

**ALICE IN WONDERLAND
ATROCITY ACCOUNTABILITY IN THE 21ST
CENTURY
A WORLD TURNED UPSIDE DOWN**

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*Those who can make you believe absurdities can make you
commit atrocities - Voltaire²*

ABSTRACT

Professor Leila Sadat was a central figure in creating the accountability paradigm, an age of accountability from 1993-2015, as well as a friend, colleague, and an inspiration to us all. Before the shadows of populism/nationalism set in, Professor Sadat was a steadfast advocate for the rule of law where tyrants, dictators, and thugs were held accountable. She remains so today, despite these new challenges of populism/nationalism. During the Age of Accountability, the beast of impunity was faced down, that terrible pariah fading before the bright light of justice. It was through her efforts during this time, among many of our other mutual friends and colleagues, that a new legal discipline was created, international criminal law. This is a particularly important step for mankind which had just emerged from the bloody 20th century and the destruction and ruin of tens of millions of humans at the hands of their own governments with little or no accountability. Despite this new “wonderland” we now face, Professor Sadat remains a true rock in the middle of the stream of history in facing down tyranny.³

¹ Founding Chief Prosecutor for the international war crimes tribunal in West Africa, called the Special Court for Sierra Leone, 2002-2005. Founder of the Global Accountability Network that houses the Syrian, Yemeni, and Venezuelan Accountability Projects. One of the founders of modern international criminal law.

² *Voltaire on Capitol Hill: ‘Anyone who can make you believe absurdities can make you commit atrocities,* VOLTAIRE FOUND. (Feb. 16, 2021), <https://voltairefoundation.wordpress.com/2021/02/16/voltaire-on-capitol-hill-anyone-who-can-make-you-believe-absurdities-can-make-you-commit-atrocities/>.

³ I first met Professor Leila Sadat in Galway, Ireland at a reception held by Professor William Schabas during a conference in the summer of 2004. We have been friends and collaborators ever since. I have learned a great deal from this amazing scholar. The most important thing I learned from her was compassion.

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I. INTRODUCTION

Fake news, untruths, conspiracy theory, all mixed by the misunderstood impact of social media, make holding accountable those who commit atrocity a challenging proposition today. We live in an absurd world, almost an “Alice in Wonderland” scenario.⁴ After a brief and shining two decades of accountability at the turn of this century, it appears those who use unlawful force as a political tool, including atrocities, have an influence on the domestic and international stage not seen since the beginning of fascism in the 1920’s and early 1930’s.⁵ It is a dark and unpredictable time as the world struggles to get a grip on a virulent virus of continued pandemic proportions.

The assumptions and norms that have been established since the end of World War II, under the United Nations paradigm, seemed to be a given rock-solid idea of the world governing itself under the rule of law.⁶ It had, in some ways, become pro forma. Another rise of tyranny and authoritarianism was not contemplated. Though far from perfect, this paradigm, cobbled together over seventy-five years ago, seemed to be how states governed themselves. Today this entire paradigm is faltering.

Though there is no set date for this shift away from the international rule of law, in some ways, it began when the iron curtain fell in the early 1990’s. The world, locked in a “dance of death”⁷ with the Soviet Union,

⁴ I use the Alice in Wonderland story in this piece as it is so apt. With so many unanticipated changes in the world order not seen since the early 1930’s, it is to this author that we are now, once again, living in a time of absurdity, truly a bizarre wonderland of a world turned on its head.

⁵ David Crane, *Beware a Reichstag Fire!*, JURIST – Professional Commentary (Dec. 7, 2020), <https://www.jurist.org/commentary/2020/12/david-crane-beware-a-reichstag-fire/> (explaining the rise in fascism in Germany and in turn, the rise in atrocity crimes).

