

**RESPONSES OF  
ELI M. ROSENBAUM  
DIRECTOR, HUMAN RIGHTS ENFORCEMENT STRATEGY AND POLICY  
COUNSELOR FOR WAR CRIMES ACCOUNTABILITY  
DEPARTMENT OF JUSTICE**

**TO QUESTIONS FOR THE RECORD  
ARISING FROM A SEPTEMBER 28, 2022, HEARING**

**BEFORE THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**ENTITLED  
“FROM NUREMBERG TO UKRAINE:  
ACCOUNTABILITY FOR WAR CRIMES AND CRIMES AGAINST HUMANITY”**

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**Questions from Senator Whitehouse**

**Question 1:** The scale of the atrocities in Russia creates unique demands on the ICC and Ukrainian domestic courts with respect to gathering and processing massive amounts of evidence for war crimes prosecutions. What is the Department doing to support the ICC and the Ukrainians and to ensure they have the data processing and evidence collection resources necessary to accomplish their goals?

**Response:** The Department of Justice (“Department”), working with partners throughout the United States Government and around the world, is in especially close and regular contact with the Ukrainian Prosecutor General’s Office regarding the massive scale of crimes occurring in the wake of Russia’s unprovoked and unjustified invasion. To demonstrate DOJ’s commitment to identifying, apprehending, and prosecuting those involved in war crimes and similarly grave violations in Ukraine, Attorney General Garland announced, in June, the creation of the War Crimes Accountability Team, and simultaneously created the position of Counselor for War Crimes Accountability to lead that team. The team is based in the Human Rights and Special Prosecutions Section within the Department’s Criminal Division, and it coordinates efforts across the Department and engages with other federal agencies and foreign law enforcement counterparts to hold accountable those responsible for war crimes and other atrocities committed in Ukraine. On September 20, the Attorney General and Ukrainian Prosecutor General Andriy Kostin met in Washington to discuss areas for enhanced collaboration, and they signed a landmark Memorandum of Understanding (“MOU”) to facilitate appropriate cooperation, coordination, and deconfliction between each country’s respective investigations and prosecutions. In addition, multiple components of the Department have shared with the Prosecutor General’s Office their expertise in developing electronic systems to manage large

numbers of complex, data-intensive cases. Moreover, even prior to Russia's invasion this year, the Criminal Division's International Criminal Investigative Training Assistance Program ("ICITAP") launched a program that helped the National Police of Ukraine ("NPU") develop and implement an electronic evidence management system to increase and improve operational capacity and procedures related to the collection, processing, inventory, and storage of physical and digital evidence in compliance with Rule of Law, human rights, and international best practices. ICITAP is currently working with the NPU to expand its capacity building mission, with an emphasis on evidence collection of war crimes.

The Department works closely with the Department of State, in particular the Office of Global Criminal Justice and the Bureau of International Narcotics and Law Enforcement. The State Department is providing support to the War Crimes Units of the Office of the Prosecutor General of Ukraine, through implementing partners, to build the OPG's capacity in investigating and prosecuting atrocities. Through the Atrocity Crimes Advisory group ("ACA"), a joint initiative created by the United States, the European Union, and the United Kingdom, and announced by Secretary Blinken in May, the State Department has deployed teams of multinational experts to provide strategic advice and operational assistance to OPG specialists and other stakeholders in areas such as collection and preservation of evidence, operational analysis, investigation of conflict-related sexual violence, crime scene and forensic investigations, drafting of indictments, and cooperation with international and national accountability mechanisms.

With respect to the International Criminal Court ("ICC"), the United States supports a range of international investigations into atrocities in Ukraine. This includes those conducted by the ICC, as well as those conducted by the U.N. Human Rights Council's Commission of Inquiry on Ukraine, the experts' missions established by invocation of the OSCE's Moscow Mechanism, the U.N. Human Rights Monitoring Mission in Ukraine, the Joint Investigative Team coordinated through Eurojust, and potential future prosecutions in the domestic courts of third countries. DOJ continues to assess the manner in which we can best cooperate with the ICC's investigation consistent with U.S. law and policy, including the restrictions put in place by the American Servicemembers Protection Act of 2002.

**Question 2:** It is widely reported that soldiers in the Russian army are demoralized. It is equally important to Ukraine's war effort that we continue to demoralize the Russian junior officer corps and ensure they know they will be held accountable for the illegal acts they are ordered to commit in Ukraine. One potential way to do this is to "name and shame" individuals associated with acts of brutality, publicizing their names and ranks.

- a. Does this strategy further the United States' goals, and is the Department able to support efforts to identify these individuals?
- b. Would it help or hinder Ukraine's efforts to publicly identify these Russian officers?

- c. Is there any chance that naming individuals would hurt ongoing investigations in Ukraine?

**Response:** The Department is committed to pursuing all appropriate means to support our Ukrainian partners and hold war crimes perpetrators accountable for abuses in Ukraine, both to achieve justice for the victims of grave crimes and to deter the commission of additional crimes. At every opportunity, the Attorney General and other Department officials have repeated, in the strongest terms, the crucial message of deterrence that the world is closely watching what happens in Ukraine and that the Department is part of a concerted global effort to ensure that perpetrators are held accountable for their crimes. This messaging, when combined with similar statements from other federal agencies and from other national authorities around the world, sounds a clear warning to potential perpetrators at whatever level that there will be no safe haven for those who commit atrocities.

The Department is also working closely with Ukraine and other foreign partners to facilitate mutual legal assistance and extraditions relating to Russian illicit finance and sanctions evasion, including with respect to designated Russian oligarchs who have supported the Russian regime and its efforts to undermine Ukrainian sovereignty. In March, the Attorney General announced the creation of Task Force KleptoCapture to further leverage the Department's tools and authorities against efforts to evade or undermine the economic actions taken by the U.S. Government in response to Russian military aggression. Since then, the task force has taken significant action, including facilitating the seizure of superyachts and other assets of sanctioned individuals with close ties to the Russian regime; dismantling Russian criminal networks; and investigating sanctions violations.

