

EXPLAINER

Can There Be Real Justice in Ukraine?

Past tribunals offer valuable lessons for how war crimes and genocide could be prosecuted in Ukraine.

By [Alexandra Sharp](#)

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Almost three months after Russia invaded Ukraine, the first trial related to war crimes wrapped up. Vadim Shishimarin, a 21-year-old Russian soldier, was sentenced to life in prison for murdering an unarmed Ukrainian civilian, Oleksandr Shelipov. Since then, two other war criminals, both Russian foot soldiers, have been tried and sentenced. They were only small fry—but perhaps the start of something bigger.

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“Prosecuting low-level perpetrators not only allows justice to be delivered for the victims who have suffered directly from their crimes but can also be a part of the long game of building cases upward to reach those higher in the chain of command,” [Sergey Vasiliev](#), an international criminal law expert, wrote in *Foreign Policy* last month.

But what does that long game look like? According to [Sviatoslav Yurash](#), Ukraine’s youngest parliamentarian, the country’s future should include trials “to try and punish all those for the gross destruction of our country.” This includes accusations of rape, torture, summary executions, deliberate targeting of civilians and civilian infrastructure, the use of human shields and cluster munitions, and forced deportations, among others, according to a [report](#) by the Organization for Security and Cooperation in Europe (OSCE) released in April.

However, when looking at the history of international tribunals, their effectiveness and efficiency—as well as applicability to the current conflict—come into question.

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nor Ukraine is a member of the ICC. Although Ukraine has accepted the court's jurisdiction over crimes committed in the country, it's exceedingly doubtful that Russia will do so as well, which effectively means impunity for the war's architects since the ICC won't have jurisdiction over Russian war criminals.

"As long as [the Russian commanders are] in Moscow and the current regime is in power, they're not going to be handing anyone over," said Kyle Reed, an international studies expert.

If not the ICC, what about a different court?

Some experts are turning to domestic trials, such as Shishimarin's. The Ukrainian justice system, established after the country declared its independence from the Soviet Union in August 1991, continues to be robust despite the challenges inherent in fending off Russia's assault, including one effort to seize the capital of Kyiv. However, like what Rwanda experienced by trying to charge all low- and middle-ranking officials in its gacaca courts after the 1994 genocide, the Ukrainian government does not have the bandwidth to charge every foot soldier and middle-tier Russian officer, as so many have have been accused of committing war crimes.

This leads to two other options: either a Truth and Reconciliation Commission like the one used in South Africa to address its history of apartheid or a system of hybrid courts run by third parties. Whereas the former focuses primarily on conflict resolution, the latter can try officials through universal jurisdiction, the idea that some crimes (such as piracy) are a crime against all of humanity, so the right and obligation to prosecute transcend national borders.

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themselves have committed many of the atrocities attributed to Russian attacks.

In March, the OSCE announced it was launching a fact-finding mission to investigate possible war crimes in the Russia-Ukraine war. “We don’t want to wait [to investigate],” Michael Carpenter, the U.S. envoy to the OSCE, told FP’s Robbie Gramer at the time. “What we’re seeing on the ground is horrific. And we want to telegraph that there will be accountability in one way, shape, or form.”

Since then, the OSCE has released a report documenting “clear patterns of [international humanitarian law] violations by the Russian forces in their conduct of hostilities,” despite the fact that OSCE officials and partnered nongovernmental organizations were unable to safely enter Ukrainian territory. “Russia is the aggressor and therefore responsible for all human suffering in Ukraine,” it concluded.

Actively seeking legal justice could also discourage other nations from committing atrocities, whereas impunity breeds imitators. “We find if there is a successful example of a [U.N. Security Council Permanent Five] member launching an illegal war to acquire territory permanently, you will find that others will follow suit,” said Diane Desierto, a professor of law and global affairs at Notre Dame Law School.

Even a lack of accountability can encourage countries that have committed atrocities to keep going. In Myanmar, the military has spread its violent crackdown against the country’s Rohingya minority in the west to the east, largely due to the international community’s relative silence on the ongoing genocide there. The same can be seen in Syria, where international leaders, including past and current

countries prioritize stable relations over seeking justice. In a U.N. vote to suspend Russia from the Human Rights Council in April, 24 countries voted against and 58 countries abstained from the decision; more than two-thirds of the world's population lives in countries that did not even symbolically punish Putin's invasion.

Without formal investigations, the international community faces a lengthy process of trying to get records and witness testimony out of Russia as well as Ukraine. And even if a formal investigation is authorized, Ukraine still finds itself in an active war, one that is having a particularly dire effect on the country's most vulnerable populations: women, children, older adults, and people with disabilities.

The longer a war continues, Desierto said, the possibilities for international justice dim due to destroyed evidence and changing priorities. "The collective, sociological trauma of a people all sets in, and political priorities of what to address first become very, very messy within the international political system," she said. "Do we deal with the humanitarian crisis first? Do we try to stabilize the territorial situation? What do we do about a nuclear power, like Russia, that has already openly signaled it will not hesitate to use its nuclear capabilities to prosecute this war if necessary?"

Whatever course is eventually taken—international tribunals, domestic courts, or universal jurisdiction—it must be Ukraine's choice, Desierto said.

"It cannot be imposed. It is a matter that affects the Ukrainian people the most," she said.

