

TRANSCRIPT

"LATIN AMERICA AND THE JUSTICE CASCADE"

A Conversation With César Rodríguez-Garavito and Kathryn Sikkink

Moderator: James Goldston

* * *TRANSCRIBER'S NOTE: CESAR'S ACCENT DIFFICULT AT TIMES* * *

ANNOUNCER:

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JAMES GOLDSTON:

My name is Jim Goldston with the Open Society Justice Initiative. And-- we-- have with us today-- Dr. Kathryn Sikkink-- who-- as of January will be a professor of human rights policy at the Kennedy School at Harvard, and who has-- authored-- a book and a number of publications now which we'll be talking about-- on the theme of the Justice Cascade, and-- César Rodríguez-Garavito who's professor of law and founding director or program on global justice and human rights at Los Andes University in Columbia, who has written a great deal about the American system and these issues in that context. So we're very pleased to have both of them today.

Kathryn-- Dr. Sikkink is gonna start-- with-- a brief presentation of some of her work and findings, and then-- and then-- Professor Rodríguez is going to-- then offer a commentary on that. And then we'd love to-- open this up for an interactive-- discussion amongst all of us here.

I should just note briefly by way of introduction that-- the issues that are-- that are discussed in-- in the Justice Cascade-- are of central importance and great interest to many at Open Society Foundations. The-- battle against impunity, the search for

accountability for grave crimes is something we've been working on, and many people here have been working on for a long time. One of the extraordinary things that-- that-- Professor Sikkink's research has done is to-- provide actual facts, data with which to address one of the most contentious questions that has arisen about the tension between peace and justice-- and what is the impact-- of-- prosecutions-- perpetrators of grave crime. So-- it's-- it's wonderful that this research exists and is being advanced and-- very much looking forward to hearing more about that. So, Professor?

KATHRYN SIKKINK:

Well, thank you first-- thanks-- for-- for hosting this session, and-- the-- the justice initiative's doing such important work that I really see this as-- an opportunity for me to share some of my work with you and to get your feedback and-- and comments on it.

And it's always a great pleasure to share any session with César who-- from whom I always learn something new. And it's also great to have some of the-- the people here in the audience, people from our Budapest seminar last summer, like Christine and Chris, and also to have (UNINTEL) here. So-- anyway, thank you.

As you know, two years ago I published a book, *The Justice Cascade*. I want to very briefly for those of you who may not be familiar, 'cause I-- I didn't expect people to necessarily have read the article that they sent out that summarized it. So very briefly, I'm gonna summarize a few findings.

But mainly I want to present to you some new-- research that we've done since the book came out-- and in particular the-- the National Science Foundation has provided two separate grants for my team. It's a team-- between the University of Minnesota and Oxford for us to compile new and better data. And basically we h-- are going in just the next few days, our website will go up with the data from the first National Science-- Foundation grant, which is on domestic human rights prosecutions, amnesty laws and truth commissions in the world.

And then the second grant w-- is-- we're-- we're now one year into. We're also coding reparations policies, vetting illustration, customary reforms of justice and civil trials for damages. So we already have and we will have what I think is the most comprehensive database in the world about-- the use of-- transitional justice.

Now you may ask while-- why compile all this data? But I think as Jim suggested and as you all know, some of-- there's some very-- contentious issues out there in the transitional justice field. They've gone by-- these debates have gone by names like Truth Versus Justice, Restorative Justice Versus Retributive Justice, Peace Versus Justice, International Justice Versus Domestic Justice, et cetera. And we felt that the best way we could help was to bring some-- empirical data to bear on these debates and sort of say, "If we look at these debates-- using data from the world, what kinds of answers can we get about the-- these debates?"

I say "we." Notice I say we, because-- as you know from the piece you read, but also I have these great co-authors. So Kerry Booth Walling, Hung-Ju Kim, Jeff Dancy (PH), just some of my co-authors-- who have really helped me do this research. The-- the new data, some of which I present here, helps answer a couple of critiques that were made of the book, *The Justice Cascade*. One critique was made was that we th-- we did analysis about the process of prosecution, but we didn't have data about verdicts, and especially about guilty verdicts.

So some people said, "You are really over counting the number of prosecutions because you're looking at the whole process of prosecution from indictment-- to preventive detention to extradition requests." And in the end, most of those aren't going anywhere. So the new data as you'll see has-- the-- (RUSTLING) the number of transitional countries and when we can actually get trial verdicts (COUGHING) (UNINTEL) guilty verdicts, the-- the green line, guilty verdicts.

And-- and then another critique that people made was, "Well, yeah, you're counting prosecutions, but you're not looking at amnesty laws." And there's simultaneous processes at s-- underway. There's an increase in accountability, and with all these amnesty laws there's an increase in impunity and they're essentially canceling one another out.

So as you see, we have the-- the red line are new amnesty laws that are being adopted, and so it's interesting, of course, is that there's a dramatic decline in new amnesty laws. Existing amnesty laws continue to be on the book around the world and still having an impact, so I'm not saying amnesties are gone. I'm just saying there has-- there has been a decline in new amnesty laws. And then-- as I said, the-- you know, the striking thing is we are finding that many of these prosecutions we've been tracking do result in verdicts and do result in guilty verdicts.

Now the single most im-- I would say the single most important finding that-- came out in terms of the impact of transitional justice that came in the book and that has since been sustained by the new data and new analysis we've done of the new data is that the use of domestic human rights prosecutions is associated with improvements in reports of physical integrity abuses.

And-- now this may sound, to this room, may sound kinda common sensical-- or even simpleminded. But as you know, there's a lotta people who made the argument including Jack Snyder who's just up the street here at Columbia University that the use of prosecutions makes things worse. It makes human rights violations worse. It-- it c-- leads to conflict. It undermines democracy. So there are people who are making that argument and just to sustain as we have, using new and better data and using complex-- analysis, that it-- that holding constant everything we know that we can measure that leads to human rights violations, we still find that human rights prosecutions have an independent and statistically significant impact on improving basic physical integrity rights.

Now the-- some-- many of you will wanna know why I have confidence in this conclusion, and you-- and you-- and I think Jim suggested you might wanna know

what kind of data we're using to measure physical integrity abuses. And so, we are using two scales which we did not create, they're the scales most used by social scientists-- the so-called political terror scale and the Seary Physical Integrity Index.

And those-- both of them are coded from two sources, Amnesty International annual reports, and the State Department Country Reports of Human Rights Practices, and they're coding for physical integrity violations, summary execution, disappearance, torture and political imprisonment. Okay, so when I say it's associated with improvements, I mean, it's associated with improvements with those-- four types of physical integrity abuses.

Now, there are some problems with those measures. I've just published a report-- an article in *Human Rights Quarterly* with Ann Marie Clark critiquing those measures. Okay, and I'm happy to talk about that. But what I can say is to the degree the measures have a problem, the problem they have is that we know so much more today than-- about human rights violations around the world, than we knew in 1980 when those reports-- when-- those measures started to be crafted, okay.

That the biggest problems the measures have is that sometimes they make it seem that nothing has improved in the world, okay. And it's-- it's a r-- what looks like torture is flat in the world, and it's-- it-- we don't know whether there's actually as much torture today as there used to be, or that we know so much more.

We're-- the human rights movement has been so good at information politics, at gathering, disseminating-- information, that it's just we know much more about torture. So the problem the measures have is that sometimes they make the world seem worse than it may be. (RUSTLING) So when you have a finding like our finding, which is that human rights prosecutions are associated with improvements, you're-- you're actually as a finding against the bias in the data.

And so I have more confidence in this finding 'cause I actually know that we're sort of fighting against a bias in the data to show that things don't-- never get better. So, lemme just explain briefly. The findings are not that using-- a human rights prosecution in one year immediately leads to improvements. Rather it's that accumulative-- there's accumulative effect of the use of prosecutions over time that's associated with improvements.

Now, it-- it doesn't mean that this is the only thing that-- that leads to human rights improvements. If, we know from our research and we control for these factors, that-- that war, both internally and international, democracy, levels of economic development and levels of an equality are all very much associated with-- violations or improvements of human rights, okay.

And in our analysis, those factors appear as important. But those are all, as you know, big terms, structural factors that are hard to improve in the short term. You know-- (NOISE) and so the advantage of prosecutions is that they are actual policy tools that governments have at their disposal that they can use and that we show can have an impact.

