



Using Battlefield Evidence in Atrocity Crime Cases



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ABBREVIATIONS AND ACRONYMS

AFU	AFU Armed Forces of Ukraine
API	Additional Protocol I
APII	Additional Protocol II
CAH	Crimes Against Humanity
CCU	Criminal Code of Ukraine
CIMIC	Civilian–military cooperation
CIL	Customary International Law
CoA	Crime of Aggression
CPCU	Criminal Procedure Code
DFU	Defense Forces of Ukraine
EU	European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GC	Geneva Convention
GDPR	General Data Processing Regulation
ICC	International Criminal Court
ICL	International Criminal Law
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
MoD	Ministry of Defense

MLES	Military Law Enforcement Service
NATO	North Atlantic Treaty Organization
NPU	National Police of Ukraine
OGP	Operation Gallant Phoenix
OPG	Office of the Prosecutor General of Ukraine
OSINT	Open-Source Intelligence
POW(s)	Prisoner(s) of War
PSU(s)	Psychological Support Units
ROE	Rules of Engagement
RS	Rome Statute
SBI	State Bureau of Investigation
SOP	Standard Operating Procedure
SSU	State Security Service of Ukraine
STCoA	Special Tribunal for the Crime of Aggression against Ukraine
TDF	Territorial Defence Forces
UJ	Universal Jurisdiction
UN	United Nations
U.S.	United States
URPTI	Unified Register of Pre-Trial Investigations

FOREWORD



By **Gyunduz Mamedov**

Gyunduz Mamedov, Ukrainian legal professional and military servicemember. PhD in Law, Honored Lawyer of Ukraine. Deputy Prosecutor General of Ukraine (2019–2022). He laid the groundwork for systematic and coordinated investigations of international crimes in Ukraine.

The armed aggression of the Russian Federation, which has lasted for more than ten years, has posed unprecedented challenges to Ukraine that require a systemic response—primarily in the field of documenting war crimes and restoring justice.

One of the key tasks of modern Ukraine is to adequately reflect upon these challenges—particularly those related to large-scale violations of international humanitarian law and human rights law.

War always leaves behind more than ruins—it leaves traces of crimes. The question is whether we will be able to find, preserve, and bring these traces before a court, or allow them to disappear with the dust of war. Documenting international crimes is not only a legal obligation but also a moral mission aimed at establishing the truth, restoring the rights of victims, and combating impunity. The evidence collected on the battlefield forms the foundation of criminal proceedings, ensures the inevitability of punishment, and strengthens faith in justice.

Ukraine already has bitter experience with the loss of evidence. For instance, during the procedural oversight of investigations into crimes committed by Russian armed formations under the command of Igor Girkin in Sloviansk—an area that fell within my scope of competence at the Department for Supervision of Criminal Proceedings Concerning Crimes Committed in the Context of Armed Conflict of the Office of the Prosecutor General (“War Crimes Department”) – it became evident that a significant portion of evidence had disappeared because the military personnel who were the first to enter the city failed to ensure its proper documentation. Only through the efforts of journalists who documented part of the material was it possible to preserve certain testimonies that became valuable evidence in criminal proceedings. This example vividly demonstrated how critically important the involvement of the military is in the primary collection of evidence “hot on the trail.”

It was this experience that helped us understand, when we established the “War Crimes Department” in 2019, that cooperation with the military must be a priority.

After the start of the full-scale invasion by the Russian Federation in 2022, the problem became systemic. While directly in the combat zone—from Bucha to Iziurno, from Kupiansk to Pokrovsk—I saw firsthand that servicemembers overlook evidence of international crimes. In most cases, this was due not to indifference but to a lack of knowledge, resources, clearly defined procedures, as well as challenges and risks servicemen face when performing their primary duty.

This experience inspired the creation of this **Guide**, designed to systematize best international practices for documenting the gravest crimes while taking into account Ukrainian realities. Its primary aim is to provide servicemembers, investigators, and prosecutors with practical knowledge and tools for identifying, recording, and preserving evidence of violations of international humanitarian and human rights law, as well as to prevent such violations in their own activities.

The Guide is based on practical experience gained through field and desk research, interaction with military units at various levels, and the experience of NATO countries in **battlefield forensics**, which ensures the timely collection of evidence, verification of international crimes, and the acquisition of operational information that promotes accountability, situational awareness, and compliance with the norms of international humanitarian law.

In 2022–2023, within the Command of the Territorial Defense Forces of the Armed Forces of Ukraine, a **Working Group on the Implementation of IHL and Provision of Legal Services** (the Working Group) operated, focusing on the implementation and observance of international legal standards in the activities of military units. The idea to establish this Working Group arose in the first days of Russia’s full-scale aggression and took final shape after the de-occupation of the Kyiv region, when the scale of international crimes became evident. The Armed Forces of Ukraine were the first point of contact for victims and, beyond their security tasks, ensured the preservation of evidence crucial for future justice.

The Working Group’s primary focus was on preventive measures: implementing enforcement mechanisms, enhancing servicemembers’ knowledge and skills in IHL, and organizing the collection of battlefield evidence on violations of IHL. Specialists in national and international law—many of whom had been mobilized into the Armed Forces—used their civilian expertise to adapt the security and defense system to the requirements of the law of war.

This work continues today within the **Department for the Collection and Processing of Information on Violations of IHL Norms** of the Unmanned Systems Forces Group of the Armed Forces of Ukraine, which primarily deals with **digital forensics and OSINT**.

The documentation of crimes committed by the enemy serves not only evidentiary but also preventive purposes. It fosters an awareness of responsibility and helps servicemembers avoid actions that may be international crimes. By educating its military personnel on IHL norms, the state cultivates respect for the laws and customs of war, fostering discipline, humanity, and legal awareness.

Servicemembers' awareness of the necessity to comply with IHL norms is not only a fulfillment of Ukraine's international obligations but also a manifestation of a soldier's honor. Achieving this level of legal culture requires consistent, systematic, and targeted work. History offers many examples of commanders and soldiers once celebrated as heroes in their own countries who were later found guilty of war crimes. For example, the prominent Bosnian Croat politician and general **Slobodan Praljak** was indicted in 2004 by the International Criminal Tribunal for the Former Yugoslavia for war crimes, including torture, mass killings, and the destruction of civilian infrastructure and cultural heritage in the city of Mostar by subordinate personnel. On 29 May 2013, Praljak was sentenced to 20 years' imprisonment. This example serves as a reminder of the importance of preventing a similar scenario within the Armed Forces of Ukraine. Effective implementation of IHL norms is not only about adhering to international standards but also about preserving humanity even under the harshest conditions of war.

Building an effective system for collecting battlefield evidence requires not only legal knowledge but also an understanding of the context of war. War is not only a struggle for territory – it is a struggle for truth. The quality of evidence we collect today will determine the quality of justice tomorrow. Every fragment, every photograph, every report is a brick in the foundation of future verdicts against war criminals.

The Guide summarizes the concept of international crimes, mechanisms for collecting and preserving evidence, and methods for preventing violations of international humanitarian law. Its purpose is to ensure that the truth of war is not lost in its dust. Every piece of collected evidence is a step toward truth, and every observed principle of IHL is a step toward the victory of humanity over war.

EXECUTIVE SUMMARY

A decade of armed conflict in Ukraine has been characterized by repeated violations of international law—and by victims' long pursuit of justice. Securing justice for atrocity crimes is a massive challenge for prosecutors and other justice system professionals.

One challenge the Prosecution faces in the Ukrainian context is common in armed conflict: much of the evidence they need to build cases is located on the battlefield, in temporarily occupied territories over which their government has lost control, or in detention centers controlled by potential perpetrators. Historically, battlefield evidence has helped prosecutors secure convictions from the Holocaust to contemporary cases at the International Criminal Court. But it is often hard to locate. And once it is located, it is often first collected by military forces rather than traditional law enforcement.

Consequently, it is essential that prosecutors and other justice sector professionals work together with military personnel to ensure that evidence is professionally and reliably collected, stored, preserved, and eventually shared in order to build cases.

This Guide explains the concept of battlefield evidence and recommends ways to improve the evidence collection process and cooperation between prosecutors, investigators, military personnel, and justice sector professionals based on both international good practices and Ukrainian realities.

This Guide makes recommendations to help maximize the value of battlefield evidence for use in criminal prosecutions in three primary areas: legal reforms; refinements in the evidence collection processes; and actions to be taken by the Armed Forces of Ukraine.

Legal Reforms:

- The Criminal Procedure Code of Ukraine (CPCU) should be amended to establish a presumption that battlefield evidence is admissible if it is collected in accordance with standard protocols;
- Articles 3 and 8 of the Law On the Military Law Enforcement Service in the Armed Forces of Ukraine should be amended in order to regulate the powers of the Military Law Enforcement Service (MLES) to carry out initial measures for the recording and preservation of evidence of international crimes in areas of hostilities in accordance with international standards;

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- prosecutors should ensure they can prove international crimes to international standards when making charging decisions under the Ukrainian Criminal Code (CCU);
 - the CPCU should be amended to set out a procedure for the admission of intelligence data into evidence;
 - the CPCU should be amended to authorize the National Police, as well as the State Bureau of Investigation, to investigate allegations of crimes prohibited in Chapter XX of the CCU, including international crimes, by giving them alternative investigative jurisdiction;
 - a properly designed conflict-related specialization of the judiciary should be established to enhance the capacity of the justice system to handle cases involving alleged international crimes;
 - the issue of whether alleged perpetrators of crimes against humanity between 2014-2024 and commanders allegedly responsible for failing to take reasonable measures to prevent or punish crimes by their subordinates between 2014-2024 can be prosecuted in Ukrainian court on the basis of recent legal reforms should be clearly resolved;
 - prosecutors and other justice system representatives should get more staffing and resources, and additional training on addressing international crimes;
 - prosecutors should build cases against the most responsible perpetrators, including those responsible for broader patterns of atrocity crimes and midlevel commanders who may have given orders to direct perpetrators, as well as prosecuting direct perpetrators;
 - a comprehensive victim and witness protection system should be established;
 - the CPCU should be amended to allow witnesses to directly submit documents and evidence to investigative authorities to be used in criminal proceedings, in the same way as applicants and victims;
 - the possibility for military personnel to remotely participate in procedural hearings as specialists to assist courts in evaluating military matters should be expanded; and
 - Article 41 of the CPCU should be amended to allow prosecutors and investigators to empower military personnel to conduct investigative actions under formal authorization under certain circumstances, while preserving the ability of personnel to collect, preserve, and share evidence they encounter regardless of whether they have been formally or specifically authorized to do so.

Refining Evidence Collection Processes:

- Evidence should be collected in a manner that maximizes the likelihood that it can be used in any court that hears cases arising out of the conflict in Ukraine;
- law enforcement has and should have primary responsibility for investigations and evidence collection, including on the battlefield;
- military personnel should collect evidence when appropriate (for instance, when law enforcement cannot access the area);
- the military should have a standard publicly-releasable algorithm for collecting and preserving evidence and sharing it with law enforcement;
- appropriate military officials should communicate and cooperate with law enforcement to advance justice for atrocity crime victims;
- overclassification of battlefield evidence should be avoided;
- both judges and evidence collectors should ensure that battlefield evidence can be vetted and tested in court, including through witnesses who can authenticate it properly;
- appropriate servicemembers should receive training in identifying and collecting evidence; and
- modern technological tools like the Delta platform should be used for collecting, processing, and sharing evidence.

Actions by the Armed Forces:

- Communicate and cooperate with prosecutors and investigators to help build cases and advance justice for victims, including by identifying information in the possession of military units which may have evidentiary value;
- develop, approve, and implement a standard procedure for collecting, preserving, and promptly sharing with law enforcement evidence of potential international crimes including both physical and digital evidence;
- identify personnel responsible for collecting, preserving, and sharing such evidence with law enforcement;
- provide additional training to applicable units and servicemembers in identifying and collecting evidence of potential international crimes;
- continue to develop units that would be able to investigate the causes and circumstances of IHL violations and MLES as a unit with special coordinating and supporting role in detecting, recording, preserving, and transferring to law enforcement authorities evidence of international crimes;

-
- continue to build the Ukrainian Armed Forces' capabilities to uphold IHL and IHRL to comply with Ukraine's legal obligations and reinforce its international legitimacy; and
 - fully integrate legal advisors into the commander's staff during military operations to promote compliance with international humanitarian law.

This Guide was produced by Ukrainian and international experts with decades of experience dealing with atrocity crime cases and with the legal, policy, and practical issues surrounding the use of battlefield evidence. Authors included serving members of the Armed Forces of Ukraine who have researched and authored studies on the state of documenting violations of international law in the context of the Ukrainian conflict.

Additional recommendations to help build the capacity of the Ukrainian justice system to handle serious international crimes are set out in ULAG's report "Needs Assessment of Ukraine's Justice System: Delivering Meaningful Justice to the Victims and Survivors of the Armed Conflict."

CHAPTER 1.

INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL CRIMES

For Ukraine, in addition to its domestic laws, three primary bodies of international law apply during wartime: International Humanitarian Law (IHL); International Criminal Law (ICL); and International Human Rights Law (IHRL).



For Ukraine, in addition to its domestic laws, three primary bodies of international law apply during wartime: International Humanitarian Law (IHL); International Criminal Law (ICL); and International Human Rights Law (IHRL).

IHL governs the conduct of armed conflict, applying only during war to limit harm by protecting civilians, regulating targeting, and requiring the humane treatment of detainees. ICL establishes individual criminal responsibility for some IHL violations and sets the procedure for bringing perpetrators to justice. IHRL provides continuous protection for fundamental rights and freedoms that are not directly related to military operations to ensure core human rights are upheld.

During armed conflict, these frameworks operate concurrently and provide overlapping layers of protection. IHL takes precedence over matters directly involving combat operations and military conduct. IHRL maintains its protective role in areas beyond IHL's scope such as safeguarding regular citizens' due process rights, freedom of expression, and other essential liberties, some of which are not suspended during war. And ICL, along with applicable domestic criminal statutes, determines when individuals may be held criminally responsible, and what rights people accused of wartime crimes are entitled to. Together, they form a robust legal framework of protection during armed conflict.

1.1

Concept and Development of International Humanitarian Law

1.1.1 Core Principles of IHL

IHL has the following characteristics:

- it applies in situations of armed conflict, which is why it is traditionally referred to as the “law of armed conflict” or “law of war” (*jus in bello*);
- it applies to all armed conflicts, both international and non-international (though there are some rules that apply in either international conflicts or non-international conflicts, but not both);
- it regulates the conduct of hostilities, not the causes of war or its consequences;
- it establishes restrictions on the use of certain means and methods of warfare and rules for the treatment of victims of armed conflicts;
- it is equally binding on all participants in an armed conflict; and
- it is based on generally recognized norms of human morality.

The purpose of IHL is to limit the suffering that war causes to both the civilian population and those directly involved in the conflict.

IHL applies in any situation of armed conflict. Whether there is an armed conflict is a question of fact—there may be an armed conflict even if neither side declares war, and the legal basis for a State’s participation in the conflict is not relevant. IHL also always applies in situations of occupation of the territory of one State by another, even if such seizure of territory was not accompanied by armed conflict or continues after the end of the active phase of hostilities. IHL does not apply in peacetime outside of occupied territories.

IHL applies to all participants in an armed conflict. First and foremost, it binds states as the main subjects of international law. Entities that are not subjects of international law but are involved in hostilities, such as non-governmental armed groups and military formations, are also obliged to comply with IHL.

IHL also binds individual participants in the conflict, including members of State armed forces; organized non-state armed groups; and civilians who directly participate in hostilities.

IHL remains equally binding on all participants in an armed conflict, regardless of who is the aggressor and who is the victim of the attack, who is using military force unlawfully and who is exercising their right to self-defense, etc. Therefore, neither United Nations (UN) Security Council sanctions nor the fight against armed aggression or terrorism justify deviating from the provisions of IHL. Similarly, no conduct on the part of one party, even systematic and flagrant violations (such as the execution of prisoners of war or the bombing of residential buildings), exempts the other party from compliance with IHL. Thus, the principle of equality (equal application to all parties to the conflict) is decisive for IHL, while the principle of reciprocity (“an eye for an eye”) does not apply.

The objects of protection under IHL are primarily people who are not participating in the hostilities and civilian objects that are not military objectives. In addition, IHL provides some protections to combatants. Although attacks on combatants participating in an armed conflict are lawful, IHL restricts the use of means and methods of warfare that cause them excessive suffering or make their death inevitable. IHL also protects fighters who are **hors de combat**, i.e., when they are taken prisoner or have clearly expressed their intention to surrender; have been wounded or become sick to the extent that they are unable to defend themselves; or have been shipwrecked.¹

1 International Humanitarian Law: Answers to Your Questions. ICRC, 2020, p. 30.

Principles of IHL

The IHL system is based on certain fundamental guiding principles that define the spirit of this branch of law and its purpose, as well as shaping its development. These include:

Distinction. Combatants must be distinguished from civilians at all times. Civilians must never be intentionally targeted unless they are directly participating in hostilities, and civilian objects such as hospitals and schools may not be attacked unless they become lawful military objectives because by their use, purpose, or location they are contributing to military action. IHL prohibits attacks directed at civilians as well as attacks that are not directed at a specific military objective but may indiscriminately impact military objectives and civilians or civilian objects.

Necessity. This principle permits only the degree of force required to achieve a legitimate military objective. Recognized as customary international law, it allows measures not otherwise prohibited by IHL if they are essential to defeating the enemy. However, this principle is not absolute and is constrained by the principles outlined below. Acts that inflict unnecessary suffering or target civilians or civilian infrastructure cannot be justified by necessity. Ultimately, while military necessity provides operational flexibility, it must operate within legal limits designed to reduce human suffering.

Proportionality. Attacks that, based on the information available to a commander at the time of the attack, would be reasonably expected to cause civilian harm that is excessive compared to the military advantage they would achieve are prohibited.

Precaution. Feasible precautions must be taken to avoid or minimize civilian harm during military operations. This includes verifying targets, selecting means and methods of attack that reduce risk to civilians, and providing effective warnings when possible so that civilians may leave an area where military targets will be attacked.

Avoidance of unnecessary suffering. IHL prohibits or restricts the use of means and methods of warfare capable of causing excessive injury or unnecessary suffering to combatants, such as some types of weapons.

Humane treatment. IHL establishes the absolute right of all persons who fall into the power of the enemy (including prisoners of war and residents of occupied territories) to be treated humanely, regardless of their status and previous function or activities, without any discrimination based on race, color, religion or belief, sex, origin or property status, or other similar criteria.²

² Melzer, N. *International Humanitarian Law. General Course: Textbook/Manual*. Kyiv: International Committee of the Red Cross, 2020, p. 22.

1.1.2 History of IHL

The process of establishing international law took several centuries. Ancient wars were restricted by religious norms, various “codes of honor” for knights or warriors (for example, the famous Samurai Code (Bushido), which is a collection of ethical rules for professional warriors that was developed over 300 years ago), as well as agreements between states that were in conflict. However, these agreements mainly applied locally or regionally, not universally.

The birth of modern IHL is typically linked to two diplomatic conferences in Switzerland in 1863 and 1864, resulting in the adoption of the Geneva Convention for the Amelioration of the Condition of the Wounded in Armed Forces in the Field.³ The conferences grew out of Jean Henri Dunant’s proposal of a legally binding convention to protect wounded soldiers and the creation of national societies that would prepare personnel and material resources in peacetime to provide assistance to the wounded and sick during wartime, inspired by his personal impressions of the Battle of Solferino. In February 1863, Dunant founded the International Committee for the Relief of the Wounded, which in 1876 received its current name, the International Committee of the Red Cross (ICRC). This Committee prompted the 1863 and 1864 conferences.

IHL subsequently developed along two main vectors: (1) “Geneva law,” which was aimed at protecting victims of war, and (2) “Hague law,” which provided for restrictions on certain methods and means of warfare.

Thus, the Geneva Conventions of 1864 were amended and supplemented by the conventions of 1899, 1906, 1907, 1929, 1949, and 1977, primarily in terms of extending the status protected by IHL to sick combatants; persons shipwrecked; prisoners of war (POWs); civilians in occupied territories; and the entire civilian population of an enemy State.

Similarly, the 1899 Hague Conventions defined the laws of land warfare and prohibited certain means and methods of warfare, such as bombing from air balloons, artillery shells with poisonous gases, etc. In 1907, 11 conventions were adopted in The Hague on various legal issues of armed conflict, such as the opening of hostilities; the regulation of land warfare; the rights and duties of neutral states and persons in land and sea warfare; the status of enemy merchant ships at the outbreak of hostilities; etc.

The international political situation and major armed conflicts had a significant impact on the development of IHL. Thus, considering the experience of World War I, in particular the use of chemical weapons and the problems of POWs, the

³ International Humanitarian Law. Handbook for Lawyers. M.M. Gnatovsky, T.R. Korotky, A.O. Korynych, V.M. Lysyk, O.R. Poedinok, N.V. Khandel. Edited by T.R. Korotky. Kyiv-Odesa: Ukrainian Helsinki Human Rights Union, Phoenix, 2017, p. 27.

Geneva Protocol on the Prohibition of the Use of Asphyxiating, Poisonous and Other Gases and Bacteriological Methods of Warfare (1925) and the Convention on the Treatment of Prisoners of War (1929) were adopted.

After World War II and the Holocaust, which was accompanied by unprecedented human suffering and destruction, the IHL system was reinvigorated with the adoption of the four Geneva Conventions on the protection of victims of war in 1949. In addition, the international community determined it was necessary to establish individual responsibility for particularly serious international crimes, and so signed treaties such as the Convention on the Prevention and Punishment of the Crime of Genocide (1948).

In 1977, additional protocols were added to the 1949 Geneva Conventions which expanded the international legal norms in armed conflicts for states which joined these additional protocols, including Ukraine.⁴

1.1.3 Relation between IHL and ICL

The development of IHL has been accompanied by the emergence and development of ICL, which also has a significant impact on IHL. ICL addresses war crimes as well as genocide, crimes against humanity, aggression, and terrorism.

While ICL protects different interests and may sometimes deviate from IHL to protect the rights of defendants, the adoption of the Rome Statute of the International Criminal Court (ICC), as well as the practice of the Nuremberg and Tokyo Tribunals, the ad hoc tribunals for the former Yugoslavia, Rwanda, and Sierra Leone, and, more recently, the ICC, have contributed to the clarification and uniform interpretation of both customary and treaty-based IHL.⁵

1.2 Sources of IHL

The sources of IHL are divided into two main groups: treaties and customary international law. Like any state, Ukraine is bound by treaties it has signed and ratified⁶ and by rules of customary international law (unless it is a persistent objector). Indeed, in Ukraine, international law takes precedence over national legislation, so after ratification, the provisions of international treaties take precedence over the

4 Shevchenko V. V. Historical aspects of the creation and development of international humanitarian law. *Current issues in modern medicine: Bulletin of the Ukrainian Medical Dental Academy*. 2015. No. 2 (50), pp. 54-56.

5 Melzer N. *International Humanitarian Law. General Course: Textbook*. Kyiv: International Committee of the Red Cross, 2020, p. 42.

6 Vienna Convention on the Law of Treaties, Art. 31; Ukrainian Constitution, Art. 9 part 1; Law of Ukraine "On International Treaties of Ukraine", Art. 19.

provisions of national legislation in case of a conflict between them.⁷ In addition, general principles of law recognized by the legal systems of the nations of the world and the case law of international judicial institutions may help further flesh out legal principles and clarify ambiguities in treaty language or customary international law.

Treaty sources. Many international treaties have been concluded in the field of IHL, which is one of the most codified branches of international law. The advantage of treaty sources is that they clearly define the scope of the treaty and its parties, the rights and obligations of the parties, any reservations, and impose obligations that require compliance. For example, the Geneva Conventions of 1949 are considered the most widely ratified international treaties in the world.⁸ Core IHL treaties which are binding upon Ukraine are listed by subject at the end of this section.

Customary sources. Rules of customary international law are characterized by near-universal state practice and by the fact that states engage in that practice out of a sense of legal obligation.

Historically, like other branches of international law, IHL was formed by the development of certain customs and traditions of warfare, which were later formalized in international treaties. However, even after the development of a broad treaty base of IHL, international customs have not lost their importance, as they: (a) deepen and expand areas which may not yet be addressed by treaties; (b) overcome gaps, conflicts and other shortcomings in treaty law; and (c) apply to those parties to armed conflicts that are not parties to international treaties (e.g., non-state military formations, rebel movements, unrecognized states, etc.).

While customary law is not codified, there are key scholarly works analyzing these rules. For instance, experts under the general coordination of the ICRC prepared a doctrinal codification of IHL's customary rules, the Study of Customary IHL, about twenty years ago. This study contains a list of 161 rules that have been formed as customary international humanitarian law. The research is constantly updated and published on the ICRC website.⁹

Ukraine's obligations to comply with IHL and prevent its violations stem not only from international law but domestic legislation, as set forth in more detail below.¹⁰

7 Ukraine is also bound by IHL treaties signed and ratified by the USSR. Law of Ukraine "On the Succession of Ukraine".

8 Meltzer N. International humanitarian law. General course: textbook. Kyiv: International Committee of the Red Cross, 2020. 398 c. C. 24.

9 The essence and significance of customary international humanitarian law. Official website of the Ukrainian Red Cross Society. URL: <https://redcross.org.ua/news/2025/04/111855/>.

10 See Chapter 1.5.

IHL Treaties Binding Upon Ukraine

Subject	Treaties
<p>The 1949 Geneva Conventions and their Additional Protocols</p>	<ul style="list-style-type: none"> ● I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; ● II Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; ● III Geneva Convention relative to the Treatment of Prisoners of War; ● IV Geneva Convention relative to the Protection of Civilian Persons in Time of War. ● Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of June 8, 1977; ● Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol II), of 8 June 1977; ● Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III), of December 8, 2005.
<p>Limits on the Means and Methods of Warfare</p>	<ul style="list-style-type: none"> ● IV Hague Convention on the Laws and Customs of War on Land with annexed Regulations Regarding the Laws and Customs of War on Land of 1907; ● The Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 1925; ● The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 1972;

	<ul style="list-style-type: none"> ● Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, 1980, with protocols (Protocol on Undefined Fragments, 1980 (Protocol I). (Protocol I); Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices, 1980 (Protocol II); Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons, 1980 (Protocol III); Protocol on Blinding Laser Weapons, 1995 (Protocol IV); Protocol on Explosive Remnants of War, 2003 (Protocol V); ● Treaty on the Non-Proliferation of Nuclear Weapons of 1968; ● The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction of 1993.
Protection of Cultural Property	<ul style="list-style-type: none"> ● The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 with its two Protocols of 1954 and 1999
Protection of the Environment	<ul style="list-style-type: none"> ● The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976
Protection of Children's Rights	<ul style="list-style-type: none"> ● The Convention on the Rights of the Child (1989) with its Optional Protocol on the Involvement of Children in Armed Conflict (2000)
Liability for IHL Violations	<ul style="list-style-type: none"> ● The Geneva Conventions, particularly their Grave Breaches provisions; ● Convention on the Prevention and Punishment of the Crime of Genocide of 1948; ● The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968; ● Rome Statute of the International Criminal Court of 1998.

1.3

Ukraine's Obligations to Comply with IHL and Prevent Crimes

1.3.1 Types of Obligations

The specific details of a state's international obligations are determined by:

- Which treaties it has acceded to;
- Norms of customary international law; and
- The role of international law in its domestic legal system.

As noted above, Ukraine has signed and ratified numerous treaties which obligate it to follow and enforce IHL. In addition, customary international law imposes obligations on all states. In particular, under international law every state has:

- Obligations to ensure its policies comply with IHL and that violations of IHL are legally prohibited;
- Obligations to train its military personnel to comply with IHL;
- Obligations to punish those military personnel who violate IHL;
- Obligations to either prosecute anyone on its territory credibly accused of grave breaches of IHL or extradite them to a country where they can be prosecuted, whether or not they are military personnel.

If these obligations are not fulfilled, a State may be liable under international law. If military commanders do not take all reasonable measures to prevent crimes or punish perpetrators, they may be individually criminally responsible under international law or the Criminal Code of Ukraine (CCU). Ukraine's obligations to comply with IHL and good practices in doing so are discussed further in Chapter 5 below.

1.3.2 International Law in the Ukrainian Legal System

The Constitution of Ukraine provides that international treaties bind Ukraine and supersede domestic legislation. Part 1 of Article 9 directs that international treaties become part of the national legislation of Ukraine once the Verkhovna Rada gives its consent for Ukraine to be bound by those treaties.¹¹

Ukraine is also bound by international treaties on IHL which were ratified by the Soviet Union (USSR) when Ukraine was part of the USSR, according to the Law

11 See also Law of Ukraine "On International Treaties of Ukraine" of June 29, 2004, No. 1906-IV, <https://zakon.rada.gov.ua/laws/show/1906-15#Text>.

of Ukraine “On the Succession of Ukraine.”¹² In addition, in a special notification in 2015, the Government of Ukraine recognized itself as bound by international legal acts signed before the creation of the USSR, namely the Hague Conventions and Declarations of 1899 and 1907.¹³

Ukraine is consequently a party to the vast majority of the key IHL treaties, with two exceptions: the 2008 Convention on Cluster Munitions¹⁴ (to which Ukraine has not acceded) and the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (which Ukraine ratified in 2005, but in July 2025 Ukraine suspended the application of this Convention for itself).¹⁵ The most recent important document relating to IHL which Ukraine ratified was the Rome Statute of the International Criminal Court, which was approved by the Verkhovna Rada on August 21, 2024.¹⁶

Ukraine’s obligations to comply with IHL and prevent violations have also been codified in several Ukrainian domestic laws. These include, among others:

- the Law of Ukraine “On the Defense of Ukraine” of December 6, 1991, No. 1932-XII (defining the need to take into account the provisions of IHL in the field of defense and civil protection);¹⁷
- the Law of Ukraine “On the Armed Forces of Ukraine” of December 6, 1991, No. 1934-XII (defining the principle of humanity in the activities of the Armed Forces of Ukraine);¹⁸
- the Civil Protection Code of Ukraine of October 2, 2012, No. 5403-VI (defining the implementation in wartime of IHL norms as the basis of civil protection and specifying certain applications);¹⁹

12 The Law of Ukraine “On the Succession of Ukraine” of September 12, 1991, No. 1543-XII, <https://zakon.rada.gov.ua/laws/show/1543-12#Text>.

13 Implementation of international humanitarian law at the national level in Ukraine. Global Rights Compliance, 2020, pp. 26-27. See ICRC, International Humanitarian Law Database: <https://ihl-databases.icrc.org/en/ihl-treaties/treaties-and-states-parties?sort=state&state=18044>.

14 Convention on Cluster Munitions, 2008 <https://www.clusterconvention.org>

15 The Law of Ukraine “On the Suspension for Ukraine of the Operation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction” of July 15, 2025, No. 4519-IX <https://zakon.rada.gov.ua/laws/show/4519-20#Text>

16 The Rome Statute of the International Criminal Court https://zakon.rada.gov.ua/laws/show/995_588#Text; <https://zakon.rada.gov.ua/laws/show/3909-20#Text>

17 The Law of Ukraine “On the Defense of Ukraine” of December 6, 1991, No. 1932-XII <https://zakon.rada.gov.ua/laws/show/1932-12#Text>

18 The Law of Ukraine “On the Armed Forces of Ukraine” of December 6, 1991, No. 1934-XII <https://zakon.rada.gov.ua/laws/show/1934-12#Text>

19 The Civil Protection Code of Ukraine of October 2, 2012, No. 5403-VI <https://zakon.rada.gov.ua/laws/show/5403-17#Text>

- the Statute of Internal Service of the Armed Forces of Ukraine, approved by Law of Ukraine No. 548-XIV of March 24, 1999;²⁰ and
- the Disciplinary Statute of the Armed Forces of Ukraine, approved by Law of Ukraine No. 551-XIV of March 24, 1999²¹ (obliging military personnel to comply with IHL and establishing processes to hold military personnel accountable for non-compliance with IHL).

Special attention should be paid to the CCU, which establishes criminal liability for a number of violations related to armed conflict.²² Taken together, these laws implement Ukraine's obligations to ensure its policies comply with IHL; establish procedures to punish violators; and require Ukrainian military personnel and others subject to Ukraine's jurisdiction to comply with IHL.

At the sub-statutory level, the most relevant defense policy document is the Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine No. 164 of March 23, 2017.²³

1.4 International Crimes under International Law

International crimes are serious violations of the principles of international law. They affect the entire international community and may pose a heightened threat to international relations, individual states, or even humanity as a whole. Individuals may be held responsible for these violations and sentenced to criminal punishment, either by domestic or international courts. The general characteristics of these crimes are as follows:

- they constitute a violation of international law (most often, international humanitarian law);
- they entail individual criminal responsibility regardless of whether they are recognized as criminal offenses under national law;
- they have no statute of limitations;

20 The Statute of Internal Service of the Armed Forces of Ukraine, approved by Law of Ukraine No. 548-XIV of March 24, 1999 <https://zakon.rada.gov.ua/laws/show/548-14#Text>

21 The Disciplinary Statute of the Armed Forces of Ukraine, approved by Law of Ukraine No. 551-XIV of March 24, 1999 <https://zakon.rada.gov.ua/laws/show/551-14#Text>

22 See below Chapter 1.5.

23 The Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine No. 164 of March 23, 2017 <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>

- they require prosecutors to prove a high culpable mental state, typically intent and/or knowledge; and
- they are typically committed by a number of people acting together, each of whom may contribute in different ways (including command responsibility).

States may be held responsible for internationally wrongful acts, including acts that may also constitute international crimes by individuals, and may have a responsibility to compensate the victim state.

The primary international crimes are:

- the crime of genocide;
- crimes against humanity;
- war crimes; and
- the crime of aggression.

A sample handout for soldiers explaining these crimes under international law is attached.²⁴ Terrorism is also an international crime,²⁵ though it is beyond the scope of this Guide and consequently omitted from the handout. Together, these are often referred to as “atrocities crimes.”²⁶ Each category of international crimes is further defined in Articles 6–8 of the Rome Statute, as well as in the jurisprudence of the *ad hoc* tribunals.

1.4.1 War Crimes

War crimes are serious violations of IHL committed in the context of an armed conflict, the criminality of which is defined by international law.

Different conduct may constitute a war crime in an **international** armed conflict (involving two or more states fighting against each other) as opposed to a **non-international armed conflict**.

Either way, most war crimes fall into one of three primary categories:

- Mistreatment of people who are not lawful targets for violence, such as killing or physically abusing civilians not participating in hostilities or soldiers who have surrendered and are no longer participating in the conflict;
- Targeting civilians not participating in hostilities or civilian objects (like schools or hospitals that are not being used by armed forces) for attack; or

24 See Annex 1.

25 *Prosecutor v. Ayyash et al.*, Case No. 11-01/I, Interlocutory Decision on the Applicable Law, Terrorism, Conspiracy, Homicide, Cumulative Charging.

26 See Scheffer, David (2006) "Genocide and Atrocity Crimes," *Genocide Studies and Prevention: An International Journal*: Vol. 1: Iss. 3: Article 3. Available at: <https://digitalcommons.usf.edu/gsp/vol1/iss3/3>.

- Using prohibited means or methods of warfare, like poisoned gas or blinding lasers.

In terms of legal sources, war crimes may be divided into two main groups:

Category	Representative crimes
Grave breaches of the 1949 Geneva Conventions and their Additional Protocols	<ul style="list-style-type: none"> ● intentional and unlawful killing (e.g. murder); ● torture or inhuman treatment, including biological experiments; ● intentionally causing great suffering or serious injury to protected persons; ● extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; ● compelling a prisoner of war (POW) or other protected person to serve in the armed forces of an enemy state; ● deliberately depriving prisoners of war or other persons under protection of the right to a fair and regular trial; ● illegal deportation or transfer or illegal deprivation of liberty of protected persons; or ● taking hostages.
Other serious violations of the laws and customs of war (illustrative list)	<ul style="list-style-type: none"> ● intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; ● intentionally directing attacks against civilian objects; ● intentionally directing attacks against personnel, objects, material, units or vehicles involved in the provision of humanitarian assistance or in a peacekeeping mission in accordance with the UN Charter; ● attacking or shelling unprotected cities, villages, dwellings or buildings;

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| | <ul style="list-style-type: none">● killing or wounding a combatant who has surrendered unconditionally;● subjecting persons to acts of sexual violence;● pillaging a town or village, even if it has been taken by storm;● using poison or poisoned weapons; or● the use of asphyxiating, poisonous or other gases, and all similar liquids, materials or devices. |
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1.4.2 Crimes against Humanity

Crimes against humanity are very serious violations of human dignity committed as part of a widespread or systematic attack directed against a civilian population. This distinguishes them from war crimes, which may be committed as isolated incidents.

In general, international law permits prosecutions for crimes against humanity committed in times of peace as well as times of war and against a State's own civilian population as well as the citizens of putative adversaries.

Crimes against humanity include the following acts:

- extermination (mass murder);
- murder;
- rape or other forms of sexual or gender-based violence;
- torture;
- unlawful deportation or forcible transfer of civilians from a place where they were lawfully present;
- persecution of an identifiable group or community on political, racial, national, ethnic, cultural, religious, gender grounds, or on other grounds that are recognized as unacceptable under international law, in conjunction with any international crime;
- enforced disappearance;
- unlawful imprisonment or other severe deprivation of physical liberty;
- apartheid; or
- other inhumane acts of a similar nature intentionally causing great suffering or serious bodily injury or serious harm to mental or physical health.

For any of these acts to constitute a crime against humanity, it must be:

- Committed intentionally; and
- Committed in the context of and in connection with a widespread or systematic attack directed against a civilian population.

Some international courts, including the ICC, also require proof that an alleged crime against humanity was committed as part of the policy of a State or organization in order to enter a conviction for a crime against humanity. Others, like the International Criminal Tribunal for the former Yugoslavia, have not had such a requirement.

An attack may be found to have been directed against a civilian population even if that population lived in an area that was defended by military forces. In such cases, courts look to the nature of the attack to determine whether it was directed at the population or at lawful military targets. By contrast, crimes that are targeted *only* against fighters—even if they have been taken prisoner and so may not lawfully be subjected to violence—are likely to be qualified as war crimes, not crimes against humanity.

1.4.3 The Crime of Genocide

Genocide consists of deliberate acts committed with the intent to destroy a national, ethnic, racial, or religious group as such, in whole or in substantial part. The core of the crime of genocide is that it is directed against a group as such and the real aim is to biologically destroy the group, not simply kill some of its members.

As a rule, this crime is mass in nature and organized. Therefore, isolated or chaotic attacks on individuals, even if they are targeted because they belong to a particular group of the population, will usually not constitute genocide. At the same time, the critical element for establishing genocide is not the scale of the crimes or their coordinated nature, but the existence of an intent to destroy the group or part of it.

The Genocide Convention is not explicit as to what “part” of a group must be targeted for biological destruction to constitute genocide. Today, international law requires proof that a defendant intended to destroy a “substantial” part of a targeted group, meaning a part whose destruction would threaten the survival of the group as a whole, in order to enter a genocide conviction.²⁷

The following acts may constitute genocide, if committed with the requisite intent:

- killing members of a national, ethnic, racial, or religious group;

- causing serious bodily injury or mental harm to members of such a group;
- deliberately inflicting on such a group conditions of life calculated to bring about its physical destruction in whole or in part;
- taking measures intended to prevent births of children within the group;
- forcibly transferring the children of such a group to another group.²⁸

To secure a conviction for genocide, it is necessary to prove a perpetrator engaged in at least one of these five acts, with genocidal intent.

Genocide is distinguished from other international crimes primarily by its targeting of specific types of groups for destruction (national, ethnic, racial, or religious). If the relevant acts are committed against members of other types of groups (social, political, cultural, etc.), the act does not constitute genocide, but may constitute a crime against humanity if other elements are present.

International crimes include the acts of genocide mentioned above, but also conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide.

Direct and public incitement to genocide may be particularly notable and has been the subject of some investigations in the Ukrainian context.²⁹ The International Criminal Tribunals for Rwanda and Yugoslavia identified this as an inchoate crime, which would be complete as soon as the inciting communication was made, although the Rome Statute is somewhat ambiguous in this respect.

To enter a conviction for direct and public incitement of genocide, a court must find that the defendant made a communication which was directed to the public at large rather than a select audience; that the audience would have understood it to call upon them to commit genocide; and that the defendant intended to prompt his or her audience to destroy a national, ethnic, racial, or religious group in whole or in substantial part.³⁰

1.4.4 The Crime of Aggression

The crime of aggression is the planning, preparation, initiation, or commission of an act of aggression by a person in a position to exercise control over or direct the political or military actions of a state. An act of aggression is the use of armed force by a state against the sovereignty, territorial integrity, or political

28 E.g. Genocide Convention, Article II.

29 See Ukrainian Legal Advisory Group, Needs Assessment of Ukraine's Justice System, p.37, <https://ulag.org.ua/wp-content/uploads/2024/09/na-web.pdf>.

30 E.g. *Prosecutor v. Ngirabatware*, Case No. MICT-12-29-A, Judgment (Appeal), paras. 52-54, 58.

independence of another state, or in any other manner incompatible with the UN Charter, which, by its nature, severity, and scale, constitutes a manifest violation of the UN Charter. Because aggression can only be committed under international law by “a person who is in a position to exercise control over the political or military actions of a state”, only people in high-ranking positions may be charged with this crime. Regular soldiers may never be charged with aggression, even if they are participating in the use of armed force against the sovereignty or territorial integrity of another state.

According to Article 8 bis of the Rome Statute, acts which may constitute an act of aggression include the following:

- invasion or attack by the armed forces of a state into the territory of another state;
- any military occupation, regardless of its temporary nature, resulting from such invasion or attack;
- any annexation by the use of force of the territory of another state or part thereof;
- bombardment by the armed forces of a state of the territory of another state;
- use of any weapon by a state against the territory of another state;
- blockade of the ports or coast of a state by the armed forces of another state;
- attack by the armed forces of a state on the land, sea or air forces or the sea and air fleets of another state;
- the use of armed forces of one state present in the territory of another state under an agreement with the receiving state in violation of the terms of the agreement, or any continuation of their presence in such territory after the termination of the agreement;
- an act by a state which permits its territory, which it has placed at the disposal of another state, to be used by that other state for the purpose of committing an act of aggression against a third state; or
- the sending by a state or on behalf of a state of armed bands, groups and irregular forces or mercenaries who commit acts of armed force against another state which are of such a serious nature as to be equivalent to the acts listed above, or its substantial participation in such acts.

The UN Security Council has the power to determine whether an act of aggression has occurred, with the corresponding legal consequences, in accordance with the United Nations Charter.³¹ At the same time, the individual responsibility of specific persons for the crime of aggression does not depend on whether an act of

aggression has been established by the Security Council or whether the state itself has been held accountable for that act.

1.5

Violations of IHL under Ukrainian National Legislation

The most serious violations of IHL in Ukraine are subject to criminal liability under the CCU. The relevant criminal offenses are defined primarily in Chapter XX, “Criminal Offenses Against Peace, Security of Mankind, and the International Legal Order,” of the CCU. In addition, some are contained in Chapter XIX, “Criminal Offenses Against the Established Order of Military Service (Military Criminal Offenses)”. Chapter XX applies to all persons within the jurisdiction of Ukrainian criminal law. Chapter XIX applies only to members of the Ukrainian military.³²

A sample handout which could be provided to servicemembers identifying the potential crimes under Ukrainian law which they may encounter is attached.³³ Those crimes, as they are codified as of September 2025, are discussed further below along with additional legal notes where relevant. However, the applicable sections of the CCU have been amended repeatedly over the past ten years and additional proposed amendments are under discussion as of this drafting, so it will be essential for both prosecutors, investigators and military personnel to remain abreast of additional developments in this area of the law.

1.5.1 Criminal Offenses against Peace, Security of Humanity, and International Legal Order

Chapter XX of the CCU addresses criminal offenses that undermine the foundations of international relations and the international legal order. As noted below, in some instances Ukrainian definitions of crimes could be read to diverge from international law. Prosecutors should consider interpreting the CCU in line with international law, conscious that Ukraine may decide its own interpretation of in-

32 In accordance with Part 2 of Article 401 of the Criminal Code of Ukraine, military personnel of the Armed Forces of Ukraine, the Security Service of Ukraine, the State Border Service of Ukraine, the National Guard of Ukraine and other military formations established in accordance with the laws of Ukraine, the State Special Transport Service, the State Special Communications and Information Protection Service of Ukraine, as well as other persons specified by national legislation. Special police officers of the National Police of Ukraine who are directly involved in combat operations during martial law shall be liable under certain articles of Section XIX of the Criminal Code of Ukraine ([Articles 402](#), [403](#), [414-416](#), [422](#), [427](#), [429](#), [430](#), [432-435](#)).

33 See Annex 2.

ternational crimes so long as its definition is “consistent with the essence of the offense” as it is defined in international law.³⁴

1.5.1.1 Articles Detailing Such Criminal Offenses

Article 437 CCU Crime of aggression establishes criminal liability for planning, preparing, or waging an aggressive war or military conflict, as well as participation in a conspiracy aimed at committing such acts (part 1), and for conducting an aggressive war or aggressive military actions (part 2). The CCU’s definition of the crime of aggression does not fully comply with international law, since the CCU does not limit the people who can be held responsible for this crime to those who can actually exercise control over or direct the political or military actions of a state as the Rome Statute does.³⁵ Also, the CCU does not explain what types of acts may constitute “aggressive military actions” or “waging” or “conducting” an aggressive war, while the Rome Statute defines acts of aggression clearly. In both regards, a careful approach would be for a prosecutor to follow international law in evaluating charging decisions under Article 437. Indeed, the Ukraine’s Supreme Court appears to have addressed the first issue with some regard for international law, holding that only persons who “exercise effective control over”, “manage”, “significantly influence”, or “manage specific areas of” a State’s military or political actions can be held liable for aggression under Article 437.³⁶

Article 438 CCU War crimes provides for criminal liability for the following acts: (1) cruel treatment of prisoners of war or civilians; (2) deportation of civilians for forced labor; (3) looting of national treasures in occupied territory; (4) use of means of warfare prohibited by international law; (5) other violations of the laws and customs of war provided for by international treaties, the binding nature of which has been recognized by the Verkhovna Rada; and (6) giving orders to commit such acts. Part 2 of this article provides that these crimes carry a more severe sentence if they result in the death of one or more persons.

It should be noted that Article 438 of the CCU does not fully correlate with the provisions of the Rome Statute, which provides greater specificity about the

34 See Grand Chamber of the Supreme Court, Case No. 415/2182/20, available at <https://reyestr.court.gov.ua/Review/117555176>, para.36.

35 For more details, see “Assessment of the Needs of the Ukrainian Legal System,” ULAG report, Kyiv, 2025, <https://ulag.org.ua/uk/reports-and-materials/needs-assessment-ukraines-justice-system/>. Some post-World War Two aggression trials used a slightly different test than ICC’s, requiring proof that defendants had the authority to “shape or influence” the decision to wage aggressive war before entering convictions. E.g. *U.S.A. v. Leeb et al.*, Judgment, 27 October 1948, pp.22–23.

36 See Grand Chamber of the Supreme Court, Case No. 415/2182/20, <https://reyestr.court.gov.ua/Review/117555176>, para.46; Are You a Leader? Ukraine’s Supreme Court Clarifies the Definition of the Crime of Aggression, Sergii Masol, 2024, <https://www.ejiltalk.org/are-you-a-leader-ukraines-supreme-court-clarifies-the-definition-of-the-crime-of-aggression/>.

crimes that might be charged. Article 8 of the Rome Statute lists 37 war crimes which may be committed in the context of and in connection with an international armed conflict and 22 war crimes which may be committed in the context of and in connection with a non-international armed conflict. The definitions of war crimes under the CCU are more general; do not explicitly require a link to armed conflict; apply generally to any, not only the most serious, violations of the laws and customs of war; and do not establish differentiation of responsibility for the commission of such acts (except in cases where they resulted in death).

Thus, prosecutors should consider interpreting Article 438 in line with international law, in order to avoid overly broad application of the provision.

