THE SEVENTEENTH WALDEMAR A. SOLF AND MARC L. WARREN CHAIR LECTURE IN NATIONAL SECURITY LAW*

THE HONORABLE DR. BETH VAN SCHAACK†

I. Introduction

It's an honor to be able to deliver this lecture, named after two giants in the field, and to sit in the actual chair itself while doing so—the Iron

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* This is an edited transcript of a lecture delivered on March 22, 2024, by the Honorable Dr. Beth Van Schaack to the 72d Graduate Course at The Judge Advocate General's Legal Center and School, Charlottesville, Virginia. The Waldemar A. Solf Chair of International Law was established at The Judge Advocate General's School on 8 October 1982 in honor of Colonel (COL) Waldemar A. Solf. On 16 August 2007, the Chair was renamed the Waldemar A. Solf and Marc L. Warren Chair in International and Operational Law. COL Waldemar Solf (1913–1987) was commissioned in the Field Artillery in 1941. He became a member of the Judge Advocate General's Corps in 1946. He served in increasingly important positions until his retirement twenty-two years later. COL Solf's career highlights include assignments as the Senior Military Judge in Korea and at installations in the United States; Staff Judge Advocate, Eighth U.S. Army/U.S. Forces Korea/United Nations Command and U.S. Strategic Command; Chief Judicial Officer, U.S. Army Judiciary; and Chief, Military Justice Division, Office of The Judge Advocate General. After two years of lecturing with American University, COL Solf rejoined the Judge Advocate General's Corps in 1970 as a civilian. Over the next decade, he served as Chief of the International Law Team in the International Affairs Division, Office of The Judge Advocate General, and later as chief of that division. During this period, he served as a U.S. delegate to the International Committee of the Red Cross Conference of Government Experts on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. He also served as Chairman of the U.S. delegation to the International Committee of the Red Cross Conference Meeting of Experts on Signaling and Identification Systems for Medical Transports by Land and Sea. He was a representative of the United States to all four diplomatic conferences that prepared the 1977 Protocols Additional to the 1949 Geneva Conventions. After his successful efforts in completing the Protocol negotiations, he returned to Washington and was appointed the Special Assistant to The Judge Advocate General for Law of War Matters. Having been instrumental in promoting law of war programs throughout the Department of Defense, COL Solf again retired in August 1979. In addition to teaching at American University, COL Solf wrote numerous scholarly articles. He also served as a director of several international law societies and was active in the International Law Section of the American Bar Association and the Federal Bar Association.

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Throne of International Humanitarian Law, if you will. This is a moment I will treasure. Thank you so much for inviting me.

I am the sixth Ambassador-at-Large for Global Criminal Justice (GCJ), as it's now called. My position used to be called the Ambassador-at-Large for War Crimes Issues, but our mandate expanded considerably over the years, and with that expansion came a name change. My job is essentially to respond to, look to mitigate, and try to prevent atrocities committed around the world and to advance justice when such crimes are committed.

My remit is truly global. I spend about 40 percent of my time on the road, visiting areas where atrocities are being threatened or have been committed. In those instances, I often act in an advisory capacity with our local embassy, whose personnel have not necessarily been trained in recognizing the risk factors or the triggers that are associated with atrocities. If there's a situation ongoing, where atrocities are already being committed, we're looking for what tools we have to try to mitigate harm to civilians and constrain perpetrators. That includes contributing to sanctions authorities, ensuring the rigorous documentation of abuses, and identifying and strengthening pathways to justice that might be available, either while a conflict or authoritarianism is ongoing or after the fact, if that is more viable.

In a post-atrocity situation, we help advise embassies, posts, foreign governments, civil society, and multilateral institutions in the conceptualization and deployment of the whole range of transitional justice tools. This includes criminal trials, but we also focus on truth-telling, the rehabilitation of survivors, and lustration—the vetting of individuals who should not hold positions of power or authority in a new democratic administration. And we're thinking about guarantees of non-repetition, potential institutional reforms, and other mechanisms to ensure that a society does not return to the destructive patterns or practices of the past. It's a huge remit. One that became crushing on February 23, 2022, with Russia's full-scale invasion of Ukraine,[1] and has remained so ever since.

I am very focused on prioritizing where we deploy the resources that we have, bearing in mind that we're a small team of about 20. In my leadership capacity, I am also always thinking about secondary trauma within my own team. As you can imagine, we see very difficult fact

[1] Michael Ray, *Russia-Ukraine War*, BRITTANICA, https://www.britannica.com/event/2022-Russian-invasion-of-Ukraine [https://perma.cc/BD4T-KT5G] (last visited Jan. 6, 2026).

patterns, and we're often speaking to survivors who have lived through things that no one should live through. It's a difficult portfolio, but it's one that is extremely inspiring, and I draw energy from being out in the field, speaking with survivors and civil society organizations, interfacing with members of our military who are deployed in these circumstances, and working with colleagues across agencies.

I thought I'd spend my time with you today to speak a little bit about the situation in Ukraine. Partly, because it's a huge piece of my portfolio, but also because I think it's a useful window through which it's possible to view the expanding realm of international criminal justice. What institutions exist? What norms are being invoked? And what creative innovations are emerging, given the broad support for accountability for the situation in Ukraine, including within the multilateral sphere and within our own government, on a bipartisan basis?[2] Importantly, as a community of justice advocates, we've been able to think creatively about building new justice institutions that will be deployed, first with respect to Ukraine, but that can then be rolled out in connection with other atrocity situations. So, for the remainder of my remarks, I will discuss where we've come from, where we are, and where we can envision the field potentially going.

In my office, we're working to empower, strengthen, and open up what I describe as the five pathways to justice for the war crimes, crimes against humanity, and other atrocities that are being committed on a daily basis in Ukraine. The first pathway involves supporting Ukraine's domestic efforts. The second involves catalyzing strategic litigation that may proceed in third States under extraterritorial principles of jurisdiction. The third pathway runs through existing, new, and imagined institutions at the international level. The fourth pathway focuses on the crime of aggression. The fifth and final pathway leads here to the United States.

II. Pathway One: Strengthening the Ukrainian Legal System

The first pathway to justice is built upon the Ukrainian national system. Unlike many States in atrocity situations, Ukraine has a

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[2] Gissou Nia, *Congress Just Passed a Big Change to War Crimes Law. Here's What it Means for Ukraine and Beyond*, ATLANTIC COUNCIL (Dec. 23, 2022), https://www.atlanticcouncil.org/blogs/new-atlanticist/congress-just-passed-a-big-change-to-war-crimes-law-heres-what-it-means-for-ukraine-and-beyond/ [https://perma.cc/BWN5-UMDW].

functioning, if imperfect, judiciary.[3] Indeed, the Prosecutor General is extremely motivated to prosecute these cases.[4] In partnership with the United Kingdom and the European Union, the United States established the Atrocity Crimes Advisory Group (ACA) in May 2022.[5] This is a unique experiment aimed at coordinating donor support to the national system in keeping with the principle of complementarity. Complementarity is premised on the idea that we should always try to prosecute these events as close to the ground as possible, which empowers the national system; ensures accessibility for victims, survivors, and witnesses; and enhances local capacity and the rule of law more generally.[6] It also preserves international resources for situations in which a state is unwilling or unable to act itself, either because of a full-scale collapse of its judicial system or because the judicial system has been captured by an authoritarian regime.[7]

The ACA's goal is to coordinate our foreign assistance and surge resources and training to the Prosecutor General in Ukraine. We have done this primarily by deploying a cadre of veterans from the war crimes tribunals of the world and other subject matter experts. Many of my former colleagues from the International Criminal Tribunals for Rwanda and the former Yugoslavia are now working with the Prosecutor General in Ukraine. Imagine the individual who prosecuted the Siege of Sarajevo now helping his Ukrainian counterparts prosecute the Siege of Mariupol. The

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[3] Tetyana Antsupova, *Judiciary in Ukraine Evolution in a Context of Systemic Deficiencies and Endless Reforms*, BINGHAM CTR. FOR THE RULE OF L. (Oct. 2025) https://binghamcentre.biicl.org/documents/2239_judicary_in_ukraine_-tetyana_antsupova__final_27_10_25.pdf [https://perma.cc/FCT5-TVW5]; Olena Romtsiv & Mariana Kuzmiak, *The Judicial System of Ukraine: Constitutional Analysis of Reforms,* 11 BULL. OF LVIV POLYTECHNIC NAT. UNIV. SERIES: LEGAL SCIS. 303, 303-307 (2024).