⁶ Just after World War II, and in the interim before the start of the Cold War, there was a bright and shining four years in the middle of the darkness of the bloody 20th Century. Not only did we see the creation of the International Military Tribunals at Nuremberg and Tokyo in 1946, but also the United Nations. Office of the Historian, *The Nuremberg Trial and the Tokyo War Crimes Trials (1945-1948)*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/nuremberg> (last visited July 26, 2021). For the establishment of the United Nations, see *History of the United Nations*, UNITED NATIONS, <https://www.un.org/en/about-us/history-of-the-un> (last visited Jan. 21, 2022) A few years later, we see the issuance of the Universal Declaration of Human Rights, followed by the Genocide Convention and the Geneva Conventions of 1949. See *The Genocide Convention*, OFF. ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, <https://www.un.org/en/genocideprevention/genocide-convention.shtml> (last visited July 26, 2021); See *The Geneva Conventions and their Commentaries*, INT’L COMM’ OF THE RED CROSS, <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions> (last visited July 26, 2021). These became the cornerstones in the development of the jurisprudence of modern international criminal law almost fifty years later.

⁷ *Dance of Death*, ENCYC. BRITANNICA, <https://www.britannica.com/art/dance-of-death-art-motif> (last visited Oct. 17, 2021). The “dance of death” is reminiscent of the 13th and 14th Medieval time

was caught off-guard by the suddenness of the collapse of this threat that lasted many decades. By this time, the Cold War had destroyed millions around the world allowing for the murky beginning of a new fascism today, which rose like a phoenix from the ashes of early 1900s fascism: Germany, Italy, and Japan. The international community did not see this coming.

This commemorative paper will explore the theory as to how modern societies evolved towards a new Information Age that shed the restrictions of the Industrial Age. How all this impacted the development of international criminal law and its consequent atrocity accountability mechanisms will be explored, followed by a discussion of where we are now in holding those accountable who destroy their own citizens and others. This will not be an exhaustive study, but more a think-piece to encourage further discourse.

II. THE INFORMATION AGE AND THE HOPE FOR A DEMOCRATIC PEACE: DOWN THE RABBIT HOLE

When the wall, the so-called iron curtain, crumbled and fell, the world hesitated in shock and in awe.⁸ Could it be possible the Soviet Union, a dangerous threat, in large part was a Potemkin village? Did the Soviet's clever use of smoke and mirrors successfully make a society in ruins, baiting the West into spending four decades pouring resources into the effort to counter a threat of communism that never really existed? The West certainly did not understand nor appreciate this and followed the rabbit down the hole into Wonderland. We are still there.

The 1990's saw an international community intoxicated with the idea of a democratic peace, where liberal democracies would flourish under the rule of law.⁹ It was a heady time. The maturing United Nations saw a renewed respect, with "Blue Helmets"¹⁰ welcomed around the world in

when many art forms depicted death to illustrate the "inevitability and impartiality" of death. *Id.*

⁸ Heather Stephenson, *The Fall of the Berlin Wall "Was Like Heaven on Earth"*, Tufts Now (Nov. 5, 2019), <https://now.tufts.edu/articles/fall-berlin-wall-was-heaven-earth>.

⁹ Francis Fukuyama in a best selling book of the time would call it the "end of history." FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* 211 (1992). During the 1990's, Alvin Toffler would write a series of fascinating books about a new era such as *Powershift: On Knowledge, Wealth and Violence at the Edge of the 21st Century* and *Future Shock*. This would truly be the beginning of the democratic peace. How wrong we all were. Alvin Toffler & Heidi Toffler, *A New Theory of Warfare: The 'Third Wave' Arrives: We Make War the Way We Make Wealth--With Information: War is won today by information, not industrial power or strength of troops. First of two parts.*, L.A. TIMES (Mar. 5, 1991), <https://www.latimes.com/archives/la-xpm-1991-03-05-me-22-story.html>.

¹⁰ *Military*, U.N., <https://peacekeeping.un.org/en/military> (last visited July 22, 2021).

places in need of assistance. Under the leadership of a strong and steady Secretary General, Kofi Annan, the original paradigm of the United Nations — settle disputes peacefully, only resorting to the use of force as a last resort — gained a renewed momentum.

This new age of accountability began with the development of concepts not seen since the end of World War II at Nuremberg, acting on atrocity with the rule of law in a united front via an activist Security Council.¹¹ Despite the end of the madness of the Cold War in 1990/91, horrors in the Balkans and in the Lakes Region of Eastern Africa caused a new approach to accountability by creating tribunals under a United Nations mandate.

