



**Proceedings of the
Twelfth International
Humanitarian Law
Dialogs**

August 26–28, 2018, Chautauqua Institution

Edited by Mark David and David M. Crane



**American Society
of International Law**

**Proceedings of the Twelfth
International Humanitarian Law Dialogs**

*August 26–28, 2018
The Chautauqua Institution*

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Twelfth International Humanitarian Law Dialogs

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This volume is dedicated to

Allyson Caeson and Christina Cowger

2018 Recipients of
the Joshua Heintz Award for
Humanitarian Achievement

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Prosecutors at the Twelfth International Humanitarian Law Dialogs



Back row (left to right): Stephen J. Rapp, David M. Crane

*Front row (left to right): Douglas Stringer, Andrew Cayley,
Fabricio Guariglia, Brenda J. Hollis*

Foreword

Foreword

Mark David Agrast*

Over the past twelve years, the American Society of International Law has joined with the Robert H. Jackson Center and other leading organizations in the field of international criminal justice to convene the International Humanitarian Law (IHL) Dialogs at the Chautauqua Institution in New York.

The Society is honored to participate in the IHL Dialogs and to publish the annual *Proceedings*. These volumes offer important insights into the world of international criminal justice, drawing on the expertise of current and former chief prosecutors for the various UN courts and tribunals, academic and NGO experts, and organizations working to end impunity and promote accountability for war crimes and mass atrocities.

The 12th IHL Dialogs brought a special focus to the perspectives and experiences of victims and survivors, posing the question, “Is the Justice We Seek the Justice They Want?” The program featured a diverse array of speakers who shared their experiences of loss, resilience, and survival, and their determination to see justice done. They included **Ishmael Beah**, a former child soldier in Sierra Leone who has won acclaim as an author and human rights activist; and **Mohamedou Ould Slahi**, whose memoir, *Guantánamo Diary*, recounts his fourteen years of imprisonment without charge.

Other notable speakers included **Stephen J. Rapp**, Former Prosecutor for the Special Court for Sierra Leone and Former U.S. Ambassador-at-Large for Global Criminal Justice; **Zainab Bangura**, the former Special Representative of the UN Secretary-General on Sexual Violence and Conflict, and a leading human rights activist in her

* Executive Director and Executive Vice President, American Society of International Law.

home country of Sierra Leone; and **Catherine Marchi-Uhel** the Head of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011.

The 2018 Heintz Humanitarian Award was presented to **Allyson Caeson** of North Carolina Stop Torture Now, and **Christina Cowger**, of the North Carolina Commission of Inquiry on Torture, for their grassroots campaign to investigate the use of aircraft based in North Carolina to transport detainees to secret prisons in other countries.

As always, the program included a roundtable of current prosecutors and concluded with the issuance of the Chautauqua Declaration, both of which are included in this volume.

On behalf of the Society, I would like to express my appreciation to David Crane, who established this annual forum and continues to guide and nurture it; to our hosts at the Robert H. Jackson Center; and to our fellow cosponsors for their generous support of the Dialogs.

Finally, I wish to thank Wes Rist, the Society's Deputy Executive Director, who represented the Society at this year's IHL Dialogs; and Caitlin Behles, the Society's Director of Publications and Research and the Managing Editor of these *Proceedings*.

Lectures and Commentary

A Conversation with Zainab Bangura

This conversation took place at 6:45 p.m., on Sunday, August 26, 2018, between Zainab Bangura, former Special Representative of the UN Secretary-General on Sexual Violence in Conflict, and Greg Peterson, Director and Co-Founder of the Robert H. Jackson Center, who hosted the discussion. Zainab Bangura received the 2017 Joshua Heintz Award for Humanitarian Achievement. An edited version of their remarks follows.

GREG PETERSON: It is intimidating to be hosting this discussion with a lady of your stature, but I am thrilled to be in your presence for so many reasons.

I was asking some of your colleagues today what I should ask you or what they would want me to ask you. I approached your esteemed friend, Ambassador Stephen Rapp, and he reminded me that, as the United Nations Secretary-General's Special Representative on Sexual Violence in Conflict, you were at a special conference in London in 2014, and you were the keynote speaker. There was a guest there named Angelina Jolie, and he wanted me to ask what you thought of her. That was his question.

[Laughter.]

ZAINAB BANGURA: Angelina Jolie, together with William Hague, who was then the Foreign Secretary for the United Kingdom, launched this initiative on preventing sexual violence in conflict. And I think the good thing about working with people of that stature—you know, peak status—is that it puts their voice on issue, and it opens doors.

I remember when we had the G-8 summit. William Hague wanted the G-8 agenda to include sexual violence in conflict. So he said, “I need

to bring Angelina Jolie.” Of course, everybody comes, you know. All the foreign ministers of the G-8 came.

[Laughter.]

ZAINAB BANGURA: I was given the responsibility of sitting next to the Russian foreign minister to make sure he kept quiet so he wouldn't criticize the agenda. She brought a momentum, and I think those were years when we had about 150 countries that signed the declaration to commit themselves to fight against sexual violence in conflict. It's not very easy. You have the Iraqi prime minister, and all sorts of people. So what we do, whenever we go to visit a country where we know the head of state is very reluctant, is we take her along.

[Laughter.]

ZAINAB BANGURA: So they opened doors for us. In working with her I saw she was very, very committed. She was very committed, and she wanted to do something. She wanted to use her star power to bring people around the table, and to get people to agree on things that they don't want to agree on, because once Angelina Jolie stands there, it's yes, yes, yes.

[Laughter.]

ZAINAB BANGURA: We got a lot of signatures to come in. That's very good, you know.

GREG PETERSON: There's a very good YouTube piece of William Hague walking in with her, and I'd never seen him walk so quickly or so proudly.

You went from being a star in the insurance world to being what you became. How did that happen? Was there an aha moment?

ZAINAB BANGURA: I grew up as an only child to my mom, who was very traditional and illiterate. She never went to school. My father was a Muslim cleric, and I was very close with him. But as a Muslim cleric, he had to follow—I don't want to say the doctrine—the policy, and that is not to educate the girl child. I had learned the Quran first before I went to the English school, and at the age of twelve, my father wanted me to leave school to get married. My mom said no.

GREG PETERSON: Twelve.

ZAINAB BANGURA: Twelve years old. And my mom said no. So my father threw us out, my mom and me. We went to the village, and my mom instilled in me that the only thing that could get us out of that situation was for me to have a good education. So she did everything she could to get me educated. It was very difficult, and my last year in high school when I was a senior, she couldn't pay the fees anymore. I had a very lovely principal. She wrote to the government and said, "I have this brilliant girl in school, but her mom can't pay her fees anymore." So the government paid my fees.

And then I took the exams. I went to the equivalent of college here in the United States. It was very difficult because my mother had to sell everything she had. When I went to high school, she couldn't afford a uniform, so somebody who started a year before me and left a year before me, gave me an old uniform. She had instilled the sentiment that you have to get an education. It's the only thing that will take you out of poverty.

Then my mom died. After I finished university—I went to Nottingham University—I came back home, and I lost my mom. I had to go to the funeral. I had to track down my father. We went to the funeral, and my father had to take charge. This is a man who has left us, but then tradition demands that he has to be in charge of the funeral.

I was not married then, but I was living with my husband. I had a son. They said, “No, you can’t do anything at your mother’s funeral because you are not legally married.” So I had to leave my mom’s corpse and actually go out and get married, and then once we finished the traditional wedding we came back and he took control.

I think that was very difficult for me to understand. How can I accept this? So I went to Freetown, the head of the UN, and I spoke to a couple of people, and they said, “You should talk to the UNDP.” The head of the UNDP was then a woman from Tanzania, so an African woman. I made an appointment and I went to her, I spoke to her about it, and then she laughed. She said, “That is what you call women’s rights.” She said, there is a problem in Sierra Leone, inasmuch as the constitution says we are all equal, but the constitution also recognizes religious and customary laws. So, actually, a father has that right.

To cut a long story short, that is how I became interested in women’s rights issues. I started a campaign when I was young called Women Organized for a Morally Enlightened Nation, just as Sierra Leone was going to a military government. There was a coup, and then I realized that you can’t fight for women’s rights under a dictatorship. So I turned my attention against the government and tried to throw them out, insisting that we have to have democracy.

While we were making this argument, the United States had what they call now the Young African Leaders Initiative, but it used to have a different name. The lady who was the public relations officer, Kiki Munchi—she is now retired in California—kept listening to me as I got involved in this debate about democracy, and she said to me, “You know, you have potential. I need you to go to the United States.” They had what they called the International Visitors Program then, which is a six-week program. So I came to the U.S., and the title of the program was Grassroots Pragmatism and Grassroots Democracy.

I spent six weeks traveling the length and breadth of the United States, and the one thing I took back home was that as diversified as the U.S. was, they had certain values that held them together. It doesn't matter who you are or where you come from. These principles and values protect people and give you a voice.

So I went back to Freetown, and I went to the American ambassador. I said, "I want to work for democracy." She looked at me and said, "Are you crazy? You are living under military governments." So I said, "I do want to work for this because there's something that tells me this is what we need in Sierra Leone." She said okay, and they gave me my first grant, which was \$25,000. I set up an organization, and I started working.

Because my mother comes from a grassroots level, she was a market woman. So I started working with the market women, and I realized in our society, because the governments had collapsed at the national level, the people and the cities had set up their small networks. So I went and studied those networks. Even though the leaders were not elected, they were respected. So I got the leaders. The American embassy gave me space, and I started training them and trying to indoctrinate some on democracy.

Once I was content that they were ready, I took on the governments and went into the streets. At that time, the war had started in Sierra Leone, and once we were able to have an election, I gave up my insurance job. I started working on human rights and democracy, and then the war started. I started documenting, monitoring, and reporting the atrocities that were happening in Sierra Leone.

I had people deployed behind rebel lines. I was reporting on atrocities of the war and atrocities here. The rest of it is history.

GREG PETERSON: Being female, did you run into a lot of glass ceilings as you were advocating and agitating? Was that something that was part of your experience?

ZAINAB BANGURA: Oh, yes. I come from a very traditional culture where women don't have voices. Up to today, as I speak, women cannot be traditional leaders where I come from. It was very difficult, you know, because it was difficult for people to accept.

But I had one philosophy. Someone said, "At the banquet table, there are no reserved seats." I learned very early on that you don't have to wait until you are invited. For example, the World Bank went to Sierra Leone. They were discussing something on local government. I didn't wait for invitations. I went to meetings. I participated, and I think people were so shocked at how abrasive I was. But I don't wait for you to ask me to sit at the table. I believe that if I wait, I will be waiting for the rest of my life. So there were a lot of obstacles, but for me, the result is what matters because I needed to break the barriers. I needed to break the culture of denial, and the culture of silence. I needed to be very aggressive in dealing with it.

One of the most interesting thing is that everybody thought I didn't behave like a woman. I remember one interesting experience. People read so much about me in the paper, the way I was behaving, and all sorts of things. I sat in the sitting room with my husband, and I said to him, "Why is it that people think that I don't behave like a woman?" And he turned to me and looked at me and said, "Don't you know that you have male hormones?" I said to him, "Oh my God." I realized I had to deal with a lot of these battles, but I think I had the courage.

I had a lot of support from international people during the height of the war in Sierra Leone. The American ambassador and the British High Commissioner gave me a lot of protection. They went with me to places. Sometimes I couldn't sleep in my house, but they went with

me. They made it known that they had my back. Having international communities support me was one thing that helped me greatly in my country during a difficult time.

GREG PETERSON: In your house you have an inscription on what looks like a wooden carving. It says, “Let your faith be bigger than your fear.” Is that something you believe in?

ZAINAB BANGURA: I’m a very spiritual person. I’m Muslim, but I also believe in the Bible. I think my faith has kept me going because I always believed in destiny. This is what I was chosen to do, and I think there is a bigger being over there who looks after me. So I can even go into the lion’s den because I have the belief that once I do it with all my heart and I do it not because of me, there’s something that protects me. So my faith is very strong in what I do—my faith in God—and I do it for humanity because whatever I do, there are a lot of people who benefit. I benefitted a lot from the goodwill of a lot of people, and that took me a long way.

GREG PETERSON: You believed in the goodwill of a lot of people. Being from Sierra Leone you saw the various atrocities and you know about the Special Court for Sierra Leone. Give me your best story about David Crane.

[Laughter.]

ZAINAB BANGURA: Setting up the Special Court was not easy. The rule of law is the first victim of any conflict, and in Sierra Leone, we had almost three decades of military rule and dictatorship. So the rule of law was completely destroyed.

When they set up the Special Court, I didn’t realize that David was a military person. Now I realize that he succeeded because he was marching into Sierra Leone like a military man. The courts in Sierra

Leone interested him, but he also tried to get the government to accept that they committed atrocities, and even if they didn't accept it, he tried to get them to surrender their own people, which was one of the most difficult things.

Foday Sankoh was very unpopular, but Hinga Norman was treated like a demigod because people thought that without him, we could not actually have peace in Sierra Leone. David doesn't take prisoners, I have to tell you. He intimidated everybody, including our presidents at that time. It was a straight line. He just moves on. I think we are very lucky to have had David start with the Special Court and Stephen follow up.

I remember the first time I met David. I was totally fearless. Everybody was giving evidence about this issue of first marriage, and the judges were very confused. "I was his bush wife. I was his bush wife." And they said, "What is this?" They knew that a crime had been committed because of the girls' story of how they were treated and what happened to them, but they didn't know what a bush wife was.

So everybody said to David, "You have to talk to Zainab. She's been documenting this. She's the only person you can talk to who will give you the correct story and tell you exactly what's happened." So they spoke to me about David. And that was the first time I was frightened of somebody, I have to tell you, because he really intimidated me. I don't easily get intimidated.

GREG PETERSON: I can't imagine it.

ZAINAB BANGURA: Exactly.

[Laughter.]

ZAINAB BANGURA: I was very impressed, and I think he was the one who gave me the courage to do this. He told me what they

wanted, that they believed that I knew exactly what it was, and that I could write the story.

He intimidated everybody, so I was not the only one. When you talked to the police, they would say, “Oh, that David Crane, my God, he’s trouble.” Everybody was afraid of him in Sierra Leone, because he had done so much with the Special Court. He had come to try the government because there was so much impunity. Nobody thought this was a crime. People did things because they didn’t realize this was something that they could be punished for and that they could be held accountable.

Once the Special Court started operation, it was very difficult, but he was able to get the government to actually make the Special Court very independent. I don’t know whether he was aware of the argument that the Special Court should be under the Supreme Court before coming because they wanted our judges to be part of it. But they said no. Eventually, they agreed, and they said the Special Court should be independent.

As I said, all of the prosecutors in Sierra Leone did a fantastic job, and it was also an educational process for us. It restored a lot of confidence in the rule of law. It included a lot of our local lawyers, and they had a lot of interaction with the Court. They were not isolated. They worked very closely with civil society. They created an outreach office, which worked very well and actually brought the people into the Court. The people felt that they owned the Court, and the Court was actually working for the people of Sierra Leone. It was a very interesting experience, and I think that later on, people looked at the best examples of how it was run. That was mostly because of the prosecutors because they realized that the Special Court would be unpopular if it was not owned by the people of Sierra Leone.

One of the best things that it did was to make sure that the people felt that this Court was not only to give them justice, but that they owned the Court, and the Court listened and reported to them. It set a very good example.

GREG PETERSON: You were not gathering all of this information in anticipation that there would ever be a Court. I assume the Revolutionary United Front (RUF) wasn't very happy with you. You spoke pretty brazenly about the atrocities. Did you fear for your life at all?

ZAINAB BANGURA: Oh, yeah. I won't say attempts were made, but I had a lot of threats. I think the worst time was January 6th when the rebels actually entered the city.

GREG PETERSON: What year was this?

ZAINAB BANGURA: It was 1999 when the RUF entered the city. I think they could have taken the city before Christmas, but SAJ Musa died at Waterloo. So they stopped at Waterloo. For about a week or more, the city was under siege. We were doing all sorts of advocacy. The government had brought in the commanders in towns. People were shot, and people were killed. People were disappearing.

Then on the fifth of January, I was in front with the now minister of education, who was then the secretary general of the teachers union. He thought the rebels were going to enter the city. He was living in Kissy in the east end. He came over to the west end, and that's why he spent the night.

I got a call at about midnight from the president of the Labor Congress. And that night, I was on VOA and BBC giving interviews, and talking about what it would mean if the city fell and saying all sorts of negative things about the rebels.

Because we had a very strong civil society network, we had each other's telephone numbers. Once the city fell in the east end, people kept calling me to say where they had arrived. By the time they got to Liverpool Street, which is the center of Freetown, we were able to pick up their strategy. We chose to use the people as human shields, to have all the people in front, and the rebels would be at the back. That way if the Nigerians were going to counter-attack, they would kill the people. So we informed the Nigerians.

Every stronghold checkpoint collapsed. So the Nigerians retreated and mobilized at Congo Cross Bridge, and then once they arrived there, the mobs arrived. The Nigerians got all the people to lie down, and then they walked over them and attacked the rebels. It was a massive slaughter of people across the stretch of the city from Congo Cross, Tengbeh Town, and Hill Station. My house was less than 500 yards from where the lines were drawn.

They knew that I was leading the resistance, and as they were singing my name and saying, "We'll get her. The rebels will kill here," people started calling me. So I called the Nigerians, and they had armored cars in front of my house. For me, that was the most frightening time of my life because they came literally 200 yards from my house, and the bullets were flying. For two nights, I couldn't sleep, and I was in my sneakers and jeans. On the third night, I wrote down the names of all my friends and their telephone numbers. I had some cash, and I gave it to my son. I said, "Once the gates are hit, you leave."

And for two or three days, the lights were off. The telephone system was off. We couldn't even cook in our houses because they would see the smoke.

On the fourth day, when a friend of mine, Julius Spencer, came knocking at my gate, I thought the rebels were there. I asked my son

to jump, and Julius shouted. He said, "It's me, Julius." He came with some Nigerians, and he said the government had fled.

The president had run away. The ministers had left. So we had to take charge. For one week, we ran the country. I was very frightened. For about a month the Nigerians were in the vicinity of my street. We had to get out when they started pushing the Nigerians, and we had to collect the dead bodies. We had to bury them in mass graves.

The British sent a military ship with something to spray and clean the streets. We had to clean and wash the streets because the dogs and vultures were eating the dead bodies. So that was the closest I came to being killed. Several times they had attempted it. In the end, Foday Sankoh and I became friends when he came to town because there came a time when I was the only person who could confront him. Everybody was afraid of him. It was a very difficult period.

GREG PETERSON: And that was only equaled by your meeting with David Crane.

[Laughter.]

GREG PETERSON: So many people admire you. You are really a role model for so many folks. Do you have a role model? Did you have somebody as you reflect on your career that you wanted to emulate or somebody who was special?

ZAINAB BANGURA: I was a history student. I read a lot about people who had done lots of work to transform their countries. For a long time, they called me the "Iron Lady" back home. They still do call me the "Iron Lady" because of Margaret Thatcher.

I respect strong people, people who stand up for their beliefs, and people who don't get influenced by others. So when I read history books

about people like Margaret Thatcher and Otto von Bismarck, it was the people who decided to do the right thing no matter what happened that I wanted to pursue. For me, that's the most important thing.

People don't need to agree with me. I always say in Sierra Leone, I don't need you to love me. I need you to respect me for who I am, but if you want people to like you, then you have to do what they want. And a lot of times what they want is not something you agree with.

So I don't make a lot of friends. I have very few friends back home. Back home, I don't think I have three or four people whose homes I visit, because at the end of the day, I have such strong conviction in myself. I disagree with a lot of people. People might feel you are too strong, you have an attitude, and you don't listen. You and I will be friends if we share a lot of values together, and those are the people I am friends with. Even in history, those are the people I believe in; people who believe in certain things and pursue them to the end. It doesn't matter what other people say about them.

GREG PETERSON: I was reading someplace that among the people you admired as president were Ellen Johnson Sirleaf of Liberia and Angela Merkel of Germany. Do they fit those definitions?

ZAINAB BANGURA: Yes. Ellen is more than a friend. She is almost like a sister to me. We met when we started the Soros Foundation in Paris. I respect her a lot because she went through hell in Liberia before she became president, but she never gave up.

I met her when she was struggling after the Samuel Doe incident. Since then, we've been friends. She just visited me because she knew I was sick. She came to see me in Freetown in November. I'm going to visit her on her farm.

I also know Angela Merkel. I met her when I was foreign minister. Then most recently, she invited me to Germany when she was chair of the G7, and we went. She's very strong. She doesn't bend, as you yourself said. So I like her very much as a woman leader.

GREG PETERSON: You're a lover of jazz.

ZAINAB BANGURA: My God, where did you get all these stories? You must have done your homework.

[Laughter.]

GREG PETERSON: I've been working this for a month. So who's your favorite jazz instrumentalist? Who's your hero?

ZAINAB BANGURA: Kenny Rogers.

GREG PETERSON: If we were really good, we'd be playing that right now.

ZAINAB BANGURA: Yeah. Whenever I visit my dentist in New York, they always play me jazz music while he's working on my teeth, so that I don't feel the pain.

[Laughter.]

GREG PETERSON: That's good. So you get interviewed quite a bit. What's the answer to the question that you think these folks would be most interested in that I haven't asked?

ZAINAB BANGURA: In the course of my work, I've met a lot of people. I remember the experiences meeting some of these people, especially the armed groups and the governments, and how to engage them.

I remember when I met the South Sudan president. He talks too much, and everybody had one minute. But don't allow him to start talking or else you will not be able to engage him. So by the time I left, the foreign minister said to me, "Madam, you terrorized my president."

I think that's something I have had to learn. When you deal with a crazy person like Foday Sankoh, you need to be able to make sure you don't allow them to talk. The FARC can talk you under the table. They talked nonstop when I met them in Cuba. It was a very interesting experience working with all these different classes of people, armed groups, and heads of state. It's very challenging.

GREG PETERSON: What's been the most rewarding part of what you've accomplished? As you reflect today in 2018, you'd say I got this award here, and maybe one of the reasons I got that award was because of X. How would you fill in that?

ZAINAB BANGURA: I think for me, my best achievement was working in the DRC. When I was interviewed for the job, the Secretary-General said to me, "We've never gotten President Kabila to accept that his military people are committing atrocities." He said, "The DRC is our biggest headache" They had thousands of women being raped regularly. And I listened. That was the only country he complained about to me.

When I got the job, I went to see him three months later. He said almost the same thing to me. So I knew that the DRC was very close to his heart, and he wanted something to be done. I decided that one of the first things I had to achieve was actually getting President Kabila to accept that atrocities were being committed in the DRC and by his military.

I worked very hard. As an African woman, I realized I had to use all the tactics I had, and I did my planning for six months. I went to the DRC

for two weeks. I said I can't meet him at the beginning. If I did, he would deny everything. I needed to travel in the country, meet the victims, meet the people, and actually learn about the country from within the country so that when I met him, I would have very clear examples.

The meeting was arranged, and it was very interesting because the Special Representative of the UN Secretary-General (SRSG) in Kinshasa had not seen Kabila for about a year. He just doesn't talk.

Normally in our position, the SRSG is your host, so he goes with you to all your meetings. For this SRSG, he didn't want to go. I didn't have a problem with that. The deputy SRSG accompanied me to all my meetings. Once it was confirmed that I was going to meet Kabila the second week, the SRSG saw it as an opportunity to actually also meet Kabila.

I went to the meeting, and he gave me thirty minutes. I ended up with one hour, thirty minutes with him. I said to him, "I have not come to talk to you as a UN representative. I've come to talk to you as an African woman who has gone through conflicts in my own country. I have witnessed conflict, and I have had to deal with it." I talked to him about some of the experiences of other countries. I spoke for about twenty minutes, and then he said to me, "Do you have time?" I said, "Of course, Mr. President. I'm at your disposal." For the first time, he spoke for twenty-five minutes. He knew everything that was happening in his country. He knew who were committing the atrocities. Then he told me, "I couldn't do anything because I don't have the power."

At the end of the day, we had an agreement. We struck a deal. In the two years that I worked with the DRC, we succeeded in prosecuting 150 people in the military, including a general. The sexual violence committed by soldiers was reduced by 50 percent.

When we had a conference in London, I got them to invite the defense minister, and he didn't want to come. I spoke to President Kabila. I asked him to come, and he was so intimidated because all the NGOs were demonstrating against DRC. So I said to him, "The DRC government has never had a voice. You have to come." He said, "What do I say?" I said, "Don't worry." I got my staff to prepare a speech for him. I sat with him to read the speech because he was very aggressive. He wanted to complain about the ICC. I said, "No, that's not your problem. You don't complain about the ICC. You talk about your problem, and then at the end, make a commitment that you will accept responsibility. Crimes have been committed by the military, but you will make a commitment." We set up a very strong military prosecution division in the army, which became stronger than the civilian prosecution team.

The second to last General Assembly that President Kabila attended before I left the UN, he invited me to his hotel, and he said to me, "Thank you very much." I was able to get the Parliament to have a committee that addressed sexual violence. Everything I asked him to do, he did, and for me, that was a great satisfaction. The UN Secretary-General went there, and he refused to discuss sexual violence. My predecessor went there three times. President Kabila refused. But I was able to get him to accept what was happening and take responsibility. The first time I went to the DRC, the chief of army staff refused to talk to me. President Kabila had to call him, and he called me to ask for a meeting.

That was one of the lessons I learned. I had a very difficult time with South Sudan. I met the president five times. I met the rebel leader five times. It was very difficult. Iraq was also very difficult with the prime minister. So I faced a lot of difficulties, but the most important issue at the end of the day was that they all take responsibility.

I was never able to get them to move to the next step, but at least in the DRC, President Kabila moved. And he made a lot of changes. I was working with Stephen Rapp to actually have a court. We were not able to get it before we all left, but that was my most satisfying work.

GREG PETERSON: We thank you for all that you've meant to all the international law dialogues. Thank you very much.

Katherine B. Fite Lecture

Catherine Marchi-Uhel*

It is a great pleasure to join you at the Twelfth IHL Dialogs at Chautauqua, and I am very honored by the opportunity to deliver this year's Katherine B. Fite lecture. The experience of this pioneer of international criminal justice, the first woman to join Justice Jackson's staff at Nuremberg, is a source of undeniable inspiration for me. Her steps, along with those of other remarkable women who have helped in building the foundations of international criminal justice, have guided me ever since I joined the International Criminal Tribunal for the former Yugoslavia (ICTY) as senior staff sixteen years ago, and again when I later became an international judge at the Khmer Rouge Tribunal in Cambodia.

I continue to be inspired by her example today as I reflect on the adventure I embarked on a year ago when I was appointed to lead the novel and innovative International, Impartial and Independent Mechanism Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM or Mechanism).

Today I would like to walk you through the key features of this new body, focusing in particular on my vision for the Mechanism's priorities.

The Mechanism was established by the UN General Assembly (UNGA) in December 2016. The Security Council failed to refer the situation of Syria to the International Criminal Court (ICC) or to create an ad hoc tribunal, as it had done for the former Yugoslavia and Rwanda. Therefore, the UNGA stepped in.

* Head, International, Impartial and Independent Mechanism.

The Mechanism is not a prosecutor's office, nor a court. It cannot issue indictments, prosecute cases, or render judgments. Instead, it is mandated to:

- (a) collect, consolidate, preserve, and analyze evidence of violations collected by a variety of actors over the past seven years (UN bodies, Syrian and international NGOs, individuals, states, and others).
- (b) prepare files to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional, or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.

Currently, national courts can exercise jurisdiction, such as forms of universal jurisdiction, over certain crimes committed in Syria. However, in the future, it is not excluded that an ad hoc tribunal on Syria might be established, or that the situation of Syria might be referred to the ICC. Furthermore, it is to be hoped that in the future Syrian courts themselves will be best placed to adjudicate crimes committed in Syria.

A key challenge is the unprecedented volume of potential evidence of crimes in Syria, including large amounts of images and video material. Information management is key. The IIIM has now a secure and state-of-the-art evidence management system in place—as required in its terms of reference. There are also risks of cyber-attacks, though the Mechanism has taken and will continue to take measures aimed at protecting its confidential materials and work product.

The current priorities for the Mechanism include, first, structural investigation (SI), which guides our strategy to collect information and evidence and build cases. In a nutshell, the SI seeks to map

crime patterns and examine the contextual elements required to establish core international crimes. It also seeks to understand the cultural, historical, and gender dimension of crimes; the structures of power—police, military, and civilian; and the links between crimes and individuals, ranging from direct physical perpetrators to other perpetrators wielding power and authority over the events.

A second priority is comprehensive evidence collection for the Mechanism to be a central repository of material concerning crimes in Syria. Our approach to collection is informed by the parameters of our SI, and we are working towards acquiring existing material held by others. This includes UN entities, such as the Commission of Inquiry on Syria, which signed a memorandum of understanding and already has an important part of the material collected over the past seven years, and also the UN Operational Satellite Applications Programme, the World Health Organization, and others. This also includes other international organizations, for instance, the Organisation for the Prohibition of Chemical Weapons, which recently passed a resolution calling for collaboration with the IIIM. Civil society also plays a role, in particular Syrian civil society actors, who have been relentlessly documenting crimes in Syria by such means as distributing and collecting surveys, and many states have already revised or are in the process of revising their national laws and procedures to allow full engagement with the Mechanism.

Third, at present we aim to support national investigative and prosecuting authorities. The IIIM works to assist national jurisdictions that respect criteria as indicated in the IIIM terms of reference: respect for human rights, fair trial standards, and no death penalty. The Mechanism is engaging directly with war crime units of various states, both bilaterally and in the context of the EU Genocide Network, hosted by Eurojust in The Hague. This has allowed us to identify important and concrete ways in which the Mechanism can be of assistance to overcome some of the major challenges that national prosecutors

face, including limited resources, lack of access to the territory, and the constraints deriving from their own system's procedural rules. The Mechanism's advantages include substantial analytical capacity, including an important Arabic-speaking component; a privileged position to access material held by others given its mandate from the UNGA; and flexible procedure not bound by specific domestic rules.

The Mechanism has also received several requests for assistance from prosecuting authorities in national jurisdictions. Where possible, we prioritize the collection of material most likely to assist ongoing national criminal justice processes.

Lastly in terms of priorities, it is not possible to address all crimes in Syria since March 2011. The SI provides a principled foundation for the Mechanism to exercise discretion—independently and impartially—about which cases to build.

But let me go back to Katherine B. Fite for a moment, and to the relevance of her legacy in the context of our work. Her commitment to international justice at a time when it was rare for women to have a role to play in this field is an inspiring contribution to breaking gender barriers. Significant gender barriers still exist and have long shaped a historical tendency to overlook or mischaracterize gender-based crimes, including sexual violence, and to marginalize victims.