[4] Myroslava Chaiun, *Ukraine: No One Will Do This For Us,* INST. FOR WAR & PEACE REPORTING (March 4, 2025), https://iwpr.net/global-voices/ukraine-no-one-will-do-us [https://perma.cc/3BZ6-ZC9B].

[5] Antony J. Blinken, *Launch of the Atrocity Crimes Advisory Group (ACA) for Ukraine,* FED. NEWSWIRE (May 26, 2022), https://thefederalnewswire.com/stories/626427412-launch-of-the-atrocity-crimes-advisory-group-aca-for-ukraine [https://perma.cc/4MW4-3QRT]; ATROCITY CRIMES ADVISORY GRP. FOR UKR., https://www.aca-ukraine.org/ [https://perma.cc/226Z-7DSJ] (last visited Jan. 6, 2026); *The Atrocity Crimes Advisory Group (ACA) for Ukraine*, U.S. DEP'T OF STATE, OFF. OF GLOB. CRIM. JUST. (Jan. 20, 2025), https://2021-2025.state.gov/ukraine-advisory-group-aca/[https://perma.cc/Z3N5-BNQM].

[6] Olympia Bekou, *Complementarity Principle*, OXFORD BIBLIOGRAPHIES (June 25, 2013), https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0071.xml [https://perma.cc/JZZ9-W2PG].

[7] *Id*.

goal is to coordinate assistance, so we're not overinvesting in some areas and underinvesting in others, and to try to encourage our implementing partners, who are actually able to be full-time on the ground in Ukraine, unlike government actors, to work together constructively. This can be a challenge, as you can imagine. It is very much an ongoing experiment in donor coordination.

The Prosecutor General has recorded over 120,000 potential prosecutable incidents.[8] As a civil law system, they recognize the principle of mandatory investigation: prosecutors must open a file in connection with the commission of any potential crime.[9] Understandably, the challenge of prioritization has been huge. This is partly what the ACA has been able to help Ukrainian prosecutors think through. How are you going to determine which of these 120,000-plus incidents can be successfully prosecuted? Do you have sufficient admissible evidence, including tangible physical evidence, documentary evidence, intelligence, eyewitnesses and survivors who are willing and able to testify, or expert witnesses whom you can call?

It is also necessary to consider whether you have a legal framework that works. Ukraine has a war crime statute.[10] It's relatively dated and vague. It doesn't contain an expansive or detailed enumeration of war crimes as many more modern statutes do.[11] Ukraine does not have a crimes against humanity statute, nor do they have a codified superior responsibility doctrine.[12] One of the main sources of advice that the ACA gives is how to imagine prosecuting up a chain of command without this doctrine. The United States doesn't have superior responsibility in our

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[8] *Ukraine Probing Over 122,000 suspected War crimes, Says Prosecutor,* REUTERS (Feb. 23, 2024), https://www.reuters.com/world/europe/ukraine-probing-over-122000-suspected-war-crimes-says-prosecutor-2024-02-23/ [https://perma.cc/J9CY-DQSG].

[9] Lan Chi Le et al., *Mandatory Prosecution in the Changing Time: A Systematic Literature Review*, 44 CRIM. JUST. ETHICS, 78 (2025).

[10] КРИМІНАЛЬНИЙ КОДЕКС УКРАЇНИ [CIVIL CODE] art. 438 (Ukr.).

[11] *See Global International Criminal Law Database*, PROJECT MERIDIAN, https://projectmeridian.org/ [https://perma.cc/7AX5-QUGM] (last visited Jan. 6, 2026).

[12] The Ukrainian Parliament subsequently rectified both of these omissions. Liza Brovko, *The Criminal Code of Ukraine Will be Brought into Line with the Norms of the Rome Statute of ICC*, BABEL (Oct. 9, 2024), https://babel.ua/en/news/111540-the-criminal-code-of-ukraine-will-be-brought-into-line-with-the-norms-of-the-rome-statute-of-icc [https://perma.cc/G45J-ZFXD].

Title 18 either,[13] so we're stuck using collective or accessory theories of responsibility in order to reach what is essentially a "system crime,"[14] where you have individuals who are contributing to criminal conduct or a criminal enterprise at multiple different levels and in different functional capacities.

In supplemental appropriations, GCJ received dedicated funding from Congress in order to promote justice, and we've put much of it towards this advisory group. We've also built a multinational fund with the idea of accepting donations from other states outside of the region in the hope of sending a message that this is a global effort, not just a European problem or an American enterprise. It is truly an international exercise.

So that's the first pathway: working within the courts in Ukraine and supporting our colleagues in their efforts to undertake fair and effective prosecutions.

III. Pathway Two: Catalyzing Other National Prosecutions and Empowering Civil Society Organizations

The second pathway recognizes that, increasingly, we are seeing cases involving the commission of international crimes proceeding in third-party states, often far away from the events in question. The Europeans have really been in the lead here. There have been dozens of cases premised on extraterritorial principles of jurisdiction—including the concept of universal jurisdiction—involving perpetrators who are alleged to have committed abuses in Syria, Iraq, Liberia, and The Gambia, among others.[15]

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[13] Beth Van Schaack, *Title 18's Blind Spot: Superior Responsibility*, JUST SEC. (June 3, 2014), https://www.justsecurity.org/11066/title-18s-blindspot-superior-responsibility/ [https://perma.cc/43EX-NQWH]; Brian Finucane, *A Commander's Duty to Punish War Crimes: Past U.S. Recognition*, JUST SEC. (Dec. 4, 2020), https://www.justsecurity.org/72915/a-commanders-duty-to-punish-war-crimes-past-u-s-recognition/ [https://perma.cc/JTN8-BLD6].

[14] Andrè Nollkaemper, *Introduction in* SYSTEM CRIMINALITY IN INTERNATIONAL LAW 1 (Harmen van der Wilt & Andre Nollkaemper eds., 2009) ("The term system criminality refers to the phenomenon that international crimes—notably crimes against humanity, genocide and war crimes—are often caused by collective entities in which the individual authors of these acts are embedded.").

