



War Funders and Profiteers: Economic Complicity in International Crimes in Ukraine and Beyond

Anton Moiseienko, Emily Bell, Matthew Neuhaus (ANU)
& Dmytro Koval (Kyiv-Mohyla Academy)



Australian
National
University

Contents

I	Foreword	1	VIII	International criminal law and economic complicity	30
II	Acknowledgments	2	A.	Complicity provisions in international criminal law	30
III	Abbreviations and acronyms	3	B.	Funding international crimes	31
IV	Executive summary	4	1.	Actus reus	31
V	Introduction	8	2.	Mens rea	32
VI	Economic complicity in international crimes before Ukraine	10	C.	Profiting from international crimes	34
A.	Post-World War II trials	10	D.	Economic complicity and reparations	35
1.	'Industrialist' trials at Nuremberg	10	E.	Domestic AML/CTF and sanctions laws	36
2.	Pillage and plunder	12	F.	Legal reform options	37
3.	Labour exploitation	13	1.	International criminal law options	37
4.	Membership in criminal organisations	13	2.	AML/CTF and sanctions options	39
5.	Illicit trade	14	IX	Conclusions and recommendations	41
B.	Other international courts and tribunals	14	ANNEX 1:	Economic complicity in international crimes (pre-Ukraine)	44
C.	Cases in domestic courts	16	ANNEX 2:	Economic complicity in international crimes (Ukraine)	46
1.	Cases against corporations	16	ANNEX 3:	Russian PMCs' operations in Africa and funding	48
2.	Cases against individuals	17	ANNEX 4:	Western governments' messaging about doing business in Russia	52
D.	Conclusion	17	About authors		54
VII	Economic complicity in international crimes in Ukraine	18			
A.	Grain pillage	18			
1.	Stages of grain pillage	18			
2.	Legal status	19			
B.	Funding PMCs	21			
C.	Taking over residential property in occupied territories	24			
1.	Expropriations and 'reconstruction' in Mariupol	24			
2.	Legal status	26			
D.	Military bloggers	26			
E.	Doing business and paying taxes in Russia	27			
F.	Conclusion	29			

Foreword

The ANU Centre for International and Public Law is delighted to publish this report ‘War Funders and Profiteers: Economic Complicity in International Crimes in Ukraine and Beyond’.

The Centre for International and Public Law has a long and proud tradition of supporting excellent, timely and impactful international law research, a tradition which this report follows. Individual criminal liability for international crimes has long been at the forefront of international law. This report argues for the rigorous and robust application of international criminal law to those economically complicit in international crimes—the unscrupulous war-funders and profiteers who deliberately gain from or exploit the suffering of others. In doing so, it provides a new way forward for increasing accountability in international law, and seeks to widen the application of international justice over those benefiting from international crimes.

The report relies on a consideration of domestic and international cases to build a legally rigorous background for its important recommendations. As the report notes, the Nuremberg trials themselves considered issues of economic complicity in international crimes, something that has dropped away in the decades that have followed. However, as the scourge of war unfortunately still devastates communities around the world, it is our responsibility as an international community to fight for peace—including by holding those accountable who make economic profit from such devastation.

The Centre for International and Public Law proudly supports this report, and hopes that its recommendations are discussed widely.

Associate Professor Imogen Saunders

Director, ANU Centre for International and Public Law

II

Acknowledgments

The authors would like to thank those who have provided feedback on earlier drafts of this report, including Professor Douglas Guilfoyle, Professor Don Rothwell and the reviewer who wished to remain anonymous. We also benefitted greatly from the comments shared by participants at a workshop organised by ANU's Centre for International and Public Law (CIPL) in November 2024. We are grateful to CIPL's Director, Imogen Saunders, for her support. The views expressed in the report are the authors' own.

Cover image: Dzasohovich (cropped by Florstein), CC BY-SA 4.0
<<https://creativecommons.org/licenses/by-sa/4.0/>>, via Wikimedia Commons



III

Abbreviations and acronyms

AFRC	Armed Forces Revolutionary Council
AIS	automatic identification system
AML	anti-money laundering
AUC	<i>Autodefensas Unidas de Colombia</i> (United Self-Defenders of Colombia)
CAR	Central African Republic
CTF	counter-terrorist financing
DPR	Donetsk People's Republic
EU	European Union
FARDC	Armed Forces of the Democratic Republic of the Congo
FATF	Financial Action Task Force
FIU	financial intelligence unit
FSB	Federal Security Service of the Russian Federation
GRU	Military Intelligence Service of the Russian Federation
ICA	Investment Canada Act
ICC	International Criminal Court
ICIJ	International Consortium of Investigative Journalists
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Former Yugoslavia
IMT	International Military Tribunal (Nuremberg Tribunal)
IMTFE	International Military Tribunal for the Far East (Tokyo Tribunal)
IT	information technology
LPR	Luhansk People's Republic
OSINT	open source intelligence
PMC	private military company
RUF	Revolutionary United Front
SS	Schutzstaffel
UN	United Nations
UK	United Kingdom
US	United States

IV

Executive summary

Wars offer an opportunity for unscrupulous parties to advance their political interests by funding warfare, including international crimes, or amass wealth through their commission. Despite the persistence of economic complicity in international crimes, international criminal law is remarkably ill-equipped to address it.

This inability has been evident for a long time but is especially acute in the context of Russia's full-scale invasion of Ukraine. A wide array of forms of economic complicity in international crimes is on display in Russia's aggression against Ukraine, including the pillage and sale of Ukrainian grain; funding of private military companies; and taking over residential property in occupied territories. Despite ongoing discussions of setting up an international criminal tribunal for Ukraine, issues of economic complicity have been overlooked in the international criminal law discourse yet again.

The assumption seems to be that domestic anti-money laundering (AML), counter-terrorist financing (CTF) and sanctions efforts in Western jurisdictions are sufficient to address those issues. This view needs to be re-examined. These efforts are best seen as a complement to, rather than substitute for, a robust international criminal justice response. There are also ways to better leverage the synergies between international criminal justice efforts on the one hand and domestic AML/CTF and sanctions initiatives on the other, including through increasing the number of designations based specifically on allegations of economic complicity in international crimes.

In international criminal law, there are multiple obstacles to addressing economic complicity. Key concepts are either vague or not consistently applied. In the case of funding international crimes, it is uncertain how closely connected the contribution needs to be to the commission of a particular crime in order to attract criminal responsibility (for example, what if one funds a military unit that is involved in widespread war crimes?). Nor is there a clear and consistent set of rules as to how intent or knowledge can be established or inferred, for instance where information about a particular unit's involvement in international crimes is widely available.

The gaps are particularly striking insofar as profiting from international crimes is concerned. Short of situations where the profiteer was already involved *before or during* the commission of the crime, no criminal responsibility ensues for involvement in international crimes downstream, such as the sale of looted commodities or misappropriated residential property. This is in contrast to domestic legal systems, which allow criminal prosecutions for dealing with proceeds of crime.

These shortcomings also hobble efforts to secure reparations for victims of international crimes. If no prosecutions can be brought against those who are both morally responsible for such crimes *and* well-resourced financially (i.e. funder and profiteers), one runs the risk of issuing reparation awards that are doomed to remain symbolic. This is why, in one case, the International

Criminal Court (ICC) has felt compelled to crowdfund the payment of reparations from states, organisations and private individuals, rather than pay out reparations from perpetrators' assets.

In summary, this report calls for legal reform to make international criminal law capable of addressing economic complicity in international crimes. To that end, suggested wording of relevant provisions is proposed. The report also urges a political commitment to ensure that economic complicity in international crimes is addressed both internationally and domestically via prosecutions based on universal jurisdiction. Specifically, it makes the following recommendations:

Recommendation 1 In addition to their ongoing efforts to ensure accountability for international crimes committed in Ukraine, the Ukrainian government and its international partners should commit to pursuing accountability, including through individual criminal responsibility, of those who fund international crimes committed in Ukraine or profit from them.

Recommendation 2 States should affirm their willingness to investigate and prosecute the activities of those who fund international crimes or profit from them based on universal jurisdiction. This should include international crimes committed in Ukraine and elsewhere.

Recommendation 3 Any Ukrainian or international mechanism set up to adjudicate international crimes committed in Ukraine, such as a special tribunal for the crime of aggression, should enable prosecutions for funding international crimes committed in Ukraine or profiting from them.

Recommendation 4 Separate provisions on the individual criminal responsibility of those who fund or profit from international crimes should be included in the statute of any international mechanism set up to adjudicate international crimes committed in Ukraine, as well as in domestic laws, including the law of Ukraine.

As an example, these provisions could be along the following lines:

A person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person ...

- (a) Intentionally provides funds or other material support to another person in connection with the commission of the crime in the knowledge of the other person's intention to commit the crime. The provision of such funds or other material support need not have any effect on the commission of the crime.

The knowledge of the other person's intention to commit the crime can be inferred from the public availability of such information at the relevant time, including information about the other person's behaviour at the time closely preceding the commission of the crime.

- (b) Intentionally seeks, directly or indirectly, financial or other material profit from the crime, including by handling its proceeds, in the knowledge of the circumstances that make up the crime.

The following activities do not, in and of themselves, constitute seeking financial or other material profit from the crime:

- Good-faith journalistic, reporting or other documentation activities provided that such activities are intended to expose the crime;
- Legal representation of any person in any legal proceedings relating to the crime.

- (c) Intentionally deals with the proceeds of any of the crimes within the jurisdiction of the Court, unless such dealing involves the receipt of payment in consideration for goods or services provided in good faith.

Recommendation 5 Separate provisions on the individual criminal responsibility of those who fund or profit from international crimes should be adopted in domestic legislation as soon as possible.

Recommendation 6 The Office of the Prosecutor at the International Criminal Court should consider the practical likelihood of securing reparations as one of the factors in the exercise of its prosecutorial discretion. In other words, if a potential defendant benefitted financially from the alleged crime and therefore is in possession of assets that could be used to pay reparations to victims, this can be legitimately considered in prioritising the prosecution of that defendant.

Recommendation 7 Whenever sufficient evidence of involvement in international crimes is available, including through funding them or profiting from them, states should impose sanctions on that basis, rather than based on more generic sanctions criteria, such as being affiliated with a particular government.

Recommendation 8 The Ukrainian government and its international partners should continue to publicise widely the international crimes committed in Ukraine. Sanctions risks and risks of individual criminal responsibility involved in funding such crimes or profiting from them should form part of their overall communications strategy.

Recommendation 9 Law enforcement units responsible for the investigation and prosecution of money laundering should cooperate with their counterparts responsible for the investigation and prosecution of international crimes so as to bring money laundering prosecutions against individuals and companies involved in the laundering of proceeds of international crimes.

Recommendation 10 Financial intelligence units should work to identify typologies related to the laundering of proceeds of international crimes and, together with regulatory agencies, disseminate them among regulated businesses.

Russia's ongoing war against Ukraine is an affront to international law and international justice. It is a source of great destruction. But it also presents opportunities for some to amass wealth or gain political power. Networks of individuals and companies who fund Russia's crimes or benefit from them are central to Russia's war effort. Some of them are subject to Western sanctions; others are not. Up until now, none of them have been discussed as potential defendants in future war crime tribunals, international or domestic.

This report is an attempt to change this. The moral responsibility for international crimes¹ committed during the war in Ukraine arguably does not end with either the Russian soldiers who carried them out or Russia's leadership. This responsibility may also be shared by those who fund private military companies (PMCs) operating in Ukraine; sell off the homes of displaced Ukrainian families; pillage Ukrainian grain; and otherwise embed themselves in an economy reliant on war crimes and crimes against humanity. This report explores whether this moral responsibility can translate into legal responsibility under international criminal law.

An examination of this topic is long overdue. The experience of Russia's war against Ukraine calls for a much-needed re-appraisal of international criminal law rules on economic complicity. This war is generating vast amounts of information in real time, thereby shedding light on a broad array of typologies of war funding and profiteering. The availability of this information lends further urgency to the question of how international criminal law should respond. As the Ukrainian government and multiple other governments discuss the establishment of a tribunal for the crime of aggression against Ukraine, international criminal responsibility for private parties' economic complicity in international crimes needs to be considered, too.

The importance of this question extends far beyond Ukraine. For too long, the issues of war funding and profiteering have been overlooked despite the pioneering work of certain civil society organisations, such as The Sentry,² and other experts.³ This neglect means that efforts are rarely, if ever, made to bring to international criminal responsibility those who are most capable of paying reparations to victims, as opposed to impecunious low-level offenders. This leads to paradoxical situations, such as the International Criminal Court's attempt to crowdfund the payment of

1 Understood here as crimes within the jurisdiction of the International Criminal Court, i.e. war crimes, crimes against humanity, genocide and wars of aggression.

2 The Sentry's reports are available at <https://thesentry.org/reports/>.

3 The two recent book-length studies of the subject of which we are aware are Nina HB Jørgensen (ed), *The International Criminal Responsibility of War's Funders and Profiteers* (Cambridge University Press, 2020) and Laura Ausserladscheider Jonas, *Individual Criminal Responsibility for the Financing of Entities Involved in Core Crimes* (Brill, 2021).

reparations from states, organisations and private individuals, rather than pay out reparations from perpetrators' assets.⁴

There is also a need to reconsider the focus on sanctions as the *sole* response to private parties' economic entanglement in Russia's war. Sanctions have been one of the collective West's methods of choice in addressing Russia's activities, but their effect is limited against those Kremlin-affiliated individuals who are comfortably ensconced within Russia's ruling classes. The prospect of criminal prosecution, internationally or in domestic courts overseas, is more likely to be taken seriously. This does not mean that sanctions need to be abandoned, but the synergies between sanctions and international criminal law should be borne in mind. In particular, sanctions dossiers can create a permanent record of alleged wrongdoing that, in time, can serve as a catalyst for law enforcement action. This can happen in a future international criminal tribunal for Ukraine, Ukrainian domestic courts, or other states' domestic courts based on the principle of universal jurisdiction.

In light of these considerations, the objectives of this report are to:

1. Identify key typologies of funding international crimes and benefitting from them, referred to here as 'economic complicity' in such crimes, based on both prior international experience and Russia's ongoing war in Ukraine;
2. Provide legal analysis of how international criminal law applies to those typologies; and
3. Propose improvements to substantive international criminal law, as well as the interaction between international criminal law and sanctions efforts, to better ensure accountability for economic complicity in international crimes.

The findings and recommendations provided in this report are based on open-source research to identify the typologies of war funding and profiteering; doctrinal legal analysis to assess whether those typologies attract criminal responsibility under international criminal law; and policy analysis to explore the previously overlooked potential synergies between international criminal law, sanctions and other means of undermining the business models of those who fund and benefit from international crimes.

This report is concerned with issues of principle. It does not seek to ascribe responsibility for any activities, legal or otherwise, to any particular person. We cite press reports and other available sources because they identify relevant types of war funding and profiteering that may be occurring, rather than as any indication of who is involved, which is a matter of which we have no independent knowledge and on which we make no comment. That matter is for domestic and international courts and tribunals to determine.

The report is structured in four parts. First, it outlines the typologies of economic complicity in international crimes that emerged in international and domestic case law prior to Russia's full-scale invasion of Ukraine. Second, it discusses how Russia's war in Ukraine evinces a wide variety of further forms of such complicity. Third, the report highlights the gaps in current international criminal law rules dealing with economic complicity and makes the case for law reform. Specifically, it proposes improvements to substantive international criminal law and its institutional framework, as well as the interaction between international criminal law and sanctions efforts, to better ensure accountability for war funding and profiteering. Conclusions follow.

⁴ 'ICC Trust Fund for Victims Issues its First Urgent Funding Appeal of EUR 5 Million to Launch a Reparation Programme for Victims of Dominic Ongwen', *International Criminal Court* (web page, 27 June 2024) <<https://www.icc-cpi.int/news/icc-trust-fund-victims-issues-its-first-urgent-funding-appeal-eur-5-million-launch-reparation>>.

Economic complicity in international crimes before Ukraine

VI

Funding international crimes or benefitting from them is not a new phenomenon. This chapter of the report considers relevant developments before Russia's full-scale invasion of Ukraine in early 2022. Specifically, it traces the genesis rules on economic complicity in international crimes in the post-World War II trials in Nuremberg and Tokyo (A); discusses the jurisprudence of other international courts and tribunals (B); and considers relevant prosecutions in domestic courts (C); followed by a conclusion (D).

A. Post-World War II trials

As early as in the Middle Ages, individuals were occasionally tried on allegations of what we would now describe as war crimes.⁵ Later on, peace treaties concluded upon the end of World War I were meant to address the German looting of Belgium and widespread use of forced labour among other things.⁶ However, it took the establishment of the International Military Tribunal (IMT) in Nuremberg and International Military Tribunal for the Far East (IMTFE) in Tokyo for the first international war crime trials to be held. These were followed by what is often described as 'subsequent Nuremberg trials', i.e. prosecutions brought before US, British and French military courts and tribunals based in Nuremberg, which applied substantially the same law as the IMT.⁷

1. 'Industrialist' trials at Nuremberg

Following considerable deliberation as to which German industrialists, if any, to put on trial,⁸ the IMT charged Gustav Krupp of the eponymous industrial group, but had to stay the proceedings on account of his ill health.⁹ By contrast, three of the twelve subsequent Nuremberg trials carried out by US military tribunals focused on the alleged crimes of Nazi industrialists.

5 Beth Van Schaack and Ronald C Slye, 'A Concise History of International Criminal Law' in Beth Van Schaack and Ronald C Slye (eds) *International Criminal Law: Intersections and Contradictions* (Foundation Press, 2020) 5; Cherif M Bassiouni, 'Chronology of Efforts to Establish an International Criminal Court' (2015) 86(3) *Revue Internationale de Droit Pénal* 1163.

6 Mark A Lewis, 'Blueprints for International Criminal Courts and Their Political Rejection in the 1920s' in Mark Lewis (ed) *The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919–1950* (Oxford University Press, 2014) 78; Jens Thiel and Christian Westerhoff, 'Forced Labour', *International Encyclopedia of the First World War* (web page, 8 October 2014) <<https://encyclopedia.1914-1918-online.net/article/forced-labour/>>.

7 The subsequent Nuremberg trials took place on the basis of Control Council Law No. 10 'Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity'.

8 Talford Taylor, *The Anatomy of the Nuremberg Trials. A Personal Memoir* (Knopf, 1992) 93.

9 *The United States of America v Alfried Krupp et al. (Judgement)* (United States Military Tribunal III-A, Case Ten, 31 July 1948) 1328–1484 ('Krupp case').