And-- you know, all the people say, "Well, prosecutions are so expensive." And the

question is, "Expensive compared to what?" You know, expensive compared to-- (NOISE) military invasion? Expensive incl-- compared to policies that could really r-- raise the GNP of a country? So-- so I think those are the other factors that can also contribute to improved human rights, and human rights prosecutions may not be expensive compared to those other factors that we know can lead to human rights improvements.

No other-- I can tell you now of all the other-- transitional justice mechanisms we're looking at, there's no other mechanism that appears to have the kind of big impact that criminal prosecutions have. And we are seeing kind of-- really kinda interesting findings like w-- with truth commissions we're seeing a finding that high quality truth commissions are associated with improvements, but not any old truth commission-- high quality.

Do they have public hearings? Do they produce a report? Do they have archives, okay? But as far as we know so far, and again all the-- the-- we haven't done all the data collection or analysis, there's no other single transitional mechanism that has this kind of affect. That doesn't mean that these can't be used very productively together.

Now-- notice I'm not talking about the affect on satisfaction of victims. It's very li-- that requires a whole different methodology, not what I'm using here-- require, you know, surveys or in depth interviews with human rights victims. And it's very likely if we were doing that, we would find other things. We would find that reparations-- are the most important, or s-- maybe customary forms of justice in some countries. So-- I'm not saying-- I'm saying for the measures we're using, and that is those physical integrity, right, measures, we're seeing-- association with-- improvements.

Now the topic we chose to focus on today is the interaction of international and foreign human rights prosecutions and domestic prosecutions especially in Latin America. And lemme just show you fir-- the-- the-- one of the big findings of the-- book-- the original book is that the great bulk of prosecutions are (NOISE) domestic prosecutions.

And there's so much attention and so much controversy is focused on these international tribunals. And it misses the big picture. The big picture is most the actions happen in domestic courts. But the international and the foreign prosecutions are really important backup systems. So I'm arguing this way, interactive-- a decentralized, interactive system of accountability in which the domestic and the international and foreign complement one another, not one-- not international or domestic, but how they work together.

The-- the-- there's very interesting regional-- as you know f-- the bulk-- over half of these prosecutions are in the Americas, which goes to the topic for today. The question is why? We know it's not that there were more human rights violations in the Americas than elsewhere-- and that the Americas were-- were innovators. These are the first ten countries in the database that use human rights prosecutions.

We see after Greece and Portugal, it's a list of-- of-- of eight Latin American countries

with the dates of their first prosecution. And so when we look however at the international prosecutions, we find this interesting factor and this is kinda what first led to the topic for today. Someone looked at this thing and said, "Look-- when we look at international prosecutions we find that they're roughly divided between Europe, Africa and Asia and it's zero for the Americas." There is no international, as you know, in-- no international or hybrid tribunal for the Americas.

And-- you know, we can talk more about this, but this is, you know, basically your-- the ICTY is-- is holding up those European numbers. It's the ICC and the ICTR that-- the Sierra Leone tribunal for Africa, and very interestingly-- there's a lot of prosecutions in east Timor. That's one of my big kinda questions. What was going on in east Timor? And we-- so that's what-- why such big Asian numbers here.

But, the Americas, despite the absence of international prosecutions, h-- there have not been an absence of concern with using external-- external-- pressures to-- to bring to bear on-- domestic prosecutions. And the inter-American, (UNINTEL) American commission had been very important. César is gonna talk about that, so I'll just leave that to him. But I'm gonna talk to you briefly about-- foreign human rights prosecutions by region.

Our foreign human rights prosecution-- this is a prosecution in a domestic court of another country, where the human rights didn't occur, okay-- so-- and this data is not good yet. Okay, so I'm presenting preliminary data that's incomplete. So I just wanna s-- it-- we have 79-- foreign prosecutions here. And I think-- I think it's just-- this is the hardest prosecution data to gather. There's no central data source on it.

There's no-- there's no website, and so you just-- you have to go one by one and try to dig them up. We've got a lotta expertise on Latin America and my team, and it could be we're just pickin' up a lotta Latin America because Latin America human rights organizations may publicize it more. But right now, as you see-- we've got 90% of foreign prosecutions involve-- a human rights violation that occurred in Latin America.

ARYEH NEIER:

I think that's quite wrong.

KATHRYN SIKKINK:

You think that's wrong?

ARYEH NEIER:

I-- I think that-- there have been European organizations pressing universal jurisdiction, like FIDH-- in France, and I don't know for example, if you're picking up

the French prosecutions-- that they have gotten-- you-- you'd have a hard time doing that unless you went organization by organization to see what they've actually pushed by way of universal jurisdiction. So in France, you've had, let's say, a number of Tunisian-- prosecutions. You probably wouldn't find that unless you had a detailed examination of--

KATHRYN SIKKINK:

I think-- I think you're right. This is not-- but I suspect even the more we get, we're gonna see this very strong role for Latin America. So this is the other part of it. This is the c-- the location of the court where the trials occur. So they're-- so a lot of trials that were picking up so far and I think you're absolutely right, it's not a complete--

ARYEH NEIER:

W-- what's happened in Latin-- in-- Europe, of course, is that they allow-- prosecutions in absentia. And so, you have trials-- where you don't have the defendant-- present. And then, actually, apprehending the defendant gets to be the-- the major issue.

KATHRYN SIKKINK:

Exactly. So, the one thing I wanna point out here that's quite interesting to me is, while most of these are happening in Europe, the second biggest categories are happening in Latin America. So you're starting at a situation where Chilean-- there's a trial of a Chilean in Argentina-- b-- for a Chilean human rights violation in Argentina, or-- an-- violation-- a Uruguayan violation in-- Chile, okay.

But just so you know, so this is the breakdown if you wanna see it, the country or the human rights harm, and the court-- the counter prosecution events, and what we see here is at least the data we have so far, it's three countries. It's Chile, Argentina, and Guatemala. This is very interesting.

And so the question is, why, so much-- and-- and then if you look at where it's occurring, it's three countries again. It's-- we know Spain. That's one we all knew. And we know Italy-- for-- (UNINTEL) that (UNINTEL) just said. They do-- they do trials in absentia (SIC). But the second point is the-- that there are many, many Argentine victims who had dual citizenship. Italy let those-- let Argentine citizens hang onto dual citizenship three, four generations away from immigration, and they could still get access to the-- the-- the Italian courts.

And so, the-- the large number Italy-- and what the surprise for me here, when I first saw this, was France. And it could be what you say about the federation, the-- bein' invol-- very involved. But the France is-- I thought Belgium would be more important than it is for-- because of the (UNINTEL) jurisdiction laws, and-- and some

African trials that have been allowed to move ahead.

So this is what we have so far. And-- I don't think it's-- I don't think it's-- complete, but I think it raises some issues about Latin America. And-- and I just wanna just end briefly with those issues. And-- and that is, well, why-- why h-- have foreign prosecutions been so important for Latin America? And it's partly that-- most of these countries did have amnesty laws.

Domestic prosecutions were closed down for quite a while-- amnesty laws. Innovative-- human rights organizations in Latin America, mainly representing victims, looked for all sorts of ways to get around the amnesty laws. And one way they searched out were these foreign prosecutions. And (UNINTEL) many of these cases were brought forward by human rights organizations based in the Americas, sometimes based in France, or elsewhere, on behalf of Latin American victims who wanted to search for accountability abroad, because they couldn't get it at home because of their amnesty laws.

ARYEH NEIER:

Just-- just one other-- comment on this. For instance, in the U.K.-- two of the prosecutions in the U.K.-- involved immigrants from Belarus-- to the U.K. who were prosecuted (COUGHING) (UNINTEL) for Nazi war crimes committed-- during World War II. That is, they had-- lied on the immigration applications. The became the basis-- for the U.K. initially to-- to pursue them. Then they per-- prosecuted them for the crimes committed during World War II. So, World War II legacy-- crimes-- in fact a significant part of the European-- use of the universal jurisdiction.

KATHRYN SIKKINK:

Right. And we have vacillated-- normally, our database has excluded the successor trials from World War II, 'cause the database starts in 1980 because of the sources we're using.

ARYEH NEIER:

Some of those were even-- were much later than that.

