Panel Transcripts

TO THE HAGUE AND THE BEYOND: THE SHIFTING TERRAIN OF INTERNATIONAL CRIMINAL JUSTICE

AFTER DOHA, AFTER WTO? RETHINKING TRADE AND ECONOMIC LAW IN A FRAGMENTED WORLD

WHO GOVERNS THE GLOBAL COMMONS? TECHNOLOGY, PRIVATE POWER, AND THE NEW ARCHITECTURES OF AUTHORITY

To the Hague and the Beyond: The Shifting Terrain of International Criminal Justice

This panel was convened at 10:30 a.m., Friday 6, 2026, by its moderator, Leila Nadya Sadat, James Carr Professor of International Criminal Law at Washington University School of Law. Prof. Sadat introduced the panelists: Valerie Oosterveld, Sharon Weil, Nancy Combs, and David Crane

LEILA N. SADAT

Good morning, everybody. It is wonderful to see you, and it is a lovely day in St. Louis. I am really honored that I have been asked to chair this first panel.

I would like to give a shout-out to the founding Director of the Harris Institute, Professor Stephen Legomsky because we would not be here without his vision and leadership. Prof. Legomsky never, never claimed credit for himself. His vision established the Institute twenty-five years ago; his work with Mark Wrighton ensured continued funding for the Institute; and his work with Whitney Harris secured the naming gift for the Institute. Prof. Legomsky, we wouldn't be here without you, and I'm really excited that you are here today. It was also his vision to start the Global Studies Law Review, and you all can see, twenty-five years later we still have a lot to thank him for. So, can we have another round of applause for Professor Stephen Legomsky?

I would like to give another shout-out to another individual who is no longer with us, Whitney R. Harris. Whitney was the last living member of Justice Jackson's team at Nuremberg - Justice Jackson was the Chief Prosecutor for the United States during the Nuremberg trial. Whitney did a great job as the General Counsel at Southwestern Bell and in his other endeavors. In 2001, he endowed the Institute. Later, in 2007, when I became the Director, he created the World Peace Through Law Award, an award bestowed to individuals who have achieved distinction in international law and advanced the rule and contributed to world peace. Whitney's belief that the law could, in fact, lead to a more peaceful world is obviously being challenged today. But if he was still with us and lived to almost 100, he would tell us to keep going because he had to keep going when all seemed impossible.

So, I'd like to start with that ray of hope because we are in a very difficult geopolitical reality today.

On this panel, I would like to welcome our four terrific speakers, one online, and three here with us this morning. Valerie Oosterveld, immediately to my right, is a Professor at Western University in Canada. She was actually there for the first meeting of the Crimes Against Humanity Initiative. She is currently the Special Advisor on Crimes Against Humanity to the ICC Prosecutor, Karim A. A. Khan.

To her immediate right is Dr. Sharon Weil, a Professor at International Law at the American University of Paris and a Professor at the Sciences Po in Paris and Paris II University. She has done some groundbreaking work on corporate criminal liability and on comparative analyses of terrorism trials. I'd recommend everyone to read her article on the Bataclan trials. It is also Dr. Sharon's first time to Washington University and we are thrilled to have her here today.

Next, we will hear from Nancy Combs, who has participated in our WashU Law symposia before. Nancy, we are so happy to have you back. She is the Ernest W. Goodrich Professor of Law at William & Mary College of Law, a distinguished scholar and teacher.

And online is the looming presence of David Crane. David Crane was the founding Chief Prosecutor of the Special Court for Sierra Leone, and is esteemed for his continued leadership in the field of international criminal justice. As another old friend and familiar face at the law school, David and I used to teach together in Utrecht during the summer program that Washington University Law School had for many years. He was known for holding his office hours in pubs for our students.

Each panelist will speak for about ten minutes on the areas of international criminal law they work in. International criminal law is a vast field, so we can't possibly hope to cover it all this morning. After the first round of remarks, the panelist will offer a few comments on what they have heard, and then we'll invite questions and comments from the audience.

Finally, I would like to thank the students, especially this year's board, who organized this program. Adesola Orogade has done an amazing job as Editor-In-Chief; Glenn Asuo-Asante as Managing Editor; And Susan Wu as Global Symposium Director have done a spectacular job, putting together this symposium.

Without further ado, I'm going to turn the podium over to my dear friend and colleague, Professor Valerie, who was just with me in New York two weeks ago working on the Crimes Against Humanity Convention treaty of the American Branch of the International Law Association, and maybe we'll talk a little bit about that in the Q&A.

VALERIE OOSTERVELD

Thank you so much, Leila. I'm going to jump into today's theme of the shifting terrain in international criminal justice by raising three points, each with both good and bad news, all of which relate to the gender sensitivity of international criminal justice, because that's the area in which I work.

I am going to begin first with the fact of the founding of the modern-day international criminal tribunals over the last three decades: the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the International Criminal Court, amongst other regional and hybrid types of internationalized courts.

I wanted to point out that there has been significant positive progress forward with respect to international criminal law, gaining an increasingly sophisticated understanding of the role gender plays in war and atrocity. By this I mean that practitioners, judges, scholars, and civil society actors all have come to understand the social construction of gender, and that this social construction is often at the heart of wartime and atrocity military and occupation strategies and forms of persecution as crimes against humanity.

Let me give you an example of what I mean by this increasing sophistication and forward progress. For a very long time – and I mean hundreds of years, centuries indeed – various forms of sexual and non-sexual gendered violence like rape, sexual slavery, and forced marriage were seen as incidental side effects of fighters who were taking opportunistic advantage of the chaos of war to abduct and sexually abuse girls and women and also men, boys, and others.

But the International Criminal Tribunal for the Former Yugoslavia, the Special Court for Sierra Leone, and, in particular, the International Criminal Court have conducted multi-layered analyses concluding that these violations were not opportunistic. They were foreseeable and formed part of the larger criminal plan, particularly for crimes against humanity. This includes sexual attacks against men and boys and the targeting of LGBTQIA individuals. These are areas that are often overlooked, in addition to having centuries of overlooking of gender-based crimes against women and girls.

This increasingly sophisticated understanding of gender as a socially constructed norm, and the realities of both war and atrocities committed in peacetime, led to groundbreaking indictments, prosecutions, and convictions in all of the courts that I've mentioned. That's the good news.

Let me turn to the bad news of the day. We are once again in international criminal law in a time of coordinated backlash at the international level on the understanding of the term gender. But this backlash isn't new, so it is something that can be predicted and something that can be pressed against.

Let me tell you why it's not new. Back in 1994, at the UN Conference on Population and Development, there were different opinions among states during discussions of reproductive autonomy and gender. The very next year, at the 1995 UN World Conference on Women, these difference rose to a fever pitch on how to define the term 'gender', which is different from biological sex. Again in 1998, in the drafting of the Rome Statute of the International Criminal Court, the Holy See and conservative Middle Eastern states worked together with conservative and religious-based non-governmental organizations in a coordinated campaign to counter the use of the term gender in that statute, or as a backup to have it defined to mean the same thing as biological sex. They were concerned about persecution on grounds of gender being listed as a crime against humanity.

