

Tom Lantos Human Rights Commission

Hearing

on

Accountability for Russia's War Crimes and Aggression against Ukraine

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"Back to the Future"

Good morning and thank you for this opportunity to address this esteemed Commission on this critical issue—accountability for Russia's alleged war crimes and aggression against Ukraine. I want to thank the co-chairs for their leadership and most importantly their consistent championing of human rights around the world. Proudly, I have been working with Chairman Chris Smith since 2002 in facing down the beast of impunity. It started with his support to me in Sierra Leone and West Africa where we took down, for the first time in the modern era, the most powerful warlord in Africa, then President Charles Taylor of Liberia who now sits in a maximum security prison in the United Kingdom for the rest of his life. Chairman Smith along with Chairman Ed Royce, at the time, led the House of Representatives efforts in assisting us in getting Charles Taylor handed over to the UN Special Court for Sierra Leone for a fair and open trial.

The history of atrocity accountability has been a tenuous one to be sure. Up until the middle of the 20th Century, what I call the bloody 20th century, where over 200 million people perished from war and strife, there was little to no accountability. After World War II, the allied nations gathered together in London to create the world's first tribunal to prosecute those who committed international crimes at Nuremberg and Tokyo. Thus the cornerstone was laid for what is now modern international criminal law, of which I was a founder.

Establishing the tribunals at Nuremberg and Tokyo were the first wave of accountability. Afterwards, the world went dark related to atrocity accountability, due to the Cold War, yet the flame of justice, that was started at Nuremberg burned, not brightly, but it did cast a dim light in the dark corners of the world during that time.

When the Soviet Union dissolved in the early 1990's, and the world came together under the blue banner of the United Nations, the tragic events in the former Yugoslavia and Rwanda saw the international community create two ad hoc tribunals to prosecute those responsible for committing international crimes there. This was followed up with the creation of the world's first hybrid international war crimes tribunal in Sierra Leone. Tyrants, dictators, and thugs, to include heads of state were no longer able to kill their own citizens with impunity.

During this timeframe, the world also came together in Rome to create a permanent International Criminal Court with the hope of prosecuting the gravest of crimes. This was the beginning of the second wave of accountability for atrocity crimes.

For the next two decades mankind took on those who committed war crimes, crimes against humanity, and genocide. The three major tribunals for the Former Yugoslavia, Rwanda, and Sierra Leone, and somewhat the International Criminal Court, accounted for the deaths of millions; and the perpetrators of those international crimes were put in jail.

In the second decade of the 21st century, in a gradual and insidious way, strongmen around the world began to seize or maintain long-term power under a populist or nationalistic banner. There are many reasons for this. The world began to turn inward, basic human liberties began to shrink, and the political interest in international atrocity accountability dissipate. We are now in the third wave of accountability, the Age of the Strongman. The rise of nationalistic tyrants has not been seen like this since the late 1920's and early 1930's. *We have gone back to the future!*

One of those strongmen, Vladimir Putin, using the very same geo-political tactics that another strongman, Adolf Hitler, used in the late 1930's, has invaded the sovereign territory of another member state of the United Nations, the Ukraine.

There is no legal basis for this use of force and it is clearly aggression, an international crime. Additionally, Russian forces, who Putin commands, have committed war crimes and crimes against humanity against the brave citizens of the Ukraine. All international crimes.

To digress, war crimes are violations of that body of law called the laws of armed conflict (a subset of international humanitarian law) that include the Geneva Conventions, The Hague Rules, and other associated international treaties and protocols. Crimes against humanity is a widespread or systematic attack against civilians. For all this, as the President of the Russian Federation and head of its armed forces, Vladimir Putin is individually criminally responsible for the crime of aggression, war crimes, and crimes against humanity. This means the international community can prosecute him for these criminal acts. I did this in West Africa when I took down a sitting President for war crimes and crimes against humanity. Heads of state are no longer immune for their international criminal acts. Head of state immunity no longer protects them.

We have the experience, the jurisprudence, and the proper rules of procedure and evidence to prosecute those Russians who bear the greatest responsibility for aggression, war crimes, and crimes against humanity, to include Vladimir Putin. How could this be done?

First the international community, through the United Nations General Assembly (as Russia has neutralized the operational effectiveness of the Security Council) needs to agree on how we are going to hold Vladimir Putin, his henchmen, and senior commanders accountable for international crimes. There are several ways this could be done.

The International Criminal Court (ICC) has the jurisdiction to prosecute war crimes and crimes against humanity perpetrated by Russia in the Ukraine. The Prosecutor of the ICC has already opened a preliminary investigation related to these alleged crimes. Note, using this option effectively takes the United States out of the picture. All of the leadership, management and legal experience that this country could bring to the table would not be used for all intents and purposes.

A second possibility, would be the creation of an international tribunal created by the United Nations General Assembly using this tribunal to restore

international peace and security. They could also create an international hybrid tribunal in association with the Ukraine. Ad hoc and hybrid tribunals have been successfully created before by the United Nations through its Security Council, yet it is not outside the authority of the General Assembly to do the same. They created the International, Independent, and Impartial Mechanism for Syria that now sits in Geneva. As an important aside a mechanism for Ukraine is also an appropriate option.

Thirdly, a regional tribunal or court could be created by a consortium of interested states as part of the European Union or NATO. There is an important historical precedent as the International Military Tribunals at Nuremberg and Tokyo in 1945 were created by a consortium (allies) of interested states.

A fourth option is using the domestic law of the various member states of the European Union or NATO. Currently, several of those states are prosecuting Syrians who have violated the domestic law of those states based on domestic jurisdictional statutes. This is the least preferred method of accountability, as this would most likely be disjointed and bring inconsistent legal results.

Regardless of how the international community decides to do this, it can and must be done. All of the options above are legally sustainable and appropriate. These various tribunals or courts, even a mechanism, must be led by a proven and experienced international prosecutor, deputy prosecutor, and registrar. We have those experienced leaders standing by to assist.

It must be noted that the United States has led in the creation of all of the international tribunals and courts in the modern era, from Nuremberg and Tokyo, the Former Yugoslavia, Rwanda, Sierra Leone, the ICC, and various domestic efforts and mechanisms around the world as well. The United States must continue to show leadership in the creation of a justice mechanism to hold Vladimir Putin and his henchman accountable. The world and the American people are united in seeing justice done.

However, the world's strongmen around the world are watching, like crocodiles, as to what we do about the international crimes committed by the Russian invasion of the Ukraine. If we do nothing, then we will surely see other aggression perpetrated by China and North Korea, among others. We have to show tyrants around the world that the rule of law is more powerful than the

rule of the gun. We cannot go “back to the future” of 1930’s. Mankind cannot survive otherwise.

I thank you for this opportunity to speak to you today and ask that my remarks be placed in the record. I look forward to your questions and comments.

NOTHING FOLLOWS