[15] *See European Countries' Approach to Universal Jurisdiction Over War Crimes Committed in Syria–A Success Story?*, EUR. INST. FOR INT'L RELS., (Dec. 5, 2023), https://www.eiir.eu/international-law/european-countries-approach-to-universal-jurisdicti

These cases are proceeding under somewhat idiosyncratic statutes that may contain certain limitations or requirements; for example, many of them require the presence of the accused in the prosecuting state, the presence of a victim, or a nationality connection of some sort to create a nexus to the forum.[16] Other statutes embody a purer form of universal jurisdiction, which allows the state to seek the extradition of someone, even if there's no nexus to the prosecuting state.[17]

As a result of these statutes and the work of dedicated war crimes units, we've seen the development of jurisprudence around universal jurisdiction emerging from Europe. And we're starting to see glimmers elsewhere, including here. We have a case moving forward in Colorado in September under universal jurisdiction involving a Gambian torturer who overstayed a visa and went underground under an assumed name.[18] His victims recognized him and reached out to the Center for Justice and Accountability (CJA), where I used to work, and asked, "Listen, we think this guy is here. What do we do?" CJA reached out to the Human Rights and Special Prosecutions unit within the Department of Justice (DOJ), which has jurisdiction over the suite of international crime statutes within Title 18, to encourage them to add torture charges to immigration charges that had been the subject of an earlier investigation.[19] DOJ subsequently achieved a superseding indictment for torture and conspiracy to commit torture. That case will go forward in September.[20]

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on-over-war-crimes-committed-in-syria-a-success-story/ [https://perma.cc/RY24-FE2F]; UNIVERSAL JURISDICTION ANNUAL REVIEW 2025, EUR. CTR FOR CONSTITUTIONAL & HUM. RTS. (2025), https://www.ecchr.eu/en/publication/universal-jurisdiction-annual-review-2025/ [https://perma.cc/LQ3A-MLXW].

[16] EUROJUST, AT A GLANCE: UNIVERSAL JURISDICTION IN EU MEMBER STATES, https://www.eurojust.europa.eu/sites/default/files/assets/at-a-glance-universal-jurisdiction-in-eu-member-states.pdf [https://perma.cc/5QZ7-AEUG] (2023).

[17] *Id*.

[18] Indictment, United States v. Correa, No. 20-cr-148 CMA (D. Colo. June 2, 2020), Dkt. No. 1, https://www.courtlistener.com/docket/17311153/united-states-v-correa/ [https://perma.cc/6U67-LR2N].

[19] *U.S. Criminal Prosecution of Michael Sang Correa*, CTR. FOR JUST. & ACCOUNTABILITY, https://cja.org/what-we-do/litigation/u-s-criminal-prosecution-of-michael-sang-correa/ [https://perma.cc/64MZ-72AS] (last visited Jan. 7, 2026).

[20] The defendant was subsequently convicted by a U.S. jury of torture and conspiracy to commit torture and will serve a 67 year sentence. Press Release, U.S. Dep't of Just., Gambian Man Convicted on Torture Charges (Apr. 15, 2025), https://www.justice.gov/opa/pr/gambian-man-convicted-torture-charges [https://perma.cc/XD8U-7LDZ].

The United States has launched other successful cases under our international crime statutes,[21] including one against Chuckie Taylor, the son of ex-Liberian President Charles Taylor.[22] He was a U.S. citizen, having been born in the United States, so technically, this wasn't a full universal jurisdiction case. He was convicted and is serving a 97-year sentence.[23] A couple of other cases were also brought, but then the state of nationality of the accused or the victim requested the extradition of that individual.[24] We obliged, on the theory, again, that it would be better for this case to be prosecuted in the State that witnessed and was ravaged by those crimes, rather than in a faraway courtroom in the United States.

Elsewhere, Argentina is now stepping up, having opened several investigations involving international crimes committed all over the world.[25] I was down there recently, meeting with the prosecutors and investigators and looking for ways for the United States to support those efforts to deliver justice under an extraterritorial theory of jurisdiction.[26]

In particular, GCJ is helping to connect and fund civil society organizations that are assisting with these cases within Europe and elsewhere. It's a new model of public-private partnership. Ordinarily, prosecutorial authorities work in acoustic isolation, with less engagement in or input from the community. They want extreme secrecy and confidentiality. All of that is understandable when investigating state or Federal crimes. But when you're dealing with international crimes, you must understand a crime base that may be very new to an American

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[21] *Universal Jurisdiction: Law and Practice in the United States of America*, OPEN SOC'Y JUST. INITIATIVE, (May 2022), https://ujim.trialinternational.org/wp-content/uploads/2021/03/Briefing-paper_UJ_USA_ENG.pdf [https://perma.cc/UQ7H-WY5A].

[22] United States v. Belfast, 611 F.3d 783 (11th Cir. 2010).

[23] Press Release, U.S. Dep't of Just., Roy Belfast Jr., A/K/A Chuckie Taylor, Sentenced on Torture Charges (Jan. 9, 2009), https://www.justice.gov/archives/opa/pr/roy-belfast-jr-aka-chuckie-taylor-sentenced-torture-charges [https://perma.cc/SNX2-955H].

[24] Press Release, U.S. Dep't of Just., Bosnian National Extradited to Stand Trial for Murder and Torture (June 3, 2013), https://www.justice.gov/archives/opa/pr/bosnian-national-extradited-stand-trial-murder-and-torture [https://perma.cc/V8ZL-R5J7].

[25] Bénédict De Moerloose, *Universal Jurisdiction Law and Practice in Argentina*, TRIAL INT'L (May 6, 2025), https://trialinternational.org/latest-post/universal-jurisdiction-law-and-practice-in-argentina/ [https://perma.cc/LN5J-VGFN].

[26] Press Release, Legal Action Worldwide, Argentina Court Issues Arrest Warrants for Genocide and Crimes Against Humanity Committed Against the Rohingya Community (Feb. 14, 2025), https://legalactionworldwide.org/accountability-rule-of-law/argentina-court-issues-arrest-warrants-for-genocide-and-crimes-against-humanity-committed-against-the-rohingya-community/ [https://perma.cc/Q92X-WUMQ].

prosecutor. Many U.S. lawyers may not even, frankly, be able to find The Gambia on a map; it's a tiny little country that's embedded within Senegal. It's not an atrocity situation that is top of mind, and yet, terrible crimes were committed. Prosecuting the *Correa* case required understanding who President Jammeh was and why he was so repressive.[27] Why were a group of Ghanaian and other West African migrants massacred at his orders?[28] Who were the Junglers?[29] These are contextual questions that civil society organizations can help answer because they have worked, often for decades, in the relevant communities. This allows U.S. investigators to better understand the patterns and dynamics of violence and vet witnesses who come forward with information on perpetrators who may be within our jurisdictional reach.

These civil society organizations often have trusted relationships within refugee and diaspora communities, which helps survivors and witnesses feel comfortable coming forward, telling their story, and exploring their willingness to participate in a case. These civil society organizations can then accompany victims through what is often a very arduous justice process, where they must confront, in a court of law, the person whom they are accusing of having tortured them, or of having committed sexual violence against them. All the while, they're used to a system in which the powerful are never, ever in the dock. They often wonder if they can trust our system to be fair and to give them an opportunity to bear witness without experiencing intimidation or retaliation for coming forward. Seeking justice is an extremely courageous act, and having civil society organizations there to help support witnesses and survivors can be incredibly validating.

Many of these civil society organizations are operating at the tip of the spear when it comes to open source digital investigations. This is the new frontier of international justice and of domestic justice processes more broadly. Using new technological tools to scrub social media sites,

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[27] Aminata Ndow, *Building Voice Upon Voice: Truth, Memory, and Activism, in The Gambia's Transnational Justice Process*, 14 INT'L J. FOR CRIME, JUST. AND SOC. DEMOCRACY 1 (2025).