Though rough around the edges at first, these new ad-hoc tribunals for the former Yugoslavia and Rwanda, created under Chapter Seven of the United Nations Charter, began their work. The international community had “crossed the Rubicon”¹² by declaring that those who destroy their own citizens will be prosecuted under law in a fair and open trial. The legacy of Nuremberg was burnished and began to shine a new light against impunity.¹³

During the 1990’s and into the early 2000’s, a new shift in technology was rapidly changing how data and knowledge were exchanged. The advancement of computer technology and the expansion of the World Wide Web began to impact on how we lived. It was and remains misunderstood, its ultimate impact on all aspects of societies around the world was not clear.

The dawn of the Information Age, and the fading of the Industrial Age, continues to impact all of us. For the first time in history, any person, wherever they may be, who can use the internet, has access to nearly all knowledge ever written at their fingertips. This is a fundamental shift in human development the likes seen only with other fundamental shifts in technology such as the development of writing, the printing press, the steam engine, electricity, and radio/television. There was and is no turning back

11 Tove Rosen, *The Influence of the Nuremberg Trial on International Criminal Law*, ROBERT H. JACKSON CTR., (<https://www.roberthjackson.org/speech-and-writing/the-influence-of-the-nuremberg-trial-on-international-criminal-law/#:~:text=The%20Nuremberg%20trials%20established%20that,aggression%20and%20Crimes%20Against%20Humanity>) (describing the importance of the Nuremberg Trials in the international legal community).

12 *Julius Caesar Crossing the Rubicon, 49 BC*, EYEWITNESS TO HIST. (2002), <http://www.eyewitnesstohistory.com/caesar.htm>.

13 It must be pointed out, for decades the International Military Tribunal at Nuremberg was hardly a force in international law. Those who participated in this new experiment at Nuremberg, returned from Germany with little fanfare, moving on from that experience getting on with their lives. It was only in the 1990’s that the principles created at Nuremberg took on new relevance and importance.

with the development of such fundamental changes. Most of this is for the good, but there is a dark side to the Information Age.

That dark side is making information the ultimate “high ground.” One who can control and manipulate information and access that information has a power never seen before. This all began during the end of the Cold War¹⁴, a new exciting technological advancement, that in some ways has become the opening of a Pandora’s Box. It would continue to have an impact on atrocity accountability, particularly at the end of the first quarter of the 21st Century.¹⁵

Governments,¹⁶ dictators,¹⁷ and thugs¹⁸ could no longer hide their actions as the internet would expose their misdeeds, at first slowly, but now almost in real time. In the bloody 20th century, it had been far easier to cover up these acts and get away it. There was little to no accountability then. The beast of impunity nibbled ravenously on the edges of humanity and civilization.¹⁹ The advancement of the World Wide Web and programs that morphed into what is now called social media, exposed the dark corners of the world and actions by tyrants.

The flip side of all this is the ability of tyrants, dictators, and thugs to manipulate social media and turn it on its head with information warfare, cyber-attacks, and data manipulation. Using techniques not seen since the Nazi era, today’s authoritarian leaders, have become masters of cyberspace, causing confusion, misinformation, and fake news.²⁰ Mankind does not completely understand where this is going. To be certain, it will have an

¹⁴ Mike Murphy, *From dial-up to 5G: A complete guide to logging on to the internet*, QUARTZ (Oct. 29, 2019), <https://qz.com/1705375/a-complete-guide-to-the-evolution-of-the-internet/>.

¹⁵ For example, an article published by Human Rights Watch detailed how certain social media platforms adhered to the demands of the governments who wished to hide war crimes committed by them. Belkis Wille, *Video Unavailable*, HUM. RTS. WATCH, <https://www.hrw.org/report/2020/09/10/video-unavailable/social-media-platforms-remove-evidence-war-crimes> (last visited Oct. 17, 2021).

¹⁶ Agnes Callamard, Speech at the 70th Anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide and the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of this Crim, (Dec. 7, 2018), in *The Prevention of Atrocity Crimes and Social Media: Challenges and Opportunities*, GLOB. FREEDOM OF EXPRESSION (Dec. 10, 2018), <https://globalfreedomofexpression.columbia.edu/updates/2018/12/prevention-atrocity-crimes-social-media-challenges-opportunities/>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Rosen, *supra* note 11.

