Head of intelligence for the “DPR”) and Leonid Kharchenko (commander of the “DPR” reconnaissance unit)—guilty of committing a terrorist act and murder. The verdict stated that the defendants acted in coordination with representatives of the Russian Armed Forces, in particular during the transportation of the Buk anti-aircraft missile system to the territory of Ukraine and its subsequent removal to Russia.¹³ The investigation identified all 42 servicemen of the 53rd anti-aircraft missile brigade of the Russian Armed Forces who were near the Ukrainian border at the time of the downing of MH17. It also identified three officers who were directly involved in launching the missile: two were part of the 2nd battalion crew, and the third accompanied the installation as a representative of the 3rd battalion. In addition to the crew members, the JIT also involved senior Russian commanders who coordinated the actions. Among them were Russian President Vladimir Putin,

¹² Prosecution Service of the Netherlands, “MH17 Plane Crash – Criminal Investigation by the Joint Investigation Team (JIT),” *Prosecutionservice.nl*, accessed June 25, 2025, <https://www.prosecutionservice.nl/topics/mh17-plane-crash>.

¹³ District Court of The Hague, “Judgment in the MH17 Criminal Case (ECLI:NL:RBDHA:2022:14039), 17 November 2022,” *Uitspraken.rechtspraak.nl*, 2022, <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2022:14039>.

Defense Minister Sergei Shoigu, Presidential Assistant Vladislav Surkov, Deputy Head of the GRU Alexei Dyumin, and Sergei Aksyonov, who at the time headed the occupation administration of Crimea. The case files documented their involvement in the system of control over the “DPR” and in providing instructions to its leadership. These episodes were separated into a separate criminal proceeding for possible further prosecution.¹⁴

The JIT materials, which are being examined within the Dutch jurisdiction, raise a complex legal question: can such officials—including the Minister of Defense, the Deputy Head of the GRU, or the President of the Russian Federation as Supreme Commander-in-Chief—claim combatant status, which could affect the legal qualification of their actions? In this context, it should be noted that at the time of the incident, both Sergei Shoigu and Alexei Dyumin held the military rank of general, and Vladimir Putin, as Head of State and Supreme Commander-in-Chief, personally coordinated the actions of the Russian Armed Forces. According to Dutch law, in particular Article 8d of the Dutch Criminal Code (1881)¹⁵ and Section 16 of the International Crimes Act (2003),¹⁶ the current Head of State cannot be held criminally liable, even for war crimes. This immunity applies throughout the person’s term of office.

The MH17 case can be understood as a paradigm of an emerging practice within the scope of international criminal justice, addressing crimes that typically involve large groups of victims and are often legitimized by expressed concern with victims. This approach allows trials to honor their value by providing a forum for addressing injustice, where traditional justice may remain elusive.¹⁷

Therefore, based on the above facts, the MH17 case should be considered a key precedent in international criminal law. It demonstrated the effectiveness of identifying, documenting, and prosecuting persons involved in the use of illegal means of warfare in the temporarily occupied territory of Ukraine, and confirmed the participation of Russia in an international armed conflict. This case laid the

¹⁴ Prosecution Service of the Netherlands, “Report MH17,” *Prosecutionservice.nl*, 2023, <https://www.prosecutionservice.nl/documents/mh17/map/2023/report-mh17>.

¹⁵ Government of the Netherlands, “Dutch Criminal Code (*Wetboek van Strafrecht*),” 1881, <https://wetten.overheid.nl/BWBR0001854>.

¹⁶ Government of the Netherlands, “International Crimes Act (*Wet Internationale Misdrijven*),” 2003, <https://wetten.overheid.nl/BWBR0015252>.

