

Collecting Evidence of International Crimes in Ukraine: The Role of the Royal Netherlands Marechaussee

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Abstract

This chapter outlines the various international crimes that have been committed in Ukraine, discusses the available accountability options and sketches the context in which international crimes investigations take place within and outside Ukraine. It introduces some of the most relevant actors that are involved in criminal accountability initiatives and discusses the role of the Royal Netherlands Marechaussee in collecting evidence on international crimes in Ukraine. As the investigation landscape becomes increasingly rich in its variety of actors, the role of the gendarmerie in it is one to monitor closely.

Keywords: Ukraine, International crimes, Battlefield evidence, Accountability, Royal Netherlands Marechaussee

1. Introduction

Since the full-scale invasion of Russia into Ukraine on 24th February 2022 numerous international crimes – war crimes, crimes against humanity, possibly genocide, and the crime of aggression – have allegedly been committed in Ukraine. These events were preceded by the invasion and subsequent annexation of Crimea and armed conflict in Eastern Ukraine in 2014. Immediately after the 2022 invasion, the international community called for concerted action in the investigation of these crimes as well as the prosecution of suspected perpetrators. The international crimes committed in Ukraine and the ‘battlefield evidence’ that needs to be collected to pursue accountability have led to unprecedented amounts and types of new investigation and prosecution initiatives. Yet, they also pose novel challenges.

Eurojust defines battlefield evidence as ‘materials that originate from a conflict area, including materials collected by nongovernmental organizations (NGOs),

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entities of the United Nations (UN), the International Criminal Court (ICC) and other organisations.”¹ The collection of battlefield evidence is a multidisciplinary process that increasingly adopts a modular, hybrid and multinational character. Battlefields offer a distinct context to collect evidence on a wide number of serious crimes. In recent years, a number of initiatives regarding the use of battlefield evidence have been taken, notably in relation to the investigation or prosecution of terrorist offences² and international crimes.

In light of these recent developments, this contribution aims to describe the process of collecting battlefield evidence and other relevant information for the purpose of international crimes prosecutions in Ukraine. We outline the types of international crimes that are committed and the available accountability options (section 2); then sketch the context in which international crimes investigations within and outside Ukraine take place by introducing some of the most relevant actors that are involved (section 3); and subsequently discuss the deployment of the Royal Netherlands Marechaussee (RNLm) in Ukraine since May 2022 and early lessons that can be drawn from these experiences for the further thought and policy development concerning the involvement of military police in battlefield international crimes investigations (section 4).

2. International crimes in the Russia-Ukraine war

War crimes, crimes against humanity, genocide, and the crime of aggression are known collectively as the core international crimes and are the four crimes that fall under the jurisdiction of the ICC. There are clear indications that the Russian armed forces have committed international crimes since 2014, and on an even much larger scale since the invasion in 2022.

At the time of writing, Ukraine’s Prosecutor General’s Office had registered more than 80,000 cases that may amount to international crimes.³ For instance, in Kherson, 20 torture chambers were found and more than 1,000 survivors reported an array of abuses, including the use of electric shocks, waterboarding, being forced

¹ Eurojust Memorandum on Battlefield Evidence, September 2020. See: Eurojust, “Eurojust memorandum on battlefield evidence.”

² For an overview of five recent initiatives, see: Position of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the use of ‘battlefield’ or military produced evidence in the context of investigations or trials involving terrorism offences, April 2021. See: https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position.

