

THE BROOKINGS INSTITUTION
WEBINAR

CRIMES AGAINST HUMANITY, GENOCIDE, AND ECOCIDE; OF RIGHTS,
RESPONSIBILITIES, AND INTERNATIONAL ORDER

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Panelists:

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P R O C E E D I N G S

MS. STELZENMULLER: It is really nice to see that some of the people I've only met online actually have legs and feet, it's quite lovely really. I will also say that the last, the before last Breyer Lecture, and this would have been the ninth Breyer Lecture had we not had to drop the one where we had invited in 2020, Heno Junani as I think the first event. Peter Slover from the Dutch Embassy remembers vividly how hard we worked on that. And it was the first event that we had to drop. And this is I'm told, the first event that we are doing with actual live people again. So in some ways we are coming full circle here, which is a good thing. And I'm really pleased so many of you have chosen to come here in person. It's great, we hope to have a great session with you.

We are immensely grateful to the Embassy of Netherlands and to Ambassador Haspels, who is sitting in front of me. And the Municipality of The Hague represented by Paine Zackman who is sitting over there. That embassy is also represented by my friend Peter Slaut, for their efforts and their support of this lecture series from the beginning. We could not have done this without your support, and we're really pleased because of the history of the City of Hague, its century-old commitment to international law and international justice, to be doing this series together. It couldn't be a more perfect partnership.

We also profoundly appreciate their abiding respect for the value that we place on our independence.

Justice of the Supreme Court of the United States Stephen Breyer, after whom this series is named and who gave the very first lecture in 2014, unfortunately couldn't be with us today, but I have sent him all the details and the links to the conference in case he wants to watch it.

It's also my great honor and personal pleasure to introduce this year's

speaker, Philippe Sands. Philippe, whom I've known since we were students at Harvard together, is Professor of Law of University College London and the Samuel and Judith Pizar Visiting Professor at Harvard Law School, and practicing barrister. And his lecture today is titled "Crimes against Humanity, Genocide, and Ecocide; of Rights, Responsibilities, and International Order. Thank you, Phillipe, for joining us for this lecture.

After Phillipe's lecture he will be joined for a brief conversation with my colleague Ted Piccone, sitting over here, a nonresident Senior Fellow in the Center for Security, Strategy, and Technology in the Foreign Policy Program at Brookings, that's a mouthful, and Chief Engagement Officer at the World Justice Project. And I will say, the person who first originated this lecture series here at Brookings, and who shepherded it through and then handed it off to me when he left us for patches greener.

And their conversation will be followed by a panel discussion featuring three really distinguished experts of international law. Diane Amann, Regents' Professor of International Law and Emily & Ernest Woodruff Chair in International Law at the University of Georgia School of Law.

Sean Murphy, Manatt/Ahn Professor of International Law at George Washington University Law School, and Jane Stromseth, Francis Cabell Brown Professor of International Law at Georgetown University.

And today's event, as always, reflects only the views of the speakers themselves.

I would like to perhaps if I may, add on a personal level, some of you know I used to be, I'm a lawyer by training and worked for a journalists as a long time. And because I was a lawyer, my paper where I started on April 7th, 1994, the day after the beginning of the Rwanda Genocide was declared in Hamburg, and our Africa correspondent was on holiday, gave this to me as a topic, and I ended up covering the genocide in

Rwanda, genocide in the Falklands, the tribunals in Russia and for Yugoslavia and the Hague. And finally the ICC negotiations in 1998.

And I have seen both the conflicts that originated these trials and the legal negotiations arising out of them. And I'm of course also German, and the child of war children, and so for me in the events that are currently occurring in Ukraine, a lot of things are coming full circle. I don't know about you, I have spent a lot of time rage crying, to be honest. This goes deeply, not just to my principles, my sense of morality, but also to my emotions. I cannot deny that.

And I'm really glad that we have managed to make time for this topic and this event today because I think it's a really fitting topic for us all to be returning to Brookings with. Because this institution has always been committed to making the world a better place, and I think this might be one of the ways that we can try and to this altogether.

But before giving you the floor, Phillippe, I will turn things over to the Dutch Ambassador to the United States, Mr. Andre Haspels, and following him a short video by the Deputy Mayor of The Hague, Saskia Bruines, for some worlds of welcome. Please, Ambassador.

AMBASSADOR HASPELS: Good morning everybody. And thank you for joining us for the eighth annual Justice Breyer Lecture. Less of course than 24 hours after the historic appointment of the first Black woman to the Supreme Court, Ketanji Brown Jackson. And it's not lost on me that she is replacing the retiring Justice Breyer, and we are here for a lecture named in his honor.

We're also, as has been said already, for the second time in straight years, digitally online, which is great, so in that way we can reach a bigger audience.

This year's topic, as has already been mentioned, is Crimes against Humanity, Genocide, and Ecocide; of Rights, Responsibilities, and international order. And

it's especially meaningful considering Russia's invasion of Ukraine.

This aggression has caused a geopolitical crisis with which world leaders are still grappling, and probably will in the foreseeable future. And let me also take this opportunity to show my solidarity with the brave people of Ukraine. Of course the Netherlands is in full support of the sanctions that have been announced, and we have also, like many other countries in Europe and across the world, opened our borders for refugees.

As a symbol of our support as well we have raised next to the Dutch flag the Ukrainian flag at our residence, and I really hope that the conflict will be solved peacefully and soon. But, Constanze, I share your frustration when it comes to not only the frustration but also the sadness about what's currently happening. And to be honest I don't see an easy off ramp on the short term if I look at the conflict now.

But with Ukraine in our minds I think it is more important than ever for us to talk about the international legal order. The Kingdom of the Netherlands strongly believes that advancing the international rule of law is crucial to a fair and just world. And it's for that reason that we have anchored that idea in our constitution. So Article XC, translated in Dutch reads: "The government shall promote development of the international legal order." No city in the world evokes the noble ideas of peace and justice like The Hague in the Netherlands. It's the legal capital of the world and it's the city of peace and justice, and that's what we are known for.

We have more than 14,000 working and more than 130 international institutions and organizations to advance world peace every day. The Hague owes its international reputation of legal capital of the world and international city of peace and justice to the presence of international courts and tribunals. And one of the six principal functions of the United Nations is based in The Hague, the UN International Court of Justice. Which makes us one of the top-ranking cities in UN cities in the world.

But we also work on promoting international legal order outside our national borders. In fact our support to the Stephen Breyer Lecture today is an example of that. And today it has been said, more than ever, it is important for us to come together to exchange views and ideas about the current challenges to our democracies, to our way of living, to the international rule of law and to the infringements of human rights.

We are a small country but we are strongly committed to the international rule of law. Thank you very much.

MS. BRUINES: Ladies and gentlemen, I have proudly served as The Hague's Deputy Mayor for International Affairs for five years now. In that time I have often been asked to reflect on international law. It cannot be denied the field has made immense strides forward the last 75 years. I am proud of the role of my city, The Hague, with its many international courts and tribunals, has played in that progress.

But since the end of February we have witnessed scenes we hoped never to see again in Europe. Many innocent Ukrainian civilians have been killed. Millions have been displaced and received as refugees by neighboring countries. Much of the rest of the world has been swift to impose sanctions and offer humanitarian aid. Yet questions on the role of international law remain. What use is international law and the institutions created to enforce it if the aggressor chooses not to abide by it. Therefore today's discussion on the past and the future of war crimes jurisprudence is crucial.

As representative of the world's legal capitol I have faith in the ability of our legal institutions to back up words with actions, to achieve justice for the victims of the Ukraine crisis, however long that may take.

Some of the first steps taken by The Hague's legal community give me hope. Ukraine itself choose to approach the International Court of Justice, the highest court of the United Nations, to ask for the invasion to be stopped. The Court has since ruled it has

not seen any evidence supporting this justification of the war.

The prosecutor of the International Criminal Court has decided to open an investigation into the situation. He already has a team of people on the ground to collect evidence of war crimes.

Many of our knowledge institutes and NGOs have also been active, organizing discussions to explain the legal implications of the invasion to the general public. And in that light I'm also grateful to the Brookings Institute for cooperating with the Netherlands Embassy in Washington and the City of The Hague in organizing today's events. I wish you an inspiring session, and in the words of the Former Chief Prosecutor at the Nuremberg Trials, the great Benjamin Ferencz, "Law not war." Thank you.

MR. SANDS: Thank you very much for this invitation. I think it originated with you, Constanze, and it's incredibly nice to be here at the Brookings Institute. And I thank all of the institutions who have made this possible.

When we first conceived of this lecture, of course, events were not as they are now. And so there's been a bit of a moving adjustment as we move along. And the essence of what I'm going to talk about is to connect the moment that was 1945 with the situation that we are in today. And I will much look forward to the conversation with my colleagues and friends that will follow, and questions I hope will flow from the audience.

To contextualize what I'm going to say I want to go back to the autumn of 2010 when I received an invitation to give a lecture at the Faculty of Law in the City of Lviv, a city I had not heard of in 2010, until it was pointed out to me that Lviv is Lemberg, is Laveve. Would I come to the law faculty and give a lecture on my work and cases on crimes against humanity and genocide, two international crimes that came into existence as legal concepts in the summer of 1945.

I spent a part of that summer writing the lecture. And in the course of the

research I discovered, really accidentally, I was not looking for it, that the man who put the concept of crimes against humanity into international law, the renowned Professor Hirsh Lauterpacht, happened to come from Lviv. Indeed he had been a student at the university that invited me, although those who issued the invitation were blissfully unaware of that fact. Later he went to the University of Vienna and he studied under Hans Kelsen.

