



IPI SPEAKER SERIES

July 15, 2009

Trygve Lie Center for Peace, Security & Development
International Peace Institute
777 United Nations Plaza, 12th Floor

Warren Hoge:

Good evening. I'm Warren Hoge, the Vice President and Director of External Relations at the International Peace Institute and on behalf of Terje Rød-Larsen, IPI's President, I want to welcome you to this event featuring the book "Prosecuting Heads of State," and it's co-editor, Caitlin Reiger. Caitlin, an Australian, and an Adjunct Professor at New York University's Center for Global Affairs, is Deputy Director of the Prosecutions Program at the International Center for Transitional Justice and heads the Center's work in Cambodia.

The book notes that 67 former heads of state or government have been legitimately prosecuted for serious human rights or financial crimes, with the majority of them being brought to trial in free and fair judicial processes, and some of them serving time in prison as a result.

In the introduction of the book, Mary Robinson, the former U.N. High Commissioner for Human Rights, says the historical unspoken presumption that heads of state may act with impunity has finally begun to crumble. She adds, though, that progress continues to be extremely difficult, unsteady and hard-fought.

I spent five years as the Rio de Janeiro-based New York Times correspondent covering South and Central America in the early 1980s, and it was a critical time for the development that this books tracks.

I arrived in Brazil just as that country's fifth consecutive military president was taking office, but with the understanding that he would be the last uniformed ruler and would end up returning the country to representative civilian government. That period in Brazil was called "abertura" -- "opening" in Portuguese -- and it was a fascinating process to witness --

the gradual return of freedoms of assembly and speech leading to an election in 1984 that did restore Brazilian democracy.

Now, in Brazil, where the military rule had been less harsh than elsewhere in South America, there were no trials. But to the south of us, in Argentina, where there had been a highly abusive military regime, five of the top- ranking generals and admirals who had “disappeared” thousands of their citizens in the so-called “Dirty War” faced trial and went to jail. Those proceedings, say Caitlin and her co-editor, Ellen L. Lutz, became “the springboard for the global transitional justice movement.”

When I was completing my assignment in Brazil five years later, Rio’s leading newspaper, the *Jornal do Brasil* sent a reporter around to do an exit interview with me. And he caught me by surprise by asking me to say in one word what I thought the major problem facing Brazil was.

I was flummoxed, and I blurted out “impunidade.” Impunity. And you know, as I read the book, I realized it wasn’t such a bad answer.

If I can just mention one more anecdote from personal experience: by the middle 1990s I was the London bureau chief of the New York Times, and one night lying in bed, I had a dream about the guerilla wars I had covered in Central America back in the early 1980s.

In the dream, I heard crowds shouting out the rebel chant, “Un pueblo unido jamás sera vencido” [A people united will never be defeated]. Then I woke up, and I still heard the chanting. It wasn’t a dream. What I found out that night was that right across from our flat was the residence of the Chilean ambassador. And there were Chileans out in the street celebrating the fact that on that day the British authorities had arrested General Augusto Pinochet in London at the behest of a Spanish judge. It’s called universal jurisdiction, and there’s a lot about that in this book.

Aspects of that case, I learned from the book, were to inform prosecutors in Sierra Leone years later as they closed in on Charles Taylor, the former Liberian strongman, who as you know is now on trial before four international judges based in The Hague.

In recent months, we have seen two instances of the strong and conflicting reactions that attempts at prosecuting national leaders can bring. First in Sudan over President Omar Hassan al-Bashir, and then in Bosnia and Herzegovina over Radovan Karadzic, the former Bosnian Serb leader.

Now here at IPI, we believe that international criminal justice plays an important role in encouraging states to confront past wrongs, attempt reconciliation and address the injustices that can lead to conflict or conflict

relapse. Yet even as public support for the use of international criminal justice tools grows around the world, there are increasingly strident calls at the international level for “justice” objectives to be deferred in favor of “peace” objectives.

IPI is working with leading U.N. officials, member states and civil society actors to find ways to more effectively and routinely integrate justice considerations into U.N. peace efforts. And to prevent justice claims from becoming a source of recurring crisis for the U.N.’s peace efforts.

In January, IPI convened a retreat for permanent representatives from senior U.N. staff to consider these issues. And last month, we brought together a range of African experts in Liberia to advise the African Union Panel of the Wise on approaches to integrating justice thinking into their conflict resolution work.

There is finally a need to build broader political support for this approach by encouraging thinking about the different forms that justice efforts may need to take in different context. This can be achieved through encouraging discussion of the role played by the principle of complementarity between the international and local-national and regional-level justice efforts.

Just last week in this room, IPI hosted a meeting to explore the International Commission against Impunity in Guatemala, a joint U.N. member state effort to deal with impunity in that country. So we are particularly eager, here at IPI, to hear from Caitlin because studies like this one, that she has directed, play a crucial role in helping us understand what kinds of collaboration might be possible.

