



## **MATRA-Ukraine project ‘Strengthening Ukraine’s Capacity to Investigate and Prosecute International Crimes’**

### **Conference Report**

The final conference of the MATRA-Ukraine project, ‘Strengthening Ukraine’s Capacity to Investigate and Prosecute International Crimes’ was held on 19 November 2024 at The Hague Conference Centre. Over the past four years, the focus of the T.M.C. Asser Instituut and Global Rights Compliance’s partnered project has been developing tools for and supporting Ukrainian criminal justice actors and other societal actors in their unprecedented pursuit of accountability domestically amid the ongoing armed conflict. Bringing Ukrainian actors together with Dutch and international counterparts, the conference took stock of progress and achievements in investigating, prosecuting, adjudicating and reporting on international crimes cases domestically in Ukraine since 2020.

The conference was opened by project partner leads **Dr Christophe Paulussen, Acting Chair of the Executive Board and Academic Director of the T.M.C. Asser Institute** and **Ruby Axelson, Senior Legal Adviser at Global Rights Compliance**, who highlighted progress and achievements made in the project, despite challenges posed by the global pandemic and the full-scale invasion of Ukraine by Russia. Emphasis was placed on the importance of justice pursued and delivered locally in Ukraine, with local ownership and victims at the centre of justice processes and in compliance with international law.

Further opening remarks were made by **Myroslava Krasnoborova, Counsellor of the Ukrainian Embassy in The Hague and Liaison and Prosecutor for Ukraine, Eurojust**, on the importance of cooperation between Ukrainian and international counterparts in The Hague, as exemplified through the International Centre for the Prosecution of the Crime of Aggression and study visits offering the opportunity to Ukrainian criminal justice actors to develop their understanding of international mechanisms and standards. **Carl Peersman, Head, Europe Department-Ukraine, Ministry of Foreign Affairs of the Netherlands**, which funds the project, stressed the ongoing support by the Netherlands for Ukraine, commending the unprecedented efforts by Ukraine amid ongoing conflict and the 1000 days since the full-scale invasion.

### **Panel 1: Strengthening the documentation, investigation, prosecution and adjudication of international crimes: tools to promote best practices**

The first panel ‘Strengthening the documentation, investigation, prosecution and adjudication of international crimes: tools to promote best practices’ was moderated by **Prachiti Venkatraman, Legal Adviser at Global Rights Compliance**. It began with an overview of the tools which have been developed by the MATRA-Ukraine project to support the documentation, investigation and adjudication of international crimes, including the Basic Investigative Standards (“BIS”) Manual and App, and the Benchbook on the Adjudication of International Crimes.





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To describe the progress made in terms of investigations and prosecutions in Ukraine, **Yuriy Belousov, Head of the War Crimes Department, Office of the Prosecutor General of Ukraine** described the extent of the crimes occurring, and the efforts towards establishing specialised units within the Office of the Prosecutor General, such as those focused on genocide, conflict-related sexual violence, and attacks against cultural heritage, with a view to building cases against higher-level perpetrators.

Mr Belousov noted that with support from international experts, Ukrainian criminal justice actors had enhanced their knowledge in line with international standards, despite the challenges of working during the war. He stressed the continued efforts towards the establishment of a Special Tribunal for Aggression, that *in absentia* trials can bring a sense of justice for victims, and that progress will continue on the national level.

**Zera Kozlieva, Legal Director at Truth Hounds** then highlighted some of the remaining priorities for Ukraine in terms of investigations into international crimes. Ms Kozlieva mentioned the importance of adherence of investigations to international standards, in order for the evidence to be admissible on multiple levels, both in jurisdictions other than Ukraine and internationally. Cooperation among the justice sector was also regarded as critical. Ms Kozlieva noted the need to strengthen the knowledge of practitioners through continued training, including beyond the centralised specialised units within the Office of the Prosecutor General. Finally, the unique nature of the crimes committed by Russia in Ukraine was acknowledged, thereby warranting the use of creative legal solutions to pursue accountability in this situation.

