

Joining Forces: National War Crimes Units and the Pursuit of International Justice

Elise Baker, Lara Hakki, Julia Jacovides, Kristina Steinmetz, Eric Stover, Victoria Tang & Fabian Unser-Nad

ABSTRACT

As international tribunals close and the International Criminal Court struggles with jurisdictional issues and waning political support, national war crimes units—or specialized prosecution units—have emerged as important actors in the pursuit of international criminal justice. This article discusses three challenges these units face: (1) political and financial support, (2) access to and admissibility of evidence, and (3) coordination and cooperation within and among units. The article is based on an extensive literature review and interviews with forty-two current or former investigators and prosecutors at national war crimes units, international tribunals, and nongovernmental organizations.

Elise Baker holds a J.D. from the University of California, Berkeley, School of Law.

Lara Hakki holds a J.D. from the University of California, Berkeley, School of Law.

Julia Jacovides holds a J.D. from the University of California, Berkeley, School of Law.

Kristina Steinmetz holds an LL.M. from the University of California, Berkeley, School of Law.

Eric Stover is Faculty Director of the Human Rights Center and Adjunct Professor of Law and Public Health, University of California, Berkeley, School of Law.

Victoria Tang holds a J.D. from the University of California, Berkeley, School of Law.

Fabian Unser-Nad holds an LL.M. from the University of California, Berkeley, School of Law.

"Eight years after the onset of the [Syrian] civil war, international criminal justice has done little for Syria, but Syria has done a lot for international justice."¹

Mark Kersten

I. INTRODUCTION

On 22 May 2014, three years after the outbreak of the Syrian civil war, China and Russia vetoed a UN Security Council Resolution referring the situation in Syria to the International Criminal Court (ICC). Seemingly angered by the vote, "the French Ambassador to the United Nations, Gérard Araud, described China's and Russia's [rejection of] the resolution as akin to 'vetoing justice.'"² The resolution's defeat meant that those demanding accountability for atrocity crimes in Syria—including a sarin gas attack outside of Damascus in August 2013 that left more than 1,400 people dead—would have to pursue other options, none of which would be easy. One obvious option would be to set up a special tribunal for Syria, as the UN General Assembly had done in other war-torn countries—an idea that never gained traction.

Finally, in 2016, the UN General Assembly established the International, Impartial and Independent Mechanism (IIIM) to collect, consolidate, preserve, and analyze evidence of violations of international humanitarian law committed by all sides in the Syria conflict.³ While not a prosecutorial body itself, the IIIM was mandated to prepare files on war crimes and other international crimes for future criminal proceedings. Now, three years later, the IIIM has amassed more than a million records of potential war crimes and received requests from twenty-three national war crimes units and judiciaries for assistance.⁴ European states, meanwhile, have individually

1. Mark Kersten, *International Justice Has Done Little for Syria, but Syria Has Done a Lot for International Justice*, JUSTICE IN CONFLICT (4 Mar. 2019), <https://justiceinconflict.org/2019/03/04/international-justice-has-done-little-for-syria-but-syria-has-done-a-lot-for-international-justice/>.
2. See Somini Sengupta, *China and Russia Block Referral of Syria to Court*, N.Y. TIMES (22 May 2014), <https://www.nytimes.com/2014/05/23/world/middleeast/syria-vote-in-security-council.html>.
3. The full title of the IIIM is "The International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011."
4. See Press Release, United Nations, Head of International Mechanism on Syria Describes Progress Documenting Crimes Committed by Both Sides, As General Assembly Takes Up Report (23 Apr. 2019), <https://www.un.org/press/en/2019/ga12139.doc.htm> (In 2011, the UN Human Rights Council established the Independent International Commission of Inquiry on the Syrian Arab Republic which expressly called upon states to utilize universal jurisdiction laws to "investigate and prosecute persons and groups implicated in egregious violations"); Beth Van Schaack, *Domestic Courts Step Up: Justice for Syria Once Case at a Time*, JUST SECURITY (25 Mar. 2019), <https://www.justsecurity.org/63289/domestic-courts-step-up-justice-for-syria-one-case-at-a-time/>.

invoked extraterritorial jurisdiction laws to investigate and prosecute more than twenty cases regarding war crimes in Syria. France and Germany, supported by the European Union agency known as Eurojust, even set up a joint investigation team to pursue Syrian suspects.⁵

But Syrian war crimes suspects are not the only ones being pursued in courts abroad. At the time of writing, more than a dozen national war crimes units—also referred to as specialized prosecution units—have been established across the world. The largest number of units are concentrated in Europe, Canada, and the United States. Many units were created in response to massive migration flows from conflict zones around the globe and employ a “no-safe-haven approach” for those migrants suspected of committing serious international crimes, including genocide, crimes against humanity, and war crimes, prior to their arrival. The units are generally based in law enforcement or a prosecutor’s office and vary in structure, organization, and size. Some units have broad mandates relying on universal jurisdiction—a legal principle giving states the authority to prosecute anyone who is believed to have committed serious international crimes, even if the prosecuting state has no link to the crime other than bonds of common humanity⁶—while others have more limited mandates. In 2018, war crimes units or judiciaries in fifteen countries had cases open against 149 suspects from Iraq, Syria, Rwanda, Guatemala, the Democratic Republic of the Congo, Liberia, and other countries. These cases resulted in eight convictions and two acquittals.⁷

There are, of course, benefits to prosecuting international criminal law cases in the countries where the crimes took place. Domestic trials, if conducted properly, can reinforce the rule of law as well as provide greater societal visibility to past crimes. On a practical level, domestic investigators have greater access to victims and witnesses as well as physical and documentary evidence than their international counterparts. But there are also benefits to international prosecutions: local prosecutors often do not have the expertise to prosecute international crimes, corruption can be rampant, witnesses may be at greater risk, and the risk of contaminating evidence may be higher. Moreover, as legal scholar Beth Van Schaack notes, “where courts in the affected country are foreclosed, as is the case in Syria, legal processes in the courts of other countries offer a second-best alternative.”⁸

5. See *Genocide and war Crimes Cases Rise by 1/3 in the EU in 3 years*, EUROJUST (23 May 2019), <http://www.eurojust.europa.eu/press/PressReleases/Pages/2019/2019-05-23.aspx>

6. Kenneth C. Randall, *Universal Jurisdiction Under International Law*, 66 *TEX. L. REV.* 785, 788 (1988).

7. See TRIAL INTERNATIONAL, *EVIDENTIARY CHALLENGES IN UNIVERSAL JURISDICTION CASES: UNIVERSAL JURISDICTION ANNUAL REVIEW 2019*, 11 (2019), https://trialinternational.org/wp-content/uploads/2019/03/Universal_Jurisdiction_Annual_Review2019.pdf; see also AMNESTY INTERNATIONAL, *UNIVERSAL JURISDICTION: A PRELIMINARY SURVEY OF LEGISLATION AROUND THE WORLD—2012 UPDATE* (2012), <https://www.amnesty.org/en/documents/ior53/019/2012/en/> (noting 147 (approximately 76.2 percent) of 193 UN member states provide for universal jurisdiction over at least one serious international crime, such as genocide and crimes against humanity).

8. See Van Schaack, *supra* note 4, ¶ 2.

This article examines the major challenges national war crimes units face as they investigate war crimes, and the measures they are taking to overcome them. In all, we interviewed forty-two investigators and prosecutors based in war crimes units in Europe, Canada, and the United States; former and current personnel in international criminal tribunals; members of civil society; and transitional justice scholars. We supplemented this data with a review of scholarly articles and reports on war crimes units published by Eurojust's Genocide Network, Human Rights Watch (HRW), REDRESS, TRIAL International, Open Society Justice Initiative (OSJI), and the European Center for Constitutional and Human Rights (ECCHR). These publications covered topics ranging from the application of international treaties and criminal law in domestic jurisdictions to evidentiary challenges faced by international criminal tribunals.

We conducted the research at the request of the Office of the Prosecutor (OTP) of the ICC, which provided us with a list of investigators and prosecutors based in war crimes units in Belgium, Bosnia and Herzegovina, Canada, France, Germany, the Netherlands, Norway, Sweden, and the United Kingdom. The OTP was particularly interested in learning how it could improve interactions with war crimes units through information sharing, standard setting, and coordination in preparation for a workshop to be convened in The Hague in 2020.

By grounding this article in a review of scholarly articles and the views and opinions of a relatively small number of individuals based in war crimes units in Europe and North America, we run the risk of formulating general conclusions from a limited data set. But our aim is not to provide an overarching theory about the effectiveness of domestic prosecutions in promoting international justice. Instead, we explore the process by which war crimes units conduct their investigations and, when necessary, coordinate their activities with other national and international investigatory entities. While this article provides an initial survey of war crimes units and the challenges they face, further research is necessary for a more comprehensive view of how these challenges can be overcome or mitigated.

II. BACKGROUND

The legal foundations for the creation of national war crimes units can be traced to the end of World War II. During the 1940s and early 1950s, thousands of trials of German and Japanese military and civilian officials accused of wartime crimes were held throughout Europe and Asia. These proceedings—most notably the Nuremberg and Tokyo trials of major military and civilian leaders—established many of the core legal principles of international criminal law that are still in force today. One of these was the introduction of a new international crime: crimes against humanity.

Defined in the Charter of the Nuremberg Tribunal, crimes against humanity include a constellation of criminal acts—murder, extermination, enslavement, deportation, persecution, and other inhumane acts—made criminal under international law when they are committed as part of a widespread or systematic attack on a civilian population.⁹ Crimes against humanity are considered crimes against *all* humanity, not just the individual victims or their immediate communities.

