

TRANSCRIPT

"FINANCING ATROCITY, FORGING ACCOUNTABILITY: NEW STRATEGIES FOR INTERNATIONAL JUSTICE"

A conversation with Eric Witte, Holly Dranginis, Brian Adeba, and Roxanna Altholz

Moderator: Priscilla Hayner

Recorded May 28, 2019

ANNOUNCER:

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PRISCILLA HAYNER:

Welcome. My name is Priscilla Hayner, and-- I'm a member of the U.N. Standby Team of Mediation Advisors. But I should probably say, I'm not speaking for the U.N.-- needless to say, although I can't imagine the U.N. will disagree with anything that I might say here. I'm delighted to be here. We have-- with us four experts, advocates-- investigators-- troublemakers perhaps, some of them.

And-- and this goes to all-- to all four of them. I mean, all four of the panelists here are real experts in their own right-- th-- right. They've also done many different kinds of-- of work in the arena of justice investigations-- trying to find new avenues for accountability. So it's a real pleasure to be able to moderate this dis-- this discussion. What I'd like to do is to put specific questions to the panelists. First-- the two authors to-- to my left, and then-- our other two commentators-- to my right. We will certainly have a good amount of time at the end for questions or comments from the floor, so please-- be ready to-- to jump in for the last-- bit of the session.

And-- and there's-- there's much to cover, so there's-- there's many things we won't have a chance to discuss here, but please keep in mind that we have a global scope, and there's many, many questions outstanding right now in the field of-- of accountability.

I'd like to perhaps first-- begin by-- and I'll introduce each-- panelists as we turn to them. But Holly-- Dranginis to-- to my left is the author of a new report called *Prosecute The Profiteers: Following the Money to Support War Crimes Accountability*, which has just come out. She is-- a senior legal analyst at the Sentry, which is an investigative project of-- of the Enough Project-- in D.C., although she's based in-- in California. We actually have four people who've traveled, all of them far to get here to-- to the panel tonight.

Holly, can I begin by putting a question to you. Your report, which is excellent-- makes the case that, as the title implies, one should follow the money. Those that are investigating international crimes, grave crimes should be following those that are benefiting financially or backing financially the-- the-- the crimes that are taking place, the conflicts that are taking place out there.

Now-- you list-- amongst the kinds of crimes-- everything from money laundering to trafficking of national-- natural resources, to forced labor, to various forms of fraud-- to transporting stolen goods. Now to me, it seems as if it's n-- it's not so controversial that these kinds of crimes should be prosecuted. So the question I would put to you is, are they not being prosecuted by those mechanisms that should be or that are otherwises-- wise looking at-- at grave crimes? And if so, why not? Please.

HOLLY DRANGINIS:

Thanks. I-- I should start by thanking the Open Society too for hosting, just before I jump in and answer the question. And (THROAT CLEARING) it's-- and to Christian and Nina especially for organizing. It's just a privilege to have such an esteemed or-- organization-- host the launch of the report.

And I-- I sorta want to answer the question first by saying a bit about The Sentry, which gives context to how we arrived at this idea that financing is not being taken into account quite as much as it should be, when it comes to international justice, and then what can be done about it. The Sentry is an investigative initiative, and we're focused on conducting financial investigations in four countries in East and Central Africa that are particularly impacted by mass violence. That's Sudan, South Sudan, the Central African Republic, and the Democratic Republic of Congo.

This is a region where economic crimes and violent crimes happen in tandem. Mass violence almost anywhere requires cash and equipment and often produces ample profit based on certain businesses. And the profiteers are all along the supply chain. However, even despite the fact that this is a region that has actually garnered particular attention by the International Criminal Court and-- is sort of a focus of the-- of international-- efforts to prosecute war crimes-- the finance piece is left out in many of these cases.

That's-- that's starting to change, and actually, if we go back to-- the Nuremberg Trials, which is in a lot of ways is sort of the model for modern international justice-- we did see financiers prosecuted for the executives of certain companies, prosecuted for-- their support of the Nazi regime, including as it related to crimes-- during the Holocaust.

But fast forward into the '90s and even more recently-- we've seen a lot of leaps and bounds happen in the area of international justice. And f-- finance has not really been part of that. The defendants that are-- typically indicted are rebel commanders, military commanders, political actors. They are very, very seldom-- remote executives or-- CEOs, and certainly not corporations-- despite the-- the significant evidence that these actors play a role in-- the war crimes themselves.

Now why hasn't this been-- a practice that has come into the prosecution of war crimes more commonly? Especially as we saw the ad hoc tribunals develop and the International Criminal Court develop. In our en-- engagement and conversations with prosecutors all across the board, folks at the ICC and in domestic war crimes-- units, it often comes down to a disconnect of-- expertise, and-- and-- and a s-- feeling that it would take so many resources and so much new training and new expertise to follow the money.

The experts in kind of white collar crime or asset tracing or understanding even the structure of corporations is apart from who is typically-- prosecuting war crimes cases, which are experts in humanitarian law, international humanitarian law, experts in military dynamics, experts in the region where-- the actual crimes are being perpetrated.

And so there's this feeling that it would take too much to add this whole other dimension and element to-- the war crimes cases themselves. The c-- the-- allst-- one note bef-- before I end on that is that, we believe that this-- that actually bringing in the financial investigations into war crimes cases can pay dividends, could actually improve the project of-- prosecuting war crimes overall.

It-- it does require different kinds of expertise, and that kind of expertise and training costs money, but-- there is a case to be made for why that would end up improving even the-- the core case-- for crimes like genocide or-- murder against civilians as a crime against humanity, for example.

PRISCILLA HAYNER:

So s-- so you-- you-- you mentioned-- expertise that is missing. Is that-- is that really the primary reason? Because it seems to me, or at least at first blush I might think that there must be also a lot of resistance at the political level.

Because if we're looking at corporations-- we're not just looking at a war criminal, accused war criminal somewhere, but we're looking at international networks and international powers-- of persuasion-- that are either benefiting or backing-- conflict. How much has it

been attempted in places where it's the political will that's missing or the political resistance that's the problem?

HOLLY DRANGINIS:

Yeah, ab-- absolutely, that's another big piece of it. Going after corporate actors and corporations is much more politically sensitive in some cases, as-- as you are pointing out. A lot of the cases that are pursued or ha-- that we've seen pursued are-- do end in deferred prosecution agreements or settlements.

And you can see-- see through the process of those cases, that there was this sense that the company or even-- an individual, set of individuals who were at the CEO level-- are sort of too big to fail, and that there was a lot of-- pressure on (THROAT CLEARING) the different authorities to not go ahead with the case or to kind of give in-- these individuals or companies a break. There is-- an investigation against HSBC-- you know, massive international bank, for their involvement in money laundering together with the Sinaloa drug cartel in Mexico.

The charges outlined massive money laundering and brutal violence committed by the cartel. And the bank was recently-- they've signed a deferred prosecution agreement, paid a hefty fine-- but a fine nonetheless. And-- were just recently in 2017 sort of let off the hoo-- the deferred prosecution agreement was (COUGH) complied with, and nobody will go to jail over that-- or even as ser-- those serious crimes-- related to-- to both extreme financial crime and-- extreme violence as well.

PRISCILLA HAYNER:

Thanks. There's a lot more to cover here, and I may come back to you with-- a couple more questions, but just turning to Eric Witte, who is visiting us from Brussels-- and he's a senior project manager with the Open Society Justice Initiative.

And he is the author of the other report that we're honoring tonight, which is called *Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes*. And as you can see, it's not only thick, but it's also heavy. It's-- many hundreds of pages long. Very impressive and very, very useful resource, ash-- I have to say, extraordinary amount of information that's within.