Caitlin, welcome to IPI where our floor is now yours.

Caitlin Reiger:

Thank you Warren. And thank you IPI for taking on what has become a book that, at the time the project began, which was several years ago, we couldn’t have quite anticipated how timely it would become by the time the book actually was released.

Last year as the book was being sent, as the final manuscript was being sent off to the publishers, was just when the ICC request for an arrest warrant was issued. The week the book came out was when the conviction against Alberto Fujimori in Peru came down.

And it’s further evidence in many ways of the sorts of things that my co-editor, Ellen, and I found as we went through the project.

What I thought I'd do is give a little bit of a sort of snapshot of some of the key findings and key data that has come out of the project for those of you who haven't had a chance to read it yet, and some of the implications that we have drawn from the stories that are contained.

Although first and foremost the book is a collection of stories. Many of the case studies in the book that range from high profile examples of former heads of state or heads of government who have been prosecuted to lesser known ones are incredible stories. And it is about the tales of how people who were seen to be completely beyond the reach of legal processes were ultimately brought to account for crimes that took place under their watch.

And just at the onset, Warren mentioned some of the statistics in the book, that 67 former leaders -- and "Heads of State" is in the title, but it does include a few heads of government as well -- that statistic is since 1990. And we really take the Cold War as the starting point for the discussions in the book. And the fact that that many alone in the space of less than, you know, less than 20 years is really quite remarkable and something that I think is not particularly well known.

We include examination of both financial crimes and human rights crimes. And the reason for that is that it seems that in some circumstances the political will, and a popular will to hold a former leader accountable, is stronger for corruption-related crimes although there is often a great relationship between corruption that then goes on to fund human rights abuses. Or human rights abuses that have begun that then blend together with financial crimes.

But I also wanted to just reflect a little bit first on the fact that yesterday in The Hague, Charles Taylor, former President of Liberia, took the stand in his own defense in his trial which is a really remarkable thing to happen. We've seen other high profile former leaders, like Milosevic, take the stand, although that's also ... it was a different circumstance because they were also representing themselves. And there is obviously a great concern that one of the challenges of these types of prosecutions is that the courtroom will be used as a political stage. And I think the challenge is for judges running these types of trials to somehow insulate themselves from the political circumstances that are inevitable if you're looking at a former leader, but to ensure that the process itself is conducted fairly.

This Special Court, though, is, I think, also an interesting little snapshot of the developments more broadly in the book, and one day last year as I was working on the collection, there was a remarkable moment when the Special Court for Sierra Leone had three former presidents in its courtrooms. It had Charles Taylor on trial. It had former Liberian

President, Moses Blah who had been Taylor's deputy at one point, testifying against him.

That alone is quite a remarkable example, I think. Some of the other things that have come out of the book, just to sort of give you a flavor of what these figures really mean. As I said, it's restricted to the former heads of government or heads of state. Some of whom, interestingly for current circumstances, were sitting heads of state at the time they were indicted. By the time they made it to a courtroom, for those who did make it to courtrooms, they were obviously no longer in office. But I think that's an important feature to recognize that indicting a sitting head of state is not without precedent and Milosevic was still president at the time he was indicted.

Of those who were indicted, and this, by that term, we're really talking about those who faced some form of formal criminal charge against them, not just the sort of much broader category of perhaps furious, perhaps politically motivated, certainly more controversial allegations that were leveled against political leaders by their opponents and by a range of people.

So we're not looking at those, that much broader category, but really looking at those cases where there was a genuine prosecutorial effort undertaken. And that these cases were, as you mentioned in the introduction, on the whole, dealt with by relatively independent prosecutors, relatively free and fair judicial processes by judges who weighed the evidence against them and made their findings.

About half of the almost 70 cases led to trial. So a great many, and Pinochet is a good example of that. He died without ever facing trial, although he spent the last decade of his life, essentially, dodging legal proceedings.

But about half of them went to trial. About half of those that went to trial ultimately led to convictions and some form of sentence. Although, again, some form of sentence ranged from the ... the one extreme, namely Saddam Hussein's execution, through to various forms of prison time, but very often in certain of the Latin American cases have been termed "Nicaraguan arrest," which was kind of a very flexible house arrest meaning not many restrictions at all.

And so I think what the book really tries to do is to document the movement that has developed towards greater accountability. But that's not to say that we have reached a point where there is complete accountability. Obviously, the huge range of obstacles still persist in really following all the way up the chain of command to the highest levels of

responsibility for serious crimes. But what has shifted is that that is now a realistic possibility.

It's not that long ago. And certainly during the mid- 80s when the Argentine Junta trials took place, the vast majority of people would have assumed that it's just not possible in most circumstances, to ever see a former head of state or a former head of government, face trial...that they are essentially untouchable. They will be in positions to negotiate amnesties, to immunize themselves, to negotiate good exile deals and so on.