²⁰ Joseph Goebbels was the Nazi Minister of Propaganda and used the media at the time, to include movies, to extol the virtues of national socialism under Germany’s Chancellor, Adolf Hitler. He is purported to have said, regarding the German people, “if you tell a lie big enough and keep repeating it, people will eventually come to believe it.” Susana Martinez-Conde, *I Heard It Before, So It Must Be True*, SCI. AM. (Oct. 5, 2019), <https://blogs.scientificamerican.com/illusion-chasers/i-heard-it-before-so-it-must-be-true/>. See also Callamard, *supra* note 16.

impact on the continued evolution of atrocity accountability in the 21st Century. We unwittingly chased the rabbit into the unknown, and perhaps it is the Wonderland we now live in.

III. THE RULE OF LAW IS MORE POWERFUL THAN THE RULE OF THE GUN: ALICE IN THE AGE OF ACCOUNTABILITY

Despite the unsettled nature of this new socio-political dynamic taking place after the Wall came “crashing down”, there was a movement forward regarding atrocity accountability that began in the early 1990’s with the creation of modern international criminal law.²¹ With the Nuremberg Principles as a cornerstone and a decisive United Nations Security Council, the international community took on genocides and other international crimes perpetrated in the former Yugoslavia and Rwanda with the establishment of the ad hoc tribunal system, a monumental political step forward using the law to hold perpetrators accountable.

During this time, the world began to consider an idea that had been percolating for years: the creation of a permanent international criminal court to deal with those who committed mankind’s most serious crimes. World leaders convened in Rome and developed a paradigm that would be the anchor to a new age of the rule of law—the age of accountability had begun.

In various parts of the world, atrocities continued in places such as Darfur²² and Sierra Leone,²³ while societies in former Yugoslavia and Rwanda tried to return to normalcy, assured that the tribunals would hold accountable those who destroyed their lives.

With the turn of a new century, the world decided to act in West Africa, which at the time was recovering from ten years of civil war, creating new concepts of justice and accountability with a hybrid international court focused on a particular region with the involvement in the tribunal by members of those societies affected.²⁴

21 See *The Tribunal - Establishment*, U.N. INT’L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/about/tribunal/establishment> (last visited Oct. 17, 2021).

22 International Criminal Court [hereinafter ICC], *Darfur, Sudan*, ICC, <https://www.icc-cpi.int/darfur>.

23 Lansana Gberie, *The Special Court for Sierra Leone Rests – For Good*, AFRICA RENEWAL (Apr. 2014), <https://www.un.org/africarenewal/magazine/april-2014/special-court-sierra-leone-rests-%E2%80%93-good>.

24 For example, the creation of the special court of Sierra Leone in West Africa, allowed for war criminals to be held accountable. Michael P. Scharf, *The Special Court of Sierra Leone*, AM. SOC’Y OF

The Special Court for Sierra Leone was an entirely new justice mechanism that refined the concepts of the ad hoc tribunals, advancing the rules, procedure, evidence, and new jurisprudence that reinforced atrocity accountability.²⁵ That international court began its work the very same month that the new International Criminal Court came into being, July 2002.²⁶ The age of accountability was in full swing. For example, even the international crimes committed against the peoples of Cambodia in the mid 1970's, the so-called "killing fields", were a focus of the international community with the creation of a hybrid domestic court called the Extraordinary Chambers in the Courts of Cambodia.²⁷ The world was facing down the beast of impunity, sending it scurrying back down a dark hole.

These various justice mechanisms moved forward with their work, developing groundbreaking theories of law holding heads of state accountable, and prosecuting crimes against women and children²⁸ and attacks on United Nations peacekeepers,²⁹ through the use of new

INT'L L. (Oct. 5, 2000), <https://www.asil.org/insights/volume/5/issue/14/special-court-sierra-leone>.

²⁵ The Special Court for Sierra Leone had a different mandate than the other international tribunals. Its mandate was, for the first time, to prosecute those who "bore the greatest responsibility" in committing atrocity against the civilians of Sierra Leone amidst a bloody civil war, a mandate similar to Nuremberg, and it proved to be workable. The court could accomplish its mandate with these new words. This is now the new international standard for any future tribunal or court. Lansana Gberie, *The Special Court for Sierra Leone rests – for good*, AFR. RENEWAL (Apr. 2014), <https://www.un.org/africarenewal/magazine/april-2014/special-court-sierra-leone-rests-%E2%80%93-good>.