So Eric, I wanted to-- to ask you-- I-- I have to say that those of who are thinking about, well, international mechanisms for-- designing accountability mechanisms for grave crimes, we think of, well, of course there's the International Criminal Court, there's the ICTY, the ICTR. We've all heard about the special court in Sierra Leone, the Cambodia tribunal, and you know, maybe CICIG in Guatemala, and sort of our mental list sort of trails off somewhere around there.

But you actually have documented 33 examples of either mechanisms or attempted mechanisms all around the globe in different regions, some of them domestic, some of 'em international, some of 'em-- more investigations, some of 'em actually criminal courts or attempted courts or special-- mechanisms within existing courts. I mean, very interesting array. And I'm wondering having looked at and having documented so closely all 33 of these cases, what is it that stands out for you, that-- that this-- experience to date tells us? What should we be taking away from this?

ERIC WITTE:

Thank you, Priscilla. So I think-- the-- the main sort of lesson is that there isn't-- isn't a template for how to do these things. There's been a tremendous experimentation around the world, especially since the end of the Cold War-- with accountability mechanisms for grave crimes.

And there have been some successes-- some outright failures-- and some sort of-- well, I would say, most of them somewhere in between. And there have-- what we tried to do with this handbook-- was trying to synthesize lessons across the board. And in doing so, one realizes, you know, there aren't that many lessons that apply across the board. There are some I-- I would say, like, the importance of doing outreach-- for any accountability mechanism is important-- in order to help manage victim expectations, to help the affected population understand what this mechanism is meant to do, what are the limits on what it can do.

Ha-- and it-- outreach helps prevent di-- disinformation campaigns designed to undercut the mechanism. So that would be one sort of general lesson. Another might be, you know, the need for-- strong internal and external oversight on how these mechanisms function, so they don't have their own-- s-- internal scandals that discredit their work. So there are some generally applicable lessons.

But mostly what we're looking at are-- various trade-offs, considerations under each area of design-- that need to be looked at-- so that a mechanism can be really tailored to the situation at hand, to the context, the political, cultural context-- you know, the-- the levels of political will-- the-- the degree to which a mechanism meets its-- intended purpose, you know.

And that's-- that's sort of the first element of mechanism design is defining, what is the purpose of this thing? Is it just to deal with-- a specific high-profile case or-- or handful of them? Or does it-- does it aim to more generally foster the rule of law in a country? Because those-- those mechanisms for one purpose or the other could look very different. And so really m-- for the most part, the handbook is about the-- the trade-offs in each area of design, from purpose to structure, to-- the mandate, the legal mandate-- to-- how it's financed, to-- to how oversight works-- et cetera.

PRISCILLA HAYNER:

And-- do you have examples in mind where-- where some countries made the wrong decisions? Like, because there are so many different routes that countries have taken. Is there a place-- are there places where you think, "Ooh, you know, setting up-- a new court is-- is really not as effective-- as setting up just a commission of inquiry, for example, or-- or some other approach?"

ERIC WITTE:

I think it's not so much ha-- sorta the decision to create a court or not, but sort of how they've done it. And it's not just-- countries that have made mistakes, but often, it's the international community that's made mistakes. So, for example, in East Timor-- the United Nations-- poured a lot of resources into-- supporting the investigation and prosecution of grave crimes-- and omitted to-- provide any support for the defense until very late in the proceedings.

And it really-- made such lopsided proceedings where fair trial rights could not be upheld that it-- it-- really discredited the process to-- to quite a degree. So I mean, there-- there have been a lot of mistakes made. And-- and the good thing is, we can learn from those-- so that they're not repeated.

I would say there's-- there's been an evolution over time-- to have mechanisms that are more integrated-- and-- and less sort of stand-alone, international-type mechanisms. Because there is more of a desire to-- foster the rule of law, to strengthen domestic-- judiciaries-- and-- and the capacity at-- at national level to investigate, prosecute, you know, do all the things along the judicial chain, protect witnesses-- adjudicate these cases. And that's meant a different kind of court being established over time, a preference for-- a model that's more tightly integrated with existing justice institutions.

PRISCILLA HAYNER:

And-- and could I ask finally the obvious question to sort of marry together the two reports that we have before us. Of the 33 examples you looked at, Eric, do any of those look deeply into financial crimes?

ERIC WITTE:

So I'd say that that's another recent trend is where-- where an accountability mechanism is at least open to the option of looking at the economic aspect of crimes. Even at the Iraqi High Tribunal, that was possible under the statute. I-- I don't think it was used at all. Similarly, in Uganda, it's sort of open to that. The proposed tribunal for-- Liberia explicitly-- mentions economic crimes.

The proposed African Court on Justice and Human Rights, which will be-- a regional court-- in Africa with-- with expanded jurisdiction-- over international crimes, explicitly includes corruption-- trafficking and other-- (COUGH) other such crimes. I-- I think Guatemala is a really interesting example, CICIG, as you mentioned. The-- the International Commission Against Impunity in Guatemala. Its mandate actually doesn't include core crimes, war crimes-- crimes against humanity or genocide. It's main-- the thrust of its mandate is to identify and dismantle parallel power structures.

And it-- it's been tremendously effective in doing that. And in fulfilling that mandate, it's really had a tremendous impact on Guatemala's ability to investigate and prosecute-- core crimes-- war crimes and crimes against humanity-- and genocide-- including the first ever domestic jurisdiction of a former head of state for the crime of genocide-- in-- in-- in quite decent proceedings, flawed by decent-- proceedings.

Because the-- it-- it strengthened the independence of-- the attorney general's office-- it strengthened the independence of judges-- not fully, but-- it-- it improved the independence of judges. And it gave them new tools, which they then applied-- to these war-time atrocity cases. So it-- even though that wasn't part of its-- its mandate, it was-- a benefit.

PRISCILLA HAYNER:

Thank you so much. Allow me to turn to Roxanna Altholz on my right-- who is a clinical professor of law at the University of California at Berkeley. And she was a member of the International Advisory Group of Experts, GAIPE, I think we call it-- in-- for its acronym in Spanish-- which looked at particular-- set of events in Honduras.

And it was one of those interesting examples of ways to try to find accountability when there's lack of movement and lack of-- initiative on many-- institutions' parts, including the state itself. So Roxanna, let me ask you, how did that GAIPE-- project work, and how did you all come out in your own investigations?

ROXANNA ALTHOLZ:

I want to also thank the organizers. It's really a great opportunity to have this discussion with-- with a great mix of folks and feels like a particular privilege to be on a panel with a former student. (LAUGH) So-- that gives meaning (LAUGH) to the clinical part of my-- of my title.

Yeah, so I kinda want to come at the question from a slightly different perspective-- and focus on-- civil society initiatives-- which can seem-- a strange way to talk about criminal prosecutions. So GAIPE is-- was a team of experts. It was modeled after the team of experts that investigated the disappearance of the 43 students in Mexico known as Je (PH). So I'm talking about the Ayotzinapa disappearances.

But-- when there was a negotiation to try to reach an agreement with the-- between the Inter-American Commission and the Honduran government to establish a group of experts with an official mandate, Mexico sent a delegation to Honduras and said, (FOREIGN LANGUAGE). Like, "Don't do this. Do not enter into an agreement with the Inter-American Commission-- that would establish a group with an official mandate and access to-- the criminal proceedings. That was a big mistake for us." And so Honduras refused.

And-- Berta Caceres'-- family decided to proceed nonetheless, and they chose a team. And with civil society support-- including the support of Open-- Open Society, we-- we started working, we started investigating. So Berta Caceres is-- is killed on March 2nd, 2016, and we initiated our investigation in November of 2016. In Latin America, and I think this is a really important component to this question about how to investigate and prosecute atrocity crimes, it's been a key ingredient to success-- in every country in Latin America where there has been human rights prosecutions. In Latin America, there's three parties to criminal proceedings.

You have the state represented by the public prosecutor, defense obviously, and then in many of these cases with varying degrees of-- of authority of standing, you have-- a private prosecutor. (FOREIGN LANGUAGE). It's called different things in different countries. And in Honduras-- under the Honduran constitution, you have a private prosecutor representing the interests of the victim's family in the criminal proceedings, and with the standing to intervene.