We have learned many lessons in the past twenty-five years from ad hoc international tribunals. The IIIM committed to building on this practice and addressing the full range of gender-based crimes arising in the Syrian context, as well as other gender issues such as ensuring that the voices of women are properly heard in the accountability process. There is a special emphasis on these issues in the IIIM's mandate, which has led to the appointment of experts in sexual and gender-based violence. I am also personally committed to upholding gender equality.

Finally, I would like to conclude by going back to the theme of these dialogues: the demands of victims and the meaning of justice. The IIIM recognizes the important role of both civil society and the affected communities in the accountability process. Since the start, the Mechanism has given particular attention to engaging with Syrian NGOs. In April, the Mechanism and twenty-eight Syrian NGOs signed a Protocol, known as the Lausanne Platform, for collaboration, which provided a general framework for cooperation that can extend to other NGOs willing to collaborate with the Mechanism in the future.

Syrian civil society is also fundamental in spreading awareness on the Mechanism among communities affected by the crimes. The IIIM is committed to promoting outreach and effective exchanges with affected communities, hearing the views and interests of victims, and making sure that they are canvassed and considered on an ongoing basis.

We are conscious that criminal accountability processes are part of broader transitional justice objectives that will ultimately be needed for Syria. I am also mindful of the disillusionment of people most affected by the crimes, who have no immediate prospects of justice.

While the Mechanism cannot directly prosecute cases, it can carry out work to advance accountability processes elsewhere, now and in the future. In performing this crucial preparatory work, the Mechanism is guided by a victim-centered approach aimed at strengthening the confidence of the affected Syrian communities for the prospect of justice and promoting the dignity of the victims.

Legal Limits to the Use of the Veto Power in the Face of Atrocity Crimes

Jennifer Trahan*

This document discusses the need to reexamine how the veto is used by the permanent members of the UN Security Council while there are ongoing atrocity crimes (genocide, crimes against humanity, and/or war crimes). Specifically, it raises the question of whether all such veto use is consistent with international law.

Drafting of the UN Charter

If one reflects back on the early drafting of what became the UN Charter, with negotiations primarily conducted by the United States, United Kingdom, and Soviet Union at Yalta and Dumbarton Oaks, it was the Soviet Union that insisted on the veto power, which at that point was referred to as “the principle of unanimity.”¹ The United States and United Kingdom were not originally insisting on it, and particularly thought there should be a carve-out if a permanent member was involved in the situation being voted on—that the permanent member should be excluded from voting (and, hence, also veto use). That concept, however, fell to the wayside, upon Soviet insistence, at least for votes under Chapter VII.²

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1 The Soviet Union argued that the “principle of unanimity” was critical in the negotiations. *See, e.g., The Chairman of the Council of People’s Commissars of the Soviet Union (Stalin) to President Roosevelt*, 1 FOR. REL. 806 (1944).

2 *Cf.* U.N. Charter art. 27(3) (“[I]n decisions under Chapter VI, and under paragraph 3 of Article 52 [peaceful settlement of disputes through regional arrangements], a party to a dispute shall abstain from voting.”).

In the negotiations at San Francisco, non-permanent member states mounted significant “pushback” to the concept of the veto power and suggested various limitations, but did not prevail. The sentiment seemed to be that if the permanent members were going to be the major troop-contributing countries to the newly forming United Nations, then they should have this extraordinary power. In the end, the permanent members quite simply would not agree to a Charter without the veto power.³

Thus, in 1945, while there was a broad conception of veto power, it was seen primarily as necessary for the permanent members to be unanimous on decisions relating to the use of force under Chapter VII. Of course, in 1945, the field of international justice basically did not yet exist. Accordingly, if one were to examine contemporaneous uses of the veto—for example, veto of a chemical weapons inspections regime in Syria⁴ and veto of a ceasefire in Aleppo that would have allowed for provision of humanitarian assistance⁵—these kinds of topics were simply not discussed in 1945, nor were issues related to accountability. Keep in mind that in 1945, the International Military Tribunal at

3 One of the U.S. delegates famously threatened that the other states could get rid of the veto power, but they could also forget about having a Charter, and dramatically tore up his draft of the Charter. EDWARD C. LUCK, *UN SECURITY COUNCIL: PRACTICE AND PROMISE* 14, 135 n.24 (2006).

4 *See, e.g.*, S.C. Res. 970 (Nov. 17, 2017) (vetoed by the Russian Federation).

5 S.C. Res. 1026 (Dec. 5, 2016) (vetoed by the Russian Federation and China).

Nuremberg was just commencing its work, and there was not yet the 1948 Genocide Convention,⁶ nor the four 1949 Geneva Conventions.⁷

Cold War Veto Use

During the Cold War, there was extensive use of the veto, predominantly by the Soviet Union and the United States, related to each other's spheres of influence. The General Assembly responded in the late 1940s with a series of resolutions requesting the permanent members show moderation in veto use⁸ because there was a genuine fear that extensive veto use would cause the Security Council (and, hence, the UN) to fall into the paralysis that had beset the League of Nations.

These concerns manifested in 1950 in the "Uniting for Peace" resolution, which created a procedure for an emergency special session of the General Assembly to be called to take up issues blocked at the Security Council.⁹ The United States led this approach, as it was trying to obtain authorization for the Korean War. It was, of course, also then a differently composed General Assembly sympathetic to the U.S. position. This process under the Uniting for Peace resolution, however, has only been utilized a handful of times, so is not seen as a full solution to paralysis caused by veto use.

6 Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

7 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12 1949, 75 U.N.T.S. 31; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12 1949, 75 U.N.T.S. 85; Geneva Convention III Relative to the Treatment of Prisoners of War, Aug. 12 1949, 75 U.N.T.S. 135; Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter, collectively, 1949 Geneva Conventions].

8 See, e.g., G.A. Res. 40(I), ¶ 3 (Dec. 13, 1946).

9 G.A. Res. 377 A, at 10–12, Uniting for Peace (Nov. 3, 1950).

The General Assembly also has other residual powers under the UN Charter to take up issues,¹⁰ so it can sometimes act in the face of Security Council paralysis,¹¹ but not always. There are limits to the General Assembly's competence. Certainly anything that would require a force authorization would fall beyond its competence; for example, this would include even "lesser" uses of force, such as authorizing a "no fly zone," protecting civilians in internally displaced persons camps, or creating humanitarian aid corridors.

Post-Cold War

In the 1990s, emerging from the Cold War, there existed a brief period of optimism that the Russian and U.S. vetoes would no longer dominate and more could be accomplished at the Security Council. During this time, sufficient political alignment existed to permit, for example, the creation of the International Criminal Tribunal for the former Yugoslavia¹² and the International Criminal Tribunal for Rwanda.¹³ Yet, that time-period was limited, and dynamics now appear to have returned to something more resembling echoes of the Cold War in terms of Security Council voting patterns.

10 *See, e.g.*, U.N. Charter arts. 10, 11(2).

11 The recent creation of the IIIM is one such example. IIIM stands for "The International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic Since March 2011." *See* G.A. Res. A/71/L.48 (Dec. 19, 2016).

12 S.C. Res. 827 (May 25, 1993).

13 S.C. Res. 955 (Nov. 8, 1994).

Veto Use or Threats While Atrocity Crimes Are Ongoing

This document primarily discusses “veto use” in the face of atrocity crimes, but note that it is sometimes the *threat* of the veto that can act similarly. There are also situations of the so-called “silent” or “hidden” veto, where there is not even a threat made, but a permanent member’s political alignment is such that resolutions are never drafted or put to a vote because of the existence of the veto power. Where a threat to veto is made or the silent or hidden veto is at work, it is less clear to the outside world what is happening, but the absence of measures being debated, proposed, or passed can also be attributed to the veto power.

In terms of veto use in the face of atrocity crimes, historically, going back to the apartheid era, there were French, U.K., and U.S. vetoes protecting the government in South Africa. This did not, however, result in complete Security Council paralysis, as there were measures that passed, including, eventually, mandatory sanctions.

In 1994, there was no express veto use, but it was known that the United States, United Kingdom, and France would have vetoed any resolution recognizing the killing in Rwanda as “genocide,” or sending in more robust peacekeeping forces near the start of the genocide.¹⁴ The UN Assistance Mission for Rwanda (UNAMIR),¹⁵ led by Canadian General Roméo Dallaire, was in Kigali with a minimal force and the wrong mandate in the middle of the genocide.¹⁶ States utilized awkward formulations regarding the crimes, such as saying “isolated acts of genocide may be occurring.” Such terminology is essentially meaningless, as either the *dolus specialis* of genocide is met or not.¹⁷

14 Ariela Blätter & Paul D. Williams, *The Responsibility Not to Veto*, 3(3) GLOB. RESP. PROTECT 301, 311 (2011).

15 UNAMIR was established by Security Council Resolution 872 on October 5, 1993.

16 For a moving account by Dallaire, see ROMÉO DALLAIRE, *SHAKE HANDS WITH THE DEVIL: THE FAILURE OF HUMANITY IN RWANDA* (2004).

17 *Dolus specialis* refers to the special mental state requirement for genocide.

There was eventually a UN force deployment of UNAMIR II, but troops arrived only when the genocide was largely over; the French also assisted Hutu perpetrators' escape into the Democratic Republic of the Congo through *Opération Turquoise*.¹⁸

The United States frequently uses the veto when Israel is at issue; sometimes these vetoes are in the face of atrocity crimes, sometimes not. I am not going to single out all such U.S. vetoes as problematic, but there are some that are.

China appears to prefer not to expressly use its veto, and it is more the veto threat or “silent” or “hidden” veto that is at work. One sees this manifested in the minimal Security Council response during the Darfur genocide, with a UN-African Union (AU) hybrid peacekeeping operation (UNAMID),¹⁹ deployed only with the consent of the government of Sudan, after the height of the killing was over. Veto threats also weakened the sanctions regime, including eliminating any oil embargo, and weakening, initially, the arms embargo. (Note, for those who would argue the crimes in Darfur were not genocide, I think you are incorrect,²⁰ but my arguments would also apply if the crimes were recognized as crimes against humanity and war crimes.) Of course, China has been strategically aligned with the Sudanese administration, through significant economic ties, including Sudanese oil exports to China, and Sudanese arms imports from China.²¹

18 Blätter & Williams, *supra* note 14, at 321, n. 68.

19 UNAMID took over from AU forces on December 31, 2007. See S.C. Res. 1769 (July 31, 2007).

20 See Jennifer Trahan, *Why the Killing in Darfur is Genocide*, 31 *FORDHAM J. INT'L L.* 990 (2008).

21 HUMAN RIGHTS WATCH, *SUDAN, OIL, AND HUMAN RIGHTS* 456–58 (2003); Phillip Manyok, *Oil and Darfur's Blood: China's Thirst for Sudan's Oil*, 4 *J. POL. SCI. & PUB. AFF.* (2016).

Again, as to Sri Lanka, one sees very little responsiveness out of the Security Council during the mass atrocity crimes of the civil war, and that pattern is repeated related to crimes against the Rohingya in Myanmar. There was one resolution expressly vetoed by China and Russia in 2007 related to Myanmar that would have early on condemned the crimes being committed. It would have called on

the Government of Myanmar to cease military attacks against civilians in ethnic minority regions and in particular to put an end to the associated human rights and humanitarian law violations against persons belonging to ethnic nationalities, including widespread rape and other forms of sexual violence carried out by members of the armed forces.²²

As with Sri Lanka, it is difficult to determine the exact number of veto threats by China related to Myanmar, as it appears China's support for Myanmar has translated into a consistent understanding that China would not support significant Security Council involvement.

Most recently, of course, it is the situation in Syria that has attracted the most attention with twelve Russian vetoes (often accompanied by Chinese vetoes):

- On October 4, 2011, Russia and China vetoed a resolution that would have demanded an end to use of force by the Syrian authorities, calling for an end to violence and human rights violations;²³
- On February 4, 2012, Russian and China vetoed condemnation of "continued widespread and gross violations of human rights

22 S.C. Res. S/2007/14 (vetoed by China and the Russian Federation).

23 S.C. Res. S/2011/612 (vetoed by the Russian Federation and China).

and fundamental freedoms by the Syrian authorities, such as the use of force against civilians, arbitrary executions, killing and persecution of protestors and members of the media, arbitrary detention, enforced disappearances, interference with access to medical treatment, torture, sexual violence, and ill-treatment, including against children”;²⁴

- On July 19, 2012, Russia and China vetoed condemnation of bombing and shelling of population centers, and condemnation of detention of thousands in government-run facilities;²⁵
- On May 22, 2014, Russia and China vetoed referral of the situation in Syria to the International Criminal Court;²⁶
- On October 8, 2016, Russia vetoed a resolution expressing outrage at the alarming number of civilian casualties, including those caused by indiscriminate aerial bombardment in Aleppo;²⁷
- On December 5, 2016, Russia and China vetoed a 7-day ceasefire in Aleppo that would have allowed humanitarian assistance;²⁸
- On February 28, 2017, Russia and China vetoed condemnation of the use of chemical weapons and a demand for compliance with the Organisation for the Prohibition of Chemical Weapons (OPCW);²⁹

24 S.C. Res. S/2012/77 (vetoed by the Russian Federation and China).

25 S.C. Res. S/2012/538 (vetoed by the Russian Federation and China).

26 S.C. Res. S/2014/348 (vetoed by the Russian Federation and China).

27 S.C. Res. S/2016/846 (vetoed by the Russian Federation).

28 S.C. Res. S/2016/1026 (vetoed by the Russian Federation and China).

29 S.C. Res. S/2017/172 (vetoed by the Russian Federation and China).

- On April 12, 2017, Russia vetoed a request for documentation such as flight plans and access to air bases where chemical weapons were believed to have been launched;³⁰
- October 24, 2017, Russia vetoed renewal of the UN Joint Investigative Mechanism (JIM)—a chemical weapons inspection regime that would have attributed responsibility to the side using the weapons;³¹
- On November 16, 2017, Russia vetoed a resolution that would have condemned the use of toxic chemicals as weapons, expressed grave concern that civilians continue to be killed and injured by such weapons, renewed the mandate of the JIM, and stated that “no party in Syria shall use, develop produce otherwise acquire, stockpile or retain, or transfer chemical weapons”;³²
- On November 17, 2017, Russia again vetoed renewal of the JIM;³³ and
- On April 10, 2018, Russia vetoed condemnation of “use of any toxic chemical including chlorine as a weapon in the Syrian Arab Republic,” and an expression of outrage “that civilians

30 S.C. Res. S/2017/315 (vetoed by the Russian Federation),

31 S.C. Res. S/2017/884 (vetoed by the Russian Federation). The JIM was originally created by Security Council Resolution 2235 on August 7, 2015, with its mandate renewed twice in 2016.

32 S.C. Res. S/2017/962, pmbl., paras. 1, 3 (vetoed by the Russian Federation).

33 S.C. Res. S/2017/970 (vetoed by the Russian Federation).

continue to be killed and injured by chemical weapons and toxic chemicals as weapons in the Syrian Arab Republic.”³⁴

Were these kinds of vetoes envisioned during the Charter negotiations? No, there simply was no discussion of vetoing such measures.

I have a chart correlating fatalities in Syria and recognition of the crimes occurring (including crimes against humanity and war crimes) on the dates of each of the above vetoes. I do not claim the vetoes caused all the fatalities in Syria. Yet, when there was veto of even a chemical weapons inspection regime that would have attributed responsibility, and then continuing use of chemical weapons, it is safe to say that the veto in the face of atrocity crimes *is costing lives*.

These vetoes, considered collectively, also arguably conveyed to the Syrian Government that it would be protected from scrutiny and accountability. Certainly, there was little reason created for any deterrence. The vetoes provided the regime with a sense of invincibility, that it had “protection” from accountability.

Voluntary Veto Restraint Initiatives

Dismay at unrestrained veto use has existed for quite a while. I mentioned the early Cold War General Assembly resolutions seeking veto restraint.

34 S.C. Res. S/2018/321, ¶¶ 1, 5 (vetoed by the Russian Federation). The resolution also would have established a UN Independent Mechanism of Investigation (UNIMI) “to identify to the greatest extent feasible, individuals, entities, groups, or governments who were perpetrators, organizers, sponsors or otherwise involved in the use of chemical weapons, including chlorine or any other toxic chemical, in the Syrian Arab Republic.” *Id.* ¶ 8.

The Responsibility Not to Veto

More recently, there exist express calls for veto restraint in the face of atrocity crimes, starting in 2001 with the report of the International Commission on Intervention and State Sovereignty, which first articulated the “responsibility to protect” (R2P).³⁵ The report calls for veto restraint in the face of atrocity crimes³⁶—recognizing this as an important component of R2P, the agenda of which can be all too easily blocked by veto use. Various later R2P reports contain similar calls for veto restraint in the face of atrocity crimes.

The “S5” Initiative

Chronologically, there is next an initiative out of the “S5” (small 5) group of states (Costa Rica, Jordan, Singapore, Switzerland, and Liechtenstein) calling for veto restraint.³⁷ It was presented in a draft General Assembly resolution in 2006, but no action was taken. It then resurfaced in a 2012 draft resolution calling for veto restraint and other measures encouraging Security Council transparency. After pressure was put on the Under-Secretary General for Legal Affairs, she declared the resolution pertained to an “important question,” and under Article 18(2) of the UN Charter required a two-thirds General Assembly vote, rather than a majority vote.³⁸ In the face of that decision, as well as permanent member pressure on states not to support the resolution, the S5 resolution was withdrawn.

35 INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT; REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, at xiii (2001).

36 *Id.*

37 *See* Letter Dated November 3, 2005, from Costa Rica, Jordan, Liechtenstein, Singapore, and Switzerland, (Nov. 3, 2005), (letter with suggested draft General Assembly resolution).

38 Legal Opinion of Patricia O’Brien Under-Secretary-General for Legal Affairs (May 14, 2012).

The French/Mexican Initiative

Encouragingly, a call for veto restraint was also taken up by a permanent member of the Security Council—France. At one point, as part of various proposals for UN Security Council reform, one idea floated was giving away France’s seat on the Security Council to become a rotating European Union seat. Possibly, France saw its seat as a permanent member as being less than fully secure, and, therefore, saw more of a need to be seen as a responsible member of the Council in its voting.

France proposed a political declaration, which becomes known as the “French/Mexican initiative,” calling for veto restraint in the face of atrocity crimes.³⁹ Currently 101 states have endorsed this approach. Yet, it contains a carve-out that the veto can be used in a permanent member’s “vital national interests.” That begs the question of whether the permanent member would be the sole judge of its “vital national interests.” Furthermore, why should there be any “vital national interests” that align with the perpetration of atrocity crimes?

The ACT Code of Conduct

A forth voluntary veto restraint initiative is the ACT Group of states’ “Code of Conduct.”⁴⁰ (ACT stands for “Accountability, Coherence and Transparency.”) Interestingly, it was France that early on articulated the need for a code of conduct, but it was the S5 group

39 For background on the “French/Mexican initiative,” see Jean-Baptiste Jeangène Vilmer, *The Responsibility Not to Veto: A Genealogy*, 24 GLOB. GOVERNANCE 331, 334 (2018).

40 See G.A. Res. A/70/621–S/2015/978, Annex I to the Letter Dated December 14, 2015, from the Permanent Representative of Liechtenstein to the United Nations Addressed to the Secretary-General, Code of Conduct Regarding Security Council Action Against Genocide, Crimes Against Humanity or War Crimes (Dec. 14, 2015).

(minus Singapore), that then led the Code of Conduct, which launched in May 2013 with twenty-two states.

The Code of Conduct is not simply limited to veto restraint in the face of atrocity crimes, but more broadly calls for states to support timely and decisive Security Council action in the face of atrocity crimes and not vote against a credible draft resolution before the Security Council on timely and decisive action to end genocide, crimes against humanity, or war crimes, or to prevent such crimes. It is currently signed by 119 states—including the United Kingdom and France. Thus, there are actually *two* permanent member states endorsing veto restraint in the face of atrocity crimes.

The Code of Conduct also has a carve-out (drafted at U.K. insistence), that the call for veto restraint would only apply to a “credible draft” Security Council resolution. That begs the question of what constitutes a “credible draft,” leaving an opening for a permanent member to declare a resolution not “credibly drafted” and use the veto anyway.

There have also been a number of other voluntary veto restraint initiatives. One was proposed by a group of elder statespersons known as the “Elders,” which included Kofi Annan and Nelson Mandela.⁴¹ Former Under-Secretary General for Legal Affairs at the UN Hans Corell had his own veto restraint initiative.⁴² There was even a U.S.-based Genocide Prevention Task Force chaired by former U.S. Secretary of State Madeleine Albright and U.S. Senator William S. Cohen that called for veto restraint.⁴³ (Of course, the U.S. Task

41 *The Elders Call for Strengthening of the United Nations*, THE ELDERS (Feb. 7, 2015), <https://theelders.org/news/elders-call-strengthening-united-nations>.

42 See Letter from Hans Corell to the Governments of the Members of the United Nations, Security Council Reform: Rule of Law More Important Than Additional Members (Dec. 10, 2008).

43 U.S. GENOCIDE PREVENTION TASK FORCE, MADELEINE K. ALBRIGHT & WILLIAM S. COHEN CO-CHAIRS, PREVENTING GENOCIDE: A BLUEPRINT FOR U.S. POLICYMAKERS (2008).

Force occurred during the Obama Administration, and, even then, did not result in the United States joining either the Code of Conduct or the French/Mexican initiative).

For the sake of time, I will not dwell on the variations in these veto restraint initiatives. However, to briefly note, some differences include: which crimes are covered; whether a threat of the veto should be covered; whether the threat of the crimes would be covered (or the crimes must be occurring); whether there should be an outside body that serves as a “trigger” to recognize that the crimes are occurring; whether there should be an explanation by a permanent member using the veto, including how the veto is consistent with international law; whether there should be a carve-out permitting the veto in a permanent member’s “vital national interests”; and whether all vetoes of resolutions in the face of genocide, crimes against humanity, and/or war crimes should be covered, or veto restraint should only apply, for example, to a “credible” draft resolution.

On the positive side, these initiatives reflect nearly twenty years of momentum that something must be done about unrestrained veto use while there are ongoing atrocity crimes (genocide, crimes against humanity, and/or war crimes), and two permanent members share this position. On the negative side, these initiatives are seen as “soft law”—a code of conduct and a political declaration—so they do not even purport to articulate binding legal obligations, and, perhaps more significantly, three permanent members have joined none of them. Thus, in the end, while these initiatives are extremely helpful in increasing the political “cost” of veto use, they are not reining it in, even in the face of mass atrocities.

Examining Existing Legal Limits to Veto Use in the Face of Atrocity Crimes

It is time to consider a new, yet complementary, approach—that is, whether international law has anything to say about unrestrained veto use in the face of atrocity crimes. Certainly, in 1945, there was not yet as much international law as exists today. Whereas the veto appears to be treated as a *carte blanche* (a permanent member may veto for whatever reason or no reason), the veto, created in the UN Charter, actually sits within a system of international law.

Three arguments are worth considering.

The Veto and Jus Cogens

First is whether current veto use is consistent with genocide, crimes against humanity, and war crimes being recognized as *jus cogens* norms.⁴⁴ *Jus cogens* norms are, hierarchically, the highest level of

44 In its commentary on Article 40 of the *Articles on the Responsibility of States for Internationally Wrongful Acts*, the International Law Commission (ILC) recognized the existence of, *inter alia*, genocide and crimes against humanity as *jus cogens* norms. International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, arts. 40, 26, A/56/10 (adopted) (2001). As to war crimes, the ILC writes: “In the light of the description by the ICJ of *the basic rules of international humanitarian law* applicable in armed conflict as ‘intransgressible’ in character, it would . . . seem justified to treat these as peremptory.” *Id.* Commentary on art. 40, 283–84, citing *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. Rep. 226, 257, ¶ 79 (emphasis added).

law⁴⁵ from which no derogations are permitted, which “cannot be violated,” which must be respected “in all circumstances,” and which “rules are absolute.” Because the veto power is located within the UN Charter, it is subordinate to *jus cogens* in terms of the hierarchy of norms. (The Charter does not contain the word “veto” in it, but it is read into Article 27(3) on Security Council voting.)⁴⁶

Then, is it acceptable to veto in the face of atrocity crimes considering these are *jus cogens* norms (receiving this highest level of protection)? One could construct an argument that it is not. Under the *Tadić* case, the Security Council’s “powers cannot . . . go beyond the limits of the [UN].”⁴⁷ The European Court of First Instance has held that *jus cogens* constitute “a body of higher rules of public international law binding on all subjects of international law, including the bodies of the United Nations.”⁴⁸ If the UN cannot violate *jus cogens*—as it cannot—then the Security Council also cannot violate *jus cogens*.

45 M. Cherif Bassiouni, *International Crimes: Jus Cogens and Obligation Erga Omnes*, 59 L. & CONTEMP. PROB. 67 (1996) (“[A] *jus cogens* norm holds the highest hierarchical position among all other norms and principles.”); André da Rocha Ferreira, Cristieli Carvalho, Fernanda Graeff Machry, & Pedro Barreto Vianna Rigon, *Formation and Evidence of Customary International Law*, 1 UFRGS MODEL UN J. 182, 194 (2013) (“Peremptory norms of international law or norms of *jus cogens* have a superior hierarchy in relation to other rules.”).

46 See U.N. Charter art. 27(3).

47 Prosecutor v. Duško Tadić, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 28 (Int’l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

48 See, e.g., Case T-315/01, Kadi v. Council of the European Union and Commission of the European Communities, 2005 E.C.R. II-03649; Case T-306/01, Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities, 2005 E.C.R. II-03533. On appeal, the Court of Justice of the European Union saw it somewhat differently, that its review should focus on how EU members *implement* Security Council resolutions. Joined Cases C-402/05 P & C-415/05 P, Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council and Commission, 47 I.L.M. 923, ¶287 (Sept. 3, 2008).

Permanent members are also bound to respect *jus cogens* by the fact that they are states, and states are bound to respect *jus cogens*.⁴⁹

Is it therefore acceptable to use the veto in a way that is inconsistent with, or facilitates the ongoing commission of crimes prohibited by, *jus cogens*? For example, is it acceptable to veto chemical weapons inspections when chemical weapons use is a war crime (and, depending on context, a crime against humanity)? Assume such chemical weapons inspections were deterring chemical weapons attacks (which they were in Syria), but after the veto of the inspections regime that was attributing responsibility to the side using the weapons, chemical weapons attacks increased—so there is a correlation between veto use and increased chemical weapons attacks. Dapo Akande, for example, writes that “any Security Council decision in conflict with a norm of *jus cogens* must necessarily be without effect.”⁵⁰ As to genocide, Judge Lauterpacht finds that when the operation of Security Council resolutions effectively “make[s] members of the United Nations accessories to genocide it cease[s] to be valid and binding,” such that UN member states are “free to disregard it.”⁵¹ If a Security Council resolution cannot violate *jus cogens*, veto use also should not run contrary to *jus cogens*.

49 Salahuddin Mahmud & Shafiqur Rahman, *The Concept and Status of Jus Cogens: An Overview*, 3(6) INT’L J. L. 111 (2017) (“According to *Oxford Dictionary of Law*, *jus cogens* refers to a rule or principle in international law that is so fundamental that it binds *all states* and does not allow any exception.” Thus the concept of *jus cogens* in the context of international law indicates that it is a body of fundamental legal principle which is *binding upon all members of the international community in all circumstances.*”) (emphasis added).

50 Dapo Akande, *The International Court of Justice and the Security Council: Is There Room for judicial Control of Decisions of the Political Organs of the United Nations?*, 46 INT’L & COMP. L. Q. 309, 322 (1997).

51 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo. (Serb. and Montenegro)), Provisional Measures, Order, 1993 I.C.J. Rep. 325, 441 (Sept. 13) [hereinafter *Bosnia Arms Embargo Case*].

The Veto and the UN Charter

Second, the veto sits in the context of the UN Charter. But the UN Charter provides a limitation on the Security Council. Under Article 24(2), the Security Council must act “in accordance with the purposes and principles of the United Nations.”⁵² The “purposes and principles” of the United Nations in Articles 1 and 2 of the Charter are quite broad,⁵³ so I will not address them all. Yet, one might ask whether the vetoes that are occurring are consistent with the UN’s “purposes and principles,” because if they are not, then the vetoing permanent member is acting *ultra vires*—that is, beyond the proper exercise of Security Council power. It appears quite clear that current veto use is inconsistent with the UN’s “purposes and principles,” and the vetoing permanent members are acting beyond their competence. The Charter cannot have granted permanent member states power to violate the UN’s “purposes and principles” as their own capacity to act as permanent members was created by the Charter, so they cannot have power to violate the Charter.

This argument, as to limitations to veto use provided by the Charter, has already been taken up by a number of states at the United Nations. In May 2018 alone, one state invoked the argument during a meeting on the Security Council and International Law, and the next day two states invoked it or related arguments during a meeting on the Code of Conduct.⁵⁴ This is important, as it indicates a significant shift that states are starting to see current veto use as problematic as a matter of international law. That is substantially different from the view that veto restraint is solely a “voluntary” matter.

52 U.N. Charter art. 24(2).

53 See U.N. Charter arts. 1, 2.

54 5/17/18 UNSC meeting on *The Security Council and International Law*, (statement of Peru); 5/18/18 meeting at the UN on the Code of Conduct (statements of Belgium and France). The author was present at both meetings.

The Veto and Foundational Treaties

Third, one might focus on the treaty obligations of individual permanent member states. For instance, under the Genocide Convention there is an obligation to “prevent” genocide.⁵⁵ The “prevention” obligation was at issue in the *Bosnia v. Serbia* case before the International Court of Justice (ICJ).⁵⁶ Under the four 1949 Geneva Conventions, there is also in Common Article 1 an obligation for states parties to “to ensure respect for the Geneva Conventions in all circumstances.”⁵⁷

If all permanent members are parties to both the Genocide Convention and the four 1949 Geneva Conventions (which they are),⁵⁸ is it acceptable to veto in the face of genocide, “grave breaches,” or other violations of the 1949 Geneva Conventions?

Examining the ICJ’s *Bosnia v. Serbia* decision, the Court holds that a state must do what is in its power to prevent “genocide,” depending on its ability to influence.⁵⁹ Under that standard, the permanent members should have a particularly strong responsibility, as might a country intervening in a situation (such as the situation in Syria) or one with ties to the regime in question. A permanent member who is both

55 1949 Geneva Conventions, *supra* note 7, art. 1.

56 Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. and Montenegro), Judgment, 2007 I.C.J. Rep. 43, ¶ 438 (Feb. 26) [hereinafter *Bosnia v. Serbia Case*].

57 Common Article 1 to the 1949 Geneva Conventions, *supra* note 7.

58 See *Status of the Convention on the Prevention and Punishment of the Crime of Genocide*, UNITED NATIONS TREATY COLLECTION (July 15, 2019), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en (listing the parties to the Genocide Convention); *Treaties, States Parties, and Commentaries*, INTERNATIONAL COMMITTEE FOR THE RED CROSS (ICRC), https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_treatySelected=380&xp_viewStates=XPages_NORMStatesParties (listing the parties to the 1949 Geneva Conventions).