**Justice Mykola Mazur of the Grand Chamber of the Ukrainian Supreme Court** provided a comprehensive overview of how discrepancies between the Ukrainian Criminal Code (“CCU”) and international criminal law standards have posed challenges for Ukrainian criminal justice actors in dealing with conflict-related crimes cases. Referring to Article 437 of the CCU (on the crime of aggression) and the Yanukovich case, Justice Mazur demonstrated that the Supreme Court in Ukraine had recognised the divergences in the law (on the leadership nature of the crime) and showed willingness to pursue effective justice. Justice Mazur also highlighted procedural issues including notification and the right to a retrial in *in absentia* cases which did not align fully with European standards. Justice Mazur noted how amendments to the Criminal Procedure Code and the ratification and implementation of the Rome Statute in Ukraine would assist judges, given that the law would provide for universal jurisdiction, crimes against humanity and command responsibility and judges would now be able to refer precisely to international criminal law provisions in their adjudication. Justice Mazur also shared trends observed in Article 438 cases (war crimes) in Ukraine, which align closely with the MATRA-Ukraine project’s forthcoming ‘Strategic Recommendations for the Judiciary: A review of War Crimes Judgements in Ukraine’.

The follow up Q&A session centred around the involvement of the defence in Ukraine and how law and practice are not always aligned, as well as how building an ecocide case in the context of Ukraine could prompt the investigation of this emerging crime by the International Criminal Court going forward.

## **Panel 2: Incorporating child-friendly justice into the investigation and prosecution of international crimes**

The second panel ‘**Incorporating child-friendly justice into the investigation and prosecution of international crimes**’ was moderated by **Morgan Grant, Legal Adviser at Global Rights Compliance**, who opened with a reminder of the unique suffering faced by children of the conflict in Ukraine, and how Global Rights Compliance, through the MATRA-Ukraine project, has been closely working with the juvenile justice department (“JJD”) set up within the Office of the Prosecutor General to develop strategies and standard operating procedures (“SOPs”) in line with international standards.

The first panellist, **Tetiana Tsyndrenko, Documentarian at The Centre of Civil Education “Almenda”** emphasised that the situation faced by Ukrainian children must be properly understood by all actors in the criminal justice chain. Ms Tsyndrenko described how the last 10 years of conflict has seen every Ukrainian child becoming a victim, either having been killed, traumatised physically and mentally, or forcibly deported. The situation is also complex in the occupied territories, where over 1 million children remain, due to the damage and destruction to schools, or the militarisation or Russification of children, through youth armies, school curricula or forced passportisation. In addition, children are directly discriminated against by Russian (proxy) authorities, who have



initiated criminal proceedings against minors for showing support for Ukraine, and forced them into psychological treatment. Ms Tsyndrenko highlighted that there is a need for criminal justice actors to ensure they adopt a trauma-sensitive approach in their practice, and that this approach is broadened to the regional authorities.



Sharing the progress made by the prosecution in adopting child-friendly approaches, **Ianina Tertychna, Juvenile Justice Department Prosecutor, Office of the Prosecutor General of Ukraine** outlined the function of her department in issuing procedural guidance in proceedings where children are witness, victims, and perpetrators. Ms Tertychna noted their investigations (including through open-source research) in particular into forced indoctrination or Russification, as well as to locate missing children, and the department's cooperation with the UN Commission of Inquiry, OSCE and the Moscow Mechanism, the International Criminal Court and other NGOs. Ms Tertychna emphasised that coordination among agencies and a multidisciplinary approach is key, so as to involve law enforcement agencies, social workers and international experts in their operations. Ms Tertychna also mentioned the techniques employed by the department to uphold children's rights, and the pilot project initiated in 2023 to integrate international standards for child protection into the justice process in Ukraine, covering 11 regions. The SOPs developed by the department in cooperation with Global Rights Compliance through the MATRA-Ukraine project incorporate the best interests of the child, investigative plans, and a handbook on interview techniques.

