

**COMMUNITY CHRONICLE**

January 5, 2019

# **UABA holds 41st annual meeting in Washington**

By **Bohdan Shandor**



At the Ukrainian American Bar Association banquet (from left) are: Oksana Pelekh, UABA president; Bohdan Shandor, chair, UABA Committee on Legislative Affairs; Liudmyla Chaly; Ambassador Valeriy Chaly; Congressman Andy Harris; Nicole Harris; and Musia Shandor.

WASHINGTON – The Ukrainian American Bar Association held its 41st annual meeting in the confines of the U.S. Capitol Building. The conference, titled “U.S.-Ukraine: New Policies, Strategies and Lessons from the Past,” took place during the weekend of November 9-11 and attracted a wide array of attorneys, jurists and academics from the United States as well as from Ukraine.

The conference ended with a banquet honoring one of the co-chairs of the Congressional Ukrainian Caucus, Congressman Andy Harris of Maryland, who received a Special UABA Award for his efforts and continuing support of Ukraine.

At the outset of the conference, the attendees were welcomed by UABA President Oksana Pelekh, who pointed out that this was the first time that the UABA annual meeting was taking place in the U.S. Capitol. A special greeting was also extended by an honored member in attendance, Chief Judge Timothy M. Tymkovich of the United States Court of Appeals for the 10th Circuit, who expressed his continuing interest in the UABA and pleasure at being able to attend the meeting in the nation’s capital.

Victor Rud, a founding member of the UABA, addressed the group on a timely topic, “The Iceberg Beneath the Mueller Investigation: Understanding our Understanding – or Not – of Russia.” Mr. Rud chairs the UABA Committee on Foreign Policy and International Affairs and is actively engaged in national security matters affecting the United States and Ukraine.

Mr. Rud took aim at the West's lack of understanding of Russia and failure to acknowledge or deal with the risks that Vladimir Putin and the Kremlin pose to democracy and the international rule of law. This naiveté, Mr. Rud said, finds its roots in the post-World War II policy expounded by, among others, the former U.S. ambassador to the USSR, George Kennan, who wrote in his memoirs: "The Russians don't want to invade anyone. It's not in their tradition."

In particular, he cited a mindset in Washington and the West that views the fall of the Berlin Wall and the break-up of the Soviet Union as the end of the threat rather than the beginning, even as Mr. Putin seeks to re-assert Russia's dominance over its neighbors who are now sovereign nations, like Ukraine. He pointed out that five years into the largest war since World War II, between the largest country in the world and the largest country in Europe that gave up its nuclear arms – no one even hears about it.

Relying upon published materials, Mr. Rud built a case for America's ignoring clear signs of what was to come by ignoring such defining events as: Russia's attack on Armenia; Mr. Putin's celebration of Joseph Stalin's 120th birthday in 1999; and commemorative services for Felix Dzerzhinsky, regarded as the founder of the KGB. Even Mr. Putin's own lament about the demise of the Soviet Union as being "the greatest geopolitical disaster of the 20th Century," was viewed with amusement.

Mr. Rud posited Russia as the same adversary from tsarist history which today poses a new but not identified threat. America's ability to prepare for the immediate challenge is further confounded by Russia's use of propaganda, disinformation and manipulation. In 2013, Gen. Valery Gerasimov described the doctrine that bears his name, when he said: "It is now possible to defeat the enemy (the United States) through a combination of political, economic, information, technological and ecological campaigns."

The next speaker, Dr. Michael Carpenter, is senior director, Penn Biden Center for Diplomacy and Global Engagement, and nonresident senior fellow at the Atlantic Council. The topic of his presentation, "Russia's War Against Ukraine and the West; U.S. Sanctions; The Danger of Russian Efforts to Occupy the Azov Sea; the Need for a New Approach and Strategies defending Ukraine and the U.S.A. Against the Russian threat," was nothing if not prescient.