It was only with the end of the Cold War in the early 1990s that the precedents established in Nuremberg and Tokyo could finally take root and flourish on the international stage. Within a span of eighteen months beginning in May 1993, the UN Security Council established two tribunals—the *ad hoc* International Criminal Tribunal for the Former Yugoslavia (ICTY) and the *ad hoc* International Criminal Tribunal for Rwanda (ICTR)—to prosecute suspects accused of war crimes, crimes against humanity, and genocide in the Balkans and Rwanda. The Yugoslavia and Rwanda tribunals were quickly followed by a new set of judicial institutions, established under the auspices of the United Nations and known as hybrid or mixed courts. Since the mid-1990s, hybrid tribunals—which are generally situated in the host country and are staffed by international and national personnel—have been established in Bosnia and Herzegovina, Cambodia, the Central African Republic, East Timor, Kosovo, Lebanon, Senegal, and Sierra Leone.¹⁰

In 1998, more than a hundred states met in Rome to hammer out a multinational treaty to establish the ICC, a permanent tribunal with jurisdiction over anyone suspected of committing a serious international crime “in situations where the alleged perpetrator is a national of a State Party or where the crime was committed in the territory of a State Party.”¹¹ The court would also have the power to open an investigation of potential crimes committed in nonmember states if the United Nations Security Council refers the situation to the court. At the time of writing, 122 countries are parties to the Rome Statute, but numerous others, including the United States, Russia, China, India, Pakistan, Turkey, Israel, and Indonesia, have so far decided not to join.¹² In recent years, the ICC has been plagued by a litany of setbacks ranging from the fact that it has not successfully prosecuted a state official,¹³

9. See ERIC STOVER, VICTOR PESKIN & ALEXA KOENIG, *HIDING IN PLAIN SIGHT: THE PURSUIT OF WAR CRIMINALS FROM NUREMBERG TO THE WAR ON TERROR* 4-9 (2016).

10. *Id.* at 6-9 (providing an overview of the establishment of these tribunals).

11. *Understanding the International Criminal Court*, INTERNATIONAL CRIMINAL COURT (ICC), at 4, <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>.

12. *The States Parties to the Rome Statute*, INTERNATIONAL CRIMINAL COURT (ICC), https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx.

13. See Oumar Ba, *The International Criminal Court Just Acquitted the Former Ivory Coast President. What Happens now?*, WASH. POST (22 Jan. 2019), <https://www.washingtonpost.com/news/monkey-cage/wp/2019/01/22/the-international-criminal-court-just-acquitted-the-former-ivory-coast-president-what-happens-now/>.

to the withdrawal from the Rome Statute by Burundi and the Philippines, to the decision by ICC judges to block the Prosecutor's request to open an investigation of potential crimes in Afghanistan.¹⁴

Given these impediments, national war crimes units are now emerging as a venue of choice for investigating and prosecuting international crimes. Nevertheless, they, too, face major challenges. Beyond figuring out the logistics of collecting evidence, interviewing potential witnesses, and securing the extradition of suspects, these units must justify the expenditure of the country's resources and navigate thorny national and regional politics. This article discusses these challenges below.

III. DISCUSSION

A. War Crimes Units and Case Selection

Serious international crimes are particularly complex and resource-intensive to investigate and prosecute. When deciding whether to initiate an investigation, national war crimes units must evaluate some considerations, including the probability of success.¹⁵ They also must consider the location, availability, and sufficiency of the evidence; the amount of time an investigation might take; the anticipated cooperation with other countries; and the prospect of success in both criminal and civil cases.¹⁶ Underlying each unit's decision are concerns over limited resources—resources that some respondents suggested will only become scarcer in the future.¹⁷

-
14. See Marlise Simons, Rick Goldstone & Carol Rosenberg, *Hague Court Abandons Afghanistan War Crimes Inquiry*, N.Y. TIMES (12 Apr. 2019), <https://www.nytimes.com/2019/04/12/world/asia/icc-afghanistan-.html>.
 15. Telephone Interview with Teresa McHenry, Section Head, US Department of Justice Human Rights and Special Prosecutions, Anne Asbury, Special Agent, US Federal Bureau of Investigations Middle East and Asia Human Rights Program, Maureen Schutz, Unit Chief, US Federal Bureau of Investigations International Human Rights Unit, Lisa Koven, Chief, Department of Homeland Security Immigrations and Customs Enforcement Human Rights Section, and Nannette Shorten, Supervisory Special Agent and National Program Manager, United States Immigration and Customs Enforcement Homeland Security Investigations (27 Oct. 2018).
 16. Telephone Interview with Terry Beitner, General Counsel and Director, Canada Department of Justice Crimes Against Humanity and War Crimes Section (29 Oct. 2018).
 17. Skype Interview with Matevz Pezdirc, Head of Network Secretariat, Genocide Network (12 Nov. 2018) (suggesting that the International Criminal Court's lack of success may lead to an overall decrease of commitment and funding for international crimes prosecutions, possibly even at national levels); Telephone Interview with Stephen Rapp, Former Ambassador at Large for War Crimes, US Department of State Office of Global Criminal Justice (30 Oct. 2018) (suggesting funding will go to terrorism cases, not international crimes cases, in the future); Skype Interview with Vincent Cillessen, Team Leader, Netherlands War Crimes Unit (Oct. 19, 2018) (suggesting funding will go towards terrorism cases in the future).

This section discusses some of the challenges war crimes units face in case selection. First, governments and their national war crimes units face the onerous task of justifying why taxpayers should support investigations of atrocity crimes that took place extraterritorially. Investigating such crimes can be expensive given the costs involved in sending investigators and prosecutors abroad to collect evidence and interview potential witnesses.¹⁸ As one respondent who has worked closely with several war crimes units explained: it is understandable that citizens might ask why their government has spent \$1 million on a single war crimes case, when that same amount of money could be used to prosecute 1,000 shoplifting cases or five murder cases.¹⁹

Second, prosecutors may be limited in the war crimes charges they can bring and instead decide to pursue immigration fraud charges. In practice, this means that individuals suspected of committing international crimes before migrating to another country, and who subsequently lied about their participation in such crimes, are prosecuted for immigration fraud.²⁰ The decision to pursue immigration fraud charges is sometimes necessary. In some cases in the United States, statutes of limitations and *ex facto* principles have barred all federal charges against war crimes suspects, aside from criminal immigration fraud charges.²¹ Immigration charges can also be pragmatic: as the head of the Canadian Crimes Against Humanity and War Crimes Section (CAHWC) explained, criminal war crimes charges require a higher burden of proof than civil immigration charges. If the evidence appears insufficient for a criminal conviction, civil immigration charges offer an alternative remedy.²²

These immigration prosecutions may result in convictions for acts related to international crimes that would not otherwise be possible. However, according to legal scholar Maximo Langer, this approach raises the question of whether or not an immigration fraud trial can satisfy victims who suffered from the underlying international crimes.²³ Many immigration trials end with suspects being deported back to their home country, where they may never

18. See Máximo Langer, *The Diplomacy of Universal Jurisdiction: The Political Branches and the Transnational Prosecution of International Crimes*, 105 AM. J. INT'L L. 1, 5 n.19 (2011) ("the economic costs of these [universal jurisdiction] prosecutions and trials ... can be quite substantial."). While many respondents identified war crimes cases as being more costly and time consuming than other criminal cases, there is no publicly available data to demonstrate how much more costly and time consuming they are.

19. Skype Interview with Matevz Pezdirc, *supra* note 17.

20. See *Liberian Warlord "Jungle Jabbah" Receives Historic Sentence in Immigration Fraud Case*, U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT (20 Apr. 2018), <https://www.ice.gov/news/releases/liberian-warlord-jungle-jabbah-receives-historic-sentence-immigration-fraud-case>.

21. Email communication with Nelson Thayer, Assistant United States Attorney, Eastern District of Pennsylvania (22 July 2019).

22. Telephone Interview with Terry Beitner, *supra* note 16.

23. Telephone Interview with Máximo Langer, Professor of Law, University of California Los Angeles School of Law (13 Feb. 2019).

face criminal prosecution of the underlying international crimes. While diaspora communities may welcome the suspect's deportation and view that as justice served, survivors in the home country may not be satisfied with a suspect's return without a subsequent trial. Furthermore, survivors residing in the suspect's home country could face additional risks upon the suspect's return.²⁴

Another concern raised by the authors is the possibility that the use of immigration law may unintentionally contribute to xenophobic attitudes about immigration and criminality. Seeking justice for international crimes through immigration remedies may create the false perception that many people fleeing conflict zones have perpetrated crimes. This attitude, in turn, may increase support for anti-immigrant policies.

Another concern regarding case selection is that several countries prioritize terrorism cases over international crimes cases.²⁵ This trend has been noted in the United Kingdom and France, where international crimes and terrorism prosecution teams share the same budget or have even been combined.²⁶ Vincent Cillessen of the Netherlands War Crimes Unit expressed fear that in the future this trend will increase, and national units will pay more attention to war crimes committed by terrorist groups than by nonterrorists, resulting in a disproportionate focus on one demographic of war criminals over another.²⁷ Stephen Rapp, former United States Ambassador at Large for War Crimes Issues, echoed Cillessen's concerns that countries will shift from prosecuting war crimes to prosecuting terrorism cases in the future.²⁸

One new technique some units are pursuing for case selection is building "structural investigations."²⁹ A structural investigation maps out over-arching crime patterns throughout a conflict, identifies power structures underpinning crimes, and identifies certain actors and their responsibilities within these structures.³⁰ Structural investigations allow war crimes units to gain a better understanding of military networks and the responsibilities of specific com-

24. See Skype Interview with Alain Werner, Director, Civitas Maxima (15 Oct. 2018).

25. See Telephone Interview with Stephen Rapp, *supra* note 17; Skype Interview with Vincent Cillessen, *supra* note 17.

26. Email correspondence with Deborah Walsh, Head, United Kingdom Counter Terrorism Division (23 Oct. 2018); email correspondence with Beth van Schaack, Leah Kaplan Visiting Professor in Human Rights, University of Stanford School of Law (9 July 2019).

