
2023

The War in Ukraine: A Case Study in Modern Atrocity Crimes Documentation

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Dr. Paul R. Williams and Nicole Carle, *The War in Ukraine: A Case Study in Modern Atrocity Crimes Documentation*, 55 Case W. Res. J. Int'l L. 7 (2023)

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THE WAR IN UKRAINE: A CASE STUDY IN MODERN ATROCITY CRIME DOCUMENTATION

*Dr. Paul R. Williams**

*Nicole Carle***

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I. INTRODUCTION

This article aims to detail how the Public International Law & Policy Group¹ designed and launched a remote documentation initiative to collect witness statements from those who experienced violence during the war in Ukraine, following the Russian Federation’s invasion in February 2022.² This article offers a step by step guide outlining how PILPG implemented this novel approach to conducting remote investigations, including the additional considerations one must take when communicating and storing data digitally. Specifically, it covers how to build and train a team of investigators, how to psychologically care for both witnesses and investigators, how to go about communicating with and interviewing witnesses, and how to organize and store collected information. This article also negates the narrative that there is too much documentation happening in Ukraine and that it is harmful to ongoing investigations. It instead suggests that proper training and coordination, not less documentation altogether, is the most helpful towards seeking accountability for those responsible for atrocity crimes. Lastly, this article concludes by offering succinct key takeaways for those looking to begin their own remote documentation efforts.

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1. *See generally Public International Law & Policy Group*, PUB. INT’L L. & POL’Y GRP., www.publicinternationalallawandpolicygroup.org/ [https://perma.cc/ZL2A-QXFN].
 2. *The Ukraine Memorialization and Accountability Initiative*, UKR. TRANSITIONAL JUST. & DOCUMENTATION, www.ukrainetjdoc.org/ukraine-accountability-initiative-information-page-en [https://perma.cc/ES6R-PH4S].

II. A BRIEF OVERVIEW OF DOCUMENTING THE WAR IN UKRAINE

The war in Ukraine is unique in numerous ways, but aggression and territorial greed is nothing new. The conflict began in 2014 when Russia illegally annexed Crimea and began actively supporting eastern Ukrainian separatists in the Donbas region.³ Then, in February 2022, in an illegal act of aggression, Russia invaded Ukraine after amassing troops along the border for months, initiating the most recent phase of conflict.⁴ Responses to the outbreak of the war soon dominated conversations throughout numerous state governments, domestic civil society groups, and other international actors such as the European Union, the Council of Europe, and the United Nations, and sparked a collective desire among Ukrainians and the international community alike to hold Russian civilian and military leaders—as well as front line soldiers—accountable for both the act of aggression, and for other atrocity crimes being committed against Ukrainian civilians and prisoners of war.⁵ This section discusses the atrocity crimes being committed in Ukraine, and why early and sufficient documentation is critical to seeking accountability for these crimes in the future, and in particular, why documenters had to plan their data collection differently to cover this war than in some in the past.

As with any conflict of this nature and scale, effective documentation of atrocity crimes is critical for the success of potential future accountability proceedings, as well as for maintaining the rule of law. As of the summer of 2022, more than 20,000 claims of war crimes had already been submitted to the Office of the Prosecutor of Ukraine, exemplifying the need for

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3. See Center for Preventive Action, *Conflict in Ukraine*, COUNCIL ON FOREIGN RELS., www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine (Nov. 8, 2022) [<https://perma.cc/48EX-D952>].
 4. *Timeline: The Events Leading up to Russia's Invasion of Ukraine*, REUTERS, www.reuters.com/world/europe/events-leading-up-russias-invasion-ukraine-2022-02-28/ (Mar. 1, 2022, 4:03 AM) [<https://perma.cc/U97A-P6DL>].
 5. See e.g., Viola Gienger et al., *Holding Putin and Russia Accountable: A List of Legal and Policy Options*, JUST SEC. (Feb. 25, 2022), www.justsecurity.org/80360/holding-putin-and-russia-accountable-a-list-of-legal-and-policy-options/ [<https://perma.cc/H2N2-58SX>].

additional assistance with investigations.⁶ Neither the domestic police force, nor the Office of the Prosecutor, possessed the capacity or expertise to investigate and document evidence of this level of atrocity crimes.⁷ To provide assistance, numerous civil society organizations recruited volunteers to collect and store evidence of potential atrocity crimes that have occurred in their neighborhoods and throughout Ukraine.⁸

Fairly quickly it became obvious that the war would continue for some time,⁹ making it difficult for civil society documenters to conduct thorough investigations. Photo and video documentation technologies have become popular to capture the immediate aftermath of various attacks¹⁰ but collecting reliable witness statements remained elusive in the early days of the war.¹¹

Moreover, neighboring states did not set up refugee camps for those who fled the violence. Instead, neighboring states, namely Poland, focused on relocating Ukrainian refugees throughout

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6. Ministry Internal Affs. of Ukraine, *Denys Monastyrskyy: About 20,000 War Crimes Have Been Registered by Now*, UKR. GOV'T PORTAL (May 24, 2022, 10:46 AM), www.kmu.gov.ua/en/news/denis-monastirskij-sogodni-zareyestrovano-blizko-20-tisyach-voyennih-zlochiv [https://perma.cc/QQX6-2D63]; see also Ministerie van Buitenlandse Zaken, *REPLAY: Afternoon Talkshow at Ukraine Accountability Conference*, YOUTUBE (July 14, 2022), <https://www.youtube.com/watch?v=o1xb5-g1QvM>.
 7. Beth Van Schaack, Ambassador-at-Large, Off. of Glob. Crim. Just., FPC Briefing on War Crimes and Accountability in Ukraine (June 15, 2022).
 8. William Worley, *How Ukrainian Civil Society Is Documenting Alleged Russian War Crimes*, DEVEX, www.devex.com/news/how-ukrainian-civil-society-is-documenting-alleged-russian-war-crimes-102832 (Apr. 22, 2022) [https://perma.cc/CL5Z-7JV9].
 9. See Associated Press, *Ukraine's Leader Says His Troops Keep Defying Predictions*, POLITICO (June 12, 2022, 08:25 AM), www.politico.com/news/2022/06/12/ukraine-zelenskyy-war-predictions-00039007 [https://perma.cc/4BCN-VZ3Y]; see also James M. Dubik, *Beware of War Predictions: Ukraine's Outcome Is Not Yet Written*, THE HILL (July 31, 2022, 9:00 AM), <https://thehill.com/opinion/national-security/3578062-beware-of-war-predictions-ukraines-outcome-is-not-yet-written/> [https://perma.cc/ZRE8-6EQ4].
 10. See, e.g., *How We Verify Our Reporting on the Ukraine War*, N.Y. TIMES, www.nytimes.com/2022/03/11/world/europe/ukraine-war-journalism.html (Apr. 20, 2022) [https://perma.cc/Q5JS-Y4UN].
 11. See *id.*

Poland, and throughout the European Union.¹² As such, Ukrainian refugees are geographically dispersed and difficult to physically locate, making the collection of statements both time and resource intensive, as well as logistically complicated.

III. INCREASE IN CIVIL SOCIETY DOCUMENTATION

The war in Ukraine in particular has spurred a proliferation of civil society documentation for war crimes investigators.¹³ This proliferation is partially because in an age of technology, it has become simpler than ever for citizens to capture evidence of crimes using smartphone technology.¹⁴ This section describes modern documentation and introduces the tools and various technologies that documenters are increasingly relying upon, most evident by their prolific use in Ukraine.