59 *Bosnia v. Serbia* case, *supra* note 56, ¶ 430.

intervening and/or has ties to the regime would presumably have the highest level of responsibility.

Another interesting facet of the ICJ's *Bosnia v. Serbia* decision is the finding that Serbia had an obligation to prevent genocide in Bosnia.⁶⁰ Accordingly, obligations carry over to crimes occurring in *another state*. Thus, the Genocide Convention imposes not only an obligation for a state to prevent genocide on a state's own territory; the obligation has extraterritorial applicability. The same is true of the obligation to "ensure" respect for the 1949 Geneva Conventions.⁶¹

Thus, an argument can be made that the individual permanent member countries using vetoes in the face of genocide, "grave breaches," or Common Article 3 violations (or probably the Geneva Conventions more broadly)⁶² are violating their individual treaty obligations. These obligations do not cease by virtue of a country sitting on the Security Council.

60 The ICJ expressly stated that "the obligation each state . . . has to prevent and to punish the crime of genocide is not territorially limited by the Convention." Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bos. & Herz. v. Yugo.*), Preliminary Objections, 1996 I.C.J. Rep. 595, ¶ 31 (July 11).

61 The ICJ recognized the extraterritorial applicability of Common Article 1 in both the *Wall* and *Nicaragua* cases. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (*Wall Case*), Advisory Opinion, 2004 I.C.J. Rep. 136, ¶ 158 (July 9); Military and Paramilitary Activities in and Against Nicaragua (*Nicar. v. U.S.*), 1986 I.C.J. Rep. 14, ¶ 220 (June 27).

62 Protocols I and III also have similar obligations to "ensure respect for" their provisions, so similar arguments would apply to the extent the permanent members are parties to those conventions. *See* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3 (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem, Dec. 8, 2005, 75 U.N.T.S. 135 (Protocol III).

One might make a similar argument for crimes against humanity, but the treaty on crimes against humanity is in drafting, so one would need to construct a similar argument by focusing on the “*erga omnes*” obligations of all states related to crimes against humanity. For instance, Articles 40 and 41 of the International Law Commission’s Articles on State Responsibility recognize that each state has “a positive duty to cooperate to bring to an end any serious breaches, by a state, of an obligation arising under a peremptory norm of international law.”⁶³

One caveat in making a treaty-based argument, however, is that one has to also work around Article 103 of the UN Charter, which basically provides that obligations under treaties can be trumped by obligations created under the Charter.⁶⁴ Here, one might argue, however, that the Genocide Convention and 1949 Geneva Conventions are not simply *any* treaties but foundational treaties, so rather than viewing these treaties and Article 27 (allowing the veto) to be read in a way that is conflicting, one should adopt a “harmonious interpretation” whereby veto use needs to be consistent with these treaty obligations. Or one might formulate it that the obligations under these treaties embody the “purposes and principles” of the United Nations, and, therefore, under Article 24(2), Security Council members must respect these treaties. Thus, it is not so clear the Security Council permanent members are free to act in complete disregard of foundational treaty obligations.

63 International Law Commission, *Articles on the Responsibility of States for International Wrongful Acts*, *supra* note 44, arts. 40.1, 41.1.

64 Article 103 states: “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” U.N. Charter art. 103.

Conclusion

In summation, these or similar legal arguments should be seriously considered. The arguments could be particularly helpful to the elected members of the Council, bolstering reasons to oppose veto use while there are ongoing atrocity crimes. One could even imagine the General Assembly putting a request to the ICJ for an advisory opinion on a question of whether all use of the veto is legal even while genocide, crimes against humanity, and/or war crimes are ongoing. The General Assembly might also consider confirming its understanding of such hard law concepts directly in a General Assembly resolution. In the meanwhile, states at the UN should utilize these arguments and create a consistent practice of opposition to veto use while there are ongoing atrocity crimes. No longer should the UN system tolerate the veto being used in a way that essentially facilitates or allows the continuing perpetration of atrocity crimes.

Year in Review Lecture

Valerie Oosterveld*

Thank you for inviting me here today. It is an honor to present this year in review of international criminal law. I will focus on three themes today: confusion, hope, and focus.

I will begin with confusion: this is what I, and many others around the world, felt when the International Criminal Court (ICC) Appeals Chamber judgment in the *Bemba* case was issued in June.¹

For those who do not know the background of the *Bemba* case, I will provide a brief introduction. The case focuses on events in Bangui, the capital of the Central African Republic (CAR), during Ange-Félix Patassé's presidency. After surviving two attempted coups in 2001, Patassé faced a third in 2002, this time by his former chief of staff François Bozizé. This led to a civil war in the CAR. President Patassé invited the *Mouvement de Libération du Congo* (MLC), an armed group from the Democratic Republic of the Congo to help suppress the rebels. In 2004, President Bozizé (as he was then) referred the situation to the ICC.² In 2005, the ICC's Prosecutor sought an arrest

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1 Prosecutor v. Bemba Gombo, ICC-01/05-01/08 A, Appeals Judgment (June 8, 2018) [hereinafter *Bemba* Appeals Judgment]. For media coverage, see, e.g., Owen Bowcott, *Jean-Pierre Bemba's War Crimes Conviction Overturned*, THE GUARDIAN (June 8, 2018), <https://www.theguardian.com/global-development/2018/jun/08/former-congo-leader-jean-pierre-bemba-wins-war-crimes-appeal-international-criminal-court>.

2 *Background*, OPEN SOCIETY JUSTICE INITIATIVE, INTERNATIONAL JUSTICE MONITOR, <https://www.ijmonitor.org/jean-pierre-bemba-gombo-background/> (last visited June 16, 2019).

warrant against the MLC's president and commander-in-chief, Jean-Pierre Bemba Gombo (Bemba).³ Bemba was arrested in Belgium.⁴

Out of ten charges, seven involved gender-based crimes: rape as a crime against humanity and a war crime; "other forms of sexual violence" as a crime against humanity and a war crime; torture as a crime against humanity and a war crime; and the war crime of outrages on personal dignity, all committed "through acts of rape or other forms of sexual violence."⁵ The Prosecutor argued that "women were raped on the pretence that they were rebel sympathizers. Men were also raped as a deliberate tactic to humiliate civilian men and demonstrate their powerlessness to protect their families."⁶

This was the first case at the ICC including charges for the rape of both male and female victims, and the first to consider the principle of command responsibility.⁷

In March 2016, Bemba was unanimously convicted by the ICC's Trial Chamber for command responsibility for acts of rape, murder, and pillage committed by his troops in the CAR, making him the first person convicted of rape in the ICC.⁸ The conviction was based on, among other evidence, evidence of the rape by male MLC soldiers of twenty-eight people: twenty-five female prosecution witnesses, two

3 *Id.*

4 *Id.*

5 *Case Information Sheet*, INTERNATIONAL CRIMINAL COURT (Mar. 2019), <https://www.icc-cpi.int/CaseInformationSheets/bembaEng.pdf>.

6 *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08, Public Redacted Version of the Amended Document containing the charges filed on 30 March 2009 (Mar. 30, 2009).

7 Dieneke De Vos, *Historic Day for the ICC: First Command Responsibility and Sexual Violence Conviction*, EUROPEAN UNIVERSITY INSTITUTE (Mar. 22, 2016), <https://me.eui.eu/dieneke-de-vos/blog/historic-day-for-the-icc-first-command-responsibility-and-sexual-violence-conviction/>.

8 *Id.*

male prosecution witnesses, and one female victim participant.⁹ The Trial Chamber concluded that the measures taken by Bemba “patently fell short of ‘all necessary and reasonable measures’ to prevent and repress the commission of crimes within his material ability.”¹⁰ The judgment was detailed, it contained extensive reasoning.¹¹

This case marked a turning point for the ICC’s Prosecutor in the prosecution of sexual and gender-based crimes.¹² The Trial Chamber sentenced Bemba to eighteen years’ imprisonment, minus time already spent in ICC detention.¹³

Bemba was also convicted in October 2016 for corruptly influencing witnesses in his case, a conviction that was upheld in March of this year.¹⁴

In June of this year, the Appeals Chamber released its judgment. A majority—three of five judges—voted to overturn Bemba’s

9 Prosecutor v. Bemba-Gombo, ICC-01/05-01/08, Judgment, ¶ 633 (Mar. 21, 2016) [hereinafter *Bemba* Trial Judgment].

10 *Id.* ¶ 731.

11 There are 364 pages, 753 paragraphs, and 2227 footnotes.

12 This judgment was a turning point due to the lack of prior success by the Prosecutor in securing convictions for sexual and gender-based crimes. This was noted by a number of commentators, including, e.g., Janine Natalya Clark, *The First Rape Conviction at the ICC: An Analysis of the Bemba Judgment*, 14 J. INT’L CRIM. JUSTICE 667, 668 (2016).

13 Prosecutor v. Bemba Gombo, ICC-01/05-01/08, Decision on Sentence, ¶ 97 (June 21, 2016).

14 Prosecutor v. Bemba-Gombo, Musamba, Kabongo, Wandu and Arido, ICC-01/05-01/13, Judgment, ¶ 955 (Oct. 19, 2016), *reaffirmed in* Prosecutor v. Gombo, Musamba, Kabongo, Wandu and Arido, ICC-01/05-01/13 A A2 A3 A4 A5, Appeals Judgment, ¶ 1631 (Mar. 8, 2018).

convictions, and he was released.¹⁵ Bemba returned to the Democratic Republic of the Congo.¹⁶

If this trial had been poorly run, if the judgment had been poorly reasoned, or if the evidence had not been strong, I would not have been confused and dismayed at the judgment of three of the five Appeals Chamber judges to overturn Bemba's convictions. But that was not the case: the trial had been run relatively smoothly, the evidence—particularly of sexual violence—was very strong, there was good evidence presented by the prosecution that he did not take the necessary steps to rein in the sexual violence of his troops against civilians in the CAR,¹⁷ and the trial judgment was logically reasoned.

What happened?

Three judges of the Appeals Chamber made questionable findings on a number of matters. I will highlight two of these.

First, the majority changed the standard of review on appeal, after the appeal had been heard and without notice to the prosecution.¹⁸ Under international criminal law at the ICC and other tribunals, prior to the *Bemba* appeals judgment, the standard of review was whether a reasonable trier of fact could have reached the finding in question, based on the evidence that was before the Trial Chamber.¹⁹

15 *Bemba Appeals Judgment*, *supra* note 1, ¶ 198.

16 Jason Burke, *Former Warlord Returns to DR Congo from Prison to Run for President*, THE GUARDIAN (Aug. 1, 2019), <https://www.theguardian.com/world/2018/aug/01/former-dr-congo-rebel-presidential-bid-jean-pierre-bemba>.

17 The Trial Chamber concluded that the steps he did take—which did not focus on rape, but rather on pillaging—“were limited in mandate, execution, and/or results.” *Bemba Trial Judgment*, *supra* note 9, ¶ 720.

18 *Bemba Appeals Judgment*, *supra* note 1, ¶¶ 35–37; *see also* Leila Sadat, *Prosecutor v. Jean-Pierre Bemba Gombo*, 113 AJIL 353, 356 (2019).

19 Sadat, *supra* note 18.

In what has been described by the dissenting judges, the Prosecutor, and commentators as a “significant and unexplained departure” from the normal standard of appeal,²⁰ the majority instead took select pieces of evidence (not considering all of the evidence), and based on a review of only those pieces of evidence, revisited the Trial Chamber’s factual findings, finding “some doubt,” and substituted their judgment as to a factual determination made by the Trial Chamber.²¹ The majority does not explain why a departure from the reasonableness standard was—in their view—necessary in this case.²²

The reason a margin of deference is usually given to the Trial Chamber as to determinations of fact is because these judges have reviewed the totality of the evidence presented to them in lengthy and complicated trials. As the Prosecutor stated after the release of the appeals judgment, the majority appeals judges’ “approach would seem to confuse the standard of proof, which the Trial Chamber applies having heard all the evidence, with the standard of appellate review, which applies when the Appeals Chamber considers the trial judgment.”²³ As well, the dissenting judges point out that if the “some doubt” or “serious doubt” standard were correct, it would mean that in any case with a dissent at the trial level there would necessarily be an acquittal on appeal, as the dissenter obviously expressed doubt.²⁴

20 Statement of ICC Prosecutor, Fatou Bensouda, on the Recent Judgment of the ICC Appeals Chamber Acquitting Mr Jean-Pierre Bemba Gombo, International Criminal Court Office of the Prosecutor (June 13, 2018), <https://www.icc-cpi.int/Pages/item.aspx?name=180613-OTP-stat> [hereinafter Bensouda Statement].

21 Sadat, *supra* note 18, at 358.

22 See *Bemba Appeals Judgment*, *supra* note 1, ¶¶ 40–41, 45, in which the Appeals Chamber diverges from the previous standard and does not provide *any* footnoted support for this departure.

23 Bensouda Statement, *supra* note 20.

24 Prosecutor v. Bemba-Gombo, ICC-01/05-01/08 A, Dissenting Opinion of Judge Monageng and Judge Hofmanski, ¶ 3 (June 8, 2018) [hereinafter *Bemba Appeals Judgment Dissent*].

In my view, the majority judges' approach in changing the standard of review on appeal was simply unwarranted.

Second, the majority of the Appeals Chamber essentially lowered the standards of responsibility of commanders who are not in the field with their troops, basically rewarding commanders who are remote and who do not take effective actions to supervise their troops.²⁵ The majority judges found that the Trial Chamber did not pay enough attention to the difficulties that Bemba, as a “remote commander,” faced in investigating the conduct of his troops in a foreign state.²⁶ They took the evidence heard at trial—that he had taken certain steps, for example, setting up ineffective investigations—and concluded that “measures taken by a commander cannot be faulted merely because of shortfalls in their execution.”²⁷

Diane Marie Amann, the Prosecutor’s Special Advisor on Children in and affected by Armed Conflict, subsequently pointed out:

Command responsibility doctrine recognizes war’s awful consequences, and so imposes extra duties of care upon officers who accept to lead others in the use of lethal, armed force Evincing scant regard for the ethical roots of the doctrine that imposes extra duties of care upon military leaders, the [*Bemba*] appellate majority thus transformed command responsibility into an admonition with little effect, a legal burden too easily shirked.²⁸

25 Sadat, *supra* note 18, at 358; Diane Amann, *In Bemba and Beyond, Crimes Adjudge to Commit Themselves*, EJIL TALK! (June 13, 2018), <https://www.ejiltalk.org/in-bemba-and-beyond-crimes-adjudged-to-commit-themselves/#more-16267>.

26 Sadat, *supra* note 18, at 358.

27 *Bemba Appeals Judgment*, *supra* note 1, ¶ 180.

28 Amann, *supra* note 25.

Similarly, the two dissenting judges rejected the majority's "uncritical acceptance" of the defence's submission about the difficulties of conducting investigations in the Central Africa Republic.²⁹ Unlike the majority, the dissenting judges held that "if the results of measures taken are unsatisfactory and a commander *does not follow up* with other measures that are available in the circumstances, it cannot be said that he or she has discharged his or her duty to prevent, repress or punish crimes committed by his or her subordinates."³⁰

An Australian colleague, Rosemary Grey, put it well when we communicated about this judgment:

It would seem that the doctrine of command responsibility, as interpreted here, set the bar remarkably low. It suggests that when faced with reports of their troops committing rape abroad, a commander can make some gestures towards accountability, none of which are well-suited to prosecuting allegations of sexual violence or achieve that task, and that may suffice. This approach, if followed in subsequent decisions, will give comfort to unscrupulous commanders who send poorly disciplined troops into a foreign warzone. It will be of little solace to the civilians that those troops encounter on their way.³¹

The result is thousands of victims of the MLC in the Central African Republic are left without justice.

I will turn now to the theme of hope.

29 *Bemba Appeals Judgment Dissent*, *supra* note 24, ¶ 45.

30 *Id.* ¶ 80.

31 Personal communication with Dr. Rosemary Grey (June 11, 2018).

I have felt hopeful this past year about the international criminal law community's increasing understanding and recognition of sexual and gender-based violence committed against women, girls, men, and boys around the world. Twenty years ago the Rome Statute was adopted, which was the most gender-sensitive international criminal statute at the time. These provisions were then replicated in the Special Court for Sierra Leone (SCSL) Statute and elsewhere.

The challenge has been to translate the words on paper—the gender-sensitive provisions in the Rome Statute—into practice. Progress at the ICC, International Criminal Tribunals for the former Yugoslavia and Rwanda, SCSL, and Extraordinary Chambers in the Courts of Cambodia (ECCC) has been subject to steps forward and many steps backward. I have already outlined the significant step backward that is the Appeals Chamber judgment in *Bemba*.

But there have been many steps forward in recent years, for example, in the charging and conviction of individuals for forced marriage as a type of crime against humanity.

The recognition of forced marriage began with the SCSL, which convicted individuals of this act for the first time in an international criminal tribunal.³² (Zainab Bangura was an expert witness on this.) Forced marriage involved the abduction of girls and women during the Sierra Leone civil war, and assignment of those women and girls to fighters as their sexual and domestic slaves.³³ They were referred to as “bush wives.”³⁴ Many of these girls and women were subjected to intense physical and psychological violence, and some had children

32 On this see, e.g., Augustine S. J. Park, “Other Inhuman Acts”: *Forced Marriage, Girl Soldiers And the Special Court for Sierra Leone*, 15 *Soc. & LAW STUDIES*, 315, 316 (2006).

33 *Id.*

34 *Id.* at 327.

as a result of the ongoing rape.³⁵ Binta Mansaray mentioned yesterday that many of those who survived this experience were then subjected to stigmatization by their families and communities, thereby continuing their victimization.³⁶

The ECCC has also examined forced marriage of a somewhat different nature, in which men and women were forcibly married under the Khmer Rouge, often in mass ceremonies, and expected/pressured to procreate.³⁷ The second judgment in Case 002 will consider this—it will be issued in November.³⁸ As part of its outreach, the Victims Support Section of the ECCC conducted a Mobile Exhibition on “Forced Marriage during the Khmer Rouge Regime” and Intergenerational Dialogue last September.³⁹ The objectives were to let participants know the suffering and consequences victims underwent as a result of forced marriage, to enhance the participation of victims by encouraging them to join in intergenerational dialogue to share

35 *Id.* at 322.

36 For more on Registrar Mansaray’s point, see Maureen Quinn, *Interview with Two Principals from the Special Court for Sierra Leone, Justice Fisher and Registrar Mansaray*, IPI (Oct. 17, 2012), <https://theglobalobservatory.org/2012/10/interview-with-justice-shireen-avis-fisher-and-registrar-binta-mansaray-from-the-special-court-for-sierra-leone/>.

37 *Prosecutor v. Nuon, Ieng, Khieu and Ieng*, 002/19-09-2007-ECCC-OCIJ, Closing Order: Office of the Co-Investigating Judges, ¶¶ 156–59 (Sept. 15, 2010). See also Andrew Boyle, *A Long Time Coming: Understanding the Landmark Ruling from the Khmer Rouge Trials*, JUST SECURITY (Nov. 19, 2018), <https://www.justsecurity.org/61514/long-time-coming-understanding-landmark-ruling-khmer-rouge-trials/>.

38 *Prosecutor v. Nuon and Khieu*, 002/19-09-2007/ECCC/TC, Case 002/02 Judgment (Nov. 16, 2018).

39 *Mobile Exhibition on “Forced Marriage during the Khmer Rouge Regime” and Intergenerational Dialogue*, ECCC, <https://www.eccc.gov.kh/en/articles/mobile-exhibition-forced-marriage-during-khmer-rouge-regime-and-intergenerational-dialogue> (last visited May 26, 2019).

their experiences with youth, and finally to raise youth and public awareness of gender-based violence during the Khmer Rouge period.⁴⁰

In March of this year, the ICC issued a warrant of arrest for Al Hassan, an alleged member of *Ansar Eddine* and the de facto chief of Islamic police, alleged to have been involved in the work of the Islamic court in Timbuktu, Mali.⁴¹ He is charged with taking part in the destruction of mausoleums in Timbuktu using Islamic police forces, and participating in the policy of forced marriages that victimized females in Timbuktu and led to the rape and sexual enslavement of both women and girls.⁴² Al Hassan is charged with crimes against humanity (torture, rape, and sexual slavery; persecution of the inhabitants of Timbuktu on religious and gender grounds; and other inhumane acts) and war crimes including rape and sexual slavery.⁴³ Al Hassan was surrendered to the ICC on March 31, 2018, and is currently in the custody of the court.⁴⁴ His confirmation of charges hearing will begin in July 2019.⁴⁵ This is a good news story—the fact that he is in custody and this case will expose some of the gender-based crimes that have taken place in Mali.

40 *Id.*

41 Prosecutor v. Al Hassan, ICC-01/12-01/18, Warrant of Arrest (Mar. 25, 2018) [hereinafter *Al Hassan* Warrant of Arrest].

42 *Id.* ¶ 8–9.

43 *Id.* ¶ 1.

44 *Al Hassan Case*, INTERNATIONAL CRIMINAL COURT, [HTTPS://WWW.ICC-CPI.INT/MALI/AL-HASSAN](https://www.icc-cpi.int/MALI/AL-HASSAN) (last visited May 26, 2019).

45 The test that will be used is whether the Prosecutor establishes substantial grounds to believe that he committed each of the crimes charged. *Case Information Sheet*, INTERNATIONAL CRIMINAL COURT (May 2019), <https://www.icc-cpi.int/CaseInformationSheets/al-hassanEng.pdf> (last visited June 16, 2019).

In other hopeful developments, the ICC's *Ntaganda* case began closing statements today. That case involves the former deputy chief of staff to an armed group in the DRC, and is considering among the crimes, rape and sexual violence committed by Ntaganda's fighters against their own girl soldiers.⁴⁶ And the ICTY's final judgments—for example, the *Mladić* trial judgment last November—contained convictions for persecution as a crime against humanity carried out through rape and sexual assault.⁴⁷

As well, Catherine Marchi-Uhel—who presented the Katherine B. Fite lecture yesterday evening—was appointed Head of the International, Impartial and Independent Mechanism (IIIM) in 2017.⁴⁸ The IIIM collects, consolidates, preserves, and analyses evidence of violations committed in Syria since March 2011.⁴⁹ Former ICTY Deputy to the Prosecutor Michelle Jarvis—a noted gender expert in ICL—was appointed Deputy Head of the IIIM in November.⁵⁰ Together, Catherine and Michelle have both articulated a gender-sensitive framework for collecting and analyzing information at the IIIM.

At the local level, in December 2017, members of a militia group in the DRC were convicted of raping thirty-seven girls from Kavamu

46 Prosecutor v. Ntaganda, ICC-01/04-02/06, Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9, ¶ 1 (Jan. 4, 2017).

47 Prosecutor v. Mladić, ICTY-09-92-T, Judgment, ¶ 5214 (Nov. 22, 2017).

48 *Catherine Marchi-Uhel, Newly Appointed Head of the IIIM Attends a News Conference on Syria Crimes at the UN in Geneva*, THOMSON REUTERS (Sept. 5, 2017), <http://news.trust.org/item/20170905133950-326q4>.

49 *Id.*

50 Dayna Chaikel (@DaynaChaike), TWITTER (Nov. 8, 2017, 0:36), <https://twitter.com/danyachaikel/status/928179425446957056>.

in eastern DRC.⁵¹ The girls they raped between 2013 and 2016 were aged between eight months and twelve years old.⁵² Ten of them were convicted of crimes against humanity.⁵³ They carried out the rapes in the belief they would gain supernatural powers on the battlefield.⁵⁴ The mastermind behind the attacks, a powerful member of parliament, was among those convicted.⁵⁵ The trial, which was held in a mobile military court in Kavumu so that locals could attend and see justice done, lasted just over a month.⁵⁶ Fabricio Guariglia mentioned yesterday that these convictions were upheld on appeal last month.

In other developments over the past year on the theme of hope, in April, the ICC's Prosecutor sought a ruling from the Court on a question of jurisdiction: whether the Court may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh.⁵⁷ The Prosecutor pointed to reports that, since August 2017, more than 670,000 Rohingya have been intentionally pushed—deported—across the international border into Bangladesh, particularly mentioning that the UN High Commissioner for Human Rights described the Rohingya crisis as “a textbook example of ethnic cleansing” and the UN Special Envoy for human rights in Myanmar said that it potentially bears the “hallmarks of a genocide.”⁵⁸ The

51 Ruth Maclean, *Congolese Fighters Convicted of Raping Young Girls in Landmark Case*, THE GUARDIAN (Dec. 13, 2017), <https://www.theguardian.com/world/2017/dec/13/congolese-fighters-convicted-raping-toddlers-young-girls-landmark-case#img-1>.

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.*

56 *Id.*

57 President of the Pre-Trial Division, ICC-RoC46(3)-01/18-1, Application Under Regulation 46(3), Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute (April 9, 2018) [hereinafter ICC Prosecution Rohingya Request].

58 *Id.* ¶ 2.

Prosecutor pointed out that the attacks leading to the deportations were well-organized, coordinated, and systematic and included killings, rape, torture, enforced disappearance, and destruction and looting of hundreds of villages, as well as livestock, crops, and other personal property.⁵⁹ These actions occurred on the territory of a non-state to the Rome Statute, Myanmar, but resulted in the Rohingya fleeing into Bangladesh, a state party to the Rome Statute. Thus, an essential legal element of the crime—crossing an international border—occurred on the territory of a state that is a party to the Rome Statute (Bangladesh).⁶⁰ The Court then invited and received amicus curiae briefs from academics and civil society.⁶¹ While there is no decision yet, I include this under the theme of “hope” because it represents one possibility of potential justice at a time when the deadlock in the UN Security Council otherwise stymies movement on other forms of justice.⁶²

As well, yesterday the report by the UN Independent International Fact-Finding Mission on Myanmar was released.⁶³ It concluded that crimes against humanity of murder; imprisonment; enforced disappearance; torture; rape, sexual slavery and other forms of sexual violence; persecution; enslavement; extermination; and deportation

59 *Id.* ¶ 9.

60 *Id.* ¶ 2.

61 *Id.* ¶¶ 20, 43, 53.

62 On September 6, 2018, Pre-Trial Chamber I decided, by majority, that the Court may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh. On September 18, 2018, the Prosecutor announced the opening of a preliminary examination concerning the alleged deportation of the Rohingya people from Myanmar to Bangladesh. *Preliminary Examination Bangladesh/Myanmar*, INTERNATIONAL CRIMINAL COURT, <https://www.icc-cpi.int/rohingya-myanmar> (last visited June 16, 2019).

63 U.N. Human Rights Council, *Report Of The Independent International Fact-Finding Mission On Myanmar*, U.N. Doc. A/HRC/39/64, at 1 (Sept. 12, 2018).

took place.⁶⁴ It also concluded “there is sufficient information to warrant the investigation and prosecution of senior officials in the Myanmar military.”⁶⁵ It called for the situation in Myanmar to be referred to the ICC or for an ad hoc international criminal tribunal to be created.⁶⁶ In the interim, it called for an independent, impartial mechanism to collect, consolidate, preserve, and analyze evidence of violations.⁶⁷ It also recommended targeted individual sanctions against those who appear to be most responsible.⁶⁸

Finally, I will turn to the theme of “focus.” Certain issues from the past year indicate that the international criminal law community will need to continue to focus on a number of ongoing issues.

The first issue that requires more focus is budgets for the ICC and other international criminal law mechanisms. Budgets are not the most interesting issue, but they are vitally important. The ICC’s Assembly of States Parties (ASP) must look at the question of the ICC’s budget from the point of view of what states wish the ICC to achieve. Despite ever-increasing calls for the ICC’s Office of the Prosecutor (OTP) to take action on, or be referred, more and more situations, the budget of the OTP has only increased at a very low rate from year to year. At the 2017 annual meeting of the ASP, states approved a budget of €147.4 million for 2018.⁶⁹ This budget will have to cover expenses related to its Judiciary, the Office of the Prosecutor, the Registry, the Secretariat of the Assembly of States Parties, the Premises, the Secretariat of the Trust Fund for Victims, the Independent Oversight Mechanism, the

64 *Id.* 16.

65 *Id.* 19.

66 *Id.*

67 *Id.*

68 *Id.*

69 *Summary Day Nine*, COALITION FOR THE ICC (Dec. 14, 2017), <http://www.coalitionfortheicc.org/asp-2017-day-nine>.

Office of Internal Audit, and payment toward the host state loan, taken out to pay for the permanent premises of the Court (€3.58m). The Court had requested €151.4m (an increase of 4.4 percent to its 2017 budget) and the Committee on Budget and Finance recommended a 2 percent increase to the 2017 budget.⁷⁰ States, however, only increased the budget by 1.47 percent.⁷¹ This does not cover the cost of inflation, and it means that the ICC's OTP is not being provided with sufficient resources to increase its investigation load in line with both need and demand. It means that the Prosecutor can only ever deal substantively with a handful of cases in any given year.

On the same note, continued funding of other international criminal justice mechanisms is of concern. You heard the Prosecutor of the RSCSL, Brenda Hollis, talk yesterday about her and others' ongoing work of raising money for the continued existence of the Residual SCSL, so as to ensure monitoring of the convicted individuals serving sentences, continued victim protection, and responses to issues that arise.⁷² For example, the Court needed to address Charles Taylor's public phone call to supporters in Liberia during the election campaign last year from his prison in the United Kingdom, where he indicated that he was still committed to revolution in Liberia.⁷³ The ECCC considered a potential stay of proceedings almost a year ago due to lack of funding—which then opened the door to another way that cases unpopular with the Cambodian government can be stymied—but, in the end, the funding crisis was averted.⁷⁴

70 *Id.*

71 *Id.*

72 *See, e.g.*, RESIDUAL SPECIAL COURT FOR SIERRA LEONE, FIFTH ANNUAL REPORT OF THE PRESIDENT OF THE RESIDUAL SPECIAL COURT FOR SIERRA LEONE (2018).

73 *Id.* at 27.

74 *Recent Developments at the Extraordinary Chambers in the Courts of Cambodia: Threat to Permanently Stay Cases 003, 004 004/2A*, OPEN SOCIETY FOUNDATIONS (June 2017), <https://www.opensocietyfoundations.org/sites/default/files/recent-developments-eccc-june-2017-20160614.pdf>.

Similarly, it will be important to follow the budget discussions in the UN on the Mechanism for International Criminal Tribunals (MICT), so as to ensure that its work is not narrowed through budget reductions.⁷⁵ Again, while not many people pay attention to funding, lack of funding is a way to choke or slow down the work of international criminal justice mechanisms.

At the Special Tribunal for Lebanon, one year ago today, in the *Ayyash et al.* case, the Legal Representatives of 72 Victims Participating in the Proceedings began presenting evidence on the victims' behalf.⁷⁶ This marked the first time that victims of terrorism have presented their case before an international tribunal. That evidence consisted of live testimonies as well as witness statements and documents.⁷⁷ The Legal Representatives presented evidence about the harm that the victims suffered collectively and individually as a result of the 2005 murder of Lebanese Prime Minister Rafik Hariri and the death and injury of other persons.⁷⁸ Final trial briefs were filed in this case over the past month,⁷⁹ so it will be important to follow the outcome of this case in the coming weeks.

