

Proceedings of the Thirteenth International Humanitarian Law Roundtable

August 25-27, 2019, Chautauqua Institution

Edited by Mark David Agrast and David M. Crane

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American Society
of International Law

**Proceedings of the Thirteenth
International Humanitarian Law Roundtable**

*August 25–27, 2019
The Chautauqua Institution*

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Thirteenth International Humanitarian Law Roundtable

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Dedicated to Desmond de Silva
1939 – 2018

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Prosecutors at the Thirteenth International Humanitarian Law Roundtable



*Back row (left to right): Michelle Campbell, Helen Brady,
Steve Rapp, Catherine Marchi-Uhel, Robert Petit*

*Front row (left to right): David Crane, Richard Goldstone,
Louis Moreno Ocampo, Brenda Hollis*

Participants of the Thirteenth International Humanitarian Law Roundtable



Foreword

Forward

David M. Crane*

After twelve years, the International Humanitarian Law Dialogs shifted to a new format, one that would continue the relevance of this annual and historic gathering of the world’s international prosecutors, colleagues, friends, and supporters of international justice. Once again, at the Athenaeum Hotel on the grounds of the Chautauqua Institution, they gathered for the thirteenth annual International Humanitarian Law *Roundtable*, 25-27 August 2019.

It was an amazing gathering, with an important issue as the theme: “The Third Wave”: Implementing ICL in the Face of Today’s Realities. In an age of the strongman, rising nationalism and a populist and limited worldview, the age of accountability has shrunk and is challenged at many levels. This new roundtable format was designed to be not just a gathering, but also a working session that tackles cutting-edge issues in international humanitarian law. The issue for this first-ever roundtable, the thirteenth in the series, took on one of the more significant challenges to date on seeking justice for victims of atrocities. The result of this new roundtable format follows.

As is the custom of the series, we kicked off the event with a gala at the Robert H. Jackson Center. There we presented the 2019 Joshua Heintz Humanitarian Award to **Irwin Cotler, P.C., O.C.**, for his important leadership and impact on advancing justice for the oppressed. In a moving acceptance speech Mr. Cotler, a former Minister of Justice of Canada, called for continued work in seeking justice around the world. He is a living example of that fight.

Following the awards ceremony, the gathering enjoyed a performance by Samite, a world-renowned African musician, preceded by an

* The Special Court for Sierra Leone.

interview by **Greg Peterson**, founder of the Robert H. Jackson Center. The melodic and soothing rhythms of Samite's music set an overall tone for the next two days of the roundtable.

As the group gathered the next morning at the Athenaeum Hotel, keynote speaker **Navi Pillay** charged **Brenda Hollis**, the Chair of the IHL Roundtable, to create a template on how best to move justice forward in this age of extremes and to develop a white paper on solutions to these challenges. Following the keynote, **Dean Michael Scharf** moderated the Ferencz Prosecutors' Update and Commentary.

At this point, the participants broke into subgroups, each of which was headed by a practitioner and an academic who were experienced in the issues of their various subgroups. The subgroups were:

1. Future of Courts and Tribunals?
2. The New Way? Mechanisms
3. The Rising Tide? Grass-root Efforts
4. Back to the Future? Impact of Populism/Nationalism

After an initial discussion and general guidance by the Chair, Brenda Hollis, the subgroups met for the rest of the first day, coming together for a plenary session at the end.

At the lunch break, the participants listened to **Herman von Hebel** give the annual Clara Barton Lecture. Given his long service as a Registrar at both the Special Court for Sierra Leone and the International Criminal Court, his perspectives related to this year's theme were insightful and important.

At the end of the first day, each subgroup reported its recommendations in a plenary session. The recommendations were discussed and debated by the group as a whole. Brenda Hollis adjourned the meeting, and the group prepared for the annual reception hosted

by the American Bar Association, followed by dinner and the annual Katherine B. Fite lecture.

The Chief Prosecutor of the International Criminal Court, **Fatou Bensouda**, gave the Fite Lecture. Her topic was the role and place of the International Criminal Court in this new age of extremes. The challenges are many, particularly with the United States' direct attacks on their work. Fatou Bensouda's remarks were taped, as she was not allowed to enter the United States due to a ban on her travel into the country. As always, the first day concluded with a performance by musicians from Case Western Reserve University School of Law, hosted by Dean Michael Scharf. A good time was had by all.

The next day, as the sun rose over Lake Chautauqua, the participants settled into a splendid breakfast and listened to talks on various new initiatives currently ongoing in this third wave of atrocity accountability. The group then listened to the "Year in Review" presented by **Professor Mark Drumbl**.

After a break, the participants gathered to hear the framework and outline for the white paper by the Chair, Brenda Hollis, and the heads of the various subgroups. An outline and focus were agreed to, and the Chair adjourned the plenary session just before lunchtime. During lunch, **Mark Ellis**, Executive Director of the International Bar Association, gave an overview of an important initiative of his organization, the Eyewitness Project. There were several questions, and the project was received enthusiastically by the participants, who echoed Ellis' points on the importance of technology in gathering information and evidence of atrocities.

Brenda Hollis then issued the First Chautauqua Principles in a ceremony hosted by the American Bar Association. The general point was that humankind could not turn away from its obligations to enforce the rule of law as strongmen nibble away at the advancement

of accountability for atrocities over the past twenty plus years. The thirteenth annual International Humanitarian Law Roundtable was gaveled to a close, the assembled friends and colleagues assured that the fight for international justice would continue in this age of extremes.

As a special feature, a closing dialog featured the four founding Chief Prosecutors of the five major international criminal tribunals. Led by Greg Peterson, **Richard Goldstone**, **David Crane**, **Luis Moreno Ocampo**, and **Robert Petit** were interviewed on their initial challenges in setting up the tribunals for Yugoslavia, Rwanda, Sierra Leone, and Cambodia, and the International Criminal Court. This was the first time that all of the founders of modern international criminal law were together at the same time. It was a special moment.

The two days were topped off by an amazing dinner cruise around Lake Chautauqua hosted by the Case Western University School of Law. As the sun set over the hills to the west, the special camaraderie that characterizes this important event was apparent. The participants looked forward to continuing the dialog at the fourteenth annual International Humanitarian Law Roundtable.

Lectures and Commentary

Keynote Address

Judge Navanethem Pillay*

When I retired in 2014, after two decades of service as an International Judge and United Nations High Commissioner for Human Rights, I was still swimming on the crests of the First and Second Waves of justice and accountability. I expected a trajectory of unhindered heights. Instead what was once a golden age of accountability is now a darker age of, to echo the words of Queen Elizabeth II of the United Kingdom, the ‘anni horribilis.’

Or, as some believers say, we are experiencing the cycle of “Kaliyuga,” the age of darkness and ignorance. The bad news is that apparently, we can do nothing about this predicted cycle, except sit it out. But the good news, seemingly, is that this dark period is about to end.

However, as all of us in this room are neither believers nor mystics, we will readily agree that disasters are manmade, and solutions must come from us and not the stars.

We have witnessed the growth of decades-long institutions that have contributed to the golden age of justice and accountability, largely through the efforts of civil society, lawyers, and academics.

For the first time in modern history, in 1945, at Nuremberg, judicial power, backed by punishment, was exercised by the international community to achieve justice and accountability of individuals for the commission of war crimes and what were called crimes against humanity. The resort to justice as integral to the peace process in the aftermath of great conflicts, is a new development that still needs nurturing and direction.

* The United Nations.

The subject of accountability for serious violations of international law, including genocide, war crimes and crimes against humanity was initially embraced in the collective security architecture set out in the Charter of the United Nations, subsequently elaborated in the Universal Declaration of Human Rights and the International Bill of Rights.

Preservation of the right to life, and protections against systematic and gross violations of human rights and human dignity were henceforth to remain cornerstones of the international normative system built after the defeat of Nazi ideology and fascism. More significantly, all states were expected to integrate these norms into their domestic legal frameworks and take measures to hold accountable those individuals found to have been in violation.

Nuremberg lay dormant for the next fifty years, until 1993 and 1994, when the United Nations Security Council, acting under Article 7 of the Charter—threat to international peace and security—set up the ICTY in the context of the Balkan war and the ICTR after the genocide of Tutsis in Rwanda.

These were followed up by ad hoc tribunals and international courts in Timor Leste, Sierra Leone, Cambodia, Kosovo; the courts for Iraq and Lebanon; and finally the world's first permanent International Criminal Court was established in 1998 by the adoption of the Rome Statute. New ad hoc tribunals are coming up in Central African Republic and South Sudan in the aftermath of conflicts there.

In addition to these new judicial mechanisms to achieve justice and accountability, strong and sustained civil society pressure led to the development of a robust international institution for the promotion and protection of human rights and for monitoring and reporting violations by state and non-state actors, in 1993, following the Vienna Declaration, the UN General Assembly the Human Rights Commission as an institutional mechanism within the UN for the

protection of human rights. The Universal Periodic Review of the Human Rights Council reviews the human rights record of every state and serves as a means of securing compliance of states with their human rights obligations. Similarly the Human Rights Council has appointed 58 independent experts who make recommendations to states on better human rights protection.

It is clear that the fundamental frameworks for safeguarding against violations and crimes are in place: these include a strong and growing body of international laws and standards, a vigilant civil society engagement as well as institutions to interpret the laws, monitor compliance and apply them to new and emerging human rights challenges.

Together, the international tribunals and courts have rendered justice in many situations, holding key perpetrators to account for war crimes, genocide, and crimes against humanity.

As judge and president for four years of the ICTR, I had the unique privilege of participating in the first, groundbreaking cases against the interim prime minister, Jean Kambanda, and other political, military, and religious leaders, resulting in the world's first conviction of the crime of genocide, as well as the decision in the case of Jean Paul Akayesu, mayor of Taba commune, of rape and sexual violence against Tutsi women constituting genocide. Regrettably very few prosecutions of rape and sexual violence followed in subsequent International tribunals—often attributed to little or no investigation, or insufficient seriousness attached to these crimes.

The Special Court for Sierra Leone determined that the abduction and sexual enslavement of women, in that conflict, constituted a crime against humanity of forced marriage, and the same court also convicted Charles Taylor, former president of Liberia, for planning and aiding and abetting the commission of crimes against humanity

in neighboring Sierra Leone. This is an historic conviction of a former head of state for serious crimes committed while in office.

The ICTY, on March 24, 2016 convicted former Bosnian Serb leader, Radovan Karadžić, of genocide for the massacre of Muslims in Srebrenica. The long arm of justice had caught up with this fugitive.

Similar progress in ending impunity has been made at the International Criminal Court, which entered its first conviction against Congolese warlord, Thomas Lubanga Dyilo for the crime of forcible recruitment and use of child soldiers in 2012.

A good instance of the exercise of universal jurisdiction comes from Africa with the prosecution and conviction of war crimes of Hissène Habré, the former president of Chad, in Senegal. It is a significant step forward in holding high profile perpetrators of crimes accountable. It can serve as an important model of how hybrid courts can reconcile the often-conflicting demands of international law and national sovereignty.

Yet the relationship between the International Criminal Court and the African Union is marked by controversy. At its extraordinary session of the General Assembly in October 2013 the AU expressed concern over “the political misuse of indictments against African leaders by the ICC”; that prosecutions against heads of states could undermine sovereignty, stability and peace; and resolved that serving heads of state and high senior state officials be covered by immunity from prosecution.

The notion that political power can be a safe haven for impunity would create a dangerous double standard for accountability. It is also incompatible with international law and the Rome statute, under which national immunities are not a bar to the court exercising jurisdiction for ICC crimes. Currently, South Africa has an International Crimes

Bill before Parliament that provides immunity from prosecution for ICC crimes for the head of state and senior state officials.

While the jurisprudence of the ad hoc tribunals and the international criminal court show that significant advances have been made in promoting accountability and delivering justice for victims of serious violations of International law, there is no doubt that the fight against immunity is far from achieved. The challenge comes from failure to cooperate with the ICC by states and international institutions and the absence of political will to act against impunity.

Regrettably, the international community remains unable to react consistently, strongly and speedily to crises, including situations of grave human rights violations with high potential for regional overspill.

Over half a century since protection of individual human rights and prohibitions against atrocity crimes acquired the status of binding international norms, some of which are “Jus Cogens” in nature, the world continues to witness horrendous human suffering and widespread and systematic violence against civilians from rebel and terrorist groups, as well as at the hands of state actors and authorities themselves.

In a world struggling with international challenges, today’s realities compound the challenges. The United States, led by a president who has no respect for the rule of law and human rights, no longer exercises a leadership role. This vacuum has created opportunities for state actors to flex their geopolitical muscle, stepping forward and rolling back accountability gains of the past twenty-five years. What was once a golden age of justice and accountability is now a darker age of the strongman. At no time has modern international criminal law come under more scrutiny than today.

Steeped in ignorance, and fear of justice and accountability, many reactionary political leaders are taking the lead from President Trump

to attack international criminal justice—labelling the International Criminal Court as a den of inequity. Duterte, the president of Philippines, who has used his military to carry out extra judicial executions of alleged drug dealers, numbering 25,000 and still counting, has pulled out of the ICC. So has the new leader of Burundi who assumed power after widespread violence against the opposition. We should be concerned with Trump’s war mongering threats against Iran, Venezuela, Yemen, and North Korea.

His “America first” and isolationist rhetoric has spawned copycat vigilantism and acts of terrorism in the United States and elsewhere.

John Bolton has threatened to arrest any ICC personnel who plan to conduct investigations on U.S. territory and has withdrawn entry visa to the prosecutor and her representatives.

Trump is undermining the rule of law and international humanitarian law by his anti-human rights, anti-UN, anti-NATO, and anti-ICC actions; his trade war with China and Mexico and withdrawal from the Paris Climate Agreement; and his withdrawal of U.S. support for a two-state solution for peace in the Middle East, encouragement of unlawful Israeli settlement expansion into Palestinian land, and moving the U.S. Embassy to Jerusalem are acutely retrogressive measures.

His racist, sexist language, support for misogyny, and white supremacy in his race to make America great again are serious threats to the magnificent edifice of human rights institutions and respect for the rule of law built by the international community over the years. His rhetoric has been trumpeted by reactionary forces in Europe where one opposition leader said Europe is for whites only and everyone else should be kicked out.

In reaction, the United Nations' largest body of independent human rights experts collectively expressed their alarm over today's realities as follows:

...[T]oday, a chill wind is blowing through much of the world and the very notion of human rights is under increasing attack. So-called populists movements are invoking nationalism and traditionalism to justify racist, xenophobic, sexist, homophobic and other forms of blatant discrimination, taking advantage also of the difficulties of the current economic climate. Hate speech aiming to incite violence, hostility, and discrimination is dramatically on the rise, as is violence against women, children, ethnic, religious or belief groups, persons with disabilities, sexual minorities, migrant and many other groups. Inequality is growing dramatically, and democratic institutions are being systematically undermined.¹

More and more governments are turning to increasingly intrusive technologies which systematically embed and exploit means of mass surveillance which threaten a whole range of fundamental human rights. In many parts of the world, these assaults on human rights are being reinforced by attacks on the human rights movement.

The space for civil society, without which there can be no enduring and meaningful respect for rights, has been effectively closed down by many governments. international treaties such as the International Court statute, are being denounced, funding for human rights bodies is shrinking, attacks on the integrity of monitoring mechanisms are increasing, and any form of international solidarity is rejected as a threat to national interests.

¹ The full statement is available at: <https://reliefweb.int/report/world/human-rights-under-increasing-attack-worldwide> (visited July 25, 2022).

The experts called upon governments to recognize that a world which repudiates fundamental human rights values, retreats from established standards, and undermines international human rights institutions, is a world which will be less secure, more vulnerable to devastating conflicts, and utterly incapable of protecting the rights of vast numbers of people who do not happen to look or think like those in power.

In carrying out its Chapter VII mandate of ensuring international peace and security the play of geo-political agendas in the UNSC in response to wars and conflicts, has had catastrophic consequences—with hundreds of thousands killed, millions displaced, and swelling the swarms of refugee flows, large swathes of country and cities destroyed. Many see the acts of double standards and pursuit of geo-political agendas as detrimental to building trust in international justice institutions and an impediment to the struggle against impunity.

Many in Africa are suspicious of the selective targeting of countries in Africa for ICC investigations. They question why the UNSC referred African states only, Dafur and Libya to the ICC but not the attack on Iraq or the conflicts in Syria, Sri Lanka and Occupied territory of Palestine.

The failure of some states to place the collective interest above short term geopolitical considerations and narrow definitions of national interest have led to persistent failures to take action in situations, where for example, action was necessary to ensure accountability for gross violations of international humanitarian law. A broader conception of “national interest” to guide the work of the UNSC, given its charter mandate as the guardian of international peace and security is necessary as the collective interest of states is also in the national interest.

I have stated that the lack of political will is the greatest impediment to the advance of International criminal justice, but the reality is

that many see the system of international criminal justice, and the ICC in particular, as failures.

Let me list some of the complaints:

Inconsistency in jurisprudence and confusing outcomes. For example, the well-established interpretation of the criteria for aiding and abetting crimes was turned on its head by the ICTY Appeals Chamber presided over by Meron, which insisted on the criteria of physical proximity to the scene of the crime by the perpetrator. This was contrary to the interpretations and applications of the law that was consistently followed by the ICTR, ICJ, and the SCSL, in the Charles Taylor decision and was not followed by a subsequent ICTY Appeals Chamber (which went against its own AC ruling delivered by Judge Meron).

Apart from two completed trials, that of Lubango Dyilo and Bosco Ntaganda, former rebel commanders in the Democratic Republic of Congo, both of which are now under appeal, the ICC has a dismal record of successful prosecutions. It is also criticized for excessive delays and curious outcomes: the Kenyan indictment against the president, Uhuru Kenyatta, was withdrawn by the Prosecutor for lack of evidence after many years of investigation; the reversal of the guilty verdict of former Congolese vice president Jean Pierre Bemba by the Appeals Chamber in a divided opinion and four separate opinions reached an all-time low in clarity over application of the law; the rejection by the Pre-trial Chamber of the Prosecutor's application to open an investigation over ICC crimes allegedly committed in Afghanistan by the Taliban, as well as Afghan Security forces and U.S. soldiers and CIA officials—giving as their reason the limited prospects for a successful investigation and prosecution. The reasoning of the Chamber has come up for criticism by some who suspect pressure from the U.S. in the light of the John Bolton threat against court officials; the acquittal of Laurent Gbagbo, former

president of Côte d'Ivoire at the end of the Prosecution's evidence in a split judgment that was delivered six months after the verdict. Gbagbo and his co-accused were allowed to leave the prison even though the OTP had filed an appeal.

The inconsistency in jurisprudence, below-par quality of judgments, long delays and questionable competencies of the personnel, contribute to a lack of trust and confidence in the Court.

The Prosecution has been conducting investigations for lengthy periods with little or no result, such as: the 2008 conflict between Russia and Georgia; the 2014 conflict in Gaza and Israeli-occupied Palestinian territories, the conflict in Columbia and dockets relating to the attack against Iraq and violations of Rohingya refugees. The Prosecution's investigation in Afghanistan extended over ten years before being summarily dismissed by the court.

Lack of cooperation from states over execution of warrants of arrests and poor political support for the ICC generally, together with woeful funds are severe constraints against the proper functioning of the court.

While victims of atrocity crimes endure some disillusionment with the progress of international criminal justice, their persistent demands for justice and accountability have reaped unimaginable impact on the ground: I refer here to three powerful political strongmen now facing trial—Omar al Bashir, former president of Sudan, is on trial in his country on charges of corruption and the killing of peaceful protestors. Jacob Zuma, former president of South Africa, is on trial for corruption and receiving bribes in arms trade with the French State company, Thales. Najib Razak, former prime minister of Malaysia, has been charged on 42 counts of corruption and money laundering.

The conveners of this year's "International Humanitarian Dialog," the 13th, in response to the challenges confronting our world, have

devised a more assertive role for us at this conference to use a new roundtable format, creating a roadmap for fresh ideas and initiatives for the implementation of International criminal law in today's political and legal landscape. The roundtable is expected to come up with a realistic product that would be useful to practitioners, diplomats, and politicians in considering new ways of achieving justice for victims of atrocity crimes. They call this the third wave.

The Roundtable is structured around four breakaway sessions under the following topics:

- Breakout 1. The future of International Courts and Tribunals.
- Breakout 2. The New Way? The Mechanisms, State Implementation, inter-state cooperation and Regional courts.
- Breakout 3. A Rising Tide: Grass root efforts to seek Accountability
- Breakout 4. Back to the Future? The impact of the rise of Populism / Nationalism.

I hope that the Breakouts will advance strategies for more consistent application of international criminal law and international law generally; develop the notion of one body of law even though it comes under different names: international criminal law, international human rights law and international humanitarian law—that they all serve the same goal. I raised concerns over a disparate jurisprudence emanating from the ad hoc tribunals, hybrid courts, and the ICC, as well as intra appeals benches. I hope that we can address how best to ensure the application of the jurisprudence of these entities from the standpoint of certainty and precedential value.

I respectfully charge the chair of the Roundtable, Brenda J. Hollis, to create a working document that addresses the challenges of adopting modern international criminal law to the challenges of our times, some of which I have briefly highlighted.

Katherine B. Fite Lecture

Fatou Bensouda*

Dear Friends and Colleagues,

It is a pleasure to address you today, albeit through electronic means. I regret not being with you in person in beautiful Chautauqua for this traditional gathering of prosecutors and other legal experts. Please accept my warm greetings from The Hague, along with my sincere thanks to all involved in the organization of the round table. My presence is currently required at the ICC premises where this week the members of the Committee on budget and finance are gathering to scrutinize the ICC's 2020 proposed program budget. An important engagement, not least in view of the growing mismatch between demands placed on my office and victims' expectations on the one hand, and resources that ICC States Parties are prepared to allocate to the Court on the other. This is not the only challenge that our office, and the ICC as a whole, are currently facing. Indeed, these are testing times for the Court. States Parties and other stakeholders are actively engaged in discussions concerning a possible review, or reform, of the Court's functioning, while others have been launching frontal attacks on the Court, with a view to interfere with its independence. What is more, on a global scale, we appear to be witnessing a diminished appetite and commitment towards the rule of law and protection of human rights, more generally. This makes the Roundtable and the theme under which you gather all the more timely and pertinent. The work of the ICC and other courts and tribunals, given their complex and important mandate, will always invite intrigue and commentary.

Having said that, we must endeavor to continuously improve our performance through our internal processes and work methods. In parallel, we must continue to engage in good faith with all constructive

* Former Registrar of International Criminal Court (2013-2018). This is an edited version of a transcription of his Lecture.

efforts to increase the efficiency and effectiveness of our institutions. For this purpose, my office recently published its new Strategic Plan 2019-2021. This strategic document provides a mission, vision, and specific strategies devised by the Office on how to tackle our main challenges under the umbrella of the new Court-wide Strategic Plan for the same period. The Plan will assist me and my dedicated staff to look toward the future with confidence and with a shared understanding of our current situation and the results we wish to achieve together.

In recent years, we have produced a mixed performance in Court. We have achieved important convictions in the Ntaganda, the Al Mahdi, the Bemba et al. cases. We have also seen a number of other significant litigation successes, such as the ruling made by the Chamber in the Myanmar/Bangladesh Situation on the Court's jurisdiction over deportation. These successes have been partly overshadowed by unsatisfactory outcomes. In the Ruto and Sang case, in the Gbagbo and Blé Goudé case, which were both terminated at the end of the Prosecution case, and an acquittal on the appeal in the Bemba case, following unanimous conviction at trial. We are currently reviewing the written reasons provided for the Gbagbo and Blé Goudé acquittal to determine whether we will appeal that decision.