²⁶ *International Criminal Court Will Enter into Force on 1 July 2002, as 10 States Deposit Ratification Instruments at Headquarters*, UNITED NATIONS (Apr. 11, 2002), <https://www.un.org/press/en/2002/L3000.doc.htm>. With a mandate to prosecute the gravest of crimes, only if a state party to the Rome Statute (that created the Court) was unwilling or unable to prosecute those crime, the International Criminal Court began its work. It has been a less than inspiring legacy for the Court to be sure and has become what some call a "League of Nations", a great idea with little respect.

²⁷ The development of the Extraordinary Chambers for Cambodia has a strange history. Its birth saw a "two headed baby" – an abnormality. The Court almost has an unworkable structure, particularly in having two Prosecutors, yet it has managed to struggle forward in seeking justice for the victims of those terrible killing fields. Editorial, *'Killing Fields' harvest of injustice: 1.7 million killed, 3 convictions*, CHI. TRIB. (Apr. 12, 2017), <https://www.chicagotribune.com/opinion/editorials/ct-cambodia-tribunal-killing-fields-pol-pot-edit-0413-jm-20170412-story.html>. This is a perfect example of how politics is truly the bright red threat of modern international criminal law. The strange organization of this Court is a political compromise between the United Nations and the Kingdom of Cambodia. The organization was the only way the government of Cambodia would agree to any accountability mechanism. Hans Corell, *Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea*, AUDIOVISUAL LIBR. OF INT'L L. (June 6, 2003), <https://legal.un.org/avl/ha/abunac/abunac.html>.

²⁸ Rosemary Grey, *Gender-based crimes: A monumental day for the ICC*, INTLGRRLS (July 8, 2019), <https://ilg2.org/2019/07/08/gender-based-crimes-a-monumental-day-for-the-icc/?blogsub=confirming#subscribe-blog>.

²⁹ Edith M. Lederer, *UN Condemns Peacekeeper Attacks, Urges Prosecution, Safety*, ABC NEWS

procedures of evidence and law.³⁰ Mandates were adjusted, efficiencies developed in charging perpetrators of these international crimes, and different diplomatic solutions used to shape and mold accountability for an atrocity.³¹ It is hoped that all this development will continue to build upon already new yet settled legal theories that will assist future efforts of accountability throughout this century.

IV. BEFORE THE RED QUEEN: THE WONDERLAND OF SOCIAL MEDIA AND ATROCITY ACCOUNTABILITY

The age of accountability ended without a whimper around 2015 and an unanticipated age of the strongman emerged.³² The rise in populism and nationalism that led to President Trump winning the 2016 election allowed for rise in other world leaders to also follow suit in their rhetoric and nationalistic tendencies. Though the legal and procedural advancements made in atrocity accountability remain, the political interest has been diminished by the resurgence of tyrants, dictators, and thugs. Populism and nationalism, fueled by ethnocentric reaction to stressed migrants from the Middle East and North Africa,³³ are now powerful counterweights to the gain in the rule of law made earlier in the century. We are now before the Red Queen, awaiting our fate.

The major tribunals have completed their work with considerable success. Yet today the diminished capacity of the Extraordinary Chamber in the Courts of Cambodia³⁴ and a lackluster International Criminal Court

(May 25, 2021), <https://abcnews.go.com/US/wireStory/condemns-peacekeeper-attacks-urges-prosecution-safety-77883772>.

³⁰ The most important ruling of jurisprudence during this time came from the Appellate Chamber at the Special Court for Sierra Leone. In *Prosecutor v. Charles G. Taylor*, the Appellate Chamber ruled that a head of state can be prosecuted for international crimes committed while that head of state was in office. Erin Louise Palmer, *Introductory Note to Prosecutor v. Charles Ghankay Taylor (SCSL)*, 53 INT'L LEGAL MATERIALS 1, 2 (2014). This ruling weakened the rock-hard legal doctrine of head of state immunity, a centuries old legal principle. No longer can a tyrant or dictator hide behind the legal shield of head of state immunity for their criminal acts.

³¹ Paolo Palchetti, *Making and enforcing procedural law at the International Court of Justice*, QUESTIONS OF INT'L L. (July 31, 2019), <http://www.qil-qdi.org/making-and-enforcing-procedural-law-at-the-international-court-of-justice/>.