27. Skype Interview with Vincent Cillessen, *supra* note 17.

28. Telephone Interview with Stephen Rapp, *supra* note 17. In the case of Umm Sayyaf, this has already happened. In 2016, the US Department of Justice charged Sayyaf, the wife of a high-ranking Islamic State official, with providing support to a foreign terrorist organization that resulted in the death of American aid worker Kayla Mueller. Mueller had been held captive by Umm Sayyaf and her husband. *Kayla Mueller's Death Results in Terrorist Charges for ISIS Leader's Wife*, CBC (9 Feb. 2016), <https://www.cbc.ca/news/world/kayla-mueller-isis-wife-1.3439717>.

29. Telephone Interview with Terry Beitner, *supra* note 16; Skype Interview with Vincent Cillessen, *supra* note 17.

30. See *Glossary*, ECCHR, <https://www.ecchr.eu/en/glossary/structural-investigation/>.

manders within those structures before possible defendants are identified.³¹ These investigations can help guide subsequent case selection to ensure cases cover a range of violations and all groups of perpetrators, rather than only limited aspects of a conflict. Germany, Sweden, and the IIM are all building structural investigations on the conflict in Syria.³²

B. Types of Evidence

Most national war crimes units build cases based on testimonial evidence, supported by physical and documentary evidence where available. But no matter the type of evidence sought, gathering it, let alone analyzing and assessing its probative value, poses numerous challenges for these units, ranging from working with witnesses to accessing, preserving, and admitting evidence at trial.

1. Witness Testimony

While national war crimes units have traditionally prioritized the collection of witness testimony over other forms of evidence, working with witnesses poses numerous challenges, including language barriers³³ and the significant time lag between a crime's occurrence and when a witness testifies in court.³⁴ Witnesses may testify multiple times in different jurisdictions regarding the same crimes, and small inconsistencies may emerge.³⁵ Cases can fall apart if defense attorneys uncover discrepancies between witnesses' in-court and prior statements (usually given months or years prior to their appearance

-
31. See Telephone Interview with Hanna Lemoine, Prosecutor, Swedish National Unit Against Organized Crime (23 Oct. 2018); Skype Interview with Vincent Cillessen, *supra* note 17.
 32. Email correspondence with Klaus Zorn, Head, German Central Unit for the Fight Against War Crimes (24 Jan. 2019); Telephone Interview with Hanna Lemoine, *supra* note 31; Telephone Interview with Michelle Jarvis, Deputy Head, International, Impartial and Independent Mechanism (12 Oct. 2018).
 33. Telephone Interview with Nelson Thayer, Assistant United States Attorney, Eastern District of Pennsylvania (31 Oct. 2018); email correspondence with Deborah Walsh, *supra* note 26.
 34. See, e.g., Telephone Interview with Vincent Foy, Sergeant, Royal Canadian Mounted Police Sensitive International Investigations Extra-Territorial Response Unit, Henrich Neuwirth, Sergeant, Royal Canadian Mounted Police Sensitive International Investigations Extra-Territorial Response Unit, and Yves Gravelle, Corporal, Royal Canadian Mounted Police Sensitive International Investigations Extra-Territorial Response Unit (24 Oct. 2018); Telephone Interview with John Bonning, Head, UK War Crimes Team (23 Oct. 2018); Telephone Interview with Hanna Lemoine, *supra* note 31; Skype Interview with Vincent Cillessen, *supra* note 17; Skype Interview with Mersudin Pruzan, Prosecutor, Prosecutor's Office of Bosnia and Herzegovina (12 Oct. 2018).
 35. Telephone Interview with Nelson Thayer, *supra* note 33.

in court).³⁶ Investigators must be conscientious of the fallibility of human memory and take measures to corroborate witness testimony with other types of evidence.

Multiple interviews with the same witnesses can also raise the risk of re-traumatization, with no guarantee of justice or victim support after the trial concludes.³⁷ The onus is on prosecutors to alleviate these risks. Some witnesses who participated in past studies of war crimes trials singled out their interactions with prosecutors and investigators as the one mitigating factor that helped make the act of testifying less stressful. Simply put, when prosecutors pay more attention to the needs of their witnesses, a higher degree of witness satisfaction results.³⁸

Nelson Thayer, a United States federal prosecutor and former ICTY prosecutor, described how witnesses testifying at the Yugoslavia tribunal were forced to relive their trauma during cross-examination and how it affected them.³⁹ Prosecutors, he said, are now more conscious about providing psychosocial support to witnesses. He provided the example of an immigration fraud case he recently prosecuted in Pennsylvania involving a Liberian suspect Mohammed Jabbateh, who had committed various war crimes that he then lied about when he came to the United States. When investigators traveled to Liberia to collect evidence, they brought an experienced female victim's advocate who had worked with sexual assault victims for decades. When witnesses arrived at the court in Philadelphia to testify, the advocate made sure that they had all the resources they needed to feel comfortable. Despite these preparations, many witnesses still broke down in trial preparation because of the deeply traumatic nature of the events.⁴⁰

Another challenge regarding witnesses is ensuring their security.⁴¹ After testifying, many witnesses return to their home countries where they may

-
36. See *Kouwenhoven Acquitted*, HAGUE JUSTICE PORTAL (10 Mar. 2008), <http://www.hague-justiceportal.net/index.php?id=9002> (a Canadian judge acquitted a defendant charged under Canada's Crimes Against Humanity and War Crimes Act because the prosecution did not prove its case beyond a reasonable doubt, in part because two witnesses were found to be not credible); Telephone Interview with Vincent Foy, Henrich Neuwirth & Yves Gravelle, *supra* note 34.
 37. Telephone interview with Nelson Thayer, *supra* note 33; see also Telephone Interview with Hanna Lemoine, *supra* note 31; Skype Interview with John Ralston, Former Chief of Investigations, International Criminal Tribunal for the Former Yugoslavia (19 Oct. 2018).
 38. See ERIC STOVER, *THE WITNESSES: WAR CRIMES AND THE PROMISE OF JUSTICE IN THE HAGUE 90-91* (2005); see also EDGAR ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988); JOHN W. THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* (1975); Edgar Allan Lind, Ruth Kanfer & P. Christopher Earley, *Voice, Control & Procedural Justice: Instrumental and Noninstrumental Concerns in Fairness Judgment*, 59 J. PERS. & SOC. PSYCH. 952 (1990); Tom R. Tyler, *What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 L. AND SOC. REV., 103, 129 (1988).
 39. Telephone Interview with Nelson Thayer, *supra* note 33.
 40. *Id.*
 41. Skype Interview with Nicole Vogelenzang, Prosecutor, Netherlands National Prosecution Service International Crime Unit (12 Nov. 2018); Telephone Interview with Teresa McHenry, Anne Asbury, Maureen Schutz, Lisa Koven & Nannette Shorten, *supra* note 15; Telephone Interview with Hanna Lemoine, *supra* note 31; Skype Interview with Alain Werner, *supra* note 24.

face recrimination. Yet, in building cases, some war crimes units fail to focus on witness security. Alain Werner, Director of the Swiss nongovernmental organization (NGO) Civitas Maxima, found it “irresponsible” that some war crimes units do not allocate resources to witness protection abroad and overlook working with local organizations, which can offer advice on security concerns and some degree of protection for witnesses.⁴² For example, Civitas Maxima travels regularly to Liberia and cooperates closely with a Liberian partner organization, Global Justice and Research Project (GJRP), which is based in Monrovia and has fifteen Liberian staff. Civitas Maxima and GJRP work together to relocate victims who have been threatened, sometimes within hours. Although GJRP cannot promise witnesses lifelong protection from potential risks, the organization is able to mitigate risks by undertaking witness protection assessments and maintaining contact with witnesses even after they testify.

Security risks in a witness’ home country, combined with distrust of foreign authorities, often lead to reluctance to cooperate with war crimes units.⁴³ Witnesses, for example, may be unwilling to talk to investigators if they fear providing statements or testifying in court will put friends and family at risk.⁴⁴ This is another reason why witness protection must be improved before, during, and after trial proceedings.⁴⁵

As several respondents suggested, training investigators and prosecutors on the best practices for interviewing victims and other witnesses in international crimes cases is essential.⁴⁶ According to studies conducted by UC Berkeley’s Human Rights Center, such training should address the security and psychosocial needs of witnesses and the availability of support services; orientation to court proceedings; and the right to receive information about trial outcomes, including whether defendants will be released.⁴⁷ In the German Central War Crimes Unit (ZBKV), the prosecution has established a special training program for female prosecutors on how to interview female victims.⁴⁸ Nelson Thayer also noted that federal prosecutor’s offices in the United States have dedicated units to assist witnesses with the

42. Skype Interview with Alain Werner, *supra* note 24; *see id.*

43. Telephone Interview with Hanna Lemoine, *supra* note 31.

44. Skype Interview with Vincent Cillessen, *supra* note 17.

45. *See* Telephone Interview with Hanna Lemoine, *supra* note 31; Skype Interview with Alain Werner, *supra* note 24.