While my overall assessment of the Office's performance might not be as gloomy as that of some of our observers, I am convinced that we can, and must, do better. This is notwithstanding the Office's complex and dynamic operating environment, which will continue to define, in part, its overall success. Such environmental factors include the lack of universality of, or even withdrawers from, the Rome Statute, as well as conflicting national interests, political agendas, and economic realities. I have personally experienced how national policies can translate into tangible measures directed against our work. The Court's States Parties first and foremost play a key role when such attacks are made against the Court, its officials, and the values and goals of the Rome Statute. At such times of clash and crisis

of fundamental values, silence from the international community is not tactical communication, but deafening—sending the wrong signal to the authors of such policies that they have a free reign to proceed unchecked; that the unthinkable is the new norm; that we are willing to let the costly advances we have made in international criminal justice to regress. This we cannot allow. Courage and conviction must guide the actions of all stakeholders within the international criminal justice system to protect our common values and goals and to assist in insulating it from political attacks. All of us who are in the trenches, who are assuming personal risk to do this crucial work, need that hope and trust—that we have our key stakeholders firmly by our side to support our work in diplomatic fora, provide meaningful cooperation and tangible assistance to our operations, and ensure the necessary means to conduct our challenging, but necessary work. We as prosecutors, in turn, cannot influence external factors beyond our immediate control. However, there are many areas where we have identified ways to improve the processes already started or to take completely new measures.

This being my third and last prosecutorial strategy, I am committed to see that the goals set by my Office at the beginning of my term are fully achieved at the end of my mandate in 2021. For this purpose, in our new Strategic Plan 2019-2021, we have identified six strategic goals that can be grouped under three main areas. These will be our focus in the coming months and years to improve our performance and results: firstly, improving performance in relation to the Office's core activities; secondly, enhancing sound management practices; and thirdly, contributing to the effective functioning of the Rome Statute system. I will refrain from going into too many details of my Office's Plan, but I will nonetheless highlight some areas relevant to this Roundtable. I believe we could focus and learn from each other's experiences in these areas to collaborate more closely and improve our output. Helen Brady, who heads the Appeals Section in my

Office, is with you in Chautauqua and can elaborate and discuss any further issues with you in person.

Under our Strategic Plan, my Office seeks to increase the speed, efficiency, and effectiveness of its preliminary examinations, investigations, and prosecutions. Various steps will be taken in parallel to achieve this goal. We will optimize preliminary examinations. Where possible, we will shorten them and will ensure that they serve as better starting points for new investigations so as to gain time in this area, too. The speed and efficiency of investigations are also influenced by the number of resources assigned to the Office. With an expected increase in new situations in the near future, and not wanting to compromise on the quality or wellbeing of staff, the Office will have to apply even more strictly its case selection and prioritization policy. At the same time, it will have to look into possible completion strategies for existing situations. A discussion with States Parties and other actors on this challenging situation will be needed.

We will also continue to optimize cooperation with partners in key areas, such as preservation of evidence. This should help to increase the expediency of our investigations. Here I feel that more can be done to ensure a structured dialog, for example, with United Nations mechanisms that have an investigative mandate. This is true, in particular, when they concern situations in which the ICC has jurisdiction. We are acutely aware of the changing investigative landscape with more individuals and actors collecting relevant information as events unfold. More engagement is requirement, and my Office has already organized a seminar on evidence preservation with a select group of first responders. We will be following up on this in the future.

Similarly, under a goal to develop with States enhanced strategies and methodologies to increase the arrest rate of persons subject to outstanding ICC warrants, we will explore with relevant actors the

use of special investigative techniques and the creation of operational groups to assist with arrests. Currently, there are too many individuals subject to arrest warrants who continue to evade justice with more atrocity crimes, more harm to victims, and more instability as a result. More action is required to remedy this situation.

Finally, I see benefit in closer cooperation in relation to the last goal of our Strategic Plan, too. Relating to the broader aim of increasing the effective functioning of the Rome Statute system. Here, my Office seeks to further strength its ability, and the ability of its partners, to close the impunity gap by sharing information, best practices, and lessons learned with other prosecution authorities, where possible.

Dear friends, these are just some of the measures we have identified in our new Strategic Plan. Across my Office, divisions, sections, and integrated teams are currently developing specific objectives and action plans so that the strategic goals translate into tangible milestones. Notwithstanding challenges and setbacks, we aim to continue diligently building our independent Office and continuously improving our work methods and practices on the basis of the strategies set forth in the Strategic Plans adopted since I took office in 2012. We do so in furtherance of, and strengthened by, the important decisions in the cases I mentioned earlier. Cases ahead of us will offer a further test of whether our strategies will continue to be successful, and these include the Al Hassan case in the Mali Situation and the Yekatom and Ngaïssona case in relation to the Situation in the Central African Republic, both of which are currently at the confirmation stage. Additional potential cases are being pursued in the situations currently under active investigations by my Office, and I hope to see more fruits of our labor in the not-so-distant future. As you all know, the job of an international prosecutor is immensely challenging and carries a heavy burden. Notwithstanding the challenges, my office remains committed to the important mandate bestowed upon it by the Rome Statute. Indeed, the Office of the Prosecutor is acutely aware of

the immense responsibility it shoulders. The importance of the Court to cultivating a culture of accountability for atrocity crimes and to the rule-based global order is never lost to the Office. As we continue on our journey towards justice and encounter new challenges and work in new situations and environments, what is required today, more than ever, for the work of the ICC and other courts, tribunals, and accountability mechanisms for their independent and impartial work and the international rule of law, is greater support and not less. What is required is greater dialog and cooperation to jointly strengthen the continuously evolving multilateral international criminal justice system. I am confident that these values will continue to be valued and promoted, including as part of your discussions at Chautauqua.

Dear friends, with this modest contribution, I conclude my remarks and I wish you fruitful exchanges. I look forward to seeing you again in person soon, in The Hague, or elsewhere, and I thank you for your attention.

Clara Barton Lecture

Herman von Hebel*

It's a great pleasure to be here, and I think I have to apologize also to Jim and Leila because we had this fantastic, very vivid discussion this afternoon on the porch, and while we were having those discussions, I actually realized, hey, there's a lot of stuff that actually I prepared for this evening to talk about. So, I already gave away a bit of my thoughts on international justice and what may be the future and the shortcomings of international justice. So, there might be a bit of a repetition for those who were participating in that, but I'll try to sort of keep it alive as possible.

Let me start off by also saying that I certainly do not pretend I have the golden key on what the future of international justice is going to be or may be. The only thing I'm doing is providing some food for thought. People may agree or disagree, but it's a basis for further discussions. And hopefully, it will assist in all of you to further catch up on what the future of the ICC, but also international justice in general, may be.

Let me start by having a bit of a small anecdote. You were talking about the fact that I spent nine years at the Ministry of Foreign Affairs in Holland. I joined in September of 1991, and the very first assignment I got was from the then legal advisor of the ministry. He said, "You know, Herman, I have to go to New York next month, and I have to do a speech in the Sixth Committee on this topic about the Draft Code of Crimes by the International Law Commission and, of course, also draft a statute for an ICC. So can you prepare me a speech?" I thought that's an interesting topic, so, you know, young lawyer, enthusiastic. So I really wrote a fantastic speech for him about how important it is and we really have to get an ICC established all these kind of things.

* Former Registrar or Deputy Registrar for the ICC (2013-2018).

So I sent a text, and after a few days, I didn't hear anything from him. So I got a bit worried, but then he came into my office. He sat down and said, "Herman, you know what? Let's be realistic over here. You know, this topic has been on the agenda of the U.N. since basically the U.N. got started, and it will be on the agenda of the U.N. for many years to come. So you know what? Yes, we pay lip service to the need for the creation of an ICC, but you know what? It won't happen." That was 1991.

Well, then two years later, we had the establishment of the ICTY, the Rwanda Tribunal in '94, and the very same boss who told me that story that it would never happen became the chair of the ad hoc committee in New York for the discussion on the creation of the ICC—Adriaan Bos. From then on, he continued to be the chair up to the Rome Conference, where due to health reasons, he was unfortunately not able to be there.

But the reason why I bring up this anecdote is about how times can change from something of years of practical experience from him—but, you know, these kind of things, they're on the agenda, but it's not going to happen. You know what? And probably now we see ourselves going in a different direction in the sense that, you know, what happened at that time, I think we wouldn't be able to do the same thing today. If there would be no ICC today, we would have the very same question on the table in the U.N.: is the time right for the creation of an ICC? I think the majority would say, immediately, "No, it's not," and I think that is an important message in terms of let's be careful what we have. Let's make sure that we preserve what we have. It may not be perfect, and we all know it's not perfect. But the bottom line is let's not throw away the baby with the bath water. We may want to refresh the water a bit, but let's make sure that we preserve the baby because it is a very precious baby as such.

So that, I think, is the background that has driven me always since then in terms of working in the different tribunals and including, of course, also the ICC.

Where do we stand today? We have a totally political—different political situation. The trust—and we also discussed it this afternoon—the trust in international institutions, the trust in international law is not there anymore. Presidents can walk out of Paris accords, Iran deals, ICC statutes. Whenever it serves them right, they feel like we can join in, but we can also walk out if it is good for our own political interests.

The whole idea that international law is there to function for the entire community, world community, is not there with a number of political leaders, and therefore, this is worrying. Of course, also for the ICC, it is very worrying. So the whole idea about multilateralism is in decline, it's more about bilateral deals or about economic interests, short-term economic interests, and at the same time also, if you look at the U.N. today, e.g., the Security Council, another topic that we discussed this afternoon, we see there is no support from the Security Council for any referrals to the ICC for Syria, for Myanmar, for other cases, where everyone around here in this room and many people outside do know these are cases for which the ICC actually was established. If there is one situation since the creation of the ICC for which it was meant to function, it was for Syria—let's be clear about it—and it doesn't function there. And that's a big shortcoming, of course, of the system. That is not a shortcoming of the ICC. It's a shortcoming of the system as such.

And I think the only thing that binds Russia, China, the U.S., and the Security Council—of course, they have many disputes, but the only thing that binds them is that aversion towards international justice. Unfortunately, that's the only thing that they have in common these days. But, of course, it's not good for the functioning of the ICC.

Then let's move on to the ICC. Where does the ICC stand today? I must say I was very impressed with the speech by Fatou this afternoon here, where she actually said, "You know what? If we look at our track record, then I as prosecutor of the ICC—I recognize we can and should do more. What has happened so far is simply not enough."

Let's have a quick look at the track record. We have so far four convictions. ICC has been in function for 17 years. Four convictions, of which one may still be in appeal. We have four acquittals, of which two may also be subject to appeal. We have two non-confirmations, self-indictments, three cases that have been withdrawn or terminated. We have now three people in pre-trial, still subject to confirmation of indictments, one person in trial, and we have a total of 15 people at large that have been indicted by the Court, some of them already for many, many years but are still not in The Hague. At the same time, the prosecutor is working on ten preliminary examinations and 11 investigations. So, there's a lot of work that is ongoing, but the total track record, what we have seen so far after 17 years of work, is simply not enough. I think we can all agree with what Fatou was saying. We can and must do better, and we can and must do more.

But at the same time, I think—and that is also the discussion we had this afternoon—I think it is too simple to only look at those figures. Yes, the Court has been there for 17 years. Yes, the budgets, if you add them up for all those 17 years, has been a huge amount of money, but I think the Court is more than just only a couple of figures about convictions and acquittals. Let's also realize that in those 17 years as well, we have seen thousands of victims who have been participating in proceedings. The victim participation system in the ICC statute is unique. Every single victim that participated, they may have some of their own views and concerns about the length of proceedings or whatever, but every single victim is an expression of hope of delivering, of getting justice delivered to them. And

that's why they have participated. Let's not forget about the voice of the victims in those proceedings.

In addition to that, we often forget about it, but also the trust fund for victims is an integral part of the ICC. They sometimes don't think so themselves, and I'll go back to this later. But the trust fund is an integral part, and through their programs, they have actually been reaching out to more than 100,000 victims of crimes in those countries where the Court has been active. That is a huge, huge positive impact, and when I was working for the ICC, I saw a number of those protests being operated in Uganda and Eastern Congo, and it's truly amazing what they do. And every one of the victims that have been assisted in all kinds of programs are truly amazed and impressed by the work that the trust fund has been doing. It's part of the Rome Statute system, and we should not forget about that.

Also, I am the first one to recognize that the ICC should do more about outreach. Outreach—you can never do enough—but through all the different outreach projects in the different countries, also more than hundreds of thousands of people who have been reached out to, do know about what international justice means. These are also part of the figures that we should take into account when we make a total assessment of the functioning of the Court.

Let's look a bit at the major players in the total assessment of what the Court is about, what it has to achieve, the strength, the weaknesses, the shortcomings, the achievements, et cetera, and of course, there are two major players here. On the one hand, the states have theirs; on the other hand, the Court itself.

Let's start with the states. Known states parties first, you know, we all know about the position of the U.S. at this very moment towards the Court. Support is not the first thing that springs to mind there. There are some challenges. I'll put it that way.

But let's also not forget that under the previous era government—and I see Stephen Rapp sitting over there—you know what? The amount of support from the U.S. towards the ICC has been enormous, and I've been readily saying—and Fatou as well—you know what? There has sometimes been more support coming out from non-state parties than from a number of states parties, and in particular, the U.S. is meant by that. Unfortunately, the situation is completely different at the moment. That's also why Fatou, unfortunately, is not here today, and that is very unfortunate, and hopefully, times will change.

Of course, also, I mentioned it before, also other countries—the Security Council with many countries out there, at the moment 122 states parties, do we expect any new ratifications in the foreseeable future? Probably not, unfortunately. We are far away from universal recognition of the ICC statute.

At the same time, a lot of criticism about it. You know, Russia, I mentioned already. China but also India, Indonesia. There's no movement in that way in terms of support for the ICC.

But also on the states party side, the picture is quite mixed. You know, states parties actually have two roles to play. On the one hand, the support to the ICC system; on the other hand, an element of governance, an element of control over the Court. I must say that balance has not really been there. It has been a bit out of balance. I think the support—to be very blunt, the support has not been enough, and the control has been way too much. And I'll get to that in a minute.

When it comes down to support, we're talking about judicial cooperation, 15 outstanding arrest warrants for such a long period of time. The ICC doesn't have a police force. The Court is dependent on the support and the police actions of states. It's a shame for the states

parties for not having implemented it for a long time. We have seen it in particular, of course, where the travels of Mr. Bashir to different countries in the world, where states parties, also non-state parties—but states parties could always be on top of it, sending messages to the countries where Mr. Bashir was traveling to, do pick him up, do bring him over to The Hague, no response to these kind of requests. Beyond the control of the Court, but it does have an impact, of course, on the reputation of the Court.

But also in issues like where I always very much involved in, enforcement of sentencing agreements, witness relocation agreements. A lot of states or a number of states who have been very vocal about the public showing of support for the Court are much less vocal when it came down to the willingness to enter into witness relocation agreements. It was actually quite interesting that in those five years that I was at the ICC, we managed to get a lot of agreements in place with countries who were much less vocal about the support to the Court but actually did agree with witness relocation agreements. It's quite an interesting element there.

But still, the number of countries that are willing to provide witness protection is limited. The number of states that are willing to take someone on board who has been convicted by the Court is limited. That is part of the traditional cooperation aspects where you think, “You know what? States, you could have done a bit more, and, states, you should do more.”

Also, on the political cooperation, two states are withdrawing, but only Philippines—we already discussed it today—simply out of self-serving interest of the leader of those countries, just throw the ICC statute out of the window, and you feel you're safe. The number of African countries that continue to be critical about the Court, discussions going back in South Africa anytime soon again about whether or not to pass legislation about the withdrawal from the

ICC statute, but also even among states that have shown for years to be strong supporters of the Court over the last two to three years, you've actually seen a fatigue amongst them. Whenever the budget discussion was coming up, "Oh, you're always asking for too much money, and how can I defend that back home? International justice is on its way down. There's other topics that are important for us." You actually have seen an increasing fatigue towards the ICC, towards international justice. It's not a good development, and of course, these are things beyond the control of the Court but, of course, do have an impact on the way the Court is able to perform.

But also, an element of what I call "institutional cooperation," election of judges is one of those examples, and we discussed it this afternoon. I will get back to that a bit later. But one aspect that is very important is the yearly adoption of a budget for the Court. We're talking about over the last couple of years, 140-150 million euros, and you can say, on the one hand, it is too much money to justify and to support the track record of the Court, but at the same time, in my view, it's not enough money, really, for the Court to be able to change that track record because the resources are not enough. We discussed it this afternoon as well. It's not enough really for the prosecutor to have sufficient investigators doing proper investigations into situations where they need to do the investigation.

Take an example: on the average, the prosecutor is able to have, each and every investigation, between ten to 15 investigators, and that is, for example, east in DRC, huge part of the country, lawlessness, very difficult to do your investigation. How can you with 14, 15 investigators really bring about and develop strong cases against potential accused persons? Every national legal system, if you have a big case, then you have for any major killing case or coming from Holland, MH-17, the downing of the plane in eastern Ukraine, over hundreds of investigators working on that case. There were dozens of prosecutors

working on that case. The ICC, the prosecutor of the ICC, does not have those resources to take and to undertake proper investigations.

The political reality, of course, is there is no possibility for an increase of the budget, but it does have an impact on the ability of a prosecutor, any prosecutor, of the ICC to really bring about strong cases that stand the scrutiny of the judges.

Then also, the last aspect here is the element of control. When I heard Fatou saying this afternoon, “Well, I have to be here because I have my meetings with the Committee on Budget and Finance,” I truly felt sorry for her. Having been working with the Committee on Budget—and, Luis, you know that as well—working with the Committee on Budget and Finance is close to inhuman and degrading treatment, I would say, you know?

[Laughter.]

I may file a lawsuit against it. But, you know, it is painful. It is micromanagement. It is hundreds of questions in two weeks’ time, and you provide answers and hundreds of pages, and they don’t read it. So, you come into meetings, and you know that they haven’t read it, didn’t have the time for it, ask the same questions again. It is really a painful process, but it is the basis on which the states discuss their budgets, our budget, or the core budget later on.

And then you sometimes have discussions with 40, 50 diplomats in The Hague around the table, and you’re talking about maybe, oh, let’s take 10,000 out of that budget line or 15,000 out of that budget line. The mere fact that six or seven Court officials and 40 or 50 diplomats were sitting in a room for three years already costs more than the total saving of that 10- or 15,000 euros, you know?

I may sound critical and cynical about it, but that process, that budget process was really out of control. And I've never compared to the other tribunals where ACABQ is not necessarily always fun either, I recognize that, but the level of micromanagement and all that was really truly, and continues really truly to be a tough exercise, and that's also where I'm saying, "You know what? Control, yes, plenty of it, but support, well, could have been a bit more."

Now moving to the Court itself, first, of course, the judges and the judicial work over the last couple of years. There are already a couple of judgments that were discussed this morning, the Afghanistan decision, the Gbagbo and Blé Goudé decision, the Bemba Appeals Chamber decision. We don't have to go into the details now anymore, but these are cases that do not necessarily add to the credibility of the institution. And that's probably an understatement, which is a pity.

Then on top of that, we know that judges have filed a case in Geneva against the Court for a pay raise at a time when you know that the budget of the Court will not increase, at a time when judicial activity is relatively low, at a time when there's already a lot of criticism about the functioning of the Court. And that's probably not the right moment for judges to ask for a pay raise with probably re-directive effect for many years as well, which may lead to millions of extra costs.

Some states' bodies, I know, have already indicated even if the judges will win that case in Geneva, we will not up that budget with the same amount of money. So that basically means that a total capacity of the Court to do investigations, to do prosecutions, to do witness protection will actually further diminish. I don't think that is the right message that judges should give to the public and community.

Then, of course, moving to the prosecutor. I'll get back to the Registry later on as well, so don't worry. No one is spared this evening.

[Laughter.]

You know, as we said before, simply not enough arrest warrants. The track record is simply not good enough. We recognize that all. We don't have to spend more time on that. It is a track record that is not convincing and there is a need to change that record. How to do that? That is difficult. It does require budgetary resources, but it is a recognition that what has been done so far by objective means but also in comparison, of course, to other courts and tribunals, it is not something that we can be too proud of.

And I was very happy there again to hear Fatou this afternoon say, "You know what? Hey, we are going to assess our working matters. We have to look into how we can do our work better," and I think that is actually necessary as well.

And I think one of the issues—and we have a discussion this afternoon as well—is if you do see the track record in terms of the number of acquittals, number of non-confirmations, you know, there is an issue with the quality of the evidence that is being produced before and presented to the judges. There is a need to thoroughly look into the work procedures of the investigation teams and to see how they can really strengthen that. I'm hesitant to go too much into the detail because I'm not a prosecutor, I'm not an investigator. But comparing the working methods of the ICC to that of other courts and tribunals, there is a need to thoroughly look into that.

Then the Registry. It didn't make a good start. That is for sure, and when I came to the Registry in 2013, the first thing I was confronted with was a letter from an NGO who basically—which was already sent to my predecessor 4 months before—which basically alleged that a staff member of the Court in Kinshasa had actually sexually abused three women who were in their care because they were vulnerable witnesses in Kinshasa and had actually been sexual slaves during

the war. My predecessor had not done anything about it. The only documents I got when I was asking about it was a huge binder of which three senior officials of the Court were sending memos to each other, why one was not as responsible as someone else was, and they were filing memos to each other. But I didn't find one piece of paper in that dossier as to what actually was done in relation to those three women.

So what I did was call Brenda over there and saying, "Brenda, I have a problem over here, and I need to have a very thorough investigation into this, as an internal investigation." But there was too much publicity about it already, so an internal investigation was not enough. I needed outside experts. Brenda with a team of four or five people did a thorough investigation, a big report. It was 100 recommendations or something like that, and thankfully, one of the people in her team became the new head of that section of the Victims and Witness Section and really implemented all of those recommendations. But it was a real poor state in which the Registry was at that time.

There were other incidents as well. At one point, I was called by one of the judges—I won't mention any names—who said, "Herman, I want to talk about this and that case, but can you please not bring your own lawyers? Because they are not on the right track on this, and they advise you in the wrong way." So you know what? If that is the kind of things that you get in the first 2 or 3 weeks working in the Registry, you think, "Wait a minute. There's some problems out here."

So, I started a big reorganization. I know that I didn't make myself necessarily always very popular with that, but it was absolutely necessary. Is it perfect now? No, it's not. It will never be perfect, but at least it's much better than it used to be. And at least there is an element of a regaining of trust between the Registry, the Prosecutor, and the the Registry and judges, and so it has moved in the right direction. But I think there's still work to be done.

Trust fund for victims. I mentioned it before. We often forget about that, but it is an integral part of the Rome Statute. The problem, I think, is that the trust fund itself presents too much as being an NGO within the Rome Statute system. They're not part of the Court. They want to use the resources of the Court when their staff is traveling around, but they don't want to see the ICC on their cards because they don't want to be associated with the ICC. Well, that's a bit of a difficult one because you are the trust fund for victims of part of the Rome Statute, of the ICC statute.

In addition to that, they've sometimes been quite slow in their decision-making towards starting progress in particular countries. I think they started thinking about going to Kenya. By that time, the cases were withdrawn, which was probably a bit late. So, there have been some shortcomings over there, but there's also some changes taking place over there.

All in all, if we look at the track record, there's room for improvement on all different sides, certainly also in comparison with other Courts and tribunals, but it is also—let's be fair—it's a combination of inside factors and outside factors.

Then the way forward. Let's be realistic, and I mentioned that earlier today as well. You know what? The course has often been presented, really since its start, as the Court that is going to end impunity. Well, that's not realistic. The Court will never end impunity throughout the world. It's simply impossible. First, it's subsidiary. It's a complementary system. States have the primary responsibility for that, but even if the Court were to take that responsibility, the resources are not enough. The number of crimes committed all over the globe are so huge that no Court will be able to ever really end impunity. The Court can contribute to that, but it can't end it.

It's also, I think, to a certain extent, a victim of its own presentation of what it is supposed to do, and therefore, it gets criticism for it, "Hey, you have not yet ended impunity. You told us 17 years ago, and you still haven't done it. I'm making a joke about it, but there is an element of raising too high expectations about what the Court can deliver on, and I think it's good to be more realistic about their assessment about what you can actually deliver and also what you cannot deliver and also be transparent about that as well.

At the same time also, I think we always will recognize that the mere mandate of this Court, given the crimes, given the normal successions of people that are responsible for the ordering or the commission of such crimes, the mandate will always be extremely complicated. That will not change, and there again, that is also beyond the control of the Court because it really depends on the cooperation of others to really make that happen.