[28] *Remembering the 2005 Massacre of West African Migrants*, WOMEN'S ASS'N FOR VICTIMS' EMPOWERMENT (July 22, 2025), https://wave-gambia.org/remembering-the-2005-massacre-of-west-african-migrants/ [https://perma.cc/M5AK-UAEQ].

[29] For a more in depth discussion of the atrocities commited in the Gambia *see* Mustapha K. Darboe, *Gambia's Full Terror Exposed Before The TRRC*, FOUND. HIRONDELLE (July 26, 2019), https://www.justiceinfo.net/en/42026-gambia-full-terror-exposed-before-the-trrc.html [https://perma.cc/P4K5-2RZ7].

aggregate digital information, and apply big data analytics can reveal patterns and practices, relationships, and networks that might otherwise be invisible to the naked eye.[30] Some of these civil society organizations are doing this work at a much higher level, frankly, than those of us who are used to old-school, on-the-ground investigations in a neighborhood where there may have been localized violence. This partnership between civil society organizations and national prosecutorial authorities is an important new component of the engine that has propelled these cases forward.

We're also seeing many states form dedicated war crimes units.[31] We have one in our own system: the Human Rights and Special Prosecutions Section, which I mentioned earlier.[32] These units are developing in-house expertise in investigating international crimes to better understand the elements of the offenses, the types of evidence that can be used to prove command responsibility, and techniques to establish the contextual elements of crimes against humanity or war crimes. These national units are increasingly interlinked and interoperable. Many of them in Europe are working under the umbrella of Eurojust, which hosts regular meetings of the war crimes units as part of a genocide network.[33] Our people participate in that as well, as does my office.

These units are also forming Joint Investigative Teams (JITs) looking at some of the big crime bases around the world.[34] There's a JIT involving multiple European states dedicated to Syria, to Iraq and ISIS, and now to Ukraine,[35] which includes the Office of the Prosecutor of the International Criminal Court (ICC).[36] JITs enable a more free-flowing sharing of

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[30] BETH VAN SCHAACK, BIG DATA AND ARMED CONFLICT: LEGAL ISSUES ABOVE AND BELOW THE ARMED CONFLICT THRESHOLD 291-316 (Laura A. Dickinson & Edward W. Berg eds., 2023).

[31] *See* Elise Baker et. al., *Joining Forces: National War Crimes Units and the Pursuit of International Justice*, 42 HUM. RTS. Q. 594 (2020).

[32] *Human Rights and Special Prosecutions Section (HRSP)*, U.S. DEP'T OF JUST.: CRIM. DIV., https://www.justice.gov/criminal/criminal-hrsp [https://perma.cc/3GLN-BJEA] (last visited Jan 7, 2026).

[33] Genocide Prosecution Network, EUR. UNION AGENCY FOR CRIM. JUST. COOP., https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-prosecution-network [https://perma.cc/9A2U-R3FH] (last visited Jan. 7, 2026).

[34] Andrea Furger, *Can They Deliver? The Practice of Joint Investigation Teams (JITS) in Core International Crimes Investigations*, 22 J. INT'L CRIM. JUST. 43 (2024).

[35] *Id*.

[36] *ICC Participates in Joint Investigation Team Supported by Eurojust on Alleged Core International Crimes in Ukraine*, EUR. UNION AGENCY FOR CRIM. JUST. COOP. (Apr. 25,

information. Ordinarily, bilateral requests for evidence would have to go through a mutual legal assistance arrangement that involves ministries of foreign affairs and diplomats, whom you generally want to keep out of law enforcement. JITs let the prosecutors and investigators talk amongst themselves and share information directly.

With the full-scale invasion of Ukraine, we've seen a mass mobilization of these war crimes units working together in novel ways: creating common databases, sharing techniques and strategies, tracking Russian fugitives, mapping the chain of command within Russia, and understanding what role organizations such as the Wagner Group is playing within Ukraine,[37] and then in other areas in which the Wagner Group has been deployed around the globe.[38]

Pathway number two thus has me thinking about ways for the United States to support this growing ecosystem of national prosecutors and to facilitate the provision of assistance from civil society organizations.

IV. Pathway Three: International Institutions

The third pathway to justice involves international institutions. There are a number of these institutions engaged in war crimes documentation focused on Ukraine. After Russia's invasion, the United Nations created a Commission of Inquiry (COI), which the United States has supported through our voice and our vote in multilateral organizations, but also through information-sharing arrangements.[39] GCJ is working with our intelligence community to downgrade or otherwise make available information that can inform the COI's public reports.

2022), https://www.eurojust.europa.eu/news/icc-participates-joint-investigation-team-supported-eurojust-alleged-core-international-crimes [https://perma.cc/65VD-PAQX].

[37] *Accountability for Crimes of Personnel of the Wagner Group in Ukraine*, OPEN SOC'Y JUST. INITIATIVE (Nov. 2023), https://www.justiceinitiative.org/uploads/a8de622f-bfbf-4cf5-99ba-f5b98b34f4ad/accountability-for-crimes-of-personnel-of-the-wagner-group-in-ukraine-en-20231108.pdf [https://perma.cc/SPD7-G2GH].

[38] Monika Pronczuk & Sam Mednick, *A Confidential Brief to the ICC Accuses Russia-Linked Wagner of Promoting Atrocities in West Africa*, INDEPENDENT (June 22, 2025), https://www.independent.co.uk/news/mali-icc-russia-wagner-west-africa-b2774572.html [https://perma.cc/92MK-CVAH].

[39] *Independent International Commission of Inquiry on Ukraine*, U.N. HUM. RTS. COUNCIL, https://www.ohchr.org/en/hr-bodies/hrc/iicihr-ukraine/index [https://perma.cc/R3NL-P977] (last visited Jan. 8, 2026).

The COI joins a longstanding Human Rights Monitoring Mission, which receives funding from our human rights bureau, focused on some of the human rights issues arising in the Ukrainian context since Russia's initial invasion in 2014.[40] Its mandate includes oversight of the domestic criminal law system. While there was a longstanding tradition of the rule of law within Ukraine, there were still due process deficits. The Human Rights Monitoring Mission has been advocating for the implementation of due process protections even while Ukraine undertakes the daunting task of prosecuting thousands of war crimes during an ongoing conflict, while prosecutors are having to duck into bomb shelters, because they're under assault as this work is underway. Making sure that Ukraine is adhering to fair trial principles will ensure that these legal proceedings withstand the test of time and also the scrutiny of the European Court of Human Rights, which has a well-developed jurisprudence on lustrations[41] and *in absentia* trials.[42]

The Organization for Security and Cooperation in Europe (OSCE) has deployed its Moscow Mechanisms six times with respect to this region: four times following the full-scale invasion of Ukraine, once in connection with Belarus, and once in response to Russian authoritarianism and the crackdown on dissidents, political opponents, and human rights organizations documenting what's happening internally and in neighboring states.[43] The Moscow Mechanism allows for a rapid reaction deployment of experts to assist in the resolution of a specific human rights

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[40] *UN Human Rights Monitoring Mission in Ukraine: Monitoring the Human Rights Situation in the Country Since 2014*, OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., https://ukraine.ohchr.org/en [https://perma.cc/BBQ8-QBCH] (last visited Jan. 8, 2026).

[41] Cynthia M. Home, *International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context*, 34 LAW & SOC. INQUIRY 713 (2009); Robert Casty, *Developments in Ukrainian Lustration*, COLUM. J. TRANSNAT'L L.: THE BULL. (Dec. 9, 2019), https://www.jtl.columbia.edu/bulletin-blog/developments-in-ukrainian-lustration-1 [https://perma.cc/AZ4E-Q22K].