One of such ‘industrialist’ trials involved 24 officials of IG Farben, a German chemical company.¹⁰ IG Farben’s development of synthetic nitrate allowed the German military to maintain independence from foreign companies and suppliers,¹¹ whilst its Zyklon B was used in gas chambers for mass extermination.¹² Charges included multiple war crimes and crimes against humanity, and 13 out of the 24 defendants were found guilty. The Tribunal underscored IG Farben’s integration into German military policy:

Farben marched with the Wehrmacht and played a major role in Germany’s program for acquisition by conquest. It used its expert technical knowledge and resources to plunder and exploit the chemical and related industries of Europe, to enrich itself from unlawful acquisitions, to strengthen the German war machine and to assure the subjugation of the conquered countries to the German economy. To that end, it conceived, initiated, and prepared detailed plans for the acquisition by it, with the aid of German military force, of the chemical industries of Austria, Czechoslovakia, Poland, Norway, France, Russia, and other countries.¹³

The other two US industrialist trials concerned six officials of a group of companies controlled by Friedrich Flick (‘Flick trial’)¹⁴ and twelve directors of the Krupp Group (‘Krupp trial’),¹⁵ both being major German industrial conglomerates that benefitted from Germany’s pre-war re-armament and wartime crimes.

Of the 13 groups of trials held by British courts, one directly addressed business involvement in atrocity crimes.¹⁶ The owner and two employees of a company called Tesch & Stabenow were convicted of supplying Zyklon B to the Nazi government knowing that it will be utilised for mass killings in concentration camps.¹⁷ Similarly to the British trials, the French ones mostly dealt with the atrocities committed at concentration camps. However, one of eight trials, the *Roechling* case, was centred around German industrialists engaged in the use of forced labour, plunder and spoliation.¹⁸

The legal strategies involved in US, UK and French industrialist trials differed from case to case. They can be grouped into prosecutions centred around pillage and plunder; labour exploitation; and membership in criminal organisations.

¹⁰ *United States of America v Carl Krauch et al. (Judgement)* (United States Military Tribunal VI, Case Six, 30 July 1948) 1084–1325 (‘IG Farben case’).

¹¹ Jonathan Kolieb, ‘Through The Looking-Glass: Nuremberg’s Confusing Legacy on Corporate Accountability Under International Law’ (2015) 32(2) *American University International Law Review* 569, 583.

¹² Edmund L Andrews, ‘The Business World; IG Farben: A Lingering Relic of the Nazi Years’ *New York Times* (online, 2 May 1999) <<https://www.nytimes.com/1999/05/02/business/the-business-world-ig-farben-a-lingering-relic-of-the-nazi-years.html>>.

¹³ IG Farben case (n 4) 1128.

¹⁴ *The United States of America v Friedrich Flick (Judgement)* (United States Military Tribunal IV, Case Five, 22 December 1947) 1186–1223 (‘Flick case’).

¹⁵ Krupp case (n 9).

¹⁶ Matthew Lippman, ‘War Crimes Trials of German Industrialists: The “Other Schindlers”’ (1995) 9 *Temple International and Comparative Law Journal* 173.

¹⁷ *Prosecutor v Bruno Tesch, (Trial)* (British Military Court, Hamburg, Case No. 9, 1–8 March 1946).

¹⁸ *Trials of War Criminals Before the Nuremberg Military Zone of Occupation Under Control Council Law No. 10* (US Government Printing Office, 1951–1952) vol XIV (‘Roechling case’).

2. Pillage and plunder

Since its inception, international criminal law has treated pillage and plunder as crimes. The precise terminology differs, and the distinction between these two terms, if any, is uncertain.¹⁹ Article 6(b) of the Charter of the IMT listed ‘plunder of public or private property’ as a war crime attracting individual responsibility.

In *Roehling*, Hermann Roehling and four fellow Nazi industrialists involved in the steel industry were found guilty of war crimes and crimes against peace.²⁰ Roehling was charged for his conduct in directing the operations of his firm in occupied Dutch, Belgian and French territories. Under Roehling’s leadership, the firm seized, requisitioned and removed land and machinery from corporations in occupied territories. Once steel production recommenced in occupied territory, the firm charged France disproportionately high prices for its products. The Tribunal found that Hermann Roehling had committed ‘war crimes of an economic nature’,²¹ pointing specifically to his involvement in the ‘systematic looting of the economy’.²²

Krupp concerned a private company that owned, both directly and through subsidiaries, mines, steel and armament plants in Germany. Their dealings included the provision of iron and steel to the Nazi war effort.²³ The judgment details numerous acts of plunder, including the physical removal of machines and materials from occupied territory, changes of corporate property and contractual transfer of property.²⁴ The judgment described the firm as ‘profiting ... from the continental wide anti-Jewish policy of the Nazi regime’ by leasing and purchasing property sequestered in France by the commissioner for Jewish affairs at a below-market price.²⁵ Jewish property owners were not compensated for the transfer of property rights, and some were deported to concentration camps for refusing to hand over company books and accounting data.²⁶

An overarching issue in those cases was the validity of ostensibly consensual transfers of property under duress. In *IG Farben*, the court contrasted legal transfers, where property in occupied territory is transferred from original owners to citizens of the military occupant by free consent, with illegal transfers, where putative consent is obtained ‘by threats, intimidation, pressure, or by exploiting the position and power of the military occupant under circumstances indicating that the owner is being induced to part with his property against his will’.²⁷

Another relevant trial is that of the Reichsbank President Walther Funk. In *Funk*, the defendant was convicted of crimes against peace, crimes against humanity and war crimes. Central to this was Funk’s involvement in procuring an agreement between the Reichsbank and the Schutzstaffel (SS). Under this agreement, the Reichsbank received gold, jewels and currency from the SS. These goods were made up of the personal belongings of individuals murdered at Nazi extermination camps. Coins and bank notes were retained by Reichsbank, whilst gold items were sorted, valued and sold onwards by the bank. Despite Funk’s claim that he was not aware of the origin of articles received by the bank, the Tribunal found that Funk ‘either knew what was being received or

19 Black’s Law Dictionary defines pillage as ‘the forcible taking of property by an invading or conquering army from the enemy’s subjects’: *Black’s Law Dictionary* (5th edn, 1979) ‘pillage’ (page 1033). For a detailed discussion of the difference between pillage and plunder, see Amanda J Perrett, ‘Prosecuting Plunder and Pillage Within the Framework of Internal Armed Conflicts’ (2005) (Spring) *War Crimes Memoranda, Case Western Reserve University School of Law Scholarly Commons*.

20 *Roehling case* (n 18) 1068.

21 *Ibid* 1066

22 *Ibid* 1098

23 *Krupp case* (n 15) 1331.

24 *Ibid* 1345–1456.

25 *Ibid* 1350.

26 *Ibid* 1350–1351.

27 *IG Farben case* (n 10) 1135.

was deliberately closing his eyes to what was being done'.²⁸ While Funk was not charged with or convicted of plunder specifically, the behaviour of which he was convicted could be accurately described as such.

3. Labour exploitation

The use of slave or forced labour to support industrial enterprises was another common typology at Nuremberg. In *Flick*, the Tribunal heard that the Flick concern, a large German industrial firm, had utilised tens of thousands of slave labourers and unpaid prisoners of war to carry out business activities for profit, including assisting with the manufacture and transportation of armament and munitions.²⁹ In its judgment, the Tribunal found that the Flick concern:

were principals in, accessories to, ordered, abetted, took consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with enslavement and deportation to slave labor on a gigantic scale of members of the civilian populations ... under the belligerent occupation of or otherwise controlled by Germany.³⁰

Similarly, Krupp employed labourers from Nazi concentration camps, whilst IG Farben utilised forced labour in its factories and built a concentration camp in Monowitz using inmates as labourers.³¹

4. Membership in criminal organisations

In *Flick*, among other things, the prosecution charged the industrialist Otto Steinbrinck for membership in, and provision of funding to, the SS from 1933 until Nazi Germany's collapse in 1945. The Tribunal found Steinbrinck accessorially liable for crimes committed by the SS, stating that:

One who knowingly by his influence and money contributes to the support thereof [of a criminal organisation] must, under settled legal principles, he [*sic*] deemed to be, if not a principal, certainly an accessory to such crimes.³²

The Tribunal concluded that a man of Steinbrinck's intelligence, who had the means to acquire information about SS activities, could not have been ignorant of the group's criminal nature. The Tribunal further referred to Steinbrinck's willing and continuous membership of the SS, which he maintained despite knowing that his financial contribution 'was being used for the commission of acts declared criminal'.³³ Several of the accused in the *Flick* case were also found guilty of participating in criminal organisations, namely the Nazi Party and a group of Nazi-aligned German industrialists known as Himmler's circle of friends.

In contrast to pillage, plunder and labour exploitation, the offence of membership of a criminal organisation did not become a commonly used tool of international criminal accountability post-Nuremberg. The reason for this is a value judgment involved in designating a particular organisation as criminal in the context of international criminal law, as well as difficult questions about who, if anyone, could be authorised to make the designation. However, as discussed below, a similar logic of identifying specific organisations as undesirable—if not criminal—and imposing financial and travel restrictions on their members manifests itself in the use of targeted sanctions under domestic laws.

²⁸ *Trials of War Criminals Before the Nuremberg Military Zone of Occupation Under Control Council Law No. 10* (US Government Printing Office, 1951–1952) vol I, 306 ('Funk case').

²⁹ *Flick case* (n 14) 1194.

³⁰ *Ibid* 1193.

³¹ *Andrews* (n 12).

³² *Flick case* (n 14) 1216.

³³ *Ibid* 1215.

5. Illicit trade

The IMTFE in Tokyo also had the occasion to consider the economic side of the war of aggression. Its focus was state-orchestrated illicit trafficking. In particular, the Tribunal found that '[i]n order to finance her operations in Manchuria and also in order to weaken the power of resistance of the Chinese, Japan sanctioned and developed the traffic in opium and narcotics'.³⁴ Although the Tribunal did not refer to Japan's drugs policy and trade in any individual verdicts,³⁵ such conduct was recognised as undertaken in support Japan's broader war of aggression. In its indictment, the Prosecution alleged that:

During the whole period covered by this Indictment, successive Japanese governments ... pursued a systematic policy of weakening the native inhabitants' will to resist ... by directly and indirectly encouraging increased production and importation of opium and other narcotics and by promoting the sale and consumption of such drugs among such people.³⁶

Japan's role in facilitating the supply and sale of opium and other narcotics abroad began in the years before the start of World War II. A 1933 report by US Treasury Attaché in Shanghai, Martin R Nicholson, revealed a secret telegram sent from the Kwantung Army chief of staff to Japan's vice-minister of war in 1932, which stated that of the estimated ¥64 million required to administer the Japanese puppet state of Manchukuo, an estimated ¥10 million was to come from opium revenue.³⁷

Despite not being central to any of its judgments, the IMTFE's reference to illicit trade as a way of generating income in support of Japan's war effort provides an indication of another possible modality of states and non-state actors benefitting from either war writ large or, if committed in conjunction with international crimes, from such crimes.

B. Other international courts and tribunals

The Nuremberg and Tokyo trials were the first instalment in a series of ad hoc tribunals created from time to time to address international crimes in the context of a particular conflict, such as the International Criminal Tribunal for Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Since 2002, the International Criminal Court (ICC) has been operating under the Rome Statute as the world's only standing international criminal court. Its jurisdiction encompasses crimes against humanity, war crimes, genocide and the crime of aggression.³⁸ Ukraine has authorised the ICC to exercise jurisdiction over crimes committed in its territory,³⁹ but the ICC cannot exercise such jurisdiction over the crime of aggression unless both Russia and Ukraine ratify the Rome Statute or referral is made by the UN Security Council.⁴⁰

Consistent with the Nuremberg case law, crimes of pillage and plunder continue to be recognised in international criminal law. For instance, Article 8(2)(b)(xvi) of the Rome Statute identifies 'pillaging a town or place, even when taken by assault' as a war crime.⁴¹ Charges of pillage have

34 Neil Boister and Robert Cryer, *Documents on the Tokyo International Military Tribunal: Charter, Indictment and Judgments* (Oxford University Press, 2008) [49, 160].

35 Neil Boister, 'Colonialism, Anti-Colonialism and Neo-Colonialism in China: The Opium Question at the Tokyo War Crimes Tribunal' in Kerstin von Lingen (ed) *War Crimes Trials in the Wake of Decolonization and Cold War in Asia, 1945–1956: Justice in Time of Turmoil* (Springer International Publishing, 2016) 25, 41.

36 Boister and Cryer (n 34) 37.

37 *Records of Proceedings of the International Military Tribunal for the Far East* (International Military Tribunal for the Far East, 1946–1948) vol 14, 4670, 4682; Boister (n 35) 31.

38 *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) art 5 ('Rome Statute').

39 International Criminal Court, 'Ukraine', <<https://www.icc-cpi.int/situations/ukraine>>.

40 House of Commons Library, 'Conflict in Ukraine: A Special Tribunal on the Crime of Aggression', August 2024, 5.

41 Opened for signature 8 August 1945, 5 UNTS 251 (entered into force 8 August 1945).

been brought in the ICC against Sudan's former president Omar al-Bashir.⁴² However, relevant case law is sparse.

In the *Čelebići* case before the ICTY, the trial judgment considered the charge of plunder and spoliation, defining it as 'all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including those acts traditionally described as "pillage"'.⁴³ The judgment points to dispossession and acquisition of property and theft by individuals for private gain as falling within the scope of plunder and spoliation.⁴⁴

By far the most significant post-Nuremberg trial involving financial benefit from international crimes is that of Charles Taylor, the former president of Liberia, before the Special Court for Sierra Leone, an 'internationalised' court set up by Sierra Leone with UN support.⁴⁵ Among other things, Taylor was charged with supplying arms and ammunition to two of the parties in the civil war—the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC)—in return for diamonds. Those weapons were used to commit crimes such as extrajudicial killings, torture, conscription of children and abduction. Taylor's conduct was 'not exclusively commercial in nature' because it was also motivated by political considerations,⁴⁶ but it is emblematic of a confluence of political and commercial motivations that one can observe in such cases.

In *Taylor*, the trial chamber sought to determine whether there was a causal link between the provision of material support through weapons and the commission of international crimes. The trial chamber found 'beyond reasonable doubt that the provision and facilitation of these arms and ammunitions by the Accused constituted practical assistance to the RUF and RUF/AFRC during the Indictment period'.⁴⁷ In particular, '[t]he materiel provided or facilitated by the Accused was critical in enabling the operational strategy of the RUF and the AFRC during the Indictment period',⁴⁸ while 'the provision and facilitation of the arms and ammunition to the RUF/AFRC had a substantial effect on the commission of crimes charged in the Indictment'.⁴⁹ The typology involved in *Taylor*, namely the provision of weapons and ammunition to a party committing international crimes, is one of the most obvious modes of economic complicity, which is discussed in greater detail below.

Besides the legal significance of *Taylor* as a case involving the prosecution of a former head of state, among other consequences of Charles Taylor's actions was the establishment of the Kimberley Process, an international certification scheme aimed at preventing 'blood diamonds' from entering global supply chains. The Kimberley Process relies on certification by participating governments that exported diamonds had not been sold by any rebel group seeking to overthrow an internationally recognised government.⁵⁰ This represents one of the earliest multilateral attempts to ensure supply chain integrity, in this case specifically as relates to property stemming from international crimes.

42 'Al Bashir Case', *International Criminal Court* (web page) <<https://www.icc-cpi.int/darfur/albashir>>.

43 *Prosecutor v Zejnir Delalić and ors (Trial Judgement)* (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber II, Case No. IT-96-21-T, ICL 95, 16 November 1998) [591] (*Čelebići Trial Judgement*).

44 *Ibid* [590]; see discussion of this case in *Prosecutor v Dario Kordić and Mario Čerkez (Trial Judgement)* (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber II, Case No. IT-95-14/2-T, ICL 287, 26 February 2001) [351]–[353].

45 *Prosecutor v Charles Ghankay Taylor (Judgement)* (Special Court for Sierra Leone, Trial Chamber II, Case No. SCSL-03-01-T, 18 May 2012) (*Prosecutor v Charles Taylor*).

46 Jørgensen (n 3) 155.

47 *Prosecutor v Charles Taylor* (n 45) [6912].

48 *Ibid* [6914].

49 *Ibid* [6915].

50 See 'What is the Kimberley Process?', *Kimberley Process* (web page) <<https://www.kimberleyprocess.com/en/what-kp>>. The effectiveness of the Kimberley Process has been recently criticised: Brad Brooks-Rubin, 'The Kimberley Process Has Failed At Its One Job. Let It Do Something Else', *JCK* (web page, 5 December 2024) <<https://www.jckonline.com/editorial-article/kimberley-process-failed-job/>>.

C. Cases in domestic courts

Prosecutions for breaches of international criminal law can also be brought, and should be brought, in domestic courts. Indeed, domestic courts have pursued individuals and businesses for their economic involvement with international crimes. Some of these cases were decided based on laws other than those implementing international criminal law rules, yet they offer insight into typologies of economic complicity in international crimes. In this section, we discuss cases against corporate and individual defendants in turn, with reference to cases in the US, France and the Netherlands.

1. Cases against corporations

Chiquita Brands International Inc. In 2024, a jury in the US District Court in the Southern District of Florida found in a civil trial that the US banana company Chiquita Brands International Inc (Chiquita) had knowingly financed the Colombian paramilitary organisation AUC despite its human rights abuses.⁵¹ In 2020, the families of victims killed by the AUC commenced the proceedings. They alleged that a Colombian-based subsidiary of Chiquita made ‘protection payments’ to the AUC between 1992 and 2004.⁵² The AUC was involved in the armed conflict in Colombia’s Uraba region and was implicated in torture, extrajudicial killing, war crimes and crimes against humanity.⁵³ Chiquita admitted to paying the AUC in return for ‘security services’ provided to company employees.⁵⁴ In addition, Chiquita allegedly ‘facilitated the clandestine and illegal transfer of arms and ammunition from Nicaragua to the AUC’⁵⁵ by providing port and cargo processing facilities whilst knowing about their illegal use.⁵⁶

Lafarge. French cement manufacturer Lafarge is alleged to have paid armed groups in Syria, including the Islamic State and al Nusra Front, approximately US\$5.92 million between 2013 and 2014.⁵⁷ The company allegedly bought raw materials, such as oil and pozzolan, from jihadist groups in exchange for the free transit of Lafarge employees, customers and suppliers through checkpoints during the Syrian civil war.⁵⁸ In 2022, Lafarge pleaded guilty to conspiracy to provide material support to a terrorist organisation in the US.⁵⁹ In October 2024, the company was ordered to face trial in France on charges of financing terrorism and operating in breach of EU sanctions.⁶⁰

51 As of this writing, the jury verdict is not publicly available. See, instead, *Jane Doe 8, et al. V Chiquita Brands International, Inc., a New Jersey Corporation*, Case No. 20-3244, Case 2:20 (Complaint and Demand for Jury Trial) United States District Court for the District of New Jersey (‘2020 Complaint’)

52 ‘Doe v Chiquita Brands International’, *EarthRights International* (web page) <<https://earthrights.org/case/doe-v-chiquita-brands-international/>>.