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12. Zosia Wanat, *Poland's Generous Welcome of Ukrainian Refugees Shows Signs of Strain*, POLITICO (Mar. 11, 2022, 4:02 AM), www.politico.eu/article/poland-dunkirk-moment-refugee-ukraine-war/ (“But there are no refugee camps. Instead, like the rush of boats sailing across the Channel to rescue trapped soldiers in France in 1940, hundreds of thousands of Polish people spontaneously mobilized to help: they give out tea, sandwiches and soup on the border, provide free transport across the country, gather bales of clothing to donate and offer spare rooms in their homes.”) [<https://perma.cc/DN3J-4ER4>]. For more on organizations helping to relocate Ukrainians, see *We Launched a Programme to Relocate Ukrainian Refugees from Poland to Other EU Countries*, OPEN DIALOGUE FOUND. (Mar. 31, 2022), <https://en.odfoundation.eu/a/252767,we-launched-a-programme-to-relocate-ukrainian-refugees-from-poland-to-other-eu-countries/> [<https://perma.cc/9SGS-778E>].
 13. Justin Hendrix, *Ukraine May Mark a Turning Point in Documenting War Crimes*, JUST SEC. (Mar. 28, 2022), www.justsecurity.org/80871/ukraine-may-mark-a-turning-point-in-documenting-war-crimes/ (“The collection and preservation of digital media and other evidentiary material in Ukraine is a massive undertaking. It is being met by brave Ukrainian officials and local civil society groups operating in besieged cities and towns, as well as by an international coalition of human rights, open-source intelligence and digital forensics researchers.”) [<https://perma.cc/Y6CC-CJW7>].
 14. David Lumb, *How Ukrainian Civilians Are Using Phones to Share the Invasion with the World*, CNET (Mar. 14, 2022, 5:00 AM), www.cnet.com/tech/mobile/how-ukrainian-civilians-are-using-phones-to-share-the-invasion-with-the-world/ [<https://perma.cc/6VJF-HRH6>].

Investigative tools are no longer limited to pen and paper.¹⁵ Largely due to the rapid increase in documentation technologies and widespread smartphone use, efforts in Ukraine quickly centered around capturing digital evidence.¹⁶ Many are doing open search research and data collection as well, or compiling data that is available publicly, such as from social media.¹⁷

Digital evidence collection, as well as the swift training of both civil society organizations and ordinary Ukrainians in best practices to capture such data, quickly became the priorities for those interested in preserving evidence for potential accountability proceedings.¹⁸ To guide documenters relying on technology to collect data for accountability purposes, in 2020, Lindsay Freeman¹⁹ and her team at the Tech and Human Rights Program at the University of California Berkeley Human Rights Center²⁰ published the Berkeley Protocol, or, a set of evidentiary standards for digital and open source information that is intended to eventually be relied upon as evidence in court.²¹ Ukrainian organizations, such as Truth Hounds, for instance, have also stepped in to train citizens and government actors alike on documentation of atrocity crimes.²² Moreover, organizations such

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15. See PILPG, THE ENGINE ROOM & HURIDOCS, TECH TOOLS FOR HUMAN RIGHTS DOCUMENTATION: A SNAPSHOT OF THE LANDSCAPE 5, 7 (2021).
 16. See, e.g., Lumb, *supra* note 14.
 17. EUROJUST, 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 3-7 (2018); Hendrix, *supra* note 13.
 18. Worley, *supra* note 8.
 19. See generally Human Rights Center: Lindsay Freeman, U.C. BERKELEY, <https://humanrights.berkeley.edu/about/staff-profiles/lindsay-freeman> [<https://perma.cc/3VZK-TK8W>].
 20. See generally Human Rights Center: Technology, Law and Policy, U.C. BERKELEY, <https://humanrights.berkeley.edu/programs-projects/technology-law-and-policy> [<https://perma.cc/MV4D-VTJL>].
 21. U.C. BERKELEY HUM. RTS. CTR. & U.N. OFF. OF THE HIGH COMM’R, BERKELEY PROTOCOL ON DIGITAL OPEN SOURCE INVESTIGATIONS v-vi (2022).
 22. Brian Dooley, *Ukraine’s Public Mobilizes to Document War Crimes*, HUM RTS. FIRST (May 9, 2022), <https://humanrightsfirst.org/library/ukraines-public-mobilizes-to-document-war-crimes/> [<https://perma.cc/E7YL-V2K6>]; see also Truth Hounds, Інструкція

as EyeWitness have produced technologies to capture photo evidence of potential atrocities before the sites are contaminated or destroyed.²³ And to account for the preceding intensification of attention on Ukraine, groups including Open Society Foundations, have worked tirelessly to bring prominent actors together and coordinate efforts among them.²⁴ Still, the collection of corresponding or corroborating witness statements was minimal.

Overall, the growth in volunteer documentation is primarily intended to assist the aforementioned prosecutors, whether domestic or international, with their cases and investigations, offering leads and potentially physical or digital evidence to be used in court.²⁵ With that said, there are other reasons for civil society documentation as well, aside from assistance with prosecutorial efforts. Statement collection from interviewees can be cathartic for victims and witnesses, in that oftentimes sharing their stories with a neutral individual can be helpful in the healing process following a traumatic event.²⁶ Documentation for the

для зйомки наслідків воєнних злочинів [Instructions for Filming the Consequences of War Crimes], YOUTUBE (Mar. 1, 2022), <https://youtu.be/JJR2s5zULdc>.

23. *Ukraine: Businesses and Civilians Advised by Lawyer to Capture Verifiable Photos Before Potential Evidence is Removed*, EYEWITNESS TO ATROCITIES, www.eyewitness.global/property-damage-in-ukraine-capture-verifiable-photos-before-potential-evidence-is-removed (“[EyeWitness] verification technology [allows users to] capture verifiable footage that will stand up in future legal proceedings . . . [and] will store and protect the footage ready for investigators long into the future.”) [<https://perma.cc/9BSY-3STG>].
24. *See generally Open Society Foundations*, OPEN SOC’Y FOUNDS., www.opensocietyfoundations.org/ [<https://perma.cc/QUB8-2NJB>].
25. *Documenting War Crimes, Ukrainian NGO Center for Civil Liberties Seeks Justice*, NAT’L ENDOWMENT FOR DEMOCRACY (May 31, 2022), www.ned.org/documenting-war-crimes-ukrainian-ngo-center-for-civil-liberties-seeks-justice/ (“Ordinary people have become civil society activists, documenting evidence of shelling on residential buildings, schools, and kindergartens; attacks on hospitals and medical personnel; killings, torture, enforced disappearances, rapes of civilians, and other devastating crimes.”) [<https://perma.cc/2E6E-CTN6>].
26. Paul G. Cassell, *In Defense of Victim Impact Statements*, 6 OHIO STATE J. CRIM. L. 611, 645 (2009).

purpose of catharsis may be done in a different way than investigations for accountability mechanisms that have the purpose of pursuing leads. Most importantly, documentation may take different forms depending on the victims' needs and the investigators' goals.

IV. INTRODUCTION TO REMOTE DOCUMENTATION

Before the COVID-19 pandemic, remote working was unheard of for most individuals, and especially so for war crimes investigators.²⁷ Throughout the pandemic, organizations, including PILPG, grew increasingly comfortable operating with remote technologies, making them a necessary part of everyday workflows. Overall, the pandemic introduced both reliance and increased competency with remote technologies, enabling the new era of remote documentation.²⁸ As discussed in detail below, this transition laid the foundations for what became a remote documentation mission "in" Ukraine.

PILPG has longstanding expertise in documentation across the globe.²⁹ In addition to conducting numerous documentation trainings, many of PILPG's experts are seasoned investigators themselves.³⁰ Just a few years prior to the launch of the Ukraine Accountability Initiative,³¹ PILPG orchestrated an in-person State Department funded mission to Bangladesh to document atrocity crimes committed against the Rohingya between 2016-17, ultimately leading to Secretary Blinken's declaration of

27. See, e.g., Enrico Battisti et al., *Remote Working and Digital Transformation During the COVID-19 Pandemic: Economic-financial Impacts and Psychological Drivers for Employees*, J. BUS. RSCH. 38, 38 (2022).