Intervene to request certain lines of inquiry, certain investigative activity with the authority to present witnesses and experts to cross-examine, et cetera. So robust intervention. So in July 2017, GAIPE obtained access not just to the criminal file, which we had partial access to the criminal file, we obtained access to about 55 gigs of telephone data.

That has increased over time. It's basically 350,000 text messages-- and call logs. So call logs-- logs of calls from private cell phone companies. So there were-- there have been nine people arrested in this case of the killing-- companies involved. And when they were arrested, the public ministry in Honduras seized their telephones. And then they extracted all the data from the telephones. Their contact lists, the images, the audios, and for us, WhatsApp messages.

The company was engaging in criminal activity and using WhatsApp as their primary vehicle for communication. So investigations have really changed in the last ten years. I think that-- we more readily acknowledge the way our lives has-- have become more public, so open-source investigation. We did social network analysis as part of our investigation.

But we're documenting more of our lives. Even our private lives. And so we had thousands and thousands of messages of-- the CFO, the CEO of the company talking with their chief of security, with ex-police person speaking-- about how to-- follow Berta, how to collect intelligence on Berta, how to corrab-- collaborate with the-- with the military and the police to undermine legitimate protests and-- and other acts by-- over opposition to the dam project by COPINH, which is the grassroots organization that Berta-- founded.

And through that, you really get a sense of what this criminal network was. And you get a sense of how the primary motivation is of course money. So if-- if-- if ultimately the-- the-- the purpose of this work is not to get the trigger men-- not to get the low-ranking military-- we have to pursue the financial end, because that's what really leads us to the intellectual authors. And we can see that-- in Berta Caceres's case. How money was motivating this very malignant alliance between the state, private company, and criminal organizations.

PRISCILLA HAYNER:

Thank you very much. Maybe I'll-- I'll-- I'll-- I'll turn to-- to Brian. I think we need to follow up on all of the speakers, 'cause there's so much-- material already on the table. But-- let me introduce Brian Adeba, who's directly-- direc-- deputy director of policy with the Enough Project based in Washington, D.C.

I know you've done a lot of work in a number of countries in Central and East Africa-- South Sudan amongst them. How do you see in your work, the inputs that we have from these two reports, both in terms of helping to think about options for accountability from Eric's report, or indeed, is there-- a new channel open for looking at the-- following the money and looking at the profiteers and prosecutions? I mean, I know that in the Enough Project together with Sentry, you all have been working on this angle for some time. But do you think there are new approaches that perhaps would strengthen the possibilities?

BRIAN ADEBA:

Thank you so much-- for the opportunity and also to-- Open Society. I think, w-- with regard to South Sudan, on which I have focused for-- quite-- a long time now-- we see that there is-- a desire somehow to explore the financial end-- of holding people accountable-- using local mechanisms, some of which-- the-- resemble what Eric has mentioned.

And with regard to-- the current crisis in South Sudan, of course there's a peace deal. And the peace deal stipulates the creation of the hybrid court. However, we go back to Holly's point about the challenges of pursuing the financial crime-- you know, based on-- factors like-- lack of expertise. And when you look at the-- peace agreement itself, there's a stipulation for the hybrid court.

And the language in the hybrid court seems to suggest or insinuate or-- point to the fact that there is going to be a prosecution of financial crimes. But it's not really explicitly clear. And-- that is an indication of the thinking of the people who crafted that piece of-- that language, that agreement. And-- and we're talking-- a context here-- a regional context of-- countries led by strongmen, dictators, and who see the opening-- of-- financial crimes as something that may come to bite them-- in the-- in the end.

And so what we see in this sort of ambiguous language is really an ob-- obus-- obfuscation by-- the political elite in that region. And so that gives us the-- picture of the challenges going forward. What other options are there? Well, I think when you look at-- wu-- fors--

for us here in the West, I think what-- what we do have, we have tools that are ha-- that are existent in the law books, that have been used successfully to combat-- drug trafficking, to combat-- terrorism.

And-- those-- legi-- pieces of legislation or those tools also allow for the prosecution of-- financial crimes in-- in-- in these countries. And so what we at the Enough Project and Sentry have done is basically-- followed the money as well. And we have been able to do that-- via the access of information that we get from-- whistleblowers. (COUGH)

For South Sudan, for instance, people are really just-- pissed off-- by the egregious corruption that happens and the lavish lifestyles of the-- people who are behind this corruption and the-- the lavish lifestyles of their kids and-- and all that. And so that information keeps coming out.

We've been able to collect that information and meticulously study it and make a case, and then use that information to go to policymakers here in the United States and say, "Hey, this is what's happening." And you know, you can point to a lot of things. You know, instability in the region is a threat to the national security of-- of, you know, stated-- as stated, you know, in the national poli-- security policy of the United States. Instability in that part of Africa constitutes a threat to the national interests. You can make a case-- regarding that to politicians.

And so what we've done is-- build those cases-- go to officials over here, and say, hey, this is what you can do to hold these people accountable. And so there's Global Magnitsky, of course-- which just came into effect a few years back. So there are countries in-- that have taken that into consideration, and those are avenues that can be utilized. They haven't been utilized enough.

You know, even in Canada, you know, some of the people that have been listed or targeted for sanctions in-- in-- in South Sudan, the political elites over there-- there's been no follow-up on holding them accountable. And so-- what we're trying to do is to continue building these cases and continue knocking on the doors of politicians in the United States, in Europe, and also in Africa.

I must say that it's-- it's a challenge, but it's-- it's-- it's doable. Some of our work has resulted in politicians taking-- taking-- you know, taking note. And-- there has been some follow-up action, and-- and we can say that-- we have been at the forefront of pushing-- financial pressures against perpetrators of violence in-- in-- in-- in East and Central Africa. And we've seen some results. However, this is still the beginning, that we need a groundswell of activity around that area, so that we hold more people accountable, and so that we end the crimes of-- against humanity, genocide in that region. Thank you.

PRISCILLA HAYNER:

So I want to ask you one more question, but after that, I'd like to actually open up the floor for questions, so feel free to-- I guess there's only one mic, so feel free to-- to stand up and line up behind the mic if you have questions. But Brian, if-- if I might ask up you-- follow-up, you-- you-- you said at the-- the-- there's of course the Global Magnitsky-- legislation, but could you actually tell us exactly what that is and how it works?

BRIAN ADEBA:

Well, Holly's probably better, best suited for that, but (LAUGH) g-- Global ga-- Magnitsky basically is-- is-- is a piece of legislation that tries to go after people who've committed crimes against humanity, and it's named after the Russian-- investigator that was-- held in custody by the Russian police and-- and-- and-- and I think died in custody.

And then, after that, of course, there was a groundswell of activity to sort of create-- a piece of legislation around that, to hold people account-- co-- accountable. And some countries have adopted that, the United States being one and I think Canada. But-- I think you-- there's still much more work to be done in Europe, right, if--

HOLLY DRANGINIS:

And just to add, global magnit-- before Global Magnitsky, there was no channel-- no formal channel for the U.S. to sanction individuals for acts of corruption. This is a groundbreaking law, because now the U.S. can sanc-- pun-- can put individuals and companies on sanctions lists anywhere in the world for both acts of corruption and acts of violence or intimidation against individuals who are blowing a whistle on corruption.

So it creates-- coercive powers-- that apply broadly and sort of elevates the importance of corruption globally when it comes to-- you know, the-- the priorities of the U.S. government and intervention efforts. And already, you know, when Global Magnitsky was passed, there was a question of, well, is it going to be used? How are the authorities gonna decide who to designate? And so far, there have been a number of individuals and dozens and dozens of companies-- related to East and Central Africa-- and-- and other parts of the world. So there's been a diversity of use of the law.