46. Skype Interview with Nicole Vogelenzang, *supra* note 41; Skype interview with Vincent Cillessen, *supra* note 17.

47. *See* STOVER, *supra* note 38, at 150-52; UC BERKELEY HUM. RTS. CTR., THE VICTIMS’ COURT? A STUDY OF 622 VICTIM PARTICIPANTS AT THE INTERNATIONAL CRIMINAL COURT (2015), https://www.law.berkeley.edu/wp-content/uploads/2015/04/VP_report_2015_final_full2.pdf; UC BERKELEY HUM. RTS. CTR., BEARING WITNESS AT THE INTERNATIONAL CRIMINAL COURT: AN INTERVIEW SURVEY OF 109 WITNESSES (2014), [https://www.law.berkeley.edu/files/HRC/Bearing-Witness_FINAL\(3\).pdf](https://www.law.berkeley.edu/files/HRC/Bearing-Witness_FINAL(3).pdf).

48. Email correspondence with Klaus Zorn, *supra* note 32.

effects of trauma and inform them of their rights as victims.⁴⁹ Staff assigned to these units regularly refer victims of violent crimes to social workers or psychologists for counseling. The more progressive units include services to explain the prosecutorial process, update victims on the progress of the trial proceedings, coordinate transport and childcare, and, when needed, provide translators.⁵⁰

2. *Physical Evidence*

Physical evidence is less common in extraterritorial international crimes cases litigated in domestic courts, largely because investigators have limited or no access to crime scenes or are unable to collect physical evidence given the passage of time since the commission of the crimes. Several respondents said their units lacked access to physical evidence related to crimes committed in the 1990s or earlier.⁵¹ For example, Mersudin Pruzan from the Prosecutor's Office of Bosnia and Herzegovina explained that their cases from the Balkans conflict often lack forensic evidence because local police frequently took part in the hostilities and did not conduct any investigations at the time the crimes occurred.⁵² Investigators with the Royal Canadian Mounted Police (RCMP) said that while some international crimes cases may involve forensic evidence derived from mass grave exhumations, physical evidence, such as DNA evidence, is difficult to retrieve and may degrade with time.⁵³ In their experience, the lack of physical evidence poses an acute challenge to prosecutions because this type of evidence can often have more probative value than witness testimony.⁵⁴

3. *Documentary Evidence*

Documentary evidence, especially military and government records, often play an important role in cases involving international crimes, especially when triangulated with physical and testimonial evidence. Thanks to the

49. Telephone Interview with Nelson Thayer, *supra* note 33.

50. STOVER, *supra* note 38, at 27.

51. Skype Interview with Leif Morten Eide, Police Prosecutor, Norway National Criminal Investigation Service International Crimes Section (20 Feb. 2019) (discussing lack of physical evidence for cases where crimes occurred ten to fifteen years prior); email correspondence with Klaus Zorn, *supra* note 32 (discussing lack of forensic evidence for international crimes cases); Skype Interview with Nicole Vogelenzang, *supra* note 41 (discussing lack of physical evidence for cases where crimes occurred before 2000); Telephone Interview with Nelson Thayer, *supra* note 33 (discussing lack of physical evidence for Liberia cases); Telephone Interview with Hanna Lemoine, *supra* note 31 (for Rwanda and Yugoslavia cases); Telephone Interview with John Bonning, *supra* note 34 (for Rwanda cases).

52. Skype Interview with Mersudin Pruzan, *supra* note 34.

53. Telephone Interview with Vincent Foy, Henrich Neuwirth & Yves Gravelle *supra* note 34.

54. *Id.*

global spread of social media in recent years, national war crimes units now have access to audio-visual material collected by citizens in war zones that traditional media outlets often are unable to access. This information can easily be disseminated on social media platforms, such as Facebook, YouTube, and Twitter, or messaging platforms, such as WhatsApp, Signal, and Telegram. While this is a tremendous boon for investigators, online open source information also raises many challenges that units are only beginning to grapple with.⁵⁵

C. Investigations

1. Online Open Source Investigations

Some national war crimes units have been relatively successful at integrating information acquired through open source investigations into their international crimes prosecutions.⁵⁶ Open source information is defined as “publicly available information that anyone can lawfully obtain by request, purchase, or observation.”⁵⁷ While the use of open source information in legal investigations is not new, the volume and diversity of open sources have broadened as a result of the proliferation of social media and the ever-increasing use of the internet and other digital resources for information sharing. Today, any individual with a smartphone can create and distribute digital content globally, albeit of varying quality, veracity, and transparency. The growing volume of data and speed by which such data is transmitted and shared has created new opportunities for open source investigators to gather and analyze information about international crimes and human rights violations.

At the time of writing, national war crimes units are at different stages in their use of open source information for investigatory and prosecutorial purposes. Klaus Zorn from the ZBKV said that German prosecutors primar-

-
55. See GENOCIDE NETWORK, *Conclusions of the 18th Meeting of the European Network of Contact Points for Investigation And Prosecution of Genocide, Crimes Against Humanity and War Crimes* (23 Apr. 2015), <http://www.eurojust.europa.eu/doclibrary/genocide-network/genocidenetworkmeetings/Conclusions%20of%20the%2018th%20meeting%20of%20the%20Genocide%20Network,%2022-23%20April%202015/Conclusions-18th-Genocide-Network-Meeting-2015-04-EN.pdf> (recognizing efficient use of online open source evidence as “an important evidentiary element in the process of investigation and prosecution of core international crimes”).
56. See GENOCIDE NETWORK, *Prosecuting War Crimes Of Outrage Upon Personal Dignity Based on Evidence From Open Sources: Legal Framework and Recent Developments in the Member States of the European Union* (Feb. 2018), [http://www.eurojust.europa.eu/doclibrary/genocide-network/KnowledgeSharing/Prosecuting%20war%20crimes%20of%20outrage%20upon%20personal%20dignity%20based%20on%20evidence%20from%20open%20sources%20\(Febuary%202018\)/2018-02_Prosecuting-war-crimes-based-on-evidence-from-open-sources_EN.pdf](http://www.eurojust.europa.eu/doclibrary/genocide-network/KnowledgeSharing/Prosecuting%20war%20crimes%20of%20outrage%20upon%20personal%20dignity%20based%20on%20evidence%20from%20open%20sources%20(Febuary%202018)/2018-02_Prosecuting-war-crimes-based-on-evidence-from-open-sources_EN.pdf).
57. United States National Security Agency, Intelligence Community Directive No. 301, at 8 (11 July 2006), <https://fas.org/irp/dni/icd/icd-301.pdf>.

ily use open source information to generate leads or to verify information found in documents or provided by witnesses.⁵⁸ Swedish prosecutor Hanna Lemoine noted that most of her unit's prosecutions of war crimes in Iraq and Syria are now based on open source investigations.⁵⁹ In a recent case, Swedish investigators received a tip that a video on Facebook showed a Syrian man, now residing in Sweden, torturing someone in Syria. Swedish investigators identified the man and successfully prosecuted him based primarily on open source evidence, without identifying or interviewing the victim.⁶⁰ Nicole Vogelenzang, a prosecutor in the Dutch National Prosecution Service's International Crime Unit, noted that Dutch war crimes investigators are also proactively collecting open source information on crimes committed in Syria. Vogelenzang described a case where the authorities found a photograph posted in 2015 on Facebook showing Dutch citizen Oussama Achraf Akhlafa posing next to a crucified body in Syria.⁶¹ Through geolocation, investigators established that the execution had taken place in the town of Abu Kamal in eastern Syria, and that, at the time, Akhlafa was a member of a sniper battalion with the Islamic State.⁶² When Akhlafa returned to the Netherlands in 2018, he was arrested and later convicted—based in part on the Facebook photograph—for participating in a terrorist organization.⁶³

Several respondents noted that national war crimes units could benefit from more training on the best practices for finding, collecting, and verifying open source information, as well as presenting it as evidence at trial. Even staff that are well trained in open source techniques find that it takes massive amounts of time to identify, process, track, catalog, and analyze open source information. To overcome this challenge, the IIM has made integrating expertise on open source investigations and analysis a priority for the organization.⁶⁴ Meanwhile, Vogelenzang with the Dutch International Crime Unit is hoping to bring in digital forensics experts to prove the authenticity of new evidence.⁶⁵

58. Email Correspondence with Klaus Zorn, *supra* note 32.

59. Telephone Interview with Hanna Lemoine, *supra* note 31.

60. *Mouhannad Droubi*, TRIAL INTERNATIONAL (5 Aug. 2016), <https://trialinternational.org/latest-post/mouhannad-droubi/>; Telephone Interview with Hanna Lemoine, *supra* note 31; see also Telephone Interview with Terry Beitner, *supra* note 16 (citing Sweden as a country that has successfully prosecuted international crimes based on online open source evidence); Telephone Interview with Michelle Jarvis, *supra* note 32 (citing Sweden as a country that has developed techniques to verify online open source evidence and suggesting other prosecutors should look to Sweden to see what techniques they used).

61. Skype Interview with Nicole Vogelenzang, *supra* note 41.

62. Tjitske Lingsma, *First Dutch Islamic State Fighter Convicted for War Crimes*, JUSTICEINFO.NET (25 July 2019), <https://www.justiceinfo.net/en/tribunals/national-tribunals/42008-first-dutch-islamic-state-fighter-convicted-for-war-crimes.html>.

