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Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development

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• (1830)

[English]

The Vice-Chair (Mr. Michael Cooper (St. Albert—Edmonton, CPC)): I call the meeting to order.

Welcome to meeting number nine of the Subcommittee on International Human Rights. Today we will be continuing our study on human rights in Ukraine and Russia.

I have a few comments to make before I introduce the witnesses. I don't think I need to remind everyone that the COVID directives issued by the Board of Internal Economy remain in effect. Further, all participants should know that translation is available through the globe icon at the bottom of their screen. When there is 30 seconds left in your speaking time, I'll give you a warning.

I'd like to welcome all of the witnesses who have taken the time to join us today, both in person and virtually.

We have four witnesses on this panel. We have Chile Eboe-Osuji, professor at the Lincoln Alexander school of law at Ryerson University and at the University of Windsor. We also have, in person, Paul Robinson, a professor at the University of Ottawa. Appearing virtually is James K. Stewart, retired deputy prosecutor of the International Criminal Court. Finally, we have, in person, Eugene Czolij, NGO Ukraine-2050 president and honorary consul of Ukraine in Montreal.

Welcome.

I will now open the floor to our witnesses for their five-minute statements. I will begin with those of you who are joining us virtually, followed by those of you who are with us in the committee room.

With that, I will turn it over to Mr. Eboe-Osuji to begin.

Dr. Chile Eboe-Osuji (Professor, Lincoln Alexander School of Law, Ryerson University, University of Windsor, As an Individual): Thank you very much, member of Parliament.

My name is Chile Eboe-Osuji, and I was the president of the International Criminal Court from 2018 to 2021. I was there for nine years, including the period when I was a judge of the court. Now I teach at the Lincoln Alexander school of law of Toronto Metropolitan University, formerly known as Ryerson.

For my presentation today, I'm going to tell you where I'm going—that would be point B—and then I'll begin from point A. That point B is to say that we've come to a point in international law, and this war in Ukraine has gotten us to that point, where there are

some critical adjustments that must be made to that law to deter this kind of behaviour in the future. There are two adjustments I'm proposing.

We have to go back to the Rome Statute, as there is a necessary amendment that needs to be made there because of a certain yawning gap in that statute on the crime of aggression. I'll return to that in a minute.

The second thing I propose we do is this. It is now time to adopt a treaty, as it were, that recognizes the right to peace as an actionable right as opposed to just living it as a mere declaration of a right to peace. If we have an actionable right, it will make wars of aggression less likely in the future.

Let me tell you where I'm going from point A to point B. Point A is history. It has always been the case that the big developments in international law have always occurred after an armed conflict, right from the very beginning of international law itself. You'll find the Thirty Years War and the Eighty Years War that occurred in Europe concluded with that thing some of you will have heard of, the treaty of Westphalia. To international relations experts and political scientists, the treaty of Westphalia of 1648 is credited with being basically the starting point for international law as we recognize it today. It resulted from a war.

We move from there to 1856, the first time that there was any sort of thing in writing about how to regulate war in a humanitarian way. That was something called the Paris Declaration. Again, it resulted from an armed conflict, from the war in Ukraine, in a sense, the Crimean War of 1859 or so. The Lieber Code—again, lots of international lawyers know of that—resulted again from the American Civil War, and that code has informed the development of humanitarian law in very major ways. We move forward to 1864 and the first Geneva Convention. We can keep going, but I have only five minutes.

Let's move it forward then to 1919, the First World War. Everyone recognizes that, and that gave us the League of Nations. For the first time, it was thought that it was a good idea to have a standing international organization that would modulate peace in the world. Skip forward again to 1945, at the end of the Second World War. Again, lots of things happened. The UN, as we know it, resulted from that. The convention against genocide resulted from that. The idea of the recognition of human rights law that we know resulted from that war, as was the idea of responsibility in international law on human beings.

• (1835)

The Vice-Chair (Mr. Michael Cooper): You have one minute.

Dr. Chile Eboe-Osuji: The point is now for us to develop this right to peace, another juncture, and that is something that victims of wars of aggression can use later on in the civil courts of free countries in the world to sue those who launch wars of aggression and their accomplices in those wars. It is time to do that.

I will stop it there and then take questions. Thank you.

The Vice-Chair (Mr. Michael Cooper): Thank you for that.

I will now turn to Mr. Stewart.

You have five minutes.

Mr. James Stewart (As an Individual): Thank you, Mr. Chair.

Thank you for this invitation to appear on the panel.

Two months ago my nine-year term of office as deputy prosecutor at the International Criminal Court came to a close, so I am speaking as a private individual, not for the office of the prosecutor of the ICC.

I will, however, approach the interest the subcommittee has in the status of human rights in Ukraine from the perspective of the criminal investigation and prosecution of human rights violations that are so grave as to constitute war crimes or crimes against humanity, even genocide.

In doing so I hope to place the Rome Statute, the founding treaty of the ICC, within the overall architecture of human rights protection, with particular reference to the current situation in Ukraine.

I think of the ICC as being on the cutting edge of human rights protection because its operations are meant to hold the perpetrators of atrocity crimes to account and help deter such crimes in future.

The subcommittee knows that the ICC's jurisdiction is complementary to that of states parties to the Rome Statute because the states parties have assumed primary responsibility to repress war crimes, crimes against humanity and genocide. I agree with Chile about the need to get the crime of aggression properly set up and installed within the statute.

Where states do not act, either because of lack of capacity or lack of political will, the ICC was set up as the fail-safe mechanism designed to intervene. Once the ICC is engaged, states parties are then obliged by the statute to support its investigations and prosecutions. Non-states parties are also free to support ICC operations.

The driver of ICC operations is the office of the prosecutor—I'll call it the OTP—which has the independent mandate to conduct impartial criminal investigations and prosecutions of Rome Statute crimes. Victims of Rome Statute crimes also have a role to play in ICC judicial proceedings. They are, moreover, eligible for reparations where crimes are successfully prosecuted. Such features of the Rome Statute system of international criminal justice enhance the protection of human rights.

Ukraine, which is not yet a state party, accepted the ICC's jurisdiction in 2014 and again in 2015 in the wake of the Maidan violence, the Russian annexation of Crimea and the armed conflict that broke out in the Donbass.

In 2020, near the end of her mandate, Fatou Bensouda, the previous ICC prosecutor, announced that her preliminary examination of the situation in Ukraine was completed and that all the criteria to justify opening an investigation were met, but for reasons relating primarily to overstretched resources, she took no further active steps, leaving it to her successor to set priorities.

The new prosecutor, Karim Khan, QC, took office in June 2021. The Russian invasion of Ukraine that began on February 24 of this year pushed Ukraine to the fore as allegations of war crimes came in. As the subcommittee knows, over 40 states parties, including Canada, referred the situation in Ukraine to the prosecutor, empowering him, under the statute, to open an investigation directly, which he did.

The OTP is now investigating allegations of war crimes in Ukraine in real time. States party support for this endeavour, I understand, has been forthcoming in the commitment to provide both financial resources and seconded personnel, and in this Canada has been playing a key role.

With respect to this support, there is however an important point to underscore. The prosecutor, as I mentioned, has an independent mandate to investigate crimes under the Rome Statute, so it's vital that he be able to apply resources, both financial and human, as he sees fit. States parties cannot earmark resources for the Ukraine investigation, and they don't have to in order to support the court effectively.

• (1840)

For example, the personnel seconded to the OTP can be used in other investigations that the OTP is conducting. This frees up OTP resources for Ukraine and permits greater flexibility in the deployment of personnel. Canada understands this very well.

Ukraine, of course, remains a priority investigation. In the past, when I was with the OTP we outsourced work requiring expertise we lacked, but kept it under our direction. Therefore, in the current situation in Ukraine, it's no surprise that a team of Dutch forensic experts is going to Ukraine to assist OTP investigations. This sort of support is coordinated with the OTP and—

The Vice-Chair (Mr. Michael Cooper): Mr. Stewart, please wrap it up in 15 seconds, if you can.

Mr. James Stewart: —strikes me as perfectly legitimate and necessary.

To conclude, the Ukraine situation calls for an innovative and imaginative approach to international criminal investigations, with planning and coordination among parties, and broad-based means.

Thank you.

The Vice-Chair (Mr. Michael Cooper): Thank you, Mr. Stewart.

I will now turn it over to Professor Robinson.

Please make your opening five-minute statement.

Professor Paul Robinson (Professor, University of Ottawa, As an Individual): Good evening.

I will speak as an academic who studies Russia and as a former army officer who has published on the topic of just war theory.