Article 439 CCU Use of weapons of mass destruction establishes criminal liability for the use of weapons of mass destruction prohibited by international treaties, the binding nature of which has been recognized by the Verkhovna Rada. Part 2 of this article provides for a more severe punishment for such acts if they result in the death of one or more persons.

It should be noted that the use of such weapons may also be covered by the provisions of Article 438 of the CCU (see above). In addition, while the criminal penalties under both Article 438(1) and Article 439(1) of the CCU are the same, in cases where the relevant acts have resulted in the death of a person, the penalty under Article 438(2) of the CCU is more severe.

Similarly, the development of weapons of mass destruction, or other actions which may facilitate their use, is criminalized by **Article 440** of the CCU.

Article 441 CCU Ecocide provides for criminal liability for actions that may cause an environmental disaster, including mass destruction of flora and fauna and the poisoning of air and water resources. It does not differentiate responsibility based on the consequences of an act of ecocide; any such act is subject to imprisonment for eight to fifteen years.

Article 442 CCU Genocide provides for criminal liability for acts intentionally committed with the aim of completely or partially destroying a national, ethnic, racial, or religious group as such. As in international law, the acts which may constitute genocide are:

1. killing members of the group;
2. causing serious harm to members of the group;
3. imposing on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. imposing measures intended to prevent births within the group; or
5. forcibly transferring children of the group to another group.

Part 2 of this article criminalizes direct and public calls to commit the above acts, made with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group as such, as well as the production of materials containing calls to commit such acts with the intent to disseminate them or the actual dissemination of such materials.

The wording of the elements of the crime of genocide under the CCU is generally the same as it is under international law. However, where the Genocide Convention and the Rome Statute use the term “serious bodily or mental harm,” Article 442 uses the concept of “serious harm,” which is understood as causing serious bodily injury or bodily injury of moderate severity, committing rape or other forms of sexual violence, or causing severe physical pain or physical or mental suffering.³⁷

Article 442 is also silent as to what “part” of a group must be targeted in order for an intent to destroy it to constitute genocidal intent. Again, the best approach may be to interpret Article 442 consistent with international law and require a prosecutor to prove that a defendant intended to destroy a “substantial” part of a targeted group, meaning a part whose destruction would threaten the survival of the group as a whole, in order to secure a genocide conviction.³⁸

In addition, the CCU provides for criminal liability for the production of materials calling for the commission of genocide with the aim of disseminating or distributing such materials. While the CCU does not explicitly require the Prosecution to prove that someone who disseminated materials calling for genocide intended to prompt other people to act on those calls in order to secure a conviction, a careful prosecutor would likely again follow international law and only bring charges for incitement to genocide where the inciter’s genocidal intent could be proven.³⁹

Article 442-1 CCU Crimes against humanity establishes criminal liability for the intentional commission, within the context of a widespread or systematic attack directed against any civilian population, of the following acts:

- persecution of any identifiable group or community, i.e., restriction of important human rights on political, racial, national, ethnic, cultural, religious, gender, or other discriminatory grounds defined by international law as unacceptable;
- deportation of the population, i.e., the forced and unjustified transfer of a group of persons from the territory where they were legally present to the territory of another state;

37 See Note to Article 442 of the CCU.

38 E.g. Prosecutor v. Mladić, Case No. MICT-13-56-A, Judgment (Appeal), para.580. See Chapter 1.4.3 above.

39 See e.g. Prosecutor v. Nahimana et al., Case No. ICTR-99-52-A, Judgment (Appeal), para.1034.

- forcible transfer of population, i.e., the forced and unjustified transfer of a group of persons from the territory where they lawfully reside to another locality within the same state;
- rape, sexual exploitation, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence;
- enslavement or human trafficking;
- enforced disappearance;
- unlawful deprivation of liberty;
- torture;
- apartheid;
- murder;
- extermination; and
- other inhumane acts of a similar character, accompanied by severe suffering, moderate or serious bodily injury, or serious harm to mental or physical health.

The wording of Article 442-1 of the CCU almost literally reproduces the provisions of Article 7 of the Rome Statute. At the same time, the first of the acts described, related to the persecution of any group or community, constitutes a crime against humanity at the ICC only if committed in conjunction with any other international crime, while Article 442-1 of the CCU defines this act as an independent crime against humanity. Moreover, for some crimes against humanity (such as extermination), the CCU could be read to define the crime more broadly than international law does. Again, a careful prosecutor should consider interpreting the CCU in a manner that is consistent with international law.

Article 445, Illegal use of the symbols of the Red Cross, Red Crescent, and Red Crystal, establishes criminal liability for the illegal use of the symbols of the Red Cross, Red Crescent, and Red Crystal, except in cases provided for by the CCU.

It should be noted that the symbols of the Red Cross, Red Crescent, and Red Crystal are among the distinctive emblems established by the Geneva Conventions. Their unlawful use constitutes a violation of the Third Additional Protocol to the Geneva Conventions. In turn, the improper use of distinctive emblems established by the Geneva Conventions, resulting in death or serious injury to a person, is recognized as a war crime under Article 8(2)(b)(vii) of the Rome Statute. Therefore, if such consequences occur, the act violates both Article 445 and Article 438. In addition, a Ukrainian servicemember who commits a similar offense is criminally liable under Article 435 of the CCU.⁴⁰

1.5.1.2 Principles Relevant to Crimes Against International Peace and Security

For crimes addressed in Articles 437–439, 442, and 442-1 of the CCU, a number of special features of criminal liability have been established.

First, Article 8(2) of the CCU establishes that Ukrainian courts have universal jurisdiction over such crimes. This article provides that foreigners or stateless persons who do not permanently reside in Ukraine and who have committed any of these crimes outside Ukraine are subject to liability in Ukraine in accordance with the CCU, if such persons are present on the territory of Ukraine and cannot be extradited to a foreign state or international judicial institution for criminal prosecution, or if their extradition has been refused.

Second, Article 31-1 of the CCU establishes “command responsibility” for these crimes. It provides that both military and non-military superiors may be held responsible for such crimes committed by their subordinates, albeit under different standards:

- a military commander or other person who actually acts as a military commander is criminally liable for any of these crimes committed by a subordinate who was under his actual command and control at the time of the crime or, depending on the circumstances, under his actual authority and control if the crime occurred as a result of the commander’s failure to exercise proper control over the perpetrator; the commander knew or, given the circumstances at the time, should have known and could have known that the subordinate had committed or intended to commit the crime; and the commander failed to take the measures he should have and could have taken within his powers to prevent or stop the commission of the crime or report it to a competent authority.
- a superior who does not fit the definition of a military commander is criminally liable for any of these crimes if such crime related to activities that fell under his actual responsibility and control and was committed by a subordinate who, at the time of the crime, was under his actual authority and control; the crime occurred as a result of the superior’s failure to exercise proper control over the subordinate; and the superior knew or should have known, or deliberately ignored information that clearly indicated that the subordinate was committing or intended to commit such a crime, but failed to take measures that he should have and could have taken within the limits of his authority to prevent or stop the commission of the crime or to report such crime to the competent authority.

While the CCU does not define which measures a superior “should have and could have taken,” it is likely that this language is best understood to parallel the

requirement under international law that a commander take all necessary and reasonable measures within their ability under the circumstances at the time.⁴¹

In such cases, the superior shall be held criminally liable in accordance with the relevant part of Article 31-1 of the CCU and the article of the Special Part of the CCU providing for criminal liability for a crime committed by a subordinate.

Finally, with regard to criminal offenses provided for in Articles 437-439, 442, and 442-1 of the CCU, the statute of limitations for bringing criminal charges (Article 49(5) of the CCU) and the statute of limitations for the execution of a conviction (Article 80(6) of the CCU) does not apply.

1.5.2 Military Criminal Offenses

Chapter XIX of the CCU addresses criminal offenses against the established order of military service. These offenses apply only to military personnel of the Armed Forces of Ukraine, the Security Service of Ukraine, the State Border Service of Ukraine, the National Guard of Ukraine, and other military formations established in accordance with the laws of Ukraine, the State Special Transport Service, the State Special Communications and Information Protection Service, and any other persons determined by law.

Although the provisions of this Section are primarily devoted to criminal offenses of a disciplinary nature committed by military personnel, they also address certain violations of IHL, including those that can be classified as war crimes. In fact, most of them the crimes provided for in Article 438 of the CCU are duplicated in Chapter XIX. However, the penalties provided for the corresponding criminal offenses in Chapter XIX are significantly milder than those established for war crimes under Article 438 of the CCU (with the exception of the misuse of distinctive emblems). This approach risks deviating from established international practice. In the long term, this may create challenges for the international integration of Ukraine's law enforcement which, in turn, will require gradual adjustments to the regulatory framework towards greater compatibility with international standards.

Article 432 CCU Looting provides for criminal liability for the theft of items found on the battlefield belonging to killed or wounded persons. This criminal offense corresponds to the war crime of destruction or seizure of enemy property, except in cases where such destruction or seizure is imperatively demanded by military necessity (similar to Article 8(2)(b)(xiii) of the Rome Statute).

Article 433 CCU Violence against the population in a war zone establishes criminal liability for violence, unlawful destruction of property, and robbery or

41 E.g. *Prosecutor v. Bemba*, Case No. ICC-01/05-01/08-A, Judgment (Appeal), paras.168-170.

unlawful seizure of property under the pretext of military necessity, committed against the population in a war zone. These acts correspond to the following war crimes provided for in the Rome Statute: intentionally causing great suffering or serious injury to body or health (Article 8(2)(a)(iii)); widespread destruction and appropriation of property not justified by military necessity and committed unlawfully and wantonly (Article 8(2)(a)(iv)); pillaging a town or village, even if taken by storm (Article 8(2)(b)(xvi)); and outrages upon personal dignity, in particular insulting and humiliating treatment (Article 8(2)(b)(xxi)).

Article 434 CCU Ill-treatment of prisoners of war provides for criminal liability for ill-treatment of POWs that has been repeated, is particularly cruel, or is directed against the sick and wounded, as well as negligent performance of duties towards the sick and wounded by persons responsible for their treatment and care, in the absence of signs of a more serious crime. These acts correspond to the following war crimes under the Rome Statute: torture or inhuman treatment (Article 8(2)(a)(ii)); intentionally causing great suffering or serious injury to body or health (Article 8(2)(a)(iii)); compelling a POW or other protected person to serve in the armed forces of a hostile state (Article 8(2)(a)(v)); intentionally depriving a POW or other protected person of the right to a fair and regular trial (Article 8(2)(a)(vi)); or outrages upon personal dignity, in particular humiliating and degrading treatment (Article 8(2)(b)(xxi)).

Article 435 CCU Illegal use and abuse of the symbols of the Red Cross, Red Crescent, and Red Crystal prohibits the wearing of Red Cross, Red Crescent, or Red Crystal symbols in the area of military operations by persons who do not have the right to do so, as well as the misuse of flags or signs of the Red Cross, Red Crescent, Red Crystal, or colors assigned to sanitary and transport vehicles. These acts carry a more severe sentence if committed under martial law.

As noted above, these acts are violations of IHL and, if there are specific consequences, may constitute a war crime such as the improper use of distinctive emblems established by the Geneva Conventions, resulting in death or serious injury to a person (Article 8(2)(b)(vii) of the Rome Statute). In addition, they are almost identical to the acts provided for in Article 445 of the CCU. At the same time, unlike for other war crimes, the penalty for this offence is more serious if prosecuted under Chapter XIX of the CCU than if prosecuted under Chapter XX.

CHAPTER 2.

DOCUMENTING INTERNATIONAL CRIMES ON THE BATTLEFIELD

- 2.1 Introduction
- 2.2 Battlefield Evidence of International Crimes
- 2.3 Collecting Evidence of International Crimes on the Battlefield during an Armed Conflict
- 2.4 Strategic Value of Battlefield Evidence
- 2.5 Conclusion

2.1 Introduction

Ensuring effective documentation of legal violations committed in armed conflict is important to realize the principles of inevitability of punishment and protection of victims. Properly documented facts enable investigating authorities and the court to determine the truth of serious allegations, including whether factual allegations have been proved; whether they constitute war crimes or other types of international crimes; or whether the acts in question were lawful and no violation occurred.

Often, key evidence is found on the battlefield, where it is first encountered by members of the military. Military personnel are usually the first to arrive in newly liberated settlements and have unique access to the sites of combat encounters, where “civilian judicial and law enforcement authorities often have limited capacity to conduct on-site investigations”.⁴² Even though documenting crimes is neither a prime mission nor skill set of the military, this access gives them a unique opportunity to collect material evidence on the battlefield before it is lost or destroyed.⁴³ To preserve the evidentiary value of items they collect, the Ministry of Defense has observed, servicemembers must “use them correctly, preserve them in an appropriate way, and transfer them to the law enforcement agencies.”⁴⁴

This requires systematic approaches to documenting such evidence, standardizing procedures and methods, and harmonizing them with Ukrainian legislation. Compliance with the requirements of national law and international standards makes it possible to use the collected materials in courts in Ukraine as well as the International Criminal Court (ICC) and other states’ domestic courts. However, the approaches provided for by the Criminal Procedure Code of Ukraine (CPCU) require a balanced adaptation to combat realities taking into account that documenting crimes is not the military’s primary responsibility.

The CPCU defines the procedures and rules governing the conduct of investigative actions, processing of case files, and the conditions and basis for cooperation with international organizations, including the ICC. An important aspect of the CPCU is the establishment of peculiarities of pre-trial investigation in the

42 U.N. Doc. S/2018/770, Seventh Report of the Secretary-General on the threat posed by ISIL (Da’esh) to international peace and security and the range of United Nations efforts in support of Member States countering the threat, 16 August 2018, para.69.

43 Peculiarities of Evidence in the Investigation of War Crimes, A.K. Dergachev, Yaroslav Mudryi National Law University, https://ivpz.kh.ua/wp-content/uploads/2023/03/Актуальні-проблеми-протидії-злочинності-та-корупції_17.02.23.pdf#page=211. See also id.

44 Voluntary report on implementation of international humanitarian law, Ministry of Defence of Ukraine, 2024, https://s3.eu-west-1.amazonaws.com/mod.gov.ua-statics-bucket/Voluntary_report_Mo_D_in_IHL_Ofae15454a.pdf, p.111.

context of armed conflict, which allows for adapting procedural actions to the conditions of war and ensures effective investigation of crimes.⁴⁵

A clear procedure for documenting potential international crimes in the extremely difficult conditions of combat can help investigators and prosecutors to develop a high-quality evidence base that will help determine whether specific individuals are responsible for crimes. Its implementation and adherence by all involved—soldiers, investigators, prosecutors, experts—will ultimately contribute to the promotion of the rule of law, protection of victims and witnesses, restoration of justice, and prevention of impunity. It also is likely to improve the quality of intelligence information that can be used to benefit other national security functions. Such a procedure must take into account both international standards and national peculiarities of the criminal process.

The procedure we suggest in Chapter 2.3 solves several problems. First, it provides military personnel and commanders with the tools to collect evidence in the combat zone correctly and minimize the burden and risk to them. Second, it helps clarify the role of military personnel in the documentation of alleged international crimes. Third, it ensures evidence can be securely stored to avoid loss, distortion, or doubt about its authenticity. Fourth, it reduces the risk that the evidence will be inadmissible in criminal proceedings due to spoliation or procedural errors or violations.

Having clear guidelines for documenting potential international crimes is particularly important because international crimes typically require proof of difficult issues like distinguishing lawful from unlawful deaths and proving a perpetrator's mental state. Establishing these facts requires a thorough investigation commenced as promptly as possible and a thorough review of available evidence, witnesses, and the crime scene. If the investigation is postponed or conducted sporadically, proving a case becomes even more difficult.

This section will introduce battlefield evidence by:

- explaining the concept of battlefield evidence and its established value in cases involving serious crimes;
- proposing guidelines for the collection of evidence, considering the national specifics of criminal procedure and international experience; and
- describing the strategic value of battlefield evidence.

45 Peculiarities of Evidence in the Investigation of War Crimes, Dergachev A.K., Yaroslav Mudryi National Law University, https://ivpz.kh.ua/wp-content/uploads/2023/03/Актуальні-проблеми-протидії-злочинності-та-корупції_17.02.23.pdf#page=211.

2.2 Battlefield Evidence of International Crimes

Nuremberg prosecutor Ben Ferencz explained that he had prosecuted “the largest murder trial in history” without “calling a single witness” because “the top-secret documents were indisputable.”⁴⁶ Those documents were reports composed by Nazi military units on the front lines and sent back to Berlin during World War II. They were found in a German Foreign Ministry office in Berlin after the city was liberated by Allied forces.⁴⁷

The documents Ferencz used were straightforward reports in which perpetrators described their own criminal conduct.⁴⁸ In legal terms, they were admissions, by perpetrators, that they (and their subordinates) had committed the charged crimes, and the judges relied on them to prove the same.⁴⁹

But similar documents have been used by other international criminal courts and tribunals for narrower purposes as well. For instance:

- At the International Criminal Tribunal for the former Yugoslavia (ICTY), orders to supply fuel to particular units at the time they were transporting prisoners to be executed at Srebrenica helped show that the people issuing the orders had culpably participated in the genocide, when taken together with intercepted phone conversations, witness testimony, and other evidence.⁵⁰
- At the International Criminal Tribunal for Rwanda, minutes of government meetings and signed orders appointing personnel assisted in showing particular accused persons’ effective control over forces that were involved in the genocide.⁵¹

46 The Last Man at Nuremberg, The Atlantic, 2014, <https://www.theatlantic.com/international/archive/2014/05/the-last-man-at-nuremberg/361968/>. Ferencz had worked in a U.S. Army department responsible for setting up the Nuremberg tribunal.

Russia’s international crimes: what you need to know about the role of military personnel in documenting them, ZN.UA, https://zn-ua.translate.google.com/translate/ukr/LAW/mizhnarodni-zlochyni-rosiji-shcho-treba-znati-pro-rol-vijskovosluzhbovtiv-u-jikh-dokumentuvanni.html?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp.

47 The Making of a Prosecutor, Benjamin B. Ferencz, <https://benferencz.org/stories/1946-1949/the-making-of-a-prosecutor/>.

48 For one example of such a report, see <https://pages.uoregon.edu/dluebke/NaziGermany443/JaegerReport.htm>.

49 See e.g. *Prosecutor v. Ohlendorf et al.*, Judgment, p.416-432 (“The story of the Einsatzgruppen... was written as the events it narrates occurred, and it was authored by the doers of the deeds... “followed by quoting several reports which detail mass killings committed by Einsatzgruppen units and explaining that the judges had relied on the reports).

50 E.g. *Prosecutor v. Popovic et al.*, Judgment (Trial), paras.1126-1130, 1166.

51 E.g. *Prosecutor v. Bagosora et al.*, Judgment (Trial), para.2022.

- At the ICC, evidence about how orders were issued and transmitted and reports were submitted assisted the judges in finding that an accused person and his co-perpetrators could give orders to subordinates in particular groups which would be “respected and executed” so that they could use the groups “to implement their common plan.”⁵²
- Also at ICTY, prompt investigations of mortar impact sites in Sarajevo—shortly after the mortars fell, while conflict was ongoing—assisted the judges in assessing where the mortars had been fired from and consequently making findings about which warring party had fired a specific mortar.⁵³
- In courts of various nations hearing cases related to the wars in Afghanistan, Iraq, and Syria, physical evidence from explosive devices has often contributed to convictions of terrorist bombmakers.⁵⁴
- And in Ukraine itself, drone footage from a conflict zone combined with shell casings and intercepted communications led to an *in absentia* conviction of a Russian company commander for the murder of a Ukrainian civilian.⁵⁵

In many such cases, the crime itself was proven by other evidence. The battlefield evidence was used to help connect one or more defendants to that otherwise-proven crime, either by showing where the perpetrator must have been located at the time the crime was committed (the mortar investigations); providing the perpetrator’s biometric data (the explosive devices); or showing how commanders exercised their authority and control over large, coordinated criminal enterprises, even if they were far from where the crime was carried out (in the other three international examples).⁵⁶

52 E.g. *Prosecutor v. Ntaganda*, Judgment (Trial), paras. 815–816.

53 E.g. *Prosecutor v. Galic*, Judgment (Trial), paras.391–394. Notably, Sarajevo was encircled and besieged but was not occupied and was not the site of significant house-to-house fighting. Consequently, these investigations were carried out by Bosnian law enforcement officers rather than military forces.

54 E.g. The Strategic Potential of Collected Exploitable Material, Michael R. Fenzel with Leslie Sloomaker and R. Kim Cragin, 2020, <https://ndupress.ndu.edu/Media/News/News-Article-View/Article/2420897/the-strategic-potential-of-collected-exploitable-material/>; See Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://theij.org/wp-content/uploads/2021/09/USG-Non-Binding-Guiding-Principles-on-Use-of-Battlefield-Evidence-EN-1.pdf>, p.7.

55 See Winthrop Wells, Battlefield Evidence in the Age of Artificial Intelligence-Enabled Warfare, *Chicago Journal of International Law* (2025), <https://cjl.luchicago.edu/print-archive/battlefield-evidence-age-artificial-intelligence-enabled-warfare>.

56 See also Eurojust Memorandum on Battlefield Evidence, 2020, <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>, p.13 (noting battlefield evidence had been used to prove the existence of an armed conflict—a threshold requirement for war crimes cases—and to show how particular institutions functioned on the battlefield).

2.2.1 The Concept and Legal Status of Battlefield Evidence in Proving International Crimes.

In this Guide, we use ‘battlefield evidence’⁵⁷ to refer to evidence collected from conflict areas⁵⁸ or captured enemy headquarters, including records like the ones Ben Ferencz’s team found and used to convict more than twenty Nazi officers.⁵⁹

Battlefield evidence is commonly admissible in court.⁶⁰ And as the examples above reflect, battlefield evidence can have enormous value for a prosecutor trying to prove an atrocity crime case.⁶¹ It can contain admissions of crimes; prove who fired a critical shot; show what a commander knew and when she knew it; or simply prove that the chain of command was functioning properly at the time the crime was committed.

To ensure fair trial requirements are met, battlefield evidence must satisfy the same standards as other items and information do before being admitted into

57 Technically, evidentiary material formally becomes “evidence” only once it is admitted into the record of a case at trial. E.g. Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences (“Military Evidence Guidelines”), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/battlefield_evidence_final.pdf, p.35. We use the term ‘battlefield evidence’ in this Guide to include evidentiary material whether or not it is formally admitted into evidence in a particular case.

58 Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>, p.6.

59 Some sources use battlefield evidence to refer only to evidence collected by military personnel. E.g. Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://theijj.org/wp-content/uploads/2021/09/USG-Non-Binding-Guiding-Principles-on-Use-of-Battlefield-Evidence-EN-1.pdf>, p.1; Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences (“Military Evidence Guidelines”), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/battlefield_evidence_final.pdf, pp.2-3. However, this seems incomplete, since a number of different types of organizations may be active and collecting evidence on the battlefield. E.g. Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>, pp.11-12.

60 E.g. Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>, p.7; Comparative Practices on the Use of Information Collected in Conflict Zones as Evidence in Criminal Proceedings, Council of Europe, 2024, <https://edoc.coe.int/en/terrorism/12088-comparative-practices-on-the-use-of-information-collected-in-conflict-zones-as-evidence-in-criminal-proceedings.html>, pp.9, 26.

61 Id. pp.9, 33.

evidence.⁶² If it is admitted into evidence, like any exhibit, it will be assessed in the context of all the other evidence in the record.⁶³ Thus, battlefield evidence should not be expected to win cases on its own, as it typically requires verification and/or corroboration before it can serve as a basis for factual findings.⁶⁴

Under Ukrainian law, battlefield evidence will most commonly constitute 'physical evidence' within the meaning of Article 98 of the CPCU. Physical evidence means "tangible objects that have been used as an instrument of a criminal violation, retain traces of such or contain other information, which may be used as evidence of the fact or circumstance to be established during criminal proceedings."⁶⁵ Physical evidence collected and submitted into the record by an applicant or victim, or collected by an inspector from a witness, is admissible in principle. As we explain below, it is important to collect and preserve physical evidence properly to maximize the likelihood that it is admitted into evidence and given appropriate weight in a judge's deliberations and minimize the risks that improper collection or storage makes it inadmissible or difficult to rely upon.

In many cases, it will also be useful to create 'documents' within the meaning of the CPCU, meaning objects (whether written, videorecorded, photographic, or otherwise) which are created specifically to conserve information and which memorialize evidence found on the battlefield.⁶⁶

2.2.2 Types of Evidence Collected on the Battlefield During Armed Conflict Concerning International Crimes

A wide range of battlefield-collected evidence may be relevant to a particular case or investigation, and it is unlikely that any particular soldier, unit, or commander will know at the time of collection exactly what the prosecution will need to

62 Id. pp.26-27; Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GCTF, https://theijj.org/wp-content/uploads/2021/09/GCTF-Abuja-Recommendations_ENG.pdf, p.17. Because of concerns about proper chain of custody, some especially cautious experts have recommended that soldiers collect physical evidence only if "there is a strong likelihood that it will be permanently lost unless they take steps to collect it for safekeeping."; The Role of the Soldier in Responding to War Crimes, G. Yasutis, R. Mikova, J. Prescott, W. Shabas, 2023, https://www.dcaf.ch/sites/default/files/publications/documents/War_crimes_Evidence-EN.pdf, p.16.

63 E.g. Ukraine Criminal Procedure Code, Art. 94 (court evaluates evidence based on "comprehensive, complete, and impartial examination of all circumstances" and "in respect of the aggregate of collected evidence" to reach a decision).

64 E.g. Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://theijj.org/wp-content/uploads/2021/09/USG-Non-Binding-Guiding-Principles-on-Use-of-Battlefield-Evidence-EN-1.pdf>, pp.2-3; Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>, p.13.

65 CPCU Article 98(1).

66 CPCU Article 99(1).

prove its case. Consequently, “the more evidence collected, the better the chance” of securing an appropriate outcome (including, if merited, a conviction).⁶⁷ Relevant evidence can be very similar to items and information that have intelligence value and may include, *inter alia*:

- **internal records from a perpetrator group**, like individuals’ registration forms or lists of personnel, or military maps;
- **records of communication between members of a perpetrator group**, like letters describing planned crimes;
- **physical evidence** like unexploded or recovered parts of exploded IEDs;
- **satellite imagery** of relevant sites;
- **biometric data**, like a fingerprint on a weapon used to commit an IHL violation or act of terrorism;
- **intercepted communications** involving members of perpetrator groups; and
- **digital evidence** like devices used by perpetrators containing their communications (such as cell phones, hard drives, or USB thumb drives).⁶⁸

To the extent possible, units should also try to seize enemy records of “combat logs, logs of orders received and given, fire cards, ammunition receipts, etc.”.⁶⁹

2.2.3 The Specific Characteristics of Battlefield Evidence Concerning International Crimes

International sources have noted several specific challenges that may impact the use of battlefield evidence in court. For instance:

- In some states, materials collected by organizations other than law enforcement historically had not been admissible in court.⁷⁰ However, this issue is

67 Handbook Tactical Site Exploitation and Cache Search Operations, CALL, 2007, No.07-26, <https://info.publicintelligence.net/CALL-SiteExploitation.pdf>, p.29.

68 Comparative Practices on the Use of Information Collected in Conflict Zones as Evidence in Criminal Proceedings, Council of Europe, 2024, <https://surl.li/ilsomm>, p.7; Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://surl.li/aeqjgm>, pp.14-15; The Role of the Soldier in Responding to War Crimes, G. Yasutis, R. Mikova, J. Prescott, W. Shabas, 2023, https://www.dcaf.ch/sites/default/files/publications/documents/War_crimes_Evidence-EN.pdf, p.17; Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GCTF, https://theij.org/wp-content/uploads/2021/09/GCTF-Abuja-Recommendations_ENG.pdf, p.17.

69 The Role of the Soldier in Responding to War Crimes, G. Yasutis, R. Mikova, J. Prescott, W. Shabas, 2023, https://www.dcaf.ch/sites/default/files/publications/documents/War_crimes_Evidence-EN.pdf, p.17.

70 Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://theij.org/wp-content/uploads/2021/09/USG-Non-Binding-Guiding-Principles-on-Use-of-Battlefield-Evidence-EN-1.pdf>, p.2.

increasingly rare: by early 2025, the Council of Europe reported that most jurisdictions in Europe permit the admission of evidence which was originally collected by the military or by intelligence services.⁷¹

- The circumstances in which battlefield evidence is collected may make it harder for prosecutors to meet the threshold requirements for admitting the evidence and/or to ensure it is given sufficient weight in the factfinder's deliberations, particularly when civilian judges and lawyers may be unfamiliar with such challenging circumstances.⁷²
- Some states may not be able to properly protect classified material during trial, which may mean governments have to choose between keeping their secrets secret and using the best evidence to prosecute critical criminal cases.⁷³ In some of these instances, overclassification of battlefield-collected material has been perceived to unnecessarily limit prosecutors' ability to make their cases.⁷⁴
- Militaries may collect so much information from the battlefield that properly analyzing it for evidentiary purposes may be overwhelming for prosecutors and their staffs.⁷⁵

International good practices reflect a variety of ways to address these challenges. Of course, it is essential to maintain defendants' rights to a fair trial, as guar-

71 Comparative Practices on the Use of Information Collected in Conflict Zones as Evidence in Criminal Proceedings, Council of Europe, 2024, <https://surl.li/iwwkro>, p.38.

72 Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>, p.7; Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences ("Military Evidence Guidelines"), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org/securitycouncil.ctc/files/battlefield_evidence_final.pdf, pp.21, 24. See Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GSTF, https://theij.org/wp-content/uploads/2021/09/GCTF-Abuja-Recommendations_ENG.pdf, pp.2, 17-18.

73 Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>, p.18.

74 Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>, p.18; Comparative Practices on the Use of Information Collected in Conflict Zones as Evidence in Criminal Proceedings, Council of Europe, 2024, <https://edoc.coe.int/en/terrorism/12088-comparative-practices-on-the-use-of-information-collected-in-conflict-zones-as-evidence-in-criminal-proceedings.html>, pp.18-19. See Chapter 3.3.

75 Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://theij.org/wp-content/uploads/2021/09/USG-Non-Binding-Guiding-Principles-on-Use-of-Battlefield-Evidence-EN-1.pdf>, p.2; Battlefield Evidence: From Terrorism to Ukraine, Adam Pearlman, 2023, <https://thescif.org/battlefield-evidence-from-terrorism-to-ukraine-1396e5149356>.

anteed in the International Covenant on Civil and Political Rights and European Convention on Human Rights (Ukraine is a party to both treaties).⁷⁶

Among other things, international standards recommend that:

- Law enforcement has primary responsibility for investigation and evidence collection, though the military should collect evidence when necessary (for instance, when law enforcement cannot access the area).⁷⁷
- The military effectively and regularly communicate and coordinate with law enforcement about evidence collection and investigation.⁷⁸
- Legal frameworks allow for battlefield evidence to be collected by whichever entity is appropriate under the circumstances, used in investigations, and (subject to procedural requirements) admitted into evidence at trial.⁷⁹

76 Comparative Practices on the Use of Information Collected in Conflict Zones as Evidence in Criminal Proceedings, Council of Europe, 2024, <https://surl.li/gyizsg>, p.9; Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences (“Military Evidence Guidelines”), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/battlefield_evidence_final.pdf, pp.8, 11; Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GSTF, https://theijj.org/wp-content/uploads/2021/09/GCTF-Abuja-Recommendations_ENG.pdf, p.16. See European Convention on Human Rights, Art. 6; International Convention on Civil and Political Rights, Art. 14.

77 Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences (“Military Evidence Guidelines”), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/battlefield_evidence_final.pdf, Recommendation One. See The Role of the Soldier in Responding to War Crimes, G. Yasutis, R. Mikova, J. Prescott, W. Shabas, 2023, https://www.dcaf.ch/sites/default/files/publications/documents/War_crimes_Evidence-EN.pdf, pp.5, 7, 9; The Role of the Military in Securing Suspects and Evidence in the Prosecution of Terrorism Cases before Civilian Courts: Legal and Practical Challenges, B. van Ginkel & C. Paulussen, 2015, <https://surl.li/iylhjq>, p.16.

78 Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GCTF, https://theijj.org/wp-content/uploads/2021/09/GCTF-Abuja-Recommendations_ENG.pdf, Recommendation 5; Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences (“Military Evidence Guidelines”), Counter-Terrorism Committee Executive Directorate (CTED), <https://surl.li/tsonzr>, Recommendation 4; The Role of the Military in Securing Suspects and Evidence in the Prosecution of Terrorism Cases before Civilian Courts: Legal and Practical Challenges, B. van Ginkel & C. Paulussen, 2015, <https://surl.li/rychep>, pp.10-11.

79 Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GCTF <https://surl.lu/ebbbkz>, Recommendation 20; Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://surl.lt/xiapc>, p.2; Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences (“Military Evidence Guidelines”), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/battlefield_evidence_final.pdf, Recommendation 5.

- Policies and procedures are adopted to ensure that battlefield-collected evidence is properly preserved and the chain of custody⁸⁰ is appropriately maintained and recorded.⁸¹
- Civilian criminal justice officials are made aware of the specific circumstances in which battlefield evidence is collected.⁸²
- Overclassification of battlefield evidence is avoided.⁸³
- Witnesses are available to testify to authenticate and contextualize battlefield evidence as appropriate, including through the use of protective measures or, where appropriate, through submitting affidavits.⁸⁴ and

80 'Chain of custody' "typically refers to the chronological history of the handling of physical evidence." Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://theij.org/wp-content/uploads/2021/09/USG-Non-Binding-Guiding-Principles-on-Use-of-Battlefield-Evidence-EN-1.pdf>, p.6. If there is a flaw in the chain of custody, then depending on the local legal system the evidence may be entirely inadmissible or may be given less weight in the factfinder's eventual deliberations.

81 Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://theij.org/wp-content/uploads/2021/09/USG-Non-Binding-Guiding-Principles-on-Use-of-Battlefield-Evidence-EN-1.pdf>, p.2; Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences ("Military Evidence Guidelines"), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/battlefield_evidence_final.pdf, Recommendations 5, 9, 17, 22, 24, 25, 27; Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GCTF, https://theij.org/wp-content/uploads/2021/09/GCTF-Abuja-Recommendations_ENG.pdf, Recommendation 21; Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>, p.17.

82 Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://theij.org/wp-content/uploads/2021/09/USG-Non-Binding-Guiding-Principles-on-Use-of-Battlefield-Evidence-EN-1.pdf>, p.2; Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences ("Military Evidence Guidelines"), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/battlefield_evidence_final.pdf, Recommendation 16.

83 Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://theij.org/wp-content/uploads/2021/09/USG-Non-Binding-Guiding-Principles-on-Use-of-Battlefield-Evidence-EN-1.pdf>, p.2; Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences ("Military Evidence Guidelines"), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/battlefield_evidence_final.pdf, Recommendation 21; Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GCTF, https://theij.org/wp-content/uploads/2021/09/GCTF-Abuja-Recommendations_ENG.pdf, Recommendation 23. See also Chapter 3.3.

84 Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GCTF, https://theij.org/wp-content/uploads/2021/09/GCTF-Abuja-Recommendations_ENG.pdf, Recommendations 24, 26, 27.

- The use of battlefield evidence is subjected to vetting, testing, and the other aspects of a fair trial.⁸⁵

These recommendations should be adopted in the Ukrainian context as far as possible, and we recommend some mechanisms to do so below.

2.2.4 Challenges in the Ukrainian Experience of Collecting Evidence of International Crimes on the Battlefield

As set forth above, battlefield evidence has shown its value in atrocity crime prosecutions, including in Ukraine – in the *Kerzhaev* (see chapter 2.2.) case among others.

Nonetheless, at the moment, there are no unified algorithms, detailed methodologies, or clear instructions at the command level that would regulate the process of documenting potential international crimes. Moreover, servicemembers do not receive training in documentation, and it sometimes falls by the wayside given the intensity of combat operations. This suggests that the process could and should be further systematized.

Military units are required to submit reports containing information about violations of IHL, which may constitute crimes under international and/or Ukrainian law.⁸⁶ When there are indications of potential international crimes, servicemembers are responsible for reporting that information.⁸⁷ Soldiers must inform their commanders about potential violations, and the commander (or their designee) must then fill out an information card regarding the potential violations and transmit that card both to law enforcement and up their own chain of command.⁸⁸

85 E.g. Id., Recommendations 14, 19; Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences (“Military Evidence Guidelines”), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org/securitycouncil.ctc/files/battlefield_evidence_final.pdf, Recommendations 12, 20; Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GCTF, https://theij.org/wp-content/uploads/2021/09/GCTF-Abuja-Recommendations_ENG.pdf, p.18 (“The defense should be able to verify the credibility and reliability of the evidence...”).

86 E.g. Urgent Reporting Table of the Armed Forces of Ukraine (2.72/IHL form) approved by Order of the Commander-in-Chief of the Armed Forces of Ukraine of April 27, 2022.

87 Instructions on the Procedure for Military Personnel in Combat Situations in the Event of Discovery of Information that May Indicate the Commission of War Crimes, approved by Order of the Commander-in-Chief of the Armed Forces of Ukraine of August 19, 2025.

88 Instructions on the Procedure for Military Personnel in Combat Situations in the Event of Discovery of Information that May Indicate the Commission of War Crimes, approved by Order of the Commander-in-Chief of the Armed Forces of Ukraine of August 19, 2025. The information card is attached at Annex 3.

However, these regulations do not address the proper storage and further processing of information or the procedure for transferring physical evidence at the request of public authorities. This creates a risk of irretrievably losing important information about potential international crimes.

Moreover, this procedure faces both practical and legal challenges. For instance:

- Necessary reports are not always prepared and submitted, often due to the high intensity of combat operations, technological limitations, or the high workload of servicemembers' ongoing military duties.
- Soldiers may not document potential violations, including by photo or video.
- When violations are documented, the information about the servicemember who recorded the incidents, their contact information, and the equipment used (which is important for establishing the source of information and further effective investigation of international crimes by law enforcement agencies) is not always indicated in the reports.
- The use of technical means to record incidents in the combat zone is complicated by a number of factors. Among them are intensity of hostilities, lack of electricity, and service restrictions on the use of photo and video equipment or mobile phones in combat conditions.
- Video of the front line recorded by unmanned systems may not be properly reviewed for indications of potential international crimes.
- In the process of collecting information and preparing reports on potential international crimes, there is no mechanism for data verification, control, or responsibility for the proper and timely submission of reports.
- Reports sometimes include incomplete information or relate to incidents where there was only lawful combat, but no violation of IHL or potential crime (such as shelling the location of a military unit).
- Information is not always passed to law enforcement in accordance with Article 214 of the CPCU.⁸⁹

89 Abstracts of the report: "Implementation of International Humanitarian Law in the Context of the Current Armed Conflict in Ukraine", G. Mamedov, V. Khekalov. Collection of materials of the International Scientific and Practical Conference "Problems of Legal Support of Defense of Ukraine", edited by P. P. Bogutskyi, Y. V. Harust, L. V. Zaslavska, V. Pylypchuk; eds. Kyiv, 2024 "New "weapon" for the Ukrainian army - legal", G. Mamedov, Mirror of the Week, March 14, 2024, <https://zn.ua/ukr/war/nova-zbroja-dlja-ukrajinskoji-armiji-juridichna.html>, "Russia's international crimes: what you need to know about the role of military personnel in documenting them," G. Mamedov, V. Khekalov, Mirror of the Week, August 25, 2023, <https://zn.ua/ukr/LAW/mizhnarodni-zlochyni-rosiji-shcho-treba-znati-pro-rol-vijskovosluzhbovt-siv-u-jikh-dokumentuvanni.html>.

Moreover, the involvement of military personnel in the collection of evidence is subject to certain legal challenges. For instance:

- Active participation in the submission of evidence requires an appropriate procedural status (such as applicant or victim). In all other cases, military personnel cannot participate actively in the submission of evidence.
- Military personnel are not authorized to conduct investigative activities within the meaning of the CPCU, which are the primary means of gathering evidence.
- A servicemember who discovers items of evidentiary value may not be available to be interviewed by law enforcement for a long period of time. This may mean items are lost or the servicemember's memory fades due to the stresses of combat. Furthermore, if the servicemember is not available to testify at trial, it may be that the evidence he discovered cannot be admitted under Article 23 of the CPCU. and
- Evidentiary material is often transferred to the pre-trial investigation body with territorial jurisdiction over the area through unauthorized persons. This may undermine the evidentiary value of the material in two ways. First, items from different parts of the frontline are sometimes included in one package and it may thus be very challenging for investigators who receive the package to determine which item was discovered when or where. Second, the persons delivering the packages to the pre-trial investigation body sometimes do not have information about the circumstances and exact place of seizure and cannot give any comments on the potential material evidence provided that would assist the recipients in using it to advance their investigations and pursue justice.⁹⁰

These challenges must be met. Further systematization of the process of collecting battlefield evidence and enhanced cooperation between military personnel and law enforcement can assist in meeting these challenges and getting justice for the victims of international crimes. By contrast, the lack of unified procedures for processing and transmitting the data received and gaps in legal regulation may lead to the loss of evidence, its inadmissibility in court, duplication of efforts by different agencies, and/or the waste of scarce military resources. This may have a negative impact on Ukraine's ability to investigate international crimes, identify and prosecute perpetrators, and even defend itself.

90 Practical Guide for the Armed Forces of Ukraine "Interaction of the Armed Forces of Ukraine with pre-trial investigation bodies in recording the circumstances of crimes related to armed aggression against Ukraine", Yaroslav Mudryi National Law University Institute of Legal Training for the Security Service of Ukraine, Kharkiv, 2023.

2.3

Collecting Evidence of International Crimes on the Battlefield during an Armed Conflict

Servicemembers of the Armed Forces of Ukraine (AFU) and other units of the Defense Forces of Ukraine (DFU) are often the only ones who can quickly record traces of a crime on the ground, collect material evidence, and hand it over to pre-trial investigation authorities for further investigation. Military personnel around the world have been performing these ancillary duties for decades across many wars and anti-terrorism operations, even though they are not vested with the powers of investigators or prosecutors.⁹¹

However, military personnel face challenges that peacetime investigators do not. They consequently should collect data on potential international crimes only if these activities do not interfere with the fulfillment of combat missions and do not expose servicemembers to clear danger of death, capture, or injury. Military personnel collecting data are obliged to take into account considerations including possible dangers (mines, shelling, chemicals, the work of enemy drones, etc.), the possible presence of persons involved in the commission of a crime, and the possibility of accidentally destroying or damaging an important object or source of information. If collection is nonetheless appropriate to avoid the risk that evidence is lost, the collected items and documents should be stored and preserved in such a way that they have evidentiary value in future criminal proceedings.

We have annexed some suggested guidelines on collecting evidence on the battlefield which are formulated on the basis of national legislation, recommendations of international authorities, and international standards. The guidelines take into account the servicemembers' legal status and the specific circumstances of the armed conflict.⁹² They further comply with the requirements of national and international law to avoid accidental loss, destruction, or distortion of data and to increase the likelihood that the collected materials are accepted as evidence in court. Adherence to such guidelines will facilitate the proper recording of war crimes, crimes against humanity, and other violations of international humanitarian law, and thus further the prosecution of perpetrators.

2.3.1 General Guidelines

Given the exigencies of combat operations, it may be that some steps in the documentation process cannot be undertaken immediately. These guidelines are

91 E.g. "Russia's international crimes: what you need to know about the role of military personnel in documenting them," G. Mamedov, V. Khekalov, *Mirror of the Week*, 2023, <https://sur.li/xfoebc>.

92 See Annex 5.

consequently just that—guidelines. They are not intended as a test for whether evidence is admissible or not. However, they should serve as a reminder of the importance of documenting the what, when, and where of the evidence-collection process as much as possible under the circumstances in order to maximize the likelihood that collected material helps investigators find the truth and ultimately, is admitted into evidence to help prove the truth in court.

With that in mind, we recommend a five-step process when military personnel encounter potential evidence of an international crime:

- **secure** the scene so evidence can be collected and proven authentic, for instance by securing a perimeter;
- **record** the scene as it exists, such as by photographs or video, including through the use of unmanned systems where appropriate;⁹³
- **assess** whether evidence can be collected safely;
- **collect, log, and store** evidence, if appropriate; and
- **report** on the indication of a possible crime to law enforcement and up the chain of command.

This process will help courts as they ask the same types of questions about a piece of information that military or intelligence analysts often ask: can we trust this information? And, if we can, what does it mean for our work?

To answer, courts typically evaluate the **authenticity**, **credibility**, and **reliability** of evidence. An **authentic** piece of evidence is what it appears to be and has not been changed since it was collected.⁹⁴ To help prove authenticity, a log is typically created for each item that tracks its “chain of custody,” recording when it was received and anybody who had control of it between when it was collected and when it was introduced in court.⁹⁵

A **credible** piece of evidence is believable in that it intends to communicate truthful information.

And a **reliable** piece of evidence is believable in that it is likely to convey accurate information, for instance because its author has the necessary expertise to

93 E.g. Handbook Tactical Site Exploitation and Cache Search Operations, CALL, 2007, No.07-26, <https://info.publicintelligence.net/CALL-SiteExploitation.pdf>, p.29.

94 E.g. Berkeley Protocol on Digital Open Source Investigations. A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law, United Nations, 2022, https://www.ohchr.org/sites/default/files/2024-01/OHCHR_BerkeleyProtocol.pdf, para.160.

95 A sample chain of custody log is attached at Annex 4. See also https://armypubs.army.mil/pub/eforms/DR_a/ARN39560-DA_FORM_4137-000-EFILE-1.pdf.

reach a technical conclusion or had a vantage point from which they could observe all the relevant factual details.⁹⁶

Courts assess these considerations on two levels. First, they assess whether a piece of evidence satisfies their procedural standards for **admission** into the record of a case. Second, at the end of a trial they consider each piece of evidence together with all the other evidence in the record—including evidence which may corroborate it (or make it more likely to be true) and evidence which may contradict it—and decide how much **weight** a piece of evidence has, or how effective it is in actually proving a particular fact or element of a charged crime.⁹⁷

In the battlefield context, it may promote safe, reliable collection of evidence if military specialists who possess appropriate technical knowledge and skills can be promptly engaged. For instance, sappers, explosive ordnance disposal specialists, engineer units, medical professionals, and experts in the protection of cultural heritage can each help promote safety at the scene, accurate recording of circumstances, and/or the collection and preservation of material traces of crimes. In particular, members of the Military Law Enforcement Service (MLES) may be able to coordinate between combat units and military specialists. MLES representatives can organize the protection of the scene; engage appropriate specialists (EOD, sappers, engineers); ensure control over the chain of custody, registration, labeling, packaging, and preparation of accompanying documentation; and ensure the continuity of the process of preserving and transferring evidence to pre-trial investigation bodies, thereby facilitating subsequent use in national or international proceedings.

2.3.2 Assess whether Evidence can be Collected Safely

Before taking any action to collect evidence, the servicemember must make sure that there is no obvious threat to life such as enemy fire, drone activity, or minefields. In the case of high danger, it is recommended to wait until it is safe to proceed.

2.3.3 Secure the Scene of the Incident

It is essential to secure the scene. If law enforcement can access the area immediately, this will allow them to conduct a detailed examination (presumably with the involvement of forensic experts). Otherwise, securing the scene will allow

96 E.g. The Handbook of Human Rights Investigation, Dermot Groome, Human Rights Press 2011, p.190.

97 E.g. Berkeley Protocol on Digital Open Source Investigations. A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law, United Nations, 2022, https://www.ohchr.org/sites/default/files/2024-01/OHCHR_BerkeleyProtocol.pdf, paras.56-57.

it to be documented as it was when it was found to help investigators and courts understand the information and evidence that was found there. Until the site has been documented properly and evidence has been collected, to the extent possible objects should not be moved and the appearance of the area should not be altered. The integrity of evidence including trace evidence (e.g. impact or gunshot marks, location of personal belongings or biological materials at the site) should not be compromised.⁹⁸

Military specialists can assist in securing the scene. For instance, EOD specialists, sappers, and engineers can identify and eliminate unexploded mines or other explosive devices, and military lawyers can help ensure that to the extent possible, eliminating the risk from explosive devices does not damage or destroy potential evidence.

2.3.4 Record the Scene

It is recommended to start with a broad recording of the entire scene, then move to medium shots (showing the location and relative size of objects), and then move to close-up images of specific evidence, injuries, etc.⁹⁹ This results in a record of the scene as a whole, as it was found, and then individual records of important details.