**Ruby Axelson, Senior Adviser at Global Rights Compliance** noted the accountability gap when it comes to crimes against children, due to an adult-centred approach in international criminal justice and a failure to appreciate the unique harms children face or to actively empower them to participate in justice mechanisms. Ms Axelson mentioned that less attention has been paid to crimes which disproportionately affect children, such as attacks against schools or indoctrination, and that more work and study is needed to better understand the nuances in order not to consider children as a homogenous group. While the International Criminal Court's policy on children has been the departure point for Global Rights Compliance's work with the JJD in Ukraine, the international community should also learn from Ukraine's demonstrable commitment to prioritise the investigation of crimes against children, noting that this will become the best practice going forward. Global Rights Compliance has supported the JJD, together with the Atrocity Crimes Advisory Group, to develop an innovative domestic prosecutorial strategy to incorporate victim-centred and trauma-sensitive approaches, so that children can actively participate and have agency.

Building on Ms Axelson's reflections, **Professor Kim Thuy Seelinger, Special Adviser on Sexual Violence in Conflict at the International Criminal Court**, noted that within the International Criminal Court's framework, Article 54 of the Rome Statute requires the prosecutor to pay special attention to crimes against children, which has led to investigations into the crimes of forced conscription. The arrest warrants issued in the situation in Ukraine have been welcome expansions. However, Professor Seelinger noted that there are also crimes *affecting* children, where children are specifically targeted because they are children, as is seen in child soldier cases or cases where children are forced to witness crimes against their parent, vicariously being victims



themselves. Professor Seelinger noted that the International Criminal Court's 2023 children's policy was based on emerging scientific research and practice, and draws from the UN Convention on the Rights of the Child. It was highlighted that concepts such as the "best interests of the child" can become blurry in practice, often being conflated with the consent of parents. The International Criminal Court's tool therefore seeks to break down these concepts into tangible components, such as narrowing the scope of interviews to key issues, minimising the number of people in interviews, or protective measures. The work of the Court in this respect is guided also by conversations with national prosecutors on their practices with a view to solidarity.

The following Q&A centred around issues such as the intersection with policies or strategies on conflict-related sexual violence. It was noted that while there are literal overlaps, for example concerning avoiding re-traumatisation, and development of these policies in tandem, the key is to harmonise approaches.

### Panel 3: Monitoring the fairness of domestic cases

The third and final panel on '**Monitoring the fairness of domestic cases**', moderated by **Dr Christophe Paulussen**, began with the reminder that the rule of law demands critical reflection on justice processes in Ukraine in order for improvement. Dr Paulussen noted that the T.M.C. Asser Institute has been supporting efforts towards the fairness of trials in Ukraine through the creation of the Fair Trial Indicators, designed for civil society organisations and journalists on monitoring the fairness of trials in line with international law (English [here](#), Ukrainian [here](#)). The Institute ran a defence lawyer training series, in partnership with the Ukrainian Bar Association in early 2023, and has also been preparing 'Strategic Recommendations for the Judiciary: A review of war crimes judgements in Ukraine' which analyses around 50 war crimes judgements since December 2021 through an international law lens (forthcoming, January 2025).



Beginning the discussions, **Oksana Rasulova, Head of the Court Monitoring Project at Media Initiative for Human Rights**, noted that, after 8 years of experience her organisation has on court monitoring, challenges still remain in terms of accessibility of proceedings for the media. These issues are not legislative, but rather due to inconsistency in approaches by individual courts in practice, and lack of resources. Judges, court staff, and legal representatives such as defence lawyers have created obstacles to their effective monitoring, often citing reasons of security, without expanding on specifics. For example, judges have prohibited audio recording (permitted under Ukrainian law), defence lawyers have prohibited media contact with their client (in contradiction to their client's wishes) and defence lawyers have asked for their names to be redacted. Ms Rasulova indicated that often defence lawyers cite fears of stigmatisation, but that a balance needs to be struck with communicating justice to society. Ms Rasulova highlighted that, as detailed in her organisation's 2024 report "[Cooling Effect. Motivation of Victims to Participate in the Justice Process and Their Support along the Way](#)", while victims and witnesses used to be an important source of information to monitors, their expectations in terms of justice and reparation have not been satisfied, resulting in more reluctance.