[42] Valentina Cafaro, *Trial in Absentia and Retrial Rights in Italy: ECtHR finds a Breach of Article 6*, SACCUCCI & PARTNERS (Sep. 19, 2023), https://www.saccuccipartners.com/en/2023/09/19/trial-in-absentia-and-retrial-rights-in-italy-ecthr-finds-a-breach-of-article-6 [https://perma.cc/MX94-PXDX]; Lorena Bachmaier Winter, *New Developments in EU Law in the Field of* In Absentia *National Proceedings. The Directive 2016/343/EU in the Light of the ECtHR Case Law*, 2 PERSONAL PARTICIPATION CRIM. PROCS. 641 (2019).

[43] *Mechanisms and Procedures*, ORG. SEC. COOP. EUR., OFF. FOR DEMOCRATIC INSTS. & HUM. RTS., https://odihr.osce.org/odihr/human-dimension-mechanisms [https://perma.cc/AG74-AC7E] (last visited Jan. 8, 2026).

issue on the territory of any OSCE participating state.[44] The current invocation is focused on civilian detainees in Russia-occupied and Russia-controlled territory, and those who have been transferred or deported into Russia proper.

Finally, the United States is looking for ways to advance the work of the International Criminal Court. The ICC received an unprecedented political mandate when 43 states parties referred the situation in Ukraine to the Court.[45] Ukraine has not yet ratified the Rome Statute,[46] but it subjected itself to the ICC's open-ended jurisdiction on an *ad hoc* basis under Article 12(3).[47] The Prosecutor opened an investigation that immediately generated two arrest warrants: one for Vladimir Putin himself and one for his "children's rights commissioner," Maria Lvova-Belova,[48] for the unlawful transfer and deportation of children into Russian-occupied territory, into Russia itself, and—from what we're learning—also into neighboring Belarus.[49]

Recently, two additional arrest warrants have emerged for subordinates of President Putin charged with overseeing unlawful attacks on elements of the civilian infrastructure, particularly on energy facilities,

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[44] *Id*.

[45] Letter from Joanna Roper, Ambassador, U.K., to Karim A. A. Khan, Prosecutor, Int'l Crim. Ct. (2 Mar. 2022), https://www.icc-cpi.int/sites/default/files/2022-04/Article-14-letter.pdf [https://perma.cc/MK2H-7DX2]; Rep. of the Int'l Crim. Ct., at 11-12, U.N. Doc. A/77/305 (2022).

[46] Ukraine ratified the Rome Statute in December 2024. *Ukraine's Path to Ratification of the Rome Statute*, LZI (Oct. 1, 2025), https://parlament.org.ua/en/analytics/ukraines-path-to-ratification-of-the-rome-statute/ [https://perma.cc/Z4X6-SHYF].

[47] Letter from Pavlo Klimkin, Minister of Foreign Aff. of Ukr., to Herman von Hebel, Registrar, Int'l Crim. Ct. (8 Sep. 2015); Rome Statute of the International Criminal Court art. 12(3), July 17, 1998, 2187 U.N.T.S. 90.

[48] *Situation in Ukraine*, INT'L CRIM. CT.: SITUATIONS https://www.icc-cpi.int/situations/ukraine [https://perma.cc/APF6-SD5K] (last visited Jan. 8, 2026).

[49] Press Release, Int'l Crim. Ct., Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, (17 Mar. 2023), https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and [https://perma.cc/24R2-WZN9]; Kaveh Khoshnood et al., *Belarus Collaboration with Russia in the Systematic Deportation of Ukraine's Children*, HUMANITARIAN RSCH. LAB AT YALE SCH. OF PUB. HEALTH: NEW HAVEN 16 Nov. 2023, at 1, https://files-profile.medicine.yale.edu/documents/a5414357-e145-47de-90e3-f5625305e089 [https://perma.cc/QU3Q-28LW].

as winter was setting in.[50] In addition to being charged as war crimes—which you would expect—this conduct is also being charged as "other inhumane acts" under the umbrella of crimes against humanity. That theory is somewhat new, and it'll be interesting to see how that jurisprudence develops.[51]

Under the 2023 Appropriations Omnibus Act, Congress made a number of changes to U.S. law that enable the United States to better support the ICC,[52] even though we're not a state party to the Rome Statute. These changes mandate information sharing, allow the ICC to conduct investigative activities here with respect to the situation in Ukraine, and authorize funding, if such resources are appropriated or available.[53] My office runs point for trying to coordinate the implementation of these new authorities across the interagency to ensure that the ICC is able to pursue these cases with the evidence, resources, and the diplomatic support that it needs.

Support for the ICC is a key component of the third pathway to justice via international institutions.

V. Pathway Four: Prosecuting the Crime of Aggression

The fourth pathway to justice is focused on ensuring accountability for the crime of aggression. Most of the aforementioned pathways involve prosecutions for war crimes or crimes against humanity (CAH). But the Ukrainians firmly believe, and we are in agreement, that it was the initial act of aggression by Russia that opened the door for all of these other atrocities to be committed.[54]

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[50] Press Release, Int'l Crim. Ct., Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov (June 15, 2024), https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-kuzhugetovich-shoigu-and [https://perma.cc/Y5WK-3B3R].

[51] Iryna Marchuck, *Justice for Victims of Missile Attacks in Ukraine: New ICC Arrest Warrants for Russian Top Military Commanders*, OPINIO JURIS (Mar. 15, 2024), http://opiniojuris.org/2024/03/15/justice-for-victims-of-missile-attacks-in-ukraine-new-icc-arrest-warrants-for-russian-top-military-commanders/ [https://perma.cc/C4ZR-L7QT].

[52] Consolidated Appropriations Act of 2023, Pub. Law No., 117-328, §7073, 136 Stat. 4459 5092 (2022).

[53] *Id.*

[54] Beth Van Schaack, *Ambassador Van Schaack's Remarks on the U.S. Proposal to Prosecute Russian Crimes of Aggression*, U.S. DEP'T OF STATE OFF. OF GLOB. CRIM. JUST.:

This is a crime that has not been prosecuted since the World War II era, when it was called "crimes against the peace."[55] The Nuremberg Tribunal was supposed to be "the trial to end all wars," and alleged crimes against the peace were the centerpiece of the indictment against senior Nazi figures.[56] These allegations appeared alongside charges for war crimes and CAH, the latter also being a new crime in the post-World War II period, but much of the judgment is devoted to the crime of aggression, as we would call it today.[57] Nonetheless, that crime was never subsequently prosecuted, even as cases alleging war crimes, CAH, and genocide have emerged.[58] The war in Ukraine offers a renewed opportunity to revisit that earlier jurisprudence in the modern era.

To this end, my office, along with the State Department's Office of the Legal Adviser ("L"), has been engaged in a series of negotiations around the modality for establishing such a tribunal. We have reached a bit of an impasse, if I'm being honest, with our Ukrainian colleagues, however. They were very keen to see the creation of an international tribunal along the lines of the ones established by the U.N. Security Council for the former Yugoslavia and Rwanda.[59] They feel Russia's war of aggression is such a breach of international peace and security that it merits a fully international tribunal.

