

Testimony of Ambassador (Ret) Clint Williamson
Lead Advisor of the US-EU-UK Atrocity Crimes Advisory Group (ACA)
Before the House Foreign Affairs Subcommittee on Europe, Energy, the Environment
and Cyber

Hearing on Russian War Crimes in Ukraine on Wednesday, September 21, 2022

Chairman Keating, Ranking Member Fitzpatrick, and Distinguished Members of the Committee, it is an honor to join you today and to have this opportunity to speak with you about the tragic situation in Ukraine. I am particularly privileged to appear here with Andrii Kostin, the Prosecutor General of Ukraine, with whom I work very closely in my role as Lead Advisor of the Atrocity Crimes Advisory Group – a function that I exercise through my affiliation with the Georgetown Law Center on National Security.

For almost thirty years, since the advent of the modern era of international criminal justice, I have been actively engaged in efforts to further accountability for perpetrators of atrocity crimes all over the world. In May 1994, I was the very first American prosecutor to arrive at the newly-created International Criminal Tribunal for Yugoslavia – the ICTY – as part of a group of US Government prosecutors, investigators and analysts detailed to the Tribunal to help jump-start its operations. Since that time, I have worked in a variety of roles in the US Government, the United Nations and the European Union, where I have had responsibility for investigating and prosecuting atrocity crimes or for policy coordination and diplomacy promoting accountability for such crimes. In this latter category, I had the honor of serving as US Ambassador-at-Large for War Crimes Issues for the last two and a half years of the George W Bush administration and most of the first year of the Obama Administration. I was the first career civil servant or foreign service officer to be appointed to that post.

Although my engagement on atrocity crime issues commenced with my posting to ICTY, my work in ensuing years has been global in scope, dealing with places as diverse as Cambodia, Sierra Leone, Sri Lanka, Rwanda and Kosovo. My formative years in this field were, however, focused on the former Yugoslavia and to bookend that experience, my last posting with the Department of State was to the European Union where I served as the EU Special Prosecutor examining crimes that were perpetrated at the end and in the aftermath of the 1999 war in Kosovo and which fell outside the jurisdiction of the ICTY.

I can honestly say that when I left that post with the European Union, I never imagined that I would be doing this type of work in Europe again. That is not to say that Europeans are somehow unique or that they are beyond engaging in atrocity crimes. In fact, the twentieth century in Europe was perhaps the bloodiest and most brutal that any continent has suffered in the history of the world. It culminated, in the 1990s, with the Balkan wars, which were of course marked by horrific atrocities. Yet, in the twenty-three years since the end of the wars in the former Yugoslavia, we have seen a Europe that has become far more integrated politically, economically and culturally. We have seen borders disappear and common institutions created. As an American seconded in a senior role to the European Union headquarters in Brussels, I had the unique opportunity to work in EU institutions and witness first-hand the day-to-day progress toward an integrated Europe.

So, when Russia began laying the groundwork for its invasion of Ukraine early this year, it had an almost surreal quality to it. To see Vladimir Putin, in the year 2022, using the same

tactics that Adolf Hitler had used to prepare the ground for his absorption of the Sudetenland in 1938 or that Slobodan Milošević employed to justify Serbian aggression in Croatia in 1991 and in Bosnia-Herzegovina in 1992, was chilling. When, in January, Putin began speaking of a genocide against ethnic Russians in Ukraine, it harked back to the claims made by his fellow dictators as they set up break-away statelets, massed troops on the borders, made outrageous demands on the international community and otherwise agitated to create pretexts for invasion and eventual conquest.

As this was ongoing, I had already been working for some months with the Office of the Prosecutor General of Ukraine – the OPG – to assist that office in its handling of investigations and prosecutions of atrocity crimes that had occurred in Ukraine since Russia's initial invasion in 2014. When I undertook that project, funded by my former office in the Department of State – the Office of Global Criminal Justice – no one would have imagined that the nature of our work would change so drastically at the beginning of this year. As the Russian invasion appeared more imminent in January, I began working closely with the State Department on contingency plans for how we might shift our work from a traditional capacity-building effort to a much more operational, hands-on approach that could offer immediate, real-time assistance to the Ukrainian authorities if Russia did invade.

On the morning of February 23, I awoke to find a number of messages from the Prosecutor General's office asking for an urgent call as soon as possible. Although they, like most Ukrainians, had been rather sanguine about the prospects of a Russian invasion – having lived with the somewhat static conflict in Donbas since 2014 – their demeanor on the morning of February 23 was markedly different. They clearly recognized at that point that an invasion was going to happen and they asked if I could come, with a small team of experts, to assist them with the incredible challenges they knew they would soon be facing. We discussed the possibility of me and three others traveling to L'viv, where the Prosecutor General was going to send a liaison team. Immediately after the call, I went to the State Department and in discussions with officials there, they agreed that I should try to go. As we all know, though, the invasion did take place the following day – on February 24 – and for two days thereafter, I lost contact with my Ukrainian counterparts.