¹⁷ Marieke de Hoon and Antony Pemberton, “Crossing Borders: A Victimological Perspective on the Legal Aftermath of the Downing of Flight MH17,” *International Review of Victimology*, ahead of print, November 20, 2025, <https://doi.org/10.1177/02697580251386069>.

legal basis for assessing Russia's state responsibility and for conducting further investigations into, first, Russia's top political and military leadership. Secondly, determining legal responsibility for organizing the transportation, deployment, and combat use of the Buk TELAR "3X2" anti-aircraft missile system, which led to the death of 298 people. Furthermore, the effective investigation of this war crime and the subsequent trial highlight the important roles of intergovernmental cooperation, digital OSINT technologies, and satellite evidence in ensuring justice in war-related cases.

Case 2. The Murder of Andrea Rocchelli: The Case of Vitaliy Markiv in Italy

One of the most famous examples of transnational criminal prosecution in the context of the Russo-Ukrainian war and the temporary occupation of Donetsk Oblast is the case of Ukrainian soldier and citizen of Ukraine and Italy, Vitaliy Markiv. In 2017, he was detained at Bologna airport on suspicion of involvement in the deaths of Italian photojournalist Andrea Rocchelli and Russian translator Andrei Mironov, who were killed on May 25, 2014, near Mount Karachun (Sloviansk, Donetsk region), as well as the serious injury of French journalist William Rogelon. In this case, on October 11, 2019, the court of first instance in Pavia found Markiv guilty and, in a 176-page verdict, sentenced him to 24 years in prison. The charges were based mainly on circumstantial evidence—fragments of conversations during the arrest, the testimony of journalist Roguelon, a local taxi driver who drove the victims to the scene, and the general circumstances of the deaths. The court noted that the defendant was on Mount Karachun on May 24, 2014, and had visual control over the area near the Zeus Ceramica factory and the railway, where Rocchelli and Mironov died. Referring to a publication by journalist Ilaria Morani in the *Corriere della Sera* newspaper, which was described as a "direct confession" by the soldier, the court concluded that Markiv opened fire on civilians, including journalists, who were in the combat zone. Since Markiv could not hit the targets with his AK-74 automatic rifle, he allegedly passed on the coordinates to the command, which authorized artillery fire. As a result, Rocchelli and Mironov were killed, and French journalist William Roguelon was seriously injured. The court concluded that Markiv had carried out an "illegal order" that violated the 1949 Geneva Conventions on the protection of civilians.¹⁸

¹⁸ Radio Liberty, "Pavia Judges Publish Statement of Reasons for Judicial Decision in Markiv Case," *Euromaidan Press*, October 14, 2019, <https://euromaidanpress.com/2019/10/14/pavia-judges-publish-statement-of-reasons-for-judicial-decision-in-markiv-case/>.

The verdict caused widespread public outrage. In response, the Ukrainian side initiated independent technical and forensic investigations. Experts from Kyiv Scientific Research Institute of Forensic Expertise (KNDISE) conducted phonoscopic, photographic, traceological, explosive, military, and ballistic examinations. According to the experts' conclusions, it was physically impossible to hit the area where the journalists were located from Markiv's position, given the terrain and the distance of more than 1,650 meters. It was also established that the 127 mm caliber shell that killed the victims was not used by the Armed Forces of Ukraine, but was in service with the militants of the "DPR."¹⁹

On November 29, 2020, the Milan Court of Appeal fully acquitted Vitaliy Markiv, recognizing him as not involved in the death of the journalists. This decision was upheld by the Italian Court of Cassation on December 9, 2021.²⁰ This case has therefore become a landmark example of the protection of military personnel's rights in the context of hybrid conflict and transnational justice. It has highlighted the importance of independent expert assessment, scientifically sound analysis of evidence, and impartiality in international proceedings involving politically sensitive cases.