But the world is in a very different geopolitical place than we were in the mid-1990s when the Security Council was actually functioning and was able to stand up two *ad hoc* tribunals, with Russia using its privileged position as a member of the P5 in good faith to contribute to efforts to establish and maintain international peace and security.[60] Those days are

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REMARKS & RELEASES (Mar. 27, 2023), https://2021-2025.state.gov/ambassador-van-schaacks-remarks/ [https://perma.cc/EXU9-72AE].

[55] Charter of the International Military Tribunal art. 6, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279, https://avalon.law.yale.edu/imt/imtconst.asp [https://perma.cc/GLX7-59GY].

[56] Beth Van Schaack, *Negotiating at the Interface of Power and Law: The Crime of Aggression*, 49 COLUM. J. TRANSNAT'L L. 505 (2010).

[57] Charter of the International Military Tribunal, *supra* note 55.

[58] Schaack, *supra* note 56.

[59] Oona A. Hathaway, *The Case for Creating an International Tribunal to Prosecute the Crime of Aggression Against Ukraine (Part I)*, JUST SEC. (Sep. 20, 2022), https://www.justsecurity.org/83117/the-case-for-creating-an-international-tribunal-to-prosecute-the-crime-of-aggression-against-ukraine/ [https://perma.cc/BNB9-WZF5].

[60] *Punishing War Crimes: International Criminal Tribunals*, INT'L COMM. OF THE RED CROSS: ADVISORY SERV. ON INT'L HUMANITARIAN L., (Jan. 2003), https://www.icrc.org/

over. There's no way that the Security Council can operate effectively with respect to Ukraine, given Russia's veto. Indeed, the Council has been largely frozen since 2012, when any effort to impose coercive measures against Syria was blocked by Russia, often with China in tow, yielding a double veto.[61]

The unavailability of the Council has caused the international community to look elsewhere to establish new mechanisms and institutions to promote justice. In this regard, the General Assembly has emerged as a site of creativity, flexing its powers in the face of debility within the Council.

Ukraine has thus advocated for a General Assembly-created tribunal. There are some concerns with this proposal, both legal and practical. The legal concern is: does the General Assembly have the power under the U.N. Charter to create a coercive mechanism? If you've read the Charter, you know that the Assembly is basically limited to making recommendations to the international community, which states can then—voluntarily—carry out.[62] The Assembly doesn't have the power, in an executive capacity, to impose its will on the international community in the same way that the Security Council can. This generates open legal questions about whether the General Assembly can create a court that could legally hold someone in custody and issue a verdict that could result in someone spending the rest of their days in a prison cell.

Then, there are the pragmatic concerns: Do we have the votes in the General Assembly today, particularly after the events of October 7, to create such a tribunal? It's not clear that we do. The international community is more fractured than it has been in a long time. Even watching the votes with respect to Ukraine, we see a diminution of support over time, particularly as the General Assembly is being asked to do more. If all the General Assembly is doing is condemning Russia's actions, we

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sites/default/files/external/doc/en/assets/files/other/punishing_war_crimes.pdf [https://perma.cc/F4N5-3XK5].

[61] Rebecca Barber, *Syria: The Disgraceful Stain Left by the UN Security Council Veto*, INTERPRETER (Sep. 24, 2019), https://www.lowyinstitute.org/the-interpreter/syria-disgraceful-stain-left-un-security-council-veto [https://perma.cc/2GUT-YK36]; *UN Security Council Casts Nearly All Vetoes Last Decade on Syria, Palestine and Ukraine, Robbing Opportunities for Peace,* OXFAM INT'L (Sep. 19, 2024), https://www.oxfam.org/en/press-releases/un-security-council-casts-nearly-all-vetoes-last-decade-syria-palestine-and-ukraine [https://perma.cc/GY3Y-RMVU].

[62] U.N. Charter arts. 9-22.

get about 140 votes.[63] When the General Assembly was asked to exclude Russia from the Human Rights Council, we got 90 'yes' votes and a ton of abstentions.[64] That was just to kick the country off a human rights body. With the Ukrainian proposal, we would be asking U.N. member states to create a new and novel institution, of dubious legality, that could be deployed elsewhere, which makes states nervous about reciprocity. The concern is that we wouldn't get the votes, and that would send a horrible message.

Given these concerns, we have been engaged in dialogue with our Ukrainian colleagues and some of the allies among the immediate frontline states to advance a different model. This would be more of a hybrid court, embedded within the Ukrainian national system. But it would enjoy lots of international investment, including personnel, diplomatic support, information sharing, and funding. And it could sit extraterritorially—the Netherlands has offered to host—and then be moved back into Kyiv when security conditions allow.

There's a lot of precedent for this. There are half-a-dozen or more hybrid courts of various forms and formalities that have existed around the world: in Lebanon, Cambodia, Chad, et cetera.[65] There are new hybrid courts being contemplated for Liberia[66] and The Gambia,[67] which I visited two weeks ago, to help conceptualize and build those imagined institutions.

This is a tried-and-true method that's legally available now. Where we are probably going to land is somewhere in the middle. A new proposal has emerged from the Council of Europe to host the aggression tribunal.

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[63] *With 143 Votes in Favour, 5 Against, General Assembly Adopts Resolution Condemning Russian Federation's Annexation of Four Eastern Ukraine Regions*, U.N.: MEETINGS COVERAGE & PRESS RELEASES (Oct. 12, 2022), https://press.un.org/en/2022/ga12458.doc.htm [https://perma.cc/2ZLQ-7257].

[64] Edith M. Lederer & Jennifer Peltz, *UN Assembly Suspends Russia from Top Human Rights Body*, ASSOCIATED PRESS (Apr. 7, 2022), https://apnews.com/article/russia-ukraine-united-nations-general-assembly-voting-rights-united-nations-linda-thomas-greenfield-6b4f311e6099315aa4efc2d5772ab80e [https://perma.cc/B5ML-DVUU].

[65] *Hybrid*, INT'L CRIMES DATABASE, https://www.internationalcrimesdatabase.org/Courts/Hybrid [https://perma.cc/HE8D-RSZM] (last visited Jan 9, 2026).

[66] *Pres. Boakai reaffirms commitment to establish WECC*, NEW DAWN (Apr. 30, 2025), https://www.thenewdawnliberia.com/pres-boakai-reaffirms-commitment-to-establish-wecc/ [https://perma.cc/E92P-VSL3].

[67] Didier Gbery, *The Gambia Opts for a Hybrid Court*, INT'L. CTR. FOR TRANSNAT'L JUST. (Feb. 29, 2024), https://www.ictj.org/latest-news/gambia-opts-hybrid-court [https://perma.cc/8RU3-5XNW].

Proceedings involving the crime of aggression would begin in Ukrainian national courts. They could then be transferred to the new regional court, using a mechanism that Europeans utilize when they have multi-jurisdiction litigation, which allows them to centralize cases in one place so that they're not pursuing related matters in multiple European courts.[68]

The tribunal would operate under the rubric of the Council of Europe, which is the "Big Europe" of which Russia used to be a member, until it was kicked out in the early days of the war.[69] Nonetheless, there's some political legitimacy inherent to hosting the tribunal there because Russia was once a member. All-in-all, the tribunal would be primarily a European exercise. So, that's where the negotiations stand. We're still meeting monthly to try and hammer out some of these details.[70]

In the meantime, however, the international community came together and created the International Center for the Prosecution of Aggression (ICPA).[71] This is essentially a proto-prosecutorial office sitting in The Hague to which a number of states have seconded prosecutors. With funding from my office, the United States has sent a very senior international prosecutor to sit amongst her colleagues and explore what a model indictment would look like.[72] The open questions abound. What

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[68] EUROJUST REPORT ON THE TRANSFER OF PROCEEDINGS IN THE EUROPEAN UNION, EUR. UNION AGENCY FOR CRIM. JUST. COOPERATION (Jan. 2023), https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-report-on-the-transfer-of-proceedings-in-the-eu.pdf [https://perma.cc/43TU-RAEC].