He is a former deputy assistant secretary of defense and also served as a foreign policy advisor to Vice-President Joe Biden as well as on the National Security Council as director for Russia. Dr. Carpenter spoke candidly about the situation confronting Ukraine and his assessment that the current administration could be doing more with respect to Ukraine. He compared the United States to a superhero in Hollywood animations who has the power but is afraid to use those vast powers. Similarly, the United States is not fully utilizing the enormous power at its disposal.



UABA President Oksana Pelekh (left) with Chief Judge Timothy M. Tymkovich of the U.S. Court of Appeals (10th Circuit) and Ivanna Bilych, president of the Volya Institute.

Specifically, Dr. Carpenter cited the use of the United States' asymmetrical power to impose real financial sanctions against Russia. He described the actions to date as "debt and equity" restrictions on financial companies; but not "full blocking sanctions," as have been applied to North Korea and Iran. According to him, applying "full blocking sanctions" to two or three Russian banks which would be prohibited from engaging in any transactions in the U.S. financial sector would definitely have an immediate crippling effect and get the Kremlin's attention. Presently, the "debt and equity" sanctions which exist are directed at selective transactional prohibitions and in his view have produced no tangible results. The only instance of the "full blocking" approach being used is against Bank Rossiya, which he described as a small "crony bank" and ranked 26th in Russia; predictably, its blocking produced hardly a yawn from the Russians.

Commenting on what some have called "the nuclear option," Dr. Carpenter advised caution in the use of sanctions involving the SWIFT banking system, if only because any ban on its use would have substantial and unforeseen effects upon Europe's and the global economy.

As for the Sea of Azov (he was speaking before the recent Russian acts of aggression), Dr. Carpenter noted that the United States should provide Ukraine with more radars to boost its maritime domain awareness, as well as land-based anti-ship missiles. But, the best deterrent, he observed, is bolstering the presence of the United States military in Eastern Europe.

The conference's next speaker, Mark Voyger, said that calling "hybrid warfare" a new type of warfare is a misnomer since it has been around for years. Today it utilizes high-tech tools and approaches, which makes it seem "new." Mr. Voyger is a former special advisor to retired Lt. Gen. Ben Hodges, former commanding general of U.S. Army Europe. Speaking on the topic of "Russian Lawfare," Mr. Voyger pointed out that Russian hybrid warfare is akin to the multi-headed hydra monster of Greek mythology. In this case there is a political center or "head" and tentacles that extend into diverse areas of the target's endeavors: legal, cultural, financial, economic, diplomatic, intelligence, energy, socio-cultural, economic and infrastructure tools. To this, Russia adds organized crime and conventional and surreptitious military actions as a means to target not only adversary nations but the Russian population, both domestically and abroad.

So what exactly is Russia doing when it engages in “lawfare”? It is using a quasi-legal theory to justify what would otherwise be unacceptable conduct under international norms by any nation. For example, one of Russia’s favorite arguments is to claim that it is acting to protect the rights of Russians in a particular territory. Mr. Voyger pointed out that Russia’s claim “to protect the people” is as old as Russia’s tsars, who first made the claim in 1774 and subsequently used the same excuse every time a tsar wanted to meddle in a neighbor’s affairs (which was quite often). Throughout the 19th century the Russians claimed they wanted to protect Orthodox Christians whenever they meddled in the Balkans, as they annexed more and more land. He pointed out that Adolph Hitler used the same pretext in annexing the Sudeten territory from Czechoslovakia in 1938. Likewise, Stalin justified annexing the Baltic republics at the outset of World War II. But, to serve this purpose, the Kremlin also needs quasi-legal justification. The rationalization for justifying unlawful conduct is what U.S. legal experts have come to call “lawfare” or, in other words, legal warfare.

When engaging in lawfare, Russia does not ignore international law, but rather uses international law and treaties as a weapon. In this manner it exploits, manipulates and misrepresents the international legal system in order to justify its own wrongful conduct. This twisting and bending of international norms and the law enables Russia to create the perception or appearance that it is operating in a quasi-legal framework enough to justify the deployment of its troops to Crimea, Georgia and Moldova. The Baltic nations are justifiably more than merely concerned when Mr. Putin speaks of “protecting Russian speakers,” Mr. Voyger noted.