And then I learned, again accidentally, that the man who invented the word “genocide,” and just to pause for a moment, walking down the street I noticed going past the Carnegie Building it was the Carnegie Foundation that commissioned the book in which the word “genocide” first appeared when it was published in 1944. So there was a very direct connection with place in relation to these concerns.

He, too, Raphael Lemkin, had been a student at the same law facility in Laveve, as it then was, although not at the same time as Hirsh Lauterpacht, but five years later. Those who invited me to Lviv also didn’t know about that point of connection and they were surprised and delighted.

And then I learned that at the Nuremberg Trial, the famous trial of ’45 and ’46, Lauterpacht and Lemkin were actually part of the prosecution teams on behalf of the British and the Americans. And they targeted, in particular, Hans Frank, who had been Adolph Hitler’s personal lawyer and Minister of Justice in Bavaria, then Governor General of Nazi occupied Poland. He was prosecuted for both crimes against humanity and genocide.

When the trial opened on November the 20th, 1945, Lauterpacht and Lemkin did not know that the man they were prosecuting was actually the person in the dock most responsible for the deaths of their own entire families. This is a set of facts that you virtually could not invent, as the Historian Antony Beevor wrote rather generously.

And I think it was probably my work as a barrister rather than my academic writings that had caused the invitation to be sent from Lviv. In the summer of 1998 I’d been

involved peripherally in the negotiations in Rome that led to the creation of the International Criminal Court, a body that would have jurisdiction over both genocide and crimes against humanity, as well as war crimes and the crime of aggression. My role was limited in fact to drafting the preamble with my dear friend Andrew Clapham. And this was really a case of two very young international lawyers being told to prepare a draft, working on the assumption that everything they put it in would somehow be changed, but it emerged completely untouched. Hence the line in the preamble about the duty of every state to investigate international crime remained, and was then picked up a few months later in the famous Piniche proceedings in the English courts. This is the way of international law.

The essential difference between genocide and crimes against humanity, concepts which are on the front pages of our newspapers as we gather here today, really centers on the question of who is protected and why. If 10,000 people are killed, murdered, exterminated, or even a few hundred, that act will invariably be a crime against humanity.

But would it be a genocide? That depends of course on the intentions of the killers and the ability of prosecutors to prove that intention to the satisfaction of judges.

To establish the crime of genocide you have to prove that the act of killing is motivated by a special intent. The intent to destroy a group in whole or in part. If a criminal prosecutor can't prove that a large number of people have been killed with that intent, then the crime of genocide is not established under international law.

So basically you have these two crimes operating side by side for the last 75 years and overlapping. Every genocide is also going to be a crime against humanity. But not every crime against humanity will be a genocide.

The bottom line of this momentous development in 1945 is that for the first time the protection of individuals and groups was integrated into the international legal order. Sovereignty was not absolute. The rights of the state over peoples subject to its jurisdiction

or power was limited. And that was a new idea and it was a revolutionary idea.

Lauterpacht and Lemkin were individuals who generated ideas. And those ideas fed into the Nuremberg process and they fed into our modern international legal order. How did it actually all begin and then move along?

I take as my starting point often, the Atlantic Charter of 1941, the moment when Roosevelt and Churchill met off the coast of Newfoundland and agreed a set of principles which would govern the creation of a new world order after the war against Nazi Germany was over. And the central elements of that new world order was cast really on three fundamental pillars.

The prohibition on the use of force in international relations; the creation of rules on economic liberalization, trade included; and rights for individuals and peoples. You find in the Atlantic Charter the seeds of the concept of self-determination.

That was then taken forward four years later in San Francisco with the negotiation and adoption of the United Nation's Charter, which for the first time in a multilateral instrument of any kind spoke of human rights and fundamental freedoms for individuals and for human beings, and also of the commitment to decolonization.

Also around that time, a few weeks later, in London, negotiations began for the statute that would found the International Military Tribunal at Nuremberg. And into the statute were incorporated four basic, three basic crimes. Crimes against humanity; crimes against peace, as they were called then, the crime of aggression today; and war crimes. Of those war crimes was the only one which had been established and with roots in modern international law.

There was a fourth crime that didn't make it into the statute but did then make it into the indictment a few months later, and that was Lemkin's notion of genocide.

The simple point is that this was the moment when these concepts came

into being. The things that we are talking about today, war crimes, crimes against humanity, genocide, and the crime of aggression find their origins and roots in that remarkable moment in 1945.

And the United States played an absolutely central role in that moment. I think it could not have happened but for the United States. There were many individuals who were involved in giving rise to that moment. I'm thinking particular of individuals like Robert Jackson, who was the chief prosecutor. And then one character who's fallen out of the story but I think played a very important role in the elaboration of the key principles in the United Nation's Charter, and that's Ralph Bunche.

When Robert Jackson made the opening speech on the 20th of November 1945, he said, as we famously note, "Never again." And those words, sadly, have come not to ring so true. But when he spoke on that opening day, and I've just had a class, my students over at Harvard, going over the video, which is available for anyone to see, it is an enormously powerful speech. It encapsulates the totality of the order with which we are now engaged and asking ourselves the question, what does Ukraine mean for that order. Is it destruction of the order or is it a moment when it can actually be reinforced?

An essential aspect for me, and what I'm going to talk about today in more detail now, is the place of the United States having essentially created that order in 1945 and assisted in its elaboration over time. What is actually the position of the United States today in taking that order forward?

It was a revolutionary moment. It was followed by a myriad of other developments. I don't have time to get into all of the history of what happened in the intervening 75 years. But just a number of points on which to purge. 1946, the United Nations General Assembly meets for the first time and effectively by its first resolutions, 95 to 96, incorporates into international law the Nuremberg Principles. And these four crimes

effectively become part of the international legal order.

In 1948 we have the first multilateral human rights treaty, the Convention on the Prevention and Punishment of Genocide, in which the United States played a very key role, but of course did not ratify for some 40 years until President Reagan accidentally visited a cemetery in Bitburg in Germany and unwittingly paid homage to a gravesite that included a number of SS officers. International law often developed in these accidental sorts of ways.

But the absence of ratification by the United States was of course significant, and reflected also the reason why Robert Jackson never used the word "genocide" at any point in the Nuremburg Trial, and why the United States proposed the development of genocide.

It was concerned, and in particular southern senators were concerned that the concept would be used in relation to historical matters in the United States, some actually not so historical.

For 50 years developments in relation to these rights for individuals and groups trundled along very quietly. And it really wasn't until the 1990s that things moved forward in a significant way. You've already made mention, Constanze, of the developments in relation to Rwanda. Rwanda and Yugoslavia caused the creation of the first International Criminal Tribunals since Nuremburg and Tokyo.

And the Clinton Administration played an absolutely crucial role in that moment. And Madeline Albright, who we honor and respect on this day, played an absolutely key role in that moment.

Both tribunals had jurisdiction over war crimes, crimes against humanity, and genocide. And I was discussing in our preparatory meeting something now that I've really began to focus on it, the absence of aggression being placed not in the Rwanda

tribunal's jurisdiction, but certainly the Yugoslav tribunal's jurisdiction. And there's probably a very good reason for that. But effectively it meant that the use of force as such by Serbia against other newly independent entities that emerged with the collapse of the former Yugoslavia, didn't get addressed by international judges, and aggression moved into a sort of place or vacuum.

The developments in relation to Yugoslavia and Rwanda themselves catalyzed new movement in relation to the creation of the International Criminal Court, which had been, I kid you not, in negotiations for 50 years until in 1998 states gathered in Rome and adopted the statute.

And 1998 was a really fundamental year because that was the year not only that the ICC statute was adopted, but also the year in which Mr. Pinache was arrested in London. Ironically enough charged with crimes against humanity and genocide in a Franco era Spanish law. And it was also the year in which for the first time a serving head of state was indicted for international crimes. This had never happened before, and that was Slobodan Milosevic.

So there was a move, a strong sense of direction at this point and things were taking I would say, a significant direction. And then of course the events of September the 11th happened and that created, I mean a bit of understatement, a jolt shall we say, in our commitment to the idea that all human beings and all groups at all time and place have minimum rights and minimum standards.

And that moment caused the United States, but not the United States alone, the United Kingdom I think is in a similar position, and there are some other countries, to take steps that I think were fundamentally problematic for the order and the structure that had been invented and taken forward in 1945.

A war was promulgated against Iraq which was, in my view, manifestly

illegal. It is known, for example, that the Deputy Legal Advisor of the Foreign Office, Elizabeth Wilmshurst, resigned because she considered it was not only illegal but a crime of aggression and she did not feel able to serve a government that was prosecuting such a war.

The United States engaged in techniques of interrogation that, in my view and the view of many other people, plainly crossed the line into torture. And there has never been an accounting of any sort for acts that I think crossed the threshold into a crime against humanity, so extensive are they.

And of course the United States at this point began to engage with the International Criminal Court and adopted a position, again I express only my own view, that I think was hopeless, namely that the Court could never exercise jurisdiction over any individual who was a national of a country that was not a party to the statute of the International Criminal Court. I've always thought the argument is preposterous. If an American comes to Britain and perpetrates the crime of genocide in the United Kingdom and the United Kingdom fails to do anything about it, of course the ICC's got jurisdiction. It matters not a whit what the nationality of that person is by reference to the statute of the International Criminal Court.

Simply point that I'm making is that the relationship with some of the fundamentals that have been put in place in 1945 became more semi-detached. It was not a single moment, there was a continuum that led to this, but it was a moment that was articulated, I think, with some degree of precision.