They did not succeed in this campaign, but they also didn't give up. The International Criminal Court's Prosecutor has since enumerated a very clear commitment to implementing a nuanced and thoughtful approach to understanding the term gender, including as a ground of persecution.

This campaign has popped up many times since the adoption of the Rome Statute, including outside of international criminal law. For example, it was evident during the drafting of the Council of Europe's Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence, and in various debates of the UN Human Rights Council and UN General Assembly on the human rights of LGBTQIA individuals. It also arose over the last two weeks, during the discussions – now back in the international criminal law realm – on the draft Crimes Against Humanity Convention in New York, which also contains the term 'gender' in the prohibited list of grounds of persecution.

Supportive states are carefully considering how to address this particular gender backlash. So that's my first thought on the realities of where we are right now.

My second thought is that after years of commitment to specific localized forms of gender-sensitive international criminal justice - some of which Sharon is going to talk to you about – such as the Special Jurisdiction for Peace in Colombia and in the Special Criminal Court of the Central African Republic, which have made really important advances in understanding how gender norms fit within the conflicts in which they are analyzing – they are now under attack in a way in terms of budget cuts and financial pressures.

The Special Jurisdiction for Peace in Colombia, for example, has recognized crimes directed against LGBTQIA individuals and also how women and girls who were forced into fighting for the FARC rebel group faced attacks on their reproductive capacity. These are positive developments in international criminal law, but the overall fiscal crisis at the United Nations prompted by the United States withdrawing of its budget

funds and the elimination of USAID funding is putting these localized forms of justice into precarity – extreme precarity.

The advances these courts have made are the good news. The negative news is the severe pressures that they're under at the moment, and we're not sure they will all survive.

My final point is good news, and it is about your professor, Leila Sadat's work. The discussions around the draft Crimes Against Humanity Convention have been informed from the very beginning by gender sensitivity, thanks to her work beginning with the Crimes Against Humanity Initiative, and this is different from almost every treaty that has ever been drafted at the international multilateral level.

This draft treaty and its civil society engagement are really quite remarkable. Those who have been advocating for a victim-sensitive, trauma-informed approach to the draft treaty have seen states get ahead of the discussions and think about whether and when they can support proposals – for example, to add forced marriage, to add the slave trade, to add gender apartheid, and to add reproductive violence to the provision defining the crime against humanity.

This has prompted thoughtful, insightful, and supportive commentary from a number of countries, as well as from civil society actors. It's not going to be easy sailing, of course, between now and 2029 – when the treaty will be adopted, but to start by not overlooking gender issues and gender-based crimes is already a win, in my view.

Thank you.

LEILA N. SADAT

Thank you, Valerie. And what I didn't say in the introduction is that having a panel with so many women is a huge shift from what the field of international criminal justice was like when we started out. I can remember when Valerie came to one of our conferences with a babe in arms, and we had to fight to allow the Knight Center to allow her to stay there. We have made progress, but the backlash is real.

Sharon, it is now your turn. Thank you for coming all the way from France to be with us. The floor is yours.

SHARON WEILL

Thank you so much for the invitation. Thank you, Leila. It is a real pleasure to be here and you are lucky to be on this beautiful campus. I have enjoyed it very much, and I am sure you are as well.

Like Valerie – and we did not coordinate this – I will speak in three points looking at the new terrain of international criminal law.

I will approach it through my own work, which focus on research in national courts. Since the completion of my PhD studies and continuing to the present, my research has focused on examining how international law is applied, negotiated, accepted, or contested within national courtrooms. This inquiry is approached from the perspective of everyday judicial practice, with the aim of understanding how international legal norms operate in concrete domestic settings. Although various branches of international law and types of courts exist, the focus on this discussion is international criminal law. In what follows, I will develop three points.

First, there is the bureaucratization and routinization of mass crime prosecution within domestic judicial units, a novel terrain that I have identified and will explore in detail.

Second, traditional criminal law's emphasis on repression and deterrence is increasingly complemented by alternative approaches, including restorative and transformative justice, reflecting an expansion in how the objectives of criminal justice are conceptualized.

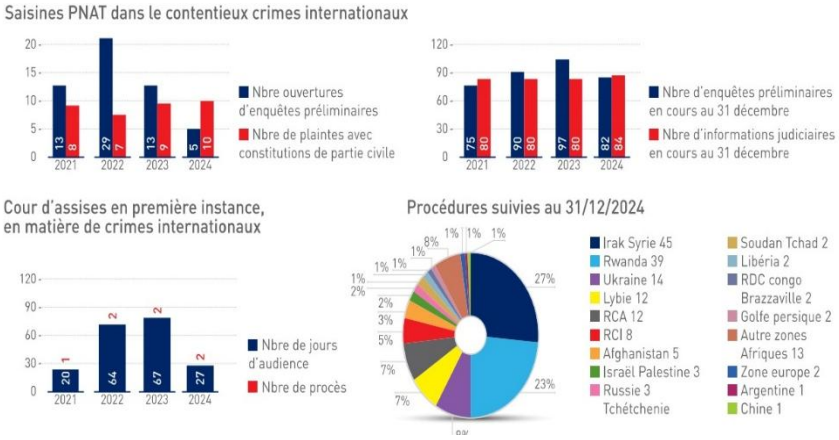
Third, the notion of the subjects of these trials is evolving, particularly in relation to cooperation and collaboration within judicial processes.

(1) Today, when discussing international criminal law in university conferences or professional settings – as was the case when I attended a conference in Paris with the Prosecutor of the International Criminal Court and colleagues working in the field – participants frequently spoke of maintaining "faith" in the system, of needing to keep "believing" in it. The use of these terms is fascinating because legal practice is typically associated with routine, gray offices, long hours, files, and burnout – hardly a setting for such spiritual language.

The good news is that even this seemingly "spiritual" field is becoming bureaucratized. Based on my observations, particularly in Europe, states that have ratified the ICC have created specialized war crimes units within their domestic judiciaries and prosecution offices. These units are professional, career-oriented, and funded, including lawyers, investigators, secretaries, and other staff, much like regular prosecutor offices.

This development is significant because it places trained, career-minded professionals – rather than activists or ideologues – at the center of mass crime prosecution. These individuals engage directly with cases, applying the law in practice. In this sense, prosecuting mass crimes can be understood less as an exercise of "faith" in international institutions and more as the implementation of law in concrete judicial practice.

Here are the official numbers published in 2025 by the French Unit for Combating Crimes Against Humanity and War Crimes.



Within this context, it may be helpful to consider these efforts as the application of criminal law on mass crimes, rather than as "international criminal law." The latter term often generates confusion: does it refer to international institutions, specialized doctrines, or the application of these doctrines within national courts? Recognizing this distinction opens a broader discussion about how international norms are operationalized at the domestic level.