53 Ibid.

54 2020 *Complaint* (n 51) [251].

55 Ibid [366].

56 Ibid [370].

57 Luc Cohen and Karen Freifeld, ‘Lafarge Pleads Guilty to US Charge of Supporting Islamic State, To Pay \$778 Million’, *Reuters* (web page, 20 October 2022) <<https://www.reuters.com/legal/french-cement-maker-lafarge-plead-guilty-us-charges-supporting-islamic-state-2022-10-18/>>.

58 US Department of Justice, ‘Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations’ (press release, 18 October 2022) <<https://www.justice.gov/opa/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations>>.

59 Ibid.

60 ‘French Cement Maker Lafarge to Face Trial on Terrorism Funding Charges’, *Reuters* (online, 17 October 2024) <<https://www.reuters.com/world/europe/french-cement-maker-lafarge-face-trial-terrorism-funding-charges-2024-10-17/>>.

2. Cases against individuals

Guus Kouwenhoven. Dutch businessman Guus Kouwenhoven conducted business activities in Liberia throughout the country's civil war, overseeing the operations of logging companies in his capacity as owner-president.⁶¹ Kouwenhoven used his business to import, store and distribute weapons and ammunition to Charles Taylor's regime, to whom he had close personal and professional ties. Kouwenhoven's defence submitted that the Liberian Amnesty Scheme approved by Charles Taylor in 2003 prevented his prosecution in the Netherlands.⁶¹ This was rejected by the Dutch Court of Appeal.⁶² Kouwenhoven was ultimately found guilty of deliberately providing the means for war crimes committed by the Liberian armed forces, rendering him an accomplice to war crimes.⁶³ He was sentenced to 19 years imprisonment.⁶⁴

Frans van Anraat. Frans van Anraat is another Dutch businessman held liable for his commercial involvement with international crimes.⁶⁵ Van Anraat supplied chemical components to Saddam Hussein, who used the raw materials to make poison gas during Iraq's war with Iran between 1984–1988. van Anraat was convicted of complicity in war crimes,⁶⁶ and sentenced to 17 years' imprisonment.⁶⁷

D. Conclusion

As the overview provided above demonstrates, the phenomenon of economic complicity in international crimes, i.e. funding them or profiting from them, has a long history. It has rarely been central to criminal justice efforts, with the exception of 'industrialist' trials carried out by US courts in the aftermath of World War II. Despite this, a body of case law has accreted over time that is indicative of a wide range of possible typologies. This case law is summarised in **Annex 1** to this report, which identifies major types of funding or profiting from international crimes before Russia's full-scale invasion of Ukraine.

⁶¹ *Public Prosecutor v Guus Kouwenhoven*, ('s-Hertogenbosch Court of Appeal, The Netherlands), No. 20/001906-10, 21 April 2017, [H.2]–[H.4].

⁶² *Ibid* [A.1.2]–[A.1.3].

⁶³ *Ibid* [M].

⁶⁴ *Ibid* [Q].

⁶⁵ *Public Prosecutor v Frans Cornelis Adrianus van Anraat*, (Court of Appeal of the Hague, The Netherlands), No. 2200050906-2, 9 May 2007; 'Dutchman Jailed for 17 Years Over Iraq Poison Gas', *Reuters* (online, 10 August 2007) <<https://www.reuters.com/article/idUSL09704778/>>.

⁶⁶ *Ibid* [13].

⁶⁷ *Ibid* [20].

Economic complicity in international crimes in Ukraine

VII

One of the features of Russia's war in Ukraine is the wide array of various types of economic entanglement in international crimes that it exhibits. They are the focus of this chapter, which discusses grain pillage (A); funding PMCs (B); taking over residential property in occupied territories (C); the activities of military bloggers (D); and doing business and paying taxes in Russia (E); followed by a conclusion (F). These typologies are summarised in **Annex 2** to this report.

A. Grain pillage

Following Russia's full-scale invasion of Ukraine in 2022, Russia's occupying forces have systematically seized farmland and grain in occupied territories.⁶⁸ Russia's army and government-affiliated entities, such as state-owned enterprises, have been linked to such activities in the occupied parts of Luhansk and Zaporizhzhia regions, as well as the export of Ukrainian grain from port facilities in the Zaporizhzhia and Crimea regions.⁶⁹ Shipping and satellite data analysed in a report by the Initiative for the Study of Russian Piracy revealed that, by halfway through 2022, more than half a million metric tons of grain had been processed through ports in occupied territory and transported by sea to Turkey, Russia, Syria and possibly Lebanon.⁷⁰

1. Stages of grain pillage

The pillage of grain on such a scale requires a sophisticated and coordinated logistical effort, which involves three key stages, summarised in **Figure 1** below:

- First, Russian government-affiliated entities acquire farmland in occupied territory. These acquisitions are reportedly made through force and involve the transfer of contractual property rights from Ukrainian companies or individuals to Russian state-owned enterprises or Russian companies whose ownership is not easily ascertainable.⁷¹ For example, in December 2023, *The Guardian* reported that Ukrainian farmer Andrian Khablenko was tortured by the

68 See Tom Burgis and Pjotr Sauer, 'Forged Documents: how Ukrainian grain may be enriching Putin's circle' *The Guardian* (web page, 11 December 2023) <<https://www.theguardian.com/world/2023/dec/11/forged-documents-how-ukrainian-grain-may-be-enriching-putins-circle>>; Global Rights Compliance, *Agriculture Weaponised: the Illegal Seizure and Extraction of Ukrainian Grain by Russia* (report, November 2023) 9 <<https://globalrightscompliance.com/wp-content/uploads/2023/11/20231115-Grain-Report-External.pdf>>; Polina Ivanova, Chris Cook and Laura Pitel, 'How Russia secretly takes grain from occupied Ukraine' *Financial Times* (web page, 30 October 2022) <<https://www.ft.com/content/89b06fco-91ad-456f-aa58-71673f43067b>>; Initiative for the Study of Russian Piracy, 'Russian Piracy in 2022: Looting of Ukrainian Industrial and Agricultural Products' (preliminary report, 22 July 2022).

69 One example of a Russian government-affiliated entity is a company majority-owned by the Russian state, with minority stakes held by at least two other regime-affiliated individuals, namely a reported friend of Putin who previously worked on Putin's presidential campaigns in 2000 and 2004, and the son-in-law of Russia's foreign minister Sergey Lavrov. See Burgis and Sauer (n 68); See also Global Rights Compliance (n 68) 5.

70 (n 68).

71 OSINT obtained by Global Rights Compliance reveals that some companies are partially owned by the Russian state: Global Rights Compliance (n 68) 11–13.

Russian occupation police and forced to sign property rights over to individuals affiliated with the Russian government.⁷² Given the scale of reported grain extraction operations, this was likely not an isolated incident.⁷³

- Second, the grain is produced, harvested and stored. This is made possible through the appropriation of machinery, personnel and storage facilities in occupied territory.
- Third, the grain must be exported. This is made possible through a coordinated logistical process effected by the Kremlin, involving the appropriation of locomotives⁷⁴ and construction of new railways.⁷⁵

Figure 1: Stages of grain pillage

Acquisition of farmland	Production	Export
<ul style="list-style-type: none"> • Reportedly made under duress. • Involves acquisitions by state-owned enterprises or companies with obscure ownership structures. 	<ul style="list-style-type: none"> • The grain is produced, harvested and stored. • Made possible through the appropriation of machinery, personnel and storage facilities. 	<ul style="list-style-type: none"> • Enabled by a coordinated logistical effort involving the appropriation of locomotives and construction of new railways.

The implications of grain pillage in occupied territory are two-fold. First, the export of grain under Russian orders deprives the Ukrainian population of grain that was otherwise intended for domestic consumption.⁷⁶ Second, profits from the sale of illegally acquired Ukrainian grain either directly fund the Kremlin's war effort, in the case of state-owned enterprises, or indirectly contribute to it through the payment of Russian taxes by private companies or individuals involved in such trade.

2. Legal status

One might expect grain pillage to constitute a war crime, but the position under international criminal law is nuanced. Article 8(2) of the Rome Statute lists the 'extensive destruction and appropriation of property' and 'pillaging a town or place' as war crimes in international armed conflicts.⁷⁷ Defined as 'the forcible taking of property by an invading or conquering army from the enemy's subjects',⁷⁸ pillaging is prohibited by a range of instruments such as the Hague Regulations,⁷⁹ the Charter of the IMT⁸⁰ and the Fourth Geneva Convention.⁸¹

⁷² Burgis and Sauer (n 68).

⁷³ The Global Rights Compliance suggests that large-scale grain extraction networks in occupied territory and beyond form part of a broader deliberate Russian state policy: Global Rights Compliance (n 68) 26.

⁷⁴ Ibid 44.

⁷⁵ Pippa Crawford, 'Russian Theft of Ukrainian Grain Likely a War Crime, Legal Analysis Says' *The Moscow Times* (online, 23 November 2023) <<https://www.themoscowtimes.com/2023/11/20/russian-theft-of-ukrainian-grain-likely-a-war-crime-legal-analysis-says-a83147>>.

⁷⁶ Global Rights Compliance (n 68) 24.

⁷⁷ Opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002).

⁷⁸ *Black's Law Dictionary* (n 19).

⁷⁹ *Convention (IV) respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, opened for signature 18 October 1907 (entered into force 26 January 1910) article 28.

⁸⁰ *Charter of the International Military Tribunal*, 82 UNTS 279 (entered into force 8 August 1945) article 6(b) ('IMT Charter').

⁸¹ The Fourth Geneva Convention is particularly relevant to Russia's obligations as an occupying power in Ukraine. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) article 33; International Committee of the Red Cross, 'Rule 52. Pillage' *International Humanitarian Law Databases* (web page) <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule52#Fn_30AC3C11_00003>. For further discussion of the scope and applicability of the Fourth Geneva Convention, see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (advisory opinion) [2004] ICJ Rep 137; see also *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem* (advisory opinion) (International Court of Justice, General List No. 186, 19 July 2024).

However, the Elements of Crimes in the Rome Statute contain a crucial limitation, namely that any appropriation be carried out ‘for private or personal use’ to constitute pillaging.⁸² Publicly available evidence suggests that companies and individuals profiting off the sale of grain taken from occupied Ukrainian territory are predominantly operating on behalf of, or with the approval of, the Russian state.⁸³ Therefore, private individuals involved in the sale of grain may argue their business conduct is in aid of the broader war effort and thus cannot be defined as pillaging.

The private use requirement is specific to cases brought before the ICC.⁸⁴ As discussed previously, subsequent Nuremberg trials involved successful prosecutions for pillage carried out in support of the Nazi war effort. Therefore, if an international criminal tribunal were established to address international crimes committed in Ukraine, its provisions on pillage could be drafted more broadly—i.e. without the private use requirement—while arguably reflecting the state of customary international criminal law.

Another area of complexity is the responsibility of intermediaries involved in the ‘downstream’ facilitation of the sale of stolen Ukrainian grain. Consistent with the three stages of grain pillaging identified above, UK and US sanctions designations provide an insight into the diversity of various modes of involvement in grain pillage.⁸⁵ Some state-owned enterprises are allegedly ‘connected to the systematic theft of Ukrainian grain’.⁸⁶ Others form part of a broader logistical network. For example, the US government describes the alleged role of one of the sanctioned companies in the following terms:

[The company] purchases stolen Ukrainian wheat from [Russia’s state-owned enterprise] State Grain Operator and then issues a series of falsified documents to conceal the origin of the cargo from would be second-hand buyers.⁸⁷

Another US sanctions designation targets the following persons:

[The] registered owner and shipping manager of the PAWELL, a Syrian-flagged general cargo vessel that was used to transport stolen grain. The PAWELL routinely engages in maritime evasion techniques, to include disabling the vessel’s onboard automatic identification system (AIS) in order to conceal its location and the origin of its cargo.⁸⁸

These scenarios call for consideration of how complicity rules under international criminal law apply to them, which is discussed later on in this report.

82 Preparatory Commission for the International Criminal Court, *Part II: Finalized Draft Text of the Elements of Crimes*, UN Doc PCNICC/2000/1/ADD.2 (2 November 2000) article 8(2)(b)(xvi).

83 The companies ‘State Grain Operator’ and ‘Starobilsky Elevator’ were listed as Russian-backed companies in Global Rights Compliance (n 68) 9.

84 ‘Why Corporate Pillage Is a War Crime’, *Open Society Foundation* (web page, May 2019) <<https://www.opensocietyfoundations.org/explainers/why-corporate-pillage-war-crime>>.

85 United Kingdom Government, ‘UK sanctions target Russia’s theft of Ukrainian grain, advanced military technology, and remaining revenue sources’ (press release, 19 May 2023) <<https://www.gov.uk/government/news/uk-sanctions-target-russias-theft-of-ukrainian-grain-advanced-military-technology-and-remaining-revenue-sources>> (‘UK Government Press Release: 19 May 2023’); US Department of State, ‘United States imposes additional sanctions and export controls on Russia in coordination with international partners’ (press release, 19 May 2023) <<https://www.state.gov/united-states-imposes-additional-sanctions-and-export-controls-on-russia/>> (‘US Department of State Press Release: 19 May 2023’).

86 UK Government Press Release: 19 May 2023 (n 85).

87 US Department of State Press Release: 19 May 2023 (n 85).

88 Ibid.

B. Funding PMCs

PMCs, also sometimes referred to as private military security companies, are often defined as follows:

[PMCs] are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.⁸⁹

PMCs have been central to Russia's projection of power in Ukraine and elsewhere. The US government describes Russian PMCs as 'a force multiplier to achieve objectives for both government and Russia-aligned private interests while minimizing both political and military costs'.⁹⁰ Prior to the full-scale invasion in 2022, Russia used PMCs to maintain military presence in Ukraine whilst reducing the 'regular military footprint' of the Russian military.⁹¹ Major Russian PMCs operating in Ukraine include the following:

- a **The Wagner Group.** The Wagner Group is the best-known Russian PMC. The Wagner Group was formed by Russian businessman Yevgeny Prigozhin and former GRU⁹² special forces officer Dmitry Utkin in 2014, reportedly in response to emerging Russian-backed separatist movements in Ukraine's Donbas region.⁹³ Prigozhin first developed a relationship with the Russian Defence Ministry when his company *Concord* became the government's key catering contractor in the early 2010s. Up until his death in 2023, Prigozhin faced sanctions from numerous Western states.⁹⁴ The first known deployment of the Wagner Group in Ukraine occurred in the Donbas region in 2014.⁹⁵ The Wagner Group also assists the Kremlin by propagating disinformation campaigns and facilitating corporate front companies as financial proxies for the Russian state.⁹⁶

The Wagner Group has significantly assisted the Kremlin's war effort in Ukraine by providing necessary boots on the ground, particularly in light of reportedly high personnel losses among Russian troops.⁹⁷ The Wagner Group is made up of troops from diverse backgrounds including voluntary fighters and, more recently, former convicts.⁹⁸ The Wagner Group has been linked to the commission of numerous alleged war crimes, including:

⁸⁹ The *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict*; see also Council of Europe Parliamentary Assembly, *On Private Military Companies, Mercenaries, Foreign Fighters and their Impact on Human Rights* (Introductory memorandum No. AS/Jur 05, 26 February 2024) 3 ('PACE Report'); see also House of Commons Foreign Affairs Committee, *Guns for Gold: the Wagner Network Exposed* (Seventh Report of Session 2022–2023, 18 July 2023) 6 ('Guns for Gold Report').

⁹⁰ Asymmetric Warfare Group, *Russian Private Military Companies: Their Use and How to Consider Them in Operations, Competition, and Conflict*, (report, April 2020) IX.

⁹¹ Åse Gilje Østensen and Tor Bukkvoll, 'Private military companies—Russian great power politics on the cheap?' (2022) 33(1–2) *Small Wars & Insurgencies* 130, 138.

⁹² Russian military intelligence service (Главное разведывательное управление).

⁹³ Neil Buckley et al., 'Ukraine's 'little green men' carefully mask their identity', *Financial Times* (online, 16 April 2014) <<https://www.ft.com/content/05e1d8ca-c57a-11e3-a7d4-00144feabdco>>.

⁹⁴ See, e.g., US Department of the Treasury, 'Treasury Sanctions Illicit Gold Companies Funding Wagner Forces and Wagner Group Facilitator' (press release, 27 June 2023) <<https://home.treasury.gov/news/press-releases/jy1581>> ('US Sanctions Press Release: 27 June 2023').

⁹⁵ Nils Dahlqvist, 'Russia's (not so) Private Military Companies' (RUFs Briefing No. 44, January 2019) 1.

⁹⁶ Jessica Berlin et al., *The Blood Gold Report: How the Kremlin is using Wagner to launder billions in African gold* (report, 2023) 3 ('*The Blood Gold Report*').

⁹⁷ Helene Cooper et al., 'Troop Deaths and Injuries in Ukraine War Near 500,000, US Officials Say', *New York Times* (online, 18 August 2023) <<https://www.nytimes.com/2023/08/18/us/politics/ukraine-russia-war-casualties.html>>.

⁹⁸ Arsenii Sokolov, Tim Whewell and Nina Nazarova, 'Russian Convicts Released to Fight With Wagner Accused of New Crimes', *BBC* (online, 10 August 2023) <<https://www.bbc.com/news/world-europe-66364272>>.