So with that by way of background, let me just say a little bit more about aspects of United States' engagement with each of these crimes in relation to subsequent developments.

Genocide. Genocide, regrettably in my view, has come to be seen as the

crime of crimes. It isn't, I don't think that a crime against humanity is any less terrible than an act of genocide. But in popular parlance and in popular consciousness if something isn't characterized as a genocide it will get a lot less attention. That no doubt is one of the reasons why President Zelensky has taken in this past week to referring to the terrible events in Bucha and other parts of Ukraine, as a genocide.

I think to be fair to him, he is probably using it more in a political sense and in the sense of public consciousness than in a straight legal sense. But the moment he mentioned the word genocide, attention went up several more notches from already a high starting point.

And genocide is very much in the news these days. There is the case of the Rohingya in Myanmar, and to be clear, I'm one of the counsel, others are here today, for the Gambia in relation to those proceedings. There's the case of the Uighurs in China and something of a rush really I think to characterize what is happening to the Uighurs, which in my view appears to be terrible whatever label you put on it, as a genocide.

And the reason for that I think is clear. The moment a president calls it a genocide, it makes it onto Page 1 of the newspaper. If it's just a crime against humanity or just a violation of fundamental human rights, it may not be reported at all. Or if it is reported, it'll only be reported in the middle pages of some newspapers.

The United States has always had an ambivalence with the concept of genocide, as I've explained already by the reference to the Nuremberg Trials and what came subsequently. But more recently there has been a willingness to characterize certain things as a genocide. President George W. Bush in relation to Sudan, and more recently Biden, Trump and Biden Administrations in relation to the Rohingya and the treatment of the Uighurs.

And then not so long ago President Biden stepped out and for the first time

for any President in the United States, characterized what had happened to the Armenians in 1915 as a genocide. And that got, as you know, a huge amount of attention.

I was invited to give, to participate in Fareed Zakaria's television program to discuss the momentous of this moment. And to be honest, got myself into a bit of trouble with aspects of the Armenian community because I wasn't quite as gleeful as I think some hoped that I would be. Why wasn't I so gleeful? I wasn't so gleeful for a number of reasons. I won't go through all of them.

But first off there is an issue about putting the label of genocide under the convention on events that occurred 30 or more years before the word was actually invented. And if we're going to do that we've got to work out the principles that we're going to apply temporally and otherwise in applying that label. If we go back to 1915, why not go back to the 19th Century, why not go back to the 18th Century or the 17th Century, in fact why not go back 2000 years and start taking these kinds of steps.

It has been a very significant development that has occurred simultaneously with President Biden's actions. And that is the characterization, and this is I think an even more significant development, of Germany. Of its treatment of the Harrow in what is today Libya and what used to be Southwest Africa, as a genocide, and making available a billion euros, not in compensation, but in development assistance to offset the wrong that was done.

This has huge consequences because this is actually the first time that a country which itself was responsible for the act of wrongdoing, has put that label on that act. And that really does open the door in relation to the retroactive application.

I mention this because in the Fareed Zakaria television program I made the point, and I was asked why am I not more excited about President Biden's statement. And I said well, I'd be much more excited if President Biden characterized actions that are taking

place in the United States as a genocide. The treatment of Native Americans, Indigenous communities for example, why not that? Or the treatment of Black people in southern states in the 19th and earlier parts of the 20th Century. If we're going to open that door, let's open it in a way in which international law isn't just for others. Let's talk about enslavement, and let's ask ourselves what labels we want to put on that if we're going to open the door and go backwards.

So I suppose what I'm saying here is that the move to label things as genocide might be a good thing, although some of you know I have certain hesitations about the concept of genocide. But if we're going to do it, let's do it systematically and let's do it in accordance with particular principles. And let's not just do it as part of international law being for others. International law is for us also.

Just to be clear, this is not a Brit American bashing because exactly the same principles can be applied to the United Kingdom in relation to colonialism and enslavement. And I will come on to that, it's just that I'm in Washington, D.C. and I want to give some local examples.

So there is a semi-detached relationship, I think, in Washington and in the United States with the concept of genocide. A little too easy to point to the genocides of others, a little too slow in reflecting on its own history.

Crimes against humanity, and I speak here with some hesitation as we have the individual who was responsible really for heralding through a convention which really should have been adopted 70 years ago. I mean it is nothing short of scandalous that in 2022 we do not have a binding convention on the prevention and punishment of crimes against humanity to lie alongside the convention on genocide, and maybe a lot of the problems that have arisen would have faded away if we hadn't put that subject into abeyance for so long. Perhaps genocide wouldn't have reached quite the elevated status

that it has in public consciousness if there was another way of labeling or dealing with certain acts that amount to crimes.

But we now do have a convention in draft form, proposed by the International Law Commission. Its special rapporteur is present today and I'm hoping, Sean, in the conversation later we can talk about it. I am a firm supporter of that convention. I think it's nothing short of scandalous that the UN General Assembly has not moved that convention forward. And I hope that countries will now move that forward. And I hope that events in Ukraine today, which could cut in a number of different ways, contribute to a stronger effort to push forward that draft convention.

But let me talk about American and British semi-detachment with the concept of crimes against humanity. Again, to disclose, I am counsel in the case, I am not independent as an observer and I try to talk about it as fairly as I can.

But I want to say a few words about a place called Jagos, which most of you have probably never heard of. There are a few of you here who will have heard of it. It is an archipelago of about 60 countries. It was a British colony between 1814 and 1968. In the early 1960s the United States decided that it would like to develop a strategic military plan to place military airstrips sort of things on strategic island atolls located in various places around the world. And it chose an island that you will have heard of called Diego Garcia as one of these fabulous places. And it cut a secret deal with the British to allow the United States to establish a military base, initially a communications facility, on the Island of Diego Garcia. And an agreement was entered into.

Britain at this point faced a bit of a problem because it had committed in the United Nation's Charter to the principle of decolonization. And the people living in the British colony of Mauritius, of which the Chagos archipelago had been a part for 150 years, wanted their independence.

What the British did, and I'm paraphrasing a longer and slightly more complex story, was to detach the Chagos archipelago from Mauritius by ordering counsel in 1965, make available to the United States the Island of Diego Garcia for the military base and remove the entire population from all of the islands, Diego Garcia and every other island, by means of forcible deportation, which happened between 1968 and 1973. The entire population, about 2,000 people going back more than a century and a half in terms of their ancestors, were forcibly removed. In my view, in manifest violation of international law and all of the rules that had already developed by the mid-1960s against forcibly deportation. Prompted, ironically enough, by Nazi practices of forcible deportation which led to changes in international rules after 1945.

The population was scattered hither and thither, Mauritius, Machel's, Crawley, next to Gateway Airport in London. And the population there lingered. Mauritius eventually decided to take proceedings, a number of people in this room have been involved in those proceedings. And the upshot was the International Court of Justice, by an advisory opinion, not in a contentious case, gave an authoritative ruling in 2019 that the United Kingdom actions in creating a new colony in 1965, the British Indian Ocean Territory, and consequently removing the entire population to another place, was illegal. And it was illegal at initial.

The matter was sent to the General Assembly of the United Nations which adopted a resolution in May, 2019 by an overwhelming majority. And the four states in the world voted with the United Kingdom and the United States against a resolution for the implementation of the ICJ's Advisory Opinion which provided for the right of return of all the Chagosians and the departure of the United Kingdom from Chagos by November 2019. The four countries that supported the United Kingdom and the United States were Australia, the Maldives, Hungary, and Israel. Apart from that no other country supported the two countries.

Subsequent development, I should just say by way of context, the position of Mauritius has been that the island base of Diego Garcia will remain in American hands. It is not an issue. And a long-term agreement has been offered by Mauritius to the United States or to the United States and the United Kingdom. In January, 2021 the International Tribunal for the Law of the Sea determined that the ICJ Advisory opinion had determinative effects and that Mauritius was the coastal state.

So we now have two international rulings, an overwhelmingly supported resolution of the General Assembly. And you would have thought that perhaps the United Kingdom and the United States might say okay, times up, time to go. No. It's two fingers up in the air at both international rulings. Just like China sends two fingers up in the air to international rulings that it doesn't like. Just like Russia sends two fingers in the air to international rulings that it doesn't like.

How does this relate to crimes against humanity? So Article IX of the ICC statute, sorry, Article VII of the ICC statute provides as follows: "For the purposes of this statute crimes against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge. It includes 'deportation or the forcible transfer of population.'" Now that provision of course didn't apply to events that occurred in the period between 1968 and 1973 when the population was forcibly removed.

Well there was a question as to whether there is a continuing violation, which takes you across the line and post-1998. But what is certainly the case is that the refusal of the United States or the United Kingdom, principally the United Kingdom, but it's principal supporter is the United States, to now allow the Chagosians to return is, in my view and in the view of many people, a crime against humanity. And it is one which is currently being explored in various fora and by various non-governmental organizations.

I'm not making the argument that there is a direct equivalence between that violation, between that crime against humanity, and a crime against humanity which may be taking place on a much larger and more grotesque scale today in Ukraine. Simple point that I'm making, if you can't really afford to be selective about the crimes against humanity you're going to object to when you yourself have, in different but nevertheless significant circumstances, failed to heed the rights of an entire community. It is ironic to hear the United Kingdom complain about Russia's occupation of parts of Ukraine when the United Kingdom itself is occupying a part of Africa and Mauritius.