And just, since we're talking about prosecutions-- and litigation, Global man-- Magnitsky is a sanctions law, but-- there's a law in the U.S. called IEEPA by its acronym that allows for litigation around the-- the violation of sanctions.

So Global Magnitsky not only created this way of sanctioning individuals and entities for corruption-- but-- but, if a company or an individual is found to then violate a sanctions order, say, they continue to do business with someone who was sanctioned who-- for

corruption in the Democratic Republic of Congo. If any U.S. companies or persons continue doing business with them, they can be-- brought to account in U.S. courts.

ROXANNA ALTHOLZ:

Can I ask you a question, Holly? Sorry. I'm just curious, 'cause I think in a lot of these conversations, we don't ever talk about what I would consider the primary tool the U.S. uses to combat corruption, which is extradition. So the United States, you take Mexico, for example.

There have been, I think it's now seven governors, or former governors-- governors of Mexico that have been extradited to the United States to face money laundering, extortion (COUGH) charges here. And the United States is very resistant to acknowledge, you know, their involvement in atrocity crimes. Yet, they are being extradited and prosecuted.

And I'm Colombian, so I have-- I'm not trying to advocate for extraditions, because I think it is a flaw-- (LAUGH) but I do think it's important to acknowledge this-- this tool the U.S. uses in countries like Mexico and Columbia, sometimes to the detriment of-- of human rights prosecutions-- and sometimes in lieu of human rights prosecutions. So I was just curious to get your-- your take on-- on criminal extraditions.

HOLLY DRANGINIS:

Yeah. I'm-- it's not something that we have the, almost the privilege of dealing with much, when it comes to our part of the world. I think what-- when it comes to the-- when I say our part of the world, the region of the world that we focus on. I think it begs these questions about Eric's work, which is, are there strong mechanisms of justice in the country where crimes are committed?

And how do we do that assessment? And-- and (COUGH) where, you know, this question of where is justice best done for certain crimes? I think the-- Eric's work and this question of financing in the prosecution of war crimes opens that conversation up in a way that's really important, and where there's such a diversity of opinion. (THROAT CLEARING)

You know, the part of the report-- on bringing financial investigations into war crimes cases talks about how we should follow the money to any jurisdiction that can prosecute the crimes that are happening in-- in this very violent part of the world. And that has costs. It's-- those are gonna be cases that are far away from the populations that are most affected. At the same time, that-- it-- it-- having jurisdictions in Europe or North America, for example, prosecute actors who are responsible, either com-- by complicity or co-perpetration or-- direct perpetration, prosecuted in these developed-- legal systems for war crimes that ha-- that took place in foreign territory has benefits.

And certainly has a symbolic value to say, it doesn't matter where you're operating. It doesn't matter where you can fly to. You will face justice-- and-- and that justice authorities are not

just going to take a narrow lens and put it on the place where the-- the actual violence happened and only prosecute within-- that narrow frame, I think is-- is really important and relates back to extradition--

BRIAN ADEBA:

Can I sort of jump in? I think also the-- you know, just going back to that question, is the issue of nexus. What's the ne-- the-- the U.S. nexus-- here that may allow that kind of prosecution. I think when you look at su-- South America or Southern America, I think most of the drug-related-- related crimes there have a nexus to the U.S. And maybe that's where prosecution happens.

However, also-- the-- (COUGHS) in our region, the region that we cover, the use of the U.S. dollar is another point that gives the U.S. jurisdiction to go after-- after these-- these-- these criminals. Every transaction that happens-- anywhere in the world in U.S. dollars-- is traceable back to the United States.

And-- the tools available here allow officials to-- sort of look at where that money originated from-- find out who the person behind that transaction was. And if that person is complicit in some of the crimes that we're discussing here, then they can be held liable under U.S. law. And that's-- that's a very powerful tool that needs to be utilized more. Thank you.

ERIC WITTE:

Just-- briefly on Mexico. I mean, the United States looks at Mexico very much through the lens of the drug war, and that's problematic. On the other side-- Mexico has never successfully investigated and prosecuted an atrocity crime really-- or a grand corruption case-- because the judiciary is so politicized, because there's such a lack of political will, such political obstruction to accountability in these cases.

But it's, I think, worth noting that there's now, with the new government in Mexico, there's-- there's a discussion about the creation of a mechanism in Mexico that could deal with atrocity crimes and corruption-- that's linked. And even ahead of that-- there have been some cases in the U.S. against-- leaders of cartels-- in Texas and-- and other jurisdictions-- that have generated quite a lot of useful information, that could eventually be used for domestic prosecutions of-- some of these same cartel leaders and some of the implicated governors-- the governors who are implicated in-- in collusion with cartels-- down the line, we hope if there's political will.

PRISCILLA HAYNER:

If, I don't know if there's questions from the floor. Because of the-- because they're taping this, people do need to stand at the mic to ask a question, and we're happy to take questions. Yes, please.

GORDON SKINNER:

Oh, okay. A/V work. So first--

PRISCILLA HAYNER:

If you could introduce yourself, that would be terrific.

GORDON SKINNER:

Okay, my name is Gordon Skinner. And-- first, the-- the-- the terms liability, culpability immediately come to mind, and recognizing (THROAT CLEARING) as you introduce complicity, I'm also thinking about the United States' role. So it's very easy to look out, but-- and it's interesting when you talk about what's not happening in the Mexican courts, insofar as what is occurring in Mexico.

But I would be interested in seeing how that view would be, you know, how those courts would operate if, you know, the United States was being held accountable. And so within that, I'm also, I would like to know about-- is there a mechanism or is there a mindset of actually shifting-- you know, corporate involvement and holding individuals criminally accountable? It's very easy to hold a corporation accountable. It's a civil liability, it's a civil case, but actually recognizing those individuals are culpable.

Last point I want to make is one with regard to the stakeholders-- or the victims. They're not-- their voices are not always sacrosanct as well I think they should be. I believe a lotta people do. However, the ICCCR, by example chose not to take the voices of the victims from the Democratic Republic of Congo-- sh-- Sudan, as well as Uganda and Rwanda, when they were looking to-- when those countries were agreeing to give Joseph Kony immunity if it got-- if it ensured peace. The ICCCR's position was that, the world court, you know, was prevalent. So I just want to know if there's anything that you'd like to address or respond to. Thank you.

PRISCILLA HAYNER:

Since there were several questions invited there, perhaps we'll turn directly to the panel before taking our next questions. Holly, would you like to begin?

HOLLY DRANGINIS:

Sure. Thanks. Great questions. On the point about the U.S.-- you know, part of our work that create-- that we think creates more opportunity for-- accountability is talking to U.S. authorities about assets that are criminally derived that are in the U.S. where-- authorities

would have-- power to seize-- those assets, as at least one measure of intervention in certain-- commercial and criminal networks that are doing business in-- East and Central Africa.

And, you know, those-- with mixed responses, in terms of how-- interested authorities are in-- in doing that work. Here in the U.S.-- that also relates to certain companies that are U.S.-based. So I think as this work continues and-- deepens, there-- we will hopefully start to see some of the U.S.-based companies and individuals and properties that are here-- face some consequences or-- be part of the accountability-- mechanism.

I'm glad you brought up liability. I think-- the-- one of the points that we were talking about earlier about, are there financial mandates-- in these different mechanisms? It is important that finance and financial crimes are included in certain mechanisms, certain courts. But something that-- that I-- I think is really important is that the liability schemes are essentially-- mandates to-- can be mandates to go after financiers without the actual terms of economics or finance in them. So a mandate to go after financiers doesn't necessarily have to have those terms in them. What we're talking about is, what it means to assist a crime, what it means to co-perpetrate a crime, what it looks like to have a conspiracy that might be occurring in Europe that relates to crimes in the D.R.C., for example.