Case 3. Legal Proceedings against Voislav Torden (Jan Petrovsky) in Finland

On March 14, 2025, the Helsinki District Court (Finland) handed down a guilty verdict against 38-year-old Russian citizen Voislav Torden, also known as Jan Petrovsky. The defendant was the commander of the neo-Nazi paramilitary group Rusich, which in 2014 took part in hostilities on the side of pro-Russian illegal armed formations in the Luhansk region of Ukraine. The court found Torden guilty on four of the five counts of war crimes under IHL. One of the counts was dismissed due to insufficient evidence. The court found that Torden personally participated in the execution of wounded Ukrainian prisoners of war, which was classified as intentional murder with particular cruelty—a crime for which the Finnish Criminal Code provides for life imprisonment. In addition, the court found that under Torden's command, Rusich militants used methods of military disinformation, in particular, illegally using Ukrainian military insignia to organize ambushes, result-

¹⁹ Kharkiv Human Rights Protection Group, "Italian Court of Cassation Acquits National Guard Soldier Vitaliy Markiv," November 4, 2020, <https://archive.khpg.org/en/1604437714>.

²⁰ Institute of Mass Information, "Court in Italy Ultimately Acquits Ukraine's National Guard Member Markiv – Ukrinform," December 10, 2021, <https://imi.org.ua/en/news/court-in-italy-ultimately-acquits-ukraine-s-national-guard-member-markiv-ukrinform-i42809>.

ing in the deaths of more than 20 Ukrainian servicemen. The evidence included photos and videos showing Torden's direct involvement in combat operations: firing a machine gun, giving orders to use heavy weapons (in particular, the RPO-A "Shmel"), shooting wounded prisoners, and acts of cruelty against captives. One of the episodes involved carving the Rusich emblem on a prisoner's face, which the court considered to be an act of humiliation and glorification of violence. Another case involved the publication of images of the dead on social media.

The fifth charge concerned Torden's public statements on social media about his refusal to take prisoners. Although this statement was not directly related to a specific criminal act, the court found it to be influential in a broader legal and moral context. It was not recognized as a separate crime, but was considered in the overall assessment of the defendant's behavior. During the trial, Torden denied that he commanded the militants, stating that he was in Ukraine solely for the purpose of filming propaganda material. However, the court found these statements to be implausible and contrary to the available evidence. The defendant was arrested on July 20, 2023, at Helsinki-Vantaa Airport while attempting to cross the border with forged documents. Despite being subject to EU sanctions, he managed to enter the EU temporarily. His identity was established through coordinated actions by EU border guards and law enforcement agencies. This verdict was one of the first cases in which a national court of an EU member state convicted a third-country national for war crimes committed in Ukraine. The Torden case strengthened the practice of applying universal jurisdiction as an effective tool to combat impunity for international crimes.²¹

Case 4. United States v. Suren Mkrtchyan, Dmitry Budnik, et al.: A Case of Universal Jurisdiction

On December 6, 2023, the U.S. Department of Justice charged four Russian military personnel suspected of committing war crimes on the territory of Ukraine. This was the first time in American legal history that national legislation on war crimes had been applied to foreign citizens for actions committed outside the United States.

According to the case file, the crimes took place between April 2 and April 12, 2022, in the village of Milove (Kherson region, Ukraine) during the Russian occu-

²¹ Helsinki Times, "Voislav Torden Sentenced to Life for War Crimes," March 14, 2025, <https://www.helsinkitimes.fi/finland/finland-news/domestic/26297-voislav-torden-sentenced-to-life-for-war-crimes.html>.

pation of the region. Among the defendants were two officers (Suren Seiranovich Mkrtchyan and Dmitry Budnik) and two other soldiers known only by their first names, Valerii and Nazar. According to the investigation, the perpetrators kidnapped and illegally detained a U.S. citizen who was living in Ukraine with his wife at the time. The victim suffered severe physical and psychological abuse, including being seized in his own home, stripped, tied up, beaten, and threatened with being shot and sexually assaulted. He was held in a makeshift place of detention, where the torture continued. The group's commander, Dmitry Budnik, demanded the victim's "last words" and committed acts that are legally classified as torture and inhuman treatment. This case is of particular legal significance because it illustrates the United States' application of the principle of universal jurisdiction. The indictment concerns crimes committed abroad against a U.S. citizen who, under IHL, is a protected person. This provides grounds for legally qualifying the actions of the accused as war crimes.