Gene Fishel is someone who is very much in the thick of things as senior advisor, with the Bureau of European and Eurasian Affairs at the U.S. Department of State. His topic: “What the U.S., Ukraine and International Community Should Do to Restore the Territorial Integrity of Ukraine.” Mr. Fishel, who is fluent in Ukrainian, stressed that Ukraine has many friends at Foggy Bottom. Due to his official capacity, he requested that his remarks at the conference be treated as personal and “off the record.”



Three judges at the UABA convention (from left): Chief Judge Timothy M. Tymkovich, U.S. Court of Appeals (10th Circuit); Judge Bohdan Futey, U.S. Court of Claims (retired); and Judge Orest Jejna, Municipal Court of Scottsdale, Ariz,

At the break, UABA members and guests dined on a delicious luncheon of grilled salmon, beef tenderloin and chicken Francoise, all prepared by the Capitol Hill caterers. Afterwards, the conference focused on a key area on everyone’s mind and affecting Ukraine today: the

Russo-Ukrainian war. The attendees were honored to have one of Ukraine's foremost diplomats and former ambassador from Ukraine to Great Britain, Volodymyr Vassylenko, not only present at the conference but also speaking on "Ukraine's Legal Remedies and Countermeasures Against the Russian Federation."

There was a presentation by a Ukrainian activist from eastern Ukraine, Semen Kabakaiev, co-Founder of Project "Stop Terror" and "War Crimes of Russia." In his remarks he addressed "Russia's Use of Military, Religion and Political Means in its War with Ukraine." Mr. Kabakaiev, who was born and raised in Luhansk, has been very active in collecting information and data on Russian war atrocities in the Donbas region. He participated in the formation of a website, <https://stopterror.in.ua>, for the collection and verification of information which is then made available to the public regarding Russian acts of aggression in eastern Ukraine.

Working with Ukraine's ministries of Justice and Foreign Affairs, he organized international experts with private funds and as volunteers for the project "War Crimes of Russia" to form the factual and juridical basis for future claims against Russia in the international courts. He has received commendations from the Ministry of Defense, the Ministry of Internal Affairs and the Security Service of Ukraine for his work in connection with the Russo-Ukraine war in the Donbas.

Mr. Rud next spoke on the topic of "Deconstructing the 'Dezinform' and Why it Matters Today." In his address, he highlighted the history of blindness exhibited by the United States in successive administrations, starting with the agreements made at the Yalta Conference that sealed the fate of eastern Europe for almost half a century. The continuation of this myopia led to policies of containment, which only prolonged the inevitable collapse of the Soviet Union.

Because this year commemorates the 85th anniversary of the Holodomor in Ukraine 1932-1933, the UABA Board of Governors invited Judge Bohdan Futey, a founding member of the UABA, and a frequent speaker in the United States, Ukraine and around the world, to address this most timely and important topic. Judge Futey outlined the fundamental basis for classifying the Holodomor as Genocide by definition under international law.

The starting point to any consideration of genocide is the horror of World War II and the events leading up to it. Judge Futey pointed out that international law has evolved after World War II from a system of laws oriented towards state sovereignty to one also dedicated to the protection of human dignity. The tribunal overseeing the Nazi war Crimes trial in Nuremberg provided the first definition of crimes against humanity: "murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population, before or during the war or persecutions on political, racial, or religious grounds..." He pointed out that there is not one universally condemned act that Hitler and Stalin did not commit.

Judge Futey also paid tribute to Dr. Raphael Lemkin, an American attorney who spent time in western Ukraine and is credited with coining the term "genocide." Dr. Lemkin served as the legal advisor to Robert Jackson, the U.S. chief prosecutor for the Nuremberg Trials, and throughout his life advocated for increased protection for racial, national, and religious groups whose cultural, political, social or physical existence were imperiled.