(2) The second point concerns the relationship between different levels of responsibilities responsibility, international criminal law, and mass crimes. The legacy of Nuremberg established the principle that individuals, rather than entities, must be prosecuted. However, since, practice has focused on a limited number of individuals, even in cases involving extensive crimes, numerous victims, and complex systems of perpetration. This creates an inherent tension between the individual-focused paradigm of criminal law and the systemic nature of mass crimes.

Recent developments offer new ways to address this tension. For example, the Special Jurisdiction for Peace in Colombia – whose judges I have had the opportunity to interview a few times – has approached these cases through a macro-criminality lens. They construct "macro-cases" encompassing hundreds, if not thousands, of harmful events, grouping them to identify patterns and understand the broader structure of the crimes. This approach allows us to identify patterns, while maintaining individual criminal responsibility at the highest levels. It opens the possibility of analyzing systemic crimes in ways that complement, rather than replace, the focus on individuals. We could imagine a further step, which will also criminalize collectives and structures, and not only individuals.

Another important development is the incorporation of restorative approaches, which facilitate dialogue between victims and perpetrators, enabling recognition, accountability, and reflection. Such practices are more

difficult to achieve in international criminal trials, such as those at the ICC, where perpetrators often view themselves as victims, and the victims of the crimes are largely excluded from the process. Restorative mechanisms, however, allow the legal process to center the experiences of victims while also engaging offenders in taking responsibility. This approach is particularly relevant when addressing the hundreds of individuals who participate in mass crimes, especially during conflict, as it opens avenues for rehabilitation and reconciliation within the broader justice process.

(3) The third point concerns the responsibility of corporations. Recent developments indicate that it is possible not only to hold individuals criminally accountable, but also, in many jurisdictions – including France and twenty other countries – to hold legal entities responsible for crimes against humanity.

A notable example is the ongoing investigation in France involving the Lafarge Cement Company. French jurisprudence has established in 2021 that a company can be accused of complicity in crimes against humanity without sharing the specific intent of the principal perpetrators; awareness of the ongoing crimes is sufficient. Thus, if the French cement company made payments to Daesh to maintain factory operations, even without sharing Daesh's intent to commit crimes against humanity, the company's awareness of these crimes was sufficient to render it complicit.[1] This jurisprudence contrasts with the International Criminal Court's statute that requires a shared intent or purpose among perpetrators. The French framework therefore expands the scope of accountability, allowing for cases such as arms sales: a company that provides weapons to a state or non-state armed group committing crimes against humanity can be prosecuted in French courts for complicity. This development illustrates a broader trend toward recognizing corporation – and not only their directors - as legal entity bearing responsibility of mass crimes. This reasoning could open the door to extending criminal responsibility to the State itself. It should be recalled that when the UN International Law Commission published its 2001 draft articles on state responsibility, which excluded criminal responsibility of the State, it nevertheless noted that such responsibility was not inherently impossible. I would suggest viewing this exclusion as an institutional decision made at a particular point in time, rather than as a fixed doctrinal axiom.

Voilà. Thank you.

1 With my students, we observed this trial during six weeks in Paris in November-December 2025. Six blog entries documenting our observations are available on Justice Info website. *See* Lafarge on Trial, The Courtroom Diary, JusticeInfo.Net, https://www.justiceinfo.net/en/tag/lafarge-on-trial-the-courtroom-diary [https://perma.cc/V4G4-CVHW; https://perma.cc/4U9X-GCUM; https://perma.cc/498H-J7EE; https://perma.cc/4LUL-7QF6; https://perma.cc/EL6D-XBG5; https://perma.cc/624M-MEGQ].

LEILA N. SADAT

Thank you so much for those thoughtful remarks, Dr. Sharon. This reminded me of how one of our other international law colleagues, Melissa Waters, who teaches foreign relations law, always talks about how national and international systems are co-constitutive – that international law is not a top-down system, that there is actually a cycling between national and international systems creating these norms together. Your paper really exemplifies that.

Okay. Nancy, now over to you.

NANCY COMBS

Thank you so much to Prof. M.J. Durke, Prof. Leila Sadat, and the *Global Studies Law Review* for inviting me to this marvelous event. I am delighted to be celebrating the anniversaries of the law review and the Harris Institute with you and to be among so many expert colleagues whom I respect immensely.

Leila suggested that I talk about evidentiary changes over the last twenty-five years, which much of my scholarship has focused on. And that is good in some sense, because it is a relatively happy topic compared to many not-so-happy ones circulating in international criminal law these days. Indeed, Valerie's presentation contained some happy and not-happy elements, but when it comes to evidentiary issues, the trajectory really has been largely positive both in terms of international and domestic mass atrocity trials.

At the end of my remarks, I will consider some broader questions about the other trajectories of International Criminal Law (ICL), which do not focus so much on evidence as on the wider themes of the conference.

But now, let's start with evidence. Discussions of international criminal justice typically start with the ad hoc tribunals – the International Criminal Tribunal of the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). These tribunals were in many respects very successful. They created a substantive jurisprudence out of whole cloth. They also developed a set of procedural rules that sought to comply with human rights norms and have become the blueprint for what is now considered international criminal procedure. And they successfully prosecuted hundreds of defendants.

Unfortunately, the evidence used to convict defendants in at least some of those tribunals presents a somewhat less positive picture, largely because in many of these trials, the only relevant evidence of the crimes came in the form of witness testimony. On the one hand, you might think that there is no problem because, after all, there were thousands of witnesses – these were large-scale events that lots of people saw. But research in many fields has revealed that witness testimony is much less accurate than people think it is. That is, witness testimony, even in domestic trials of so-called ordinary

crimes, is often problematic. When it comes to mass atrocity trials, witness testimony often features an entire range of additional problems.

For one thing, there is often a very long lag between when the crime took place and the trial, and we all know that memories degrade over time. Second, the nature of the event witnessed impacts the accuracy of the subsequent testimony. Studies show that the stress involved in witnessing violent events can distort memory and undermine witnesses' accuracy. Mass atrocities are nothing if not violent. Finally, and perhaps most importantly, witnesses in mass atrocity trials usually hail from far-off lands, so their testimony needs to pass through language interpretation to be understood by courtroom personnel. Interpretation is well-known to introduce inaccuracies. In addition, there are frequently cultural divergences between witnesses and their hearers that can undermine the ability of lawyers and judges to understand what the witness is saying, and, as importantly, to contextualize and assess any problematic features of that witness testimony.

So, let's talk about those problematic features because there were some. I can briefly say that witness testimonies in these early witness-only trials were often inconsistent with the witness's previous statements and also frequently contradicted other witness testimony. These inconsistencies were sometimes at the margins of relevance, but they sometimes concerned core issues in the trial. Likewise, the contradictions between different witness accounts were often numerous and significant. These issues created a great deal of uncertainty in fact-finding. Judges had to make their decisions about whom and what to believe, but they had a limited objective basis for those factual findings.