The investigation into this case lasted about a year and was conducted jointly by the Federal Bureau of Investigation (FBI) and the U.S. Department of Homeland Security. U.S. Attorney General Merrick Garland stated that "these charges are not only a legal response to war crimes, but also a clear signal: responsibility for the Russian Federation's illegal aggression against Ukraine is inevitable. This is only the beginning."²²

As we can see, this case sets an important precedent in holding foreign nationals accountable for international crimes through national legal mechanisms. This case is evidence of the growing role of universal jurisdiction as a legal response to armed conflicts in the 21st century.

The Role of the International Criminal Court (ICC) in Documenting Crimes Committed by the Russian Federation in Ukraine, and Ukraine's Cooperation with the ICC

The full-scale invasion of Ukraine by the Russian Federation on February 24, 2022, constitutes an unprecedented violation of international law, in particular the provi-

²² U.S. Department of Justice, "Four Russia-Affiliated Military Personnel Charged with War Crimes in Connection with Russia's Invasion of Ukraine," December 6, 2023, <https://www.justice.gov/archives/opa/pr/four-russia-affiliated-military-personnel-charged-war-crimes-connection-russias-invasion>.

sions of the UN Charter and the Geneva Conventions. As noted by T. Hoffmann,²³ Russia's armed aggression encompasses the full spectrum of actions that constitute an act of aggression under UN General Assembly Resolution No. 3314 (1974). In response to the aggression, 141 UN member states supported Resolution A/RES/ES-11/1 (2022), in which the actions of the Russian Federation were clearly characterized as an act of armed aggression against Ukraine. An important legal step was taken on August 24, 2024, when the Government of Ukraine ratified the Rome Statute of the ICC, thereby granting the Court full jurisdiction over crimes committed on Ukrainian territory. As a result, in 2023–2024, the ICC prosecutor, based on the evidence gathered, initiated proceedings to issue arrest warrants for several high-ranking officials of Russia, among them:²⁴

March 17, 2023—Vladimir Putin, President of the Russian Federation, and Maria Lvova-Belova, Presidential Commissioner for Children's Rights, were accused of illegally deporting and transferring Ukrainian children from occupied territories to Russia, which is classified as a war crime.

March 5, 2024—Sergei Kobylash, Lieutenant General of the Russian Air Forces, and Viktor Sokolov, Admiral of the Russian Navy, were charged with intentional attacks on civilian infrastructure, causing disproportionate loss of life among the civilian population, which qualifies as a crime against humanity.

June 24, 2024—Sergei Shoigu, former Minister of Defense of the Russian Federation, and Valery Gerasimov, Chief of the General Staff of the Armed Forces of the Russian Federation, were charged with organizing large-scale attacks on civilian objects that caused excessive damage, also classified as crimes against humanity.

These arrest warrants are an unprecedented event in the history of the ICC and mark a transition from the investigation phase to the direct prosecution of individuals at the highest levels of power. Today, the Office of the Prosecutor General of Ukraine coordinates Ukraine's cooperation with the ICC. The main areas of cooperation include: fulfilling ICC requests for the collection and transfer of evidence; participating in the JIT; and harmonizing national legislation with international

²³ Tamás Hoffmann, "War or Peace? – International Legal Issues Concerning the Use of Force in the Russia–Ukraine Conflict," *Hungarian Journal of Legal Studies* 63, no. 3 (2022): 206–35, <https://doi.org/10.1556/2052.2022.00419>.

²⁴ International Criminal Court (ICC), "Situation: Ukraine (Case ICC-01/22)," *ICC-CPI.int*, accessed June 25, 2025, <https://www.icc-cpi.int/situations/ukraine>.

criminal law. In this regard, amendments have been made to the Criminal Code of Ukraine (2001) regarding war crimes and crimes against humanity, as well as to the Criminal Procedure Code of Ukraine (2012) to allow for pre-trial investigations in absentia. Discussions are also ongoing on the introduction of a separate article into the Criminal Code of Ukraine that would criminalize perfidy as a war crime under the Rome Statute. This would make it possible to legally classify, in particular, Ukraine's deception regarding the guarantees of its sovereignty and territorial integrity provided under the Budapest Memorandum as a war crime, taking into account violations of the principles of the 1907 Hague Convention and the 1994 Memorandum on Security Assurances.