KATHRYN SIKKINK:

Right. But I'm sayin', we have-- so we have a general excluded-- the justice cascade is about sort of what happened after-- the successor trials for World War II. We're sayin' there was-- there was unique circumstances surrounding-- Nuremberg, Tokyo, and the successor trials for World War II-- but we're-- the (UNINTEL) is something

that is-- builds on that, builds on Nuremberg, but is a different phenomenon.

And so-- the-- so I just wanted to say, so what's interesting in Latin America, 'cause there has been very extensive use of-- these foreign prosecutions, it's done mainly on behalf of-- victims by human rights organizations. They get jur-- they get-- standing in different ways, not only through universal jurisdiction. They get standing, as in the ital-- Italian case, through dual citizenship.

They get standing-- because of-- because the crime was partially committed on foreign soil. As you know, the condor-- situation-- in the southern cone, there were all sorts of s-- crimes that-- someone was kidnapped in Argentina, and brought to Uruguay-- etcetera. And-- they-- they get jurisdiction, as you know, in the Spanish case, because sometimes, you have Spanish victims-- the-- the Spanish priests in El Salvador, for example.

And then s-- a small number are, you know, still jurisdiction cases. But I think the main thing is that-- that these foreign prosecutions aren't-- are not necessarily all the universal jurisdiction cases, but are a much more interesting mix of-- of ways in which the courts get standing. But-- the ma-- the main purpose of these foreign prosecutions when-- was-- was basically, to pry open space for accountability back home. And so, the Pinochet-- ruling, I think, was-- was paradigmatic in that way. You had-- a ruling that Pinochet could stand trial in Spain-- but he was allowed to go back, and eventually that that did open up space for domestic prosecutions back home in-- Pinochet was facing when he died.

And, you know, hundreds of-- of prosecutions opened up at that-- at that same moment, for Chileans to-- to deal with their domestic courts. And so, this is why we just in-- in-- in-- and, I would I say, I d-- I think it's-- I think it's a flawed notion to think about the international, or the domestic, or foreign prosecutions, or domestic prosecutions, and really the importance of really understanding this interactive system by which-- you can use these international-- angles in order to-- put pressure and open space to pursue-- justice closer to home. Thank you.

QUESTION:

Thank you very much. Fascinating. And-- César, we're gonna turn it over to you right now. I just wanna flag a question either for yourself, or for the discussion to follow. And Catherine, you eluded to this-- are we talking about a global justice cascade, or are we talking about the justice cascade in Latin America?

You mentioned the fact is, which many people-- would look to, to explain, well of course. Latin America has historically specific circumstances and reasons that would explain why there has been stronger mo-- moto-- impetus for accountability than elsewhere. It-- it had-- many countries had a tradition of democratic government. The rule of law was stronger, historically in a number of those countries than elsewhere in the world.

Levels of economic development, perhaps, were higher. There were stronger levels of

civil society. There were a number of factors that might explain why this would happen. So-- which I think I g-- goes to the question of how significant and widespread a phenomenon this is, that I-- at least for those of us engaged in some of work, are particularly interested in-- in-- in hearing what-- what you guys have to say about this.

The ot-- the other question, when it comes to Latin America, which I think César is gonna touch on, is the role of the inter-American system, and-- and in reinforcing these efforts. And-- and as well, the dynamic between national governments and the inter-Americas-- system, particularly where in the last three years, we have seen the inter-American commission under significant pressure from national governments, including some national governments who have been pretty good on accountability, but who apparently haven't seen the inter-American system as necessarily serving their interests. So, curious how that works. César, please.

CESAR RODRIGUEZ-GARAVITO:

That's cheating. That's a really complex question (UNINTEL). (LAUGHTER) Okay, I'd be happy to-- comment on that briefly. But really, it's a pleasure to be here, and an honor, always to be-- with-- Kathryn teaching, or giving a talk. Really-- but, as I told Jim in-- in a phone call we had, she's the expert in this field. I have never written on transitional justice.

We have this funny joke at the Justicia, which is the organization that (UNINTEL) that has been supported by U.S.-- for-- since the beginning. And so, this is-- we're grateful (UNINTEL) so they always (UNINTEL) a way to give back a little bit to OSF. We always have this running joke that (UNINTEL), the Co-director is in charge of repression, and in charge of emancipation, right. (LAUGHTER)

So, he's the one dealing with all these issues of torture, disappearances, and all that, and I have-- I tend to specialize in issues having to do with-- with socioeconomic rights, with environmental justice. But of course being based in Columbia, you have-- you're sort of an instant expert on transitional justice, especially these days.

And then, I'm gonna-- gonna (UNINTEL) five minutes. I'm gonna raise three questions, and I'm gonna say something really briefly about the inter-American human rights-- system. (COUGHING) The first-- issue as well, as you may know, Columbia is going through a process of negotiation with FARC which is the oldest guerrilla group in the world, and-- for the first time in-- in a long time, there're, you know, good prospects of reaching an agreement with FARC.

Far from being a sure thing, but-- we-- we're getting as close as we have for 30 years now to reaching an agreement with FARC within the government and FARC. Columbia went through a similar process with the right wing (UNINTEL) five years ago-- very limited transitional justice process, but it led to the demobilization of some of the major-- right wing (UNINTEL) groups mostly in the-- in the northern part of-- of Columbia.

So the-- really the question here is kind of an unfair set of comments for Kathryn, but I'd love to hear her reaction. Because she very clearly states both in the book and in the paper that-- they use empirical comparisons, which is-- you know, I-- you know, I was trained as a lawyer and as a s-- social scientist. So wearing my sociologist hat, that's the kind of comparison that I also prefer.

Because it gives you a point of reference, not in the ideal world or-- or in the c-- counterfactual world, but actually in the real world. So you're comparing transitional countries that have used prosecutions with transitional justice that have not used prosecutions, right. And on the basis of that, you try to answer these really complex and urgent question of whether or not-- for instance-- prosecutions make civil wars-- continue for longer or-- or-- or create more human rights violations, right.

Now, the issue in context like the Columbian one is whether prosecutions or the threat of prosecutions thwart-- negotiations and agreement altogether, right. And there's no way for-- the data set to answer that question, I-- I think. (UNINTEL) first question is-- is there anything in that data set that helps us answer the pressing question, for example, in Columbia that we're facing now in the human rights community that-- about the extent to which we should press for prosecutions, say, for the top FARC leaders or even for the rank and file, in a way that does not-- create an-- an insurmountable obstacle for a peace agreement? So the old (UNINTEL) between peace and justice, right.

So-- the second question has to do with the very last paragraph in your review article, which is really puzzling and interesting, right. And you say, "Look, this is a new avenue for research." The combination interaction is that between amnesty and prosecutions, right, because you're (UNINTEL) and others have found that maybe the combination of amnesty and prosecution through time, right, maybe having amnesty law first and then having groups-- persevere through time trying to get the-- human rights violators-- convicted either in domestic or international courts. That's sort of what gets you to the best case scenario.

Now what we're going through in Columbia might be interest-- it's a unique case in many ways. But-- the most likely scenario would be one in which the combination of amnesty and prosecution is embodied in a single piece of legislation, meaning that the government and Congress have passed a law whereby-- courts would prosecute the top leaders of FARC and then may-- maybe offer alternative-- punishment, maybe in home-- you know, how they call that-- residence--

KATHRYN SIKKINK:

House arrest.

CESAR RODRIGUEZ-GARAVITO:

House arrest, exactly, as opposed to actual jail. And then extend the blanket amnesty

to everyone else, right. So-- I was also wondering whether there is anything in-- in the data set that could tell us something about the potential impact of this kind of combi-- combination, not through time, but-- in a single piece of legislation.

And finally I'll say something about the inter-American human rights-- system which, by the way, this effort that-- (UNINTEL) has-- supported was k-- continues to be a key support for a coalition of organizations working in defense of the inter-American human rights system. As you may know, it came as-- after-- under really heavy attack from many states from Ecuador, Venezuela to Columbia-- Brazil-- and-- and one of the things that some states resent is precisely the activism of inter-American human rights court, for instance, in cases in Peru.

Peru was also very-- aggressive against-- their commission into-- the commission just recently. But, you know, there's-- a paper that I mentioned to Jim and-- and Kathryn by Alexander (UNINTEL) said that University of Wisconsin Madison that argues that really there's sort of-- an additional layer of criminal prosecution going on in Latin America.