So it's-- as-- as, you know, this work unfolds, I-- my hope is that practitioners won't just say-- won't just sort of scan and look for, do we have the power to prosecute financial crimes or prosecute financiers? But that they're looking at the core crimes and saying, who-- who is in this web, and who are on the concentric circles that could be part of this crime? And see that a lot of them are financiers, or they're shipping companies, or they're legal service companies-- helping move money.

So-- the-- the development of-- case law around liability is really important too, and that's in the report. That case law is getting-- kind of more flexible when it comes to actually hooking folks that might be very remote actors but nonetheless have a central-- role to play in crimes that are occurring in this region. I'll-- I'll stop there-- and let the (COUGHS) rest.

PRISCILLA HAYNER:

I think Brian, and-- and then Roxanna, and I don't know if Eric-- Eric also had-- and if you all could address. You may have-- ma-- this may have been embedded in your point about liability, but one of the questions I think you asked, which I think is quite confusing conceptually is, how can corporations be held criminally responsible? Like, what does that mean, not just civilly responsible. If-- if one of you all could address that in-- in your contexts. Roxanna. (LAUGH)

ROXANNA ALTHOLZ:

I-- I don't know if I'm gonna address that. I-- I think-- I-- I think that right now, especially given increased hot-- hostility towards-- accountability for human rights, for atrocity crimes,

I think it's really important to acknowledge the limitations of these sta-- state-centric models that we've been engaging in.

I-- I think that-- at least in the Latin America context, which is the context I'm familiar with-- and I-- I-- I don't want to speak to this as being, like, a global-- trend. It's really been through the-- the private prosecutors. The private prosecutors that are being-- pushed by family members really, and who are in turn pushing the state-- towards human rights prosecutions that we've seen progress made.

I think secondly, I would say, we need to acknowledge that-- civil society has power in this conversation. Even though it's about criminal accountability, we're really talking about who has access to evidence. And more and more open source investigation is-- uncovering-- patterns and specific facts that are important to criminal accountability. And because of the, again, returning to the-- the concept of private prosecutor like in GAIPE, that's how we got access to thousands and thousands of pages of edi-- evidence.

I also think we need to internalize the limitations of legal accountability. And not become so focused on what is a crime that we lose-- the possibility of exposing corrupt networks that are engaged in mass violence. I think partly-- what GAIPE was able to contribute to was confirmation of a narrative, confirmation of the experience of grassroots human rights defenders.

And-- and that confirmation was powerful. Not everything that we-- documented was a crime. (COUGHS) But it did expose-- the players in the ni-- network. And lastly, one thing that worries me about financial crimes-- and-- and making that a central point of-- of-- of pursuit is that, you lose the victim. In homicides, mass murder-- torture, there's a victim, but in money laundering, there's no victim. Not legally recognized.

I spent seven years litigating a case in federal court-- here in the United States. And we were ultimately successful, but it took us seven years to prove that there's a victim of a drug conspiracy. The United States has played a horrendous role in countries like Columbia, in helping impede efforts to expose that-- relationship between drug cri-- drug conspiracies and mass violence.

And-- we-- we were successful in proving that there's a victim of a drug conspiracy, because of the particularities of the way paramilitary violence operated in Columbia. But how do you, with the loss of the victim, where is the moral authority and the pressure to really pursue these financial crimes? (NOISE)

HOLLY DRANGINIS:

Sorry, Brian, did you want to say?

BRIAN ADEBA:

No, please.

HOLLY DRANGINIS:

Okay. So one-- so I'm so glad that you raised this. One of the-- recommendations that we have is that victims and survivors and civil society groups are-- when-- when prosecutions are going forward, when criminal investigations are happening that-- the-- the vast evidence that these-- that individuals and communities have gathered about money laundering, have gathered about extraction of natural resources and how that impacts their lives, that that comes in to the investigations.

That-- you know, formal victims and formal witnesses to these investigations are not just asked about direct violence, but also asked about criminal networks and commercial networks. We spent-- a month out in-- Northern Uganda in refugee-- camps with-- speaking to South Sudanese refugees who had just come across the border.

Women-- I spoke to a woman who was raped by government soldiers. She could identify her-- her perpetrators. And when I asked her about the motivation of the crime, she said, "They're thieves." She, and she, you know, she could describe her everyday life living in a system of theft and extraction and displacement based on greed. In turn, we've gone up the chain and looked at the corporate profiles of the commanders of her assailants, and they are robust. These are individuals with-- you know, stake and stock in dozens of companies that can be investigated, that can be-- be looked at.

And-- in our experience in the communities with individuals who are suffering from these violent crimes, they-- there is a lot to say about who the victims are of money laundering, of theft. And the financial motivations of-- perpetrators of violent crimes.

ERIC WITTE:

Just on this question about, you know, losing the victim, I mean, I-- I think that's an important point. I think, what we see in Guatemala though makes me wonder about the potential of the financial aspect of these crimes-- the potential for that aspect to broaden the constituency for accountability.

Because-- in-- in Guatemala, you've had these groundbreaking trials related to the 36-year civil war. And-- and the vast majority of the crimes targeted the marginalized, indigenous community. And-- and Guatemalan society all these years after the end of the Cold War remains-- starkly polarized along Cold War lines, right?

And the-- you have the old military aligned-- rightwing that views indigenous people-- the leftwing as-- as Communists and anti-state. And-- and-- and it's really deeply polarizing. But

in 2015, when CICIG uncovered a corruption network that implicated the then sitting president and vice president of Guatemala-- youth born after the conflict led-- an opposition movement.

And people poured out into the streets. And you had people from the business community that were aligned with the military right, and you have leftists in the street together-- supporting CICIG, this accountability effort, that brought down that president and that vice president and sent them to jail. And I think there's-- there's something to be explored there.

You know, why-- why did CICIG become so popular for uncovering a corruption network, when the domestic judiciary had been doing these very difficult accountability cases related to the-- to the conflict that remain deeply polarizing?

And if you can do more to marry those issues, can you broaden the constituency for-- independence of the judiciary? For-- you know-- a capable, independent attorney general's office, that's capable of addressing a range of-- of laws, and in a system that's not seen as-- where the jud-- judiciary isn't seen as weaponized along-- societal fault lines.

ROXANNA ALTHOLZ:

Yeah, just to clarify. I was talking about recognition of-- legally of a victim, and I think, yeah, those comments are-- are important. You know, in Latin America unfortunately, for example, Fujimori is a great example, a mass murderer. What really riled the population in opposition to him was corruption.

HOLLY DRANGINIS:

That's true.

ROXANNA ALTHOLZ:

Right? Not the-- not the human rights atrocities.

PRISCILLA HAYNER:

Okay, we have a couple people patiently standing in line. Please.

FEMALE VOICE, UNIDENTIFIED:

First off, thank you to the panelists for all the important work you do, 'cause it-- it-- thank you. I'm sort of following up on this gentleman's question. I'm-- this will be hard for me to articulate it, but my background is in large document reviews on international fraud.

I read the Latin America languages, so I do a lot of work on Petrobras, which was in Brazil, on Pemex, which is in Mexico. And you see the same pattern of fraud where, in order for-- a big company-- like, a group of big companies get together and collude and say, "Look, we'll take turns getting the contract-- and so that way we can raise the amount of money we get. And we'll include the politicians and give them a bribe."

And I've seen it everywhere. I actually-- because of my experience, I see the same pattern over and over. I wonder what's going on our border-- with the migrants. Like, who's getting paid for the trucking? Who's getting paid to build the tents and to feed the children, and what sheriff is getting money in their pocket? But that's another story.

Anyway, the-- the-- I-- thing I keep hearing from you guys is, where is the expertise? I'm coming from a place where I'm hired as, like, a hired gun by the hour, but there is a ton of expertise in the large law firms going after financial crime. They're not looking at what you're talking about 'cause it doesn't pay. But there's a whole aspect to big law firm process of pro bono work. And I suspect you guys could package yourselves to perhaps try to get these big firms who work on the Petrobras cases and the Pemex, and the way they're able to-- like, you brought it up.