Let me highlight the difficulty of holding perpetrators to account in situations of civil conflict and war. Yesterday was the eighth anniversary of horrific events in the Ukrainian city of Odessa, when a building sheltering protesters who were demonstrating against the Maidan revolution was set on fire, resulting in the death of 42 people.

Nobody has ever been held to account for what happened, leading to this comment from the United Nations human rights office:

...the investigations into the violence have been affected by systemic institutional deficiencies and characterized by procedural irregularities, which appear to indicate an unwillingness to genuinely investigate and prosecute those responsible.

Parties to conflict are consistently unwilling to deal with misdeeds committed by their own side. This is likely to be the case again in the current war in Ukraine, in which both sides have accused each other of war crimes. Neither country has a good record of accountability in this area. The allegations of war crimes deserve thorough investigation, including those against Ukraine, not all of which can be dismissed as disinformation.

But I will focus on Russia, as that is my area of expertise.

Contrary to what many think, the Russian state is quite legalistic and most of the time sticks to the letter of the law, both domestically and internationally. However, when really important interests are at stake, Russia, like many other states, doesn't let the law prevent it from doing what it wants. Even then, though, it matters to the Russian authorities to be seen to be obeying legal rules, to which end they often go out of their way to frame their actions as legal, even when they are not.

The Russian state has on occasion held its troops accountable for misdeeds in war, such as in Chechnya in the early 2000s, but generally only when the misdeeds in question could not be ignored. Given that independent media have now largely been eliminated in Russia, this probably no longer applies.

While the Russian state overall has a good record of accepting judgments by international courts, including the European Court of Human Rights, its record is less good when it comes specifically to matters that it believes concern state security. Furthermore, an amendment to the Russian constitution last year states that decisions of international bodies shall not be enforced if they "contradict the Constitution of the Russian Federation", a category that I imagine might be interpreted quite broadly according to the wishes of the political authorities.

In the current atmosphere, I think it is most unlikely that the Russian authorities will admit to any wrongdoing in Ukraine, let alone take any action to prosecute it or to hand over suspects to any international court. I would not expect that any form of international pressure will force Russia to comply with western demands. The invasion of Ukraine has made it clear that the Russian authorities no longer care what we think.

In short, options are limited. In any case, prosecuting human rights violations after the fact is less important than preventing them from happening in the first place. However awful war crimes may be, they account for a tiny fraction of the human suffering experienced in war. The war in Ukraine is being fought largely in an urban setting. Fighting in built-up areas, even when entirely following the laws of war, is extremely destructive. It tends to result in considerable loss of civilian life. We have seen this in recent years in Syria and Iraq, in cities like Raqqa, Mosul and Fallujah.

In modern conflicts, we have also seen the catch-all phrase "dual-use targets" being used to justify attacks on a very broad category of potential targets. Beyond that, the laws of war actually permit what is euphemistically called "collateral damage".

In war, human rights are violated daily on an entirely legal basis. Peace, even on unfavourable terms, is generally a much better way of protecting rights than prolonging war, however just the cause.

Despite this, in the past week NATO has stated that it will back Ukraine if necessary for years. The British government has stated that it will support Ukraine if it tries to retake Crimea, and the U.S. Secretary of Defense has stated that America's aim is to weaken Russia. The human costs of these options, if put into practice, would surely be enormous. Even if Ukraine manages to halt the current offensive in Donbass, it is unlikely that it will have sufficient strength to recapture all its lost territories. Even if it could recapture them, it could not do so without inflicting on cities like Donetsk and Luhansk the same sort of damage the Russians have inflicted on Mariupol.

• (1845)

Ending suffering would require the war be brought to an end as rapidly as possible, but I am concerned we may be moving—

The Vice-Chair (Mr. Michael Cooper): I'll have to ask that you wrap up.

Prof. Paul Robinson: —in the opposite direction.

On that point, I conclude. Thank you.

The Vice-Chair (Mr. Michael Cooper): Thank you, Professor Robinson.

Lastly, Mr. Czolij, I will turn it over to you for your five-minute opening statement.

Mr. Eugene Czolij (President, Non-Governmental Organization Ukraine-2050 and Honorary Consul of Ukraine in Montreal, As an Individual): Mr. Chair and members of the House of Commons Subcommittee on International Human Rights, thank you for inviting me to appear before you in view of your study of the current situation of human rights in Ukraine and Russia.

My name is Eugene Czolij. I'm the president of NGO Ukraine-2050 and the honorary consul of Ukraine in Montreal.

Needless to say, my task today was considerably simplified by the unanimous adoption on April 27, 2022, of a motion by the House of Commons of Canada correctly recognizing that the Russian Federation is committing acts of genocide against the Ukrainian people. Genocide is clearly the gravest crime and the worst violation of human rights.

[Translation]

A month and a half ago, on March 16, 2022, the International Court of Justice in The Hague rendered an interim judgment in the case of Ukraine v. Russian Federation, ruling first that both countries are parties to the UN Genocide Convention, and then stating that:

The Court considers that the civilian population affected by the present conflict is extremely vulnerable. The “special military operation” being conducted by the Russian Federation has resulted in numerous civilian deaths and injuries. It has also caused significant material damage, including the destruction of buildings and infrastructure. Attacks are ongoing and are creating increasingly difficult living conditions for the civilian population. Many people have no access to the most basic foodstuffs, potable water, electricity, essential medicines or heating. A very large number of people are attempting to flee from the most affected cities under extremely insecure conditions.

On that basis, the International Court of Justice ordered that: “the Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine”.

• (1850)

[English]

Since then, on a daily basis, Russia has been blatantly violating this order of the International Court of Justice as Russian forces relentlessly pursue their vicious bombardment of the civilian population and infrastructure of Ukraine, including hospitals and schools as well as residential buildings, and commit countless war crimes by killing, raping, torturing and starving Ukraine's civilian population and forcibly deporting children from the temporarily occupied territories of Ukraine to Russia.

There is a saying that a picture is worth a thousand words, so please try to imagine today's reality in Ukraine as you listen to the following statement by Ukrainian Parliament Commissioner for Human Rights, Liudmyla Denisova, reported on April 11, 2022, by the BBC.

About 25 girls and women aged 14 to 24 were systematically raped during the occupation in the basement of one house in Bucha. Nine of them are pregnant... Russian soldiers told them they would rape them to the point where they wouldn't want sexual contact with any man, to prevent them from having Ukrainian children.

If that does not revolt you, nothing will.

With the most sophisticated intelligence reports available to him, about a month ago after this judgment, President Joe Biden qualified these atrocities as genocide. The President of the United States later explained:

I called it genocide because it's become clearer and clearer that Putin is just trying to wipe out the idea of even being able to be Ukrainian. The evidence is mounting.

[Translation]

For the record, one need only recall the gruesome images of Bucha, Borodianka, Irpin, Kramatorsk and Mariupol to name a few that made headlines.

Putin and the Kremlin are obviously aware of the atrocities being committed against the Ukrainian people and, by their conduct, endorse such acts of savagery and ensure that the Russian forces perpetuate them.

[English]

For instance—and I will end on this, Mr. Chair—on April 18, 2022, in a presidential decree, Putin honoured Russia's 64th motorized brigade that committed the horrendous war crimes in Bucha, by awarding it the title of “Guards” and stating that “The unit's staff became a role model in fulfilling its military duty, valour, dedication and professionalism”.

The Vice-Chair (Mr. Michael Cooper): Thank you, Mr. Czolij.

We will now proceed to our first round of questions for members.

Each member will have seven minutes, starting with Mr. Zuberi.

The floor is yours, Mr. Zuberi.

Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses for being here and taking the time with us today. I want to start off with Mr. Eboe-Osuji.

Could you please explain to us a bit more what you were elaborating on in your opening remarks around a treaty that would promote the right to peace? I found those comments really interesting.

Dr. Chile Eboe-Osuji: Thank you very much, honourable member.

Right now, there is no recognition of peace as an actionable human right. I speak to people about it and say, how can that be? We have fundamental rights to security, to life. Those are some of the essential ones. With regard to freedom of speech, freedom of expression, you ask yourself, which of these rights do we have in the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights? Which one of them can you really enjoy meaningfully in circumstances where there is no peace, in circumstances of armed conflict? You just look at what's happening in Ukraine to get your answer to that question.

We don't have peace recognized as an actionable human right, and it is long overdue. When you do that... In law, there is a notion in Latin, which is expressed as *ubi jus, ibi remedium*, meaning “where there is a right, there is a remedy”, when that right is violated.

When you recognize peace as a fundamental human right, it will then mean that anyone who engages in a war of aggression—and by the way, a war of aggression is not recognized in international law as a crime against international law.... Anytime you have a war of aggression, the victims of that war of aggression will have a remedy against those who launched that war and accomplices to that war.