³ Kovalenko, “Q&A: Ukraine’s Prosecutor General discusses accountability for Putin’s war crimes.”

to strip naked, and threats of mutilation and death.⁴ Moreover, more than 60 cases of rape were documented in the Kherson region alone.⁵ In areas still controlled by Russian forces, residents, including children, have been forcefully relocated to other occupied territories or to Russia.⁶

On 23rd June 2023, the Under-Secretary General of the United Nations for Political Affairs told the UN Security Council that the Office of the High Commissioner for Human Rights (OHCHR) has recorded 24,862 civilian casualties to date.⁷ The actual figures are likely considerably higher.⁸ The World Health Organisation (WHO) furthermore verified over a thousand cases of attacks on healthcare, with 101 deaths and 139 injuries. Most attacks involved the use of heavy weapons. Also, UNESCO has verified damage to 260 sites since February 2022, including 112 religious sites, 22 museums, 94 buildings of historic significance, 19 monuments, 12 libraries and one archive.⁸ The safety, livelihood and dignity of a huge proportion of Ukrainian citizens have been profoundly undermined by the war. Moreover, many people living outside Ukraine have experienced the dependency on food supply lines and energy security.⁹

In accordance with the laws of armed conflict or International Humanitarian Law (IHL), not all casualties and destruction that occur in a war qualify as a crime. IHL provides rules according to which fighting parties can conduct their hostilities during an armed conflict lawfully. Not all violations of IHL are war crimes; only serious violations of a subset of IHL rules amount to individual criminal responsibility. In the international armed conflict between Russia and Ukraine, in particular the Russian armed forces violate IHL on a large scale, which, allegedly, include many instances of war crimes. The UN Independent International Commission of Inquiry on Ukraine concluded that the Russian authorities have committed the war crimes of attacks on civilians and energy-related infrastructure, willful killings, unlawful confinement, torture, rape and other sexual violence, and unlawful transfers and deportations of children.¹⁰

⁴ Freking, "Ukraine's top prosecutor speaks of 'evil' Russian atrocities."

⁵ Associated Press, "WATCH: Ukraine top prosecutor says Russian forces are using rape, torture to sow terror."

⁶ United Nations, "Deportation, treatment of Ukraine's children by Russian Federation take centre stage by many delegates at Security Council briefing – 24 August 2023."

⁷ United Nations, "Russian-Ukraine war has weakened international security, USG DiCarlo warns – 23 June 2023."

⁸ Ibid, note 9.

⁹ GCSP, "Human security and reconstruction in Ukraine – June 5, 2023"; see also: Benton, et al., "The Ukraine war and threats to food and energy security"; for more information on the human impact of the war in Ukraine, see: United Nations Development Programme, "Human impact assessment Ukraine."

¹⁰ United Nations Human Rights, "War crimes, indiscriminate attacks on infrastructure, systematic and widespread torture show disregard for civilians, says UN Commission of Inquiry on Ukraine."

In addition to war crimes, many of the crimes that are committed by the Russian armed forces also appear to qualify as crimes against humanity. Crimes against humanity are not characterised by having to be committed during an armed conflict, as is the case with war crimes, but for crimes to qualify as crimes against humanity, they need to be committed as part of a widespread or systematic attack directed against a civilian population. There are clear indications that the requisite contextual elements for crimes against humanity are fulfilled, such as that crimes such as murder, deportation and forcible transfer, torture, rape and other forms of sexual violence, and persecution are committed against the Ukrainian civilian population through a state policy that is both widespread and systematic.

Moreover, the ‘denazification’ rhetoric that the war is targeted against the Ukrainian national identity may also fulfill the criteria of the special intent that is required for the crime of genocide. Killings of Ukrainians, bodily and mental harm, and, notably in this context, forcible transfer of children to Russia may amount to genocide if committed with the intent to destroy, in whole or in part, a national (or ethnical, racial or religious) group because they are part of that group identity. Increasingly, commentators are noting that there are compelling signs of genocide against Ukrainians.¹¹

Finally, it is widely accepted that the use of armed force by Russia against Ukraine qualifies as a crime of aggression, for which the leaders that were in a position to effectively exercise control over or direct the political or military action of Russia are responsible. While nowhere near the scale and systematicity of the Russian atrocities, there are also indications that Ukrainian forces may have committed war crimes. For example, video footage has been published which suggests that Ukrainian troops may have executed surrendering Russian officers.¹²