Following the adoption by the United Nations of the Genocide Convention for the purpose of preventing, criminalizing and punishing acts of genocide in December 1948, the Convention was ratified by the Presidium of the Supreme Council of the USSR on March 18, 1954.

The question raised by some commentators about how a convention against genocide can apply to actions taken before World War II was answered by Judge Futey. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity was adopted by the United Nations in November 1968, and ratified by the

Russian SFR and Ukrainian SSR the following year. This convention, he said, when taken together with the concept of the “compelling law status of the prohibition of genocide, eliminates the argument that acts of genocide committed prior to the Genocide Convention are not subject to prosecution.”

In a widely publicized speech in 1953 on the occasion of the 20th anniversary of the Great Famine, Dr. Lemkin spelled out the four-pronged attack that Stalin used in an attempt to liquidate the Ukrainian nation. The Ukrainian intelligentsia was the target of the first blow, so as to eliminate “the brain of a nation with the intent to paralyze the rest of the body.” The second attack was directed against the Ukrainian Church, priests and church hierarchy. The third blow was struck against the nation’s peasants and farmers by starving them to death. The final blow was the fragmentation of the Ukrainian people by forced resettlement, exile and the introduction of Russians into Ukraine.

Judge Futey concluded his remarks by reviewing the recognition by the U.S. Senate and House of Representatives, together with 22 states, of the Holodomor as an act of genocide. He stated: “The crimes against humanity by the Soviet Communist regime must be condemned, adherence to international covenants must be preserved, and tribute must be paid to the millions of victims in Ukraine.”

Ivanna Bilych, a member of the UABA Board, moderated a panel composed of attorneys in the pre-eminent Washington law firm Covington & Burling, LLP, on the topic, “International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All forms of Racial Discrimination in the Case of Ukraine v. Russian Federation.” The three partners in the firm representing the government of Ukraine before the International Court of Justice are: Marney Cheek, Jonathan Gimblett and David Zionts. The litigation arises out of the many cases of ethnic and religious discrimination and abuse of individuals in Crimea and elsewhere. This case has now been extended to include human and sex trafficking in the war zone of the Donbas and is tied to the hybrid warfare being waged by Russia.

Markian Silecky, a Kyiv law practitioner and member of the UABA Board, moderated a panel comprising Michelle Small, director, Head Office Representative of the European Bank for Reconstruction and Development; and Boris Chumak, desk officer, Office of Russia, Ukraine and Eurasia, Global Markets Unit, at the Department of Commerce. The panel’s topic was “U.S. and European Perspectives on Ukraine’s Economic Situation.” Ms. Small and Mr. Chumak described the procedures and requirements for applying for EBRD loan guarantees and the emphasis that is placed on entrepreneurs in Ukraine. Ms. Small encouraged business owners and entrepreneurs to visit the EBRD website at <https://www.ebrd.com/> and contact one of the regional offices of the EBRD in Ukraine.

On Saturday, the UABA members and their guests were honored by the presence and an address by Valeriy Chaly, ambassador of Ukraine to the United States, who spoke on “Recent Political Developments in Ukraine.” Ambassador Chaly made reference to the preparations in Ukraine for the next presidential elections on March 30 and the continuing efforts of the Russian Federation to confuse and intimidate the electorate by waging war in eastern Ukraine, which is now in its fifth year.

He described the Kremlin’s foreign policy as one that includes: waging war in Ukraine; interfering in U.S. and European elections; invading, occupying and annexing Crimea; conducting destructive cyberattacks in countries around the world; and violating international nonproliferation agreements – while in the process lying about their conduct.

Ambassador Chaly pointed out that there is a clear link between human rights violations and the threat to international security. There is an understanding by the United States that real peace in the territorial areas of Ukraine temporarily occupied cannot ever be achieved without securing the rights of those people who are there. The only way to assure human

rights is to put an end to Russian occupation in the eastern part of Ukraine by withdrawing all Russian troops out of the country and de-occupying Crimea. He firmly said: “This can and will happen.”