You have scenario where.... It's not just the prosecution, of course. We have to tighten the prosecutorial front to ensure that people are prosecuted. However, beyond the prosecution, the victims of these aggressions—people who have lost loved ones in this fight, for instance, in Ukraine, people whose homes have been destroyed—will be able to go after those who commenced that war and those who facilitated that war. When I talk about those who facilitated that war, you include other states that would have supported that war. You would also include corporations that furnish weapons to fight wars of aggression.

Let me be clear here: When I say corporations that furnish weapons, I'm not talking about corporations that have armed states to defend themselves against wars of aggression for purposes of self-defence. It would be once you supply a country with weapons that they need to defend themselves and then it turns out down the line that they used those weapons to launch a war of aggression that everybody recognizes. The weapons that were originally supplied are depleted at the first round of offensive, and then you keep re-supplying so that the war of aggression continues. Any corporation that does that would be on the hook as an accomplice of a war of aggression, together with the country that commenced it.

If we have that kind of recognition, it would mean that these assets that are frozen all over the world.... Canada is wondering what we do with these frozen assets—

• (1855)

Mr. Sameer Zuberi: If I could ask....

Dr. Chile Eboe-Osuji: —you can then use that later on and satisfy the judgment against those whose assets you have seized.

Mr. Sameer Zuberi: Could you briefly explain how that type of treaty would be triggered, as you see it right now? You did reference a number of historical events that lead to treaties and whatnot.

Do you think the current circumstances would lead to such a treaty coming forth, which would protect the right to peace?

Dr. Chile Eboe-Osuji: I think that the current circumstances provide fertile emotional soil for that to grow. If countries like Canada could take it up as something worth pursuing, I do think that they will have some reception.

Of course, I'm not guaranteeing that. You know what happens in these wars. At some point, the shooting will stop and then people will quickly want to move this behind them. At that stage, those countries who may want to do what they want to do in the future may be against that sort of proposal, knowing that it may come back to haunt them.

This is now the time to move that project, if we think it is something that victims in this war in Ukraine or victims in other wars of aggression happening around the world as we speak could use.

Mr. Sameer Zuberi: Thank you.

Maybe I'll shift to Mr. Stewart and continue with you, Mr. Eboe-Osuji.

To both of you, in your opinion, what obligations, with respect to international law and the Geneva Conventions, is Russia currently violating in its conflict with Ukraine?

• (1900)

Dr. Chile Eboe-Osuji: If you can go fast, since I did the last one, I'll come back later.

Mr. James Stewart: The suggestion, from what we see.... Of course, I'm a retired prosecutor, so we have to be careful what we say here in speaking in conclusive terms.

If you were to ask me what evidence would suggest the crimes that we're talking about, the list is very long. In the situation of international arm conflict, we're looking at potential crimes or at least potential proof of crimes such as wilful killing, torture, extensive destruction of property that is not justified by military necessity, unlawful deportation, disproportionate attacks, pillaging, employing weapons that cause indiscriminate suffering and death, and rape, as we've heard from the consul from Montreal.

The list is a long one and that's not an exhaustive one.

The Vice-Chair (Mr. Michael Cooper): Thank you, Mr. Stewart. The time has expired.

I will now turn it over to Mr. Viersen for seven minutes.

Mr. James Stewart: I'm sorry, Mr. Zuberi. That's what I can say.

The Vice-Chair (Mr. Michael Cooper): I gave you 20 extra seconds.

Hopefully you'll have the time to pick that up.

Mr. James Stewart: Thank you, Mr. Chair.

The Vice-Chair (Mr. Michael Cooper): Mr. Viersen.

Mr. Arnold Viersen (Peace River—Westlock, CPC): Thank you, Mr. Chair.

I want to start with Mr. Robinson.

In this article written by you from November 28, 2021, you wrote that, “analysts grounded in reality accept that Russia is not about to invade Ukraine.” This was an article around misinformation and things like that.

How are we to characterize that comment today?

Prof. Paul Robinson: I got that completely wrong. I was not the only person who got that completely wrong. There was a sharp division between military analysts with military dispositions who said it was going to happen and political analysts who pretty much to a man or woman said it wasn't going to happen.

Yes, I got it wrong. I was not alone. I was in the company of a very large number of other people.

Mr. Arnold Viersen: What precipitated that? What brought us to the point where a whole swath of people were wrong on this idea?

Prof. Paul Robinson: There are a number of reasons.

The first one is that the Russian state did not prepare its own public for this at all. If you watched, as I did, Russian television before the invasion, people such as television host Vladimir Solovyov and others, who are regarded as Kremlin propagandists, were all saying it was rubbish. They were actually laughing at it and saying that this is western propaganda, this is a load of garbage and nothing of the sort was going to happen. There was zero attempt to prepare the Russian population for it. In fact, the Russian population was told that the idea this was going to happen was rubbish.

Those of us who expected that you would prepare your population for war were thrown off a little bit by this. We were also thrown off by the fact that what you might call the top political analysts in Russia, people who know Putin, like Fyodor Lukyanov, and others, Andrey Kortunov, Dmitri Trenin—I can list off a whole pile of names—all said it wasn't going to happen. They all said it was just coercive diplomacy.

Because the top names, who supposedly know what people in the Kremlin are thinking, thought it wasn't going to happen, that convinced many of us that it wasn't going to. All the signs coming out of Moscow were against, so that's what led to this misinterpretation.

Mr. Arnold Viersen: As somebody who doesn't follow this very closely, the expansionist ambitions of Putin seem to have been on display for a number of years already. Was that not a flag?

Prof. Paul Robinson: The best explanation I've been given on this is by a defence analyst in Moscow I spoke to about a week before the invasion, who explained to me that the Russian authorities had come to a decision that the Ukrainian state was inherently hostile, that it had been for 30 years, that it was incapable of making peace over Donbass and that it was being egged on by the west; therefore, there was going to be a war. If it wasn't today, it would be tomorrow or it would be a year from now or in five years from now.

They were in a position, you might say, like the Germans in 1914, who were convinced that war was coming and it's better to do it now while you still have a chance, rather than five years down the road when there are NATO troops there and you start World War III.

That's the most logical explanation I've been given for Putin's decision-making in this context. In his eyes, therefore, it's sort of preventive war because they'd convinced themselves that this was going to happen sooner or later.

• (1905)

Mr. Arnold Viersen: Thank you for being here, Mr. Robinson.

Mr. Czolij, you mentioned the fact around genocide.... You kept calling it a genocide. I've worked in this place around the Uighur genocide when we worked to recognize that. Do you have any specific evidence that you'd like to share with the committee, in particular in light of the accusation of genocide?

Mr. Eugene Czolij: Thank you.

First of all, to the earlier question, where we're looking for a legal basis to hold Russia accountable for the acts that are being committed today in Ukraine, I just want to remind all the participants

here that article 2(4) of the UN Charter says, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

This gives ample legal basis to hold Russia accountable for its acts of genocide being committed in Ukraine today.

As for your question, for concrete examples, I'll tell you that when I look at article II of the Convention on the Prevention and Punishment of the Crime of Genocide, and if we go through this article to see what it encompasses, genocide means "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:"

These "acts" are, first, "Killing members of the group". We've seen that just about every day on any news you watch. Second is "Causing serious bodily or mental harm to members of the group". In Mariupol, when you're starving people, that's clearly causing serious bodily or mental harm to members of the group. Third is "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part". When you prevent people from having access to food, water, electricity, you're creating those conditions. Fourth is "Imposing measures intended to prevent births within the group". I quoted an example of that. Last is "Forcibly transferring children of the group to another group." There are now about 100,000 children who have been forcibly transferred from the occupied territories of Ukraine to Russia.

The Vice-Chair (Mr. Michael Cooper): We're going to have to leave it there.

I recognize Monsieur Trudel for seven minutes.

[Translation]

Mr. Denis Trudel (Longueuil—Saint-Hubert, BQ): Thank you, Mr. Chair.

I thank all the witnesses here tonight, as we deal with a subject that is not necessarily easy. It's a conflict that has engulfed us, in the last couple of months, all over the world. It's all anyone's talking about.

Mr. Eboe-Osuji, my first question is to you, and I will probably put the same question to Mr. Stewart.

Mr. Czolij mentioned the fact that the House of Commons had voted unanimously to recognize that there was genocide in Ukraine at the moment by Russia.

You were at the International Criminal Court. In your opinion, can we indeed speak of genocide, from a strictly legal point of view?

• (1910)

[English]

Dr. Chile Eboe-Osuji: Since you didn't get a chance, why don't you take this one first and I'll come in?