In the last several years, the technological revolution that has changed our lives in so many ways has also hit mass atrocity trials. A lot of this you already know. For instance, cell phones are now prevalent across the globe, even in places where people are relatively impoverished. Consequently, everyday citizens can video-record mass atrocities as they are happening. That is true for domestic crimes as well, as the Renee Good shooting has shown us. In addition to its video and photo capabilities, cell phones can provide investigators with location evidence that can be crucially valuable at trial. Also important is that people now communicate so much more through text messaging and other forms of written messaging. So, access to a defendant's cell phone can often provide prosecutors with strong evidence about numerous elements and most importantly, *mens rea*. As a result, it will come as no surprise to you that recent trials, across judicial systems, now feature large quantities of this sort of non-testimonial evidence.

Now, I do not mean to suggest that these forms of evidence are free from significant or troubling challenges. To begin with, open-source evidence can give rise to substantial security concerns. Those recording events can suffer repercussions and threats, which can also extend to those

using open-source information in their investigations. Bias is another issue. Although bias is a challenge in any investigation, it carries different – and potentially more serious - connotations when it arises in connection with certain forms of non-testimonial evidence. Take video recordings, for example. A recording focuses on only a single aspect of a scene. Because it is a video, it appears particularly objective, but it does not provide any context or show what other, perhaps equally relevant, events are not occurring outside the frame.

Consider what may have occurred immediately before the recording began or after it ended. These concerns persist even when victims recording events are making every effort to remain neutral and objective. Victims, like all observers, bring particular perspectives that can shape the evidence they create in subtle ways. More overtly, the emergence of deepfakes and other AI-generated imagery poses a direct threat to evidentiary accuracy by enabling the wholesale distortion of factual records. One might ask, what happened right before the recording begins or ends? Indeed, all of these concerns exist when victims who are taping the scene are trying to be neutral and objective. But victims, like everyone else, have a particular point of view, and their own perspective can shape the evidence they create in subtle ways. Additionally – and not subtle at all – is the potential for deep fakes and forms of AI-generated images to wholly distort evidentiary accuracy. Lastly, domestic and international court systems need to develop or apply evidentiary rules that were drafted in a bygone era to these new forms of evidence. Numerous doctrinal issues have arisen in the last few years, and many remain to be addressed. Happily, the International Criminal Court's (ICC) recent judgment in the *Yekatom & Ngaissona* case answered some of them, at least with respect to Facebook evidence.

Although there are challenges, if you get into the evidentiary weeds of recent domestic and international mass atrocities trials, you find greater factual certainty than in earlier trials, and convictions that are supported by more credible and reliable evidence.

Let's talk first about domestic trials of mass atrocities. Scholars have highlighted States' increasing use of universal jurisdiction to prosecute far-away mass atrocities in their own judicial system. Many factors likely contribute to this increase, but a likely consideration is the ease and simplicity of some of these recent cases. Many of the early universal jurisdiction cases centered on the Rwandan genocide; the only evidence available to prosecutors in those cases was witness testimony, so investigators were forced to make frequent – and expensive – trips to Rwandan crime sites and interview large numbers of witnesses. These prosecution witnesses had to travel long distances to appear at trial, and their testimony was often contradicted by a passel of defense witnesses who traveled similar distances but provided fact-finders with diametrically opposed accounts. By contrast, many of the more recent universal

jurisdiction cases have featured only non-testimonial evidence that investigators accessed from their local offices on their computer screens. This evidence might be a video of the defendant committing the crime, say executing a prisoner or posing with a mutilated corpse that the defendant himself posted to social media. Recently, then, States have had a much easier time using universal jurisdiction to prosecute Syrian and Iraqi defendants affiliated with ISIS or other rebel or governmental forces.

At the ICC and hybrid international courts, it's rare to see trials that feature only non-testimonial evidence. Indeed, most recent ICC cases have continued to feature many dozens of fact witnesses. But these recent cases have also featured non-testimonial evidence that crucially corroborates or contradicts that witness testimony. The non-testimonial evidence, first, narrows the factual contestation amongst the parties. A defendant, for instance, may not advance an alibi defense claiming that he was hundreds of miles from the crime site, when he knows that his phone placed him at the crime site. Second, non-testimonial evidence provides us greater confidence in the facts that the court ultimately finds. Whereas in early international criminal trials, the judges would simply have to decide between competing eyewitness accounts, now trials additionally feature radio intercepts, satellite imagery, video recordings, occasional traditional documents, text messages, and Facebook posts. The witness accounts in these new cases might still contradict one another, but the additional non-witness evidence often provides judges with a firmer foundation for their decisions.

I have done a deep dive into the cases, which will appear in a forthcoming full-length law review article. What is particularly notable about these cases is not only the charges on which the defendants were convicted, but also those on which they were acquitted. In many recent cases, defendants are convicted on some charges but acquitted on others. Significantly, the counts resulting in acquittal were often supported solely by witness testimony. That suggests a shift from a framework in which judges were expected to resolve competing – and often flawed – witness accounts, to one in which such evidence alone is insufficient to sustain a conviction. Admittedly, the number of cases considered here is limited, so it may not be a sample from which we can draw broad conclusions. Still, this appears to be a notable development. These evidentiary developments, however, sit within a broader political trajectory that is far less linear and far more contested.

With the few seconds I have left, I want to say a few words about the elephant in the room. Namely, the evidentiary story I just told is a relatively positive one, but are we fact-finding while Rome burns? I appreciate that my co-panelists have managed to find some optimism here and there, but I am not sure how justified that optimism is, given the powerful forces currently aligned against international criminal justice today.

For one thing, if you look at our panel, the first thing that you might notice is that all of us speakers are about the same age, within about ten years give or take. What that means is that we all began our careers at a time when optimism, enthusiasm, and idealism about international law were at a high. In those days, there was a prevailing belief in the ability of law – and international criminal law in particular – to improve human affairs across the world.

Throughout the intervening thirty years, we could maintain a decent degree of optimism, in part because we could claim that international criminal law, though flawed, was on a positive trajectory. For instance, international criminal justice has always been selective. That selectivity was on full display at Nuremberg, where the Nuremberg Charter provided the tribunal jurisdiction only over Axis defendants. We, ICL scholars, recognized Nuremberg as an instance of "victor's justice," and we recognized that victor's justice is not "justice" in the appropriate sense of the term. But we saw progress over time. The Statutes of the *ad hoc* tribunals do not expressly provide for victor's justice in the way that Nuremberg did, so that seemed an advance. Certainly, the ICTR was unsuccessful in prosecuting – or even investigating – members of the Rwandan Patriotic Front accused of crimes. Nonetheless, it was considered a significant step forward that the Tribunal had jurisdiction over *anyone* accused of international crimes in Rwanda. And this paper's universality extended to subsequent international criminal bodies, such as the ICC.