In December, during the annual ICC ASP meeting, states decided to activate the crime of aggression, which was an important step in

75 U.N. Secretary General, *Revised Budget for the International Residual Mechanism for Criminal Tribunals for the Biennium 2018–2019*, U.N. Doc. A/72/813 (Mar. 29, 2018).

76 *Victims' Case in the Ayyash et al. Trial Begins*, SPECIAL TRIBUNAL FOR LEBANON (Aug. 28, 2017), <https://www.stl-tsl.org/en/media/press-releases/5922-victims-case-in-the-ayyash-et-al-trial-begins>.

77 *Id.*

78 *Id.*

79 *Trial Chamber Schedules Filing of Final Briefs and Oral Closing Arguments in June 2018 in the Ayyash et al. Case*, SPECIAL TRIBUNAL FOR LEBANON (Apr. 12, 2018), <https://www.stl-tsl.org/en/media/press-releases/6271-trial-chamber-schedules-filing-of-final-briefs-and-oral-closing-arguments-in-june-2018-in-the-ayyash-et-al-case>.

international criminal law.⁸⁰ However, the negotiation around that activation left some open questions that we will need to watch—and I urge you to read Jennifer Trahan’s analysis of this in her International Criminal Law Review article.⁸¹

Finally, yesterday Stephen Rapp mentioned that international criminal law is facing some strong headwinds at the moment: threats from the Philippines to withdraw from the Rome Statute of the ICC; and continuing issues within South Africa on this same topic.⁸² As well, there have been delays in the creation of already-agreed criminal justice mechanisms in the Central African Republic and in South Sudan.⁸³ There is deadlock in the UN Security Council on the creation of international criminal justice mechanisms. And yet we see windows being used when doors are closed: the creation of the IIIM for Syria, and discussions of the same to collect evidence on the Rohingya crisis.⁸⁴ We must keep pressing for justice, for new windows.

80 *Assembly Activates Court’s Jurisdiction Over Crime of Aggression*, INTERNATIONAL CRIMINAL COURT (Dec. 15, 2017), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1350>.

81 Jennifer Trahan, *From Kampala to New York – The Final Negotiations to Activate the Jurisdiction of the International Criminal Court over the Crime of Aggression*, 18 INT. CRIM. L. REV. 197, 197–243 (2018).

82 *See, e.g.*, ICC Press Release, ICC-CPI-20180320-PR1371, ICC Statement on The Philippines’ Notice of Withdrawal: State Participation in Rome Statute System Essential to International Rule of Law (Mar. 20, 2018).

83 *See, e.g.*, *South Sudan: Stop Delays on Hybrid Court*, HUMAN RIGHTS WATCH (Dec. 14, 2017), <https://www.hrw.org/news/2017/12/14/south-sudan-stop-delays-hybrid-court>; Patryk Labuda, *Negotiating peace and Justice in the Central African Republic*, RELIEF WEB (Jan. 28, 2019), <https://reliefweb.int/report/central-african-republic/negotiating-peace-and-justice-central-african-republic>.

84 *See, e.g.*, Polina Levina Mahnad, *An Independent Mechanism for Myanmar: A Turning Point in the Pursuit of Accountability for International Crimes*, EJIL TALK! (Oct. 1, 2018), <https://www.ejiltalk.org/a-turning-point-in-the-pursuit-of-accountability-for-international-crimes/>.

To conclude, this past year in international criminal law has brought confusion, hope and focus. Our challenge in the next year is to press for *hope* to be more common than *confusion*.

Transcripts

Reflections by the Current Prosecutors

This panel was convened at 10:30 a.m., Monday, August 27, 2018, by its moderator, Michael Scharf, Dean and Director of the Frederick K. Cox International Law Center, Case Western Reserve University School of Law, who introduced the panelists: Douglas Stringer, International Criminal Tribunal for the former Yugoslavia (ICTY); Andrew Cayley, formerly Extraordinary Chambers in the Court of Cambodia (ECCC); Fabricio Guariglia, International Criminal Court (ICC); and Brenda J. Hollis, Residual Special Court for Sierra Leone (RSCSL). An edited version of their remarks follows.

MICHAEL SCHARF: Let me introduce our panelists today. We'll go through them in alphabetical order starting with Andrew Cayley, who is a Queen's Counsel. He's from the United Kingdom. He currently serves as the head of the Service Prosecuting Authority of the United Kingdom. He previously served as Chief International Co-Prosecutor of the ECCC from 2009–2013, which he calls the toughest four years of his life, and he's been a senior prosecuting counsel at the Yugoslavia Tribunal. Andrew, it's great to have you back.

We also have Fabricio, and I'm just going to say "G" because I've never once pronounced that correctly in all my years, but I've known Fabricio for about thirty years. He's from Argentina. He's Director of the Prosecutions Section of the International Criminal Court. He got his J.D. from the University of Buenos Aires and his Ph.D. from University of Münster in Germany. As a legal advisor to the Argentine Ministry of Justice, he was one of the leading negotiators of the Rome Treaty that established the ICC twenty years ago. He's also served as a prosecutor at the ICTY and at the ICC going all the way back to 1998.

Then we have Brenda J. Hollis from the United States. She is the current Chief Prosecutor of the Residual Special Court for Sierra Leone. She previously served as the trial attorney in the very first

case before a modern international criminal tribunal, the *Tadić* case before the ICTY. She was lead counsel during the investigation of the *Milošević* case at the ICTY, lead counsel in the Charles Taylor case at the Special Court for Sierra Leone, and chief prosecutor of the Special Court for Sierra Leone from 2010 to 2013, and now continues in that role in the Residual Court. She was previously a colonel in the Air Force JAG and has an honorary doctorate from Case Western Reserve University.

And then we have, new to us, Douglas Stringer from the United States, senior trial attorney and appeals counsel of the Office of the Prosecutor for the International Residual Mechanism for Criminal Tribunals (MICT) from Rwanda and the former Yugoslavia. That is under the Chief Prosecutor Serge Brammertz and Chief Judge Ted Meron, who have been friends of this conference over the years. Previously, Douglas served as legal advisor to the UN mission in Kosovo, and he started his career as a trial attorney at the U.S. Department of Justice. Welcome, Douglas.

I will start off with some general questions, and then I have a lot of follow-up questions for our panelists. I'm going to ask you to keep your answers rather brief so that this is more of a dialog than a lecture, and then hopefully we'll have a lot of time at the end for your Q&A because that's always the most interesting part of this.

Let's begin with a warm-up question for all the panelists. What do you consider to be the most important developments at your tribunals during the past year? We'll start in the order that you're sitting, so we'll go down to Douglas.

DOUGLAS STRINGER: Thank you, Michael. Let me first say thank you for having me here at this important event. I'm going to call it the Yugoslavia Tribunal because it's had a couple name changes over the last few years. I've been with the Tribunal for a

number of years, sixteen out of the last twenty actually, and this event at Chautauqua was something that I always heard about. I'm very grateful that the Prosecutor asked me to come and sit in for him today and to have this opportunity with you and my colleagues here, all of whom I've known for many years.

I think it's not going to be a surprise for me to say that the most important development at the ICTY during the last year is the fact that it ended. The ICTY closed its doors officially at the end of last year on December 31, 2017. After some twenty years or more, we have prosecuted and investigated crimes across what we used to call Yugoslavia at all levels: the lowest levels all the way up to the highest levels.

It was also quite a remarkable year because in the lead-up to the closure of the ICTY, of course, we saw important judgments come last year at the Tribunal. We saw the trial chamber in the *Mladić* case render its judgment convicting General Ratko Mladić of many crimes linked to his command of the Serb Forces in Bosnia during 1992 and in the years after.

We saw also the judgment in the *Karadžić* case in which the political leader of the Bosnian Serbs, Radovan Karadžić, was convicted of numerous crimes, including genocide, as was Mladić, and during the course of the last year, the appeal proceedings in the *Karadžić* case were also under way. The appeal proceedings in the *Mladić* case are currently under way as well. Those briefs are in the process of being written.

In addition, we had an important judgment in another case, which is the case against Jadranko Prlić and others. This was the appeal judgment that culminated a lengthy trial in which I was personally involved as a senior trial attorney and also on the appeal. It involved a group of Bosnian Croats who were found responsible for having

been members of a joint criminal enterprise in which Muslims across much of western Herzegovina in the southwestern regions and central regions of Bosnia were victims of crimes against humanity and many forms of displacement.

During the *Prlić* judgment, you might recall if you were watching, a very tragic event occurred in the courtroom in which one of the accused managed to get poison in, and he drank it in the course of the proceedings. It was a tragic, very emotional day. It was not the best day for the Tribunal, but I think that in the end, all it did was focus world attention on a case that had not received much attention—being in the shadow of *Mladić* and *Karadžić* and the others—a case that put a spotlight on the responsibility of Croatia’s then leadership for crimes and ethnic cleansing that occurred in Bosnia during the conflict there.

So it was a big year. I could go on about the legacy of the Tribunal, but I don’t think there’s much I can add to what’s already been said today by Stephen Rapp.

MICHAEL SCHARF: Douglas, let me ask a follow-up. Two year ago, when the IHL Dialogs were having their 10th anniversary at the Nuremberg Tribunal and we had the Prosecutor’s Roundtable there, Serge Brammertz talked about how wrong the acquittal was of Vojislav Šešelj, how this was the biggest miscarriage of justice he’d ever seen, and that they were going to send the full weight of the prosecution to make sure that ship was righted.

This year, there was an appeals decision on that. What happened there?

DOUGLAS STRINGER: Yes. The ship was righted. The Appeals Chamber earlier this year did in fact reverse the acquittal of Vojislav Šešelj, finding him responsible for instigating deportation. Interestingly this was not in Bosnia or Croatia, which are the two states where the great balance of criminality occurred during the

conflict, but actually for instigating the deportation of non-Serbs from the Vojvodina region in Northern Serbia itself. So it was gratifying to see the correction. It could have been more gratifying certainly in the view of the Prosecutor, I'm sure. Many of us were hoping for a broader finding based on Šešelj's responsibility for having incited many crimes against non-Serbs that occurred in Bosnia and particularly in Croatia during the conflict. But we were satisfied with the judgment, obviously, and it did bring about a much needed correction.

I should add also that another important development is one that I'm involved in personally right now, which is the retrial. We're doing the first retrial in the history of the ICTY. This was a case that was tried some years ago. The accused were found not guilty. The judgment was found to have been flawed on appeal, and the case was sent back for a retrial. I'm talking, of course, about the prosecution of Jovica Stanišić and Franko Simatović. Stanišić was the head of the Serbian State Security, an organ of the Serbian government, which in our assessment, was very close to Serbian President Milošević, and this was an important tool through which crimes against non-Serbs were committed during the war in Croatia and in Bosnia.

This retrial began last June. The prosecution phase of the evidence is going to be concluding in the next month or two, and then we will move to the defense case. There's still quite a bit going on in terms of this trial, but looking back, I think it's been quite a good year for the ICTY, and quite a good year to go out on.

MICHAEL SCHARF: My takeaway is that after twenty-five years, the ICTY is going out not with a whimper, but with a bang. So congratulations for all the good work there.

Sitting next to you is Andrew Cayley. Andrew is not just in charge of litigation for one of the branches of the military in the United

Kingdom, but rather, under their reforms, all of the branches of the U.K. military. Their court system is under Andrew's watch.

Andrew, I know that one of the big things in the news has been your investigation of U.K. soldiers in Iraq for events and atrocities that occurred from 2003–2008. This is the same period that the International Criminal Court has opened an investigation into. Do you want to comment at all on how those are going?

ANDREW CAYLEY: This is a surprise that you're asking me this question, actually, but it's fine. Just to be clear, I'm not the chief prosecutor for the Khmer Rouge Tribunal any longer. I was until 2013. The current prosecutor broke his foot, so he can't be here today. I am, as Michael has just said, essentially the chief prosecutor of the U.K. Armed Forces. I'm a civilian.

I want to be considered in what I say because this is going out on a live stream.

In essence, in the United Kingdom, we have been investigating historic allegations against U.K. armed forces in Iraq arising from the beginning of the war in 2003 up until the withdrawal of all U.K. armed forces. That was in 2011. We still have some troops there supporting the Iraqis, but the bulk of our forces have gone.

Before I became the Director of the Service Prosecuting Authority we set up in the United Kingdom a domestic mechanism to investigate these alleged crimes in Iraq. The year after I was appointed, so in 2014, the International Criminal Court reopened a preliminary investigation that had been closed in 2006 in respect of allegations against U.K. forces in Iraq. These were allegations of murder by U.K. forces, so homicide, together with allegations of mistreatment of Iraqi detainees. So this is complementarity working in action. The ICC continues to examine what the United Kingdom is doing in respect of

these crimes. We continue to investigate, and prospectively where the evidence is sufficient and it's in the public interest, we will prosecute individuals. There haven't been any domestic prosecutions as yet.

I should point out that one of the significant issues that we face here is that the lawyer who originally brought these cases to the attention of the international Criminal Court, a man called Phil Shiner, a very well-known human rights lawyer, was found to have committed acts of dishonesty in respect to a substantial number of these allegations against U.K. forces. He was actually disbarred at the beginning of last year. That's created additional problems for us in terms of the credibility of evidence in these cases, as well as issues for the International Criminal Court, but we carry on doing this work. It's not domestically particularly popular work. As in this country, our armed forces are extremely well respected and there is national sympathy, and so the popular press tend to be behind them. I have not been at the top of everyone's Christmas card list for doing this work.

[Laughter.]

ANDREW CAYLEY: But, nevertheless, what I think it does demonstrate—and I've said this—is that complementarity works. In a sense, I think one of the arguments that we use constantly with the relevant authorities in London is that we have an obligation to do this because we are a developed country with the rule of law, but we need to remember that the ICC is conducting a preliminary examination as well. So if we don't do it ourselves and do it right, the ICC will do it. So we have to do this. But I think, by and large, our relationship with the ICC is extremely good. They've been to visit us on a number of occasions. They're satisfied with the work that we're doing, and when the time is appropriate, when the prosecutor decides on the advice of Fabricio and his colleagues, the preliminary examination will be closed.

[Laughter.]

MICHAEL SCHARF: That's a good segue to Fabricio.

Fabricio, it was twenty years ago that you were in Rome negotiating the Rome Statute. It seems like just yesterday, and yet so much time has gone by. What would you consider to be the most important developments? You mentioned before we started that you weren't going to confine yourself to one, and that there were at least six. As economically as you can, let us hear about those.

FABRICIO GUARIGLIA: Thank you. Thanks a lot. How do you pronounce your name?

[Laughter.]

MICHAEL SCHARF: I've heard it "Shraf," "Scarf," and "Sharf."

FABRICIO GUARIGLIA: I'll call you "Mickey."

First of all, thanks a lot for the invitation to be here. It's an honor to be here again surrounded by so many colleagues and friends from so many years. Both Prosecutor Bensouda and Deputy Prosecutor James Stewart have always attached to this meeting an enormous amount of importance. Unfortunately, neither of them could make it again this year, but I am honored to be representing them.

As much as I enjoyed last year's panel, I am really glad to see that we seem to be doing better in terms of gender balance, and we're still a bit on the same side of the spectrum in terms of civil law/common law balance, but fortunately, at least we have Catherine to even things out a bit more. That's always good. The more diversity, the better.

There were a number of developments at the ICC last year. I am going to focus on what I would call the positive ones. There is a big elephant

in the room. That is the *Bemba* appeals judgment, but Michael will take us to the controversial issues in a moment.

So going through the positives before I get really depressed talking about *Bemba*, the Pre-Trial Chamber issued what we call a warrant for arrest against Omar Hassan. Hassan was arrested. He had his initial appearance before the Pre-Trial Chamber, and his confirmation hearing has been announced for next year. This is a continuation of the Mali case, which was a case involving war crimes in Timbuktu and was confined to destruction of culture and religious property. In the *Hassan* case, we have expanded the case, and we have a number of war crimes and crimes against humanity. This is an important case for the community in Timbuktu and an important case to represent again the type of victimization that the people in Mali have been suffering.

We have completed trial proceedings in the *Bosco Ntaganda* case. Bosco Ntaganda, alias “The Terminator,” is the militia leader of the Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo (UPC/FPLC) in the Ituri region. We’re having closing arguments tomorrow. So it’s an important matter for us—our second Democratic Republic of the Congo Ituri case coming to an end. It was a very smooth trial. We have some bumpy ones, but this one was very smooth, and if everything goes the way we hope it to be, we think it’s going to be a very important contribution to international criminal law and international humanitarian law.

We have completed the presentation of evidence both in the *Ongwen* case, concerning crimes against humanity and war crimes committed by the Lord’s Resistance Army in Northern Uganda, and in the *Gbagbo* case, which involved post-electoral violence in Côte d’Ivoire. Gbagbo was the former president who refused to step down once he lost elections and triggered a wave of repression of the civilian population.

The Appeals Chamber confirmed the Article 70 conviction against Bemba and his associates. Article 70 is similar to contempt of court, but actually they're offenses against the administration of justice, which are codified in the Rome Statute and in the Elements of Crimes. They confirmed a very important decision—a Trial Chamber conviction. Bemba decided at one point with his defense counsel, lead counsel, and others, that playing by the rules was not going to get him anywhere, and he decided to bribe and script witnesses. This was confirmed by a Trial Court in its judgment. In the end, ironically enough, as we will see, his gamble may have paid off, but we will discuss that in a second.

We opened an investigation into the situation of Burundi after successfully obtaining authorization to do so before the Pre-Trial Chamber. The investigation is ongoing, and, obviously, I can't say anything else except that.

As Steve also mentioned, we requested the opening of an investigation into the situation in Afghanistan. We did this after considering that the preliminary examination—which had been open for an inordinate amount of time—had been exhausted and that other requirements to open an investigation had been met.

We opened two new preliminary examinations in the Philippines and in Venezuela. Preliminary examination is something that happens before the commencement of an investigation. It is precisely to determine whether—as in the Iraq situation—it merits opening an investigation, whether there is jurisdiction, whether there is admissibility, and whether all the legal requirements enshrined in Article 53 of the Statute have been met. The opening of the Venezuela preliminary examination met a reasonable reaction, I would say, from the Venezuelan government, who have promised they are going to cooperate, and a not-so-positive reaction from the government of the Philippines.

MICHAEL SCHARF: Was the reference you just made to President Rodrigo Roa Duterte of the Philippines saying he would withdraw from the ICC?

FABRICIO GUARIGLIA: Yes, and we can discuss that later, if you want.

One interesting development has been in regard to our request for an early ruling on admissibility to the Pre-Trial Chamber in the Rohingya situation. We have basically moved before the Pre-Trial Chamber. We consider that the Court can exercise jurisdiction over the crime of deportation of the Rohingya population into the territory of Bangladesh, which is a state party. One element of the crime against humanity of deportation is the crossing of an international border, and that crossing takes place effectively into the territory of a state party, so one element of the offense is happening in the territory of a state party. Therefore, we gain jurisdiction as a result. So we are satisfied that is the case. Since this was going to be a *de novo* situation, we decided that the safest course of action was to put this to the Pre-Trial Chamber for them to decide. The Pre-Trial Chamber has already received a number of submissions and an *amicus curiae* brief as well. We are expecting a decision in the coming weeks.

Perhaps one final note is that there is very meaningful and important litigation taking place before the Appeals Chamber in relation to the Darfur situation, in particular in relation to the issue of head-of-state immunity in the Bashir case. The Appeals Chamber has been flooded with *amicus curiae* briefs from multiple law professors and think tanks in relation to the submissions made by the parties. Here the situation is between Jordan as a state party that has been found in noncompliance because of its refusal to arrest President Bashir and the prosecution as a respondent. There will be a hearing in September. We will see what happens. Obviously, this is a very, very important decision for the future. I wouldn't say it's important for the future of international criminal law because that's a bit overly

presumptuous, perhaps, but it is true that it is going to be the first full discussion on the critical issue of immunity of heads of states before international courts and tribunals. In particular, it will deal with the scope of Article 27 vis-à-vis the status of international customary law, the role of the Security Council, and the scope of the referral by the Security Council in a situation of this type. Stay tuned because I think it's going to be very interesting.

MICHAEL SCHARF: On that last point, al-Bashir has been to Jordan, Chad, and Uganda this year.

FABRICIO GUARIGLIA: Yes.

MICHAEL SCHARF: Why is it only Jordan that is being subjected to that?

FABRICIO GUARIGLIA: What happened is that there was a finding of noncompliance in relation to Jordan. All three were reported to the Pre-Trial Chamber. Jordan, in the Pre-Trial Chamber, engaged in an open formal proceeding. Jordan responded, and there was a ruling. That was the first ruling that came out, and Jordan has appealed that ruling. So that's where we are.

Before that, you may remember that last year the Pre-Trial Chamber found South Africa to be in noncompliance of the Statute because of its own refusal to arrest al-Bashir. This led to a very difficult situation for South Africa because it was found to be in violation of domestic law by its own courts and of its international obligations by the ICC. This led to a discussion of withdrawal in South Africa, which Stephen also referred to earlier. However, in that case, South Africa in the end decided not to seek an appeal.

MICHAEL SCHARF: So the number of major cases at the ICC have really proliferated, and if it makes your head twirl trying

to keep up with all of that, I do suggest that you subscribe to War Crimes Prosecution Watch, which is an e-news service that Public International Law and Policy Group and Case Western jointly put out. That's how I keep up with all of these things, and that's how I know that Brenda, even at the Residual Special Court for Sierra Leone, there's been a lot going on for you. It seems to be out of the news, but that's not the case.

You've had cases of early releases. There was an effort for financial reasons to try to take your court and combine it with the others, and you successfully fought against that. What do you want to tell us about?

BRENDA J. HOLLIS: I'm not sure we've successfully fought against that, but at least up until now we have.

First of all, let me congratulate my fellow speakers on the wonderful job that they're doing with a very active judicial mandate, and if all of these cases and developments are swirling around in your head, you can look at this electronic media or you can talk to Stephen Rapp because he has all of this in his head.

[Laughter.]

BRENDA J. HOLLIS: I would also like to thank you, Michael. You were very generous in your introduction for me, but I was not the chief prosecutor of the *Milošević* case. I was the lead prosecutor as we were investigating the case until I left in 2001, but other very capable attorneys were actually the lead prosecutor at trial. When we talk about the Residual Court for the Special Court for Sierra Leone, we are not talking about an active judicial mandate in the sense of trials or appeals. We are talking about residual functions—the legal obligations that remain after you put someone in jail, including consideration of the “early release program.”

There's an entire issue about whether these courts do have the ability to grant early release. It's not in the Statute, certainly not for the ad hocs, and not for Sierra Leone. The Statute speaks about pardon or commutation, and the judges have made it very clear that early release is neither of those. But, you know, they are judges, and so, in their minds, they have the inherent authority to grant early release.

The Prosecution has always opposed early release, even with conditions. Our position has been that, number one, the judges do not have the legal authority to do it. But, more importantly, because of the types of crimes we are dealing with, the number of crimes involved, and the impact on entire societies and countries, it is not appropriate for these individuals to serve less than one day of the sentence that has been adjudged against them. However, as we know, attorneys propose and judges dispose, so the RSCSL has an early release program.

Early release is not pardon, acquittal or commutation of sentence. It is simply a grace bestowed on the prisoner by the Court that allows him, after serving two thirds of his sentence, to apply to serve the last third of that sentence at a designated location outside of prison.

The RSCSL early release program differs from that of the ad hoc tribunals, like the MICT. Unlike the ad hocs and the MICT, our judges deemed it very important that the Court continue to have active supervision. So if a prisoner successfully applies for early release, conditions are attached—conditions to which the prisoner must agree. Violation of those conditions may result in the prisoner being returned to prison. Another difference is that the Prosecution plays an active role in the process, including making submissions regarding the appropriateness of the release.

To date, two prisoners have been granted conditional early release. That leaves us with five prisoners in Rwanda, and one prisoner who is making his presence very felt in the United Kingdom,

Mr. Charles Taylor. We would have six prisoners remaining in Rwanda. However, one prisoner died of medical complications after refusing medical treatment.

We have struggled with voluntary funding, even during the life of the Special Court. Even when we had high-profile cases such as the *Taylor* case, we had to go to the United Nations for subvention grants to meet the needs of a relatively modest budget. That challenge has continued with the Residual Court because we don't have sexy cases to talk about. Instead, we have things like enforcement of sentence to talk about. We have survived because of subvention grants for several years. The challenge is to create a cost-effective sustainable funding model.

In my view that model must include the RSCSL maintaining its legal identity. That doesn't cost anything, but it preserves the legacy of the Court, in Sierra Leone and in the sub-region. It also allows the Court to continue to be a deterrent force, and a factor in creating a stable Sierra Leone and a stable sub-region. This is not just the Court's view; this is the view of the people in Sierra Leone and the sub-region as well. So a separate legal identity needs to be maintained.

We also believe another key characteristic is to keep the separate roster of judges. This is no cost added. When you need a judge for a residual matter, be it the MICT or the Residual Special Court, you have to pay someone. So why not pay someone who knows the cases, knows the accused, knows the procedures, knows the process, and knows the history and the dynamic of the conflict in Sierra Leone that gave rise to these crimes?

I would add that we would apply the same logic for the Prosecutor and the Principal Defender. They only pull us off the shelf, dust us off, and pay us when they need us. So why not have people who understand the Court and the cases upon which decisions are going to have to be made?

We also had another very important discussion regarding finality of judgments and a prisoner's equitable right to apply for review of his judgment. The law seems very clear that you cannot put a time limit on the application for review because potentially fifteen years later you may discover a new fact that makes the conviction unsound. But what is the proper balance between this equitable relief and finality of judgments? What I suggested, and what I hope the Court will seriously consider, is that we can insert some type of certainty and finality by saying that the application for review must be brought within a certain period of time after the new fact is found. So a prisoner can't wait until he has the best tactical advantage to bring it up. Rather, when he finds a new fact, there is a certain time limit to bring it to the court.

I appreciate the ability to come here today and speak to you about the fact that our Court does still exist and what our mandate is; the mandate we were given pursuant to agreement between the United Nations and Sierra Leone. Thank you for the opportunity to speak here today.

MICHAEL SCHARF: Brenda, you mentioned Charles Taylor, the former president of Liberia, who is serving time in the United Kingdom after being convicted by your Court. Let's now use that as a segue to the next thematic group of questions about the most controversial aspects of the different courts. In the case of Charles Taylor, he made a phone call from his cell that was broadcast through a loud speaker to large crowds in his country, and as punishment, he's now claiming that he's been placed in solitary confinement against his international human rights. What role does your Court continue to play in issues involving the treatment of prisoners when they're serving their sentences under your convictions?

BRENDA J. HOLLIS: Well, ultimately, of course, the Court and the President of our Court are responsible for ensuring that the conditions under which these prisoners serve their sentences meet

international standards. On a day-to-day basis, our Registrar is very involved in these issues.

Taylor raised the same argument in a motion that he made a couple years ago to have his place of imprisonment moved from the United Kingdom to Rwanda—a motion that we opposed and eventually a motion that was denied. In discussing his status within the prison in the United Kingdom and the fact that he was kept segregated, it came out very clearly that part of this was for his protection. Indeed, he also had felt that he needed this type of protection. It wasn't a punishment so much as to ensure his security and his safety within the prison, and also, in part because of medical problems that he had.

In today's jargon, perhaps what I would say is that his version are alt-facts that we really shouldn't pay much attention to, or at least should be able to dispose of in a reasoned and informed manner.

MICHAEL SCHARF: Speaking of interpreting facts, let's move to Fabricio and the case you called the "elephant in the room." The ICC Appeals Chamber overturned the conviction of Congo warlord Jean-Pierre Bemba Gombo. People like Kate Gibson, a friend of mine who was one of the defense counsel, and Mike Newton, who has often spoken here, did some briefs on command responsibility in that case for the defense. There were also several people on the prosecution side who were so angry that they were shouting publicly about this, including our good friend, the prosecutor, who said some uncharitable things about the standard of review that the Appeals Chamber applied, leading the Appeals Chamber to say she shouldn't be saying such things. Maybe I'm mischaracterizing because I'm only relying on what I see in the press. Please tell us about this.

FABRICIO GUARIGLIA: The first thing is that obviously I'm sure Kate Gibson and Peter Haynes are ecstatic about this.

They defended the case. They won an appeal. I would be excited myself. That's hardly the point.

The point is not a matter of being happy or unhappy about the outcome of the case, and it's not a matter of prosecutorial anger at a bad result. If anything, I think that my office has shown that it really has been shaped by a lot of thorough self-criticism, learning the lessons the hard way, and recognizing those instances where we have done things wrong.

Brenda has just concluded a very important audit, I would say, of the matter in which the Office of the Prosecutor approached the Kenya cases at our request. We have always acknowledged that there were issues in some of the cases that did not go forward, and we changed our work methods on the basis of the lessons that we learned. So it's hardly a situation where you have an Office of the Prosecutor that doesn't know how to lose a case. That's not the point.

The point here is the manner in which the Appeals Chamber—and I would say a group of judges within the Appeals Chamber, one of whom is no longer in the Appeals Chamber—approached the case, how they approached the standards of appellate review, and the consequence this can have for the fairness of the proceedings for us and the defense, and for the defense in future cases.

I don't want to make it too technical, but you know problems in the context of international jurisdictions. What happens is you don't have a full second trial. You have an Appeals Chamber that approaches the appeals process in a corrective fashion. What does that mean? It means that when it comes to factual matters, the Appeals Chamber says, "Well, I haven't heard the evidence. I haven't heard the witnesses. I don't know the case. I know what I read from what the parties have briefed me on, and I have access to the record, but my job is not to conduct a second trial. My job is not to reevaluate the evidence.

My job is to see whether the Trial Chamber has done a good job—a reasonable job—in discharging its duties.”

With alleged factual errors, first the party that alleges a factual error has to prove that error existed, that it materially affected the verdict, and that no reasonable trial chamber could have reached the conclusion that it reached on the basis of the evidence that was before it. So it’s a standard of reasonableness, first thing.

A second thing is the ample deference to the Trial Chamber as the trier of fact. So the Appeals Chamber says the Trial Chamber heard the evidence, the Appeals Chamber didn’t, and they are going to look at only whether the findings are reasonable, period.

That has been the standard of all ad hoc tribunals, including the Special Court for Sierra Leone. It’s a standard that you have in most jurisdictions for appeal. It’s a standard that you have in all civil jurisdictions for appeal, and it’s the way you approach the appeal if the appeal is going to be a corrective process. There’s a separate avenue. There’s a separate possibility in comparative criminal procedure, which is where you have a full second trial. This is a full second trial on the merits. You rely on the record of the first trial. You recall witnesses. You can bring some additional evidence. Obviously you’re not talking about a corrective process. You’re talking about a full-blown trial—a full second trial on the merits with safeguards, ample power, and time. It takes a long time. It’s not a one-week hearing. It’s a month. Complex cases can take up to six months or a full year because it’s another trial.