So maybe one or two minutes, and then I really will wrap up. The way first, then, of course, we recognize at the moment in an era of populism, of lack of trust in international law and international institutions, et cetera, it will be very difficult to really change the functioning of the Court. The world out there is not very helpful for that Court, and there's only so much that the Court can do.

But here again, I think that both for the Court and for states, there are a number of things that they can do. As far as the states are concerned, I think they should have a very serious look at the election of judges. I think there's a wide recognition—and the Court is not unique in that, possibly other international Courts and tribunals, they have had their own challenges in terms of the composition and the quality of judges. At the ICC, that is certainly also a big issue, and I think states parties should really carefully look at how to strengthen that election process.

I don't think it's a question of the difference between what they call List A and List B, you know, people with a criminal law background or an international legal background. There're some fantastic judges that are examples of both List A and List B, and there are some clearly less effervescent examples on both as well.

I think there is a need for a bigger role for the Advisory Committee on Nominations. I think states should take the advice of the Advisory Committee more seriously. They normally have a distinction between qualified and highly qualified, while being U.N.-speak, is basically a reality that means that qualified is, hmm, doubtful and highly qualified is okay—they probably can do the job.

[Laughter.]

And I think maybe it will be good for states to say, “You know what? If my candidate that we put forward, if that person only gets a qualified, maybe we should withdraw our candidate because there's probably not the level.” I'm not sure how many states would even do that, but it might be something interesting to discuss with states. You know what? If you really want the best judges over there and there's an independent advisory committee that does make that assessment, let's follow their advice.

Also, I think it would be good for judges to be tested on other things than only their legal qualifications. If you are sitting as a judge in a Court, you deal with witnesses that are victims of sexual crimes or other crimes. You need to have a certain skill set, sub-skills, call them, to really make sure that you make that appearance of that witness in the courtroom a day in court that they deserve, and don't make any mistakes over there. There have been examples, not any relation to sexual crime witnesses, but there have been examples of one or two judges that started laughing about a particular witness because that judge did not believe that witness. Sorry, but you cannot do that. That

is simply improper. It's unethical to do that. These are kind of issues where I think you can test judges a bit more than simply only looking at the legal qualifications, you know, qualified or highly qualified.

Election of the next prosecutor, I think, is also an incredibly important thing. I know that a process has already gotten started, but I think we really—given the enormous challenges of the Court, I think the next prosecutor really has to be an outstanding person that will be able to face all those challenges that are out there. It's what we call in Holland “a sheep with five legs,” and we know that that is a very rare phenomenon. I've never seen one myself. But it is that kind of person that we really need because the challenges out there are really enormous. And I think there is also the responsibility for states to focus more on their obligation to support the Court, less control, more support.

For the ICC itself, I think for the judges, I think there's a need to have more self-discipline, to work more with their own internal working methods, ethics. A couple of years ago we started working on key performance indicators. Jim knows all about that. That is a process that needs to go on. Look at the Blé Goudé case. The last witness for the prosecution was called—was it January last year? Only two months ago, we got a written decision by judges—or one month ago on the No Case to Answer, but it's 18 months. You know, with any other tribunal, there was one or two months. Let's set key performance indicators on that. No Case to Answer, you take a decision with one or two months. Other cases, judgments, six months in action, you've got to produce a judgment there. The Kosovo Specialist Chambers has put very ambitious deadlines in their statute. Let's use them also for the ICC. I think it would add to that credibility.

Also for the prosecutor, I understand that Fatou is already working on that, look at the working method, seeing where there are things that can be changed, and I think also here, you know, look at the cooperation between the Registry and the Prosecutor's Office. There's

still overlapping functions on both sides, witness protection people in one, witness protection people in the other. Let's see whether there can be more of an exchange of functions so that really every single person has a single responsibility to do.

And last but not least—and we had this discussion this afternoon as well—I think it would be good to have a ten-year, full staff member at the Court. If you work for, let's say, seven years, ten years or whatever, it's time to move on. You don't come in there and think, “You know what? If I don't make too much of a problem, I can get my pension out of here.” Thankfully, the vast majority of people working at the Court don't think in that way. There are, unfortunately, a few who do, and that does have an impact on the staff morale of others as well. These kinds of things may, as I say—I know it's very delicate for that, that proposal. It probably would only apply to new staff coming to the Court. I think otherwise it will be a few hundred pages again at the ILO Tribunal in Geneva. That might be a bit costly, but it is something that you may want to think of.

Those were a couple of reflections that I have. Of course, I'm happy to answer any questions and also happy to see any further discussion tomorrow taking place. Thank you so much for your attention.

Year in Review Lecture

Mark A. Drumbl*

MARK DRUMBL: Good morning, everyone.

ATTENDEES: Good morning.

MARK DRUMBL: I think I'm going to proceed in a way that's a bit more of a storytelling than necessarily a distillation of what happened over the past year.

In part, it's not all that necessary to offer a distillation or a survey since on the prosecutors panel yesterday we saw marvelous snapshots of all of the work that the international tribunals have been doing in terms of ongoing cases, new investigations, and also issues such as sentencing and enforcement.

I also thought what was really fascinating in the prosecutors panel was a presentation of some of the very important developments at the national level in terms of new kinds of prosecutions. It is fascinating that corruption is emerging as a penal sanction to map onto an atrocity context. And also a variety of conversations about universal jurisdiction were had.

What I think I'd like to do is tell three stories of three things that did happen in international criminal justice over the past year, and use my time as a vehicle and doorway to think about law and also how law fits in life. One of the themes that I want to evoke through these stories is what I felt is an important vibe in international criminal law enforcement this past year. And it's the theme of time and age and coming of age.

* Washington and Lee University, School of Law.

Let me start with the ECCC. As had been mentioned yesterday, one of the convictions that was rendered in November of 2018 involved criminality and two defendants, prosecuted and convicted for the second time with regards genocide and crimes against humanity in Cambodia.

One of the defendants, Nuon Chea, passed away on August 4, 2019, after having been convicted twice by the ECCC on different sets of charges. He passed away at the age of 93. He had been ill for a while. He had spent approximately the past decade in detention. He was the chief ideologist, so to speak, of the Khmer Rouge regime. For those of you who may not necessarily be aware of all the details, the Khmer Rouge -- the Government of Democratic Kampuchea from 1975 to 1979 -- initiated a variety of horrific massacres, forced labor, and starvation. Roughly 2 million Cambodians passed away in that time period.

After the Khmer Rouge exited power (they were ousted by the invading Vietnamese army), a People's Tribunal was set up that ended up prosecuting two defendants, one of whom at the time was Pol Pot, who passed away himself either by suicide or through natural causes in 1998.

When we look at the work of the ECCC, one aspect of it that I find fascinating is the reality of the prosecution of extremely elderly individuals. At the time of this presentation, very few still were alive, let alone functional. And the aesthetics and realities of aging pervade the ECCC courtroom.

Defendants are to stand when the verdict is read, and the act of one defendant standing in court in November 2018 was only made possible because he was supported by two guards, one of whom hoisted him up by the back of his trousers.

I think one very interesting question for us as international lawyers is: What are the aesthetics publicly of prosecuting individuals who can barely stand, can barely walk? *Demjanjuk in Munich* is a book written by Lawrence Douglas on the prosecutions of John Demjanjuk that occurred in Munich at the national level in Germany. At one point, he had to come into the courtroom lying flat on a board that then had to be tilted up in order to visualize the proceedings. It reminds me of the *Silence of the Lambs* where Hannibal Lecter is on this board. But those are these kinds of visuals.

The main themes I would like to evoke are age and time. So, here we have the very old. But also, increasingly, children and young people are becoming subjects and deeply involved as protected classes and also participants, in a certain sense, in the process of international criminal law and its particular enforcement. Here, of course, I'm thinking about the prosecution of individuals for crimes such as child soldiering; unlawful recruitment, use, and enlistment under the age of 15; and also a number of the convictions, for example, in the Ntaganda conviction in June of this summer. And among the charges for which the convictions were issued -- there were 18 counts, I think, in total -- a number of those charges involved crimes that relate to very young people, minors, such as sexual slavery and also child soldiering.

Also, very interesting to go back, I think, to the context of the ECCC. One of the convictions that was issued in November 2018 is for forced marriage, which in Cambodia had been practiced in a way that was different than how it had been practiced by the AFRC and RUF in Sierra Leone or by the Lord's Resistance Army, the LRA, in Northern Uganda. The LRA trial at the ICC involving Dominic Ongwen is the third story I would like to tell. And I'll get to him in a bit.

But what's fascinating to me in the forced marriage context—and we have Valerie Oosterveld here, who is, I think, the leading global authority on forced marriage as a crime in international criminal law.

What's very interesting to me is how in Cambodia the practices of forced marriage involved the state coming in to conscript both men and women into conjugal unions. The Khmer Rouge did it in part to demolish the relevance of family and private loyalties, to fracture and fray associative rights, to allow the state to enter into the most private sphere of decision-making and also in the ultimate paradox killing 2 million people but yet then wishing to increase the size of the Cambodian population to 20 million and, in part, forced marriage turned into forced procreation. And then the ECCC criminalized that in terms of this particular verdict.

In Northern Uganda, the Ongwen case—Dominic Ongwen's prosecution, the trial is ongoing.¹ Who is he? He is a brigadier commander in the Lord's Resistance Army. He first entered the Lord's Resistance Army—it's unclear exactly when, but according to the defense, at the age of 9. He then grew up, so to speak, in the Lord's Resistance Army, became a child soldier, rose through the ranks, and achieved a level of great power within the spaces over which he had authority. Dominic Ongwen, I believe, is facing the largest number of charges that anyone has faced before an international tribunal.

He faces charges of crimes that he himself injured and suffers—enslavement and, of course, child soldiering. Ongwen also faces charges for both his own personal status as someone who forcibly married women to himself, but also his responsibility for forced marriage within the Lord's Resistance Army as a whole. As mentioned earlier, the ECCC found in the Cambodian context that both men and women were the victims of forced marriage. In the Lord's Resistance Army case and also in Sierra Leone, largely, the portrayal of victimhood in forced marriage situations oriented itself around women and girls as victims.

¹ At the time of the presentation. Ongwen has since been convicted and in 2021 sentenced to 25 years' imprisonment at trial.

What I find very interesting to tie all this together is how, this year, international criminal law, when I look at it, increasingly is involved in these life cycles of ordinary people in ordinary lives through the extraordinary criminality of these powerful defendants, certainly ones that become old through time, who look very frail—and they flail—and also a story, for example, of someone like Dominic Ongwen who began powerless, utterly powerless, and yet through the metastasis of atrocity, he himself metastasized over time into someone who engaged in acts of terrible evil. To me, these are these interesting questions of the etiology and the background -- the provenance of atrocity -- how to fully understand how atrocity becomes so massive in scope is good, I think, to have a conversation about Dominic Ongwen as a complex perpetrator, because complex perpetrators are the actors and agents that make atrocity truly massive.

I think it's good to have a conversation about these very elderly defendants, and yes, some of them may exercise agency in excessively looking unwell. But they're just unwell biologically, physically at that time, and I think if we get away from these notions of perpetrators as broad and tall and powerful and strong at all times, I think we get away from those kinds of stereotypes. If we get away from those kinds of constructions, I think we then get a far deeper and better appreciation of how atrocity really happens and how power is never permanent, the shifting nature of power and its authority and exercise.

I've written a lot about individuals who are both victims and victimizers. I'm very interested, for example, how in World War II concentration camps a variety of individuals persecuted by the Nazis, brought into the concentration camps against their will—10 percent of those individuals came to form part of what the Nazis called “prisoner self-administration.” Many of the camps ran with limited SS oversight, and a lot of the daily functions of law and order in the camps fell into the space of completely persecuted people who then became part of the tragic machinery of persecution.

I think as international criminal lawyers, we need to develop a better vocabulary in law to talk about the riddles of how the weak can be really strong in certain moments, how a powerless person can still lord tremendous authority, including over life and death over someone else in a particular moment. In other words: how a victim can victimize.

Like Hannah Arendt said in *Eichmann in Jerusalem*, courts exist to determine the guilt or innocence of the man or the woman in the dock. But in the public at large, courts also themselves are vehicles for storytelling. They're seen by the public as places and spaces where stories are narrated and where life is unveiled and life cycles are unwound. And to me, these cases this year, the three that I picked to just share with you briefly, for me these cases show how the weak can inflict terrible pain, how in the case of child soldiering, the pain of child soldiering can last and be ongoing. I also think a very important question when we talk about life cycles, when it comes to forced marriage and compelled procreation, one of the really tough conversational questions is what about the children born out of forced marriage relationships? How do we think about reintegrating those particular individuals?

On forced marriage, I'm writing an article now, and this will be the last thing that I end up on because I think maybe we can have some dialog—so I'm writing an article now on Northern Uganda, and I'm writing it with an anthropologist, and it's on something that does not get spoken about much in Northern Uganda, namely the men in the forced marriage relationships in the LRA.

I mentioned to you earlier that in Cambodia in terms of the judicialization of forced marriage, the men were presented as victims of forced marriage. Now, the ECCC in the November 2018 judgment did rule that the men in forced marriage relationships did not suffer rape in those particular forced marriage contexts. That was in part due to a read of Cambodian law, but then the court also ruled that the

compelled procreation—that the men in forced married relationships who are subject to compelled fatherhood at the behest of the state—did not amount to sexual violence. This situation was not of the requisite gravity of sexual violence.

Despite the fact that men were seen as victims of the Khmer Rouge overall policy of forced marriage, there were limits to the victimhood of men in those relationships as articulated by the verdict, as articulated through law.

Now, in Northern Uganda, almost the entirety—I would say the entirety—and please correct me, you folks can correct me if I'm wrong—almost the entirety of the presentation of victimhood in the forced marriage charges in the Ongwen case revolves around women and girls, and this is interesting to me because if one looks at the ethnographic research, if one looks at the on-the-ground scenarios and realities of forced marriage in Northern Uganda, indeed, there were some commanders, in particular, more senior commanders like Ongwen, who took on multiple wives and who exercised choice. They exercised their choice in so doing, and that's the facts of Ongwen. I think he had 10 wives.

ATTENDEE: Nine.

MARK DRUMBL: Nine. That's one thing, but what's extremely interesting is if you look more deeply at some of the ethnographic data, most of the men in forced marriage relationships in the LRA were ordered by commanders to be in those particular relationships. Emphasizing the horrific sexual torture against women within those forced marriages is compatible with relating the reality that in Northern Uganda a number of coerced men and boys also suffered in forced marriage contexts. One of the key elements of the crime of forced marriage is a crushing of freedom of association, a crushing of dignity, compelled parenthood, and a removal of choice in

the context of one of the most personal and private decisions that may be made, that of marriage.

All this to say that when I think of a year in review, I learn from panels about prosecutors that involve discussing what's going on, but I think one of the most interesting things for international criminal law and its adjudication is the broader storytelling capacity. What stories does law tell? Does law tell complete stories? Does law tell partial stories? Does law occlude as it clarifies? Does law take away as it gives? And to me, on a broader level, if we believe in the value of international prosecutions, which we all do, I also think we need to think about how to tell those stories, and for law to better tell those stories—and to tell them more completely—I think it will help justice.

Using Technology to Narrow the Impunity Gap for Atrocity Crimes

Mark S. Ellis



Introduction

In 2011, London’s Channel 4 News produced an extraordinary investigative documentary into the killing of thousands of civilians by government forces during the final weeks of Sri Lanka’s twenty-six-year civil war.¹ At the heart of the investigation was a graphic video revealing acts of torture and execution. The video, sent anonymously to Channel 4, contained live-action footage of a soldier shooting a prisoner as he lay bound and blindfolded amongst a pile of bodies, and another sexually brutalizing a woman dead or unconscious on the ground.

I was asked by Channel 4 to advise whether the video showed war crimes being committed. My answer was an emphatic “yes.” Yet, there was a problem. The anonymous video could not be authenticated, and Channel 4 ran a tag line seeking the public’s help in providing information about the video or its source.

* Dr. Mark Ellis is Executive Director of the International Bar Association. London.

1 Channel 4 News, *Channel 4 to broadcast Sri Lanka’s Killing Fields*, CHANNEL 4 NEWS (June 10, 2011), <https://www.channel4.com/news/channel-4-to-broadcast-sri-lankas-killing-fields>.

Taking advantage of this authenticity gap, the Sri Lankan government vehemently asserted that the video had been doctored.² Launching a swift disinformation campaign, the government undermined the entire story. The result was an even larger *impunity gap*. Clear visual evidence of perpetrators committing atrocities was irrelevant because the evidence could not be authenticated.

A Wider Problem

Digital information sharing has fundamentally changed the way we learn about and document human rights abuses. With barriers of access and proximity removed by the internet, events once hidden can now be shared instantly and globally. Social media platforms such as YouTube, Facebook, Google, and Twitter have become popular tools for sharing real-time news and eyewitness accounts in conflict situations (e.g., East Timor, Libya, Egypt, Iraq, Ivory Coast, Syria, Yemen, etc.). An estimated four million videos about the Syrian conflict alone have been uploaded to YouTube.³

This shift in the way we process and consume news has raised the level of awareness about places and events that otherwise might go unnoticed. It is increasingly difficult for perpetrators to hide their abuses. In conflict zones in particular, mainstream news outlets often report on social media activity as an additional source or angle on the news.

2 Channel 4 News, Sri Lanka calls 'war crimes' video a fake, CHANNEL 4 NEWS (Aug. 26, 2009), https://www.channel4.com/news/articles/world/asia_pacific/sri%2Blanka%2B-calls%2Baposwar%2Bcrimesapos%2Bvideo%2Ba%2Bfake/3321507.html.

3 Armin Ross, *Erasing History: YouTube's Deletion of Syria War Videos Concerns Human Rights Groups*, FAST COMPANY (July 3, 2018), <https://www.fastcompany.com/40540411/erasing-history-youtubes-deletion-of-syria-war-videos-concerns-human-rights-groups>.

Still, for purposes of news, investigation, and documentation, there are significant challenges posed by the use of social media. Photographs and videos uploaded to sites such as YouTube are rarely attributed and verifiable, and do not carry information about the date, time, geographical coordinates, or “author” of the videos. Thus, mainstream media (e.g., CNN, BBC) will often report that information “cannot be verified or confirmed,” which weakens a story’s credibility. Lacking a chain of custody or ability to verify, they are of little or no use to authorities. In the event of a criminal prosecution, witness photographs and video footage are likely to be rejected or given little weight due to a higher standard for reliability in a legal context. This is a problem for the legal profession.

In sum, while eyewitness documentation distributed on social media raises awareness of atrocities, it poses difficulties for the prosecution of individuals who commit international crimes as the process of retrieving social media evidence that meets the legal standard is time consuming and resource intensive.

Closing the Authenticity Gap

In an effort to close the *authenticity gap*, the International Bar Association (IBA), with support from LexisNexis Legal & Professional, launched the eyeWitness to Atrocities app (“eyeWitness”).⁴ The first pillar in the eyeWitness app is that it is a new tool for documenting and reporting human rights atrocities in a secure and verifiable way. Second, the manner in which eyeWitness stores and safeguards the

4 International Bar Association, *International Bar Association Launches Mobile App that Captures Verifiable Images to Aid Prosecution for Human Rights Atrocities* (June 8, 2015), <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=F8FF99F9-43E4-4301-B1A4-9935A25F0FDD>. Also available at <https://www.businesswire.com/news/home/20150608005437/en/International-Bar-Association-Launches-Mobile-App-that-Captures-Verifiable-Images-to-Aid-Prosecution-of-Human-Rights-Atrocities>.

photos and videos captured with the app ensures that we can certify for a court that no one has had access to the information from the time it was recorded until it is handed over. The third pillar of eyeWitness involves curating the information collected and compiling it into dossiers for investigators.

Collectively, these pillars enable eyeWitness to bridge the gap between frontline human rights defenders and organizations recording violations and lawyers who can act on that information to obtain justice and achieve accountability for the worst international crimes.⁵

How it Works⁶

While mobile devices can collect the information needed for verification, such as the date, time, or geographic coordinates, this information—and the very images themselves—can be manipulated. The eyeWitness app works by collecting and embedding metadata—GPS coordinates, date, time, and information about nearby cell towers and Wi-Fi networks. Footage is stored and encrypted on the recording device in such a way that it cannot be edited. In addition, the app embeds a unique identifying code (known as a hash value), which is used to verify that the footage has not been edited or altered in any way.

A user can submit images directly from the app to a storage database maintained by eyeWitness, creating a trusted chain of custody. Only footage captured with and sent from the app is stored, ensuring that it is original. The encrypted footage is securely stored until it is needed for an investigation or trial. Users retain the ability to separately

5 eyeWitness to Atrocities, *Our Impact*, <https://www.eyewitness.global/our-impact#:~:text=The%20eyeWitness%20to%20Atrocities%20app,courts%2C%20and%20international%20police%20forces>. This section is taken from the EW website.

6 International Bar Association, *supra* note 4.

upload the now verifiable footage to social media or other outlets. The collection and embedding are thus done to meet the legal standard for showing chain of custody and authentication in court.

What does eyeWitness do with the footage?

The eyeWitness organization works with partner organizations to promote accountability for violations of international criminal law, specifically war crimes, crimes against humanity, genocide, or other systematic violence.

When a user uploads footage to the *eyeWitness* repository, an expert legal team analyzes it to determine its relevance and identify the appropriate authorities, including international, regional, or national courts. The team then catalogues, tags, and compiles the information into dossiers tailored to the needs of international investigators and courts. The *eyeWitness* team essentially becomes the advocate for stored evidentiary information, working collaboratively with the organizations who collected the information to ensure that footage is appropriately used.

How is footage stored?

LexisNexis Legal & Professional, a part of the RELX Group, hosts the secure repository and backup system used for data collected via the eyeWitness app. Their industry-leading data hosting capabilities provide the eyeWitness program with the same technology used to safeguard sensitive and confidential material for LexisNexis clients every day. The database is not accessible to the public. Only members of the eyeWitness team may access the secure server.

Impact

The eyeWitness app is currently being used by human rights defenders around the world and since its existence has been used on behalf of more than 40 partner organizations. To date, the app has been downloaded more than 30,000 times, and more than 13,000 photos and videos have been captured.

The footage obtained has contributed to investigations conducted by the United Nations, the International Criminal Court, different European war crimes units, domestic courts, and international police forces. To date, 21 eyeWitness case dossiers were submitted which were used in several ground-breaking cases.⁷

TRIAL, partnering with WITNESS and eyeWitness, worked directly with the Congolese victims' lawyers to collect evidence to be used against Gilbert Ndayambaje and Evariste Nizehimana, two commanders of the Democratic Forces for the Liberation of Rwanda (DFLR), suspected of having perpetrated torture and killings in South Kivu in 2012. The 2018 conviction of Ndayambaje and Nizehimana was a result of key evidence found not only in witness statements and other documentary evidence but also in the photographic footage captured through the eyeWitness app.

Ninety-two authenticated photos revealed the dimensions and estimate of bodies the mass graves held and the injuries suffered by surviving victims. The photos helped prove the contextual and material elements of murder and torture as a crime against humanity.

This case highlights the importance and weight of photographic evidence. According to Guy Mushiata, DRC Human Rights

⁷ eyeWitness to Atrocities, *supra* note 5.

Coordinator for TRIAL International: “When the footage was shown, the atmosphere in court switched dramatically.”⁸

In another situation, the partner organization Al Haq captured 1,602 photos and videos through eyeWitness that showed ongoing human rights abuses and violations of international humanitarian law by state and non-state actors. The eyeWitness legal team reviewed the media files, briefed the United Nations Independent Commission of Inquiry on the protests in the Occupied Palestinian Territory investigating team about the content, and provided photographic information that helped to identify the location of major incidents.

In another high-profile case, the International Partnership for Human Rights (IPHR) collaborated with Truth Hounds (a Ukrainian-based NGO) to collect information about the impact of shelling in Donetsk and Luhansk. Field documenters took 159 photos with eyeWitness that confirmed shelling sites and helped to assess whether objects protected under international law were targeted. Verification through eyeWitness helped to strengthen the evidence, avoid data manipulation, and corroborate other evidence.