When they reemerged and contacted me from L'viv, where the office had relocated, they were still interested in me coming out with my team but recognized that it would not be possible for us to travel to Ukraine. So, we instead made arrangements for us to go to a town near Przemysl, Poland, on the border just west of L'viv, and we arrived there on March 04 – just eight days after the war began. Already the next day, we started meeting with the OPG and began working with them on a number of issues, offering recommendations based on our own experiences in other conflict scenarios where atrocity crimes were being perpetrated, as to how they might structure the office for war-time operations, start prioritizing investigations, deal with prisoners of war, gather evidence from displaced persons and refugees, address sexual violence cases and effectively handle crime scene investigations.

What struck me in those first conversations at the border, just a little over a week into the conflict, was how determined the Ukrainian prosecutors were to get this right and how clear-headed they were in assessing the challenges they faced. At that point, Russian forces were bearing down on Kyiv and the outcome of the invasion was very much in question. Yet, the Ukrainian prosecutors – like most of their countrymen – were defiant and absolutely convinced, even at this early date, that defeat was not a possibility. They were already

committed, in these early days, to holding those who perpetrated crimes – on either side – accountable for their actions.

Since the outset of the conflict, I have spent well over two months working either in Poland or more recently in Ukraine itself. The contingency plans that I made in conjunction with the State Department have led to the establishment of the US-EU-UK Atrocity Crimes Advisory Group – the ACA. This entity has grown out of that very first deployment I undertook to Poland on March 04. Since then, we have continued to send very experienced prosecutors, investigators and other specialists to assist the OPG. As supplemental funding becomes available in October, we will be able to maintain a more robust contingent of such experts in Ukraine on an ongoing basis. These experts are individuals who have worked for years in international tribunals and have extensive expertise in the investigation and prosecution of atrocity crimes. Those who have served with ACA thus far have already forged a strong working relationship with their Ukrainian counterparts and I am confident that this partnership will deepen even further as we expand our on-the-ground presence in Kyiv and in field locations around the country.

The ACA started as a solely US initiative, under the auspices of the Office of Global Criminal Justice, led by Ambassador Beth van Schaack, but it quickly garnered support from our international partners and both the European Union and the United Kingdom have since joined the effort. This multi-national partnership was rolled out to the global community in a joint statement by Secretary of State Antony Blinken, EU High Representative for Foreign Policy Josep Borrell and then-UK Foreign Secretary Liz Truss on May 25, in which they announced that the ACA would be the official mechanism of these governments to assist the Ukrainian authorities in their investigations and prosecutions of crimes occurring during this conflict.

And why is it so important that we assist the Ukrainians as they pursue these prosecutions? Obviously, there are our strong national interests in deterring naked aggression, in standing up for rule of law, and in helping ensure a peaceful and secure Europe. Yet, there is another factor at play here as well and it is one that makes the situation in Ukraine quite different from almost any scenario I have worked in over the last thirty years. That is the fact that the Ukrainians are well positioned to address the crimes being committed on their territory and, as a matter of long-standing US policy, we should support this domestic response.

The more common scenario is the one we have seen transpire in places like Syria or Myanmar, where the national authorities have been resistant to any accountability efforts because they themselves are complicit in crimes. Going back even further to the former Yugoslavia and Rwanda, the domestic justice systems in those countries were incapable, at least while the conflicts were ongoing, to deliver justice because of multiple deficiencies and ethnic bias. What is unique in Ukraine is that we have a democratically elected government, with legitimate law enforcement and judicial authorities who have both a legal mandate and the capacity to investigate and prosecute crimes occurring on their national territory. So, it is important that we support them in this task.

It is also important, in my view, that we support viable international justice efforts in Ukraine, which rest primarily with the International Criminal Court. That court was established on the concept of positive complementarity, in which domestic justice processes will be the preferred first option in dealing with mass atrocities and international efforts, like those under the ICC, will be utilized only to fill the gaps the domestic system is unable to

address. In Ukraine, the government has invited the ICC to focus investigations in those areas under Russian occupation, which Ukrainian authorities cannot access, and they also recognize that the ICC may be better positioned to pursue cases against the most senior political and military leaders in Moscow. The ICC Prosecutor, Karim Khan, and the Office of the Prosecutor General have formed a very good working relationship and that dynamic extends to the work that we in ACA are doing to support domestic prosecutions. That is important because the ICC has limits to how many cases it can bring in any given situation due to the demands it has with its global jurisdiction. So, every perpetrator who falls under that threshold level of ICC prosecutions, will have to be dealt with by the Ukrainian authorities and these cases could number in the hundreds, if not thousands.

The task, then, that the OPG faces is monumental. When I first met with them a week after the invasion, they were already dealing with a few hundred cases. Those numbers have now increased to approximately 33,000. Whole areas of the country are effectively continuous crime scenes, with massive destruction that stretches for miles, hundreds of deaths in concentrated areas, and with witnesses who have been scattered across Ukraine and into any number of foreign countries. These are challenges that would be overwhelming for any national prosecution authority, including here in the United States or in Western Europe. Under the circumstances, the Prosecutor General and his office have done a phenomenal job and it has been a privilege to work with them. Since his appointment in late-July, Mr. Kostin has brought renewed energy to the office and has shown a strong commitment to enhancing the OPG's capabilities and ensuring that atrocity crime prosecutions are prioritized. We have to recognize, though, that his work, and that of his office, will go on for years, not months, and it is critical that we are able to sustain our support to them and help as they try to deliver a degree of justice to the victims of Russian perpetrated crimes in Ukraine.