Indeed, I have often told my students that we cannot be so unrealistic as to expect fully formed universal international criminal justice to descend upon us. Law is a process, and the more international criminal trials are conducted, the more normalized they become – that is, the more it becomes normal to expect that when you have a mass atrocity, there will be criminal accountability for that atrocity. That normalization undermines the ability of powerful states and powerful individuals to push back against the mere notion of criminal sanctions for large-scale crimes.

Perhaps, however, the excitement and optimism about international criminal law that characterized my early career have been generated and perpetuated by a lot of people like us. And by that, I mean scholars and practitioners in international criminal law. As I look back on these decades and as I face full on the dark moment where we now find ourselves, I am not so sure that governments were ever fully on board with the ICL project. It cannot be a coincidence that three of the five Security Council permanent members are not States Parties to the ICC. More pointedly, even States Parties that were early supporters, such as those in Africa, have quickly turned against the Court the minute the Court turns its eye toward them. I'm hoping that my concerns, and more importantly, my grave current pessimism, are ill-founded, but there is no question that the events of the last year give ICL proponents a lot to worry about.

LEILA N. SADAT

All right. Well, that's a perfect segue to Professor David Crane who is going to talk about the changing geopolitical reality.

David, It's so lovely to see you. I am reminded of one of my favorite quotes by Jean Monnet, one of the architects of the European Union, who said in his Memoires: "Resistance is proportional to the degree of change one seeks to bring about." And he backlash that we're seeing and the pushback and the disintegration – which is showing up in the trade area, it's showing up in other international spaces – we're just seeing that change.

All right, David, Chief Prosecutor of the Special Court for Sierra Leone, and dear friend to Washington University, you have the floor.

DAVID CRANE

Well, good morning. It's great to see you. I have been at Washington University several times, and I wish I could join you in-person, but best wishes from North Carolina.

It is such a great pleasure to be on this panel, and also to be with some really very long-term friends. I remember meeting Professor Leila Sadat in Galway in the summer of 2004 with Bill Chavis at his home. We have been friends and colleagues ever since. And my wonderful friend, Valerie Oosterveld, whom I met in very cold Ottawa, Canada, on February 8, 2003. And I remember going over to her house for dinner and playing on the floor with her very young son at the time when he was two or three.

I am really pleased to hear my colleagues' comments. What I want to do is briefly step back, and consider the broader concept of atrocity accountability – a kind of 'wave of accountability'. I will approach this topic as one of the founders of modern international criminal law, having worked with Cherif Bassiouni, Hans Corell, Richard Goldstone, and many others to advance the idea of seeking justice for victims. As I have said many times – and as members of this panel have likely heard – we do this for one reason only, and that is justice for victims.

Let me briefly discuss it. I have four waves of accountability.

The first wave is one that everybody is familiar with, Nuremberg and the birth of modern accountability.

The second wave is the age of accountability itself, which I had a small measure of influence in. This was the moment when humanity stepped back, revisited Nuremberg, and advanced its legacy forward, using it as a cornerstone to build an amazing architecture that remains in place today. This framework allows us to seek justice for victims by holding not only the states, but also individuals and other actors, accountable. We saw the emergence of institutions such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone, among others. And then, of course, the

establishment of the International Criminal Court, showing the world that these mechanisms can be used at any time.

I was closely involved in many of these developments, and I could spend the rest of the day telling you war stories – for which I am famous. It was an exciting time. It was also a grim , but righteous time. Above all, it was important to see justice reach millions of people who had been destroyed by their own governments and others. That was the age of accountability.

But then I saw something happen in the 2010s that I frankly did not anticipate. I thought we were in the age of accountability, the working courts and tribunals beginning to phase out, even as the International Criminal Court still remained in operations. It was still a period of dialogue. All of a sudden, for various reasons, including political ones, the third wave began to eased into a darker shadow, overtaking much of the work that had taken decades to perfect. What I never saw coming, was the 'age of the strongman' a period in which we saw the world enter an even darker period – the heads of state, instead of looking multilaterally and solving problems as an international body, turn inward for political reasons mainly to solve their problems. Thereafter, we saw a retrenchment of states looking away from moderate approaches; then a rise of about a dozen strongmen around the world solving problems in their own perspective.

Well then, just within the past year, we now have a fourth wave, which I call "the age of aggression". It is not separate from the age of the strongman; it is kind of a corollary, but it is an extension of an evolving approach of how strongmen have turned away from, after 80 years of strength, the human paradigm itself.

We actually see major powers like Russia, United States, and even China, aiding and abetting aggression against Ukraine, supporting Russia. We also see them individualizing their own state's attacks on other nations and this augurs very poorly for the rule of law and the advancement of seeking justice for victims of accountability.

Now, we are in what I would refer to as the 'age of aggression' - This is not all doom and gloom.

In the middle of all of this, I was involved not just creating the Special Court for Sierra Leone, but also served for three years as the chair of a high-level working group. In that capacity, and in the middle of considerable uncertainty and geopolitical tension, we were able to bring together the foundations of another tribunal: a Special Tribunal for the Crime of Aggression against Ukraine – a marker of which we should be very proud. The tribunal came into existence in June 2025, and now has a functioning working group. We will establish an aggression tribunal which will hold, in large measure, Putin and his henchmen accountable for the crime of aggression.

We also saw Syria follow Assad and a new leader coming in and thinking about creating a domestic special court, a special tribunal, or a special court for trying the Assad family for the war crimes and crimes against humanity and violations of Syrian domestic law there.

We also saw a former head of state being handed over to the International Criminal Court for appropriate justice for what he had done to individuals who were suspected of being drug dealers and arbitrarily killing them.

International law doesn't go away. International law has been around for five centuries, and even though there has been ebbs and flows, international law, writ large, is not going away.

In conclusion, we need a fifth wave. In other words, we need to hang tough, to keep moving forward, to fight the battles that we can win them. Perhaps we may lose sometimes, but we also have to just keep moving forward. The business that we are all in, and I have been for over 30 years, is that sometimes it is two steps forward, three steps backward. But we're always leaning forward and seeking justice for victims of atrocities.

So, I'll leave you with that, because we should also be very proud that we are not going away and perhaps we can move into a fifth wave of further accountability and the rule of law.

Thank you very much.

LEILA N. SADAT

David, thank you. We needed a little cheering up there. And for the students in the room, we need to be forward-leaning as well as look back to our roots to understand what's going on.

We've heard about defunding from Valerie. We've heard about challenges at the international level. At the same time, we've had several new treaties enter into force: the treaty on cybercrime and the treaty on the prohibition of nuclear weapons. We're negotiating a crimes against humanity treaty with some difficulty, but we're making progress. We are trying to be forward-leaning, but against the backdrop of a world in chaos. So, it's an interesting time.

I'm going to let the panelists have one or two minutes, to add anything to their initial remarks. Then, I will turn it over to the audience, as I know many of you may have questions or comments.

Valerie, back to you.

VALERIE OOSTERVELD

Sure. I wanted to add a comment supporting Nancy's observations on the evidence used in international criminal law, particularly evidence obtained through technology, and share a brief story – only less than one minute.