What we have certainly seen, though, in the last 20 years is that those promises still get made. There are obviously still arrangements like that, but they can no longer be relied upon. This is a real possibility of the law eventually catching up with them.

And I think Charles Taylor's case, again, is a very important example of that and one that quite rightly is pointed to by people, for example, looking at Zimbabwe and saying this is a reason to potentially avoid or prolong the avoidance of a real transition in those countries.

I think one of the other very interesting things that comes out of the book's stories are the challenges, not just the political challenges of garnering enough political and public support for the processes to move forward, but also the practical and legal dimensions of conducting prosecutions like this.

It's very difficult, I think, for judges in particular who are used to being the authority in their courtroom to deal with somebody who is used to being the ultimate authority, and very used to dealing with using public opinion, mastering the art of the sound bite, using the media to full effect.. They have built their careers in mobilizing public opinion in their way, and in their favor. And that's not something that judges are used to doing, nor should they be used to doing that. But it upends the ordinary balance of power in those trials. And many of you will recall in the televised trials of Milosevic, where he would deliberately refuse to address the judges by their ordinary honorifics in the courtroom. And it was all about using the opportunity to continue to present their side of the story.

So I think that's a very difficult thing for those processes to manage. One of the other very difficult things, though, is the fact that for these processes to have legitimacy, [they must not] just be seen as show trials, which past trials of leaders had simply been a lot of the time. It was a convenient way for successor regimes to discredit their predecessors. And this book is not trying to focus just on those. It's showing that there has been a real shift.

But one of the ways that shift has taken place is because the trials have been largely open to scrutiny. They have been transparent, they have been based on careful assessment of evidence and so on. And that's not an easy task at all when you are dealing with somebody who literally embodies a regime under which horrendous things might have taken place.

Preserving the rights of an accused and basic due process guarantees is even harder in these sort of circumstances, but that is essential if the trial is to distinguish itself and be a legitimate response. And ultimately, whether or not somebody is convicted or serves time in prison, one of the most important ways in which these prosecutions have contributed to broader tasks of peace building, of establishing the rule of law, as well, has been to de-legitimize individuals who were seen as still inherently having the credibility that went with the power of their positions.

So I think there's many obvious implications for examples that have now continued beyond the life of the book, and people have already started saying that we need to start planning for volume two. (Laughs). But I hope that sort of gives you the sense of the main things that we really have pulled out during the process.

Warren Hoge: Can you off the top of your head list the eight case studies? I think it'll be of interest to the room to know the eight different situations which...the book is a book of case studies.

Caitlin Reiger: Pinochet is one.

Warren Hoge: And Saddam Hussein is one.

Caitlin Reiger: Saddam Hussein, Milosevic, Charles Taylor, Bizimungu from Rwanda.

Warren Hoge: That's right.

Caitlin Reiger: One of the lesser known examples and not one of the most positive examples as well.

Warren Hoge: Also the Philippines, not so well known.

Caitlin Reiger: Similarly. Estrada from the Philippines. Chiluba from Zambia, again, a politically more contentious example and Fujimori.. And I think I said Milosevic.

Warren Hoge: You said Milosevic.

Caitlin Reiger: And then there's two chapters that provide overviews of a much broader range of developments in Latin America and in Europe, which have really been the two regions, globally, that have seen the greatest number of prosecutions of former leaders. Those two chapters, we sort of included, because they partly trace the development of this trend. And there is a huge number. And they also have, I think, one of the themes that runs through the book, is the relationship between the few high profile cases that have the names that are familiar to us that took place in the international tribunals. But the vast majority of the cases in the book and the individual, the statistics listed in the back as well, took place before domestic courts.

But clearly the impact of those international proceedings helped provide the momentum and the political space at the domestic level for proceedings.

Warren Hoge: You mentioned the Charles Taylor case. And it is taking place in The Hague, but, of course, as you know, it's a special court set up there to try that particular trial. One of the effects of Charles Taylor being arrested I remember from either reading about it or talking to reporters who had been in Africa at that time, was the reaction in Africa, almost disbelief that this man had finally been caught up with and was sitting in a jail somewhere.

But then there was the decision, Caitlin, to move the trial out of Africa and have it take place in Europe. And I think that the reason given was it might cause too much disruption in West Africa where he still had so many supporters. Would you just talk a little bit about that and whether you agree that was a wise thing to do or looking back would it be smarter now to have that trial taking place in Sierra Leone?