28. See, e.g., Hendrix, *supra* note 13.

29. See generally Andrew C. Mann & Nicole Carle, *Responding to Claims of Atrocities Against the Rohingya: Behind the Scenes of the 2018 Rohingya Documentation Project*, 54 CASE W. RSRV. J. INT'L L. 305, 305-22 (2022) (discussing past-PILPG missions, namely its 2018 documentation mission in Cox's Bazaar to collect evidence related to the atrocity crimes committed against the Rohingya).

30. See *id.* at 314-15.

31. See generally *The Ukraine Memorialization and Accountability Initiative*, *supra* note 2.

genocide.³² PILPG spent months deciding when and where the mission would take place, training the team, securing visas, hiring interpreters, and scheduling camp visits.³³ Overall, PILPG conducted 1,024 interviews in six weeks and provided to the State Department a quantitative database with more than 13,000 coded instances of grave human rights violations.³⁴

In an early 2022 conversation with one of its pro bono partners who assisted with the 2018 Rohingya documentation mission, PILPG and Orrick, Herrington & Sutcliffe (“Orrick”)³⁵ were discussing what they could do together towards a documentation mission to investigate atrocity crimes committed on Ukrainian territory, and potentially going to the Ukrainian border to interview refugees. During this discussion, it was suggested that the team could make use of remote technology.

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32. U.S. Sec’y of State Antony J. Blinken, Remarks on the Genocide and Crimes Against Humanity in Burma at the Holocaust Memorial Museum (Mar. 21, 2022), www.state.gov/secretary-antony-j-blinken-at-the-united-states-holocaust-memorial-museum/ [<https://perma.cc/53PP-AZCV>]; *see also* Humeyra Pamuk & Simon Lewis, *Biden Administration Rules Myanmar Army Committed Genocide Against Rohingya*, REUTERS, www.reuters.com/world/asia-pacific/exclusive-biden-administration-rules-myanmar-army-committed-genocide-against-2022-03-20/ (Mar. 20, 2022, 9:46 PM) [<https://perma.cc/PM6Y-2447>]; Mann & Carle, *supra* note 29, at 307.
 33. *See generally* PILPG, DOCUMENTING ATROCITY CRIMES COMMITTED AGAINST THE ROHINGYA IN MYANMAR’S RAKHINE STATE 9-10 (2018).
 34. *Id.* The Project, its findings, legal analysis, and impact would not have been possible without the extraordinary abilities and efforts of the Project Director, Milica Kostic. Andrew Mann, Senior Legal Advisor, the outstanding international investigative team, and the support team on the ground and in Washington, D.C., also made contributions essential to the Project’s success. The investigators were Saadia Aleem, Anonymous, Kristina Filipovich, Adrienne Fricke, Venitia Govender, Stephen Hathorn, Ralph Keefer, Milica Kostic, Andrew Mann, Camille McDorman, Stephanie Morin, Pratima T. Narayan, Gregory P. Noone, Sandra Orlovic, Michael Stefanovic, Larissa Wakim, Jae Chun Won, and Kyle Wood. Neha Bhatia, Debbie Bodkin, Celine Denisot, Sadiyya Haffejee, Stephanie Munro, and Paul R. Williams were also members of the team on the ground in Cox’s Bazaar at various times during the project.
 35. Orrick, Herrington & Sutcliffe, LLP helped PILPG with qualitative and legal analysis. *Id.* at i.

The team discussed how Ukrainian refugees are dispersed throughout Europe, and not in refugee camps as the Rohingya were, and still are, and how many of them likely have access to reliable internet connections across Europe, unlike the Rohingya. By interviewing remotely, documenters could reach victims and witnesses who have both fled Ukraine and those who remained at home or within Ukraine's borders. This became the most plausible path forward, as on the ground investigations to interview witnesses and victims directly remained both difficult and resource intensive by March 2022, when the idea for the initiative took place.

In March 2022, PILPG developed an online program to train investigators on how to conduct war crimes investigatory interviews remotely.³⁶ Shortly thereafter, PILPG launched the Ukraine Memorialization and Accountability Initiative, a remote documentation program to collect witness statements via Zoom from those who experienced violence during the war in Ukraine.³⁷ The project was designed for two purposes. First, it was designed to contribute to a historical record of the events that occurred following the February 2022 invasion of Ukraine.³⁸ Second, it was designed to be able to assist prosecutors and international accountability mechanisms collect data on potential atrocity crimes that had been committed during the war.³⁹ The project focuses primarily on collecting witness *statements*, and not photo or video documentation.⁴⁰ The planning and implementation of the Ukraine Memorialization and Accountability Initiative is discussed in detail below.

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36. See *Collection of Information*, PUB. INT'L L. & POL'Y GRP., <https://www.publicinternationallawandpolicygroup.org/collection-of-information-ukraine-accountability-initiative> [<https://perma.cc/9F29-U2YH>].
37. *The Ukraine Memorialization and Accountability Initiative*, *supra* note 2.
38. *Id.*
39. PILPG, *Questions and Answers About the Ukrainian Accountability Initiative*, UKR. TRANSITIONAL JUST. & DOCUMENTATION, www.ukrainetjdoc.org/ukraine-accountability-initiative-qa-english [<https://perma.cc/7DYU-68YQ>].
40. PILPG, *Conduct During the Interview*, YOUTUBE (June 15, 2021), www.youtube.com/watch?v=779Ica9KeNk&t=5s (speaker notes available on Public International Law & Policy Group website).

V. WHAT TO DO IF YOU WANT TO DOCUMENT REMOTELY

The goal of the Ukraine Memorialization and Accountability Initiative was to be efficient with time and resources while collecting witness statements, rather than scattering team members across Europe for weeks at a time to knock on doors, seeking those who may have experienced violence in the wake of the invasion. As mentioned, Ukrainian refugees are not generally located in refugee camps, and many have chosen to remain in Ukraine, making identifying potential witnesses all the more difficult.⁴¹

The remainder of this section will cover discrete considerations for those designing a remote documentation program. It will also cover how to build a team, train a team, design a workflow, index data collected, create a database, store digital information, communicate with witnesses prior to the interview, interview via Zoom, and acquire and provide psychosocial support for both witnesses and investigators.

While the project was implemented fully remotely, that is not to say that there were no logistical hurdles to training investigators for such a prolonged mission, and to create a system that was safe, secure, and yet simple to follow. When properly utilized, technology is an excellent resource for connecting teams and investigating remotely. But to properly manage a remote documentation team takes intense planning and oversight, perhaps more than if one were to all go out “to the field” together. Each section below details the various stages of the mission and the steps taken to successfully launch the initiative.

A. Building the Team

The first step in any documentation mission is to build a team. PILPG assembled two cohorts of investigators.⁴² First, PILPG reached out to its cohort who traveled to Cox’s Bazaar in

41. *How Many Ukrainian Refugees Are There and Where Have They Gone?*, BBC (July 4, 2022), www.bbc.com/news/world-60555472 [<https://perma.cc/L5YA-JY9Y>].

42. Mann & Carle, *supra* note 29, at 307 (cohort one); Paul Williams & Isabella Karibjanian, *The Origin Story of the Public International Law & Policy Group: A Case Study in Strategic Optimism*, 54 Case W. Rsrv. Univ. J. Int’l L. 333, 357-58 (2022) (cohort two).