Furthermore, the metadata captured by the eyeWitness app was integrated into a visual map that accompanied a 2017 written report, which was also shared with the Organisation for Security and Cooperation in Europe (OSCE).⁹

Most recently, Lawyers for Palestinian Human Rights used the pictures captured by Al Haq with the eyeWitness app in their submission of

⁸ eyeWitness, *Bringing historical crimes to a domestic court in the Democratic Republic of Congo*, <https://www.eyewitness.global/Bringing-historical-crimes-to-a-domestic-court-in-the-DRC.html>.

⁹ eyeWitness, *Fighting misinformation and supporting human rights advocacy in Ukraine*, <https://www.eyewitness.global/Fighting-misinformation-and-supporting-human-rights-advocacy-in-Ukraine.html>.

their complaint to the OECD. Nineteen photos were used to document the demolition of homes, the Shu'fat refugee camp and settlements.¹⁰

Conclusion

The eyeWitness to Atrocities app offers a breakthrough method for ensuring that real-time documentation of abuses is secure and verifiable and can be used as evidence in a court of law. By authenticating information and providing a reliable chain of custody, the app offers a solution to the evidentiary challenges of mobile phone footage.

Combined with the support of a team of legal experts, the eyeWitness app, a virtual evidence locker, empowers those courageous individuals who photograph and document the very worst of crimes. Harnessing sophisticated technology to authenticate photographic evidence, eyeWitness is helping in bringing perpetrators to justice.



¹⁰ Lawyers for Palestinian Human Rights, *Complaint Regarding the Involvement of JCB in Human Rights Breaches in the Occupied Palestinian Territory* (Dec. 10, 2019), <https://lphr.org.uk/wp-content/uploads/2019/12/Complaint-regarding-the-involvement-of-JCB-in-human-rights-breaches-in-the-occupied-Palestinian-territory-raised-by-LPHR-FINAL.pdf>, pp. 7, 33-44, 45-46, 47-51.

Panels

Benjamin B. Ferencz Prosecutors Update and Commentary

This panel was convened at 10:30 a.m., Monday, August 26, 2019, by its moderator, Michael Scharf, Dean and Joseph C. Hostetler–BakerHostetler Professor of Law at Case Western Reserve University School of Law, who introduced the panelists: Helen Brady, International Criminal Court (ICC); Michelle Campbell, Special Tribunal for Lebanon (STL); Brenda J. Hollis, Residual Special Court for Sierra Leone and Extraordinary Chambers in the Courts of Cambodia; and Catherine Marchi-Uhel, International, Impartial and Independent Mechanism (IIIM). An edited version of their remarks follows.

MICHAEL SCHARF: Let me start with the introductions. Beginning with my far left, your far right, and this is Catherine Marchi-Uhel, who is representing the IIIM. During her 27-year career, Catherine has provided legal support to the International Criminal Tribunal for the Former Yugoslavia, the U.N. Mission in Liberia, the UN Interim Administration Mission in Kosovo. She has also adjudicated for the Extraordinary Chambers in the Courts of Cambodia and served as ombudsperson at the U.N. Security Council Sanctions Committee, and before that, she served as head of chambers at the International Criminal Tribunal for the Former Yugoslavia and as an international judge at the Pretrial Chamber of the Extraordinary Chambers in the Courts of Cambodia. And that's after she had a long career in her native country as a judge, so a lot of experience, a lot of wisdom, and some really exciting stuff going on. We look forward to hearing from you in a minute.

Next to Catherine, we have somebody who's not been a stranger to us. She's been a prosecutor here for several years, and that's Brenda Hollis. Today she is representing both the Residual Special Court for Sierra Leone, which still has a lot of exciting things to tell you about, but she is also the current reserve prosecutor—well, the current

reserve international co-prosecutor of the Cambodia Tribunal, and she has gotten through all the hoops. And she's just waiting for the king to sign his name, and she will take over formally for our good friend Nic Koumjian, who is the new head of the IIIM for Burma, and I have to say I first met Brenda 25 years ago when she was Colonel Brenda Hollis, a JAG attorney prosecuting the first trial in an international court since Nuremberg, the trial of Duško Tadić.

Representing the Special Tribunal for Lebanon, we have Michelle Campbell, who is head of the Office of the Prosecutor's Appeals and Legal Advisory Section, and prior to joining the Special Tribunal for Lebanon, Michelle was Crown Counsel in Canada, where she prosecuted at all levels, including cases before the Canadian Supreme Court.

Then, finally, we have Helen Brady, the senior appeals counsel at the International Criminal Court. Before joining the ICC in 2014, she served for 12 years as senior appeals counsel and appeals counsel at the International Criminal Tribunal for the Former Yugoslavia, and for one year as Chef de Cabinet to the President of the Special Tribunal for Lebanon. She was also a member of the Australian government's delegation to the Rome Conference and the Preparatory Commission for the ICC. So, when she's working on appellate stuff, she knows it from the beginning and all the way through the process.

All right. So what we're going to do is ask three general questions, and then I'll have follow-up questions. And then we'll open it to the audience. We hope you can be as forthcoming as possible. The first question is, "Can each of you tell us about the most important success story of your organization in the past year?" And we'll begin with Catherine.

CATHERINE MARCHI-UHEL: Thank you, Michael. Really a pleasure to be with all of you today.

The most success story for the IIIM, I would say without any hesitation, having turned the concept of a central repository of information in evidence of the co-crimes committed in Syria into a reality or at least a reality that is well under way.

Let me give you a few facts. We've now engaged with over 100 sources. We've conducted 78 collection activities, and these collection activities have resulted in close to a million-hundred-thousand records processed in our collection. We have preserved as well, as an important aspect of our mandate, 24 terabytes of data for those. It says something. That's quite a bit amount. Not everything is processed, but it's preserved.

So I think it's an important development for us because that's really the *raison d'être*, the first *raison d'être* of the mechanism in the absence of an international tribunal, of a blockage of referring the Syria situation to the ICC. This mandate is about doing exactly that, becoming a place where the various providers that have documented crimes in Syria can turn to, bring the evidence, still get access to it as they need for their own work, and us providing it to ongoing prosecution and judges who need this material for their own cases. So that's exactly what we are doing.

We have to date received 27 requests for assistance from about nine to ten different prosecutors and judges, and of course, we collect this material with a view to diversify, as much as we can, the sources, and to aggregate the data, and we collect with a strategic framework in mind. We follow a prosecution-led methodology, including in chain of custody and processing of the evidence, and we make sure that we cover the needs of our own cases and our analytical work, but also those other jurisdictions that we are currently supporting.

I'll stop there, maybe.

MICHAEL SCHARF: That's great. I was looking out, and I realized there's some lay folks from Chautauqua, lots of students who aren't experts yet in international humanitarian law and all these institutions. I think maybe we should pause and give a moment to describe sort of the history of the IIIM. Do you want to just tell them that?

CATHERINE MARCHI-UHEL: Of course. We were established in December 2016 by the General Assembly. It's not a Security Council mandate, and the reason why we were established, although we're not a court or tribunal, was specifically the reason I referred to earlier, blockage at the Security Council level preventing a referral of the situation to the ICC. It's an initiative which has resulted, as you can imagine, in a lot of controversy, including allegations that the General Assembly was acting *ultra vires*, but it's now a reality.

The beauty of it—if you can put it this way—that irrespective of the absence at the moment of an international tribunal or court, which, of course, would be the logical place where this material should end up, we are in a position to support a national prosecution. And there are many ongoing, not enough for a global accountability for crimes committed in Syria, but at least meaningful hope of justice for the victims.

MICHAEL SCHARF: To put this in the context, Paul Williams, Milena Sterio, and I have a book coming out with Cambridge about how the Syria crisis has changed international law, and there's a chapter about the IIIM. In that chapter, we conclude that this is the biggest power shift from the Security Council to the General Assembly since the 1970 Uniting for Peace Resolution, which is where the General Assembly claimed the ability to create peacekeeping forces. And Russia took that all the way to the International Court of Justice to object.

Well, because your tribunal is not funded through the U.N., they cannot withhold funding and make it an International Court of Justice case. How has the funding been going so far?

CATHERINE MARCHI-UHEL: Well, it's certainly one of our big battles ahead. We've been funded by voluntary contributions, and it's a budget of a little less than \$70 million per year. So, you need to generate that amount of money by voluntary contributions. It's been going well so far, but our concern if it were to remain funded under voluntary contributions is the sustainability of the effort. There will be donor fatigue, as we know in the context in which we operate.

Recently, the Secretary-General decided, based on a call upon from the General Assembly, to include the need for budget of the Mechanism into its submission for 2020 for regular budget. We've been going through ACABQ, coming to for program and coordination, tough battles. I can say more if there are questions.

MICHAEL SCHARF: That's going to be interesting.

CATHERINE MARCHI-UHEL: And we know it's going to be a difficult route, and we are hopeful to have at least a consequent part of funding from the regular budgets. If we need, we will go and try to get voluntary contributions to top it off.

MICHAEL SCHARF: Luis, do you want to jump in with something from the audience?

ATTENDEE: Legally, the U.S. cannot accept that. The U.S. legally cannot accept that because the law in the U.S. says you cannot contribute. So, the U.S. cannot legally accept your proposal.

MICHAEL SCHARF: Well, we'll see how it comes out.

CATHERINE MARCHI-UHEL: The U.S. was supportive, has been very supportive of the move to regular budget.

ATTENDEE: Yeah.

CATHERINE MARCHI-UHEL: They have been quite encouraging, as I say, during the last oral debate on the Mechanism of Syria at the G8.

MICHAEL SCHARF: Okay. Next we have the chair of this conference, Brenda Hollis, who has two hats, and you're going to tell us the success stories from both of them.

BRENDA J. HOLLIS: I'm going to tell you the success story from the Residual Special Court.

MICHAEL SCHARF: That's great. We'll start with that.

BRENDA J. HOLLIS: The success story from the Residual Special Court is that we still exist—

[Laughter.]

BRENDA J. HOLLIS: —and have not been folded into any other mechanisms and still get money, although it's through subvention. That's really the success story.

But we do have another success story, and that is the judges have recently completed a book about the unique jurisprudence of the Special Court for Sierra Leone. And I believe that that will be launched next month.

MICHAEL SCHARF: That's great.

BRENDA J. HOLLIS: We do have some unique jurisprudence. We are the little court that is often forgotten but has done quite a bit, and so I think that will be very helpful to international courts and practitioners. So, those are our success stories. I won't go into the funding issues. We have the same nightmares that every voluntary funded court has.

MICHAEL SCHARF: Thank you. Now, next, we have Michelle at the Special Tribunal for Lebanon, and we would love to know what your successes have been this year.

MICHELLE CAMPBELL: Right. Thank you. Our main success this year is undoubtedly filing the final trial brief and closing submissions, and now we're waiting for the judgment. So that's been a nine-year journey for us from the beginning of investigation through to the end of trial.

As most of you know, the main trial at the STL involves the assassination of Rafik Hariri, who was the prime minister, and it's been called the "world's biggest whodunit." It's entirely a circumstantial case. It is based on very complex telecommunications data. We have pored through hundreds and hundreds of thousands of documents dealing with call data records, that kind of thing, and then trying to link that back to colocation with other phones so that we can attribute the phones that were in play that were part of a Hezbollah network so we could attribute that to the accused at the relevant times.

We have done that entirely without any witnesses, direct witnesses. We have witnesses from the telcos and people who were in the vicinity at the time, but we don't have any direct witnesses. And we also don't have any inside source information.

This is the first time in ICL that this kind of data has been used not just as lead evidence but actually as the substantive evidence. So, it's really quite a remarkable case, and as you can imagine, in order to collect and collate all that data and to make it into a compelling legal narrative, we've had to rely on a lot of evidence that we've gathered ourselves.

In terms of numbers, we've had 307 witnesses, 3,131 exhibits, 4,874 filings, 1,516 interim judicial decisions, and perhaps most importantly, the involvement of 71 witnesses. And I believe 43 of

those appeared in person, and that's really also quite remarkable for the STL. ICC has somewhat of a similar involvement with the victims. So really, it's been a massive undertaking in terms of the size and the substance of the prosecution, and so for us, that's really quite an achievement to get to this point.

MICHAEL SCHARF: A lot of people haven't been focusing enough on what's going on at the Lebanon Tribunal. I know your closing arguments were almost a whole year ago.

MICHELLE CAMPBELL: September last year.

MICHAEL SCHARF: You did send a delegation down to Lebanon to sort of pave the way for eventually announcing the verdicts and seeing how that can best be done. When do you predict that the verdicts will come down?

MICHELLE CAMPBELL: Okay. Well, that's the million-dollar question. Do you have any intel?

MICHAEL SCHARF: No. So, you're just waiting on pins and needles?

MICHELLE CAMPBELL: I don't know. It was September of last year that we closed the case and had the final submissions, so we're hopeful that in the next couple of months, we'll get the judgment.

Having said that, for the reasons that I mentioned, the very complicated, technical, circumstantial nature of the case, the legal standard to be applied is only reasonable inference, and that's a very high, very high legal standard, and it's going to require very careful, careful consideration from the Chamber. So, on one hand, we would like you to hurry it up, and on the other hand, we're like please take your time and do it as correctly as I know they will.

MICHAEL SCHARF: And on the other hand, I think this group has been ultra-focused, laser beam focused on the International Criminal Court, and I would say this has not been an altogether, from what we're reading in the press, a wonderful year for the ICC. There's been a lot of mixed decisions coming out of the Court, but it's good to start this conversation with one of the positives. Let's hear what you have in mind.

HELEN BRADY: Well, Michael, for that very reason, I think, if I may, I'll take a small liberty and mention just, of course, briefly a few, a small handful of the successes—

MICHAEL SCHARF: Sure. Let's go for that.

HELEN BRADY:—because exactly for that reason. I think that some of the few unsatisfactory outcomes that we've had this year—and, of course, we acknowledge them—have sort of overshadowed that there's been some really positive key developments and successes in the court.

If I could just mention a few of them and starting from the most recent one. First, we have the recent trial judgment in Ntaganda. In July, just last month, after—I believe it was a 3-year trial, the trial chamber hearing that found Bosco Ntaganda, who was the deputy commander of the UPC/FPLC, the deputy of Lubanga, they found him guilty on all 18 counts of war crimes and crimes against humanity that he was charged with, for crimes that he and his troops committed against civilians in the DRC. And he was convicted of a number of different war crimes, crimes against humanity, from murder, rapes, deportation, sexual slavery, conscripting, and using children to participate—under 15 to participate in the hostilities and a number of other crimes within the crimes against humanity and war crimes charges. He was convicted both as a direct perpetrator and also as an indirect perpetrator for the crimes committed by his troops and himself.

Now, what's happening there right now, because we didn't win, we weren't successful on every single incident underlying those counts—and there were some legal aspects as well that we're considering in the judgment, but we're now, both the prosecution and the defense obviously, are very much reviewing because of the seriousness of the conviction. We're reviewing for appeal, and the notice of that is due very soon, in early September, and then if we appeal, or the defense, then there will be an appeal brief after that. And then meanwhile, the Trial Chamber is receiving submissions on sentence. We'll have a sentencing hearing for Bosco Ntaganda in mid-September.

The second sort of highlight I should mention is our two sort of new cases, and they're both presently at the pretrial stage. Firstly, we have the Al-Hassan case coming from the Mali situation. We had a confirmation hearing, which concluded last month in July, and now we're awaiting the Pre-Trial Chamber's decision on whether they're going to confirm the charges, whether there's sufficient evidence to send them to trial. If we're successful on that, which we hope we will be, then a trial will be likely in 2020, next year.

Just for those of you who perhaps are not as familiar, he is one of the alleged members of the group Ansar Dine and was, we allege, the de facto head of the Islamic Police in Timbuktu in Mali from April 2012 to January 2013. There's a variety of war crimes and crimes against humanity, but I think, in particular, the case is particularly significant for the number of sexual/gender-based crimes, not just rape and sexual slavery, outrages against personal dignity, but it will be the first time that the crime of gender persecution is going to be prosecuted at the Court or, indeed, first time in international criminal law. And that latter one, the gender persecution, is based on allegations of forced marriage and a number of other practices which were enforced upon the women of Timbuktu when it was under the occupation of that Islamic group and which deprived them of very fundamental civil

and political rights, and if they breached them, it would lead to very severe punishment, floggings, and beatings.

We've also got a second new case which is stemming from the CAR (Central African Republic) situation—the second, CAR II—which is that against Yekatom and Ngaïssona, who were alleged senior leaders or commanders in the Anti-Balaka movement, and in that case, again, just recently, we filed the DCC (Document Containing the Charges), and we're moving towards a confirmation hearing scheduled for mid-September. If that matter is sent to trial, and if the PTC confirms, again, we're going to be seeing a trial in 2020.

I also want to mention another significant—I think a very significant, legally significant matter was in the Myanmar-Bangladesh situation. As I think has already been mentioned, in September last year, we put forward a request for a ruling on jurisdiction because, of course, Myanmar not a state party, Bangladesh a state party. And we put forward a submission asking the PTC (Pre-Trial Chamber) to confirm that the court had jurisdiction when an essential element of crime, that is, deportation in this case, occurred on the country, of a state party, Bangladesh. So even the coercive acts which happened in Myanmar happened in a nonstate party, it was completed until that step was carried out in Bangladesh.

The Pre-Trial Chamber agreed and said yes, that we have jurisdiction. Prosecutor opened her preliminary examination, studied the information, and she took the view, she determined that there was a reasonable basis to believe that about 700,000 Rohingya were deported from Myanmar to Bangladesh through a range of coercive acts, and also, it's quite significant that they also experienced great suffering and serious injury by their violation of the right to return to their state of origin.

Based on that, we have now put into the Pre-Trial Chamber an Article 15 authorization seeking authorization to open an investigation for deportation, persecution based on deportation, and inhumane acts, and that's for the violation of the right to return.

And then just very briefly, one second, because I think I'll probably come back to it later this morning, but the successful outcome we had in the Appeals Chamber in the Al-Bashir appeals decision with the Appeals Chamber deciding in May of this year that the state party of Jordan did breach its obligation by not surrendering then President Al-Bashir to the court when he was visiting for a League of Arab States meeting in 2016 and agreeing with the prosecution and the Pre-Trial Chamber decision below that his official position as a head of state could not be raised as a bar to his surrender or give him immunity from prosecution. But I wanted to go more into that because I know we'll come back to it.

MICHAEL SCHARF: I might follow up now on that in one way. Everybody has been focused on that case in particular as a failure of both the ICC and the Security Council, and maybe saying, look, if they can't get Al-Bashir, what kind of court is this? But, I want to remind everybody that in the early years of the other courts, there were similar struggles. I remember with Richard Goldstone here, the first couple of years, they were only getting small-level people, and the big giant defendants didn't come until there were some other political winds that changed over the years.

Well, Al-Bashir fell from power. Who saw that coming? Not me. And that's potentially a sea-change if I don't know what his government is going to do, but if he ends up at The Hague, suddenly, the ICC is going to be looked at as a completely different institution.

HELEN BRADY: Yeah. Well, I think that's also why working in the ICC, the people there, seeing the negativities about the Court,

we have to remember that we need to play the long game because this could be a reality. This could happen, and if we all just went, “Oh well. It’s all too hard. Pack up,” I mean, we can’t do that. We’ve got to always assume that, hopefully, at the end of the day, we will see justice in the end.

MICHAEL SCHARF: And with that theme, I think that one of the roles that the scholars here, the former prosecutors and the people who run NGOs and so forth play is not just as champions of international justice—and we all are champions—but also as honest critics of international justice. When we see something that we think should change, we speak up, and therefore, when there are controversies at the international courts, they seem to be magnified, and sometimes I think there’s even some ill will, bad feelings between people who are criticizing the courts that they love. But, do remember that it is all part of what makes these institutions thrive and are better.

With that, let’s look at the controversies that have plagued each of these institutions over the last year, and let’s start with Catherine in the IIIM.

CATHERINE MARCHI-UHEL: Thank you. Well, I thought of probably one of the controversies that I’ve been witnessing during this period has been something arising from ongoing investigation and charges or even arrests warrants being brought against individuals who defected from the Syrian regime in the early days, but obviously, according to the investigation, after having themselves being involved in the commission of crimes. And the controversy came out with the reaction of civil society actors that have been reacting to the fact that they were among the first to be arrested and to have to be held accountable for those crimes when others that they consider more responsible are still at large.

I think it’s an important thing we need to keep in mind. I mean, in order to build leadership cases, we know the defectors, insiders are

critical. It's important to secure that evidence. It's difficult enough to ensure their safety and security, and of course, I'm not suggesting that the crime they committed ought be forgotten. But we have to keep in mind that it's a difficult situation, and it may lead some of the people that could be willing to appear as witnesses in court to actually decide not to do it. So that's one of the difficult situations at the moment.

MICHAEL SCHARF: Back to Richard, as you were building the pyramid of cases from the smaller cases up, it turned out that those smaller cases laid the foundation for the latest successes. Where the ICC has been accused of jumping over the smaller cases—and perhaps that has been one of the reasons for some of the acquittals—we'll get back to that in a second, but I'm just saying that that's a really interesting point that Catherine is already dealing with based on the fact that the refugees who are bringing most of the evidence are not necessarily the people at the highest levels from the start. But that's how justice has always been built in a giant crime case.

Brenda, let me ask you to put on your new hat for a minute. There has been a huge development at the Cambodia Tribunal, and that is that Pol Pot's second in command, Nuon Chea, has died after he's been convicted, but while his appeal is pending. What does that mean for justice at the Cambodia Tribunal?

BRENDA J. HOLLIS: Well, that's to be determined. The Court has terminated—and by the way, I will speak about Cambodia with leave of Robert Petit, the founding international co-prosecutor. I would ask him to allow me to do that.

They have terminated the proceedings, but the question they have asked the prosecution and the defense to address is, what is the consequence of that determination? There is a conflict or certainly discord between the approach of the international courts, the approach of some states, even what would happen in Cambodia. And really,

the disconnect is with jurisdictions where on appeal, at some level of appeal, they can act as *de novo* fact finders.

In the Cambodian Court, the judges have said, “We don’t have that role.” Our position is: this is a post-conviction death, so the conviction should stand, and if a conviction stands, you cannot have a presumption of innocence where you don’t have a fact-finding body above the trial level. There can be no presumption of innocence either, but they have asked for our submissions on that, and we will be filing those in the near future.

MICHAEL SCHARF: So, these tribunals continue to make cutting-edge law.

Speaking of which, let’s go to Michelle. We’re waiting for the verdicts. This is the first case since Nuremberg where the defendants were tried in *absentia*.

MICHELLE CAMPBELL: Yeah.

MICHAEL SCHARF: At Nuremberg, of course, one of the defendants, Martin Bormann, had been tried in *absentia*. They found out afterwards that he was already dead at the time of the trial, which is a little bit embarrassing and I think was one of the reasons why there have not been trials in *absentia* at the other international tribunals.

But, there was no way to get the defendants, and you wanted to move forward. What do you think are going to be the legal consequences and the controversial aspects of an acquittal or a conviction of people who are being tried in *absentia*?

MICHELLE CAMPBELL: Well, I mean, it’s an interesting issue for us, and the *in absentia* issue has been controversial since the beginning, so many, many years ago. And at various points in the

trial, it presents us with unique challenges. There are issues regarding formulation of trial strategy. How do you do that in an absentia case? What about joint statements of fact? Can defense counsel without instructions—can they enter into joint statements of fact? The effectiveness of cross-examination when you don't have instructions from your counsel, and then, of course, also the possibility of retrial, which is always, for the STL, the elephant in the room.

If the accused show up later, either after conviction or during or after the appeal, they have an automatic right to retrial. That makes our institution very unique, and it means that we're always dealing with some uncertainty.

Even when we get to appeal, it will be very much a live issue, I anticipate, of whether or not there can be an appeal in absentia, and who has to bring that. That is still something that's being litigated, and although there are some civil law countries that do have a tradition of in absentia—I'm from common law—I'm from Canada, so we certainly don't have it, but there are many civil law countries that do—France, the Netherlands. There are some countries that are walking away from us, such as Germany, for example. But even in those situations, domestically, their situations are often quite different from ours, and in our case, the accused were fully represented by counsel at trial, which is distinguishable for most of the civil law countries. In some instances, their basis for doing certain things in absentia doesn't really apply to us, so it really is a constant new issue that we're dealing with.