³² With the populism of Trump came nationalistic views that led to President Trump winning the 2016 election, which allowed for rise in other world leaders to also follow suit in their rhetoric and nationalistic tendencies.

³³ Marc Lynch & Laurie Brand, *Refugees and Displacement in the Middle East*, CARNEGIE ENDOWMENT FOR INT'L PEACE, (Mar. 29, 2017), <https://carnegieendowment.org/2017/03/29/refugees-and-displacement-in-middle-east-pub-68479>.

³⁴ Seeta Scully, *Judging the Successes and Failures of the Extraordinary Chambers of the Courts*

are unable to counter the political shift that is taking place around the world. Over a dozen rule in Europe, Asia, Central and South America, as well as the Middle East.³⁵ Democracy is faltering in several other places such as the United States, Britain, and Israel. Two of the five permanent members of the United Nations Security Council are now headed by dictators.³⁶ A third, the United States, is faltering in political turmoil brought upon by an authoritarian now ex-president.³⁷ This augers poorly for the future and will have a serious impact on atrocity accountability. It must be understood that the bright red thread of modern international criminal law is politics. Justice mechanisms are creatures of political events and political compromise. Politics are in their DNA, so to speak, and are directly affected by the politics of the day. The politics of THIS day has no interest in atrocity accountability.³⁸

Again, as in the earlier days of the post-Cold War, technology has continued to be a driving force in atrocity accountability. It is a two-edged sword in large measure. The ability to capture acts of atrocity as they happen in real time is an important step for historical purposes. Tyrants, dictators, and thugs just can't sweep their criminal acts under the rug. They are exposed for all to see. History will not judge them lightly for what they have done, and they must know that.³⁹

of Cambodia, 13 ASIAN-PAC. L. & POL. J. 301, 322-334 (2011), http://blog.hawaii.edu/aplpj/files/2012/01/APLPJ_13.1_Scully-1-31-Final.pdf.

³⁵ See Sarah Repucci & Amy Slipowitz, *Democracy under Siege*, FREEDOM HOUSE 30 (2021), <https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege>.

³⁶ The two are China and Russia. Andrea Kendall-Taylor & David O. Shullman, *How Russia and China Undermine Democracy – Can the West Counter the Threat?*, FOREIGN AFF. 2, 4 (Oct. 2, 2018), <https://www.foreignaffairs.com/articles/china/2018-10-02/how-russia-and-china-undermine-democracy>.

³⁷ Lena Surzhko Harned & Luis Jimenez, *President Trump's Use of the Authoritarian Playbook Will Have Lasting Consequences*, THE CONVERSATION (Dec. 17, 2020), <https://theconversation.com/president-trumps-use-of-the-authoritarian-playbook-will-have-lasting-consequences-150895>.

³⁸ The United States recently has given up on setting up a justice mechanism for South Sudan after spending 5 million dollars in the effort. There is no political will to move forward to seek justice for the people of South Sudan by the African Union and the rest of the international community. Alice Banens, *OPED: South Sudan Government a Stumbling Block to Justice for Victims of Crimes Against Humanity*, AMNESTY INT'L (Oct. 14, 2019), <https://www.amnesty.org/en/latest/news/2019/10/oped-south-sudan-government-a-stumbling-block-to-justice-for-victims-of-crimes-against-humanity/>.

³⁹ The important role of social media began in Iran in 2007. During the so-called Green Revolution by the citizens of Iran calling for a fair national election, a young woman was shot through the heart by government forces in downtown Tehran. She died before our very eyes, the event captured on a cellphone that CNN broadcast around the world. Nazila Fathi, *In a Death Seen around the World, a Symbol of Iranian Protests*, N.Y. TIMES (June 22, 2009), <https://www.nytimes.com/2009/06/23/world/middleeast/23neda.html>.