- Secret messages intercepted by the German foreign intelligence service revealed that the Wagner Group played a central role in carrying out the Bucha massacre of civilians in March 2022 alongside other Russian units.⁹⁹ There, an estimated 419 people, including nine children, were killed by the retreating Russian forces.¹⁰⁰
- According to Ukrainian prosecutors, in April 2022 three Wagner mercenaries operated alongside Russian troops to kill and torture civilians in Kyiv.¹⁰¹
- In November 2022, a former Wagner fighter who allegedly defected to Ukraine was captured by Russian forces. Unverified video footage shows a man giving his name as Yevgeny Nuzhin, before he is beaten to death with a sledgehammer.¹⁰² The video was posted on Wagner-linked Telegram channels,¹⁰³ and Prigozhin described the killed Wagner fighter as a ‘traitor’.¹⁰⁴
- In an interview with the ABC News, former Wagner Group commander Andrey Medvedev detailed numerous instances of summary executions and other alleged crimes committed by the group against its own members.¹⁰⁵
- In a telephone interview with *The Guardian*, a former Wagner fighter described his participation in summary executions of ‘several dozen’ Ukrainian prisoners of war in eastern Ukraine.¹⁰⁶
- Former Wagner fighter Azamat Uldarov described his involvement in the murder of a group of civilians, including a young girl, during the 2022/2023 battle for Bakhmut.¹⁰⁷

Following the failed coup in June 2023,¹⁰⁸ which was precipitated by Prigozhin’s criticism of Russia’s military leadership,¹⁰⁹ several thousand Wagner Group fighters relocated to Belarus.¹¹⁰ Similarly, Prigozhin was exiled to Belarus, where he was welcomed by Lukashenko, but was then killed in an aeroplane crash over Russian airspace.¹¹¹ Since his death, many former Wagner fighters have reportedly returned to Russia and signed contracts to fight for the Russian military.¹¹² This has resulted in a co-optation of ex-Wagner Group into the formal Russian military structures.¹¹³

99 Melanie Amann, Matthias Gebauer and Fidellus Schmid, ‘German intelligence intercepts radio traffic discussing the murder of civilians’ *Spiegel* (online, 7 April 2022).

100 ‘What is Russia’s Wagner group, and what has happened to its leader?’, *BBC* (online, 6 September 2023) <<https://www.bbc.com/news/world-60947877>>.

101 Ibid.

102 Guy Faulconbridge, ‘Video shows sledgehammer execution of Russian mercenary’, *Reuters* (online, 13 November 2022).

103 Ibid.

104 Ibid.

105 Patrick Reevell, ‘Russian defects from Wagner mercenary group, says it’s committing war crimes in Ukraine’, *ABC News* (online, 14 February 2023) <<https://abcnews.go.com/International/russian-defects-wagner-mercenary-group-committing-war-crimes/story?id=97043522>>.

106 Pjotr Sauer, ‘Wagner mercenary admits ‘tossing grenades’ at injured Ukrainian PoWs’, *The Guardian* (online, 19 April 2023) <<https://www.theguardian.com/world/2023/apr/18/wagner-mercenary-admits-tossing-grenades-at-injured-ukrainian-pows>>.

107 Ibid.

108 ‘Russian mercenary leader Prigozhin: this is a ‘march for justice’’, *Reuters* (online, 23 June 2023) <<https://www.reuters.com/article/technology/russian-mercenary-leader-prigozhin-this-is-a-march-for-justice-idUSS8N36Mo8B/>>.

109 Isabel van Brugen, ‘Prigozhin resumes attacks on Russian military in message from beyond’, *News Week* (online, 30 August 2023) <<https://www.newsweek.com/yevgeny-prigozhin-videos-attacks-russian-military-death-funeral-1823348>>.

110 ‘A year ago, Russian mercenary chief Yevgeny Prigozhin challenged the Kremlin with a mutiny’, *Associated Press* (online, 23 June 2024) <<https://apnews.com/article/russia-wagner-prigozhin-mutiny-putin-ukraine-war-a3c617e27a67ea38364529888292efd8>>.

111 Paul Kirby, ‘Belarus leader welcomes Wagner boss Prigozhin into exile’, *BBC* (online, 28 June 2023) <<https://www.bbc.com/news/world-europe-66029636>>.

112 Ibid.

113 Matt Murphy, ‘A year after mutiny, Kremlin controls Wagner remnants’, *BBC* (online, 23 June 2024) <<https://www.bbc.com/news/articles/c4nnip81q590>>.

- b **Patriot.** In 2018, the independent Russian news outlet *Rain* reported on the emergence of a new Russian PMC, Patriot.¹¹⁴ According to the US State Department, the Patriot PMC is an entity associated with Russia's now-former Defence Minister Sergei Shoigu.¹¹⁵ In 2018, Patriot representatives were linked to the suspected murder of journalists Orhan Dzhemal, Alexander Rastorguev and Kirill Radchenko, who were investigating the operations of private military companies in the Central African Republic (CAR).¹¹⁶ PMC Patriot was sanctioned by the US Department of State and the Treasury on 12 April 2023.
- c **Convoy.** Founded by Sergey Aksyonov, the Kremlin-appointed governor of Crimea and led by a former Wagner Group leader, Konstantin Pikalov in 2015.¹¹⁷ Reportedly made up of former Wagner Group employees.
- d **Rusich.** Rusich is 'a neo-Nazi paramilitary group' that has operated in conjunction with, or as a subsidiary to, the Wagner Group in Africa and more recently, Ukraine.¹¹⁸ Rusich members have allegedly posted videos and images depicting killed and mutilated Ukrainians, whilst documents posted online by the group provide detailed torture techniques and body disposal advice for soldiers.¹¹⁹

While Ukraine is the primary operating theatre for most Russian PMCs, some of them, especially the Wagner Group, are active in a much broader array of geographies. For instance, the Wagner Group has been accused of human rights abuse in up to thirty countries, chief among them Syria, Libya, Sudan, Mali and the CAR.¹²⁰ Publicly available information about Russian PMCs' African operations and their funding is summarised in **Annex 3** to this report.

114 Lilya Yapparova, 'A new Russian PMC has begun fighting in Syria', *TV Rain* (online, 5 July 2018).

115 Office of the Spokesperson, 'Further curbing Russia's efforts to evade sanctions and perpetuate its war against Ukraine', *US Department of State* (web page, 12 April 2023) <<https://www.state.gov/further-curbing-russias-efforts-to-evade-sanctions-and-perpetuate-its-war-against-ukraine-2/>>.

116 Lilya Yapparova, 'Who and why could have killed journalists in the Central African Republic', *TV Rain* (online, 29 September 2018).

117 "Armed to the teeth" Who runs—and who funds—a new private military company in annexed Crimea?, *Meduza* (online, 26 March 2023) <<https://meduza.io/en/feature/2023/03/26/armed-to-the-teeth>>.

118 US Department of the Treasury, 'Treasury Targets Additional Facilitators of Russia's Aggression in Ukraine' (press release, 15 September 2022) <<https://home.treasury.gov/news/press-releases/jy0954>>.

119 Marina Tovar et al., Private military contractors on the Ukraine–Russia war: a mapping of their involvement (report) <<https://londonpolitica.com/intelligence-department-articles/politicalriskexplained-2>>.

120 See, e.g., In July 2018, three Russian journalists investigating the presence and activities of the Wagner Group in the CAR were murdered: 'Central African Republic: Abuses by Russia-linked forces', *Human Rights Watch* (web page, 3 May 2022) <<https://www.hrw.org/news/2022/05/03/central-african-republic-abuses-russia-linked-forces>>; In July 2021 at least 12 unarmed men were reportedly killed by Russian-speaking forces near the CAR town of Bossangoa: 'Central African Republic: Abuses by Russia-linked forces', *Human Rights Watch* (web page, 3 May 2022) <<https://www.hrw.org/news/2022/05/03/central-african-republic-abuses-russia-linked-forces>>; In December 2021 Wagner forces reportedly worked with Christian proxies to attack the CAR town of Boyo, killing an estimated 25 Muslim villagers whilst also taking hostages, looting, destroying property and perpetrating sexual violence: US Department of State, *International Religious Freedom: Central African Republic* (report, 2022) <<https://www.state.gov/reports/2022-report-on-international-religious-freedom/central-african-republic/>> (*International Religious Freedom: CAR Report*); Wagner Group representatives reportedly killed up to 70 civilians in and between the CAR towns of Aigbado and Yango in January 2022: Philip Obaji Jr, 'Survivors say Russian mercenaries slaughtered 70 civilians in gold mine massacre', *Daily Beast* (online, 31 January 2022) <<https://www.thedailybeast.com/wagner-group-accused-of-killing-70-at-mine-in-aigbado-central-african-republic>>; Since 2019, Wagner Group representatives have been closely linked to the control of key military bases and oil facilities in Libya, working in collaboration with Khalifa Haftar's Libyan National Army: Yurii Oliinyk, Marta Oliinyk-D'omochko and Anatolii Maksymov, *The Impact of Wagner Group's Activities on African States: Implications for Ukraine* (report) 3 <https://analytics.intsecurity.org/wp-content/uploads/2023/07/Eng_Africa-Centre_05_Wagner-in-Africa.pdf>; In conjunction with Malian forces, Wagner soldiers allegedly massacred at least 300 civilians in the town of Moura between 27 and 31 March 2022: Catrina Doxsee and Jared Thompson, 'Massacres, Executions, and Falsified Graves: The Wagner Group's Mounting Humanitarian Cost in Mali', *Centre for Strategic and International Studies* (Commentary, 11 May 2022) <<https://www.csis.org/analysis/massacres-executions-and-falsified-graves-wagner-groups-mounting-humanitarian-cost-mali>>.

C. Taking over residential property in occupied territories

The ongoing evacuation of Ukrainians from areas subjected to Russian attacks creates profiteering opportunities that have not remained unexploited. In 2023, the International Organization for Migration reported that an estimated 9.7 million Ukrainians have been displaced by Russia's invasion, with 6 million located in Europe and 3.7 million displaced internally.¹²¹ In many cases, homes and property left behind in occupied territory have been expropriated by Russian authorities, redeveloped by Russian companies and sold onwards to Russian purchasers. The partially destroyed Ukrainian city of Mariupol offers a particularly stark example.

1. Expropriations and 'reconstruction' in Mariupol

During the siege of Mariupol between February and May 2022, Russian forces likely committed war crimes by intentionally launching attacks on civilian buildings such as apartment blocks, hospitals, university sites and cultural centres without evidence of Ukrainian military presence in or around relevant buildings.¹²²

On 6 March 2022, a Russian air strike destroyed Mariupol's Maternity Hospital Number Three (Hospital No. 3), reportedly killing three people and injuring at least 17 more.¹²³ Article 8 of the Rome Statute lists intentionally directed attacks on hospitals and places where the sick and wounded are collected as a war crime.¹²⁴ On 16 March 2022, a Russian airstrike targeted the Donetsk Regional Academic Drama Theatre in Mariupol. The theatre's forecourt was labelled with the Russian word for 'children' in a manner clearly visible from the air.¹²⁵

Beyond destroyed hospitals, schools and community buildings, the UN estimates that up to 90 per cent of residential buildings and 60 per cent of private homes in Mariupol were damaged or destroyed by Russian attacks between February and May 2022.¹²⁶ Throughout the same time period, an estimated 1,500 civilians were killed in Mariupol whilst approximately 350,000 of Mariupol's pre-war population of 450,000 citizens had fled the city by May.¹²⁷

With Mariupol currently occupied by Russia, the exodus or death of many of the city's residents has opened up opportunities for profiteering for Russian developers, government officials, construction companies, real estate agents and private purchasers. Here, again, the process involved can be broken down into three stages.

- a Expropriation of property.** Following Russia's occupation of Mariupol, occupying authorities notified Ukrainian residents that properties would be deemed 'ownerless' should owners fail to re-register them.¹²⁸ The re-registration process reportedly requires residents to present ownership documents and a Russian passport to occupying authorities. The requirement to return poses an unjustifiable risk to many former Mariupol residents who fled Russian

¹²¹ International Organization for Migration, *Strategic Response Plan: Ukraine & Neighbouring Countries 2024-2026* (report, 2024) 11.

¹²² Human Rights Watch, *SITU Research and Truth Hounds, Beneath the Rubble: Documenting Devastation and Loss in Mariupol* (report, 2024) <<https://www.hrw.org/feature/russia-ukraine-war-mariupol>>; Human Rights Watch, SITU Research and Truth Hounds, "Our City was Gone": *Russia's Devastation of Mariupol, Ukraine* (report, 2024) 2.

¹²³ 'Ukraine war: Three dead as maternity hospital hit by Russian air strike', *BBC* (web page, 10 March 2022) <<https://www.bbc.com/news/world-europe-60675599>>.

¹²⁴ Rome Statute (n 38).

¹²⁵ Amnesty International, "Children": *The attack on the Donetsk Regional Academic Drama Theatre in Mariupol, Ukraine* (report, 2022) 63.

¹²⁶ Michelle Bachelet, 'High Commissioner updates the Human Rights Council on Mariupol, Ukraine' (Statement, 50th Session of the Human Rights Council, 16 June 2022).

¹²⁷ *Ibid*; Estimates of the death toll in Mariupol range significantly, with unverified reports estimating that as many as 75,000 people may have died.

¹²⁸ 'Russia's latest crime in Mariupol: stealing property', *The Economist* (online, 19 June 2024) <<https://www.economist.com/europe/2024/06/19/russias-latest-crime-in-mariupol-stealing-property>>.

occupation, leaving their properties at risk of expropriation. Furthermore, the requirement to adopt Russian citizenship on pain of losing one's home is contrary to the obligations of the occupying power.¹²⁹

- b Reconstruction of the city.** The Russian government announced its 'restoration' plans for the city shortly before the Ukrainian withdrawal from Mariupol. Through a detailed masterplan reportedly appropriated from outdated Ukrainian plans, Russia's Ministry of Construction set out plans for the city's reconstruction from 2022 through to 2025, including improved public transport, street layouts and residential infrastructure.¹³⁰ Realisation of this plan requires services provided by Russian construction companies who are on the receiving end of government contracts to rebuild the city.¹³¹ Investigative reports have identified several construction companies as participating in this scheme.¹³² Although the specific contractual arrangements between companies and the Russian government are not publicly available, the *Financial Times* found links between Russian oligarchs, semi-public entities and subcontractors involved in Mariupol construction activity. Additionally, property developers have built new apartment blocks where Ukrainian homes once stood, paying little to no compensation to original land-owners. Where compensation *has* been paid, recipients argue the amounts received are insufficient to support re-entry into the property market.¹³³ Former property-owners can also apply to the Russian government for compensatory flats in newbuild estates. However, locals report that the application process is slow, and those who are eventually allocated flats are 'clearly of pro-Russian views'.¹³⁴
- c Sale and purchase of property.** Russian realtors are advertising the purchase of ruined apartments in Mariupol as an invaluable investment opportunity, offering prospective purchasers return on investment and an attractive lifestyle by the sea. Multiple unverified posts on X (formerly known as Twitter), which appear to be made by private Russian citizens, demonstrate the demand and reasons for interest in property in occupied territory.¹³⁵ De-identified posts include:

'We came to the Russian city of Mariupol for a few days to renovate an apartment we had already purchased and just relax. At the same time, we will draw up documents for a new premises near the famous Drama Theatre, the previous owners are unlikely to return, we are waiting for formalities and restoration. The best investment.'

'Congratulations on a profitable investment! It's true that the wait for restoration will take a long time, bureaucrats. I took a more expensive one, but in Berdyansk, the city was surrendered without a fight, so everything is intact. True, the infrastructure is so-so and in general the vibe of a cheap resort. but the sea'

'We didn't buy anything at all. We just drove into an empty place, filled out the documents and that's it 👍.'

Response: 'That's also an option, but what about paying for utilities, interacting with authorities, etc. Still, registering ownership is a little more difficult, but much more convenient'

129 *Hague Convention (IV) respecting the Laws and Customs of War on Land, Annex to the Convention, Regulations respecting the Laws and Customs of War on Land*, opened for signature 18 October 1907, UKTS 9 (entered into force 26 January 1910) art 45: 'It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power'.

130 'Inside Mariupol: Russia's New Potemkin Village', *Financial Times* (online, February 2024) <<https://ig.ft.com/mariupol/>>.

131 *Ibid.*

132 *Ibid.*

133 Adam Robinson, Erwan Rivault and Olga Robinson, 'The Russians hunting for cheap flats in occupied Mariupol' *BBC* (web page, 6 August 2023) <<https://www.bbc.com/news/world-66393949>>.

134 *Ibid.*

135 Translated English versions of these posts have been reviewed and kept on file by the authors.

2. Legal status

As described above, pillage is a crime under international criminal law. Here, too, the application of the ‘private use’ criterion under the Rome Statute may come into play. On the one hand, the expropriation of Ukrainian property is undoubtedly carried out for the private use of its Russian purchasers and developers. On the other hand, the officials involved may argue that, insofar as their involvement is concerned, they are giving effect to Russia’s state policy rather than acting in anyone’s, let alone their own, private interests. Given the experience of post-World War II prosecutions in Nuremberg, which likewise involved adjudicating systematic state-level policies of dispossessing occupied nations, the better view is that the prohibition of pillage is sufficiently broad to encompass such activities.

As for the role of private companies or individuals, some further complications may arise. Some of them are likely to argue that they did not participate in the dispossession of Ukrainian civilians. Instead, their role is limited to ‘merely’ acquiring the now-vacant property in accordance with Russian law. This gives rise to complex issues of accessorial involvement after the fact that are considered later on in this report.

One might further ask if the position differs in respect of those Russian citizens who first moved into ‘vacant’ properties and *then* sought to formalise their purported ownership through the Russian legal system. This behaviour is easier to characterise as direct participation in pillage, analogous to soldiers helping themselves to civilians’ possessions. However, there is little if any meaningful moral difference between those Russian settlers who moved in first, obtained the documents later and those who did the process in the reverse. Ultimately, this speaks to the challenges stemming from the absence in international criminal law of any rules expressly dealing with the use of proceeds of international crimes, as discussed later.

Even greater ambiguities, both moral and legal, characterise the position of companies involved in construction projects in occupied territories. On the one hand, profiteering through lucrative construction contracts awarded to well-connected Russians as a consequence of, say, Mariupol’s devastation is unconscionable. On the other hand, the destruction of such cities means they require some degree of rebuilding, even while under occupation. As it currently stands, international criminal law does not provide any framework for drawing such distinctions. As discussed in greater detail later on, with only narrow exceptions, it overlooks the potential responsibility of those who profit from international crimes.

D. Military bloggers

Another relevant typology involves the activities of pro-Russian military bloggers, colloquially known as ‘milbloggers’ or ‘Z-bloggers’.¹³⁶ Exploiting the information vacuum created by the Kremlin’s crackdowns on independent media,¹³⁷ milbloggers use social media and online messaging platforms such as Telegram to disseminate ‘updates’ from the front line, promote

¹³⁶ Gigor Atanesian, ‘Ukraine War: Putin Influencers Profiting From War Propaganda’, *BBC* (web page, 2 September 2023) <<https://www.bbc.com/news/world-europe-66653837>>.