MICHAEL SCHARF: Yeah. Well, we're going to know soon what that means for international justice.

Helen, there were so many issues that I could pick and choose from, but I think for this audience, the most controversial one might be the fact that your office requested authorization to open an investigation

into war crimes in Afghanistan, including by the United States for its treatment of detainees. Now, what's controversial with this group is not that investigation was opened. With the White House, I think that was the controversy. In fact, it was so controversial that President Trump would not allow your boss, our friend, Fatou Bensouda, to come and give the keynote speech in public. So, we're going to see her on video instead.

But what became controversial was that the Pre-Trial Chamber denied the request on the standard that nobody ever thought was going to be used for a case like this, the interest of justice. And in June, your office appealed. I assume that was you, right?

HELEN BRADY: Yes.

MICHAEL SCHARF: And those filings are public.

HELEN BRADY: Yes.

MICHAEL SCHARF: Can you tell us about the appeal and what's going on with that?

HELEN BRADY: Sure, that's right. In the decision of the Pre-Trial Chamber that came out, they held that there was a reasonable basis to believe that crimes against humanity and war crimes were committed in Afghanistan—this is on the standard which is applicable at that stage—and that potential cases concerning those crimes would be admissible.

But nevertheless, they decided, well, we're going to reject the Prosecutor's request to authorize the opening of an investigation into the situation on the basis that it would not serve, quote, "the interest of justice." And here, I should remind the request that we brought relates to alleged crimes by the three different parties: the Taliban; the

Afghan government security forces; and U.S. forces and personnel, military forces, and officials.

We filed leave to appeal request in June of this year, and right now we're awaiting that Pre-Trial Chamber decision on our request, and it may be that it comes out quite soon, imminently. It could be based on some suggestions, if I could put it that way, given by the Appeals Chamber. I'll get to that in a moment.

In addition to our request for leave to appeal—meanwhile, at the same time, several victim groups and groups of amici curiae have themselves—they did two things. Some sought leave to appeal a la the Prosecution's procedure, and some filed direct appeals before the Appeals Chamber. Now, the Prosecution, we didn't take the direct appeal route because of certain jurisprudence that took a very strict view on what could be brought as a direct appeal to the Appeals Chamber on the basis of decisions on admissibility and jurisdiction, and so for that reason, we went to the Pre-Trial Chamber in seeking leave.

Again, the matter is sub judice because we're waiting. So, I'll be a bit circumspect about what I say, and I'll stick really to the public, what is out there in the public.

We've brought three issues for leave to appeal. The first one is essentially that we say that the Pre-Trial Chamber should never have looked at the interest of justice at all. So, the first question is whether the PTC is required, or actually even permitted, to make a positive determination that an investigation would be in the interest of justice before authorizing an investigation.

Now, previous—I think there were three, if I remember correctly, in three previous situations where there was an Article 15 request, those chambers didn't do this. They didn't look at the interest of justice test. Also, it's sort of in contrast to what is the wording, what was really the

drafter's intention in Article 53(1)(c) of the statute, which posits that factor, interest of justice. Yes, it is in there, but it's something for the Prosecutor to determine, to consider once she's reached her positive determination that the jurisdictional and the complementarity, the admissibility factors are satisfied, and only when she considers that there is substantial reasons to believe that an investigation would not serve the interest of justice. So, the first ground, PTC shouldn't have been looking at it in the first place.

The second ground or issue, as we have to call them in the statute, is even if the PTC, even if it was correct to look at the interest of justice and consider it, the second question is whether the PTC properly used its discretion in the factors it looked at and how it appreciated those factors. And we've framed the issue at the moment quite broadly, and it's intended to capture a number of different factors, which the PTC, the Chamber, considered or didn't. And most significantly in that sort of very broad ground, the PTC had held in its decision that an investigation would only be in the interest of justice, and I'll quote, "if it appeared suitable to result in the effective investigation and subsequent prosecution of cases within a reasonable time frame."

And then after not having any submissions on the issue at all from the parties or participants, because, of course, it wasn't an issue for the Prosecutor, so we didn't make submissions because she hadn't reached the negative determination, and then after not hearing from anybody or asking for further submissions, the Pre-Trial Chamber then made its own assessment of the possibility of state cooperation and whether the Prosecutor's Office had the sufficient resources. And it said, well, it wouldn't on both fronts, and so that's that. That's a second issue, and we framed it in a way that we could challenge all the various factors that the Pre-Trial Chamber took into account such as—and also even including not hearing from the parties, looking at the wrong factors, and there's also a legal issue that the Pre-Trial Chamber had made about the nexus to the armed conflict. So that's

sort of a bit of a—”grab bag” may be a way of describing it. It’s a big ground if the Pre-Trial Chamber allows it.

And then the third issue concerns the possible scope of any investigation authorized by the Pre-Trial Chamber. Essentially, what happened is the Pre-Trial Chamber held that the authorization of the investigation could only be on the basis of those incidents which the prosecutor had specifically mentioned in the request and that were in the parameters, the geographic temporal parameters, or that which was closely linked.

But this is different from what previous chambers have done in this situation where they’ve understood the scope of the investigation to comprise essentially defined geographic, temporal, contextual parameters, but then the specific incidents, which are in the Article 15 request, are only illustrative but not exhaustive because, of course, as you know at the PE stage, our preliminary examination stage, we’re not conducting an investigation. We’re in the land of information only. We don’t even have the toolbox for our investigation. So how could we possibly put an exhaustive list of everything that could possibly be in the investigation? That’s called the investigation. So, we’ve also appealed that one, so we’ll see what happens. That was a majority, that finding. Judge Mindua had disagreed with the majority, thought it was too restrictive.

Substantively, that’s where we are. Procedurally speaking, we’re waiting for the Pre-Trial Chamber to issue its decision on the Prosecutor’s application. It also has to decide on whether the victims, because there are these different groups, have standing to do this and, if so, to address their application, and then meanwhile, there’s this whole other sort of litigation going on that’s PTC stage before the Appeals Chamber because two of the victim groups have tried to file direct appeals. What the Appeals Chamber has basically said is “This is frozen for the moment. We’re freezing timelines. We’re waiting for the Pre-Trial Chamber to issue its decision,” and in that, it made

this sort of strong suggestion to the PTC that if it hasn't issued by the 1st of September, the Appeals Chamber is going to make another decision. So, there are sort of these two sides to—procedurally two things that are going on, and I think, yeah, just waiting to see which one is going to happen first, I guess. But we're hoping for the Pre-Trial Chamber, clearly, which then if the leave is granted, we'll then have timelines starting for the appeal, and then we'll be filing all our briefs and responding. It very much depends on how the issues are grouped. Is it going to be other issues? Some of the victim groups have put in additional issues, but they fall within the umbrella of most of our issues. Then there are these direct appeals. What's going to happen with them? It's very procedurally complex, I have to say.

MICHAEL SCHARF: That's a good segue for my final question, which is, what is the greatest challenge facing each of the institutions in the year ahead? But in that context, I was mulling over the dialog that we had, the colloquy between Luis Moreno Ocampo, the first prosecutor of the International Criminal Court, and Catherine about what might be a change in the United States policy.

The U.S. is a little bit unpredictable these days in a lot of areas, including in international criminal justice, but one of them has to do with what's going on with the IIIM. And that is that Germany has created a very robust version of universal jurisdiction that was a bit like what Spain and Belgium had been doing 20 years ago, and if you remember, it was the United States that put pressure on both Spain and Belgium that then amended their laws and nipped universal jurisdiction in the bud.

Well, Germany is using it in the context of Syria, and they have recently requested the extradition of somebody who is not a German national, there are no German victims, and the person is not present in German territory. He's actually in Lebanon, and they requested the extradition. And the United States supported that request,

which seems to be a 180-degree change in its approach to universal jurisdiction, at least in the context of Syria.

CATHERINE MARCHI-UHEL: Well, it seems to me that with the Syria situation, we really have a shift of many positions, actually. I wouldn't say that I see the return of the enforcer, the global enforcer approach, as such or alone. It's a combination of approaches.

We are faced with situations like the German judiciary and prosecutors prepare to not only undertake what they refer to as a structural investigation, which permits to investigate even before you have actually suspect in mind, but look broadly at the collection of evidence and information you need to build a case when that case comes up. And then, of course, they do look at—they exercise universal jurisdiction without requiring any link, but they are not working alone. They work with other states. I'm thinking Sweden. I'm thinking France and particularly France because they have now decided to have a joint investigative team with the Germans. So, it means they put together the investigative efforts in that—not only the structured investigation, in fact, which they both do, but also in support of the charges that they bring, the investigation that they need to conduct for that. And that leads to a situation where a state like France, who doesn't have pure universal jurisdiction, has extended forms of extraterritorial jurisdiction, and in the case of torture attributed to the regime, they would use the fact that they have some Franco-Syrian, for instance, as their link, but they also conduct an investigation, a structured investigation that is much broader than that. And the fact they do that together with Germany makes the whole thing much more complex and much more interesting.

We at the IIIM seek to support all of them, whether they are applying universal forms of jurisdiction or more restricted forms, including for states that require the presence or the existence of a traditional link to extraterritorial jurisdiction.

And in the case of the JIT, the Joint Investigative Team, while not a party to that JIT, because states are party to the JIT—it doesn't have, by the way—it's a European concept, but it doesn't have to be only European states participating. It's open to more, and in the case of the MH17 investigation, you have Malaysia, Ukraine taking part in that.

But we use it as an investigation that we support, basically. That's the way we see it, and we have a lot of flexibility in the mechanisms approach to support. We only have some stand-out requirement, important ones—respect for human rights, lack of—no application of death penalty for the offenses under consideration. But apart from that, we can support a JIT as much as a court or a tribunal.

MICHAEL SCHARF: Our former late colleague, Judge Cassese, who was both at the Yugoslavia Tribunal and the Lebanon Tribunal, once declared that universal jurisdiction was dead, and I think we're seeing a resurgence of it, and your institution is fostering and playing a role in that as well.

Brenda, let's ask you about things going on in both of the tribunals that you're responsible for, starting out with what's going on with Charles Taylor. He's always up to something. Can you give us a little sense of the challenges that he is constantly putting your way?

BRENDA J. HOLLIS: I think probably the United Kingdom is very sorry they agreed to let him be in prison there. He is a difficult child, demanding a lot of attention. Now, whether what he's doing is legitimate or not legitimate, I won't speak to, but he certainly causes a lot of people headaches.

One thing that we think may be happening in the not too distant future is that Mr. Taylor may apply for a review of this judgment. He has said, very openly from the beginning, he will do that, and there are some indications that he may be actually getting close to

do that. Now, as a prosecutor, that tells me that he's had enough time to buy enough people to recant their testimony, but many people don't share my view on that.

[Laughter.]

BRENDA J. HOLLIS: That may be happening, and of course, he has that right. The troubling thing to me as a prosecutor is that recently the judges have come out with a new practice direction on review of judgment, and they have basically done away with two of the fundamental parts of review of judgment in my consideration. And that is you don't have to show due diligence in finding the fact. There's even an exception to it. It has to be a new fact. They have significantly lowered the standard, which could make it much more likely that we would have some kind of hearing beyond the application. That's what Mr. Taylor may be up to as far as I know.

MICHAEL SCHARF: I think that's news to a lot of the people in the room, and they thought the Cambodia Tribunal was the challenge. Tell us a little bit what's likely to be facing that tribunal in the year ahead.

BRENDA J. HOLLIS: Well, I think both for the Residual Special Court for Sierra Leone and Cambodia, one of the biggest challenges is—and continues to be—funding, and when I was in New York on a fund-raising mission, which I call spending money to get no money—

[Laughter.]

BRENDA J. HOLLIS: —there was a possibility I would go to Cambodia. Many of the Permanent Representatives to the U.N. talked about that, and a little bit to my concern, I must say, many of them said, “Well, if you think the Residual Special Court for Sierra Leone has problems with funding, Cambodia has worse problems.

And I said, “Well, does that mean I won’t get paid?” Both courts have real challenges with funding.

I think another thing in Cambodia is, will there be any more cases? Because we have a difference between the investigating judges as to whether they closed out a case and investigation and said go to trial or don’t go to trial, and so what happens when on the appeal? What happens if you have a split decision? You have to have a super majority to win, but if you don’t have a super majority, does the decision not to go forward stand? Does the other decision to go forward stand? I think those are challenges that will have to be faced.

MICHAEL SCHARF: Over to the Lebanon Tribunal, I know that one of my students is in the room, David, who was an intern there, and he spent the summer helping to prewrite the brief for appeal, not even knowing how the case was going to come out, right? Well, that’s what they’re working on, right?

MICHELLE CAMPBELL: I gave David a lot of work, didn’t I, David? It was never ending.

MICHAEL SCHARF: Right.

MICHELLE CAMPBELL: Yeah, it was never ending.

MICHAEL SCHARF: So, that’s part of what you do. You don’t wait until the verdict comes out to try to guess what might be up on appeal, right?

MICHELLE CAMPBELL: Yeah. I mean, it’s like anything else, even domestically, when you have convictions and you’re waiting for a big judgment.

The thing for us is we're working up as much as we can, and there's a lot of different variations that could happen. And there are four accused. One died, Badreddine, but there are four accused left. There's a lot of different ways it could go, and we could be appealing, hopefully not, but we would certainly be very likely responding to something. Somebody is going to be appealing something at some point, and we're preparing for that.

MICHAEL SCHARF: That's going to be the big challenge.

MICHELLE CAMPBELL: Yes, but we have another challenge as well, which maybe I'll just mention briefly, and this isn't to do with the Ayyash trial, but it's probably the single biggest challenge that we face right now, and that has to do with jurisdiction or, in fact, the lack thereof.

We have inherent primary jurisdiction under the state for the Hariri case, which happened on Valentine's Day 2005 and resulted in the death of 21 other people as well and many injured. We have direct inherent jurisdiction for that.

We have permissive jurisdiction, which means it can be granted to us, for connected cases, so for cases that fell within October 2004 to December 2005, and we're currently investigating three of those. And we intend to seek an indictment. So, there's three politicians as well.

The rub with that is that we have—in order to establish connectivity to get jurisdiction—to investigate, but we don't have the authority to investigate in order to establish connectivity, in order to get jurisdiction, so it's tricky. The way that we deal with that is through request for assistance to the Lebanese government, to telcos in Lebanon, and the prosecutor general of Lebanon has been very cooperative with us. We have a very good relationship.

But it's a very cumbersome process, and so some people ask, "Well, why has it taken so long for these connected cases when we started nine years ago?" And that's part of the reason, because it just takes a really long time. It works, but it's cumbersome. But hopefully, we're coming to the end of that as well soon.

MICHAEL SCHARF: And the last question before we open it up to the audience is for Helen. Just to choose one, I think the Bemba case, which was decided about a year ago when we were all here. People were really animated. There was a lot of emotion about it on both sides, but now the Congo VP, former VP, who was a defendant and who was acquitted, is demanding that the ICC compensate him 68 million euros for neglect of his seized assets. So, I guess Bemba is the gift that just keeps giving. What's going on with that?

HELEN BRADY: Okay. As you've summarized, after the acquittal, actually—and it was March this year—he filed a claim of compensation under Article 85 of the Statute for 68 million euros.

For those of you not familiar with that provision, basically, it's a provision which allows the Court in exceptional circumstances where the court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice. It can, and it may, in its discretion award compensation for a person who has been released following a final decision of acquittal.

Bemba alleges, basically, that he's been the subject of such a grave and manifest miscarriage of justice, and he's seeking damages. It's quite a complex claim he's bringing, but firstly for the personal damage, for the personal suffering he had following ten years in detention. Part of that time in detention—because you'll know that he's also a convicted person, which has been affirmed on appeal for Article 70 offenses, for bribing and coaching witnesses in that main case of which he was then acquitted on appeal. That part of the sentence, he's

not claiming for—it's only a year, though, that he got a sentence on that, but for the years in detention.

But, actually, as you said, the bulk of his claim is really about the property damage, and his property damage, he alleges, which came from the Court's—what he says is the Court's negligence vis-à-vis his assets which had been frozen—seized and then frozen by three state parties, pursuant to cooperation requests issued by the Court. These covered his many airplanes and houses.

Really, the property claim is a matter, more or less, between the registry and Bemba. OTP is not really involved in that aspect of the litigation, although there's a couple of allegations as well, which we have to answer.

MICHAEL SCHARF: Would you represent the Registry?

HELEN BRADY: No. The Registry is representing themselves for sure. In fact, we've already had four submissions, filings, lengthy filings. We've had the hearing in May. The Registry was represented, made their submissions.

But Bemba is arguing he's met the test for miscarriage of justice under 85. So, he's following that one, and therefore, his damages follow. But we've argued, based on previous case law—there are two cases previous to this that had the test set out—we say he's not met the very high threshold for a showing under Article 85, which was basically—going back to the drafting history—meant for the exceptional case, where there's been a bad-faith prosecution, a malicious prosecution, which is not the case here.

As I said, the hearing was held, and it was very interesting because at the hearing, he had sort of, more or less, not completely let go, but he had, more or less, moved away from the personal damage and the

85 claim. And he's really focused on this sort of separate civil law claim for property damage. He's saying that "It doesn't matter. I meet the test for 85, but even if I don't meet that test, this Court should be able to grant remedy for my damage to my assets," which had greatly dissipated over the years. We've argued that civil claim doesn't exist under the statute because Article 85 is the whole—you know, that's it. That's the only provision which is applicable, and he doesn't meet it.

But, anyway, the opposition is that, and in any event, it's really a matter between the Registry and him. Registry basically has largely disputed the dissipation and the amount. It's so detailed, the dispute, but they're saying, "If you want to pursue that claim—first, it doesn't exist in the statute, but if you want to pursue that, it would be against the state parties who seized and froze the assets, where the assets are, the territory where the assets are, and not the Registry who is merely the one issuing the order to states for preservation of assets and is not involved in the actual handling, the day-to-day handling." It will be very interesting to see what happens.

We argued it in May, so I assume that the decision should come out in this next few months, and then from there, we'll probably have the inevitable appeal.

Conversation with the Founders

This panel was convened at 2:00 p.m., Tuesday, August 27, 2019, by its moderator, Greg Peterson, Director and Co-Founder of the Robert H. Jackson Center, who introduced the panelists: David M. Crane, Prosecutor, Special Court for Sierra Leone; Richard J. Goldstone, International Criminal Tribunals for the former Yugoslavia and Rwanda; Luis Moreno-Ocampo, International Criminal Court (ICC), and Robert Petit, Extraordinary Chambers in the Courts of Cambodia. An edited version of their remarks follows.

GREG PETERSON: We're here to talk about *The Founders*, and that's this book. For those who haven't got it, it's an incredible book entitled *The Founders: The Four Pioneering Individuals Who Launched the First Modern Era International Criminal Tribunals*.

When you go on Amazon, you'll read this: "The Balkan Wars, the Rwanda genocide, and the crimes against humanity in Cambodia and Sierra Leone spurred the creation of international criminal tribunals to bring the perpetrators of unimaginable atrocities to justice. When Richard Goldstone, David Crane, Robert Petit, and Luis Moreno-Ocampo received the call, each set out on a unique quest to build an international criminal tribunal and launch its first prosecutions. Never before have the founding international prosecutors told the behind-the-scene stories of their historic journey. With no blueprint and little precedent, each was a path-breaker. This book contains the firsthand accounts of the challenges they faced, the obstacles they overcame, and the successes they achieved in obtaining justice for millions of victims."

This is the first time the four of them have ever been together on a panel, historically, aside from the fact they're in and of themselves individually historically credible, to talk about one book, which

was edited by David Crane, Leila Sadat, and Michael Scharf. All of them were contributors in and to this book, and so we're here to chat a little bit about this.

To set the stage, I'm going to turn to David because this has a back story as to why there was even an interest in this book and kind of what launched it. David, why don't you set the stage.

DAVID M. CRANE: Well, thank you, and it's a pleasure to be here. It is an amazing moment for me personally to be with my colleagues here but also with you as well, and it occurred to me, gosh, no more than about five weeks ago that all four of us are actually going to be here. I reached out to Jim and I said, "You know, we really should probably do something. This is kind of, in my opinion, a significant moment," and so Jim was gracious enough to add this program for you. I hope that you find it important as well, but it is one of those moments that you just really can't pass up.

The idea of the book and the idea of the founders occurred to me as we were sitting on the porches of, I believe, the Eleventh International Humanitarian Law Dialogs, sitting right out on that corner there as we listened to Michael Scharf and his great musicians. We were sitting around with a group of prosecutors, and we had the usual Chautauqua thing in our hand—beer, wine, or water, or whatever. Maybe beer and wine—and I just posed this question to my colleagues. I said, "Did any one of you actually apply to be a chief prosecutor?" and you could see smoke coming out of everybody's ears because it was one of these funny moments where everybody never thought about that.

Therefore, it turns out—and there were, I think, six or seven of us—none of us sought, asked, applied for, or demanded to become a chief prosecutor of an international tribunal, let alone found a tribunal. And so, we all went around and explained how we became, or were introduced, to the idea of being a chief prosecutor. It all turned out

each and every one of us got the phone call out of the clear blue sky, literally the clear blue sky, by somebody.

For you, it was Nelson Mandela, I believe, wasn't it, Richard, if I recall?

GREG PETERSON: Well, don't steal his story.

DAVID M. CRANE: Okay. Well, I'm sorry.

[Laughter.]

DAVID M. CRANE: For me, it was Richard Haass at the White House. My phone call was seven o'clock at night, D.C. I had just spent 12 hours—

GREG PETERSON: David, did you miss the script? We're going kind of long—

[Laughter.]

DAVID M. CRANE: I apologize. Obviously, I'm off the reservation. But the bottom line is, as I was going around the table, I realized that there's never been any book about this, about just how this all went down. So, as I was flying home, down to Maggie Valley, North Carolina, in the Smokey Mountains, I thought, "You know, that would be a heck of a book."

The next year, we were having our gathering at Nuremberg, and so I had all my colleagues and several prosecutors, but also really the smart thinkers in the room. Michael Scharf, Leila Sadat, William Schabas, Hans Corell, and David Scheffer—we all got together over breakfast one morning, and I introduced the idea of "why don't we write a book?" and everybody kind of looked at me and said, "That's not a bad idea," and so the rest is history.

I will stop there before I get the hook, actually.

[Laughter.]

GREG PETERSON: The foreword to the book, which is written by Kofi Annan, which is amazing unto itself, but the first paragraph was such that he quoted Robert Jackson, “The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people and must also reach men who possess themselves of great power.” And there was a sense that—this is for Richard—the first tribunal is the ICTY, and maybe you can give a little back story about you, the abridged version, and then how you got the call.

RICHARD J. GOLDSTONE: I knew little about the ICTY. I thought of it from a layman’s point of view, from the Security Council of 1993. I’d never been a prosecutor. I tried some criminal cases, but my area of expertise was commercial law, not criminal law. I never prosecuted. I knew next to something about the former Yugoslavia, and I knew nothing literally about international humanitarian law. I wasn’t, in my own mind, interested in any way in becoming involved with the ICTY, but that changed really quickly in a momentous week for me.

On a Monday, I was informed by a new democratically-elected minister of justice that came to me and invited me on the first Constitutional Court of South Africa, which was a dream position, and two days later, a fax from Antonio Cassese, the president of the ICTY, asking if I would be interested in becoming the chief prosecutor of the ICTY, which I found amusing and I think ridiculous.

[Laughter.]

RICHARD J. GOLDSTONE: I was drafting up a letter with a “no,” when my phone rang, and it was Nelson Mandela. He had an endearing habit of always making his own phone calls, and there was

this unmistakable voice saying, “Richard.” I said, “Mr. President.” He said, “I believe you have been invited to become the prosecutor of the ICTY,” and I said, “Yes. In fact, Mr. President, I’m just drafting a nice “No, thank you.” He asked me my reason, and I told him the three reasons that should disqualify me. He then said, “Well, don’t be in a hurry to send your refusal.” I asked, “Why not?” He said, “Because I’ve just told the Secretary-General that you will do it.”