You know what I'm talking-- where is their standing? And, like, I, you know, the-- the hedge fund that got-- that says, "You misrepresented us, you know, you didn't tell us you were bribing people, so we invested money in you and we lost money." Or the pension fund or-- so that's where we get U.S. standing. Or there's a factory in U.S. soil. So that's where we get the standing to go after them, and they hire me.

But there's a ton of expertise that's getting funded by billion-dollar companies. And the numbers I'm seeing on these projects are ridiculous. Maybe, just a suggestion. There's expertise out there that you could tap into, and I think people do have hearts and they would want to help. Anyway, it's not a question. It's just a comment, and I invite, as if that were a question, what do you think? (LAUGHTER)

PRISCILLA HAYNER:

You made it into a question, which is very good. I think there's a couple more people in line, but perhaps we'll take a quick comment on-- on that, before we take more questions? It's very important--
(OVERTALK)

ROXANNA ALTHOLZ:

I think it's-- it's really interesting. I think that, you know, human rights work historically has been so narrative driven. So we obtain the declaration of the torture victim, and based on that narration, we can move forward with it. But the way abuses especially-- involving land and environment are being conducted, we have to understand-- we have to take in a lot more data.

So yeah, I worked on this case, I worked with-- machine learning, artificial intelligence. I got one of these big Rule 26 firms, so the data analysis. I worked with data scientists. And you-- we have to learn more about how to deploy those tools effectively in the context of human rights. I would love your card. (LAUGHTER)

I think that we're thinking-- a few of us in Latin America are thinking about how to replicate the experience of GAIFE, so a civil society-led initiative and build out an investigative unit that certainly will rely on pro bono-- law firms for some support, although there is problems around conflicts. So some of the firms conflict out-- which is problematic, but it is what it is. Thank you so much.

HOLLY DRANGINIS:

Yeah. I-- I also just want to say thank you for that comment. The Sentry has-- has been-- we sort of, when we were building our model was in part to sort of start to bring some folks in, whether they were at the end of their careers or-- working closely with law firms and pro bono help.

Because we were a human rights organization that understood a lot about this region, a lot about atrocity crimes in this region, and needed the financial expertise to sit alongside. And now through our investigations with that hybrid approach can al-- can now help authorities or prosecutors, sanctions authorities with the-- the marrying of the two. And it's invaluable, so thanks.

PRISCILLA HAYNER:

Perhaps we could take another-- another question?

ANNA MEHRABYAN:

Clearly too short for this microphone. Hello, my name's Anna Mehrabyan. I'm from the Council on Foreign Relations. My question was, I guess, taking a quick zoom to a different part of the world. I'm Armenian, so I, like-- I see this I guess through a different lens.

Because you were talking about-- building-- integrating into local justice systems, and you were mentioning how one of the problems is that there aren't-- there isn't enough expertise to try these crimes. And that's so clear in Armenia and in other-- Eastern European countries.

And I guess I was wondering, how do you try corruption, and how do you build out local-- judiciary systems at the same time, without necessarily I guess outsourcing those-- those justiciable issues, and the issues of corruption to another country?

Because, as much as it's kind of nice that the U.S. has a robust judiciary system that can prosecute Mexican-- Mexican governors-- it's far more helpful for countries to be able to do

it themselves. So how do you, I guess, harness that expertise and build it out, and integrate a justice system-- but in a place where I guess, like, asset tracking is not something they do-- or there isn't that expertise to begin with? Thank you.

PRISCILLA HAYNER:

So we could take another question, just so we have two to grapple with, to make sure we have time for everybody.

TANIA BERNATH:

Hi-- hi. I'm Tania Bernath. I'm actually working with-- a group in Liberia doing work on war crimes. And what I've noticed is, I mean, and I also do other work there on economic-- or environmental and other kinds-- and crimes, and the-- there's such a vast difference between the groups that focus on war crimes and then the groups that focus on-- environmental or labor rights or anything.

I was doing work with Firestone on one hand, and then on war crimes in another. And it's, you know, and-- and just, like, listening to everybody-- I mean, it is that issue around expertise. The-- the group that I'm working with on war crimes is just struggling to do that part. They're a local group, and they're just really learning how to do that. And then on the other side-- it's almost, the-- they're just two completely different worlds.

And I know, like-- and, you know, even in Liberia, as-- Eric mentioned, it's-- there's a war and economic court being proposed, but the economic part doesn't get a lot of play, because no one really knows how to do that. So-- it's just interesting, 'cause-- I do think that there could be some models, but it's-- it's really hard just even to do the-- the war crime case-- part-- you know? And I just, I do wonder-- how on the ground that that could-- that-- that could really, what that really could look like.

I don't know, 'cause it does feel like it's really high-level expertise that's needed for that. And I know just from the work doing environmental or labor work, it requires, you know, testing and-- and, you know-- scientists, and-- and this kind of thing. I don't know. So anyway, just-- more of a comment I think, rather than a question.

PRISCILLA HAYNER:

Those two questions were directly linked, it seems. Eric, do you want to, and then Holly, and then others here?

ERIC WITTE:

So-- how you build expertise in a country-- you know, to deal with this domestically is-- is a huge question that-- that a number of countries face. I mean, the-- there's-- desire among

many in the international community-- multilateral institutions, donor states, whatever, to view-- view these as purely technical questions.

You know, let's provide capacity support and do a bunch of trainings and workshops. Often, there's (COUGH) underlying the lack of capacity, which is usually a real issue is lack of political will, which is more fundamental. So even if you're doing those things, you're allowing the local government to say, "See, we have will. We're doing-- we're participating in your trainings and workshops." And meanwhile, maybe through other means, or just through inaction-- nothing is proceeding.

So I think-- generally, the international community has to enter into these-- arrangements with a bit more skepticism, a bit more-- thinking about how to leverage the political will side of things before agreeing to-- provide expensive technical capacity-- support. But there are situations where there is genuinely a government that-- is willing. Maybe there's been a change of government or-- as in Armenia. (LAUGH) And-- and there is newfound political will. And-- and I think there are a number of experiences that provide lessons.

And I think one innovation from Bosnia that's quite interesting was that there was-- an involvement-- sort of-- inter-- internationals were plugged into the domestic system-- but temporarily. And that's a really interesting idea, because I mean, in-- the theory is that the international experts-- are working alongside locals on cases.

So it's not just providing-- a training, but they're actually advancing cases through the system. And then-- you know, and passing along their knowledge and expertise in the course of doing so. And then they leave, and they leave behind-- national officials who are capable of doing these things on their own. And we've seen that-- that work in Guatemala quite-- quite well-- as well with CICIG-- working alongside the attorney general's office.

I mean, the-- the one problem with the Bosnian model is that, if you say, okay the internationals phase out over time, and they're all gonna be gone in a few years-- anyone interested in obstructing the justice process-- is going to try to wait out the-- departure of internationals. So I think one improvement that could be made to that particular model, for example, would be pegging the phase-out of internationals to particular-- benchmarks of independence and, you know, and performance of-- of the local justice system. But there is-- in-- in the handbook, there is some discussion of this question of how you-- build the capacity of-- of a domestic system to deal with these crimes.

BRIAN ADEBA:

If I may jump in and-- expound a bit on-- on that point. Yes, there is-- there is reason to believe that-- local capacities can be strengthened to sort of go after financial crimes. (COUGHS) But again, coming back to Eric's point, it's-- dependent on the lack-- on-- on the availability of political will.

So let me just give an example of South Sudan. There's absolutely no political will to prosecute any corruption case, and when you look at the capacities, local capacities that are existent in the-- legislation in the law books-- these-- these capacities or institutions have all been stymied. So through various means.