¹³⁷ Russia has restricted use of American social media platforms in Russia, including Facebook, Instagram, X and Discord. Following its invasion of Ukraine in February 2022, the Kremlin also forcibly closed independent media outlets in Russia. See Ivana Kottasová, ‘Putin’s Digital Footsoldiers: How Bloggers Became a Key Cog in Russia’s War Machine’, *BBC* (web page, 4 April 2023) <<https://edition.cnn.com/2023/04/04/europe/russia-military-bloggers-war-machine-intl-cmd/index.html>>; Angela G Palmer, ‘Moscow, We Have a Problem’, *The Interpreter* (Blog Post, 2 August 2023) <<https://www.lowyinstitute.org/the-interpreter/moscow-we-have-a-problem>>; Ilya Yablokov and Elisabeth Schimpfössl, ‘Russia’s Disappearing Independent Media: Why They Closed’, *The Conversation* (web page, 1 April 2022) <<https://theconversation.com/russias-disappearing-independent-media-why-they-closed-178590>>.

sponsored advertisements, and generate pro-war sentiment.¹³⁸ Often, bloggers are referred to as war correspondents, or ‘voyenkory’ in Russian.¹³⁹ In 2023, the BBC reported that top-earning milbloggers charge up to £1,550 per sponsored post on Telegram.¹⁴⁰ Meanwhile, many bloggers charge their audience for access to exclusive videos.¹⁴¹

Many prominent milbloggers have a demonstrable connection to the Kremlin. Some have previously worked for state-run media organisations and maintain a relationship with the Kremlin alongside their online activities. For example, a top-earning military blogger formerly served as a war correspondent for a pro-government newspaper, and has recently been appointed by Putin to serve on the presidential human rights council.¹⁴² During a meeting with milbloggers in June 2023, Putin publicly praised the influencers for their work, describing ‘the fight in the information space’ as ‘a crucial battlefield’.¹⁴³ Scholars argue that these interactions reflect ‘not only Kremlin tolerance but support’.¹⁴⁴

Some commentators have observed that the power and influence of milbloggers may be reduced by the Kremlin in the wake of Wagner’s mutiny in June 2023.¹⁴⁵ However, recent allegations of Russian-linked pro-war influencers operating overseas in countries such as the US suggest that this typology requires further scrutiny.¹⁴⁶

E. Doing business and paying taxes in Russia

Perhaps the most far-reaching extension of the notion of economic complicity in Russia’s crimes would be to hold legitimate foreign companies operating in Russia complicit in such crimes by virtue of their tax contributions to the Russian budget. The Ukrainian government has repeatedly and expressly described Western companies maintaining business presence in Russia as complicit in Russia’s crimes, including through the publication of the now-defunct ‘Sponsors of War’ blacklist.¹⁴⁷

While Ukraine has been especially forceful in making this argument, it is by no means alone in raising it. For example, in February 2024, the US Department of State released a business advisory

138 Some videos posted by pro-war bloggers are allegedly fake, suggesting that some bloggers are posting fabricated or staged content to generate anti-Ukraine public sentiment: Atanesian (n 136).

139 Vitaly Shevchenko, ‘Ukraine War: Who are Russia’s War Bloggers and Why Are They Popular?’, *BBC* (web page, 5 April 2023) <<https://www.bbc.com/news/world-europe-65179954>>.

140 Atanesian (n 136).

141 Ibid.

142 Ibid.

143 Ibid; Konstantin Pakhaliuk, ‘Russia’s War Influencers Get Their Audience with Putin’, *OpenDemocracy* (web page, 16 June 2023) <<https://www.opendemocracy.net/en/odr/russias-war-influencers-get-their-audience-with-putin/>>.

144 Donald N Jensen, Angela Howard, ‘How Russia’s Military Bloggers Shape the Course of Putin’s War’, *United States Institute of Peace* (blog post, 10 August 2023) <<https://www.usip.org/publications/2023/08/how-russias-military-bloggers-shape-course-putins-war>>.

145 Palmer (n 137). Despite their importance to the Kremlin’s propaganda machine, milbloggers do not necessarily enjoy immunity from the Russian state. On 21 July 2023, prominent blogger, former FSB agent and former commander of Russian proxy forces in the Donetsk Oblast, Igor ‘Strelkov’ Girkin, was arrested and charged for extremism under article 282 of the Russian Criminal Code. Girkin had criticised the Russian military’s conduct during the war in Ukraine. See Martin Fornusek, ‘Russian Sources: Igor Girkin Arrested’, *The Kyiv Independent* (online 21 July 2023) <<https://kyivindependent.com/russian-media-claim-girkin-arrested/>>.

146 See, e.g., Alan Suderman and Ali Swenson, ‘Right-Wing Influencers Were Duped to Work for Covert Russian Operation, US Says’, *Associated Press* (online, 6 September 2024) <<https://apnews.com/article/russian-interference-presidential-election-influencers-trump-999435273dd39edf7468c6aa34fad5dd>>.

147 Tom Balmforth and John O’Donnell, ‘Ukraine Drops Russia Business Blacklist After Backlash’, *Reuters* (online, 23 March 2024) <<https://www.reuters.com/world/europe/ukraine-drop-russia-business-blacklist-after-backlash-2024-03-22/>>.

for businesses and individuals doing business in the Russian Federation and Russia-occupied territories of Ukraine, identifying the following risks arising from such operations:

1. Risk of businesses and individuals becoming exposed to sanctions, export controls, import prohibitions, money laundering vulnerabilities, and corruption;
2. Risk of businesses and individuals being implicated in the Government of Russia's violations of international law, including war crimes and crimes against humanity, and human rights abuses; and
3. Risk to businesses and individuals due to the proliferation and implementation of repressive laws in the Russian Federation and the areas of Ukraine it occupies, including measures authorizing expropriation in certain instances or detentions based on spurious grounds.¹⁴⁸

The advisory does not clarify what it takes for an individual or company to become 'implicated' in Russia's violations of international law. However, US sanctions designations supply indicators of the kinds of activity that the US treats as significant contributors to Russia's overall war fighting capabilities, without necessarily having any particular connection to international crimes. Broadly speaking, those tend to be financial, technological and industrial operations. For example, in June 2024 the US Department of the Treasury announced 300 new sanctions designations aimed at Russia's financial infrastructure, with their purpose described as follows:

[To] ratchet up the risk of secondary sanctions for foreign financial institutions that deal with Russia's war economy; restrict the ability of Russian military-industrial base to take advantage of certain U.S. software and information technology (IT) services; and, together with the Department of State, target more than 300 individuals and entities both in Russia and outside its borders ... whose products and services enable Russia to sustain its war effort and evade sanctions.¹⁴⁹

A focus on constricting Russia's ability to carry out financial transactions with the rest of the world has been constant since the full-scale invasion. For instance, a number of members of the European Parliament wrote to the government of Austria in April 2024 calling on it to put pressure on the Austrian Raiffeisen Bank to withdraw from Russia lest Austrian companies 'contribute to Russia's ability to wage an illegal and unjustified war against Ukraine and its people'.¹⁵⁰

There do not appear to be any instances of sanctions imposed on Western companies solely by reference to their tax contributions to the Russian budget, as opposed to specific *activities* in which they are involved. Likewise, for reasons described later in this report, there appears to be no solid basis in international criminal law for prosecuting any individuals or companies *solely* by virtue of continued business activities in a state committing international crimes, including Russia.

This is not to deny the overarching policy interest in achieving a withdrawal of foreign business operations from Russia or any other states engaged in similar unlawful behaviour, but this objective should be pursued through domestic laws or public pressure, rather than through international criminal law. To date, Western governments have primarily sought to achieve the general withdrawal of businesses from Russia through encouragement, as opposed to legal compulsion, as is evident from multiple statements summarised in **Annex 3** to this report.

148 US Department of State, 'Risks and Considerations for Doing Business in the Russian Federation and Russia-Occupied Territories of Ukraine' (press release, 23 February 2024) <<https://www.state.gov/russia-business-advisory/>> ('US Business Advisory').

149 US Department of the Treasury, 'As Russia Completes Transition to a Full War Economy, Treasury Takes Sweeping Aim at Foundational Financial Infrastructure and Access to Third Country Support' (press release, 12 June 2024) <[https://home.treasury.gov/news/press-releases/jy2404#:~:text=Brett%20Warrick%20Mac%20Donald%20\(Mac,in%20the%20Central%20African%20Republic.>](https://home.treasury.gov/news/press-releases/jy2404#:~:text=Brett%20Warrick%20Mac%20Donald%20(Mac,in%20the%20Central%20African%20Republic.>)) ('US Sanctions Press Release: 12 June 2024').

150 Abbey Fenbert, 'European Parliament Calls on Austria to Pressure Raiffeisen bank to leave Russia', *The Kyiv Independent* (online, 26 April 2024) <<https://kyivindependent.com/european-parliament-calls-on-austria-to-pressure-raiffeisen-bank-to-leave-russia/>>.

F. Conclusion

International criminal justice has become one of Ukraine's focal points for the pursuit of accountability in connection with Russia's invasion. However, with the exception of Ukraine's short-lived publication of the 'Sponsors of War' blacklist, economic complicity in international crimes in Ukraine is largely overlooked despite its centrality to Russia's war in Ukraine. This is despite the multiple reported forms of economic complicity in international crimes in Ukraine.

These typologies vary widely in terms of their legal and policy implications. Some of them, such as grain pillage, are already addressed by international law at the point of their commission but raise questions about the responsibility of those involved in the sale of stolen grain downstream. Others, such as funding PMCs, require the examination of what, if anything, the funder knows about the respective PMC's involvement in international crimes. Still others, such as benefitting from construction contracts in the occupied territories, raise difficult questions about both what international law *is* (does it criminalise such behaviour?) and what it *should be* (should it criminalise such behaviour?). These issues are addressed in the following chapter.

International criminal law and economic complicity

With the benefit of our overview of the main typologies of economic complicity, we can now consider the legal treatment of economic complicity in international criminal law. As will be seen, the current legal position involves a mix of substantive offences (e.g. pillage) and complicity rules, which fall short of providing a comprehensive and coherent framework for dealing with economic involvement in international crimes.

This chapter outlines key provisions of international criminal law dealing with economic complicity (A); considers the rules dealing with funding international crimes (B); considers the rules dealing with profiting from them (C); discusses the interplay between economic complicity and reparations (D); explores the role of domestic laws in addressing economic complicity in international crimes (E); and proposes legal reforms (F).

A. Complicity provisions in international criminal law

Most international crimes are not committed by lone perpetrators, but by multiple individuals who often play different roles in commission of the crime and have different positions in the military or civilian hierarchies involved in the crime. However, international criminal law 'lacks a separate provision for financial complicity in international crimes'.¹⁵¹ Instead, it includes general rules on various forms of complicity.

For the ICC, they are contained in Article 25(3)(c) and 25(3)(d) of the Rome Statute, which provide that 'a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person':

- (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
- (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime.

The modes of liability under Article 25(3)(c) and 25(3)(d) are often referred to as 'accessorial liability' and 'common purpose liability' respectively. Each of them entails its own requirements as to what the defendant must have done (*actus reus*) and thought or known (*mens rea*). This

¹⁵¹ Carsten Stahn, *A Critical Introduction to International Criminal Law* (Cambridge University Press, 2019) 140.

builds on similar provisions in Article 7(1) of the ICTY Statute and Article 6(1) of the ICTR Statute, which provided for the responsibility of those who ‘aided and abetted’ international crimes.

In addition to complicity, several war crimes and crimes against humanity intrinsically possess an economic dimension because they involve an unlawful taking of the victim’s property. As discussed previously, these include pillage (or plunder) and unlawful seizure of the adversary’s property. However, difficult questions arise about the responsibility of those involved in such offences downstream, e.g. by handling the proceeds of pillage.

More broadly, the principal challenge presented by economic complicity is that, short of direct involvement in pillage, enslavement or similar crimes, it involves activities that are not criminal per se. Consider selling steel (as in *Flick* and *Krupp*) or facilitating maritime logistics (as in *Chiquita*). The international criminal responsibility in such instances is contingent on the identity of the parties involved, e.g. the recipient of goods or services provided; the use to which such goods or services are put; and the state of mind of the provider of goods or services. Cases involving profiting from international crimes raise further difficulties stemming from the fact that, generally, international criminal law does not criminalise complicity ‘after the fact’, i.e. after the underlying offence has been committed.

B. Funding international crimes

In considering international criminal responsibility for funding international crimes, it is convenient to begin with the actus reus (physical elements) of complicity, before proceeding to discuss its mens rea (fault elements).

1. Actus reus

If an accessorial liability prosecution is brought, the first question pertains to what constitutes, in the words of the Rome Statute, ‘aiding, abetting or otherwise assisting’ a crime, ‘including providing the means for its commission’. In principle, these words are capable of encompassing a broad range of behaviour. For instance, ‘aiding means giving assistance to someone’ while abetting ‘would involve facilitating the commission of an act by being sympathetic thereto’.¹⁵²

However, it is arguable that these notions imply a degree of proximity to, or causal link with, the crime committed. In some cases, such as donating funds to an armed unit directly involved in the commission of war crimes, the issue does not appear to be problematic. Contrast this with funding an army that includes certain units involved in the commission of war crimes. Or, to take this example further still, consider the responsibility of someone paying taxes to the exchequer of the state within whose army such units operate.

This discussion is far from hypothetical. As discussed previously, questions could be raised about the responsibility of those who fund PMCs in Ukraine; those who fund Russian armed forces in general; and even those who contribute to the Russian state budget through paying taxes in Russia. Which of these forms of conduct, if any, can give rise to international criminal responsibility, depends on the applicable causation test.

¹⁵² *Prosecutor v Jean-Paul Akayesu (Judgement)* (International Criminal Tribunal for Rwanda, Chamber I, Case No. ICTR-96-4-T, 2 September 1998) [484].

Causation has surfaced in multiple ICC, ICTY and ICTR cases, as well as the Dutch domestic prosecutions of Frans van Anraat and Guus Kouwenhoven.¹⁵³ In all instances, courts have agreed that the accomplice's contribution need not be decisive. However, they differ as to whether the contribution needs to be substantial (or, in some cases, 'significant').¹⁵⁴ Some pre-Rome Statute materials, such as the International Law Commission Draft Code of Crimes against the Peace and Security of Mankind of 1996, stipulate that the accomplice's contribution to the crime must be direct and substantial.¹⁵⁵ This is the approach that the ICTY set in *Furundžija*, holding that accessory liability requires 'practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime'.¹⁵⁶ The ICTY's subsequent case law followed *Furundžija* with minor qualifications.¹⁵⁷ By contrast, the ICC decided in *Bemba* that the actus reus of accessory liability 'does not require the meeting of any specific threshold' despite contrary holdings in some prior ICC case law, e.g. *Mbarushimana* and *Lubanga*.¹⁵⁸ In short, the law in this area is in flux.¹⁵⁹

In the absence of settled case law, one may expect judges' policy intuitions to play a role in practice. For example, it would arguably be too far-reaching an interpretation to suggest that all companies operating in Russia are, without more, aiding and abetting international crimes by paying taxes. By contrast, funding a PMC directly involved in the commission of such crimes is more likely to be sufficiently causally proximate to the underlying criminal conduct. Even then, however, difficult questions can arise, such as whether the frequency with which the PMC engages in international crimes matters for the assessment of whether the funder's contribution should be deemed to have contributed to an international crime, as opposed to other military operations.

Similar complexities characterise the concept of 'contributing' to the commission or attempted commission of a crime if a common purpose prosecution is brought. In *Tadić*, the ICTY held that participation in a common purpose 'may take the form of assistance in, or contribution to, the execution of the common plan or purpose'.¹⁶⁰ This approximates the concept of 'contributing' to a crime to that of 'aiding, assisting or otherwise abetting', with analogous causation issues involved, as discussed above.

2. Mens rea

In order for economic complicity to be punishable under international criminal law, it also has to satisfy the mens rea requirements of complicity. In the ICC context, Article 30 of the Rome Statute provides as follows:

153 These include *Prosecutor v Tadić (Trial Judgement)* (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, Case No. IT-94-1-T, 7 May 1997) [687] (*Prosecutor v Tadić*) and *Prosecutor v Furundžija (Judgement)* (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, Case No. IT-95-17/1-T, 10 December 1998) [235] (*Prosecutor v Furundžija*) (ICTY cases establishing that the contribution needs to be 'substantial') and *Prosecutor v Bemba et al. (Public Redacted Version of Judgement)* (International Criminal Court, Trial Chamber VII, Case No. ICC-01/05-01/13, 19 October 2016) (*Prosecutor v Bemba*) (ICC case holding that no such threshold applies).

154 For useful analysis, see Göran Sluiter and Sean Shun Ming Yau, 'Aiding and Abetting and Causation in the Commission of International Crimes: The Cases of Dutch Businessmen van Anraat and Kouwenhoven' in Nina HB Jørgensen (ed), *The International Criminal Responsibility of War's Funders and Profiteers* (Cambridge University Press, 2020).

155 Caspar Plomp, 'Aiding and Abetting: The Responsibility of Business Leaders under the Rome Statute of the International Criminal Court' (2014) 30(79) *Utrecht Journal of International and European Law* 4, 8.

156 *Prosecutor v Furundžija* (n 153) [235].

157 Plomp (n 155) 10.

158 *Prosecutor v Bemba* (n 153) [93]–[94].

159 For detailed analysis, see Laura Ausserladscheider Jonas, *Individual Criminal Responsibility for the Financing of Entities Involved in Core Crimes* (Brill, 2021) 70–79.

160 *Prosecutor v Tadić* (n 153) [227]. For discussion, see Kai Ambos, 'Joint Criminal Enterprise and Command Responsibility' (2007) 5 *Journal of International Criminal Justice* 159, 171.

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
 - (a) In relation to conduct, that person means to engage in the conduct;
 - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, ‘knowledge’ means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. ‘Know’ and ‘knowingly’ shall be construed accordingly.

This means that, in order to be guilty of a crime as an accomplice or participant in a common purpose, the defendant needs to *intend* to aid, abet or otherwise provide material support for the commission of a crime (in the case of complicity) or contribute to its commission (in the case of a common purpose). He or she must also be aware of the ‘essential elements’ of the intended offence.¹⁶¹ The ICC’s requirement of knowledge contrasts with the ICTY’s suggestion that recklessness is sufficient for accessorial liability.¹⁶²

It is notable that the ICC’s definitions of ‘intent’ and ‘knowledge’ both encompass awareness of certain consequences occurring ‘in the ordinary course of events’. This suggests that the awareness of some probability of a crime being committed can suffice to satisfy both those mens rea requirements, but it is uncertain how high that probability has to be. Furthermore, it is uncertain whether this requirement can *only* be satisfied by demonstrating actual (subjective) knowledge on the part of the defendant, or whether ‘willful blindness’ in circumstances where the defendant should have known about the crime can suffice.¹⁶³

Both intention and knowledge requirements raise challenges in the prosecution of someone who, say, funds a military unit widely suspected or believed to be involved in the widespread commission of international crimes. Specifically, the question arises of whether intention and knowledge can be inferred from the availability of such information; how reliable or easily available such information needs to be to infer knowledge of the crimes; and how widespread alleged international crimes need to be in order to infer the intention to assist or encourage them.