Caitlin Reiger: Well, I think it's a very good example of the real political challenges that surround these types of cases. One of my favorite sort of stories that I came across during the preparation for the book was that apparently when Charles Taylor, who was at the peace talks in Ghana, that many had been waiting for, for a long time, an official pulled him aside and said, "There's an indictment that's just been unveiled against you for crimes against humanity from the Special Courts there in Sierra Leone." Charles Taylor reportedly turned around and said, "What? I'm a head of state. That's impossible." And just, you know, just did not believe it. And, of course, then was ... the peace talks continued and he was not arrested on the spot, which certainly many people at the Special Court who had been working on it and the prosecutor, David Crane thought he would be. But the reality was: Liberia was in a very sensitive crisis at the time and there was great concern that, not just for Liberia but the nature of that conflict which had

been for so long such an intertwined regional conflict, did require other priorities.

Although the indictment, of course, was not withdrawn against him. It remained valid and after a time the political winds shifted again. There was a new government in Liberia and ultimately there was the political decision taken to revoke or to essentially pressure Nigeria to revoke the exile deal that had been given to him.

The story then of how he was actually transferred is, I'm hoping some day there will be a movie about that, because it's hard to believe the ins and outs of how he actually was handed over.

Now, from the perspective of those people in Liberia, in Sierra Leone: I think many people would like to have that trial taking place in the region.

Warren Hoge: It is being televised back to Africa, I think.

Caitlin Reiger: It is, although ICTJ has just released a report, there was another event today partly about the progress at the Taylor trial, and one of the difficulties that research has shown there has been that the televising and broadcasting has not been effective for a whole range of reasons. And it's very difficult to really substitute for being able to go in the courtroom and see this sort of thing for yourself. And it's very difficult obviously to do that when it's in The Hague.

So I think it's presented a whole range of extra challenges for the expectations and goals of the trial to have a broader impact in the region, but at the same time, I think this is part of the political reality that it was one of the conditions upon which he was handed over. He would not be tried in the region. And, again, the stability of Liberia at the time was certainly seen as a priority for that.

One of the difficulties, I think, though, is that it raises the bar in terms of the challenge of explaining to people what is happening. Or really you see confusion in the media that he's being tried by the ICC, not by the Special Court of Sierra Leone sitting outside the country. So it's part of the reality. Is it better than him remaining in Nigeria and never facing trial? Certainly if he'd been in the region, though, I think there would be greater, both potential for positive impact but arguably also negative impact.

Warren Hoge: Because I was intrigued when you said before one of the purposes or one of the hopes is that somebody, a head of state being arrested loses legitimacy in his own country. Of course that head of state, as you pointed out yourself, Saddam Hussein not accepting the court, Milosevic not accepting the court, tries to war against that. But do you see that now

happening? Do you see actually that when an outside force, an international tribunal comes in, or a national court, indicts a former president, that people do accept it and they do believe that their man has been de-legitimized?

Caitlin Reiger: It can take time. I don't think it happens overnight necessarily. And a lot of it depends on the extent to which that individual still enjoys significant levels of support. But in many of those cases, and the nature of former leaders, [he] usually will still enjoy some level of support. It kind of depends where that support is. Another of the big challenges that these cases have shown, Just look at the Milosevic case, for example, where even though there had been a political transition in Serbia, Milosevic's team itself was arguably de-legitimized by the process of having been indicted, ultimately removed from power and handed over.

And yet within the military and the security sector in Serbia, as well as other sectors of the society, enjoyed still huge support. And yet the prosecutor's office, in order to prove the charges against him, often requires insider witnesses from inside that same armed forces structure, someone to be able to testify, and it's very difficult for people like that to come and testify against their former bosses when the regime, when there are still significant levels of support.

So I think that is a very, you know, it's a balance and it's always going to be an issue.

Warren Hoge: Caitlin, what about the future of universal jurisdiction? Because it's obviously one direction this can go. I remember in London that time that I described, we just didn't believe that it really happened. Balthazar Garzon was a very prominent Spanish jurist. He made a lot of noise. He made a lot of charges. But we were just amazed that the British, that he actually worked it out in such a way the British felt that they could legally, or would proceed to arrest Pinochet. Pinochet was amazed also.

I learned in the book that this all began in Belgium in 1993? Could you talk a bit about that? About the origins of universal jurisdiction and what future you see for it? Do you think it is the way to go?

Caitlin Reiger: Well, I think universal jurisdiction is well established for certain crimes, such as genocide, such as torture, and also for grave breaches of the Geneva Convention. And that's a treaty-based obligation for most countries of the world who are party to those treaties. And arguably even under customary international law.

The extent beyond that, that it goes, that it is possible to exercise universal jurisdiction, I think, at the moment is facing a very difficult time. Belgium

was one country, although not the only one, Spain clearly has been one of the others, that had a very broad version of ... I mean, universal jurisdiction gets talked about as though it applies to many things, but there's often still universal jurisdiction for some crimes that in fact still require some link back to the state.

And essentially what the Belgian legislation was doing was not requiring either that a perpetrator was from that country, a victim was from the country or the crimes had been committed in the territory.