In the field I work in, which is related to gender-based crimes, many outside the field said for quite some time, "Oh yes, we are using of technology to gather evidence in international criminal law, but use of this technology does not apply to gender-based violence." This type of crime is carried out in very personal ways, behind closed doors, physically and psychological against bodies. So, I encountered some who thought that technology was not useful when examining these crimes. However, those with expertise in investigating gender-based violence has disproven this assumption, such as using satellite technology and tracking through online forums to place offenders at victims' reported locations.

Nancy mentioned the ISIS trials. ISIS in northern Syria and Iraq also used technology to carry out the slave auctions of the captured Yazidi women and girls, and that's being gathered and traced. Such evidence is being used in more trials across multiple locations.

I'll end there by saying that this is another slightly brighter light in terms of evidentiary development. Thank you.

LEILA N. SADAT

Thank you, Valerie. There are actually private organizations, eyewitness to atrocities, which is capturing millions, millions of bytes of data and analyzing it and giving it to prosecutors to prosecute. So, technology has been a real positive for international criminal justice.

Sharon, any comments?

SHARON WEILL

Yes, so thank you. Yes. I'm thinking about what you were saying about the evidence. We are drowning in the material, and now the challenge is not about having evidence but about having less.

I don't know how to – yes, it's like it's being – it's so huge, you know? For example, in the Bataclan trial I was following in France, the investigative file was 1 million pages. Who can read this? And when you have the defense lawyer, what kind of defense, anyway, can you have? Because, you know, then the prosecution is helped by the NGOs, are helped by all those private – you have so much information, but then the defense lawyer, you know – and usually, at least in France, for the terrorism, they are very young. They devote their life to this, you know, and they can't even go over everything.

This is also something to consider. And I wonder if we all need so much evidence because, you know, sometimes actually you don't need all this amount to convict someone, you know.

But we have this idea that we need to conduct a systemic investigation – or, as they call it, a systemic investigation. But again, at the end, you have one accused. So, there's this tension, you know? And so maybe it's time to rethink how we handle this data now that we have it.

Okay, this is just some thought. Thank you.

LEILA N. SADAT
Thank you, Sharon. Nancy?

NANCY COMBS
Just my only question I want to just put out there is: we all agree there's been a retrenchment, we're in the step back. So where do we go?

Specifically, about the ICC, right: what is the problem that the ICC – we all assumed that justice should be universal. Somebody like Putin or Netanyahu should be subject to criminal prosecution just as much as some leader or even lower level rebel leader.

But that gets – that hasn't worked out the way we all – it turns out that an indictment against Netanyahu provokes a very different reaction than an indictment against a Congolese rebel leader, right? The question is now that – it is not that we didn't know it, but now that we see the full force of that, where does international criminal justice go?

Should we take our steps back and lick our wounds and just go prosecute those rebel leaders so that we can build up a lot more jurisprudence and ten years from now we can say, see, we're still here? Or do we say no, justice has to be equal, and it's not actually justice if only the weak, globally insignificant parties are brought to trial?

I don't know the answer to that. I don't think either one is very good, but that's what I wanted to put out there. Thank you.

LEILA N. SADAT
David, anything to add?

DAVID CRANE
Thank you for your comments, ladies – again, very well put.

Obviously, just a closing comment: the bright red thread of successful atrocity accountability in creating tribunals and courts, which I now have helped create two, is politics. It is a political decision to create a tribunal. It is also a political decision to deal with any atrocity. So, we have to take the world as it is, not as we would like it to be.

At the end of the day, most atrocities, particularly the ongoing ones, will not actually be accounted for. That is just a fact – but we have to move forward and deal with them as the world politically allows us to do so. So, when the world politically decides that they are going to do something about the crime of aggression against Ukraine, and they created that tribunal.

Although the international community does not really like to create international courts and tribunals, they did this time at the end of the day. We also have to understand that the reality is we are not going to see accountability in some places that are truly needed, but that doesn't mean we stop our work.

LEILA N. SADAT

Thank you, and I will briefly talk about the International Criminal Court before inviting questions from the audience.

At the ICC ASP in The Hague, this question came up: Are the heads of state of non-parties immune at the ICC? This issue surfaced after the ICC prosecutor and two deputies were sanctioned by the United States. Several judges have been sanctioned by the United States and Vladimir Putin has gone as far as to indict and convict several judges and prosecutors in absentia.

As a result, each time Judge Hofmański travels internationally, he has to make sure he is nowhere near Russian airspace or any country with an extradition treaty with the Russian Federation.

Against this backdrop, the question prompted me to consider whether we really need to revisit the issue of immunity. However, several states immediately jumped to their feet and rejected the idea of reopening the debate: we are not going there. That is not okay.

As many geopolitical tensions continue to unfold, I would pose a broader question to the audience: should you stick to your values, tough it out and think how to be quicker and nimbler, or should you yield?

Let's turn it over to you now.

Q1:

I have a question for Valerie, maybe Leila, and then an evidentiary data question for the two of you.

So, Valerie and Leila, I just want to commend your efforts with gender-based type of crimes. When I was at the ILO as a lawyer, we were trying to construct Convention 190 on gender-based violence and harassment. So, I'd be curious about learning more about any cross-fertilization that might be happening across those initiatives, noting that only 50 governments have ratified that convention. So, it suggests some of this resistance that you've been noting.

And I'm also a little bit curious: you had mentioned that there were state supporters recently, but that suggests there were also state opponents, and just a bit of empirically where we're seeing that divide and whether it seems increasingly regressive.

And then to Nancy and Sharon: I loved the discussion about the evidence and the role kind of AI, and both a friend and a foe here. Nancy, you know, I had never even thought about deep fakes as kind of mitigating the usefulness of AI, and I'd love to hear a little bit more about where that is showing up. And then Sharon, listening to your comments just now about how there's so much data, I actually wonder if AI couldn't help in that respect and whether there are any moves to employ LLMs to try to digest these millions of pages of documents.

Q2:

International institutions and private actors. So I remember being surprised at the beginning of my career 15 years ago as a State Department lawyer how large intergovernmental agreements about intelligence and declassifying intelligence loomed for purposes of evidence in international criminal tribunals, and I wondered: with the rise of the technology that you're describing, with the rise of personal phones, private satellite data, has the public sector role in sharing intelligence receded as these mounds and mounds of evidence have become available from private actors, right?

I'm sort of curious about the public-private dimension of how some of the themes that we've explored is unfolding. Thank you.

DAVID CRANE

That's a great question. It's always been a tension from Yugoslavia all the way forward, and I suspect that lead to me and the special tribunal for Ukraine.

The issue relates to intelligence: what information countries have access to, and what data private entities are willing to share with them. When you work individually with different countries to negotiate agreements, they are always reluctant to give you anything at all. Intelligence, including criminal data, is also sometimes used for political purposes. If the countries are mad at you, they do not give it to you.