Social media has also helped advance investigations into atrocity.⁴⁰ The ability to collect data, analyze it, and turn social media data into criminal information that can be then turned into evidence has been important and useful.⁴¹ The challenge however is that all the data, meta-data, and videos that are gathered must meet the important rules of evidence developed over decades. Authenticity and relevance remain the standard in proffering evidence to be admitted before a tribunal/court to prove elements of a particular charge.⁴²

The amount of data available to an investigator of an atrocity in today's social media driven world is so vast that it can be overwhelming and distracting. The task of sifting through this data to find pieces that are authentic and relevant is comparable to finding the proverbial "needle in the haystack". In some ways the World Wide Web, and social media in general, has made it almost harder to prove a case than it was just ten to fifteen years earlier because of the sheer amount of information available at our fingertips. This is not a "showstopper", but another challenge that investigators must face in atrocity accountability.

Diplomats and politicians, in some ways, have a false sense of security related to proving an atrocity in considering social media. Syria is a good example. Despite the lack of political will to do something about the international crimes in Syria, there have been professional efforts by nongovernmental organizations to gather data related to the crimes.⁴³ Although the terra-bytes of data gathered related to crimes in Syria seemed to give diplomats at the United Nations an assurance that they had a solid case against the actors committing those crimes, the reality was that this data was unworkable.⁴⁴ Most of the data gathered thus far is useless, as

40 Alexa Koenig, et al., *Digital Lockers: Archiving Social Media Evidence of Atrocity Crimes*, HUM. RTS. CTR., UNIV. CAL. BERKELEY, SCH. OF L. 1, 15 (2021), https://humanrights.berkeley.edu/sites/default/files/digital_lockers_report5.pdf.

41 *See id.*

42 Sara Mansour Fallah, *The Admissibility of UnLawfully Obtained Evidence before International Courts and Tribunals*, BRILL 159, 161, 163 (Aug. 26, 2020), https://brill.com/view/journals/lape/19/2/article-p147_2.xml?language=en.

43 Statement, *50+ NGOs Urge Secretary Pompeo to Call Myanmar's Crimes Genocide*, REFUGEES INT'L (July 16, 2020), <https://www.refugeesinternational.org/reports/2020/7/15/50-ngos-urge-secretary-pompeo-to-call-myanmars-crimes-genocide> [hereinafter Refugees Int'l Statement].

44 There are so many open-sources that pertain to the atrocities that take place in Syria that it equals and/or exceeds the terra-bytes of data. For example, the Syrian Accountability Project itself has 2-3 terra-bytes all derived from open-source investigations. Syrian Atrocity: Evidence of Torture, Starvation, and Execution. Testimony before the United Nations Security Council (New York, April 2014); before the European Parliament (Strasbourg, Mar 2014) and before the United Nations Human Rights Council (Geneva, June 2014).

evidence before a tribunal that will use the rules of evidence as a standard.⁴⁵ This is being remedied by an evidentiary mechanism put in place by the United Nations that will take that data and turn some of it into evidence that can be used in a future domestic, regional, or international tribunal.⁴⁶ It must be emphasized that social media is not the solution for appropriate investigatory methods, rather it is a tool.

V. CONCLUDING THOUGHTS

The development of atrocity accountability can be seen in three evolutionary waves.⁴⁷ The first wave was the International Military Tribunals at Nuremberg and in Tokyo in the late 1940's.⁴⁸ However, the political will to use the rule of law to face down impunity at that time was only temporary, ending with the advent of the Cold War.

The second wave was the age of accountability, 1993-2015/16.⁴⁹ The creation of international criminal law and its justice mechanisms in the form of various tribunals and courts marked the start of a noble effort to hold those who feed on their own citizens accountable for their acts. The political will to create accountability mechanisms was strong and focused.

The third wave today is the age of the strongman.⁵⁰ There is no political will for accountability regarding international crimes. The United Nations Security Council is divided in a way that was like the divisions Cold War,⁵¹ hence no effort to counter atrocity that is cropping up around the world. Only extraordinary efforts by the United Nations General Assembly have created the "International, Impartial and Independent Mechanism"⁵² (IIIM) that shows a modicum of political will to maintain efforts for accountability

45 Nikita Mehandru & Alexa Koenig, *Open Source Evidence and the International Criminal Court*, 34 HARV. HUM. RTS. J. 2 (2021), <https://harvardhrj.com/2019/04/open-source-evidence-and-the-international-criminal-court/>.

46 David M. Crane, *The Third Wave – Accountability for International Crimes in an Age of Extremes*, 52 CASE W. RES. J. INT'L L. 407, 415 (2020), <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2576&context=jil>.