[Translation]

Mr. Denis Trudel: Yes, please, Mr. Stewart.

Mr. James Stewart: From a strictly legal point of view, one can talk about some evidence that would perhaps establish that there is genocide. Even though I'm retired, I have to respect the fact that there are ongoing investigations by the Office of the Prosecutor of the International Criminal Court, so I wouldn't want to prejudge what conclusion might be reached at some point.

Of course, there are elements that the Honorary Consul of Ukraine in Montreal has mentioned. There are things that we have noticed. You can talk about genocide, but ultimately you have to prove it. The intentional element is really important, in terms of the purpose of everything we are talking about. There can be an intentional element to the rapes and everything that has been talked about without there being genocide per se.

All I can say at this point, Mr. Trudel, is that there are elements that need to be looked at, and it's worth doing so, obviously. However, we cannot prejudge the conclusion that might be reached by the Office of the Prosecutor, for example.

Mr. Denis Trudel: I'm going to word my question differently.

Can we draw parallels between what is happening in Ukraine right now and the genocide that took place in Rwanda, for example? Are there any connections to be made or similarities that might help us understand?

Mr. James Stewart: Of course, I worked at the International Criminal Tribunal for Rwanda. I was involved in the first genocide prosecutions at that tribunal. In that case, we were talking about killing on such a large scale that genocide was established beyond doubt.

The other example that may be of interest is the case of Srebrenica in the former Yugoslavia. The International Criminal Tribunal for the former Yugoslavia found that there had been genocide in the case of the killing of military-aged boys and men from the Muslim community in Srebrenica. It was a somewhat controversial conclusion that has been challenged by some theorists, but it is another example of a case of genocide.

That's why I don't take a position on Ukraine. We have to be careful. That said, there are still elements that need to be examined.

[*English*]

Dr. Chile Eboe-Osuji: May I come in here?

[*Translation*]

Mr. Denis Trudel: Yes, please go ahead.

[*English*]

Dr. Chile Eboe-Osuji: Thank you.

The question was if we can draw a parallel between what happened in Rwanda and what's happened in Ukraine. I look at it this way: I don't think we need to draw those parallels with either what happened in Rwanda or what happened in the Second World War, with the Holocaust, for instance, because that's something people tend to do.

As Mr. Stewart said, genocide leans a lot on the intent element of it, the intent to destroy a group in whole or in part. A reference to the Rwanda tribunal was made. The case law jurisprudence of the Rwandan court actually, when you analyze it, tells you that you do

not need to kill a lot of people to have a genocide if that intent to destroy a group in whole or in part is there, an intent to destroy an ethnic group, racial group, religious group or a national group in whole or in part.

Mr. Czolij in his summation discussed five acts of genocide. I will repeat them: killing people, inflicting mental harm and bodily harm on people, depriving births within a group, and imposing upon people conditions of life calculated to bring about a destruction of that group in whole or in part.

If any of those five acts is identified with intent to destroy a group in whole or in part, you don't need to have 800,000 people killed as happened in Rwanda or six million as in the Holocaust to have a genocide.

I thought I should chip in there. Thank you.

● (1915)

[*Translation*]

Mr. Denis Trudel: That's very interesting, Mr. Eboe-Osuji, but how do we go about establishing that intent?

[*English*]

The Vice-Chair (Mr. Michael Cooper): You have about 15 seconds.

[*Translation*]

Mr. Denis Trudel: I'll come back to that when it's my turn to speak again.

Thank you very much, Mr. Eboe-Osuji and Mr. Stewart.

[*English*]

The Vice-Chair (Mr. Michael Cooper): Thank you, Monsieur Trudel.

I now recognize Ms. McPherson for seven minutes.

Ms. Heather McPherson (Edmonton Strathcona, NDP): Thank you, Mr. Chair.

I want to thank all of the witnesses for joining us today. This has been very interesting.

I think I may be following on Mr. Trudel's comments. We are in a situation, in which what we are seeing looks very much like a genocide. Obviously, that was the motion that I brought forward to the House of Commons.

My concern is how we stop this. How do we not get into a situation such as we had in Rwanda, where the genocide was declared after the fact and the loss of life was massive? What role can the International Criminal Court play in preventing it? Does the fact that Ukraine filed these applications very early help?

Perhaps I could start with you, Mr.... I'm just going to call you Chile, because it's easier and it's delightful to see you.

Dr. Chile Eboe-Osuji: That's all right. Thank you very much.

That's an important question, but first of all let me say again that it's too much to impose the obligation on a court of law to prevent a genocide. I think I need to make that very clear.

In Canada we have had our legal system here for hundreds of years, a lot longer than international criminal justice has been active, and people still commit those crimes we have in the Criminal Code, so we should not impose that obligation on a court of law. What a court of law does has to do with the extent to which political will is there is to ensure that there is punishment for the crimes.

I get the drift of your question. You have to do what you must as politicians, and there's a place for that as long as we leave room for the law to do its own job, its own work, and allow justice to be done.

Oftentimes, it's not unusual to have political statements lead the way. Even in law we recognize what we call "probable cause". Mr. Stewart is a seasoned prosecutor here. Probable cause doesn't give you the proof you need to convict someone, but it does say there's something awful that's happened here that has caught the attention of the law, causing it to spring into action. That happens and I liken that to the sort of motion you have made.

There's a place for that as long as we recognize that, if there's no evidence, we're saying, this is what it looks like to us. You call it, and then you allow room for the law to come in and tell us whether that's really what it is. There are places for that sort of thing. Politics can lead the way, and the law then follows to do its work.

I don't know whether that helps.

Ms. Heather McPherson: It does.

Really quickly, how does the law do that? How do we support the International Criminal Court to do that work? What can Canada do more? Can we be playing a better role in funding the ICC? I know there has been some discussion around the idea that the ICC has been starved of resources and that we are asking it to do a job without giving it the tools to do that.

What can be done for that part?

Dr. Chile Eboe-Osuji: I'll say this quickly while Mr. Stewart thinks about his own answers.

That's a starting point. That's something that can happen: Fund the court. Support it beyond the case of Ukraine. Give it that standing support.

I will turn to the primary question: How do we even stop this from happening in the first place? We need to return to that proposal—that thing I'm saying. Let's rebuild international law. Let's try to plug all the gaps we see. If anyone asks me a question about what gaps we are seeing, on the crime of aggression, I'm happy to take that, but I don't think I have time to do it under your question now.

Let's fortify international law to the extent we can and put all the layers and walls of deterrence in place that we need to, to make sure that people think twice about these things before they start, because wars of aggression were described in the Nuremberg tribunal judgment as an accumulation of all the evils of all the other crimes we have in international law, and there's a reason for that.

• (1920)

Ms. Heather McPherson: I would like to hear from Mr. Stewart, and maybe in my next round I can ask you a bit more about how we will plug those holes.

Mr. James Stewart: If there's no time right now, that's fine, but I do have something I want to say.

Ms. Heather McPherson: No, Mr. Stewart, I am passing it over to you. Please go ahead.

Mr. James Stewart: I was going to say that it really is a long game. The response to these atrocities is multi-faceted, but the legal one is just as Chile said. If you look at the preamble to the Rome Statute, the idea is that you hold accountable those people who commit these atrocities. You make them accountable and, in doing so, you hope to deter future atrocities. Now, of course, that's not always going to work. Murders are still committed even though it's against the law in the Criminal Code, but each time you hold someone accountable, you build an atmosphere. You build a framework that's terribly important.

Why does everybody talk about the ICC every time there's a conflict? Why are we talking about war crimes in Ukraine now? That's because international criminal law is very much in the public mind. It's in your minds, as members of Parliament. This is extremely important because it's building a culture, an attitude and a morality, if you will, relating to warfare and all the rest of it. I think that's very important.

With respect to your other question, it really is important to support the International Criminal Court. Canada's doing that right now. There has been a remarkable response on the part of states parties, I understand, to the current situation in Ukraine. I did make the point that you can't earmark these things for Ukraine, but supporting the court allows it to take action of the sort I'm speaking about. I think that's very important. It's a long game.

Who thought Milošević would ever be in The Hague? Yet he was. Who thought that we'd ever get anywhere close to al-Bashir? We still don't have him at the ICC, but he's in detention in Khartoum. This is why I say you have to be patient. Some of the people convicted by the ICC escaped justice for seven or 10 years, but they were ultimately held accountable and that is what we have to do. We have to have the stamina and determination to hold people accountable for what they do. That's why it's important to support the International Criminal Court, and I'm so proud and glad that Canada is doing that now.

Ms. Heather McPherson: Thank you so much.