When I took down Charles Taylor, the United States was very angry with me. All of a sudden, they would not give me any intelligence, even though I knew they had it. Thus, there is always a pull and pull and push.

You have a range of technologies with different ability to pick up data, which can potentially be transformed not only into criminal intelligence, but also into evidence. This introduces a whole new dimension that relates to who has what, where, when, and why. One might think that this would be easy, but at the end of the day, it often make it more complicated. It becomes like searching for evidence in a tsunami of data, which in some ways actually increases the complexity rather than reducing it.

We are working through it. Now, we have technologies that assist us, but there has always been a tension between international courts and tribunals, and the intelligence that countries have that could benefit that entity.

NANCY COMBS

That's a really interesting question. The answer depends largely on the level of the offense at issue. At the lower end of universal jurisdiction cases, we often see individual offenders who directly committed the crimes themselves on trial, and in those cases, publicly available videos are sufficient. Sometimes, defendants have posted the videos on their own

Facebook pages or other social media platforms. In those circumstances, there is little need for any assistance from governments or other outside sources.

But the goal is not simply to prosecute the guy who is holding up the decapitated head. Once prosecutions move to higher-level offenders, this kind of crowdsourced information is not nearly as useful, and investigators still requires information from sources including the U.S. government.

I agree with everything David said. Politics infuses every last aspect of this, and if you don't accept that, you're sort of living in denial. One of the aspects is what information gets shared and what doesn't get shared.

Turning to the question about deep fakes: I have not seen any cases where deep fakes themselves were alleged. What does commonly occur, however, is that defense counsel challenges the admissibility of digital evidence – it might even be about a Facebook post. Because the law remains underdeveloped in this area, questions frequently arise regarding authentication. We generally know what is admissible when dealing with traditional documentary evidence or witness testimony, but when it comes to a Facebook post, there'll be questions like: what level of authentication is necessary? Who needs to do it? Must someone from Facebook testify about the platform's operation?

Again, *Ntaganda* and *Yekatom* dealt with these issues and basically imposed a fairly low standard – it presumed the authenticity of certain Facebook posts.

That's where the evidentiary battles are currently playing out. But as the ability to manipulate digital images continues to advance, these challenges will only become more significant – and not only in mass atrocity trials. The issue is just as relevant to domestic contexts, such as ICE enforcement in Minnesota as it is to international criminal prosecution.

While I do not have a definitive answer, the legal framework is still developing.

SHARON WEILL

There are students working on projects and helping to analyze AI. Amnesty International are doing projects with students. So, I have just two thoughts.

So, I really like what David said about the distinction between data and evidence. And then maybe we can have the data, evidence, and the archive, you know.

If we think about the ICC or the prosecutor's office: we have 380 workers at the ICC prosecutor's office. They all work a lot of hours every day. They produce tons of papers – and this is without the experts, that are, you know, consultancy, that I don't know how much they are – and they have few cases, but there is a lot of information and we do not have trials.

The question is: what do you do with all this data, with all this information, with all this evidence?

I thought it was interesting that France really promoted the idea of trials in absentia because at least it is a way to show the evidence, at least it is a way to make them public. Otherwise, it will stay secret, you know, within the prosecutor's office, within the IIIM.

And this is again, you know – so you have so much, but at the end so little that arrives to the public.

VALERIE OOSTERVELD

I want to add to this by saying that what we've seen over the last five, six years or so is the changing role of international criminal law practitioners, whether they're at the domestic level or they're in international courts or tribunals or investigative mechanisms with the United Nations.

Their changing role is that they now need to understand how to use open source information gathered using technology. The amount of training that they're doing in open source investigations has significantly increased over the last five, six years or so.

There's also been the 'democratization' of satellite imagery. It used to be that only governments had access to satellite imagery. Now almost anyone can have access to satellite imagery if they have enough money to purchase it. There are some organizations that collect it for humanitarian purposes, but for many others, it's for sale.

This 'democratization' has helped international courts and tribunals to not only be reliant upon government satellites imagery, but also to seek it out directly themselves. So that's positive.

The other thing I wanted to comment on is the use of AI for pattern recognition. This is so incredibly important in many different types of crimes, but in my field of sexual and gender-based violence crimes, with the extreme mass of information that's coming into the International Independent Investigative Mechanism for Syria, or the IIIM, and the IIMM for Myanmar, for example. They have terabytes and terabytes of data. How do they manage it? They manage it through proprietary AI.

Two and a half years ago or so I met with a representative of an international organization to ask if it is using proprietary AI to identify patterns of sexual and gender-based violence. I was told that the type of proprietary AI that came with the evidence management database did not come trained to do that. The organization needed to figure out how to train the AI to look for this type of violence – it seemed to me that those who created the proprietary AI may have assumed that it couldn't use it for sexual and gender-based violence investigations, when indeed it can. It just need to look for specific indicators – nakedness and the presence of certain weapons and that sort of thing. AI has been incredibly valuable to narrow,

to weed through, the mass of digital information gathered during investigation.

One comment on deep fakes: Ukrainian colleagues who are involved in the investigation of crimes directly in Ukraine report that Russian forces plant digital deep fakes of sexual violence online in areas of the virtual world that they know that investigators will examine. It is a way of wasting the investigator's time trying to verify the information, like red herrings.

And then lastly, on your question of opponents versus supporters, numerically where are we at: Leila's students over the past many years have taken amazing notes during the discussions on the draft Crimes Against Humanity Convention. We therefore have a sense of who the supporters are on the gender-based aspects, as well as on some other proposals that are being made.

We also have a sense of who the detractors are with respect to gender-based crimes, and we can see that they are often the same countries that raise similar concerns in the international human rights law, and international labor law, and international criminal law realms when gender sensitivity comes up. The supportive states include many countries such as the Nordic states, Canada, Latin American countries, some African states, and others. They are now thinking about the next steps to protect what we already have, the advances we've made, and how to make more advances.

LEILA N. SADAT

Thank you so much, Valerie. That's exactly right.

I want to say just two notes about – and then maybe we have time for one more question – about gender.

In fact, the gender issue is – we saw, which goes to the geopolitics, right, which everybody sort of alluded to on the panel – basically we had a two-week treaty non-negotiation, because we weren't actually talking substance. They had some decisions to make during the Preparatory Committee for the diplomatic conference, and Russia and China created a great deal of drama during the discussions. They succeeded in delaying the opening of the discussion considerably, and the Committee ended up having to go to a vote just to elect conference officers, which only took place seven days into the meeting.

What was a little unusual this time, which was different than in prior years, is we saw more African states aligning with Russia and China. We also saw China being much more active and procedural obstacles sort of thrown in the path of everything, and they were also aligning some of the negative discussion on gender – it was a very strange alliance.