Existing jurisprudence suggests there are cases where public availability of information about the principal’s course of criminal conduct will be sufficient to infer the accessory’s knowledge of it. For instance, the Special Court for Sierra Leone had regard to the following factors in finding Charles Taylor guilty of aiding and abetting international crimes:

The Trial Chamber recalls the numerous contemporary public reports which described in detail and over a large period of time each of the crimes charged in Counts 1 to 11 of the Indictment. The Trial Chamber also notes that after 1997 there was increased media coverage on the RUF/AFRC terror campaign in Sierra Leone.¹⁶⁴

There is a further layer of complexity surrounding the interplay between complicity rules and the crime of aggression. If a particular person funds the Russian armed forces, it can be difficult to establish whether that person knows that a particular military unit, or the Russian armed forces

¹⁶¹ *Prosecutor v Haradinaj et al. (Judgement)* (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, Case No. IT-04-84-A, 19 July 2010) [58]. For commentary, see Andrea Reggio, ‘Aiding and Abetting In International Criminal Law: The Responsibility of Corporate Agents And Businessmen For “Trading With The Enemy” of Mankind’ (2005) 5 *International Criminal Law Review* 623, 640.

¹⁶² *Prosecutor v Tadić* (n 153) [687].

¹⁶³ *Jonas* (n 159) 118–120.

¹⁶⁴ *Prosecutor v Charles Taylor* (n 45) [6950].

as a whole, is engaged or will engage in international crimes. However, that person *will* know, as does everyone, that the Russian army is engaged in aggressive war. Since individual criminal responsibility for the waging of aggressive war is likely limited to the top leaders of a state (e.g. Russia's president Vladimir Putin), the question arises of whether the funder can be deemed to have supported *those individuals specifically* in the waging of aggressive war, with the requisite intent and knowledge. Those kinds of issues have not yet been aired in the ICC since it has never exercised jurisdiction over the crime of aggression, but they could arise if a bespoke aggression tribunal were set up for Ukraine.

C. Profiting from international crimes

Scenarios concerning profiting from international crimes present greater complexity than funding international crimes because they feature involvement in a crime *after it has been committed*. At common law, such involvement is traditionally characterised as being an 'accessory after the fact', which is normally considered to be a distinct offence rather than a form of complicity.¹⁶⁵ Whether accessorial involvement after the fact is recognised as criminally punishable under international criminal law is contentious.

The current consensus appears to be that ex-post facto involvement is only sufficient to constitute complicity in a crime *if the defendant already has the requisite mens rea before the crime is committed*.¹⁶⁶ Suppose that the defendant intends to assist the crime (in the case of accessorial liability) or forms an agreement with the perpetrator (in the case of a common purpose) prior to the crime but the assistance or contribution is provided after the crime, e.g. by disposing of the bodies of victims.

The reason for this stance is that someone who *only* gets involved ex-post has not assisted or contributed to the commission of the crime. Their involvement can be more accurately described as helping the perpetrator deal with the consequences of the crime and, so the argument goes, is therefore best thought of a separate offence akin to the obstruction of justice.¹⁶⁷ This is not an offence that the Rome Statute provides for,¹⁶⁸ nor is it accepted in international criminal law writ large.¹⁶⁹

The policy assumptions behind this stance can be queried. It is arguable that profiteering opportunities are central to sustaining war economies and enabling international crimes. For instance, the systematic looting of Ukrainian resources is not merely something that happens to occur after war crimes in cities like Mariupol; it is one of the incentives to continue the war and perpetrate those crimes. This is entirely analogous to how opportunities to sell stolen goods or launder ill-gotten money are central to domestic criminal economies. In recognition of this, states around the world criminalise handling of stolen goods and money laundering.¹⁷⁰ The absence of a distinct set of rules in international criminal law dealing with the *proceeds* of international crimes is a major gap, which we return to later in considering legal reform options.

165 Miles Jackson, *Complicity in International Criminal Law* (Oxford University Press, 2015) 74.

166 *Prosecutor v Vidoje Blagojević and Dragan Jokić (Judgement)* (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber I, Case No. IT-02-60-T, 17 January 2005) [730]–[731]. See also Plomp (n 221) 11.

167 Jackson (n 165).

168 For close textual analysis, see Manuel J Ventura, 'Accessory after the fact at the International Criminal Court? Reconciling Article 25(3)(c) in Spanish of the polylingual ICC Statute' (2022) 20(5) *Journal of International Criminal Justice* 1085.

169 Plomp (n 155) 11.

170 See Anton Moiseienko, *Doing Business with Criminals: Between Exclusion and Surveillance* (Cambridge University Press, forthcoming) ch 2.

D. Economic complicity and reparations

As we have established, the treatment of economic complicity in international law lacks clarity and comprehensiveness, as relates to both funding international crimes and (especially) profiting from them. This has significant implications for the payment of reparations to victims. If no criminal responsibility attaches to those who bear moral culpability for international crimes *and have the resources to pay reparations* (i.e. funders and profiteers), awards of reparations will continue to be no more than symbolic.

International criminal law provides for the obligation of those who commit international crimes to pay reparations to the victims. In the ICC, this is reflected in the establishment of the Trust Fund for Victims.¹⁷¹ Its functions are two-fold.¹⁷² On one hand, it is used by the Court as a depository, or collective pooling mechanism, to hold fines or forfeiture for redistribution to victims in the future.¹⁷³ On the other hand, the Trust Fund serves as an intermediary, directly facilitating reparations to be paid from a convicted person to their victims.¹⁷⁴ Beyond fines and forfeiture, the Trust Fund website also seeks contributions from members of the public.¹⁷⁵

However, very few victims actually receive reparations in practice.¹⁷⁶ One of the reasons is the difficulty of identifying victims and a lack of available evidence through which victims may claim entitlement to reparation.¹⁷⁷ Another key obstacle, which is directly relevant to the present discussion, is the inability to identify and seize any assets from which reparations would be paid.

The ICC case against Dominic Ongwen of the Lord's Resistance Army (LRA) provides a stark example. Following the award of €5 million in reparations, the ICC has been unable to collect these funds from Ongwen himself and therefore launched an appeal for 'States, organisations, corporations, and private individuals to urgently contribute EUR 5 million to allow for a start to the delivery of reparations'.¹⁷⁸ The ICC's desire to explore all avenues to compensate victims is commendable, but crowd-funded 'reparations' of this nature have neither the practical nor the symbolic weight that would come from seizing perpetrators' assets to repay the victims.¹⁷⁹ Furthermore, as is often the case for such insurgent organisations, there is evidence of the LRA relying on its financial facilitators to raise significant amounts of funds. Two people involved in such activities—among them 'the primary supplier of ammunition, mines, weapons, good, supplies and other goods to the LRA'—were sanctioned by the US in 2017, but no international criminal response followed.¹⁸⁰ This evinces a systemic and ongoing failure of aligning prosecutorial responses to international crimes with reparation efforts.

171 Rome Statute (n 38) art 79.

172 Thordis Ingadittor, 'The Trust Fund of the ICC' in Dinah Shelton (ed), *International Crimes, Peace, and Human Rights: The Role of the International Criminal Court* (Brill, 2021) 149, 150.

173 Ibid.

174 'Trust Fund for Victims', *International Criminal Court* (web page) <<https://www.icc-cpi.int/tfv>>.

175 'Trust Fund for Victims: Home Page', *International Criminal Court* (web page) <<https://www.trustfundforvictims.org/>>.

176 Regina E Rauxloh, 'Good Intentions and Bad Consequences: The General Assistance Mandate of the Trust Fund for Victims of the ICC' (2021) 34 *Leiden Journal of International Law* 203, 204.

177 Ibid, 205.

178 'ICC Trust Fund for Victims Issues its First Urgent Funding Appeal of EUR 5 Million to Launch a Reparation Programme for Victims of Dominic Ongwen', *International Criminal Court* (web page, 27 June 2024) <<https://www.icc-cpi.int/news/icc-trust-fund-victims-issues-its-first-urgent-funding-appeal-eur-5-million-launch-reparation>>.

179 Holly Dranginis, *Prosecute the Profiteers: Following the Money to Support War Crimes Accountability* (The Sentry Report, April 2019) 24.

180 US Department of the Treasury, 'Treasury Sanctions Lord's Resistance Army Facilitators Involved in the Illicit Trade of Ivory, Weapons, and Money in Central Africa' (press release, 13 December 2017).

The same difficulties would arise if the only target of prosecutions in connection with international crimes committed by Russian forces in Ukraine were low-ranking military directly involved in their commission. They almost certainly lack the financial wherewithal to provide any meaningful reparations. Ironically, prosecutions against Russia's top political leadership, such as President Vladimir Putin, might throw up a different but related challenge: while reportedly leading a luxurious lifestyle, he is also unlikely to hold substantial amounts of property in his own name,¹⁸¹ which will complicate recovery efforts and potentially involve competing third-party claims to assets.¹⁸²

Bringing prosecutions against those who are involved in international crimes *and* generate substantial amounts of funds through them, or have at their disposal the wealth that they use to fund such international crimes, is an under-explored yet indispensable solution. It both serves the moral imperative of prosecuting all those responsible for international crimes, including those who support them financially, and offers the practical advantage of opening up opportunities for reparations that would otherwise remain unavailable.

E. Domestic AML/CTF and sanctions laws

Compared to international criminal law, domestic laws offer a greater array of legal means of addressing economic complicity in international crimes.¹⁸³ This is because, in addition to domestic implementation of international criminal law, there are other relevant areas of law, including anti-money laundering (AML), counter-terrorist financing (CTF) and sanctions laws.

AML laws criminalise dealing with proceeds of crime or its instrumentalities, i.e. property that either derives from crime or is used to commit it. So, for example, a bank handling the proceeds of drug trafficking is committing the criminal offence of money laundering. Money laundering can be committed with the proceeds of almost any category of profit-generating crime, including international crimes.¹⁸⁴ With only minor divergences, the criminalisation of money laundering is substantially uniform around the world as a result of countries' implementation of the recommendations adopted by the Financial Action Task Force (FATF), a Paris-based intergovernmental organisation.¹⁸⁵ Despite the legal feasibility of prosecuting money laundering related to international crimes, no such prosecutions appear to have taken place so far, which calls into question the degree of coordination between economic crime-oriented and international crime-oriented law enforcement activities.

CTF laws criminalise the provision of resourcing, including but not limited to funding, to terrorists.¹⁸⁶ Similarly to AML laws, the overall parameters of CTF laws are largely determined by the FATF Recommendations. However, individual states often differ in whom specifically they treat as terrorists, including via designations of proscribed terrorist organisations. For instance, Ukraine has long described the Russia-controlled Donetsk People's Republic (DPR) and Luhansk People's Republic (LPR) as terrorist organisations, but Ukraine's overseas partners, while condemning the activities of those organisations, have not uniformly characterised them as terrorist organisations.

181 See the Panama Papers investigations into people who may be holding property on Putin's behalf according to the International Consortium of Investigative Journalists (ICIJ): 'The Panama Papers: Exposing the Rogue Offshore Finance Industry', ICIJ (web page) <<https://www.icij.org/investigations/panama-papers/>>.

182 Such problems have been amply demonstrated by US efforts to seize the property of former Ukrainian prime minister Pavlo Lazarenko following his money laundering conviction.

183 Given the diversity of domestic legal systems, this discussion necessarily involves a degree of generalisation. However, as explained below, certain areas of relevant laws are substantially uniform across countries.

184 For general context, see Guy Stessens, *Money Laundering: A New International Law Enforcement Model* (Cambridge University Press, 2000).

185 Financial Action Task Force, *International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation* (report, updated November 2023).

186 See, e.g., Jodi Vittori, *Terrorist Financing and Resourcing* (Palgrave Macmillan, 2011).

Sanctions laws can fulfil similar functions to AML/CTF ones. Financial sanctions involve the freezing of assets of sanctioned organisations or individuals as well as prohibitions on any financial dealings with them, including making any payments to them or receiving any payments from them. Therefore, a sanctions designation shuts the sanctioned organisation out of the legitimate economy in the sanctioning state. The US, UK, EU and other like-minded states and organisations have extensively resorted to this approach in connection with Russia's invasion of Ukraine by sanctioning thousands of Russian individuals and organisations.¹⁸⁷ Sanctioned organisations, such as the Wagner Group, are off-limits to anyone within the sanctioning states' jurisdiction.

As a result, financial entanglements with actors involved in international crimes can attract criminal responsibility under a range of domestic laws. For example, as described previously, this is why the French cement company Lafarge faced criminal prosecution under CTF laws for paying 'taxes' to the terrorist group Isis in Syria.¹⁸⁸ Similarly, this is the reason for the prosecutions of a number of US and other nationals engaged in financial transactions with sanctioned Russian persons. For such prosecutions, mere engagement in a transaction with the sanctioned person is sufficient, irrespective of whether it is in any way connected with any international crime.

One limitation of such prosecutions is they can only be brought in the state imposing the sanctions, as opposed to prosecutions for economic complicity in international crimes, which can be brought anywhere in the world under universal jurisdiction. Furthermore, for those cases that do involve financial transactions with a provable connection to an international crime, sanctions evasion charges do not reflect the nature or gravity of the accused's conduct. Therefore, despite being used as the collective West's response of choice to Russia's invasion of Ukraine, sanctions do not obviate the need to consider international criminal justice responses to economic complicity in international crimes in Ukraine.

F. Legal reform options

Two key points emerge from the analysis above. First, there is a wide array of forms of economic complicity in international crimes, including war crimes and crimes against humanity. They involve multiple types of funding and profiteering. While they are by no means limited to Russia's war in Ukraine, it provides an abundance of contemporary and well-documented instances of such economic complicity. Second, despite the promise of post-World War II industrialist trials, international criminal law has seen no development insofar as its capacity to prosecute war funders and profiteers is concerned—and, in fact, such prosecutions have become exceedingly rare. For now, this capacity remains extremely limited, which calls for reform. In this section, we consider reform options in the domains of international criminal law (at the international level) and AML/CTF and sanctions (at the domestic level).

1. International criminal law options

As discussed above, existing modes of liability under international criminal law most relevant to economic complicity in international crimes are accessory liability and common purpose liability. Their application to cases of economic complicity presents multiple challenges.

Common purpose prosecutions require proving an agreement between the parties involved. Such an agreement may be inferred from the circumstances, but questions arise as to the plausible limits of such inferences. For example, one might debate whether the provision of weapons to the Russian state in general implies an agreement to commit a specific war crime. One might contrast

¹⁸⁷ US Department of the Treasury, 'Joint Statement from the REPO Task Force' (press release, 9 March 2023) <<https://home.treasury.gov/news/press-releases/jy1329>>.

¹⁸⁸ Cohen and Freifeld (n 57).

this with a situation where an external party supplies weapons to a particular PMC operating in Ukraine and widely reported to be involved in systematic commission of war crimes.

Accessory liability involves distinct but similar challenges. In part, they stem from the requirement to prove the accomplice's *knowledge* of the planned crime and *intention* to assist or encourage its commission. Both can be proved by establishing awareness that a crime will be committed 'in the ordinary course of events'. In situations where international crimes are widely reported, e.g. in reports by international organisations or reputable media, the question arises of whether such awareness can be deemed to exist if one funds the activities of a particular military unit, or perhaps even entire armed forces. This question partly involves an issue of law (can such awareness be established on an objective basis in light of what the defendant *should have known?*) and partly involves an assessment of the facts at hand, which must be case-specific.

In terms of the physical actions constituting the offence (*actus reus*), uncertainty persists as to the applicable causation tests, namely whether the contribution to the offence needs to be 'substantial' or 'significant'. Or, in other words, the issue is how proximate the contribution needs to be to the crime in order to attract international criminal responsibility. For instance, it would be counter-intuitive for *all* companies paying taxes in Russia to be treated as potentially fulfilling the *actus reus* of complicity in international crimes, but far less counterintuitive for complicity charges to be available in connection with funding a PMC widely reported to be involved in international crimes.

The greatest gap pertains to profiting from international crimes. In the absence of dedicated rules dealing with proceeds of international crimes, international criminal responsibility can only ensue if the requisite *mens rea* arose *before* the commission of the crime. As a consequence, downstream activities such as selling stolen Ukrainian grain or taking over civilian residences in Mariupol to resell them for profit do not seem to attract international criminal responsibility so long as the profiteer is not directly involved in the theft or expropriation. This arguably runs counter to both moral intuitions and the practical realities of war economies that are sustained by profiteering opportunities.

There are several potential solutions. One is ensuring that provisions dealing with economic complicity are included in the statute of any international criminal tribunals that may be established to deal with the crimes committed in Ukraine or other future conflicts.¹⁸⁹ Another is enshrining such provisions in domestic legislation. These provisions can include carve-outs to shield from liability those who come into contact with proceeds of international crimes innocently, for example as a result of receiving payment for good-faith provision of goods or services. In any event, these legal reforms should be accompanied by a political commitment to pursue accountability for economic complicity, as well as prioritising funders and profiteers as likely sources of reparations for victims.

Like any criminal law, provisions establishing international crimes cannot apply retrospectively.¹⁹⁰ There will therefore be an important discussion to be had as to the extent to which such provisions codify existing rules of international criminal law as opposed to creating new offences. In our assessment, the position differs as between funding international crimes and profiting from them.

As outlined earlier, prosecutions for funding international crimes can already be brought under international criminal law. However, it is desirable to clarify applicable *actus reus* and *mens rea* requirements, including those of 'intention' and 'knowledge'. If such clarifications were supplied in domestic legislation of the statute of a newly created international court or tribunal, questions would arise as to whether they reflect the pre-existing state of international criminal law (and are

¹⁸⁹ One possible approach to drafting them is set out in the recommendations in the end of this report.

¹⁹⁰ Article 15(1) of the International Covenant on Civil and Political Rights states that 'No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed': opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

therefore non-retrospective) or advance it (and therefore are retrospective). The answer to this ultimately depends on one's legal assessment of what the current state of international criminal law is, which is an issue that we do not attempt definitively to resolve in this report.

