

CICJ Steering Group Statement

Beyond Ukraine: International justice without double standards

Berlin, Wellington, Florence and Oslo, 11 November 2022

The war in Ukraine has led to renewed support for international justice and the International Criminal Court (ICC), including financial contributions and secondments. The ICC, as a result, seems to be playing an unprecedented role in investigation efforts in Ukraine. Even though [proposals](#) for additional international mechanisms, such as an *ad hoc* special tribunal for the crime of aggression against Ukraine and a comprehensive international compensation mechanism, are still being discussed, the ICC is likely to remain central to international justice efforts. It is engaged in capacity-building activities with Ukrainian authorities, partnering in joint investigation activities with Ukrainian and other European states, as well as collecting potential evidence and preparing cases for ICC prosecution.

“This may be a unique moment in history when the world is largely united in support of international justice. It should lead to a principled approach towards justice efforts among Western governments, which now wholeheartedly promote justice in Ukraine”, affirmed the Steering Group of the Coalition for International Criminal Justice (CICJ). “We should take advantage of this goodwill and direct it towards other parts of the world where atrocities have been committed and justice measures are needed. This is an opportunity to take energy and effort, now focused on Europe, and apply them evenly, west and east, north and south.”

The renewed support for international criminal justice is closely linked to tension between the United States and European states on the one side, and Russia on the other. It risks being associated with instrumentalization of international criminal justice or international criminal law (ICL) terminology. Should a perception take hold that accountability for crimes committed in Ukraine deserves more resources or attention than crimes committed elsewhere (where victims may be more removed from geopolitics or interest-based policies prevail), it would undermine the project of international justice. Political instrumentalization of the ICL-core of international law can even undermine the international legal order as a whole.

Frequent statements by Western politicians referring to ‘genocide’ taking place in [Ukraine](#) – as well as in the [Xinjiang](#) and [Rakhine](#) situations – may reinforce a perception of will to instrumentalize. Political statements that are not backed up by adequate evidence could create an impression that some Western governments are prepared to use ICL terminology as an integral part of their rivalry with opponents.

Furthermore, justice denied or delayed in situations involving Western armed forces feed perceptions that international justice can be selective. Apart from Afghanistan, an important [example](#) was the 2003 war against Iraq, which is reported to have caused several hundred thousand deaths. Soldiers from both the United States and the United Kingdom were responsible for torture in their zones of operation. There are also recent cases of feeble support from Western states for justice in situations where mass-atrocity has occurred, for example in Syria, Yemen and Ethiopia, as well as what seems to be under-resourced ICC investigations in Afghanistan and Nigeria.

In his acclaimed 2015 study [Double Standards: International Criminal Law and the West](#),¹ CICJ Steering Group member Wolfgang Kaleck articulates reasons why double standards can be harmful to the international legal order. He explains how we may face both horizontal and vertical selectivity. There is *horizontal* selectivity when grave crimes are committed in several similar situations throughout a given historical period, but only some of these are prosecuted as

¹ Wolfgang Kaleck, *Double Standards: International Criminal Law and the West*, Torkel Opsahl Academic EPublisher, Brussels, 2015 (<http://www.toaep.org/ps-pdf/26-kaleck>).

crimes under international law. Vertical selectivity refers to perpetrators of international crimes who hold high-level office and often manage to escape prosecution.²

“What we are now witnessing in Ukraine should become the new normal”, said Gunnar M. Ekeløve-Slydal, CICJ Director. “States’ increased support and willingness to cooperate with the ICC should be reflected in other situations where equally serious international crimes take place. The ‘global South’ needs to see that European states, the United States, Canada, Australia, Japan and other Western-aligned states care equally for justice irrespective of where core international crimes occur, who the perpetrators are, and who suffers the victimization.”

Background: Unprecedented Support for ICC Investigation

The first expression of the renewed support was the [referral](#) by 39 states of the situation in Ukraine to the ICC, announced by the ICC Prosecutor on 2 March 2022. On [11 March 2022](#), he announced that two additional states (North Macedonia and Japan) had made similar referrals. The response of the ICC Office of the Prosecutor to “this unprecedented collective call for action by States Parties” has also been without precedence.

In cooperation with the Netherlands, the Office has [deployed](#) a team of 42 investigators, forensic experts and support personnel to Ukraine to advance investigations and provide support to Ukrainian national authorities. It has established a dedicated [portal](#) through which persons may contact ICC investigators to submit information about alleged crimes. His office has also become a [participant](#) in the [joint investigation team](#) on alleged core international crimes committed in Ukraine, joining Lithuania, Poland and Ukraine.

The Prosecutor has [reached](#) out to the authorities of the conflicting parties to explain the role of his Office according to the ICC Statute, meeting with Ukrainian authorities, and “transmitting a formal request to the Russian Federation to meet their competent authorities and discuss the current situation”.

On 7 March 2022, he submitted an invitation to all States Parties to aid his Office, including through voluntary financial contributions and the provision of national experts on a secondment basis. He underlined that this would be “essential in addressing the urgent resource needs of [the] Office and in allowing it to effectively address all situations presently under investigation or in trial”.

According to a [statement](#) on 17 May 2022, “21 States have indicated their willingness to second national experts in support of the work of the Office, while 20 States have committed to providing financial contributions”. According to the Prosecutor, “this injection of support will have a tangible impact, multiplying the effectiveness of [the Office’s] activities in all situations”.

In a joint [press conference](#) with Eurojust on 27 May 2022, the Prosecutor laid out his vision of partnerships between different actors in providing justice in situations where international crimes take place on a massive scale, and for the use of modern technology in assembling and analyzing information.

On 15 June 2022, the Prosecutor concluded his [third visit](#) to Ukraine, which included the bombarded city of Kharkiv. He announced the imminent opening of an ICC office in Kyiv, in line with his approach to strengthening field presence in all situations under ICC investigation.

On 14 July 2022, at the Ukraine Accountability Conference, the [Prosecutor](#) referred to the establishment of a Dialogue Group to promote “visibility and engagement across the various accountability initiatives relevant to the situation in Ukraine”, and to the joint work of Eurojust and the ICC to develop Guidelines on Documentation Efforts by Civil Society Actors. The

² *Ibid.*, pp. 7 ff.

guidelines were [launched](#) on 21 September and followed-up by a technical briefing to civil society actors on 6 October 2022.

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