That’s what a number of jurisdictions have. Germany has it; they call it “*berufung*.” Italy has it; they call it “*appello*.” My jurisdiction doesn’t have it. We only have a trial and then an appeal on legal issues and procedural matters, and that’s that. But that avenue does exist. It’s nowhere to be found in the Rome Statute. It’s

certainly incompatible with the corrective nature of the appeal as adopted by the ad hoc tribunals.

Our own Appeals Chamber had already said in a fairly consistent manner that this is not a second trial in the first interlocutory appeals to *Lubanga*, *Ngudjolo*, and the *Bemba* Article 70 appeal that I was telling you about. This is a corrective appeal, a corrective process, and we are going to approach factual findings with deference to a trial chamber and apply the standard of reasonableness.

It was very clear until this appeal. We walked into the courtroom to litigate a corrective process. We used all the legal artillery that we had on the basis of the law as it existed, and we found out after the hearing that the standard had changed. The majority had decided to abandon the standard of reasonableness and it is completely unclear what standard has been adopted.

Two judges of the majority said, “We simply tweaked the existing standard a bit,” and the current president of the court said, “No, no, no. We have departed from the previous standard, and we have adopted a new one where we will actually reexamine the entire evidence.”

What they seem to have done is seen to themselves to apply a beyond a reasonable doubt standard. So if they have doubt to the evidence taken on its face, and evidence that they haven’t heard, then they will acquit. And that’s what they did. So they embarked on a process of looking at the evidence, looking at what the defense was saying about the evidence, and then saying, “No. We have doubts as to a number of these factual findings, so we are going to acquit.”

It’s a judgment. The majority judgment is very, very short. They couldn’t agree on very much, and to make it even worse, the current president of the Court, Judge Eboe-Osuji, was not even in favor of an acquittal. He was in favor of what seems to be a remand for a

new determination of particular issues, although maybe he wanted a retrial. It's not entirely clear in his separate opinion what he thinks. But, clearly, the only common denominator there is three judges didn't seem to like the judgment. We don't know exactly why, but they didn't seem to like it.

Two judges on the contrary said, "If you apply proper standards of review, if you look at the totality of the record, if you look at the judgment, and if you look at the underlying evidence, this conviction has to be confirmed in its totality." That was what happened in *Bemba* with a bitterly divided appeals chamber. The language of the minority decision is really strong in criticizing a majority that is split and seems to have departed from exercising jurisprudence. And the result of that is a controversial acquittal and 5,000 victims of the worst instances of sexual violence that I have seen in my entire career—and I have seen a number of horrible things in my career—left without any justice.

One additional point that is important to know is the *Bemba* record was polluted with a lot of corrupt evidence. There were a lot of scripted witnesses that basically told a bunch of lies. We kept the Trial Chamber blocked from the criminal investigation into the corruption of witnesses, but they heard the witnesses. So they knew the witnesses were simply not credible, and, rightly enough, they dismissed a lot of the witnesses.

The Article 70 Trial Chamber knew it also because they heard the evidence of the corruption campaign, so they knew all these witnesses were corrupt.

The Appeals Chamber was in neither position. They didn't hear the evidence. They didn't hear the witnesses, and they were not privy to the record of the corruption trial. So, as a result, in their acquittal, they end up relying on a number of instances of corrupt evidence, and of witnesses that admitted in the Article 70 case that they had been

scripted on themes that we had demonstrated in the Article 70 case were based on witnesses that were lying to the court.

In the end, that is a cruel paradox of fate in this case. It may well be that Bemba's decision to litigate by using corrupt means in this case paid off—not where he planned it to pay off in his trial, but on appeal. And it's a sad story for the project of international criminal justice. It's a sad story for the victims of the Central African Republic. It's bad for the Court. There's no doubt about it. No one is really vindicated in this decision. It's a highly controversial decision, and the Court is paying a price in terms of its credibility.

At the end of the day, I don't think that this is going to stand as precedent. I don't think that the new Appeals Chamber is going to follow this sudden departure from the previous standard. I think this will be the typical case where if it was my jurisdiction, you would take this case to the Supreme Court. But we have no Supreme Court, so we're stuck with this.

I think this is a typical case that creates an explosion and raises a lot of controversy, but in the end, things steer back to the previous state of affairs. I would not be surprised if in a future appeal, the Appeals Chamber goes back to the standard of reasonableness and goes back to deference to the Trial Chamber.

MICHAEL SCHARF: Andrew, as you mentioned, you are no longer with the Cambodia Tribunal, and you don't follow it as closely as you used to. In the book that David Crane, Leila Sadat, and I just published with the stories of the chief prosecutors of the International Tribunals, in Robert Petit's story, he starts out with the line that if one were to set about creating a tribunal that was destined to fail, you couldn't have done a better job than the way the Cambodia Tribunal was structured. Yet it has soldiered on, though in fits and

starts, and it has had its difficulties. Do you want to tell us about anything that is in the vein of that?

ANDREW CAYLEY: Yes, more generally, but bear in mind I have to be careful with what I say because I am a civil servant of the U.K. government now.

This was a hybrid court that was established in 2006 to address the crimes that the Khmer Rouge committed between 1975 and 1979, and the structure of the Court was such that it was staffed by both international staff from the United Nations and by national staff: local Cambodian judges, prosecutors, investigators, administrative staff.

In my office, so the prosecutor's office, I was the co-chief prosecutor with my Cambodian counterpart, Chea Leang. It was a civil law court, so there were investigating judges who conducted the main investigations in the cases. There was a Cambodian judge and an international judge. In the Trial Chamber, again, there were national Cambodian judges and international judges, and it was the same in the Supreme Court Chamber, the final Appeals Court, with national judges and international judges.

The challenge throughout the life of the Court has been the position of the nationals that there should only be two trials. In the first trial, the commandant of the S-21 security camp was convicted of crimes against humanity and war crimes, and he eventually received life imprisonment, principally for torture and mass murder. Now I understand they've proven it was 18,000 people murdered over a three-year period.

In the second case, which involves the senior leadership of the Khmer Rouge, we originally had four accused. Essentially, two of them fell out of the trial, one for mental incapacity. She had dementia. These people are all very old because these events happened a long time ago.

Then another accused, in fact, her husband, Ieng Sary, died during the trial. Eventually, we were left with two accused: Khieu Samphan, the president of the Democratic Kampuchea, as Cambodia was known then, and Nuon Chea, who was the deputy to Pol Pot, the leader of the Khmer Rouge. Now, those two individuals were convicted in 2014 of crimes against humanity and both were sentenced to life imprisonment. These are two very elderly people.

That trial involving them was split into segments because there was a fear that if they were tried for all charges at once, they would die during the trial. They've just now been tried a second time for other charges, including genocide, forced marriage and rape, and sexual violence. The Court is still awaiting a decision on those cases, I think. In fact, Ambassador Stephen Rapp told me it will be November of this year. I think the decision was expected earlier this year, but it's going to be November, although in fact they finished hearing the evidence in January of 2017. So it will have taken about two years to get to a decision, which is not ideal when you've got very elderly accused.

Now, there are two other cases, Cases 3 and 4, which involve four accused because one has died. These cases are opposed by the national side principally because the jurisdiction of the Court is limited to the senior leadership, the senior members of the Khmer Rouge, and those most responsible, which includes more minor people who may have committed bigger crimes. The position of the national side of the Court is that all of those four individuals don't fall within the personal jurisdiction of the Court. In the national side's view they are neither senior enough, nor are they most responsible. The position of the international side throughout has been that in fact these four individuals are either senior, in the leadership of the Khmer Rouge, or are most responsible. So you have a collision of positions between the national and the international side.

I'll give you two substantive examples in the last year. Im Chaem was, I believe, a district leader, so fairly senior within the structure of the Khmer Rouge, and she was the only female member of the Khmer Rouge to be charged, but not tried. In that case, interestingly, the national and international co-investigating judges in fact agreed. The national judge and the international judge agreed that she wasn't either within the senior leadership or most responsible, but the prosecution took the position that in fact she was within the personal jurisdiction of the Court. Without going into the details—we'd be here all day trying to explain the mechanisms of the Court—when there is a disagreement like that and the prosecutor appeals, the decision of the co-investigating judges goes to the Pre-Trial Chamber. The Pre-Trial Chamber might not agree because it splits between the international judges and the national judges, which is what happened. If you're following me, I know it's complicated.

[Laughter.]

ANDREW CAYLEY: So the co-investigating judges decide together that there is no case. The prosecution appeals that decision to the Pre-Trial Chamber, which consists of national and international judges. The national judges say, “No. There's no personal jurisdiction. She's not senior or responsible enough.” The international judges say, “Actually, she is.” But that's not a decision because you need what's called a “super majority.” You need at least one of the three national judges to agree with the two international judges. That didn't happen. If there is no super majority there's no decision by the Pre-Trial Chamber. Then the decision of the co-investigating judges stands, and the case comes to an end. And that's that.

There is another accused in Case 4, where the co-investigating judges have disagreed. The international judge has issued a closing order charging him. The national judge has issued an order saying, “Sorry. This individual is neither in the senior leadership, nor

is he most responsible.” So now you have two competing orders by the co-investigating judges.

If you read the rules, it’s not absolutely clear what happens in this situation, but I talked to Brenda about it actually on Saturday night. I think the way the rules were drafted and the way the international community tried to make this Court work was that if there’s a negative decision and a positive decision, the positive decision goes forward. So my position here would be that the closing order charging this individual has to go forward. That would be my view.

As I have said, there is a mechanism for the co-investigating judges to go the Pre-Trial Chamber if there’s disagreement between them, but that chamber, again, is going to split between the national judges and the international judges and result in no decision, essentially.

If I was the international prosecutor, my argument would be that this has to go forward. The difficulty is how on earth you’re going to constitute a Trial Chamber to try the case because I suspect the national judges would just not show up and they would say, “Sorry, but this isn’t within the personal jurisdiction of the court.”

I don’t work there anymore, but I would defend the cases where there wasn’t this disagreement between the national and international sides because I think if you read that jurisprudence, it actually meets the test. It absolutely meets the standards. There have never been any complaints about Cases 1 and 2. I think those judgments where the national and international sides agreed will stand the test of time. It’s just problematic where there is disagreement between the two sides.

MICHAEL SCHARF: Case 2 will be decided by the end of this year.

ANDREW CAYLEY: It will be decided by the end of this year, and I think that will be a sound decision. Let’s wait and see what

happens, but it will give convictions for genocide in respect to the Vietnamese and the Cham, and that will be historic. It will be historic when that happens.

I think that side of the Court is very positive, but I do tend to agree with Robert that if we go down the road of using these hybrid courts, within the founding documents, you've got to give, I think, a lot more authority to the international side. That's what I would say.

The Court was a compromise. In order to establish it, they had to make these legal compromises. There would have not been a court otherwise.

Lastly, I'm often asked the question of whether it would have been better with no court at all, and I think the answer to that question is absolutely not. That would have been a catastrophic error, although I know there are a lot of people, including Hans Corell, who were against the Court. They predicted that what we see now taking place would happen, but I still believe the option we have is better than no court at all.

MICHAEL SCHARF: Let's end our lightning round with Douglas. When I was joining you all at dinner among the portraits of convicted and executed Nazis, I was looking across the way into the eyes of Hermann Goering and thinking about the fact that he cheated the hangman by taking his own life. When you mentioned the *Prlić* case, I am sure that you had the same feeling. You and your colleagues in the courtroom were thinking here's a guy who was just convicted, upheld on appeal, and before anything else happens, he drinks poison. That has to be a PR disaster for the court. What has changed in the aftermath in response to that occurring?

DOUGLAS STRINGER: The short answer is that if anything has changed procedurally in what happens before an accused is brought into a courtroom there, I'm not aware of it.

I know that after the incident occurred—after General Praljak committed suicide in the courtroom—Prosecutor Jallow was commissioned to do an internal investigation into the procedures and what had led up to that day. He did so, and his finding was that what had happened was very likely not something that could have prevented.

The prisoners are not subjected to body cavity searches before they are brought into the courtroom. To my knowledge, it's not known how he was able to acquire the potassium cyanide that he used in the courtroom.

It was a PR disaster, and for me personally, it was a very powerful day. I had spent a couple months cross-examining General Praljak during the course of the trial. He had been the commander of the Bosnian Croat militia forces. The epicenter of this case is the Town of Mostar in Western Herzegovina. A very famous old Ottoman bridge, the Stari Most, was destroyed in November of 1993 as part of this conflict and later rebuilt by UNESCO.

But I don't know to what extent anything has changed that could prevent that from happening again in the future. I just very much hope it doesn't.

As I said—and of course, I'm biased, having been involved in it all—his act, ironically, brought a tremendous amount of attention to the case, and it did put a spotlight on the role that Croatia and its then leadership played in those events and crimes in Bosnia. So we took some comfort in that. I don't know if that's the right word, but it was certainly a day I'll never forget.

MICHAEL SCHARF: Something else controversial is that one of your former judges, Judge Akay, was arrested by the Erdoğan government in Turkey, and there was an international movement to try to free him. I think there was a decision not to reappoint him because he couldn't be an effective judge while he's in prison. What's your take on that?

DOUGLAS STRINGER: Well, this is all very much in the realm of the chambers and the judiciary. I don't know Judge Akay. I know that President Meron was very proactive and very vocal in trying to bring about his release unsuccessfully, and that there was, indeed, controversy and strong disagreement among the judges in terms of his not having been then reinstated as a judge when that time came. Beyond that, I don't know how much more I can say.

MICHAEL SCHARF: But don't judges have immunity when they travel?

DOUGLAS STRINGER: Well, as you know, yes. I think in principle, and legally speaking, they do. We live in a world in which heads of state are subject to international arrest warrants, but can move freely throughout different countries. In view of so much else that we see happening these days, that blows back against the rule of law. Can we say we're shocked and outraged that the immunity of a judge is not being respected in this instance? It's tragic to say, but it seems to be just a part of the pattern and the picture that we see in a broader sense.

MICHAEL SCHARF: Let's open up the panel to questions from the audience. We have a full fifteen minutes. I know this is what a lot of you came all the way from the four corners of the country and the world for. Who has a question for our prosecutors?

ATTENDEE: First of all, thank you so much to our panel. It was a very enlightening discussion. I ask this question as an alleged social scientist. Brenda Hollis, you've mentioned the important deterrent effect of the Sierra Leone Residual Court. I'd like to open this question to all the prosecutors in the room. What evidentiary basis is there, more broadly, for the deterrent effect of international criminal processes on potentially criminal behavior in the future? Thank you.

BRENDA J. HOLLIS: In some ways, the deterrent effect is sort of like immunity. In a practical sense, it's only as good as the guideline says it is.

I think the reason we say there's a deterrent effect in Sierra Leone and the sub-region is because people will cite to the Court when they're telling others to behave themselves. Sometimes they have said, "Well, if you don't behave yourself, the Special Court . . ."—or they've also said the ICC—will prosecute you.

Now, it's often said about something we couldn't prosecute, but people have the idea that somebody out there can hold you accountable. That has been very important in Sierra Leone, especially in regard to the possibility of election-related violence. Of course, I think it's very important in any country, especially those whose history is that if you are in a position of power and influence, you can do what you want and nobody can ever hold you accountable. In that sense, I think the Court has been a great deterrent.

In another sense, the Court has been a deterrent as a major factor in establishing a sustainable piece. The Court, throughout its life, beginning with David Crane all the way through today, has worked very hard to make the people of that country a participant in the process through its Outreach program. That program has been a dialogue, not a series of lectures. And that approach has made the Court very much the Court of the people of Sierra Leone. That has added to stability in the country because the people have viewed the Court and the results of the cases as their product as well, and I think those are very, very important factors in terms of stability and deterrence.

MICHAEL SCHARF: Fabricio, before you jump in, let me ask you to talk about how your office has, from time to time, announced that it is considering launching investigations as a way to try to deter what it sees as the beginning of atrocities in a region.

FABRICIO GUARIGLIA: I think there are two things. One is that every criminal registrar around the world will tell you that measuring the deterrent effect of any criminal justice system is a daunting task. Often we just simply can't get any hard answer on the real level of the terrorist threat.

Just imagine you're trying to measure terrorism globally and to see what the impact is of international investigations and prosecutions in the global community. I think what ends up happening is you end up not having a uniform phenomenon. You have pockets of deterrence. I think it's true that the Special Court for Sierra Leone had its own pockets of deterrence locally. Some of our work has clearly had at least an impact on the deterrent effect. The prosecution of Lubanga for child soldier crimes led to the demobilization of child soldiers and militia groups in places as different as Colombia and the Democratic Republic of Congo because, all of a sudden, there was this notion that you can go to jail for having children in your own rank and file. This was unprecedented.

There is an expressive value to international criminal prosecutions and investigations beyond whether they're terrorism related or not. It's the fact that we're putting under the spotlight the scope of victimization; the values behind the criminal rules that have been broken; and the importance of human dignity, sexual independence, and diversity—gender diversity and ethnic diversity—as values that we want to uphold as an international community. That may trigger a conversation around those values in local communities.

There is, I think, an early study from UC, Berkeley on the contribution of the Court to the rule of law and a national conversation about the values behind the Rome Statute. I think that expressive side of business at times may be more important than the letter of the deterrent effect because it's based on the long-term effect, and you are contributing to

a values-based global community. In the current times, I think that's more important than ever before.

As I started to say, if we think that our early intervention may lead to avoiding an escalation of violence, we will try to do it. At times, we just do it through a preventive statement. When we see that something is getting out of hand, the prosecutor says, "I remind all parties to this particular situation that I am watching." Now, this may or may not have a deterrent effect. We won't be able to measure it, but I think it's something that we can try to do.

One factor that we will consider in terms of which investigation to open first is whether we may have an impact in terms of deterrent effect and making things better for the civilian population if we intervene earlier instead of doing it six months down the line. These are values that will be considered.

But at the end of the day, the answer to your question is we don't know. We hope that we do have a deterrent effect, but I don't think that the exercise can be judged only on those terms.

ANDREW CAYLEY: It's interesting because I agree with Fabricio. I think deterrence is very difficult to measure, either in an international or a domestic system.

I mentioned already the concept of complementarity. It is a form, actually, of deterrence. In this concept, the national jurisdiction has primacy. The expectation is that these kinds of crimes will be tried by the national courts. The International Criminal Court will only intervene where the national state is unable or unwilling.

Just to emphasize what I said at the beginning of these discussions, I've seen the effects of complementarity within the United Kingdom. It's

very real, actually. So in discussions about the work that we're doing in domestic investigations and prosecutions, that issue is constantly there. It's the elephant in the room. I don't mean that in a bad way, but it relates to questions such as, "How many more resources are we going to put into this? How much more work are we going to do?" Well, we have to do it because we have international treaty obligations that we have to meet because we've signed and ratified the Rome Statute, and if we don't do this, the ICC will intervene potentially. But it's there. I think over the decades and centuries, as that develops, it will be come much stronger.

It's true. Al-Bashir travels extensively, and states don't arrest him, but it's a developing norm. This is a developing norm. I've seen it in my own country, and it works. It's effective. It's seen as a real legal issue in all of those discussions, and I think it's made sure that we've had proper funding and that these things have been taken seriously, partly because of the presence of the ICC and the preliminary examination.

MICHAEL SCHARF: Douglas?

DOUGLAS STRINGER: Just to follow up, in Yugoslavia—maybe I'll be a bit of a devil's advocate here—has the Tribunal had a deterrent effect? The Tribunal was established by the Security Council in 1993. Srebrenica happened in 1995. So the deterrent effect of the establishment of the ICTY is perhaps open to debate.

On the other hand, Andrew and I have worked together on cases where you see the orders of military commanders directing their personnel to follow the Geneva Conventions, not because they expect that the Geneva Conventions will be followed in their military operations, but they're padding their file because they have this idea that it's possible something, somebody, somewhere, someday

could actually be looking at the way in which they directed or undertook a given military operation.

We've seen evidence of commanders doing things in the field, maybe not to actually deter them, but to act in ways that are more constrained or possibly more circumspect, given the possibility that they might find themselves before a tribunal someday.

My point would be that whether we had deterred crimes is not the preeminent thing. And to bring it back to what this conference is about, we have done these cases, we have won them, lost them, or lost them on appeal. Whether we've deterred others or not, I don't know.

What I do know from having had the privilege of working with many, many victims who were witnesses in these cases over the years, is that they provide the opportunity for victims and witnesses to come into a court that they regard as a legitimate international impartial court, where there are judges who care and where there are prosecutors who care. Many witnesses that I've worked with have had that experience. It's very, very beneficial, and what in my mind makes it all worthwhile is the possibility of giving justice to those victims and those witnesses, whether or not we're deterring some crime three, five, or ten years down the road.

MICHAEL SCHARF: The last word goes to Brenda.

BRENDA J. HOLLIS: Just very, very quickly, not all of these orders reflect the cleverness of commanders. At the Special Court, one of the orders that we saw—given in writing by a senior commander to his fighters—was, “Remember, no looting until after we have taken this town.” So not every perpetrator knows that saying less is sometimes saying more.

MICHAEL SCHARF: Final food for thought; one month ago, the Kampala Aggression Amendments came into force. In a year will we be talking about the first investigations launched for the crime of aggression? It's a big question mark.

With that, let me end our panel by thanking Brenda, Fabricio, Andrew, and Douglas, as well as all of you for being here.

[Applause.]

Ferencz Issues Panel: Is the Justice We Seek the Justice They Want?

This panel was convened at 2:30 p.m., on Monday, August 28, 2018, by its moderator Leila Sadat, James Carr Professor of International Criminal Law, Washington University in St. Louis, who introduced the panelists: Catherine Read, Executive Director, North Carolina Commission of Inquiry on Torture; Zainab Bangura, former Special Representative of the UN Secretary-General on Sexual Violence in Conflict; Binta Mansaray, Registrar, Residual Special Court of Sierra Leone; Herman von Hebel, former Registrar, International Criminal Court; and Scott Roehm, Center for Victims of Torture. An edited version of their remarks follows.

LEILA SADAT: So the first question I would like to ask is, in your experience, what kind of remedies or actions do the victims of atrocity crimes seek, and what do they need? That was really the last question that was posed to Mohamedou Ould Slahi, who said, “Nothing. I need to tell my story.” Zainab, why don’t you start us off. What do people want?

ZAINAB BANGURA: Thank you very much. I am going to focus my contribution on victims of sexual violence in conflict. From my experience in dealing with about nineteen to twenty countries, and in talking to victims during my time at the UN, both in Liberia and New York, and then in Sierra Leone, I think when you talk to victims, or survivors, the first thing they demand is justice for crimes that have been perpetrated against them. Therefore, legal remedies to address the prevailing impunity is one thing that they always say is very critical. I think this is very interesting and complicated because we work in a lot of situations after conflicts where the rule of law is nonexistent or the structures do not exist. If they do exist, they are very weak. Of course, the UN has made a lot of effort in our country, including the efforts we made when I was in the UN, supporting the

government to strengthen the national laws and to actually work on that. I will explain that later.

In regard to the second issue, former President Juan Manuel Santos of Colombia was asked, “What did you learn in terms of dealing with the peace process?” The one lesson he learned is to listen to the survivors. They want their story to be heard, and they want acknowledgement. There is such a strong culture of denial and a culture of silence in institutions where there are mass sexual violence atrocities.

When I went to Colombia for the first time, I sat with a group of about ten survivors, and I was listening to them. We had lunch in a restaurant. And as they were talking, telling me some of the stories of what happened to them, I was crying, and they were crying. I didn’t say anything. I just listened to them. And after they finished, they all said, “Thank you so much for listening. You are the first person who actually sat down, didn’t interrupt, and listened to us.” They said, “We so appreciate it.”

The same thing happened with the Yazidis the first time I went to Iraq and met them, because I gave them all the time they needed. I met their prince, I met their high priest, I met all their senior leadership, and I listened to them. I became friends with the Yazidis. I actually was the one who raised a lot of their issues and spoke about what was happening to the Yazidis. I was on the BBC. I had a lot of challenges with a lot of the issues. They said, “Oh, you went to Syria. You only come and talk about the Yazidis.” But nobody knew what was happening to them and all the atrocities taking place. That meant a lot to them, and they even said to me, “You have become our mother.” I became so friendly with their princes and their high priest. I went into their same pool. They took me everywhere because they wanted me to know what happened to them. And I think that’s very important, the acknowledgement. That’s the second thing I think is very important to victims.

The third is the guarantee of non-repetition, and I think this aligns with the Colombian crisis. I was very much involved in the Colombian peace process deal, and with Colombian civil society and the victims. They made sure the guarantor of non-repetition was actually included in the peace deal, because they wanted to make sure it became part and parcel of the framework for the peace process. So they put it in the peace agreement. They said, “We don’t want this to happen to anybody else. We want it to stop. We don’t want any more atrocities. We have suffered. We want our children to have peace.”

And so everywhere I went, I would say, “We want this to stop.” And everybody said, “We don’t want it to be repeated. You have to see what you can do to help us and make sure it stops.” So non-repetition is the third aspect.

You know, Médecins Sans Frontières (MSF) and the other government health services have collapsed. So if you go to a place like the Democratic Republic of the Congo (DRC), Dr. Denis Mukwege has become very important because of the services he provides to those women. He provided care to the women in Guinea, after the mass rape in September in the soccer stadium in Conakry. We worked with him to go to different countries to be able to see these women suffer in silence. The damage that’s caused to these women is unbelievable. They need to go in a massive operation, and so there are lots of women. Just once I had that experience in Uganda where I met a lot of male victims who had been raped. You know, they become a victim a second time. Lots of times the medical services are underfunded and there are lots of countries where you have huge victims of sexual violence.

The fifth one is reparation and livelihood supports. The thing about rape is that once you are raped you are abandoned and you are ostracized. And in most countries in Africa, women don’t have access to property, and they don’t have access to livelihood supports. I went to Somalia where 75 percent of the women in the

camps—there were about 520 internally displaced persons camps in Mogadishu when I visited—have been abandoned by their husbands. They are living a destitute life.

When you talk to a victim of rape, the one thing she will need is help in picking up the pieces of her life and moving on, because she has no means to be able to take care of herself. So the issue of reparations and livelihood support is extremely important for victims of sexual violence.

Last, but not least, is dealing with the stigma associated with rape. There is so much stigma about rape that actually the stigma also kills. The rape ends, the war ends, but the stigma continues. Their families ostracize them, and they abandon them. Their husbands don't want them. I met a woman in DRC who had, I think, five children. Then she was raped and she had a child. And then the families of the husband said, "We are not even sure the five children were brothers." So she was thrown out. There is so much stigma associated with rape, and part of the campaign I was trying to work on when I was in the UN was how to transfer the stigma to the perpetrator instead of the victim. That's why a lot of the time the victims prefer to die in silence than come out and accept that they have been raped. Because you also have the culture of silence and denial, there's so much pressure on a victim.

I remember I had to go to NATO to talk about how we could collaborate in Brussels. One of the assistant secretary-generals of NATO said to me, there was a woman in Croatia who had been raped during the Bosnian War, and she had a child. This child grew up and everybody in the society knew that the child was born out of rape. And people started talking. Then the son who she had before the incident, one day heard this story and came to the mother, and said, "What is this I'm hearing?" And the mother said, "What is it?" "Is it true that my brother was born out of rape?" The mother said, "No," and the son said, "Thank God, because I would have killed him."

So the stigma is not only on the victim. The stigma is on the family. They also carry the stigma in the community. A lot of the time we have to be able to destigmatize the sexual violence and conflict, bring those women into society to accept them, talk about the rape, and get them together with the community to understand that they are victims. A lot of times people believe that, as a woman, she caused the rape. These are the most critical things for a victim that we have to look at. And this is why, in the case of the justice, it's very important to ensure that the transition of the justice process works and the victims know. I saw what they did in Sierra Leone. Once the victims realized the person will be punished, they are prepared to talk and cooperate. I saw it in the DRC with the local courts. The victims were prepared. It's a sign of relief, that at long last, this demon is taken out of my society. He doesn't have power over me.

One of the girls I worked with was sent to Germany, and once she saw the perpetrator in Germany she decided to go back to the refugee camp in Iraq. She couldn't live with the assurances we gave her. She couldn't stay in Germany. She realized this man was free. He could do anything to her. He could do it to her in Iraq, and now she sees him driving a car in Germany. And he recognizes this.

So for victims it is important to capture the perpetrators, so they can look at them. It gives her a sign of relief that something is being done and at least she is free, because otherwise she's a hostage to that victim. Every time she sees his face, she hears his voice, she knows that "I'm not free. I'm not safe." Thank you.

LEILA SADAT: Thank you. So Catherine, what about your experience? What do victims need? What do they want?

CATHERINE READ: Thank you and thanks for having me on this panel. I'm going to focus on the victims, like Mohamedou, of the U.S. rendition, detention, and interrogation (RDI) program,

otherwise really known as a torture program. For those who weren't at the awards ceremony last night, the North Carolina Commission of Inquiry on Torture is investigating the role of North Carolina in that program, and we're very lucky that David Crane is one of our commissioners. Through research undertaken by the (London based) Rendition Project, we have been able to trace at least forty-nine detainees who were rendered using North Carolina facilities, and Mohamedou is one of those detainees.

What's remarkable to me is hearing Zainab's explanation of what the victims in mass atrocity situations overseas want, because it parallels with those victims of the RDI program. Firstly, I should just say that we don't know all the victims of the program. The U.S. government has only admitted, in the 2014 Senate Intelligence Report on Torture, to 119 that were transferred to CIA black sites, like Mohamedou. But there were many more, perhaps hundreds, perhaps thousands, who were transferred to foreign governments, and we don't often have the names of those victims. So the sample that I will give is pretty small, because, of course, there are also other victims that don't want to talk. They don't want to talk about what happened to them, for fear of reprisal. They just want to try and forget.

One of the key items that stands out is this issue of apology and acknowledgement—and obviously that was mentioned by Mohamedou as well—and that sense of healing and dignity that comes from a simple apology from the perpetrators. One victim of the RDI program, Mohamed Bashmilah, spent nineteen months in a CIA black site and tried to commit suicide numerous times. He asked his lawyers in 2014 when the Senate Intelligence Report on Torture and the executive summary were released, “Well, does this mean I'll get an apology now, because it's there in black and white that this happened to me. This was real.” He hasn't received an apology, and neither have any of the other victims, at least from the

U.S. government. Sadly, he died this year in Yemen, and his widow still seeks truth, admission of wrongdoing, and apology.

Another victim of the program, Abou Elkassim Britel, spoke about his desire for an apology: “The wrong has been done, sadly. What I can ask for now is for some form of reparation so I can have a fresh start and try to forget. I want an apology. It’s only fair to say that when someone’s done something wrong that they must apologize.” This stands out strongly among the victims that we speak to.