The difficulty that Belgium ran into was that it was then seen as a useful forum for complaints from all around the world. And the book talks about some of the range of claims that were filed, complaints that were filed by victims organizations, by NGOs, by others that really swamped the system including targeting U.S. officials and others which ultimately led to a political backlash. And we're now seeing a very, very similar restriction take place in Spain against the universal jurisdiction legislation there.

What I think is a real pity is that there has not been as much focus, particularly with the recent developments on how useful those proceedings have been not just as an attempt to exercise jurisdiction where the country concerned should in fact be doing it, but the cases where it's been a useful prompt to that country concerned. And that certainly has been Latin America's experience on the whole.

But the Belgian legislation was shot down although the Belgian legislature in amending the law did leave a couple of little provisions that allowed a couple of cases to still continue that weren't shot down. And one of those is the Habré case. The former president of Chad, who may potentially face trial in Senegal at some point, but the case that had been built in Belgium against him that included some Belgium plaintiffs together with Chadian plaintiffs, was allowed to survive the passage of the amending legislation. And so we are now, again, seeing that legacy continue through in Belgium's ongoing pressure, being held to Senegal to move ahead with trials itself.

Warren Hoge:

I wanted to ask you, you might not want to take a shot at this, but would you like to theorize what's going to happen in Sudan? You've got a real standoff there. And you've got a president who is defying the Court and, as we all know, went out on a campaign afterwards to sort of reestablish his legitimacy. Seems to have gotten away with it so far. But what do you know? What do you think?

Caitlin Reiger:

Well, I think it's too soon to make a call. Based on some of the experiences in the book -- it can take time. But it is difficult to predict what will happen in the Sudanese case. And I think what's very difficult in

the case of the Sudan is that the regime is still very strong. And in many of the cases where, including where sitting heads of state were indicted, the regime was arguably under greater pressure already. But then again people predicted the worst when Taylor was indicted, when Milosevic was indicted. Obviously there have been very serious repercussions in Sudan as a result of the arrest warrant there. But I think time will tell and I think it's very difficult. So I'm not going to put any predictions down.

Warren Hoge: Another fear that people always had when the idea of arresting a head of state came up was what would happen to the state? Now you've got many cases here where people are arrested; they're jailed. Is it your experience that the state continues on? The institutions are often very fragile with some of the ones we're talking about. Can they survive this kind of thing? The trauma of having a president or a former president going to jail?

Caitlin Reiger: Well, I think that's one of the most, one of the strongest messages that comes out of the experiences we've documented is that dire predictions were often made and really did not come to pass. Yes, there are fragilities, there are sensitivities that have to be managed. But in none of the cases in the book did chaos ensue. The governments did not fall, the countries didn't relapse as a result of what happened back into serious conflict.

But again, the book also shows that where these cases have the best chances of success is where the rule of law and democracy is already well embedded. And I think the absence of that makes it far more difficult to proceed and see those processes as being effective.

Warren Hoge: And I want to let the others ask you questions, [but let me ask] just one final question. By writing the book, or by editing the book and by having people write the book, you clearly believe that this is going forward. I guess I'm asking you how optimistic are you that this really is a movement now that has gained traction, that is gaining acceptance and that will keep moving forward, and we will have basically more prosecutions of heads of state who commit crimes against humanity?

Caitlin Reiger: Well, I think it certainly seems to be the case that things will keep moving forward. But that's not to say that there won't be small steps backward along the way and I think the amendments to the Spanish universal jurisdiction legislation are an example of that. And it certainly shows that this is not simply a linear progression completely.

But I think that the most significant thing, the sheer volume of cases since 1990 shows that there are now precedents. It is now seen as a viable option. It may not always be the option that is chosen. It may not be the most appropriate option in every circumstance, at every moment in time. But it is now there as one of the possibilities. And I think heads of state

who oversee abuses during their time in power really do now need to be cautious. And whatever deals may be done may not last. And that's certainly what we've seen. So as to how that continues, we'll have to wait and see.

Warren Hoge: And the arguments that I mentioned in the introduction, and [an area] where IPI is particularly working, that by perfectly well- intentioned, well- meaning people who are conducting the peace operations in the country, who say if you come in here and arrest the president, that's going to upset what we're trying to do here. What needs to be done? That's where we're working right now, but what needs to be done there to make peace and justice move forward on parallel tracks rather than ones that fall into conflict?

Caitlin Reiger: I think there's various dimensions to that. And one of them is the question of timing. And it is about, it may not be the right moment immediately. But it's also, I think, about making sure that it's not removed as an option. So that amnesties or promises are not made. That are done with a shorter term vision of how to secure a peace but ultimately may not lead to a sustainable peace anyway.

It also goes towards the need to ensure that whatever decisions are taken are in fact reflective of a broader range of popular demands. And not just based on the negotiations or the views of those in power or their immediate opponents, but really these prosecutions are about listening to and affording rights back to the victims of these regimes.

Warren Hoge: Very good. I would love to get some questions from the audience. I see Tom's hand up.