Because you-- you do have this foreign prosecutions and also domestic prosecutions, but the inter-American human rights system has played a role in sort of getting s-- states to prosecute the-- some human rights violators who were not prosecuted-- domestically, right. Of course, that's not criminal jurisdiction if-- if that's-- the-- the level of-- of compliance with these orders is always limited. But it has had some effect.

So again-- to raise a final question is whether you see this as an additional piece of information that would-- you'd have to add to your data set, whether this is a completely different world in which this is human rights jurisdiction. That would in the end-- entail domestic prosecutions that you would see in your database.

QUESTION:

Thank you, César, that's great. Kathryn, maybe you wanna take on board those initial questions. And also, if you'd like to-- if you care to address the question of the regionally specific nature of this phenomenon or not, that would be great.

And just, if I can add to that 'cause I-- I just noted-- in your article you talked about the crucial role played by-- small groups of public interest lawyers, jurists and activists who pioneered this field. That also makes me wonder to what extent this is regionally specific, or at least system specific because certain legal systems are more open to the prompting, prodding participation of private actors of victims, to actually bring cases forward than others.

And-- certainly civil law systems I think in Latin America are-- are more open to that kinda participation than many common-law systems are. So I'm wondering as well, how that affects the dynamic.

KATHRYN SIKKINK:

Well, what-- 1) what great questions, terrific questions. And-- so just-- so we just briefly start on the-- the Latin America question that-- that Jim kinda started with. And I would just say, so if I go back to the-- the truth is I'm giving you an old chart here. This one is-- is actually old. You see it's the-- I was using a 2009 data. We now have some 2011 data.

I just didn't have the chance to get the new chart made. But the new chart has America as 48%. So what is happening slowly is that the percentage of-- of Latin America in the database is decreasing, and one of the-- I did-- well, Leigh Payne and I did a chapter for a book called *Transitional Justice in the Asia Pacific*. And the first draft of that paper is we said, "Well, there's really not much going on the Asia Pacific." And then we started getting the new data, and we had to totally rewrite the chapter and say, "You know, a lot more is going on in the Asia Pacific than we originally thought."

And so what I would say is this is definitely a trend that's being initially driven by the Americas. The Americas have been pr-- have had a very important protagonist role here, but it is not limited to the Americas and it is very much-- diffusing elsewhere in the world. And so I think we have to think of it that way, a trend where there's been huge Latin America protagonism, but it d-- it's not a Latin American justice cascade.

It is in fact a global justice cascade, with very imperfect and-- and varied-- relevance in other parts of the world. So as you see the m-- you know, the Middle East-- north Africa is always tiny. And I used to say when I (UNINTEL) 'course with the Arab Spring, that's gonna change and-- maybe-- and then, of course, we see, no, it's not changing. May-- and again-- that's gonna be my question to you folks.

You got your hands on the pulse of what's going on maybe around the world-- more, and maybe t-- what you-- I don't know what you're seeing. So, a second-- this is kind of the second point of these-- of César 's point about these empirical comparisons and the big issue in Columbia is whether the threat-- the prosecutions or the threat of prosecutions can thwart-- peace negotiations.

That's the \$100 question, isn't it? This is a question that-- that Jack Snyder has always put to me. And he always uses a threat of prosecutions, and I s-- and one thing I say in terms of empirical comparison, the first thing I say is, "How am I gonna measure the threat of prosecutions?" Every time it's in a newspaper op-ed piece? Every call that-- that-- that a NGO makes for prosecution?

So one big issue is, if the threat of prosecutions have an affect, I need to know what constitutes a threat. And so it's very hard to measure. It's very hard to m-- it's very hard to measure and test whether a threat of prosecutions does anything. So all I can do is whether prosecutions themselves have a negative affect on-- on peace.

And the-- the best new researchers, my-- one of my fabulous students-- he was in the photo there, Jeff Dancy, has just finished a dissertation where he has a whole chapter asking this question, using all of our data and using conflict data that goes down not

just civil war, but goes down to as small as 25 battle deaths in conflict-- 25 deaths in conflict.

And what he finds is this, that-- that-- pr-- actual prosecutions in this short-- immediate or short term can temporarily worsen dyadic conflict between two groups. But in the long term that is more than, I believe, two years-- two to three years, it is a s-- prosecutions are associated with no conflict recurrence, okay.

So prosecutions have a long term affect on-- on-- to help end conflict, but they can have a short term blip, especially in dyads. And the reason dy-- you know, we go dyads? You know, but in Africa today as you know, there's so many-- insurgent groups that you have to l-- just look at-- you don't just look at war. You have to look at dyadic war between two different-- between the government and each individual insurgent group, right. So that's the best I can say, and I will-- I'll-- I can s-- ask him to send you that chapter, 'cause it's really interesting.

The last paragraph on amnesties and prosecutions, this is the-- this is the d-- b-- biggest debate within my team. Okay, so Leigh Payne and I are in the same team and she's got a book out that says, the only combination that works is amnesties and trials together. And I kept saying, "Lee, there's something wrong with that, 'cause amnesties are supposed to stop trials."

And if you got amnesties and trials together, it means that amnesties aren't working. So I'm gonna assume it's trials that are doing the work, not the amnesty. And she s-- would say, "You're not even measuring amnesties. You can't even talk about it." And so we measure amnesties. We're running the new-- we're running the new analysis and we have a very preliminary paper just presented to the American Political Science Association meetings and I think what we're finding is that blanket amnesties do not help.

Okay, blanket amnesties don't help. But the combination of a partial amnesty and trials m-- may be the-- maybe that combination that's associated with improvements. By partial amnesties, we generally mean amnesties that are considered-- that are fit under international law, that is an exempt war crimes, crimes against humanity, genocide, et cetera.

So like the Guatemalan amnesty, you know, where-- where these major crimes are exempted from the amnesty. But we have only six examples of partial amnesties in our database. They're all the recent ones. All the recent amnesties are partial amnesties. We aren't seeing new blanket amnesties for the most part, and so it looks like the answer is, "No, it isn't just that you should combine amnesties and trials. And that's a good option."

But the combination of a partial amnesty and a trial may be associated with improvements. And the question-- then question is why would that be? And it could be because it tranq-- it calms certain groups, certain spoilers out there who might be wanting to have a coup. And so the amnest-- the-- these-- they may sort of calm these spoilers long enough for-- for democracy to take root.

You know, I-- but I c-- I can't tell you about-- I don't-- I never have understood the

Columbian legislation well enough or its (UNINTEL). My understanding is it's j-- it's not just a single legislation, it's for a single group. And so--

CESAR RODRIGUEZ-GARAVITO:

Yeah, well it's not-- well, it-- the decision doesn't say this-- it's not (UNINTEL) but, you know, this is only-- this process is going on. So, yeah, and so we'll see.

KATHRYN SIKKINK:

And so I-- I-- I-- I guess I wanna just turn the question back to you. What do you think when you embody amnesties and prosecutions in a single piece of legislation?

CESAR RODRIGUEZ-GARAVITO:

That-- that's the position I'm taking (UNINTEL) organization (UNINTEL). That's the position that we're defending, that you need a combination of those two-- not extend blanket amnesties for any kind of crimes, of course. Because you can no longer do that under international law, and you have the-- ICC writing letters to the constitutional court two days before their ruling on the constitutional (UNINTEL) of-- very controversial.

On the constitutional legal, that is of legislation. But there's no way that the Columbian criminal system will be able to prosecute 8,000-- foot soldiers of FARC-- for every type of crime. And that's the position also of the attorney general's office. Yeah, so that's-- it's-- from a normative point of view, and from a pragmatic point of view, that's the position that we're-- we've defended (UNINTEL), with the number of other human rights organizations.

But there are differences in-- in conceptions of-- transitional justice even within the human rights-- movement. And some national, international organizations are pushing-- are pushing for-- a more sort of punitive approach to-- negotiations (UNINTEL).

KATHRYN SIKKINK:

And then-- then the other question I have for you, then is, so-- so-- because people always say this to me, right. (LAUGHTER) Is that-- "Okay, but we know-- and what we know over time, amnesties have been a r-- challenged all over the world. And amnesties are eroding and being derogated as you know, or being annulled especially in Argentina and Uruguay. So when you make an amnesty, you may not be able to promise that the amnesty's gonna hold. So h-- what posi-- you know, what position does the (UNINTEL) take on-- on that?