During video recording, the date, time, location, and, if possible, coordinates or terrain reference points should be stated, and the individuals involved in the documentation process should be identified. If necessary, individuals should be referenced by callsigns or other code names in order to avoid exposing them to danger.

Today, one way to record a scene may be the use of unmanned systems, which can serve as an important tool for documenting international crimes.¹⁰⁰

2.3.5 Collect, Log, and Store Evidence

Any material objects that are relevant to whether violations of IHL may have been committed may have evidentiary value, including:

- weapons, shell casings, and ammunition fragments;

98 E.g. The Handbook of Human Rights Investigation, Dermot Groome, Human Rights Press 2011, pp.84-99; Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-09-14-Eurojust-Memorandum-on-Battlefield-Evidence.pdf>, p.8; The Role of the Soldier in Responding to War Crimes, G. Yasutis, R. Mikova, J. Prescott, W. Shabas, 2023, https://www.dcaf.ch/sites/default/files/publications/documents/War_crimes_Evidence-EN.pdf, p.12.

99 E.g. Handbook Tactical Site Exploitation and Cache Search Operations, CALL, 2007, No.07-26 <https://info.publicintelligence.net/CALL-SiteExploitation.pdf>, p.29.

100 See below Chapter 2.3.7.

- documents belonging to the opposing army, whether they include orders, personnel lists, or unit deployments;
- fragments of rockets, mines, cluster munitions, and chemicals; and
- electronic media (phones, flash drives, memory cards), combat logs, etc.

Such materials may also have intelligence value.

Other facts about the scene may be important evidence even if they cannot be physically picked up. The area around a grave, for example, may feature tire tracks or other markings that are important to investigators. These should also be documented as they were when the scene was first discovered and photographic and/or video evidence of them should be stored securely so it can be proven accurate and authentic.

Once discovered, it is recommended that objects with potential evidentiary value be photographed, documented, and, if possible, properly packed in airtight bags or containers. If it is not possible to carry out full packaging at the scene, it is important to at least separate the physical evidence from other items. A minimum of information should be noted on the package as soon as practicable: when, where, and by whom it was found (including the name of the servicemember involved and their unit), and a brief description of the object. Always take care not to damage the object.

2.3.5.1 Protecting and Saving Collected Data

After taking a photo or video, the data must be reliably protected from accidental damage or distortion. For instance, the Eyewitness to Atrocities app allows users to capture photographs with embedded metadata and store them securely to preserve the chain of custody of evidence.¹⁰¹ Use of a similar technology, if consistent with national security and classification requirements, could facilitate preserving and using photo and video evidence. We discuss some aspects of using one potential system, the “Delta Integration Platform” of the Center for Innovation and Development of Defense Technologies of the Ministry of Defense of Ukraine,¹⁰² in Chapter 4.3 below.

If the information is to be provided to the commander or investigator, it should be transmitted in person or through authorized persons.

101 <https://www.eyewitness.global>.

102 Official website of Delta, <https://delta.mil.gov.ua>

2.3.6 Report Up the Chain of Command

Servicemembers who acquire information about potential atrocity crimes must report that information up the chain of command so that it can be provided to law enforcement.¹⁰³ It is important to ensure there are clear procedures for both internal reporting and for communications between the military and law enforcement about possible international crimes, as we discuss in more detail below.¹⁰⁴

2.3.7 Specific Means of Evidence Collection

2.3.7.1 Using Unmanned Systems to Record Facts of International Crimes

Another effective way to document violations of IHL on the battlefield is to use unmanned systems. Unmanned systems' footage can document the situation on the ground in detail, recording the exact geographical coordinates of shelling, the extent of damage, and potentially the use of prohibited means and methods of warfare. The use of unmanned systems can also help promote and document compliance with IHL by the user's own forces and limit risk to operators' safety.

However, the use of unmanned systems to collect evidence cannot be prioritized over its use for military and intelligence purposes. Obtaining data on violations of IHL is a side benefit of using unmanned systems for intelligence. Nonetheless, such missions regularly yield information that can be useful as evidence in war crimes investigations. Realizing this opportunity requires careful adherence to security requirements because of risks from enemy electronic warfare, the danger of detecting the operator's location, the possibility of a drone being shot down, etc. It also requires proper training of drone operators to identify footage with potential evidentiary value and clear procedures for processing and transmitting digital data to investigators and prosecutors.

2.3.7.2 Interviews with Witnesses and Victims

Particularly when liberating a temporarily occupied territory or rescuing prisoners or detainees, military personnel may have first contacts with victims of or witnesses to suspected violations. Among their other duties,¹⁰⁵ servicemembers may be instructed to obtain information from such persons for military or intelligence

103 See Urgent Reporting Table of the Armed Forces of Ukraine (2.72/IHL form) approved by Order of the Commander-in-Chief of the Armed Forces of Ukraine; Instructions on the Procedure for Military Personnel in Combat Situations in the Event of Discovery of Information that May Indicate the Commission of War Crimes, approved by Order of the Commander-in-Chief of the Armed Forces of Ukraine of August 19, 2025.

104 See Chapter 3.4, 3.5 below.

105 See Chapter 3.4.1 below.

purposes. For battlefield evidence purposes, servicemembers may be instructed to conduct a preliminary interview to determine if a particular person is willing to be interviewed by law enforcement and is likely to have information useful to atrocity crime investigations.¹⁰⁶ Servicemembers who have not been trained in criminal investigation should not attempt to do a comprehensive investigative interview, especially if the interviewee appears to be particularly vulnerable to re-traumatization (for instance, if the interviewee is particularly young or particularly old or was a direct victim of conflict-related sexual violence).

Purpose and Risk Warnings

Military personnel may thus be asked to conduct preliminary interviews with witnesses and victims. Preliminary interviews can be used to record the most tactically important details of the incident (time, place, persons, nature of the damage) and save evidence from being lost. At the same time, the interviewee should be warned that his or her testimony may be included in criminal proceedings and that law enforcement will contact him or her.

Informed Consent

It is always appropriate to get a witness's informed consent before doing an investigative interview about potential atrocity crimes.¹⁰⁷ This typically entails:

- ensuring the witness understands the purpose of the interview and what type of questions will be asked;
- ensuring the witness has freely decided whether they are willing to be interviewed;
- ensuring the witness has freely decided whether the information they provide (or their identity) may be shared with other organizations, including domestic law enforcement and/or international investigative mechanisms like the ICC;
- ensuring the witness has freely consented to the modalities of the interview, including whether it will be recorded; and
- ensuring the witness is aware of what will likely happen after the interview. In an atrocity crime case, this will often entail managing the witness's expectations so that they are aware investigations may take a long time.¹⁰⁸

106 E.g. *The Handbook of Human Rights Investigation*, Dermot Groome, Human Rights Press 2011, p.180 (the first interview should be a 'preliminary interview' to get the general outlines of what a witness knows, rather than a detailed interview).

107 E.g. *The Handbook of Human Rights Investigation*, Dermot Groome, Human Rights Press 2011, p.49 ("A victim's cooperation with investigators must be voluntary and based on informed consent"); *Handbook on Civil Society Documentation of Serious Human Rights Violations*, Public International Law and Policy Group <https://surl.li/otkvzv>, p.9.

108 E.g. *Id.*

Survey Tactics

It is necessary to try to maintain a safe atmosphere and to conduct a trauma-informed interview that minimizes the risk to the witness. An interviewer should be aware of where to refer victims who may need psychosocial support as a result of their experiences.¹⁰⁹ Civil-military cooperation units and the legal service can also provide initial recommendations on where and how a victim can obtain additional support.¹¹⁰

In conducting a preliminary interview, military personnel should ask open-ended questions and avoid providing witnesses with information about the case, asking leading questions, suggesting what the “right” answer to a question may be, or otherwise disturbing the victim’s memory. Disturbing the memory may have lasting negative impacts on an investigation.¹¹¹

Recording and Sharing Contact Information

If a civilian is willing to speak with law enforcement, his or her name, surname, approximate place of residence, date of birth, and contact phone number should be recorded. This will allow investigators to find this person in the future to take a formal statement. If the witness does not want to disclose his or her data or fears reprisals, the servicemember should record this and, if possible, ask the witness to provide a minimum set of information so that law enforcement officers can find the person in the future (under safe conditions).

Avoiding Potential Ethical Issues

In working with witnesses, it is important to observe ethical rules and avoid issues that could harm vulnerable witnesses and undermine cases. For instance, it is important to:

- **Protect citizens’ Rights;** prevent abuse of power or violations of IHL. It is important for effectiveness, morale, compliance, and victory to prevent violations of domestic or international law in the evidence collection process such as unauthorized searches of civilians, seizure of property without proper grounds, and unlawful detentions. Evidence collected in this way can be rendered invalid and/or itself constitute a violation of civilians’ rights.
- **Limit risks of retraumatization.** Recording crimes against humanity or war crimes involves serious moral and psychological challenges: identifying mass

109 E.g. United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL, *Trauma-Informed Investigations Field Guide*, p.24.

110 See Chapter 3.6.

111 E.g. United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL, *Trauma-Informed Investigations Field Guide*, pp.34-35. See *The Handbook of Human Rights Investigation*, Dermot Groome, Human Rights Press 2011, p.181.

graves, communicating with victims of violence, collecting data on rape and other forms of sexual violence, etc. In this aspect, the role of psychological support units is important, as their specialists can take measures to reduce the risk of additional traumatization for both the servicemembers involved and the victims. In addition, some types of witnesses, such as survivors of sexual violence, may be at particular risk of re-traumatization or other harmful consequences. Military personnel should be particularly careful to limit their interviews of such witnesses. Instead, if the witness provides informed consent, soldiers should relay their information to law enforcement so that trained specialists may conduct an interview.¹¹²

- **Maintain the Confidentiality and Security of Witnesses.** As noted above, before being interviewed a victim should be given an opportunity to provide (or withhold) informed consent to their information being shared with other parties. This is consistent with the victim's right to privacy.¹¹³ In particular, publishing photos, videos, or stories of witnesses without their consent or without proper depersonalization is impermissible. It can expose people to persecution by the enemy, re-traumatize victims, and erode their confidence in the investigative process. In general, materials from the battlefield should not be shared either on social media or in the media.

Obtaining Information from Prisoners of War

Any collection, recording, and transfer of information obtained from POWs must be carried out within the limits established by international law—specifically, the Third Geneva Convention (1949)¹¹⁴ and Additional Protocol I (1977)¹¹⁵—and Ukraine's national laws and regulations.¹¹⁶ The main requirements of these provisions can be summarized as follows:

112 Handbook on Civil Society Documentation of Serious Human Rights Violations, Public International Law and Policy Group <https://surl.li/rpqwym>, p.111.

113 E.g. The Handbook of Human Rights Investigation, Dermot Groome, Human Rights Press 2011, p.49 (“A victim’s cooperation with investigators must be voluntary and based on informed consent”).

114 Third Geneva Convention, 1949, https://zakon.rada.gov.ua/laws/show/995_153#Text.

115 Additional Protocol I (1977), https://zakon.rada.gov.ua/laws/show/995_199#Text/

116 E.g. Procedure for Measures Concerning the Treatment of Prisoners of War During a Special Period, approved by Cabinet of Ministers Resolution No. 721 of June 17 2022, <https://surl.li/chwgbk>; Procedure for Interviewing a Prisoner of War, approved by Cabinet of Ministers Resolution No. 721 of June 17 2022, <https://zakon.rada.gov.ua/laws/show/721-2022-n#n122>; Procedure for the Detention of Prisoners of War, approved by Cabinet of Ministers Resolution No. 413 of April 5 2022, <https://zakon.rada.gov.ua/laws/show/413-2022-n#n2>; Procedure for the Organization, Escort, and Guarding of Prisoners of War from the Places (Locations) Where They Are Held After Capture to Camps for the Detention of Prisoners of War or to Sections for the Detention of Prisoners of War, approved by Joint Order of the Ministry of Defense of Ukraine and the Ministry for Communities, Territories and Infrastructure Development of Ukraine No. 15/12 of January 8 2024, <https://zakon.rada.gov.ua/laws/show/z0116-24#Text>; Doctrine on the Treatment of Prisoners, Documents, and Property, approved by the Chief of the General Staff of the Armed Forces of Ukraine of October 24 2020, <https://surl.li/yiphlg>.

- POWs are under the authority of the State that holds them, not of the individuals or military units that captured them;
- Upon capture, servicemembers are obliged to state only their name, personal number, rank, and military unit—any other information may be provided solely at their discretion and no pressure, threats, or blackmail may be used to obtain such information. Interviews are to be conducted in a language they understand and without torture or ill-treatment;
- POWs must be provided with all necessities at the place of their detention, and medical care must be provided;
- POWs at the place of their detention may be engaged in work (light industry, household/maintenance work, etc.), taking into account their age, sex, military rank, and physical ability to work; officers may work only with their consent;
- Torture, other forms of violence, cruel or degrading treatment, intimidation, the imposition of punishment without a court decision, and encouraging public curiosity toward a POW are prohibited;
- Interviews of POWs shall not pursue the purpose of obtaining confessions or compelled testimony.

Information obtained during such interviews may serve as a source of operational intelligence and analytical information, but may also reveal data concerning violations of IHL, and may be used in criminal proceedings. Where possible, video-recording means are to be employed during interviews. At the same time, it is impermissible to record videos depicting POWs in a humiliating condition—for example, when the POW is undressed or in underwear; dirty or blood-stained; crying; speaking in fear; blindfolded or with a bag over the head; making telephone calls to relatives during the recording, thereby making a private conversation public; or when the interviewer raises his voice, shouts, or mocks the POW on or off camera, etc. The record of the interview and a video recording, if one is available, are also directly sent to pre-trial investigation bodies, often the SSU .¹¹⁷

Violating these rules may itself constitute an IHL violation or give rise to criminal liability, and may undermine the value of any information a POW provides—indeed, pressure, coercion, or degradation of the POW will render their information inadmissible in court. Nonetheless, POWs may have important information about international crimes, and a POW themselves may be a witness or suspect in criminal proceedings. Consequently, humane treatment of POWs and rapport-building may help effectively investigate and prosecute international crimes, as well as reinforcing Ukraine's legitimacy in the international legal arena.

117 Procedure for Measures Concerning the Treatment of Prisoners of War During a Special Period, approved by Cabinet of Ministers Resolution No. 721 of June 17 2022, <https://zakon.rada.gov.ua/laws/show/721-2022-n#n91>

2.3.8 Conclusion

Collecting evidence of potential international crimes on the battlefield is a complex task that requires military personnel to simultaneously maintain combat discipline, take care of potential evidence, and master basic forensic skills. It includes:

- risk assessment and safety during evidence collection;
- minimizing interference with the environment and ensuring the authenticity of the scene;
- packaging and labeling of collected materials;
- interviewing witnesses and victims (only to the extent necessary to preserve the most important facts); and
- storage and transfer of physical evidence and digital materials to the appropriate authorities.

Implementing these recommendations will help lay the foundations for the successful investigation and trial of international crimes committed in Ukraine right now—in the field, while the conflict is still ongoing. Proper procedures allow investigators to quickly identify and store factual data on alleged perpetrators and form a complete evidence base. This, in turn, will contribute to the achievement of the fundamental goals of national criminal justice and international justice: establishing the truth, protecting victims, combating impunity, and ensuring a lasting sense of justice in society.

2.4 Strategic Value of Battlefield Evidence

This document principally discusses how to improve Ukraine's capacity to collect, process, store, share, and use battlefield evidence as a tool to improve accountability for war crimes. Such evidence has been at the heart of war crimes tribunals from Nuremberg to the International Criminal Tribunal for the former Yugoslavia and beyond. It has since become widely accepted as an important counter-terrorism tool, as well.¹¹⁸

The potential value of battlefield evidence, however, also reaches far beyond justice sector applications; done properly, it is a strategic tool.¹¹⁹ From the stand-

118 See above Chapter 2.2.

119 The Strategic Potential of Collected Exploitable Material, M. R. Fenzel, L. Sloomaker, R. K. Cragin, 2020, <https://ndupress.ndu.edu/Media/News/News-Article-View/Article/2420897/the-strategic-potential-of-collected-exploitable-material/>

point of strategic studies of ends, ways, and means,¹²⁰ battlefield evidence can enhance Ukraine's ability to leverage several instruments of its national power, including military and intelligence effectiveness, to achieve Ukraine's desired ends. Indeed, battlefield evidence can play an important role in Ukraine's "implementation of international legal, political, diplomatic, security, humanitarian, and economic measures aimed at ending the Russian Federation's illegal [aggressive activities against Ukraine since 2014]," and other goals provided for in the National Security Strategy of Ukraine.¹²¹

Strategic literature offers several different frameworks for organizing and categorizing instruments of power. In English texts, these include "DIME,"¹²² "DIME-FIL,"¹²³ and "MIDFIELD."¹²⁴ Whichever framework one chooses to describe Ukraine's elements of power, it undoubtedly both employs and is impacted by the **military, intelligence, diplomatic, economic, informational, and law enforcement and justice** activities that states use to advance their national interests, the use of which all can be enhanced through properly collected, processed, stored, and shared battlefield evidence.

- The **military** fights and wins the nation's wars. It is the front line of Ukraine's defense and directly engages military threats against it. When military personnel are able to properly collect, process, and pass along battlefield evidence, that capability benefits the Armed Forces as well as other entities in the government in advancing their respective missions to advance Ukraine's interests. First, proper collection of battlefield evidence contributes to defense intelligence functions, including measurements and signatures intelligence, to better understand what capabilities and equipment the enemy

120 See Heffington, et al, eds., *A National Security Strategy Primer*, National Defense University Press, Washington, D.C. (2019), https://nwc.ndu.edu/Portals/71/Documents/Publications/NWC-Primer-FINAL_for%20Web.pdf?ver=HOH30gam-KOdUOM2RFoHRA%3D%3D ("Fundamentally, national security strategy entails the design and application of ideas for employment of means as well as the orchestration of institutions and instruments of national power (diplomatic, informational, military, and economic) to achieve viable ends that protect or advance national interests. National security strategy bridges the gap from a less-desirable current state of affairs or condition to a more desirable future state of affairs or condition. National security strategy can apply broadly, organizing or guiding nearly all aspects of a state's policy, or more narrowly regarding a specific situation. Conceptually, national security generally entails the competitive search for advantage over a foreign nation, group of nations, or nonstate actor; a favorable foreign relations position; and/or a defense posture capable of successfully deterring hostile action.")

121 National Security Strategy of Ukraine of 2020, §6. Ukraine's Military Security Strategy of 2021 also promotes "using the full potential of the state and society (military, political, economic, international legal (diplomatic), spiritual, cultural, etc.) to repel aggression."

122 Diplomatic, Informational, Military, Economic.

123 Diplomatic, Information, Military, Economic, Financial, Intelligence, Law Enforcement.

124 Military, Information, Diplomatic, Financial, Intelligence, Economic, Law, Development.

has and how to defeat them. Second, having a robust battlefield evidence capability is also (at least a theoretical) check against war crimes being committed by enemy forces, as well as Ukraine's own personnel, which furthers Ukraine's IHL compliance, strengthens military institutional credibility, and, as discussed throughout this guide, makes future accountability more likely.¹²⁵

- **Intelligence** means and methods are critical to analyzing battlefield evidence and advising commanders and policymakers alike. From the shadows, intelligence can help to illuminate everything from operational capabilities to specific units, to particularities in their funding, supply, and logistics chains, all of which can help defend against attacks, contribute to defeating the enemy, and end wars. But the quality of exploitation and analysis that can be performed is largely dependent on the quality of what is recovered and ultimately received by the exploitation and analytical teams. That means that those collecting battlefield evidence have a direct role in keeping the items and information collected in the best condition possible, accompanied by providing as much contextual information as possible, to enable the best analysis possible.
- **Diplomacy** is the instrument of power principally responsible for the development and maintenance of relations between Ukraine and other states and international bodies, a key part of the National Security Strategy of Ukraine's Fundamental Principle of Interaction.¹²⁶ This includes important aspects of determining whether and to what extent Ukraine and other nations cooperate on and share findings relating to battlefield evidence. Diplomats also negotiate and are on the front lines of enforcing the bilateral and multilateral treaties and resolutions that set international laws and norms. Beyond the international laws governing the conduct of warfare, diplomacy is responsible for the treaties and frameworks for travel and trade that can limit bad actors' (whether individuals, organizations, or states) physical mobility and participation in the global economy. To the extent visa issuances fall under the umbrella of diplomatic duties, what is learned through battlefield evidence can enhance the efficacy of consular operations. If credible battlefield evidence that implicates individual war criminals is included in the consular databases of Ukraine and any other nation committed to helping Ukraine to neutralize war criminals, then consular officers may be able to flag a visa applicant because of a piece of battlefield evidence that connects to him or her, and thus prevent that person's international travel, much like how restrictions on terrorists' travel are implemented.
- **Economic and financial** instruments, including sanctions and export controls, aim to cripple enemies' financial flows and material supplies. Properly

¹²⁵ See also Chapter 5 below.

¹²⁶ National Security Strategy of Ukraine, §4.

recovering parts from drones, munitions, landmines, and other equipment as battlefield evidence can allow analysts and exploitation teams insights into how they are made, where their parts are coming from, and whether manufacturers or parts suppliers are circumventing restrictions on trade and technology transfers, so the government can know where to focus its enforcement operations and appropriately penalize offenders, including by freezing or seizing their financial accounts.

- In the **information** space, having good battlefield evidence helps the broader public to understand the threats they face, which is especially important in a democracy and in foreign relations. It helps people at home and abroad to remember the purpose of the fighting, and to tell the stories of the victims of the enemy's war crimes. Robust battlefield evidence capabilities and practices also help promote positive perceptions of the military and other government institutions; collecting and handling battlefield evidence in a credible way—and being able to publicly tell the story of having done it properly—builds the credibility of those institutions and their leaders. It also helps to counter information warfare and other disinformation campaigns used by the enemy against Ukraine.
- The **law enforcement and justice** sector functions are most central to this Guide in part because meeting the rigorous standards of criminal law and procedure make achieving all other effective uses of battlefield evidence easier and more attainable. Criminal investigation and prosecutions are often long, expensive, uncertain, and imperfect. Nonetheless, Ukraine has committed to a justice process for allegations of war crimes and aggression, opening investigations into about 190,000 incidents of potential international crimes as of September 30, 2025;¹²⁷ joining the ICC; and working with allies to open the Special Tribunal for the Crime of Aggression against Ukraine.¹²⁸ Having committed to a justice process, Ukraine has a strategic imperative to ensure these allegations are “judged clearly and fairly... through a proper legal process”¹²⁹ and actually produce justice for victims. Indeed, the ability to achieve accountability under the law is a core value separating Ukraine from its enemy. Furthermore, law enforcement powers and effectiveness reach beyond

127 OPG provides a daily update on the number of such investigations. As of September 30, 2025, this number included approximately 185,000 investigations into possible war crimes under Article 438 of the CCU. See <https://www.gp.gov.ua/> (last checked September 30, 2025).

128 See below Ch.6. See also <https://www.president.gov.ua/en/news/rosiya-maye-buti-prityagnuta-do-vidpovidalnosti-za-svoyu-agr-97657> (“We all understand there is a lot of work ahead, both political and legal. We all understand how hard it is to actually bring war criminals to the courtroom. But we’ve already chosen the path. Russia will be held accountable for this war. This is a moral duty for Europe—and for everyone in the world who values human life”).

129 <https://www.president.gov.ua/en/news/gaaga-chekaye-na-zdijsnennya-pravosud-dya-vistup-prezidenta-u-98677>.

the investigative and prosecutorial aspects that this document focuses on. Law enforcement functions include important elements of border security and transportation security which, like diplomatic visa functions, help to isolate war criminals and prevent their ability to travel, which can be achieved using leads generated by battlefield evidence. And the law enforcement and justice sectors have unique tools and resources, including through “mutual legal assistance” treaties and mechanisms like INTERPOL, which can benefit Ukraine’s efforts at accountability long after the war is over. Importantly, unless the individual is killed or detained during active military operations, it is far more likely that a war criminal will be apprehended via law enforcement means than any other way. Having military units that have effectively collected, processed, and stored battlefield evidence greatly increases the likelihood of that happening.

2.5 Conclusion

The most important aspect of building any criminal case is reliable evidence. When crimes are committed during an armed conflict, critical evidence is often found on the battlefield. From Nuremberg to the Hague, battlefield evidence has helped prove allegations of very serious international crimes. In Ukraine, battlefield evidence can help advance investigations, assess very serious allegations, and advance national strategy.

To maximize the value of battlefield evidence, it is important to develop legal guidelines for its collection, preservation, and use, and an understanding of the conditions in which it is collected throughout the bench and bar. In particular, while military servicemembers’ core mission is to defend the country, their service will often make them the first people to encounter such evidence. International practice reflects that using simple good practices can make evidence first encountered by the military useable in court and allow it to contribute to justice for very serious crimes. The more evidence is properly collected, preserved, and shared with law enforcement, the better the chance that victims of international crimes in Ukraine will be able to get the justice they deserve.



photo: Jose Hernandez, shutterstock

CHAPTER 3.

THE ROLE OF MILITARY PERSONNEL, UNITS, AND COMMANDERS IN COLLECTING AND PRESERVING BATTLEFIELD EVIDENCE OF INTERNATIONAL CRIMES

- 3.1** Introduction
- 3.2** Legal and Procedural Status of Military Personnel Collecting and Preserving Evidence of International Crimes
- 3.3** Interaction of Military Personnel, Units and Services with Law Enforcement Agencies and other State Institutions in Preserving, Transferring, and Using Evidence of International Crimes
- 3.4** Interaction of Military Personnel and Units of the Armed Forces of Ukraine with Civilians in Collecting Evidence of International Crimes
- 3.5** The Role of Commanders in Collecting and Preserving Evidence of Violations of International Humanitarian and Human Rights Law
- 3.6** The Role of the Units and Services of the Armed Forces of Ukraine in Collecting and Preserving Evidence of International Crimes
- 3.7** Conclusion

3.1 Introduction

Many international crimes are committed on the front line or in temporarily occupied territories. Under Ukrainian law, pre-trial investigations into possible crimes are conducted by law enforcement.¹³⁰ But law enforcement has extremely limited access to such areas.¹³¹ Often, the only representatives of the state who are directly in the conflict zone and can ensure the preservation of evidence are military personnel of the Armed Forces of Ukraine (AFU) and other military formations of the Defense Forces of Ukraine (DFU). Good practices for the DFU to document potential international crimes are set out in the previous chapter.

Because of their unique access, members of DFU have a unique opportunity to help document potential international crimes. But the legal regulation of their participation in documenting such violations is fragmented and indirect. Ukrainian legislation does not provide detailed, specially designed procedures for military personnel to collect evidence of war crimes and other violations of IHL in armed conflict. The existing regulations on this topic are formulated mainly in the general provisions of the criminal procedure legislation, military regulations, orders of the Ministry of Defense of Ukraine (MoD), and individual acts of the Commander-in-Chief and the General Staff of the AFU. These regulations should be further developed.

Moreover, in the context of hostilities, there is a significant risk of losing potentially important evidence, which creates further challenges for the already difficult job of holding perpetrators to account. In the absence of proper recording of events, an evidentiary vacuum is created over time, which impedes the establishment of facts and circumstances, protection of victims, proper qualification of criminal acts, and the implementation of the principle of inevitability of punishment. This reinforces the need for clearer guidance for military personnel participating in documentation efforts. The introduction of clear, unified, and legally correct regulations will contribute to more effective collection, systematization, and further use of information on possible international crimes, and thus increase accountability for the perpetrators of violations and fight impunity.

130 Why the Military Should Be Empowered to Document War Crimes and the Damage They Caused, February 10, 2023, M. Bem, I. Horodysky, Dnister Center, <https://dc.org.ua/news/chomu-viyskovykh-varto-nadilyty-povnovazhennyamy-schodo-dokumentuvannya-voennykh-zlochyniv-ta-zapodiyanyh-nymy-zbytkiv>.

131 Why the Military Should Be Empowered to Document War Crimes and the Damage They Caused, February 10, 2023, M. Bem, I. Horodysky, Dnister Center, <https://dc.org.ua/news/chomu-viyskovykh-varto-nadilyty-povnovazhennyamy-schodo-dokumentuvannya-voennykh-zlochyniv-ta-zapodiyanyh-nymy-zbytkiv>.

3.2

Legal and Procedural Status of Military Personnel Collecting and Preserving Evidence of International Crimes

While ideally law enforcement will carry out criminal investigations (in accordance with the CPCU), military personnel of the AFU and other military formations of the Defense Forces of Ukraine (DFU) are responsible for sharing information about international crimes with law enforcement and, where possible, preserving evidence (though they are not currently obliged to *collect* evidence). Moreover, in some circumstances military personnel practically need to be directly involved in the collection and preservation of evidence of potential international crimes in order to ensure the evidence is not lost because law enforcement simply cannot carry out investigations promptly in a particular area.¹³² In those instances, there is an acute need for servicemembers to document criminal acts and preserve evidence for national and international justice. Indeed, their work may have a decisive impact on the quality and timely documentation of atrocity crimes.

Servicemembers are obliged first and foremost to protect the sovereignty and territorial integrity of the state, but also to facilitate the recording and investigation of alleged international crimes. At the same time, their role in recording and investigating crime is complex and insufficiently acknowledged or regulated. Insufficient legal regulation, the limited procedural role of the military in criminal proceedings, and a number of practical difficulties impose additional uncertainties on the procedure and recording of evidence.

In these circumstances, those responsible for the collection of evidence on the battlefield should understand the potential procedural roles a servicemember might play in the criminal justice process and follow good practices in collecting and preserving evidence,¹³³ when the situation calls for them to do so.

3.2.1 Constitutional Principles on the Role of Military Personnel in Collecting and Preserving Evidence from the Battlefield

In accordance with Article 8 of the Constitution of Ukraine,¹³⁴ the rule of law is recognized and applied in Ukraine, and constitutional norms have the highest legal force. Laws and other legal acts are adopted on the basis of the Constitution

132 E.g. Voluntary report on implementation of international humanitarian law, Ministry of Defence of Ukraine, 2024, https://s3.eu-west-1.amazonaws.com/mod.gov.ua-statics-bucket/Voluntary_report_Mo_D_in_IHL_Ofae15454a.pdf, p.111.

133 See above Chapter 2.3.

134 Constitution of Ukraine, <https://zakon.rada.gov.ua/laws/show/254k/96-bp#Text>.

and must comply with it. Article 68 of the Constitution¹³⁵ emphasizes that everyone is obliged to strictly observe the laws of Ukraine and not to infringe on the rights and freedoms, honor, and dignity of other people. This constitutional provision determines the appropriate nature of the activities of military personnel and their responsibility in case of violations of IHL.

The provisions of Articles 12-17 of the Law of Ukraine "On National Security of Ukraine"¹³⁶ define the general powers and functions of the security and defense sector forces, which include the AFU. In particular, according to Article 12 of this law, the AFU, other military formations established in accordance with the laws of Ukraine, law enforcement and intelligence agencies, and special purpose agencies with law enforcement functions which are entrusted by the Constitution and laws of Ukraine with the functions of ensuring the national security of Ukraine and defense of the state, are all part of the system of state authorities of the security and defense sector of Ukraine. The most important components of national security are the protection of the social order established by the Constitution of Ukraine; protection and defense of the rights and legitimate interests of citizens, enterprises, organizations, institutions, and other entities; and protection of the sovereignty and territorial integrity of Ukraine.

Thus, during an armed conflict military personnel are obliged to assist law enforcement agencies in protecting Ukrainian citizens' human rights and the national interests of the state. Given the strategic importance of collecting battlefield evidence and the risk it may be lost without military assistance, this implies supporting the documentation of international crimes.

3.2.2 Provisions of National Legislation on the Collection and Preservation of Evidence from the Battlefield as One of the Obligations to Comply with International Humanitarian Law

The requirement that servicemembers know and observe IHL is enshrined, in particular, in Article 15, Section 1, Part I of the Law of Ukraine "On the Statute of Internal Service of the Armed Forces of Ukraine" which imposes on every servicemember the obligation to comply with international treaties ratified by Ukraine, as well as national acts adopted to implement IHL.¹³⁷ The relevant details of the requirement are contained in the IHL Instruction, which obliges AFU personnel to comply with international rules and standards in the course of performing com-

135 Constitution of Ukraine, <https://zakon.rada.gov.ua/laws/show/254k/96-bp#Text>.

136 Law of Ukraine "On National Security of Ukraine" of June 21, 2018, No. 2469-VII, <https://zakon.rada.gov.ua/laws/show/2469-19#Text>.

137 Law of Ukraine "On the Statute of the Internal Service of the Armed Forces of Ukraine" of March 24, 2019, No. 548-XIV, <https://zakon.rada.gov.ua/laws/show/548-14#Text>.

bat missions and activities in the armed conflict zone.¹³⁸ Servicemembers must also perform their functions in good faith and prevent the commission or facilitation of criminal acts.

In the best case, investigators should collect evidence. Military personnel must, where possible, take measures to preserve evidence about possible international crimes, including in electronic form.¹³⁹ If military personnel are the only ones able to collect evidence, they should do so. If they can provide law enforcement with sufficient information to believe that a crime may have been committed, they may be able to prompt law enforcement to open an investigation. Later in the process, they can provide documentary evidence which can be attached to an ongoing investigation and otherwise support law enforcement in pursuing justice for victims of atrocity crimes.¹⁴⁰ Nonetheless, military personnel do not have the powers of investigators or prosecutors within the meaning of the Criminal Procedure of Ukraine (CPCU) and military personnel in combat situations are not obliged to collect evidence, conduct investigations, or take other procedural actions with information that may contain details of war crimes.¹⁴¹ Servicemembers must also report information about illegal actions, including potential international crimes, to law enforcement agencies.¹⁴²

The collection of information on violations of IHL in the AFU and reporting on that information is currently being carried out pursuant to the Urgent Reporting Table of the Armed Forces of Ukraine (2.72/IHL form) approved by Order of the Commander-in-Chief of the Armed Forces of Ukraine¹⁴³ and Instructions on the Procedure for Military Personnel in Combat Situations in the Event of Discovery of Information that May Indicate the Commission of War Crimes, approved by Order of the Commander-in-Chief of the Armed Forces of Ukraine of August 19, 2025.¹⁴⁴ These regulations were implemented to coordinate the efforts of the AFU, state bodies,

138 Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine of March 23, 2017, No. 164, <https://zakon.rada.gov.ua/laws/show/z0704-17>.

139 Id., para.2.4.

140 E.g. CPCU Article 214.

141 Instructions on the procedure for military personnel in combat situations in the event of discovering information that may indicate the commission of war crimes, approved by order of the Commander-in-Chief of the Armed Forces of Ukraine dated August 19, 2025, para.2.3.

142 Instructions on submitting reports and statements on incidents, criminal offenses, military administrative offenses and administrative offenses related to corruption, violations of military discipline and their accounting in the Ministry of Defense of Ukraine, the Armed Forces of Ukraine and the State Special Transport Service, approved by Order of the Ministry of Defense of Ukraine No. 604 of December 29, 2018.

143 Urgent Reporting Table of the Armed Forces of Ukraine (2.72/IHL form) approved by Order of the Commander-in-Chief of the Armed Forces of Ukraine

144 Instructions on the Procedure for Military Personnel in Combat Situations in the Event of Discovery of Information that May Indicate the Commission of War Crimes", approved by Order of the Commander-in-Chief of the Armed Forces of Ukraine of August 19, 2025

international and non-international non-governmental organizations to record and summarize information on violations of IHL in areas and places where state authorities and non-state actors cannot perform their functions due to hostilities.

An important legal guideline for collecting and preserving evidence is the Doctrine of Treatment of Captured Persons, Documents and Property, approved by the Chief of the General Staff of the Armed Forces of Ukraine on October 27, 2020. This legal act provides for the procedure for interviewing detainees and the procedure for recording and seizing documents and material assets. The preservation of material evidence, as well as the humane treatment of detainees, must be carried out in accordance with the requirements of IHL.¹⁴⁵

3.2.3 Procedural Status of Military Personnel

The CPCU does not provide for any special status for military personnel participating in criminal proceedings. They are not investigators and are not empowered to conduct investigations within the meaning of the CPCU. Thus, while they may be required to assist in collecting information, when necessary, their procedural status is the same as civilians'. Consequently, military personnel may participate in criminal proceedings in any of several procedural capacities:

- if they have other factual information, including where or how a piece of evidence was found, they may participate as an applicant or a witness;
- if they are providing specialized technical knowledge or skills, they may participate as a specialist or expert;
- if they have been harmed by an alleged offense, they may participate as a victim; and
- if they themselves are suspected of a violation, they will have the procedural status and rights of a suspect.

In particular, applicants and victims both have the right to play an active role in a criminal proceeding and may provide evidence to an investigative body. A servicemember participating as an applicant or victim may consequently relay battle-field-collected evidence to the appropriate investigative bodies.

Regardless of a participant's procedural status, they are obliged to provide truthful information; maintain the confidentiality of an investigation; and appear for interviews and testimony when summoned. Below, we discuss a few other salient features of the most relevant procedural statuses military servicemembers may hold.

145 The Doctrine of Treatment of Captured Persons, Documents and Property, approved by the Order of the Chief of the General Staff of the Armed Forces of Ukraine on October 27, 2020, <https://tro.mil.gov.ua/doktryna-povodzhennya-iz-zahoplenymy-osobamy-dokumentamy-ta-majnom/>

Applicant

To serve as an *applicant*, a servicemember should submit a statement or report of a criminal offense either in writing or orally. In principle reports of potential international crimes should be submitted to the State Security Service (SSU), though if a report is submitted to another law enforcement agency it should be forwarded to the SSU.¹⁴⁶

An applicant is an active participant in the process who may, *inter alia*, provide documentary evidence that an investigator or prosecutor may make part of a casefile and/or submit an appeal in cases of investigative or prosecutorial inaction. It may be procedurally advantageous, when possible, for a unit that collects evidence to formally designate a servicemember who is part of the evidence-collection process to serve as an applicant in related criminal proceedings.

After an applicant reports a criminal offense, the investigator, inquiry officer, or prosecutor must, within 24 hours, enter the relevant information into the Uniform Register of Pre-trial Investigations (URPTI) and initiate an investigation. Within 24 hours of entering such information, the official must provide the applicant with an electronically-generated document which confirms that information about a criminal offense, received according to certain parameters, has been entered in the URPTI.

An applicant has the following procedural rights:

- Submit items and documents to support their application. These may confirm the occurrence of a criminal offense, reveal the circumstances of its commission, expose the person who committed it, etc. Such items and documents may be used as evidence in criminal proceedings.
- Receive information about the completion of the pre-trial investigation. In particular, if the criminal proceedings are closed, the applicant shall be sent a copy of the relevant decision of the investigator, inquiry officer, or prosecutor.¹⁴⁷
- Appeal against a decision by an investigator, inquiry officer, or prosecutor to close criminal proceedings or against the failure to enter information about a criminal offense into the URPTI after receiving a statement or report of a criminal offense.¹⁴⁸

In addition, the applicant has the right to security measures for their protection, if there are relevant grounds.¹⁴⁹

146 See more details in chapter 6.2

147 CPCU Article 284(6).

148 CPCU Article 60(2); 303(1).

149 CPCU Article 303(6)(1); Law of Ukraine “On Ensuring Security of the Persons who Participate in Criminal Legal Proceedings” of December 23, 1993, No. 3782-XII, <https://surl.lu/cgtcqa>.

If a servicemember has applied as an applicant, they may, if necessary, be recognized as a victim (if they have suffered harm) or as a witness. If so, investigative actions may be conducted with them in the capacity of a victim or witness.

Victim

A servicemember may participate as a *victim* if the servicemember has suffered moral, physical, or property damage as a result of a criminal offense. Only a servicemember who was individually and personally harmed—for instance, by being personally subjected to unlawful mistreatment while held as a POW—may be a victim.¹⁵⁰ A victim also has significant procedural rights, including the right to submit evidence.

A person may be recognized as a participating victim either by submitting a statement themselves; by being identified as a victim in a statement submitted by another person; or by a decision by an investigator, prosecutor, or court.

The victim in criminal proceedings is granted a wide range of rights provided for in Article 56 of the CPCU. In particular, throughout the criminal proceedings, he or she has the right to:

- be informed of their rights and obligations under the CPCU. To this end, the victim shall be given a memorandum on their procedural rights and obligations by the person who accepts the report of a criminal offense;
- know the nature of the suspicion and charges against the suspect or accused;
- be informed of the selection, change, or cancellation of measures to ensure criminal proceedings and the completion of the pre-trial investigation in relation to the suspect or accused;
- submit evidence to the investigator, prosecutor, investigating judge, and court;
- file motions and petitions;
- if there are relevant grounds, benefit from legal measures to ensure the safety of themselves, close relatives or members of their family, property, and home;
- give explanations and testimony, or refuse to give them;
- appeal against decisions, actions, or inaction of the investigator, prosecutor, investigating judge or court;
- have a legal representative; and
-

- familiarize themselves with materials directly related to the criminal offense committed against them.¹⁵¹

Victims may participate in procedural actions including investigative and search proceedings during the investigation of criminal allegations and may participate actively in court proceedings if a case goes to trial.

Witness

A servicemember who has relevant information for a criminal proceeding, but is not an applicant or victim, may testify as a witness.¹⁵² Witnesses have certain procedural rights set forth in Article 66 of the CPCU, but those rights are more limited than the rights of an applicant or victim.

Witnesses do not provide physical or documentary evidence directly to the court. However, if a witness reports that they have relevant evidence in their possession, law enforcement may request or seize the evidence from them.

Specialist

A servicemember with relevant technical knowledge or skills may participate as a 'specialist' within the meaning of CPCU Article 71. A specialist may be called upon by the parties or the court to provide direct technical assistance (photography, drawing up diagrams, plans, sketches, selecting samples for examination, etc.) or to provide information, conclusions, or other documents. In addition, the parties to criminal proceedings have the right during court proceedings to file a motion to involve a specialist or to use his explanations and assistance.¹⁵³ The involvement of a specialist is a discretionary right of the investigator, prosecutor, and/or court, which is aimed at ensuring effective criminal proceedings.

A specialist's role is primarily to explain technical details about evidence. For instance, a servicemember with the requisite knowledge might provide information about artillery, military tactics, or air or naval operations, or might assist the court in identifying or understanding military units; weapons; or ammunition, or might explain the technical details of removing evidence from captured electronic devices. The Ministry of Defense has reported that members of the AFU "often participate in ongoing criminal proceedings as specialists."¹⁵⁴

151 CPCU Article 56.

152 Military medical and religious personnel may be exempted. See CPCU Article 65(2).

153 CPCU Article 71(3).

154 The Ministry of Defence reports that servicemembers often do so. https://s3.eu-west-1.amazonaws.com/mod.gov.ua-statics-bucket/Voluntary_report_Mo_D_in_IHL_OFAE15454A.pdf, p.111.

3.2.4 Potential Clarifications to Legal Regulation

Several changes to the current legislation of Ukraine may help further clarify the status of military personnel and facilitate investigators and courts in relying on the collection and preservation of evidence from the battlefield.

First, amending certain provisions of the CPCU would help eliminate any legal questions about the admissibility in principle of battlefield-collected evidence. Legislators should consider:

- providing for the presumption of admissibility of evidence from the battlefield, including digital evidence, if it has been collected by military personnel in accordance with established protocol;
- determining the procedure for legalizing intelligence data (including from foreign partners) as evidence in criminal proceedings;
- expanding the possibilities for conducting procedural actions with the participation of military personnel remotely;
- expanding the opportunities for involving military personnel as specialists or experts in the collection, recording, and examination of evidence from the battlefield;
- expanding the list of urgent procedural actions that can be carried out under martial law before entering information into the URPTI (all types of inspections and searches, temporary seizure of items/digital media) with subsequent legalization by an investigating judge;
- providing for the possibility of witnesses directly submitting items and documents to investigative authorities be assessed for use as evidence in criminal proceedings, as applicants and victims can do; and
- amending Article 41 of the CPCU to allow investigators and prosecutors to explicitly authorize military personnel to conduct investigative actions under martial law (beyond evidence collection, processing, and sharing), in cases where it is impossible for law enforcement to do so, while preserving the ability of military personnel to collect, preserve, and share evidence they encounter regardless of whether they have been formally authorized to do so.

The DFU could also provide additional regulations to systematize the collection of battlefield evidence and maximize its eventual value as evidence. For example, it could:

- establish procedures for sharing intelligence and other information with law enforcement agencies that may indicate the commission or preparation of serious violations of IHL and other criminal offenses;

- systematize and harmonize departmental acts regarding the collection, recording, storage, and transfer to law enforcement agencies of information that may indicate serious violations of international humanitarian law;
- develop and approve a national field protocol for the collection, recording, storage, and transfer by military personnel of information that may indicate serious violations of IHL and other criminal offenses;
- define the positions of military personnel who may be tasked with collecting and recording evidence from the battlefield and interacting with law enforcement agencies, or introduce permanent positions for military personnel who will be responsible for these activities, establish special requirements for them and a training program;
- explicitly empower military personnel to collect, record, store, and transfer to law enforcement agencies information that may indicate serious violations of IHL and other criminal offenses, in cases where it is safe to do so and law enforcement may be unable to do so; and
- develop and approve interagency instructions on the procedure for collecting, recording, storing, and transmitting information that may indicate serious violations of IHL with the participation of the MoD, the General Staff of the AFU, Ministry of Internal Affairs, OPG, and the heads of pre-trial investigation bodies.

3.3

Interaction of Military Personnel, Units and Services with Law Enforcement Agencies and other State Institutions in Preserving, Transferring, and Using Evidence of International Crimes

Ensuring effective investigation of potential international crimes in the context of the ongoing armed conflict requires cooperation between the Defence Forces of Ukraine (DFU), law enforcement agencies, and other state institutions. In particular, in proceedings for potential international crimes, pre-trial investigation bodies often need to obtain military information, including intelligence. This information is critical for the investigation, proper qualification, and proof of the offense, particularly in relation to:

- identification of military units and servicemen of the DFU and adversary forces who participated in hostilities or were stationed in certain territories at certain times;

- time, place, name of units, and military equipment from which air or ground munitions were launched; direction and trajectory of these munitions; their identification, type of munitions, batch number, technical details (range of error, etc.);
- the date and place of capture of prisoners of war by the DFU, establishment of their current location, circumstances of capture, and items and documents found in their possession; and
- the number and identification data of the weapons of the air defense forces of Ukraine, time, and place of their use, to distinguish them from the debris of enemy weapons found at the scene.¹⁵⁵

In order to establish the facts of potential international crimes, for example, determining the extent and nature of the damage caused by an attack, it is necessary to immediately conduct investigative actions, such as inspection and documentation of the scene of the attack. In this regard, it is necessary, to the extent possible, to take measurements, photographs, sound and video recordings, and draw up plans and diagrams with reference to geospatial data.¹⁵⁶

However, given the close proximity of some of these attacks to the front lines, it may be impossible for pre-trial investigation bodies to promptly perform their functions in some areas of Ukraine. Accordingly, pre-trial investigation bodies may not have an objective opportunity to fulfill the requirements of the CPCU regarding the immediate conduct of investigative actions. After the DFU liberate the territories occupied by the Russian Armed Forces, the evidence on the ground may be effectively lost and or not suitable for the purposes of criminal proceedings. This risk increases if military forces do not promptly collect evidence they encounter.¹⁵⁷

Indeed, often the only representatives of the state who can ensure the preservation of the evidence base are military personnel. Both information and evidence available to military authorities and military units, especially those operating in and near combat areas, is thus extremely important for the effective investigation of international crimes.¹⁵⁸

155 Practical Guide for the Armed Forces of Ukraine "Interaction of the Armed Forces of Ukraine with pre-trial investigation bodies in recording the circumstances of crimes related to armed aggression against Ukraine", Yaroslav Mudryi National Law University Institute of Legal Training for the Security Service of Ukraine, Kharkiv, 2023.

156 "Russia's International Crimes: What You Need to Know About the Role of the Military in Documenting Them". G. Mamedov, V. Khekalov, Mirror of the Week, August 25, 2023, <https://surl.lt/yjqpjq>.