63. *Id.*

64. Telephone interview with Michelle Jarvis, *supra* note 32.

65. Skype interview with Nicole Vogelenzang, *supra* note 41.

Another challenge investigators face is the volume of potentially relevant online content. In March 2018, Keith Hiatt, then a technologist and activist with the nonprofit Benetech, estimated that YouTube hosted 4 million videos relating to the Syrian conflict.⁶⁶ Prosecutors must figure out how to preserve social media evidence and all of its metadata in a way that will last, given international crimes prosecutions can take decades to complete.⁶⁷

2. Financial Investigations

Throughout history, war criminals have used private businesses, as well as international financial institutions, to support or cover up their nefarious activities. In turn, corporate executives have profited handsomely through special favors and paybacks.⁶⁸ For decades following the trials at Nuremberg, cases against corporate executives for serious international crimes rarely succeeded.⁶⁹ There were, however, some exceptions.⁷⁰

In recent years, international crimes investigators and prosecutors have started to focus on the financial infrastructures that fuel armed conflict and, in turn, facilitate atrocity crimes. To do this, some national units have opened investigations to uncover supply chains and to trace the financial transactions of suspected war criminals.⁷¹ Financial investigators seek a broad range of documentary evidence, including bank records, export records, business disclosures, or social media posts. One of their main objectives is to provide context and to understand the “illicit cash flows”

66. Armin Rosen, *Erasing History: YouTube's Deletion of Syria War Videos Concerns Human Rights Groups*, FAST COMPANY (7 Mar. 2018), <https://www.fastcompany.com/40540411/erasing-history-youtubes-deletion-of-syria-war-videos-concerns-human-rights-groups>.

67. Skype Interview with Sam Dubberley, Digital Verification Corps Manager, Amnesty International (28 Nov. 2018); Telephone Interview with Terry Beitner, *supra* note 16; Skype Interview with Vincent Cillessen, *supra* note 17; see also Genocide Network, *Conclusions Of The 24th Meeting Of The European Network Of Contact Points For Investigation And Prosecution of Genocide, Crimes Against Humanity and War Crimes* (25 May 2018), http://www.eurojust.europa.eu/doclibrary/genocide-network/genocidenetworkmeetings/Conclusions%20of%20the%2024th%20meeting%20of%20the%20Genocide%20Network,%202024-25%20May%202018/2018-05_Conclusions-24th-Genocide-Network-Meeting_EN.pdf (recognizing the importance of preserving social media content).

68. Holly Dranginis, *Beyond Sanctioning Elusive War Criminals, Prosecute the Profiteers*, JUST SECURITY (4 Apr. 2019), <https://www.justsecurity.org/63495/beyond-sanctioning-elusive-war-criminals-prosecute-the-profiteers/>.

69. HOLLY DRANGINIS, THE SENTRY, PROSECUTE THE PROFITEERS: FOLLOWING THE MONEY TO SUPPORT WAR CRIMES ACCOUNTABILITY, 1 (April 2019), https://cdn.thesentry.org/wp-content/uploads/2019/04/ProsecuteProfiteers_TheSentry_April2019.pdf.

70. For example, in 1948, thirteen executives at the German chemical company IG Farben were convicted of war crimes and crimes against humanity in a US military court in Germany for providing the Nazis with Zyklon B, a poisonous gas used to exterminate more than a million people in gas chambers installed at Auschwitz-Birkenau and other concentration camps. The IG Farben Trial was the second of three trials of leading German industrialists for their conduct during the Nazi regime. *Id.* at 1.

71. *Id.* at 9.

between suspected war criminals and their corporate backers.⁷² Financial investigations do this by filling in the details of a suspect's lifestyle, travels, and associations.⁷³ Compared to traditional methods of evidence gathering—interviewing witnesses and collecting physical evidence from the scene of a crime—financial investigations are often less costly and take less time to complete.⁷⁴ Moreover, in situations where investigators have no access to crime scenes, financial data can be easier to obtain when compared to physical and testimonial evidence.⁷⁵

Today, investigators are able to use online financial tools to trace the financial transactions of potential suspects. For example, in June 2018, French judges indicted the French cement company Lafarge on charges of complicity in crimes against humanity for cooperating with terrorist groups in Syria.⁷⁶ In their decision to charge, prosecutors looked at the nearly €13 million that Lafarge had paid to an armed group in the region.⁷⁷ Because the payments were far removed from the actual crime scenes, relying on traditional techniques like testimony from employees would have failed to flag the financial link between Lafarge and the armed group. However, by tracking the transfer of funds, investigators were able to connect the dots.

Although some war crimes units do not engage in financial investigations, a growing number of units now offer training programs to investigators on procedures for tracking financial transactions and linking this information to

72. Dranginis, *Beyond Sanctioning Elusive War Criminals*, *supra* note 68, at 3.

73. HELENA WOOD, ROYAL UNITED SERVICES INSTITUTE FOR DEFENCE AND SECURITY STUDIES, *EVERY TRANSACTION LEAVES A TRACE: THE ROLE OF FINANCIAL INVESTIGATION IN SERIOUS AND ORGANISED CRIME POLICING* 6, 9 (Sept. 2017), https://rusi.org/sites/default/files/201709_rusi_everytransactionleaves-a-trace_wood_web.pdf (British officials have said that financial investigations help to identify the extent of a criminal group, illustrate offenders' lifestyles; track and anticipate movements by following a financial footprint, locate people at particular places and particular times, identify additional offenses and offenders, locate assets and identify ownership of vehicles or real estate that provide a link between criminality and physical location. Financial investigations of core international crimes may do all of this, as well as allow for confiscation of illegal assets, protect the integrity of an economic system, and support a victim's right to compensation.) *See also* Genocide Network, *Conclusions of the 17th Meeting of the European Network of Contact Points for Investigation and Prosecution of Genocide, Crimes Against Humanity and War Crimes*, 1 (31 Oct. 2014), <http://eurojust.europa.eu/doclibrary/genocide-network/genocidenetworkmeetings/Conclusions%20of%20the%2017th%20meeting%20of%20the%20Genocide%20Network,%2030-31%20October%202014/Conclusions-17th-Genocide-Network-Meeting-2014-10-EN.pdf>.

74. *Investigation: Effective Financial Investigation*, COLLEGE OF POLICING (27 Aug. 2014), <https://www.app.college.police.uk/app-content/investigations/investigative-strategies/financial-investigation-2/effective-financial-investigation/>.

75. Telephone Interview with Holly Dranginis, Senior Legal Analyst, The Sentry (19 Nov. 2018).

76. Agence France-Presse *Lafarge Charged With Complicity in Syria Crimes Against Humanity*, THE GUARDIAN (28 June 2018), <https://www.theguardian.com/world/2018/jun/28/lafarge-charged-with-complicity-in-syria-crimes-against-humanity>.

77. *Id.*

possible suspects.⁷⁸ In addition, the Center for Advanced Defense (C4ADS), an NGO based in Washington, DC, uses open-source data to track financial flows to and from conflict zones.⁷⁹ The Hague-based Institute for International Criminal Investigations (IICI) has developed a training program on the financial dimensions of international crimes, covering global financial regulations and institutions, methods and procedures of financial investigations, and how to use open source information to track the movement of money, conduct company background checks, and protect whistleblowers.⁸⁰ The United States Institute of Peace has also launched an initiative to train Congolese prosecutors, court officials, and lawyers in methods of financial investigations related to international crimes.⁸¹

D. Evidence

1. Access to Evidence

TRIAL International, in its 2019 annual review of universal jurisdiction cases worldwide, wrote:

Mass crimes, remote locations, protection of victims and witnesses, procedural obstacles, outreach. Those are just some of the challenges inherent to universal jurisdiction cases. From gathering evidence to tracking down suspects, each step of the process is long, complex, often frustrating, and sometimes downright dangerous.⁸²

Respondents in our survey echoed this observation, but particularly identified access to evidence, especially crime scene evidence, as one of their biggest obstacles, largely because investigations often occur years or decades after the crimes took place.⁸³

Many respondents also reported that politics prevent them from conducting investigations into crimes that took place in other countries.⁸⁴ Diplomatic rules and procedures often determine whether investigators can access the

78. Telephone Interview with Holly Dranginis, *supra* note 75.

79. *About Us*, C4ADS, <https://c4ads.org/about-us>.

80. *Financial Dimensions of War Crime Investigations*, Institute for International Criminal Investigations, <https://iici.global/course/financial-dimensions-of-war-crimes-investigations/>.

81. *Prosecuting Economic and Environmental Crimes in the DRC*, UNITED STATES INSTITUTE OF PEACE (2016), <https://www.usip.org/sites/default/files/2017-02/DRC-Prosecuting-Economic-and-Environmental-Crimes.pdf>.