[Laughter.]

RICHARD J. GOLDSTONE: I certainly wasn’t a person who was prepared or even thought about refusing what was not a request, but an instruction, from President Mandela, and I said, “What about the Constitutional Court?” He said, “Don’t worry about that. The cabinet is meeting today, and we’re going to amend the constitution to allow us to appoint acting justices on the Constitutional Courts. We’ll let you go for two years, and you’ll see it will be kept going for you.” So that was the beginning of a very steep learning curve. When I look at my library today, it’s full of books on Tito and the Balkans and humanitarian law, and so that’s really how it came up.

GREG PETERSON: Did you also get a call from your wife?

RICHARD J. GOLDSTONE: Oh, I got a call from my wife just before President Mandela called me, and she said—we had just come back from a vacation at the end of my commission, and she said, “Any interesting mail?” and I said, “No, not really, but there’s a funny invitation to go to The Hague.” She immediately said, “Wouldn’t that be wonderful to live in The Hague for a few years?” I said, “Yes, but not in this ridiculous position.”

[Laughter.]

RICHARD J. GOLDSTONE: Little did I know that at the end of ten minutes of that, I'd get a call from Nelson Mandela.

GREG PETERSON: Just get this correct, they sort of rearranged the constitution to get you to be the first—

RICHARD J. GOLDSTONE: Right. Well, it was the interim constitution. They hadn't thought about two things about the constitution. Of course, there's eleven members for a quorum, so all eleven members have to sit. And they hadn't thought about acting appointments to the Constitutional Courts, and they had to do both of those things to allow me to go.

GREG PETERSON: Just out of curiosity, Jackson got confronted with that same thing because of the Supreme Court, having been asked to leave the Supreme Court to become a prosecutor. Did that ever come up?

RICHARD J. GOLDSTONE: No, it didn't. I only got that history later that, in fact, Justice Jackson, as I understand it, didn't seek permission from the chief justice—

GREG PETERSON: No.

RICHARD J. GOLDSTONE: —because he knew what the answer would be, and he simply accepted President Truman's invitation. I suppose it was similar to President Mandela's invitation.

GREG PETERSON: That gets you to Yugoslavia. You accepted the position of the chief prosecutor at the ICTY. Then shortly thereafter, there's another tribunal created. How did you all of a sudden become chief prosecutor of both?

RICHARD J. GOLDSTONE: Well, this was really the politics. The Security Council had decided as they adopted the Rwanda

tribunal against the wishes of the Rwanda government, which was then a non-permanent member of the Security Council. The UN—and probably, it started with the Secretariat—didn't want a different prosecutor for each of the two ad hoc tribunals. They thought one in Africa, one in Europe. We want consistency of the process, and we want one prosecutor. I was consulted but again had little choice. That was the political decision taken. So overnight, I became—in fact, one witty journalist said that in the case of the ICTY for its first year, it was a tribunal without a prosecutor, and in the case of Rwanda, it was a prosecutor without a tribunal, which was fairly accurate. That was the reason for it.

GREG PETERSON: Okay. Then shortly thereafter, incidents occurred in Sierra Leone, and, David, things happened and you get the call. Had you been following what was going on at all in Sierra Leone, Liberia, Charles Taylor? Is that something that was even on your knowledge base before they got you engaged?

DAVID M. CRANE: Well, I'd like to say yes, and I was following it closely and I was very much up to speed and was the right guy for the job. I thought Sierra Leone was in the Caribbean.

[Laughter.]

DAVID M. CRANE: No, I'm just kidding, but—

LUIS MORENO-OCAMPO: Cut it out.

DAVID M. CRANE: No, I hadn't been. I was a senior executive at the Department of Defense, and I was aware of conflicts. And I was vaguely aware that there was this dark hole in West Africa that no one spoke about, but yet it was apparently horrific. I knew the general idea that there was a terrible thing going on, but I had never really gotten into the nitty-gritty of that.

GREG PETERSON: David, what was your background?

DAVID M. CRANE: Well, you know, it's interesting. Like Richard, yes, I happened to be a judge advocate for many years, and yes, I happened to help develop the DoD Law of War program after Mỹ Lai and trained judge advocates around the world at the Judge Advocate Generals School for a couple of years as the professor of law there. So, I did have a professional legal basis. I did understand the laws of armed conflict, international humanitarian law at the time and what it was, which was very, very nascent, and for a while there, my department was the only training facility for anybody going to the ICTY and the ICTR. There was no law in this area. There was just Nuremberg, and the statutes, the Geneva Conventions, what have you, and The Hague rules. But no one had ever actually applied laws, what we would call at the time, "laws of armed conflict," to real-world situations, and so we were training members of the Judge Advocate Generals corps. Brenda Hollis is one of those individuals, and people from the Department of Justice going over to be seconded to your office, and just teaching them on how to spell "Geneva" and how to talk about The Hague rules, those kind of things.

We would give—depending on the time that they had—one, two, three, four days' worth of training on this, give them all the materials that we could possibly put together for them, bundle it up, and ship them off and wish them Godspeed. And Jim Johnson was in my department, too. In fact, actually, I was the chair, but I didn't sit down all the time and meet with them, but Jim Johnson was one of those individuals who was training people. I mean, it was really a clean slate. No one had a clue about this law at the time.

So, yes, I did have a background, but a lot of my background also was—my wife likes to call me Forrest Gump because I happen to be kind of person peripherally walking across in the back, behind something that's important. I had been a special operations officer, a

door kicker, a paratrooper, intelligence officer. At the time when I did get the call, I was actually overseeing about 80 percent of the United States intelligence community on behalf of the Secretary of Defense and the two intelligence communities. I was a little bit off the grid as far as international humanitarian law at the time when I did get that call.

LUIS MORENO-OCAMPO: Who interviewed you? Richard Haass or someone else?

DAVID M. CRANE: Well, initially, with that phone call, yes. I had come home, and my wife was working in the Department of Defense as well, working in the Defense Intelligence Agency. Like any D.C. wonk, seven o'clock is usually early to eat dinner because you've been working up to that point and everybody is putting in their usual 60 to 80 hours a week in that crazy town. Believe it or not, we actually had some time together, and so we made some spaghetti. The phone rang. In those days, that's when the credit card companies called you. We didn't have cell phones and stuff, but there was this device on the wall. I have to describe it actually to my students because they don't understand that.

I pick up the phone, irritated, and I said, "What?" And he goes, "Mr. Crane?" He identified himself, and I said, "Well, hello." Kind of like out of the clear blue sky. He said, "Would you be interested in being the U.S. nominee to be the chief prosecutor of the new tribunal they're putting together in West Africa?" and I said, "I might, but am I a throwaway nominee?" Because sometimes the United States nominates somebody just because they're the United States and—

LUIS MORENO-OCAMPO: Yes.

DAVID M. CRANE: —you know, I was going to be thrown away rather quickly. I was well aware at the time that we had—this is just after the Bolton letter—we had just left the International Criminal

Court, and the world is furious with us. So, I said, “Yeah, I might be interested,” kind of almost flippantly. He goes, “Well, we’ll follow up on this. I just wanted to give you this phone call,” and I hung up. I walk out in the kitchen, and my wife is irritated because dinner is ready, and I hadn’t opened the bottle of Chianti yet. I’m doing my thing with the Chianti bottle, and she goes, “Who was that?” I explained, and she just started laughing. She goes, “You’re not going to get that.” I said, “I know.” She goes, “You’re a Democrat.” “I know.”

[Laughter.]

DAVID M. CRANE: “And you’re an American.” “I know.” We just probably forgot about it and had a wonderful dinner. Two weeks later, three planes went into three buildings, and we’re in the Department of Defense. We’re at war, and Sierra Leone and all of that just went right out the window. I was busy. Two weeks after that, towards the end of September, Pierre Prosper, who was the ambassador-at-large for War Crimes at the time, called me he said, “Dave, could you send us your résumé?” I said, “You guys were serious about that? Pierre, we’re at war. I’m busy.” He goes, “Well, can you just send me your résumé?” So, I said, “Sure,” and my secretary sent my résumé over.

I didn’t hear much about it for a couple weeks, and then finally, I get this call from the U.S. Mission in the UN saying, “Your application has been received, and John Negroponte is going to be walking it across the street to the UN.” I’m thinking nothing is going to happen, so I said, “Well, thank you very much. I appreciate the courtesy call” and hung up and promptly forgot about it.

Six months later, I get this call after going through several interviews, all of which were negative and all of which were angry and all of them shouting at me that I had no right to be even an applicant, and a week prior, I had been told that I wasn’t going to get it and Ken Fleming was going to get it, an Australian, good friend. We

probably all know Ken Fleming. I said, "Great. He's much better at it than I am." I told my wife, and I put the file back in my drawer and forgot about Sierra Leone.

Then Assistant Secretary of Defense for Public Affairs calls me. This is the Friday morning on the 11th of April. I have two computers. I have this classified version and the unclassified version. He goes, "Is your unclassified version up?" I said, "Yes." He goes, "You might want to check this Reuters story. It says an American has been chosen as chief prosecutor of the Special Court for Sierra Leone." I'm going, "Oh, my God. What is this?" because I'm basically told I'm out, and he says, "Is that you?" Because they had known. I had told the Secretary of Defense and stuff that I was dancing around all this. I said, "You know, I don't know."

I called Pierre Prosper's office, and I said, "Are you aware of this Reuters story?" and there's this dead silence. He wasn't. There's dead silence from his end, and he goes, "No, I know nothing about it." I said, "Well, I don't either. Could you check?" I had no more than dropped the phone and my secretary comes around the corner, and her eyes are as big as the bottom of this cup, "Kofi Annan is on the phone." I said, "Why don't you send him in?" In his very eloquent way, he said, "Mr. Crane, would you be willing to help me out in West Africa? I need your help, please." What am I going to say? No? I said, "Yes, Mr. Secretary-General. It would be my pleasure." He goes, "Well, good, because I'm going to announce it in about a half hour to the world." This is 11:30, and so he's going to walk down at noon and announce it.

Now, my wife, remember, knows that I'm not going, and now I'm going. I said I better make this phone call, and she was congratulatory. I said, "Well, let's talk about this, this weekend." Fortunately, it was on a Friday. Then I called Pierre Prosper back who hadn't been called and said, "Look, oh, by the way, I am now the chief prosecutor of the Special Court for Sierra Leone," and he goes, "I'll see you later.

I've got to go tell Colin Powell." Click. You could hear him running down the hallway, even from my Pentagon position. So that's my story, and I'm sticking to it.

GREG PETERSON: Luis Moreno-Ocampo.

LUIS MORENO-OCAMPO: Yeah.

GREG PETERSON: From 1984 to 1992, you worked as a prosecutor in Argentina, and you were the assistant prosecutor in the trial of the Juntas, which turned out to be the first trial since the Nuremberg trials—I always kind of work in Jackson a little bit here—the first trial since the Nuremberg trials in which senior military commanders were prosecuted for mass killings. Did that sort of launch you on a certain stage and a certain trajectory which would get you attention and kind of a—

LUIS MORENO-OCAMPO: Yes.

GREG PETERSON: So not everybody probably knows all about that. A lot of students just walked in.

LUIS MORENO-OCAMPO: In Argentina, we had a dictatorship in 1976. In 1982, Argentina invaded the Falkland Malvinas. We have a war. Margaret Thatcher was our liberator. She defeated our generals, and our country had a coup d'état. Normal democratic government ended its term, but in 1983, one of the candidates, the minority candidate, proposed to investigate the general, and finally, he won, 52 percent. Our neighbor was Pinochet. So, all Latin America was full of dictators, supported by U.S., by the way, and my country decided—Argentina is a crazy country—decided to prosecute the generals.

The first day this guy took office, he signed a decree presenting the case before the courts. So, at the beginning would be a military court.

Then the civilian court took, and then in 1984, they called me to be the deputy prosecutor. And I told the prosecutor, “I never did a case in my life. This is my first trial,” because I was a clerk of the solicitor general. My job was to review Supreme Court decisions. My constitution is like a U.S. constitution—it’s a copy. I knew how the U.S. prosecutor worked from the books and from the precedent, not real life. I told him, “Look, I have no idea. It’s a great idea, but we cannot do it in a normal way. We do it in civil law country. We do not do it with dossier. Invent something.” So, they gave me the task to investigate the crimes with zero opinions.

I had a team of five, six, seven—seven guys, 25, 23. I had dinner with one of the Truth Commissions. They collected 50,000 witnesses, like a real investigation, and we select from there. What we learned in this case was how to investigate with all the police. That was very useful for me because then you investigate through the witness. The big teams provide the information to you. We called the person who was abducted, who was tortured and asked, “Okay. Who saw when you were abducted?” Two neighbors, my uncle. Okay. And then you have a habeas corpus, which was rejected. So, we had to collect evidence on this side, and so that’s what I did for five months in litigation.

GREG PETERSON: Most importantly in your bio—most people probably don’t know this, but in the late 1990s, you starred in a reality program in which you arbitrated private disputes, essentially listened to the disputes, listened to the presentations, and simply said, “You’re fired.” I just wondered if that—there’s a current person who is in a high position in the United States, took the lead from you? I just was curious.

LUIS MORENO-OCAMPO: No, no. It was Judge Judy more.

[Laughter.]

LUIS MORENO-OCAMPO: It was a crazy TV producer who invited me to do something like a private court on TV, and I believe in education. I strongly believe in education, so I was thinking, okay, maybe we can use—because for me, it was shocking.

I remember one day, I said to the journalist, they've taken out torture, and the guy put a big title in the newspaper: "They've taken out torture." Come on. What's the news? But the news is the leaders of the leadership were in jail, and we are saying that they cannot torture. That's the expression, the force of the law, and I was saying, okay, if this happened with the media, we can do more with a daily TV show. So, basically, for months, I did this TV show and got small cases, and it was very useful.

I remember a neighbor told me, "You got to stop this TV show. I live in a very poor area of the country. My neighbors once a week came to see your TV show, and they ask, 'Do you see the cow?' and there's justice for people." It was massive. So, yes. I was 32 when I was in the Junta trial, and I was thinking I never would do something more important in my life. So, I do whatever they want now. From there—that's why I became wild. I did whatever I wanted, including this TV show.

GREG PETERSON: A reality TV host. I love it, something novel. Then the Rome Treaty is signed in 1998 and then on April 21, 2003, you were unanimously elected first prosecutor of the new International Criminal Court. How did that come to be? What's the back story?

LUIS MORENO-OCAMPO: Big mistake. Big mistake, obviously.

[Laughter.]

LUIS MORENO-OCAMPO: No, but you see this conversation, how we were appointed, and then I like it when you were discussing here the rules, how we tell the rule for the ambassador-elect.

Come on, guys. Reality is different. They play completely crazy, different game, because they're crazy.

I remember, similar to him, I received a phone call. I was parking my car in Buenos Aires. Prince Zeid's office called me, telling me, "Look, we are looking for a chief prosecutor. Your name is now on the top of the list, but we know you got the job." Thank you, okay. I was going to New York; I will see you. Okay.

I told my wife this is a joke; it will never happen, but it's fun. I would see this Prince Zeid, what he had to say. In those days, I was appointed professor at Harvard. I was so happy going to Harvard, teaching at Harvard. For me, it was great. This was crazy.

But then the judges were appointed. The position was postponed, and in April, some country might need to visit them to discuss the possibility. In 5 days, I went to six countries. The first meeting was in your country, Netherlands, with the advisor, a nice guy who was ambassador for this. It was very lovely, very lovely lunch. Then I went to London and met Elizabeth Wilmshurst, who two days later resigned because she was against the war in Iraq, and I was appointed in the middle of that. Then I went to Oslo. Rolf Fife, who was the legal advisor of Norway, very smart guy, very critical on Rome. I confused him totally because he was very legalistic, and I was showing him how to mitigate networks, because in those days I was teaching in Harvard, the case on how to mitigate corruption, and I was showing network analyses and these things. The guy was watching me. I saw his face completely transforming, so I tried to say better what I was trying to say, but I think it was a disaster meeting. Then in France, it was worse because they talked to me in French, and I had a girlfriend when I was young, French, and normally, we talk in French, so I was thinking I could talk in French, but my bad English now erased completely my decent French. So, I cannot say one word in French, and I had to tell him, "Yes, I understand what you're saying." More

or less, I understood, but I cannot say one word in French. He was pretty angry. Then in Germany, the worst meeting. Hans-Peter Kaul, who then became a judge in ICC, he was—one of my last cases, I was defending a former minister of economy, very unpopular in my country, and I had some covered bases against me. Hans-Peter was very worried about that and then became furious, “And also, you’re a member of Transparency International, an American organization? So you work with Americans?” “Mr. Kaul, Transparency is here in Berlin. It’s here. It’s founded by a German guy. It’s in Berlin.” I had to go show him the address and the map. It was a disaster meeting. The last meeting was in Spain. It was okay. I went to my house for the weekend. I say to my wife, “Okay, forget this. Zero problem.” But then she showed me the newspaper, “Look at your appointment.”

[Laughter.]

LUIS MORENO-OCAMPO: For me in this meeting, these two days, I think I was discussing it with Herman. The work in this court is so complex. It’s so complex, that it’s so difficult to transmit to people. And that’s why sometimes I became nervous when I listen to some comments that have nothing to do with real problems.

To show my lack of understanding—I was appointed, and then they told me to go to New York. Before the formal appointment, stupidly, I was meeting with all the ambassadors because I was trying to show them I was good; I would do what you should think. That was the worst thing you can do because then you can ruin your nomination because it’s an agreement. Don’t reopen the box. I had no idea.

I request a meeting. I had meetings with everyone. No one had any intention, any interest to discuss the ICC. There’s no problem in the meetings except in one case. One ambassador from Europe asked me, “Okay. Mr. Ocampo, you came from a civil law country, but you work a lot in the U.S. Are you a civil law lawyer or a common law lawyer?”

I was waiting for this question. I took the Rome Statute, and I said, “Look, I am a lawyer, and this is my law. I will apply this law.” You think it’s a perfect answer. No. He was furious.

[Laughter.]

LUIS MORENO-OCAMPO: Oh, my God. He was furious with me saying, “No. You should defend civil law. That’s your mission.” Okay. That story for me—yeah, you laugh, but that is real life.

What I tried to encapsulate in real life is that ambassadors represent their own country, and they don’t care about justice or evidence or whatever. Their role is to defend their own country’s interest. This guy wanted to defend civil law and that’s it. That’s the problem.

In Argentina, we have a national community that cares about the crimes, a leadership who proposed the investigations, and then the prosecutor was the strawberry on the cake. You have the cake below. ICC was the strawberry with no cake.

[Laughter.]

LUIS MORENO-OCAMPO: I had to invent, I had to build a cake, and then all of you think, “Oh, my God, the cake is not full. I don’t like how it looks. It’s yellow. It has to be white.” All of you want a different cake. I have come to understand that.

I was thinking on this. All these people are passionate. All of you are passionate about all these issues, spend decades working on them, but it’s difficult to come to an agreement between us. I was thinking, okay, we should find a way to have basic agreement and disagreement over what is basic and what is complex.

There are many narratives. It's about the witness. It's about the judges' decisions. Investigation is very complex, but for me, what is missing is diplomatic and political leadership. Marc has to build a different "up" to follow the ambassadors, to agree with the counsel, because that—the problem is there.

We are used to the idea in the national system. When you expose a crime, yes. There are police and prosecutors dealing with it and not politicians who will oppose. In our life, you expose the crime, and they say no. Don't investigate the crime because it's a friend or because you are the head of state, or it's in Africa or in the U.S., or in Israel, whatever. They say don't do it. That is the real problem. It's not about the technicalities. It's about a strawberry with no cake. We need to build a cake, not the strawberry.

GREG PETERSON: Robert, by the way, this is all going to be on National Comedy Center tonight at 11:00. This is fantastic. It was great.

LUIS MORENO-OCAMPO: Thank you.

GREG PETERSON: Well, you can talk about the dog if you'd like. Robert, you really are just a fan of the Montreal Canadians and then ultimately became an international prosecutor. How did that work?

ROBERT PETIT: Well, it's funny because it was because of a dog.

GREG PETERSON: Okay.

[Laughter.]

ROBERT PETIT: I've been a prosecutor since 1998 in Montreal, and after it got crowned, a provincial crown, a real crown.

ATTENDEE: Provincial.

ROBERT PETIT: That was for you. Oh, yeah, yeah. That's right. You were. Sorry. Okay, we're good.

One day in 1995, I had switched over to the federal Crown, wanting a change, and we used to make fun of the federal crowns when it was a provincial Crown because we'd go in the courtroom with like 20 files. The second week after my training, I went into court with 23 prelims in one court in front of one judge, times three witnesses per file. The cops didn't want to be there. Defense attorneys wanted the best deal, et cetera, et cetera. Whereas the federal Crown would walk in with this one file every other month or so, you know, and no witnesses, just cops who happen to see things.

I wanted a change, though, and I had switched to a new unit of the federal Crown. I'm walking my dog one summer on Saint-Denis street, which is a very nice street in Montreal for those who know it, and I meet this guy, Luc Côté, who some of you know well, and Luc had been a legal aid lawyer. So when you're a crown, a legal aid is the guy you see or the woman you see every day that you negotiated with, that you have to get along with, or at least reasonably tolerate so that you do your deals, because otherwise the system breaks down. I had known Luc, had good relations with him, but I hadn't seen him in quite a while. Of course, I had switched as well.

I asked him what he's doing, and he said he had been with the Human Rights Mission in Rwanda and then had switched over to the ICTR and started work—I think it was in the fall of 1995, so just very recently. Then he asked me, "What are you doing?" and I said, "Well, I'm the federal Crown. I needed a change." He said, "Well, if you want to change, about as big as you can get a change, why don't you come and try and apply?" So, I applied, but if I had walked my dog on the other side of the street that day, I'd still be a federal crown.

[Laughter.]

ROBERT PETIT: So, yeah, it was the dog's fault.

GREG PETERSON: Then you got into the system, and you sort of were working with a variety of tribunals, but then ultimately got an inquiry regarding becoming the chief prosecutor of something new in Cambodia.

ROBERT PETIT: Yeah. I didn't warrant a phone call. I just got an email, and it was very surprising. I had done Rwanda, Kosovo, East Timor, Sierra Leone, and now I was back in Ottawa with the War Crimes Section of our Department of Justice. At least a year before that email, I had seen something on the web that look a little bit like a 420 scam: "We're looking for potential candidates for this potential court. Send in your C.V." because as you probably know, right after the end of the conflict or the armed part of the conflict, I should say, in Cambodia, a court to judge the Khmer Rouge was part of the discussion. Hun Sen, now prime minister, had asked the international community in a letter that he didn't draft—he just signed—for help in setting up the court, and then he immediately withdrew any support for it. So, for about 20 or 30 years, they argued about it, but it was always there.

An NGO—I don't even remember the name of the NGO—put out this call for interest. I remember sending a C.V. without a cover letter because I thought it looked very silly, and like I said, out of the blue one afternoon, I got this email from this nice Filipino lady telling me I had been short-listed for the post of this ECCC and "We'd like to set up an interview."

I went to see my boss, who wasn't very thrilled because, you know, this was another time when I was going to ask him for a little bit of a leave of absence to go somewhere else, but first, I called my wife. And she says, "What is this?" I said, "I don't know. I don't remember," and I didn't remember about the time that I had applied to this.

[Laughter.]

ROBERT PETIT: Obviously, it was very flattering, and I said okay. Then my last assignment at Sierra Leone where we had worked with a guy called Chuck Caruso.

DAVID M. CRANE: Oh, yes.

ROBERT PETIT: Yeah, Charles Caruso. Charles is/was a U.S. attorney who had been with us in Sierra Leone for a couple of years, I think.

DAVID M. CRANE: About a year and a half, yeah.

ROBERT PETIT: Yes, and we got along well, and he was quite a character. He went on subsequently to work for the U.S. anticorruption initiatives in Asia. He had been based in Bangkok for quite a bit, and we kept in touch. He was also short-listed for this.