157 "Russia's International Crimes: What You Need to Know About the Role of the Military in Documenting Them," G. Mamedov, V. Khekalov, Mirror of the Week, August 25, 2023, <https://surl.li/svaydf>; "How to Reduce the Consequences of War on Cultural Heritage: the Armed Forces Can Help," Mirror of the Week, G. Mamedov, V. Tytych, January 8, 2024, <https://surl.lu/qohslq>.

158 See Practical Guide for the Armed Forces of Ukraine "Interaction of the Armed Forces of Ukraine with pre-trial investigation bodies in recording the circumstances of crimes related to armed aggression against Ukraine", Yaroslav Mudryi National Law University Institute of Legal Training for the Security Service of Ukraine, Kharkiv, 2023.

And members of the military possess knowledge that is essential for prosecutors and investigators working on allegations of crimes committed during an armed conflict. Consequently, for instance, a working group of military experts attached to the OPG has been established. The members of the working group “advise law enforcement officers and help them to analyse physical evidence, documents of the armed forces of the Russian Federation, to understand the structure of the armed forces of the Russian Federation, connections between detachments and their roles, leadership as well as the legal system of the enemy forces, particularly command and control doctrines.”¹⁵⁹ Such expertise is essential to proving both crime-base and linkage aspects of cases alleging international crimes.

To obtain information from the military, pre-trial investigators send requests to military units and command and control bodies. In the course of responding to requests, organizational issues may arise. All parties should work to ensure the information provided complies as far as possible with the requirements of the CPCU regarding the relevance and admissibility of evidence, in both form and content. In particular:

- requests should be directed to designated liaisons in the military, copying higher levels of command, not sent only to high levels of command;
- requesters should endeavor to send requests to the appropriate military unit, for instance the military unit which was responsible for the area where the crime is believed to have been committed at the key time; and
- military liaisons should ensure each request gets a specific response which can be attached to the materials in the specific criminal proceeding where the request originated, rather than providing an omnibus response to several requests.

In short, systematic cooperation between DFU, law enforcement agencies and other government agencies in the preservation, sharing, and use of evidence of international crimes is crucial to ensuring justice, restoring the rights of victims, and bringing perpetrators to justice. Important factors in successful interaction are:

- Legal regulation and clear procedures. The existence of unified algorithms, methods, and standards for processing evidence from the field allows for coordination between military units and investigative bodies, and reduces the risk of evidence being declared inadmissible or losing its evidentiary value.
- Prompt exchange of information. Timely transfer of data received from military personnel simplifies the investigation process and makes it more efficient. For this purpose, it is important to use secure communication channels,

¹⁵⁹ Voluntary report on implementation of international humanitarian law, Ministry of Defence of Ukraine, 2024, https://s3.eu-west-1.amazonaws.com/mod.gov.ua-statics-bucket/Voluntary_report_Mo_D_in_IHL_Ofae15454a.pdf, p.112.

maintain a clear register of seized material evidence, and store digital materials with original metadata. A timeliness standard should also be stipulated by the respective regulations and procedures.

- Training and education of personnel. Military personnel involved in evidence collection should understand the minimum procedural requirements of criminal proceedings and have basic skills in documenting and preserving evidence. This requires appropriate curricula and training in close cooperation with law enforcement agencies.

Taken together, these measures would help strengthen the ability of the Defense Forces of Ukraine to document crimes and ensure that the evidence collected will be useful for law enforcement agencies and the judiciary. This contributes to the inevitability of punishment for international crimes and crimes against humanity, and also serves as an important factor in improving the legal culture, establishing the rule of law, and strengthening Ukraine's image in the international arena.

3.3.1 Interagency Cooperation to Enhance Battlefield Evidence Sharing Among Ukrainian Agencies and Partners

To help address some of the issues raised above, including interagency communications and coordination of policies and procedures concerning items and information that might be useful in investigations and prosecutions and also to advance the other strategic uses of battlefield evidence described in Chapter 2.4, it is advisable to systematize interagency dialogue, coordination, and cooperation. There are several ways to achieve this, both on the domestic "interagency" or "whole of government" level, and on the international level with cooperation among allied and partner states. This might include specific agency-designated liaisons and knowledgeable points of contact between the military, justice sector, and other Ukrainian government stakeholders.

One effective model that promotes both policy-level support and operational-level functionality and expertise and progress is to manage interagency coordination on the national level by designating an entity to coordinate agenda-driven, action-oriented joint meetings and discussions between representatives of the pre-trial investigation authorities, the prosecutor's office, and the military, with the regular involvement of representatives of other agencies as prudent. The appropriate agency heads within each ministry (and commands within the military services), along with the heads of other participating agencies including intelligence and security services, can designate representatives for regularly scheduled in-person meetings to resolve challenges impeding the full deployment and leveraging of Ukraine's battlefield evidence capacity.

Recognizing that joint meetings are a tool for problem-solving, the coordinating entity, which, for example, may be the prosecutor's office, is responsible for ensuring that such meetings are conducted in a manner that produces concrete outcomes and practical benefits. These may include participating agencies highlighting practical issues they contend with and working through potential solutions for the optimized use of battlefield evidence and/or OSINT. In this way, joint meetings can move beyond formality to become a reliable instrument for meaningful progress at the operational level and create a baseline for high-level engagement, support, and resourcing.

Multi-national bodies with experience in fostering the international sharing of battlefield evidence for use in prosecutions in other countries also provide a blueprint for Ukraine's cooperation with foreign officials beyond mutual legal assistance treaty mechanisms. NATO, for example, has been actively developing and revising its battlefield evidence and technical exploitation doctrine so that its members can make better use of military-collected items and information, including for prosecutorial purposes.¹⁶⁰

Separately, Operation Gallant Phoenix (OGP) [BX1] also provides an example of international operational fusion and sharing of battlefield evidence. OGP "is a task force comprised of law enforcement, military, and intelligence professionals" from 30 nations from around the world, as well as organizations like Europol.¹⁶¹ "International and interagency mission partners are collocated in a fusion center where they benefit from the diversity of functional experts, a collective of legal authorities, and an environment conducive to real-time information-sharing. Stakeholders all share a common purpose and build enduring relationships based on trust. The operation leverages unique partner capabilities, authorities, and access to develop intelligence into usable information or unclassified legal process that enables partners to finish a target through the application of appropriate mechanisms."¹⁶² Between October 2023 and September 2024, OGP's operations contributed to more than 1,600 investigations in numerous countries using battlefield evidence and associated analysis of military-collected materials.¹⁶³

160 Technical Exploitation and Battlefield Evidence, NATO Joint Analysis and Lessons Learned Centre, 2023, https://www.jallc.nato.int/application/files/3117/0473/0094/TEBE_Factsheet_V2_FINAL.pdf

161 Answer given by Mr Avramopoulos on behalf of the Commission, 2018, https://www.europarl.europa.eu/doceo/document/E-8-2018-000009-ASW_EN.html

162 Outmatched. Shortfalls in Countering Threat Networks, David Richard Doran, 2018, https://ndupress.ndu.edu/Portals/68/Documents/jfq/jfq-89/jfq-89_28-33_Doran.pdf?ver=2018-04-11-125441-307; Australia, U.S. Discussions Ranged the Globe, Dunford Says, Jim Garamone, 2018, <https://www.jcs.mil/Media/News/News-Display/Article/1205895/australia-us-discussions-ranged-the-globe-dunford-says/>

163 https://www.armed-services.senate.gov/imo/media/doc/general_fulton_joint_opening_statement_with_mrcolbyjenkins.pdf

Though OGP is focused on terrorism-related battlefield evidence, specifically in the Middle East, its military/law enforcement/intelligence fusion model can serve as a blueprint for core international crimes accountability, as well. Indeed, the 2023 NATO Vilnius Summit Communiqué observed that the threats posed by Russia and terrorism “are global and interconnected.”¹⁶⁴ Recognizing this, OGP’s participating nations come from as far away as New Zealand;¹⁶⁵ OGP-shared evidence has contributed to convictions in several countries, including Portugal;¹⁶⁶ [AM2] and Canada’s justice system and legal framework are making necessary updates to be able to include OGP evidence in their own system.¹⁶⁷

As a contextual note, it is important to recognize that neither the domestic interagency nor the international process is quick—it takes time to develop relationships, trust, and buy-in, learn what other agencies are doing, how they are doing it, and how to pull everything together into a system that achieves the common goal. Even in a system where the highest leadership demands immediate action, issues as complex as battlefield evidence take time, resources, and deliberate action to effect.

3.3.2 Battlefield Evidence Security, Classification, and Sharing

As a general rule, information should be classified at the lowest level possible to protect against the damage that its unauthorized disclosure could cause. Security classification triggers special requirements to protect national security, intelligence, and defense information. At the same time, however, protecting classified information requires perpetually costly security and compliance measures and imposes strict regulatory requirements on the ability to access, share, and/or use the information that has been classified. The Law of Ukraine “On State Secrets” (Articles 8, 10–11)¹⁶⁸ and the Cabinet of Ministers Resolution No. 939 of December 18,

164 Vilnius Summit Communiqué, NATO, 2023, https://www.nato.int/cps/en/natohq/official_texts_217320.htm (“Peace in the Euro-Atlantic area has been shattered. The Russian Federation has violated the norms and principles that contributed to a stable and predictable European security order. The Russian Federation is the most significant and direct threat to Allies’ security and to peace and stability in the Euro-Atlantic area. Terrorism, in all its forms and manifestations, is the most direct asymmetric threat to the security of our citizens and to international peace and prosperity. The threats we face are global and interconnected.”).

165 Operation Gallant Phoenix deployment extended, Hon J. Collins KC, Hon M. Mitchell, Rt Hon W. Peters, 2025, <https://www.beehive.govt.nz/release/operation-gallant-phoenix-deployment-extended>

166 <https://interlinkagesdatabase.icct.nl/case/99170jblsb>

167 Exclusive: ‘Battlefield evidence’ from Syria is coming to Canada’s courts, S. Bell, J. Semple, 2024, <https://globalnews.ca/news/10772543/cem-battlefield-evidence-isis-canda-operation-gallant-phoenix/>

168 Law of Ukraine “On State Secrets” No. 3855-XII of 21 January 1994, <https://zakon.rada.gov.ua/laws/show/3855-12#Text>

2013¹⁶⁹ establish that information may be classified only if its disclosure could harm national security, and the level of classification must correspond to the degree of such potential harm.

The general practice of minimizing security classification applies as much to battlefield evidence as any other type of potentially sensitive information. As noted in Chapter 2.2.3, overclassification of battlefield evidence can impair investigators and prosecutors from building atrocity crime cases. Overclassification can also impair the other uses of battlefield evidence described in Chapter 2.4, especially but not limited to its utility in the informational and justice sectors. The public and judges presiding over criminal trials, alike, are more likely to credit battlefield evidence that has not been misclassified or overclassified. To maximize the usefulness and strategic value of battlefield evidence, including with respect to the interagency cooperation and collaboration described above in 3.3.1, minimizing security classification and access restrictions to it (while maintaining chain of custody) will better allow Ukraine's different departments and agencies to use their different authorities and capabilities to achieve similar, complementary, and/or singular outcomes that advance Ukraine's national security goals, including stronger defense, intelligence, and justice capabilities, while minimizing wasteful duplicate efforts.

In fact, recovered items themselves, such as munitions, equipment fragments, and media, often do not merit security classification at all,¹⁷⁰ unless the activities, sources, or methods that led to those items are themselves secret. Even then, classification is the exception rather than the rule, especially in conventional military situations. There are numerous international battlefield evidence guidelines and standards noting the importance of minimizing classification hurdles to maximize the ability to share battlefield evidence among all necessary stakeholders

169 Order of the Security Service of Ukraine No. 383 of 23 December 2020 "On Approval of the Compendium of Information Constituting a State Secret, <https://zakon.rada.gov.ua/laws/show/z0052-21#Text>

170 Physical items and media do not include human/interrogation-derived information, or intercepted signals.

domestically—including but not limited to criminal investigators and prosecutors—as well as with international partners.¹⁷¹

That position has become formal defense policy in some countries. For example, in 2000, the United States Department of Defense formalized the different security treatment between physical items collected as battlefield evidence (which DoD calls “collected exploitable material,” or “CEM”), and products obtained by exploiting or analyzing the items. The Secretary of Defense decreed that, by default, most raw things collected and their context were to remain unclassified, preserved, and sharable, while leaving classification of the analytical methods and outputs to the discretion of the appropriate commands.¹⁷² Leaving battlefield evidence unclassified and releasable to the public, other agencies, and partner nations, the Secretary said, “support[s] U.S. mission objectives and partner nation security and law enforcement purposes, to include criminal prosecutions... To ensure the most effective possible use of information in criminal proceedings, States are encouraged to refrain from over-classifying such information.”¹⁷³

At the same time, leaving collected battlefield evidence unclassified does not mean that access to it is unfettered. Appropriate controls should be in place to maintain chain of custody, protect sensitive details of potential criminal investigations, and prevent unauthorized release of information about or pictures of crime scenes or suspects.¹⁷⁴

171 E.g. Non-Binding Guiding Principles on Use of Battlefield Evidence in Civilian Criminal Proceedings, <https://theij.org/wp-content/uploads/2021/09/USG-Non-Binding-Guiding-Principles-on-Use-of-Battlefield-Evidence-EN-1.pdf>, p.2; Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences (“Military Evidence Guidelines”), Counter-Terrorism Committee Executive Directorate (CTED), https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/battlefield_evidence_final.pdf, Recommendation 21; Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects, GCTF, https://theij.org/wp-content/uploads/2021/09/GCTF-Abuja-Recommendations_ENG.pdf, Recommendation 23. These documents tend to have been developed with counterterrorism operations in mind, which regularly employ special forces and sensitive intelligence assets to a greater extent than traditional military operations. Despite the fact that the campaign to counter Russia’s invasion of Ukraine in 2014 was called an anti-terrorist operation, the state of the armed conflict in Ukraine exceeds that tactical description. The terrorism reference here is meant solely to underscore that, if battlefield evidence in counterterrorism operations can be treated as unclassified, that presumption can also apply to other military operations. It may nevertheless be useful to keep in mind that certain acts can be “cumulatively” prosecuted in some jurisdictions as both terrorism *and* as war crimes. See Eurojust Memorandum on Battlefield Evidence, Eurojust, 2020, <https://surli.li/ongyrj>.

172 The Strategic Potential of Collected Exploitable Material, M. R. Fenzel, L. Sloomaker, R. K. Cragin, 2020, <https://surli.cc/knziec>.

173 See *ibid*.

174 Note that, in the event a suspect has been captured, Article 13 of the Third Geneva Convention protects detainees and prisoners of war against being exposed to “public curiosity.”

3.4

Interaction of Military Personnel and Units of the Armed Forces of Ukraine with Civilians in Collecting Evidence of International Crimes

During armed conflict, civilians often find themselves witnessing and suffering from international crimes, including war crimes and crimes against humanity. In some areas of Ukraine, the military personnel and units of the Armed Forces of Ukraine are the only representatives of the state authorities who are in direct contact with the civilian population.

Civilians are forced to turn to the military on the ground for all their concerns. It is from the military that they receive primary emergency assistance (food, drinking water, medicines, help to evacuate their families and children to safer places, social, psychological and legal assistance, etc.).¹⁷⁵ This particularly includes officers of civil-military cooperation units who ensure interaction with the civilian population in the areas of responsibility of their unit.¹⁷⁶ However, in the realities of an armed conflict, other military personnel also have contact with civilians and provide assistance with essential services.¹⁷⁷ As a consequence, they build trust with civilians, who may in turn share information that may be valuable to the investigation of international crimes.¹⁷⁸

This is particularly true during the current conflict in Ukraine. As noted below, in this specific legal circumstance the military has been called upon to take on a variety of responsibilities in supporting the civilian population.

175 "How to Get Legal Assistance to People in the Areas of Hostilities," G. Mamedov, I. Nikolaiev, *Mirror of the Week*, July 13, 2023, <https://zn.ua/ukr/war/jak-otrimati-pravovu-dopomohu-ljudjam-shcho-perebuvajut-u-zonakh-vedennja-bojovikh-dij.html>.

176 The Doctrine of Civil-Military Cooperation was approved by the Commander-in-Chief of the Armed Forces of Ukraine on July 2, 2020, No. 15860/C <https://surl.lu/vnqohb>, Temporary Guidelines on Civil-Military Cooperation in the Training and Use of the Armed Forces of Ukraine, approved by the Order of the General Staff of the Armed Forces of Ukraine on April 2, 2019, No. 131.

177 "How to Get Legal Assistance to People in the War Zone," by G. Mamedov, I. Nikolaiev, *Mirror of the Week*, July 13, 2023, <https://zn.ua/ukr/war/jak-otrimati-pravovu-dopomohu-ljudjam-shcho-perebuvajut-u-zonakh-vedennja-bojovikh-dij.html>.

178 Russia's International Crimes: What You Need to Know About the Role of the Military in Documenting Them, August 25, 2023, G. Mamedov, V. Khekalov, *Mirror of the Week*, <https://zn.ua/ukr/LAW/mizhnarodni-zlochyni-rosiji-shcho-treba-znati-pro-rol-vijsko-vosluzhbovtiv-u-jikh-dokumentuvanni.html>. See also Voluntary report on implementation of international humanitarian law, Ministry of Defence of Ukraine, 2024, https://s3.eu-west-1.amazonaws.com/mod.gov.ua-statics-bucket/Voluntary_report_Mo_D_in_IHL_0fae15454a.pdf, p.83.

3.4.1 Practical Aspects of Cooperation with Civilians in Collecting Evidence of International Crimes

The investigative need to establish close cooperation between the DFU and the civilian population in the combat zone is due to a number of factors stemming from the realities of the current armed conflict. The main factors include:

- Direct presence in the combat zone. Military personnel performing combat missions on the front line often become the first witnesses or receive information from local residents about alleged violations of IHL (shelling of residential areas, damage to civilian infrastructure, etc.). The timely recording of these facts and information about them may later become a decisive factor for a successful criminal investigation.
- Lack of prompt access for law enforcement. Due to active hostilities, the presence of landmines, threat of unmanned vehicle attacks, destruction of road infrastructure, and logistical difficulties, investigative authorities often cannot quickly arrive at the scene of crime. The military becomes the main communicator between victims or witnesses and state authorities, making it possible for them to preserve important information that might be otherwise be lost.
- Ensuring the legitimacy of the actions of the Ukrainian Defense Forces. Effective and humane interaction with local residents, including providing them with the necessary primary legal or humanitarian assistance, creates a positive image of the DFU, builds trust, and facilitates the receipt of additional evidence and testimonies about crimes committed. Prompt and proper documentation of potential violations may also help avert unfounded accusations that the Defense Forces of Ukraine itself committed the violations, and so assist in demonstrating its compliance with IHL.
- Filling the vacuum of public administration. In areas where active hostilities are taking place or in territories occupied or liberated by the parties to the conflict, the work of civilian state and local authorities is often suspended or limited. In such circumstances, military personnel often take on functions that go beyond the purely defensive purpose of the DFU, including assisting local residents in contacting government agencies, explaining legal procedures, etc.

Thus, a number of objective circumstances—from the military’s priority access to the conflict zone to the limited capabilities of law enforcement agencies—make it critical to involve the DFU in working with local residents. This makes it possible to timely detect violations of IHL, record them, and pass that information on to the competent authorities. In the long run, such interaction not only helps to establish the truth and bring perpetrators to justice, but also builds trust in the DFU, ensuring that law and order is maintained even in the most vulnerable areas.

3.4.2 Regulatory and Legal Framework for the Interaction of Military Personnel and Units of the Armed Forces of Ukraine with the Civilian Population in Collecting Evidence of International Crimes

Ensuring effective interaction between the military personnel of the AFU and the civilian population during armed conflict is possible if the military's relevant powers and procedures are clearly regulated by law. The requirements of the Constitution of Ukraine to protect human beings and guarantee their rights and freedoms, combined (when applicable) with the provisions of the legislation on the legal regime of martial law, create the basis for the involvement of units of the Armed Forces of Ukraine in the performance of additional functions beyond normal military duties. These additional functions are dictated by both practical needs (the absence or limited activity of civilian authorities in combat zones) and the national duty to ensure the protection of civilians in danger.

According to Article 3 of the Constitution of Ukraine, a person, his or her life and health, honor and dignity, inviolability, and security are recognized in Ukraine as the highest social value. This determines the general obligation of state authorities, including the DFU, to take all possible measures to protect civilians, including under martial law. However, the military's powers to do so still require further legal specification: according to Article 19 of the Constitution of Ukraine, public authorities may only take particular actions if they are specifically empowered by law to do so. Moreover, the constitution requires such normative acts to define the limits of the public body's powers and the manner of activity.¹⁷⁹

The Law of Ukraine "On the Legal Regime of Martial Law" was adopted, among other things, to create conditions for ensuring the continuity of public authority in the territory where martial law was introduced and, as a result, to provide services to the population of the relevant administrative-territorial units.¹⁸⁰ This law also provides that the military command and (if established) military administrations may, if necessary, assume some of the powers of civilian authorities to ensure the vital needs of the population and implement the measures of the martial law regime.

Article 9 of this Law¹⁸¹ defines the powers of state authorities and local self-government bodies to carry out specific measures under martial law. In particular, during the period of martial law, a village, town or city head of a territorial community in which no hostilities are taking place and no decision has been made to establish a military administration, solely for the purpose of implementing the

179 Constitution of Ukraine, <https://zakon.rada.gov.ua/laws/show/254k/96-ep#Text>.

180 Law of Ukraine "On the Legal Regime of Martial Law" of May 12, 2015, No. 389-VIII, <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

181 Ibid.

measures of the martial law regime, may decide to establish institutions for the provision of free primary legal aid, appoint and dismiss the heads of such institutions, engage individuals or legal entities under private law to provide free primary legal aid. In areas where hostilities are taking place, the military command and military administrations (if established) are directly responsible for the introduction and implementation of the martial law regime.

Part four of Article 1 of the Law of Ukraine “On the Armed Forces of Ukraine” allows for the involvement of AFU units in the implementation of martial law, protection of civilians, evacuation of people, prevention of crisis situations, restoration of critical infrastructure, and protection of public order in the areas of hostilities. Under conditions when civilian authorities cannot fully perform their functions, military units actually become the most important link in helping the population.¹⁸²

To be clear, a state of martial law is not and should not be required to trigger the military’s capabilities, authorities, obligations, or prerogatives to collect, process, and share items and information it encounters that may assist prosecutors or investigators in building criminal cases. Rather, martial law is declared in situations where an emergency requires the military to take a larger role in justice and governance, including exercising investigatory powers that might otherwise be reserved to civilian authorities.

3.4.3 Restoration of Basic Stability, Civilian Protections and Coordination of Legal Aid by Units of the Armed Forces of Ukraine as an Element of Obtaining Data on Violations of the Laws and Customs of War

In this context, one effective mechanism for obtaining timely information on violations of the laws and customs of war is the delivery of basic necessities and information regarding the availability of legal aid to the civilian population by military personnel. The involvement of the AFU in solving urgent problems for civilians in the combat zone allows them not only to facilitate the provision of civilians’ basic needs and guarantees of humane treatment with a view towards restoration of their legal rights, but also to obtain additional data and evidence on alleged international crimes.

In combat zones, military personnel can restore order, respond rapidly to crises, provide security to civilians and safeguard them from violence, help coordinate their access to legal aid, and ensure the protection and preservation of cultural heritage. They are often a primary source of information that can assist the civilian population including:

182 Law of Ukraine “On the Armed Forces of Ukraine” of December 6, 1991, no. 1934-XII, <https://zakon.rada.gov.ua/laws/show/1934-12#Text>.

- facilitating access to humanitarian, social, or medical assistance;
- providing contact and ensuring communication with state authorities or international organizations that assist with legal issues (i.e., free legal aid centers of the Ministry of Justice of Ukraine, the Office of the Ukrainian Parliament Commissioner for Human Rights, the International Committee of the Red Cross, international and national human rights organizations, etc.);
- documenting the facts of violations of the laws and customs of war committed in the combat zone; and
- guiding persons on processes to obtain assistance if housing is destroyed, health is damaged, etc.¹⁸³

This entails informing a civilian about his or her rights and the possibilities to receive services guaranteed by the state, and informing them about the nearest state institutions (free administrative service centers, legal aid centers, notaries, public and private bailiffs, justice authorities, etc.).¹⁸⁴

Providing necessary information and basic necessities normally builds trust between the armed forces and civilian population, which often leads to the exchange of information about international crimes. If military personnel receive information from the local population about international crimes, such information should be properly documented, stored, and passed on via the command to ensure the information is provided to relevant law enforcement agencies.¹⁸⁵

Systematic work on the provision of basic needs and guarantees of protections to civilians by military personnel in the combat zone has been carried out in the Territorial Defense Forces of the Armed Forces of Ukraine (TDF) since the full-scale Russian invasion of Ukraine in 2022.¹⁸⁶

On June 12, 2022, the Law of Ukraine “On Amendments to the Law of Ukraine ‘On the Principles of National Resistance’” of May 3, 2022, No. 2237-IX came into force to enable the territorial defense to perform tasks in areas of military combat operations. With this law, the legislature expanded the list of tasks of the TDF by adding “participation in the provision of legal services to the population in the manner prescribed by the Law of Ukraine ‘On Free Legal Aid’”.¹⁸⁷ This was the state’s response to the situation when, due to active hostilities or occupation, civilian authorities are unable to perform their functions, and citizens are left without legal protection and access to advice.

183 How to Get Legal Assistance to People in the War Zone, by G. Mamedov, I. Nikolaiev, *Mirror of the Week*, July 13, 2023, <https://sur.li/gxrtfb>.

184 Ibid.

185 Ibid.

186 Ibid.

187 Law of Ukraine "On Amendments to the Law of Ukraine 'On the Principles of National Resistance'" of May 3, 2022, No. 2237-IX, <https://zakon.rada.gov.ua/laws/show/2237-20#Text>.

On July 12, 2023, pursuant to the Law of Ukraine "On Amendments to the Law of Ukraine "On the Principles of National Resistance" of May 3, 2022, No. 2237-IX, after conducting field and desk research,¹⁸⁸ as well as public discussions with the non-governmental sector and public authorities, a memorandum of cooperation was signed between the Command of the TDF and the Coordination Center for Legal Aid Provision.¹⁸⁹

The cooperation envisaged the participation of the TDF in the organization of primary legal aid to civilians in the combat zones in cooperation with the Coordination Center for Legal Aid established within the system of the Ministry of Justice of Ukraine, whose specialists can provide both advisory (primary) legal aid and legal support (secondary legal aid). The need for such cooperation is primarily related to the fact that due to the negative security situation and significant destruction of settlements in the combat zones and de-occupied territories, state and local governments are either absent or are only just resuming their work. Sometimes the state in such situations cannot ensure citizens' rights of access to legal aid in full. At the same time, almost every person in such areas needs urgent legal aid. Thus, military personnel are irreplaceable.¹⁹⁰ Indeed, interaction with the civilian population, including in terms of explaining legal resources and coordinating various basic services¹⁹¹ is an important task of civil-military cooperation units.¹⁹²

188 New "Weapon" for Ukrainian Army – Legal, G. Mamedov, Mirror of the Week, March 14, 2024, <https://zn.ua/ukr/war/nova-zbroja-dlja-ukrajinskoji-armiji-juridichna.html>; How to get legal assistance to people in the combat zones? G. Mamedov, I. Nikolaiev, Mirror of the Week, July 13, 2023, <https://zn.ua/ukr/war/jak-otrimati-pravovu-dopomohu-ljudjam-shcho-perebuvajut-u-zonakh-vedennja-bojovikh-dij.html>; Russia's International Crimes: What You Need to Know About the Role of Military Personnel in Documenting Them, August 25, 2023, G. Mamedov, V. Khekalov, Mirror of the Week <https://zn.ua/ukr/LAW/mizhnarodni-zlochyni-rosiji-shcho-treba-znati-pro-rol-vijskovosluzhbovtziv-u-jikh-dokumentuvanni.html>; How to Reduce the Consequences of War on Cultural Heritage: the Armed Forces of Ukraine Can Help, G. Mamedov, V. Tytych, Mirror of the Week, January 8, 2024, <https://zn.ua/ukr/war/jak-zmenshiti-naslidki-vijni-dlja-kulturnoji-spadshchini-mozhut-dopomohiti-zsu.html>; Abstracts: "Implementation of International Humanitarian Law in the Context of the Current Armed Conflict in Ukraine", G. Mamedov, V. Khekalov. Collection of materials of the international scientific and practical conference "Problems of legal support of defense of Ukraine", compiled by P. P. Bogutskyi, Y. V. Harust, L. V. Zaslavska, V. Pylypchuk; m. Kyiv, 2024.

189 TD Forces Sign Memorandum of Cooperation with Coordination Center for Legal Aid, Censor.net, July 12, 2023, <https://censor.net/ua/n3430675>.

190 Ibid.

191 The Doctrine of Civil-Military Cooperation was approved by the Commander-in-Chief of the Armed Forces of Ukraine on July 2, 2020, No. 15860/C <https://surl.lu/vnqohb>; Temporary Guidelines on Civil-Military Cooperation in the Training and Use of the Armed Forces of Ukraine, approved by the Order of the General Staff of the Armed Forces of Ukraine on April 2, 2019, No. 131.

192 Ibid.

3.5

The Role of Commanders in Collecting and Preserving Evidence of Violations of International Humanitarian and Human Rights Law

The commander performs a multifaceted role. On the one hand, his/her status as the commander in accordance with the Statute of the Internal Service of the Armed Forces of Ukraine obliges him/her to effectively organize the process of documenting alleged international crimes. On the other hand, the situation of intense hostilities, limited resources and increased stress requires flexible decisions and the ability to coordinate the efforts of entrusted units and military personnel. Consequently, their leadership position and ability to respond promptly to challenges determine both the combat effectiveness of the unit and the level of legal awareness and discipline of the personnel. The role of commanders is integrative: by organizing interaction between the soldiers, units, and services under their command, they can ensure a comprehensive approach to collecting and preserving evidence of potential international crimes.

Historically some military commanders (and policymakers) have questioned the relevance of collecting and preserving evidence to the military's mission. It is often said, and this Guide acknowledges in several places, that military personnel are neither police officers nor crime scene investigators. However, as noted above, military personnel are obliged to assist law enforcement in protecting Ukrainian citizens' human rights and Ukraine's national interest.¹⁹³ Moreover, a soldier's job is to neutralize threats against his forces while protecting his own—whether through kinetic means or by otherwise removing the enemy from the battlefield or destroying or degrading the enemy's ability to fight. And, as demonstrated in Chapter 2.4, battlefield evidence can help to advance that mission in many ways. Commanders' engagement and leadership in ensuring evidence is collected are thus critical not just for building individual criminal cases but for enabling the strategic force-multiplier that collected evidence can be.

3.5.1 Provisions of Legal Acts on the Role of Commanders in the Collection and Preservation of Evidence From the Battlefield

Ensuring proper observance of IHL and other legislative requirements in the combat zone largely depends on the activities of commanders. In accordance with the provisions of the Statute of Internal Service of the Armed Forces of Ukraine¹⁹⁴

¹⁹³ See above Chapter 3.2.1.

¹⁹⁴ The Statute of the Internal Service of the Armed Forces of Ukraine, approved by the Law of Ukraine of March 24, 1999, No. 548-XIV, <https://zakon.rada.gov.ua/laws/show/548-14#Text>.

and the Instruction on IHL,¹⁹⁵ commanders have full leadership authority. The commander is also personally responsible for discipline, training of personnel, compliance with military regulations, and proper application of the law, including in terms of documenting international crimes.

In particular, in accordance with Article 58 of the Statute of the Internal Service of the AFU, the commander is solely and personally responsible for the combat and mobilization readiness of the unit, combat training, education, military discipline, the moral and psychological state of their subordinates, and the preservation of their subordinates' life and health; for internal order, condition and safety of weapons, ammunition, military and other equipment; for comprehensive provision of the military unit; and for ensuring his subordinates receive the social protection and legal rights they are entitled to. At the same time, the commander must require his subordinates to comply with the requirements of the Constitution of Ukraine, laws of Ukraine, charters of the AFU, and other regulatory legal acts.¹⁹⁶ Article 59 of the same Statute obliges the commander to comply with Ukraine's IHL obligations and to demand the same from his subordinates.¹⁹⁷

As discussed further in Chapter 5.3, commanders are the key actors in enforcing IHL. They must educate subordinates on IHL, warn them of criminal liability for violations, stop and report violations, and hold perpetrators accountable within the commanders' scope of authority.¹⁹⁸ Commanders are required to work with legal advisors to resolve issues in the application of IHL. In the battlefield evidence context, that should entail seeking legal guidance and ensuring that any evidence collected meets Ukrainian and international legal standards.¹⁹⁹

3.5.2 The Influence of the Commander as a Military Leader on the Collection and Preservation of Evidence from the Battlefield

The commander must coordinate the actions and ensure the interaction of their troops involved in collecting evidence from the battlefield. Thus, everything depends on their leadership.

195 The Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine of March 23, 2017, No. 164. <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>

196 The Statute of the Internal Service of the Armed Forces of Ukraine, approved by the Law of Ukraine of March 24, 1999, No. 548-XIV, <https://zakon.rada.gov.ua/laws/show/548-14#Text>.

197 The Statute of the Internal Service of the Armed Forces of Ukraine, approved by the Law of Ukraine of March 24, 1999, No. 548-XIV, <https://surl.li/cujdnc>.

198 See IHL Instruction, Ch.5 Sec.1.

199 The Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine of March 23, 2017, No. 164. <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>

In the context of battlefield evidence, commanders can lead in a number of ways. For instance, leaders:

- **Know the Law.** Commanders must remind troops of IHL rules and the consequences of breaking them.
- **Lead by Example.** Commanders follow the laws of war themselves and enforce discipline in their unit. The commander's responding quickly and correctly to alleged violations of IHL demonstrates the importance of gathering evidence of potential violations and engaging in the justice process.
- **Report & Preserve Evidence.** Commanders make clear that violations must be documented and reported.
- **Support Interagency and National Processes.** As noted throughout this Guide and particularly in Chapter 3.3.1, national-level or interagency working groups or task forces can help ensure that the strategic and operational value of the collected evidence is maximized. Commanders' leadership, support, and, when appropriate, providing the appropriate level of representation to participate in such bodies, is essential to building a unit culture that understands evidence collection and preservation as important to Ukraine's security.

Commanders thus must take steps to collect, protect, and preserve evidence from the battlefield for any potential investigation and must know how not to jeopardize a possible investigation or else battlefield evidence collection will not work properly. This means they must ensure that:

- their troops receive basic information on how to handle the storage and movement of evidence and how to deal with alleged victims and witnesses;²⁰⁰
- their units do in fact collect evidence of potential international crimes, when given the opportunity;
- information about potential international crimes is relayed up the chain of command and to other stakeholders in the Ukrainian government in a timely manner;
- evidence is properly preserved, classified at the lowest level possible under the circumstances, and transferred to law enforcement; and
- proper psychological and other support is provided to military personnel who encounter evidence of potential international crimes (such as mass graves, etc.).

200 The Role of the Soldier in Responding to War Crimes, G. Yasutis, R. Mikova, J. Prescott, W. Shabas, 2023, https://www.dcaf.ch/sites/default/files/publications/documents/War_crimes_Evidence-UKR.pdf.

3.5.3 Challenges and Recommendations for Improving the Effectiveness of the Role of Commanders in Evidence Collection

Despite the crucial role of commanders in ensuring combat readiness, discipline, and the moral and psychological state of their units, in practice there are a number of factors that complicate the proper organization and performance of their functions to collect and preserve evidence of potential international crimes. For instance:

- **Lack of systematic specialized training.** Not all commanders have sufficient knowledge and practical skills in recording international crimes. A course on the importance and organization of the process of collecting and preserving evidence from the battlefield should be included in the command training programs.
- **High pace of combat operations and limited resources.** Against the backdrop of intense hostilities, commanders are often (understandably) forced to prioritize purely military tasks. In such circumstances, the process of documenting IHL violations may be put on the back burner. To overcome this problem, it is important to create clear internal instructions in each unit and distribute responsibility among military personnel who can respond promptly to the detected facts of international crimes, so that the process does not require excessive time.
- As noted elsewhere, **there are not unified instructions for storing, preserving, and transferring evidence.**
- **Appropriate protection of information.** The commander should ensure proper information control consistent with the principles articulated in Chapter 3.3.2, explain to personnel the applicable confidentiality requirements even for unclassified material relating to possible evidence of war crimes, and ensure their awareness of the consequences for unauthorized disclosures.
- **Psychological barriers and the impact of stress.** During combat operations, military personnel may ignore or underestimate the importance of evidence collection due to high levels of stress and constant threats to their lives. It is extremely difficult to follow all evidence collection procedures in situations of stress, fatigue, or combat shock.

The commander is the central point of contact for implementing procedures for documenting IHL violations in the daily activities of the unit. To do this, it is necessary to:

- integrate training on the procedure for recording the facts of international crimes: photo and video recording, drawing up an initial protocol, taking testimony, etc., into the system of combat training;

- instruct personnel so that in case of detection of international crimes, servicemembers know the algorithm of actions (notification of the commander, ensuring security of the scene, informing the legal service, etc.); and
- ensure discipline in preventing unauthorized destruction of evidence or its publication in open sources without proper authorization.

Therefore, the commander must act in close cooperation with psychological support units²⁰¹ to minimize negative psycho-emotional factors that impede the effective recording of international crimes and the fulfillment of the main tasks of military service. In particular, the commander, in cooperation with specialists of psychological support units, should explain to servicemembers the importance of collecting evidence for international crimes, both in terms of its strategic value for Ukraine²⁰² and its proven value in advancing prosecutions,²⁰³ and ensure personnel have the necessary psychological support for any encounters with evidence of international crimes as well as with the daily horrors of combat.

In short, commanders play an essential role in collecting and preserving evidence of potential international crimes because of their key position in the military hierarchy and their responsibility for discipline, combat readiness, and the moral and psychological state of the unit. Despite the existing legal requirements, a number of factors, including insufficient specialized training, high intensity of hostilities, and problems with the preservation of evidence complicate the practical implementation of these responsibilities. Further policy guidance and IHL training can assist commanders in fulfilling this part of their role.

3.6

The Role of the Units and Services of the Armed Forces of Ukraine in Collecting and Preserving Evidence of International Crimes

All units and services of the DFU may have the opportunity to assist in collecting and preserving evidence of potential international crimes, if investigators are unable to be present at the scene of the incident. Any unit which liberates a village or seizes a position where munitions and documents have been left behind may encounter evidence which assists investigators and prosecutors in investigating and/or prosecuting alleged international crimes. Any unit thus may play an important role in collecting and preserving evidence of international crimes. However, four types of units particularly stand out:

201 See Chapter 5.4.1.4.

202 See Chapter 2.4.

203 See Chapter 2.2.

- the legal service;
- intelligence units;
- civil-military cooperation units; and
- military law enforcement.

Among other units, psychological support units may provide valuable support to servicemembers who encounter evidence of potential international crimes.²⁰⁴

The participation of legal advisors, intelligence officers, and civil-military cooperation units in battle planning helps them build the expertise and practical experience necessary to identify and prevent violations of international humanitarian law and promotes the proper documentation and preservation of evidence. By contrast, the absence of such involvement inevitably creates gaps in understanding legal risks and weakens the state's ability to respond effectively to violations committed by either party to the conflict.

3.6.1 Legal Service

Members of the legal service carry out the initial processing, systematization, and transmission of information on potential international crimes. Such activities are fundamental to the proper collection and preservation of evidence of potential international crimes, creating the legal basis for further investigation and prosecution. The legal service also plays a key role in ensuring the observance of law during combat missions, as described in Chapter 5.4 below.

According to Article 99 of Section 3 of Part I of the Statute of the Internal Service of the Armed Forces of Ukraine, approved by the Law of Ukraine No. 548-XIV of March 24, 1999, and section 6 Part 1 of the IHL Instruction,²⁰⁵ each military unit has an assistant commander for legal work. In peacetime and wartime, he/she is responsible for the organization and state of legal work in the military unit. During an armed conflict, the assistant commander advises the command on compliance with rules of engagement, and instructs personnel on the application of the relevant le-

204 See also Chapter 5.4.

205 Statute of the Internal Service of the Armed Forces of Ukraine, approved by the Law of Ukraine of March 24, 1999, No. 548-XIV, <https://zakon.rada.gov.ua/laws/show/548-14#Text>; Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine of March 23, 2017, No. 164. <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>

gal norms.²⁰⁶ The legal service's role in promoting compliance with IHL by Ukrainian forces is addressed in more detail in Chapter 5.4.

Legal services officers also play an important role in transmitting information about potential international crimes. As experts in domestic and international law, they may be best placed to identify potential evidence and ensure it is collected, preserved, and shared appropriately. And as a matter of regulation, they are an essential part of the current information-sharing process. In particular, assistant commanders for legal work are responsible for coordinating the documentation of alleged international crimes, monitoring compliance with proper procedures, and ensuring units' readiness to cooperate with law enforcement agencies and prosecutors. In practical terms, this involves a number of specific responsibilities:

- Ensuring the proper submission of information on violations of IHL. For instance, reports on violations of IHL in form 2.72/IHL are drawn up by representatives of the legal service on the basis of information submitted by servicemembers and signed by the commander of the military unit or another person authorized by the commander.²⁰⁷ The reports are submitted to the higher-level legal service in printed and electronic form according to their subordination. This information should also be sent to law enforcement. As noted elsewhere, a report should contain information about the place, date, and time of the alleged violation; the relevant law that may have been violated; any units or personnel which are suspected to have participated; measures that the unit has taken to assist victims and/or document violations; and information about collected evidence.
- Facilitating the collection, preservation, and sharing of evidence. Relaying an allegation that a violation has been committed is not sufficient to prove a case. Investigators and prosecutors need evidence that has been collected in a way that allows them to rely on its authenticity.²⁰⁸
- Organizing cooperation with law enforcement agencies. In particular, the legal service should inform the competent authorities (State Security Service, National Police, etc.) about the revealed facts of possible war crimes, facili-

206 Report on the component part of the research work on the study of the problems of legal regulation of the use of the Armed Forces of Ukraine, other military formations, law enforcement agencies in armed conflicts, their involvement in anti-terrorist and other operations in peacetime, taking into account NATO standards and the experience of leading countries, O. Gushchyn, Kyiv, 2018. It should be noted that the Statute of the Internal Service of the Armed Forces of Ukraine applies not only to the Armed Forces of Ukraine, but also to other military formations, such as the State Border Guard Service of Ukraine, the Security Service of Ukraine, the National Guard of Ukraine, the State Special Transport Service, and the State Service for Special Communications and Information Protection of Ukraine.

207 Urgent Reporting Table of the Armed Forces of Ukraine (2.72/IHL form) approved by Order of the Commander-in-Chief of the Armed Forces of Ukraine of April 27, 2022.

208 See Chapter 2.3 above.

tate access of investigative teams to primary evidence, and work with other military units to carry out documentation, if law enforcement cannot themselves access at the scene of the incident.

- Nonetheless, the legal service faces significant challenges in its role supporting the collection and preservation of evidence from the battlefield. Authors of this Guide (some of whom are active servicemembers of the AFU) conducted a study of the state of collection and generalization of information on violations of IHL.²⁰⁹ This analysis revealed that:
- The legal service is typically focused on current legal activities and to a lesser extent IHL compliance and battlefield evidence. Command guidance is needed to improve the focus on battlefield evidence collection;
- Legal advisors typically receive information on IHL violations from external institutions (law enforcement agencies, units of the State Emergency Service, military administrations, local self-government bodies, or open sources, rather than directly from servicemembers with immediate access to potential crime scenes;
- A clear process for collecting, preserving, and sharing evidence should be established and conveyed to members of the legal service;
- Information about servicemembers who personally collect evidence should be better recorded. Reports on potential international crimes often do not indicate the contacts, status, or technical means of recording of the persons who first documented the event. This makes it unnecessarily difficult to determine the origin of the materials and their authenticity during further investigation;
- Additional training should be provided to members of the legal service in addressing evidence of potential international crimes, and in turn members of the legal service should provide advice to civil-military cooperation, intelligence, moral and psychological support units, and other categories of military personnel on documenting and managing information;

209 Russia's international crimes: what you need to know about the role of the military in documenting them, G. Mamedov, V. Khekalov. *Mirror of the Week*, August 23, 2023, <https://zn.ua/ukr/LAW/mizhnarodni-zlochyni-rosiji-shcho-treba-znati-pro-rol-vijsko-vosluzhbovtsiv-u-jikh-dokumentuvanni.html>.

Why International Humanitarian Law Should Be Implemented in the Armed Forces of Ukraine, by G. Mamedov, *Mirror of the Week*, March 14, 2024, <https://zn.ua/ukr/war/no-va-zbroja-dlja-ukrajinskoji-armiji-juridichna.html>.

Abstracts of the report: "Implementation of International Humanitarian Law in the Context of the Current Armed Conflict in Ukraine", G. Mamedov, V. Khekalov. Collection of materials of the international scientific and practical conference "Problems of legal support of defense of Ukraine", compiled by P. P. Bogutskyi, Y. V. Harust, L. V. Zaslavska, V. Pylypchuk; m. Kyiv, 2024.

- Clearer guidance should be provided on when reports on potential international crimes should be submitted and how to verify the information included therein; and
- Coordination with law enforcement should be improved. In the absence of clear regulations, the legal service does not always have mechanisms to effectively transmit the information received, especially in the context of active hostilities. Some aspects of the relationship between military units and law enforcement are addressed above.²¹⁰

3.6.2 Intelligence Units

The intelligence units of the DFU are an integral part of the state's defense forces, responsible for collecting, processing, and transmitting information on the situation in the combat zone, as well as on possible violations of IHL. Information with intelligence value can also help prove international crimes or determine which individuals may bear responsibility. For instance, intelligence units often receive priority information about the location and activities of enemy units, the nature and content of orders from enemy commanders, the use of prohibited means and methods of warfare, data on casualties, destroyed civilian objects, etc. Each of these types of information may have value in proving criminal case, as well as military value. Indeed, the value of intelligence information is increasing due to the emergence and improvement of its sources, such as the use of unmanned systems, fixed surveillance cameras, and open source data.

The IHL Instruction requires intelligence units to comply with the requirements of the Law of Armed Conflict.²¹¹ According to the provisions of Chapter 1, Section 3 of the IHL Instruction, the main tasks of intelligence are to obtain reliable intelligence on enemy objects located near civilian objects; the presence of shelters for the civilian population in possible areas of action of military units; the presence, location and condition of objects protected by IHL, the degree of their use by the enemy; and violations of international humanitarian law during the conduct of hostilities.²¹² Intelligence units' role in promoting compliance with IHL by Ukrainian forces is addressed in more detail in Chapter 5.4.

Given that significant amounts of intelligence gathering take place directly in the area of armed conflict, intelligence units not only analyze the enemy's military

210 See Chapter 3.3.

211 Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine of March 23, 2017, No. 164. <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>

212 Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine of March 23, 2017, No. 164. <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>

activity and assess its capabilities but also gain unique access to a wide range of information about possible violations of international humanitarian law. They can record information about the preparation and execution of criminal orders, identify documents containing evidence of alleged international crimes, and collect information about the destruction of civilian objects or the detention of prisoners of war in conditions contrary to IHL. As a rule, these include:

- information about enemy units: their combat composition, names of commanders, and the content of orders that may be criminal;
- documentary evidence of the alleged violations: captured orders, ammunition records, combat logs, schematic drawings, or digital media;
- records of radio and telephone intercepts which may include discussions of shelling of civilian objects or the use of prohibited weapons, or orders for ill-treatment of prisoners of war;
- data obtained from satellites;
- information obtained from prisoners of war; and
- data on mass graves or damage to civilian objects: photographs, video or geolocation materials prepared by intelligence forces as part of their combat missions.

Thus, intelligence units may have relevant information about possible violations which could be transferred to those bodies of the DFU and law enforcement agencies responsible for investigating international crimes. In the process of such interaction, intelligence must preserve secrecy and protect its information, as it may contain information constituting state or military secrets.