**Zoia Zahynei-Zabolotenko, National Expert on the Ukrainian Bar Association project "Trial monitoring in war crimes cases"**, described how the project had monitored proceedings relating to war crimes against crimes against national security across Ukraine, resulting in the reports published in [December 2023](#), and [June 2024](#).



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The monitoring activities had shown progress in the application of international humanitarian law standards, however further efforts were needed to ensure notification in *in absentia* trials which adhered to international standards, taking recent cases involving notification via Telegram as examples. Ms Zahynei-Zabolotenko also noted that there is no unified practice on the qualification of conduct (as charges), leading to inconsistencies whereby the same group have been charged with the same crime in different regions under different modes of liability. It was acknowledged that while defence lawyers do not always prepare for an effective defence, they do face moral dilemmas, since society links them to their clients.

Based on her extensive experience in working on international crimes and complex terrorism cases in the Netherlands, and with the the Witness Knowledge Centre and Bureau of International Crimes within the District Court of The Hague, **Annelot Jumelet, a Dutch lawyer with KLS Strafrechtadvocaten** shared her reflections from working with Ukrainian counterparts. Ms Jumelet stressed that the defence are the guardians of fair trial standards and play a vital role in maintaining the integrity of the judicial process. In speaking with Ukrainian colleagues, Ms Jumelet noted the difficulties Ukrainian defence lawyers face in contacting clients and preparing a defence. In a training held by the MATRA-Ukraine project, it was evident that further investigation into the ill-treatment faced by POWs in Ukraine would be required to satisfy the presumption of innocence, and that without this, cases would be brought by Russian applicants to the European Court of Human Rights against Ukraine. Ms Jumelet added that a particular challenge faced by defence lawyers working on international crimes cases domestically is translating a range of international law bodies into national practice, and that the complexity of such cases requires hours of work. Overall, further time, effort and resources must be dedicated to the defence in Ukraine, and Ms Jumelet recommended the creation of specialised firms (including through international funding), based on a similar approach used in the Netherlands.

The following discussion and Q&A centred around the balance between communication to the public and the security and stigmatisation concerns faced by defence counsel in Ukraine. The speakers highlighted that while public opinion must change, it is something defence lawyers on international crimes cases face globally.

**Dr Christophe Paulussen and Wayne Jordash KC, Managing Partner at Global Rights Compliance** closed the conference. The key takeaways from the conference noted by Dr Paulussen were that: more emphasis should be placed on managing expectations but that case prioritisation is required (including on crimes against and affecting children); that Ukraine should continue efforts to implement child-sensitive, victim-centred and trauma-informed approaches, stressing the best interests of the child; *in absentia* cases must be monitored from a fair trial perspective; and for Ukraine to succeed in its efforts to prosecute and adjudicate conflict related cases fairly, it is essential that time, effort and resources are committed to the quality and know-how of the defence.

Wayne Jordash KC reflected on the project as a whole, which has been instrumental in holistically assisting the diverse actors engaged in addressing and seeking accountability for international crimes in Ukraine, by developing tools and resources to support investigators, prosecutors, defence lawyers, judges, civil society and journalists. There is further work to be done in continuing to support Ukraine's ongoing justice endeavours and building on the legacy and outputs of the MATRA-Ukraine project. As ever, the project partners, with the support from the Netherlands, are committed to ensuring Ukraine receives the highest quality, on the ground assistance in their pursuit of justice.