The Vice-Chair (Mr. Michael Cooper): Thank you, Ms. McPherson. Your time has expired.

We will now proceed to the second round of questions, with five-minute rounds per member.

I recognize Ms. Vandenbeld for five minutes.

Ms. Anita Vandenbeld (Ottawa West—Nepean, Lib.): Thank you very much.

Again, I'd like to thank all the witnesses.

My first question is for you, Mr. Stewart.

It's along the lines of what you were just saying, but specifically about the documentation of war crimes. You mentioned that, in this conflict, we're seeing war crimes in real time. I think you mentioned that the Dutch are sending forensic teams. I know that Canada is sending RCMP.

What is it that Canada can do? Is it to provide support to the Ukrainian prosecutor's office, or to train civil society on how to properly document crimes in ways that can be used in court? Is there more that Canada can be doing on this?

Mr. James Stewart: I honestly don't know at the moment what the current status is. I understand that Canada has offered to send 10 RCMP officers to the ICC. I guess it will be up to Karim Khan how he deploys them.

I can say that, in my experience when I was still with the OTP, the RCMP officers who came over to assist us under an agreement that was developed while I was still deputy prosecutor were absolutely first class. Our people loved them. They hit the ground running, they fit in well and they worked extremely effectively. That's still the case. The more the better, I suppose I would say.

These investigations are vast, and they are multi-layered. You go from satellite imagery to intercepts, to open-source material that you can gather and authenticate, to witness testimony on the ground, to forensic examinations of crime scenes, to armament examination and all the rest of it. You layer this evidence so that you build up, not only the crime base, but you work up through the chain of command and you find who's responsible for what's happened, right up to the top, if that's where it goes.

Some of the things that, of course, you can rely on are what people say. What does President Putin say? What does Sergey Lavrov say? There's some wonderful stuff there, for anybody looking to do a criminal prosecution, I have to say. The support that Canada can give and other states parties can give to the office of the prosecutor now will be of great value, I think.

The other things you mentioned are important too. I know that Karim Khan, the current prosecutor, as we did, believes very strongly in complementarity. One thing that is innovative in this situation—I've seen this on their website—is that they have become a participant in the joint investigative team that's been set up by Eurojust, involving Lithuania, Poland and Ukraine. This allows the OTP to get access to evidence that's uncovered, say, by the prosecutor general of Ukraine, but also, in its discretion, to share evidence it acquires with them. It's this kind of innovative approach, bringing together a number of different elements, that could be very important.

There may be some diplomatic things that I won't get into that Canada could be helpful about. There are so many different levels at which we have to work, but yes, a full engagement by Canada is going to be very important.

I have to say, again, based on my experience, that Canada has always been extremely well represented in The Hague through its diplomats. The current ambassador, Lisa Helfand, is no exception to that rule. She's just great. I think, in working through her, that she will be very well informed about what the needs are and what's happening.

• (1925)

Ms. Anita Vandenberg: That's very helpful. Thank you so much.

I'm limited in my time, and I do have a question for Mr. Eboe-Osuji.

You got my attention when you talked about the natural evolution of international human rights law and that it would be going toward declaring peace as a human right. I have a couple of questions about how that might work. I know we don't have a lot of time.

Would you clarify, for instance, the definition of peace versus security? Then, obviously, the idea of who is an aggressor state is something that can be disputed. Somebody's liberator might be another person's aggressor, especially if it's a third party or an alliance coming in to defend another country.

Finally, my concern might be that, if you are a military personnel who is participating in a conflict under orders, you know that, if you do things like rape, torture and extrajudicial killings, those are crimes against humanity. Those are illegal. What about peace? Would the mere participation in that conflict cause those military personnel to then be potentially breaking human rights laws?

I know these are big questions. If you don't have time, I would very much invite you to send answers in writing, unless there's time later, but, please, take the time you have to respond.

Dr. Chile Eboe-Osuji: Let me try. Your question is an important one.

The trick there is to limit the definition of what we mean by "peace" and take the bearing of that definition from the war of aggression. There is a definition of a war of aggression in international law. You have it in the Rome Statute. In 1972, the UN adopted resolution 3314, which defines it. It already lays out what a war of aggression is, so we don't need to worry too much about that.

What we need to avoid is expanding the concept of peace so it scares people. For instance, this idea of the right to peace is not an entirely new one for me. What I'm saying now is that we have to make a convention, rather than just a mere declaration.

The difficulty all along has been that, when people wanted to talk about the right to expand it, everybody gets in and discrimination against minorities and ethnic groups is a violation of the right to peace. Discrimination against women is a violation of the right to peace and all of that. Once you have that, people now say that they already have difficulties with this at home and now we want to add something else to it.

We would bring it down to say that we are talking about a war of aggression and we limit it to that. The laws against discrimination have their own purposes in international law. Let's leave those to do their work. Let's limit what we're talking about here to when one country decides to conduct military or special military operations—or whatever you choose to call it or not call it—against another country that has not attacked it. That is a war of aggression, and it is an international crime.

That is what we're talking about when we're talking about the right to peace, rather than expanding it too much.

• (1930)

The Vice-Chair (Mr. Michael Cooper): Thank you very much.

Thank you, Ms. Vandenbeld.

I now recognize Mr. Viersen for five minutes.

Mr. Arnold Viersen: Thank you.

I want to go back to Mr. Stewart for a moment, particularly around our motion for this study here.

What we're really trying to get at is the nature of the crimes that are being committed in the conflict in Ukraine between Ukraine and Russia right now and the mechanisms for holding perpetrators accountable.

To recognize the genocide is one thing. I'm wondering if you have any other areas that we should pursue around the nature of these international crimes and perhaps the mechanisms. The court is one way, but perhaps you have other suggestions.

Mr. James Stewart: Obviously genocide is a big word, and it catches attention and brings light to bear on what's happening. I think Professor Robinson could be of assistance here. Where you're talking about wilful killing, for example, wilful killing of prisoners of war or killing of civilians, the indiscriminate bombardment of cities and villages, that sort of thing that relates to the law of armed conflict, it's all codified in the Rome Statute, particularly in article 8. If we're dealing with an international armed conflict, you'd look at paragraphs (a) and (b) of article 8. I won't try to list all of the things, because as I mentioned in response to an earlier question, the list is a long one.

For example, when you hear allegations that Russian troops looted houses and dwellings and that sort of thing, that could potentially be the war crime of pillaging. Then the issue becomes whether this is just soldiers who are doing this, not being controlled by their officers, because there is an obligation under international law of armed conflict for officers to stop that sort of thing, to punish it and to prevent it. Is it not happening because they've lost control, or because that's what they want to happen because it's going to terrify the population and all the rest of it?

What I'm trying to underscore to you is that you could look at these different categories of potential crimes and then realize that when you break down the elements of these crimes, they're very complex. The intention issue can be very difficult to establish. It's so easy, I suppose, for a military commander to say we were trying to hit a military objective and the rocket went off course. If you have a pattern, however, of smashing down buildings indiscriminately, that argument becomes much more difficult to establish.

These are issues that really need to be developed through a careful layering of evidence, and you can't do that quickly. You simply can't do that quickly. It doesn't mean that you can't, as parliamentarians, be looking at these various categories.

When it comes to holding people accountable, I think it's very important to recognize that the International Criminal Court doesn't have a police force. We have investigators in the office of the pros-

ecutor, so once you bring charges, once you obtain warrants of arrest from a pretrial chamber, then it really is up to states parties to execute that warrant. We have no power to do that ourselves. You have to rely on states or states parties. It doesn't have to be a state party. The United States was instrumental in the arrest of two of our suspects who were then tried and convicted of war crimes and crimes against humanity, so that's just an example.

The mechanism to hold accountable becomes very challenging. I mentioned Milošević before I mentioned al-Bashir. You can see the difficulty that any court like ours faces in trying to hold certainly the top-rank perpetrators to account. However, there, again, it becomes the duty, if you will, of the states parties that are part of the Rome Statute system of international criminal justice to bring that about.

I think strengthening that system is something that parliamentarians in Canada can certainly look at. I hope that helps with your question.

• (1935)

Dr. Chile Eboe-Osuji: Might I butt in here, please? I think this comes back—I don't want to look back, but I must—to this: In this day and age, the question now is how we evolve international law to the next level. It has moved so far to where it is. What else can be done? I return to whatever we can do to avoid a scenario where wars are being discussed as something that happens in ordinary course. Once somebody starts that war of aggression, we're talking about collateral damage. Mr. Robinson talked about that, which is true. International law recognizes that. Not everyone who dies in war has died as a result of sinister behaviour.