Intelligence units' ability to obtain data on the enemy's activities in a combat situation allows them to identify circumstances that may indicate violations of IHL with high efficiency and accuracy. At the same time, it is necessary to properly regulate the procedures for intelligence cooperation with the legal service, Civil-Military Cooperations Units (CIMIC), and other units of the AFU and law enforcement agencies, and to develop mechanisms to protect this data from loss or misuse. An integrated approach to the organization of intelligence, both in military and legal terms, will contribute to fair justice for international crimes.

For instance, much of intelligence units' work remains classified. Without an appropriate mechanism for declassification or transfer to a format suitable for criminal investigation, key information collected by intelligence units may remain unused in court proceedings.²¹³ Moreover, intelligence officers do not always have proper conditions and tools for professional documentation (secure storage, computer equipment, secure communication channels, and stable power supply). This

leads to the risk of loss or damage to critical evidence. In addition, there are currently no unified protocols that would define the process for transferring intelligence to law enforcement agencies. Increased clarity would help maximize that likelihood that evidence collected by intelligence units is admissible at trial.

As highlighted in Chapter 3.3.2, excessive classification of battlefield evidence hinders investigators and prosecutors in developing cases addressing international crimes. It also limits the broader potential applications of such evidence. By reducing classification levels and easing access restrictions—while still safeguarding the chain of custody—Ukraine’s various departments and agencies will be better positioned to apply their respective authorities and capacities toward achieving coordinated, complementary, objectives.

3.6.3 Civil-Military Cooperation Units

The main goal of civil-military cooperation is to create favorable conditions for the implementation of military tasks and achievement of military-political goals.²¹⁴

Civil-military cooperation units are directly involved in interaction with the civilian population and so potentially important for collecting and preserving evidence of violations of international humanitarian law. After Russia’s invasion of Ukraine in 2014, the Office of Civil-Military Cooperation was established within the Ukrainian Armed Forces, and cooperation between the army and civilian institutions became a separate function of the Ukrainian Armed Forces. With the beginning of Russia’s full-scale invasion in 2022, the need for civil-military cooperation activities increased and these units became a link between the Armed Forces of Ukraine, the civilian population, and local authorities.²¹⁵ However, the mechanisms of civil-military cooperation are still adapting to the scale and pace of the conflict.²¹⁶

The amendments of November 20, 2024, to the Law “On Defense of Ukraine” provided an official definition of civil-military cooperation and established the legal basis for the further development of CIMIC as an integral element of the national defense system.²¹⁷ In particular, the amendments clarified Article 1 to specify that civil-military cooperation is a set of measures carried out by the AFU and other military formations established in accordance with the laws of Ukraine in order to

214 The Doctrine of Civil-Military Cooperation was approved by the Commander-in-Chief of the Armed Forces of Ukraine on October 4, 2025, No. 5183/НВГШ

215 Civil-military cooperation in Ukraine: training, preparation and assistance in critical situations, Army Info, May 5, 2023, <https://surl.li/pbkhss>.

216 The Role of Civil-Military Cooperation in the Protection of Civilians: Ukraine’s Experience, Center for Civilians in Conflict, 2023, <https://surl.li/abmwss>

217 Law of Ukraine “On the Defense of Ukraine”, December 6, 1991, no. 1932-XII, <https://surl.li/epifyk>.

interact with state authorities, local governments, public associations and individuals to create favorable conditions for the AFU to perform their tasks and functions, as well as other measures.²¹⁸

On October 4, 2025, the Commander-in-Chief of the Armed Forces of Ukraine approved the new Doctrine on Civil-Military Cooperation No. 5138HBFLLI. The Doctrine presents the system of civil-military cooperation, which consists of four interconnected subsystems: civil-military interaction, support of troops, support of the civilian environment, and assessment of the civilian environment.²¹⁹ In accordance with the Doctrine, civil-military cooperation units continuously collect and analyze data and assess the state of the civilian environment; forecast possible options for its development during the training and employment of defense forces; determine the attitude of the population to the troops and their actions; identify risk factors for the defense forces during their training and employment; and prepare proposals for neutralizing or minimizing the impact of such factors.²²⁰

As part of their activities, CIMIC units perform a number of tasks that may directly or indirectly contribute to the collection and preservation of evidence of violations of IHL in the armed conflict zone. CIMIC officers may get such information from contacts with civilian authorities, local residents, or even photographic or video documentation. For example, they:

- **Collect and analyze information on the state of the civilian environment.** CIMIC personnel constantly monitor the security, socio-economic, and humanitarian situation in their mission areas. They thus monitor information relevant to allegations of international crimes, like data on damage to civilian objects; civilians who have been killed or wounded; and the humanitarian situation in general.
- **Support the civilian environment.** CIMIC personnel “assist in the restoration of the impaired (lost) capacities of public authorities” and coordinate actions aimed at ensuring public safety and order.²²¹ In the course of these activities,

218 Law of Ukraine "On the Defense of Ukraine", December 6, 1991, no. 1932-XII, <https://zakon.rada.gov.ua/laws/show/1932-12#Text>; Law of Ukraine "On Amendments to Certain Laws of Ukraine in the Field of National Security and Defense on the Provision of Pre-Hospital Care and Civil-Military Cooperation", November 20, 2024, no. 4068-IX, <https://zakon.rada.gov.ua/laws/show/4068-20#n10>.

219 The Doctrine of Civil-Military Cooperation was approved by the Commander-in-Chief of the Armed Forces of Ukraine on October 4, 2025, No. 5183/HBFLLI

220 Temporary Guidelines on Civil-Military Cooperation in the Preparation and Use of the Armed Forces of Ukraine, approved by Order of the General Staff of the Armed Forces of Ukraine of April 2, 2019, No. 131.

221 The Doctrine of Civil-Military Cooperation was approved by the Commander-in-Chief of the Armed Forces of Ukraine on July 2, 2020, No. 15860/C <https://surl.lu/vn-qohb>, para.3.3. Temporary Guidelines on Civil-Military Cooperation in the Preparation and Use of the Armed Forces of Ukraine, approved by Order of the General Staff of the Armed Forces of Ukraine of April 2, 2019, No. 131, para.2.5.

servicemembers help restore the functioning of vital facilities (e.g., water, energy, heating networks, transportation infrastructure). Their inspections of such facilities and interviews with witnesses may help establish the facts of damage to vital facilities. If the information indicates that such destruction was intentional or the result of the use of prohibited methods and means of warfare and is properly shared with law enforcement, this may provide grounds for law enforcement to enter the relevant information into the URPTI and lead to further investigation of attacks on such facilities.

- **Protection of cultural heritage.** Cultural heritage sites are under special legal protection in the context of armed conflict, and unless they are used for military purposes, their intentional damage or destruction is an international crime.²²² Civil-military cooperation units play an important role in protecting cultural heritage during armed conflict. They monitor the condition of objects of cultural and historical value and organize priority measures for their preservation.²²³ They thus may receive early information about damage to or destruction of such sites. If this information is shared properly, and evidence about damage or destruction is recorded professionally, it may help facilitate investigations into whether attacks on those sites give rise to criminal responsibility.
- **Interaction with law enforcement agencies.** Civil-military cooperation officers are responsible to establish and maintain contacts with military administrations, local governments, and law enforcement agencies. This provides a channel to promptly transmit information about facts discovered in the combat zone that may indicate the commission of international crimes. As noted above, it is important to follow certain procedural procedures, including recording and storing evidence in a manner that would allow its further use in court.²²⁴ Since the success of investigations largely depends on the evidence collected, it is essential for CIMIC units to provide a reliable channel for the transmission of such information and guarantee its quality and completeness.

222 Rome Statute, Art. 8(b)(ix); The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, <https://ips.ligazakon.net/document/MU54K01U>; <https://surl.li/nilziz>; How to reduce the effects of war on cultural heritage: the Armed Forces can help, G. Mamedov, V. Tytych, *Mirror of the Week*, January 8, 2024, <https://zn.ua/ukr/war/jak-zmenshiti-naslidki-vijni-dlja-kulturnoji-spadshchini-mozhut-dopomohti-zsu.html>.

223 The Doctrine of Civil-Military Cooperation was approved by the Commander-in-Chief of the Armed Forces of Ukraine on October 4, 2025, No. 5183/HBГЩ; How to reduce the effects of war on cultural heritage: the Armed Forces can help, G. Mamedov, V. Tytych, *Mirror of the Week*, January 8, 2024, <https://zn.ua/ukr/war/jak-zmenshiti-nasl>. CIMIC's assignment to promote the protection of cultural property helps fulfil Ukraine's obligations under Article 7 of the Hague Convention.

224 See Chapter 2.3, above.

In short, CIMIC's responsibilities give it a unique opportunity to document potential violations of IHL, which can serve as a basis for further investigations and prosecution. However, in practice, it appears that this potential is not fully realized. CIMIC officers often face a number of obstacles, ranging from limited resources and lack of clear instructions on documenting international crimes to underdeveloped mechanisms for storing evidence. All of this greatly complicates the work of civil-military cooperation units and limits their ability to contribute to investigations or improve the protection of civilians.

Like other units, CIMIC's evidence collection work is limited by the lack of clear algorithms for collecting and formalizing evidence; inadequate resources; limited training on identifying and documenting international crimes; and an overwhelming quantity of other tasks in the heat of armed conflict. In the context of armed conflict, the potential of civil-military cooperation units to document violations of international humanitarian law is extremely important, as timely and properly recorded information can be crucial for further investigation and prosecution.

Effective realization of its potential thus requires systemic changes: the development of unified standards for recording evidence, improvement of technical equipment, in-depth legal training of its personnel, and establishing interagency cooperation with both military legal services and law enforcement agencies to ensure collected materials are properly processed, shared, and become part of the evidentiary record in relevant cases.

3.6.4 Military Law Enforcement

Responsibility for ensuring law and order and military discipline in the AFU and other military formations of the Defense Forces of Ukraine (DFU) lies with the Military Law Enforcement Service (MLES), which is a specialized law enforcement formation within the AFU. Each brigade has a MLES representative, as do some battalions and companies that function as separate units. As such, the MLES can play a key role, institutionally enshrined in law, in collecting and preserving evidence of international crimes, which distinguishes it from other military units.

According to part 1 of Article 3 of the Law of Ukraine "On the Military Law Enforcement Service in the Armed Forces of Ukraine" of 7 March 2002 No. 3099-II,²²⁵ the MLES, functioning as military police, is tasked with:

- identifying the causes, preconditions and circumstances of criminal and other offences committed in military units and at military facilities; and

225 Law of Ukraine "On the Military Law Enforcement Service in the Armed Forces of Ukraine" of 7 March 2002 No. 3099-II, <https://zakon.rada.gov.ua/laws/show/3099-14#Text>.

- assisting bodies engaged in operational and investigative activities, pre-trial investigation, and the judiciary, as well as state authorities, local self-government bodies, military command bodies, enterprises, institutions, and organizations in performing their legally mandated duties.

In accordance with part 1 of Article 8 of the same Law, the MLES is further entrusted with:

- cooperating with law enforcement agencies, including exchanging information for the detection of offences; and
- executing, within the limits of its competence and as prescribed by law, the orders of investigators and prosecutors, as well as court rulings and judges' decisions.

The MLES is the only component of the Armed Forces of Ukraine that is expressly mandated by law to support pre-trial investigation bodies and the courts. This suggests that the MLES should have a special coordinating and supporting role in detecting, recording, preserving, and transferring to law enforcement authorities evidence of international crimes—functions that for other units remain only auxiliary or episodic. However, the MLES does not have a specific investigative capacity. It merely supports law enforcement.²²⁶ Because the law does not empower MLES to do its own investigations, it also does not specify the role of the MLES in potential evidence collection, or the specific features of its interaction with other military units, law enforcement bodies, and the court.

Therefore, it may be appropriate to refine the regulatory framework governing the tasks and functions of the MLES. Amendments to the Law on MLES could clearly establish the MLES's coordinating and supporting function in the identification, collection, preservation, and transfer of evidence of international crimes and specify its role as a key link in interactions between military units and law enforcement bodies.

Combat and other units are usually the first to discover the scenes of international crimes and evidence of their commission, may ensure the inviolability of such sites, and notify the competent authorities. The MLES, however, can organize site security, liaise with specialists; conduct registration, marking and packaging of materials; control the chain of custody; prepare accompanying documentation; and coordinate the transfer of evidence to investigative bodies. With properly defined functions and authority, the MLES can ensure continuity of the chain of custody, procedural admissibility of evidence, and its proper transfer for use in national or international proceedings.

226 E.g. Military Justice Reform in Ukraine Is Urgently Needed, Armenak Ohanesian, 2024, <https://www.wilsoncenter.org/blog-post/military-justice-reform-ukraine-urgently-needed>.

The MLES role in promoting compliance with IHL by Ukrainian forces is addressed in more detail in Chapter 5.4.

3.7 Conclusion

In short, while law enforcement will play the primary role in collecting evidence when circumstances allow, military servicemembers will often be an essential link between collecting objects on the battlefield and seeing those same objects admitted into evidence in the courtroom. While current regulations do not oblige them to collect evidence, they are obliged to collect information about potential atrocity crimes and report it up the chain of command. Good communication and cooperation between the military, law enforcement, and civilians in the area where crimes were allegedly committed—cooperation led by commanders and coordinated by the legal service—can help facilitate information sharing and ensure battlefield evidence is used to build strong cases.

To help realize the potential of battlefield evidence, several measures would be useful:

- formal processes should be established for collecting, preserving, storing, and sharing battlefield evidence;
- all servicemembers—but particularly commanders, legal service officers, intelligence officers, and civilian–military cooperation officers—should receive additional training in the processes for dealing with battlefield evidence;
- personnel and units involved in battlefield evidence should receive more designated resources to facilitate this aspect of their work;
- regulations governing the legal and intelligence services should be reformed to more clearly address their responsibilities related to battlefield evidence; and
- regulations governing the MLES should be clarified to clearly state its coordinating and supporting function in the identification, collection, preservation, and transfer of evidence of international crimes, and to define its role as a key link in the interaction between military units and law enforcement bodies.

Together, these measures can help investigators and prosecutors use battlefield evidence to get justice for the victims of atrocity crimes in Ukraine.

CHAPTER 4.

SOME TECHNOLOGICAL TOOLS TO COLLECT EVIDENCE OF INTERNATIONAL CRIMES

- 4.1 Introduction
- 4.2 Open Source Intelligence as Admissible Evidence
- 4.3 Use of modern technology to preserve and process evidence obtained from the battlefield during armed conflict



4.1 Introduction

In modern atrocity crime investigations, tools that can not only record events in real time but also enable the use of the collected materials in the criminal justice process are especially relevant. Modern information systems allow for proper recording, tagging, storage, and preparation of battlefield information for further use in criminal proceedings. Trial monitoring indicates that the use of electronic evidence is common in cases alleging international crimes in Ukraine.²²⁷ And open source intelligence (OSINT)—which is public by its nature and covers a wide range of information from posts on social networks to news resources or satellite images—is increasingly becoming a key tool for recording events, analyzing evidence, and building an evidence base that can withstand procedural scrutiny in court.

Modern armed conflicts are characterized by an unprecedented amount of digital traces that remain publicly available, from videos on social networks to satellite images. These traces form the basis of OSINT, which refers to the systematic use of open sources to collect, analyze, and interpret data that can be used by military commanders to form an operational picture, as well as by investigators or prosecutors to document offenses and prepare evidence.

OSINT also provides the ability to document violations of IHL and identify those responsible. Unlike classified data, open sources are both accessible and multi-layered: they allow one to simultaneously build an operational picture for the commander and create an evidence base for the investigator. However, their admissibility in court proceedings is contingent on how they are collected, processed, and stored.

At the international level, the framework for this is set by the Berkeley Protocol on Digital Open Source Investigations,²²⁸ which emphasizes transparency, accountability, and compliance with the chain of custody of digital evidence. Additional standards have been developed by the EU (General Data Protection Regulation (GDPR),²²⁹ personal data protection practices), the UN (human rights monitoring principles), and international courts. They all agree that the key is to prove the authenticity and integrity of the evidence and avoid any doubts about manipulation.

227 Report on the Results of the 3rd Phase of the Project Monitoring of Court Proceedings and Analysis of Court Decisions in War Crimes Cases (Under Article 438 of the Criminal Code of Ukraine) Ukrainian Bar Association and the UBA Human Rights Institute, 2025, <https://uba.ua/documents/2025/Report-Monitoring-EN-2025-WEB.pdf>, p.88.

228 Berkeley Protocol on Digital Open Source Investigations. A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law, United Nations, 2022, <https://www.ohchr.org/en/publications/policy-and-methodological-publications/berkeley-protocol-digital-open-source>.

229 General Data Protection Regulation, <https://gdpr-info.eu>.

In the Ukrainian national context, OSINT faces a number of specific challenges. The Criminal Procedure Code of Ukraine (CPCU) does not explicitly mention the category of “electronic evidence,” but Articles 84 and 99 allow the use of photo, audio, and video materials as documents. This has paved the way for the use of data from open sources in criminal proceedings. However, national judicial practice shows that OSINT is only recognized as evidence if it is properly processed through the criminal procedure pipeline—by drawing up inspection protocols and recording the source, time, and method of collection.

The first in Ukraine to systematically use OSINT in the investigation process was the Prosecutor’s Office of the Autonomous Republic of Crimea. The lack of physical access to the crime scenes prompted the Prosecutor’s Office of the ARC to actively use open intelligence methods to collect evidence from digital sources.²³⁰

Special attention should be paid to military technical means that enable the collection and processing of data directly from the battlefield. An example of such a technological tool is the Delta integration platform (Delta),²³¹ which combines the functions of data collection, storage, and analysis. Delta provides geolocation of objects, storage of primary materials, as well as control over their access and integrity. These capabilities allow for the integration of diverse sources of information into a single structure suitable for long-term use and verification.

Combining open source data and information obtained through specialized platforms is crucial for comprehensive documentation of international crimes. In a context where information has become a potent weapon, it is the quality and reliability of the collected materials that determine the level of trust in justice.

The purpose of this chapter is to provide military servicemembers, law enforcement agencies, and prosecutors with practical guidance on transforming the data they collect into reliable and compelling evidence that can withstand the strictest scrutiny, and to help prosecutors and investigators use such technical evidence to prove their cases.

230 Gyunduz Mamedov: “Ukraine has the opportunity to hold Russia to account for war crimes.”, *Mirror of the Week*, 24 November 2020, <https://zn.ua/ukr/internal/hjunduz-mamedov-same-ukrajina-maje-shans-pokarati-rf-za-vojenni-zlochiny.html>

231 <https://delta.mil.gov.ua>.

4.2 Open Source Intelligence as Admissible Evidence

4.2.1 Introduction and Overview of Open Source Intelligence (OSINT)

Open Source Intelligence, or OSINT, refers to the practice of collecting and analyzing information that is publicly accessible. The key characteristic of OSINT is that the information itself is *not* confidential or secret. What makes it “intelligence” is the systematic process of finding, verifying, analyzing, and contextualizing this public data to create meaningful insights for decision-makers. Without proper analysis, it’s just raw information; but with systematic organization, categorization, and contextualization, it becomes a powerful tool. The importance of OSINT has skyrocketed in modern times, making it an indispensable resource.

Just as traditional law enforcement uses OSINT for criminal investigations, in a wartime context it is critical for investigating alleged international crimes, documenting human rights abuses, and gathering evidence to support prosecutions in domestic or international war crimes cases. This involves documenting events, providing context, identifying perpetrators, and corroborating witness testimonies. Military units also actively use OSINT methods and tools for their own needs. This includes monitoring open digital sources, analyzing videos and images, identifying objects (equipment, positions, forces, routes), and predicting the development of events. Thanks to this, the military gains an operational advantage: they understand what is happening on the battlefield and can plan, react, and adjust their actions. However, when during such OSINT operations the military records information that indicates international crimes, they must ensure the preservation, authenticity, integrity, and transfer of this data to law enforcement. Law enforcement may also request that the military provide additional information or clarify information that it has provided.

For investigators and prosecutors trying to build cases addressing international crimes, OSINT provides crucial insights into the perspectives and experiences of people at the scene of a potential crime, as well as contextual information about location, time, date, and other individuals involved. In addition, many of the same aspects of OSINT that add value for the military commander also assist the investigator and prosecutor, such as:

- **Strategic Intelligence:** Understanding the capabilities, intentions, and vulnerabilities of potential adversaries, as well as the political and economic factors influencing a region.

- **Tactical Intelligence:** Providing real-time updates on battlefield conditions, enemy movements, civilian populations, and infrastructure damage.
- **Targeting and Strike Assessment:** Verifying information about potential targets or assessing the impact of military actions.
- **Humanitarian Operations:** Identifying areas in need of aid, tracking displaced populations, and monitoring the safety of aid corridors.
- **Information Warfare/Counter-Disinformation:** Monitoring and countering adversarial narratives, identifying propaganda, and understanding public perception in occupied areas.

In both domestic and international conflict-related prosecutions for atrocity crimes, OSINT is becoming a vital source of evidence. It can be used to corroborate alibis or operational records; expose contradictions in testimony from soldiers or civilians; document violations of international humanitarian law, or the laws of armed conflict; and provide context for specific incidents or campaigns. For example, public videos of military actions, archived news reports of atrocity crimes, or open source intelligence on military equipment can be presented in court to establish a timeline, prove intent, or demonstrate a pattern of conduct.

Its widespread accessibility and cost-effectiveness make OSINT a unique and powerful tool, offering a perspective that classified intelligence might miss and complementing traditional sources of evidence. However, this accessibility also presents challenges, particularly when OSINT is intended for use in formal legal settings with formal rules of evidence and high standards for authentication.

OSINT's journey from a publicly accessible data point to a piece of admissible evidence in a court of law can be complex. The primary aim of this section is to explore the methods and considerations necessary to collect and process OSINT, specifically in a military context, in a manner that ensures it can be legally accepted and deemed trustworthy by a court, whether it be a national court, or an international criminal court.

One challenge lies in the origins of much OSINT, combined with the often sensitive and high-stakes nature of military operations. A piece of OSINT reporting collected by the military detailing troop positions might seem straightforward, but proving its authenticity, demonstrating it hasn't been altered, and showing its relevance to the situation at hand can be complicated.

Without protocols governing the collection, documentation, and handling of OSINT, the evidence can be easily dismissed as unreliable, tampered with, or illegally obtained, which can have severe consequences in cases seeking accountability under the laws of armed conflict. The preferred option is to create a system that is "legal by design," meaning that forensic rigor is built in from the start of the OSINT

collection process. This means that OSINT can routinely be repurposed as evidence with little additional effort, a boon to investigators and prosecutors.

Short of that ideal, this section will suggest a menu of good practices that can be applied—at varying levels of effort to the military collector, for whom military effectiveness, not evidence, is the top priority—that will assist efforts by investigators and prosecutors to use this trove of OSINT data.

A central framework for OSINT investigations is the **Berkeley Protocol on Digital Open Source Investigations**. This internationally recognized set of guidelines, developed by the Human Rights Center at the University of California, Berkeley, provides a comprehensive and detailed blueprint for the ethical and effective collection, preservation, and verification of digital information. While it originated from human rights investigations, its principles are highly applicable to documentation for accountability (e.g., alleged war crimes). The Protocol emphasizes fundamental concepts such as:

- **Transparency:** Clearly documenting every step of the collection process.
- **Accountability:** Ensuring that investigators are responsible for their methods and findings.
- **Maintenance of a Clear Chain of Custody:** Tracking the evidence from its discovery to its presentation, preventing any question of tampering.

Adoption of these principles—adapted to the specific circumstances military OSINT personnel work under—can significantly increase the chances that military-collected OSINT while performing their primary duties can be used by investigators and prosecutors as investigative leads or as evidentiary information. This gives the information a life and usefulness that extends past its application on the battlefield.

Beyond the Berkeley Protocol, other significant national and international standards exist for handling digital evidence. These various frameworks help to identify common threads and good practices that underpin the legal recognition of digital information, and also call attention to issues that might arise depending on the location of the court or conflict. These other standards include:

- **European Union (EU) Standards:** This involves considering relevant articles of the GDPR, which sets strict rules for data processing and privacy. While OSINT deals with public data, the act of collecting, storing, and analyzing this data, especially if it relates to identifiable individuals (e.g., military personnel, civilians in conflict zones), falls under GDPR's scope.
- **United Nations (UN) Principles and International Humanitarian Law (IHL):** The UN has developed principles and guidelines related to human rights

monitoring, documentation, and the collection of evidence for international justice mechanisms. These principles often emphasize impartiality, accuracy, and the protection of victims and witnesses, which are highly relevant to OSINT conducted in sensitive contexts of armed conflict.

These diverse approaches help identify universal principles and practical strategies that bolster the legal standing of digital evidence, regardless of its origin, and specifically within the framework of military operations and international law. The ultimate objective is to define a pathway for OSINT to move beyond its informal beginnings and acquire the necessary evidentiary weight for judicial acceptance in cases concerning potential international crimes.

4.2.2 Special Considerations When Collecting Open Source Intelligence as Evidence in a Military Context

Collecting OSINT for potential legal use in a military context is not simply about finding information; it's about finding it under unique operational and legal constraints. First and foremost, military collectors are using OSINT for military purposes, with operational effectiveness being their top priority. This means that additional protocols for repurposing OSINT as evidence must not place an undue burden on the collector or have a negative impact on the mission as a whole.

Military personnel who use OSINT methods in their work should be aware that when, while performing their primary military duties, they discover signs of international crimes from open sources, this data is not just military information—it may become important digital evidence in criminal cases. This significantly increases the importance of accurate documentation of how the information was collected.

For OSINT collected by military entities to be taken seriously in a court of law, whether national or international, its collection methods must be transparent and the collectors accountable for their actions. Further, prosecutors and law enforcement must be able to prove the authenticity and integrity of the information, as well as documenting the chain of custody and proving the information has not been altered. This is not just good practice; it's crucial for getting OSINT evidence admitted into a trial record and for rebutting claims of bias, misconduct, or evidence manipulation, which can have devastating consequences for a prosecutor's case and for the institutional credibility of any service or agency involved. This may include who found certain sources, when and under what circumstances, and how exactly the data was stored, processed, and verified.

The very name "open source" can be misleading, especially when operating within the strictures of military operations. While the information is publicly accessible, the act of collecting, processing, and using it, particularly for legal purposes

related to armed conflict, is anything but accessible, and can often involve significant expertise and technology.

Avoiding Claims of Bias or Misconduct in Operations:

- If the methods used to collect OSINT are opaque, or if there is a perception that the collector has a hidden agenda (e.g., to justify a specific action or suppress negative information), the evidence can be easily challenged. Transparency involves clearly documenting how the information was found, what tools were used, and why certain data was deemed relevant while other data was excluded. This demonstrates a methodical and objective approach, which is vital when investigations are scrutinized.
- Maintaining transparency often involves creating detailed standard operating procedures (SOPs) specifically for military OSINT collection and regularly training military personnel on these procedures, emphasizing both legal compliance (IHL, national laws) and ethical conduct. This builds a foundation of credibility that is invaluable when military-collected OSINT—or the investigative process as a whole—is inevitably scrutinized by prosecutors deciding whether to rely on it, defense attorneys seeking to impeach it, or judges evaluating whether OSINT evidence can assist in justifying a conviction.

Ensuring Authenticity and Integrity of Military OSINT:

Even if OSINT is collected ethically and legally in a military context, it will not be admitted into court if its authenticity and integrity cannot be proven. In simple terms, courts need to be convinced that the digital evidence is exactly what it claims to be, and that it hasn't been changed or damaged since it was collected. This is a paramount concern with digital information, which can be easily altered or copied imperfectly, especially given the rapid flow of information in conflict zones.

Demonstrating the Chain of Custody:

The “chain of custody” concept is critical in forensic science, and it applies just as much to digital evidence from military contexts as it does to physical evidence from a crime scene. It refers to the documented, unbroken progression of evidence from the moment it is collected to the moment it is presented in court. Any break in this chain can raise doubts about the evidence's integrity and potentially lead to its exclusion, which can significantly impact accountability efforts. The tasks associated with creating and documenting the chain of custody may appear burdensome, but many, if not most, are probably already part of the intelligence documentation process, easing the burden on military personnel. A clear chain of custody assures the court that the evidence has been:

- **Protected from tampering:** No unauthorized alterations have occurred, crucial when evidence might be manipulated for propaganda or to create an impression of wrongdoing where none occurred.
- **Protected from contamination:** No irrelevant data has been accidentally mixed in with the digital evidence, which is easy to do with the volume of OSINT.
- **Continuously accounted for:** Its whereabouts and handling are always known, reducing opportunities for challenges.

To establish a robust chain of custody for military OSINT, documentation is essential. This involves creating a comprehensive log for every piece of digital evidence collected. This log—which may be substantially similar to one already in place for military reports—should include the following information:

- **What was collected?** A precise description of the content (e.g., a specific social media post by an alleged combatant, a satellite image showing damage, a video clip of an incident).
- **Where was it collected from?** The exact URL, platform, or database where information was collected from. If the source is a dynamic page,²³² the specific path²³³ or search query used should be recorded. For geospatial data, the specific coordinates and source.
- **When was it collected?** Date and time, including the time zone (crucial for international investigations spanning different geographical areas).
- **Who collected it?** The full name, position, rank, and unit of the OSINT analyst.
- **How was it collected?** The specific tools (software, hardware, browser type)

232 A dynamic page is a web page whose content changes depending on user actions or data updates on the server. For example, when you open a news site and new articles appear without reloading, or when a Facebook or X/Twitter feed pulls up new posts automatically, these are dynamic pages. In digital forensics, this is important because the content of such pages can change or disappear, so it is necessary to record the exact time, path, or search query by which the information was obtained.

233 A specific path is the exact address or sequence of parts in a URL that lead to a specific page or file on a site. For example, in the link: <https://example.com/documents/reports/2024>, the /documents/reports/2024 part is the specific path, which shows where exactly the desired information is located within the site. In digital forensics, indicating a specific path helps to accurately reconstruct where data was taken from, even if the site has many similar pages.

and version) and methods used (e.g., automated archival,²³⁴ manual screen capture, API call,²³⁵ specialized geospatial analysis tools²³⁶).

- **How was it stored?** The initial storage location (e.g., specific folder on a forensically sound military workstation or a personal device with approved software, secure server, classified network).
- **Initial Integrity Check:** Hash237 values (see below) calculated immediately upon collection.
- **Any anomalies or observations during collection:** For example, if a page loaded slowly, if there were broken links, or if the content appeared briefly before being removed.
- **Reason for collection:** Why this specific piece of information is relevant to the legal case (e.g., “to document alleged IHL violation”).

Transfer of Evidence: Every time the digital evidence is moved or accessed by a new individual, that transfer must be documented, often requiring a formal handover process within military chains of command. This includes:

- Date and time of transfer.
- Name, rank, position and unit of the person relinquishing the evidence.
- Name, rank, position and unit of the person receiving the evidence.
- Reason for the transfer (e.g., handed over for analysis by a specialized intelligence unit, transferred to legal counsel for review).

234 Archival is the process of creating an exact copy of a web page, file, or other digital material with date, time, and technical parameters fixed so that this copy can be reproduced in the future without changes. In other words, archiving is done in such a way as to preserve the information as it was. This can be done automatically through special services (for example, the Wayback Machine, Hunchly, Archive.today), which save the entire page, along with the code and images. It can also be done manually, by downloading the page, saving a PDF, or taking screenshots, or through APIs or special programs that record not only the content, but also technical metadata (time, URL, server data).

235 An API call is a technical request to an application, site, or server that returns accurate information, for example the publication time, author, coordinates, or content of certain material. The process is simple: 1) A data source is selected – for example, YouTube, X (Twitter), Telegram-bot or Wayback Machine archive; 2) A request is made to the system with the required parameters, for example: “show all publications with a specific tag” or “provide data about a specific video”; 3) The system returns a response in the form of structured data such as a list or table with time, author, location, link, etc.; 4) The result is stored with a record of the date, time, and source to confirm the immutability of the information received.

236 Specialized geospatial analysis tools are programs or online platforms that allow you to work with maps, satellite images, and coordinates to analyze where an event occurred, how the terrain has changed from one point in time to another, or the relative location of different places or objects.

237 A hash is a unique digital code that is created from a file so that a user can check whether it has not been changed. In other words, a hash is like a “fingerprint” of a file: it’s different for everyone, and if you change something in the file, the fingerprint will be different immediately.

- Any additional digital copies of the file created in order to make changes (e.g., a copy made for the purpose of adding analysis notes or improving the quality of an image, which should never be done to the original evidence).
- **Physical and Digital Security:** The digital evidence itself must be stored securely to prevent unauthorized access or alteration, adhering to military classification and security protocols. This can involve:
 - Write-blocking: Using hardware or software write-blockers during acquisition to ensure that the collection process itself doesn't alter the original source.
 - Encrypted storage: Storing the collected data on encrypted drives or classified military networks.
 - Access controls: Limiting who can access the evidence based on their clearance and need-to-know, and tracking all access attempts.
 - Immutable storage: Utilizing storage solutions that prevent data from being overwritten or deleted, crucial for long-term accountability.

The chain of custody isn't just a formality; it's the narrative that convinces a court that the military-collected evidence presented is the same as it was at the moment of discovery, untouched and authentic, even after passing through various intelligence and legal channels.

4.2.3 Best Practices for Collecting and Processing Military OSINT to Ensure Admissibility

To effectively transform raw OSINT gathered in a military context into legally admissible evidence, a structured, disciplined, and standardized approach is paramount. This section outlines the best practices across data collection, processing, documentation, and adherence to legal standards, specifically tailored for military operations and legal scrutiny.

The foundation of admissible military OSINT lies in establishing clear, consistent, and legally compliant data collection protocols. Without these, even valuable information can be rendered useless, potentially undermining accountability efforts.

- **Standardized Operating Procedures for Military OSINT:** Every military unit, intelligence agency, or individual involved in collecting OSINT which in the course of their work uncovers open source data that may indicate international crimes should have and strictly adhere to detailed Standard Operating Procedures (SOPs). These SOPs can supplement the standard OSINT SOPs,

being careful neither to place too onerous a burden on military collectors nor to interfere substantially with their primary mission.

- **Training in Best Practices:** Even the best military protocols are ineffective without proper, continuous training. All military personnel involved in OSINT collection and preservation (intelligence analysts, legal advisors, specialized units) must receive comprehensive training in:
 - **Legal Compliance:** understanding of IHL, national military laws, rules of engagement, relevant data protection laws (e.g., GDPR), and specific evidentiary rules for courts likely to receive the evidence they collect.
 - **Technical Proficiency:** Competence in using specific military OSINT collection tools and understanding their capabilities and limitations. This includes knowing how to properly extract and preserve metadata from various digital sources (e.g., social media, geospatial platforms, dark web²³⁸).
 - **Documentation Standards:** Rigorous training on meticulous logging, chain of custody procedures within military channels, and standardized report writing that emphasizes clarity, accuracy, completeness, and adherence to classification guidelines.
 - **Regular Updates and Threat Awareness:** As technology, legal landscapes, and adversary tactics evolve, training must be ongoing and updated regularly to ensure continued compliance and effectiveness against sophisticated disinformation campaigns.

By establishing and enforcing robust data collection protocols, military organizations can ensure that OSINT is gathered systematically, ethically, and in a manner that maximizes its potential for legal admissibility in high-stakes military and international legal proceedings.

4.2.3.1 Processing and Documentation for Military OSINT

Collecting data is only the first step. For military OSINT to be useful for operations and admissible as evidence, it must be processed, organized, and documented in a way that preserves its integrity, ensures it is handled correctly, and facilitates its understanding by commanders, legal professionals, and the court.

- **Metadata Tagging:** Beyond preserving inherent metadata, military analysts should add their own metadata tags to collected OSINT during processing. This can include:

²³⁸ The dark web is a hidden part of the Internet, which may be accessed through special software (for example, Tor, I2P, Freenet), protocols, or network configurations that ensure the anonymity of users and resources, in particular by encrypting traffic and hiding IP addresses.

- **Operational ID/Case ID:** Linking the evidence to a specific military operation, intelligence assessment, or legal case.
- **Relevance Tags:** Indicating which specific intelligence question, military objective, or legal argument the evidence supports (e.g., “target verification,” “IHL violation evidence,” “adversary propaganda,” or “exculpatory evidence”).
- **Verification Status:** Noting if the item has been cross-referenced, independently verified by other intelligence disciplines, or assessed for authenticity (e.g., “verified,” “unverified,” “potential disinformation”).
- **Analyst Notes:** Any observations, preliminary analysis, or classification notes related to the specific item.
- **Version Control for Dynamic Content:** For dynamic online content from conflict zones (e.g., frequently updated news sites, social media feeds), it is crucial to document different versions or changes over time. If a webpage or social media post is updated or deleted, each state should be captured forensically and recorded, along with relevant timestamps.
- **Maintaining Evidence Integrity During Processing (Military Standards):**
 - **Working on Copies, Not Originals:** All military intelligence analysis and processing should be conducted on forensic copies of the collected data, never on the original acquisition. This preserves the original’s pristine state for potential legal review.
 - **Hashing at Each Stage:** When significant processing occurs (e.g., creating a subset of data for an intelligence brief, or converting file formats for presentation), new hash values should be calculated for the processed data and logged, linking them back to the original hash. This demonstrates that the processing itself did not introduce unauthorized changes.
 - **Audit Trails for Tools:**²³⁹ If processing involves specialized military intelligence software or forensic tools, ensure the software generates its own audit trails or logs of actions performed, further bolstering integrity and accountability.
- **Chain of Custody Documentation (Continued and Integrated):** The chain of custody form isn’t just for initial collection; it must be continuously updated

239 Audit trails are documented records of all actions, changes, or accesses to specific data that allow you to track who did what to an item of evidence or file, when, and where. In other words, they are a “digital trail” that shows the history of working with the material from the moment it was created or uploaded to the moment it was transferred or archived. For example, the system log records that a user with a specific ID opened a photo on June 10, 2024, and made a copy of it on June 12. Audit trails are an important part of the chain of custody of digital evidence, as they confirm that the material has not been altered or tampered with, and can be used to verify the authenticity and integrity of evidence in court

throughout the processing phase and integrated into military documentation systems. Every time the evidence is accessed, analyzed, or a copy is made and edited (even if a copy is simply saved into a new file format for presentation for legal purposes), this activity must be logged with dates, times, individuals involved (name, position, rank, unit), and the reason for the action. This ensures a clear record within the military chain of command.

These steps ensure prosecutors can demonstrate the authenticity and reliability of OSINT information, increasing the likelihood that it will be admissible in court, whether domestic, or international.

Finally, the crucial practical challenge of adapting military intelligence practices to allow the use of intelligence as evidence is doing so in a way that does not disrupt ongoing military intelligence efforts. The need for rapid intelligence gathering for immediate operational decision-making (e.g., targeting, force protection) can sometimes clash with the slow, meticulous pace required for legal admissibility. Furthermore, commanders are understandably unwilling to compromise military effectiveness to cooperate with accountability efforts, so any procedural or organizational changes must not unduly burden warfighters. Some ways to do this include:

- **Integration from the Start (Legal-by-Design):** Ideally, the “admissibility mindset” should be integrated into the initial phases of military intelligence gathering, particularly for activities that might generate evidence (e.g., post-strike assessments, documentation of incidents). If there is any chance OSINT might become evidence for accountability, collection should begin with forensic rigor from the outset rather than trying to retroactively validate poorly collected data.
- **Clear Roles and Responsibilities:** Defining clear roles for who is responsible for immediate intelligence analysis versus who is responsible for evidence collection helps avoid conflicts and ensures that both operational and legal needs are met. This requires robust communication between intelligence, operations, and legal departments.
- **Technological Solutions:** Investing in automated tools that can simultaneously support both rapid intelligence generation (e.g., by providing quick summaries of public threats) and forensic collection (by capturing full metadata and hash values in the background) can bridge this gap.

By embedding these legal and forensic standards into every facet of military OSINT operations, from initial planning to final reporting, military organizations can significantly increase the likelihood that their collected open source intelligence will stand up to scrutiny in a court of law, supporting both effective operations and accountability.

4.2.3.2 The Role of Military OSINT Analysts in Providing Context about violation of IHL:

Military OSINT analysts can sometimes play another role in authenticating and contextualizing information in legal proceedings. They are not just data collectors about violations of IHL that they may receive while performing their direct tasks; they are also critical repositories of knowledge about how and why intelligence is collected, as well as nuances that might be lost on someone without direct battlefield experience. In essence, they may be able to translate descriptions of events on the battlefield for a legal audience. Their role extends to:

- **Synthesizing Information:** Weaving together multiple pieces of OSINT (e.g., social media, satellite imagery, news reports, radio chatter) to create a coherent intelligence picture that accurately reflects the situation on the ground or the intentions of actors.
- **Explaining Nuances:** Providing explanations for cultural references, slang, technical jargon (e.g., military acronyms) that might not be obvious to law enforcement officers, prosecutors, defense attorneys, or judges.
- **Identifying and Addressing Ambiguities:** Acknowledging where information is unclear, contradictory, or requires further investigation. Transparency about limitations or uncertainties in intelligence assessments is crucial for sound decision-making and legal review.
- **Structuring Intelligence Reports for Clarity:** Presenting OSINT findings in a logical, easy-to-understand format that highlights the connections between different pieces of evidence and explains their relevance to the legal matter. This often involves detailed timelines, network diagrams of influence or associations, and clear summaries with confidence levels.
- **Legal Soundness:** Ensuring that the analysis and contextualization remain objective and avoid speculative conclusions that could lead to unjustified military actions or flawed legal cases. Every interpretive step must be justifiable based on the evidence, and the analysis should be distinct from the raw data but clearly linked back to it.

Presenting military OSINT within its accurate context builds trust and credibility. It shows that the investigator has not simply collected data, but has also thoughtfully analyzed and understood it, vital for informed military operations and legal accountability.

Sometimes too, expert testimony—including by OSINT collectors—is needed to further contextualize information. An expert witness can explain complex digital concepts, validate methodologies, and provide an authoritative interpretation of the OSINT data for a court. An expert might:

- **Explain Technicalities:** Judges, lawyers, and other specialists may not be familiar with concepts like deepfake detection²⁴⁰, geospatial intelligence analysis, cryptographic hashing, or advanced web archiving. An expert can simplify these technical details and explain why these methods ensure reliability and how they are applied in a military context.
- **Validate Methodology:** The expert can testify that the military OSINT was collected using forensically sound and industry-accepted best practices (e.g., following the Berkeley Protocol, NIST guidelines²⁴¹, military intelligence doctrine). This reassures the court about the trustworthiness of the process, especially given the high stakes of atrocity crime cases.
- **Interpret Complex Data:** An expert can interpret trends, patterns, and connections within large, often classified, OSINT datasets that might not be obvious to a non-specialist. For example, an expert might analyze social media networks of enemy military personnel or signals intelligence related to publicly available frequencies, to explain their command structure or operational methods.
- **Address Challenges:** Experts are crucial in responding to challenges to the military OSINT's authenticity, integrity, or relevance, which will often be raised on cross-examination. They can explain why a particular piece of data is reliable, how potential manipulations would have been detected, and how it aligns with military intelligence processes.

The Berkeley Protocol offers specific guidance on expert witness testimony for digital open source investigations, which is highly relevant for military applications:

- **Qualifications:** It emphasizes that experts must possess demonstrated knowledge, skills, experience, training, or education in relevant areas (e.g., digital forensics, OSINT methodologies, specific platform analysis, geospatial intelligence, military intelligence tradecraft).
- **Clear, Transparent Analysis:** Expert reports should clearly articulate the methods used, the data sources, the analytical process, and the conclusions reached. They should differentiate between factual observations and interpretations. For military contexts, this means clearly delineating raw OSINT from intelligence assessments.
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240 A deepfake is a digitally altered or synthetically generated material created using artificial intelligence that: visually or audibly fakes the appearance, voice, facial expressions, or behavior of a person; or misleads the user by creating the illusion of authenticity; is often used for disinformation, manipulation, undermining reputation, or even creating false evidence.

241 NIST guidelines, <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-181r1.pdf>

- **Independent Opinion:** Experts must provide an impartial and objective opinion, based solely on the evidence and their expertise, rather than advocating for a particular side. This is crucial for maintaining credibility in a legal process.
- **Disclosure:** The Protocol suggests transparency regarding any potential conflicts of interest and the scope of the expert's engagement, which can be difficult to resolve when the expert is part of a military force fighting against the defendant.

The role of the expert witness in military contexts is not just to present facts, but to educate the court on *how* those facts were reliably obtained and analyzed within the unique environment of military intelligence operations.

4.2.4 Verification and Cross-Referencing: Confirming the Evidence in Court

Beyond proving that the evidence hasn't been altered, courts need assurance that the original information itself is genuine and reliable. This requires verification and cross-referencing, especially when dealing with potentially biased or propaganda-laden content from conflict zones. Law enforcement specialists or prosecutors might use the following strategies to cross-check information collected by military OSINT.

- **Reverse Image/Video Search with Contextual Analysis:** For images or videos performing a reverse image search (e.g., using Google Images, TinEye, or others) helps identify if the content has appeared elsewhere, at an earlier date (disproving recency), or in a different context (e.g., old footage presented as new). This is crucial for identifying reused content, hoaxes, or deliberate disinformation campaigns aimed at influencing public opinion or legal proceedings.
- **Geolocation and Chronolocation:** analyzing visual cues in images or videos (street signs, unique buildings, landmarks, vegetation, shadow analysis, weather patterns) to confirm the exact geographical location where the content was supposedly created. Combining this with timelining (**chronolocation**) using satellite imagery history, news reports, or known operational timelines allows an analyst to verify when the content was captured. Tools like Google Earth Pro, open-source mapping data, and even weather archives are critical.

- **Metadata Analysis (EXIF²⁴², Geospatial):** Extracting and analyzing embedded metadata from files can provide clues about creation date, device used, GPS coordinates (if enabled on military or civilian devices), and even editing history. For geospatial data, verifying projection, datum, and source accuracy is essential.
- **Deepfake and Propaganda Detection:** As AI-generated content becomes more sophisticated, specialized tools and human expertise are increasingly needed to identify “deepfakes” (synthetic media that realistically portrays someone saying or doing something they didn’t) or other forms of advanced digital manipulation. This is especially vital in information warfare where adversaries may use such content to discredit operations or spread false narratives. This often involves looking for subtle inconsistencies or digital artifacts.
- **Historical Website and Platform Archives:** Using services like the Wayback Machine (archive.org) allows investigators to view historical versions of web pages, verifying when certain content appeared or disappeared, which can be crucial for establishing timelines of events or assessing changes in adversarial propaganda.

Users may need to use a Virtual Private Network (VPN)²⁴³ to access some of these tools, depending on their location. Using a VPN will not diminish the evidentiary value of the material, but should be recorded along with other information about the material’s collection.

Prosecutors and investigators might also corroborate information across multiple independent sources to demonstrate its reliability. The strongest OSINT evidence is that which is corroborated by several distinct, unrelated sources, in-

242 EXIF – (Exchangeable Image File Format) – is a special standard that stores technical information about a photo or video inside the file itself. In other words: EXIF is a “passport” of the image, which records when, where, by whom and on what device the photo or video was taken. This data is automatically added by the camera or smartphone during shooting. What EXIF information can contain: date and time the file was created; GPS coordinates of the shooting location; model and serial number of the device (camera, phone; camera settings – shutter speed, aperture, ISO, flash; frame orientation, resolution, format; sometimes – the username or name of the program used to edit the photo. EXIF data helps to verify the authenticity and context of the image – when and where it was taken, whether it was changed after shooting; this is important for establishing the location of the event, chronology and reliability of evidence. Geospatial data is information that shows where exactly on Earth a certain object or event is located. In other words: this is any data tied to a specific place – for example, coordinates, a map, a photo from GPS, satellite images or boundaries of territories. Such data helps to see events not just as facts, but as phenomena in space, that is, to understand where exactly something happened, how the territory is changing, and which objects are located nearby.

243 A VPN (Virtual Private Network) is a technology or service that creates an encrypted (“private”) connection (tunnel) between a device and a network or server, even if the connection is over the public internet. A VPN hides a user’s IP address, making it difficult to determine the location or relationship between the user and the traffic and encrypts information sent and received so that outsiders cannot read or modify it.

cluding non-adversarial ones, including if a piece of information (e.g., an alleged incident, a statement by a specific group) is reported by:

- A major international news organization.
- Reputable local civilian media or citizen journalists from the conflict area.
- Recognized human rights organizations.
- Satellite imagery analysis from independent commercial providers.
- Official statements from multiple governments or international bodies.