International Cooperation: JITs, the Role of Eurojust, the ICC, and International ONGs

In accordance with Article 571 of the Criminal Procedure Code of Ukraine (2012), Ukraine participates in JITs together with EU member states and the ICC. JITs are mechanisms for international cooperation that coordinate the efforts of several countries to investigate crimes committed outside their borders or that affect their national interests. JITs are composed of prosecutors, investigators, and other authorized officials from participating countries acting under a joint mandate. Increasingly used in investigations into core international crimes (war crimes, genocide, crimes against humanity, and the crime of aggression), JITs are understudied in the field of international criminal law.²⁵ A striking example of the effective use of this mechanism is the MH17 investigation, which culminated in verdicts handed down by the District Court of The Hague (as described in more detail above).

As Caianiello²⁶ emphasizes, Eurojust plays a key coordinating role in the formation and operation of JITs, facilitating the exchange of information, the coordination of procedural actions, support for extraditions, and the optimization of investigative strategies. To support ongoing proceedings for crimes committed in Ukraine, Eurojust has created the Core International Crimes Evidence Database (CICED), which accumulates digital, documentary, and physical evidence of international crimes.

²⁵ Andrea Furger, "Can They Deliver? The Practice of Joint Investigation Teams (JITS) in Core International Crimes Investigations," *Journal of International Criminal Justice* 22, no. 1 (2024): 43–58, <https://doi.org/10.1093/jicj/mqae005>.

²⁶ Michele Caianiello, "The Role of the EU in the Investigation of Serious International Crimes Committed in Ukraine. Towards a New Model of Cooperation?" *European Journal of Crime, Criminal Law and Criminal Justice* 30, no. 3–4 (2022): 219–37, <https://doi.org/10.1163/15718174-30030002>.

In addition to EU countries, Eurojust cooperates with third countries outside the EU through bilateral agreements and cooperation with the ICC. Such cooperation is particularly relevant given Interpol's limited jurisdiction over political and military crimes and Europol's limited mandate, which applies only within the EU legal system.

JITs allow countries to conduct simultaneous evidence gathering (including digital evidence), witness interviews, and other procedural actions in multiple jurisdictions. For example, although the MH17 case was heard in a Dutch court, the evidence was gathered through international coordination.

Due to jurisdictional limitations of international law enforcement agencies, Ukraine must intensify bilateral cooperation with other states and international institutions, particularly the ICC and Eurojust, to identify suspects and facilitate further investigations and prosecutions. Furthermore, given that the ICC does not have a separate investigative unit, there is an urgent need to establish a specialized international investigative team to investigate international crimes committed in Ukraine, in coordination with national and international authorities.

The involvement of international NGOs is also extremely important. Organizations such as Human Rights Watch and Amnesty International conduct both field and remote investigations using OSINT methods. In the environmental sphere, organizations such as Greenpeace and EcoAction document the ecological consequences of armed conflict. Joint initiatives, such as the Tribunal for Putin, record the chronology of crimes and eyewitness testimony, which may be admissible as evidence in international proceedings.²⁷

Ukrainian investigative authorities actively engage foreign experts in accordance with Article 71 of the Criminal Procedure Code of Ukraine, particularly in areas related to CBRN weapons, forensic medical examinations, DNA analysis, and digital identification. International cooperation is further strengthened through initiatives such as the Atrocity Crimes Advisory Group (ACA), which is supported by the U.S. government and aims to document conflict-related sexual violence.²⁸

²⁷ Kostiantyn Zadoia, "The First Criminal Case in the USA Regarding War Crimes Committed in Ukraine," *The Global T4P Initiative (Tribunal for Putin)*, February 12, 2024, <https://t4pua.org/2281>.

