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UKRIFORM interview with IBA Executive Director Dr Mark Ellis

January 2025

BACKGROUND:

UKRIFORM interviews **Dr Mark Ellis**, international criminal law expert and **Executive Director** of the **International Bar Association** (IBA). He discusses international accountability for Russia's military aggression against Ukraine and the potential of digital technologies to collect evidence of war crimes and other gross violations of international law. Dr Ellis initiated the creation of **eyeWitness to Atrocities** (eyeWitness), a mobile phone application directed at using pictorial evidence of international crimes in a court of law. He also co-conceived the **Stockholm Human Rights Award** and is a member of the **Magnitzky Award Committee**. He has been placed on the Russian government's sanctioned list for his vocal support of Ukraine during the ongoing conflict.

INTERVIEW:

Q: Do you think there is a risk that Ukrainians will be disappointed by international accountability mechanisms that take a long time to deliver results, not to mention the final decisions of the courts?

There is always a significant risk of disappointment. Ukrainians have placed high expectations on international accountability mechanisms, fuelled by a collective desire for justice and closure.

However, processes within institutions like the International Criminal Court (ICC) and the United Nations can take years or even decades. For instance, past tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) lasted over 20 years.

Delays are often caused by procedural complexities, political negotiations, and the collection of evidence that meets strict international legal standards.

The frustration may also be exacerbated by competing political interests among international stakeholders, who might prioritize broader geopolitical stability over immediate justice for

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Ukraine. This could lead to a perception that the sacrifices of Ukrainians are being undervalued or ignored by global powers.

It is important, however, to remember that there is no statute of limitations for the types of atrocity crimes being committed in Ukraine. Those who commit these crimes are forever liable for them; there is no impunity for their actions.

Q: Is it realistic to expect Ukrainians to seek justice and become more involved in gathering evidence and testifying in court, at least if they are given the necessary training or legal assistance?

Undertaking domestic war crimes trials is exceedingly difficult in the best of circumstances; doing so during an open conflict can be near impossible. War's uncertain and chaotic nature significantly complicates an already tortuous situation.

Security for judges, prosecutors, and defendants is challenging to ensure. Resources are limited. Meeting international standards on impartiality and independence is exceptionally rare. Even more compelling is the challenge of providing victims and witnesses protection.

A Crisis Group report noted that there are challenges to gathering testimony in Ukraine because '[a] lack of adequate victim care and witness protection discourages many survivors from telling their story and leads them to distrust law enforcement.' This is even more of an issue for women survivors who suffered sexual violence and who must live with the stigma of this particular crime.

However, it is essential to say that Ukraine is doing an excellent job undertaking domestic trials. I have been personally involved with this endeavour, so I can speak firsthand about the processes being followed. Ukrainians have already demonstrated a significant ability to undertake domestic war crimes trials consistent with international standards of fairness and impartiality. They have also shown resilience and active participation in documenting the war, often using smartphones and apps to record atrocities.

Our project, eyeWitness to Atrocities, plays a critical role in documenting war crimes. Providing adequate training and legal support for citizens to participate in gathering evidence and

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testifying in court is critical. Programs to educate Ukrainians on legal processes, digital evidence collection, and court protocols would be essential.

Additionally, support networks to address psychological trauma could help victims and witnesses feel more comfortable testifying. Ukrainian society's strong motivation to seek justice and appropriate institutional support significantly enhance these efforts.

Q: Do you think that a peace process at this stage could reshape or cancel the ambition for a tribunal under pressure from partners, especially the Global South, or the US elections?

The ambition for a tribunal could face challenges, particularly if a peace process prioritizes reconciliation over accountability. Countries in the Global South often emphasize diplomacy and may resist initiatives perceived as Western-centric, including tribunals targeting Russian leaders.

Similarly, the Trump Presidency will likely impact American support for such initiatives. However, the tribunal remains a priority for Ukraine and its European allies. The European Parliament, Council of Europe, and other entities have already laid the groundwork for establishing such a tribunal, signalling strong regional support.

Ukraine's diplomatic push since 2022 has kept the issue in focus, and the European Commissioner for Justice has suggested that the tribunal is in advanced stages.