Moving on from recent developments in Ukraine to the recent U.S. midterm elections, Bohdan Shandor, a founding member of the UABA and Chair of the UABA Committee on Legislative Affairs, gave a presentation on “A Non-Partisan Review of the U.S. Midterm Elections and How They May Impact Ukraine on Capitol Hill.” Mr. Shandor pointed out that, with the seismic shift in the House of Representatives, with the Democratic Party gaining 28 seats and majority control of the House in the 116th Congress, and with the Republican Party holding on to its majority in the Senate, with a gain of two seats, the net effect upon Ukraine remains positive, with Ukraine enjoying unprecedented support on Capitol Hill on both sides of the aisle.

This bilateral support can be seen in the most recent passage in both the House and Senate of resolutions designating the Holodomor as an act of genocide by the Soviet government in 1992-1993. The vote on providing lethal weapons to Ukraine was also indicative of the overall support with a positive vote of 419-3 (out of 435) in the House and 97-2 in the Senate (out of 100).

Prior to the midterms, the Congressional Ukrainian Caucus had 50 members, and the Senate Ukraine Caucus had 17 members. Although it is uncertain how many representatives and senators will be in their respective Ukrainian Caucuses, since some have retired or not won election, the expectation is that the numbers will be substantially the same.

Mr. Shandor concluded his remarks by saying that the overall state of Ukraine on Capitol Hill is not only “good,” but “very good.” However, this relationship is constantly under attack by the Kremlin and Russia’s paid agents in Washington. He encouraged all in attendance and their family and friends to contact their representatives and senators to urge them to join the respective Ukrainian Caucus if they are not already members.

The conference’s Saturday activities concluded with a reception and banquet at the trendy Washington restaurant Joe’s Seafood, Prime Steak & Stone Crab. Following a cocktail reception and sumptuous dinner, Ms. Pelekh introduced the keynote speaker, Rep. Harris from Maryland, who is now in his fifth term in Congress. He sits on the House Appropriations Committee, and the Subcommittees on Agriculture, Labor, and Homeland Security.

The congressman was presented an award from the UABA, which was inscribed: “The Board of Governors of the Ukrainian American Bar Association, on the occasion of its 41st Annual Meeting in the city of Washington in the District of Columbia, has the great honor and pleasure of bestowing this special award upon Rep. Andy P. Harris, M.D., of the State of Maryland for his outstanding contribution, effort and commitment to the Ukrainian Congressional Caucus and for his working to further Ukraine’s development as a free and sovereign nation governed by the rule of law.”

Rep. Harris began his remarks by pointing out that he himself is a descendant of immigrants and the first generation in his family born in the US. His late father was Hungarian and his mother is Ukrainian, having been born in what is today Ivano-Frankivsk. He told the audience that he learned from an early age from both of his parents of the horrors of Communism and the dangers posed by Russian imperialism.

Rep. Harris stressed that Ukraine is important not only to Ukrainians but to the stability of Europe and the national security of the United States – a point that is often lost in Washington. In response to a question about the current sanctions, he said, “Sanctions against Russia alone are not enough. Every country has the right to protect its borders and Ukraine needs to be given the tools and weapons necessary to accomplish this task. Fortunately, the Congress is generally in sync when it comes to Ukraine.”

He related a conversation he had with a member of the other party who told him, “Andy, there are not many things the Democrats and Republicans agree upon – except when it comes to Ukraine.” During the question and answer period, which the congressman said he enjoys, he was asked what specific actions he would support for Ukraine in dealing with the war in the Donbas. His response, “Whatever it takes to get the Russians and their paid mercenaries out,” drew immediate applause from the audience.

He further emphasized that Javelin missiles should not be considered the end of the story and that anti-aircraft weapons, advanced radar systems and other weapons need to be made available to Ukraine’s armed forces. He concluded, “We brought down the Soviet Union in Afghanistan and we can do the same here.”

For further information about the Ukrainian American Bar Association, readers may visit the website [www.UABA.org](http://www.UABA.org).

---