The anticorruption commission, for instance-- is incapable of-- pursuing anyone-- because of-- (COUGHS) conflicting legislation that governs its work. The constitution mandates it to prosecute-- financial crimes or go after cor-- corruption. The local act that governs its-- daily activities doesn't. And this incompatibility is left deliberately on the law books. No one wants to pursue reconciling these disparate pieces of legislation.

There's also the issue of-- appointing cronies to head these institutions, so that they look the other way. And so-- that is one. The other third-- factor at play is, how these institutions (COUGH) that are supposed to hold-- people accountable are actually-- starved of the funds that they're-- that-- that they're required to operate. So in this instance, then, you-- you find that-- they're underpaid, the staff are underpaid. They don't have the facilities. They don't have the equipment, and they lose their staff.

Retention is a problem. They lose the staff to other people. What does that mean-- in the end? It-- it-- it means that, because of this-- lack of political will, there is still a role for outside organizations or mechanisms-- to pursue these type of-- processes to hold-- these-- individuals-- complicit in corruption accountable. So even within-- in-- within South Sudan, there is a complete lack of faith in the systems of the country to actually combat corruption.

And so from civil society, from individuals, what we really see is that evidence is being gathered-- from WhatsApp messages, from cell phone pictures and all that. But they're-- they're being sent outside to-- to the South Sudanese diaspora. There's-- there's a large South Sudanese diaspora across the world.

And all these messages are doing the circulation on WhatsApp-- groups-- and all that. And that's a treasure trove of evidence. And it just also requires that those who are working outside-- take due diligence to collect and-- and gather that information.

HOLLY DRANGINIS:

Well, I was just gonna respond to the second question. Just the-- the comment reminded me verbatim of-- what some of the prosecutors at the ICC said-- when I met with them about this. You know, just-- just prosecuting the core crimes is such a heavy lift, and there are so many challenges, that how do we even consider bringing in this other mandate or taking on these other-- streams of investigation?

And-- I think that's-- clearly, there's reason to feel that kind of overwhelm. The ICC actually began with-- a financial intelligence unit within the court. And-- that was something that was actually disbanded because of siloing. And (THROAT CLEARING) it's come off-- came across as if there was a sort of deprioritization of financial investigations.

And a lotta the cases didn't even look at-- economics and finance. Now we're seeing a shift in the ICC cases where, instead of having a financial unit that's separate, basically the prosecutor, the now chief prosecutor, Fatou Bensouda, decided, this has to be an integrative effort.

So now more and more, the prosecution teams have a single person-- on each of the cases, or someone who c-- comes around and integrates into the different core crimes investigations-- to-- to really run alongside and have-- more integrated conversations. So with the Liberia example, you know, there will be some situations where a case against Firestone goes along separately from a case-- about a massacre against a community.

But I think, one of the lessons we're seeing is that, to start with integration is-- is a good idea. To start, even-- even if it feels disparate, I think the-- the links will become clear. And-- and make the decisions from there once-- once there is conversation between both sides how to move forward.

Because starting off separate feels natural, but if-- if the integration happens from the beginning-- there-- there will often be links that make sense, and where the financial investigations actually s-- make the-- the job of the core crimes team easier. Where linkage evidence comes up and is stronger-- or motivations and-- conspiracy structures become clearer that have nothing to do with a corporation being a defendant-- but that actually make the core crimes cases stronger.

ERIC WITTE:

Just briefly to add, and I think-- we've seen as the ICC has struggled with its-- investigations and prosecutions-- one of the many problems it's faced is an overreliance on witness testimony. And there's a real need to diversify sources of evidence. And this is an important stream of evidence that shouldn't be neglected.

PRISCILLA HAYNER:

That's a very good point. All right, last question, please, and we'll finish with this. We've got a couple minutes left.

MARY DAHDOUH:

I'll try to make this question-- I have two questions. I'll try to make them quick, and maybe we can just get some final thoughts on this. My name is Mary Dahdouh. I'm actually a former student of Professor Altholz. And I kind of come to this-- to this topic of conversation from a dif-- different perspective. I work as an attorney with the International Refugee Assistance Project.

And working with displaced communities, talking about international justice and peace, it's a lot of wait and see, or we have lost hope. And I think a lot of this conversation dealt with justice after the fact. So I was wondering if-- if atrocity prevention is part of the conversation at all. And-- and-- in what ways can kind of following the money lead to prevention, as opposed to just waiting until-- acon-- an armed conflict is over to actually start pursuing-- justice, or ways to maybe further prevent atrocities in the future.

Especially thinking about Yemen. That has been at the back of my mind for most of this conversation. We talk about following the money, and it leads us directly to this country. So-- so what can we do in situations like this where following the money leads us to a very obvious place-- but it doesn't necessarily fit into the mechanisms and the structures that we've been discussing tonight.

My second question-- is, within the scope of-- of U.S. case law, especially following-- the Alien Tort Statute and its development over the last 20 years, I think there was a period where there was a lot of interest in corporate accountability under the Alien Tort Statute.

And then Jesner happened, and it was very clear that there was not a lot of political and maybe even judicial will in the United States for-- for corporate responsibility. And, of course, that conversation kind of happened outside of international justice.

We're talking about criminal proceedings through civil proceedings. They're very different. But in what sense at all has kind of the-- the U.S. approach to corporate accountability kind of shaped the-- the global discussion about following the money? Thank you.

PRISCILLA HAYNER:

Excellent. Who would like to?

ROXANNA ALTHOLZ:

I am so lucky.

PRISCILLA HAYNER:

No, one thing we have proved tonight is that Roxanna has excellent students. (LAUGHTER) So well done, thank you. Would you like to respond first, if therefore? Or others?

ROXANNA ALTHOLZ:

I-- I-- (UNINTEL) financial crime atrocity prevention is such an interesting one. And I think that probably Holly and Brian and Eric are in a better position. I-- I did want to reflect on what we saw in Berta's case. So Berta's killed-- it-- it's like death by neoliberalism.

(LAUGH) It is. I mean, I don't want this event to conclude without talking about capitalism and neoliberalism, 'cause it's so core to this conversation.

It was death by neoliberalism. She died because she was successful in opposing a dam project. Honduras had given the green light to 70 dams. (NOISE) Sixty of them built, were going-- were planned to be built on Lenca territory t-- so indigenous people's territory.

She had founded a grassroots organization, and she had spent years opposing this one dam project on a tiny river in Honduras. And she had successfully opposed the-- the project. So the company, the Honduran company that was going to build the project was started with \$0.5 million in capital. And over two year-- three years, they were able to obtain \$35 million from international development banks.

And-- and-- and I think it's important-- I mean, there were all kinds of red flags when you look at the record. So there was-- a strong effort to boycott-- to-- to-- so direct action being taken by the grassroots organization where they blocked the-- roads leading to the dam in 2013. And there were raids, there were killings, there was-- rapes-- there was all kinds of-- crimes (THROAT CLEARING) of violence committed around that opposition.

The international development banks had consulting companies on the ground doing reports, monthly reports about the conflict. And yet, the money kept on floating-- flowing. When we looked at the WhatsApp texts, what we saw were indications that the money that they were getting from the international development banks were being used to hire and build out their public relations team, their security team. And-- and-- and those were the individuals most directly responsible for the surveillance, the monitoring, the violence.

We saw one text where the CFO of the company, a man named Daniel Atala (PH)-- who-- the Atala family's one of the most powerful families in Central America, WhatsApp chats with the president of the company, a former military intelligence officer, and says, "You've gotta go to our office and get the money. Remember there's only 65 left. You can only use 10 for the minister."

So we don't know exactly what's the financial motivation behind, but there's certainly strong indications that these alliances were being built on money. So I think that our systems for kind of monitoring how money's motivating these atrocities are entirely la-- lacking. But there is a way to follow the money for prevention, not just response.

PRISCILLA HAYNER:

Excellent. Do-- I'd like to give each panelist-- a time for final word as well. Brian, did you have anything you would like to add, either in response or otherwise?