Ultimately, whether the tribunal proceeds depends on Ukraine's ability to maintain international momentum and its alignment with broader geopolitical dynamics.

For me, it is critical that a Tribunal is created. We are in the heart of Europe, witnessing the most flagrant violation of international law – the use of force against the international integrity of another state – as outlined in Article 2 of the UN Charter as the foundational principle in international law aimed at maintaining peace and security among nations.

Q: What's the outlook for the tribunal ahead of possible negotiations to end the war in Ukraine?

The tribunal's establishment will likely depend on the terms of any peace agreement. If negotiations heavily involve global powers seeking stability, accountability measures might be deprioritised to avoid derailing talks.

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Conversely, if Ukraine retains significant leverage (e.g., continued Western military and financial support), the tribunal could proceed as a non-negotiable element of post-war justice.

The progress of similar efforts, such as the ICTY, shows that political will and sustained international backing are critical.

Again, for me, I think it is critical that the international community continues to insist that a tribunal is established; international law demands it, and there is no other situation that requires accountability more than Russia's war against Ukraine.

Q: Do you think Russia could be accused of genocide in Ukraine?

Yes, there is a legal basis for accusing Russia of genocide. Under the Genocide Convention, genocide requires proof of specific intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. Intent can be inferred from the perpetrator's words or deeds and may be demonstrated by a pattern of purposeful action. Russia has done both.

Evidence such as the forced deportation of Ukrainian children to Russia, coupled with public dehumanising statements by Russian officials, strengthens the case.

Reports by the Independent International Commission of Inquiry on Ukraine and advocacy groups like the Kharkiv Human Rights Protection Group emphasise these elements, suggesting a deliberate strategy to erase Ukrainian identity (for example, through the deportation of Ukrainian children to Russia). In addition, Putin denies that there is any existence of Ukraine and Ukrainians and has furthermore made it clear that he believes Ukraine has no right to exist as an independent state.

Q: Could a decision on Russia's guilt for genocide be reached by one or both international institutions?

Yes, but it is a lengthy process because genocide cases require substantial evidence of specific intent. Past cases, such as the Rwandan Genocide and Srebrenica in the former Yugoslavia, illustrate the high evidentiary threshold.

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While a ruling on genocide could eventually be reached, it will likely face political pushback and appeals, extending the timeline. However, The ICC and other international bodies are currently investigating the crime of genocide, so that is encouraging.

Q: Can new technology of evidence collection and verification, such as AI software, make many proceedings shorter than they were 10-20 years ago?

Yes, technological advancements can significantly reduce the duration of investigations and trials. AI tools can rapidly process and analyse vast amounts of evidence, such as videos, photos, and documents, to identify patterns or authenticate data. Blockchain technology ensures evidence integrity by maintaining an unalterable record of metadata. Moreover, tools like facial recognition and geolocation analysis can corroborate witness accounts and link perpetrators to crimes more efficiently than manual methods used in past tribunals.

However, the sheer volume of documentation presents a new challenge. Courts and investigators must ensure that only relevant, verified evidence is admitted, requiring robust protocols for data management.

Q: How is the eyeWitness to Atrocities app helping war crimes investigations?

The eyewitness App is a cutting-edge digital platform that allows individuals to record evidence of atrocities while automatically embedding metadata, such as timestamps, geolocation, and device information. This ensures the evidence's authenticity and admissibility in court. It also means that the people taking the videos and pictures are not required to testify in court—the pictorial evidence speaks for itself. The App has been used extensively in Ukraine, helping document potential war crimes and providing secure, verifiable evidence to international investigators.

Q: How much evidence was collected through the app in the Russia-Ukraine war?

Over 50,000 videos and pictures from the war in Ukraine have been collected so far.

Q: Can the app also be used to help prove Ukrainian national cases?

Yes, the app's evidence can be used in Ukrainian courts to support domestic war crimes trials, provided it complies with national rules of evidence.

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We have already trained judges on the use of pictorial evidence.

Q: For how long will the evidence of war crimes that has been collected be stored by the app?