Sadly, the list of those crimes is already lengthy and it continues to grow. In the first weeks of the invasion, we saw the Russians use indiscriminate force against civilian areas, with destruction of protected sites like hospitals, and with a large number of non-combatants – including women, children and the elderly – being killed. This was the precursor for what, in my opinion, was the first strong evidence of crimes against humanity. That emerged in the Kyiv suburb of Bucha, which was liberated from Russian occupation on March 31 of this year. There, for the first time, we saw the results of exactly what it was like for the innocent civilians who had to live through a prolonged period of Russian occupation. Soon after the Russians had taken the town, they began going door to door, searching residential buildings, claiming they were “hunting Nazis.” The killings began almost immediately, some of them targeted and others just random murders of civilians who happened to venture outside for something as innocuous as smoking a cigarette. By the time I visited Bucha in June, Ukrainian authorities had already recovered hundreds of bodies of people from Bucha and surrounding areas, including dozens of children. Prosecutors took me to execution sites and explained that there were numerous documented cases of bodies found with their hands tied behind their backs, shot at point-blank range, and exhibiting signs of torture. Those responsible for these acts were in the 64th Motorized Brigade of the Russian Army, which occupied Bucha from March 04-31. On April 18, while bodies of their victims were still being discovered, President Putin decorated the unit for “mass heroism and bravery, steadfastness and fortitude” and for “distinguishing itself in military action for the protection of the Fatherland and state interests.”

Another town I visited in June, along with the former Prosecutor General, was Bohdanivka, northeast of Kyiv. We walked through the small town's primary school which had been the

headquarters of Russian forces during their occupation from March 08-29. When the Russians were forced to withdraw, they burned the school, using its library books as accelerants for the fire, and setting land mines around the shell of the building. They also burned a nearby kindergarten for no apparent reason destroying the two facilities in the town dedicated to the education of children. In the wake of the Russian withdrawal, around seventy bodies have been found, including sixteen with clear signs of torture and who were apparently summarily executed. Unfortunately, we are likely to find much more of the same as investigations progress in the areas newly liberated from Russian occupation. Prosecutors from my office were already visiting sites, along with our Ukrainian counterparts, this past week, but it will take some time before we know the full extent of the crimes in those areas.

In the city that has perhaps suffered more than any in Ukraine, Mariupol, it is still far from clear how many people have died. The local authorities have said that they believe perhaps 30,000 may have been killed in the city but that the number could be much higher. In one of the most heinous acts yet committed by Russian forces, two 500-kilogram bombs were dropped on the city's theatre, a location where approximately a thousand civilians were sheltering and which was clearly marked as such. Signs had been written in large letters in Russian on either side of the building saying "children," and these were certainly visible to Russian pilots and through satellite imagery. This theatre was a hub for the distribution of medicine, food and water, and a designated gathering point for people hoping to be evacuated via humanitarian corridors. When the bombs fell, an estimated 600 people were killed, including an untold number of children.

And the list goes on and on. According to the National Ombudsman of Ukraine, their office had received around 400 reports of rapes by Russian soldiers by early-April. In mid-May, the UN Office of the High Commissioner for Human Rights said they had documented 108 allegations of conflict-related sexual violence in the regions of Chernihiv, Dnipro, Donetsk, Kharkiv, Kyiv, Kherson, Luhansk, Mykolaiv, Vinnytsia, Zaporizhzhia, Zhytomyr and in a detention facility in the Russian Federation. Such facilities are black holes and it is difficult to ascertain exactly what has happened in them or, for that matter, to so many of the Ukrainians who have been forcibly deported to Russia. Estimates of those forced across the border vary greatly, from 900,000 to 1.6 million, and many have apparently been sent against their will to the Russian Far East. This number may include as many as 260,000 children. The broader number includes many Ukrainians who have been subjected to filtration processes by Russian officials, in which they are screened to determine their perceived loyalty to Moscow. Those deemed to be threatening or resistant to Russian control are either detained or disappeared – their fates unknown to their families and friends. These filtration exercises are a matter of huge concern to us and our Ukrainian colleagues and we will continue to focus our efforts in resolving these cases. In short, the trauma being inflicted on Ukraine is almost incomprehensible and certainly without any justification.

So, we will continue to do what we have been doing and that is to support the outstanding work of Prosecutor General Kostin and his office. Achieving accountability will be challenging, particularly with senior Russian officials, but the Ukrainians are absolutely committed to doing just that. They recognize, as we all do, that this will be a lengthy process and, in the end, it will be successful only if the United States and our allies continue to stand in solidarity with our Ukrainian friends and demand that justice be done.