Yet, while many core international crimes are committed, bringing those responsible to justice for crimes committed in an international armed conflict is complicated. This is particularly the case when they enjoy impunity from their home state. Collecting evidence of the criminal responsibility of individual perpetrators, including their knowledge and intent, during an armed conflict is highly challenging. Nevertheless, in the current situation in Ukraine, there are unprecedented international and domestic initiatives to collect such information. Evidence is collected by a large number of actors, both previously existing actors that seek

¹¹ For example, Clint Williamson. See: Kovalenko, Oksana, and Rayevskiy, “Treat it like a marathon, not like a sprint.” Lawyer Clint Williamson worked on the tribunals in Yugoslavia and Cambodia. Here’s what he thinks on the trial of the Russians.”

¹² Browne, Hiltner, and Williams, “Videos suggest captive Russian soldiers were killed at close range.”

novel ways to collaborate and share information, as well as new actors that are established by states or private initiatives.

When it comes to international crimes, there are multiple institutions that have jurisdiction to prosecute: the Russian and Ukrainian domestic judicial systems, other states through the doctrine of universal jurisdiction,¹³ and the ICC. The Office of the Prosecutor (OTP) of the ICC would typically seek prosecution of the most responsible perpetrators and is intended to ‘complement,’ not to replace, national criminal justice systems. This fundamental principle is known as the ‘principle of complementarity.’ Except for prosecuting cases at the ICC, the OTP may also play a role in encouraging and assisting in the prosecution of international crimes in domestic jurisdictions. These activities are often referred to as ‘positive’ or ‘proactive’ complementarity and may entail the use and admission of information and evidence collected by the ICC before national courts.¹⁴ Although Ukraine is not an official state party to the ICC’s founding document – the Rome Statute – it has accepted the Court’s jurisdiction relating to the conflict situations in Crimea and the Donbas region since 20th February 2014. This is referred to as an ‘ad hoc declaration accepting ICC jurisdiction.’ The declaration to the ICC was not temporally restricted, which means that it can examine all core crimes committed since February 2014 until the present day. On 28th February 2022, the ICC Prosecutor announced he would seek authorisation to open an investigation into the situation in Ukraine. On 2nd March 2022 he announced opening an investigation on the basis of the referrals received.

Given the above, the OTP of the ICC has the jurisdiction to prosecute war crimes, crimes against humanity and genocide committed in Ukraine. Prosecuting the top leaders such as President Putin for the crime of aggression is more complicated. The ICC is not able to exercise jurisdiction over the Russian aggression against Ukraine

¹³ Through universal jurisdiction, other nations but Ukraine may investigate and prosecute war crimes even when the alleged actions did not occur on their own territory and neither the perpetrator nor victims are nationals. European states have increasingly been using universal jurisdiction powers in the past decade. Most countries, like the Netherlands, prosecute on the basis of ‘secondary universal jurisdiction,’ which means that the presence of the suspect on the nation’s territory is a prerequisite to the exercise of universal jurisdiction. An exception are Germany and Sweden. They employ the prosecutorial strategy of ‘structural investigations,’ which means that they gather evidence on international crimes in Ukraine without yet having identified specific suspects on their territory. Investigations are not directed against specific individuals, but are employed for the purpose of investigating specific structures, within which international crimes have been allegedly committed and which are in the interest of the state (e.g. because many victims reside there). Structural investigators are meant to collect all relevant information that can be obtained in the country using, for example, open source evidence and witness testimony, before the suspects are even identified. See: Aksamitowska, *War Crime Units: Legislative, Organisational and Technical Lessons*.