How do we stop getting to that point to begin with, so we don't have this discussion, this justification of killing human beings and destroying their lives? That is why I said, let's look at whatever we can do.

I do believe that beyond the prosecutorial question and this I believe is simply getting the question that was asked—

The Vice-Chair (Mr. Michael Cooper): You have 10 seconds to wrap up.

Dr. Chile Eboe-Osuji: Thank you.

The question that was asked is whether we can use civil remedies and I believe we can, so that, at the end of the war, people will have to worry about where the assets are and whether in nations all over the world there will be judgments against their property and assets all over the world.

The Vice-Chair (Mr. Michael Cooper): Thank you very much.

Monsieur Trudel, you have five minutes.

[Translation]

Mr. Denis Trudel: Thank you, Mr. Chair.

Mr. Eboe-Osuji, I confess that earlier when we were talking about how to establish intent, I was a little surprised at your response, about the comparison with Rwanda. I too, before studying these issues, was certain that, in order to speak of a genocide, there had to be 100,000 or one million deaths and a clear intention to eradicate another people. It seems to be more nuanced under international law.

Earlier, you mentioned that intent must be established when determining whether it is genocide in legal terms. Could you elaborate on your thoughts on the notion of intent?

[*English*]

Dr. Chile Eboe-Osuji: The intent to destroy a group in whole or in part is a critical element of genocide. That's what separates a genocide from murder, which you can commit in peacetime as well as in war. However, to decide to eradicate a racial group, ethnic group, religious group or national group, and to eradicate them in whole or in part is what makes that difference.

It is something that can be established if there is direct evidence of it and that somebody who is involved in that enterprise of killing or destruction had intent to destroy a group in whole or in part. That can be evidenced, as can people saying, "This is what we want to do." Otherwise, you could also use circumstantial evidence to say, "Hang on, what were you thinking when you were doing this?" You can also bring in circumstantial evidence, but the intent element is critical to genocide. There are a lot of killings that happen.

The case law of the ICTR, International Criminal Tribunal for Rwanda, in a case called Akayesu was the first case of genocide in international law—where James and I used to work many years ago as prosecutors. It says that once you have that intent element, you can kill a few people. Even one person raped with that intent can amount to genocide, so you don't need to have, as I said, 400 people, 800,000 people or six million people killed. That is very critical.

We need to have intent to have a case of genocide, and it's not an easy thing to prove. It's not impossible, because ICTR convicted a lot of people of the crime of genocide, but it requires careful attention to what evidence we have of direct implication of that intent or circumstantial evidence of it.

• (1940)

[*Translation*]

Mr. James Stewart: Can I speak very briefly?

Mr. Denis Trudel: Yes, please.

Mr. James Stewart: This is interesting, because there is still a distinction to be made between genocide and its intentional element, as Mr. Eboe-Osuji has just mentioned, and the crime against humanity that is extermination. That exists, too. It has been proven in the case of Rwanda, and it could be proven in other situations as well. In the case of extermination, it is not necessary to establish this intention to destroy, in whole or in part, an ethnic, racial or other group.

This distinction between the two is fine for lawyers and professors. For the general public, however, it is sometimes difficult to understand. Nevertheless, the distinction exists.

Genocide is an important crime, of course; it's horrible. That said, other crimes are equally horrific in terms of their consequences for victims, such as murder, extermination, rape or deportation.

Mr. Denis Trudel: Thank you, Mr. Eboe-Osuji and Mr. Stewart.

I have a question for Mr. Czolij.

There was a lot of talk about this being a new war. Mr. Robinson talked about the fact that the experts in Russia did not think it was going to happen, but it did. In essence, one could say that this is not a new war, but a continuation of the invasion of Crimea.

Could you tell us about what is happening in Crimea right now and the situation of the Crimean Tatars, for example?

Mr. Eugene Czolij: You are absolutely right. This is not a war that started on February 24; this is a war that took an incredible turn on February 24. It is a destruction unparalleled since the Second World War. It is a war that began in 2014 with the invasion of Crimea and part of the Donbass region, Donetsk and Luhansk.

[*English*]

The Vice-Chair (Mr. Michael Cooper): You have about 15 seconds, sir.

Mr. Eugene Czolij: Okay.

You're absolutely right that this is a continuation of a war that started eight years ago.

The Vice-Chair (Mr. Michael Cooper): Thank you.

Ms. McPherson, you have five minutes.

Ms. Heather McPherson: Thank you so much.

I'm hearing this testimony, and it's very interesting. The very first question I have is for Mr. Czolij.

From your perspective, have we heard intent from Vladimir Putin? Have we heard his intent to enact genocide on the Ukrainian people?

Mr. Eugene Czolij: As I quoted, after the events of Bucha it was clear. The acts perpetrated in Bucha clearly are the acts that one finds in article II of the genocide convention. The question is intent. When the president of a country awards, with one of the highest honours, a regiment that has committed atrocities in Bucha, and states, in the presidential decree, that "the unit's staff became a role model in fulfilling its military duty, valour, dedication and professionalism", the president is clearly directing all of his troops to be committing acts of genocide.

Ms. Heather McPherson: Thank you, Mr. Czolij.

Mr. Eugene Czolij: The intent is clear.

[*Translation*]

I would like to say the following to Mr. Trudel and Ms. McPherson.

[English]

I'm a lawyer by profession. I understand what Mr. Stewart is saying, that one must be very careful in order not to allow articles in newspapers and media to be deciding the issue of whether or not a crime has been committed. However, in this particular instance, with the advantage of media, watching CNN, watching almost live bombardments, indiscriminate bombardments, destroying literally....

Mr. Stewart was saying that one has to distinguish this, maybe, from a bombardment that was aimed at a military facility and hits a civilian region. Here we have, on a daily basis, bombardments that are aimed at civil infrastructure. Clearly, the intent here is to destroy Ukraine as a whole, to punish the civilian population for not surrendering in the first three days, as Putin had wanted to occur and unfortunately many western countries also thought would happen. Ukrainian forces have incredibly resisted and demonstrated that the Russian army is not that most powerful army that everybody was fighting with. Unfortunately, the Ukrainian civilian population is paying the high price of a genocide as a result of the success of the military.

To your earlier question on whether the courts can stop the genocide, I agree with what was said earlier. I would remind you that the International Court of Justice in March ordered the Russian Federation to stop the so-called military operations in Ukraine. Russia has clearly blatantly ignored this order and violated it on every single day since then.

The only way to stop a genocide from being committed, or to take even a larger portion of the population and the property, is not to rely on the courts. It is to provide Ukraine with defensive lethal weapons so that Ukraine can defend its territorial integrity. It is also to isolate Russia totally. Isolating Russia totally and preventing European and western dollars, including petrodollars, from funding a genocidal war, that is the way you stop a genocide.

• (1945)

Ms. Heather McPherson: I will say that—

Prof. Paul Robinson: Can I come in?

Ms. Heather McPherson: I will say, too, that we all recognize that the Ukrainian people have been heroes through this. Thank you for also acknowledging that.

You spoke about the need of the criminal court and how we can't depend on that. Mr. Stewart, I recognize how you're framing it, which is that we need to be patient and that justice is a long game that we have to work towards.

Should the criminal court have a police force? Is there something we can do with the criminal court to make the laws more enforceable? Is there something more that we should be doing at that level?

The Vice-Chair (Mr. Michael Cooper): Give a very brief answer, please.

Ms. Heather McPherson: That's not a very brief question. I apologize, Mr. Stewart.

Mr. James Stewart: I guess you have to make what you have work.

I must say that Mr. Czolij makes a very good argument in terms of the kind of evidence you want to look at for genocide.

I think the horrible truth here, frankly—and he's right about this too—is that you have to stop the war. That means through military means. You have to defeat and then accountability follows. That's how it works. We should do it.

Ms. Heather McPherson: Thank you, Mr. Stewart.

The Vice-Chair (Mr. Michael Cooper): Thank you very much.

We are going to go into our third round and I'd like some direction from committee members.

We are scheduled to have the witnesses up until eight o'clock. I believe it's close to 2 a.m. where Mr. Stewart is. We do have some committee business. It was scheduled for a full half-hour beginning at eight. However, in fairness, I think it's very unlikely it will take anywhere near a half-hour.

I would suggest that we do shorter three-minute rounds. However, if committee members wish to take up a full five-minute round each because everyone has a lot more questions—we have very good witnesses—I'd like some direction from the committee with the time that we have.

Mr. Trudel.

[Translation]

Mr. Denis Trudel: I think that, if we can take five minutes, that is what we should do. Indeed, I think all we have to do is determine the winners of the prizes. That can be done fairly quickly.