BRIAN ADEBA:

(UNINTEL) response. Yeah, I mean, like, the waiting game is-- is-- is a reality. I think that-- you know, for the regions or the countries that we cover, we were fortunate enough to have had an organization that has been-- around for more than a decade, but and had been following the human rights angle.

And so it just, it was-- I would say, it was-- easy to s-- switch from just-- focusing on eyewitness accounts and the-- the usual human rights-- way of-- gathering evidence, to-- to the-- to the financial-- aspect of it. And-- and so-- so for-- for the regions we cover, we-- we-- we are fortunate that-- that we have that kind of-- institutional history that was able to make that switch very easily.

With regard to countries like Yemen, I-- I-- I-- I do agree with you that that's a challenge. And-- and-- and-- and it be-- it behooves those of-- those who are here who are concerned about Yemen to-- to-- to change their perspective of how to view this conflict, not only just focus on the human rights angle. In every war, someone's getting paid all the way to the bank, and so important to switch our perspective.

ERIC WITTE:

As a final word-- maybe just to note-- there's-- there's been a lotta talk about the United States in various contexts. And I-- and I think-- (COUGHS) the United States has been-- a player for good and ill-- on international justice, and very much it-- it's positions are-- have been colored by-- the various administrations' views of U.S. national interests.

And so, at times, the U.S. can play a very positive role. Until recently, there was a bipartisan consensus-- in-- in favor of the accountability-- mechanisms in-- in Guatemala. The nash-- the domestic trials for-- grave crimes, as well as CICIG's work on anti-corruption. The U.S.-- until recently, you know-- has been-- still officially is-- is supportive of the creation of the hybrid tribunal in South Sudan.

The-- the U.S. was instrumental in creating the special court for Sierra Leone. But then, it gets complicated, because you know, for example, in Sierra Leone-- then the court indicted Charles Taylor, the former-- president of Liberia, and the state department said, "Ooh, that's gonna be disruptive to stability in the region." And so it took a lot of convincing and pressure ultimately by the U.S. Congress to force-- an administration to change its policy, the Bush administration.

And then, when it comes to crimes perpetrated by the United States in Afghanistan of course or-- or-- in-- in the-- the war against terror-- you know, you see-- utter hypocrisy and outright opposition. The U.S. saying, "We don't need the ICC because we have the best justice system in the world." Well, you know, the president's about to-- is about to pardon-- suspected war criminals, and there've been no prosecutions for what the last president admitted was torture.

And-- and, I mean, there's recognition also in countries around the world, that the U.S. plays a central role, and an increasing-- willingness to try to manipulate the domestic system to that end. In South Sudan, just a couple weeks ago, a very crass situation came to light. The government that signed the peace deal that included an agreement to create a hybrid court hired a group of senior, former U.S. officials-- ambassadors-- to lobby, among other things, lobby the U.S. government to prevent the creation of the hybrid court.

So to oppose stated U.S. policy, possibly in violation of U.S. sanctions. In Guatemala, you know, the-- the bipartisan-- consensus around supporting rule of law in Guatemala, supporting CICIG-- fell apart-- under this current U.S. administration-- because the president of Guatemala who has been implicated and come under investigation himself-- cut a deal to, you know, move the Guatemalan embassy in Israel to Jerusalem-- immediately following the U.S. d-- doing the same thing.

And that resulted in, largely is what resulted in a shift of-- of U.S. policy on CICIG. And-- it's-- it's-- just something to watch out for as we look in all this. I mean, the U.S. can play a positive role, but is-- is an 800-pound gorilla and-- and needs to be reckoned with-- in-- in all of these situations.

PRISCILLA HAYNER:

Holly.

HOLLY DRANGINIS:

Yeah. Just on the point about prevention. It's so important. You know, the armed conflicts in South Sudan and the Central African Republic are ongoing. Just this month, earlier this month, a U.N. panel confirmed corroborating evidence that two outspoken critics of the South Sudanese government, Idri Aggrey and Samuel da-- Dong-- were executed by national intelligence in a detention center in Juba.

They were two of many activists who-- uncover the links between violence and corruption. And there are many more, many of whom we work with, who are the-- they dedicate their lives to this work, and-- are threatened severely for what they do. (THROAT CLEARING) I think one thing that we can certainly talk about when it comes to prevention, or at least intervention while armed conflicts and this ka-- these kinds of threats are going on, is the role of sanctions and anti-money laundering measures.

These are-- more rapidly d-- deployable-- actions that can, if used in right ways-- be effective in breaking up some of these criminal networks-- and-- and stopping money flows. The-- the role of big financial institutions, global financial institutions and-- and the f-- the financial authorities within governments all over the world has not nearly been tapped enough. At least when it comes to this particular part of the world-- and atrocities prevention as a goal.

But there is authority that they can use to warn banks about the risk of money laundering, to have very targeted-- interventions against certain kinds of accounts-- that, you know, we've seen start to occur. Dan Gertler was recently-- sanctioned by the U.S. under Global Magnitsky, along with 33 of his-- companies.

This is a person who is the money man to former-- president of the Democratic Republic of Congo, Joseph Kabila. He's said to be in-- be involved in so many corrupt mining deals in Congo-- that it cost the D.R.C. over a billion dollars in revenues. And now with-- with an-- an effort that actually targeted not just him, not just one single person, but a network of his companies-- that business structure has changed dramatically. So as a complement to these longer-term efforts at prosecution-- those financial pressure tools are also important.

PRISCILLA HAYNER:

Thank you so much. First of all, apologies that we've gone a few minutes late. But thank you for hanging in there with us. I just want to f-- f-- conclude by first of all thanking the panel-- for the excellent-- interventions and explanations and just making three other comments.

One is that, I have to say, it's refreshing for someone like me, who's often in a position of being asked, like, "Well, what do we do now?" post peace agreement, or-- or actually while negotiating a peace agreement or other kind of transition. And there's, as someone said along the way, sometimes political constellations have changed and there's a window of opportunity. It's really nice to have tools, very practical approaches and models and ideas and directions to-- to push gover-- to push to the local actors and say, you know, these are the experiences elsewhere.

There's more and less of examples of-- of successes or-- or-- or less successes. But it's really nice to have reports like these that we can use, all of us-- the many of us in the room who are working on accountability in one form or another.

The second is, it's-- it's really striking how the message came through of, not only the complexity of the issues that we're looking at, the-- how complicated it is to do what you all are suggesting. And especially in terms of financial crimes, and the kinds of expertise that's needed-- the-- the forensics around financial investigations, but also around handling data. Sort of text forensics we might say or WhatsApp-- research. Like, how one handles that is a whole new ballgame-- in investigations and in accountability-- endeavors.

But then, third, it's striking that-- we didn't actually speak too much about the International Criminal Court. I mean, Holly put it in context, which was really, really helpful at the end. But what's interesting and actually I think very positive about that for me is that, you know, the ICC has been struggling of late-- with a number of controversial and difficult decisions in the last year or so-- including quite recently on Afghanistan.

And it's a tough time for people that are focused on the ICC, because it's r-- it's-- people are sort of trying to work out where the ship is going exactly. But, in fact, there's a much bigger world around that, which is what we've been talking about here.

There are so many other examples, either at the national level or also at the international level, but beyond the ICC. Which, you know, as I say, there's-- the examples are-- are diverse. Not all of them have been successful. Some of them have certainly or are running into brick walls, in terms of-- in terms of the politics and the powers-- that are-- that have something to lose if they're successful.

But there's a lot of interesting examples, and actually a lot of positive examples too. So I think it's quite a nice-- takeaway-- the big picture where-- where it's brought us. So I invite you-- to join us all for a reception-- outside. And it's been a pleasure to be with you to-- tonight. And a round of applause for our panelists, of course. (APPLAUSE) Thanks.

* * *END OF TRANSCRIPT* * *