¹⁴ Donlon, ‘Positive complementarity in practice: ICTY Rule 11bis and the use of the tribunal’s evidence in the Srebrenica Trials before the Bosnian War Crimes Chamber,’ 920-954.

because it has a more restricted regime for aggression than for the other crimes. Moreover, Putin cannot be prosecuted within the Ukrainian or other domestic judicial systems because he enjoys head of state immunity in foreign domestic courts. Therefore, Ukraine and supporting states are seeking for sufficient international support to establish a special tribunal to prosecute the aggression against Ukraine. As of yet no ‘Aggression Tribunal’ has been established. Internationally, there is no agreement on how to address the many political and legal hurdles.¹⁵

3. Actors involved in collecting evidence in Ukraine

The Ukrainian authorities demonstrate a strong willingness to carry out international crimes proceedings. Ukraine’s Prosecutor General’s Office (PGO – also referred to as OPG) directs all prosecutorial activities in Ukraine. It has a dedicated War Crimes Department which consists of a central office and nine regional units. Since the start of the war, hundreds of new people (lawyers, investigators) have been hired to work on war crimes investigations. According to the Ukrainian Criminal Procedure Code, war crimes are the exclusive responsibility of the Security Service of Ukraine (referred to as SSU or SBU).¹⁶ But as SSU/SBU investigators cannot investigate the large number of war crimes, it is assisted by the National Police, the SBI – State Bureau of Investigation and even the National Anti-Corruption Bureau (NABU).¹⁷ The War Crimes Department consists of four units: one dealing with the crime of aggression; one dealing with war crimes cases where civilian objects have been destroyed with civilian casualties; one dealing with violent war crimes (killings, tortures, deprivation of liberty); and a fourth unit supporting regional prosecutors in dealing with cases that involve fewer casualties or less serious destruction.¹⁸ This was the situation as of December 2022. Given the many developments in Ukraine, it cannot be excluded that the situation has changed in the meantime.

By May 2023, Ukrainian courts had reportedly convicted 30 Russian military personnel for war crimes.¹⁹ Trials often concern ‘in absentia’ cases, mostly con-

¹⁵ Numerous blogs and articles have been written about ways in which such a tribunal could be set up and the challenges related to this. See e.g.: Just Security, “Crime of aggression”; Geneuss and Jeßberger, “Russian aggression and the war in Ukraine: An introduction”; Wesslau, “A tribunal like no other: Prosecuting Russia’s crime of aggression in Ukraine.”

¹⁶ JustTalk, “One year of war crimes investigation. Interview with Yuriy Byelousov, head of the war department at the pgo [en].”

¹⁷ Klitina, “How the national anti-corruption bureau works during wartime.”

¹⁸ Salem, “Ukraine Series: Interview with Yuriy Belousov.”

¹⁹ Matola, “Ukraine: Prosecuting war crimes in civilian courts”; For earlier reporting, see: Justice Info, “Map of war crimes trials in Ukraine.”

sidering lower level perpetrators, prosecuted/convicted for murder, robbery or indiscriminate bombing. In all cases the accused were charged under one and the same general provision of the Criminal Code of Ukraine, namely Article 438 which criminalises all violations of laws and customs of war.²⁰ Interestingly, it is not uncommon that a Russian Prisoner of war (POW) after conviction is rapidly transferred to Russia in exchange for Ukrainian POWs held by Russia.²¹

Notwithstanding its willingness and the very serious efforts that Ukraine itself makes to hold perpetrators of international crimes accountable, it is obvious that it will not be able to deal with all alleged crimes. This is the reason why the ICC steps in to 'complement' the efforts made by Ukraine. As for the role of the ICC, it is important to clarify that Ukraine is not a State Party to the Rome Statute. However, it has twice exercised its prerogatives to accept the Court's jurisdiction over alleged crimes under the Rome Statute occurring on its territory, pursuant to article 12(3) of the Statute. In the first 12(3) declaration, Ukraine accepted ICC jurisdiction with respect to alleged crimes committed on its territory from 21st November 2013 to 22nd February 2014. In the second declaration, the relevant time period was extended on an open-ended basis to encompass ongoing alleged crimes committed throughout the territory of Ukraine from 20th February 2014 onwards.²²

