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Chairman Keating, Ranking Member Fitzpatrick, Distinguished Members of the Committee, it is a distinct honor to join you today and to speak with you about the tragic situation in Ukraine.

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 1990's, 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 Sudentenland 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 worked tirelessly to create pretexts for invasion.

As this was ongoing, I had already been working for some months with the Prosecutor General of Ukraine, Irinya Venediktova, to assist her 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 me to travel to Ukraine. So, we instead made arrangements for me to go to a town near Przemysl, Poland, on the border just west of L'viv, and I arrived there on March 04. Already the next day, we started meeting with the Office of the Prosecutor General 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, and effectively handle crime scene investigations.

What struck me in those first conversations at the border, just a few days after the war had commenced, 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 the Russians who committed crimes accountable for their actions.

Since the outset of the conflict, I have spent almost 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 EU-UK-US Atrocity Crimes Advisory Group – the ACA – which I head as the Lead Advisor. One of the two operational components of this is the Prosecutorial Support Unit, which has grown out of that very first deployment I undertook to Poland on March 04. It is a group of very experienced prosecutors, investigators and other specialists who have worked for years in international tribunals and have extensive expertise in the investigation and prosecution of atrocity crimes. The other operational component is our field response element, comprised of senior international prosecutors and investigators and young Ukrainian lawyers with expertise in international humanitarian law. These Mobile Justice Teams can deploy to crime scenes as Ukrainian prosecutors are undertaking their investigations and they have already done so in recent situations such as the attack on the shopping center in Kremenchuk and the apartment block outside Odessa.

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 now joined the effort. This multi-national partnership was rolled out to the global community in a joint statement by Secretary of State Blinken, EU High Representative for Foreign Policy Borrell and UK Foreign Secretary 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 also recognize that the ICC may be better positioned to pursue cases against the most senior political and military leaders in Moscow. The Chief Prosecutor of the ICC, Kharim 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 almost 23,000. Whole areas of the country are effectively continuous crime scenes, with massive destruction that stretches for miles, hundreds of deaths in concentrated areas, 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 her office have done a phenomenal job and it has been a privilege to work with them. We have to recognize, though, that this work will go on for years, not months, and it is critical that we are able to sustain our support to them and help them 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 last month, Ukrainian authorities had recovered 1,316 bodies of people from Bucha and surrounding areas, including 31 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 on my last trip to Ukraine, along with Prosecutor General Venediktova, was Bohdanvika, 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.

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 at least 22,000 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 varies greatly – from 900,000 to 1.6 million. This number may include as many as 260,000 children. Many of these people have allegedly been sent to the Russian Far East with their fates unknown. 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 the Office of the Prosecutor General. 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.