It's ironic to hear the United States and the United Kingdom complain that China is not respecting the arbiter award in relation to the South China Seas when the United Kingdom, with the support of the United States, is not heeding two international rulings, but make it crystal clear that Mauritius alone has sovereignty over the territory of the Chagos archipelago.

So this aspect of double standard has an impact. If you want to see elements of that impact I suggest for example you look at the vote in the General Assembly that took place a few weeks ago in relation to Russia's engagements in Ukraine. Yes, it was a large vote but if you break it down it gets to be quite interesting.

Look at how Africa voted. Half the countries of Africa abstained. And in part that abstention will be informed by a range of different factors, but one of them is the application of double standards in relation to the settlement of 1945, the rules that emerged, and so on and so forth.

Turn to the crime of aggression. I've already said that it fell into a sort of desuetude after 1945, 1946, Nuremberg and Tokyo, but it has been revived. Ironically, the crimes against peace idea, which is today called the crime of aggression, made its way into the Nuremberg statute at the instance of a Soviet jurist, Erin Cramon, who had to persuade

the British, the French, and the Americans to include the crime of aggression in the Nuremberg statute. And he did so, and subsequently it became the largest part of the Nuremberg Trial. The judges in the judgement called it the supreme crime. But for the illegal waging of war in September the 1st, 1939, none of the other crimes would have fallen within the jurisdiction of the Nuremberg tribunal and none of the other crimes, in a certain sense, would have occurred. And you've got exactly the same situation today.

I noted this point a few weeks ago, just three days after the war in Ukraine began, in an opinion piece that I wrote in the Financial Times. Which I wrote in some haste, 600 words they allowed me, on any aspect of Ukraine and international law. And the subject that I focused on was the crime of aggression. Why? Because I was pretty comfortable that the three other crimes, war crimes and crimes against humanity, and to the extent it comes into play, genocide, would indeed be addressed, either by national prosecutors in Ukraine, or as we're now seeing in Germany and Poland and Lithuania, and also by the prosecutor of the International Criminal Court because Ukraine had declared its acceptance of the jurisdiction of the Court in 2014 in relation to those three crimes but not the crime of aggression.

And the crime of aggression mattered to me. Because it is the only crime which necessarily leads to the top table. It's the only leadership crime in which inevitably the focus has to be on Mr. Putin and certain people around Mr. Putin. The article had unexpected consequences. I found myself being contacted by the Foreign Minister of Ukraine, I found myself being contacted by former Prime Ministers of the United Kingdom, and a sort of momentum began.

To cut to the chase and without getting into too much detail. There is now a very active but still informal discussion taking place led by Ukraine and five other European countries, to elaborate an international agreement which would allow for the establishment

of a special criminal tribunal delegating the laws of Ukraine to an international institution, a court, which would then allow investigations, and if necessary, prosecutions, for the crime of aggression, to be conducted in relation to the leadership in Russia. Ironically Russia, Belarus, and Ukraine all have the crime of aggression in their domestic laws because they invented it. They then put it into their national penal codes where they have lingered happily for the last 75 years. Which gives you a very good basis for a delegated power.

I don't know what direction this matter will take, but in relation to the points that I'm making, which is the emergent semi-detached and self-interested approach to the 1945 moment, the point I'd make is this. In relation to informal soundings with the governments, people associated with governments of France, Britain and the United States, what emerges is there isn't a view that this mustn't happen, there isn't a view that it couldn't happen, there isn't a view that it's not legally possible for it to happen. But there is a concern which is based on something else. Oh, my word, if we can create an international criminal tribunal for Russia today, why can't they create one for us tomorrow. And that is the fact of it is giving, I suspect, those three governments, and maybe some other governments, pause for thought. And that pause, I worry, if it's given legs and develops over time, will lead to the very unfortunate situation in three or four years we're going to have trials in The Hague for midlevel military types that engaged in horrors of Mariupol or Bauchi or other places, but the top table will get off the hook. And that I think would be an absolutely deplorable situation in the particular circumstances of this case.

It has to be said, and I know the debate much better in Britain than in the United States but I assume it's a sort of parallel debate, that this is an instance where the shadow of Iraq looms very large. And the experience in Britain in relation to that conflict and the consequences of that conflict is no doubt one of the significant factors that is concentrating minds about what doors would be opened if you went with the crime of

aggression in this manner in relation to Russia today.

So all of this, to come to a close, is a way of saying I am a true supporter of the role played by the United States, by Britain, by France, by the Soviet Union, in creating that 1945 moment, putting the idea of rights for individuals and groups through these new and existing international crimes into legal instruments. But I'm acutely aware, from my own country and from this country, that there has been a double standard. There has been a selectivity in terms of how the 1945 moment's rules have been identified and have been applied.

I listened to President Biden characterize Mr. Putin as a war criminal. And I have to say that made me rather uncomfortable. Perhaps it's the sort of purest lawyer in me. The way I would have put it is, yes, war crimes appear to be being committed, and perhaps crimes against humanity also, but at this point we don't know the exact circumstances of what has happened. It may be indeed that the evidence leads all the way to the top table. But we can't be sure about that and prosecutors will tell you it is very difficult to prove command responsibility on some of these crimes in the absence of decent evidence. So I would have preferred President Biden perhaps to be a little more restrained.

But there's another aspect of it. I actually don't think the worst thing Mr. Putin may have done is to have overseen the commission of war crimes being perpetrated on the territory of Ukraine, if that is what they are. The problem is more. The problem is a decision to invade Ukraine. And we have rules about that. I think that is the place to put the accent, and I worry that the growing emphasis on war crimes is a way of deflating attention to the real issues that are at stake here.

It may be of course that things are changing. I mentioned earlier the position of the United States in relation to nationals of countries that are not parties to the statute of the International Criminal Court. So I was probably not the only person in this

room who was somewhat astonished, understatement, when Senator Lindsey Graham proposed a resolution warmly endorsing and supporting the International Criminal Court's investigation of Russian nationals for crimes committed on the territory of Ukraine. But hold on a second, isn't this the same guy who didn't want the ICC investigating American crimes in relation to Afghanistan or British crimes in relation to Iraq? Yes, it is.

That resolution was not only adopted but it was adopted unanimously in the Senate of the United States. What's going on here? Has there been a sudden about turn on the engagement with the ICC and with all these rules of international law? One suspects probably not, one suspects that probably it's more in relation to the moment. But that moment has consequences, and the consequence of course is that it really becomes pretty difficult for U.S. administration going forward to argue that the ICC can't exercise jurisdiction over other nationals or states that are not parties to the statute of the ICC. Again, we have the specter of selectivity, of double standard, of hypocrisy.

And these things do matter in the court of public opinion out there beyond London, beyond Washington, beyond Paris. There are other countries in the world that matter. Some of them are allies, some of them not, but they have views and they follow these things extremely attentively.

To close let me just mention a possible fifth crime. Which I've been very involved in because I co-chaired an international working group to explore the possible introduction into the statute of the International Criminal Court of a first crime which wouldn't focus on the protection of the human but on the protection of the environment.

I think if we step back and look at the threats that are coming towards us, Ukraine today is pretty terrible. But I think climate change and other environmental threats are likely to be, over time, even worse. And one of the questions that I think we need to start thinking about is moving the regime of international criminal law away from a purely

anthropocentric approach. I think what you're going to see in the coming period as more and more governments attach support to the idea of a new crime at an international level to be integrated into the statute of International Criminal Court, the crime of a wide-spread and significant scale to the environment, ecocide as some people are calling it.

A question would arise about the United States' engagement with that crime. And what's interesting, at the grass roots level young people, there is overwhelming support for consideration of these kinds of ideas. And I think that will trickle down and create a significant impulse to open our minds to that possibility.

I mention that really in a positive spirit. I think what the United States did in 1945 was remarkable and I really want the United States back batting for the protection of that moment and for the taking forward of it going forward. It's very hard to see without the United States' active engagement in those rules. That it can completely withstand the kinds of attacks it is now under. Perhaps this is a moment Mr. Putin has unleashed unwittingly, a moment to actually recognize that something extraordinarily important happened in 1945. Many people in this city played a huge role in making that happen at that moment.

But ultimately I think on all of this, I am going to end on a positive note. I was talking to one of my colleagues at Harvard last week over breakfast and he said to me, doesn't this just feel so terrible and so glum, what are we doing, why are we bothering with this international law? And I told her the story of a moment when I was a young academic in the mid-1980s, a research fellow in Cambridge.

And I had a colleague at St. Catherine's College who was the Professor of English Legal History at Cambridge University, Sir John Baker, a wonderful human being. And he would occasionally, once a month, invite me in for lunch for a matter about what I was working on on international law. And I'd tell him what I was working, I didn't have to act or bow to whoever it was. And he'd pause and he'd say "Ah, yes, we had a similar problem

in English law in 1472 and it took 270 years to sort it out.” And I think that’s the positive way of looking at that international law.

We mustn’t forget that 1945 was very, very recent. You can’t expect those kind of changes to take place and everyone is suddenly going to keel over and say, oh, yeah, no more genocide, no more murders, no more this, that, and another. That’s not how life is. These things take a long time to bed in.

And so it’s on that optimistic note, two steps forward, one step sideways, one step back, another step forward. Maybe this will end up being one of those step forward moments rather than a step back moment.

Thank you very much.

MR. PICCONE: Great, okay. Can you all hear me? All right. Wonderful.

Well thank you, Philippe, for that master class and historical sweep is really remarkable. So much for us to chew on and where to go from here. And I do want to make sure we have room for other panelists to join us up here. But let me just ask you a couple of questions keying off of what you just had to say. You really honed in on the question of selectivity and double standards. And I think we could spend a long time going down that rabbit hole.