Ever since the full-scale invasion in February 2022, the ICC has been upscaling its investigation activities in Ukraine. To facilitate its investigative activities, the ICC Registry and the government of Ukraine signed a cooperation agreement on the establishment of an ICC country office in Ukraine in March 2023.²³ That same month, the OTP of the ICC issued its first arrest warrants for the Ukraine situation for the war crimes of unlawful deportation and transfer of Ukrainian children to Russia for President Putin and Maria Lvova-Belova, Commissioner of Children's Rights in the Office of the President of Russia.²⁴ The OTP may expand these cases of child deportations as war crimes later to also charge them with crimes against humanity and genocide. Moreover, he may issue further arrest warrants and indictments for other crimes that it is currently investigating.

Except for the Ukrainian authorities and the ICC, numerous other international actors are actively promoting accountability for international crimes in Ukraine. For example, Eurojust – the European Union Agency for Criminal Justice Cooperation – in March 2022 facilitated the establishment of a Joint Investigation

²⁰ Nuridzhanian, "Prosecuting war crimes: Are Ukrainian courts fit to do it?"

²¹ Salii, "War crime in Ukraine: A Russian pilot is convicted... and exchanged."

²² International Criminal Court, "Ukraine. Situation in Ukraine."

²³ International Criminal Court, "Ukraine and International Criminal Court sign an agreement on the establishment of a country office."

²⁴ International Criminal Court, "Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova."

Team (JIT) aimed to promote information exchange between prosecution services of different European states on international crimes committed in Ukraine. The JIT consists of 7 countries: Ukraine, Lithuania, Poland, Estonia, Latvia, Slovakia and Romania, while the ICC's OTP acts as a 'participant.' Noteworthy is that it is the first time that the OTP has joined a JIT, and it is a novel practice that a JIT investigates alleged core international crimes in an ongoing international armed conflict.²⁵ Moreover, the OTP made it explicit that it will not only 'take,' but that it will also seek opportunities to 'provide information and evidence to the concerned national authorities in support of their investigations and prosecutions.'²⁶ In April 2023, JIT members agreed to not only investigate alleged war crimes and crimes against humanity, but also crimes of genocide. Thus far, the JIT on Ukraine has not led to any concrete prosecutions.

In the absence of an aggression tribunal, Eurojust set up the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA).²⁷ This, it is argued, should be instrumental in filling the earlier referred to 'impunity gap' related to the crime of aggression. The ICPA will be part of the existing support structure for the JIT, set within Eurojust, with a specific focus on supporting and enhancing investigations into the crime of aggression. Although the name may suggest otherwise, the ICPA is not physically a 'centre.' It is a separate unit within the already existing JIT.

The Ukrainian authorities, the ICC and the JIT also cooperate intensively with a range of other actors that collect battlefield evidence, most notably with international and Ukrainian NGOs (sometimes also referred to as Civil Society Organisations – CSO's) active in documenting and archiving atrocities. The by now rich collection of CSOs include Bellingcat, Global Rights Compliance and Redress. And more than 30 Ukrainian NGOs that document atrocities are organised under the umbrella of the 5AM coalition.²⁸

In the challenging and constantly changing context described above, the RNLM has also been actively contributing to accountability in Ukraine. Between June 2022 and December 2023, RNLM dispatched four 'Trident Justice' (TJ) missions, tasked to collect forensic evidence on international crimes in Ukraine on behalf of the ICC. Moreover, RNLM hosts the Joint Initiative to support Forensic Investigations

²⁵ Tan and Yang, "The Joint Investigation Team in Ukraine: An opportunity for the International Criminal Court?"

²⁶ International Criminal Court, "Statement by ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Investigation Team on international crimes committed in Ukraine."