While the Department applauds the passage of the Justice for Victims of War Crimes Act in 2022, there is still more work to be done. Filling the legislative gaps that the Departments of Justice, Homeland Security, and State, among other federal agencies, have identified could further amplify the message of deterrence by ensuring that the U.S. has jurisdiction over war criminals who are present on U.S. soil. Department policy precludes disclosure of the names of persons under investigation for any crime, in part in order to protect our investigations from undue interference by suspects who become aware of our interest or others acting on their behalf. Prosecutors abroad may have similar concerns.

### Questions from Senator Lee

**Question 1:** In response to a question posed by Senator Grassley you stated that there are 21 statutes in the U.S. Code that use "present in" jurisdiction, please cite each of those statutes.

**Response:** Federal statutes containing jurisdictional provisions that expressly employ some form of present-in jurisdiction include the following: 18 U.S.C.A. § 32(b) (2006) (destruction of aircraft or aircraft facilities); 18 U.S.C.A. § 37(b)(2) (1996) (violence at international airports); 18 U.S.C.A. § 112(e) (1996) (protection of foreign officials, official guests, and

internationally protected persons); 18 U.S.C.A. § 831(c)(3) (1996) (prohibited transactions involving nuclear materials); 18 U.S.C.A. § 878(d) (1996) (threats and extortion against foreign officials, official guests, or internationally protected persons); 18 U.S.C.A. § 1091(e)(2)(D) (2009) (genocide); 18 U.S.C.A. § 1116(c) (1996) (murder or manslaughter of foreign officials, official guests, or internationally protected persons); 18 U.S.C.A. § 1201(e) (2006) (kidnapping only in the case of the kidnap of a foreign official); 18 U.S.C.A. § 1203(b)(1)(B) (1996) (hostage taking); 18 U.S.C.A. § 1596(a)(2) (2008) (additional jurisdiction in certain trafficking offenses for §§ 1581, 1583, 1584, 1589, 1590, 1591-involving human trafficking and slavery); 18 U.S.C.A. § 1651 (1948) (piracy); 18 U.S.C.A. § 2280(b)(1)(C) (1996) (violence against maritime navigation); 18 U.S.C.A. § 2281(b)(3) (1996) (violence against maritime fixed platforms); 18 U.S.C.A. § 2332f(b)(2)(C) (2002) (bombings of places of public use, government facilities, public transportation systems and infrastructure facilities); 18 U.S.C.A. § 2339B(d)(1)(C) (2009) (providing material support or resources to designated foreign terrorist organizations); 18 U.S.C.A. § 2339C(b)(2)(B) (2006) (prohibitions against the financing of terrorism); 18 U.S.C.A. § 2339D(b)(3) (2004) (receiving military-type training from a foreign terrorist organization); 18 U.S.C.A. § 2340A(b)(2) (2001) (torture); 18 U.S.C.A. § 2442(c)(3) (2008) (recruitment or use of child soldiers); 21 U.S.C.A. § 960a(b)(5) (2006) (foreign terrorist organizations, terrorist persons and groups); 49 U.S.C.A. § 46502(b)(2)(C) (1996) (aircraft piracy).

**Question 2:** How many of the statutes referred to in Question 1 also do not require a connection to the United States in either the nationality of the victim or the location of the crime?

**Response:** None of the statutes referenced in Question 1 requires, by its terms, a connection to the United States in either the nationality of the victim or the location of the crime.

**Question 3:** How many potential war crimes is the War Crimes Accountability Team currently investigating?

**Response:** The Department does not generally provide information about pending investigations. I can confirm that the Department and our federal law enforcement partners have pending investigations and that we actively seek and accept referrals from all available sources regarding potential war crimes over which we may have jurisdiction.

**Question 4:** How many potential war crimes against American citizens or nationals is the War Crimes Accountability Team currently investigating?

**Response:** The Department does not generally provide information about pending investigations, including the number of investigations, which changes over time as new facts

and evidence are discovered. The Department, in conjunction with the FBI and Homeland Security Investigations, is conducting investigations involving alleged war crimes committed in Ukraine involving Americans. Unlike the federal genocide and torture criminal statutes, and numerous terrorism statutes, the federal war crimes statute, 18 U.S.C. §2441, provides only very limited jurisdiction, namely in instances in which a U.S. national or servicemember is a victim or perpetrator.

**Question 5:** How many investigations is the Department of Justice currently conducting under the MOU signed by Attorney General Garland on September 20<sup>th</sup>?

**Response:** Justice Department war crimes investigations are not conducted under the MOU per se, but rather under the authority of applicable federal statutes, in this instance primarily the federal criminal war crimes statute, 18 U.S.C. § 2441. Indeed, we opened most of our Ukraine war crimes investigations prior to the September 20 signing of the MOU. However, the MOU will facilitate appropriate cooperation and coordination among, and deconfliction between, the two countries' respective investigations and prosecutions. Negotiation of the MOU was prompted, in particular, by recognition by both the Department and the Ukrainian Prosecutor General's Office of the extraordinary gravity and magnitude of the crimes that have been and are being committed in Ukraine in the wake of Russia's unprovoked invasion. The MOU will help the United States fulfill its pledge to pursue every avenue of accountability for those who commit war crimes as part of Russia's invasion of Ukraine.

**Question 6:** How many of those investigations involve potential crimes against American citizens or nationals?

**Response:** I am not able to discuss the specifics of pending investigations.