²⁸ U.S. Department of State, "Creation of Atrocity Crimes Advisory Group for Ukraine," May 25, 2022, <https://2021-2025.state.gov/creation-of-atrocity-crimes-advisory-group-for-ukraine/>.

This multi-level system of cooperation, combining JIT mechanisms, institutional support from the ICC, operational coordination from Eurojust, and expertise from global civil society organizations, creates the basis for effective documentation, investigation, and prosecution of war crimes, crimes against humanity, crimes of aggression, and genocide.

Digital Forensics and Technological Innovations in War Crimes Investigation

With the start of full-scale armed aggression by Russia against Ukraine, digital forensics has become extremely important as a key tool for investigating international crimes in conditions of limited physical access to temporarily occupied territories. In combat conditions, when traditional investigative methods are often difficult or impossible, digital technologies enable the collection, storage, and analytical processing of evidence. Digital forensics enables the effective collection and analysis of data from mobile devices, social networks, satellite systems, open sources, geolocation services, and video surveillance systems. These tools not only help reconstruct the chronology of events but also allow the identification of individuals involved in crimes, even if they are not physically present in the conflict zone. Among the most important sources of digital evidence are satellite images, OSINT, metadata from multimedia files, geotags and timestamps, and data from social networks and video surveillance cameras.²⁹ Of particular importance is the Berkeley Protocol, an international standard that regulates the procedures for collecting, authenticating, preserving, and presenting digital evidence from open sources in court.³⁰

In mobile forensics, the use of the Cellebrite UFED (Universal Forensic Extraction Device) proved effective. This device allows you to extract and analyze data from a wide range of mobile devices, including the latest iPhone and Android models, SIM cards, and messengers (for example, Viber, WhatsApp, Telegram)—even without access to passwords.³¹ This tool is particularly relevant when examining mobile devices seized from prisoners of war, which may contain evidence of war crimes.

²⁹ Liliya Shutyak, “What Is OSINT and How It Helped to Expose the Bucha Killings,” *Explainer*, April 7, 2022, <https://explainer.ua/shho-take-osint-i-yak-vin-dopomig-vikriti-vbivstva-u-buchi/>.

³⁰ Alena Grishko, “How Analysts Use OSINT to Uncover Russian War Crimes: Satellite Imagery, Social Media Analysis, and AI,” *Book of Memory*, November 7, 2023, <https://bookofmemory.com.ua/uk/analytics/how-analysts-use-osint-uncover-russian-war-crimes-satellite-imagery-social-media-analysis-and-ai/>.

³¹ Serhiy Vasilyevich Tikhonov and Mykola Viktorovich Kobets, *Application of the Hardware-Software Complex ‘Cellebrite UFED’ During the Detection and Investigation of Criminal Offenses: Methodical*

Situational awareness systems, such as the Delta platform, track enemy troop movements in real time.³² Operational data from Ukrainian security and defense agencies (including the Armed Forces, Security Service, Main Intelligence Directorate, State Border Guard Service, and Foreign Intelligence Service) is also an important source. This includes information on troop deployments, equipment locations, intercepted communications, and other intelligence data.

Digital platforms such as eVorog, Diya, the e-Enemy chatbot on Telegram, as well as specialized portals and applications—dokaz.gov.ua, [WarCrimes.gov.ua](https://warcrimes.gov.ua), [eyeWitness to Atrocities](https://eyewitness.to/atrocities)—allow civilians to submit digital evidence in real time. These tools are particularly valuable for documenting crimes in hard-to-reach areas where law enforcement cannot be physically present.

In the field of biometric identification, AI-based systems such as Clearview AI, Palantir, and Artelligence process large volumes of visual and audio data to identify criminals.

3D event modeling technologies are used with drones, quadcopters, and Artec Leo scanners. These tools enable the creation of digital 3D models of crime scenes, which is particularly important for recording incidents in hard-to-reach or destroyed locations. This approach enables high-precision reproduction of the scene's spatial structure.