82. TRIAL INT'L, *supra* note 7, at 9.

83. Telephone Interview with John Bonning, *supra* note 34.

84. Skype Interview with Alain Werner, *supra* note 24; Telephone Interview with Vincent Foy, Henrich Neuwirth & Yves Gravelle, *supra* note 34; see also TRIAL INTERNATIONAL, MAKE WAY FOR JUSTICE #4: MOMENTUM TOWARDS ACCOUNTABILITY, TRIAL INT'L, at 9 (2018), <https://trialinternational.org/wp-content/uploads/2018/03/UJAR-Make-way-for-Justice-2018.pdf>.

scene of a crime in a particular country of interest.⁸⁵ Generally, if evidence is located in another country, war crimes units must first request permission from local authorities to enter. If the authorities deny access, most national units will not enter without permission. When national units cannot interview witnesses in their countries of residence, investigators may request travel permits for a witness to meet them in another country. For example, Swiss authorities have granted temporary visas to Liberian witnesses to travel to Switzerland for interviews about crimes they witnessed during the conflict in Liberia.⁸⁶ However, organizing such travel is difficult and time-consuming, especially if adequate funds are not available. Moreover, if witnesses do not have birth certificates or other forms of identification, visas may be difficult to secure.⁸⁷

Investigators have also faced challenges accessing and preserving digital information that has been removed from digital devices or online platforms. Social media platforms often remove graphic content that violates their terms of service, but such content could be relevant to war crimes cases.⁸⁸ For example, in recent years, YouTube and other social media platforms have removed thousands of videos that appear to depict the torture and abuse of victims in Syria.⁸⁹ It remains unclear whether platforms are preserving the content they remove, and whether removed content could be available to law enforcement for use in future criminal cases.⁹⁰

2. Admissibility of Evidence

National war crimes units also struggle to navigate the jurisdictional differences between legal systems, many of which have their own rules on the admissibility of evidence. Because units operate under their own legal system's procedural and evidentiary rules, they often find it difficult to share evidence across jurisdictions. For example, when a Canadian prosecutor calls a witness to the stand, she must disclose any statement the witness previously made to other judicial bodies and law enforcement units.⁹¹ Because that witness may have already recounted her story to other investigators years or even decades earlier, disclosure of these interviews can result in inconsistencies, which poses challenges for prosecutors.⁹² Moreover, some NGOs have been hesitant to share their interview tapes or transcripts with

85. Skype Interview with Alain Werner, *supra* note 24.

86. *Id.*

87. *Id.*

88. Telephone Interview with Terry Beitner, *supra* note 16.

89. Skype Interview with Vincent Cillessen, *supra* note 17.

90. *Id.*

91. See Telephone Interview with Vincent Foy, Henrich Neuwirth & Yves Gravelle, *supra* note 34.

92. *Id.*

war crimes units out of concern that disclosure rules may result in sensitive information being released, endangering victims.⁹³

Open source evidence presents its own set of admissibility challenges. Because the use of online open source information is still relatively new, standardized methods for verifying and authenticating this type of material do not yet exist. Some respondents noted that approaches to collecting and analyzing open source information vary significantly from country to country, and that it would be useful to have an internationally agreed-upon set of standards.⁹⁴ For example, Sam Dubberley from Amnesty International and Matevz Pezdirc from the Genocide Network said that judges need training on how to assess the admissibility and probative value of online open source information.⁹⁵ At the time of writing, the UC Berkeley Human Rights Center is developing a protocol in partnership with the United Nations Office of the High Commissioner for Human Rights, to establish common professional standards for identification, collection, preservation, analysis, and presentation of open source information in international criminal proceedings.⁹⁶

Stephen Rapp noted that it is still too early to tell how courts will deal with open source evidence.⁹⁷ For instance, it remains unclear whether courts will want to verify digital evidence themselves or rely on other entities to do so. It also remains unclear whether or not digital items with no metadata or identified author will be considered reliable, and whether the techniques that investigators use to verify digital content will hold up in court.⁹⁸ For example, digital forensic experts have now examined and verified the authenticity of thousands of the 55,000 ‘Caesar photos’ taken by a military defector and smuggled out of Syria that document purported torture in government prisons.⁹⁹ Yet, to date, these photographs have not been submitted as evidence in a criminal trial, and therefore we cannot say with certainty that they will be found admissible.¹⁰⁰ Even then, admissibility would likely vary by jurisdiction.

93. Telephone Interview with John Bonning, *supra* note 34; Skype Interview with Andreas Schueller, Program Director International Crimes and Accountability, European Center for Constitutional and Human Rights (7 Feb. 2019).

94. Telephone Interview with Stephen Rapp, *supra* note 17; telephone interview with Teresa McHenry, Anne Asbury, Maureen Schutz, Lisa Koven & Nannette Shorten, *supra* note 15; telephone interview with Michelle Jarvis, *supra* note 32.

95. Skype Interview with Matevz Pezdirc, Head of Network Secretariat, Genocide Network (31 Jan. 2019); Skype Interview with Sam Dubberley, *supra* note 67.

96. *Open Source Investigations Protocol*, UC BERKELEY SCHOOL OF LAW HUM. RTS. CTR., <https://humanrights.berkeley.edu/programs-projects/tech-human-rights-program/open-source-investigations-protocol>.

97. Telephone Interview with Stephen Rapp, *supra* note 17.

98. *Id.*; Skype Interview with Vincent Cillessen, *supra* note 17.

99. See Michael R. Gordon, *Syrian's Photos Spur Outrage, but Not Action*, N.Y. TIMES (31 Oct. 2014), <https://www.nytimes.com/2014/11/01/world/middleeast/syrian-photographers-record-of-deaths-generates-outrage-but-little-action.html>.

100. Telephone interview with Stephen Rapp, *supra* note 17.

E. Coordination and Cooperation

As discussed above, international crimes investigations and prosecutions are complex, lengthy efforts that most often span jurisdictions and involve a range of actors from government officials to human rights activists. To this end, war crimes units need to develop ways of improving their coordination and cooperation with law enforcement and immigration agencies within their own borders and in other countries.

1. Information Sharing Between Countries

Several respondents emphasized the importance of information sharing between national war crimes units. They also noted that sharing certain types of information can be challenging, as the units operate under different jurisdictions and are often bound by different rules and procedures.¹⁰¹ Despite these limitations, units have found that informal communications, especially face-to-face gatherings and cross-training workshops, have helped on a range of fronts, including the handling of evidence and access to potential witnesses. One of the most constructive gatherings is the bi-annual Eurojust Genocide Network meeting, where national units from European Union member states and other countries gather to discuss issues of relevance to their work, share experiences, and develop best practices.¹⁰² Such meetings allow national practitioners to develop strong bilateral relationships with counterparts in other countries and exchange information on specific cases in their respective jurisdictions.¹⁰³

Mutual legal assistance treaties (MLATs) and other forms of inter-state cooperation agreements or protocols can also improve information sharing among national war crimes units. These agreements can facilitate the transmission of evidence, identification of potential witnesses, and, in some circumstances, the transfer of suspects. However, entering into such an agreement does not guarantee that all states will abide by them. For example, the Prosecutor's Office of Bosnia and Herzegovina has protocols on cooperation with neighboring countries, including Croatia.¹⁰⁴ Despite this agreement, Croatia refused to provide the Bosnian prosecutor with information on six Croatians who were arrested and indicted in Bosnia in 2016.¹⁰⁵

101. *Id.*

102. See *Genocide Network*, EUROJUST, <http://www.eurojust.europa.eu/Practitioners/Genocide-Network/Pages/Genocide-Network.aspx>.

103. See *id.*

104. See INT'L CTR. TRANSITIONAL JUST., *THE WAR CRIMES CHAMBER IN BOSNIA AND HERZEGOVINA: FROM HYBRID TO DOMESTIC COURT* (2008), <https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Domestic-Court-2008-English.pdf>.

105. Skype Interview with Mersudin Pruzan, *supra* note 34.

Some respondents suggested that information sharing between units, as well as with NGOs, would be greatly enhanced by the creation of a secure international database where units and NGOs could add evidentiary information, adhering to strict standards of retrieval, storage, and access.¹⁰⁶ Europol is currently trying to fill this gap by developing a database of international crimes, through which members can share information and evidence for other units to access. Europol would publish requests for information from national units, which other units could respond to and provide relevant information.¹⁰⁷

The recent arrest of Félicien Kabuga, the main financier of the 1994 Rwanda genocide that resulted in the killing of at least 800,000 people, is an example of successful cooperation and coordination between war crimes investigators and law enforcement. In May 2020, the French national police arrested Mr. Kabuga in Paris, where he had been hiding in an apartment rented by one of his children.¹⁰⁸ Using false identities and fake passports, Mr. Kabuga managed to escape arrest for decades, traveling to Germany, Belgium, Congo-Kinshasa, Kenya, and Switzerland.¹⁰⁹ While details of the arrest are still unclear at the time of writing, the French Ministry of Justice said it was made possible by intelligence-sharing between the Paris Public Prosecutor's Office, the Central Office of the Fight Against Crimes against Humanity, federal police in Belgium, the Metropolitan Police in London, Europol, and the International Residual Mechanism for International Tribunals.¹¹⁰ Hopefully, Kabuga's arrest and the subsequent trial will bring long-awaited justice for survivors of the genocide in Rwanda and inspire future coordinated efforts between war crimes prosecutors.

2. Information Sharing Within Countries

National war crimes units can play a crucial role in providing legal and logistical advice to other law enforcement agencies within their own borders, which may lack training in international law and require special guidance when handling war crime suspects.

Some countries have formalized coalitions of national agencies that share information on war crimes investigations and prosecutions. For example, the United States' Human Rights Violators and War Crimes Center (the Center)

106. Skype Interview with Vincent Cillessen, *supra* note 17.

107. Skype Interview with Andreas Schueller, *supra* note 93.

108. See Marlise Simons & Norimitsu Onishi, *Rwandan Genocide Suspect Arrested After 23 Years on the Run*, N.Y. TIMES (16 May. 2020), <https://www.nytimes.com/2020/05/16/world/europe/france-rwanda-genocide-kabuga.html>.