We showed up in New York together, and we started hanging out. I go to the interview, and by then, I had done a little bit of research already on the court. “Enthusiasm” wasn’t a word I would describe as a motivator or as a state of mind back then. There were already obvious problems with it.

Then I’m talking to Chuck who’s been dealing with Cambodians and their corruption issues, and Cambodia year in and year out ranks as one of the most corrupt countries in the world, up to this day. And, as you know, Chuck has a very colorful way of putting things. I won’t repeat them because they’re not really suitable—but he had a very stark description of what it would be to deal with Cambodian authorities, and this is a Cambodian court, a majority Cambodian court, Cambodian judges, et cetera, and the co-prosecutors and the co-investigators. That did nothing to inspire me.

Now, after the New York interview, I was going to India for the office, for the war crimes, and in New York, I picked up some information, and, you know, I was reading. All through the flight, I'm thinking about this, and the interview went well.

The French ICC judge was in the panel. He asked me, "Why don't you apply to be a judge?" I said, "I didn't even apply for this one," but it was Michaud at the time who was the legal advisor.

Anyway, so the interview went well, but between the stuff I was learning and Chuck and everything, I get to Mumbai, and I decide this is not for me. I get to this very nice hotel. We actually had a fax machine in the room, which was a first for me. I was very impressed with it. Back then, the Canadian government could afford good hotel rooms. I sent a fax back to OLA saying thank you very much, but I withdraw from consideration for personal reasons. So, not only did I not apply for this job, I didn't even want it—or I withdrew from it.

When I got back from India, I'm giving a bath to my kids one evening, and my wife comes in looking very perturbed and says, "There's either an ambassador for Cambodia and Canada or the Canadian ambassador to Cambodia on the phone."

[Laughter.]

ROBERT PETIT: I said okay, so I go and get the phone, and it was the Canadian ambassador to Cambodia, Donica Pottie, who is now in Thailand, who had been reached out to by the Permanent Mission in Canada in New York telling them, "Listen, this Canadian is a good candidate. He shouldn't withdraw. He's under serious consideration. Could you do something about this?"

She started telling me how wonderful life is in Cambodia, how happy my kids are going to be—and they were quite happy with it—how

there's no winter, so my wife will be happy. My wife is from Rwanda, so winter is a very traumatic event in our lives. I said, "Well, okay. Maybe we can talk." Then OLA gets me back to New York and tells me, "What do you want?" Well, not to that extent.

But by then, I had the structure a little bit, and I think I said—I don't know if I said it in here or not, but if you had wanted to devise a court that could not work, you'd be hard pressed to find a better blueprint than the ECCC. Both in terms of statute, which clearly envisions that you're not going to go where you should be going, and the budget and the structure that it had, we were supposed to—we were dependent for investigation on the national police, for example, one of the most corrupt, inept police forces in the world. I was supposed to investigate two million deaths. There was no budget for outreach. Again, we're supposed to depend on NGOs. No budget for witness protection. It wouldn't be needed, or the police could take care of it. I remember Michelle Lee, the first administrator, telling me, "No, no. They can come in moto taxis, and we'll reimburse the motos." So, I got them to make some changes to the structure and to the budget and finally signed on the dotted line.

GREG PETERSON: Terrific. Richard, you're now the chief prosecutor of both the Yugoslavia and the Rwanda tribunals, and I'd be curious on certain instances that occurred where the real politics, where opportunities, events occur outside. For example, you were pretty outspoken about the highly inappropriate policy of the western countries in declining to pursue suspected war criminals, singling out France and United Kingdom in particular, because just getting the defendants. Also, you were involved in preventing the Dayton Agreement. You kind of interjected yourself in that, which was sort of a Milošević moment. Did you feel like you had to respond to something that they were essentially interfering in the court?

RICHARD J. GOLDSTONE: The political reality was the fear ahead that the tribunal will be so down the river as a bargaining chip in the negotiations between the United States and the leaders of the former Yugoslavia, particularly Serbia. This was a real concern, and I must say that leading journalists, particularly from the *New York Times*, warned me that this was a possibility. I decided I had little option but to speak out against it.

It was denied by Richard Holbrooke in his book called *To End a War*, his story about Dayton. He said he would never have done that, but I'm not sure about that, because the plea I had made was that one of the provisions in the Dayton Accords, in the Dayton Agreement, should be an undertaking to hand over war criminals who have been indicted by the ICTY. That wasn't put in, and that, of course, was a very weak link from the point of view of the tribunal.

I think, as Luis has indicated already, there's a large gap between the duties, the formal duties of an international prosecutors, and the reality on the ground. I mean, when I indicted for the first time Milošević and Karadžić, I got a call to come and see the Secretary-General, Boutros-Ghali, the same Secretary-General, and he said to me, "How dare you indict Karadžić and Milošević. We're trying to make peace with them." I said, "Well, my instructions under the Security Council statute is to indict war criminals against whom there's sufficient evidence, and I'm doing my job. He said, "Yes, but you should have consulted me."

[Laughter.]

RICHARD J. GOLDSTONE: I said, "Mr. Secretary-General, the Security Council statute states that I'm independent and may not take any instructions from any government or any other person," and I said, "I assume that includes you." He said, "It does. That's

why I didn't come to you when I heard that you were going to indict them. You should have come to me."

[Laughter.]

RICHARD J. GOLDSTONE: That was his understanding of the independence of the prosecutor, and he said, "If you didn't come to me, President Cassese should have warned me." I said, "Well, President Cassese couldn't warn you, because I didn't consult him either."

[Laughter.]

RICHARD J. GOLDSTONE: That was the situation. Of course, little did Boutros-Ghali or I know that within three or four months of that indictment, there would be the meeting in Dayton, which couldn't have been held if Karadžić and Milošević hadn't been indicted. In fact, it assisted the peace rather than the other way around.

But the other reality of the United Nations, the story that comes to mind, is after the call from Nelson Mandela, I told Cassese I would do it. That was about three o'clock that afternoon, and at 12:15 a.m., my wife and I were fast asleep when the phone rang. It was Ralph Zacklin, who some of you may remember, who was the deputy legal advisor at the United Nations. I had never heard of him. He said, "I'm calling to find out if you're prepared to be the chief prosecutor of the United Nations Criminal Tribunal for the Former Yugoslavia." I said, "Mr. Zacklin, are you aware of what the time is in South Africa?" He said, "Yes, I know what time it is, but it's urgent because the Security Council is meeting on this within the next 24 hours." I said, "But were you aware that I told President Cassese at three o'clock, South African time, today that I was prepared to do it?" He said, "Yes, I was aware of that too, but he didn't have authority to ask you. I do." And then the Security Council unanimously appointed me, and Zacklin then called me to say that the Security Council's unanimous resolution

has no force in law until you have a medical clearance from a United Nations-appointed doctor in South Africa. So, that went through.

Zacklin then requested me to come to New York to be briefed on the job and to meet with the Secretary-General, and he said, “Make your own airplane bookings. It’s business class, and we’ll reimburse you when you come to New York.” I did that in good faith, got to New York, and there was a question of reimbursement for the airfare. He said, “Well, I’m afraid we don’t have the money at the moment. There hasn’t been an allocation yet made to the Yugoslavia tribunal, but I hope by the time you get to The Hague,” because they asked me to come and meet the skeleton staff in The Hague—he said, “Maybe by the time you get to The Hague, the money will be available.” Well, it was, but I found to my horror when I got to The Hague, there was Graham Blewitt, and there were 14 Americans who had been gifted to the Yugoslavia tribunal. They hadn’t been paid either. That was the reality of the powerless financial situation at the beginning of the tribunal.

GREG PETERSON: David, you made the executive branch in the United States government real happy, I’m sure, when you chose to indict Charles Taylor. Do you want to just tell how happy you made them?

DAVID M. CRANE: They’re still mad. I stopped by the Africa Bureau recently, and there’s still a picture of me which they use as a dartboard. Perhaps David could confirm that. Well, again, I indicted an Operation Justice or I indicted individuals, and two weeks later in Operation Justice, I took them all down in a 55-minute arrest operation using the British Parachute Regiment, Her Majesty’s Navy, the Iron Duke, as well as Pakistani Special Forces, and American helicopters, without a shot being fired. I announced that to the world, but there was one individual who I did not say at the time. He was already indicted, and that was President Charles Taylor of Liberia. I decided to withhold that for obvious reasons and wanted to choose a particular political moment where I could take him down in front

of everybody for dramatic purposes but also let the people of Sierra Leone know, as I've told them in my outreach programs, that the rule of law is more powerful than the rule of the gun.

I didn't do anything other than I began an operation called Operation Rope where we began to play with his head, and we knew because we had developed criminal information assets or, what we would call in the United States, "spies" in his particular government and other governments within West Africa who were providing information to us. I indicted Sam "The Mosquito" Bockarie, who liked to drink the blood of his victims, hence the name "Mosquito," as well as Johnny Paul Koroma. We knew where they were. They were working for Charles Taylor. Samuel Bockarie was helping to destabilize Côte d'Ivoire, and Johnny Paul Koroma was helping train the Liberian army. So, we began to put out through an information operation that Charles Taylor was harboring war criminals and specifically naming who they were and exactly where they were because we knew exactly where they were and exactly what they were doing, and so Charles Taylor kept denying this and kept denying this. I kept pushing the press saying, "He is harboring war criminals," and all of us during this time frame—and this is the time frame that you're actually going through your nomination process—the United States decided to aggressively invade Iraq based on a lie. The world was moving that way.

I realized, because Operation Justice happened and then the Iraq War started, the world just lost interest in West Africa, period. I wanted to get the world back focused on what had happened in West Africa on behalf of the victims, so I began to feed correct information to the press about Charles Taylor, what he had been doing, knowing all well that I had a sealed indictment in my hip pocket.

The press starts turning around, and finally, Charles Taylor admits that they're both in Liberia. He took the bait. I immediately held a press conference saying that he's harboring war criminals,

return them over immediately, again, citing exactly where they are and what they're doing.

Well, finally, Charles Taylor said, "Yes. We have found them. Unfortunately, Samuel Bockarie has been killed during the arrest operation to give him to the Special Court"—and I went back on the press and said, "No, I doubt that," and I cited exactly what Samuel Bockarie was doing.

Finally, Charles Taylor came back and said, "Well, regardless of what Mr. Crane says, I'm going to turn over Samuel Bockarie's body." I think we're still trying to figure out what happened to Johnny Paul Koroma, right, Steven?

ATTENDEE: He's dead.

DAVID M. CRANE: We think he's dead too, but again, we don't have a body.

So on my birthday, May 29th, 2003, he shipped Samuel Bockarie back to me in a cardboard box, and I remember standing there watching the helicopter land at UN headquarters and settling in. The investigative team goes out to take, literally, this cardboard box out of the back of the helicopter. Al White, my chief of investigations, turned to me and goes, "Happy Birthday." I'll never forget this to this day.

During this time frame, a revolution in Liberia is going on, and the rebels are pressing him in Monrovia. John Kufuor, the president of Ghana, called for a peace conference to maybe stop the killing, and he decided on the 4th of June, he was going to convene all of the heads of state of West Africa and other heads of state within the continent to meet in Accra. And I went, "Aha."

At the time—and I’m trying to make this as brief as possible—some of the leadership team in my office got together along with the registrar, and I said, “Look, I’m going to unseal the indictment when he walks up the steps at eleven o’clock, 3rd of June 2003, and here’s how we’ll do it. Twenty-four hours prior to that, we’ll send a letter to all of the major constituents within West Africa, the U.S. ambassador, the British high commissioner, President of Sierra Leone, as well as the SRSG, the senior representative of the UN within Sierra Leone. The next day, then, we would fax a copy of Charles Taylor’s arrest warrant and his indictment to the foreign ministry of Ghana, as well as personally hand-carry a copy to the Ghanaian high commissioner in Freetown,” which we did.

When that was confirmed, I went down to the UN headquarters at 10:55 of that morning, and at exactly eleven o’clock, the press officer of the UN said, “Mr. Crane is only going to read a statement. He’s not going to actually answer any questions.” I read a statement saying, “Charles Taylor is now indicted.” It is amazing how sometimes you’re as lucky as you are good. Charles Taylor literally was walking up the steps at eleven o’clock as I’m announcing to the world that he is now an indicted war criminal. He walked into the hall, and of course, it’s getting out now. All of the delegations are getting worried. He walks into the hall and sits down, and five heads of state in West Africa moved to the side and started talking furiously. Then they take Charles Taylor in a side room. I’m told this now; obviously, I wasn’t there. They said, “You’ve just been indicted as a war criminal by David Crane in Freetown, and we have to ask you to leave.” So, he went up the steps at eleven o’clock a president and went down the steps about ten after eleven as an indicted war criminal and was swiftly sent back to Monrovia.

Of course, the world erupted in many ways—half the world wanted to hang me, the other half wanted to give me the Nobel Peace Prize, and nothing in between. There was nobody moderate about that decision,

but I did it intentionally for political purposes. I wanted to humble the most powerful warlord in Africa at the time before the people of West Africa and all of his good old boys—that at the stroke of a pin, you can take down even the most powerful warlord. I did it intentionally for that. I didn't think they'd hand him over at the time, but I wanted to strip him politically in front of the world of his power. And then after five weeks of really a horror story—that summer was terrible—the rebels attacked immediately. They went after him, Charles Taylor. The U.S. entered Africa for the first time since Somalia with armed forces. The U.S. Marines were diverted and sent to Liberia, and then the UN peacekeeping force for Liberia arrived. And that's my story, and I'm sticking to it.

GREG PETERSON: Jim is just about to give us the hook—because this is most fascinating, and I want to go another three hours, but we should have a boat ride, right, Mike, tonight?

ATTENDEE: Five minutes.

GREG PETERSON: Five minutes. Oh, my gosh. Okay. We're going to start with Robert, and we're going to come back towards me. In a sentence, you all were all founding chief prosecutors. What do you want to say as sort of your own—maybe a sentence or two, a legacy of that time period that you were the chief prosecutor? So, Robert, on the ECCC? In two sentences or less.

ROBERT PETIT: Probably the greatest legacy is that the court, or any of our courts, is leaving behind the truth or the answers for people who can't get them during our processes. To me, one of the greatest achievements that I was responsible for was, for example, coming up with this definitive list of 8,400-something people—men, women, children—who were killed at S-21 and whose relatives and friends would never have known if we hadn't left that behind for them to find their own answers to their questions.

GREG PETERSON: Luis?

LUIS MORENO-OCAMPO: I need three minutes because I like the question. In 2008, I had to investigate President Bashir. France, UK, U.S. told me not to do it, not to do it, not to do it, “You will destroy any chance of solution there.” What I should do? Who says I should indict him? I should request to raise a hand, please.

[No audible response.]

LUIS MORENO-OCAMPO: None of you would impose arrest? Okay. I will repeat because I’m shocked. Who believes I have to investigate President Bashir?” I decided I had to, and then I informed the Security Council in advance that I would do it. In that case, it would be the person who gives instruction to the minister. Because of that, different governments sent to me different people to tell me not to do it. I had to make a decision. Should I go and request an arrest warrant, or should I respect the will of the state and wait for a different opportunity? My question to you, who of you believe that I should go and request an arrest warrant? Please raise the hand.

ATTENDEE: In retrospect.

LUIS MORENO-OCAMPO: Whatever.

[Laughter.]

LUIS MORENO-OCAMPO: It’s easier now than in those days. Who believes I should not do it? I should respect the interest of the governments and to align with them? Come on, guys. Where?

[No audible response.]

LUIS MORENO-OCAMPO: Normally when I do this exercise when I am teaching, it's 50-50, and that means that those who are supporting, you don't talk because they believe it's normal that you do that. But those who are in disagreement with you criticize you all the time, and then eventually, they say, "Oh, but you are African biased," and whatever.

My feeling is in the same way we have to learn about these complex political environments, I feel you, the experts who are following this, should also do the same, and not just about moral ability. I loved the discussion with Helen about the appeal limits. We love that. It's easy. It's clear. We need to expand on this on how to present this because it's about relevance.

When I was listening to Richard and David, okay, in the last twenty years, what could not happen happened, and in fact, when I took office, my judges were desperate because thinking the court would be closed. Some of them were talking to me saying, "*Do* be careful because the court will be closed." Now it would not happen. The ICC will stay there. The building is there. I see Helen has a job.

[Laughter.]

LUIS MORENO-OCAMPO: The institution is there. The question is about the relevance, but not just about the relevance of the International Criminal Court. It's about the relevance of international law to manage violence, and that is the real question for us. How do we increase the relevance? That is why I suggest to you today to investigate terrorism because terrorism is a new challenge, and we are not answering that. Of course, we can discuss what someone could do better or not, but that's not the real issue. The real issue is we're going back to a time that war was a normal way to solve conflicts.

This year, I read that the U.S. military were proposing to retaliate with atomic weapons and cyberattacks. There was a discussion on that, and President Trump was suggesting an attack. That is desperate. I feel that is a real challenge we have. We need to invent something bigger, and that is what I mean, that's our challenge. My point is in one line, yes, together we establish the idea, the idea is there and permanently there, but the issue is relevance. That is our common challenge.

GREG PETERSON: Thank you. David?

DAVID M. CRANE: I'll just leave you with a vignette, and really at the end of the day, I give all credit to the office of the people who worked in the office of the prosecutor from 2002 to 2012. They are the ones that were in the trenches and did the important work. As I used to say, all I did is walk around and look pretty.

I was in Makeni in March of 2004, and I had taken a couple of the secretaries in the Special Court who never get a chance to see the country. They just go to the compound, work all day, and go back home. I took them up in a helicopter to a school where I always went to, and I was in the school in a burned-out auditorium. There were about 400 children there, and I'm sitting there. It's 95 degrees. I'm wearing a bulletproof vest underneath my shirt. You couldn't tell, but I had close protection, people all around, but, you know, I was standing among them, which I always did. A young child soldier stood up, I was told he was around 12 years old. He had a tonal voice of someone who had been deafened. He had lost his hearing in combat, and he just fell into my arms. He said, "I'm sorry. I killed people. I didn't mean it," and so as he's weeping in my arms, a young woman stands up from about from here to here. She's missing half her face and had been intentionally stuck in a pot of boiling water, and she's holding a child. I don't know where that child came from. She looked at me with her one good eye, and said in Krio, "Seek justice for us," and I'd like to think we did.

GREG PETERSON: Richard?

RICHARD J. GOLDSTONE: Well, I think the legacy of the Yugoslavia and Rwanda tribunals were that they established fifty years almost after Nuremberg that international courts could work, that they could conduct fair trials, and really, I think that led directly to the greater push for the International Criminal Court.

GREG PETERSON: We just had an extraordinary panel with some extraordinary individuals, *The Founders*, the four pioneering individuals who launched the first modern-era international criminal tribunals. Please thank Richard Goldstone, David Crane, Luis Moreno-Ocampo, and Robert Petit.

[Applause.]

Conclusion

Conclusion

Mark David Agrast*

The American Society of International Law has been proud to join in organizing these dialogs for the past 13 years, and we are pleased to publish this latest volume of the Proceedings—the first to appear under the new title, the *International Humanitarian Law Roundtable*.¹ Like its predecessors in the series, this volume offers unique insights into the evolving system of international justice and accountability from the perspective of those who have shaped and nurtured it.

In addition to the new name, the program incorporated various changes to the format of the dialogs while retaining their overall goals and structure. As in previous years, the participants gathered in the beautiful environs of Lake Chautauqua, a place whose tranquil atmosphere presented a telling contrast with the troubling developments the participants had come to discuss, including resurgent authoritarianism and intolerance, declining rule of law, and the fracturing of the rules-based order that rose from the ashes of the Second World War.

One development that the participants could not have foreseen was the global pandemic that would begin a few months later, forcing the cancellation of the dialogs in 2020 and 2021. Nor could they have anticipated how the pandemic would affect the course of international justice, as the crisis consumed the attention and resources of the nations of the world, exacerbating existing inequities, and enabling repressive governments to seize on the crisis to limit freedom of movement and expression and to further marginalize at-risk communities.

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

1 The publication of this volume has been timed to coincide with the convening of the second Roundtable, which will take place at Chautauqua in August 2022.

The program once again brought together the world's foremost experts in international humanitarian law—including many who were “present at the creation”—to discuss the continuing evolution of international justice and accountability. Their discussions offered a valuable opportunity to take stock of both the progress and the setbacks, and to begin to chart a path forward. Although these Proceedings cannot fully capture the richness of the less formal conversations that took place during meals and porch sessions at the Athenaeum, or during strolls along the lake, we hope that this volume has managed to capture both the timeliness of these discussions and their historical significance.

As always, the Roundtable owes its success to the generous support and participation of the sponsoring organizations, including our partners at the American Bar Association; the American Red Cross; the Athenaeum Hotel; Case Western University School of Law and the Frederick K. Cox Center; the Chautauqua Institution; the Ferencz International Justice Initiative at the US Holocaust Memorial Museum; the International Bar Association; IntLawGrrls; New York University's Center for Global Affairs; the Public International Law and Policy Group; the Robert H. Jackson Center; and the Whitney R. Harris World Law Institute at Washington University in St. Louis.

I also would like to acknowledge our deputy executive director, Wes Rist, who participated on behalf of the Society, and our director of publications and research, Justine Stefanelli, who edited this volume.

Allow me to close with a portion of the remarks delivered by Associate Justice Robert H. Jackson to the 1945 Annual Meeting of the American Society of International Law as was preparing to go to Nuremberg.

[W]e are at this moment at one of those infrequent occasions in history when convulsions have uprooted habit and tradition in a large part of the world and there exists not

only opportunity, but necessity as well, to reshape some institutions and practices which sheer inertia would otherwise make invulnerable. Because such occasions rarely come and quickly pass, our times are put under a heavy responsibility.

As we contemplate the convulsions of the present moment, let us seize the opportunity to help overcome that inertia and accelerate the progress from impunity to accountability.

Appendices

Appendix I

Agenda of the Thirteenth International Humanitarian Law Roundtable August 25–27, 2019

Sunday 25 August

4:00 p.m. **Movement to Robert H. Jackson Center**

Depart from Hotel Lobby

5:00 p.m. **Reception and Dinner**

Hosted by the Robert H. Jackson Center

Invitation Only

Samite Interview/Performance

Moderated by Greg Peterson

8:00 p.m. **Return to the Hotel**

Informal reception on the porches

Monday 26 August

7:30 a.m. **Breakfast with the Prosecutors**

9:00 a.m. **The Impunity Watch Essay Contest
Award Ceremony**

Presented by Andrew Beiter and Cora True-Frost

Keynote Address

Judge Navanethem “Navi” Pillay Introduced by
Leila Sadat

10:00 a.m. **Break**

10:30 a.m. **The Ben Ferencz Commentary and Update**

Moderated by Michael P. Scharf

11:30 a.m. **Roundtable Convenes**

Chaired by Brenda J. Hollis

12:30 p.m. **Lunch**

The Katherine B. Fite Lecture

Fatou Bensouda

Introduced by Milena Sterio, IntLawGrrls

1:45 p.m.

Breakout Sessions Convene

1. Future of Courts and Tribunals?
Co-Chaired by Leila Sadat and Jim Goldston
2. The New Way? Mechanisms,
State Implementation, Inter-
State Cooperation, regional Courts
Co-Chaired by Jennifer Trahan and Mark Ellis
3. The Rising Tide? Grass-roots Efforts
Co-Chaired by Milena Sterio and Paul Williams
4. Back to the Future?
Impact of Populism/Nationalism
Co-Chaired by Stephen Rapp and
Randall Bagwell

5:00 p.m.

Porch Breakout Sessions Conclude

6:00 p.m.

Formal Reception on the Porches

7:00 p.m.

Dinner

The Clara Barton Lecture

Hermon von Hebel
Introduction by Randall
Bagwell, the American Red Cross

8:30 p.m.