²⁷ See: Eurojust, "International Centre for the Prosecution of the Crime of Aggression against Ukraine."

²⁸ 5 AM, "Ukraine 5 AM Coalition."

on International Crimes (JIFIIC), that aims to provide a sustainable structure to these type of missions. Together with the ICC, the aim is to develop a long-term coordination modality in order to provide joint multinational and multidisciplinary forensic teams on a rotational base. These teams can – in close consultation with the Ukraine authorities – be deployed to Ukraine to collect evidence and other relevant information in line with international standards.

Like many of the novel initiatives described above, the rotational deployment of international teams of forensic experts and their enablers is nothing but unique. Never in its over 20 years existence has the ICC relied on the assistance of gendarmerie forces of a member state in collecting information and evidence on the battlefield, let alone in a country at war. In the subsequent section, we will elaborate more on the legal basis and nature of the Trident Justice missions.

4. Role of the RNLM in collecting information and evidence on international crimes in Ukraine

The deployment of Dutch personnel in support of the ICC investigation was established through a Memorandum of Understanding (MOU), which lays down the mode of cooperation between the Netherlands and the ICC. The personnel are made available to the ICC on a temporary employment (secondment) basis, while the legal basis of the ICC to perform its investigative tasks on the territory of Ukraine is based on permission granted by Ukraine which – as mentioned above – has declared that it accepts the jurisdiction of the ICC. As temporarily designated experts of the ICC, members of Trident Justice missions are covered by the *Agreement on the Privileges and Immunities of the International Criminal Court (2002)*, to which Ukraine is a party. Article 21 of this Treaty specifies the scope of immunities and privileges of experts performing functions for the ICC, including immunity from arrest and detention. Because TJ-members have been seconded to the ICC – and, for example, are not conducting investigations in the context of Dutch criminal charges – all information gathered during the mission remains with the ICC.²⁹ Alternatively, based on the earlier referred to principle of ‘positive complementarity,’ information can also be shared with Ukraine.

During the TJ-missions, OTP of the ICC is in charge of the investigation and its investigative strategy, while the RNLM commander of the TJ-missions decides on issues related to safety, security and logistics. The TJ-missions vary in length between two and eight weeks long. Each of the four missions consists of

²⁹ Fink, *Inzet van de Koninklijke Marechaussee in de opsporing van internationale misdrijven in Oekraïne*.

interdisciplinary teams of 20-50 members. They are composed of investigators, forensic experts and support personnel and do not only include RNLM staff but also experts from other defence units and the Netherlands Forensic Institute (NFI). While the first two missions were exclusively comprised of Dutch staff, in missions III and IV also experts from other countries – including Czech Republic and Belgium – participated.³⁰ The expertise that has been provided ranges from 3D-mapping of crime scenes, forensic pathology, extraction of information from data carriers (laptops, telephones) and post-blast and ballistics expertise. Given the ongoing investigations and the required confidentiality that is to be taken into account, it is at this stage not possible to disclose more details about the nature of the missions.

Per request by the ICC, the Netherlands Minister of Defence announced in May 2023 that the Netherlands would donate a mobile forensic laboratory to the ICC. The laboratory allows investigators to analyse evidence, on site, according to international standards. Such a laboratory can be highly useful because of the many locations where alleged war crimes have been committed and because laboratories have often been destroyed in areas where forensic evidence is being secured. The donation concerns material support only, not the deployment of personnel, which means that the ICC is to assume care and responsibility for the operation of the laboratory in Ukraine.³¹ At the time of writing, logistical details on how, when and where to deploy the laboratory were subject to discussion between the Netherlands Ministries of Defence and Foreign Affairs, the ICC and the Ukrainian Attorney General.