2018 for the Rohingya investigation.⁴³ PILPG maintains regular contact with this group of seasoned atrocity crimes investigators, made up of current and former prosecutors and international tribunal—or court—staff and who often volunteer with PILPG for documentation trainings, hereinafter “Atrocity Crimes Investigator Cohort.”⁴⁴ PILPG also launched the initiative in collaboration with four top-tier law firms: Orrick, Herrington & Sutcliffe; Gibson Dunn; Eversheds Sutherlands; and Weil, Gotshal & Manges. PILPG has a longstanding relationship with each firm, and decided to bring together corporate investigative lawyers, as well as native or fluent Ukrainian and Russian speaking lawyers to expand the initiative, hereinafter “Law Firm Cohort.”⁴⁵ Because of their background in conducting corporate investigations, and especially for those with language capabilities, this cohort already possessed the particular set of skills necessary for interviewing victims and witnesses of the war in Ukraine in such a way that does not re-traumatize them, but may provide useful information for a potential accountability mechanism in due time. Therefore, with only some basic training on atrocity crimes this cohort of lawyers were able to seamlessly integrate into the initiative.⁴⁶

43. See Mann & Carle, *supra* note 29, at 307.

44. See, e.g., PILPG, *supra* note 40. Kyle Wood, who here explains how to investigators should conduct themselves during interviews, was among the group of investigators who conducted interviews in Myanmar in 2018.

45. See generally PILPG, *Expert Roundtable: Presentation of Draft Legislation for a High War Crimes Court for Ukraine (EN)*, YOUTUBE (July 22, 2022), www.youtube.com/watch?v=rVK1twVla1o&t=782s (discussing the expectations of the Ukrainian people regarding the international community’s commitment to bringing Russia to justice and the draft legislation for a potential High War Crimes Court for Ukraine with Ukrainian law experts, Ukrainian officials, and legal scholars); see also PILPG, *DRAFT LAW FOR A UKRAINIAN HIGH WAR CRIMES COURT* (2022), <https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/62d6c27baae10b6ca51cadb7/1658241661209/DRAFT+Ukraine+High+War+Crimes+Court.pdf> [<https://perma.cc/H6SJ-WMYX>].

46. PILPG, *supra* note 45, at 14:21 (discussing the success of the investigations into war crimes against Ukraine).

B. Training the Team

With a talented pool of investigators assembled, PILPG developed a specialized training program to assist this new cohort of lawyers conduct *atrocity crimes* investigations. The PILPG team rapidly prepared training materials and exercises, an asynchronous website holding hours of video recordings and additional resources, and hosted multiple live sessions to discuss the material, answer questions, and practice through live scenarios to prepare the investigators for what to expect when investigating atrocity crimes.⁴⁷ The team also covered the logistics of interviewing over zoom, working with an interpreter, indexing their interview notes, and storing their index sheets and video recordings.⁴⁸ PILPG also established a mechanism to maintain consistent communication and availability prior to and throughout the entire project, and offered the option to pair new war crimes documenters with a seasoned member of PILPG's team for early interviews if requested.⁴⁹

C. Designing the Workflow Protocol

To collect and store witness testimony fully remotely, PILPG set out to design a workflow protocol that was entirely unique to anything the organization had undertaken before. This protocol is what the investigators would refer to for a step-by-step guide for communicating with the witnesses, scheduling interviews, setting up translation if required, conducting the interviews, indexing the interviews, and uploading the relevant data files to both the database and PILPG's secure storage system for witness information, including appendices that contained the interview questions and consent forms.⁵⁰ It also contains psychosocial resources for both investigators and witnesses, and additional protocols for all stages of the interview process.⁵¹

47. See, e.g., *Documentation Training: Documentation of Information from Victims and Witnesses*, PUB. INT'L L. & POL'Y GRP., www.ukrainetjdoc.org/documentation-victims-and-witnesses [<https://perma.cc/RE8L-8L2S>].

48. PILPG, HUMAN RIGHTS DOCUMENTATION AND PEACEBUILDING IN UKRAINE GUIDE OUTLINE 2-3, 10-11 (2022).

49. See generally *id.* at 1-10.

50. See *id.* at 1-12.

51. *Id.*

In order to uphold best practices for protecting data privacy of witnesses, PILPG ensured the initiative was fully compliant with the General Data Protection Regulation.⁵² The GDPR is Europe's leading data protection law, and PILPG has in-house expertise to guarantee compliance.⁵³ Perhaps most importantly, PILPG developed a detailed and definitive consent form for witnesses to submit to PILPG, detailing the parameters of the regulation, explaining what the witness will be asked about, and specifying the witness' comfort levels with both being recorded and with having his or her information shared.⁵⁴ An excerpt from the three-page consent form reads as follows:

PILPG and Eversheds Sutherland, Gibson Dunn, Orrick, Herrington & Sutcliffe, and Weil, Gotshal & Manges partners are collecting and processing the data. The data processing will be carried out in compliance with the European Union's General Data Protection Regulation, 2016/679, according to the below legal bases and conditions:

- The individual has given consent to the processing of his or her personal data.
- Processing data is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
- Processing is necessary for reasons of substantial public interest.⁵⁵

52. See *Ukraine Accountability Project Consent Page*, PUB. INT'L L. & POL'Y GRP., <https://www.publicinternationallawandpolicygroup.org/ukraine-accountability-initiative-consent-page> [<https://perma.cc/P9DQ-AEWV>]; Council Regulation 2016/679 of Apr. 27, 2016, on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 2016 O.J. (L 119) 1.

53. See Jake Frankenfield, *General Data Protection Regulation (GDPR) Definition and Meaning*, INVESTOPEDIA www.investopedia.com/terms/g/general-data-protection-regulation-gdpr.asp (Nov. 11, 2020) [<https://perma.cc/7R8X-X7G5>].

54. See *Ukraine Accountability Project Consent Page*, *supra* note 52.

55. See *id.*

In its entirety, the form requests the witness to indicate his or her comfort level with participating in the interview, being recorded, the extent to which his or her information may be shared with accountability mechanisms and the interview organizers, and lastly, the processing of his or her personal data.⁵⁶ For instance, witnesses may consent to participating in the interview and having one's codified responses shared with prosecutors or a potential accountability tribunal, but not consent to being recorded.⁵⁷ If that is the case, the interviewer would proceed with the interview and post-interview protocol as normal but would not record the interview.⁵⁸ Witnesses may also choose to not consent to having their data shared, and in that case, an investigator would conduct the interview, but not input any of the individual's responses into the database.⁵⁹

D. Psychosocial Support for Witnesses

One of the fundamental pillars of embarking on any documentation mission—or realistically, undertaking any program in a conflict zone—is to “Do No Harm.”⁶⁰ Do no harm refers to the principle that as a documenter, one should *always* be thinking about preventing and minimizing any unintended negative effects of activities that can increase a victim or witness' vulnerability to risks.⁶¹ It means that documenters must avoid causing harm to victims or witnesses, or any intermediaries, local communities, other persons involved in the documentation process, or themselves. Steps that one may take to adhere to do no harm include the following:

- Provide the victim or witness with all potential risks that the information-gathering process may cause;
- Obtain informed consent from the victim or witness;

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. U.N. DEV. GRP., CONDUCTING A CONFLICT AND DEVELOPMENT ANALYSIS 112 (2016), https://unsdg.un.org/sites/default/files/UN_DP_CDA-Report_v1.3-final-opt-low.pdf [<https://perma.cc/N9SX-GLXL>].