But it does leave me scratching my head. Is the logical conclusion of that argument that therefore the United States should not invoke these principles until it cleans up its own act? The same with the U.K. And if it’s not the United States or a few other countries willing to take the leadership role, who will? Certainly, it’s not in China’s interest or Russia’s interest or many other countries to take a lead on this.

So that leave us with, you know, what is all this for? As you pointed out in these discussions. Why do we have these laws in the first place if we’re not going to use them? And now, we bring into Ukraine where it’s such a flagrant violation of the UN charter

and the many other crimes that you discussed. If this is not a 1945 moment what could be?

Now, that was after a world war, you know, with millions of people wounded and killed. So maybe we're not at the same scale as 1945. So can you reflect just a little bit more on what you ended up with. You know, we created these laws. Governments created these laws. Now is the time to use them. There's a war of words about war criminals and genocide, but, you know, why not use what we've got to move that ball a little bit forward once that --

MR. SANDS: You've heard I'm, you know, actively engaged on this dreadful Ukraine/UN situation and I'm fully supportive of the efforts that are taking place. The investigations of the national level, the investigations by the ICC prosecutor's efforts of various governments to use the rules that were created in 1945.

I mean, you know, I'm not starry eyed about international. Is there a government in the world that is not selective or hypocritical with double standards in terms of its approach to international law? If there is one, I haven't yet met it. So it's not a critique that is addressed only to the United States. It's a critique that is addressed generally. But I think certain countries in the order that it was created in 1945 have a particular role. The U.S. is one of them. I think Britain to a different extent today because it is so diminished is another one.

And if the countries that effectively created those orders are going to turn a blind eye when the order doesn't suit them, I think we have a real problem. I remember in 2003 attending the meeting of the American Society of International Law which is meeting right now. And being on a panel with my dear late friend, James Crawford, where his opening remarks on a panel about Iraq were made in his traditional Australian style, but didn't go down quite as well as they might in Melbourne or Sidney. It didn't go down quite as well as in Washington as it might have in Melbourne or Sidney.

And he asked the question, what is this society? Is it the American Society of International Law for others? And that issue I think in the context of Iraq was pertinent. I, myself, have come under attack in recent days from some academics, from some students, from some people for proposing the creation of a special criminal tribunal for the crime of aggression in relation to Ukraine, but having failed to do so in relation to Iraq.

My position on Iraq has been very clear. And it is true that although I thought the war was illegal, I didn't write (inaudible) saying that Tony Blair should be subject to investigation and prosecution for the crime of aggression. Although, other people did. And that has caused me to ask long and hard question, why didn't I do that? Perhaps I was in a different stage of my life. Perhaps living in the country where these things happen imposes a restraint on what you do. I don't know.

But I think the point is a decent one. And I think it goes to the heart of your question. For many people around the world, Ukraine is no worse than Iraq, okay? You travel around the world and you speak to people about their views about what happened in Iraq, and they will say to you that is as bad or worse in terms of the numbers of people killed.

MR. PICCONE: And therefore, you know, does that mean you don't write the article calling for a tribunal of the crime of aggression? No.

MR. SANDS: No. It doesn't.

MR. PICCONE: Now, you have learned, oh, I should have. And now, I'm doing it.

MR. SANDS: Right.

MR. PICCONE: And so, isn't that why we've created international tribunals in the first place? Because we know that member states are highly political and defective and have their own interests. And will not resolve these matters in their own accord. That's why we've created these international tribunals.

MR. SANDS: But what is to be done if the international tribunals apply the law in a manner that is perceived to be selective? You know, let's just throw out an aspect of this. The deputy mayor referred to a recent decision of the International Court of Justice. The Provision Measures Order adopted at the request of Ukraine.

Essentially in a case that is intended to obtain, in due course, a judgment from the International Court of Justice that no genocide is taking place against ethnic Russians in Eastern Ukraine. It's a creative bit of lawyering. Reasonable people have different views about the merits or the prospects of success. I was consulted informally about it. I thought no. I thought it's worth going. I thought it's worth raising it.

It gives you a forum. You may disappear as a functioning state and you will therefore have a place where you can raise these kinds of arguments. I have to say though, I was very surprised with what the Court did. I was very surprised with how far the Court went in terms of dealing with issues in relation to the use of force. And that raises for me the question of whether the Court would have done the same thing in relation to a parallel case brought 20 years ago?

Now, I think it's reasonable to say 2022 isn't 2003, but I find it hard to imagine that that could have happened back then. And it is true. I mean that Russia has crossed many lines. What has happened is utterly appalling. But it is also true that it is touching people like me and you in ways that seem, in part, extraordinary.

I'm living in Cambridge, Massachusetts right now and walking down streets in Cambridge, Massachusetts and seeing so many flags of Ukraine hanging out. You sort of ask yourself, what is actually going on here? This sudden embrace of Ukraine? This sudden love of Ukraine? This sudden embrace of the rules of international law?

You're right. You put it in a bigger political context. It's not a reason for not doing something, but I think one of our functions is to constantly step back and ask

ourselves the questions. How these things are being perceived by people in other places? And I can tell you from my students, from governments that I'm working with, it is perceived as yet another example of double standard.

All of a sudden because it's in Europe, Europeans really care about this. And because Europeans really care about it, Americans really care about it. And I think all I'm saying is let's recognize it.

MR. PICCONE: Right. We recognize it and I don't think we can be purest about it. And there is the real world out there of international diplomacy and politics that really does make a difference.

So when you look at what the UN General Assembly has done even just yesterday in voting Russia off of the UN Human Rights Council that vote margin went way down from what it had been a few weeks earlier on condemning the attack on Ukraine. That's an indication, I think of the point you're making that there's some wobbliness among certain states about selectively attacking Russia in this situation until we know more.

But then they revert back to legal principles and say, wait, we need a proper investigation of what happened on the ground there, right? So there is an interest and a desire for some kind of independent, impartial investigation of what's going on before we start labeling it in for all of our politicized reasons.

I wanted to, you know, towards the end, you were introducing the concept of ecocide. I know there are a lot of people online who are listening to us that are interested in this, and we got some questions beforehand. But maybe we can connect the two and say, let's imagine a scenario in which the Russians in Ukraine were also committing terrible environmental crimes, massive deforestation or something having to do with the nuclear power plants. How would that fit into your concept of what an ecocide means?

MR. SANDS: Well, I thought about that a lot even in relation to this context

because as you know there have been attacks on nuclear powerplants. I mean it seems extraordinary, but nuclear powerplants have apparently been targeted, which seems the height of folly.

We know that for some weeks, the Chernobyl powerplant was occupied. I mean to my mind, launching a military attack in the vicinity of -- on a nuclear powerplant is plainly something that crosses the threshold into risking significant harm to the environment and falls within the category of ecocide issues. Yes, I regret that I haven't said more this morning about ecocide.

This is part of the skew towards Ukraine originally when we conceived of this. I was going to say a lot more about it. But let me say one thing about that. So we sat on a working group and we wanted an unanimous consensus document because we all know that a consensus document has greater legs. But one of the points of difference between the 12 members of the group was whether to list in our proposal acts which we consider to constitute ecocide.

And I think in this respect, I was very much influenced by the experience of the genocide effort of Mr. Lemkin and the Convention and the problem of listings. In the Genocide Convention certain categories of groups are identified. The targeting of them will be treated as potentially being a genocide, nationality, race, ethnicity. But other categories of groups are left out. Groups who come together for political reasons, sexual orientation.

And the effect of producing a list which includes certain things, but not other things is to say, okay, you know, genocide in relation to those groups, but not in relation to those groups so it's fine to mistreat them, it leaves that feeling. And my concern, and I was part of the group which was a majority in the end, say, we're not going to list particular acts because to list any particular act is to exclude certain other acts which sends the signal that might be okay.

There is a second issue and it was this if you're going to have list on a crime against the environment, I don't think in 2022 you can have a list that doesn't include climate change. But the moment you put climate change on a list of definitions of ecocide, the proposal is dead because countries -- I participated in those negotiations. They have negotiated for 30 years on climate change. Are not suddenly going to accept the criminalization at the international level of certain acts that contribute to climate change in an amendment of the ICC. It will be for judges and prosecutors in due course, I think to elaborate a list.

But if there were to be evidence of intentional attacks or reckless attacks on a nuclear facility in the context of this or other conflicts to my mind that could constitute the crime of ecocide. I was just horrified as many people were by repeated reports. Not just one nuclear facility, more than one nuclear facility being subject to attack.

MR. PICCONE: Well, why don't we bring our other guests onto the panel. Jane and Diane and Sean, please join us. And we will get into another round of questions that I will try to lead here.

And I think, Jane, I might start with you if you're ready. It will automatically turn on. You don't need to do anything with the microphone.

MS. STROMSETH: I'm impressed.

MR. PICCONE: There is goes, okay.

MS. STROMSETH: Wow. Awesome. It's like magic.

MR. PICCONE: Jane, you recently testified to the U.S. House of Representatives that these flagrant violations of international law committed by Russia in Ukraine demand mutually reinforcing accountability. What does that concept mean? And how would you apply it in this case?

MS. STROMSETH: Well, thank you for that question and thank you,

Philippe, for your very interesting and provocative lecture.

I think all of us are seeing with our own eyes the brutal crimes that are being committed against the citizen of Ukraine. And it's clear that some accountability for those crimes is necessary. And there are many different mechanisms that can be mutually reinforcing that seek that accountability.