[69] *The Russian Federation is Excluded from the Council of Europe*, COUNCIL OF EUR.: NEWSROOM (Mar. 16, 2022), https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe [https://perma.cc/K8KZ-MN3K].

[70] The Council of Eurpoe eventually adopted a proposal along these lines, but without the need for cases to commence in Ukraine. Hannah Lobel & Nema Milaninia, *Building a Special Tribunal for the Crime of Aggression Against Ukraine*, EJIL: TALK! BLOG OF THE EUR. J. INT'L L. (July 25, 2025), https://www.ejiltalk.org/building-a-special-tribunal-for-the-crime-of-aggression-against-ukraine/ [https://perma.cc/LG6S-RLYT].

[71] *International Centre for the Prosecution of the Crime of Aggression Against Ukraine*, EUR. UNION AGENCY FOR CRIM. JUST. COOP., https://www.eurojust.europa.eu/international-centre-for-the-prosecution-of-the-crime-of-aggression-against-ukraine [https://perma.cc/F7VV-FEMT] (last visited Jan. 12, 2026). Note that the United States subsequently withdrew from the ICPA and the aggression tribunal negotiations. Glen Thrush, *U.S. to Withdraw From Group Investigating Responsibility for Ukraine Invasion,* N.Y. TIMES, https://www.nytimes.com/2025/03/17/us/politics/trump-ukraine-invasion-accountability.html [https://perma.cc/KGG4-TZTJ].

[72] Press Release, U.S. Dep't of Just., Readout of War Crimes Accountability Team Director and U.S. Special Prosecutor for the Crime of Aggression's Visit to Ukraine (Feb. 6, 2025), https://www.justice.gov/archives/opa/pr/readout-war-crimes-accountability-team-director-and-us-special-prosecutor-crime-aggressions [https://perma.cc/68NZ-N6VB].

sorts of analytical work product would be necessary to lay the foundation for a successful prosecution? How do we construct a chain of command and a chronology of key events and operational decisions? How do we imagine who was responsible for particular deployments, particularly in the early days, and how far down the chain of command should we prosecute? Which events should form the basis of any indictments? The crime of aggression is essentially a continuing crime, and every new assault by Russia on Ukraine is a renewed act of aggression that could be prosecuted in front of this imagined tribunal once it gets established.

Work on the fourth pathway is ongoing as we attempt to come to a firm consensus around a legal and a practical pathway to establish an aggression tribunal and prosecute this crime for the first time since Nuremberg.

VI. Pathway Five: Cases in the United States

My fifth and final pathway leads here, to the United States. We boast a pretty good suite of international crimes in Title 18.[73] We have statutes criminalizing genocide,[74] human trafficking,[75] a number of different terrorism crimes,[76] war crimes,[77] torture,[78] and piracy.[79] Most of these statutes are potentially available in the Russia/Ukraine context. The most relevant—our war crimes statute—however, had a pretty large, even glaring, jurisdictional gap in it. Notwithstanding the provisions of the Geneva Conventions, which require State parties to implement universal jurisdiction over grave breaches of those treaties, Congress, in the 1990s—when it finally domesticated the Geneva Conventions—chose to pull back on that jurisdictional reach and only allowed for the prosecution of crimes either committed by or against U.S. persons.[80] Without full universal jurisdiction, that statute would have been of limited utility in the Ukraine context unless there were U.S. mercenary types who had gone over to join the fight, dual nationals involved in war crimes, or Americans harmed

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[73] 18 U.S.C. §§ 1-6005.
[74] 18 U.S.C. § 1091.
[75] 18 U.S.C. §§ 1590-92.
[76] 18 U.S.C. §§ 2331-39.
[77] 18 U.S.C. § 2441.
[78] 18 U.S.C. § 2340.
[79] 18 U.S.C. §§ 1651-61.
[80] Beth Van Schaack, *Animating the U.S. War Crimes Act*, 97 INT'L L. STUD. 1541 (2021).

within Ukraine. In these scenarios, we could have used that old statute, but it was not going to be consequential in terms of delivering justice.

Many of us had been advocating for more than a decade to fill that gap so that our law was in better alignment not only with our treaty obligations under the Geneva Conventions, but with the laws of our friends and allies, who all had a better statute than we did.[81] Congress was finally able to focus on this legal gap in the Ukraine context.[82] With new amendments to the law, we now have the ability to exercise what we call "present in" jurisdiction. As long as the alleged perpetrator is present in the United States, we can exercise jurisdiction over them for war crimes.

The Department of Justice has since invoked our war crimes statute, interestingly, in a case involving a U.S. national who was subjected to torture, unlawful confinement, and other inhumane acts—all charged as grave breaches of the Geneva Conventions. Four Russian-affiliated individuals are named as defendants.[83] None of them are present here. But because the crime was committed against a U.S. person, we can seek the extradition of those individuals if they stray from Russia. Now it's an exercise in fugitive tracking. Where are these individuals? Will they ever leave Russia? If they do leave Russia, either voluntarily or non-voluntarily, we will be in a position to seek their extradition and to proceed against them. Additional investigations are ongoing.

Even with this amendment, we still have an additional glaring gap within our penal code: the absence of a CAH statute.[84] CAH formed part of the canon after World War II alongside crimes against the peace and war crimes. It's a really handy charge, I can say, from having worked at the International Tribunal for the former Yugoslavia, because it allows for charges to be brought when there's a widespread or systematic attack against a civilian population. Prosecutors don't have to prove the existence of a conflict, which, often in the early days, can be difficult to do, and CAH can be invoked in a situation like The Gambia, where there was never

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[81] *Id*.
[82] Jennifer K. Elsea, *War Crimes: A Primer*, CONGRESS.GOV (Feb. 2, 2024), https://www.congress.gov/crs-product/LSB10709 [https://perma.cc/KY6P-JWKR].
[83] Press Release, U.S. Dep't of Just., Four Russia-Affiliated Military Personnel Charged with War Crimes in Connection with Russia's Invasion of Ukraine (Feb. 6, 2025), https://www.justice.gov/archives/opa/pr/four-russia-affiliated-military-personnel-charged-war-crimes-connection-russias-invasion [https://perma.cc/G9S9-EUWU].
[84] Schaack, *supra* note 13.

really was a full-scale conflict, but there was systemic repression.[85] You can't use a war crimes rubric to bring charges in those instances.

The prohibition against genocide, of course, exists, but you need a victimized protected group, and you need to prove the intent to destroy the group in whole or in part, which can often be very difficult.[86] CAH is thus a prosecutorial workhorse. The charge can cover a lot of mass violence without needing evidence to satisfy those difficult elements. All you have to show is the existence of a widespread or systematic attack against a civilian population.

While it's not really necessary in the Ukraine context, because the DOJ can now invoke the war crimes statute, a CAH statute would be helpful to address crimes committed in places like Venezuela or even Myanmar, where there's a conflict now, but there was also extreme violence against Rohingya communities[87] at a time when there was no active conflict and no organized armed group in opposition to the government or the Tatmadaw military, which were committing asymmetrical violence against civilians.[88]

Many of us are working with Congress in order to draft something to fill this gap in the U.S. penal code. Senator Dick Durbin (D-IL) has had a draft that he's been pushing for a long time, but it has lacked bipartisan support to date.[89] So that's where we are in that exercise. The hope is that this current situation and the renewed attention to international criminal justice will inspire Congress to potentially just drop a crimes against humanity statute into some appropriations bill or other must-pass legislation at some point.