This year, two of the victims of the forty-nine North Carolina-connected detainees did receive an apology from the U.K. government—two Libyans, Fatima Boudchar and Abdul-Hakim Belhaj. They said, throughout their legal proceedings, that they would not drop them until they got an apology from the U.K. government. That was more important to them even than the reparations and the compensation they were seeking.

Another area that’s been very elusive for victims of the RDI program, as we heard, is this issue of legal remedy. The U.S. courts have stymied any attempts to get legal remedy for victims. The government has always cited the state secrets doctrine. So, really, they’ve had very little recourse. There was one change to that last year regarding two CIA psychologists, Doctors Mitchell and Jessen. The case went further than any case has. These were two psychologists who helped design the RDI program and the learned helplessness techniques that the detainees were subject to. Just before that went to trial they reached a confidential settlement with the three detainees. The statement that came with the confidential agreement included acknowledgement from the doctors that they designed the program, that the methods were coercive, and that it was regrettable that the detainees has suffered the abuse. One of those detainees actually died as a result of his treatment.

That's what's happening in the U.S. courts. There have been trials in Italy, where we've seen Americans convicted in absentia, and in the European Court of Human Rights, which has required other countries that were involved in the RDI program to pay compensation.

So again, on the issue of compensation, there has been nothing from the U.S., but the U.K. had seventeen British citizens who were rounded up as part of the RDI program. The U.K. government put aside 20 million pounds, which is being given out to victims. And as I also mentioned, those two Libyans received some money from the British government, and Canada has apologized. One of the most infamous cases of rendition, Maher Arar (a dual Canadian-Syrian citizen), who was traveling from Syria through New York's JFK, was picked up and tortured. The Canadian government admitted wrongdoing and paid reparations to Maher.

Even after detainees have been released they are still subject to surveillance, they don't have any ability to get legal documentation, and their families are shamed because of their association with the CIA's terrorism program. They're forever branded terrorists. It's hard to get a job, to hold down any type of social life, to get married, to live normally.

We heard about issues seeking medical treatment. There's a huge need for psychosocial services. We'll hear more from Scott about what the Center for Victims of Torture does. But all these victims suffer hugely and need psychosocial services.

I should mention that obviously the RDI program still includes forty detainees at Guantánamo Bay. We don't hear about them so much anymore but there are still forty individuals, many of whom that have not been tried, none of whom who have been brought to justice in Guantánamo, and some of whom who have been cleared for release but are still there. Many are in solitary confinement, and they suffer

even more. You heard that they can't get visits from family. They are in, for all intents and purposes, indefinite detention, which brings with it its own whole set of psychological difficulties, and really no meaningful psychosocial treatment is available to them.

I'll just end on a note from British detainee, Binyam Mohammed. He said, about what he's seeking, "I'm not asking for vengeance, only that the truth should be made known so that nobody in the future should have to endure what I did." It's very similar to what you were saying. Let's educate and speak out so that this doesn't happen to others as well.

LEILA SADAT: Thank you so much. So, Binta, you've worked at the Special Corps for Sierra Leone. You've been sort of on the receiving end of conflict, like Zainab, as well as in the justice-building phase and the accountability phase. Are the institutions that we have sufficient? What's out there, do we need more, and do we need more at the international and national levels? Tell us a little bit about your work and where we need to go.

BINTA MANSARAY: Okay. The question of the adequacy of our current institutions and processes in responding to the kinds of needs that Zainab and Catherine talked about depends on the context. You would not have a universal response that all these institutions had agreed to or not.

In order for us to really discuss this question we need to look at the context on a case-by-case basis. I would respond to the question in the context of the armed conflict in Sierra Leone in the 1990s and based on what the two speakers have said, which is just a tiny fraction of victims or survivors' needs, because you have other categories of victims out there who don't get talked about. For instance, in addition to rape and gang-rape, we had a community in Sierra Leone, called the peacock farm community. I worked with girls in that community. They were adolescent girls who were abducted, forced into combat,

raped, and gang-raped. Then they ended up being bush wives and had children, and went through the experience of stigma we talked about. Their families rejected them. After the disarmament and reintegration process they came back to their communities, but then it was war between them and their parents and family members, because the community looked at them as perpetrators, whereas they saw themselves as victims. So you have those kinds of victims who don't get talked about very much.

But that said, let me discuss the current institutions and their adequacy. I'll provide a quick background; as I said, context matters. In Sierra Leone we had an eleven-year armed conflict, from 1991 to 2002. There was a peace process and a dynamic civil society, actively led by Zainab Bangura and others. We had peace negotiations that culminated in a peace agreement, and the peace agreement had a provision for a truth and reconciliation commission. There was no provision for a retributive justice mechanism. That was a political decision, deemed necessary to give peace a chance, but the people of Sierra Leone wanted the perpetrators to pay for their crimes.

What happened? The peace did not hold, because the perpetrators continued to enjoy impunity. That led to mass demonstrations, which culminated in a nationwide demonstration on May 8, 2000, that led to the deaths of sixteen people. The president at that time was under tremendous pressure because the recalcitrance of the rebels was blamed on the impunity that they continued to enjoy.

Long story short, the president of Sierra Leone requested a special court for Sierra Leone that would prosecute the RUF, who were the rebels, but we ended up having a Special Court that prosecuted all factions, irrespective of which side they fought for. But that was what the people of Sierra Leone wanted. They wanted a truth and reconciliation commission as well a retributive mechanism, whether it was a special court or not, but we ended up having a special court.

Why is that? For some of these survivors they just want an end to war. They just want to pray and forgive because of their faith. But for others—and I would say the majority—as the saying goes, there is no peace without justice, and I mean retributive justice, not restorative justice.

So we have these two mechanisms in Sierra Leone. Their adequacy really should be measured by their performance. The acknowledgement and apology that had been talked about was achieved through the Truth and Reconciliation Commission because perpetrators and victims or survivors were able to tell their stories together, and ask for forgiveness. Whether everybody that needed to tell their story before the Truth Commission had the opportunity to do so is a subject of another discussion. But at least we have that, so people were given the chance to tell their stories, seek apologies, receive apologies, and move on.

The Special Court for Sierra Leone was created at a time of massive lawlessness, a breakdown of the judicial system, and a lack of faith in the national justice system. The people of Sierra Leone were perceiving the Special Court at that time from the lens of a judicial system that was corrupt, and that had no credibility. But what the first prosecutor, David Crane, did was extremely significant. The first indictments were very few, thirteen persons, but it included a head of state, and it included the Deputy Minister of Defense in Sierra Leone. In that region, at that time, no message could have been louder, because it sent a message from the onset that no one was above the law.

The rightness and wrongness of some of those decisions is the subject of another discussion. But it was needed at that time for the victims, and it was needed for confidence-building in the international judicial system, which I would argue contributed a lot to the success of the Special Court for Sierra Leone. But it was also needed for deterrent purposes. I know there was a debate earlier on about deterrence. In our context, in our setting, and according to the performance of this

Special Court, we would argue that this Special Court had a deterrent effect. Of course, deterrence is dynamic. It's not infinite. It is in a particular setting, during a particular time, and we can continue that academic debate. But during that time the deterrent effect of the Special Court was extremely important.

In terms of the adequacy, the establishment of those two institutions (the Truth and Reconciliation Commission and Special Court) was adequate, but they were also supported by national NGOs and community-based organizations that were working on reconciliation and reintegration. So we got it almost right in Sierra Leone as far as that setting is concerned.

Let's move now to the second part of your question. There are many examples but I would just focus on two. Witness protection. Without witnesses you don't have trials. And the Court got it right because we had a robust witness protection scheme that included supporting witnesses and protecting them by using pseudonyms, and allowing in-camera testimonies. There were also safe houses, and all sorts of protections. So that helped the witnesses. It built confidence in the witnesses and in the court.

The other aspect is outreach—engaging with the communities and with the broader population that suffered. Who is a victim? Who is not a victim? From the affected population's perspective it is tough to make this distinction. Through outreach, we struck a balance between witnesses who were testifying before the Court and the broader population who suffered as a result of the armed conflict by engaging with all segments of the population.

I rest my case, I think.

LEILA SADAT: That's fantastic, and the whole point of this is to have a dialogue. And I think what you can hear is there's this national/international partnership. Every time it's successful you have the locals organizing on the ground, often people exposing themselves to great risk, like Zainab and Binta, but you also have international support. And it's really true even with the torture issue as well.

Herman, you get to speak next, and you can tell us about the ICC, because having learned many lessons, the ICC tried to do it differently, right? So tell the audience a little bit how it works and if it's working.

HERMAN VON HEBEL: Exactly. Thank you very much. Let me first of all say that it is a great pleasure, of course, to be here this afternoon, having worked in four different tribunals and now seeing so many friends here still in those different tribunals and courts that I have been working with. The problem with talking after Binta is that we have been working for three years together as Registrar and Deputy Registrar, and we work so closely that we always have the same message that we want to bring. But she got to go first, and, of course, I will have difficulty in finding a different way to say more than just repeating her.

On whether institutions do enough, given the characteristics of the crimes that we are talking about, I think we have to realize that in all those courts and tribunals, including the ICC obviously, you can never do enough. You can never do enough for victims, never do enough for witnesses, and never do enough for the affected communities, given the large-scale suffering that we have been talking about, which is the reason the tribunals have been created. So that, I think, is a fundamental principle that we have to start with.

I will try to focus primarily on the victims. I can see within the ICC three major roles for victims, and the first one is victims as the owners of the process. This comes close to the issue of outreach and

of listening to victims. If you organize trials in order for victims to have a feeling of justice, but you do not engage with victims, in the suffering that they have had, in the role they want to play, and in having them participate and making them see that justice, you are actually missing the point.

I think what has been the frustration—when working for the different courts and when trying to talk to states about budgets and fundraising—is that many states actually didn't see the point of outreach and didn't see how important it was to actually engage people and the affected communities. Actually, the effectiveness of international justice and of those tribunals depends, I think more than 50 percent, on the quality of your outreach activities and the quality of being able to engage victims in your proceedings.

I think the second part—which had been included in the ICC statute itself—is the participation of victims in our proceedings. And like Fabricio, we have been working together in negotiations in different delegations—I was in the Dutch delegation—and we were regularly involved in the discussions about creating a role for victims and participating in the proceedings.

But how little did we actually know about how to do it? It is one thing to say it is important to have victim participation included in the statute. It's another thing to actually realize how you have to do it. And to be perfectly honest, I think so far the ICC has been struggling with it, and has developed practices and learned from its own mistakes, but I think it's still a work in progress. There is a lot more experience now and there are groups of victims that do participate in different proceedings, but I don't think that we are there yet. I think there is a need to develop more and to really make sure that victims can effectively participate.

In particular, when you talk about big groups of victims, I think some of the most important things there are also how to engage them, how to constantly keep them informed about what's going on, and also, from a legal perspective, how to make sure that they can select their own representative in court. I think it is a fundamental right for victims to actually choose their own counsel to represent them in the courtroom.

And the last thing, which is also quite unique within the ICC statute system, is the question of reparations. Within the ICC Statute system you have a Trust Fund for Victims, which I think is quite unique. They have a double mandate—on the one hand an assistance mandate and on the other hand a reparations mandate. To a certain extent, I think there's more for the Court and for the Trust Fund to do in recognizing that the ICC needs the Trust Fund and the Trust Fund needs the ICC. Proceedings, investigations, and prosecutions take a long time. In the meantime, victims have high expectations of what the Court can do, and the longer it takes, the bigger the danger is that victims feel like, "Wait a minute. How long does it take?" There is a point at which people want to see results.

With their assistance mandate, the Trust Fund can focus on more victims and not only those who can participate in the proceedings. They can actually focus on communities in totality. They can actually engage with the victims and address issues of victimization, including victimization in sexual crimes. I've seen projects by the Trust Fund for Victims, for example, in the Eastern Congo, where there are specific projects for women who were sexually abused during the war and where the particular programs aim to develop the capacity for women to have their own economic, independent existence. There are also programs in their own villages with mediation, with communication between men and women, to break through those traditional feelings about the consequences for a woman once she is raped or sexually abused. These are small programs but they actually led to dialogue and more recognition and inclusion for women in their own societies.

That's where the Trust Fund can actually exist and can bring a form of justice in addition to the judicial proceedings.

But I'll stop here as well.

LEILA SADAT: That's fantastic. Is it right that in the *Bemba* case, even with the acquittal, the Trust Fund for Victims was able to assist the 5,000 victims?

HERMAN VON HEBEL: Exactly.

LEILA SADAT: So it does sort of separate out the victimization from the criminal prosecution, which is a nice innovation.

HERMAN VON HEBEL: Absolutely. Yes.

LEILA SADAT: Scott, let's turn to you, because you haven't had an opportunity to speak, and maybe you can tell us about what the Center does. We obviously heard from Mohamedou, and it's pretty hard to top that. But, are there any compelling stories that you've come across in your work as well? And maybe for each of you, have you faced criticism of your work as an American challenging U.S. government policies, or as an individual? Each one of you is a human rights advocate, which is, as Samantha Powers said, like being the skunk at the garden party a lot of times.

So tell us about what you do and your perspective.

SCOTT ROEHM: Sure. Thanks very much, Leila, and thanks everyone for having me. I am a last-minute stand in for our executive director, so bear with me. I'm going to try to wear his hat. I'm going to wear the Center for Victims of Torture (CVT) clinicians' hats for parts of this also in speaking to some of the questions that you raised earlier. In my actual day-to-day work I run CVT's policy

advocacy in Washington, DC, so I also want to make a couple points about some of what Catherine raised as well, with respect to where the U.S. now stands on torture.

To take a step back, the Center for Victims of Torture works with torture survivors, refugees, and asylum-seekers around the world. We have sites in the Middle East in Jordan; in Africa in Kenya, Uganda, and Ethiopia; and here in the U.S. in our headquarters in Minnesota; in Atlanta, Georgia; and Washington, DC, but the DC office just does policy advocacy. Our clinicians see about 20,000 primary and secondary survivors a year, and these are people who have suffered unimaginable pain, both physical and psychological.

I want to speak to some of the questions that have been raised from the perspective of our clinicians' interactions with clients. This is only recently, but we have more intentionally been researching and working with clients on their role in the transitional justice processes, if that's a role they want to have, and how that role can be consistent with their rehabilitations—in other words, not further traumatize them and hopefully prove additionally therapeutic in some fashion. I think there are some insights that have come from that work that I want to speak to in three or four different points.

I think the first is justice tends not to be the first issue on the minds of clients that our clinicians see, at least not in the broader sense that we've been talking about here so far today. They overwhelmingly talk in terms of safety, and that makes sense. The clients in the U.S.—who will have oftentimes recently arrived here, though not always given their experiences with torture—subjectively have a very difficult time feeling a sense of safety. Clients that we see overseas have the same issue and often, just practically speaking, aren't safe in their circumstances. That's the first element of the rehabilitation work as well.

Conversations about justice inevitably happen. They tend to come later on, as part of an ongoing conversation with clinicians about a treatment plan. That's not to say there's not often an immediate visceral sense of anger, injustice, and desire for vengeance. That's all there. Our clinicians tend to try to get survivors to hold onto that feeling, work through it, and process it, as that's a critical piece of the rehabilitation work before getting to the conversations about justice and potential participatory roles.

The second point is that there is a very wide range of views, in our experience, with clients about what justice means to them. And to your question earlier, Leila, I thought I'd just give a few anecdotes that I think help illustrate that range, and some of these you'll notice that details are either vague or anonymized for confidentiality purposes.

We have a group of clients in one of our overseas clinics that were abducted, forced to marry military commanders, and who bore children as a result of rape. They are now returning to villages with those children. These are kids whose fathers may have killed neighbors and family members, and as you can imagine the stigma around them is intense and it's ongoing. Some community members have said to our clients, "How dare you bring that child into our community. His father killed my cousin." One survivor said that she felt she might have to leave because she couldn't handle the extent of the ostracization. She said she just wanted someplace she could go where she wouldn't constantly be harassed or bothered, and that, for her, would be justice.

Another survivor said all she wants is money for her child to be able to get an education, and that if she was able to do that and provide her child that, that would be justice for her. We have Syrian survivors in our clinic in Amman, Jordan, who have said they just want to know the truth. They've had family members disappear, never again to be heard of again, and they want more than anything to know the truth.

We have several clients, also in our clinic in Jordan, who want their experiences documented, very precisely, without exaggeration. Some want their names attached to them; some don't. Some want them to be anonymous. What they want, whether their name is attached to it or not, in the long run, is for people to know what happened as a part of guaranteeing, again, some prospect of non-repetition.

That's just a sample. The range is wide and includes everything else that you've heard on the panel today, but I think the point is more that there are many conceptions of this among survivors, and so getting to what's right for each of them is going to be different in each circumstance.

The third point is that the survivors we have encountered who have had experiences in transitional justice contexts have varied in terms of the quality of their experience. Some have been quite positive. Witnessing or testifying can be a cathartic experience and part of the healing process, but that tends to be true when the survivor can tell a story in a way that's not about shame and humiliation, where the story is about dignity and virtue and reclaiming ownership and power. That tends to be at a point in psychosocial healing where the survivor has processed those memories in a more emotionally healthy state.

Those experiences can also be quite re-traumatizing. They can set the healing process back. We have seen that as well, particularly when survivors aren't able to speak on their own terms and they don't have some degree of control over the process. Control is an issue that you've heard arise several times today.

And that leads to the last point on this set of issues. We've found that an important factor in the nature and quality of survivors' experiences with transitional justice processes is the extent to which those processes are really truly survivor-centered, and in particular, meaningfully integrate mental health and psychosocial services from the beginning going forward.

Reparations was just raised, and there's a good example of this that I want to end on. To the extent that there is mental health and psychosocial support provided through transitional justice processes, it often comes at the end, which is not to say that it isn't important at that point, but it really needs to be integrated at the beginning and throughout. To take a reparations context as an example, our clinicians find that clients/survivors typically describe their experiences in very broad terms in the beginning of their rehabilitation work. They often leave out highly relevant, significant events, typically those that are more shameful and difficult to discuss.

Research over the last five decades on this kind of work has consistently demonstrated that survivors have a very difficult time constructing a clear chronological, detailed narrative, even to their most trusted loved ones, until they have reached a certain point of healing. This is even more true for children or other more vulnerable survivors. And in nearly every case with our clients, shocking new details will emerge in the course of therapy that weren't there at the outset.

So when you think about building a reparations program, one of the key components to that is an assessment of who is eligible and the degree to which people have been victimized in one way or another and a need to assess that. But pressing survivors to access those kind of traumatic memories when they haven't yet had the opportunity to process them and begin to heal, is likely to exacerbate their suffering and their distress and actually not generate the information necessary to build the program.

In practice, that work probably has to be done somewhere midway through the program, which, of course, presents challenges for how you design the program in order for it to be able to do that. These aren't challenges that can't be overcome, but I think that it is an example of the kind of challenge that we need to review at every stage of all of the processes that have been discussed today, and that

will be discussed over the next day and a half. We need to figure out how we can integrate the mental health and psychosocial services into them such that survivors are more routinely having positive, affirming experiences with the processes that will then also make them inevitably more effective.

LEILA SADAT: That was great. We'll come back to you.

Zainab, how about we come back to you. First of all, not everybody was there last night when you told your personal story about how you got into this work. What has it been like for you working in this field, and are there any particular stories about victims that really speak to why you're motivated to keep doing this or that tell us something about what we need to do?

ZAINAB BANGURA: Thank you very much. I think, first, let me talk about the issues of access and justice. I think the international committee has invested a lot of resources into the ad hoc tribunals under the ICC, the Special Court in Sierra Leone, the ICTR, and the ICTY, and that has really helped a lot.

Secondly, we have an international global leader framework with the various resolutions at the Security Council, and one of the problems that I used to talk about when I was in the UN was how we take these resolutions and make them into solutions on the ground. The biggest challenge we have, which I experienced, was the fact that rape and sexual violence in a lot of environments are not crimes. I found that in Azerbaijan, and in a lot of countries, it is a crime against morality, not a crime against a person. You have that technicality.

So one of the first thing I did when I was working at the UN was to have what you would call the team of experts look at the legal framework in a country. Do they have the laws to be able to convict the people? And you would be surprised at what's happening in lots of countries.

I can give you a story in Sierra Leone that is very interesting. Once the Special Court was set up, the U.K. Department for International Development (DFID) started funding justice reform, to be able to make sure that the judiciary could actually work. I said earlier that a lot of the judiciary has collapsed, and the rule of law, in some cases, is very weak. In the case of Sierra Leone, it has collapsed, and in some cases, it's weak.

The DFID found out that all the judges in my country were not actually very often knowledgeable about international humanitarian law. At the time they qualified, human rights was not in the syllabus. So they decided to do training for these judges, and the lawyer they wanted was Abdul Tejan-Cole, who was from Sierra Leone and would be cheaper to have. The judges said, "No way. He's a student in law school. He's like our son. How can he become our teacher?" They refused. So DFID had to actually get people from outside to come and help them. So we went through this process, and we were very shocked. We found out that our own judges actually have very little understanding of international humanitarian law.

The day Samuel Hinga Norman was arrested he was the minister of internal security. He went to work, and, if I'm right, this man, who is in charge of our internal security, was arrested in his office by his own police officers. It was like you threw cold water on the entire country. The news went around. Everybody packed their bags and went home, including my son. Everybody thought that the Kamajors or the police were going to resist, because he was a very powerful person. Nobody thought you could touch him. And he was arrested in his office by his own police.

It sent a message, like Binta was saying, that nobody is above the law. And I can tell you, even today, in my country, when ministers or heads of state say they'll take it to the ICC, they don't even understand the limitation of the ICC. For them that is the only court—the Special

Court is not there anymore—that can hold leaders accountable. And I think these are some of the challenges we have.

I come to the issue of the victim, on the issue of victimization. When I worked in the Middle East one of the things I found very amazing was that the victims of rape were bastard children who cannot be registered by their mothers. Women who are raped and who have children cannot register. In the Middle East I found out that there are a lot of stateless children. I had to work with the new sector general, and actually had to have a conference in Sharjah, which is one of the small Emirate states, to talk about protection. You can't talk about protection in the Middle East.

I met a woman who was raped. She had a child. She wanted to keep the child. The man was prosecuted and jailed. She had to go to jail to marry him so he could give the child a name and register the name. That's very, very challenging. We have thousands of these children in the Middle East who are stateless, and they cannot be registered in Lebanon because their parents come from Syria and they don't have fathers.

Those are some of the challenges. When I worked at the UN the Yazidi were a very isolated community. They were very traditional and very unique. They were trained to believe that you can only have sex with your husband. When thousands of these Yazidi girls were abducted they were turned into sex slaves. They committed suicide. They hanged themselves and everything. The Yazidi have to come together and realize that there have been various genocides against them. They looked at this as a genocide. They wanted to see how they could keep their community intact. They claimed there were 1 million Yazidis around the world. They have to find a way to keep the society intact.

So they actually created a cleansing system for these girls. They raised money, they put everything together, and they worked through

the state to buy the girls back from ISIS fighters. They had to smuggle them out and they helped some of the girls to run away. All sorts of things were done to be able to get these girls. When the girls came, they would take them to the temple. They cleansed them, and they were able to get the girls to believe that the rape was a curse, and that the community had removed the curse from them.

We even have to take on the hospitals and the doctors because they started operating on these girls, saying that they are going to restore their virginity. We have to challenge the medical doctors to stop that. You cannot. You are giving them false hope. But they don't know how to respond because this issue of restoration of their virginity is so important. So the girls were committing suicide by the day. They thought that by doing this operation, they could get them under anesthetic, wake them up, and give them a certificate to celebrate.

We met this woman who was in her 30s. The doctors thought she was too old. And she almost committed suicide. It became a problem.

It's such a huge problem with each of the communities. The society they live in, the environment, and the religion all have an impact, and so that's why it's very important to talk to the victims, so there is understanding. I remember going to the ICC and talking to the fifteen judges about this trust fund. And I said, "To determine how much you give and what you give, you need to talk to the victims. You need to understand what their needs are. You need to find out what can you do." The victims in Iraq, the Yazidis, and the victims in the Middle East, are different from the victims in the DRC. They are all different.

You need to be able to talk to them. Once you listen to them, they know exactly what they want and they will tell you exactly what is possible. Your job is to educate them and tell them, "This is not possible. This I can do." Give them two or three things. You can say, "This is not possible," and then you engage with them. When

you understand them you can help them through the process. It's also part of the healing process for them to accept themselves and stop seeing themselves as victims, but to rather consider themselves survivors. They can pick up the pieces of their life. They can own their children. They can love their children.

I met a woman in DRC. She was raped by five men and she had a baby. After she had the baby, every time she woke up and saw the baby, she saw the faces of the five men, and she tried to strangle the baby. She tried to strangle him, because every time she looked at the face of the baby she saw the five men who raped her. So it was very difficult, and that is where the psychosocial supports are important. I visited different hospitals, which have different challenges with all these women that are unique and special. Rape is so rampant, and it's actually a tactic of war, because we see women as ambassadors of the family of the community. The way you dehumanize a man and dehumanize a community is actually to be able to target the women.

When I went to Syria, the precondition was that I wanted to visit a prison, and the Syrian government didn't want me to. I insisted that if I didn't visit a prison, I wouldn't go anywhere because these women in Jordan, in Turkey, and in Lebanon have been telling me about all the detention facilities. And I had spoken to the Red Cross as well. So I insisted.

They took me to this detention facility at the headquarters of the intelligence unit, and of course they had washed these women. They were sitting there. So I sat down with them and I started talking to them. None of them could talk to me. Tears were just coming down their eyes. They couldn't talk. They were just crying. They were just crying. I spoke to them, and I told them why I had come, and they just couldn't talk. I knew they were all Muslim, so I said to them, "You know, after this trip, I am going on Hajj." One of the women said, "Please pray for us. Please pray for us." I called it a dungeon.

This prison was like three floors down. It had no windows, no lights, nothing. And those women were all sitting there.

I met a woman in Jordan. Her husband was killed in front of her son. When I was talking to all the women in the camp this woman was just looking at me. She was just looking at me. She wasn't saying anything. One of the women whispered to me, "Her husband was killed in front of her son." So I went over to her and I embraced her. I hugged her. And then she started crying. She broke down completely. It was like I connected with her, and I understood what she was saying. I didn't ask her any questions.

I witnessed it in Mali. I met a girl in Timbuktu who was raped by the Tuaregs, or the terrorists in Mali. I sat in the room and I was talking to this victim, and the men were sitting behind them. I then realized the women were not talking because the men were in the room. I said to the officer in charge, "Can I talk to just the women? Let's talk women talk." Meanwhile, my staff had whispered to me, "That girl had been abducted. She had been raped. She was put in prison. They raped her continuously."

So I moved over to her. I held her, and I said, "How are you? You okay?" She said, "Yes." I said, "You look sad. You're not talking." She didn't say anything. So I embraced her. I hugged her. I said, "Come on. Come on. Let's go. Let not talk too much. Let's go to the room." So I walked with her to the office of the staff, the head of the mission in Timbuktu. I told her to sit near me on the couch. She sat near me and I gave her a glass of water. Some of the women were talking. While they were talking she then started talking. She just started talking. She didn't wait for them to finish. And then we whispered to the other women to keep quiet. She told me what happened to her, how she was put in prison, how she was raped every night, and how eventually they left her. Since that time, every time she thinks about

the rape and what happened to her she gets a blackout. So she had to drop out of school, and it was a problem.

She continued talking and then I saw that she was going, and by the time I reached for her, she was on the floor. She blacked out. So we called the doctors. The UN doctors came, and then she woke up. After they tried to pick her up, she woke up. And I told the doctors, "Take her to the hospital." So they took her to the hospital. I finished all the meetings in Timbuktu, and I went to the hospital. The doctor said to me, "She is so traumatized, you need to get her out of this environment. It is important."

So these are just experiences I have had that show how victims react, and what they want and what they need. But there is no money for it. The medical services are lacking. And those are the things for the victims. Thank you.

LEILA SADAT: Thank you. And, Herman, you had a story you wanted to share. We have a few more minutes for the panel and then we'll open it up to questions. If there is something specific that you're thinking of, go ahead. You had a story you wanted to share, and, I think, Binta, you did as well.

HERMAN VON HEBEL: Thanks very much, Leila. This story is a different version of what you were saying, Zainab, but it is indeed about communication with the victims of crimes, and going back to where the crimes have been committed. I was working at the ICC when the *Ongwen* trial was about to get started. Normally, as the registrar, you sit in the courtroom the first day and you listen to the opening statements of the prosecution. This time I actually decided not to sit in the courtroom. I decided I was going to be in Northern Uganda, where the crimes for which Mr. Ongwen is considered to be responsible took place. I went there to actually organize outreach events and talk to local community leaders, et cetera. It's the same

thing with different variants about actually going back to the sources and the areas where the crimes were committed.

The field office that we had over there had organized a big program, and for two days we actually sat down with every single local community leader, religious leader, traditional leader, and civil society organization. We had this one-day-long discussion about what justice means. International tribunals are often criticized for this Western form of justice. So we had this incredibly interesting discussion about what justice means for people.

And the interesting thing is that there is not that much of a difference between what traditional justice means and what we consider justice in the ICC and in the statutes of the other tribunals. It is all about the very same basic concepts. Of course, you may use different words, but at the end of the day it all comes down to the very same basic concepts. It is about recognition for victims, as one of the most important aspects of that.

The next day we actually went to one of the places where Mr. Ongwen was supposed to have committed crimes. It was a completely abandoned area. There was no one living there anymore. But we put up a couple tents and television screens, and we were broadcasting the opening statements by the prosecution. We informed the judges in advance, so they were aware that we were broadcasting this to what turned out to be thousands of people from the area. We organized this at seven different places, and in the place where I was there were at least 5,000 to 6,000 people.

We organized not only the broadcasting, but also an interpretation in the local language, so they actually could understand what was being said by the prosecutor back in The Hague. It was such a powerful event.

I must say, stupid me, I didn't bring my sunglasses, and the rest of the team did, because we were all so overtaken by emotions about the enormous impact that it had, with so many thousands of people there. I was giving a bit of an introductory speech and all that, but it was just so incredibly overwhelming. And at one point there was one woman who came up to one of my assistants and said, "You know what? I'm really sorry but I have to go." I said, "Why is that?" Well, at that very moment she was about to deliver a baby. She wanted to stay there in order to see it, before she actually went, but she couldn't.

It was so powerful for them. It shows how incredibly important it is to bring justice to people in the country, to the victims, and the affected communities. And then, whatever your definition of justice is, it doesn't make that much of a difference.

LEILA SADAT: Binta, maybe you want to say a couple words, and then we'll turn to the audience quickly.

BINTA MANSARAY: I want to underscore the importance of what Herman and Zainab have been saying that the success of transitional justice mechanisms depends on the strength of their outreach programs.