By contrast, liability for profiting from international crimes that we propose does not currently exist in international criminal law. In other words, introducing it would constitute development of the law in this area rather than its codification or clarification. However, states around the world invariably criminalise laundering the proceeds of crime consistent with the UN Convention Against Transnational Organized Crime and the FATF Recommendations—including, among many others, Ukraine and Russia.¹⁹¹ Therefore, while enshrining liability for handling the proceeds of international crimes is an innovation in terms of international criminal law, doing so would *not* create criminal responsibility where there was none before, but would merely enable international as well as domestic prosecution. As a result, in our assessment, this proposed development of international criminal law would be consistent with defendants' rights.

2. AML/CTF and sanctions options

To some extent, existing gaps in international criminal law are being filled through sanctions imposed by some states domestically, e.g. prohibition on all transactions with the Wagner Group. This is not a perfect response. Many of the people targeted through sanctions are outside Western jurisdictions and therefore largely insulated from their effects.¹⁹² By contrast, the spectre of international criminal responsibility, including the prospect of domestic prosecutions around the world on the basis of universal jurisdiction, could have a significant deterrent effect.

However, sanctions fulfil a useful function by creating a lasting record of alleged wrongdoing. Despite the very different evidentiary standards and purposes compared to criminal prosecution, governments can use sanctions designations to broadcast alleged wrongdoing to the world. The reputational consequences of such announcements render them a potent tool but also require that due process protections be provided to those targeted. It is therefore desirable that, whenever sufficient evidence of involvement in international crimes is available, including through funding them or profiting from them, sanctions be imposed *on that basis specifically* as distinct from using more generic sanctions criteria, such as affiliation with the Russian government.¹⁹³

The role of AML/CTF laws and institutions domestically should also not be overlooked. Ukrainian authorities have prosecuted multiple individuals for terrorist financing in connection with their support for the DPR and LPR, including for actions such as wiring money to charities in the occupied territories that was diverted to the DPR and LPR,¹⁹⁴ running businesses in the occupied territories and paying taxes to the DPR and LPR,¹⁹⁵ making cryptocurrency donations to the DPR

191 Article 6 of the UN Convention Against Transnational Organized Crime; Recommendation 3 of the FATF Recommendations. Countries' compliance with the FATF's Recommendation 3 is reflected under the rubric 'Technical Compliance' in the FATF's consolidated table of mutual evaluation reviews that it runs to assess implementation of the FATF Recommendations worldwide: <<https://www.fatf-gafi.org/en/publications/Mutualevaluations/Assessment-ratings.html>>.

192 For an analysis of the impact of targeted sanctions, see Anton Moiseienko, Megan Musni and Eva Van Der Merwe, *A Journey of 20: An Empirical Study of the Impact of Magnitsky Sanctions on the Earliest Corruption Designees* (International Lawyers Project Report, 28 June 2023).

193 Such designations are already possible under the human rights prongs of existing sanctions programmes. See, e.g., in the EU: *Council Decision (CGSP) 2020/1999 of 7 December 2020 Concerning Restrictive Measures Against Serious Human Rights Violations and Abuses* [2020] OJ L 410I/13; in the US: *Global Magnitsky Human Rights Accountability Act*, 284 USC (2016); in the UK: *Sanctions and Anti-Money Laundering Act 2018* (UK).

194 Kharkiv District Court, Judgment No. 640/10659/18 of 19 November 2018, <<https://reyestr.court.gov.ua/Review/78064688>>.

195 Kharkiv District Court, Judgment No. 619/5166/23 of 24 November 2023 <<https://reyestr.court.gov.ua/Review/115188827>>.

and LPR,¹⁹⁶ and supplying the DPR and LPR administrations with goods or services.¹⁹⁷ Some prosecutions stem from alleged direct perpetration of pillaging.¹⁹⁸ However, no prosecutions appear to have taken place either in Ukraine or overseas for laundering the proceeds of international crimes committed in Ukraine. Given the transnational footprint of certain schemes involving such laundering, including the sale of stolen Ukrainian grain, this is a striking gap.

One further benefit of enlisting the AML/CTF laws in support of efforts against war funding and profiteering stems from the available institutional framework. Regulated businesses, including financial businesses and a range of designated non-financial businesses and professions, are obliged to conduct customer due diligence and file suspicious activity reports to their states' financial intelligence units (FIUs). In doing so, they can rely on typologies disseminated by FIUs and regulatory authorities to help them identify and report suspicious activities. This opens up hitherto underexplored opportunities for FIUs to develop typologies specific to international crimes, including but not limited to the sale of stolen Ukrainian grain, so as to facilitate their detection and prosecution.

¹⁹⁶ Dnipro District Court, Judgment No. 204/9472/23 of 6 September 2023, <https://reyestr.court.gov.ua/Review/113945747>; Dnipro District Court, Judgment No. 204/2980/21 of 7 September 2021, <<https://reyestr.court.gov.ua/Review/99420042>>.

¹⁹⁷ Kharkiv District Court, Judgment No. 639/841/19 of 19 March 2019, <<https://reyestr.court.gov.ua/Review/80545598>>.

¹⁹⁸ Chernihiv District Court, Judgment No. 743/380/23 of 28 February 2024, <<https://reyestr.court.gov.ua/Review/117304451>>; Sumy District Court, Judgment No. 588/1122/23 of 30 August 2023, <<https://reyestr.court.gov.ua/Review/113106427>>; Kyiv District Court, Judgment No. 369/358/23 of 8 December 2023, <<https://reyestr.court.gov.ua/Review/116101034>>; Poltava District Court, Judgment No. 554/3954/22 of 13 June 2022, <<https://reyestr.court.gov.ua/Review/104731235>>; Poltava District Court, Judgment No. 554/3925/22 of 9 June 2022, <<https://reyestr.court.gov.ua/Review/104701812>>; Poltava District Court, Judgment No. 554/3864/22 of 13 June 2022, <<https://reyestr.court.gov.ua/Review/104739440>>.

Conclusions and recommendations

The importance of prosecuting war funders and profiteers can hardly be overstated. They enable the commission of international crimes either directly, by providing the resources for it, or indirectly, by creating a political and economic environment where international crimes become a money-making opportunity.

The ‘industrialist trials’ at Nuremberg, which saw prominent Nazi businessmen convicted of war crimes and crimes against humanity, held out the promise of recognising and addressing the harms of economic complicity in international crimes. Since then, this promise has been abandoned. While a distinct body of laws criminalises dealing with proceeds or instrumentalities of crime in domestic legal systems, no comparable rules exist in international criminal law.

Nor has there been any sustained political or institutional focus on the accountability of war funders and profiteers. For the past several years, organisations such as The Sentry have been undertaking groundbreaking work to raise the profile of the issue. Still, there is a distinct lack of institutional or legal reform, internationally or domestically, in response to this work. No prosecutions of war funders or profiteers have been brought over two decades of the ICC’s operation.

This partly accounts for the ICC’s failure to effectively provide reparations to victims. For instance, once €5 million was awarded in reparations to the victims of Dominic Ongwen from the LRA, it became apparent that that amount could not be collected from Ongwen. Meanwhile, two of the LRA’s major financial facilitators were sanctioned by the US, but faced no international criminal justice consequences.

The obliviousness of international criminal law to economic complicity has been failing Africa for decades, and is now failing Ukraine too. This is a glaring omission. Those swathes of Russian elites who, whatever their personal feelings about the war, choose to fund it or benefit from it need to be put on notice. If a bespoke international criminal tribunal for Ukraine is established, its statute can be fashioned in a manner that goes beyond the provisions of the Rome Statute. Domestic laws around the world can be amended, and prosecutions for economic complicity in international crimes brought on the basis of universal jurisdiction.¹⁹⁹

So far, sanctions have been the West’s response of choice to financial support for Russia’s war in Ukraine. If successfully implemented, they shut their targets out of the Western economies. Still, they are temporary by nature and do not entail any criminal punishment. The prospect of a criminal prosecution, internationally or domestically in a foreign jurisdiction, is far more likely to be taken seriously by anyone in Moscow who is contemplating their course of action in this war.

199 Although the precise international crimes captured by universal jurisdiction are unsettled, many states attach universal jurisdiction to war crimes, piracy, genocide, slavery and torture. In some states, universal jurisdiction has also been extended to other international crimes including terrorism, crimes against humanity, trafficking in persons, and offences related to the deprivation of liberty. See *The Scope of Application of the Principle of Universal Jurisdiction*, GA Res 76/118, UN Doc A/77/186 (18 July 2022); see also Amnesty International, *Universal Jurisdiction: A Preliminary Survey of Legislation Around the World—2012 Update* (report, October 2012).

This suggests that a recalibration of approach is desirable. In anticipation of future international criminal justice responses, sanctions designations can be ramped up that are predicated specifically on involvement in war crimes and crimes against humanity, including funding them or profiting from them.

Overall, the war in Ukraine demonstrates yet again the need to reevaluate and strengthen the state of international criminal justice. On this occasion, there is an opportunity to ensure that economic complicity in international crimes is not overlooked. To that end, we offer the following recommendations:

Recommendation 1 In addition to their ongoing efforts to ensure accountability for international crimes committed in Ukraine, the Ukrainian government and its international partners should commit to pursuing accountability, including through individual criminal responsibility, of those who fund international crimes committed in Ukraine or profit from them.

Recommendation 2 States should affirm their willingness to investigate and prosecute the activities of those who fund international crimes or profit from them based on universal jurisdiction. This should include international crimes committed in Ukraine and elsewhere.

Recommendation 3 Any Ukrainian or international mechanism set up to adjudicate international crimes committed in Ukraine, such as a special tribunal for the crime of aggression, should enable prosecutions for funding international crimes committed in Ukraine or profiting from them.

Recommendation 4 Separate provisions on the individual criminal responsibility of those who fund or profit from international crimes should be included in the statute of any international mechanism set up to adjudicate international crimes committed in Ukraine, as well as in domestic laws, including the law of Ukraine.

As an example, these provisions could be along the following lines:

A person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person ...

- (a) Intentionally provides funds or other material support to another person in connection with the commission of the crime in the knowledge of the other person's intention to commit the crime. The provision of such funds or other material support need not have any effect on the commission of the crime.

The knowledge of the other person's intention to commit the crime can be inferred from the public availability of such information at the relevant time, including information about the other person's behaviour at the time closely preceding the commission of the crime.

- (b) Intentionally seeks, directly or indirectly, financial or other material profit from the crime, including by handling its proceeds, in the knowledge of the circumstances that make up the crime.

The following activities do not, in and of themselves, constitute seeking financial or other material profit from the crime:

- Good-faith journalistic, reporting or other documentation activities provided that such activities are intended to expose the crime;
- Legal representation of any person in any legal proceedings relating to the crime.

- (c) Intentionally deals with the proceeds of any of the crimes within the jurisdiction of the Court, unless such dealing involves the receipt of payment in consideration for goods or services provided in good faith.

Recommendation 5 Separate provisions on the individual criminal responsibility of those who fund or profit from international crimes should be adopted in domestic legislation as soon as possible.

Recommendation 6 The Office of the Prosecutor at the International Criminal Court should consider the practical likelihood of securing reparations as one of the factors in the exercise of its prosecutorial discretion. In other words, if a potential defendant benefitted financially from the alleged crime and therefore is in possession of assets that could be used to pay reparations to victims, this can be legitimately considered in prioritising the prosecution of that defendant.

Recommendation 7 Whenever sufficient evidence of involvement in international crimes is available, including through funding them or profiting from them, states should impose sanctions on that basis, rather than based on more generic sanctions criteria, such as being affiliated with a particular government.

Recommendation 8 The Ukrainian government and its international partners should continue to publicise widely the international crimes committed in Ukraine. Sanctions risks and risks of individual criminal responsibility involved in funding such crimes or profiting from them should form part of their overall communications strategy.

Recommendation 9 Law enforcement units responsible for the investigation and prosecution of money laundering should cooperate with their counterparts responsible for the investigation and prosecution of international crimes so as to bring money laundering prosecutions against individuals and companies involved in the laundering of proceeds of international crimes.

Recommendation 10 Financial intelligence units should work to identify typologies related to the laundering of proceeds of international crimes and, together with regulatory agencies, disseminate them among regulated businesses.

Economic complicity in international crimes (pre-Ukraine)

International case law

Type	Description	Cases
Funding international crimes	Material support to actors committing international crimes	<ul style="list-style-type: none"> • <i>Krupp</i> (Nuremberg)²⁰⁰ • <i>IG Farben</i> (Nuremberg)
	Selling weapons to actors committing international crimes	<ul style="list-style-type: none"> • <i>Charles Taylor</i> (Sierra Leone)
Profiting from international crimes	Labour exploitation	<ul style="list-style-type: none"> • <i>Flick</i> (Nuremberg) • <i>Farben</i> (Nuremberg)
	Plunder	<ul style="list-style-type: none"> • <i>Funk</i> (Nuremberg) • <i>Krupp</i> (Nuremberg) • <i>Flick</i> (Nuremberg) • <i>IG Farben</i> (Nuremberg) • <i>Roehling</i> (Nuremberg)
Appropriating factories on occupied territories	Taking over factories for manufacturing and sales for the benefit of occupying forces.	<ul style="list-style-type: none"> • <i>Roehling</i> (Nuremberg)

200 For the purposes of this table, 'Nuremberg' includes subsequent trials before British, French and US military courts.

201 This typology could be seen as involving both funding international crimes, in the sense of providing the resources (weapons) for their commission, and profiting from them.

Domestic case law

Type	Description	Cases	
Funding International Crimes	Providing services and logistical support to actors committing international crimes	<ul style="list-style-type: none"> Local businesses or individuals entering into naval logistics contracts with those committing international crimes. Using business ports as logistical centres to import, store and distribute weapons. Providing modes of transport to armed forces during civil conflict. Other forms of commercial collaboration. 	<ul style="list-style-type: none"> <i>Guus Kouwenhoven</i> (Netherlands/Liberia) <i>Chiquita Brands International, Inc</i> (US/Colombia)
	Providing financial support to actors committing international crimes	Paying paramilitary organisations in exchange for the protection of business operations in a country experiencing conflict.	<ul style="list-style-type: none"> <i>Chiquita Brands International, Inc</i> (US/Colombia) <i>Lafarge</i> (US/France; Syria)²⁰²
	Providing weapons used to commit international crimes	Providing weapons and ammunition to violent regimes in return for payment.	<ul style="list-style-type: none"> <i>Guus Kouwenhoven</i> (Netherlands/Liberia)
	Providing other materials used to commit international crimes	<ul style="list-style-type: none"> Supplying components used in chemical weapon production. Exporting chemicals used to manufacture chemical agents without appropriate export licences. 	<ul style="list-style-type: none"> <i>Frans Van Anraat</i> (Netherlands/Iraq)
Profiting from international crimes	None unless the case also involves funding an international crime, as above.		

²⁰² Technically involving terrorist financing rather than economic complicity in international crimes.

Economic complicity in international crimes (Ukraine)

Funding		
Type	Description	Sources
Funding PMCs	Companies, including major Russian state-owned enterprises, accused of funding PMCs accused of committing international crimes.	<ul style="list-style-type: none"> · US, UK and EU sanctions designations.²⁰³ · A UK House of Commons report.²⁰⁴

Profiting		
Type	Description	Sources
Grain pillage	<p>Farming and exporting grain produced by farms in the occupied territory that have been forcibly taken over by Russia.</p> <p>Transporting pillaged grain via sea or land.</p>	<ul style="list-style-type: none"> · US, UK and EU sanctions designations.²⁰⁵ · Journalist investigations.²⁰⁶ · Reported by the Initiative for the Study of Russian Piracy and Global Rights Compliance.²⁰⁷

203 See, e.g., US Sanctions Press Release: 27 June 2023 (n 94); United Kingdom Foreign, Commonwealth & Development Office, 'UK Sanctions Wagner Group Leaders and Front Companies Responsible For Violence and Instability Across Africa' (press release, 20 July 2023) <<https://www.gov.uk/government/news/uk-sanctions-wagner-group-leaders-and-front-companies-responsible-for-violence-and-instability-across-africa>>; Council of the EU, 'Wagner Group: Council Adds 11 Individuals and 7 Entities to EU Sanctions Lists' (press release, 25 February 2023) <<https://www.gov.uk/government/news/uk-sanctions-wagner-group-leaders-and-front-companies-responsible-for-violence-and-instability-across-africa>>.

204 Guns for Gold Report (n 89).

205 See, e.g., US Department of State, 'Targeting Russia's Senior Officials, Defense Industrial Base, Financial Infrastructure Leaders, and Human Rights Abusers' (press release, 15 September 2022) <<https://www.state.gov/targeting-senior-russian-officials-defense-industrial-base-financial-infrastructure-leaders-and-human-rights-abusers/>>; UK Government Press Release: 19 May 2023 (n 85); Directorate-General for Neighbourhood and Enlargement Negotiations, 'EU Adopts 14th Package of Sanctions Against Russia for Its Continued Illegal War Against Ukraine', *European Commission* (web page, 24 June 2024) <https://neighbourhood-enlargement.ec.europa.eu/news/eu-adopts-14th-package-sanctions-against-russia-its-continued-illegal-war-against-ukraine-2024-06-24_en>.

206 Burgis and Sauer (n 68); Ivanova, Cook and Pitel (n 68).

207 Global Rights Compliance (n 68); Initiative for the Study of Russian Piracy (n 68).

Profiting		
Type	Description	Sources
Construction work in occupied territories	Russian companies, some of them reportedly owned by 'oligarchs', receiving lucrative construction contracts to rebuild buildings destroyed during conflict.	<ul style="list-style-type: none"> · EU sanctions designations.²⁰⁸ · Ukraine's 'Sponsors of War' list (now defunct). · Journalist investigations.²⁰⁹
Providing services to the occupation authorities	<p>Providing town planning assistance for occupied cities.</p> <p>Administering service contracts and distributing funds to subcontractors.</p>	<ul style="list-style-type: none"> · Journalist investigations.²¹⁰
Providing financial services in occupied territories	Facilitating the provision of financial resources to the Russian government.	<ul style="list-style-type: none"> · US, UK and EU sanctions designations.²¹¹
Selling expropriated property in occupied territories	Real estate companies receiving commission for the sale of homes in Mariupol.	<ul style="list-style-type: none"> · Documented on X (formerly Twitter) by individuals involved in the purchase themselves.²¹²
Bloggers	Producing and disseminating pro-war content on social media and other online platforms.	<ul style="list-style-type: none"> · UK sanctions designations.²¹³ · Journalist investigations.²¹⁴
Companies operating in Russia	Operating lawful business in Russia and therefore paying taxes to the Russian government.	<ul style="list-style-type: none"> · Ukraine's 'Sponsors of War' blacklist (now defunct). · US, UK and EU government messaging (see Annex 3 below).