61. *Id.*

- Demonstrate respect, professionalism, and empathy toward all participants; and
- Watch for signs of emotional distress and take steps to avoid re-traumatization.⁶²

As mentioned, part of doing no harm is protecting the mental and psychological health of the witness. There are a number of steps PILPG has taken to protect any witness who chooses to come forward with their story. First, PILPG prepared an appendix of psychosocial and legal aid resources that could be provided to any witness who requests it.⁶³ This catalog contains contact information for dozens of free remote and in-person mental health hotlines, as well as for free legal aid, counseling, and information on residence permits that refugees may have a need for.⁶⁴ Moreover, PILPG introduced the concept of allowing witnesses to have a trusted friend, family member, someone from a trusted NGO that originally referred them to the initiative on the line with them.⁶⁵ This was to help witnesses feel more comfortable and potentially less isolated in the interview, and PILPG was happy to welcome them, taking care to ensure that the additional person was not coaxing or coaching the witness through the interview.⁶⁶

E. Database

Large scale documentation, whether done in person or remotely, would not be possible without a secure database to store the information collected. This is because once an organization has a system for collecting statements or other electronic evidence, it needs a secure place to *store* it, such as a

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62. EUROJUST ET AL., DOCUMENTING INTERNATIONAL CRIMES AND HUMAN RIGHTS VIOLATIONS FOR ACCOUNTABILITY PURPOSES: GUIDELINES FOR CIVIL SOCIETY ORGANISATIONS 10 (2022), www.eurojust.europa.eu/sites/default/files/assets/eurojust-icc-csos-guidelines.pdf <https://perma.cc/7ZR3-W3KB>].
63. *See Additional Resources: Sample Interview Questionnaire*, PUB. INT'L L. & POL'Y GRP., www.publicinternationallawandpolicygroup.org/additional-resources-ukraine [<https://perma.cc/B8Q8-U2AT>].
64. *See id.*
65. *See id.*
66. *See* PILPG, *supra* note 48, at 4-5.

digital database.⁶⁷ A database, or in some instances referred to as a tool, can serve multiple purposes. Not only does it store the collected information, but it can organize the data in such a way that is useful to a particular documenter's goals, such as by assisting the documenter analyze the evidence by finding patterns and similarities between stories, and oftentimes with functions such as tagging and text scanning to assist documents to return to certain files more easily.⁶⁸

There are multiple organizations that host others' data within their software, but some documents with a particular set of technical skills and capabilities maintain their own proprietary database. For the aforementioned mission, PILPG's data is stored on a proprietary database.⁶⁹ PILPG has a long standing relationship working with the host of the database server, and relied upon it to hold data following the 2018 investigation.⁷⁰

The purpose of the database is to collect data in an organized and easily accessible way, so that accountability mechanism staff can sift through the statements in an efficient manner that is useful to their investigations. In other words, the database is intended to safely hold the data, but also be searchable in a way that a prosecutor or investigator from an accountability mechanism can find incidents of a particular nature or in a particular geographic area for further investigation.

To populate such a database, and to make it searchable, the information collected must be coded/indexed. The purpose of indexing is to organize and translate the data in a consistent way that one can input into the secure database.⁷¹ Details on the process can be found in the next section.

67. M.S.N. Figueiredo & A.M. Pereira, *Managing Knowledge: The Importance of Databases*, 12 *PROCEDURIA MANUFACTURING* 166, 170 (2017).

68. *Id.*

69. *See generally* Marco Poggio, *Orrick Helps State Dept. Rule Rohingya Killings Are Genocide*, LAW360 (Apr. 8, 2022, 8:05 PM), www.law360.com/articles/1476429/orrick-helps-state-dept-rule-rohingya-killings-are-genocide [<https://perma.cc/S6E5-Y5PX>].

70. *See, e.g., id.*

71. *See, e.g., Indexes in Azure Cognitive Search*, MICROSOFT (May 11, 2022), <https://learn.microsoft.com/en-us/azure/search/search-what-is-an-index> [<https://perma.cc/HVN2-5UU3>].

F. Indexing

Once the interviews were done and recorded, it became the interviewer's responsibility to code them using PILPG's prepared indexing sheet.⁷² As previously discussed, this process is to organize the data and to populate the database.

The indexing sheet is designed to capture and catalog the discrete events/episodes interviewees may discuss during the interviews. For each witness and for each event/episode occurrence, the interviewer fills out the Index Coding Sheet that PILPG provided, and saves it to the online storage folder.⁷³

During the interview, the victims and witnesses may mention several events that have happened to them. An event/episode occurrence is an instance where, for example, a person was held in a basement in one city for a number of days. Then this same person escaped from the basement and went to a different city, where the person saw a killing. These would be two different events/episodes and would be coded separately. If one act of aggression, such as shelling, resulted in both injury/death to a person and property damage, each consequence of the act of aggression should be entered as a separate event.⁷⁴ This will create several records in the database.

Overall, the interviewers were provided with codes to record the relevant events, locations, perpetrators, weapons, and other items from the interviews, using the Appendix PILPG provided for guidance in the workflow protocol.⁷⁵ An example of the indexing categories for each event/occurrence can be found below:

Interview [Interviewee's Unique ID #]

Event/Episode Occurrence #1

Event Code:

Atrocity Event Code (if applicable):

Interviewee/Witness Code:

72. *Additional Resources: Sample Index Coding Sheet*, PUB. INT'L L. & POL'Y GRP., www.publicinternationallawandpolicygroup.org/additional-resources-ukraine [<https://perma.cc/4EUJ-U7TY>].

73. *See id.*

74. *See id.*

75. *See id.*

Date (Days-Month-Year):
Location Code:
Victim Codes:
Number of Victims Code:
Perpetrator Code:
Weapons Code(s):
Comments:

Indexing is typically the most difficult part of any large documentation mission. For this reason, it is worthwhile to spend time designing a simple coding system, such as the one exemplified above, and fully training the documenters on it, perhaps repeatedly. It is also recommended to hold regular check-ins among documenters to ensure that indexing among the cohorts remains consistent and timely.

G. Storage of Digital Information

In addition to saving the coded information on the database, PILPG stores witness information, i.e. biographical information and testimony, separately, so that testimony in one location cannot be attributed to the individual.⁷⁶ One storage location collects and stores the interviewee-facing documents, the consent form and interview data sheet.⁷⁷ The second digital storage location stores testimonial materials—with no last names of any of the interviewees—meaning the post-interview documents, the interview sheet and index coding sheet.⁷⁸ It also permanently stores the Zoom recordings.⁷⁹ Both “online storage locations” are held on a highly secure online platform. Within this platform is where each firm and individual interviewer will have folders for their relevant uploads using the unique identifier number. PILPG and the database host are the only organizations with access to all folders for management purposes.

H. Psychosocial Support for Investigators

Lastly, psychosocial support is not only important for victims and witnesses, but for investigators as well. Investigators are exposed to each witness’ story, yet are also required to maintain

76. See PILPG, *supra* note 48, at 11.

77. See *id.*

78. See *id.*

79. See generally *id.* at 4, 11.

professional candor, for up to multiple hours a day, and for this may experience secondary traumatic stress.⁸⁰ Interviewing victims of human rights violations can also put investigators at risk of developing vicarious trauma.⁸¹ Signs of vicarious trauma include, but are not limited to, feeling anxious, afraid, vulnerable, depressed or hopeless; experiencing lingering feelings of anger, rage and sadness about interviewee's victimization; becoming overly involved emotionally with interviewees; and or physical symptoms such as disturbed sleep, easily startled, rapid heartbeat, shallow breathing, nausea.⁸²

Over time, excessive and prolonged emotional, physical, and mental stress may lead to burnout: a "*physical, emotional or mental exhaustion, accompanied by decreased motivation, lowered performance and negative attitudes towards oneself and others,*"⁸³ which sets in gradually with symptoms that are not felt immediately.⁸⁴ To account for this, PILPG provided a resource guide for interviewers as well, sharing best practices for