Tom Miller: My name is Tom Miller. I'm the President of the United Nations Association of the U.S. I'd like to just pick up on your last comment and question and just get your reaction. This is not a head of state question, but the rest of the factors are pretty similar.

I was, before I came to this job, I headed one of the world's larger NGOs working with children around the world. And we had been working in Uganda for a few weeks, and we were asked to go up to the north and start operations, the area where Joseph Kony had been so active for so long. And I was absolutely certain of right and wrong, black and white and everything else, until I got up there.

And as I started talking to people in the communities, they were moving back, and what I got was something that just totally flummoxed me, and that was: make a deal. You know? And my question is really: whose justice is it? You know? And it really kind of ... I never resolved it in my

own mind, but, you know, when you've got people. You talked about the victims. These are definitely the victims, and they, none of them were defensive about Kony. They just thought he was the most treacherous murdering thug in the world. But they had basically been living in armed camps for 20 years, and they saw an opportunity to finally return to some semblance of normalcy.

And so here's the international community saying this guy is really, really bad, and everyone agrees with that. And here's the people who are most directly impacted saying: make a deal. And I'd like to just get your comment on that.

Caitlin Reiger: Do you want to take this, Warren?

Warren Hoge: No. No. I'm just the moderator. You're the one who answers the questions. (Laughs).

Caitlin Reiger: I think that's absolutely an important part of the equation. We at ICTJ did some survey work a few years ago, about two and a half years ago and a follow-up survey last year, in northern Uganda. And when the questions are posed in terms of: do you want justice or do you want peace? It's a fairly -- for people who have been living with that sort of conflict for that long -- it's a fairly easy answer.

But the question is does it need to be posed as mutually exclusive options? And when the questions were posed then of, well, if peace can be secured, should justice still be on the agenda further down the track? The answer significantly changed. And so it's about how can we get out of that dichotomy that justice is necessarily an obstacle to peace rather than perhaps being a component that can be built into a longer term vision of peace.

And I think none of that takes away from the fact that deals may need to be done. But again the question is deals with whom? Deals for how long? How comprehensive those deals are? Are they blanket deals? Are they conditioned on certain things? And at least having justice there as an option and therefore part of the equation already shifts the parameters of the debate.

Warren Hoge: I have one other in the back. If you would please identify yourself?

Leanne Smith: Hi, my name is Leanne Smith. I work for the Department of Peacekeeping Operations. Caitlin, I wanted to ask you, I haven't read the book yet. I apologize. I wanted to ask you whether the book tells a story about the contribution or the impact of prosecution of heads of state, or more

generally the aspect of accountability, the contribution of accountability to broader transitional justice processes in the cases you look at.

I have experience working in the transitional justice in two very different environments. One in Afghanistan where, from my personal point of view, accountability should be an important factor in helping Afghanistan move forward and heal and get on with things. And then in a very different environment, like the Balkans, where I was in Serbia before Milosevic was extradited and during his trial, and I sat in Basel or Yugoslavia watching people cheering him on during the trial. And observing the ICTY process wasn't very well understood in the domestic context.

So it's not clear to me whether there is a clear message about how accountability contributes to a country moving forward from terrible circumstances to peace and healing and everything else.

Caitlin Reiger:

I think a lot of the answers to those sorts of questions require a longer term view as well. In Serbia, even five years ago, when after Milosevic's trial had ended, after he had died, it still seemed pretty impossible that there would be trials in the downtown court in Belgrade area for the Scorpion's unit, which has now taken place. And so I think part of it is about taking a longer term view and recognizing that the shifts can take time to occur.

Certainly, I also think it's about keeping our expectations realistic about what these trials can achieve. But I think one of the symbolic dimensions of seeing a former leader brought to account is that it can open up the political space for further, for others to then be held accountable as well. Or even if not held formally accountable through judicial processes and prosecutions, through other forms of transitional processes and other accountability processes, whether that be through truth-seeking efforts or other things.

And certainly in Chile the ultimately unsuccessful prosecution of Pinochet -- he died never having faced trial. But it did open up space for a whole range of debates about what had taken place under that regime and now a comprehensive reparations program that was simply not possible, arguably, prior to those proceedings is taking place.

So I think it is about the broader space. In Cambodia at the moment, you have the former symbolic head of state of the Khmer Rouge as one of the indictees waiting for his trial to begin. And many of you who are familiar with those proceedings will realize how tricky that whole process is.

But regardless of the legal and political obstacles, there are now debates going on in Cambodia about what happened during that time that were not

happening five years ago. There are artistic and cultural explorations and a whole range of ways in which the country is grappling with at that time.

Warren Hoge: By the way, in Cambodia, is what I read in the paper about the horrific examples that are coming out in the prosecution of Duch, in particular: is that being played out to the Cambodian public? Do they know that's going on?