If OSINT can be corroborated in this way, the likelihood of its reliability dramatically increases. Conversely, if information appears on only one obscure, anonymous, or highly partisan source, its reliability is questionable and would require much stronger independent verification.

Verification and corroboration of information can also be done with digital forensic tools, specialized software and hardware to include:

- **Checksums²⁴⁴/Hashing:** Immediately upon collection, every digital file (image, video, document, archived webpage, geospatial layer) must have a cryptographic hash (e.g., SHA-256²⁴⁵, MD5²⁴⁶) calculated. This generates a unique, fixed-size string of characters that acts as a “digital fingerprint.” Any subsequent change to the file, no matter how small, will result in a different hash value, immediately indicating tampering. Hash values should be recorded in the chain of custody log.

244 Checksums are special digital codes in files to verify that they have not been modified or corrupted. If a file changes even slightly (due to error, corruption, or intentional editing), its checksum will immediately change. Why are Checksums needed to: Make sure that a file has not been changed during copying, transfer, or storage; Confirm the integrity of digital evidence in forensics or during a court investigation; Compare two copies of a file and make sure that they are absolutely identical. Hashing is the process of converting any data (file, text, photo, or video) into a short, unique code called a hash.

245 SHA-256 (Secure Hash Algorithm 256-bit) is a cryptographic hashing algorithm that creates a unique 256-bit (64-character) digital fingerprint of any data - file, text, image or video. Its main property is that even the smallest change in the original material (for example, changing a single byte) leads to a complete change in the hash value. Due to this, SHA-256 provides verification of the integrity, authenticity and immutability of data, which makes it the standard in the field of digital forensics for secure storage of evidence and chain of custody. The algorithm belongs to the SHA-2 family, developed by the US National Institute of Standards and Technology (NIST), and is widely used in data security, electronic signatures, blockchain, and evidentiary verification of digital materials. In other words: SHA-256 is a “hard hash algorithm” that takes a file and produces a “fingerprint” of it – clear and changeable even with the slightest change to the file. If you change even one byte in the file (even a space or a period), the hash will completely change – this makes SHA-256 useful for verifying the integrity of evidence. How to practically get SHA-256 (tools and commands): Linux / macOS (command line): sha256sum file.ext; Windows (command line): CertUtil -hashfile file.ext SHA256

- **Write-Blockers:** During the acquisition of digital evidence from a live system or storage device (e.g., a field laptop, a captured device), hardware or software write-blockers should be used. These tools prevent any accidental or intentional modifications to the original source data while it is being copied. This ensures that the act of collection itself does not compromise the integrity of the original evidence.
- **Forensic Duplication Software:** During collection, forensic duplication software should be used. This is a tool designed to create exact, bit-for-bit copies (forensic images) of digital storage media. These copies are identical to the original and are used for analysis, preserving the original data untouched.

An additional set of tools that can be used to prove the provenance of information deals with metadata and timestamping. Metadata is “data about data.” It’s the invisible layer of information embedded within digital files and records that provides crucial context and proof of authenticity. Timestamps are a particularly important type of metadata, especially for establishing facts in fast-moving military operations. Categories of metadata include:

- **Files (Images, Videos, Documents):** For files, metadata can include:
 - EXIF data (Exchangeable Image File Format): From cameras, phones, or drones, this can reveal device model, date and time of capture, GPS coordinates (if enabled), and even camera settings. This can help confirm when and where a particular piece of visual evidence was captured.
 - Creation/Modification Dates: When a file was first created and last modified. This is vital for establishing timelines of events.

Author/Creator: Who created the file or document. This can help attribute content to specific individuals or groups.
 - Software Used: What program was used to create or edit the file. Inconsistencies here can indicate manipulation.
 - File Size, Type: Basic properties of the file.

246 MD5 (Message Digest Algorithm 5) is a cryptographic hashing algorithm that creates a 128-bit unique numeric value (hash) for any incoming file or message. The algorithm was developed in 1991 and has been widely used to verify data integrity – that is, to make sure that a file has not been modified since its creation or transmission. In digital forensics and OSINT, MD5 is used to identify digital evidence, confirm the immutability of copies, and control the chain of custody. When a user runs MD5 on any file (for example, a photo, video, document), the program calculates a 32-character code from it – a combination of numbers and letters. If this file is changed by even one byte, the hash will change completely. Therefore, MD5 is convenient to use for verifying the integrity of files – for example, when you need to download something from the Internet or store digital evidence. MD5 calculation tools: QuickHash GUI is a program for Windows, macOS, and Linux that calculates MD5, SHA-1, SHA-256, etc.; HashMyFiles (NirSoft) is a tool for Windows that displays multiple hashes for selected files.

- **Web Pages/Online Content:** For web-based OSINT relevant to military contexts, metadata includes:
- **URL:** The exact web address, crucial for proving the source.
- **HTML Source Code:** The underlying code of the page, which can reveal hidden comments, script includes, and other technical details about the website's structure or purpose.
- **HTTP Headers:** Information exchanged between the browser and the server, including server date/time, content type, and caching instructions. This can provide server-side timestamps.
- **User Agent:** Information about the browser and operating system used to access the page, which can be useful for audit trails.

Metadata serves as evidence of authenticity for military-collected OSINT in several ways. First, it can prove origin and location; EXIF data from an image/video (e.g., showing a specific type of military equipment or an alleged incident) can help confirm if a photo was taken at a specific location, supporting geospatial analysis. It can also establish a timeline, with creation and modification dates helping to sequence events, and showing precisely when information was published, changed, or removed. This is critical for understanding the flow of information during an operation or conflict. Finally, metadata can reveal manipulation: inconsistencies in metadata (e.g., an image with a creation date *after* its alleged publication date, or an image claiming to be from one camera model but having properties consistent with another) can be red flags for tampering.

Timestamping too is critical for both operations and accountability. Precisely recording the date and time of OSINT collection is paramount. Accurate timestamps can:

- **Establish Facts of Incidents:** Prove precisely when specific information related to an incident (e.g., a strike, a movement, an alleged violation) was publicly available. This directly informs the timeline of events.
- **Corroborate Operational Records:** Help align online content with internal military records, operational logs, and unit movements, providing external validation.
- **Defeat “After-the-Fact” Claims:** Prevent arguments that evidence was created or altered after an event to create a narrative of wrongdoing. This is crucial in accountability cases.
- **Enhance Situational Awareness:** For real-time intelligence, precise timestamps allow analysts to understand the most current information available.

Some methods for reliable timestamping are likely already in place in the military OSINT collection context, while others might require additional software or process steps. These methods include:

- **Synchronized Clocks:** All military OSINT collection systems must have their clocks rigorously synchronized with a reliable, internationally recognized time source (e.g., Network Time Protocol–NTP servers²⁴⁷, Coordinated Universal Time–UTC) to ensure accuracy and consistency across different units and international partners.
- **Trusted Third-Party Timestamps:** For highly sensitive evidence, some services offer digital timestamping by a neutral third party, which cryptographically links a hash of the evidence to a precise time. This provides an independent verification that the data existed in its current form at that specific moment.
- **Blockchain:** Blockchain technology offers a future potential for immutable timestamping of digital evidence, providing a decentralized and highly tamper-resistant record.

By systematically applying these verification and forensic techniques, investigators can build a strong case for the authenticity and integrity of military-collected OSINT, crucial for the information to be admitted as evidence and used in prosecutions.

4.2.5 Conclusion

The transformation of Open Source Intelligence from raw, publicly available data into admissible evidence in a court of law, particularly within a military context, is a complex yet increasingly vital undertaking in the digital age. Its importance stems from its widespread availability and its potential to uncover facts, corroborate testimonies, and provide crucial insights in a vast array of military operations, from strategic intelligence gathering to documenting potential violations of international humanitarian law.

By embracing these principles, employing robust collection methodologies, maintaining an unblemished chain of custody, and rigorously verifying and contextualizing information, OSINT can successfully be elevated from a collection of raw data to compelling and legally defensible proof. Frameworks like the Berkeley Protocol, alongside the continuous evolution of national and international standards,

247 Network Time Protocol (NTP) is a system that allows computers and devices to automatically synchronize their time over the Internet or a local network. NTP is like a “clock for the network.” It ensures that all computers on the network have the same exact time—for example, a server, a laptop, and a camera all keep the same timestamps. This is especially important for OSINT, because accurate time helps to correctly reconstruct the sequence of events, compare data from different sources, and prove exactly when something happened.

provide a critical roadmap for navigating this challenging terrain. The ability to reliably and ethically leverage OSINT will be increasingly crucial for uncovering truth, holding individuals and organizations accountable, and ultimately strengthening the pursuit of justice for international crimes. In short, OSINT tools can effectively complement traditional procedural methods, especially in conditions of occupation or active hostilities, when access to the crime scene is limited or impossible.

With regard to practice in Ukraine, alongside international standards, the CPCU does not explicitly contain a category of “electronic evidence,” but Articles 84 and 99 allow photographs, audio, and video recordings to be used as documents in criminal proceedings. National courts in Ukraine may recognize OSINT as admissible evidence if it is properly documented in accordance with general CPCU requirements (e.g., an inspection report indicating the source and time of collection), although the Code does not provide clear standards for verifying reliability, leaving this to judicial discretion. Therefore, it is essential that national legislation be harmonized with the international frameworks discussed above, ensuring their adaptation and effective application in the Ukrainian context.

4.3

Use of modern technology to preserve and process evidence obtained from the battlefield during armed conflict

4.3.1 General description of the Delta Integration platform

Modern international criminal investigations rely on high-tech tools. One key tool already in use in the Defense Forces of Ukraine (DFU) for military purposes which is being implemented with the aim of effective interagency cooperation between pre-trial investigation bodies, the prosecutor’s office, and the DFU for the proper pre-trial investigation of international crimes is the “Delta” Integration Platform of the Center for Innovation and Development of Defense Technologies of the Ministry of Defense of Ukraine (Delta).²⁴⁸

The use of Delta as a tool for military personnel to report international crimes committed in areas of armed conflict and for cooperation between pre-trial investigation bodies and the military during investigation was launched in 2022 by the

248 Official website of Delta, <https://delta.mil.gov.ua>, Information about Delta from the official website, https://delta.mil.gov.ua/open-wiki/#_4.

AFU Territorial Defense Forces²⁴⁹ and is being implemented in other units of the Defense Forces as well.

Using Delta as a digital evidence database can contribute to the overall system for collecting and processing battlefield evidence in parallel to the collection of physical evidence. This approach ensures the comprehensiveness and complementarity of the documentation process, since both digital evidence and physical evidence are essential for forming a complete evidence base in investigations of potential international crimes. An important component of this process is the integration of military intelligence data into the Delta system. Such data can serve both as a primary source of information about potential violations of IHL and as an auxiliary tool for verifying the reliability of evidence already collected. Information obtained from military intelligence, unmanned systems, technical sensors, satellite imagery, radar, or human intelligence sources makes it possible to refine the temporal and spatial parameters of events, confirm the locations of strikes, track the movement of military units, determine the coordinates of affected sites, and identify the types of weapons used. The integration of this data into the Delta platform makes it more likely that it can be used in investigations and prosecutions. At the same time, it must be preserved in accordance with the rules governing the admissibility of evidence in criminal proceedings and weighed against other available evidence about the incidents in question.

Delta, as a military tool, has been deployed within the DFU and is used to perform direct military tasks.²⁵⁰ In particular, Delta creates a unified information and analytical environment for military command bodies and military units, enabling exchange of information at all levels, with differentiated user access rights to these resources. This is consistent with Ukraine's Military Security Strategy, which explicitly obliges military command authorities to maximize the effective employment of existing intelligence capabilities and assets; to create and develop new capacities for the collection, processing, analysis (including visualization), and dissemination of intelligence information; and to ensure that these functions are performed with the required level of automation.²⁵¹

249 New "Weapon" for Ukrainian Army – Legal, G. Mamedov, *Mirror of the Week*, March 14, 2024, <https://zn.ua/ukr/war/nova-zbroja-dlja-ukrajinskoji-armiji-juridichna.html>; Russia's International Crimes: What You Need to Know About the Role of Military Personnel in Documenting Them, August 25, 2023, G. Mamedov, V. Khekalov, *Mirror of the Week* <https://surl.li/wbmogw>; Abstracts: "Implementation of International Humanitarian Law in the Context of the Current Armed Conflict in Ukraine", G. Mamedov, V. Khekalov. Collection of materials of the international scientific and practical conference "Problems of legal support of defense of Ukraine", compiled by P. P. Bogutskyi, Y. V. Harust, L. V. Zaslavska, V. Pylypchuk; m. Kyiv, 2024: <https://ippi.org.ua/problemi-pravovogo-zabezpechennya-oboroni-ukraini>.

250 The official website of Delta, <https://delta.mil.gov.ua>; Resolution of the Cabinet of Ministers of Ukraine Some Issues of Increasing the Level of Digitalization of the Security and Defense Forces of Ukraine during Martial Law" of February 4, 2023, No. 139.

251 The Strategic Defense Bulletin of Ukraine, approved by Presidential Decree No. 240 of 6 June 2016, available at: <https://zakon.rada.gov.ua/laws/show/n0063525-21#Text>.

On February 4, 2023,²⁵² the Cabinet of Ministers of Ukraine adopted the proposals of the Ministry of Defense and the Ministry of Digital Transformation to increase the level of digitalization of the security and defense forces of Ukraine to ensure their interoperability with commensurate structures of NATO member States. The technological integration of Ukraine's Defense Forces with the systems of partners and allies, particularly NATO member states, is a key factor in enhancing the effectiveness of command, operational planning, and mission execution. At the same time, the use of such tools creates opportunities for a qualitatively new level of interagency cooperation, including in analytical and strategic activities. The use of Delta has been identified as a priority in the DFU.

Structurally, Delta is a complex of interconnected software modules, supplemented by a number of applications and tools:

- 1 **Software module for collecting, analyzing, and processing information ("Delta Monitor")**—designed to solve complex tasks of visualizing data from various sources, displaying the operational situation on an electronic map in real time, and plotting the operational situation on it. It provides visualization, storage, processing, and distribution of information.
- 2 **Geoinformation module**—designed to provide geodata for the activities of military command officials (military units). It provides:
 - visualization of maps at different scales;
 - selection of the necessary map layers;
 - application of conventional signs;
 - the ability to edit maps;
 - access to all available cartographic layers of the electronic map of Ukraine;
 - use of a set of service functions:
 - zooming in (out) according to the scale of the electronic map;
 - configuration of the cartographic environment;
 - measurement of distances and areas;
 - determination of coordinates, conversion of coordinates from the SK-42 and WGS-84 systems.

252 Resolution of the Cabinet of Ministers of Ukraine "Some Issues of Increasing the Level of Digitalization of the Security and Defense Forces of Ukraine during Martial Law" of February 4, 2023, No. 139, <https://zakon.rada.gov.ua/laws/show/139-2023-n#-Text>.

- 3 Software module for user identification and authentication**—designed to recognize and verify the authenticity of Delta users. It allows for:
- obtaining information about the user based on the identifier provided by them;
 - establishing the user's ownership of information in Delta based on their personal identifier;
 - granting permissions to the user to perform actions in the data processing system.
- 4 Information exchange software module**—designed for the rapid exchange of information items of various formats between users. It provides:
- real-time exchange of text and graphic data between users;
 - confirmation of sending and delivery of data and documentation of transmitted messages in the system, designed to register users of Delta, grant users access to its functions, and monitor user activity. It enables: creation of Delta users; granting users permissions and access rights to Delta functions.²⁵³

Key Delta services include:

1. MONITOR – a tool for collecting, processing, and displaying situational awareness information;
2. ELEMENT – a secure messenger for interaction and coordination between departments and users;
3. VEZHA – an aerial reconnaissance module that integrates video sensors into a single situational awareness space with the ability to decrypt and distribute the data obtained;
4. MISSION CONTROL – a module designed for interaction between unmanned systems crews for the purpose of distributing flight zones and joint task planning;
5. NEXTCLOUD – cloud storage (similar to Google Drive) for text and multimedia files; and
6. WIKI – description of the functionality of Delta.

The following functions are also provided:

- integration of suppliers of satellite images, radars, sensors, GPS trackers, and weapons;

²⁵³ Official website of Delta, <https://delta.mil.gov.ua>, Information about Delta from the official website, https://delta.mil.gov.ua/open-wiki/#_4.

- integration of external systems, in particular the chatbots eVorog (e-Enemy) and “STOP Russian War”; and
- interface for data exchange with allies in accordance with NATO standards.²⁵⁴

Thus, Delta creates a unified geoinformation and information-analytical environment for coordinating actions at all levels of government. Due to the legislative recognition of its priority and compliance with NATO standards, Delta ensures effective integration of various types of information systems, real-time data processing, and reliable protection of information flows in the cloud environment.

The platform’s functional flexibility, including the Monitor, Element, Vezha, Mission Control, and Target Hub modules, allows for the accumulation, systematization, and analysis of a wide range of operational data from various sensors, satellite images, and other sources, significantly expanding the capabilities to document international crimes.

Thus, Delta can provide a comprehensive approach to storing and processing information about international crimes—from initial recording in the combat zone to further processing by investigators and prosecutors who have access to Delta. Delta accumulates vast amounts of data, including thousands of hours of video from unmanned systems, individual photos, video clips, and geotagged information displayed on interactive maps. The use of unmanned systems allows for safer collection of information in combat zones and occupied territories and provides evidence which may, among other things, be capable of identifying enemy units and equipment in active combat conditions.²⁵⁵ Such unmanned systems include unmanned aerial systems, maritime unmanned systems, ground-based autonomous and remotely controlled modules, and sensor networks. The integration of data from these various sources into the Delta platform allows for cross-platform verification of events (e.g., comparing traces from ground video and maritime observations), increasing the reliability of conclusions and reducing the risk of misidentification.

The administrators of the layers where this information is stored are the very units that identify such information. Prosecutors and investigators can thus contact that unit with further questions or request access to data during their investigation.²⁵⁶ To smooth the process, the parameters of such a request (e.g., video record-

254 Official website of Delta, <https://delta.mil.gov.ua>, Information about Delta from the official website, https://delta.mil.gov.ua/open-wiki/#_4.

255 See above Chapter 2.2, 2.3.

256 Unfortunately, at times queries have been directed to entities that do not possess such information, such as the Center for Innovation and Development of Defense Technologies of the Ministry of Defense, which developed Delta but does not control the information uploaded onto it.

ings from the area of Zarichne village in Donetsk oblast, related to detained persons, on 25 September 2025) should be clearly specified and military units should establish a clear process for responding to such requests, for instance by designating a specific focal point for responses.

In view of the issues described above, the AFU Unmanned Systems Forces, in collaboration with prosecution authorities and law enforcement agencies, are developing and testing an algorithm for the collection and processing of information on IHL violations obtained from various sources, with the subsequent automation of the relevant process and its implementation, support, and administration in the AFU military units (subdivisions).

4.3.2 Use of Delta for criminal proceedings

Digital materials recorded and entered into Delta are important for criminal proceedings, as they are often the only source of systematically catalogued information from combat zones or temporarily occupied territories. Particular attention should be paid to admissibility requirements so that the data obtained is admissible as evidence under the CPCU.

Delta allows the creation of an electronic dynamic database with specialized layers for documenting potential international crimes, as well as damage to protected objects (cultural property, healthcare facilities, critical humanitarian infrastructure) (hereinafter referred to as the documentation layer).

Military personnel who have discovered information about violations of IHL or who are authorized to work in Delta within their unit enter this information into their own electronic map (layer) in Delta in accordance with established rules. The process of entering data into the electronic map involves the following steps:

- creating and filling out an information card at the level of the unit that detected and recorded the IHL violation;
- verifying the data in the information card;
- transferring information about violations of IHL up the chain of military command and sharing them with law enforcement and other state authorities by providing access to the information card in the Delta documentation layer or by alternative means (preparing reports and statements about criminal offenses in the form of text documents).

This method of information transfer is implemented as an auxiliary or alternative to a text document. For each potential IHL violation, an information card is created in the documentation layer: location (including visualization on an electronic map), date and time of detection of the violation; data on who is suspected to have

committed the violation (if such information is available); and circumstances of the violation.

Delta's design makes it possible for investigators to identify specific units and officials who possess the information they need, and allows users to optimize access to information/materials obtained by military units by processing and issuing information in Delta for pre-trial investigation bodies and the prosecutor's office. This can be done, for instance, by entering information about potential violations of IHL into the Delta documentation layer, processing and verifying data using system tools, continuously and promptly transmitting information between Delta operators and pre-trial investigation bodies, and establishing official 24/7 communication between military command bodies, military units and subdivisions of the DFU and pre-trial investigation bodies, in a single secure geoinformation and information-analytical environment, with compliance with the separation of user access rights. If an investigator or prosecutor has questions about the data, they can directly contact the specific person who uploaded or processed the information, with the messages transmitted being recorded and documented in the system.

The use of Delta layers for documentation purposes thus plays an important role in ensuring the rapid storage and exchange of information on violations of IHL. The information becomes a reliable basis for investigating and proving unlawful acts, as it allows the following types of data to be combined:

1. Data necessary for conducting expert examinations (explosive, trace, construction and technical, economic, commodity, etc.) to establish a causal link between specific military actions and the fact of damage, and to determine the extent of the damage.
2. Modelling data from Delta Monitor—the use of Delta Monitor makes it possible to verify or clarify information relevant to establishing the circumstances of a criminal offense such as reproduction of the situation and circumstances of a specific event, on all available cartographic layers of the electronic map of Ukraine with the choice of the scale and cartographic environment necessary for visualization. It also allows for conducting the necessary measurements of distances, area, determination of coordinates, recalculation of coordinates from the SK-42 and WGS-84 systems with reference to a specific object/unit.
3. Photos and videos that can be processed and synchronized. Delta functionality allows a user to process and synchronize photos and videos, and create video recordings, search and categorize by time and date, draw up plans and diagrams, and create graphic images.
4. Data from general layers (function “Historical state”)²⁵⁷ and information from the catalog of layers of system operators of the relevant grouping of the DFU,

making it possible to link alleged crimes to a specific Russian military unit, and to identify the responsible commanders.

5. Data from the integrated system “Virage”,²⁵⁸ which makes it possible to establish the location of missile launch and track the flight path.²⁵⁹

Delta also provides integration of satellite imagery, radars, sensors, GPS trackers, and munitions. Additionally, it can integrate external systems, including the eVorog and STOP Russian War chatbots, and it can provide an interface for data exchange with allies in accordance with NATO standards.

The cloud approach of the system’s architecture makes it possible to store all historical changes in the situation and see the movement of objects, as well as interact with an unlimited number of users in the units or headquarters of the Armed Forces of Ukraine, the State Border Guard Service of Ukraine, the Security Service of Ukraine, the National Police of Ukraine, and the Office of the Prosecutor General.

The capabilities of the integration system also allow receiving data from satellite map providers with image date highlighting like Maxar Secure Watch²⁶⁰ and Geolnt, which are updated in real time in an integrated manner, and from the air target detection system Virage -Tablet, maritime radars (according to the NATO OTH-T-G protocol), and Garmin satellite trackers.

The information is collected, analyzed, constantly updated, and organized in the following areas: aerial reconnaissance data, satellite reconnaissance data, intelligence from informant sources (and information from the occupied territories), infrastructure facilities and their condition (intact, damaged, destroyed), and data obtained through the data exchange interface with allied systems in accordance with NATO standards.

In view of the above, the information entered into the documentation layer of Delta allows investigators to track the time and location of an alleged crime, provides multi-level verification of information, and simplifies communication between all organizations involved in gathering evidence. Thanks to Delta Monitor’s wide range of functionalities and integration with Virage and other modules, users can conduct investigative actions and recreate the circumstances of events with high accuracy and efficiency. All this significantly enhances the potential of law enforcement agencies to fight international crimes, ensures effective cooperation with military units, and allows for systematic summarization of the results of documenting violations.

258 Ibid.

259 Ibid.

260 <https://www.maxar.com>.

4.3.3 Delta Summary

The use of Delta's automated systems can provide an opportunity to quickly and effectively investigate allegations of international crimes during the armed conflict in Ukraine.

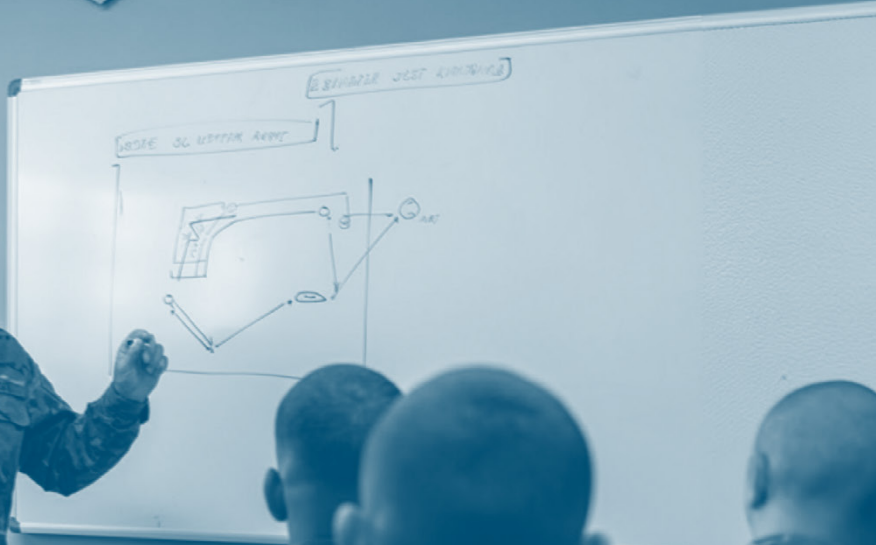
In addition, the immediate documentation of damage to or destruction of protected properties will enable the authorities to quickly establish the level of threat to IHL protected properties; determine whether proactive intervention is necessary to prevent further deterioration of their condition; and develop an action plan to protect, minimize the risks of deterioration and restore IHL protected properties.

The introduction of Delta into the DFU and the use of this software by military personnel to store and summarize information about violations of international humanitarian law facilitates the exchange of information between the DFU and law enforcement agencies in a unified geoinformation and information-analytical environment, as well as enabling the rapid and effective identification of those units and officials who have detected potential international crimes and entered data about them on an electronic map.

The application of its functions significantly expands the ability of investigators to model criminal events, conduct examinations, establish missile launch sites and identify enemy units. This contributes to the efficiency of investigations including prompt detection and prosecution of perpetrators, and ultimately strengthens Ukraine's national security and defense capabilities.

Ukraine is also working with EU support to develop the Smereka electronic criminal proceedings system for use in Ukraine's justice system.²⁶¹ Once Smereka is introduced, it will be important to ensure proper cross-platform integration between Delta and Smereka. The prospects for the digitization of criminal proceedings open opportunities for more efficient information exchange, provided that the necessary integration tools between the two systems are created.

261 Development of SMEREKA e-case management system, Delegation of the European Union to Ukraine, 2024, https://www.eeas.europa.eu/delegations/ukraine/development-smereka-e-case-management-system_en?s=232.



CHAPTER 5.

BUILDING COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

- 5.1** Introduction
- 5.2** Relevant Responsibilities and Obligations Under International Humanitarian Law and International Human Rights Law
- 5.3** Preventing Violations of International Humanitarian Law and Human Rights Law by Military Personnel
- 5.4** Specially Authorized Bodies Responding to Violations of IHL
- 5.5** Conclusion

5.1 Introduction

In the face of Russia's invasion, Ukraine's defense is both a fight for sovereignty and a demonstration of its commitment to democratic principles, the rule of law, and international norms. Ukraine's conduct on the battlefield carries profound legal, moral, and strategic implications. Upholding International Humanitarian Law (IHL) and International Human Rights Law (IHRL) is essential, not simply to meet legal obligations, but to establish Ukraine's identity as a credible democracy that respects the law and human rights. Building compliance enhances battlefield effectiveness, reinforces international legitimacy, and improves the prospects for sustainable peace.

5.1.1 Legal Obligations and Moral Responsibilities

Ukraine and its defense forces are legally bound to uphold IHL and IHRL, even during full-scale conflict and in the face of an adversary that routinely violates these principles. As a State Party to the Geneva Conventions, the European Convention on Human Rights (ECHR), and other key treaties, Ukraine operates within a comprehensive legal framework governing wartime conduct. Many of these obligations also apply customary international law, which is binding regardless of treaty ratification. They are further reinforced by their incorporation into domestic legislation and military codes, making service members individually accountable under both national and international law.

Beyond legal compliance, there is a moral imperative to mitigate suffering and protect human dignity. Adherence to IHL and IHRL, even under the harshest conditions, reinforces the professionalism and moral credibility of Ukraine's defense forces.

5.1.2 Strategic and Operational Effectiveness

Military operations conducted in accordance with operational law including IHL and IHRL promote discipline, cohesion, and legitimacy within defense forces directly contributing to operational effectiveness. Compliance reduces the risk of psychological harm, such as post-traumatic stress disorder and increased suicide rates among veterans. Strategically, lawful conduct helps prevent setbacks, bolsters international support, and shortens the duration of conflicts.

History provides compelling evidence that lawful conduct can be a force multiplier. For example, humane treatment of Iraqi prisoners of war (POWs) dur-

ing Operation Desert Storm accelerated surrender rates and hastened the end of hostilities. Conversely, just as Russia's routine use of abusive and inhumane treatment of Ukrainian POWs strengthen Ukraine's will to fight, detainee abuse during Operations Enduring Freedom and Iraqi Freedom undermined coalition legitimacy, fueled insurgencies, and prolonged the conflict. Unlawful actions can alienate populations, provoke retaliation, and erode mission success, while ethical conduct de-escalates violence, protects both troops and civilians while strengthening strategic communications and international support.

5.1.3 Accountability and Protection

Compliance with international law is a critical asset in the complex information environment of modern warfare. Ensuring military actions are legally justified and properly documented reduces legal exposure for individual soldiers and commanders. It safeguards members of the armed forces from future prosecution and counters Russian propaganda aimed at undermining Ukraine's legitimacy.

Moreover, consistent adherence to legal standards supports the credibility of evidence used in prosecuting war crimes, making it more difficult for Russia to discredit international legal proceedings. In this way, legal compliance reinforces both justice and Ukraine's strategic narrative of operational legitimacy in the overall conflict.

5.1.4 Foundation for Peace

Wartime conduct rooted in legality and human dignity lays the groundwork for post-war justice, reconciliation, and stability which are essential elements of national recovery. Ukraine's compliance with IHL and IHRL distinguishes it as a principled actor committed to human rights, therefore, enhancing international support and trust. In the long term, maintaining high legal and ethical standards strengthens Ukraine's position not only in achieving victory but in securing a lasting and just peace.

5.1.5 Summary

This chapter examines Ukraine's legal responsibilities and institutional measures for upholding international law in armed conflict. Chapters 5.2 through 5.4 outline the country's obligations, preventive measures, and enforcement mechanisms, reflecting Ukraine's commitment to safeguard human dignity and the rule of law even in wartime.

Together, these sections demonstrate how Ukraine integrates legal commitments, operational practices, and institutional safeguards into a unified system. By embedding IHL and IHRL into command, culture, and accountability structures, Ukraine strengthens civilian and combatant protection while reinforcing its credibility as a defender of sovereignty and democracy. This commitment transforms Ukraine's wartime defense into a durable framework for accountability, justice, and lasting peace.

5.2

Relevant Responsibilities and Obligations Under International Humanitarian Law and International Human Rights Law

5.2.1 Overview

As a State Party to multiple international conventions and treaties, Ukraine is bound by two distinct yet complementary legal systems that protect human dignity in wartime: IHL and IHRL.

IHL governs the conduct of armed conflict, applying only during war to limit harm by protecting civilians, regulating targeting, and ensuring humane treatment of detainees. IHRL provides broad, continuous protection for fundamental rights and freedoms, operating regardless of circumstances to ensure core human rights are upheld.

During armed conflict, these frameworks operate concurrently and provide overlapping layers of protection. IHL takes precedence over matters directly involving combat operations and military conduct. Simultaneously, IHRL maintains its protective role in areas beyond IHL's scope such as safeguarding regular citizens' due process rights, freedom of expression, and other essential liberties, some of which are not suspended during war. Both bodies of law work in concert to promote humanitarian principles. Together, they form a robust legal framework of protections during armed conflict.

5.2.2 Key Legal Frameworks

Ukraine is bound by the Hague Conventions, the four Geneva Conventions, their Additional Protocols, Customary International Law, as well as the International Covenant on Civil and Political Rights (ICCPR), the ECHR, the Convention against Torture, the International Convention on the Elimination of All Forms of Racial Dis-

crimination, and the International Convention for the Protection of All Persons from Enforced Disappearance, The Convention on the Rights of the Child with its Optional Protocol on the Involvement of Children in Armed Conflict, as well as numerous other human rights treaties.

As a Party to the treaties discussed above, Ukraine has incorporated its IHL and IHRL obligations into domestic law. The foundation is in Article 9 of Ukraine's 1996 Constitution, which established that ratified international treaties automatically form part of national legislation and prevail over conflicting domestic laws, except where constitutional amendments are required. This constitutional framework has enabled Ukraine to embed treaty obligations throughout multiple levels of its legal system. In addition, these treaty commitments are directly reflected in Ukraine's Constitution, which guarantees a broad spectrum of fundamental rights such as the right to life, prohibition of torture, freedom of expression, equality before the law, and protection of vulnerable groups, mirroring international standards.

At the statutory level, Ukraine is in a continuous process of aligning its domestic laws with its treaty obligations, some of which has been in response to ongoing armed conflict with Russia. The Criminal Code of Ukraine (CCU) criminalizes aggression (Article 437), war crimes (Article 438), genocide (Article 442), crimes against humanity (Article 442-1), torture (Article 127), hostage-taking (Article 147), human trafficking (Article 149), and the misuse of protected emblems (Article 445), closely tracking the relevant treaty provisions.

5.2.3 International Humanitarian Law

IHL regulates the methods and means of warfare and protects those who are not, or are no longer, taking part in hostilities. It serves both humanitarian and functional purposes. It minimizes unnecessary suffering and ensures fundamental protections for individuals such as civilians, POWs, the wounded or sick, and medical or religious personnel, while also promoting disciplined lawful use of military force.

5.2.4 Key Obligations

Conduct of Hostilities. Warfare must be conducted in accordance with the core principles of necessity, proportionality, distinction, and precaution. These principles prohibit indiscriminate attacks and require all feasible measures to be taken to minimize civilian harm.

Necessity. This principle permits only the degree of force required to achieve a legitimate military objective. Recognized under customary international law, it allows measures not otherwise prohibited by IHL if they are essential to defeating the

enemy. However, this principle is not absolute and is constrained by the principles outlined below. Acts that inflict unnecessary suffering or target civilians or civilian infrastructure cannot be justified by necessity. Ultimately, while military necessity provides operational flexibility, it must operate within legal limits designed to reduce human suffering.

Proportionality. Civilian harm must not be excessive in relation to anticipated military advantage. Commanders must carefully balance military objectives with the need to minimize incidental loss of civilian life and damage to civilian objects.

Distinction/Protection of Civilians. Combatants must be distinguished from civilians at all times. Civilians must never be intentionally targeted unless they are directly participating in hostilities, and civilian objects such as hospitals, schools, and other critical infrastructure are protected from attack unless they become lawful military objectives because by their use, purpose, or location they are contributing to military action.

Precaution. Feasible precautions must be taken to avoid or minimize civilian harm during military operations. This includes verifying targets, selecting means and methods of attack that reduce risk to civilians, and providing effective warnings when possible.

Persons *hors de combat*. All individuals who are not, or are no longer, participating in hostilities, such as civilians and POWs, must be treated humanely and with dignity, including adequate detention conditions and safeguards against abuse.

Respect for the Dead. Ukraine must ensure the respectful collection, identification, and handling of the dead, including enemy combatants, and facilitate the return of remains whenever possible.

Protection of Medical and Humanitarian Personnel. Medical personnel, facilities, transport, and humanitarian relief workers must not be targeted. All parties must ensure their safety and allow them to perform their duties without interference.

Obligations in Liberated or Occupied Territories. In areas under Ukrainian control, whether liberated, such as Bucha, Iziium, and Kherson, or if Russian territories in the future are occupied, authorities must ensure the safety and well-being of the civilian population. The use of collective punishment is strictly prohibited, and individuals suspected of collaboration or other offenses must be afforded due process in accordance with international legal standards.

Prevention of War Crimes. Under **Additional Protocol I (API) (Articles 86, 87)** and other sources of treaty and customary international law,²⁶² Ukrainian military commanders have a legal duty to prevent, suppress, and punish war crimes committed by forces under their command and control. This includes taking all feasible measures to prevent IHL violations. This principle holds superiors criminally liable if they knew, or should have known, about violations and failed to take reasonable measures within their power to prevent the violations or punish those responsible.

5.2.5 International Human Rights Law

IHRL protects the inherent dignity and inalienable rights of all individuals within a State's jurisdiction regardless of nationality or legal status. It safeguards fundamental freedoms and prevents State abuse of power. States bear the primary responsibility to respect, protect, and fulfill the human rights of everyone under their authority and control.

While IHRL applies continuously, some rights may be temporarily limited through derogations which allow States to suspend certain obligations during declared public emergencies such as war or civil unrest. These derogations, permitted under treaties like ICCPR and ECHR, are subject to strict conditions:

- exceptional in nature;
- necessary and proportionate to the crisis;
- non-discriminatory; and
- time-limited and officially notified to relevant international bodies.

Certain rights, however, are non-derogable and must be upheld at all times, including prohibitions against genocide, slavery, torture or cruel treatment, enforced disappearance, arbitrary deprivation of life, prolonged arbitrary detention, and systematic racial discrimination.

5.2.6 Key Obligations

Right to Life/Protection from Arbitrary Killings. Ukraine has a legal obligation to protect the right to life of all individuals within its territory and jurisdiction. This includes preventing unlawful killings, prohibiting extrajudicial executions, and

262 I. Additional Protocol I to the Geneva Conventions (1977): Article 86 – Failure to Act, Article 87 – Duty of Commanders; II. Rome Statute of the International Criminal Court (1998): Article 28 – Responsibility of commanders and other superiors; III. Customary International Humanitarian Law (ICRC Study, 2005): Rule 152 – Command responsibility, Rule 153 – Duty of commanders to prevent and suppress violations.

ensuring prompt, thorough, and impartial investigations into any alleged violations.

Prohibition of Torture and Ill-Treatment. Torture and cruel or degrading treatment are absolutely prohibited, including during armed conflict.

Due Process and Fair Trial. Due process guarantees apply even during emergencies, ensuring fair, impartial, and timely trials for all.

Protection of Freedoms and Civil Liberties. Fundamental freedoms such as freedom of expression, peaceful assembly, and association must be respected. While certain rights may be lawfully restricted during emergencies.

Non-Discrimination. Rights must be upheld without discrimination based on ethnicity, language, religion, political affiliation, or other grounds. All individuals are entitled to equal protection under the law.

Protection of Internally Displaced Persons (IDPs). Ukraine must protect and support IDPs, ensuring access to essential services, civil documentation, and the right to voluntarily return when conditions are safe. Particular attention must be paid to the rights of vulnerable groups, especially in contested or recently liberated areas.

5.2.7 Investigation and Accountability under IHL and IHRL

Whether assessed under IHL or IHRL, Ukraine has a clear duty to investigate alleged violations of international law committed by its nationals or within its territory and hold perpetrators accountable. Under this dual legal framework, a State may be simultaneously accountable under IHL for failing to investigate battlefield conduct and under IHRL for failing to remedy abuses like torture or unlawful killings by its agents.

5.2.7.1 Obligations Under IHL

The 1949 Geneva Conventions require States to criminalize “grave breaches,” search for perpetrators, and bring them to trial regardless of their nationality. While the Geneva Conventions themselves state that the duty to investigate is triggered by an allegation of a “grave breach,” practice and doctrine extend the duty to all serious IHL violations. Examples include Rules 156 and 158 of International Committee of the Red Cross’ (ICRC) study of Customary IHL. Rule 156 defines war crimes broadly as “serious violations of international humanitarian law” and Rule 158 which memorializes an obligation to investigate all war crimes. Together, Rules 156 and 158, and their commentary, oblige States to investigate war crimes including serious IHL violations as well as the Geneva Conventions’ grave breaches. **API, Articles**

86-87 further oblige military commanders to take all feasible measures to prevent, report, and respond to violations, including initiating disciplinary or penal action. The **Rome Statute of the International Criminal Court** (ICC) echoes this responsibility, affirming that the most serious crimes must not go unpunished and calling upon State Parties to take effective national measures and promote international cooperation to ensure prosecution.

Over time, these treaty-based duties have also evolved into customary international law. Rule 158 of the ICRC's study of Customary IHL reflects the requirement that States investigate alleged war crimes committed by their nationals, armed forces, or within their territory. Together, these sources establish a **duty to conduct prompt, impartial, and effective investigations** into all indications of serious IHL violations by any party to the conflict.

5.2.7.2 Obligations Under IHRL

Ukraine also has binding obligations under human rights treaties to investigate serious violations. Article 2(3) of the ICCPR requires States to provide effective remedies and investigate serious human rights abuses, including unlawful killings and torture by State agents or within their territory. Investigations must be prompt, impartial, and thorough.

5.3

Preventing Violations of International Humanitarian Law and Human Rights Law by Military Personnel

5.3.1 Introduction

Under international law, Ukraine has a binding obligation to ensure its military personnel are thoroughly trained and aware of its international law obligations and its defense forces have a fundamental duty to prevent violations. This obligation is rooted in key treaties such as the 1949 Geneva Conventions which includes the requirement to “respect and ensure respect” for the Conventions, the 1977 API, the ICCPR, and the Convention Against Torture, as well as in customary international law.

In addition to the imperative to abide by international law, Ukraine's prevention of IHL and IHRL violations by its own military is critical in upholding the rule of law and reinforcing its moral and legal position in the face of Russian

aggression and its clear violations. By demonstrating respect for its international obligations, Ukraine strengthens its credibility in seeking accountability for violations committed by Russian forces and ensures that its pursuit of justice is not undermined by allegations of its own misconduct. This commitment reinforces the legitimacy of Ukraine's claims before international courts and in the eyes of the global community.

Good practices, suggested from international experiences, forming the backbone of prevention of violations by military personnel are outlined below and include: integrate IHL and IHRL obligations into domestic law, policy, and military guidance; embed legal advisors into command structures; command responsibility and legal accountability; comprehensive IHL and IHRL education and training; monitor, evaluate, and incorporate lessons learned; civil-military coordination; and enhance technology's role in preventing violations.

In addition to the good practices outlined in this section, involving military personnel directly in identifying IHL violations and preserving evidence for future accountability also fosters a stronger culture of respect for the law and improves compliance with IHL and IHRL among Ukrainian forces. Active participation in this process reinforces the link between battlefield actions and legal consequences, making compliance with IHL and IHRL a shared responsibility rather than an abstract principle. By contributing to the pursuit of justice, military personnel internalize the importance of lawful conduct, strengthening discipline, professionalism, and Ukraine's standing in the international community.

5.3.2 Integrate IHL and IHRL Obligations into Domestic Law, Policy, and Military Guidance

Integrating IHL and IHRL obligations into domestic law, policy, military regulations, doctrine, and procedures is essential to prevent violations by military personnel. This process transforms international obligations into specific, enforceable standards that guide conduct across all levels of military operations.

A comprehensive domestic legal framework that promotes international law compliance establishes the foundation for accountability. It enables the investigation and prosecution of war crimes and other serious violations, reinforces discipline, and deters future misconduct. Embedding these principles in Ukrainian national law also empowers commanders to enforce compliance and uphold a culture of respect for legal obligations within the armed forces.

Further incorporating these obligations into military doctrine, manuals, and procedures offers practical guidance on applying the law in real-world scenarios. Military guidance grounded in IHL and IHRL translate legal norms into operational

practices, covering areas such as targeting, detention, and civilian protection. This includes concrete measures like marking protected sites (e.g., hospitals and cultural property) and issuing identification cards to combatants and protected persons which serve as tools that directly support compliance during operations.

Ukraine's obligations under international law are reflected in domestic legislation, including the Law on the Armed Forces, the Laws on Defense of Ukraine, the Law on National Security, Military Statutes, and the CCU, which criminalize war crimes and human rights abuses. The Ministry of Defense and the General Staff have also issued military subordinate normative acts that incorporate IHL principles into operational planning and conduct such as the IHL Instruction, outlined in Chapter 1.3.

To ensure lasting impact, these legal standards must be consistently implemented and enforced. Robust accountability mechanisms are essential, not only to uphold the law but also to enhance operational effectiveness, maintain discipline, and reinforce Ukraine's credibility on the international stage.

5.3.3 Embedding Legal Advisors Into Armed Forces' Command Structures

Integrating legal advisors into military command structures is essential for ensuring compliance with IHL and IHRL during operations. Legal advisors provide commanders with real-time legal guidance helping interpret complex legal frameworks and applying them to dynamic battlefield situations. Their presence supports well-informed decision-making, prevents unlawful actions, and promotes accountability, legitimacy, and protection of human dignity in military operations.

Legal advisors should be assigned to all strategic, operational, and tactical commands and fully integrated into the commander's staff during military operations to facilitate compliance with international obligations and norms. Legal advisors provide guidance on critical issues such as rules of engagement, targeting, and detention, where legal clarity directly impacts mission success and compliance. Their early involvement in planning helps prevent violations before they occur, while their presence during operations enables commanders to make informed, lawful decisions in dynamic environments. Beyond operations, legal advisors contribute to training, and after-action reviews, reinforcing accountability and institutional integrity.

Embedding legal advisors is not only a best practice, but also a legal obligation under Article 82 of AP I to the Geneva Conventions. Ukraine has recognized the importance of legal advisors by mandating their integration through both law and doctrine. Under Article 99 of the Statute of the Internal Service of the Armed

Forces of Ukraine (Law No. 548-XIV, 1999), each military unit must include a legal advisor (the assistant commander for legal work). This requirement applies across all branches of Ukraine's defense forces, including the Defense Forces, National Guard, Security Service, Border Guard Service, State Special Transport Service, and the State Service for Special Communications. In both peacetime and armed conflict, Ukrainian legal advisors are responsible for overseeing legal functions within their unit. During hostilities, they also advise commanders on IHL and rules of engagement, while coordinating legal training and guiding personnel on the application of IHL and IHRL.

According to Chapter 6, Section I of Ukraine's IHL Instruction, legal advisors must:

- advise commanders on IHL compliance;
- coordinate IHL training and education;
- guide personnel on the application of IHL; and
- remind commanders of their legal obligations, and if necessary, report non-compliance to higher command (per Article 87 of AP I).

To maximize their impact, commanders should fully embed legal advisors into operational planning and decision-making processes. This includes involving them early in planning cycles and including them in briefings and rehearsals. Where feasible, legal advisors should be co-located with command staff to ensure immediate consultation and foster strong working relationships.

Additionally, cross-training initiatives can strengthen collaboration by helping legal advisors better understand operational realities, while increasing commanders' and operators' awareness of legal obligations. When integrated effectively, legal advisors are not simply procedural checkpoints, they are strategic assets who enhance mission effectiveness, protect civilians, and uphold the rule of law.

5.3.4 Command Responsibility and Legal Accountability

Commanders have a legal and moral responsibility to ensure that their units uphold international law obligations because they exercise direct authority and control over their personnel. This responsibility arises from their authority and control over personnel, obligating them to prevent, halt, and respond to violations committed by subordinates.

Commanders set the tone for discipline and legal compliance within their units and are uniquely positioned to intervene in real time. Their leadership directly influences whether legal standards are upheld or ignored. A failure to act sends a

clear signal that misconduct is tolerated and undermines operational effectiveness, unit cohesion, and respect for the law.

Command responsibility reinforces accountability throughout the chain of command. It helps prevent impunity, supports the lawful use of military power, and preserves the integrity of the armed forces. Upholding this responsibility also builds internal trust and strengthens the military's credibility on the international stage.