It is indefinite at this moment. We have partnered with LexisNexis, one of the world's most sophisticated data storage companies, and it remains steadfast in its support of the App.

Q: What are the priorities and practical results of IBA's activities in supporting Ukraine?

To date we have initiated over 250 projects that both assist Ukraine and criticise Russia's war.

Examples of the significant assistance to Ukraine include to the:

- Ukrainian National Bar Association
- Ukrainian Bar Association
- The Office of the President of Ukraine
- Prosecutor General's Office of Ukraine
- National School of Judges
- Ukraine's Supreme Court
- Ukraine's Ministry of Defense
- Ukraine's Ministry of Foreign Affairs
- Ukraine Legal Aid
- Ukraine's Ministry of Justice
- USAID/Ukraine Justice for All Activity

A more in-depth list of the IBA's activities is [here](#).

Q: If the war ends or is suspended, how will these efforts continue?

Post-war, IBA efforts would likely shift to transitional justice, including reparations, legal reforms, and rebuilding Ukraine's judicial system. However, the IBA would continue advocating for prosecutions of crimes committed during the war.

Q: On universal jurisdiction and evidence preservation:

Rules of evidence and protocols for managing evidence are essential to ensure the integrity, reliability, and admissibility of evidence in legal and investigatory processes. Evidence must meet

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specific criteria to be admissible, including relevance to the case, materiality to its outcome, and competence according to legal standards.

Authenticity is critical, with the evidence needing to be proven genuine and untampered. Other principles like the best evidence rule and exclusionary rules further ensure that evidence is both valid and fairly obtained.

Protocols for managing evidence focus on proper collection, preservation, analysis, and presentation. During collection, trained personnel must document all relevant details and take steps to prevent contamination. Evidence is preserved through secure storage, environmental controls, and detailed access logs.

Maintaining a clear chain of custody is vital, with every transfer of evidence meticulously recorded to prevent tampering and establish accountability.

Analysis should follow standardised procedures in accredited labs, ensuring accuracy and reliability. Evidence is presented with clear documentation and, when necessary, expert testimony to explain its significance.

Post-case, retention and disposal must comply with legal guidelines, emphasising secure handling to maintain privacy and security.

Integrity, accountability, transparency, and consistency are key principles guiding these processes. Together, these rules and protocols uphold justice by safeguarding the reliability of evidence and protecting the rights of all parties involved.

Q: What are the key problems these rules address?

These rules address challenges like forgery, loss of evidentiary integrity, and legal inconsistencies between jurisdictions.

Q: How can these rules be shared between different national jurisdictions?

Through international agreements, model protocols developed by bodies like the IBA, and training programs for legal professionals worldwide.

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Q: On Ukraine's ratification of the Rome Statute: Is ratification of the Rome Statute limited to political effect, or will it have practical implications?

Ratification has both symbolic and practical implications. Politically, it reaffirms Ukraine's commitment to international law. Practically, it allows closer collaboration with the ICC and strengthens Ukraine's ability to prosecute war crimes.

Q: Will Ukrainian citizens be able to receive reparations or material support from the Trust Fund for Victims at the ICC?

Yes, victims of war crimes can apply for reparations through the ICC's Trust Fund, which provides financial and psychological support. However, access depends on court rulings and fund availability.

Q: How can ordinary people who have been victims of war crimes present their evidence to the court or hire a lawyer?

Victims can present evidence via mechanisms like eyeWitness, or work with NGOs and legal aid organisations to connect with lawyers experienced in international law.

Q: On reparations and frozen Russian assets: How can the objective of reparations from Russia be achieved through existing international institutions and procedures?

Reparations can be pursued through:

1. UN resolutions: Supporting mechanisms for compensation.
2. Seized Russian assets: Using frozen assets as leverage or direct reparations.
3. International court rulings: Mandating Russia to pay damages, enforceable through economic or diplomatic pressure.

Q: Can Ukrainians use the eyeWitness app to claim compensation for their lost property using the Ukrainian Diya application?

Yes, evidence collected via eyeWitness can complement claims in platforms like Diya, provided integration between systems and legal processes is established.

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