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80. *Secondary Traumatic Stress*, NAT'L CHILD TRAUMATIC STRESS NETWORK, www.nctsn.org/trauma-informed-care/secondary-traumatic-stress ("Secondary traumatic stress is the emotional duress that results when an individual hears about the firsthand trauma experiences of another.") [<https://perma.cc/AKD6-6PCG>].
81. *Secondary Traumatic Stress: Introduction*, NAT'L CHILD TRAUMATIC STRESS NETWORK, www.nctsn.org/trauma-informed-care/secondary-traumatic-stress/introduction [<https://perma.cc/UkJ3-RPHG>]. Also called "secondary traumatization," vicarious trauma is the emotional residue of exposure that counselors have from working with people and hearing their trauma stories as counselors become witnesses to the pain, fear, and terror that trauma survivors have endured. It is a state of tension and preoccupation from the stories/trauma experiences described by survivors. Anyone who engages empathetically with survivors of traumatic incidents, torture, and material relating to their trauma, is potentially affected.
82. *What is Vicarious Trauma?*, OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/program/vtt/what-is-vicarious-trauma> [<https://perma.cc/XE9P-E8HW>].
83. *Burnout*, AM. PSYCH. ASS'N DICTIONARY, <https://dictionary.apa.org/burnout> [<https://perma.cc/AL9A-JNW2>].
84. Christina Maslach & Michael P. Leiter, *Understanding the Burnout Experience: Recent Research and its Implications for Psychiatry*, WORLD PSYCH., June 2016, at 103, 103.

psychological self-care before, during, and after the interviews.⁸⁵ Additionally, PILPG holds bi-weekly psychosocial check-ins. For one hour every other week, PILPG staff members open a zoom room and welcome any investigator who wishes to join, share experiences, hear from others, to ask questions, and/or, to raise concerns and work out solutions. These are opportunities to both discuss stories that documenters may have heard and are having trouble processing, but have also turned into opportunities to ask the team questions about the workflow and logistics.

I. Implementing the Workflow Protocol

Once the system was built, the next step became to spread the word about the initiative in a safe, yet effective manner, meaning PILPG was keen to solicit a large number of interviewees, but did not want to advertise too broadly and risk malicious actors infiltrating the intake process or online storage methods.

Outreach began slowly and meticulously, starting only with a small group of civil society organizations who may know of candidates to be interviewed. Individual lawyers and investigators part of the Ukraine Memorialization and Accountability Initiative, many of whom are Ukrainian, reached out to their own personal networks.⁸⁶ When close-knit civil society reach outs were exhausted, PILPG and partners expanded outreach using social media, while continuing to maintain contact and meet with additional civil society organizations.

J. Communication With Witnesses

Because investigators were not going door to door to meet with witnesses, the team had to create a system for witnesses to reach out to PILPG, and for individual investigators to communicate with witnesses and to set up a time for an interview

85. *See generally Collection of Information*, PUB. INT'L L. & POL'Y GRP., www.publicinternationallawandpolicygroup.org/collection-of-information-ukraine-accountability-initiative [<https://perma.cc/R42S-3RQV>].

86. *See Ukraine Accountability Initiative*, PUB. INT'L L. & POL'Y GRP., <https://www.ukrainetjdoc.org/ukraine-accountability-initiative-intake-form> fbclid=IwAR34Xdbuy12XIyAGkvlQNWJEvKxttaPKTjUkAs_bkRwXYNP7ut_G2eXCAtU (potential interviewee form) [<https://perma.cc/WE65-HKKB>].

and collect the required consent form.⁸⁷ PILPG created a Signal⁸⁸ account and a Protonmail⁸⁹ account to communicate securely with potential witnesses.⁹⁰

When witnesses do reach out to PILPG, they fill out an interest form on the PILPG webpage.⁹¹ This form feeds into a system that automatically assigns a seven-digit unique identifier code for the witness.⁹² PILPG and each law firm partner has a team member to monitor the online database on a regular basis, and to then assign interviewers for new witnesses.

The investigator then contacts the interviewee via their preferred communication method and requests that the interviewee review and submit the consent form and interview data sheet through the unique firm links, with the top language preference the interviewee noted in the Interest Form.⁹³ Once the interviewee fills out the forms, they are automatically uploaded to an online folder for the respective firm for the respective language.

If needed, PILPG would then schedule with an interpreter. In addition to the approximately 100 volunteer investigators, PILPG worked with a cohort of volunteer interpreters who agreed to assist with the interviews that needed Ukrainian or Russian interpretation. PILPG maintained an existing relationship with two interpreters in particular who, early on into the planning of the Initiative, put together an impressive cohort of freelance interpreters who were eager to contribute their skills towards this cause. It should be noted that before interpreting for any interview, each interpreter was required to sign a confidentiality

87. *See id.*

88. Signal is an independent nonprofit providing secured, private messaging services; it avoids both advertisements and tracking users. *See* SIGNAL, <https://signal.org/> [<https://perma.cc/B3XG-AEZZ>].

89. Proton is an opensource private messaging service committed to protecting privacy; its refuses to sell consumer data and has safeguards against cybercrime. *About*, PROTON, <https://proton.me/about> [<https://perma.cc/SQ3T-25MZ>].

90. *See The Ukraine Memorialization and Accountability Initiative, supra* note 2.

91. *See Ukraine Accountability Initiative, supra* note 86.

92. *See* PILPG, *supra* note 39.

93. *See Ukraine Accountability Initiative, supra* note 86.

agreement.⁹⁴ Furthermore, if an interpreter is required, the investigator consults the interpreter availability spreadsheet PILPG shared with each cohort to determine the times, which could be proposed to the witness. The investigator then coordinates with the witness on an appropriate date and time for the interview by offering at least three times that the interviewee could choose from. When a date and time for the interview is arranged, the interviewer contacts a designated PILPG team member, via Signal, to request the contacts of the interpreter who is available on that day and time according to the interpreter availability spreadsheet. Upon receiving the contact information of the interpreter from PILPG, the investigator contacts the interpreter and agrees on the specific date and time. The investigator then schedules the interview and shares the Zoom information with the interpreter and the witness ahead of the interview.

Lastly, if the interview is being conducted with interpretation, it is recorded in both languages. Zoom has the ability to record the same meeting in two languages, as long as there are two people to record, one in each language channel, and each records locally, or to one's own computer.⁹⁵ If needed, an associate would join the interview to simply record the alternate language.

K. The Interview

The interview begins with introductions, an explanation of logistics, and a run through of the witness' consent. While the witness submitted consent forms in advance, the interviewer would confirm all of the answers again with the witness, adjusting for any changes. The investigator is instructed to discuss consent with the witness, including the consent to record, before recording the interview, and note that, once the recording is turned on, they will need to go over the consent again, as the consent is required to be recorded.⁹⁶

94. See PILPG, *supra* note 39.

95. See *Using Language Interpretation in Your Meeting or Webinar*, ZOOM, <https://support.zoom.us/hc/en-us/articles/360034919791-Using-Language-Interpretation-in-your-meeting-or-webinar> (Jan. 21, 2023) [<https://perma.cc/8FTQ-GVMN>].