They can focus on individual criminal responsibility. They can also focus on state responsibility. And we actually are in a situation where there is developed law. There are actually institutions that have jurisdiction that can play a role, and let me just mention a few.

And by the way, if you focus in a mutually reinforcing way on different violations through different institutions, you can build a web of accountability which can hopefully send a message and reinforce the most fundamental norms of international humanitarian law.

First of all, individual criminal accountability. First the ICC has jurisdiction over war crimes, crimes against humanity and potentially, if the facts bear out, genocide on the territory of Ukraine because Ukraine has accepted the Court's jurisdiction.

So this is not a situation where there's a gap. Where there's no international tribunal available as in Syria. This is a situation where there is an international court that has jurisdiction. It's being welcomed by Ukraine.

It's engaged in investigations. It's being supported by many countries, and I also think this is an area where the U.S. needs to assist. It needs to forthrightly assist and could particularly be useful in providing intelligence that could potentially link crimes on the ground to specific responsible individuals.

And I don't think it's so hard to imagine that the linkage could go all the way up to the top given the nature of the crimes we're seeing and given the nature of past

atrocities committed by Russian forces in aggressions launched by Vladimir Putin.

Second, there are national justice proceedings in Ukraine. The Ukrainians have these crimes of war crimes and crimes of aggression in their domestic code. And they're engaged in very conscientious investigations with the support of Lithuania, Poland, many EU countries. The United States is supporting these domestic investigations that could be prosecuted in Ukraine. There are other European countries that have jurisdiction as well. And together, they could build a web of accountability that essentially says to those who commit these crimes that you may run but you cannot hide. You can't enjoy those safe haven abroad.

So the combination of the ICC and domestic prosecutions and also there's another supporting institution. The UN recently created the Human Rights Council, created a Commission of Inquiry, which I think can be helpful in coordinating the work of the many, many NGOs that are involved in investigating and documenting crimes and can work together with courts. So those are at least three mechanisms that on the criminal accountability side, I think, can work together.

What about state responsibility? The video at the beginning from the Deputy Mayor of the Hague talked about the case that Ukraine brought in the International Court of Justice against Russia. Basically, arguing that it's specious claims of genocide were a violation of the object and purpose of the Genocide Convention. They did not in any sense provide a justification for the unlawful war in which Russia is engaged. That's a way of trying to build state responsibility.

The European Court of Human Rights has issued provisional measures calling on Russia to stop its attacks against civilians, to open up humanitarian corridors. And while Russia is no longer a member of the Council of Europe, it's at least an open question whether the European Court could continue to look at cases, the facts of which proceeded

the date of the departure of Russia from the Council of Europe.

Finally, I think it's really important to look at human rights violations by Russia of the citizens of Russia because Russian journalists, Russian protestors -- I mean horrific violations against Russia's own citizens. And if there's ever to be any possibility of creating space, encouraging space for political accountability on behalf of -- of the Russian people holding Putin accountable there needs to be more attention to those human rights violations.

And maybe with Russia being expelled from the UN Human Rights Council - - I mean, frankly, the idea of Russia being on that council given what it has been doing, maybe now that it's expelled, there maybe the possibility of creating a special repertoire that focuses on Russia. There are mechanisms to focus on Russia as well.

And I just want to say that no country is perfect just in response to some of the points that Philippe was making. And I'd like to supplement the 1945 moment with a 1948 moment which is when the Universal Declaration of Human Rights was adopted. And the U.S. played a big role in that.

And the whole idea of the Universal Declaration affirming the inherent dignity of each human being and the fact that everyone enjoys certain fundamental rights, civil and political, economic and social. And that we all have a role play in advancing those rights. You know, that was a very important moment as well. And it was understood as being the beginning of a process of developing rights and developing more effective enforcement of those rights.

And, you know, the U.S. as a democracy has had many different governments over the course of our history. I haven't agreed personally with what many of them have done, but I've applauded what others have done. And I think this current administration has shown a real concern about human rights at home. About addressing

some of the human rights problems we have at home. About seeing an approach that involves more humility as being important to restoring some degree of U.S. credibility in advancing human rights around the world.

And I think one reason why Zelenskyy has been so powerful and so energizing for so many Americans is because he's appealing to these fundamental principles. The principle of human dignity. The principle of liberty and self-determination. And in the face of such egregious violations of those fundamental idea. In the face of such egregious aggression and in the face of clear war crimes. I think people are rising up in defense of those norms.

Unfortunately, we have law and we have institutions that can do something about it.

MR. PICCONE: That is a good reminder that we have a rich architecture to build on going back to 1948, of course. And I think I want to bring in others on the panel.

So let me turn to Diane next. And ask you, you know, you've written quite a bit on the special plight of children victimized by war and other crimes against humanitarian. And we're all seeing images of how this conflict is effecting children who are on the run and suffering greatly.

I'm wondering if you could imagine how the ICC or other international accountability mechanism could pay special attention to children? And what kind of differentiated treatment you think they deserve?

MS. AMANN: Yes. I'd be happy to talk about that. I first need to thank Philippe for a truly wonderful intervention and state that I think the emphasis on a tribunal that would look only at aggression is really important in this moment.

I feel that a line has been crossed here that is quite different than the line from Iraq. Although, I too wrote then that I was unpersuaded that the efforts to find legal

justification. This is different. And it is not enough to say we should have done something 20 years ago. That's not an excuse not to do it now. And so, I do hope that does go forward. And I would love to see the United States on that role.

In fact, having had the privilege of serving as the first ever special advisor to the International Criminal Court prosecutor, Fatou Bensouda, until 2021 on crimes against and effecting children. I guess the thing I would like to see the United States to do is to -- I happen to be a dual national. I am a national of one state party of the ICC, the Republic of Ireland.

I would welcome my second state of nationality, the United States, to take that energy that the Senate seems to have had. The wind in their sails to unanimously support investigations, albeit with some concern on my part, only on one side of the conflict. There seem to be a misunderstanding of the duty of the prosecutor, the ICC. But to take this moment and think seriously about ratifying the wrong statute of the International Criminal Court.

That would do more than anything to begin to propel these things forward. If not, that Senator Durbin has just proposed legislation for the United States to expand the scope of national laws prohibiting crimes against humanity and increase jurisdiction over war crimes. I think it's high time that we do that.

How will that help children? There is a tendency in moments like this to instrumentalize children and I think in a way that is highly effective but that we should feel concerned about. It's the face of the child refugee, the child who is injured that is used by the media and policymakers to move our emotions and to propel us to activity. That says something very bad about us, I have to say.

That said, children have a different place as participants, whether victims or sometimes combatants in conflicts. And it's really important to pay attention to their needs.

The most common reference is child soldiers. And indeed, it has probably received too much attention. Children are victims of trafficking, victims of all kinds of violence, sexual and gender-based crimes, of course. But also maiming, killing, loss of families, loss of homes, loss of education, forced displacement.

And because of their nature as being both vulnerable and capable in different ways as they grow. In being in this generation quite gender fluid and thus sometimes experiencing the harshness of conflict in ways of persecution on account of their intersexual identities. There is a need in our system to address their concerns alone. And I was very proud to have helped Prosecutor Bensouda promulgate the policy on children of the International Criminal Court, Office of the Prosecutor that was published in 2016.

How does this relate to this conflict? And then I will return the floor. What we are not seeing in this impressive web of mechanisms that have been engaged, and Jane mentioned quite a bunch of them, is much attention on crimes against and effecting children.

If you care about those faces, you have to insist that whether it's states, international organizations, nongovernmental organizations that are engaged in the gathering of evidence within an eye to future prosecutions, you must insist that they have experts on their staff who are expert in crimes against and effecting children. And that they are investigating those very difficult to investigating crimes in real time. That is not happening.

And one of the emblems where it's not happening is that the Commission of Inquiry that was established by the Human Rights Council, which I think is staffing up right now and in the process of appointing its commissioners. The terms of reference does not in a step back from prior similar institutions does not include a requirement of expertise or staffing on crimes against and effecting children. Nor do any of the vacancy notices specify expertise in these areas.

So if you care about those faces you're seeing, we're going to need to pressure the international community to think about that particular issue.

MR. PICCONE: So I think that's a really critical point as we think about the victims of this conflict.

I also want to think about how does one address the problems of collecting evidence? When it comes to individual criminal responsibility, we have a high bar as in any criminal proceeding when it comes to the evidentiary standards. And we hear many different reports of the Commission of Inquiry, the ICC prosecutors, Ukraine prosecutors on the ground.

What do we need to do to make sure that evidence is collected in a way that is actually, you know, admissible in a court of law?

MS. AMANN: So not surprisingly, I have just published on this. And one of the things that I have suggested is a second look at an institution that was established in, I think, 1943.

Even before the United Nations became an organization in 1945. The group we now think of as the Allies had begun to call themselves or refer to themselves as the United Nations. It included not only the big four, but another dozen or so others not only in Europe but also Latin America, Asia. And they came together in something that was called the United Nations War Crimes Commission. And they began a process of creating a central clearing house for investigation, a depository of information and a methodology of distributing and sharing information.

So fragmentation is a great thing at the moment. However, we have multiple entities who are going to get different bits and pieces of information on possibly without sufficient forensic authentication. Thus, making it useless for those future trials. And to the extent that their jurisdictions are limited in an aggression tribunal.

The European Court of Human Rights, which can only concern itself with violations of the human rights in its convention, et cetera. They may simply disregard the other evidence. And so, I think what we need to think about possibly through a robust interpretation of the terms of reference of the Commission of Inquiry, possibly through the establishment of an additional institution, is a clearing house that will include investigators and prosecutors trained in how to validate, properly store, authenticate, record evidence, record witnesses now so that they don't forget 20 years later.