5.3.4.1 Legal Bases for Command Responsibility

International law, including Articles 86–87 of API to the Geneva Conventions and Article 28 of the Rome Statute, establishes that commanders may be held criminally liable if they knew or should have known about violations and failed to act. The CCU now mirrors these standards under Article 31-1, which holds commanders may be criminally responsible for crimes committed under their effective control, even if they did not directly participate.

Ukrainian military regulations also affirm that commanders bear personal responsibility for ensuring legal compliance and the protection of human rights within their units. Article 58 of the Statute of the Internal Service of the Armed Forces of Ukraine makes commanders solely responsible for the combat readiness, discipline, training, welfare, and moral condition of their units. They are required to enforce the Constitution, national legislation, and military regulations.

Article 59 of the same statute explicitly extends this duty to include compliance with Ukraine's international obligations. Commanders are required not only to obey these obligations themselves but also to demand compliance from their subordinates. This is reinforced by Ukraine's IHL Instruction, which mandates that commanders organize IHL training, stop violations, and ensure that perpetrators are held accountable. They must also engage legal advisors to handle IHL related issues and ensure that investigations are conducted in accordance with both national legislation and international standards.

Together, these regulations position the commander as the central figure in ensuring lawful conduct in military operations and reinforce the principle that commanders are not only military leaders but also enforcers of legal and ethical standards in armed conflict.

5.3.4.2 Commanders' Best Practices

- **Lead by Example and Set the Command Climate.** Commanders must demonstrate and demand lawful conduct through their personal behavior, communications, and leadership. A strong command climate that emphasizes integrity, ethical decision-making, and accountability promotes legal compliance.

- **Integrate Legal Compliance into Training and Operations.** Legal training should be regular, scenario-based, and operationally relevant. All personnel must understand basic international law principles, their individual responsibilities, and the consequences of violations. Legal advisors should be embedded in planning and execution to provide timely, mission-focused guidance. This not only reinforces lawful conduct but emphasizes that legal compliance is a core element of an effective and professional military.
- **Supervise, Prevent, and Take Immediate Action.** Commanders must issue clear, lawful orders, monitor execution, and act immediately when violations occur or are at risk. This includes fostering a system where personnel understand their duty to report misconduct and where violations are actively prevented and addressed. Prevention also includes monitoring unit behavior, understanding risk factors, and reinforcing expectations before and during missions.
- **Establish Effective Accountability Systems.** Defense forces and commanders must ensure the availability of safe, confidential reporting channels. Clear, confidential procedures for reporting violations, with strong protections for whistleblowers, encourage early disclosure of misconduct should be implemented. Allegations should be investigated promptly, impartially, and thoroughly. Appropriate disciplinary or legal measures must follow confirmed violations to demonstrate that misconduct will not be tolerated. Accountability is essential not just for victims, but for the moral integrity of the military and the nation.
- **Foster a Culture of Legal and Ethical Conduct.** Legal compliance must be embedded in military culture, not just taught in the classroom. This includes rewarding ethical leadership, incorporating compliance into doctrine and standard operating procedures, and ensuring accountability is a shared responsibility across all ranks. Ultimately, commanders are not only operational leaders but also the primary guardians of law, discipline, and human dignity in armed conflict.

Command responsibility is both a legal obligation and a cornerstone of military professionalism. Commanders are entrusted with the authority necessary to prevent and address violations of IHL and IHRL. Their leadership directly shapes unit behavior, ensures justice for victims, and safeguards the credibility of the armed forces. In every conflict, commanders serve as the vital link between legal norms and conduct on the battlefield. See Chapter 3.5 for discussion on commanders' role in the collection and preservation of battlefield evidence.

5.3.5 Comprehensive IHL and IHRL Education and Training

Comprehensive education and training in international law are essential to prevent violations. Effective training ensures that all personnel understand their legal obligations and the consequences of unlawful conduct. It equips military personnel to distinguish between lawful and unlawful orders, recognize protections afforded to civilians and detainees, and make sound decisions under operational stress. Scenario-based and continuous instruction fosters a culture of respect for the law and empowers military personnel to prevent, recognize, and report misconduct.

IHL training provides Ukrainian military personnel with the legal and practical skills to identify, document, and preserve evidence of violations in a manner that is consistent with international standards. Military personnel learn to identify and protect crime scenes, follow essential procedures for collecting and safeguarding evidence, and report. This awareness ensures that evidence remains credible and admissible in court, strengthening the chain from battlefield to courtroom and reinforcing Ukraine's pursuit of justice. Preserving and documenting violations not only supports accountability against Russian forces but also serves as a powerful deterrent to misconduct within Ukraine's own ranks. By witnessing IHL violations firsthand and witnessing their serious, often horrific nature and devastating impact, military personnel gain a deeper understanding of the importance of lawful conduct in war. This experience makes clear which actions must be avoided and reinforces that both Russian and Ukrainian personnel can face accountability for violations.

5.3.5.1 Legal Obligations

Ukraine is legally required to provide IHL and IHRL training under both international and domestic law. As a Party to the four Geneva Conventions of 1949 and API, Ukraine must incorporate IHL into military training. Ukraine is also bound by key human rights instruments, including the ICCPR and the ECHR, which require that military personnel be trained to uphold human rights standards. Domestically, Ukraine's Chapter 5, Section 1 of the IHL Instruction mandates IHL education both in peacetime and during armed conflict. Commanders are responsible for organizing and participating in training, ensuring that personnel understand the law and the criminal consequences of violations under Ukrainian law.

5.3.5.2 Best Practices for Training and Education

It is essential to ensure not only the existence of substantive norms but also clear procedural provisions – consistent, comprehensible, and legally defined mechanisms for implementing the rules of IHL in the daily activities of military units and during the execution of operations.

- **Institutionalizing Training.** To be effective, IHL and IHRL training and education must be institutionalized across all levels of military education and professional development. It should begin at the basic level for new recruits and continue through advanced courses for officers and senior commanders. One-time or infrequent instruction is insufficient. Training and education must be mandatory, continuous, and regularly updated, particularly before and during deployment, to reflect evolving operational realities. Such training should not be merely formal or treated as a residual activity to be delivered only after all other topics have been covered, simply to fulfill a checklist requirement. It must be prioritized and integrated as a core component of military readiness.
- **Tailor Content to Roles and Contexts.** Training should be tailored to the roles and responsibilities of various military personnel. Combat troops, Unmanned Aerial Systems units, legal advisors, medical staff, military police, and commanders require instruction relevant to their functions and decision-making authority. Content should be grounded in realistic operational scenarios, such as urban operations and drone operations, based on past or anticipated missions. This contextual approach helps ensure that legal obligations are internalized and practically applied.
- **Operational Tools to Reinforce Training.** Practical tools reinforce training by helping personnel apply legal principles in real life situations. These tools support quick reference and help embed legal compliance into daily operations. They include:
 - pocket-sized Rules of Engagement (ROE) cards;
 - quick reference guides for IHL and IHRL;
 - incident response checklists;
 - legal decision-making aids for commanders;
 - tactical and scenario-based discussion cards; and
 - posters and infographics as visual reminders.
- **Engaging and Practical Training Methods.** Effective training must be interactive, engaging, and grounded in adult learning principles. Traditional lectures should be supplemented with:
 - small-group discussions;
 - role-playing exercises;
 - tactical decision games; and
 - integration of legal principles into field exercises;

- mobile apps, digital modules, and e-learning platforms enhance accessibility for dispersed or deployed units, in compliance with cyber hygiene and electronic warfare measures.
- **Involve Legal and Operational Experts.** Training should be developed and delivered by teams that include both legal experts and military personnel with extensive operational experience. Legal advisors must understand both international law and the realities of military operations. Combining legal and operational perspectives ensures credibility and practical relevance. Wherever possible, commanders should take an active role by leading and endorsing IHL and IHRL training and education. This can be effectively accomplished by having unit commanders introduce the training or provide closing remarks demonstrating their clear expectations that IHL be followed at all times.
- **Evaluate Training Effectiveness.** Training effectiveness must systematically measure outcomes. Evaluation methods should include:
 - Written exams;
 - Scenario-based assessments;
 - Participant feedback;
 - Observations during exercises and operations to determine how legal principles are applied during exercises and actual operations.

Lessons learned from training evaluations, field performance, and post-deployment debriefs should inform continuous cycle of improvement of training content and methods.

- **Partnering with External Experts.** Collaboration with external partners enhances training quality and legitimacy. Organizations such as the ICRC, UN, NATO, and specialized NGOs offer expert guidance, up-to-date legal standards, and practical tools. Engagement with these partners, including participation in multinational exercises, fosters best practice sharing, interoperability, and commitment to shared legal standards.

In summary, preventing violations requires training and education that is systematic, realistic, and fully integrated into military culture and doctrine. It must go beyond legal instruction to foster ethical leadership and the operational discipline needed to uphold the law, even in high-pressure combat situations.

5.3.6 Monitor, Evaluate, and Incorporate Lessons Learned

Effective monitoring and evaluation are essential for preventing violations during military operations. Internal oversight mechanisms enable leadership to as-

sess how well personnel understand and apply legal obligations in practice. These assessments should inform updates to command policies, leadership practices, and training programs to ensure continued relevance and effectiveness. Identifying patterns of misunderstanding or non-compliance allows for targeted interventions, such as refresher training, scenario-based exercises, or leadership adjustments to reinforce legal compliance.

After Action Reviews should be conducted after military operations, exercises, deployments, or significant incidents. They should be done consistently and include legal assessments to identify gaps, highlight best practices, and guide revisions to military guidance. Treating lessons learned as a basis for institutional improvement reduces the risk of future violations and strengthens compliance with international legal standards.

5.3.7 Civil-Military Coordination

Effective civil-military coordination is vital to preventing international law violations during military operations. Strengthening communication and cooperation between armed forces and humanitarian actors helps protect civilians, preserve humanitarian space, and facilitate timely aid delivery. Establishing liaison mechanisms with humanitarian organizations, human rights monitors, and civilian protection actors allows for the exchange of information on risks, operational constraints, and protection needs. This enhances situational awareness and supports the planning of military activities that respect and complement humanitarian efforts.

In volatile or urban settings, coordination through regional military-civil administrations can clarify responsibilities, strengthen governance, and ensure that civilian protection is integrated into daily operations and stabilization efforts. Joint planning exercises and training involving military personnel, local authorities, and humanitarian actors help build mutual understanding, improve interoperability, and reduce friction during real-world missions.

Best practices include implementing deconfliction protocols, using joint planning frameworks, and maintaining regular engagement with civilian stakeholders to identify and mitigate risks early. Encouraging commanders and planners to participate in coordination forums and collaborative training reinforces the shared responsibility to protect civilians and comply with international law. When fully institutionalized, civil-military coordination becomes a key tool for enhancing operational effectiveness and ensuring legal and ethical conduct on the battlefield. Civil-military cooperation units' role in collecting battlefield evidence is discussed in Chapter 3.6.3 above.

5.3.8 Enhance Technology's Role in Preventing Violations

The responsible use of technology can significantly aid in supporting adherence to IHL and IHRL. Tools such as precision-guided munitions, advanced surveillance systems, and geospatial mapping technologies enhance situational awareness and help distinguish military targets from civilian objects. When integrated into planning and targeting processes, these technologies reduce the risk of civilian harm and support adherence to the principles of distinction and proportionality.

Beyond operational tools, digital platforms and mobile applications can strengthen training, monitoring, and accountability. E-learning modules and mobile apps provide accessible, real-time legal guidance, even in remote or deployed settings. Technologies that support secure communication and rapid reporting improve responsiveness to potential violations and facilitate coordination with legal advisors and humanitarian actors.

Additionally, body-worn cameras, drone footage, and data-logging tools can document operational conduct, promote transparency, and support investigations into alleged misconduct. When used ethically and in accordance with legal standards, technology becomes a powerful tool for promoting legal compliance and protecting civilians.

5.3.9 Summary

Preventing violations of international law by military personnel requires a comprehensive, integrated approach. Ukraine has taken important steps to embed international legal obligations into its national legislation and military structures. Continued progress depends on consistent implementation through effective command responsibility, institutionalized legal training, the integration of legal advisors, and robust systems for monitoring, reporting, and accountability. Direct involvement of military personnel in identifying IHL violations and preserving evidence strengthens their commitment to lawful conduct and reinforces Ukraine's pursuit of justice. By consistently applying these best practices, Ukraine can ensure its military remains both operationally effective and accountable to the highest legal and ethical standards.

5.4 Specially Authorized Bodies Responding to Violations of IHL

Compliance with IHL is essential for maintaining good order and discipline, in the Armed Forces of Ukraine and other formations. Adherence to IHL not only fulfills Ukraine's international obligations but also strengthens combat effectiveness, troop morale, and the legitimacy of Ukraine's military actions, while enhancing its ability to defend its interests before national and international courts.

Consequently, a number of different institutions inside and outside the Ukrainian Defense Forces play roles in promoting compliance with IHL and responding to violations:

- the Military Legal Service;
- civil-Military Cooperation Units;
- reconnaissance Units;
- psychological Support Units;
- military Chaplain Service;
- military Medical Personnel;
- the Military Law Enforcement Service;
- Units investigating the circumstances, causes, and conditions of offenses;
- government Entities whose Mandates Include IHL Compliance;
- the Office of the Prosecutor-General; and
- law Enforcement Agencies.

Civilian entities and those primarily responsible for IHL compliance and investigating adversary violations are addressed in Chapter 6.2 below. Here, we briefly describe those military units who are responsible not just for addressing adversary violations but also for promoting compliance within Ukraine's own Defense Forces, including by investigating alleged violations by their members.

5.4.1 Military Services Responsible for Promoting IHL Compliance within Ukraine's Defense Forces

5.4.1.1 Legal Service (Legal Advisors)

Each military unit has an assistant commander for legal affairs (legal advisor), who heads the unit's legal service.²⁶³ In peacetime, the advisor oversees legal work; in wartime, they also serve as the commander's advisor on IHL. In this role, the legal advisor ensures the practical application of legal norms by:

- participating in operational planning and task preparation with attention to IHL requirements;
- briefing personnel on lawful conduct and limits on the use of force; and
- explaining rules on the treatment of civilians, POWs, and protected objects.

The advisor's primary responsibility is to identify legal risks in combat operations and propose solutions consistent with IHL. Under the IHL Instruction, the advisor must also remind commanders of the rules of armed conflict and, if necessary, escalate concerns to higher command which can act as an important safeguard against unlawful decisions and potential violations of Ukraine's international obligations. More details on the role of legal advisors are described in chapter 5.3.

However, the current legal framework contains a contradiction. The Statute of the Internal Service of the Armed Forces of Ukraine assigns legal advisors the responsibility for IHL²⁶⁴ while the IHL Instruction prohibits combining the duties of

263 In accordance with Section 3 of Part I of the Statute of Internal Service of the Armed Forces of Ukraine, approved by Law of Ukraine No. 548-XIV of March 24, 1999, in peacetime and wartime, the legal advisor of a military unit is responsible for the organization and state of legal work in the military unit. During armed conflict, the legal advisor performs the duties of a legal advisor, called upon to advise the command on compliance with IHL, rules on the use of force, and the briefing of personnel on the application of relevant legal norms. According to Chapter 6 of Section I of the Instruction IHL, legal advisors shall advise commanders on compliance with IHL and participate in the preparation of military personnel for the performance of their tasks. In particular, they are required to: coordinate the study of IHL norms and regulations within the unit; provide methodological assistance to personnel on the application of IHL norms; in the event of non-compliance by the military command with the requirements of IHL, remind them of the provisions of the law of armed conflict (in particular Article 87 of Additional Protocol I to the 1949 Geneva Conventions) and, in the absence of a response, report to the higher command. The Regulations on the Legal Service of the Ministry of Defense of Ukraine, approved by Order of the Ministry of Defense of Ukraine No. 259 of May 16, 2016 (paragraph 6), specify the tasks of legal advisors, in particular the duty to provide legal support for the activities of military units and prevent violations of the law. The main task of the legal service is to organize legal work aimed at the correct application, strict observance, and prevention of non-compliance with the requirements of legislation and other normative acts, as well as the correct application, strict observance, and prevention of non-compliance with the requirements of legislation by officials in the Armed Forces of Ukraine.

264 Statute of Internal Service of the Armed Forces of Ukraine, approved by Law of Ukraine No. 548-XIV of March 24, 1999, <https://zakon.rada.gov.ua/laws/show/548-14#Text>

a legal advisor on IHL with other duties, including those of a legal advisor.²⁶⁵ To resolve this, it may be advisable to distinguish between general legal advisors and IHL legal advisors. Establishing a dedicated position of legal advisor to the commander would separate routine legal support from operational legal guidance in armed conflict and enhance IHL compliance.

5.4.1.2 Civil-Military Cooperation Units

According to the Doctrine of Civil-Military Cooperation,²⁶⁶ the goal of civil-military cooperation units is to create favorable conditions in the civilian environment for achieving military objectives.

Civil-military cooperation units continuously collect and analyze data on the civilian environment, assess public attitudes toward the defense forces, forecast potential developments, and identify negative factors affecting operations, along with ways to mitigate them. Their tasks also include protecting civilians, preventing the use of children in armed conflict, combating gender-based violence, and safeguarding cultural heritage sites.

By participating in the protection of cultural heritage sites in areas of military operations, the DFU aims to shape positive public opinion and support the actions of troops both at the local and international levels. An important step toward the national implementation of the provisions of Part Two of Article 7 of the Hague Convention was the establishment of a special unit for the protection of cultural heritage. In October 2023, a unit for the protection of cultural heritage and the environment was established within the Civil-Military Cooperation Directorate of the Command of the Territorial Defense Forces of the Armed Forces of Ukraine. This was a pilot project—a “cultural” volunteer formation of a territorial community. It included specialists from the cultural sector capable of effectively assessing damage, carrying out immediate measures necessary to preserve monuments and valuables, and organizing evacuation.²⁶⁷ In December 2024, a unit for the protection of cultural heritage was established within the structure of the Civil-Military Cooperation Di-

265 Abstract of the report: “Implementation of international humanitarian law in the context of the current armed conflict in Ukraine”, G. Mamedov, V. Khekalov. Collection of materials from the international scientific and practical conference “Problems of Legal Support for the Defense of Ukraine,” edited by P. P. Bogutsky, Yu. V. Garust, L. V. Zaslavska, V. G. Pylypchuk; Kyiv, 2024.

266 The Doctrine of Civil-Military Cooperation was approved by the Commander-in-Chief of the Armed Forces of Ukraine on October 4, 2025, No. 5183/НВГШ

267 Civilian specialists will be engaged in the Territorial Defense Forces to preserve cultural heritage, official website of the Territorial Defense Forces of the Armed Forces of Ukraine, October 25, 2023, <https://tro.mil.gov.ua/u-sylah-tro-zaluchatymut-chezvilnyh-fahivcziv-dlya-zberezhennya-kulturnoyi-spadshhyny/>; How to Mitigate the Consequences of War for Cultural Heritage: The Armed Forces of Ukraine Can Help, G. Mamedov, V. Tytych, *Mirror of the Week*, January 8, 2024, <https://zn.ua/ukr/war/jak-zmenshiti-naslidki-vijni-dlja-kulturnoji-spadshchiny-mozhut-dopomohti-zsu.html>.

rectorate of the Armed Forces of Ukraine. The main task of the unit is to coordinate actions aimed at protecting, preserving, and preventing the destruction of cultural heritage sites that may be endangered as a result of hostilities.²⁶⁸

More details on the legal status and role of civil-military cooperation are described in chapters 3.4 and 3.6.

5.4.1.3 Reconnaissance Units

Reconnaissance activities in armed conflict are not only of operational and tactical importance but also enhance compliance with the law of armed conflict. According to paragraph 6 of Chapter 1 of Section 3 of the IHL Instruction²⁶⁹, its main tasks include gathering reliable intelligence on enemy targets near civilian objects; shelters available to civilians in potential combat zones; the location, condition, and use of IHL-protected objects, and IHL violations. Reconnaissance of enemy targets also serves to assess potential harm to civilians and protected objects.

Reconnaissance carried out in accordance with IHL helps prevent war crimes and minimize harm to civilians. By identifying threats to protected objects, recording violations, and assessing the potential consequences, commanders can make decisions that comply with IHL. Thus, intelligence activities support military effectiveness and enhance IHL compliance. More details on the legal status and role of intelligence units are described in Chapter 3.6.

5.4.1.4 Psychological Support Units

Psychological Support Units (PSUs) are an important element in preventing, detecting, and responding to violations of IHL within the Armed Forces of Ukraine. Their activities are based on the Statute of Internal Service of the Armed Forces of Ukraine,²⁷⁰ the IHL Instruction,²⁷¹ and internal regulations, including the Guidelines on Moral and Psychological Support for the Training and Use of the Armed Forces

268 A unit for the protection of cultural heritage has been established within the Armed Forces of Ukraine – *Committee on Humanitarian and Information Policy*, Press Service of the Secretariat of the Verkhovna Rada of Ukraine, December 23, 2024, https://www.rada.gov.ua/news/news_kom/257026.html.

269 The Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine No. 164 of March 23, 2017, <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>.

270 The Statute of Internal Service of the Armed Forces of Ukraine, approved by Law of Ukraine No. 548-XIV of March 24, 1999, <https://zakon.rada.gov.ua/laws/show/548-14#Text>

271 The Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine No. 164 of March 23, 2017 <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>

of Ukraine, approved by Order of the General Staff No. 173 of April 27, 2018.²⁷² These documents define their role in maintaining psychological readiness, discipline, and stress resistance necessary for lawful conduct in combat.

PSUs are tasked with:

- conducting information and awareness activities to prevent international crimes;
- identifying and addressing risk factors for aggressive, destructive, or apathetic behavior; and
- providing psychological support in cases involving IHL violations;
- cooperating with commanders, IHL advisors, and other bodies to respond promptly to incidents.

Their preventive role includes IHL training, monitoring for emotional burn-out, and addressing crisis situations. In response to incidents, they provide urgent psychological assistance, advise commanders on removing at-risk personnel, and contribute to post-traumatic rehabilitation. PSUs serve not only to preserve combat effectiveness but also serve as an integral safeguard for discipline and IHL compliance. Their effective operation reduces the likelihood of violations and reinforces Ukraine's commitment to international law during wartime.

5.4.1.5 Military Chaplain Service

The Military Chaplain Service is a separate element of the system of moral and spiritual support for service members of the Armed Forces of Ukraine. According to Part 1 of Article 4 of the Law of Ukraine “On the Military Chaplaincy Service” dated November 30, 2021, No. 1915-IX.²⁷³ The military chaplain service is designed to meet the spiritual and religious needs of service members and employees of the Armed Forces of Ukraine and other military formations. In accordance with Articles 100-1 and 100-2 of the Statute of Internal Service of the Armed Forces of Ukraine,²⁷⁴ a military chaplain ensures the spiritual and religious needs of personnel are met in times of peace and war.

Military chaplains do more than provide religious services. They build moral values, promote tolerance, and support the psychological rehabilitation of personnel. As spiritual mentors, they help maintain the moral and psychological resilience

²⁷² Instruction on moral and psychological support for the training and use of the Armed Forces of Ukraine, approved by Order of the General Staff of the Armed Forces of Ukraine No. 173 of April 27, 2018.

²⁷³ Law of Ukraine “On Military Chaplaincy” of November 30, 2021, No. 1915-IX, <https://zakon.rada.gov.ua/laws/show/1915-20>.

²⁷⁴ The Statute of Internal Service of the Armed Forces of Ukraine, approved by Law of Ukraine No. 548-XIV of March 24, 1999, <https://zakon.rada.gov.ua/laws/show/548-14#Text>

of troops, which align with IHL requirements for the humane treatment of military personnel, civilians, and other protected persons.

5.4.1.6 Military Medical Personnel

Military medical personnel in the Armed Forces of Ukraine have a special status under the 1949 Geneva Conventions, their Additional Protocols, and national law. They are obligated to treat the wounded and sick impartially, regardless of which side they belong to in the conflict. In accordance with Chapter 7 of Section 1 of the IHL Instruction,²⁷⁵ military medical personnel, in performing their military duties, must adhere to IHL and are required to:

- provide medical assistance in armed conflicts as necessary;
- abide by IHL when providing medical care during armed conflict;
- provide medical assistance to all wounded and sick persons, both in military operations and in occupied territories;
- cooperate with local authorities, health care, and humanitarian organizations on issues related to the provision of humanitarian assistance to the civilian population, at the direction of the military authorities;
- participate in the preparation of special agreements by the military command and in meetings of representatives of the parties to the armed conflict on issues related to the protection and assistance of victims of armed conflicts including regulation of military activities and civilian medical units, and determination of safe zones;
- organize medical transport;
- adhere to IHL rules, standards, and procedures for identification, notification, and protection of medical personnel, units, and transport; and
- organize humanitarian and medical assistance to the civilian population.

Compliance with these rules protects the wounded, sick, and civilian population, reduces suffering and strengthens trust in Ukraine as a state that adheres to its international obligations even during armed conflict.

5.4.1.7 Military Law Enforcement Service

Responsibility for ensuring law and order in military units lies with the Military Law Enforcement Service (MLES). Its status and authority are defined by the Law of

275 The Instruction on the Procedure for the Implementation of International Humanitarian Law in the Armed Forces of Ukraine, approved by Order of the Ministry of Defense of Ukraine No. 164 of March 23, 2017, <https://zakon.rada.gov.ua/laws/show/z0704-17#Text>

Ukraine on the Military Law Enforcement Service in the Armed Forces of Ukraine²⁷⁶ the Statutes of the Armed Forces of Ukraine, and other relevant acts.²⁷⁷

The MLES, among other things, is tasked with:

- maintaining good order and discipline and lawful military conduct;
- preventing offences and crimes within the armed forces;
- identifying the causes, preconditions and circumstances of criminal and other offenses committed in military units and at military facilities; and
- assisting bodies engaged in operational and investigative activities, pre-trial investigation, and the judiciary, as well as state authorities, local self-government bodies, military command bodies, enterprises, institutions, and organizations in performing their legally mandated duties.

Under martial law, its mandate expands to include:

- countering sabotage and reconnaissance groups;
- ensuring lawful treatment of POWs in line with IHL and the Geneva Conventions;
- enforcing curfews;
- protecting critical infrastructure; and
- controlling military cargo in combat zones.

The MLES also plays a direct role in preventing and addressing IHL violations, including international crimes, through:

- cooperating with law enforcement agencies, including exchanging information for the detection of offences;
- executing, within the limits of its competence and as prescribed by law, the orders of investigators and prosecutors, as well as court rulings and judges' decisions;
- documenting violations of IHL; and
- preserving and transferring evidence for admissibility in national or international proceedings.

276 Law of Ukraine "On Military Law Enforcement Service in the Armed Forces of Ukraine," March 7, 2003, No. 3099-XIV, <https://zakon.rada.gov.ua/laws/show/3099-14#Text..>

277 Legal status of the Military Law Enforcement Service in the Armed Forces of Ukraine, <https://pravo-ua.com/mobilizayion/pravovyj-status-vijskovoyi-sluzhby-pravoporyad-ku-u-zsu/>.

Thus, the MLES functions not only as a disciplinary body but as a critical part of Ukraine's national system for preventing, recording, and investigating IHL violations. Its effective operation:

- protects the armed forces' reputation by preventing and stopping violations;
- strengthens the evidentiary basis in war crimes cases; and
- reinforces domestic and international trust in Ukraine as a state committed to the rule of law even under wartime conditions.

The MLES maintains discipline, prevents crimes, and supports investigations within Ukraine's armed forces. It helps ensure IHL compliance by documenting violations, preserving evidence, and cooperating with investigators and courts. For more information on the MLES investigative roles, please see Chapter 3.6.

5.4.1.8 Units Investigating the Circumstances, Causes, and Conditions of Offenses

At the end of 2024, organizational reforms in the Armed Forces of Ukraine introduced new units within brigades, regiments, and some battalions. They were created to analyze and investigate offenses affecting discipline, law and order, and overall service security.

The long-term intent is to expand such units beyond combat formations to higher command levels, army corps, and support units. No unified regulation defined their functions and powers when these units were first established. Many commanders therefore issue internal orders, consistent with existing legislation, to guide their activities.

Practice has shown that the tasks assigned to these units far exceed their capacity. In brigade-level formations, dozens or even hundreds of inspections and investigations may be initiated daily, which is an impossible workload for a team of five. This highlights the need to prioritize cases and clarify scope of authority.

Among priority cases, violations of IHL are of particular importance. These incidents often involve evidence relevant to national or international courts and carry significant implications impacting the reputation of the Armed Forces of Ukraine and the state. Addressing them requires not only knowledge of statutory procedures but also a solid understanding of IHL standards, contextual analysis, and cooperation with the MLE, investigative bodies, state authorities, and other organizations.

Beyond investigative functions, these units have the potential to play a preventive and analytical role. Systematic analysis of incidents can help identify trends, assess risks, and inform preventive measures, including those aimed at avoiding

international crimes. Such analysis also supports timely and informed command decisions, reducing incidents that undermine both internal discipline and Ukraine's international reputation.

As these investigative units continue to be established, the provisions and working models created in cooperation with the MLES could provide the foundation for a uniform standard. This would ensure their proper integration into the broader system of offense response and strengthen their ability to carry out their functions effectively.

5.4.2 Government and Law Enforcement Entities Responsible for Ensuring Compliance with IHL

The governmental entities responsible for ensuring the correct application and strict observance of IHL provisions in Ukraine can be divided into general and special entities.

General entities include state authorities and officials that, within their broader mandates, ensure compliance with IHL as part of Ukraine's international obligations and human rights commitments include:

- **The President of Ukraine** who is the guarantor of the Constitution, human rights and freedoms, and Supreme Commander-in-Chief of the Armed Forces, exercising leadership in national security and defense (Part 2 of Article 102, Part 1 of Article 106 of the Constitution of Ukraine).
- **The Verkhovna Rada of Ukraine**, which is the sole legislative body and is empowered to approve international treaties (Article 82(1)(32) of the Constitution of Ukraine).
- **The Cabinet of Ministers of Ukraine** responsible for implementing the Constitution and laws, and safeguarding individual rights and freedoms (clauses 1 and 2 of part 1 of Article 116 of the Constitution of Ukraine).
- **The Ministry of Justice of Ukraine** facilitates international legal cooperation and the protection of human rights, and implements state policy on the treatment of prisoners of war in compliance with international obligations (Regulation on the Ministry of Justice, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 228 of 2 July 2014).
- **Courts** which protect the rights and freedoms of individuals and citizens of Ukraine (Article 55(1) of the Constitution of Ukraine), dispensing justice in accordance with the rule of law (Article 2 of the Law of Ukraine On the Judiciary and the Status of Judges). and

- **The Ukrainian Parliament Commissioner for Human Rights** to whom everyone has the right to apply for protection of their rights (Article 55(3) of the Constitution of Ukraine).

Special Entities are state authorities and officials responsible for implementing, applying, and monitoring compliance with IHL and include:

- The **Ministry of Defense of Ukraine** oversees activities related to the implementation, application, and dissemination of IHL within the defense system.
- The **General Staff of the Armed Forces of Ukraine** organizes compliance with IHL and rules on the use of force in the Armed Forces (para. 140, sec. 3, Regulations on the General Staff, Presidential Decree No. 23/2019, Jan. 30, 2019).
- The **Cabinet of Ministers of Ukraine** has also established the following specialized advisory and coordination bodies:
- **Interdepartmental Commission on the Application and Implementation of IHL** (Resolution No. 329, of the Cabinet of Ministers of Ukraine dated April 26, 2017) – an advisory body that:
 - prepares proposals on IHL application and implementation;
 - coordinates executive authorities in fulfilling Ukraine’s IHL obligations;
 - collects and monitors information on compliance and violations;
 - develops mechanisms for documenting violations and recommending responses; and
 - promotes interagency cooperation and dissemination of IHL norms.²⁷⁸
- **Coordination Headquarters for the Protection of Children’s Rights in Martial Law** (Resolution of the Cabinet of Ministers of Ukraine No. 302 of March 17, 2022) coordinates interagency action related to:
 - evacuating children from areas affected by hostilities, including orphans and children with disabilities;
 - meeting the needs of evacuated children; and
 - making urgent decisions to protect children’s rights.²⁷⁹

278 Interdepartmental Commission on the Application and Implementation of International Humanitarian Law in Ukraine. *Official website of the Ministry of National Unity of Ukraine*. URL: <https://unity.gov.ua/diyalnist/koordynacziya-u-sferi-reintegracziyi/mizhvidomcha-komisiya/>

279 On the establishment of the Coordination Headquarters for the Protection of Children’s Rights under Martial Law: Resolution of the Cabinet of Ministers of Ukraine No. 302 of March 17, 2022. URL: <https://zakon.rada.gov.ua/laws/show/302-2022-%D0%BF#Text>

- Coordination Headquarters for the Treatment of Prisoners of War, established by Cabinet of Ministers Resolution No. 257 of March 11, 2022, coordinates the activities of state bodies, the Armed Forces of Ukraine, international organizations, and NGOs on the treatment of Russian POWs in Ukrainian custody, as well as Ukrainian POWs and detained civilians held by the Russian Federation. Its work focuses on:
 - ensuring Ukraine's compliance with international obligations on POW treatment;
 - facilitating the repatriation of the remains of deceased military personnel and civilians;
 - identifying and addressing gaps or problems in POW treatment practices.²⁸⁰

The Prosecutor's Office and law enforcement agencies are responsible for investigating international crimes and bringing perpetrators to justice. In 2019, the Office of the Prosecutor General established a Department for Combating Crimes Committed in Armed Conflict (War Crimes Department)²⁸¹ and specialized units in several regional offices.

Under Part 2 of Article 216 of the Criminal Procedure Code, investigators of the Security Service of Ukraine conduct preliminary investigations of international crimes, with the National Police and other law enforcement agencies assisting as necessary under additional authorities provided under martial law.²⁸² The State Bureau of Investigations handles pre-trial investigations of war crimes committed by Ukrainian military personnel.

Ukrainian prosecutors and investigators also cooperate with the ICC and participate in a Joint Investigation Team (JIT) with Lithuania, Poland, Latvia, Estonia, Slovakia, and Romania, supported by the ICC, Eurojust, and Europol. The JIT strengthens international coordination in investigating serious crimes committed in Ukraine.²⁸³

280 Coordination Headquarters for the Treatment of Prisoners of War. *Official website*. URL: <https://koordshtab.gov.ua/>

281 Gyunduz Mamedov: "Ukraine has the opportunity to hold Russia to account for war crimes.", *Mirror of the Week*, 24 November 2020, <https://zn.ua/ukr/internal/hjunduz-mamedov-same-ukrajina-maje-shans-pokarati-rf-za-vojenni-zlochini.html>

282 See more details in Chapter 6. See also Assessment of the needs of the Ukrainian legal system: ensuring quality justice for war victims and survivors, Ukrainian Legal Advisory Group, Kyiv, 2025: <https://www.justice-needs-ukraine.report>

283 Agreement on the extension for two years of the Joint Investigation Team on the investigation of possible core international crimes in Ukraine, February 29, 2024, <https://www.eurojust.europa.eu/ua/news/uhoda-pro-prodovzhennya-na-dva-roky-diyalnosti-spilnoyi-slidchoyi-hrupy-z-rozsliduvannya>

Non-governmental and intergovernmental organizations play a significant role in supporting compliance with IHL in Ukraine, including:

- **The International Committee of the Red Cross** operates under the Geneva Conventions' mandate to protect victims of armed conflict and provide assistance. In Ukraine, it cooperates with the Ministry of Defense on IHL dissemination, publication of materials, and legislative improvements.²⁸⁴

- **UN Human Rights Monitoring Mission in Ukraine** has been operating since 2014 under an agreement between the Government of Ukraine and the UN Office of the High Commissioner for Human Rights. Its mandate includes monitoring and reporting on the human rights situation, promoting access to justice, and supporting accountability for violations.²⁸⁵

- **Organization for Security and Co-operation in Europe Expert Missions** was deployed to assist Ukraine on specific issues. Since 2022, Ukraine has used this mechanism four times, with each mission issuing a report presented to OSCE participating States.²⁸⁶

- **Red Cross Society of Ukraine** is the national Red Cross organization, operating under the Law of Ukraine on the Red Cross Society of Ukraine November 28, 2002, No. 330-IV. It cooperates with the Ministry of Defense to implement IHL in Ukrainian law and practice.²⁸⁷

5.5 Conclusion

Ukraine's defense against Russian aggression is not only a fight for survival but also a test of its commitment to international norms, democratic values, and human dignity. Adherence to IHL and IHRL protects civilians and combatants, preserves military professionalism, and strengthens Ukraine's credibility at home and abroad.

Ukraine has embedded these obligations into its constitution and laws, criminalizing war crimes and ratifying the Rome Statute of the ICC. It is legally required to prevent, investigate, and punish violations promptly and impartially, thus reinforcing both military discipline and the broader justice system.

284 International Committee of the Red Cross: Official website. URL: <https://blogs.icrc.org/ua/>

285 UN Human Rights Monitoring Mission in Ukraine: Official website. URL: <https://ukraine.ohchr.org/uk>

286 Voluntary Report on International Humanitarian Law by the Ministry of Defense of Ukraine. Ministry of Defense, 2024, pp. 23-24.

287 Red Cross Society of Ukraine: Official website, <https://redcross.org.ua/>

Compliance relies on integrating IHL and IHRL into domestic law, military doctrine, and operational guidance, holding commanders accountable, and embedding legal advisors in command structures and strengthening their role in the combat planning and decision-making process. Ongoing training, active engagement of personnel in documenting and reporting violations, along with monitoring, lessons learned, civil-military coordination, and responsible use of technology, fosters a culture of respect for the law and ensures operational accountability.

This multi-layered system is reinforced at every level. Government entities incorporate international law into domestic frameworks. Specialized entities implement and monitor compliance, law enforcement and prosecutors investigate violations, and non-governmental and intergovernmental organizations collaborate with the Ministry of Defense to protect victims and uphold international standards.

CHAPTER 6.

PATHWAYS TO JUSTICE FOR CONFLICT-RELATED CRIMES IN UKRAINE

- 6.1** Introduction
- 6.2** Domestic Justice System of Ukraine
- 6.3** Special Tribunal for the Crime of Aggression Against Ukraine
- 6.4** Third States' Investigations
- 6.5** Conclusion



6.1 Introduction

As mentioned in previous chapters, battlefield evidence—along with other types of documentation—can be instrumental in the pursuit of justice and accountability. If reliable, legal, and relevant, information found on the battlefield can serve as evidence in proceedings taking place in various jurisdictions.

Ensuring justice is essential for supporting victims and survivors, establishing the truth about the war, addressing its consequences, and preventing future atrocities. It is also an obligation of states to investigate and prosecute grave crimes under the principle of *aut dedere aut judicare* (“extradite or prosecute”), as stipulated by international law.²⁸⁸ In the context of armed conflict, states have a primary obligation to address violations committed on their territory or by their nationals.²⁸⁹

About 190,000 investigations into potential international crimes committed since the full-scale invasion in February 2022 have been opened in the Ukrainian justice system as of September 30, 2025.²⁹⁰ This number is a result of the approach prescribed by article 214 of the Criminal Procedure Code (CPCU),²⁹¹ which requires law enforcement agencies to register every criminal incident which they identify or which is reported to them. So, while the number of actual crimes may differ, it is a vivid indication of the scale and magnitude of violations committed during the war.

Multiple justice and human rights mechanisms have been activated to address those violations, especially since the full-scale invasion in 2022, both domestically and internationally. Beyond the Ukrainian justice system, these include:

- International Criminal Court (ICC);
- Special Tribunal for the Crime of Aggression Against Ukraine (STCoA);
- Third states' investigations under the principle of universal jurisdiction;
- The Joint Investigation Team where states join efforts to investigate violations and exchange information;

288 The obligation to extradite or prosecute (*aut dedere aut judicare*). Final Report of the International Law Commission. 2014: https://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf

289 As per First Geneva Convention, Article 49; Second Geneva Convention, Article 50; Third Geneva Convention, Article 129; Fourth Geneva Convention, Article 146.

290 Website of the Office of the Prosecutor General, <https://gp.gov.ua/>, last checked September 30, 2025. This number does not include alleged international crimes committed between 2014 and February 23, 2022.

291 Article 214 of the Criminal Procedure Code of Ukraine: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

- Investigative and monitoring initiatives operated by international organizations, such as the Independent Commission of Inquiry in Ukraine, the Organization for Security and Cooperation in Europe's Human Rights Monitoring and Moscow Mechanism; and
- Human rights mechanisms such as UN treaty bodies and the European Court of Human Rights (ECtHR).

Efforts have also been made to establish compensation and reparations mechanisms, such as the Register of Damage for Ukraine,²⁹² or interim reparations for survivors of conflict-related sexual violence.²⁹³

The list is not exhaustive and may evolve over time, as pathways emerge or fade. Every mechanism has its own mandate and limitations. They do not act in silos, however, but rather are expected to cooperate and complement each other. Addressing crimes committed during Russia's war against Ukraine since 2014 requires a functioning network of justice mechanisms, supported and reinforced in line with existing needs and threats, to minimize the accountability gap. Civil society organizations also play an important role in the pursuit of justice, for instance by documenting potential violations; providing support to victims and survivors; representing their interests in various jurisdictions; contributing to the implementation of international standards; and advocating for systemic changes domestically and internationally.

This chapter provides an overview of selected mechanisms, focusing on criminal justice jurisdictions.

6.2 Domestic Justice System of Ukraine

Since 2014, numerous violations of the laws and customs of war have been recorded, requiring a response from Ukraine's justice system.

However, the state's institutions and legislation were not equipped to address international crimes, which require a different approach than ordinary crimes. As a result, such incidents were often classified and treated as ordinary crimes, frequently leaving the statuses of combatants, the legal characterization of the armed

292 Website of the Register of Damage for Ukraine, <https://rd4u.coe.int/en/>

293 Global Survivors Fund. Ukraine, <https://www.globalsurvivorsfund.org/our-work/ukraine/>

conflict, and consequently the applicable law to be misinterpreted.²⁹⁴ The context of armed hostilities has additionally strained the capacity of the authorities to administer justice due to security risks, insufficient resources, and lack of access to territories, evidence, and perpetrators.

The Russian full-scale invasion of Ukraine on February 24, 2022, has severely magnified the scale of crimes committed, creating significantly greater pressure on the domestic system, while also exacerbating the challenges it was already facing.

Throughout the years, some of these issues were addressed at different levels, such as at the Prosecutor's Office of the Autonomous Republic of Crimea since 2016, and from 2019—following the establishment of the “War Crimes Department” within OPG²⁹⁵, as well as after the full-scale invasion.

However, Ukraine still lacks the resources, expertise, institutional, policy and legislative framework to comprehensively investigate and prosecute crimes committed in the context of the armed conflict—both international crimes and crimes against national security—but it is nevertheless expected to be the primary bearer of this burden. Therefore, addressing such challenges through comprehensive reform and assistance as necessary is crucial to ensure Ukraine's ability to seek justice for these crimes under Ukraine's constitution, as well as fulfilling its international commitments.

6.2.1 Responsible bodies

Investigative authorities are expected to swiftly react to any violations, document, and investigate them. The pre-trial investigation of alleged violations related to the armed conflict is *de facto* conducted by the National Police of Ukraine (NPU), Security Service of Ukraine (SSU), and State Bureau of Investigations (SBI).

The SSU has exclusive investigative jurisdiction over grave international crimes (including violations codified in articles 437, 438, 442, and 442-1 of the CCU). However, because of the shortage of resources, and the SSU's lack of expertise in certain areas, the NPU is also actively engaged in such investigations. The SBI investigates military crimes and crimes committed by senior political and governmental officials of Ukraine, as per Article 216 of the CPCU.²⁹⁶

294 Ukrainian Legal Advisory Group. Needs Assessment of Ukraine's Justice System, 2025, <https://www.justice-needs-ukraine.report/en/chapter/overview-of-the-past-and-present-justice-related-efforts#ref-13>

295 Department for the Supervision of Criminal Proceedings in Crimes Committed in the Context of Armed Conflict (now called the Department for Combatting Crimes Committed in the Context of Armed Conflict)

296 Criminal Procedure Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

Engagement of bodies that are not directly mandated to investigate conflict-related crimes is done through “transfer of the proceeding due to inefficiency of the investigation” and the creation of interagency investigation teams. This process leads to investigations being delayed and poses additional risks for the legality of proceedings. The lack of a clear distribution of workload prescribed by state policy forces the bodies to manually negotiate the sharing of both categories of crimes and individual cases—something that can work in the short term but is best managed systemically.²⁹⁷ To clarify the legalities of the situation, Article 216 should be amended to authorize the NPU to undertake investigations into crimes set forth in Chapter XX of the CCU, as well as the SSU, by endowing the NPU with alternative investigative jurisdiction.²⁹⁸

The prosecutorial system oversees the pre-trial investigation, supports public prosecution, and coordinates investigative bodies. It is organized based on territorial jurisdiction: local district public prosecutor’s offices, regional prosecutor’s offices, and the Office of the Prosecutor General (OPG) as the highest body.

Both investigative and prosecutorial bodies have gradually established specialized units that are tasked with addressing conflict-related crimes. The OPG Department for the Supervision of Criminal Proceedings in Crimes Committed in the Context of Armed Conflict (now called the Department for Combatting Crimes Committed in the Context of Armed Conflict or the ‘War Crimes Department’) was established in 2019, becoming the first unit with systemic conflict-related specialization within the justice system of Ukraine.²⁹⁹ Later in 2019–2020 such departments were also created within the Donetsk and Luhansk regional offices.

The scale and geography of crimes have forced both prosecutorial and investigative bodies to react, resulting in more specialized units being established from 2019 not only within the prosecution system, but also in NPU, SSU and SBI within their Main Investigative Departments and some regional offices.

The judicial system does not yet have such specialization in place. Instead, general territorial jurisdiction rules apply when cases are brought to local courts (courts of first instance). After the full-scale invasion these courts’ workload have increased drastically, posing a significant challenge for understaffed institutions. Because cases are assigned automatically to judges within the court, it is harder for

297 Ukrainian Legal Advisory Group. Needs Assessment of Ukraine’s Justice System, 2025, <https://www.justice-needs-ukraine.report/en/chapter/operation-and-capacity-of-investigative-authorities-to-investigate-international-crimes>

298 There have been discussions of reforming the SSU and redistributing its investigative jurisdiction among other investigative bodies, though those discussions have been paused due to the current state of martial law.

299 Gyunduz Mamedov: “Ukraine has the opportunity to hold Russia to account for war crimes.”, *Mirror of the Week*, 24 November 2020, <https://zn.ua/ukr/internal/hjunduz-mamedov-same-ukrajina-maje-shans-pokarati-rf-za-vojenni-zlochiny.html>

judges to develop comprehensive expertise in conflict-related justice, which hinders the proceedings. A properly designed conflict-related specialization of the judiciary could help both optimize resources and develop deeper expertise of judges in such cases, enhancing the system's capacity.

6.2.2 Definition of crimes

Over the years, there have been several attempts to harmonize domestic legislation with international humanitarian law and international criminal law. This includes, for example, introducing new and aligning existing definitions and elements of grave crimes with ones that are reflected in conventions and international jurisprudence. This in turn provides a more precise classification of such incidents, which means that criminal charges would more accurately reflect the nature of crimes committed.

For example, in August 2024, Ukraine ratified the Rome Statute. It became a State Party in January 2025.³⁰⁰ An implementing Law 'On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in Connection with the Ratification of the Rome Statute of the International Criminal Court and Amendments' was adopted on October 9, 2024.³⁰¹ The law aims to implement the Statute's provisions into domestic legislation.

Among the novelties introduced to the Ukrainian legal system by the law were the inclusion of crimes against humanity (Article 442-1) and command responsibility (Article 31-1) in the CCU. Although there were some questions about these provisions' implementation, the change was highly anticipated.