As previously indicated, except for Dutch investigators, also experts from Czech Republic and Belgium participated in Mission III and IV. This is one of the tangible results of the RNLM's JIFIIC project team, which in close cooperation with the OTP of the ICC aims to develop a long-term coordination modality in order to provide joint (multinational) multidisciplinary forensic elements on a rotational base. A significant number of other countries has in the meantime displayed an interest to either participate in future Trident Justice missions commanded by the RNLM or to organise alternative missions. France, for example, deployed a technical and forensic mission under the auspices of the OTP in June 2023.³² Moreover, in the course of 2023 a Danish police team as well as a Swiss police team were deployed for the purposes of JIFIIC: a truly international endeavour.

³⁰ Hunder, "Dutch war crimes investigators examine Ukraine's battered infrastructure."

³¹ Ollongren, *Schenking mobiel laboratorium aan het ICC*.

³² Interfax, "France sends two teams of investigators, forensic experts to Ukraine to help investigate environmental crimes – MFA."

5. Concluding reflections

In this contribution, we described the many international crimes that have been committed in Ukraine, the various accountability options available to hold perpetrators of these crimes accountable, and a number of new initiatives that have been set up to promote accountability and facilitate the exchange of possible evidence of international crimes. Special attention was dedicated to the unique rotational deployment of international teams of forensic experts, commanded by RNLM. A precedent has been set, but it remains to be seen if and to what extent seconded gendarmerie forces will in the future, also in other situations and countries, be deployed on behalf of the ICC.

Whether the new developments discussed in this chapter will eventually lead to a significant number of convictions – and if this will include high level suspects of the likes of Putin and Lvova-Belova – also remains to be seen. International crimes prosecutions are known to be highly complex. Moreover, the outcome of the war in Ukraine and the internal political and security situation in Russia to a large extent impact whether or not international crimes suspects can be arrested. That said, international crimes prosecutors are known to be patient and to not easily give up. After the indictment, it took the prosecutor of the International Criminal Tribunal of former Yugoslavia (ICTY) fourteen years to arrest former Bosnian Serb leader Radovan Karadzic.

Indeed, this factor should be taken into account with regard to the seconded forensic experts of the TJ missions: it may take several years before they are called to testify in a courtroom in The Hague. The collection of evidence therefore requires proper expertise, including a sound chain of custody. What is more, as the ICC may share information and evidence with other actors, including Ukraine and other JIT-members, these very same experts may have to testify in courts in Kyiv, Bucharest or Vilnius.

As the investigations landscape becomes increasingly rich in its variety of actors, the role of the gendarmerie in it is one to monitor closely. They provide important opportunities in the collection of battlefield evidence during an ongoing armed conflict, because they combine police expertise with military expertise. For the RNLM, it is relatively easier to deploy personnel to expeditionary missions abroad than it is for the National Police organisation, given the training completed by military officers that prepares them for operating in a conflict situation and given the hierarchical command that applies to the deployment of military (police or gendarmerie) officers. The lessons that can be learned from their experiences may contribute to a better understanding of how to improve the global support to the investigations conducted for trials by Ukraine, the ICC and elsewhere. Moreover, it may help to further understand the coordination needs that the various actors have.

The experiences with Trident Justice in Ukraine are also relevant for the RNLM itself. The Defence White Paper 2022 states that in the near future, the RNLM will be reinforced with a squadron specialising in military police tasks ('MP squadrons'), including investigation tasks into alleged war crimes in mission areas.³³ It is a novelty that the Netherlands Army so explicitly delegates the latter task to the RNLM. Although the future context in which these MP squadrons will be operating may be entirely different from that in Ukraine – for instance, the ICC may then not be actively involved or the mission may not be limited to the collection of forensic evidence – the experiences of the current missions are extremely valuable in reflecting on what type of expertise these MP squadrons will need and which future contexts they may operate in.

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³³ See: Ministry of Defence, "Defence White Paper 2022," 20: "The Royal Netherlands Marechaussee will be reinforced with a squadron specialising in military police tasks at the highest end of the spectrum of force, such as detention and investigation tasks into alleged war crimes in mission areas."

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