My story relates to the compelling need to have outreach, because transitional justice mechanisms are intended to assist the affected country move from war to peace. And if it is an exercise for the parties and the judges, then it's not worth it. In Sierra Leone we know that to be the case. Building on my civil society activism experience, I designed the Special Court outreach program in a strategic way to achieve the objectives of the court.

Why is that important? The mandate of the Court is that it should bring to justice those who bear the greatest responsibility. Only thirteen persons were indicted. We had over 45,000 ex-combatants living in communities with victims and survivors. When we started

outreach in the early years, one of the frequently asked questions was, “Why is it only those who bear the greatest responsibility?”

So we went around the country and we explained the mandate of the Court. But, the more we explained, the more the question was not going away. So out of frustration one night I said, “What are we saying that is not right? Why are we not able to communicate with the people?” Then I realized that it was not because the people did not understand our message. It’s because they did not accept the message.

So, long story short, that led to the organization of victims’ commemoration conferences around the country, and we brought in the architect of the agreement establishing the Court, the former vice president who was attorney general at that time, and then a representative of the United Nations Office of Legal Affairs. We brought in everybody to explain to the people the personal jurisdiction of the court, which was only those who bear the greatest responsibility.

The prosecutor went around the country to find out from the people who they thought were responsible for the crimes committed. So the names that he indicted, he didn’t get those wrong. No one questioned why they were indicted. But their questions, and their pain, and deep sense of injustice were because they saw all these rank-and-file in their community. For them, those were the ones who bear the greatest responsibility. So they could not understand why they were not indicted.

Through the outreach program we were able to explain and link those who bear the greatest responsibility—the ones the prosecutor indicted—with the rank-and-file by simply trying to explain command responsibility. If you didn’t have Foday Sankoh, if you didn’t have Charles Taylor, if you didn’t have the deputy minister of defense, Hinga Norman, those who were running the war machinery, you would not have had the rank-and-file in the community. In the end, they understood, but they would have liked to have

seen mid-level commanders indicted. They would have liked to have seen rank-and-file indicted.

The point I'm trying to make goes back to the theme of this conference; Is the justice we seek, the justice the people want? And the answer to that is both yes and no. That's where I want to rest my case.

But in the end, the people rallied behind the Court. They accepted the limited mandate, because they understood it. And we were trying to say we have over 45,000 ex-combatants, we have children who fought, and we have women who were abducted and forced into combat. If the prosecutor indicted everyone, all of us would be in the courtroom, because we are all related one way or the other. And people understood that as well.

So that's the end of my story.

LEILA SADAT: That's a wonderful insight. Thank you for sharing.

Do we have questions from the audience?

KATHY ROBERTS: Thanks very much to the panel. This has been such a wonderful discussion, and I really appreciate all that you had to say. I wish I could talk for much longer. I'm Kathy Roberts from the Transitional Justice Clinic. I wanted to appoint myself simply to state the obvious in relation to all of this, which is that there are so, so many victims in the world, the majority whom are not within the jurisdiction of any international tribunal or court. So many people that I have come across in my work, over the years, want some kind of acknowledgement, some kind of recognition, as you said, some kind of justice, perhaps. Maybe all of these things are missing.

When you talk about the adequacy of institutions, I really think it's important that we include in this conversation the concept

of complementarity and the idea that national courts should also be empowered and given the capacity, capability, and courage to have the political will to pursue some of these crimes in their own courts. We have a lot of big, gaping holes in this net right now that just can't be addressed by the institutions we have. I guess I'd like your thoughts on that.

LEILA SADAT: We'll take three or four questions and then go down the line, so we can fit in more questions. Is that okay? Fabricio and then Catherine and then Enid, and then anybody in the back? And then one more.

ATTENDEE: Thank you. I thought it was a terrific panel. Super stimulating. Very thought-provoking, and I think that these are some of the dilemmas that frequently come to haunt us when we are dealing with investigation and prosecution in the aftermath of massive atrocities.

I have two reactions. One relates to the messages from the communities and from the victims' groups. The Office of the Prosecutor is representing the view of the victims, whether you like it or not. We're speaking on your behalf and we will do what's best for you. And undoubtedly, to a large extent, that was a noble and true feeling that was the driving force behind both tribunals.

We met when we were starting our investigation of the crimes committed by the Lord's Resistance Army in Northern Uganda back in 2006. It was a very different landscape with a very divided community, where the leaders and a number of elements in the community were saying, "We want you guys out of here. We want peace. We want to end this conflict. We want reconciliation. We don't want you, so just get out." This was a very sobering experience for us to try to deal with. We had to tackle it up front. We had to have a conversation with the communities because we simply couldn't say,

“Okay, fine. If you don’t want us, we’re leaving.” We had to keep doing our work but we couldn’t brush aside this perspective.

One day one of our teams was in the field and all of a sudden a mother and her little girl showed up, unannounced. The team was interviewing other witnesses. In theory, no one knew that we were in that location at that time. So, why were they there? The mother said, “I want to make it absolutely clear, I do not agree with what you’re doing. I don’t want you guys here. I think that we should have peace and we should not have international justice, but she,” and she pointed to her daughter, “wanted me to bring her over. She wants to talk to you.” She had been an abducted girl and one of the victims of the Lord’s Resistance Army.

The leaders of the community had to accept that there was a rift between what they thought was the best for the community and what the victims wanted. The victims were saying, “We want real justice. We want international justice. We are in favor of this.”

That changed the landscape. We could sit down and have a conversation with the leaders and with the members of the community. Ultimately, I think we’re seeing a very transforming experience in many ways. The complexity remains, though, and I think it’s a lesson that I took away with me. Praise that complexity. Don’t think that you have the answer to all the questions.

Even if we are not going to spare the rape victim the ordeal of facing her rapist in the market because we focus on those most responsible, who are the architects of the campaign of genocide, and we leave that gap, that gap has to be dealt with, because that suffering has to be addressed somehow. Often we won’t be able to provide any real redress for that, but it’s a failure of the project if we can’t give that victim some form of redress. The question, perhaps, is what form of redress can we give? What type of supplementary projects and

initiatives can be undertaken? A trust fund for victims is one, but what other mechanisms can we put in place? There's some experience in the DRC with the mobile rape courts, for instance. Things like that can work but they have to be brought to the forefront, and a number of times they're not. International justice has limitations.

LEILA SADAT: All right. Over here. Catherine. Then we'll go down the line. Scott, we'll start with you for some quick responses to the interjections. Thank you.

ATTENDEE: I'd like to make, first, a comment, if you will allow me, and then I have a question for maybe Binta, based on what Zainab told us about the story of the Yazidis.

My comment is related to Mohamedou and Catherine's account of the situation of those held in the black sites and at Guantánamo. It brought me back to my last experience as ombudsperson, when my last petitioner was actually a man who is still in Guantánamo, who came to me to seek to be delisted from the ISIS and al-Qaeda sanctions list. We've heard Mohamedou saying that he had nothing to do with terrorism. Others have had something to do with it, but that doesn't justify the treatment they went through.

When a man or woman is in that situation I think the glimpse of hope for justice is extremely important to them. In the case that I handled, even I was thinking if that person gets delisted, in the end what is going to change in his life? Probably nothing in reality in terms of actual rights will change, because he will still be detained. But, I can understand that being heard and having a sense that some people actually care about my situation matters. So we need to think of that, as well, in terms of the little opportunities of justice that exist. And justice can be criminal, transitional, and administrative in the case of sanctions.

I was also curious to hear about experiences, either at the Sierra Leone Court or elsewhere, where elders or the religious community play a role in helping victims of rape get reinstated in society or have less stigma and ostracization. I'm a little bit self-interested in understanding how I can actually shape a victim-centered approach. Thank you.

LEILA SADAT: Enid, and was there one more hand? All right, Enid, you have the last question, and then Scott will start.

ATTENDEE: All right. First of all, all I can say is wow. I remember being in Uganda for the review conference and sitting down with some women from Northern Uganda for about two hours, and listening to them. They were telling me about some of the things that they were doing in terms of getting child soldiers back into the community. I listened and I told them that what they were doing was great, and I really meant it. I was very impressed. Zainab, you said a lot about that kind of thing—sitting and listening and saying, “Okay, you’re doing a good job.”

I’ve always been very impressed by what the Trust Fund for Victims has done in getting into the communities and getting rid of the stigma of women who were raped. It seems to me we could take a lesson from that and incorporate it in a much larger sense. You may want to say a little bit more about that.

Then, as part of the ICC coalition, you talked about outreach, getting into the community, and actually livestreaming the proceedings. You discussed doing more of that and encouraging the states parties that this is essential, as well as how to do that on a greater scale and what we can do to help that process. I feel strongly about it, as you do. So what can we do and how can we broaden that within the concept, within the coalition, to encourage it? Thank you.

LEILA SADAT: Wonderful. All right. Scott.

SCOTT ROEHM: Okay. So I'll give a quick reaction to Fabrizio's and Kathy's comment together. The gap may be too big to address, right? Certainly this is the case from the perspective of international mechanisms and likely even from those combined with domestic mechanisms. So where we do have the mechanisms in place, where the atrocities are being addressed, those mechanisms are the outgrowth of the implementation of survivors' rights to justice, participation, and dignity.

We need to make sure, as much as we can, that victims' experiences with those mechanisms proceed in a way that respects their rights, that empowers them, and that helps them rebuild their lives so that they can help in rebuilding society as well.

I know your question/comment was broader than this, but it reminded me of something Catherine said, particularly after listening to Mohamedou's story again. Every time I hear it I have the same sort of visceral reaction. The prospects for justice for Mohamedou, even in his current situation; for other detainees who have been released from Guantánamo; and especially for those who are still there, are so bleak at this point. They have been bleak for a long time. This is not a problem unique to one political party versus the other in the United States, though they are especially bleak now, as everyone knows, under the current administration.

I don't mean to be overly pessimistic about this, but the settlement in the CIA contractor case last year that Catherine mentioned was a very important development for the victims. I think it's important for the idea of civil remedy around any post-9/11 counterterrorism-related abuses, particularly in the context of detention, interrogation, and torture, but the only place we've seen those in the United States is where it's contractors. There has not been a single U.S. government official who has been held accountable in a civil context, and neither has a victim's case made it to the merit stage.

The United States has managed to create impunity around this set of crimes through a whole set of legal doctrines and ways that judges approach national security issues. Never mind if you are a detainee in Guantánamo or outside the U.S., having to get a lawyer and figure out how to file the case. There is essentially no legal route for anyone who's suffered post-9/11 counterterrorism abuses in the United States in the civil context to actually get a government official held accountable. For a country that holds itself out as having one of the most sophisticated legal systems in the world, that is a real problem.

BINTA MANSARAY: Okay. One minute. I agree that national institutions need to be empowered, and that ties in with your question about other accountability mechanisms. There are ways that national institutions could be empowered. For instance, Prosecutor Brenda Hollis has been cooperating with national institutions by assisting them. For other accountability mechanisms there are many ideas about that. But I think we should see more systems like the Gacaca courts, which are grassroots-based and have restorative and punitive dimensions, to complement the international criminal justice system. Thank you.

CATHERINE READ: Thanks. To Scott's point about the U.S. having shut down the legal options, and your point about the failure of institutions, I just want to say that's why the North Carolina Commission of Inquiry exists. This is citizen driven. That's what we can do in a moment like this, when government is impotent. Citizens can do something on accountability.

In terms of the impunity gap, the recommendations that the commission will make include those for citizens themselves to provide some measure of accountability and justice for the victims of the rendition program, because we've just seen this huge failure on the level of all governments, from the lowest level of the state to the national government in the U.S. Hopefully a new avenue is involving citizens and providing some justice.

ZAINAB BANGURA: Thank you very much. I agree in the area of strength in national justice. We had a very good experience in Guinea. It's a long story and I can't repeat it now, but if you want to discuss it later we can talk about it. We were actually able to indict six people: a former head of state, the head of the presidential guard, and the governor of Conakry. I left the office, and they have not succeeded in being able to actually prosecute them at trial.

Somebody spoke about the issue of bringing religious leaders in court and that's a big challenge. When I was dealing with the Middle East, I had two meetings with the Grand Sheik of the al-Azhar University. You know how powerful it is in Sunni Islam, because ISIS had a fatwa to legitimize their raping of women. I traveled across the Middle East, but I wasn't able to get him to write a fatwa. He agreed that we were supposed to have a conference, but it never worked out. I went to Baghdad, and I explained the story of the Yazidis. We worked very well, but we didn't have the same response with regard to Turkmen Shiites. So I met the head of the Turkmen Shiites in Parliament. After two meetings—twice I traveled to Baghdad—he then confirmed to me that he was prepared to do a fatwa, but it had to be sanctioned by Ayatollah Sistani. And unfortunately, when I visited Baghdad, Sistani was very sick. I wasn't able to see him.

I had a Sunni in Baghdad prepare a fatwa. The Sunnis in Erbil—the courts are Sunni—they wouldn't recognize it. So I had to go to the Kurdistan prime minister in Erbil. He then told me the most important Sunnis in that region that I should go to are the ones in Jordan. It is very complicated and complex.

The laws are based on Sharia law, so it is important to be able to make sure we actually work within the limits of the Sharia law. I think that's extremely challenging for us, and those are the problems we have. In the DRC, the culture of denial and silence around sexual

violence is not only on the victims, but even the heads of state, governments, ministers, and communities.

I had to deal with a situation in Colombia where one of the armed leaders of one of the other armed groups was arrested. He confessed to all of the atrocities. He refused to accept the sexual violence. That's the interesting thing. The communities that stigmatize sexual violence don't want to deal with people who are victims. They don't want to be in the community. Families don't want to be associated with it. That's why we have this blanket culture of denial and culture of silence. You have to break the pieces of it to be able to support the victims and assist them. Thank you.

LEILA SADAT: Thank you. Herman, you have the last word.

HERMAN VON HEBEL: Very good, and I will be extremely brief.

First of all, I absolutely agree with you. There are many states, of course, which are not yet, and probably won't be for a long time, states parties to the ICC. But even among states parties it's not necessarily always the case that it will go to the ICC. And let's be frank as well, to what extent are states parties willing to really put up a bill in order for the Court to really be able to take up so many more cases? The ability, and, more importantly, the willingness to do so, is absolutely not present.

Indeed, I think for the future what is important is to focus more on what national jurisdictions can do, and I think it requires a lot of assistance from experts—from the Court but also from outside—to actually strengthen the capacity and the resources of states to actually do so.

Fabricio, you are actually right. In 2006, that was such a hotly debated issue. And what you experienced in 2006 and what I experienced at the end of 2015 was nine years of the Court staff's hard work

based in Uganda and in Northern Uganda to actually continue to have the discussion. I think it was one of the most important aspects over there, and it goes also with your story, Binta, about your activities in Freetown in Sierra Leone.

One of the most important breakthroughs was that we had staff in the courts who actually came from Northern Uganda and were speaking the same language. What I heard that day, when I was talking to all those leaders, was constantly, “You have one of our children working with you, and that is why we believe that this can work.” That is so incredibly important. It’s easy for me, and for you, to go to Uganda, but it takes people from the region, from the country, or from the villages themselves to make that link. I think that’s incredibly important.

The last thing is that the willingness of states to recognize how important outreach is, is very limited, frankly speaking. We have seen it so many times, such as when fundraising for the Special Court for Sierra Leone in New York, and people were saying, “We do support you but don’t come to me and ask for money for outreach because it’s not part of your mandate.” It’s ridiculous. It’s a very limited view of what justice means. And again, it is so important to make sure that outreach is an integral part of your work because that determines, to a large extent, the effectiveness of your operations.

The Trust Fund does fantastic work and I think, there again, it’s about resources that determine the amount of work that they can put in, and there should be more for that. Thank you very much.

LEILA SADAT: Please join me in thanking our amazing panel.

[Applause.]

Conclusion

Conclusion

David M. Crane*

*As human beings we have the most extraordinary capacity for evil.
We can perpetrate some of the most horrendous atrocities.*

- Desmond Tutu

Thus, the 12th International Humanitarian Dialogs come to a close. This is the last of the “dialog” format. In 2019, the format will shift to a “roundtable,” a new and innovative move to keep the dialogs fresh and meaningful. The thirteenth year of this historic convocation will be called the International Humanitarian Law Roundtable, and will be held August 25–27, 2019. It will focus on accountability in the changing political environment of populism/nationalism in the 21st century.

This twelfth dialog was an impressive end to the dialog format. Each participant came away with a new sense of camaraderie and a renewed focus on seeking justice in a kaleidoscopic world. This dialog focused on victims and their stories. Each participant sought to answer this question: “Is the justice we seek, the justice they want?” It is a question I coined and tried to answer back when I was Chief Prosecutor of the Special Court for Sierra Leone. It was important for us to answer this question honestly during this dialog.

Modern international criminal law has not done a good job in focusing on the victims. The various ad hoc tribunals brought victim concerns to their agenda late in the game. The International Criminal Court also has a somewhat neutral record regarding victim’s concerns. As I told my office in Sierra Leone, it is always for and about the victims. If we lose that thread, we are wasting our time.

* Founding Chief Prosecutor Special Court for Sierra Leone; Principal Justice Consultancy International; Executive Director and Professor, Global Social Justice Practice Academy at Ohio University. Distinguished Scholar in Residence, Syracuse University College of Law.

The United Nations and the international community writ large tend to step over the victims and focus on the mandate of the justice mechanism. There has only been one international tribunal that focused completely on the victims, and that was the Special Court for Sierra Leone. Examples of this focus include the Outreach Program and the Witness Management Program, both of which were part of my general strategy from the very beginning of our work in West Africa. It worked, and the Special Court for Sierra Leone is considered to be one of the most successful of the modern tribunals because of this victim focus.

In an age of the strongman and the waning of the age of accountability, justice for victims seems to be as elusive as ever. At least in the age of accountability, begun in the early 1990's, mankind made amazing strides in developing the modern international criminal law system, which I helped found with many of the participants at the 12th IHL Dialogs. As the world turns away from established international institutions and organizations forged from the fires of World War II, this new populism with a focus on nationalism augers poorly for the future and counters many of the gains made in that age of accountability. Yet the atrocities continue, somewhat enabled by the various dictators, thugs, and presidents, among others. It is a dangerous time for international peace and security and for seeking justice for victims of atrocity in South Sudan, Syria, Yemen, and Myanmar, just to name a few.

The 12th IHL Dialogs had a balanced yet frank discussion about how we are treating victims with commentary by those who have been in the trenches fighting for justice, but also by victims themselves and their blunt accusations that we have failed them in large part. This is particularly so concerning those who suffered under various anti-terrorist campaigns led by the United States and the infamous rendition program established after the 9/11 attacks. The victims of that program remain largely ignored, forgotten, and in various cases

permanently incarcerated. It is a true black mark on the United States, but also for mankind who looks the other way.

The substance of this important volume captures that frank discussion and causes the reader to face an unpleasant reality in the perspective of Desmond Tutu and his quote at the beginning of this conclusion. Did the IHL Dialogs answer the question “is the justice we seek the justice they want?” The answer is no, yet it was an acknowledgement by the participants and the sponsors that there must be a renewed focus on the question and an effort to keep up the momentum of the past age of accountability to seek justice for those victims.

Once again it must be pointed out that these dialogs (soon to be the roundtable) over these many years cannot happen without the enthusiastic and important substantive and financial support of so many wonderful sponsors who have been with the dialogs almost the entire thirteen years of this historic gathering. Thanks go out to: the American Bar Association; the American Red Cross; the American Society of International Law; Case Western Reserve School of Law and their Global Justice Programs; Impunity Watch, Syracuse University College of Law; the IntLawGrrls; the International Bar Associations; New York University Center for Global Affairs; the Planethood Foundation; the Public International Law & Policy Group; Oxford University Press; the United States Holocaust Memorial Museum; the Robert H. Jackson Center; and the Whitney R. Harris Institute, Washington University in St. Louis School of Law.

I will close this chapter with the words of George Orwell, so prescient in this age of the strongman: “The nationalist not only does not disapprove of atrocities committed by his own side, but he has a remarkable capacity for not even hearing about them.”

Appendices

Appendix I

Agenda of the Twelfth International Humanitarian Law Dialogs August 26–28, 2018

Sunday 26 August

- 2:00 p.m. **Screening of “500 Years”**
With the Executive Producer Paco de Onis
At Chautauqua Cinema
- 4:30 p.m. **Movement to Robert H. Jackson Center**
Depart from Hotel Lobby
- 5:15 p.m. **Reception and Dinner**
Hosted by the Robert H.
Jackson Center (*Invitation Only*)
- The Heintz Humanitarian Award Ceremony**
Recipients Allyson Caison, North Carolina Stop
Torture Now, and Christina Cowger, North
Carolina Commission of Inquiry on Torture
Presented by Joshua Heintz.
- “A Conversation with Zainab Bangura”**
Led by Greg Peterson
- 8:00 p.m. **Return to the Hotel**
Informal reception on the porches

Monday 27 August

- 7:30 a.m. **Breakfast with the Prosecutors**
- 8:30 a.m. **Movement to Fletcher Hall**
- 9:00 a.m. **Welcome**
Remembrance of the
Rt. Hon. Sir Desmond de Silva Q.C.
- 9:15 a.m. **The Impunity Watch Essay Contest
Award Ceremony**
- 9:25 a.m. **Keynote Address**
Ambassador Stephen J. Rapp, Former Prosecutor
Special Court for Sierra Leone and Former U.S.
Ambassador-at-Large for Global Criminal Justice.
- 10:00 a.m. **Break**
- 10:30 a.m. **Reflections by the Current Prosecutors**
Moderated by Dean Michael Scharf
- 12:00 p.m. **Movement to the Hotel**
- 12:15 p.m. **Lunch**
- 1:00 p.m. **Movement to Fletcher Hall**

- 1:30 p.m. **Luncheon Speaker: The Clara Barton Lecture**
Mohamedou Ould Slahi, author
of *Guantanamo Diary*, via Skype
Introduction by Randy Bagwell, American Red Cross
- 2:30 p.m. **Ferencz Issues Panel: Is the Justice
We Seek the Justice They Want?**
Moderated by Leila Sadat
- 4:00 p.m. **Movement to Hotel**
- 4:15 p.m. **Prosecutor/Student Session**
Prosecutors and students only
- 6:00 p.m. **Formal Reception on the Porches**
- 6:30 p.m. **Dinner**
- 7:30 p.m. **Dinner Speaker: The Katherine B. Fite Lecture**
Catherine Marchi-Uhel, International,
Impartial and Independent Mechanism
Introduction by Professor Milena Sterio, IntLawGrrls
- 8:30 p.m. **Informal Reception on the Porches**
Music provided by Dean Michael Scharf and others

Tuesday 28 August

- 7:45 a.m. **Breakfast with the Prosecutors**
- 8:00 a.m. **Breakfast Speaker**
Professor Jennifer Trahan, “Legal Limits to the Veto
in the Face of Atrocity Crimes”
- 9:00 a.m. **Prosecutors draft the 11th
Chautauqua Declaration** (*Private*)
- 9:00 a.m. **Year in Review**
Professor Valerie Oosterveld
Presbyterian Hall
- 10:30 a.m. **Break**
- 11:00 a.m. **Porch Breakout Sessions:**
#1: PILPG, Victims-Child Soldiers
#2: ABA, Victims-Syria-The Caesar Report
#3: North Carolina Commission of Inquiry
on Torture Report
#4: INTLAWGRRLS, Victims and
International Criminal Tribunals
- 12:30 p.m. **Lunch**
- 1:00 p.m. **Luncheon Speaker**
Ishmael Beah, former child soldier
and author of “A Long Way Gone”
- 2:00 p.m. **Break**

2:30 p.m. **The Issuance of the 11th Chautauqua Declaration**

Moderated by Alberto Mora,
American Bar Association

3:00 p.m. **The 12th IHL Dialogs Conclude**

5:00 p.m. **Dinner Cruise** (*Invitation only*)

Hosted by Dean Michael Scharf

Informal reception on the porches follows

Appendix II

The Eleventh Chautauqua Declaration August 28, 2018

In the spirit of humanity and peace the assembled current and former international prosecutors and their representatives here at the Chautauqua Institution...

Recognizing the continuing need for justice and the rule of law as the foundation of international peace and security, and cognizant of the legacy of all those who preceded us at Nuremberg and elsewhere:

Commend Allyson Caison and Christina Cowger, leaders of North Carolina Stop Torture Now, as the tenth recipients of the Joshua Heintz Humanitarian Award for their important and impressive service to humanity;

Note with sadness the passing of Kofi Annan and The Right Honorable Sir Desmond DeSilva, QC and commend their long-term service to international peace and security;

Note with great concern the use of the Security Council veto to block appropriate responses to atrocity crimes and obstruct the efforts to provide justice to victims;

Welcome and commend the innovative approaches by national and international bodies to coordinate efforts to provide access to justice for victims of atrocity crimes;

Commend the international community for creating the International Impartial Independent Mechanism for Syria;

Note the right of all members of the global community to be protected and the obligation of States to protect all victims of atrocity crimes and provide access to justice at both the national and international level;

Commend the important contributions of the International Criminal Tribunal of the Former Yugoslavia, which ceased its operations on December 31, 2017, to international criminal justice and the development of international criminal law;

Note the ongoing work of the Extraordinary Chambers in the Courts of Cambodia and the challenges it continues to face;

Recall the importance of the 20th anniversary of the adoption of the Rome Statute and the International Criminal Court in the fight against impunity for atrocity crimes and the strengthening of a rules-based global order;

Note the importance of supporting the continuing legal obligations of the international courts and tribunals as they enter into their residual phases; and

Note with regret the failure of some States to address past and ongoing violations of international and national law.

Now do solemnly declare and call upon the international community to keep the spirit of the Nuremberg Principles alive by:

Ratifying and joining the International Criminal Court family of nations with the ultimate goal of achieving universality;

Ensuring that all States Parties to the Rome Statute fully support and cooperate with the International Criminal Court, and fully comply with their statutory

obligations, including through the provision of adequate resources and the timely arrest and surrender of suspects against whom arrest warrants have been issued;

Supporting grassroots efforts, which contribute significantly to the fight against impunity and provide redress to victims of atrocity;

Fully funding mechanisms that are carrying out the continuing legal obligations of the international courts and tribunals until the conclusion of their mandates; and

Utilizing the work of initiatives such as the International Impartial Independent Mechanism for Syria as a basis for domestic prosecutions of atrocity crimes.

Signed in Mutual Witness:



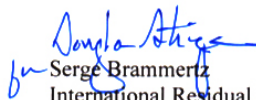
David M. Crane
Special Court for Sierra Leone



Fatou Bensouda
International Criminal Court



Brenda J. Hollis
Residual Special Court for
Sierra Leone



Serge Brammertz
International Residual Mechanism for
Criminal Tribunals

Appendix III

Biographies of the Prosecutors and Participants

Prosecutors

Andrew T. Cayley

Andrew Cayley currently serves as Director of Service Prosecutions, Service Prosecuting Authority, where he is head of the independent prosecuting authority of the United Kingdom armed forces. Mr. Cayley was appointed as Director in December of 2013 by HM Queen Elizabeth II. Previously, he was appointed as Chief International Co-Prosecutor of the ECCC in December 2009, and remained until September of 2013. Mr. Cayley previously served as Senior Prosecuting Counsel at the International Criminal Court and was responsible for the first Darfur case. From 1995 to 2005 he served as Senior Prosecuting Counsel and Prosecuting Counsel at the International Criminal Tribunal for the former Yugoslavia where he worked on cases arising from the armed conflicts in Bosnia-Herzegovina, Kosovo and Croatia, including the first prosecution for events at Srebrenica in July 1995. He served in the British army from 1991 to 1998, retiring in 1998 as a major. He is a barrister and now a Governing Bencher of the Honourable Society of the Inner Temple. He was appointed Queen's Counsel in 2012, and was appointed a Companion of the Order of St Michael and St George (CMG) for his services to international criminal law and human rights in the 2014 Queen's birthday honours list. He holds an LL.B and an LL.M from University College London. He attended officer training at the Royal Military Academy Sandhurst.

David M. Crane

David Crane is a retired Professor of Practice at Syracuse University College of Law. From 2002 to 2005, he served as the Prosecutor for the Special Court for Sierra Leone (SCSL) and indicted former Liberian President Charles Taylor for his role in the atrocities committed during the Civil War in Sierra Leone. Professor Crane was the first American

since Justice Robert H. Jackson and Telford Taylor at the Nuremberg trials in 1945, to serve as the Chief Prosecutor of an international war crimes tribunal. While at Syracuse, he founded and advised Impunity Watch (www.impunitywatch.com), a law review and public service blog. Previously, he served for over 30 years in the federal government of the United States. He was appointed to the Senior Executive Service of the United States in 1997, and held numerous key managerial and leadership positions during his more than three decades of public service. Professor Crane founded both the Syrian and Yemeni Accountability Projects. He currently is a Principal at Justice Consultancy International, LLC. Most recently, the President of the Human Rights Council appointed Professor Crane as Chair of the Independent International Commission of Inquiry to investigate alleged violations of international law in the context of large-scale civilian protests in the Occupied Palestinian Territory, including East Jerusalem.

Fabicio Guariglia

In October 2014, Fabricio Guariglia assumed the role Director of the Prosecution Division of the International Criminal Court. Previously, he held senior positions within the Prosecution Division, including Senior Appeals Counsel, Head of the Appeals Section, and Prosecutions Coordinator. Prior to joining the International Criminal Court, Mr. Guariglia was a member of the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia beginning in 1998, first as a Legal Officer in the Legal Advisory Section and subsequently as Appeals Counsel in the then shared ICTY/ICTR Appeals Section. Between 2003 and early 2004, Dr. Guariglia was a visiting fellow in London School of Economics, where he taught International Criminal Law and Public International Law. As a Legal Advisor to the Argentine Ministry of Justice from 1995 to 1998, he advised on domestic criminal legislation and international criminal law matters, and was closely involved in the process of negotiation of the Rome Statute including during the Rome Conference. Dr. Guariglia practiced law as a defense counsel and

victims representative in criminal cases in Buenos Aires from 1989 to 1995, and was also involved in various human rights and rule of law projects in post-civil war El Salvador during 1992 and 1993. Dr. Fabricio Guariglia has a law degree from the University of Buenos Aires (Argentina) and a PhD (Summa Cum Laude) in criminal law from the University of Münster (Germany).

Brenda J. Hollis

In February 2014, the Secretary-General of the United Nations appointed Brenda J. Hollis Prosecutor of the Residual Special Court for Sierra Leone, having served as Prosecutor of the Special Court for Sierra Leone from February 2010 until its closure in December 2013. She had been extensively involved in the training of judges, prosecutors, and investigators for work with the International Criminal Tribunals. She served as Senior Trial Attorney from 1994 until 2001 at the International Criminal Tribunal for the former Yugoslavia, and assisted the Office of the Prosecutor at the International Criminal Tribunal for Rwanda. Prosecutor Hollis served for more than 20 years in the United States Air Force, retiring in 1998 with the rank of Colonel. Prior to her Air Force service, she served as a Peace Corps volunteer in West Africa. She is currently a Principal at Justice Consultancy International, LLC.