47 The wave theory of atrocity accountability was developed by the author in 2019 to capture the evolution of mankind's ability and desire to hold accountable those who commit international crimes.

48 Crane, *supra* note 46, at 413.

49 *Id.*

50 *Id.* at 414.

51 The UNSC during cold war was usually at an impasse since Soviet Union and United States of America had veto power. Since that time, the UNSC has started acting with more conviction by passing resolutions swiftly. *BRIA 12 3 a The United Nations: Fifty Years of Keeping the Peace*, CONST. RTS. FOUND. 2, 4, <https://www.crf-usa.org/bill-of-rights-in-action/bria-12-3-a-the-united-nations-fifty-years-of-keeping-the-peace>.

52 *International, Impartial and Independent Mechanism*, U.N., <https://iiim.un.org/mandate>.

for international crimes in Syria and Myanmar. The IIIM is meant to assist ICC prosecutors in the investigation and prosecution of persons responsible for the most egregious crimes committed in the Syria since March 2011.⁵³ The fact that the UN General Assembly were able to adopt such a resolution illustrates the dire need for accountability and mechanisms that data collect to prove the atrocities.

To fill this gap created by a lack of political will, in this third wave, nongovernmental and grass roots efforts have stepped forward⁵⁴ to continue to investigate atrocities, keeping alive the diminished flame of the rule of law. Bravely, the academy also has been a bulwark against the rising tide of populism and nationalism, developing concepts and theories⁵⁵ to keep atrocity accountability moving ever forward.⁵⁶

At times in this age of the strongman it is one step forward and two steps back, yet the efforts in sustaining the rule of law around the world continue. This is a hopeful development, a place holder for a new wave of atrocity accountability. That time will come to be sure.

Yet today, before the Red Queen, the beast of impunity once again now feeds ever more ravenously on the edges of humanity and civilization. A sad example of this fact is that, in February of 2022, the Winter Olympic Games were hosted by China, a nation that is actively committing a genocide against the Uyghur peoples in Western China. The world assembled peacefully compete in sport, knowing all too well what is going on just to the west of Beijing. It is like the world going to Berlin in 1936 knowing that the Holocaust was taking place, while ignoring the horror of genocide.

This is where we are now in atrocity accountability in the age of the strongman. The world will show up in China and sadly look the other way. It is important to heed the words of George Orwell: *The nationalist not only*

53 “[T]he IIIM is neither a prosecutor’s office nor a court, but collects and analyses information and evidence of international crimes committed in Syria to assist criminal proceedings in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes.” *Mandate*, IIIM, <https://iiim.un.org/mandate/>.

54 For example, Refugees International along with 50 other NGOs and human rights organizations signed a petition to call on U.S. Secretary Mike Pompeo from the Trump Administration to speak out about the Rohingya genocide in Myanmar. Refugees Int’l Statement, *supra* note 43, at 1.

55 One of which is using the relationship of accountability of atrocious crimes and building the rule of law while strengthening the nation’s justice system. See Jane E. Stromseth, *Pursuing Accountability for Atrocities After Conflict: What Impact on Building the Rule of Law?*, 38 GEO. J. INT’L L. 251-253 (2007), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2694&context=facpub>.

56 Professor Sadat has been one of the key members of the academy doing very important work in seeking justice for victims of atrocity.

*does not disapprove of atrocities committed by his own side, but he has a remarkable capacity for not even hearing about them.*⁵⁷

In 1945, the words of Justice Robert H. Jackson, Chief American Counsel before the International Military Tribunal at Nuremberg, ring true: *The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because **it cannot survive their being repeated.***⁵⁸

⁵⁷The Orwell Foundation, *Notes on Nationalism*, ORWELL FOUND., 6 <https://www.orwellfoundation.com/the-orwell-foundation/orwell/essays-and-other-works/notes-on-nationalism/>.

⁵⁸ *US Prosecutor Jackson Delivers Opening Statement to International Military Tribunal*, U.S. HOLOCAUST MEM'L MUSEUM, 2 (Nov. 21, 1945), <https://www.ushmm.org/learn/timeline-of-events/1942-1945/us-prosecutor-jackson-delivers-opening-statement-to-international-military-tribunal>.