CESAR RODRIGUEZ-GARAVITO:

Well, there's a way to take-- a responsible position there because you cannot promise on anything on behalf of the, you know, the international tribunals. And the American Human Rights Commission for example, has just written a critical report of that piece of legislation and their chapter four of the (UNINTEL)-- report.

And-- and that's-- but that's a big concern for instance for the FARC. And you say, well, even if you (UNINTEL) government promised me that you-- I will not get prosecuted, well, I know what's gonna happen. The government says, well, all they can do is go to the U.N. as Santos did a month ago and say, "We need your understanding. And-- we need you, the international community, to understand that we need to bring to a close a 40 or 50 year civil war," right.

But-- it-- it's-- it's a problem that's impossible to solve domestically. I mean, it is where you two level dynamic interaction model of-- of-- transnational governance is so helpful. But-- there-- it's no longer possible for our domestic-- for a national government to promise that what they're-- you know, that the international community will not prosecute the FARC. So that's-- it's-- it's-- it's a bind (UNINTEL).

KATHRYN SIKKINK:

It can't-- it can't promise--

CESAR RODRIGUEZ-GARAVITO:

It can't promise-- can't promise.

KATHRYN SIKKINK:

--is that right? Yes. Yeah.

QUESTION:

So should we-- open it up now a little bit?

(OFF-MIC CONVERSATION)

ARYEH NEIER:

No, I wanna give you another example from a different part of what-- in which-- a combination of a partial amnesty and prosecutions-- actually turned out to be very effective. That's-- Sierra Leone. (RUSTLING) What happened in-- in Sierra Leone was-- (RUSTLING) (UNINTEL) the leader of the-- the RUF, the-- particularly brutal

guerrilla group that specialized in chopping off hands and arms-- signed a peace agreement and-- insisted on an amnesty-- as the basis for signing the-- the peace agreement.

And then-- the United Nations also had to sign on and Kofi Annan instructed the-- U.N. representative to-- add a provision saying that this did not apply to international crimes such as genocide, crimes against humanity and war crimes. And so that became the basis for establishing the special court for Sierra Leone. And-- (SIREN) that court has been-- among the more successful-- international courts including-- the-- the criminal conviction of Charles Taylor and the 50 year sentence-- imposed-- upon-- Charles Taylor. So it was a partial amnesty, but it exempted-- those crimes. And, I-- I think that-- was effective both in settling the war-- in Sierra Leone and in allowing-- accountability for the most-- egregious crimes-- that took place.

JAMES GOLDSTON:

I mean, in t-- in terms of evaluating the impact of amnesty, it's not a static phenomenon, right? You yourself have said your data show that blanket amnesties were once a phenomenon and they are less and less so. So doesn't that affect expectations? I mean, isn't the goal, if one is pursuing accountability, in fact to reduce and ultimately eliminate the expectation, the reasonable expectation that you could be accorded-- immunity for-- for what you've done? And-- and frankly, I think that is what is happening over time. At least there's a good argument for that, right?

So although Charles Taylor was purportedly promised "X, Y, and Z" by President Obasanjo, he couldn't deliver because the pressure for accountability simply was too much. And we're seeing that again and again. So the promise of amnesty, as you say, simply is not credible increasingly over time.

KATHRYN SIKKINK:

Well, when-- when-- I know the Sierra Leone, but I actually didn't know it was Kofi Annan himself--

ARYEH NEIER:

Yes.

KATHRYN SIKKINK:

--that advised. That's--

ARYEH NEIER:

He instructed--

KATHRYN SIKKINK:

--very interesting.

ARYEH NEIER:

--he instructed the U.N. representative-- on that.

KATHRYN SIKKINK:

And we-- and where did Kofi Annan get-- get the idea?

ARYEH NEIER:

Kofi Annan-- didn't start out-- as a human rights advocate. And then over the course of his tenure-- as-- U.N. Secretary General, became more and more of a human rights advocate and, you know, proposed the U.N. Human Rights Council to substitute for the-- U.N. Human Rights Commission.

And then in his post Secretary General-- period in his role in Kenya-- also was responsible for pushing trials-- he was responsible for-- asking the international criminal court to-- to indict those who were not indicted in Kenya as a result of the commission that looked in terms of the-- the post electoral violence. So by the time of the-- the Sierra Leone-- peace accord, he had become-- this kind of-- human rights advocate, which he had not been-- at an earlier phase-- of-- of his career. You know, you could speculate that it was-- in part-- his own guilt feelings about his-- role with respect to Rwanda. He has been-- very-- you know, outspoken about-- his own-- errors-- with respect to-- to Rwanda.

KATHRYN SIKKINK:

Because I knew that was a turning point. It's really a turning point in the-- in the transitional justice world. But I-- it's a more interesting turning point if it comes from the top--

ARYEH NEIER:

Yes, it came from the top.

KATHRYN SIKKINK:

--of the U.N. system, than if it c-- than it's sort of an-- this representative making decision on his own. Can-- and maybe you-- I wanted to just go back to-- so, this-- this interesting thing about-- about-- so, yes, I think one of the things that's at stake here is deterrence, right, in the sense that-- that our people being dissuaded from committing future crimes because they believe they'll be held accountable.

And w-- the one piece that I didn't tell you but w-- now that we have some-- this information on guilty verdicts, we're able to run the analysis and what we find is prosecutions themselves are associated with improvements, and prosecutions with guilty verdicts are more associated with improvements. That suggests that there is a d-- some-- part of what's going on-- I'm not saying all, but part of what's going on is-- is deterrence, the actual--

ARYEH NEIER:

Can I-- I suggest some complexities-- using two other examples. One, the Yugoslav tribunal and one-- involving the creation of the-- the international criminal court. One of the interesting things to me about-- the conflicts in the former Yugoslavia-- is that during the-- the war in Kosovo, the crimes which had been the subject of prosecutions growing out of the conflicts in Bosnia and Croatia were not repeated in Kosovo.

That is, the prosecutions-- for Bosnia and-- Croatia involved-- camps-- they involved the siege of Sarajevo. They involved large scale massacres like-- Srebrenica. None of those crimes-- was repeated in Kosovo. There had been no prosecutions relating to Croatia and Bosnia for mass force displacement, even though that took place-- in Bosnia on a huge scale.

And yet, the crime that was committed by the Serb forces in-- Kosovo was mass forced-- displacement. By the time the Kosovo war took place, 1999, the Yugoslav tribunal had begun to be taken-- seriously. But as-- after Tony Blair was elected and Robin Cook became (UNINTEL) secretary, the British troops-- in ex-Yugoslavia started making arrests-- of people who had been indicted by the-- the Yugoslav tribunal.

And that was 1997 that those-- arrests-- started taking place. And so two years later, one had to take the Yugoslav tribunal-- seriously. And in Kosovo, you just didn't h-- you had different crimes, probably 10,000 people were killed in-- in Kosovo. But you didn't have the same crimes-- that had resulted in-- in prosecutions.

The other-- example-- involves the-- the DRC-- after the creation of the-- the international criminal court. The international criminal court-- (HORN) it's-- it's-- it required 60 countries to-- to ratify the treaty for it to come into existence. And on April 11, 2002, ten countries ratified. They each wanted to be the 60th-- so there were 66-- countries.

And so the international criminal court came into being July 1-- 2002. It had no retroactive jurisdiction. It could only prosecute crimes committed-- after-- that date. At the moment that it came into existence, there were five other African countries that had troops in the Democratic Republic of the Congo, fighting a war among themselves and looting the-- the natural resources of the Democratic Republic of the Congo.

One of the ten countries that ratified on April 11-- 2002 is the Democratic Republic of the Congo. They faxed their-- ratification into the U.N., and the U.N. accepted it. Between April 11, 2002 and July 1, 2002, all five other African countries, that is Rwanda, Uganda, Zimbabwe, Namibia and Angola all withdrew their troops-- from the Congo because none of them wanted to be the first to be prosecuted by the international criminal court.