And also, more importantly to do it in a way that's safe for the informants. I have to say there are a number of nongovernmental organizations that have become quite entrepreneurial. And I'm getting emails saying, upload your cell phone videos of war crimes to our app. That's frightening particularly in a world of misinformation where all of us have been victims of fishing expeditions.

When you click on the link might you be clicking on a link to the Kremlin? If we don't have really careful, strenuous, verifiable mechanisms for this particular task that is essential to all the justice mechanisms that have been discussed here?

MR. PICCONE: Yeah. I think this is critical when you think about the information warfare underway and the doctored videos and whatnot that each side is accusing the other of. And how easy it would be for a defense council to exploit the contradictory evidence. So thank you for making that point.

Sean, let me bring you in. As Philippe pointed out, your work with the International Law Commission to create a specific treaty on Crimes Against Humanitarian seems on the surface quite relevant to what's happening in Ukraine today. But it's really meant for situations that run short of armed conflict or genocide.

So what impact do you think the conflict in Ukraine will have on the development? Will it create some political momentum for taking this up at the UN? Maybe

explain again do we need this convention? Why do we need this convention?

MR. MURPHY: Yeah, okay. Well, thanks, Ted, for that question. Thanks to the German and Dutch governments for the invitation to be here in Brookings and all that. It's a great pleasure to be with Jane and Diane and, of course, Philippe, an old friend.

So as Philippe explained, I think when you look at what we call atrocity crimes, you've got genocide, you've got war crimes and you've got crimes against humanitarian. We have a 1948 Genocide Convention. We have the 1949 Geneva Conventions that talk about the war crimes and they've been supplemented by protocols. And we have no convention on the prevention and punishment of crimes against humanitarian.

We do have the Rome Statute which sets up the International Criminal Court and allows for prosecutions of a limited number of people in the Hague. But even the Rome Statute is built on the idea of complementarity that in the first instance, we want prosecutions to happen at the national level. And yet, if you're going to do that you need to build up national laws, national jurisdictions in order to allow those prosecutions to take place so that they don't have to happen in the Hague.

We don't have a convention on Crimes against Humanitarian. We looked at the International Law Commission worldwide to find out how many countries have national laws on Crimes Against Humanitarian and the answer is about 40 percent even if you look at Rome Statute parties, it's only about 50 percent which is kind of surprising. But the Rome Statute doesn't actually require you to adopt these national laws, but for perhaps the preamble clauses Philippe referred to in his comments.

So we're in a situation where many countries if an offender turned up in it who we thought had committed Crimes Against Humanity, there's no ability to prosecute them and we're sitting in one of those countries. There's no federal or state law in the

United States that criminalizes Crimes Against Humanity.

So what is the International Law Commission's project do? It creates a series of draft articles, 15 in total plus in the annex that could form the basis for a new convention like the Genocide Convention, but a little bit more sophisticated actually because we've learned a lot since 1948. And it would require states to adopt national laws, exercise jurisdiction not only over their own nationals but over nonnationals who turn up in its territories.

So if you did have individuals who've committed crimes in Ukraine or in Sierra Leon or in China or wherever and they turned up in the United States, the U.S. would be in a position to proceed with a prosecution. It also puts states that are parties to the treaty in an interstate cooperative mode, which is kind of important for Diane's issue of gathering evidence, sharing evidence, exchanging information.

This type of convention would create a mutual legal assistance relationship among countries. And also, a relationship with respect to extradition of individuals.

So it's a pretty important next step in filling a gap in this field of international criminal law. The ILC finished the work in 2019. It was about to be debated in New York. The pandemic hit. It messed everything up. They've kind of gotten back around the looking at it now. I think there will be a fairly significant discussion. It's happening already this Spring and Summer. But in the Fall will Ukraine feed into perhaps creating a greater impetus to make it happen? I don't know.

I mean I'd like to think it drives home the value particular when you see countries like Germany that are already looking into crimes that are occurring in Ukraine. Well, wouldn't it be nice if all countries had this in mind as a possibility? Harnessing their national legal systems to look at whether or not crimes are being committed somewhere and being prepared if an offender turns up in their territory. And certainly, being prepared to

share information with other states.

So I'm hopeful that it's (inaudible), but it's in the hands of governments now in New York.

MR. PICCONE: Well, since Philippe really focused on the role of the United States. I'm wondering what is the U.S. position on the Commission's proposal? Surely, there's concern about Americans who when traveling abroad might be accused of such crimes.

And I'm wondering, you know, more broadly the role of the U.S. is very complicated in all of this. And if we rely just on the U.S., we're probably not going to get very far. You know, I'm thinking about for Rohingya case that you referred to. It's the Gambia that has taken the lead on that and that's quite interesting. It could really be precedent setting in how that case goes forward.

So, Sean, maybe you can touch on that. You've all touched on this one way or another, but maybe say another word all of you about the role of the U.S. I'm going to you, Philippe.

MR. MURPHY: Yeah. So specifically on, you know, support for these Crimes Against Humanity initiative. I think the good news is the U.S. is a party for the Genocide Convention. So we do have a Genocide Convention implementation statute in the U.S. The U.S. is a party to the 1949 Geneva Conventions. We have a War Crimes Implementation Act in the United States.

In principle, it should be possible to take this further step as well. At least you're not in any worse position than you are with respect to these other crimes. I think the U.S., generally speaking, supports building up national laws to deal with atrocities matters so I'm not overly concerned. And they have been cautiously supportive. I wouldn't say they're out in front on this particular project, but they have certainly not been saying things in

opposition to it or blocking things or anything to that effect and I've been glad to see that.

On the broader issue that Philippe introduced of, you know, sort of the U.S.'s role in sometimes supporting, sometimes not supporting. I guess, I'll say a couple of things.

One is I'm not sure of the core proposition of the U.S. at Nuremberg was a huge supporter in a way that it's not now holds up. I mean there aren't any Americans in the dock in Nuremberg, right? Or in Tokyo? And to the extent that the U.S. at that point in time was saying, we favor a tribunal that will prosecute Germans and Japanese but not us. Well, that's not so different from today maybe, right? So, you know, I'm not sure that comparison holds up.

More broadly, I would say that the U.S. government's position as I understand it is that the U.S. has a very robust national legal system that has incorporated lots of rules and lots of procedures for prosecutions of individuals for things like war crimes. They sometimes do that and they sometimes don't. I think Philippe quite properly pointed to the Guantanamo situation as a situation where you could raise real doubts if this system is fully operating the way it should.

But I think the U.S. position, generally speaking, has been we have a national legal system. We have a uniformed code of military justice. We're serious about these things. We train our soldiers not to commit war crimes. We develop military manuals. All those kinds of things such that we think we can handle this at home.

Now, you can disagree with that, right? But the idea is we think we can do it here. We don't need to have someone do it in the Hague. We're worried about possible politics playing out in the Hague. I mean I think that's the general orientation. And maybe that suggests some duplicity or some double standards, but it's possible that when it talks about other countries being exposed to the ICC, what it has in mind is they don't have the

same kind of systems operating there. Or that's the belief that it's not as rigorous, not as built up, not as independent in a judicial bodies and whatnot.

So I don't know if that's the case, but I think that's the big part of what the U.S. has thought about when it has thought about exposure to international criminal courts.

MR. PICCONE: Jane, do you want to elaborate on your own views on the U.S. role and all this? And also, maybe going back to the crime of aggression, which you didn't touch on in your comments.

You know, whether you think the proposal here that Philippe has outlined is the way to go? Or are there other thoughts on how to proceed?

MS. STROMSETH: Yeah. No, thank you. And, Philippe, I commend you for your leadership on that proposal for crime of aggression because the ICC does not have jurisdiction over the crime of aggression in this instance because neither Russia nor Ukraine are states parties. And clearly, Russia would veto any Security Council referral. So really there is a gap for this very fundamental crime.

And I actually think there is strong arguments for creating a court that could address this particular instance of aggression both because of the prohibition against aggressive wars at the cornerstone of the UN charter. It's so fundamental to the whole order that was built in 1945 and fundamental to that.

And secondly, because there are a huge host of harms that are caused by an aggressive war that will never be prosecuted as part of war crimes or Crimes Against Humanity. You know, combatants are lawful targets in an armed conflict, right? And just think of the number of Ukrainian soldiers who have been killed, who have been maimed. Think of the Russian soldiers, many of them young conscripts who were sent to this war on a misleading basis, right?

And so, what remedy is there for that? And for the horror? Not only the

crimes against children that Diane was talking about but also just the trauma, the displacement. All sorts of harm that will never be captured as part of a prosecution for war crimes or Crimes Against Humanity.

So I think there are many good reasons to focus on aggression. There's also an agreed definition. I mean in 2010, right? There's an agreed definition that a war of aggression is an act of aggression which by its gravity, scope, characters is a manifest violation of the charter. And I guess, I think this aggression is so clearcut. Is so egregious. Is such a manifest violation that it really does warrant attention and pursuit of prosecution. This is not a gray area.

There's not an arguable legal basis. And there are plenty of cases like that. And so, you know, I think the best way to do it from my view is to build from the ground up. The Ukrainians have this crime in their domestic legal code. They're investigating it with support from many other European states. And I think any special court that would be set up to address it should meet at least four criteria.

It should have the consent of the Ukrainians. I think that's very, very important. I think it should use the agreed definition of the crime of aggression that's in the wrong statute that, by the way, not only wrong statute parties but also Russia, the U.S. and other countries were involved in those negotiations.