96. See PILPG, *supra* note 39.

All interviewers are required to have their cameras on, but witnesses retain the choice to remain on or off camera.⁹⁷ Also, the witness is not admitted to the zoom room until the scheduled time of the interview. Only investigators and interpreters are able to join early to test the interpretation and other technology. Before admitting the witness, the investigator is able to change their screen name to their preferred name, rather than “PILPG 1,” for instance. PILPG advised that investigators with family or other connections to Ukraine or Russia may consider changing their screen name to their first names only. After admitting the witness—but before turning the recording—the investigator would explain to the interviewee that, for safety reasons, PILPG assigns unique numbers to the interviewees.⁹⁸ After giving this explanation, the investigator changes the witness’ screen name to their unique ID number.⁹⁹

The investigator then proceeds with the interview according to PILPG’s Interview Sheet, or Questionnaire, a document of approximately ten pages with questions to guide the investigator related to potential events occurring during or after the February 2022 invasion.¹⁰⁰ For reasons previously mentioned, PILPG decided to focus on collecting witness statements only, and not acquiring photo or video evidence from witnesses.¹⁰¹

The Interview Sheet is for the interviewers to begin filling out before the interview, to complete after conducting the interview, and to upload to the investigator’s online folder or by entering the information directly on the documentation database, if preferred.¹⁰² This document contains the script for the interviewer and space for brief note taking during the interview to assist the interviewer with the indexing.¹⁰³ Any notes taken during the

97. *Id.*

98. *Id.*

99. *See id.* (“Each interview is organized according to an automatically generated ID number, which means that the names of witnesses do not appear anywhere.”).

100. *See Additional Resources: Sample Interview Questionnaire, supra* note 63.

101. *See* PILPG, *supra* note 40.

102. *See* PILPG, *supra* note 48, at 10-12.

103. *See Additional Resources: Sample Interview Questionnaire, supra* note 63.

interview on the questionnaire are destroyed immediately after indexing and populating the database.¹⁰⁴

VI. DATA SHARING

As mentioned above, different documentation missions have different goals. These may include building a historical record, victim catharsis, and to contribute to prosecutions.¹⁰⁵ One of the main goals of PILPG's initiative was to be able to provide data and witness statements to accountability mechanisms to contribute to official war crimes investigations and eventual criminal accountability proceedings.¹⁰⁶

In August 2022, PILPG initiated conversations with the Independent International Commission of Inquiry on Ukraine about sharing PILPG's data.¹⁰⁷ Together, PILPG and the Independent Commission developed a data-sharing agreement to share access to PILPG's database, interview recordings, and interview summaries prior to the 51st Human Rights Council Session in September 2022.¹⁰⁸

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104. PILPG, *HANDBOOK ON CIVIL SOCIETY DOCUMENTATION OF SERIOUS HUMAN RIGHTS VIOLATIONS* 43 (Frederica D'Alessandra et al. eds., 2016).
 105. See PILPG, *THE ENGINE ROOM & HURIDOCS, HUMAN RIGHTS DOCUMENTATION BY CIVIL SOCIETY: TECHNOLOGICAL NEEDS, CHALLENGES, AND WORKFLOWS* 6 (2020).
 106. See PILPG, *supra* note 104, at 4, 147.
 107. See *Independent International Commission of Inquiry on Ukraine*, U.N. HUM. RTS. COUNCIL, www.ohchr.org/en/hr-bodies/hrc/iicshr-ukraine/index [<https://perma.cc/QGZ2-E7KL>]; see also Letter from Pub. Int'l L. & Pol'y Grp.'s Circle of Former Ambassadors to the Off. of the High Comm'r for Hum. Rts., Member States of Hum. Rts. Council, and U.N. Hum. Rts. Comm. (July 1, 2022), <https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/62c45270779b2045567138f8/1657033329965/PILPG+Statement+Former+Ambassadors+to+the+HRC.pdf> [<https://perma.cc/T36R-YSTP>].
 108. See Erik Møse (Chair of the Independent International Commission of Inquiry on Ukraine), Update for the Fifty-First Session of the Hum. Rts. Council (Sept. 23, 2022), www.ohchr.org/en/statements/2022/09/update-chair-independent-international-commission-inquiry-ukraine-51st-session [<https://perma.cc/BZ3Q-VNHZ>].

VII. RESULTS AND LESSONS LEARNED

As a result of the Ukraine Memorialization and Accountability Initiative, PILPG paved the road for the future of documentation. This section shares some insights and lessons learned following the launch of the initiative and discusses how geographical context plays a large role in any mission or investigation.

While the initiative was slow to gain traction with Ukrainians, it eventually grew into a large operation that was able to accommodate a consistent flow of interviews. This initial hesitation can likely be explained by the fact that the Russian Federation is proficient at cyberwarfare, likely chilling desire to speak to investigators in any case, but especially remotely.¹⁰⁹ Moreover, there is well documented evidence of civilians being detained by Russians in the first five months of the war.¹¹⁰ According to the New York Times, by April 2022, “[t]he United Nations Human Rights Monitoring Mission in Ukraine has documented 287 cases of enforced disappearances and arbitrary detentions of civilians by Russia and says the total is almost certainly more, but probably in the hundreds, rather than the thousands.”¹¹¹ It is understandable that this threat would initially discourage victims and witnesses from coming forward in this context.

VIII. DOCUMENTATION: TOO MUCH OR NOT ENOUGH

Some commenters have made claims of “over documentation” and that too much documentation is detrimental for victims, but this is not the case.¹¹² A key reason for this concern suggests that

109. CONG. RSCH. SERV., IF11718, RUSSIAN CYBER UNITS 1 (2022).

110. Carlotta Gall, *Inside Russia’s Brutal Detentions of Ukrainians*, N.Y. TIMES (Aug. 16, 2022), www.nytimes.com/2022/08/16/world/europe/inside-russias-brutal-detentions-of-ukrainians.html [<https://perma.cc/CY8E-EJHB>].

111. *Id.*

112. Priyanka Shankar, *Going After War Crime Perpetrators*, DEUTSCHE WELLE (July 14, 2022), www.dw.com/en/icc-chief-calls-for-overarching-strategy-to-probe-war-crimes-in-ukraine/a-62476910 (“While it is a good thing, over documentation creates potential traumatization every time you interview victims and even the witnesses. There are also some risks with multiple testimonies being gathered and during the trial, figuring out the difference

speaking to a witness more than once may invalidate what they have to say if they are on the record potentially contradicting themselves, leading to impeachment on the stand due to a “prior inconsistent statement.”¹¹³ This is mainly a concern of lifelong prosecutors who may not fully grasp the very high number of perpetrators and victims. As there are hundreds of thousands of potential witnesses, the likelihood of witness impeachment is not as high as in ordinary, domestic cases.¹¹⁴ Moreover, most of the prosecutors and representatives perpetuating this false narrative take ages to investigate themselves and inhibit other types of transitional justice mechanisms from coming to fruition.¹¹⁵

For instance, twenty-five years ago, the Yugoslav tribunal crushed the Bosnian truth commission because of double testimony, or what Jasna Dragovic-Soso¹¹⁶ called “institutional rivalry.”¹¹⁷ In her article, she writes that at a 2000 conference, “ICTY officials feared that the TRC could undermine the Tribunal’s own investigations and decisions, witness protection

between each of the testimonies could be challenging.”)
[<https://perma.cc/9FMT-UTVP>].