Hassan Jallow

Hassan Jallow currently serves as the President of the Supreme Court in The Gambia, a post he assumed in 2017. Prior to that post, he served as the Prosecutor of the International Criminal Tribunal for Rwanda, from 2003 to the Court's closing. Beginning in 2012, he concurrently served as the Prosecutor of the Residual Mechanism for International Criminal Tribunals. Prosecutor Jallow previously worked in the Gambia as the State Attorney from 1976 until 1982, when he was appointed Solicitor General. In 1984, Mr. Jallow served as Attorney General and Minister of Justice for the Gambia, then, in 1994, he was appointed as a justice of the Supreme Court of The Gambia. From 2002 until

2003, Prosecutor Jallow served as a Judge in the Appeals Chamber of the Special Court for Sierra Leone.

Robert Petit

Robert Petit was called to the Bar in 1988 and started his legal career as a Crown Prosecutor in Montreal for eight years eventually focusing on organized criminality and complex cases. In 1996, he embarked on an international career first as a Legal Officer in the Office of the Prosecutor of the International Criminal Tribunal for Rwanda. Subsequently between 1999 and 2004, he was a Regional Legal Advisor for the United Nations Interim Administration Mission in Kosovo, a Prosecutor for the Serious Crimes Unit of the United Nations Missions of Support to East Timor, and a Senior Trial Attorney with the Office of the Prosecutor of the Special Court for Sierra Leone. In 2006, the United Nations named him the International Co-Prosecutor of the Extraordinary Chambers in the Courts of Cambodia, a position he held until September 2009 when he returned to Canada and to his long-term position as Counsel & Team Leader with the War Crimes Section of Canada's Federal Dept. of Justice. Mr. Petit is on leave from that post because the Secretary General of the UN appointed him Senior Official to lead the Follow on Mechanism for the Democratic Republic of Congo.

Stephen J. Rapp

Ambassador Rapp is a distinguished fellow at the Center for Prevention of Genocide at the US Holocaust Memorial Museum working to strengthen the capacity of human rights inquiries to document mass atrocities. He served as US ambassador-at-large for global criminal justice from 2009 to 2015 coordinating US support to international criminal tribunals and hybrid and national courts responsible for prosecuting persons charged with genocide, war crimes, and crimes against humanity. He was credited with arranging UN Commission of Inquiry and other prosecutorial authorities' access to 55,000 photos documenting torture by the Assad regime. From 2007 to 2009, he served

as prosecutor of the SCSL, leading the prosecution of former Liberian President Charles Taylor. His office achieved the first convictions in history on crimes against humanity charges for sexual slavery and forced marriage and for attacks on peacekeepers and recruitment and use of child soldiers as violations of international humanitarian law. From 2001 to 2007, he served as senior trial attorney and chief of prosecutions at the ICTR, where he led the trial team that achieved the first convictions in history against leaders of the mass media for the crime of direct and public incitement to commit genocide. He was the United States Attorney for the Northern District of Iowa from 1993 to 2001. He received a BA from Harvard College and a JD from Drake University Law School.

Douglas Stringer

Douglas Stringer has been a Senior Trial Attorney (STA) with the Office of the Prosecutor at the ICTY/IRMICT since 2007. He is currently leading the Prosecution team in the trial of *Prosecutor v. Jovica Stanišić and Franko Simatović*, and was previously the STA in the *Prosecutor v. Hadžić* and *Prosecutor v. Prlić et al.* trials. He was Senior Appeals Counsel in the appeals in the *Prosecutor v. Gotovina* and the *Prlić, et al.* cases. Mr. Stringer was a Trial Attorney with the Office of the Prosecutor from 1997-2002, and worked as an International Prosecutor in Kosovo (2004) and in Sarajevo (2005). A practicing lawyer since 1984, Mr. Stringer is a former white-collar crime prosecutor with the U.S. Department of Justice, and in private practice, he specialized in white-collar criminal defense and complex litigation. He conducted numerous jury trials in US federal courts and practiced extensively at the federal appellate level. He is a member of the bar of the State of Oregon, the U.S. Court of Appeals for the Ninth Circuit, and the U.S. Supreme Court.

Speakers, Panelists, and Sponsors

Mark D. Agrast

Mr. Agrast is the Executive Director of The American Society of International Law (ASIL). He previously served as deputy assistant attorney general in the U.S. Department of Justice's Office of Legislative Affairs from 2009 to 2014. Mr. Agrast was a senior vice president and senior fellow at the Center for American Progress from 2003 to 2009, and held senior staff positions with the U.S. House of Representatives from 1992 to 2009. He practiced international law with the Washington office of Jones Day from 1985 to 1992. Mr. Agrast has served in numerous leadership capacities in the American Bar Association, including as a member of its Board of Governors and its Executive Committee, a longtime member of the ABA House of Delegates, chair of the Commission on Immigration and the Section of Individual Rights and Responsibilities (now the Section of Civil Rights and Social Justice), and chair of the Commission on Disability Rights. He currently serves on the Council of the Section of International Law and as a member of the Center for Racial and Ethnic Diversity. After graduating from Case Western Reserve University, Mr. Agrast pursued his post-graduate studies as a Rhodes Scholar at the University of Oxford and received his J.D. from Yale Law School where he was editor in chief of the Yale Journal of International Law.

Randy Bagwell

Randy Bagwell joined the American Red Cross after more than thirty years of service as a Judge Advocate General (JAG) Officer in the U.S. Army. As a legal advisor for the Army, Randy performed duties ranging from prosecuting and defending criminal cases to advising on administrative and regulatory matters, however, his specialty, and the majority of his assignments, were in International Humanitarian Law (IHL). Randy has taught IHL at the U.S. Naval War College, the U.S. Army JAG School, the Defense Institute of International Legal Studies, the NATO School and the Institute of International Humanitarian

Law in Sanremo, Italy. He has also instructed on IHL with partner nations in over 20 countries. Additionally, he has advised senior military commanders on IHL during operational deployments to Hungary in support of Operations in Bosnia, two tours in Afghanistan and one in Iraq. His degrees include a Bachelor Science in Business Administration, Master of Arts in National Policy and Strategic Studies, a Juris Doctor, and Masters of Laws (LL.M.) in Military Law. Prior to joining the Red Cross, Randy held the position of Dean of the Army's Judge Advocate General's School—the U.S. Army JAG School the only American Bar Association accredited law school in the U.S. Government—in Charlottesville, Virginia.

Zainab Bangura

Mrs. Zainab Hawa Bangura has nearly 30 years of policy, diplomatic and practical experience in the field of insurance, governance, conflict resolution; including conflict and post conflict countries around the world. Her early beginnings in the field of insurance soon gave way to a lifetime devoted to social development, governance, international co-operation, conflict-resolution, accountability and peacekeeping. Ms. Bangura is a dynamic civil society and human rights campaigner and pro-democracy activist, with in-depth knowledge of and insight into sexual- and gender-based violence. Indeed, she has wide-ranging experience of engaging with state and non-state actors, including rebel groups, on sexual-violence-related issues. Her unrelenting commitment to women's rights, democracy and the fight against corruption and impunity is eloquently borne out by her record as Executive Director of the National Accountability Group (now Transparency International (SL) Ltd), and Coordinator and Co-founder of the Campaign for Good Governance of Sierra Leone. After a 2-year stint heading up the Civil Affairs Section of the United Nations Mission in Liberia, Ms. Bangura became only the second woman ever to hold the post of Minister of Foreign Affairs and International Co-operation of Sierra Leone, in which capacity she also acted as Chief Adviser and Spokesperson of the President on bilateral and international

issues. These initial three years in office were followed by a further two as the country's Minister of Health and Sanitation, before being appointed United Nations Special Representative of the UN Secretary General on Sexual Violence in Conflict, a position she was to retain until March 2017, during which time she also served as Chair of the interagency network, UN Action Against Sexual Violence in Conflict. In recognition of the selfless -and seemingly- tireless contribution that she has made over the course of her life, Zainab Bangura has received numerous awards including: the Africa International Award of Merit for Leadership, the Reagan-Fascell Democracy Fellowship, the Bayard Rustin Humanitarian Award, the Human Rights Award from the Lawyers Committee for Human Rights, the National Endowment for Democracy's Democracy Award, the African American Institute's Distinguished Alumna Award and five Honorary Doctorate Degrees from both the UK and USA.

Ishmael Beah

Ishmael Beah, born in Sierra Leone, is the New York Times bestselling author of *A Long Way Gone, Memoirs of a Boy Soldier* and *Radiance of Tomorrow, A Novel*. His Memoir is published in over 40 languages and was nominated for a Quill Award in the Best Debut Author category for 2007. Time Magazine ranked the book third in its Top 10 Nonfiction books of 2007. He wrote *A Long Way Gone* with the gentle lyricism of a dream and the moral clarity of a fable; it is a powerful book about preserving what means the most to us, even in uncertain times. The New York Times called in his writing an "allegorical richness" and a "remarkable humanity to his [Beah's] characters". Riverhead will publish his third book *The Lively Skeletons of Every Season, A Novel*, in early 2019. Among other titles, Beah is UNICEF Ambassador and Advocate for Children Affected by war. He lives in Los Angeles, California, with his wife and children.

Andrew Beiter

Andrew Beiter is an 8th Grade American History Teacher at Springville

Middle School outside of Buffalo, New York. He is also the Director of the Summer Institute for Human Rights of Buffalo, a Regional Education Coordinator for the U.S. Holocaust Memorial Museum and the Board President for the Educators' Institute for Human Rights, an organization designed to provide Holocaust and human rights education to educators in former conflict zones, including Rwanda, Bosnia, and Cambodia. A Regional Education Coordinator for the United States Holocaust Memorial Museum, Mr. Beiter also serves as a Teacher Fellow for the Lowell Milken Center for Tolerance in Kansas, and as a consultant for the Holocaust Resource Center of Buffalo.

Paco de Onis

Paco de Onis grew up in several Latin American countries during a time of dictatorships. He is the Executive Director and Executive Producer of Skylight, a human rights media organization dedicated to advancing social justice through storytelling, by creating documentary films and innovative media tools applied in long-term strategies for positive social change. One of these long-term strategies is Skylight SolidariLabs, a program designed to disseminate Skylight's innovative model for creating human rights media ecosystems in conjunction with committed media makers, artists, technologists and movement organizations, with the aim of building enduring networks of 21st century human rights practitioners. Paco's film producing credits include 500 YEARS, Granito: How to Nail a Dictator, Rebel Citizen, Disruption, State of Fear, and The Reckoning.

Yvonne M. Dutton

Yvonne M. Dutton joined the Robert H. McKinney School of Law faculty in August 2012. She is an Associate Professor of Law teaching evidence, criminal law, international criminal law, federal criminal law, and criminal procedure. Professor Dutton graduated from Columbia Law. After graduation, Professor Dutton clerked for the Honorable William C. Conner, United States District Judge for the Southern District of New York. Dutton also prosecuted narcotics trafficking and

organized crime cases as a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York. She also practiced as a civil litigator in law firms in New York and California (including Wachtell, Lipton, Rosen & Katz and Gibson, Dunn & Crutcher). Professor Dutton's research interests include international criminal law, international human rights law, and maritime piracy. Broadly speaking, her scholarship examines questions about international cooperation and the role and effectiveness of international institutions in deterring and holding accountable those who commit crimes of international concern. Dutton has published her research in a variety of law reviews. In May 2013, Routledge published her book *Rules, Politics, and the International Criminal Court: Committing to the Court*.

Megan Fairlie

Megan Fairlie earned her J.D. from Washington and Lee University, cum laude. Professor Fairlie's earned the degree of Ph.D. in International Human Rights Law in June 2007, and previously earned an L.L.M in International Peace Support Operations, from National University of Ireland, Galway. From 2007-2009, Dr. Fairlie was part of an expert group, organized by the Amsterdam Centre for International Law and The Hague Institute for the Internalisation of Law, whose focus was the progressive development of a coherent body of international criminal procedure. Professor Fairlie sits on the board of Self Help Africa-USA, a non-profit organization committed to empowering communities in rural Africa. Fairlie teaches criminal law, criminal procedure, international criminal law, professional responsibility and seminars on international criminal procedure and the International Criminal Court.

Curt Goering

Founded in 1985 as the first torture rehabilitation center in the US, the Center for Victims of Torture (CTV) works in Minnesota and worldwide to heal lives devastated by torture. Starting in May 2012 as the executive director of the Center for Victims of Torture, Mr.

Goering oversees an international staff with offices in St. Paul, Minneapolis, Washington D.C. and healing projects in Africa and the Middle East. Prior to CTV, he worked as the Chief Operating Officer at Amnesty International USA. He worked for Amnesty for nearly 30 years holding positions including advocacy director for Europe and the Middle East, Senior Deputy Executive Director, and COO. In 2009-2010, Goering served as an interim Head of the Gaza office for the UN High Commissioner for Human Rights.

James C. Johnson

James C. Johnson serves as Director of the Henry T. King Jr. War Crimes Research Office and Adjunct Professor of Law at Case Western Reserve University School of Law. Mr. Johnson also served as the President and CEO of the Jackson Center from 2012 until 2015. From 2003 until 2012, Mr. Johnson served as Senior Trial Attorney and as the Chief of Prosecutions for the Special Court for Sierra Leone. As such, Mr. Johnson supervised trial and investigative teams, which prosecuted ten accused, including the former President of Liberia, Charles Taylor, for war crimes, crimes against humanity and other serious violations of international law. Prior to joining the Special Court for Sierra Leone, Mr. Johnson served for 20 years as a Judge Advocate in the United States Army. He is currently the Managing Director at Justice Consultancy International, LLC.

Binta Mansaray

In September 2014, the Secretary General of the UN appointed Binta Mansaray Registrar of the Residual Special Court for Sierra Leone. Beginning in January 2014, she served as the Acting Registrar of the Residual Court. She previously served as Registrar of the Special Court for Sierra Leone, a post she held from February 2010 until the Court's closing in 2013. From July 2007 to February 2010, she was Deputy Registrar, she also became Acting Registrar in June 2009. Ms. Mansaray first joined the Special Court in 2003 as Outreach Coordinator, during which time she designed the Court's grassroots programme to keep the

people of Sierra Leone, and later Liberia, informed about the Court and the trials. Prior to joining the Court, Ms. Mansaray was a human rights advocate for victims, women, and adolescent ex-combatants of the Sierra Leone armed conflict. She held the post of Protection Partner/Country Representative for the Women’s Commission for Refugee Women and Children in Sierra Leone. She worked with the Campaign for Good Governance, several civil society organizations, and served as consultant with the United Nations Mission in Sierra Leone (UNAMSIL). Ms. Mansaray is a graduate of the University of Sierra Leone. She received a Master’s degree in French from Fordham University in New York and a Master’s degree in Public Administration and Policy from American University, Washington, DC. In April 2018, the American University inducted her into Pi Alpha Alpha, a Global Honor Society, which recognizes outstanding scholarship in public administration and public affairs.

Catherine Marchi-Uhel

Ms. Marchi-Uhel is the first Head of the Mechanism established by the General Assembly on 21 December 2016. She brings to the position more than 27 years of experience in the judiciary and in public service—including with the United Nations—in the fields of criminal law, transitional justice and human rights. Since 2015, she has been the Ombudsperson for the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (ISIL/Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities. Previously a judge in France, Ms. Marchi-Uhel served in the same capacity with the United Nations Interim Administration Mission in Kosovo and the Extraordinary Chambers in the Courts of Cambodia. She was Senior Legal Officer and Head of Chambers at the International Criminal Tribunal for the former Yugoslavia and also held legal positions in France’s Ministry of Foreign Affairs and with United Nations peacekeeping missions. Ms. Marchi-Uhel holds a Master’s degree in law from the University of Caen.

Sarah McIntosh

Sarah McIntosh is the associate for the Ben Ferencz International Justice Initiative. Sarah previously worked as a paralegal in the class actions department of Maurice Blackburn Lawyers. She has also worked as an intern for the United Nations Office for Disarmament Affairs, interned briefly for the Coalition for the International Criminal Court, and has volunteered for the Refugee Advice and Casework Service in Sydney. In May 2017, she received her master of laws from Harvard Law School. Sarah has a bachelor of laws and international studies from the University of New South Wales, and is admitted as a solicitor of the Supreme Court of New South Wales.

Alexandra Mooney

Alexandra (Allie) Mooney received her undergraduate degree from Ohio State University and is a 2018 graduate of Case Western Reserve University of Law. Allie focused her studies in law school on international law, interning at organizations such as the International Criminal Court, the World Bank, and the International Committee of the Red Cross. She is currently assisting Professor Jim Johnson in his international law classes as an adjunct professor at Case, and she is looking forward to beginning her full-time position in the U.S. Navy JAG Corps at the beginning of next year.

Alberto Mora

Alberto Mora leads ABA ROLI's international development program and oversees the association's other international entities, brings to the association broad experience in international law and government. Mora was the chief legal officer at Mars, Incorporated (2008-13) and Walmart International (2006-08) before accepting a position at the Carr Center, where he taught and conducted research on issues related to human rights, foreign policy and national security. Mora's extensive career in international affairs began with his work as a foreign service officer during the 1970s. He later served from 1989-93 as general counsel at the United States Information Agency, where he

was the chief legal officer for USIA and Voice of America, directing the agency's legal affairs with 200 USIA posts in 130 countries. Mora was general counsel (chief legal officer) of the Navy and Marine Corps (2001-05) with management responsibility for more than 800 attorneys and personnel across 146 offices throughout the United States and overseas. In that role, he also served as the departments' chief ethics officer. Additionally, Mora served as the reporting senior of the Naval Criminal Investigative Service, as the department's chief ethics officer and, on occasion, as acting secretary of the Navy. In 2006, Mora was recipient of the John F. Kennedy Profile in Courage Award in recognition of his opposition to the abusive interrogation of detainees held at the Guantánamo Bay base.

Valerie Oosterveld

Valerie Oosterveld is Associate Dean (Research and Graduate Studies) at the University of Western Ontario Faculty of Law, and is the Deputy Director of Western University's Centre for Transitional Justice and Post-Conflict Reconstruction, where her research and writing focus on gender issues within international criminal justice. She is a member of the Royal Society of Canada's College of New Scholars, Artists and Scientists. Before joining Western Law, Valerie served in the Legal Affairs Bureau of Canada's Department of Foreign Affairs and International Trade, where she provided legal advice on international criminal accountability for genocide, crimes against humanity and war crimes. She was a member of the Canadian delegation to the International Criminal Court negotiations and subsequent Assembly of States Parties, and served on the Canadian delegation to the 2010 Rome Statute Review Conference of the International Criminal Court.

Theodore Parran III

Ted Parran is an Adjunct Professor at CWRU School of Law and an Assistant Prosecutor with the Ohio State Attorney's Office in Cleveland, Ohio. As an Adjunct Professor, Mr. Parran is the Managing Director of the Canada-United States Law Institute, a

unique bi-national legal institute jointly supported by CWRU Law and Western Law in London, Ontario and supports the Frederick K. Cox International Law Center, assisting with programming such as the IHL Dialogues. As an Assistant Prosecutor in Cleveland, Ohio, he is responsible for prosecuting serious Felony crimes, arguing appeals before Ohio's 8th District Appeals Court, and assisting in investigations into organized crime activities in the Northeast Ohio region. Mr. Parran earned his J.D. from CWRU Law and his LL.M in Comparative Law and Development from Loyola-Chicago School of Law's Rome, Italy-based PROLAW program.

Gregory L. Peterson

Mr. Peterson, is Partner at Phillips Lytle LLP and Office Leader of the Chautauqua office, where he focuses in all areas of real estate, including development and financial transactions, areas of corporate counseling including acquisitions, administration and strategic planning, not-for-profit corporate formation, tax exemption and qualification with New York State administrative areas. He has been recognized for numerous awards, including in *The Best Lawyers in America*© and *Chambers USA: America's Leading Lawyers for Business, 2017*. He received his B.A. from Allegheny College *Phi Beta Kappa*, and his J.D. from the Dickinson School of Law of the Pennsylvania State University.

Catherine Read

Catherine Read is the Executive Director of the North Carolina Commission of Inquiry on Torture, a unique citizen-driven truth commission investigating the role of North Carolina in the U.S. Rendition, Detention and Interrogation Program. Prior to this, Catherine spent 10 years leading the Washington, D.C. offices of two human rights organizations. Most recently, she was the Washington Director of Crisis Action, an award winning international human rights organization whose mission is the protection of civilians in conflict. Catherine joined Crisis Action in 2012 to establish and build the Washington office and it is now a highly regarded and critical

player in the civilian protection landscape. Before that, Catherine spent over five years with the Center for Victims of Torture (CVT) as Director of its Washington office where she played an integral part organizing the 2008 “Campaign to Ban Torture,” which brought together over 250 national security, foreign policy and religious leaders to support an Executive Order banning torture. She holds a Bachelor’s Degree in Politics from the University of Edinburgh (UK) and a Master of Arts Degree (with Honors) in International Relations from the University of Chicago. In 2011, Catherine was named by Washingtonian Magazine as one of their “40 Under 40” lobbyists with the most influence in Washington. She sits on the Advisory Council of the Rafik Hariri Center for the Middle East at the Atlantic Council and is a Council Member of NationSwell.

D. Wes Rist

D. Wes Rist is the Deputy Executive Director at the American Society of International Law (ASIL), where he has worked since 2012, previously as the Director of Education and Research. At ASIL, he supervises a variety of programmatic activities for ASIL’s membership, the international legal community, including judges and foreign legal practitioners, and the general public at large. Previously, he served as Assistant Director of the Center for International Legal Education at the University of Pittsburgh School of Law for six years, where he supervised Pitt Law’s LL.M. Program for Foreign Law Graduates, provided advice and support to J.D. students seeking to obtain internships and employment overseas and in international law positions, and taught courses on International Human Rights Law and Terrorism & the Law. Prior to his position at Pitt Law, Rist worked as a Visiting Lecturer at the University of the West of England Faculty of Law in Bristol, UK.

Scott Roehm

Scott runs the Washington, DC, office and leads the policy work of the Center for Victims of Torture (CVT). Prior to joining CVT, he was Vice

President of Programs and Policy at The Constitution Project, where he oversaw the organization's national security and criminal justice portfolios. Before joining The Constitution Project, Scott served as the special counsel for pro bono at Orrick, Herrington & Sutcliffe LLP. In that capacity, he represented indigent defendants in federal civil rights and immigration cases and led Orrick's participation in projects to address abuses arising out of U.S. counterterrorism practices, deficiencies in the immigration system, and a variety of international human rights matters. Scott has also worked with Truth and Reconciliation Commissions in Monrovia, Liberia and Greensboro, North Carolina. Scott holds a J.D. from Fordham Law School and a master's in International Affairs with a specialization in human rights from Columbia University. He began his legal career as a judicial law clerk to the Honorable James Orenstein in the United States District Court for the Eastern District of New York.

Leila Sadat

Professor Sadat is the James Carr Professor of International Criminal Law and the Director of the Whitney R. Harris World Law Institute at Washington University School of Law. A recognized expert in international human rights and international criminal law, she currently serves as Special Adviser on Crimes Against Humanity to International Criminal Court Chief Prosecutor Fatou Bensouda. The incoming President of the International Law Association (American Branch), Sadat is a prolific scholar and teacher, and has led the Initiative to draft and negotiate a new global treaty on crimes against humanity. She is a member of the U.S. Council on Foreign Relations, and a Counselor of the American Society of International Law. She has received many awards and prizes for her work, including the Distinguished Faculty Award from Washington University and an Honorary Doctorate from Northwestern University. From 2001-2003 Sadat served on the United States Commission for International Religious Freedom.

Mohamedou Ould Salahi

Mohamedou Ould Salahi is a Mauritanian Engineer and Author who spent over a decade detained by the United States without criminal charges. Born in Mauritania, he moved to Germany in 1988 after being awarded a scholarship to study Electrical Engineering at Gerhard-Mercator-Universität Duinsburg. In 1999, he moved to Canada. In 2001, everything changed for Ould Salahi, as security officers operating at the direction of the United States abducted him from his recently re-established home in Mauritania. From November 2001 to July 2002, he was interrogated at the secret Mukahbarat prison in Amman, Jordan. In 2002, he was flown to Bagram Air Base in Afghanistan where he was subjected to further interrogation at the hands of the CIA. That same year, he was transferred to Guantanamo Bay to be subjected to extended interrogation, including the “Enhanced Interrogation Special Project.” During his many years of detention, no charges were ever prosecuted against him, and the U.S. military lawyer assigned to his case declined to move forward because of the interrogation methods used in obtaining his statements. Finally, after years of legal wrangling, he was released in October 2016 to his home country under house arrest and a travel ban. He wrote a detailed narrative of his many years in detention, and the latest edition of that manuscript, “Guantanamo Diary,” is now available. Currently, he is writing “Portable Happiness,” a self-help book he drafted while detained (though he must re-write the manuscript as his drafts were confiscated by U.S. officials before his release). In the next few years he plans to publish four books: “Portable Happiness,” “The Awful English Language” (countering Mark Twain’s “The Awful German Language”), “Ahmed and his she-camel Zarga,” and another book addressing the identity crisis of many young Arab immigrants in Europe.

Michael Scharf

Michael Scharf is the Dean of the Law School and Joseph C. Baker – BakerHostetler Professor of Law at Case Western Reserve University School of Law. Scharf served as Attorney Adviser for U.N. Affairs

in the Office of the Legal Adviser of the U.S. Department of State from 1989-1993, where he played a lead role in drafting the Statute, Rules, and Security Council Resolutions establishing the Yugoslavia Tribunal. In 2005, Scharf and the Public International Law and Policy Group, an NGO he co-founded and directs, were nominated for the Nobel Peace Prize for their work assisting in war crimes trials. In 2008, Scharf served as Special Assistant to the Prosecutor of the Cambodia Genocide Tribunal. He is the author of eighteen books, three of which have won national book of the year honors. Scharf produces and hosts the radio program “Talking Foreign Policy,” broadcast on WCPN 90.3 FM.

Milena Sterio

Professor Sterio is Associate Dean at Cleveland State University, Cleveland-Marshall College of Law & Professor of Law. In her capacity as expert on maritime piracy law, Professor Sterio has participated in the meetings of the United Nations Contact Group on Piracy off the Coast of Somalia, and has been a member of the Piracy Expert Group, an academic think tank functioning within the auspices of the Public International Law and Policy Group. In addition, Professor Sterio is an expert on international criminal tribunals, and serves as Co-Chair of the International Criminal Law Interest Group at the American Society of International Law. Professor Sterio is one of six permanent editors of the prestigious IntLawGrrls blog. In the spring 2013, Professor Sterio was a Fulbright Scholar in Baku, Azerbaijan, at Baku State University. She received her J.D. from Cornell Law School, a Maitrise en Droit Franco-Americain and a M.A in Private International Law from the University Paris I-Pantheon-Sorbonne.

Jennifer Trahan

Jennifer Trahan is a Clinical Professor, NYU, Center for Global Affairs. She has served as counsel and of counsel to the International Justice Program of Human Rights Watch; Iraq Prosecutions Consultant to the International Center of Transitional Justice; and worked on

cases before the Special Court for Sierra Leone and the International Criminal Tribunal for Rwanda. She has written two digests on the law of the *ad hoc* tribunals--Genocide, War Crimes and Crimes Against Humanity: A Digest of the Case Law of the International Criminal Tribunal for Rwanda (HRW 2010), and Genocide, War Crimes and Crimes Against Humanity: A Topical Digest of the Case Law of the International Criminal Tribunal for the Former Yugoslavia (2006). She has also written widely on the International Criminal Court's crime of aggression. Her most recent publication is: *Views of the Future of the Field of International Justice: A Scenarios Project Based on Expert Consultations*, 33 American Univ. Int'l L. Rev. 837 (2018). Her latest research relates to use of the veto by permanent members of the Security Council in the face of atrocity crimes. Before working in the field of international justice, she was a litigator at a Manhattan law firm.

Herman von Hebel

Herman von Hebel has extensive managerial, legal, and diplomatic experience. Herman von Hebel has worked on, and published on, issues of rule of law, human rights, international humanitarian law, criminal law, and the creation and function of international criminal courts and tribunals. He has participated in the negotiations leading to the creation of the International Criminal Court and has worked in four different international criminal courts or tribunals. From 2001-2006, Herman von Hebel served as senior Legal Officer in the International Criminal Tribunal for the former Yugoslavia. From there, he moved to serve as the Deputy Registrar and Registrar for the Special Court for Sierra Leone, from 2006 to 2009. In 2009, he served in the same role for the Special Tribunal for Lebanon. From 2013 to 2018, Herman von Hebel served as the Registrar for the International Criminal Court. He studied law at the University of Groningen in the Netherlands.

Molly White

Molly White is a Program Analyst in Diplomatic Security. As an analyst, Ms. White oversees the performance of a countermeasures

portfolio. She earned her J.D., along with an advanced certificate of study in National Security and Counterterrorism Law, from Syracuse University College of Law. Ms. White's focus during law school was international humanitarian law and international security, which led her to the IHL Dialogs for the first time four years ago. After assisting in the organization of the Ninth and Tenth IHL Dialogs, Ms. White acted as Managing Editor for ASIL's publication of the Dialogs' proceedings, which she distributed during the Eleventh Dialogs. Ms. White is also the operations director for mentalhealthmarch.org.

Paul R. Williams

Paul Williams is the Grazier Professor of Law and International Relations at American University and the President/co-founder of the Public International Law & Policy Group. In 2005, Dr. Williams, as Executive Director of PILPG, was nominated for the Nobel Peace Prize by half a dozen of his pro bono government clients. Dr. Williams has assisted over a dozen clients in major international peace negotiations, including serving as a delegation member in the Dayton, Lake Ohrid, and Doha negotiations. He also advised parties to the Key West, Oslo/Geneva and Georgia/Abkhaz negotiations, and the Somalia peace talks. Previously, Dr. Williams served in the Department of State's Office of the Legal Advisor for European and Canadian Affairs, as a Senior Associate with the Carnegie Endowment for International Peace, and as a Fulbright Research Scholar at the University of Cambridge.

Pamela Yates

Pamela Yates is the Co-founder and Creative Director of Skylight, a non-profit company dedicated to creating feature length documentary films and digital media tools that advance awareness of human rights. She is the Director of the Sundance Special Jury award winning *When Mountains Tremble*; the Executive Produce of the Academy Award winning *Witness to War*; and the Director of *State of Fear: The Truth About Terrorism*, which is translated in 47 languages and broadcast

in 154 countries. Her third film in the Guatemalan trilogy, *500 YEARS*, had its world premiere at the Sundance Film Festival and is in wide release. Yates is a member of the academy of Motion Pictures Arts and Sciences, Writers Guild of America, and the International Documentary Association.