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[85] Jamey Keaten & Abdoulie John, *A Swiss Court Sentences a Former Gambian Interior Minister to 20 years for Crimes Against Humanity*, THE ASSOCIATED PRESS (May 15, 2024), https://apnews.com/article/swiss-court-gambia-minister-convicted-a31b7fba6c498c04b751c7e76980de74 [https://perma.cc/Q3PV-VVAJ].

[86] Jonathan Leader Maynard, *Is Genocide Occurring in Ukraine? An Expert Explainer on Indicators and Assessments*, JUST SEC. (Apr. 6, 2022), https://www.justsecurity.org/80998/is-genocide-occurring-in-ukraine-an-expert-explainer-on-indicators-and-assessments/ [https://perma.cc/XW5G-MCJS].

[87] Press Release, Off. of the U.N. High Comm'r for Hum. Rts., Brutal Attacks on Rohingya Meant to Make Their Return Almost Impossible – UN Human Rights Report, (Oct. 11, 2017), https://www.ohchr.org/en/press-releases/2017/10/brutal-attacks-rohingya-meant-make-their-return-almost-impossible-un-human [https://perma.cc/3LE7-PU3X].

[88] *Myanmar: "Many Reports of Brutal War Crimes and Crimes Against Humanity"*, U.N. REG'L INFO. CTR. FOR W. EUR. (Feb. 18, 2025), https://unric.org/en/myanmar-many-reports-of-brutal-war-crimes-and-crimes-against-humanity/ [https://perma.cc/RG4C-9PS5].

[89] Schaack, *supra* note 13.

One final note, and then I'll close. One of the investments my office has made globally is funding pure documentation. Documentation is going to be essential to any forms of accountability that might happen, in any forum, in all these pathways, and to any transitional justice efforts that might be undertaken by societies as they emerge from a period of conflict or repression.

In addition to civil society organizations, the State Department has also funded a Conflict Observatory,[90] which is a new and exciting enterprise. It's based at Yale, but it's a consortium of expert open-source investigators who scrub social media sites and have access to U.S.-licensed imagery from commercial satellite companies. The Observatory aggregates all of this information and then puts out a regular stream of reporting.[91] Most recently, reports have covered attacks on energy infrastructure,[92] the filtration system,[93] the abduction of children,[94] and the role of Belarus in supporting Russia's efforts with respect to the war in Ukraine.[95] Everything is drawn from open sources, with no closed-source

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[90] *Ukraine Conflict Observatory*, YALE SCH. OF PUB. HEALTH (May 22, 2025), https://medicine.yale.edu/lab/khoshnood/conflict-observatory/ukraine/ [https://perma.cc/KSZ9-7QTF]. The Trump administration subsequently halted this funding. Kylie Atwood, *Group Tracking Russian Abductions of Ukrainian Children Prepares to Shut Down Following Trump Admin Funding Cut*, CNN: POLITICS (June 11, 2025), https://edition.cnn.com/2025/06/11/politics/group-tracking-abductions-ukraine-shutting-down [https://perma.cc/HBZ5-QX93].

[91] *Ukraine Conflict Observatory,* YALE SCH. OF PUB. HEALTH: PUBL'NS. & REPORTS https://medicine.yale.edu/lab/khoshnood/conflict-observatory/ukraine/ [https://perma.cc/LLQ3-NPNW] (last visited Jan. 21, 2026).

[92] Oona Hathaway et al., *Remote Assessment of Bombardment of Ukraine's Power Generation and Transmission Infrastructure, 1 October 2022 to 30 April 2023*, YALE SCH. OF PUB. HEALTH (Feb. 29, 2024), https://ysph.yale.edu/news-article/remote-assessment-of-bombardment-of-ukraines-power-generation-and-transmission-infrastructure-1-october-2022-to-30-april-2023/ [https://perma.cc/XB4F-DLVK].

[93] Kaveh Khoshnood & Nathanial Raymond, *System of Filtration: Mapping Russia's Detention Operations in Donetsk Oblast*, YALE SCH. OF PUB. HEALTH (Aug. 25, 2022), https://ysph.yale.edu/news-article/system-of-filtration-mapping-russias-detention-operations-in-donetsk-oblast/ [https://perma.cc/P7MH-AZ6M].

[94] *Ukraine's Stolen Children: Inside Russia's Network of Re-Education and Militarization*, YALE SCH. OF PUB. HEALTH (Sep. 16, 2025), https://medicine.yale.edu/lab/khoshnood/news-article/ukraines-stolen-children-inside-russias-network-of-re-education-and-militarization/ [https://perma.cc/QEW7-UNZJ].

[95] *Belarus' Collaboration with Russia in the Systematic Deportation of Ukraine's Children*, YALE SCH. OF PUB. HEALTH (Dec. 12, 2023), https://medicine.yale.edu/lab/khoshnood/news-article/belarus-collaboration-with-russia-in-the-systematic-deportation-of-ukraines-children/ [https://perma.cc/HG8R-NHG3].

work at all (i.e., interviews with survivors). It's all about what the internet teaches us and what the satellites show us about what's happening on the ground. The Observatory has been a huge help for the U.S. government as well, to increase our understanding of what's happening and create broader access to information.

Having this information generated by a non-governmental entity takes the pressure off our intelligence community to engage in information sharing. Those of you who are working in intelligence know that while the Office of the Director of National Intelligence is very committed to making intelligence useful and actionable out there in the world,[96] it's still hard to do without sacrificing means and methods, or revealing sources. If we can help capacitate the private sector, the NGO sector, and the academic sector to do this work, it takes a little bit of pressure off us.

VII. Conclusion

That's the bulk of my work, and although much of what I've talked about has been focused on Ukraine, we're able to utilize and explore these same pathways in a number of other conflicts around the world. In talking to our Ukrainian colleagues and to ordinary civilians, the imperative of justice is acutely palpable. Likewise, for the U.S. government, helping Ukraine win on the battlefield but also helping Ukraine win in the courtroom are key pillars of our approach to Russia's brutal war.

While justice will never return a loved one to someone or rebuild a destroyed home, it is an important measure toward establishing peace. It's a worthy investment. It's also meaningful that the United States is a leader in this work in terms of forming the ACA, generating information, assisting civil society, and supporting the ICC even as a non-party member. The ICC is an essential part of a larger ecosystem of international justice; even if we're not comfortable joining it, we recognize the role that it plays, particularly when you have a situation with an enormous crime base that no one national system could possibly handle alone, particularly given some of the gaps in the Ukrainian penal code.

This is the mandate of my office: to look for and support these various pathways to justice around the world. And we do this in a very interagency

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[96] Julian E. Barnes & Adam Entous, *How the U.S. Adopted a New Intelligence Playbook to Expose Russia's War Plans*, N.Y. TIMES (Feb. 23. 2023), https://www.nytimes.com/2023/02/23/us/politics/intelligence-russia-us-ukraine-china.html [https://perma.cc/7K8U-TS7T]

way. I meet regularly with my colleagues and counterparts over at the Pentagon, in the Department of Justice, and in the intelligence community. We're always charting a course together that we're all comfortable with, that reflects the various, often competing, equities, but also that builds on the strengths that the different agencies can offer to a program of justice.