The Arab group was not as negative on the negotiations, and that is largely Gaza because they see the crimes against humanity convention as a sort of way of reinforcing Palestinian human rights. They were, however, regressive on gender. At the very end of the conference and somewhat out

of order, 14 states, including Jordan and some countries you think of as moderate, issued a statement that reflected a pre-Rome Statute conceptualization of gender. We saw a lot of pushback, which was very strange and slightly alarming. What emerged, in my view, was an alliance of the authoritarian or the strongman tendencies with the gender backlash.

The other comment I might make, and the panels later today might talk about this, is one of the erosions of state sovereignty. We saw this with the creation of the European Union: how the devolution of power to regional institutions pulled some sovereignty away from nation states. And we've seen that most deeply in Europe, a little bit in Latin America, much less so in the African region, although some, and virtually none in Asia.

But we've also seen a concomitant sort of decrease in state sovereignty through the rise of private actors. And our field is not immune to that. An example is private satellites. Network theory describes the way a lot is happening in our field. This sort of devolution of power both to regions and to privatization is something that is very interesting. It is not field-specific. There is a little less privatization in this field of international criminal justice because it is more public law than private law, even though in France it would be *droit pénal international privé*. But still, these two phenomenon are cutting across various areas in international law – privatization and network theory.

Yet that's also the hope for the future. Which is what we saw in the negotiations on crimes against humanity: lots of the small states, 140 small democracies basically coming together to create the resolutions that allowed us to create the path forward.

The coalition is being led by women and by the Global South - Mexico and the Gambia. By people like these astonishing female partners, and myself. But it is actually happening through the work of a very different constellation of actors than we have seen in the past, which is really interesting.

Q3:

Hi. Thank you so much for this panel.

I have a question regarding something that was mentioned earlier – national sovereignty.

My question is: to what extent should international tribunals or special tribunals defer to domestic political realities and democratic outcomes? And I mention this because earlier in the panel, Colombia was mentioned, and as a Colombian myself, I remember those days of the peace plebiscite and how deeply controversial it was. As a matter of fact, the plebiscite actually was most of the population voted against the peace treaty.

So, to what extent should international law or special tribunals just override democratic principles or national realities, or how do you deal with those? Thank you.

SHARON WEILL

This is a very big question you're asking, but I am trying to reduce it to the question of post-conflict.

What was interesting in the Colombian case is that you have a peace agreement, which was the basis for everything. Afterwards, there was the referendum and then an issue.

Once we have a peace agreement, this is the starting point when we begin to think about transitional justice and ways to establish different mechanisms. That is what happened in Colombia. It was not necessarily the idea of the victims, even though this is the rhetoric, but it was agreement between the state and the non-state armed group mainly to stop the violence, to integrate those people, and then to have accountability.

So, I am not sure the extent you are speaking about it overrides. Then it was politically sensitive. But if you think about the Oslo Accord in Israel-Palestine, so you had the Oslo Accord and then the Prime Minister was killed, you know, so it happens. When you do peace accord, there are tensions.

While this might not be the case in Colombia, it reflected the imposition of the outside-inside. of course, it can arise in situation where the ICC is prosecuting someone still in office, in which case it will be against the will of that state. But I think that, in a sense, this may have been part of the original idea of international criminal law from the start.

Now, the question is: what do you do today when the global system is not necessarily liberal but it becomes more and more authoritarian, and this is what you are describing? We were used to thinking about the global order as the liberal order but now we see that as all kinds of orders.

Maybe we will need real liberal democracies, or at least try to start to do orders.

LEILA N. SADAT

It is a complicated question. Both Valerie and I have served as Special Advisors to the International Criminal Court prosecutor. Colombia was on the docket of the ICC for a long time, and the ICC did not open a formal investigation. They let it sit in preliminary examination and you had contestation. There were people from Colombia that said: why aren't you going forward? They were so mad at Prosecutor Ocampo. And then there were people that said, you need to let Colombia decide what to do. They're actually taking the doctrine of complementarity seriously.

Again, it was a very complicated question. But I don't think there was anything anti-democratic at all, because they did leave it to the national system, whether that was a good or bad decision.

Q4:

So, I really appreciate Nancy's question, right? I want to ask this very abstract question. How does the observation that international criminal law is embedded in politics, how does that observation fit into the broader discussion about international rule of law, right?

So, what we observe on the ground really fits with my understanding of rule by law instead of rule of law. So, I just want to, you know, throw that comment out and see how you would react.

DAVID CRANE

When I was in my town hall's meeting, walking the countryside in West Africa, particularly in Sierra Leone, I always told my client, the people of Sierra Leone that: the rule of law is more powerful than the rule of the gun. I still believe that. Obviously, that does not answer the question, but it makes my point.

NANCY COMBS

What we are talking about is not all about international criminal law – there is a continuum. Even in the most prized liberal democracies, people are treated differently depending on their power and status in that society.

At the international level, and at least recently, that phenomenon seems more pronounced, more entrenched. But this is something that we want to just keep working on. The way I see it is sort of a dialectic. If you push too far for universalism, although there is a clear principle of justification for that, you are going to provoke such a backlash that you may end up just doing more harm than good.

The effort has to incrementally entrench the norm that nobody is above the law. As a practical matter, that progress has to be done incrementally. Otherwise, you end up with ICC judges who, under the U.S. sanctions, cannot book plane tickets except with a check; cannot use the internet or their emails. The backlash has been so intense that it is, in my view, wholly unjustified, but it is certainly something that we need to keep in mind when considering how to progress.

LEILA N. SADAT

Well, what I might say is, although there has been a huge pushback against the sanctions, Microsoft is being removed as the software system at the ICC, and is being replaced by other companies.

In terms of judges, the judges have courageously said that they will continue to stand on principle and apply the law that they were elected to apply. I might take slight issue with the incremental approach, which is: if

you don't stick to what's right, then you really don't have much of anything at all.

So, when I heard the debates at the Assembly of States Parties – when Denmark and a couple of other states said: do we need to modify the Rome Statute because we are getting in trouble with some of these big and powerful states that are stamping all over us? – I mean, I thought the reaction was fierce and forthright.

And to be honest, the individual leaders who are sanctioning – whether it is President Trump or Vladimir Putin – they are also not really complying with law in their own domestic systems. So, it is sort of a pushback against law completely as a constraint and at the international level, I agree that there's a tension now in the international system.

I will end with this quote by the former U.S. Ambassador for War Crimes, Beth Van Schaack, who authored a beautiful book about Syria, while trying to imagine justice for Syria. She quoted an African proverb that said: "water always finds its way."

What we're seeing is both in the creation of new institutions like the IIIM, like the devolution to national courts, like the pushback to the U.S. and Russian sanctions – we're seeing those states, about 140 to 150, wishing to go forward based upon ideas of multilateralism and democracy to solve global problems like climate change and atrocities.

They are trying to find other ways of implementing their agenda. It's getting more and more difficult. I mean, if they completely defund the United Nations and all the visas go away for everybody, well, we are going to have a different conversation next year. But at least right now, with the system still limping along, people are looking for creative, network theory-oriented ways of still achieving objectives that are important and useful.

That at least is my vision.

Thank you so much to everybody.