However, the law did not stipulate any legal grounds to allow for the application of international norms on crimes against humanity (CAH) or command responsibility to conduct before those domestic provisions took effect. Under Ukrainian law, only changes to laws on criminal liability which partially commute criminal liability or otherwise improve the situation of a defendant have retroactive effect. Consequently, if the evidence supports it, conduct between 2014 and the law's entry into force on October 24, 2024, can be prosecuted as war crimes in Ukrainian court and either war crimes or crimes against humanity at the ICC or in courts of third states. However, conduct before October 24, 2024 might not be prosecutable as a crime against humanity in Ukrainian court, and commanders might not be able to be held responsible in Ukrainian court for failing to prevent or punish crimes by

300 ICC welcomes Ukraine as a new State Party. The official website of the International Criminal Court, <https://www.icc-cpi.int/news/icc-welcomes-ukraine-new-state-party>

301 The Law of Ukraine 'On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in Connection with the Ratification of the Rome Statute of the International Criminal Court and Amendments thereto' of October 9, 2024, No. 4012-IX. URL <https://zakon.rada.gov.ua/laws/show/4012-20#Text>.

their subordinates that were committed before late 2024 unless the commanders also culpably participated in the crimes in other ways, such as by ordering or facilitating them.

In most cases, a perpetrator will still be subject to prosecution, either because their conduct constitutes a war crime as well as a crime against humanity or because justice can be sought in an international court or a third state as discussed below. Allegations of international crimes committed between 2014 and 2024 should be carefully investigated regardless of whether they can be labeled as CAH. But the omission of explicit Ukrainian jurisdiction over CAH, or over commanders who failed to prevent or punish war crimes by their subordinates, during that period may leave some accountability gaps despite these other avenues.

Even without a specific provision establishing retroactive application, it is possible that both crimes against humanity and command responsibility could still be prosecuted in Ukrainian court since those crimes have long been well-developed norms under customary international law and are mentioned in international agreements ratified by Ukraine (analogous to the ECtHR judgement in *Kononov v. Latvia*³⁰²). Nonetheless, the issue should be clarified, for example in the form of a legislative amendment and/or a Constitutional Court ruling.

Further efforts to address this issue and ensure complete Rome Statute implementation and the harmonization of domestic legislation with IHL are needed, some of which are discussed in Chapter 1.5.³⁰³

6.2.3 Other issues and challenges

There are several characteristics of the domestic justice system and challenges it faces that are important to consider when assessing its capacity:

- Trials *in absentia*, meaning without having the defendant present at trial, currently make up the majority of domestic atrocity crimes cases and are likely to continue to do so going forward. While this mechanism may be necessary due to conflict realities, rules for notification of the suspect and the right to retrial upon arrest should be further improved. Beyond that, given that most proceedings are currently held *in absentia*, it is crucial to pay particular attention to the right to a fair trial of the accused and the quality of defense in such proceedings.³⁰⁴

302 *Kononov v. Latvia*, European Court of Human Rights, <https://hudoc.echr.coe.int/fre?i=001-98669>

303 See also Ukrainian Legal Advisory Group. Needs Assessment of Ukraine's Justice System, 2025 <https://www.justice-needs-ukraine.report/en/sub-chapter/criminal-law>

304 Ukrainian Legal Advisory Group. Needs Assessment of Ukraine's Justice System, 2025, <https://www.justice-needs-ukraine.report/en/sub-chapter/right-to-defence>

- Proceedings are still primarily focused on direct perpetrators and individual cases. A shift in approach that situates individual acts and perpetrators within the wider context of the war and state policy, develops cases reflecting a broader scope of atrocities, and includes cases against the most responsible perpetrators is necessary. There has been some initial progress in this regard, but more work is needed.
- The justice system needs more people and resources to handle the volume of criminal allegations.
- Justice system representatives require more systemic and long-term oriented training and expertise in the implementation of international law and standards.
- Ukrainian criminal procedure legislation does not explicitly recognize battlefield evidence, intelligence data, or OSINT. These types of evidence should be formally recognized as admissible in the CPCU. Evidence collectors such as the military, intelligence services, etc., should establish publicly-releasable procedures for collecting, preserving, storing, and sharing such evidence to demonstrate its reliability, as set out elsewhere.³⁰⁵ Having defined and consistent procedures will give prosecutors and the collecting agency the opportunity to represent to the courts that the evidence collection followed the standard procedures and, in instances where it did not, provide a framework whereby the government can say with specificity how and why the methods or means of collection varied in that instance. These representations will enable the courts to better assess whether such evidence should be admitted and what weight to give it in their deliberations.
- There is still no comprehensive victim and witness protection system in place that would protect victims' safety while properly taking into account the context of the war. The Coordination Centre for Victims and Witnesses Support provides support services and serves as a referral mechanism, but this infrastructure needs to be improved (both from a legislative and institutional standpoint) to provide more comprehensive engagement with victims and survivors. The protection of victims and witnesses is not within the Coordination Centre's mandate and is yet to be properly ensured.³⁰⁶

These and other issues directly affect the quality of proceedings, and therefore the extent to which they can provide genuine justice for victims and be considered legal and legitimate justice processes under international law. Failure to pass this test will risk discouraging state cooperation with arrest warrants that Ukraine issues for suspects, and these very cases being later challenged in jurisdictions such as the European Court of Human Rights.

305 See Chapters 2.3, 4.2, etc.

306 Ukrainian Legal Advisory Group. Needs Assessment of Ukraine's Justice System, 2025, <https://www.justice-needs-ukraine.report/en/sub-chapter/access-to-justice>

Partner states and international stakeholders have been providing significant support to Ukraine to strengthen its domestic justice system. This often involves technical and expert assistance from foreign specialists that advise domestic stakeholders. This includes such initiatives as the Atrocity Crimes Advisory Group for Ukraine, established by the European Union, the United States, and the United Kingdom in partnership with the Government of Ukraine.³⁰⁷

Such collaboration between domestic and foreign experts can be helpful in implementing international standards into domestic criminal proceedings, building Ukrainian capacity, and supporting the justice system. It could draw on good practices from similar work in other jurisdictions (such as in Bosnia and Herzegovina and the Central African Republic).³⁰⁸ However, international support must be tailored to Ukraine's particular context and needs, apply to all justice system stakeholders based on a comprehensive assessment of their needs, and be carried out under a clear legal framework and strategy that complements Ukraine's ongoing efforts. ULAG is conducting ongoing work on this issue and has made recommendations which may be useful.³⁰⁹

6.3 International Criminal Court

6.3.1 The ICC's Mandate and Jurisdiction

The International Criminal Court is the permanent international criminal tribunal, established in 2002 under the Rome Statute³¹⁰—a treaty adopted in 1998—that sets out the basis for the ICC's mandate, jurisdiction, and key rules of operation.

It is tasked with investigating, prosecuting, and trying in court individual perpetrators of war crimes, crimes against humanity, genocide, and the crime of aggression. Unlike ad hoc tribunals like ICTY or ICTR, the Court operates as a standing court and can function in different contexts and timeframes within its jurisdictional limitations. As of 2025, the ICC works in 17 situations.³¹¹

307 Website of the Atrocity Crimes Advisory Group, <https://www.aca-ukraine.org/>

308 Ukrainian victims of war crimes need new approaches to justice. N. Volkova, E. Witte, A. Mora. Atlantic Council, 2025, <https://www.atlanticcouncil.org/blogs/ukrainealert/ukrainian-victims-of-war-crimes-need-new-approaches-to-justice/>

309 Ukrainian Legal Advisory Group. Needs Assessment of Ukraine's Justice System, 2025: <https://www.justice-needs-ukraine.report/en/sub-chapter/international-help>

310 Rome Statute of the International Criminal Court, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

311 Situations under investigation. The International Criminal Court, <https://www.icc-cpi.int/situations-under-investigations>

125 countries have ratified the Rome Statute and joined the Court so far. Ukraine is the most recent State Party, after its ratification in 2024 that entered into force January 1, 2025. States Parties play a central role in enabling the ICC's work, primarily through the Assembly of States Parties—a body that oversees the work of the court, adopts its budget, sets regulations, and elects officials of the institution. States Parties also have an obligation to fully cooperate with the Court.

Individuals cannot file a criminal complaint at ICC the way they can in some national jurisdictions. However, communications to the Office of the Prosecutor (OTP) under Article 15 of the Rome Statute can be submitted by individuals, groups, or organizations. Such communications provide information and analysis about situations within the Court's purview. If they provide sufficient grounds for the Office to act, they may prompt OTP to start a preliminary examination or open an investigation. Stakeholders may continue to assist the ICC's work throughout its process.³¹²

From a temporal perspective, the ICC's jurisdiction covers crimes committed after July 1, 2002, the date the Rome Statute entered into force. For States that ratified the Statute later, the jurisdiction of the Court starts from the date that State's ratification of the Statute entered into force, unless the State lodges a declaration accepting the jurisdiction of the Court from an earlier point in time. Once the Statute is in force, the Court's jurisdiction includes crimes committed either on the territory of a State Party or by nationals of a State Party.

States not Parties to the Rome Statute may also accept jurisdiction on an *ad hoc* basis (through an Article 12(3) declaration), and the Court can exercise jurisdiction regarding a situation that is referred to it by the United Nations Security Council. In both cases, a temporal scope of jurisdiction can be specified, which can include crimes committed before the declaration or referral, as long as they fall within the Statute's temporal limits. It is however not possible for a referring Party to limit the scope of the Court's subject matter jurisdiction to a specific alleged perpetrator group or to refer some types of crimes included in the Rome Statute but not others (so for instance, a referral cannot give the Court jurisdiction over allegations against one side of an armed conflict but not the other).

The ICC acts as a court of last resort, complementing efforts of domestic jurisdictions. Therefore, it does not prosecute cases if the national system is willing and able to administer justice to the same individual for the same conduct. That way the ICC can complement national systems, filling existing gaps, while neither overstepping the mandate of the state nor disincentivizing domestic justice processes. The Court also only investigates allegations that are sufficiently grave to justify international action.

312 How the Court Works. The International Criminal Court, <https://www.icc-cpi.int/about/how-the-court-works>.

The ICC has the status of an international tribunal under international law. This allows it to overcome the personal immunities that protect Heads of State, Heads of Government and Ministers of Foreign Affairs (the so-called “Troika”) from prosecution for their conduct while they are in office under customary international law.³¹³ While some raise questions as to whether the Rome Statute could modify the personal immunities of officials of States not Parties, the Court has found it is not bound by such immunities.

Following the Kampala amendments of 2010, the Court may prosecute individuals for planning, preparing, initiating, or executing acts of aggression, but only when committed after July 17, 2018, the date the amendments entered into force, and only if both the accused person’s state of nationality and the attacked state have ‘opted in’ to the aggression amendments. The Court cannot prosecute aggression in other circumstances unless there is a UN Security Council referral. The ICC conducts regular reviews of the Kampala amendments to address implementation issues. The next review will take place in 2029 to review the amendments and consider proposals to harmonize the Court’s jurisdiction over the crime of aggression with the regime applied to other grave crimes.³¹⁴

6.3.2 The ICC-Ukraine Relationship

Ukraine signed the Rome Statute in 2001 but only ratified the Rome Statute in 2024 and became a full party to it on January 1, 2025, when the ratification entered into force.

However, the Court has full jurisdiction over allegations of war crimes, crimes against humanity, and/or genocide committed in Ukraine during the ongoing conflict based on two declarations adopted by Verkhovna Rada:

- The first granted the Court jurisdiction over allegations of crimes committed during the events of Maidan between November 21, 2013, and February 22, 2014.³¹⁵
- The second granted the Court jurisdiction over allegations of crimes committed during the armed conflict on the territory of Ukraine beginning in 2014,

313 See Rome Statute, Art. 27.

314 ICC-ASP/S-1/Res.1 “The review of the amendments on the crime of aggression”, https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-S-1-Res1-ENG.pdf.

315 Declaration of the Verkhovna Rada of Ukraine to the International Criminal Court on the Recognition of the Jurisdiction of the International Criminal Court by Ukraine over Crimes against Humanity Committed by Senior Officials of the State, which Led to Extremely Grave Consequences and Mass Murder of Ukrainian Nationals during Peaceful Protests within the Period from 21 November 2013 to 22 February 2014, 25.02.2014, <https://zakon.rada.gov.ua/laws/show/790-18#Text>. Declaration on Ukraine’s recognition of the jurisdiction of the International Criminal Court, 09.04.2014, <https://sur.li/hppscp>.

meaning the annexation and occupation of Crimea and armed hostilities in the Donetsk and Luhansk regions.³¹⁶

As the second declaration had no end date, the ICC also has jurisdiction over allegations of crimes committed after the full-scale invasion on February 24, 2022.

When ratifying the Rome Statute, Ukraine also invoked its right to temporarily limit the Court's jurisdiction by making a declaration under Article 124 of the Statute. The ratification law states: "Ukraine declares that, for a period of seven years after the entry into force of the Rome Statute for Ukraine, it does not recognize the jurisdiction of the International Criminal Court over the crimes set forth in Article 8 (as amended) when the crime is alleged to have been committed by its nationals."³¹⁷ This sought to preclude the ICC from exercising jurisdiction over war crimes by Ukrainian nationals, while granting it jurisdiction over war crimes committed by non-Ukrainian nationals on Ukrainian territory and over crimes against humanity or genocide committed either by Ukrainian nationals *or* on Ukrainian territory. It remains unclear how the Court will treat this declaration.³¹⁸

The Article 124 declaration was a political compromise to address concerns about the possibility of the ICC prosecuting members of the Ukrainian military.³¹⁹ However, if Ukraine is willing and able to genuinely investigate and prosecute such crimes, it is in general less likely for the Court to focus on them because of the principle of complementarity and the fact that the ICC is a court of last resort. In any event, this declaration does not affect the jurisdiction of the ICC over the situation in Ukraine before January 1, 2025, since it has no retroactive effect.

The OTP opened a preliminary examination into the Situation in Ukraine on April 24, 2014. The preliminary examination was concluded on December 11, 2020. The ICC Prosecutor at that time found that there was "a reasonable basis at this time to believe that a broad range of conduct constituting war crimes and crimes against

316 Resolution of the Verkhovna Rada of Ukraine 'On the Declaration of the Verkhovna Rada of Ukraine "On the Recognition of the Jurisdiction of the International Criminal Court by Ukraine over Crimes against Humanity and War Crimes by Senior Officials of the Russian Federation and Leaders of the Terrorist Organisations "DPR" and "LPR," which Led to Extremely Grave Consequences and Mass Murder of Ukrainian Nationals,'" 04.02.2015, <https://zakon.rada.gov.ua/laws/show/145-19#Text>. Declaration on Ukraine's recognition of the jurisdiction of the International Criminal Court, 08.09.2015, https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf#search=ukraine.

317 The Law "On ratification of the Rome Statute of the International Criminal Court", <https://zakon.rada.gov.ua/laws/show/3909-20#Text>.

318 There have only been two previous invocations of Article 124 by states joining the Court and both differed from Ukraine's in that each other invoking state declined to recognize ICC jurisdiction over war crimes that had been committed either on its territory or by its nationals, rather than recognizing ICC jurisdiction in one case but not the other.

319 Римський статут: в Раді пояснили, як він допоможе Україні, і які ризики становить. UNIAN, 2024, <https://www.unian.ua/politics/rimskiy-statut-v-radi-poyasnili-yak-vin-dopomozhe-ukrajini-i-yaki-riziki-vin-stanovit-12734496.html>.

humanity within the jurisdiction of the Court have been committed in the context of the situation in Ukraine.” Yet, the Prosecutor did not immediately seek authorization to open an investigation due to a need to prioritize other situations in the context of a significant workload, thin resources, and other issues facing the Court.³²⁰

The situation changed significantly after the full-scale invasion. Shortly after the full-scale invasion, dozens of ICC States Parties called on the Prosecutor to open a full investigation into the situation in Ukraine in accordance with Article 14 of the Rome Statute. On March 2, 2022, the OTP opened a full investigation.³²¹

As of September 2025, the investigation has resulted in 6 arrest warrants:

- Two—against Vladimir Putin and Maria Lvova-Belova—in connection with the unlawful deportation of Ukrainian children;³²²
- Four—against Sergei Kobylash, Viktor Sokolov,³²³ Sergei Shoigu, and Valery Gerasimov—in connection with attacks on energy infrastructure in Ukraine.³²⁴

The OTP continues the investigation within these and other areas. It has been indicated that one of its ongoing focus areas is crimes committed in Russia-controlled detention facilities.³²⁵ It is, however, unclear as of September 2025 whether and when any new arrest warrants will be issued or how wide or deep the investigation will reach, particularly due to political and institutional challenges the Court is facing.³²⁶ Nevertheless, the ICC remains an important justice pathway, especially for complex allegations and leadership-level suspects.

320 Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine, International Criminal Court, 2020, <https://www.icc-cpi.int/news/statement-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-ukraine>.

321 International Criminal Court: Ukraine, <https://www.icc-cpi.int/situations/ukraine>.

322 Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, International Criminal Court, 2023 <https://surl.li/Intffa>

323 Situation in Ukraine: ICC judges issue arrest warrants against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov, International Criminal Court, 2024, <https://surl.li/ujggbw>

324 Situation in Ukraine: ICC judges issue arrest warrants against Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov, International Criminal Court, 2024, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-kuzhugetovich-shoigu-and>

325 E.g. International Criminal Court to focus on crimes against Ukrainian POWs, RBC, 2024, <https://newsukraine.rbc.ua/news/international-criminal-court-to-focus-on-crimes-1718624409.html>. See Report on Possible Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, Related to the Treatment of Ukrainian POWs by the Russian Federation, prof. H. Ascensio, prof. V. Bilková, prof. M. Klamberg, OSCE, 2025, <https://www.osce.org/files/f/documents/a/0/598042.pdf>.

326 Ukrainian Legal Advisory Group. Needs Assessment of Ukraine’s Justice System, 2025, <https://www.justice-needs-ukraine.report/en/chapter/the-role-of-the-international-accountability-mechanisms>.

6.4 Special Tribunal for the Crime of Aggression Against Ukraine

The idea of the Special Tribunal for the Crime of Aggression against Ukraine (STCoA) emerged shortly after the full-scale invasion in 2022 in response to the accountability gap created by the absence of a jurisdiction that could effectively prosecute the crime of aggression in this context.

The ICC, as mentioned earlier, has limited jurisdiction over this crime and has declared it does not currently have jurisdiction over it in the Ukrainian context. Domestic jurisdictions cannot prosecute the primary perpetrators—those who are in a position effectively to exercise control over or direct the political or military action of a state. Such individuals are likely to enjoy personal immunity, and are therefore protected from prosecution while in office, unless their state waives their immunity. So, the intention was to establish a legitimate mechanism that would be mandated under international law to investigate and prosecute high-level officials.

The establishment of the STCoA has been a significant challenge followed by prolonged negotiations, particularly about its potential capability to overcome personal immunities. While the Core Group of states that support the idea of a tribunal were laying the political groundwork for the Court, the International Centre for Prosecution of the Crime of Aggression was established on July 3, 2023 in the Hague. Intended to streamline evidence gathering for future justice processes, it was joined by Ukraine, as well as five Joint Investigation Team countries: Lithuania, Latvia, Estonia, Poland and Romania, and operationalized with support of the European Union Agency for Criminal Justice Cooperation.³²⁷ The United States joined the Centre as well but withdrew in March 2025.³²⁸

On June 25, 2025, Ukraine and the Council of Europe signed the bilateral agreement on the establishment of the Tribunal, that also included its Statute.³²⁹ It derives jurisdiction from Ukraine, and the investigation by the Tribunal's Prosecutor is based on the referral of proceedings, information, or evidence from the Prosecutor General of Ukraine. The Statute does not explicitly mention personal immunities, but proceedings against a head of State, head of government or min-

327 International Centre for the Prosecution of the Crime of Aggression against Ukraine. European Union Agency for Criminal Justice Cooperation, <https://www.eurojust.europa.eu/international-centre-for-the-prosecution-of-the-crime-of-aggression-against-ukraine>.

328 ЄС підтвердив вихід США з групи, яка розслідує злочин агресії Росії проти України. Європейська правда, 2025, <https://www.eurointegration.com.ua/news/2025/03/17/7207381/>.

329 Ukraine and the Council of Europe sign Agreement on establishing a Special Tribunal for the Crime of Aggression against Ukraine, 2025, <https://surli.cc/ksfcns>.

ister of foreign affairs shall be suspended, and no indictment should be confirmed until such officials no longer hold the office. Functional immunities do not apply, so there might be a group of suspects identified who can be fully investigated, prosecuted, and tried for the crime of aggression while still occupying their positions.³³⁰

There is still more work to be done to fully establish and operationalize the Tribunal. Over time, further details about its rules of procedures and evidence, as well as the participation of victims, will need to be clarified. Other states can now join the effort by signing Enlarged Partial Agreements,³³¹ which will be crucial for the Tribunal's international legitimacy and ability to effectively carry out its mandate.

6.5 Third States' Investigations

A number of other states are conducting extraterritorial investigations into potential international crimes in Ukraine. Such investigations may take one of several forms. For instance, a third state may:

- investigate allegations against its own nationals for conduct in Ukraine;
- investigate allegations that crimes were committed against its nationals in Ukraine, such as if one of its own nationals traveled to Ukraine as a journalist or humanitarian aid worker and was subsequently victimized; or
- investigate allegations of crimes committed in Ukraine pursuant to a domestic law giving itself universal jurisdiction over allegations of atrocity crimes.

The principle of Universal Jurisdiction (UJ) stipulates that states can investigate and prosecute core international crimes without a direct link to them, meaning that they were committed outside their territory, and neither the perpetrator nor the victim are nationals of the investigating state. This is the most permissive form of extraterritorial jurisdiction. It is linked to the customary international law principle "extradite or prosecute," mentioned earlier.

Each country that has implemented UJ into its domestic legislation has its own set of conditions that allow for opening a UJ investigation. This can include:

330 Statute of the Special Tribunal for the Crime of Aggression against Ukraine: <https://surl.li/wgusgt>.

331 Frequently Asked Questions - Special Tribunal for the Crime of Aggression against Ukraine <https://www.coe.int/en/web/portal/frequently-asked-questions>.

- double criminality, meaning that the act in question must be criminalized in both the state where it took place and the third state that considers opening of the investigation;
- physical presence, meaning that the suspect must be present (and sometimes must have legal residence) in the investigating state;
- subsidiarity, meaning that there should be no ongoing overlapping cases, primarily in the state where the crime was committed, or before any international court;
- impossibility to extradite a suspect; and
- the victim's physical presence on the territory of the state, even in the absence of the suspect.³³²

Some states have more progressive legislation allowing for a more flexible application of UJ (e.g. Germany), while others stipulate a stricter regime for such cases (e.g. France).

Traditionally, UJ proceedings are used when the domestic system is unable and/or unwilling to administer justice, and there are no other mechanisms in place. While Ukraine's domestic response to grave crimes has been more promising, UJ is still particularly relevant for the situation, considering that:

- A significant number of people have fled Ukraine to different states around the world, meaning that there are victims of international crimes committed in Ukraine who have relevant evidence located in many different states at the moment;
- The ICC would likely only pick a handful of cases, for example, in relation to the higher military or political leadership;
- The number and scale of violations committed puts a significant burden on Ukraine's domestic justice system; and
- Systemic imperfections of the Ukrainian justice system and its lacking capacity result in accountability gaps.

After the full-scale invasion in 2022, more than 20 states have initiated investigations into crimes committed during the Russian war against Ukraine. Most of them are structural investigations aimed at collecting information and evidence with little information available as to the strategy or prospects of such proceedings. Individual cases that have been opened primarily concern nationals of the investigating states.

332 Practitioners' Handbook on the Use of Extraterritorial and Universal Jurisdiction to Pursue Accountability for International Crimes Committed in Ukraine. Global Rights Compliance, 2025, https://globalrightscpliance.org/wp-content/uploads/2025/06/20250613-Handbook_UJ-final.pdf.

This illustrates a general reluctance of states to pursue cases on Ukraine. Sometimes the justification for such a situation is based on ongoing justice processes in Ukraine. However, as noted above, under the CPCU there is an obligation to register and investigate all incidents, but given the scale of alleged violations and Ukraine's limited capacity, it cannot possibly complete all the investigations in question.³³³ The Ukrainian government can help resolve any misimpressions by publicly encouraging third states to bring UJ cases, to make clear that it supports such proceedings and they would not constitute any incursion on Ukraine's sovereign prerogatives.³³⁴

Lack of dedicated resources, legislative and institutional framework (e.g. dedicated units within the justice system), and experience can further hinder the prospects of UJ cases. While states like Germany, Sweden, and France have significant experience in such proceedings, others—like Poland or Latvia—are yet to develop expertise in universal jurisdiction proceedings.³³⁵

In short, UJ can be an important element of the overall international justice landscape for allegations of international crimes committed during the war in Ukraine. It can provide victims with more opportunities to seek redress; support the domestic system and improve legal cooperation; and create more opportunities for the arrest and prosecution of perpetrators. And UJ proceedings focused on crimes against humanity or command responsibility may help close accountability gaps in Ukrainian domestic law.³³⁶ With a more nuanced approach to the subsidiarity principle and better cooperation and sharing of evidence between concerned states, UJ proceedings can complement the Ukrainian domestic justice system and the ICC's efforts. But as it stands now, legislative and institutional limitations, as well as lack of political will, mean this justice pathway has not yet realized its full potential for Ukraine.

333 "No safe haven" is not enough – universal jurisdiction and Russia's war of aggression, EJIL:Talk, 2025, <https://www.ejiltalk.org/no-safe-haven-is-not-enough-universal-jurisdiction-and-russias-war-of-aggression/>.

334 Id.

335 Ukrainian Legal Advisory Group. Needs Assessment of Ukraine's Justice System, 2025, <https://www.justice-needs-ukraine.report/en/chapter/the-role-of-the-international-accountability-mechanisms#ref-503>.

336 See above Sec 6.2.

6.6 Conclusion

Ensuring justice for conflict-related crimes—especially grave international crimes—is never a short-term endeavor. Although Ukraine began pursuing accountability while the conflict is still ongoing, it is likely that these efforts will need to continue for many years after the war ends.

The justice landscape that applies to allegations of crimes committed during Russia's war against Ukraine is diverse and will continue to evolve. None of the justice mechanisms in this landscape operates in a vacuum. For example, the quality of Ukrainian justice processes and the challenges they face impact the broader international justice environment. And no one mechanism can handle all the open investigations alone.

Consequently, to achieve meaningful justice for victims of grave crimes and the sovereign nation of Ukraine itself it is crucial to maintain a strategic commitment to a comprehensive justice architecture, consisting of effective mechanisms that complement each other. Each mechanism's effectiveness depends on various factors that may change over time, including its institutional capacity, the governing legislative framework, and the political will and priorities of policymakers charged with resourcing or leveraging investigations and prosecutions both inside and outside of Ukraine. Because of the quantity of allegations, it is also essential to have a clear strategic case prioritization in place.

In this ever-changing environment, timely collection of information with high evidentiary value and in compliance with international standards is particularly essential to ensure that as many events as possible are preserved and can be considered in current and future justice processes. Ukrainian courts, international courts, and courts in third states all have a role to play. Evidence should be collected so it can be admitted and relied upon in any of those courts that can provide victims with a measure of justice for the crimes committed against them.

CONCLUSIONS AND RECOMMENDATIONS

The scale of allegations that prosecutors, investigators, and other justice system professionals are responsible for investigating in the context of Russia's war in Ukraine is immense in its quantity and gravity. Investigating and prosecuting such allegations requires marshaling all the available evidence—including evidence found on the battlefield. Nonetheless, Ukraine's pursuit of justice is not unprecedented. Good practices from post-war trials after the Holocaust, the wars in the Balkans, and other conflicts around the world can be adapted to the Ukrainian situation to help develop protocols that allow justice workers to prove who is responsible for serious crimes.

This Guide has presented an analysis of how to effectively use battlefield evidence to advance justice for the victims of crimes committed during the Ukraine conflict. Drawing on local knowledge and international experience, we have explained the value of battlefield evidence to prosecutors and investigators in building atrocity crime cases. We note that, while the primary responsibility for evidence collection rests with law enforcement, battlefield evidence is often first encountered by members of the military because of their unique access to the battlefield. Consequently, we have also provided guidelines for members of the military to use as and when they collect evidence and discussed how to improve the military's participation in the pursuit of justice. We have observed that there are challenges in the use of battlefield evidence in Ukraine. Nonetheless, there have also been successes, and international good practices demonstrate ways that the use of battlefield evidence can be further refined.

Because the military will often be involved in the collection of battlefield evidence, we also describe ways to hone the cooperation between the military, prosecutors, and investigators, and the role of military units which are particularly important to the issue of battlefield evidence.

We further address the use of modern technologies, like OSINT and the Delta platform, to help build cases. To ensure Ukraine operates consistently with its Constitution, laws, and obligations, we discuss measures to promote compliance with IHL among the Ukrainian military. And, while no pathway to justice is perfect, we discuss the strengths and weaknesses of both the Ukrainian and international justice systems for addressing conflict-related crimes in Ukraine.

The complex justice landscape for Ukraine poses particular challenges for those collecting evidence of international crimes. Alleged crimes are being investigated in several different states' legal systems, and could be prosecuted in any of them. So those collecting evidence have to use good practices to ensure that the evidence they collect can be admitted in Ukrainian court, in a relevant trial at the ICC, or in the court of a third state.

On that basis, we offer three categories of recommendations to further clarify the legal and procedural issues relevant to the use of battlefield evidence to pursue justice and accountability for international crimes.

Legal Reforms

- The Criminal Procedure Code of Ukraine (CPCU) should be amended to establish a presumption that battlefield evidence is admissible if it is collected in accordance with standard protocols;
- Articles 3 and 8 of the Law of Ukraine “On the Military Law Enforcement Service in the Armed Forces of Ukraine” should be amended in order to regulate the powers of the Military Law Enforcement Service to carry out initial measures for the recording and preservation of evidence of international crimes in areas of hostilities in accordance with international standards;
- prosecutors should ensure they can prove international crimes to international standards when making charging decisions under the Ukrainian Criminal Code (CCU);
- the CPCU should be amended to set out a procedure for the admission of intelligence data into evidence;
- the CPCU should be amended to authorize the National Police, as well as the State Bureau of Investigation, to investigate allegations of crimes prohibited in Chapter XX of the CCU, including international crimes, by giving them an alternative investigative jurisdiction;
- a properly designed conflict-related specialization of the judiciary should be established to enhance the capacity of the justice system to handle cases involving alleged international crimes;
- the issue of whether alleged perpetrators of crimes against humanity between 2014-2024 and commanders allegedly responsible for failing to take reasonable measures to prevent or punish crimes by their subordinates between 2014-2024 can be prosecuted in Ukrainian court on the basis of recent legal reforms should be clearly resolved;
- prosecutors and other justice system representatives should get more staffing and resources, and additional training on addressing international crimes;
- prosecutors should build cases against the most responsible perpetrators, including those responsible for broader patterns of atrocity crimes and midlevel commanders who may have given orders to direct perpetrators, as well as prosecuting direct perpetrators;
- a comprehensive victim and witness protection system should be established;
- the CPCU should be amended to allow witnesses to directly submit documents and evidence to investigative authorities to be used in criminal proceedings, in the same way as applicants and victims;

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- expand the possibility for military personnel to remotely participate in procedural hearings as specialists to assist courts in evaluating military matters; and
 - Article 41 of the CPCU should be amended to allow prosecutors and investigators to empower military personnel to conduct investigative actions under formal authorization under certain circumstances, while preserving the ability of personnel to collect, preserve, and share evidence they encounter regardless of whether they have been formally or specifically authorized to do so.

Refining Evidence Collection Processes:

- Evidence should be collected in a manner that maximizes the likelihood that it can be used in any court that hears cases arising out of the conflict in Ukraine;
- law enforcement has and should have primary responsibility for investigations and evidence collection, including on the battlefield;
- military personnel should collect evidence when appropriate (for instance, when law enforcement cannot access the area);
- the military should have a standing and publicly-releasable algorithm for collecting and preserving evidence and sharing it with law enforcement;
- appropriate military officials should communicate and cooperate with law enforcement to advance justice for atrocity crime victims;
- overclassification of battlefield evidence should be avoided;
- both judges and evidence collectors should ensure that battlefield evidence can be vetted and tested in court, including through witnesses who can authenticate it properly;
- appropriate servicemembers should receive training in identifying and collecting evidence; and
- modern technological tools like the Delta platform should be used for collecting, processing, and sharing evidence.

Actions by the Armed Forces

- Communicate and cooperate with prosecutors and investigators to help build cases and advance justice for victims, including by identifying information in the possession of military units which may have evidentiary value;
- develop, approve, and implement a standard procedure for collecting, preserving, and promptly sharing with law enforcement evidence of potential international crimes, including both physical and digital evidence;
- identify personnel responsible for collecting, preserving, and sharing with law enforcement such evidence;
- provide additional training to applicable units and servicemembers in identifying and collecting evidence of potential international crimes;
- continue to develop units that would be able to investigate the causes and circumstances of IHL violations and to develop the MLES as unit with a special coordinating and supporting role in detecting, recording, preserving, and transferring to law enforcement authorities evidence of international crimes;
- continue to build the Ukrainian Armed Forces' capabilities to uphold IHL and IHRL to comply with Ukraine's legal obligations and reinforce its international legitimacy; and
- fully integrate legal advisors into the commander's staff during military operations to promote compliance with international humanitarian law.

While implementing all of these recommendations may take time and require further deliberation, each recommendation will assist in building cases against those responsible for crimes during the war in Ukraine and bring both justice professionals and victims one step closer to achieving justice.

Annex 1: International Crimes

Genocide is an act committed **with intent to destroy, in whole or in substantial part**, a national, ethnic, racial, or religious group. The following acts may constitute genocide if committed with that intent: killing members of the group; causing them serious harm (including rape, sexual violence, or other types of severe physical or mental suffering); imposing living conditions intended to bring about the group's physical destruction; taking measures to prevent births within the group; and forcibly transferring children from the group to another group. The following are also international crimes:

- **Conspiracy to commit genocide:** Agreement between two or more persons to commit genocide, even if the genocide is not actually carried out.
- **Direct and public incitement to commit genocide:** Openly urging others to commit genocide, regardless of whether the genocide occurs.
- **Attempt to commit genocide:** Taking steps toward genocide, even if it is not completed.
- **Complicity in genocide:** Assisting, aiding, or abetting in the commission of genocide.

Crimes against humanity are serious acts of violence or abuse committed as a part of a **widespread or systematic attack directed against a civilian population**. The following may be crimes against humanity: persecution, meaning violation of fundamental human rights based on political, racial, national, ethnic, cultural, religious, gender, or other discriminatory grounds; rape, enslavement or other sexual or gender-based crimes; enforced disappearance; unlawful deprivation of liberty; unlawful forcible transfer or deportation of civilians; torture; apartheid; murder; extermination; or other inhumane acts of a similar nature that cause severe suffering, significant physical or mental harm, or bodily injury.

War crimes are serious violations of IHL committed **during armed conflict against protected persons or property** and not otherwise justified by military necessity. These include:

- Intentional/unlawful killing;
- Torture or inhumane treatment, intentionally causing undue suffering or serious bodily injury;
- Intentional attacks on civilians not taking part in hostilities or civilian objects;
- Excessive destruction and appropriation of property;
- Intentional attacks on those involved in the provision of humanitarian assistance or peacekeeping;
- Killing or wounding combatants who have surrendered or been wounded such that they no longer have means of defense;
- Use of weapons or methods of warfare prohibited by international law including use of poisonous weapons including gases and similar liquids or devices;
- Looting or pillaging personal property or cultural and national treasures in occupied territories;
- Forced labor;
- Deprivation of life, liberty, or property without due process;
- Cruel treatment of prisoners of war or civilians;
- Deportation of civilians;
- Other serious violations of the laws and customs of war recognized by international treaties ratified by Ukraine; and
- Issuing orders to commit any of the above acts.

Crime of aggression is the planning, preparation, initiation, or execution of an act of aggression involving the use of armed forces against another State in violation of the UN Charter. The crime of aggression does not require a declaration of war. Acts of aggression include military invasion, bombardment, blockade; military occupation, annexation by force, or attack on armed forces of another State. Aggression may only be committed by people in positions of authority; regular soldiers, even in an invading army, are not guilty of aggression.

Annex 2. CCU Offences Related to International Law and/or Military Service

Chapter XIX. CRIMINAL OFFENSES AGAINST THE ESTABLISHED PROCEDURE OF MILITARY SERVICE (MILITARY OFFENSES)

Article 432 Looting – Prohibits plundering or appropriation of property in areas of armed conflict or occupation.

Article 433 Violence against the population in a war zone – Prohibits violence, unlawful destruction, or taking property under the pretext of military necessity, which were committed against civilians in areas of armed conflict.

Article 434 Ill-treatment of prisoners of war – Prohibits ill treatment of prisoners of war that is cruel; repeated; or targeted at sick or wounded prisoners. Prohibits negligence in caring for sick and wounded prisoners.

Article 435 Illegal use of the symbols of the Red Cross, Red Crescent, and Red Crystal – Prohibits unauthorized use of the Red Cross, Red Crescent, and Red Crystal symbols in areas of military operations by military personnel who are not entitled to wear them. It also prohibits the misuse of these emblems, flags, or associated markings on medical or transport vehicles.

Chapter XX. CRIMINAL OFFENSES AGAINST PEACE, SECURITY OF MANKIND AND INTERNATIONAL LEGAL ORDER

Article 437 Crime of aggression – Prohibits the planning, preparation, initiation, or conduct of an aggressive war or military conflict, including participation in a related conspiracy. Aggression can only be committed by those with decision-making power.

Article 438 War crimes – Prohibits war-related acts including: cruel treatment of prisoners of war or civilians; deportation of civilians; forced labor; looting of cultural or national treasures in occupied territories; use of weapons or methods of warfare prohibited by international law; other violations of the laws and customs of war recognized by international treaties ratified by Ukraine; and issuing orders to commit any of the above acts.

Article 439 Use of weapons of mass destruction – Prohibits the use of weapons of mass destruction which are prohibited by international treaties recognized as binding by the Verkhovna Rada of Ukraine.

Article 441 Ecocide – Prohibits the mass destruction of flora or fauna, poisoning of air or water resources, as well as other actions that can cause an environmental disaster.

Article 442 Genocide – Prohibits acts committed with the intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group. Genocidal acts may include: killing members of the group; causing serious harm (including serious or moderate bodily injury, rape, sexual violence, or severe physical or mental suffering); imposing living conditions intended to bring about the group's physical destruction; taking measures to prevent births within the group; and forcibly transferring children of the group to another group.

Article 442-1 Crimes against humanity – prohibits specific acts carried out as part of a widespread or systematic attack directed against a civilian population. The following may be crimes against humanity: persecution of an identifiable group through the denial of fundamental human rights based on internationally recognized discriminatory grounds; deportation, meaning the forced and unlawful transfer of individuals from their legal place of residence to another state; forcible transfer, meaning the unlawful relocation of individuals within the same state; sexual violence, including rape, sexual exploitation, forced prostitution, forced pregnancy, forced sterilization, or other forms of sexual abuse; enslavement or human trafficking; enforced disappearance; unlawful deprivation of liberty; torture; apartheid; murder; extermination; and other inhumane acts of a similar nature that cause severe suffering, significant physical or mental harm, or bodily injury.

Article 445 Illegal use of the symbols of the Red Cross, Red Crescent, and Red Crystal – Prohibits the unauthorized use of the symbols of the Red Cross, Red Crescent, and Red Crystal, except in cases explicitly permitted by Ukrainian law.

Annex 3. Reporting Table for IHL Violations

Information Card

About Possible Commitment of an War Crime

Who reported a crime? <i>(Military rank, Name, Position)</i>	
Who committed the crime? <i>(Indicate any known information about the perpetrator)</i>	
What crime was committed?	<input type="checkbox"/> Murder or cruel treatment of prisoners of war; <input type="checkbox"/> Murder or cruel treatment of civilians; <input type="checkbox"/> Expulsion of the civilian population from their homes; <input type="checkbox"/> Pillage of national treasures in occupied territories; <input type="checkbox"/> Use of chemical, biological, and laser weapons; <input type="checkbox"/> Other
Where was the crime committed?	Region: District: Settlement (the nearest): Address or other details:
When was the crime committed? <i>(if available)</i>	Date Time
Summary and description of the event	
Information card compiled by:	
Military rank	
Name	
Position	
Personal signature	
Date and time of compilation	Date Time

(Reverse side)

Note on familiarization and additions by commanders (superiors)

Additions (if available)	Certificate of familiarization
	Military rank: Name: Position: Time and date of entry Signature
	Military rank: Name: Position: Time and date of entry Signature

Note on approval by a legal advisor

Result of approval and additions (comments)	Mark of approval
	Military rank: Name: Position: Time and date of entry Signature
	Military rank: Name: Position: Time and date of entry Signature

NOTIFICATION OF A POSSIBLE WAR CRIME

(name, location, and subordination of the military unit)

1. Date and time of the incident, brief description, place of the incident (commission), who was present at the time (accomplices, witnesses, bystanders), what preceded the offense and its consequences (injuries, death, damage caused). Preliminary classification under Article 438 of the Criminal Code of Ukraine and Article 8 of the Rome Statute of the International Criminal Court.
2. Surname, first name, patronymic, military rank, type of military service, position, year of birth, citizenship, when and by which military commissariat (territorial center for recruitment and social support—after its establishment) called up for military service, education, family status of the victim (victims).
3. Information regarding the appointed official investigation (inquiry).
4. Military rank, surname, first name, patronymic of immediate superiors.
5. Telephone numbers for further information.
6. Official email address for information exchange.

_____ (position, military rank)	_____ (signature)	_____ (initials, surname)
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Annex 4. Sample Chain of Custody Form

CHAIN OF CUSTODY TEMPLATE

To be completed by the information custodian

Date of collection: _____

Location of collection: _____

Received from: _____
(if applicable)

Support: _____
(Describe the type of information)

Received by: _____

Organisation: _____
(if applicable)

Circumstances of Collection _____

Description of the piece of information collected *(including condition, value and reason(s) for collection)*:

Name/signature (Custodian): _____

Name/signature (Depositary): _____

Date and time:	Released by: <i>(Name, Signature)</i>	Received by: <i>(Name, Signature)</i>	Purpose of release:

Source: ICC-Eurojust Guidelines for Civil Society Organizations, Annex 2

https://www.icc-cpi.int/sites/default/files/2022-09/2_Eurojust_ICC_CSOs_Guidelines_2-EN.pdf

Annex 5. Guidelines on Battlefield Evidence

It is important to standardize evidence collection as far as possible in a combat situation. We thus recommend setting out clear guidelines for military units to follow if they encounter evidence of potential international crimes. Military personnel may be required to collect evidence if law enforcement cannot access the scene due to ongoing combat, or if it is delayed, or other similar circumstances. Below we provide an example of some guidelines which could be used.

- 1** Before collecting evidence, conduct a risk assessment. Be aware of possible dangers (mines, unmanned vehicles, shelling, chemicals, etc.), whether persons involved in the crime may be present, and the possibility of accidentally destroying or damaging evidence.
- 2** Secure and preserve the integrity of the crime scene.
 - Identify and mark the perimeter of the area and establish entry and exit points.
 - Before moving any object or otherwise affecting the traces of the crime, take a recording of the scene (including, if appropriate, by using unmanned systems).
 - Refrain from altering the scene, including by eating or smoking.
- 3** Have a set policy on what devices should be used to record evidence and related material. When recording, use settings that will encrypt the device; ensure images are high-resolution; and automatically record images unchanged. Test devices which are likely to be used for recording crime scenes in advance.
- 4** Set the device you record the scene on to preserve as much metadata as safely possible about the images you take (e.g., location, time, GPS coordinates, and whether you are using an encrypted device). This will help verify the authenticity of the images in the future.
- 5** If it is safe to do so, note the place, date and time of the recording (start and end) on the camera. Be sure to record the day, time, and place (WHEN and WHERE the photo or video was taken) with GPS coordinates (if possible). Identify the person making the video recording, as well as the persons being

filmed. It should be clear from the photo or video who took it, when, where, and at what time.

- 6** Take pictures and film from different angles and distances:
 - Start with panoramic images that show the scene and the surrounding area;
 - then take a medium-range overview shot to capture the relative position of people and objects and document exactly where a particular object was found;
 - Complete the capture with a close-up shot to show the most important details (e.g., identifying people at the scene, license plates, injuries, letters, or markings on objects).
 - Take pictures of an object from different angles, leaving it in the same place where it was found. Place a ruler or other measuring object next to the object to show its size;
 - Take 360-degree video or an overview photo to provide context. If possible, shoot video without pauses. If continuous recording is not possible, shoot overlapping video (duplicating the end of the footage at the beginning of the next video).
- 7** Protect the information you collect and the sources of the information with special measures, such as using encrypted devices. Transfer any images or videos to a location where they will be stored as soon as possible. If it is safe to do so, use an app that preserves the metadata associated with the images. Create a list of the images recorded. Try to make this list as soon as possible after taking photos and filming. Make sure that you can accurately identify which photo or video corresponds to each description. In descriptions, include only factual information (what, where, when, how, and who), not subjective assumptions or opinions.
- 8** Do not edit the files or do anything that can change the original image. If you need to use or edit a captured image, make a working copy of the image, leaving the original unchanged.
- 9** Collect any relevant item which can be safely collected and saved. Ensure that:
 - items are not inadvertently damaged or destroyed;
 - items are collected as soon as you record their discovery;

- items are packed properly in containers that do not promote decomposition and that can protect the items from shock, humidity, and extreme temperatures;
- items are temporarily stored in a safe, secure area promptly after their discovery is recorded; and
- items are promptly moved to a secure location for permanent storage.

10 When handling items of evidence, including documents, always use appropriate protective equipment (e.g., sterile gloves) to ensure their integrity, if possible. Take a picture of the item, select the appropriate packaging, and sign a chain of custody form before packing it with the item. Document the collection of the item and its preservation by photo or video.

11 To authenticate an item, obtain and record information showing its authenticity. For instance: record the information provided by the provider about the origin of the item, as well as when, where, and for what purpose it was made and received. Note the circumstances under which the provider received the item and is transferring it;

- If the person who provided you with the item is not its original owner, try to identify the original owner. If possible, interview the original owner about the item;
- Keep information about persons who can authenticate items and share this information with law enforcement or prosecutors as appropriate.

12 Maintain the integrity of each item from the moment it comes into your possession until it is handed over to the competent law enforcement authorities. ensure that the collected items and information are not damaged, lost, altered or tampered with:

- Securely pack the items;
- Label them so they can be identified, including what they are, who they were received from, and warnings if the package contains hazardous material;
- Document the chain of custody (see Annex 4); and
- Ensure they are transmitted up the chain of command and then shared with law enforcement according to standard protocols.

- 13** Before conducting information-gathering activities involving other persons (e.g., interviewing a person, taking photos or videos of them, obtaining documents from them), be sure to explain the nature and purpose of the activity to the person. Get confirmation of informed consent at each stage of collecting information. Record confirmation in writing or in audio or video formats. Make sure the confirmation clearly identifies the person providing consent and contains information to show what the person is consenting to and that the consent is truly voluntary.
- 14** Depending on the resources available, select appropriate physical and digital storage systems. Physically store information in a locked storage facility (safe or cabinet) that is protected from fire, water, and extreme temperatures if possible. Store items that are part of a kit or set in one place (e.g., documents that are related to each other).
- 15** Make sure all the information you have obtained is easily searchable. Organize it carefully so that an investigator can tell what exactly has been collected and locate any given item. Create a document or database with basic information about all the materials collected.
- 16** Use good practices for digital storage:

 - Use an encrypted device that can be easily transported and easily hidden (e.g., USB, flash drive, SD card, or external hard drive) to store your data;
 - Avoid storing information on devices with internet connections (phone, computer) when possible;
 - Make sure the device's operating system and software are up to date;
 - Install appropriate anti-virus software and a firewall;
 - Make regular backups. Ensure you can recover all your data if it is lost.
- 17** Transmit information about the following circumstances if relevant and reliable information is available:

 - time and place of the crime;
 - any information about persons who may have committed the crime;
 - information about victims, including the location of their bodies if they were killed);

- means of committing the crime, such as the type of munition used;
- available evidence, such as other persons who may have witnessed the crime;
- an approximate map of the area where the crime was committed (indicating the district and coordinates).

This data should be recorded as soon as possible. It can be recorded in any form convenient for the servicemember. Information which can be documented by photo or video should be. Recordings should be promptly transferred, for instance to information-sharing platforms like Delta.



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