[English]

The Vice-Chair (Mr. Michael Cooper): Are other members agreeable to the five minutes?

Mr. Arnold Viersen: Yes.

The Vice-Chair (Mr. Michael Cooper): Let's proceed with one final round of five minutes each.

With that, I recognize Mr. Sarai for five minutes.

Mr. Randeep Sarai (Surrey Centre, Lib.): Thank you, Mr. Chair.

This is a very impressive panel, with your level of expertise, whether it's on Ukraine itself or at the international court. I'm very impressed with that.

Your dedication, Mr. Stewart and Mr. Eboe-Osuji, to put people to justice who have done some of the most egregious crimes in the world is very commendable.

During the committee's last meeting, we heard from three courageous human rights defenders in Ukraine who were documenting the war crimes and crimes against humanity that were being committed by Russian forces against civilians.

Mr. Eboe-Osuji, based on your previous experience, what documented evidence is required in order to properly prosecute war crimes and crimes against humanity?

• (1950)

Dr. Chile Eboe-Osuji: Thank you very much.

We will begin, of course, with the eye-witness accounts of what happened. That is always a traditional method of proving cases in court.

We don't leave it only at that. Nuremberg, which prosecuted the Holocaust and war crimes that were committed during the Second World War, was heavily reliant on documentary evidence to establish the case. That is another way of proving things.

Since Nuremberg, things have moved a long way. We now have a lot of technology. James Stewart used to work in an office that had all those gadgets to sneak out what people are doing and that sort of stuff. They can use technology nowadays and things have really moved forward.

There are all sorts of programs. I know the university of Berkeley has some programs that track human rights violations in circumstances like this and others. There are different sources of evidence that could be pulled into the court to make a case.

James, maybe you can come in here. I used to be a judge until recently and James remained a prosecutor.

Mr. James Stewart: I could add to what Chile has said about technology—though, unfortunately, I'm no expert on it.

One of the things that was developed that I recall—and I wish I could remember the name of the app—was an app that would allow first responders, people who were on the ground who saw the sorts of things you're talking about, Mr. Sarai, to film this on their smart phones and then send it immediately up into the cloud so that it was protected and preserved. There were markers attached to that would preserve the location, time and all the rest of it. That's an example of the kind of technology that's available today.

Certainly, I can tell you that social media is an extraordinarily rich source of evidence. We built one entire case on social media of prisoners of war who were being shot, and the people who were doing it were putting what they were doing on social media and boasting about it. Of course, you can't just rely on that. You then have to authenticate it and support it with other evidence, but what Chile is talking about in terms of modern technology is very much a feature of criminal investigations, particularly at the international level now.

One of the difficulties is the mass of it, so the use of artificial intelligence to try to sort through it becomes very important, as is simply the application of human resources and the need to have enough people to go through this sort of material patiently. When you come right down on the ground with these things, it is just hard, smart work that generates the cases you need to bring in order to hold people accountable.

I hope that helps.

Mr. Randeep Sarai: Yes, thank you.

Mr. Stewart, similarly, when it comes to sexual violence, as we've heard from Mr. Czolij and others in the past about what has happened, particularly to many young women in Bucha and other places, there are people like the RCMP investigators who are sent there and others who are indigenous to Ukraine. Are they able to deal with the sensitivities of a person who's been through all of that and capture all of the necessary evidence?

From your past experience, is this knowledge and training being given to those who are investigating the current situation there, who are dealing with the ethnic cleansing happening in Bucha and other places?

The Vice-Chair (Mr. Michael Cooper): Make it a brief answer, please.

Mr. James Stewart: I honestly can't comment on what's happening now, because I'm not in the office of the prosecutor and I'm not authorized to speak for Karim Khan, and I just don't know. I can certainly tell you on the basis of past experience that the office of the prosecutor developed an entire policy dealing with sexual and gender-based crimes and how to deal with the medical and psychological needs of people. There are people in the office of the prosecutor who are trained to deal with traumatized victims. There are people who are capable of examining victims medically.

Of course, in today's world, when you think about the notion of complementarity, which I mentioned earlier, it may be that local prosecutors' offices have the capacity to deal with individuals. These are very sensitive matters, so much of it really depends on culture. It took a long time, for example, for people to come forward—

• (1955)

The Vice-Chair (Mr. Michael Cooper): I'm going to have to interrupt. Unfortunately, we're going to have to leave it there.

Mr. James Stewart: —to talk about sexual violence in Rwanda because of culture.

I'm sorry I went over. Thank you, Mr. Chair.

The Vice-Chair (Mr. Michael Cooper): If you want to wrap up, you can have 10 more seconds. I'm sorry to interject.

Mr. James Stewart: No, thank you very much.

The Vice-Chair (Mr. Michael Cooper): Thank you.

We were a little over there, but I will turn it over to Mr. Viersen for five minutes.

Mr. Arnold Viersen: Thank you, Mr. Chair.

Thanks to the witnesses.

Mr. Robinson, you wanted to jump in when Ms. McPherson was speaking. I am wondering if you still had that comment at the ready.

Prof. Paul Robinson: With regard to intent and what Putin has said, I have studied his features and have peer-reviewed academic articles on them, so this is my field. You should distinguish between his attitude to Ukrainian statehood and his attitude to the Ukrainian people, because they are distinct.

Putin has threatened Ukrainian statehood. He said a while back that if Ukraine tried to recapture Donbass by force, it would be the end of Ukrainian statehood. In his speech recognizing the independence of the Donetsk People's Republic and Luhansk People's Republic, he ran through how the communists had put Ukraine together from various bits, and then he said that if the Ukrainian authorities wanted decommunization, he could give them decommunization—which in effect meant unravelling what the communists had done and cutting Ukraine up. That is a definite threat against Ukrainian statehood.

However, his attitude to the Ukrainian people is very different. The Ukrainian people are continually referred to as a brotherly people, as one sharing the same language, the same culture, a common history; as one the Russian people are entirely friendly with, and there's no intent to destroy the Ukrainian people or Ukrainian culture as such. There is a keyword that's not been mentioned in the genocide convention list, the words "as such". You have to be aiming to eliminate a group "as such". No such intent has been stated in his speeches.

Moreover, he is vehemently anti-ethnonationalist. He has repeatedly denounced what he calls "caveman nationalism", which is ethnonationalism, and he has repeatedly stressed the need and the fact that Russia is a multinational, multiconfessional, multi-ethnic society, and that this is a good thing.

Therefore, yes, he's definitely expressed threats against Ukrainian statehood, but as for an intent to destroy Ukrainian people, Ukrainian culture—no.

Mr. Arnold Viersen: Thank you.

Mr. Eugene Czolij: Could I add one thing, because I am not reading the same thing that Mr. Robinson is reading?

In a very well-known and publicized article titled "On the Historical Unity of Russians and Ukrainians", on July 12, 2021, way before February 2022, Putin wrote:

...when I was asked about Russian-Ukrainian relations, I said that Russians and Ukrainians were one people—a single whole.

Then he disparaged Ukrainians by saying that, in his history books:

The name "Ukraine" was used more often in the meaning of the Old Russian word 'okraina' (periphery)...referring to various border territories. And the word "Ukrainian"...originally referred to frontier guards who protected the external borders.

That is how much Mr. Putin loves the Ukrainian people. He thinks that Ukrainians were border guards or frontier guards who were protecting the external borders of Russia, and he does not recognize the Ukrainian people as a people.

Mr. Arnold Viersen: Thank you.

One of the other areas I am wondering if you have any commentary on is the treatment of prisoners of war. That is one of the things I've noticed coming out of the conflict there. Do you have any comments on that?

• (2000)

Mr. Eugene Czolij: The horrific stories of the treatment of both civilians and the military who have been captured and are prisoners

of war defies human logic. When I look at it, when I read about it, I did not think that a human being could go that low. The treatment inflicted on prisoners of war violates every single principle in international law on their treatment.

I don't want to shock this committee with examples of such violations, but I am just saying to you that, when one goes through the list, it clearly violates every single principle of international law regarding the treatment of prisoners of war.

Mr. Arnold Viersen: Thank you, Mr. Czolij.

Prof. Paul Robinson: May I follow up on this as well?

The Vice-Chair (Mr. Michael Cooper): Yes. Mr. Robinson, I'll give you a little bit of leeway to jump in.

Prof. Paul Robinson: There is clearly mistreatment of prisoners of war going on in this war. That is clear. I think it is necessary to point out that it is happening on both sides.