So-- there was no actual prosecution. But just the threat that they could be prosecuted-- effectively-- ended what was looking like an all Africa war at that moment. Didn't end it, because there were local militias affiliated with the-- the international forces. But it substantially reduced the amount of conflict-- in the-- the DRC. And-- so I-- I think one has to look at each of these cases very closely to see how they actually had an impact, changing the nature of the crimes, bringing about a withdrawal of forces. Those kinds of things have to be-- taken into account as you think about the affects of the possibility of prosecutions.

KATHRYN SIKKINK:

I-- I completely agree.

QUESTION:

Okay, you wanna respond briefly? 'Cause I just wanna--

KATHRYN SIKKINK:

I completely agree. But what I say is this. As you know, (UNINTEL) we-- we really need these in-depth case studies. As you know, in-depth case studies on the same case by different people arrive at very different conclusions. And so we have seen as many in-depth case studies of Uganda or DRC saying, "See, the ICC involvement has contributed to more war, made things worse." And so what we're trying to do is not say, "No, we don't need-- "

ARYEH NEIER:

In a different times it could produce different results.

KATHRYN SIKKINK:

We're-- we're totally-- we-- we totally believe in those kind of in-depth case studies. But we also think it's useful to have this kind of-- kind of a global study that may be persuasive when p-- when the case studies are divided, when they talk about impact. Sorry, Jim.

JAMES GOLDSTON:

Not at all. That's very helpful. So, Allison had a question? Or (UNINTEL)?

ALLISON:

Hi. I'm-- I work at the justice initiative in the international justice program, so my question is-- to what extent your (UNINTEL PHRASE) in your framework of understanding of human rights. And so I'm getting the sense-- and from reading your book, and you're-- you're article-- it's-- (UNINTEL) within this (UNINTEL) and (UNINTEL) rights-- paradigm.

And I think, actually, there's a big overlap in terms of, like, (UNINTEL PHRASE) human suffering to, like-- more of, like, economic-- (UNINTEL PHRASE) perhaps, for expanding your data (UNINTEL) to give a bit of sense of, like, the regional dynamics, like, perhaps you get different results for Africa, or Asia, like, looking at different concepts of human suffering, and different concepts of human rights.

And I think that's really important, because-- in terms of-- looking at-- I mean, I happen to really-- love your work, in terms of the kind of positive-- inspiration that we get as part of (UNINTEL PHRASE) work. And to actually hear somebody saying (UNINTEL) you're having some impact, I think is (UNINTEL)-- I think that's very encouraging.

But the truth of the matter is-- is that-- I've worked at, like, (UNINTEL) different (UNINTEL) tribunals, and I'm not too positive, actually. I s-- see that the perpetrators and the causers of suffering are actually highly more (TAPE SKIPS) more vile, and (UNINTEL PHRASE) not looking.

So I think, actually, the identities remain the same, but they're just new-- exploiting-- (UNINTEL PHRASE) populations. So, we might see improvements in terms of-- prosecutions within the paradigm that (UNINTEL) here, but I don't think that's necessarily reflective of the reality.

Like to take a quick example, like-- talkin' about Sierra Leone City, the main cause of that conflict has never been addressed. So we're looking for some justice (UNINTEL PHRASE) other, like-- economic reasons for that conflict, and how to address them.

But, those very same actors are now-- diversifying, moving into-- like-- some of those actors were involved in the elections in Zimbabwe, for ever, which were able to

happen with the appearance of, you know, and completely being regular and order, but with a lot of-- very sophisticated forms of intimidation and suffering that were inflicted. (UNINTEL PHRASE) I have-- I c-- concerned about, like, a skew-- in-- in your findings, maybe as a result (UNINTEL PHRASE).

KATHRYN SIKKINK:

Well, one is, I should say I'm-- I'm first tr-- very supportive of-- of the kind of approach that you've taken here at the justice initiative, to have a very broad understanding of what constitutes justice, and try to think about the-- the-- the v-- many ways that one could pursue justice in-- in a wide variety of issues.

First let me say I'm v-- very supportive of that. And that my choice of choosing my research, relatively narrow-- okay, even though I say it's taken us six years to gather the data, and hundreds of research assistant hours to do it-- so, it's-- it's narrow, but it's extremely time consuming-- is that, no one had nailed this topic, okay. There were still-- I mean, Jack's mother could still run around saying, "Human rights prosecutions make things worse." And it's like, "No, Jack, actually they don't," and-- and not be believed, you know. And so I (UNINTEL) saying, no, I wanna take a narrow and focused topic, and I want to see if we can really, really-- make a very persuasive-- argument about effects, gather the data, do the analysis.

Just because I choose to work on a narrow thing, does not exclude, or does not inte-- I don't intend at all to say this is the only important thing. I s-- I'm saying, "I've got--" but no one has made m-- the case I'm making. No one has made it until now, okay, as-- I think as-- as persuasively as I'm making it.

So I thought it was important to take that narrow set, and do it. And in particular because I have this-- the-- the-- the political terror scale, and the (UNINTEL) integrity index. I have an index that's gone from 1980 to the present, that I can use as my dependent variable, okay?

This does not mean that we couldn't choose to look at the f-- what are, you know, what-- what kind of effects do these kind of prosecutions have on other things that are a concern to us. We could look at what it-- what effect-- is there any impact on inequality? We could look at, is there any impact on social and economic well being, okay.

So just the fact that I choose to work on a narrow topic, doesn't imply that the rest of it's not important, or that it might not make an impact more broadly. It's just, whenever you do research, you have to-- you've gotta--

QUESTION:

(UNINTEL PHRASE)--

KATHRYN SIKKINK:

--yeah, okay.

QUESTION:

(UNINTEL) wanna get that.

KATHRYN SIKKINK:

And-- and so I-- I and so I-- I just wanna be clear that I think that-- that it-- it-- you-- these are very important questions you're asking. They are questions that other researchers could use our data to try to answer, okay. And-- and I-- and, you know, encourage my students and others w-- (UNINTEL) produced (UNINTEL) online (UNINTEL) choose other people to use it.

One could choose to look at prosecutions as new kinds of prosecutions are around about economic, social, and cultural rights. People are doing prosecutions now on water, on access to basic drugs, HIV and-- and other basic drugs. And so, one could sort of use this model, and says, what happens when you start getting--

QUESTION:

(UNINTEL PHRASE)--

KATHRYN SIKKINK:

Litigation on-- on economic, social and cultural (UNINTEL).

QUESTION:

I don't mean in terms of litigating for water rights. I mean, looking at, for example, ways that-- economic-- actions can impact, even within your paradigm (UNINTEL) civil and political rights, like force trans (UNINTEL) populations, for example. A litigation of that type and (UNINTEL) would still be ris-- (UNINTEL) the parameters of your research, I think.

So there might be more cases out there. But I can certainly, like, in the-- it all circulates to the (UNINTEL PHRASE) some writings on that, too, which I've (UNINTEL PHRASE). But-- I guess you saw the answers to (UNINTEL) so that was released-- today.

KATHRYN SIKKINK:

No, I (UNINTEL).
(OVERTALK)

KATHRYN SIKKINK:

--here all day. (LAUGH) Yeah. Uh-huh (AFFIRM).

QUESTION:

And it-- it's a new database of m-- international criminal-- prosecutions (UNINTEL PHRASE).

JAMES GOLDSTON:

So, let's-- we can? I just wanna make sure our colleagues in the disembodied ether (UNINTEL)-- (LAUGHTER) Washington, D.C., maybe?

KATHRYN SIKKINK:

Uh-huh (AFFIRM).

JAMES GOLDSTON:

Does anybody wanna contribute to the discussion with a comment, question?

ANGELICA:

Hi, this is Angelica from the Latin American program.

JAMES GOLDSTON:

Excellent, hi.

KATHRYN SIKKINK:

Hi, Angelica.

ANGELICA:

Hi. Thank you for your presentation (UNINTEL) for your comments. I just was wondering about-- how do you see the United States in this cascade-- especially regarding the ratification of the (UNINTEL) statue, and especially regarding the issue of-- universalization of international instruments, especially in United States and Canada-- in the inter-American system?

QUESTION:

Can I add to that (UNINTEL)?

JAMES GOLDSTON:

Just before you-- yeah, before you answer, let's-- we've gotta (UNINTEL)--

QUESTION:

I just wanted to jump in and ask as well-- for-- I'm not at OSF, but I'm a fan. Leigh Payne was my advisor at Oxford. So, thank you for coming. This question is for (UNINTEL) I have to tag on along to that, is there any sense that, considering the Columbian case with (UNINTEL) and all this involvement the United States in Columbia, that there's any sort of pressure, or-- views coming in from the Department of State on whether or not the FARC (LAUGH) is-- should be prosecuted? I just wanted to get that initial touch base with you.