In the field of forensic medicine, the M. S. Bokarius Institute has introduced advanced methods of rapid DNA analysis and 3D scanning of deceased bodies using the Skeleton ID scanner. This enables real-time identification of individuals, even in cases of decomposition or when only body fragments are available.³³

Documenting environmental crimes (ecocide) occupies a special place in this context. Data from satellite monitoring, including NASA and ESA imagery, aerial photographs, and U.S. Geological Survey analyses, are used to map and visualize

Recommendations (National Academy of Internal Affairs, 2023), <https://elar.navs.edu.ua/server/api/core/bitstreams/2c421b7f-e0ad-4e98-8f8f-8d8709007c3b/content>.

³² Julian Borger, "The Drone Operators Who Halted the Russian Armoured Vehicles Heading for Kyiv," *The Guardian*, March 28, 2022, <https://www.theguardian.com/world/2022/mar/28/the-drone-operators-who-halted-the-russian-armoured-vehicles-heading-for-kyiv>.

³³ Oleksandr Kliuiev, "Modern Achievements of Forensic Expert Industry in Ukraine," *Theory and Practice of Forensic Science and Criminalistics* 30, no. 1 (2023): 5–11, <https://doi.org/10.32353/khrife.1.2023.01>.

the environmental impacts of military operations.³⁴ Such digital evidence can be used not only in criminal proceedings but also in reparations processes—in particular, to confiscate the aggressor state’s assets and restore the environment of the affected territories.

In light of the new challenges, updating Ukraine’s national digital forensics methodology is extremely important. This includes creating a national voice-sample database, introducing platforms for virtual incident modeling, and integrating digital evidence into international investigative and analytics systems. Such improvements will significantly strengthen the capacity of Ukrainian law enforcement agencies to combat international crimes in the context of hybrid warfare. Despite the progress made, digital investigations face several challenges, including the lack of a universal mechanism for the compulsory seizure of digital evidence and restrictions in international law on access to closed servers, cloud storage, and encrypted communications.

Conclusions

The creation of effective international judicial mechanisms is key to ensuring accountability for crimes committed in temporarily occupied territories. International courts and tribunals, both permanent and specially created, play a special role in this process. The creation of new tribunals is a necessary step to address jurisdictional gaps and political barriers, especially in light of Russia’s use of its veto power in the UN Security Council. Despite the political and legal challenges that complicate international investigations in conflict zones, institutional cooperation between national and international judicial bodies, the involvement of foreign experts, and the use of advanced digital technologies—such as satellite imagery, OSINT analytics, and AI—significantly increase the effectiveness of evidence collection and analysis.

The role of international non-governmental organizations such as Human Rights Watch and Amnesty International is particularly important. These organizations document war crimes using advanced technical means and remote investigation methods. Together with environmental initiatives and independent forensic experts, they help to build a comprehensive, reliable, and legally acceptable evidence base in accordance with international legal standards. After all, investigating crimes

³⁴ Viktoria Hubareva, “Wartime Challenges for Ukraine’s Protected Areas,” *Uwecworkgroup*, January 31, 2024, <https://uwecworkgroup.info/wartime-challenges-for-ukraines-protected-areas/>.

committed in occupied territories is a complex process that requires effective international legal cooperation, interdisciplinary expertise, and the integration of digital technologies into forensic practice. In the absence of effective national jurisdiction in the occupied territories, international legal instruments can help ensure accountability, particularly through investigative teams and international tribunals.

Nowadays, the integration of AI tools, big data analytics, and digital forensics increases the accuracy of event reconstruction and the identification of those responsible. It is necessary to modernize digital forensics methodology in Ukraine, including the creation of voice sample databases, digital modeling platforms, and the integration of data into international investigative and analytical systems.

Ukrainian legislation requires systematic reform and harmonization with the Rome Statute, particularly with regard to the definitions of crimes against humanity, war crimes, and the crime of aggression. Criminal liability should also be introduced for “treachery”—the simulation of peaceful intentions during armed conflict.

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