109. *Id.*

110. See Tangi Salaün, *Children of Rwandan Genocide Fugitive Kabuga led Police to Paris-Area Hideout*, REUTERS (18 May. 2020), <https://www.reuters.com/article/us-france-rwanda-kabuga/children-of-rwandan-genocide-fugitive-kabuga-led-police-to-paris-area-hideout-idUSKBN22U2IK>.

serves as a hub for information sharing between United States Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigations (FBI), and the Department of Justice's Human Rights and Special Prosecutions Section (HRSP).¹¹¹ ICE attorneys, historians, analysts, and special agents investigate international crimes for criminal prosecutions, immigration proceedings, and national security.¹¹² The FBI also investigates international crimes, and HRSP plays prosecutorial, research, and investigative roles.¹¹³ The State Department, Department of Defense, and the Department of Homeland Security's US Citizenship and Immigration Services also work with the Center. Each entity determines the extent to which they will work with the Center.¹¹⁴ Staff at the Center noted that simply working out of offices in the same building improved information sharing; shared working spaces allow lawyers and investigators to share information and experiences in real-time and to build trust.¹¹⁵ Canada's CAHWC has a similar formal sharing structure between the Department of Justice, police, and immigration authorities. Nevertheless, an RCMP respondent identified information sharing within the country as one of the agency's biggest challenges.¹¹⁶

Other countries lack formalized coalitions but still share information between agencies. One avenue is through the local police. In the Netherlands, the police intelligence staff share names of potential suspects with the war crimes unit for investigatory purposes. When the police receive a complaint of a sighting of potential international crimes suspects, they provide that information to the war crimes unit for further investigation.¹¹⁷ Similarly, the Swedish War Crimes Commission, located within the National Operations Department of the Swedish Police, receives leads on potential suspects from the Swedish Security Service and police stations nationwide.¹¹⁸

Many war crimes units work closely with immigration services. The Netherlands' Immigration and Naturalization Service will share a file on an asylum applicant with the prosecutor's office if they have reason to believe the individual committed an international crime that would exclude them from protection under the Refugee Convention and asylum processes.¹¹⁹ Immigration staff, in consultation with the war crimes unit, look for potential "red flags" demonstrating participation in international crime and then

111. Telephone Interview with Teresa McHenry, Anne Asbury, Maureen Schutz, Lisa Koven & Nannette Shorten, *supra* note 15.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. Telephone Interview with Vincent Foy, Henrich Neuwirth & Yves Gravelle, *supra* note 34.

117. Skype Interview with Vincent Cillessen, *supra* note 17.

118. Telephone Interview with Hanna Lemoine, *supra* note 31.

119. Skype Interview with Vincent Cillessen, *supra* note 17.

decide whether the individual will be excluded.¹²⁰ Sweden's National Unit Against Organized Crime similarly cooperates with the country's Migration Agency, which has an obligation to report individuals who could have been involved in international crimes. In 2018, the Migration Agency shared 135 cases with the Swedish War Crimes Commission.¹²¹ The United Kingdom's War Crimes Team, a specialized unit of the Metropolitan Police Counter Terrorism Command, also receives referrals from the United Kingdom's asylum authorities.¹²²

The massive influx of refugees to Europe since 2015 has led to new techniques for gathering information on international crimes. For example, in its asylum questionnaires, the German Immigration Office in Nuremberg specifically asks refugees, including a large number of Syrian immigrants, if they were witnesses to international crimes.¹²³ Once this information is substantiated it is forwarded to the ZBKV, which may apply it to its structural investigations or forward it to other states or tribunals.

While many units already share information with their counterparts and other law enforcement agencies in neighboring counties, respondents felt the process could be greatly improved. This is especially important as such cases are complex and take time to assemble, and investigators come and go, risking a loss of institutional memory.¹²⁴ Maximo Langer suggested that war crimes units and immigration agencies should work together to develop protocols and questionnaires to improve collaboration and information sharing.¹²⁵ For example, immigration agencies should actively encourage

120. *Asylum and the Rights of Refugees*, INT'L JUST. RES. CTR., <https://ijrcenter.org/refugee-law/> (explaining that under Article 1F of the United Nations Refugee Convention, persons who are suspected of having committed war crimes or crimes against humanity can be excluded from the protection of the Refugee Convention).

121. *Reports of Suspected War Crimes are Increasing*, SWEDISH MIGRATION AGENCY (28 Mar. 2019), <https://www.migrationsverket.se/English/About-the-Migration-Agency/For-press/News-archive/News-archive-2019/2019-03-28-Reports-of-suspected-war-crimes-are-increasing.html>.

122. Telephone Interview with John Bonning, *supra* note 34.

123. *See The Changing Influx of Asylum Seekers in 2014-2016: Responses in Germany*, BUNDESAMT FÜR MIGRATION UND FLÜCHTLINGE, https://www.bamf.de/SharedDocs/Anlagen/EN/EMN/Studien/wp79-emn-fluchtmigration-2014-2016-reaktionen-ma%C3%9Fnahmen-deutschland.pdf?__blob=publicationFile&v=15, at 40; Skype Interview with Andreas Schueller, *supra* note 93. In Germany, a structural investigation (Strukturermittlungsverfahren) can be opened where there is no identified suspect. The investigation is led by the Federal Prosecutor General and can take place whether [or not] it is foreseeable that investigation proceedings on specific cases will arise. Evidence secured within the framework of such proceedings can be used in further investigative procedures or submitted to a foreign or international jurisdiction. . . . However, a trial can never be initiated without the accused being before the court.

See OPEN SOCIETY JUSTICE INITIATIVE AND TRIAL INTERNATIONAL, *UNIVERSAL JURISDICTION LAW AND PRACTICE IN GERMANY* 16 (Apr. 2019), <https://www.justiceinitiative.org/publications/universal-jurisdiction-law-and-practice-germany>.

124. Skype Interview with Mersudin Pruzan, *supra* note 34.

125. Telephone Interview with Máximo Langer, *supra* note 23.

refugees to pass on information to the proper authorities should they see or encounter war crime suspects.¹²⁶

3. *Information Sharing with NGOs, Intergovernmental Organizations (IGOs), and Tribunals*

Since the mid-1990s, NGOs have taken a more active role in investigating international crimes by collecting potential evidence, submitting legal memoranda to national and international courts, and litigating cases.¹²⁷ These organizations include the Center for Justice and Accountability, Civitas Maxima, ECCHR, International Federation for Human Rights (FIDH), REDRESS, Physicians for Human Rights, CIJA, TRIAL, and the Syrian Observatory for Human Rights. One of the most important ways that civil society can assist national war crimes units is by facilitating information sharing. However, information sharing with nonstate actors raises unique challenges.¹²⁸

International NGOs tend to work across jurisdictions. This fluidity often provides them with access to more detailed information than national units are able to acquire. Many respondents described successful examples of cooperation and coordination with NGOs, including arranging protection measures for witnesses. Stephen Rapp explained that when national units are unable to investigate cases for lack of funding or other reasons, they often turn to NGOs for assistance.¹²⁹ NGOs may be more agile than government agencies and have more flexibility and breadth to follow evidentiary leads and create comprehensive case files, as was the case with Civitas Maxima in the previously mentioned *Jabbateh* investigation and trial.

Most respondents reported that their overall experience of working with NGOs has been positive. The Team Leader of the Netherlands War Crimes Unit noted that communication between national war crimes units and NGOs has greatly improved in the past ten years, largely because his unit has a better understanding of NGOs and their goals and procedures.¹³⁰ However, one respondent noted that some war crimes units have grown frustrated by certain human rights legal advocates or NGO activists demanding ‘accountability’ for what they perceive as international crimes when, in fact, such offenses would not trigger jurisdiction within that state. This respondent also noted that some human rights organizations have knowledge gaps with regard to disclosure and admissibility rules and lack adequate training

126. See *The Long Arm of Justice: Lessons from Specialized War Crimes Units in France, Germany, and the Netherlands*, HUM. RTS. WATCH (16 Sept. 2014), <https://www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and>.

127. See *The Role of Human Rights NGOs in Relation to ICC Investigations*, HUM. RTS. FIRST (Sept. 2004), http://www.iccnw.org/documents/HRF-NGO_RoleInvestigations_0904.pdf.

128. See *id.*

129. Telephone Interview with Stephen Rapp, *supra* note 17.

130. Skype Interview with Vincent Cillessen, *supra* note 17.

in procedures for collecting and preserving evidence.¹³¹ This same conclusion was reached by jurists and NGO and tribunal investigators attending an international workshop convened in 2014 by the UC Berkeley Human Rights Center, Open Society Justice Initiative, and the ICC.¹³²

Some war crimes units also share information with international tribunals, such as the ICC. Canadian investigators with the RCMP have assisted foreign police, international law enforcement authorities, and international tribunals like the ICTY and ICTR.¹³³ In the United States, cooperation varies greatly depending on the tribunal and the United States privacy and confidentiality protections.¹³⁴ For example, in August 2002, then-United States President George W. Bush signed the American Servicemembers' Protection Act (ASPA) prohibiting federal, state, and local governments and agencies, including courts and law enforcement agencies, from assisting the ICC.¹³⁵ The act also prohibits the extradition of any person from the United States to the court and any transfer of classified national security information and law enforcement information to the court.¹³⁶

A new type of body filling a quasi-tribunal role is the IIIM, which several respondents spoke highly of. The IIIM is building a structural investigation on the Syrian conflict – based on a wide range of information from a variety of sources, including from NGOs and United Nations investigators – and supports case-specific investigations in other countries.¹³⁷ National war crimes units and other judicial bodies can submit information requests to the IIIM, which—subject to the terms of its mandate—will pass along relevant information.¹³⁸ The IIIM can also proactively share information with national networks, without waiting for a request for specific information.¹³⁹ While the IIIM is still young, many respondents were hopeful that it will significantly improve cooperation and coordination among national war crimes units and

131. Telephone Interview with John Bonning, *supra* note 34.

132. See UC BERKELEY HUM. RTS. CTR., FIRST RESPONDERS: AN INTERNATIONAL WORKSHOP ON COLLECTING AND ANALYZING EVIDENCE OF INTERNATIONAL CRIMES (11 Sept. 2014), https://www.law.berkeley.edu/files/HRC/First_Responders_final_with_cover4.pdf.

133. See *Partners*, CANADA DEPARTMENT OF JUSTICE, (25 Oct. 2016), <https://www.justice.gc.ca/eng/cj-jp/wc-cdg/part.html>.