KATHRYN SIKKINK:

Okay. On the U.S. case, people who've read *The Justice Cascade* may-- remember, I have a whole tr-- I have a whole chapter on the U.S. case, the case with the Bush administration torture policy. (COUGH) And-- what I say is that it's-- it's both-- that-- that you-- you need to look-- if you're claiming (COUGH)-- the (UNINTEL) cascade, you need to look at the impact on powerful states, not just on-- on-- on less powerful states.

And that it's a very-- sobering case-- because (COUGH) it's quite clear that-- I mean, as you know, fi-- I number of low level-- soldiers in this country have been held accountable in-- court martials, and other administrative-- proceedings. But, there's been no-- high level-- accountability in this country.

Not only that, but the-- the-- we have essentially a d-- what I would call a de facto amnesty law with the-- military commis-- no. The-- which-- with the-- well, there's two-- anyway, two laws. One that was passed m-- by McCain, mainly to try to use the army field manual, and-- and-- (UNINTEL) interrogation had added into it

essentially, an amnesty.

So, the-- the-- the U.S. case is one that I would say, demands an interactive strategy of the kind I have spoken about. In other words, we are-- the prosecutions apparently closed in this country. I-- the-- internat-- foreign prosecutions have been attempted in-- Spain, Italy, France and Germany. They have not-- succeeded, except the Italian case on extraordinary rendition, not on torture, per say.

I think that the international community would be well advised to move ahead on more foreign prosecutions of U.S. torture cases. It's a clear cut case. We have ratification of the torture convention. We have implementation of torture convention, domestic law, and we have violation after the ratification of the torture convention.

There's ample, ample evidence-- for a prosecution, and I think that the international community should make this-- a high priority, to figure out how you're gonna prosecute U.S. officials in foreign courts, and at least deeply complicate travel strategies if not actually hold anyone accountable.

So, but you asked-- you didn't ask just that question, you asked about ratification of treaties. No, no one is holding their breath that the United States is gonna ratify the Rome statute, in the-- in the-- in the near or short-- I mean-- nor, apparently, any other treaty, since we couldn't even ratify the-- the disabilities convention. So, no, no one's holding their breath about-- about treaty ratification. Let me just say, as a political scientist, I always have to say this. No one ever pays attention to it. The ratification rules of different countries are completely different. No other country in the world, except maybe Switzerland, with it's referenda, has as difficult ratification rules as the United States.

Okay, so it's simply not the same thing to ratify a k-- a treat with a majority vote in a parliamentary system, most countries of the world ratify with majority votes. Many ratify with majority votes in parliamentary systems. It's not the same thing as ratifying of two thirds, simple majority in a presidential system.

So, as much as I think we really, really need to get the United States to ratify these treaties, and it's a huge problem that we haven't ratified, you simply can't compare a majority ratification to a two thirds ratification.

JAMES GOLDSTON:

If I can just add briefly on the-- on the-- on the very important point about-- trying to stimulate, motivate more accountability in the United States for abuses that took place-- under-- the Busch administration-- or, ultimately, under this administration as well-- there have been, in addition to the national court rulings that you discussed, there was a ruling last year in a case that we brought in the European court of human rights involving the torture and rendition of Khalid al-Masri-- a finding against the government of Macedonia (COUGH) (UNINTEL) finding-- in that case that the CIA engaged in torture-- of Mr. Al-Masri-- on the tarmac at the airport in Scopia,

Macedonia.

There's also been a ruling of the-- United Nations Committee Against Torture, in respect of Sweden's actions-- on the-- on-- on-- on two men who were-- tortured as well, in CIA related tr-- rendition. And-- there are now pending before the European court-- several other cases from Poland, Romania, and Lithuania involving-- alleged CIA torture and rendition in those, or from those, countries.

A hearing is now scheduled-- in early December on-- one of those cases. And-- there've been efforts to try to-- keep those proceedings-- secret. And it's, I think, it's extremely important that publicity about these efforts-- be disseminated, so that-- the United States understands that the failure as yet of the United States courts to act, does not mean that there won't be accountability in other jurisdictions for those actions.

KATHRYN SIKKINK:

I couldn't ag-- agree more strongly, and-- and I-- I do discuss in the book quite in-- rather in detail, the case in-- Milan, of extraordinary-- a rendition in Milan. And what you find there-- everyone goes, "Well, what's the use? It's-- it's-- an exempt-- it's in abstencia (SIC) trials."

What you find is the individuals prosecuting Italy have already paid big costs, in terms of s-- many-- have been forced to leave their-- their CIA. Many have been-- b-- discover, of course, they can't travel anymore. And so there-- there actually are costs that are imposed (UNINTEL). They're not-- they're not-- you know, prison, but-- real world costs. So I-- I v-- I very much support this-- (UNINTEL PHRASE).

CESAR RODRIGUEZ-GARAVITO:

Just wanted say something quickly about-- for the Latin American side of this equation, is that in-- it-- that-- it has become a big problem, that the U.S. has not ratified, or (UNINTEL) does not ratify, have not ratified the American convention, for example. This is what gives countries like-- Venezuela and Ecuador-- (UNINTEL) ammunition to go after the inter-American system.

And-- and it's hard to counter. I mean, how g-- can you explain that the-- well, the commission is based in-- in Washington, D.C., that-- the-- U.S. and Canada work rightly quite active in defending inter-American system, both in Cochabamba (PH) and elsewhere, we're very happy to work with-- delegates from those two countries.

But then of course, the-- the moral authority is not there, right, because they're not under jurisdiction of the court. And so, it's-- it's easy-- it's an easy case for some governments to sell to the-- to their m-- friendly media, and to s-- some sectors of the citizenry, that this is a U.S. controlled system, right?

And-- so-- and-- and we have worked with-- (TAPE SKIPS) like ACLU, to try to get

something-- moving in the U.S. Congress. But you know, we know that this is not gonna happen in the near future. But it is a big problem. It is a big problem for us in Latin America-- organizations trying to defend the inter-American system.

And then on-- on the-- on-- on Columbia, and the State Department, the State Department has been incredibly silent about the Columbian-- negotiation process. And I think-- for good reasons. And actual-- I still think it's better for them to keep relatively quiet, and for other states like-- Norway and Cuba to be more involved.

Those are the two states (COUGH) that are officially part of the negotiating table (UNINTEL) as friends of the process, and they played a key role. The-- the U.N., now of course, because of the deep involvement in b-- Columbia-- they-- they would be seen as partisan in this com-- in this negotiation. The FARC would never accept sort of a interference-- from the State Department.

And, on the other hand, the U.S. gov-- state, the government was-- was quite vocal in the negotiations with the paramilitary-- paramilitary squads. And that was actually a good thing as well, because since they were seen-- the U.S. was funding the counter terrorism, the counter guerilla-- campaign of the part of those-- state, and they had to say something about the abuses committed by the army and the paramilitary squads, in alliance with the-- with the Columbian army. So back then, they-- the-- they did, and some congress members also spoke-- up in support of-- harsher treatment for the paramilitary leaders.

JAMES GOLDSTON:

I mean, the-- the-- the-- I'm interested to hear César, your point about the-- the impact, the very debilitating impact of the americ-- the United States and Canadian refusal to ratify the convention. We see that again and again throughout the world, the impact of the perception and the reality of partial justice of a rule of law applied only to the powerless, or the less powerful, not to the most powerful, is undermining justice institutions like the international criminal court, again, and again.

And that's-- that's a critical question (UNINTEL).

CESAR RODRIGUEZ-GARAVITO:

Right. As you know well it's-- w-- where-- that the s-- this huge resistance in Kenya. I was just recently in Kenya about-- the informant of the ICC on the basis that it's become sort of-- an institution focused only on Africa. That may be unfair, but you know, when you look at evidence, looking at the data, well that's-- that's the case.

And-- and the fact that there are no cases on other parts of the world, including Columbia, well it makes people in Africa uncomfortable. But-- you know, from the point of view of the inter-American system, it had to come, one of the key (UNINTEL)-- to-- for-- those of us trying to-- strengthen as opposed to-- debilitating the inter-American commission, and the court.