113. EUROJUST ET AL., *supra* note 62, at 6; *see also* Rome Statute of the International Criminal Court art. 69, ¶ 7(a), July 17, 1998, 2187 U.N.T.S. 90 (explaining that witness’ credibility may be impeached by evidence that the witness made a prior inconsistent statement).
114. *See generally* Brianne McGonigle Leyh, *Changing Landscapes in Documentation Efforts: Civil Society Documentation of Serious Human Rights Violations*, 33 UTRECHT J. INT’L & EUR. L. 44, 47 (2017).
115. *See generally* Laurin-Whitney Gottbrath, *What Counts as a War Crime and Why They’re So Hard to Prosecute*, AXIOS (Mar. 23, 2022), www.axios.com/2022/03/22/russia-putin-war-crimes-icc-ukraine [<https://perma.cc/DE69-PCMZ>].
116. Jasna Dragović-Soso is a professor of politics and international relations at Goldsmiths College. Her work and research is focused on the areas of “nationalism and the role of intellectuals, state disintegration, nationalist (‘ethnic’) conflict and international intervention, and transitional justice and the social construction of memory.” *Jasna Dragovic-Soso*, GOLDSMITHS UNIV. OF LONDON, www.gold.ac.uk/politics-and-international-relations/staff/dragovic-soso/ [<https://perma.cc/RD7T-XP3Z>].
117. Jasna Dragović-Soso, *History of a Failure: Attempts to Create a National Truth and Reconciliation Commission in Bosnia and Herzegovina, 1997–2006*, 10 INT’L J. TRANSITIONAL JUST. 292, 294 (2016).

programme and secret indictments.”¹¹⁸ Ultimately, the Yugoslav tribunal’s opposition was one of the biggest factors in inhibiting the commission’s launch.¹¹⁹ By the time the commission launched in 2001, the President of the Tribunal issued a statement ensuring “that this national initiative not run counter to the mission of the Tribunal and that it be consonant with the powers conferred on the Tribunal by the Security Council.”¹²⁰

The truth of the matter is that the magnitude of atrocities has spurred the need for capable and knowledgeable documenters to fill the gaps left by the ICC and Ukrainian Office of the Prosecutor. As noted by one expert “there is more than enough work to be done, so newcomers are welcome.”¹²¹ This is because the aforementioned offices, even combined, do not have the capacity to conduct timely and thorough investigations into every allegation.¹²² Therefore, civil society documenters, oftentimes volunteers, have become critical to accountability investigations, especially with the influx of technological tools more readily available to help groups collect and organize their information in an efficient manner.¹²³ And furthermore, there are also other reasons to document atrocity crimes outside of preparing for trial, such as for creating a historical record, or providing a space for victim catharsis.¹²⁴ Accountability is only one reason that these processes should have to wait for only official investigators to make their way to the scene.

With that said, the extra hands must be properly trained to be effective documenters.¹²⁵ To aid and expedite civil society documentation, larger NGOs—including PILPG—have stepped

118. *Id.* at 302.

119. *Id.* at 303.

120. Press Release, International Criminal Court for the Former Yugoslavia, The ICTY and the Truth and Reconciliation Commission in Bosnia and Herzegovina, U.N. Press Release JL/P.I.S./591-e (May 17, 2001), www.icty.org/en/press/icty-and-truth-and-reconciliation-commission-bosnia-and-herzegovina [<https://perma.cc/P8PC-RKEW>].

121. Hendrix, *supra* note 13.

122. *See id.*

123. Leyh, *supra* note 114, at 46, 48-50. *See generally* PILPG ET AL., *supra* note 15, at 6-7.

124. PILPG ET. AL, *supra* note 15.

125. *Id.* at 15.

in to train and mentor newer documenters, creating greater standardization and professionalism among documenters.¹²⁶ This ensures that documenters are collecting information in a responsible way that does no harm and stored in a way that makes the evidence potentially useful to prosecutors, if that is the documenters goal.¹²⁷

To help standardize documentation done across conflict zones, the International Criminal Court, in collaboration with Eurojust,¹²⁸ published documentation guidelines for civil society.¹²⁹ The guidelines are intended to cater to the civil society documentation community who seek to collect and preserve evidence that may be offered to and/or used in accountability proceedings by drawing on and compiling existing resources.¹³⁰ While these guidelines are thorough and welcome, the ICC and Eurojust also heed caution towards civil society, claiming that too many organizations “give rise to the risk of over-documentation, increases the risk of re-traumatization and has the potential to compromise the quality of evidence ultimately available for accountability purposes,”¹³¹ suggesting civil society efforts may be counterproductive.¹³² While important to recognize, focusing on supporting civil society documenters ought to be top of mind, as without their efforts, many stories and pieces of evidence may go uncollected.¹³³

Ultimately, as long as organizations are adhering to the principles of do no harm, informed consent, and confidentiality,

126. See Leyh, *supra* note 114, at 52.

127. *Id.* at 46, 50, 52.

128. “Eurojust is the European Union Agency for Criminal Justice Cooperation, coordinating investigations of serious cross-border crime in Europe and beyond.” *About Us*, EUROJUST, <https://www.eurojust.europa.eu/about-us> [<https://perma.cc/2EHS-ERZA>].

129. See generally EUROJUST ET AL., *supra* note 62, 1-59.

130. *Id.* at 5.

131. *Id.* at 6.

132. *Id.* Notably, the Ukraine Accountability Initiative Workflow Protocol is consistent with these guidelines.

133. See *id.* at 5.

well-trained documenters should be welcomed to the international law, accountability, and transitional justice communities.¹³⁴

IX. CONCLUSION

The Ukraine Memorialization and Accountability Initiative is the first of its kind in remote documentation. For this reason, PILPG and its partners dedicated significant time and effort into developing a workflow protocol that is clear, comprehensive, easy to follow, and leads to a secure and reliable documentation methodology. From this process, a few key insights can be drawn and applied to future remote missions.

- Key to determining a documentation methodology is the location for which the conflict occurred or is occurring, and where witnesses may be located. The remote documentation structure is sensible to implement when a conflict is ongoing or refugees are widely displaced with access to reliable internet access. It lends itself to be able to collect a high number of statements in a shorter amount of time. With that said, one must also consider the perpetrator. And in this case, with Russia being a known top-cybercriminal, astute care was given to the planning process to ensure the safety of Ukrainian witnesses who offered to share their testimony.
- *When interviewing remotely, additional considerations must be offered towards witness trust and privacy.* First, victims and witnesses may be more hesitant to speak to an unknown organization via Zoom. For this reason, PILPG spent a significant amount of time explaining the initiative to trusted Ukrainian civil society organizations, who became a prime vehicle for connecting PILPG with witnesses. Moreover, with remote documentation comes additional privacy and security protocols, and organizations must make sure that its methodology is compliant with all legal structures for which it operates in, and most importantly, respects a witness' wishes. Informed consent is of the highest priorities whenever one is speaking with a witness. And when interviews are recorded, and/or information may potentially be passed to other data controllers, it is that much more crucial to

134. Leyh, *supra* note 114, at 53-54.

spend the time explaining and emphasizing such considerations.

- Just as with in-the-field documentation, investigators must be flexible and able to adapt to new protocols as developments arise. Much time was spent developing and testing the protocol before its full implementation. With that said, as investigators conducted more and more interviews, the workflow protocol was consistently tweaked and updated to adapt to realizations from those interacting with witnesses. For this reason, it was critical for investigators who consistently refer to the protocol before proceeding with an interview, as like the witnesses, the investigative cohort is spread out and less information is spread via word of mouth.
- *As with any conflict, there must be partnership, collaboration, and coordination between organizations.* The Ukraine Memorialization and Accountability Initiative is a collaborative effort between PILPG and four law firms. To maintain cohesion, PILPG held regular check-in meetings to share updates, discuss progress with the initiative, and work through hiccups that may have arisen since its implementation. These calls were critical to ensuring consistency and momentum. Additionally, PILPG team members attend regular coordination calls to ensure that PILPG's effort remains complementary to other ongoing efforts by other organizations.
- *Lastly, documentation is intended to be victim-centered and victim-serving.* Official investigations are of the utmost importance to hold perpetrators of atrocity crimes accountable. With that said, they are often time consuming and do not have the resources to investigate and prosecute all alleged offenders. For this reason, civil society's efforts are integral to the upholding of the rule of law in Ukraine by assisting with these investigations and preserving a historical record of the war. Moreover, there are additional reasons for documenting and speaking with witnesses that are reciprocal to accountability, and therefore, civil society may effectively step in to fill this need.

As it stands, the Ukraine Memorialization and Accountability Initiative established a blueprint for those seeking to take advantage of modern technology to conduct documentation across the globe.