208 See, e.g., Council Decision (CFSP) 2024/1738 of 24 June 2024 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2024] OJ L 1/119, annex ('14th EU Sanction Package').

209 Alison Killing et al., 'Inside Mariupol: Russia's New Potemkin Village', *Financial Times* (online, 7 February 2024) <<https://ig.ft.com/mariupol/>>.

210 Ibid.

211 For financial institutions connected to the SPFS financial messaging system, see, e.g., 14th EU Sanction Package (n 208); US Sanctions Press Release: 12 June 2024 (n 149); Prime Minister's Office and Foreign, Commonwealth & Development Office, 'New UK Sanctions to Crack Down on Putin's War Machine' (press release, 13 June 2024) <<https://www.gov.uk/government/news/new-uk-sanctions-to-crack-down-on-putins-war-machine>>.

212 Translated English versions of these posts have been reviewed and kept on file by the authors.

213 'Pro-Russian UK Journalist Put On Sanctions List', *BBC* (web page, 27 July 2022) <<https://www.bbc.com/news/uk-england-nottinghamshire-62308528>>.

214 Atanesian (n 136).

Russian PMCs' operations in Africa and funding

In 2023, the UK House of Commons' Foreign Affairs Committee warned against viewing the Wagner Group's activities through the 'prism of Europe' alone.²¹⁵ By cultivating military and security dependence on Wagner Group services in certain African countries, the Wagner Group managed to establish enduring revenue streams, especially in countries discussed below.²¹⁶

- a **CAR.** The Wagner Group's CAR operations serve as a template for the group's operations throughout Africa.²¹⁷ In August 2018, authorities from the CAR and Russia signed an agreement designating responsibility for the training of CAR forces to former Russian military officers. Although Wagner Group members at one point reportedly make up a large proportion of Russian forces in the country, officials on both sides denied that there is any agreement between the CAR and any PMCs, only the Russian government itself.²¹⁸
 - The Wagner Group has been linked to multiple human rights abuses in the CAR. In July 2018, three Russian journalists investigating the presence and activities of the Wagner Group in the CAR were murdered.²¹⁹ Those responsible for their deaths have never been found. In July 2021, at least 12 unarmed men were reportedly killed by Russian-speaking forces near the town of Bossangoa.²²⁰ In December 2021, Wagner Group forces worked with Christian proxies to attack the town of Boyo, killing an estimated 25 Muslim villagers whilst also taking hostages, looting, destroying property and perpetrating sexual violence.²²¹ More recently, Wagner Group representatives reportedly killed up to 70 civilians in and between the towns of Aigbado and Yango in January 2022.²²²
- b **Sudan.** The Wagner Group's operations in Sudan started in 2017 upon invitation from the government of Omar al-Bashir.²²³ Most prominently, the Wagner Group have been involved with the provision of military training to both intelligence and special forces, and the Rapid Support Forces paramilitary group.²²⁴

215 Guns for Gold Report (n 89) 3.

216 Ibid 2.

217 Ibid 11.

218 'Central African Republic: Abuses by Russia-linked forces', *Human Rights Watch* (web page, 3 May 2022) <<https://www.hrw.org/news/2022/05/03/central-african-republic-abuses-russia-linked-forces>>.

219 Ibid.

220 Ibid.

221 International Religious Freedom: CAR Report (n 120).

222 Philip Obaji Jr, 'Survivors say Russian mercenaries slaughtered 70 civilians in gold mine massacre', *Daily Beast* (online, 31 January 2022).

223 Oliinyk, Oliinyk-D'omochko and Maksymov (n 120).

224 'US pressures allies to expel Russia's Wagner mercenaries from Libya, Sudan' *France 24* (online, 3 February 2023) <<https://www.france24.com/en/africa/20230203-us-p pressures-allies-to-expel-wagner-russian-mercenaries-from-libya-sudan>>.

- c **Syria.** Wagner Group fighters have supported President Bashar al-Assad in his fight against the Islamic State and other rebel groups. In 2017, the Associated Press gained access to a five-year contract drawn between the Prigozhin-owned oil trading firm Evro Polis and Syria's state-owned General Petroleum. This revealed that Evro Polis would receive 25 per cent of proceeds derived from oil and gas production in sites that its contractors (i.e. Wagner Group fighters) liberated from Islamic State fighters.²²⁵ Evro Polis accounts analysed by the *Financial Times* revealed that despite Western sanctions, the company generated net profits of US\$90 million in 2020.²²⁶
- d **Libya.** Since 2019, Wagner Group representatives have been closely linked to the control of key military bases and oil facilities in Libya, working in collaboration with Khalifa Haftar's Libyan National Army.²²⁷ The estimated number of Wagner Group fighters in Libya ranges from 300 to several thousand²²⁸ Libya alone accounts for 39 per cent of Africa's total oil reserves,²²⁹ thus enhancing its financial appeal for the Wagner Group and Russia more broadly. In July 2020, the Wagner Group took over control of production at the Sharara oil field, which boasts the country's largest capacity of 300,000 bpd.²³⁰ This control has allowed the Wagner Group to indirectly influence the global oil markets, as Libyan oil shutdowns have slashed output to the European market.²³¹
- e **Mali.** After facilitating a coup against French troops in 2022, Mali's ruling junta facilitated the arrival and operation of Wagner forces in the country.²³² The Wagner Group was deployed under the guise of training local forces and providing general security services.²³³ However, their involvement has been far from peaceful. In conjunction with Malian forces, Wagner Group soldiers allegedly massacred at least 300 civilians in the town of Moura between 27 and 31 March 2022.²³⁴

The global reach of some Russian PMCs' operations, including multiple allegations of war crimes, means that they are not solely a matter of Ukraine's concern. This raises the questions of what the composition of such PMCs' revenues streams is, and how international criminal justice and domestic laws could be brought to bear against them. The opaque, decentralised and public-private nature of Russian PMCs renders their funding difficult to track with any great certainty. However, sufficient information is publicly available to enable insight into *likely* principal funding sources, especially as relates to the Wagner Group.²³⁵

225 Valdimir Isachenkov, 'Russia seeks to regulate private military contractors' *AP News* (online, 15 February 2018) <<https://apnews.com/article/fb4bbb531e5b49df96652536afb66372>>.

226 Miles Johnson, 'Wagner leader generated \$250mn from sanctioned empire' *Financial Times* (online, 21 February 2023) <<https://www.ft.com/content/98e478b5-cod4-48a3-bcf7-e334a4eaoaca>>.

227 Oliinyk, Oliinyk-D'omochko and Maksymov (n 120).

228 Paul Stronski, 'Implausible Deniability: Russia's Private Military Companies', *Carnegie Endowment* (web page, 2 June 2020) <<https://carnegieendowment.org/posts/2020/06/implausible-deniability-russias-private-military-companies?lang=en>>; Robert Uniacke, 'Libya could be Putin's trump card', *Foreign Policy* (online, 8 July 2022) <<https://foreignpolicy.com/2022/07/08/wagner-group-libya-oil-russia-war/>>.

229 Uniacke (n 228).

230 Ibid.

231 Ibid.

232 'EU sanctions Russian Wagner Group for African operations' *Deutsche Welle* (online, 26 February 2023) <<https://www.dw.com/en/eu-sanctions-russian-wagner-group-for-african-operations/a-64822435>>.

233 Catrina Doxsee and Jared Thompson, 'Massacres, Executions, and Falsified Graves: The Wagner Group's Mounting Humanitarian Cost in Mali', *Centre for Strategic and International Studies* (Commentary, 11 May 2022) <<https://www.csis.org/analysis/massacres-executions-and-falsified-graves-wagner-groups-mounting-humanitarian-cost-mali>>.

234 Ibid.

235 Another military unit worth noting here is Africa Corps, a Russian-backed mercenary group operating in Africa. The UK was the first G7 country to sanction the group on 7 November 2024. Africa Corps and its funding may warrant further inspection. See United Kingdom Government, 'UK Strikes at Heart of Putin's War Machine' (press release, 7 November 2024) <<https://www.gov.uk/government/news/uk-strikes-at-heart-of-putins-war-machine>>.

Prior to its co-optation into the Russian armed forces, the Wagner Group was reported to generate significant revenue. The Atlantic Council estimates the Wagner Group’s revenue between 2017 and 2023 at approximately US\$5 billion.²³⁶ This large sum is reportedly made up of not only traditional client payments for services rendered, but also funding from the Kremlin and resource extraction earnings in Africa.²³⁷ The 2023 *Blood Gold Report* suggested that Russia and the Wagner Group earned more than US \$2.5 billion from ‘blood gold’ since Russia’s invasion of Ukraine in February 2022, signalling the central role natural resources play to the financial viability of PMCs in Russia.²³⁸

In June 2024, the US sanctioned two South African nationals for providing a training programme on survival techniques to Wagner Group personnel in the CAR.²³⁹ Such training can be rightly considered as a form of material support for the Wagner Group’s operations, but unlike purchasing Wagner Group services, it involves the provision of services *to* the Wagner Group—and, therefore, receiving money from the Wagner Group rather than paying it. More examples of sanctions imposed on companies and persons with alleged links to the Wagner Group, as well as the nature of their alleged involvement, are provided in **Table 1** below.

Table 1: Sanctioned companies and persons with alleged links to the Wagner Group

Companies			
Name	Alleged involvement/ connection to PMCs	Main country of operation	Sanctioning state ²⁴⁰
Lobaye Invest Sarlu	Illegal gold and diamond trade funded the training of CAR army recruits by Russian mercenaries in CAR	CAR	UK, US, EU
Sewa Security Services	Subsidiary of Lobaye Invest Sarlu	CAR	UK, US, EU
M-Invest	Company serving as a front for the Wagner Group	Sudan	UK, EU
Meroe Gold	Subsidiary of M-Invest	Sudan	UK, US
Al-Solag Mining/Al-Solaj Mining Company Ltd	Associated with Meroe Gold	Sudan	UK
Mining Industries SARLU	Enabled illicit mining endeavours linked to Wagner	CAR	US
Logistique Economique Etrangere	Enabled illicit mining endeavours linked to Wagner	CAR	US
Midas Ressources	Mining company providing funds to Wagner operations	CAR	US
Bois Rouge Sarlu (now known as Wood International Group Sarlu)	Timber company	CAR	US, UK

²³⁶ Kimberly Donovan, Maia Nikoladze and Ryan Murphy, ‘Global Sanctions Dashboard: Sanctions Alone Won’t Stop the Wagner Group’, *Atlantic Council* (web page, 19 July 2023) <<https://www.atlanticcouncil.org/blogs/econographics/global-sanctions-dashboard-sanctions-alone-wont-stop-the-wagner-group/>>.

²³⁷ *Ibid.*

²³⁸ (n 96) 3.

²³⁹ US Sanctions Press Release: 12 June 2024 (n 149).

²⁴⁰ For the purposes of this table, the EU is treated as a single state given that the EU imposes sanctions on behalf of its 27 member states.

Companies			
Name	Alleged involvement/ connection to PMCs	Main country of operation	Sanctioning state ²⁴⁰
Limited Liability Company Broker Expert	Has exported goods to other companies listed above, including Bois Rouge and Meroe Gold	CAR, Sudan	US
Diamville	Wagner-linked gold and diamond purchasing company ²⁴¹	CAR	EU, US, UK
Evro Polis	Received energy concessions in return for Wagner actors liberating oilfields	Syria	US, UK
Mercury LLC	Oil company, likely switched operations to another entity	Syria	UK
Concord Catering	Prigozhin's catering company	Russia	US
M Finans	Linked to Concord Catering	CAR	US
Officer's Union for International Security	Claims to represent Russian 'instructors' in CAR	CAR	US
Individuals			
Name	Alleged involvement	Main country of operation	Sanctioning state
Ivan Aleksandrovitch Maslov	Head of Wagner Group's operations in Mali, WG's unofficial spokesperson in CAR	CAR, Mali	UK, EU
Aleksandr Grigorievitch Maloletko	Military instructor for WG	CAR	UK, EU
Dimitri Sytii	Individual associated with the Wagner Group in CAR	CAR	UK, EU
Konstantin Aleksandrovitch Pikalov	Advisor to Prigozhin, Wagner Commander	CAR	UK
Vitalii Viktorovitch Perfilev	Head of Wagner Group operations in CAR	CAR	UK, US, EU
Andrei Sergeevich Mandel	Director General of M-Invest	Sudan	UK, US, EU
Mikhail Potepkin	Regional Director of M-Invest and Director of Meroe Gold	Sudan	UK, US, EU
Valery Nikolayevich Zakharov	CAR's National Security Advisor who influenced the strategic direction of the Wagner Group	CAR	UK, US
Brett Warrick Mac Donald	Arranged and oversaw a training programme for Wagner Group personnel	CAR	US
Shaun Louw	Arranged and oversaw a training programme for Wagner Group personnel	CAR	US

²⁴¹ US Sanctions Press Release: 27 June 2023 (n 94).

Western governments’ messaging about doing business in Russia

Government	Date	Document	Summary of messaging
United States	23 February 2024	‘Risks and Considerations for Doing Business in the Russian Federation and Russia-Occupies Territories of Ukraine’ ²⁴²	<p>‘The specific categories of risks for businesses and individuals regarding Russia and its unlawful invasion and occupation of parts of Ukraine highlighted in this advisory are:</p> <ul style="list-style-type: none"> · Risk of businesses and individuals becoming exposed to sanctions, export controls, import prohibitions, money laundering vulnerabilities, and corruption; · Risk of businesses and individuals being implicated in the Government of Russia’s violations of international law, including war crimes and crimes against humanity, and human rights abuses; and · Risk to businesses and individuals due to the proliferation and implementation of repressive laws in the Russian Federation and the areas of Ukraine it occupies, including measures authorizing expropriation in certain instances or detentions based on spurious grounds.’ <p>‘Businesses and individuals face a range of broader risks related to the Government of Russia’s violations of international law and human rights abuses. Conducting due diligence, consistent with the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (“OECD Guidelines”), the UN Development Program’s (UNDP’s) “Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide,” and/or other sector and issue-specific due diligence frameworks can help businesses and individuals to identify and address these concerns. Businesses and individuals are also encouraged to report publicly on their process, findings, and resulting decisions, as such reports may help other businesses and individuals to avoid, address, or minimize risks.’</p> <p>Although rigorous due diligence may mitigate the ‘serious risks’ arising from business in Russia, ‘substantial risk is likely to remain’.</p>

²⁴² US Business Advisory (n 148).

Government	Date	Document	Summary of messaging
European Union	26 April 2024	'European Parliament Calls on Austria to pressure Raiffeisen bank to leave Russia' ²⁴³	Members of the European Parliament wrote to leaders in Austria, stating: 'We call on you, the respective leaders of the Republic of Austria, to encourage Raiffeisen Bank International to follow through on its statements and cease its activities in Russia. We call on you to ensure that all Austrian companies comply with the imposed restrictive measures and do not contribute to Russia's ability to wage an illegal and unjustified war against Ukraine and its people.'
European countries (Belgium, Czech Republic, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Romania, Spain and the Netherlands)	21 February 2023	'EU countries mull curbing Russia sanctions dodging via trade tools, access to EU market' ²⁴⁴	Document penned by twelve European countries for talks of representatives of EU governments who are formulating the 10th sanctions package against Russia. 'Use of the EU's trade toolbox and possibly other instruments of external action can be considered in cases of widespread circumvention [of sanctions] within the territory of a specific state that refuses to act upon these issues.' 'We should give a strong signal to persons and entities in third states. The provision of material support to Russia's military and defense industrial base will have severe consequences regarding their access to the EU market.'
United Kingdom	13 March 2022	'Chancellor calls on firms to stop investing in Russia' ²⁴⁵	UK Chancellor Rishi Sunak called on firms to 'think very carefully about their investments in Russia and how they may aid the Putin regime—and I am also clear that there is no case for new investment in Russia.'
	13 June 2023	'UK firms operating in Russia 'complicit in war crimes' against Ukraine, says MP' ²⁴⁶	Labour former minister Sir Chris Bryant told the House of Commons that UK businesses continuing to operate in Russia are 'complicit in the war crimes' committed by Russian actors against Ukrainian people.
Canada	8 March 2022	'Policy Statement on Foreign Investment Review and the Ukraine Crisis' ²⁴⁷	Statement made in relation to the <i>Investment Canada Act (ICA)</i> and role of regulating foreign investment amidst Putin's invasion of Ukraine. Regarding the acquisition of control of a Canadian entity by foreign investors: 'For the purposes of reviewing such investments by direct or indirect Russian investors, under this policy the Minister of Industry ... will find the acquisition of control of a Canadian business to be of net benefit to Canada on an exceptional basis only.'

243 Abbey Fenbert, 'European Parliament Calls On Austria to Pressure Raiffeisen Bank to Leave Russia', *Kyiv Independent* (online, 26 April 2024) <<https://kyivindependent.com/european-parliament-calls-on-austria-to-pressure-raiffeisen-bank-to-leave-russia/>>.

244 Gabriela Baczyńska, 'EU Countries Mull Curbing Russia Sanctions Dodging Via Trade Tools, Access to EU Market', *Reuters* (online, 21 February 2024) <<https://www.reuters.com/world/europe/eu-countries-mull-curbing-russia-sanctions-dodging-via-trade-tools-access-eu-2023-02-21/>>.

245 His Majesty's Treasury, 'Chancellor Calls on Firms to Stop Investing In Russia' (press release, 13 March 2022) <<https://www.gov.uk/government/news/chancellor-calls-on-firms-to-stop-investing-in-russia>>.

246 'UK Firms Operating in Russia 'Complicit in War Crimes' Against Ukraine, Says MP', *Guernsey Press* (online, 13 June 2023) <<https://guernseypress.com/news/uk-news/2023/06/13/uk-firms-operating-in-russia-complicit-in-war-crimes-against-ukraine-says-mp/>>.

247 Government of Canada, 'Policy Statement on Foreign Investment Review and the Ukraine Crisis' (press release, 8 March 2022) <<https://ised-isde.canada.ca/site/investment-canada-act/en/investment-canada-act/policy-statement-foreign-investment-review-and-ukraine-crisis>>.

About authors

Anton Moiseienko is a Senior Lecturer in Law at the Australian National University.

Emily Bell is a Researcher at the School of Law at the Australian National University.

Matthew Neuhaus is an Honorary Professor of Law at the Australian National University and former Australian Ambassador to the Netherlands.

Dmytro Koval is an Associate Professor of Law at the National University of Kyiv-Mohyla Academy in Ukraine and Co-Executive Director at Truth Hounds.



Australian
National
University