Caitlin Reiger: There's radio broadcasts taking place. And it is, I think, being televised in short segments on the nightly news in Cambodia. Obviously, the challenge is getting them out to people outside of Phnom Penh and the major capitals. But a lot of the outreach work is then being done by NGOs taking out portable DVD players and playing footage and so on. But I think both your question, Leanne, and yours, Warren, really emphasize the importance of these trials might be all very interesting to the international lawyers working on them all, but if you don't actually put the effort in, in terms of actually getting the information out, the impact is not going to be vast.

Warren Hoge: It strikes me as the only way to really gain credibility for this whole process is to make it publicly available out there. John Hirsch.

John Hirsch: This number, 67, is really very interesting. You know, there's a theory or a view, that these prosecutions are supposed to have a deterrent effect. Do you believe there's any evidence that these prosecutions are having, or will have, a deterrent effect? I'm thinking of Bashir, Mugabe, as examples of individuals who more or less continue whatever their policies have been, and they may or may not know that 67 other people have been [prosecuted]. Maybe you could comment on whether you think there's a genuine deterrent effect on all of these really commendable efforts.

Caitlin Reiger: First of all, actually, it's gone up to 69 since the book came out. (Laughs). But I think the deterrent, the rationale of deterrence at these trials, is something that should be treated with enormous caution. And I think it's very easy to offer deterrence as a rationale. And yet at a domestic level, in ordinary criminology, deterrence is often questioned as whether or not ordinary criminal justice systems even fulfill that function, let alone the far more sporadic, politically-charged, unpredictable nature of international justice efforts or justice efforts in domestic contexts for politically-charged cases.

So I don't think that deterrence is something that we should particularly focus on. That said, there is some limited evidence in some circumstances. And one of my colleagues recently drew my attention to the fact that in the Truth and Reconciliation Report from Peru, there is testimony of several simulators of death squads who mentioned the fact that they remembered

the Junta trials in Argentina and changed their tactics as a result. They didn't stop doing what they were doing, they just did it in different ways.

So they went from outright assassinations of people in the street to, you know, detention centers and so on, disappearances, et cetera. So whether or not that's deterring the more explicit manifestation or just urging a more hidden version of it -- I'm not sure. But I think the other thing is that these, the nature of mass crime cases is also, I think, not susceptible to applying deterrence necessarily. The rationale for why these crimes take place and the complexity of factors that go into allowing a genocide to take place or something, is not as simple as a deterrent effect of something that may come further down the track.

At the same time, it may make people at least more cautious. We can hope. I think what's more useful, in fact, is rather than thinking of deterrence, is about seeing [whether] these processes can contribute to non-repetition or prevention of crimes in the future, which I don't think is the same thing as deterrence. I think if these processes are done in such a way that they are legitimate, transparent, fair, upholding international standards, they could be contributing to strengthening the rule of law and strengthening the sorts of things that led to the breakdown in the first place.

Warren Hoge: Do you think there are leaders out there who are afraid of being arrested now? Who would not have been afraid, say, ten years ago?

Caitlin Reiger: I think, potentially there are. But again, whether that manifests in just being more cautious and changing their tactics...

Warren Hoge: James Cockayne in the back.

James Cockayne: Caitlin, there is serious backlash in the non-Western world right now against the system of international criminal justice because it's perceived as selective. Can the credibility of the system survive if Bush, Cheney or Rumsfeld aren't prosecuted? (Audience banter/laughter).

Caitlin Reiger: That's a very good question. (Laughs) The question of double standards has persisted through the establishment of these processes. But that's not something that's also peculiar to international justice efforts. That's part of the reality of a whole range of international relations that I think there's no easy answer to, and I think obviously the challenge to seeing any, you know, quite frankly, any member of the Permanent Five ultimately held accountable is a greater challenge because it does depend on having the political support.

Although I do think the establishment of the ICC has fundamentally shifted the scope of that and even though the ICC itself is obviously under serious challenge right now, and facing serious allegations of selectivity, particularly within Africa. I think what's important to take away from some of the messages from the book, though, is that most of these developments have taken place at the domestic level.

The international developments are the high profile ones, and inevitably will be selective. I think its credibility depends more on what it can spur at the domestic level, rather than who it ultimately ends up targeting at the international level.

Warren Hoge: I'm going to take several questions at once now. And that will be it. If you would ask them together and then Caitlin, you can answer them at once. Please.

John Washburn: I'm John Washburn. I do the international criminal court programs at the United Nations Association. In response, largely, to the Bashir situation, the international criminal court has now arrived at what appears to be an institutional position on the question of peace versus justice. And I'd like to try that out on you. But the position is that, and this is... we know it's institutional because it's been enunciated clearly in recent speeches, both by President [Sang-hyun] Song and by the prosecutor, so we have both ends of the court engaged in this.