JAMES GOLDSTON:

Any-- further questions of comments from anyone, here or in DC? Yeah.

QUESTION:

I mean, I think the-- the Columbia example raises some-- some other interesting questions-- with-- which (UNINTEL) your research. And-- and one I have is, I mean, there's-- obviously these human rights prosecutions can take place in a varieties-- variety of settings. And in the Columbia example, where we're talking about the FARC, and there'd be a prosecution of people who have opposed the government that's gonna stay in place.

And that seems very different than human rights prosecutions that-- that come in a period of transition, when-- when two sides, you know, there may be players from two sides, that are prosecuted, or the victor group was th-- the group that was not in power before. Then wondering if-- if human rights prosecutions in these different scenarios have different affects on the-- the physical integrity indicators that you speak about.

KATHRYN SIKKINK:

So, we are right now-- the-- our research is about transitional countries, right? The reason we're doing that is because-- the data for the whole world is-- which we did start to gather as well-- is complicated, 'cause it includes data on dema-- on formerly democratic countries like Columbia, that nevertheless have had very problematic human rights attrition, which includes (UNINTEL) country like the United States.

But it also includes data on all of these authoritarian countries, where it's kind of hard to know if there's a human rights prosecution happening there, whether or not it's a-- you know, is it a rule of law system? Can we call this a real human rights prosecution?

And so, we've been hesitant to use our data on the whole world. And so, we don't have findings on the whole world, okay. Partly because you're looking at-- (UNINTEL) prosecutions in what, 190 countries, or possibly 190 countries. And, you don't-- you don't know whether (NOISES) (UNINTEL PHRASE) or it's reliable.

Would could just do it for d-- transitional and democratic countries, and I think that should probably be the next step, and say, we can't talk about this-- the prosecutions in authoritarian countries. We don't know whether they're genuine. But let's add the fully democratic countries in, and see what difference it makes if we-- do that. And I think that should be the next step. You add in the Columbias-- the United States-- others, to see whether human rights-- prosecutions make a difference there, as well.

JAMES GOLDSTON:

Sean.

SEAN:

You talked about-- the justice cascade in Latin America potentially having an impact in Asia. And that was around jurists, and other actor-- international actors. I was wondering if you could say more about the mechanisms by which a justice cascade in Latin America can have a global impact, and like the role of a global organization like the justice initiative in facilitating those mechanisms.

KATHRYN SIKKINK:

So, I guess the main thing I meant was that the justice ca-- Latin America was very important for-- in helping initiate the justice cascade for, you know, because of the early adopters I showed here, right? And so the degree of which this-- the cascade is simply a c-- accumulation of many countries.

And what difference does that-- you know, how does that work globally? So, I think that, usually, it's not a diffusion. It's quite rare that people will say, "Oh, we're modeling ourselves after Argentina." But rather-- the way it's happening is simply that there are many transitional countries in Asia, that for various reasons of the own, very often d-- like once again, demand from civil society organizations, as you know, 'cause you work with them-- they're asking for-- accountability.

They may occasion-- maybe occasionally useful to borrow-- something from-- so there're certain-- there are certain legal-- useful legal tools that have been used in Latin America, but also international courts, the notion that crimes against humanity are not subject to statutes of limitations.

For example, has been a very useful legal tool throughout Latin America, the notion that disappearance is a continuing crime, and therefore, cannot be-- effected by amnesty laws. As long as there's no body, then, you know, we-- you-- you can't amnesty someone. Those are-- are tools I think that could travel to places, because you very often find that what's blocking prosecutions elsewhere is the same thing, statutes of limitations and amnesty laws.

And so, there might be innovations from Latin America that would be relevant. But every-- you know, as you know, every country faces it's own-- it's own issues, too, and often has to devise-- their own to-- kind of domestic sl-- ich-- every legal system is different.

You made the point of some civil-- law systems ha-- may have a bit easier time dealing with this than common law systems. And that's something we never thought about. A lot of us in this country seem to think, "Well, common law." That's the-- you know, that has-- certain benefits. And what we've found is, there's-- the-- the m--

- mainly civil law systems use private prosecution in criminal cases.

And we have found-- elsewhere that the-- the ability to be a private prosecutor in a criminal trial is a huge way that these trials are coming forward. And so, we're finding that maybe that's one reason Latin America's been so involved, is because private-- virtually I've seen (UNINTEL) these countries had, except Uruguay, has provisions for private prosecution in criminal cases.

When I first used that word to an English speaking audience, the-- I mean, and the l-- the lawyer said, "There's no such thing as-- as private-- prosecution in criminal cases." And I said, "Well not in the United States." You know, but there's this assumption that the way we do it is the only way.

And so, this private prosecution's very important in some countries. But-- as you know, it does not exist in most-- common-law. So much doesn't exist, that-- that it's even-- with-- just the very notion is unfamiliar. So-- so it's the-- doing this kind of research is super difficult, because you have to know about domestic, criminal law in hundreds of-- of places.

And it's almost impossible. Anyone who's tried to study domestic criminal law, even in a couple of countries (UNINTEL) (LAUGH) you know. Even knowing gua-- in Guatemala or Argentina, the-- or-- or Columbia, it's so hard. And so it's-- it's very-- there are th-- there are lessons that travel, and there are other things that are just going to have to be bottom up-- innovation.

But, what we know, for example, in Latin-- Latin America's been the region with the most challenges to amnesty laws. There's been huge number of challenges to amnesty laws in our database. They're all in Latin America. So there's this still a lot-- long ways to go to know, "What do you do when you get an amnesty law?" How do you start tryin' to figure out h-- a blanket amnesty-- how do you start tryin' to figure out how to work your way around that?

JAMES GOLDSTON:

So--

QUESTION:

(UNINTEL) Asia, are you looking at Bangladesh?

KATHRYN SIKKINK:

We are looking at Bangladesh, yes.

ARYEH NEIER:

'Cause that's-- a case study-- that's a huge thing in itself is-- (NOISES) (UNINTEL PHRASE).

KATHRYN SIKKINK:

One--

(OFF-MIC CONVERSATION)

JAMES GOLDSTON:

Rachel, you're coming in last-- last question? Comment.

RACHEL:

Could I, yeah? (LAUGH) Hi, Rachel Neal (PH) to the justice initiative. I was curious as to whether you'd looked at all at reparations or asset recovery as well, or whether you're thinking about doing that, and how you think it might play into this picture?

KATHRYN SIKKINK:

Yeah. Hi, Rachel. Yes, we right now are gathering data on reparations, okay. We're not-- we're-- it's ver-- you know, as you know, the U.N. definition of reparations is basically all transitional justice, and more. So we're t-- and to make it manageable, we're looking mainly at-- just-- compensation, basically, for victims.

And-- but we are trying to look at land-- restitution, as well. And so, we hope in about a year or so, we'll have that reparations data available, and we'll be able to-- to-- to add that into the analysis, and to share that with people, as well.

So far, what we're finding with-- with all the new data we're gathering customary forms of justice, reparations, (UNINTEL PHRASE), and civil trials, is, it's far less widespread than we originally thought. The numbers are just a lot smaller. We're not finding-- we're-- we're-- we're through-- we've done reparations in Africa. We found w-- much less than we anticipated.

And customary forms of justice, really there's only about 20 s-- countries in the world that are using customary forms of justice. So, it's been held up as a solution, but it's not really available to most countries of the world. If you don't have indigenous communities, that still retain some kind of customary forms of justice, you don't really have that as an option. And so-- so yes, we are gathering that data. Yes, we will make it available. I-- so far, I've been surprised that some of these other forms of transitional justice are not more widespread.

JAMES GOLDSTON:

So, I just wanna say-- I mean, I think this discussion, you know-- it just underscores-- how important your work is, for what open society foundations is trying to do, what our partners are doing. It-- it legitimizes that work. It forces us to interrogate the assumptions underlying that work.

It provides us with data and tools we can use to advance that work. It's really, really important, and I think it just-- it's clear to me, we-- we-- we want to-- continue the benefit from your research, and dialogue with you, as you carry this forward. So I wanna thank Kathryn and César very, very much. This has been really, really-- a great session. Thank you. (APPLAUSE)

* * *END OF TRANSCRIPT* * *