Informal Reception on the Porches

Music provided by Dean Michael Scharf and others

Tuesday 27 August

7:45 a.m. **Breakfast with the Prosecutors**

Breakfast Program: New Initiatives

1. Global Social Justice Practice Academy, David Crane and L.J. Edmonds
2. Global Accountability Initiative, Jeff Howell
3. Crimes Against Humanity Convention, Leila Sadat
4. Legal Limits to the Veto in the Face of Atrocity Crimes, Jennifer Trahan

9:15 a.m. **Year in Review**

Mark Drumbl
At Presbyterian Hall

10:00 a.m. **Break**

10:15 a.m. **Roundtable Reconvenes**

12:15 p.m. **Roundtable Closes**

12:30 p.m. **Lunch**

1:00 p.m. **Luncheon Presentation**

Mark Ellis, International Bar Association,
eyeWitness to Atrocities Project

- 2:00 p.m. **Special Program:
Conversation with the Founders**
Richard Goldstone
David M. Crane
Luis Moreno Ocampo
Robert Petit
Moderated by Greg Peterson
- 3:15 p.m. **The Issuance of the Chautauqua Principles
and Conclusion of the Roundtable**
Moderated by Lucian Dervan,
the American Bar Association
- 5:00 p.m. **Dinner Cruise** (*Invitation only*)
Sponsored by Case Western
Reserve University School of Law

Informal Reception on the porches follows

Appendix II

The First Chautauqua Principles August 27, 2019



In the spirit of humanity and peace, recognizing that in today's challenging legal and political environment, it is important to consider how the international criminal justice system and individual practitioners can provide justice for victims of atrocity crimes. To that end, the following principles are offered to practitioners, diplomats, and politicians grappling with these challenges. . .

Principle I. The future of the international criminal justice system must include a role for international courts and tribunals, including the International Criminal Court (ICC). To ensure such institutions function independently, effectively, and efficiently:

we must foster realistic expectations among the victims of crimes and the international community;

we must ensure such courts are not improperly influenced by political leaders or movements;

we must promote consistency in the investigation and adjudication of atrocity situations, realizing some degree of diversity across the international criminal justice system is healthy, as it can reflect the unique needs of hybrid, national, and international systems;

we must refine the process for the selection of judges and establish mandatory training;

we must ensure adequate resources are provided to such institutions to enable them to carry out their mandates.

Principle II. We must continue to enhance the framework of international criminal law by adopting, as appropriate, new international legal instruments.

Principle III. The practice of international criminal law requires a principled yet practical approach, focusing on broad international norms without insisting upon rigid uniformity as to irreconcilable differences, which could subvert otherwise legitimate efforts to combat impunity.

Principle IV. We must recognize the value of international impartial and independent mechanisms as a means of advancing international criminal justice. However, we must recognize that such mechanisms are information collection entities, not accountability mechanisms. Thus, they are valuable tools and resources but not an alternative to international tribunals and courts.

Principle V. It is essential that the international criminal justice system develop processes to coordinate its efforts with the efforts of grassroots activists and civil society organizations in every existing atrocity situation. Such processes must include minimizing the duplication of effort, facilitating safe collaboration and training human assets. Such coordination must also exist between grassroots activities and civil society organizations with diverse aims and objectives.

Principle VI. Technology and social media have drastically increased the volume of available information pertaining to atrocity crimes. We must ensure adequate procedures exist to properly authenticate such information. Modern technology may enable such procedures. We must also explore whether traditional notions of the indicia of

reliability should be reevaluated, within the confines of due process, to encompass new means of authentication.

Principle VII. We must condemn nationalist rhetoric that exploits fear, exaggerates differences, and erodes the coalitions which have served as the common thread for all advances in international criminal justice. Thus, we must condemn hate speech, disinformation, victim-blaming, and the rhetoric asserting that solutions to domestic challenges permit the abdication of international legal obligations. We must redouble efforts to highlight the achievements of international accountability efforts and remind everyone that challenges, such as refugee migration, are symptoms of the failure of accountability.

As chair of the Thirteenth International Humanitarian Law Roundtable, I call upon the international community to keep the spirit of the Nuremberg Principles alive by calling to attention and putting into action the Principles included herein.



Brenda J. Hollis

Chair, 13th International Humanitarian Law Roundtable

Appendix III

Biographies of the Prosecutors and Participants

Prosecutors

Fatou Bensouda

Prosecutor Bensouda of The Gambia, the Assembly of States Parties elected her as the Prosecutor of the International Criminal Court on 15 June 2012. Previously, the Assembly of States Parties elected—with an overwhelming majority—Ms. Bensouda to the position of ICC Deputy Prosecutor, a position she held from 8 August 2004 until May 2012. Prior to her work at the ICC, Ms. Bensouda worked as Legal Adviser and Trial Attorney at the International Criminal Tribunal for Rwanda (ICTR), where she rose to the position of Senior Legal Advisor and Head of The Legal Advisory Unit. Before joining the ICTR, she was General Manager of a leading commercial bank in The Gambia. Between 1987 and 2000, she was, successively, Senior State Counsel, Principal State Counsel, Deputy Director of Public Prosecutions, Solicitor General and Legal Secretary of the Republic, and Attorney General and Minister of Justice, a capacity in which she served as Chief Legal Advisor to the President and Cabinet of The Republic of The Gambia. Ms. Bensouda also took part in negotiations on the treaty of the Economic Community of West African States (ECOWAS), the West African Parliament, and the ECOWAS Tribunal. She served as a delegate to United Nations conferences on crime prevention, the Organization of African Unity's Ministerial Meetings on Human Rights, and as delegate of The Gambia to the meetings of the Preparatory Commission for the International Criminal Court. Ms. Bensouda holds a master's degree in International Maritime Law and Law of the Sea. She is the first international maritime law expert of The Gambia.

Helen Brady

As the Senior Appeals Counsel and Head of the Appeals Section in the Office of the Prosecutor (OTP) at the International Criminal Court (ICC), Helen Brady is the Prosecution lead counsel in all appeals before the Court, advises trial teams on legal issues in their cases, and is on the OTP's senior executive committee. Previously, at the ICTY for 12 years, Ms. Brady was lead counsel and co-counsel in appeals of 50 accused persons in war cases at the ICTY and ICTR and advised on another 40 appeals and trials. Formerly, she was Chef de Cabinet to the President of the Special Tribunal for Lebanon (STL), a prosecutor at the Office of the Director of Public Prosecutions (NSW), and worked in Sydney and San Francisco law firms. As a member of the Australian Government delegation to the Rome Conference and related ICC negotiations from 1998 to 2001, Ms. Brady was a negotiator and drafter of the ICC Statute and Rules of Procedure and Evidence. She has taught International Criminal Law in the LLM programs at the Australian National University and Sydney University, and trained prosecutors and judges from international and domestic war crimes courts. A graduate of ANU and Cambridge, Ms. Brady has spoken and published widely, including in leading texts and commentaries on the Rome Statute and international criminal law and procedure.

Michelle Campbell

Ms. Michelle Campbell has 20 years of domestic and international experience in both criminal and human rights law. As of June 2019, Ms. Campbell is the Senior Appeals Counsel and Head of the Legal Advisory and Appeals Section (LAAS) within the Office of the Prosecutor (OTP) at the STL. Prior to joining the OTP at the STL, Ms. Campbell worked for 13 years as Crown Counsel in the Crown Law Office (Criminal) within the Ministry of the Attorney General in Toronto, Ontario, Canada. Ms. Campbell's practice involved criminal litigation at all levels of court, with a specialization in appellate litigation before the Ontario Court of Appeal and the Supreme Court of Canada. Before this, Ms. Campbell was seconded by the Asia Foundation to the

United Nation's affiliated Joint Electoral Management Body (JEMB) in Kabul, Afghanistan. Ms. Campbell also worked as a Researcher at the International Commission of Jurists (ICJ) in Geneva, Switzerland, and as a Legal Officer with the Organisation for Security and Cooperation in Europe (OSCE) in Sarajevo, Bosnia and Herzegovina. Ms. Campbell holds a Bachelor of Arts degree from the University of Toronto (Hons), an LL.B. law degree from the University of Western Ontario, and a European Master's Degree in International Human Rights and Democratisation (E.M.A.) from the University of Padua, Italy and the University of Essex, United Kingdom.

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, Professor Crane was appointed an advisor to assist the Colombian Justice Mechanism and the Truth Commission. He founded the Global Social Justice Practice Academy at Ohio University in the summer of 2019.

Richard Goldstone

Richard J. Goldstone was a judge in South Africa for 23 years, the last nine as a Justice of the Constitutional Court. Since retiring from the bench, he has taught as a visiting professor in a number of United States Law Schools. From August 1994 to September 1996, he was the chief prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda. He is an honorary Bencher of the Inner Temple, London and an honorary fellow of St. John's College, Cambridge. He is an honorary member of the Association of the Bar of the City of New York and a foreign member of the American Academy of Arts and Sciences. He is an honorary life member of the International Bar Association and Honorary President of its Human Rights Institute.

Brenda J. Hollis

In February 2014, the Secretary-General of the United Nations appointed Brenda J. Hollis Prosecutor of the Residual SCSL, having served as Prosecutor of the SCSL from February 2010 until its closure in December 2013. She served as Senior Trial Attorney from 1994 until 2001 at the ICTY and assisted the OTP at the ICTR. She was extensively involved in training investigators, judges, NGO staff, and prosecutors for work with ad hoc national courts and national courts. Prosecutor Hollis served for more than 20 years in the United States Air Force, retiring in 1998 as a Colonel. Prior to her Air Force service, she served as a Peace Corps volunteer in West Africa. Currently, she is serving as the Acting International Co-Prosecutor of the ECCC and a Principal at Justice Consultancy International, LLC.

Luis Moreno Ocampo

Luis Moreno Ocampo was the First Chief Prosecutor of the new and permanent ICC (2003-12). He established the OTP, conducted preliminary examinations in 17 different countries, opened investigations in seven and obtained more than 30 arrest warrants or summons to appear. During his tenure, the ICC finalized its first

trial. After the end of his tenure as the ICC's Chief Prosecutor, he was the Chairman of the World Bank's External Panel of Experts with Respect to Allegations of Corruption under the Padma Multipurpose Bridge Project in Bangladesh (October 2012- May 2013). Currently, he is in private practice, managing cases with transnational challenges. He is a Senior Fellow at Harvard University, Kennedy School, Carr Center for Human Rights Policy (since 2015) and a Visiting Professor, at Hebrew University, Law School and Al Quds University. Previously he was a Visiting Professor at Stanford (2002) and Harvard University (2003), "Senior Fellow", Jackson Institute for Global Affairs, Yale University (2014/15), and "Distinguished visiting scholar", New York University, Law School (2012/13). He had a critical role during the transition to Democracy in Argentina—he was Deputy Prosecutor in the trial against the "Military Junta" (1985), and the Prosecutor in military rebellion cases in 1988 and 1991, and in dozens of grand corruption cases, including cases against judges and Ministers. During the nineties, he was in private practice in Argentina, helping companies and public institutions to control corruption. In 1987, he helped found "Poder Ciudadano" (Citizen power), an Argentine NGO that created one of the first civil society's anti-corruption programs. He wrote a book about the topic in 1993. Poder Ciudadano became one of the biggest chapters of Transparency International in 1995, and Luis Moreno Ocampo was a Transparency International's Advisory Board member.

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 OTP of the ICTR. 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 OTP of the SCSL. In 2006, the United Nations named him the International Co-Prosecutor of the ECCC, 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 United Nations 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 arranged the 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 crimes against humanity convictions for sexual slavery and forced marriage, 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.

Speakers, Panelists, and Sponsors

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 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 JAG School—the only American Bar Association accredited law school in the U.S. Government—in Charlottesville, Virginia.

Andrew Beiter

Andrew Beiter is an eighth 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.

Lucian Dervan

Lucian E. Dervan is an Associate Professor of Law and Director of Criminal Justice Studies at Belmont University College of Law in Nashville, Tennessee. He focuses on domestic and international criminal law and is the recipient of numerous awards for his teaching and scholarship. His writings have appeared in dozens of law reviews, psychology journals, and books. He is also the co-author of *International Criminal Law: Cases and Materials* (Carolina Academic Press) with Ellen Podgor and Roger Clark, founder and author of *The Plea Bargaining Blog*, and a contributing editor to the *White Collar Crime Prof Blog* (a member of the Law Professor Blogs Network). In addition to his scholarly pursuits, Professor Dervan is the Immediate Past Chair of the American Bar Association (ABA) Criminal Justice Section, Chair of the American Bar Association's Commission on the American Jury effective September 1, and Chair of the ABA CJS's Global White-Collar Crime Institute. Prior to joining the academy, Professor Dervan served as a law clerk to the Honorable Phyllis A. Kravitch of the U.S. Court of Appeals for the Eleventh Circuit and practiced law with King & Spalding LLP and Ford & Harrison LLP.

Mark A. Drumbl

Mark Drumbl is the Class of 1975 Alumni Professor at Washington and Lee University, School of Law, where he also serves as Director of the University's Transnational Law Institute. Professor Drumbl's research includes public international law, global environmental governance, international criminal law, post-conflict justice, and transnational legal process. Prior to becoming a Professor, Drumbl clerked for Justice Frank Iacobucci of the Supreme Court of Canada. He was appointed co-counsel for the Canadian Chief-of-Defense-Staff before the Royal Commission investigating military wrongdoing in the UN Somalia Mission. Professor Drumbl has also

served as an expert in ATCA litigation in the US federal courts, in US immigration court, as defense counsel in the Rwandan genocide trials, and has taught international law in a plethora of countries. Professor Drumbl's research and teaching interests include public international law, global environmental governance, international criminal law, post-conflict justice, and transnational legal process. His work has been relied upon by the Supreme Court of Canada, the United Kingdom High Court, United States Federal Court, and the Supreme Court of New York.

Mark Ellis

As Executive Director of the International Bar Association (IBA) Mark S. Ellis leads the foremost international organization of bar associations, law firms, and individual lawyers in the world. Prior to joining the IBA, Dr Ellis spent ten years as the first Executive Director of the Central European and Eurasian Law Initiative (CEELI), a project of the ABA, providing technical legal assistance to twenty-eight countries in Central Europe and the former Soviet Union, and to the ICTY. He served as Legal Advisor to the Independent International Commission on Kosovo, chaired by Justice Richard J. Goldstone and was appointed by OSCE to advise on the creation of Serbia's War Crimes Tribunal. He was actively involved with the Iraqi High Tribunal and acted as legal advisor to the defense team of Nuon Chea at the ECCC. In 2013, Dr. Ellis was admitted to the List of Assistants to Counsel of the ICC. Twice a Fulbright Scholar at the Economic Institute in Zagreb, Croatia, he earned his J.D. and B.S. (Economics) degrees from Florida State University and his PhD in Law from King's College, London. He is the recipient of two research grants to the European Union and the Institut d'Études Européennes in Brussels, Belgium, focusing on the law and institutions of the European Union.

James A. Goldston

James Goldston is the executive director of the Open Society Justice Initiative, which advances the rule of law and rights protection

worldwide through advocacy, litigation, research, and the promotion of legal capacity. A leading practitioner of international human rights and criminal law, Goldston has litigated several groundbreaking cases before the European Court of Human Rights and UN treating bodies, including on issues of counterterrorism, racial discrimination, and torture. Goldston previously served as coordinator of prosecutions and senior trial attorney in the OTP at the ICC. He was also the legal director of the Budapest-based European Roma Rights Center; director general for human rights of the Mission to Bosnia-Herzegovina of the Organization for Security and Cooperation in Europe; and prosecutor in the Office of the United States Attorney for the Southern District of New York, where he focused on organized crime. Goldston is a graduate of Columbia College and Harvard Law School. He has taught at Columbia Law School, NYU Law School, and central European University.

Herman von Hebel

Herman von Hebel is an independent consultant and advises on issues of rule of law in various countries around the world, including on the establishment of an anti-corruption court in Ukraine, code of communication for judges and court staff in relation to parties and the public in Georgia, and on access to justice for people in conflict-affected countries. Prior to that, Herman von Hebel served as the Registrar or Deputy Registrar for the ICC (2013-2018), the STL (2009-2013), and the SCSL (2006-2009). From 2001-2006 he served as Senior Legal Officer in Chambers of the ICTY. As Legal Adviser to the Dutch Ministry of Foreign Affairs (1991-2000), Herman von Hebel participated in the negotiations leading to the creation of the ICC, chaired the working group on war crimes during the 1998 Rome Conference and chaired the 1999-2000 UN working group on the Elements of Crimes for the ICC crimes. As counsel for the Dutch Government, he has also appeared in proceedings before the European Court of Human Rights. Herman von Hebel has extensive managerial, legal and diplomatic experience and has published

extensively on issues of rule of law, human rights and international humanitarian and criminal law. He is currently a Principal at Justice Consultancy International.

Jeff Howell

Jeff S. Howell, Jr. is co-founder of the Syrian Accountability Project and the Global Accountability Initiative. Mr. Howell holds a Bachelors' Degree from the University of Virginia and a Juris Doctor from Syracuse University College of Law. While at Syracuse University, Mr. Howell completed a Certificate in National Security and Counterterrorism Law with the Institute for National Security and Counterterrorism (INSCT). During his tenure as SAP Chief of Staff, Mr. Howell received training in investigations and conflict mapping from the NGO No Peace Without Justice. Thereafter, Mr. Howell worked in Turkey, supporting efforts to train Syrian investigators, jurists, and law enforcement officers in ICL. Mr. Howell is a member of the Virginia Bar and served as a Special Prosecutor with the Commonwealth's Attorney for the City of Virginia Beach. Mr. Howell is also the President and Founder of the law firm of Howell and Young specializing in business torts and construction litigation.

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 (CWRU). Mr. Johnson also served as the President and CEO of the Robert H. 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 SCSL. 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; Chair, Board of Directors for the Global Accountability Initiative; and Faculty Advisor, Yemen Accountability Project, CWRU.

Phoebe Juel

Phoebe Juel is a 2008 graduate of Case Western Reserve University School of Law where she concentrated her studies on International Criminal and Counter-Terrorism Law. While there, she worked with the Financial Integrity in Emerging Markets Lab and the Terrorism Prosecution Lab, where she drafted a memorandum for use by the OTP at the Military Tribunal at Guantanamo Bay. Prior to, she completed an undergraduate degree in Military History at Grinnell College and studied Public Health at the University of Iowa. She is currently in private practice in Pittsburgh, Pennsylvania, where she is also active in refugee and immigrant support projects with the Episcopal Diocese of Pittsburgh.

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 UN—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 UN Interim Administration Mission in Kosovo and the ECCC. She was Senior Legal Officer and Head of Chambers at the ICTY and held legal positions in France's Ministry of Foreign Affairs and with UN 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 UN Office for Disarmament Affairs, interned briefly for the Coalition for the ICC, 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.

Kristan McMahon

Kristan McMahon began serving as the President of the Robert H. Jackson Center since April 2019. She is a former principal with Vetted Solutions, an executive search firm specializing in association and nonprofit recruiting and consulting in Washington D.C. where she guided a transformational process for the company's executive searches. Previously McMahon was corporate counsel for Verizon in Arlington, VA, where she advised all business entities on a variety of antitrust issues, including deal analysis and compliance with antitrust/competition laws for a global Fortune 15 company. Prior to work with Verizon, McMahon was a Staff Attorney for Howrey LLP, where she was part of a team leading government investigations and litigations for global Fortune 500 companies.

Gregory L. Peterson

Mr. Peterson co-founded the Robert H. Jackson Center in 2001, as a non-profit organization dedicated to advancing the remarkable legacy of the U.S. Supreme Court Justice Robert H. Jackson. Peterson currently serves on the Center's board of directors. He has been a partner with Phillips Lytle LLC for over 30 years. His practice focuses on 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, and tax exemption and qualification with New York State administrative areas. Greg graduated Phi Beta Kappa with

a B.A. from Allegheny College and a J.D. from The Dickinson School of Law of the Pennsylvania State University.

Navanethem Pillay

Judge Navanethem “Navi” Pillay began her career as an attorney in Durban, South Africa (1967-1995) and in 1995, became a judge on the Kwa Zulu Natal High Court. From 1996 to 2003, Judge Pillay served as a Judge and President of ICTR. Thereafter, she spent five years (2003-2008) serving as a judge at the ICC. Following her time at the ICC, Judge Pillay served as the UN High Commissioner for Human Rights (2008-2014). Currently, Judge Pillay serves as the President of the Nuremberg Principles Academy Council, President of the International Coalition against the Death Penalty; Member of Africa Group for Justice and Accountability; and Chair of WWF Independent Panel for enquiry into allegations of breaches.

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 the Society’s educational programming, including its Annual and Midyear Meetings, as well as its various Interest Group programs, the Society’s two Signature Topics, and general member activities. He also works with high schools, community organizations, and other public groups as part of the Society’s public education and outreach about international law. Previously, he served as Assistant Director of the Center for International Legal Education and Professor at the University of Pittsburgh School of Law. He holds a JD from the University of Pittsburgh School of Law and an LLM (with distinction) from UWE Bristol Faculty of Law in the United Kingdom.

Leila N. 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 ICC Chief Prosecutor Fatou Bensouda. The President of the International Law Association (American Branch), Sadat is a prolific scholar and teacher, and she 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 ASIL. 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.

Michael P. 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 UN 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 19 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 UN 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 ASIL. 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 Clinical Professor at NYU's 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 for Transitional Justice and worked on cases before SCSL and ICTR. She has published two digests on the case law of the *ad hoc* tribunals, as well as scores of law review articles and book chapters, including on the International Criminal Court's crime of aggression. She also has served as one of the US representatives to the Use of Force Committee of the International Law Association and is Chair of the American Branch of the International Law Association, International Criminal Court Committee. The book she is currently writing, "Legal Limits to the Veto in the Face of Atrocity Crimes," is under contract with Cambridge University Press.

Cora True-Frost

Associate Professor Cora True-Frost specializes in international law and constitutional, human rights, and international law. Her primary research interests include the development of international norms, with a focus on the role of international organizations and the United Nations Security Council in these processes. Her scholarship draws on experiences defending individuals accused of crimes against humanity and war crimes, and leading the Nongovernmental Organization Working Group on Women, Peace, and Security at the

UN headquarters to advocate to the UN Security Council. Before entering academia, Professor True-Frost founded the Women's Justice Unit at the Judicial Systems Monitoring Programme in East Timor, which continues to serve women today. She also served as Legal Consultant to the Fofana Defense Team at the SCSL. She was a Litigation Associate at Cravath, Swaine and Moore LLP and a Summer Associate at White & Case LLP. In addition to her research and teaching, Professor True-Frost is the Faculty Director of Impunity Watch and an advisor to the College of Law's Philip A. Jessup international Law Moot Court Competition team. She also serves as Faculty Advisor to the National Women's Law Student Association and the Syracuse University Program on Refugee Assistance. In 2015, New York Gov. Andrew Cuomo appointed her a member of the state Developmental Disabilities Planning Council.

Molly White

Molly White is a Management Analyst in Diplomatic Security (DS). As an analyst, Ms. White oversees the strategic planning and performance management of a portfolio containing DS's Countermeasures, High Threat Programs, International Programs, and Threat Investigations & Analysis directorates. She earned her J.D. and an advanced certificate of study in National Security and Counterterrorism Laws from Syracuse University College of Law in 2016. Ms. White focused on the law and international security at Syracuse, which led her to the IHL Roundtable for the first time in 2015. She insisted James C. Johnson let her help every year since; now she is excited to step into the role of IHL Roundtable Coordinator this year. In her spare time, she fosters dogs with Dogs XL Rescue.

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 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.

About the ASIL

The American Society of International Law (ASIL) is a nonprofit, nonpartisan, educational membership organization founded in 1906 and chartered by Congress in 1950. Headquartered in Washington, D.C., its mission is “to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice.” ASIL holds Special Consultative Status with the Economic and Social Council of the United Nations and is a constituent society of the American Council of Learned Societies.

ASIL’s 3,500 members come from more than one hundred nations with nearly 40 percent residing outside the United States. Its members include scholars, jurists, practitioners, government officials, leaders in international and nongovernmental organizations, students, and others interested in international law. Through its many publications, conferences, briefings, and educational events, ASIL seeks to serve the needs of its diverse membership and to advance understanding of international law among policymakers and the public.

ASIL is a volunteer-led organization governed by an elected Executive Council and administered by an executive director and professional staff.