The position is, in its most simple terms, that the court does justice. It's going to go on doing justice, and the issue of peace belongs to the Security Council. The notion is that the choice between peace and justice is essentially a political choice. The court is depoliticized and should not be asked to make that choice in any particular case. Judges, courts have to resist pressures to be affected by political situations on those special cases.

Forgive me for one sentence more on this. Both speakers, President Song and the prosecutor, have been at pains to make it clear that they're not saying that the court has to be blind to its overall political environment. They didn't give this example, but I think it's quite clear this is what they have in mind, that it's perfectly legitimate for the prosecutor and the judge privately to reflect that if they can come up with a very good next case of equal gravity, it would really be terrific if it came from outside Africa.

Warren Hoge: **Caitlin**, can you hold that question for a minute?

Woman: My name is Abigail [unintelligible]. I'm also interested in transitional justice issues. And my worry here is about accountability and transitional justice in West Africa.. What are the implications for justice for the types of crimes that Charles Taylor did in Liberia? And who is going to stand

that sort of justice? Of course I think that the trial in The Hague might open up space for other trials in Liberia. But the essence of international trials in this sense where even the trial itself is so removed from the region that the whole effect of it is not felt. Who sees it? Who knows what's going on? No press, no African press is allowed in the court. So in the end, the whole argument of peace versus justice: whose justice is served in the end, it's really about this whole argument. And to reinforce the argument that international criminal systems now are just targeting Africans, not necessarily meeting the needs of the people who are seeking justice.

Warren Hoge:

Thank you very much. Can you do those two at once?

Caitlin Reiger:

I can. I can. I think there's a little, well, a couple of commonalities that link between question one and two. I think the ICC's position, if it is clear that there is a position, and it's not a surprising one to come from judicial officials -- with their prosecutor, or the prosecutors, or the president -- by necessity has to emphasize the importance of the judicial process from the political context.

The difficulty for the ICC is that if it took a different position, it would be opening itself up to exactly the same attacks, or would actually give greater credence to the attacks that are already being leveled against it. And so I think it is an inherently difficult position therefore, and perhaps arguably the only position that the court can actually take.

That said, I couldn't agree more, but if in its decision-making as to where it targets next, it would be obviously good to see a broadening out. But at the same time, I don't accept the argument that the ICC is targeting Africans. If the ICC had no cases in Africa and had targeted other situations around the world, I could imagine that the same argument could be made that the ICC is ignoring Africa and ignoring African victims who have been suffering horrendous crimes under a range of regimes.

So I think it is very easy for that argument to be completely politicized and used very, very selectively. And also in remembering that most of the cases have been self-referrals by African governments with one coming as a referral from the Security Council.

Similarly, in the case of the Special Court for Sierra Leone, I absolutely agree that Sierra Leone has had the examples of a negotiated amnesty as part of the peace process that provided for the establishment of a TRC, explicitly sacrificing justice. Although ultimately the government of Sierra Leone, when it ended up with Foday Sankoh in custody and recognized that it was going to be far more of a threat to the peace process if they tried to prosecute him in Freetown and put him in [unintelligible] prison,

that would have been far more threatening, and so the call was made then to the international community to assist.

The difficult thing is that they made a request to prosecute one side of the war and you set up an independent judicial process and appoint an independent prosecutor, and they're not necessarily going to just focus on, you know, who you say the bad guy is.

Obviously the relationship with the TRC, I think the whole Sierra Leone experience really highlights the importance of, if you are having multiple mechanisms, making sure there are clear coordination processes between them. And that's clearly what was lacking in Sierra Leone.

The question about the frustration that I think is very understandable that many Liberians may feel that Charles Taylor may never face accountability for the crimes that were committed in Liberia. Again, looking at what if the Special Court had not existed? What if Charles Taylor had never been arrested for crimes in Sierra Leone? That's not necessarily going to make it more likely or more possible for him to be tried in Liberia anyway.

And one of the questions in the book is about: Is it better to have somebody prosecuted for an embezzlement or some financial crimes without looking at their human rights crimes? Some would say, well it's better to have them on something, even if it's not everything.

I think the last question about the role of actors and the need to take a far broader approach to accountability is a very important one. And it's not just about the role of the states that may have been involved in supporting these regimes, and obviously it is to some extent an artificial process to only be embodying the highest level of accountability in the leader at the top of the country when obviously these things don't take, these types of crimes don't take place without significant political backing, logistical and material backing which extends, also, the call to really be looking at the role of non state actors, economic interests that support these types of regimes as well.

The difficulty is that when you're dealing with a criminal jurisdiction, its business is to be holding individuals accountable for their role. The Special Court of Sierra Leone or the ICC can't prosecute a state. They are dealing with the responsibility of the individuals, which I think just highlights the need for other processes to be working in conjunction with the efforts of these courts.

Warren Hoge:

We'll have to call a halt there. Caitlin, thank you very much for coming and joining us today.

(Transcript edited by IPI)