A month ago, a video came to light showing Ukrainian soldiers murdering Russian prisoners of war. Even though, as we've had pointed out, a video only isn't proof per se, the BBC was able to verify this by geolocating where this happened, which was in Ukrainian-held territory. The Guardian newspaper reported that bodies were spotted in the area by satellites, so it does seem likely that in this case, the Ukrainian soldiers murdered Russian prisoners. There have actually been more than one such video. There have been a substantial number of videos not just of the murder of Russian prisoners, but also of the beating of Russian prisoners and the desecration of dead bodies, so there have been, I'm afraid to say, multiple violations of human rights on both sides in this war.

Mr. Arnold Viersen: Thank you.

The Vice-Chair (Mr. Michael Cooper): Thank you, Mr. Robinson and Mr. Viersen.

Mr. Trudel, you have five minutes.

[*Translation*]

Mr. Denis Trudel: Thank you, Mr. Chair.

I will address Mr. Robinson first, but then I will come back to Mr. Czolij to ask him a question about Crimea.

Mr. Robinson, you are an expert on Russia. I think that at the moment everyone on the planet would like to stop this war. But we realize that we have to do it very carefully. The Americans are giving Ukraine weapons and Canada is giving it money to try to support it in this war. However, we cannot intervene directly. Yet we feel that many people around the world would like to.

We hear that, if we intervene, Putin would be crazy enough to unleash nuclear weapons and thus start a third world war. As someone who is an expert on Russia and is familiar with Mr. Putin's speeches, do you think this is really possible, or is it Russian propaganda being used to stop the world intervening in Ukraine?

[English]

Prof. Paul Robinson: The Russian state, even today, came out with of a new statement saying that they considered the use of nuclear weapons to be unacceptable. Now of course this is what is declared. As to what could happen in reality, I don't know, but I would consider it very unlikely unless NATO troops were advancing on Moscow or St. Petersburg, or something like that. I think it's very much an existence-of-the-state type of weapon, rather than something that should be used for tactical purposes in a war such as in Ukraine.

Does that answer the question?

[Translation]

Nuclear weapons can be used to save the state, if the existence of the state is in danger. However, I don't think they would be used to win the war in Ukraine.

Mr. Denis Trudel: And yet the line is tenuous, isn't it?

Prof. Paul Robinson: I think it's pretty clear.

Mr. Denis Trudel: All right.

Mr. Czolij, earlier you started to talk about the situation in Crimea, but you had to cut your answer short when there were only 15 seconds left.

This is indeed not a new war, but a continuation of the war that started in 2014.

Can you tell us about what is happening in Crimea right now?

• (2005)

Mr. Eugene Czolij: There are a host of crimes being committed in Crimea. I do think that the Russian authorities are trying to totally Russify Crimea. As the American president said, every demonstration of anything Ukrainian is met with severe punishment by the Russian authorities.

You only have to look at the reports of the Organization for Security and Co-operation in Europe and other bodies of the international community to see how human rights have been violated in Crimea since its invasion by Russia.

Mr. Denis Trudel: If I were to ask you the question I just asked Mr. Robinson about Mr. Putin's intentions, how would you answer it?

Mr. Eugene Czolij: I would say to you that Mr. Putin thinks he has found an answer to article 5 of the NATO treaty, according to which an attack on one of the NATO countries is an attack on all of the NATO countries, and that he is using the threat of nuclear weapons to intimidate the NATO countries.

We are faced with a choice: either we allow Mr. Putin to threaten us, to lead us around by the nose, to violate just about every international treaty, and to say that he will use chemical weapons or nuclear weapons, leaving us at his mercy, or we take the necessary steps to end this genocidal war and ensure stability in Europe, which necessarily includes respecting the borders of Ukraine.

Mr. Denis Trudel: When you say that the necessary measures must be taken, what measures do you have in mind?

Mr. Eugene Czolij: Earlier, I wanted to tell you one thing, about what can be done. On April 6, the European Union's High Representative for Foreign Affairs and Security Policy said this in the European Parliament:

[English]

We've given Ukraine nearly €1 billion. That might seem like a lot but €1 billion is what we're paying [Vladimir] Putin every day for the energy he provides us with. Since the start of the war, we've given him €35 billion, compared to the €1 billion we've given Ukraine to arm itself.

[Translation]

Mr. Trudel, I think that first of all, Ukraine should be given the necessary weapons so that it can ensure the protection of its airspace and stop the indiscriminate bombing that destroys infrastructure and residential buildings and kills the population.

[English]

The Vice-Chair (Mr. Michael Cooper): Thank you, Mr. Czolij—

[Translation]

Mr. Eugene Czolij: I think that 30% of its infrastructure has been damaged now, and the costs are over \$100 billion. We need to provide the necessary weapons to enable Ukraine to protect its territory, and we need to isolate Russia completely.

[English]

The Vice-Chair (Mr. Michael Cooper): I'm going to have to cut you off.

[Translation]

Mr. Eugene Czolij: This is what will stop this genocidal war.

[English]

The Vice-Chair (Mr. Michael Cooper): Thank you.

I'll recognize Ms. McPherson.

Ms. Heather McPherson: Thank you, Mr. Chair.

To start with, I want to say that I am deeply appalled by some of the testimony we have heard today and the fact that we have heard that there are bad people on both sides. We are looking at an illegal war and an invasion of a sovereign territory. We are looking at the ways that Russia has gone into Ukraine, despite lying over and over again, has fired on citizens and has, very clearly, done unspeakable, horrific things. To claim that there are bad people on both sides minimizes the pain that Ukraine is going through. I am appalled by that testimony.

Mr. Czolij, I want to give you an opportunity to comment. We have heard from Vladimir Putin. He has said:

As for the Russian people, it became a genuine tragedy. Tens of millions of our fellow citizens and countrymen found themselves beyond the fringes of Russian territory.

That is, to me, a very clear indication that he feels that they are Russians in Ukraine. I would like you to comment on that, if you could, Mr. Czolij.

• (2010)

Mr. Eugene Czolij: Thank you very much for giving me this opportunity.

Just like you, I was totally appalled by the statements of Mr. Robinson. I'm ashamed that he stated that in front of this committee. He shamed this hearing with that statement by trying to equate what is being done by the Ukrainian army and what is being done by the Russian army. The Ukrainian army fights in accordance with international law. The Russian army violates every international principle on a daily basis. Everything that comes out of Putin's mouth is a blatant lie. He lies as he breathes. To relay and to equate the victim with the aggressor is to do a total injustice and to shame a process where people like you are looking for ways to stop a genocidal war.

I'd like to quote South African Archbishop Desmond Tutu, and I'd like Mr. Robinson to remember this. He said when injustice is being committed and you remain neutral, you have sided with the oppressor. Through Mr. Robinson's statement before this committee, alleging without any reliable evidence and stating that the atrocities are committed by both sides, he has essentially sided with the oppressor before this committee.

That is a shame.

Ms. Heather McPherson: Thank you very much, Mr. Czolij. I agree with you wholeheartedly.

Prof. Paul Robinson: May I be allowed a right of reply?

Ms. Heather McPherson: No, thank you.

I would like to just end my questioning by saying that the New Democratic Party certainly stands with the people of Ukraine and recognizes the invasion by the Russian Federation into Ukraine and the illegal actions being done to the people of Ukraine right now.

I will end my testimony at this point.

Thank you, Mr. Chair.

The Vice-Chair (Mr. Michael Cooper): Thank you, Ms. McPherson.

I've been very generous with time to the witnesses. I see that Mr. Robinson did want to say something—

Ms. Heather McPherson: I would not—

The Vice-Chair (Mr. Michael Cooper): If he wishes to do so, I will exercise—

Ms. Heather McPherson: Do not do that with my time.

The Vice-Chair (Mr. Michael Cooper): —my prerogative as chair to give him that time, so—

Ms. Heather McPherson: No. You don't have.... I'm sorry. I challenge the chair.

The Vice-Chair (Mr. Michael Cooper): Okay. The chair has been challenged.

Ms. Heather McPherson: That is not your right.

The Vice-Chair (Mr. Michael Cooper): I believe it is, but you have every right to challenge the chair.

Mr. James Stewart: May I speak, Mr. Chair?

The Clerk of the Committee (Ms. Erica Pereira): Mr. Chair, if it's okay with you, I'll proceed to a recorded division.

The Vice-Chair (Mr. Michael Cooper): We'll proceed to a recorded vote.

(Ruling of the chair overturned: nays 4; yeas 1)

The Vice-Chair (Mr. Michael Cooper): Thank you very much.

That concludes time for questions.

Thank you very much to the witnesses.

Thank you in particular to you, Mr. Stewart, for spending an additional 20 minutes with us, it being a very early hour where you are.

With that, we will suspend for a few minutes and reconvene in camera to attend to some committee business.

[Proceedings continue in camera]

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