134. Julian Bava & Kiel Ireland, *The American Servicemembers' Protection Act: Pathways to and Constraints on U.S. Cooperation with the International Criminal Court*, 12 EYES ON THE ICC 1, 1 (2016-2017).

135. The American Servicemembers' Protection Act (ASPA) was passed in 2002 and “sharply limited the U.S. government’s ability to cooperate with the ICC in cases that are contrary to the national interest.” Julian Bava & Kiel Ireland, *The American Servicemembers' Protection Act: Pathways to and Constraints on U.S. Cooperation with the International Criminal Court*, 12 EYES ON THE ICC 1, 1 (2016-2017).

136. See Sean D. Murphy, *American Servicemembers Protection Act*, 96 AM. J. INT’L L. 975, 976 (2002).

137. See *Mandate*, INTERNATIONAL, IMPARTIAL AND INDEPENDENT MECHANISM, <https://iiim.un.org/mandate/>.

138. See *id.* (The IIIM can only share with jurisdictions that respect fair trial standards and where the death penalty would not apply to the crimes in question.).

139. Telephone Interview with Michelle Jarvis, *supra* note 32.

increase prosecutions of Syrian war crimes suspects. They also felt the IIM could potentially serve as a model for information gathering and investigations in other contexts.

IV. CONCLUSION

In a recent opinion piece on international crimes investigations, Kingsley Abbott and Saman Zia-Zarifi of the International Commission of Jurists write:

Where multiple actors are involved in the investigation and documentation of international crimes, proper coordination and cooperation is critical to: avoid re-traumatizing victims, minimize wasted time and resources, fulfill the “Do No Harm” principle, and to ensure that any future proceedings are not compromised through the unnecessary generation of multiple, possibly contradictory, statements.¹⁴⁰

As Abbott and Zarifi observe, the world of international criminal justice today, unlike twenty years ago, is populated by a wide range of actors and institutions, including courts and tribunals, commissions, law enforcement and immigration agencies, and NGOs. The principle challenge for national war crimes units is effectively navigating this terrain while gathering sufficient evidence to deliver a prosecutable case. To this end, our respondents singled out three overarching issues that need to be addressed.

First, public education and awareness programs should be developed to garner greater public and financial support for international crimes investigations and prosecutions. Several respondents spoke highly of an annual event sponsored by the Eurojust Genocide Network entitled the “EU Day Against Impunity for Genocide, Crimes Against Humanity, and War Crimes.” The event brings together top-level officials from national war crimes units in a panel discussion on international crimes prosecutions, and invites the media to cover the event.¹⁴¹ Respondents also described a recent event in Paris, organized by the French war crimes unit, which brought together high-level French officials and civil society members with the goal of showcasing the unit’s work and highlighting its accomplishments and need for resources.¹⁴² Such events help to underscore the principle of “no safe haven” for war criminals inherent in universal jurisdiction laws. At the same time, educa-

140. Kingsley Abbott & Saman Zia-Zarifi, *Is It Time to Create a Standing Independent Investigative Mechanism (SIIM)? Part I*, OPINIO JURIS at 2 (10 Apr. 2019), <http://opiniojuris.org/2019/04/10/is-it-time-to-create-a-standing-independent-investigative-mechanism-siim/>.

141. Skype Interview with Matevz Pezdirc, *supra* note 17.

142. Telephone Interview with Balkees Jarrah, Senior Counsel, Human Rights Watch International Justice Program & Maria Elena Vignoli, Fellow, Human Rights Watch International Justice Program (19 Nov. 2018).

tional programs should be developed to inform students of all ages about the importance of establishing national and international institutions, such as tribunals and war crimes units, to investigate and punish those accused of international crimes and bring a measure of justice to victims.

Second, greater attention should be paid to improving the ability of war crimes units to access, collect, and preserve evidence. Respondents cited numerous examples where investigators, for logistical, political, or diplomatic reasons, were prevented from entering states where atrocities had been committed. Some respondents suggested that units could try to circumvent this obstacle by signing bilateral agreements with other countries. For instance, the Canadian government has formal and informal agreements with foreign countries that allow historians, investigators, and lawyers to search foreign archives, identify witnesses, and conduct interviews.¹⁴³ Another way units circumvent political obstacles and collect evidence is by obtaining written witness statements, speaking with witnesses via video link, or obtaining testimony in remote locations, such as embassies, where witnesses are located.¹⁴⁴ Nelson Thayer highlighted the effectiveness of video evidence, emphasizing the power of visual testimony for the jury. During the *Jabbateh* trial, Thayer's team presented a video recorded at the location of one of the victims' final steps, where he was seized and killed in Liberia. Although prosecutors often lack traditional forensic evidence, such as fingerprints and DNA, they could corroborate in-court testimony of witnesses with video evidence.¹⁴⁵

War crimes units should also dedicate funding to hire open source investigators who specialize in collecting and analyzing open source information. These experts could broaden the evidentiary base of a unit's investigations and train staff in these techniques. There is also a need to implement training programs for judges on open source evidence. The IICI, which already convenes trainings on a range of investigatory methods and procedures for national units and civil society organizations, could take the lead in organizing such trainings. National units and civil society members should simultaneously develop standard operating procedures on open source investigations and analysis to ensure some level of uniformity and transparency, as well as compatibility with various countries' procedural and evidentiary rules. Units should also document the procedures they follow to identify, secure, and verify open source information, as any court considering such evidence will likely require such documentation. Units should also continue to build and improve information management systems and databases to ensure the preservation and retrieval of digital evidence for years to come.

143. Telephone Interview with Vincent Foy, Henrich Neuwirth & Yves Gravelle *supra* note 34.

144. Telephone Interview with Máximo Langer, *supra* note 23; Telephone Interview with Nelson Thayer, *supra* note 33; Skype Interview with Mersudin Pruzan, *supra* note 34.

145. Telephone interview with Nelson Thayer, *supra* note 33.

Third, given the recent growth in war crimes units, priority should be given to improving information sharing and standards setting among units and with other institutions, including NGOs and immigration agencies. Europol's efforts to develop a database of information about international crimes could potentially serve as a model for other regions. Another way to improve coordination among units is through face-to-face gatherings, such as the bi-annual Eurojust Genocide Network meetings and other conferences and workshops.¹⁴⁶ Establishing a comfortable rapport, discussing ongoing cases, and discovering mutual connection points, and building strong bilateral relationships between units can only help future investigations.¹⁴⁷

And, finally, greater financial and logistical support should be provided to organizations that undertake their own independent investigations of international crimes and provide this information, upon request to national units. Under this approach, organizations can keep track of requests for information and offer to connect national units if they request similar information, so they can avoid duplication of efforts.¹⁴⁸ Stephen Rapp noted the value that these international organizations bring to national units, as local NGOs may be reluctant to share confidential information directly with national units.¹⁴⁹ Adopting similar models could save national units the time and resources involved in collecting evidence, as long as the NGOs are following best practices in evidence collection.

To this end, national war crimes units should hold trainings with NGOs to ensure evidence will meet admissibility standards. The United Kingdom's Counter-Terrorism Division and War Crimes Team address this challenge by meeting with NGOs twice a year to improve their understanding of the admissibility of evidence standards under the United Kingdom law.¹⁵⁰ Another way to address this issue is to train staff in specific jurisdictional knowledge. For example, the IICI trains Civitas Maxima's investigators in documenting international crimes to the same standard used by the ICC.¹⁵¹

146. See Skype Interview with Leif Morten Eide, *supra* note 51; Telephone Interview with Balkees Jarrah & Maria Elena Vignoli, *supra* note 142; Telephone Interview with Terry Beitner, *supra* note 16; email correspondence with Deborah Walsh, *supra* note 26; Telephone Interview with Hanna Lemoine, *supra* note 31; Telephone Interview with John Bonning, *supra* note 34.

147. See Skype Interview with Leif Morten Eide, *supra* note 51; Telephone Interview with Balkees Jarrah & Maria Elena Vignoli, *supra* note 142; Telephone Interview with Holly Dranginis, *supra* note 75; Telephone Interview with Terry Beitner, *supra* note 16; email correspondence with Deborah Walsh, *supra* note 26; Telephone Interview with Hanna Lemoine, *supra* note 31; Telephone Interview with John Bonning, *supra* note 34; see also HUM. RTS. FIRST, *The Role of Human Rights NGOs in Relation to ICC Investigations*, *supra* note 127, at 21.

148. Skype Interview with Bill Wiley, Executive Director, Commission for International Justice and Accountability (29 Jan. 2019).

149. Telephone Interview with Stephen Rapp, *supra* note 17.

150. Telephone interview with John Bonning, *supra* note 34.

151. See *About the IICI*, INST. INT'L CRIM. INVEST, <https://iici.global/about/>.

This article describes the challenges national war crimes units in Europe and North America face as they investigate and prosecute serious international crimes. But it is only a glimpse. We have much more to learn, and we hope that more research will be conducted in other regions where the challenges international crimes investigators and prosecutors face may be different. Future research should also be undertaken to examine how NGOs and independent international commissions collect and preserve potential evidence of international crimes, and how these efforts can be better coordinated with war crimes units and regional and international courts.

While this article discussed significant challenges, the situation is not entirely bleak. Our research shows that there are persistent advocates in national governments, international organizations, and NGOs committed to securing justice for international crimes. While the United Nations Security Council failed to refer the situation in Syria to the ICC, NGOs and national war crimes units have stepped up to ensure there will be trials for international crimes committed in Syria. It remains unknown whether the field of international criminal justice will continue moving towards more national trials, or whether international and hybrid tribunals will have a resurgence. But international criminal justice is not going away. Advocates at all levels of the system will continue to find creative solutions to fight impunity and secure justice for international crimes.