Third, I think it should have strong support from Europe. I'd like to see the Council of Europe engaged in this and it should be located ideally in Europe given the threat to European security that is so clearly evident by this aggression. And fourth, and ideally, I would like to see it endorsed by the UN General Assembly. I think that would help give greater legitimacy and bolster its international characters.

So I think this is a good idea. I think Philippe is right. The selectivity critique is one that will be made by, you know, people will say, well, why are you doing it now and

not in another situation? And I think Philippe also right that powerful states including a number of members of the permanent five of the security council will be weary of the precedent that might be set by this.

But I think sometimes you just have to do the thing that's right given the circumstances that you have in the space you have. And I think, frankly, to not pursue it would set a precedent that would be even more disturbing.

MR. PICCONE: Yeah. I think that's a critical point there. What will Russia get away with in this conflict? And what damage that will do to the entire international legal order? I think that we have to really wrestle with.

Diane, I don't know if you have anything else you want to add at this point before I give Philippe the floor to comment on your own thoughts and wrap this up.

MS. AMANN: Yeah. So, Sean, you and I could have a discussion, but another time, another place.

I would point out that although the United States was not in the dock. It's quite clear that the participants at Nuremberg understood that they might have been. As Philippe knows, I'm working on a book about women professionals including some lawyers who were participants in the first big trial. Their diaries, their conversations with each other reveal severe concerns, self-doubts about things like the dropping of the atomic bomb at Hiroshima. The fact that they were living in a city in Nuremberg that had been leveled by Allied carpet bombing.

And so, the relevance, the understanding that they were creating a precedent that could come back to them was palpable. Indeed, if we re-read Robert Jackson's opening statement at the Nuremberg trial, he says something to the effect of the chalice being passed. I can't remember the exact quote. But he says, we are setting a precedent which we ourselves one day may need to hold ourselves to.

And perhaps this is the moment for the United States to take that chalice and accept the challenge that Robert Jackson laid down in 1945.

MR. PICCONE: Philippe, I'd like you to comment on a lot of what you've heard here. And I also, want to just -- another historical reference that we haven't heard is not the second Iraq war but the first one.

Another flagrant violation of the UN charter that really did rally huge international consensus on how to respond to -- including massive military action which is not happening in the case of Ukraine even though it is also a flagrant violation. I just want to add that to the mix of the discussion. But ask you to just take the remaining three or four minutes to touch on whatever you would like of what you heard.

MR. SANDS: Thanks for that tremendous opportunity. Actually, I think the first Iraq war -- I mean 1990, 1991, I think there's a real legal issue. I think most people were comfortable and it was authorized by the Security Council. I don't think there was an issue.

I've really enjoyed the conversation. I mean, there are three fantastic commentators. And what's great about an event like this is it should be a debate. I mean we need to be a broad church. The function of a place like Brookings is precisely to tease out the issues.

I think you've all understood that my own position in relation to what's going on in Ukraine is of devastation. And I will go to the end of the earth to see that justice is done. And I will encourage and seek the support of the United States and the United Kingdom and every other country to get it.

What I'm trying to inject into the debate, and in a sense it's a self-interrogation, is that we not be complacent about what is going on here. Why did I put pen to paper so quickly after the Ukraine thing happened? Why does it feel so very personal to

me? And it comes back to the beginning of my lecture. I know Ukraine. I know Lviv. I was in Kyiv in September for the 30th anniversary of Babi Yar. I have lots of friends in Ukraine. I've been there with Sean. We did the unveiling. It was hugely touching of the plaques of Luzon to Raphael Lemkin, to Hersh Vontapac.

So it feels immensely personal and it weighs on me in ways that are bigger than any other. And then I have to ask myself, why is it weighing on me? And why am I acting as I'm acting in relation to this? But I didn't act like that in relation to Syria. Or I didn't act like that in relation to other situations. And I think we have to be honest each of us that we are naturally affected in particular ways once it is in our own backyard so to speak.

And for me, this is a back garden. It is the place where my grandfather was born. It's a place that I've been to twice a year for each of the last 10 or 12 years. But I feel that it's right to interrogate myself on my own failings. I was pretty silent on Syria. You know, this has all happened in a really nasty way that we've been here before. And I suppose I'm really irritated with myself.

I mean I had a role with Paul Riker in the 2008 case with Georgia against Russia. A case in which the Court rejected jurisdiction. A dreadful decision. I thought it was dreadful at the time and I think it's even dreadful today because it was a moment for the Court to say, this won't do. We're going to investigate. We're going to look into this. Similarly, the judgment in the democratic Republic of Congo in Uganda where the Court found a violation of article 24 of the United Nation's charter. A manifest violation.

And it was invited by Congo. I was counsel for Congo to conclude that this was an act of aggression and the crime of aggression had been committed, and it declined to do so. There are two very strong separate opinions by Judges Larape and Simma. I really declined to do so in the context of Iraq. That was really wide. It was another lost opportunity.

So we are where we are on this issue. I completely agree with you, Jane. You've understood what I'm trying to do. I want something to happen, but in wanting something to happen I think we have to be cognizant. And this comes in a sense to the point you made, Sean. That we've talked about a lot. Is the lopsided nature of international law.

I think Diane is right. I think I spent so much time in the 1945 material. I know it intimately well including the letters home and the diaries. There wasn't any sense that we're just creating these rules for others. There was a clear sense this is not something we would do. And if we do it, we will be held to that account.

And that was the spirit of 1945. And that was the spirit of 1941 in Roosevelt's remarkable creation of the rules that would dismantle the British empire. But of course, it has taken a different direction.

There's an elephant in the room here, I think that needs to be addressed probably not now because we don't have time and that is the question of race and difference. And one of the most distressing things these days is to go onto the website of the International Criminal Court and look at all the individuals who have been indicted. And you will see that every single of them is black and from Africa, okay?

Black people from Africa don't have a monopoly on international crime. Something has gone very wrong. I don't know quite why it's gone wrong in a series of well-intentioned characters running the ICC, but how could that be that 25 years after the ICC was created, we are in that situation? And it's the same in the relation to refugees. We've all noted.

I don't know. I can speak about Britain. I don't know how it's been in the United States. Britain opens its doors and its arms to refugee from Ukraine. Did that happen with Syria? No. Did it happen with Afghanistan? No.

So I think we have to be honest about ourselves is we've constructed institutions and rules and structures in which we have permitted a sort of lopsided approach. And that lopsided approach is premised upon a perception of difference between others. I heap my critique on myself. I didn't act in relation to Syria and I should have. And it's a valid critique of my own students that I was silent on that issue. But when large numbers of blonde people with blue eyes suddenly find themselves under attack, Sands goes to the barricades. That's a relevant critique.

I have to interrogate myself about that. I felt that immensely strongly a few weeks ago. I was with Ambassador Conjewel who was here from Mauritius on a first ever visit by Mauritius to the Chagos Archipelago in the context of the legal proceedings before the International Tribunal for the overseeing.

We were accompanied, we were a delegation of 25 and we were accompanied by five members of the Chagossian community, Mauritians, who were returning to the islands where they were born and from where they were forcibly removed.

One of them was 11 months old when she was forcibly removed as a contract laborer to justify her removal. And will never forget the moment that they got off that boat and landed on (inaudible) and held hands and one of them, Arivy Bankco amongst them, made a little speech.

And he said, he expressed his gratitude to many people, the government of Mauritius, to the judges of the International Court of Justice, the International Tribunal for the (inaudible), the Members of the UN General Assembly for taking steps that made it possible for him to return. We would not have been there but for the system of the rules of international law. So let's look on the bright side. And he then said, but I must not forget that none of this would have happened to me if I was blonde and blue eyed. And that is the reality.

You look at the comparison between the Falkland Islands Maldives on the one side and the Chagos Archipelago on the other side. What's the difference? There is only one difference. And I think what I'm trying to inject into this conversation including in relation to my own engagement with it. Is just a recognition that as we go forward, let us listen to other voices in the design of new rules, the implementation of existing rules.

Let us not overly commend ourselves on our own contribution to the rule of law, to our commitment to the rule of law, even to our own national legal systems. I agree with you, as you know, Sean, one of the most distressing --

MR. PICCONE: Last word.

MR. SANDS: -- is what happened after 2001 in relation to the mistreatment of Muslims who were subjected to the most terrible torture systematically on a widespread basis across the world including Diego Garcia.

So that's the purpose of my remarks. Let us absolutely go forward with the rule of law model, but let's be honest about our own failings and let's improve ourselves in how we address them and hold ourselves to the same account to which we wish to hold others.

MR. PICCONE: Very powerful final words. In a nutshell --

MR. SANDS: There was -- sorry -- one final thing I want to say. I meant to say it at the beginning. I just want to pay tribute to Justice Bryan. This is a lecture I had written out the notes. And I had just not mentioned it.

And I feel I can't let the morning pass without paying tribute to his service as a scholar and as a justice of the United States Supreme Court who was always open to the place of international law in interpreting the Constitution of the United States. And that is not something one can say about all the justices of the United States.

And in this particular context, I just want to thank him for what he has done

to take the debate forward on the interpretation of the Constitution of this remarkable country and its engagement with the rules that exist beyond.

MR. PICCONE: Here, here.

MS. STELZENMULLER: Thank you so much. I have to say this has been both informative and moving and I'm told so by colleagues that have been watching this online and writing me emails.

I would like to correct one tiny thing. I do not represent the German government. I suspect that my friends that work in the German government (inaudible). I don't think I could have ever made it into -- if I have made it into it, I would have been thrown out very quickly.

I thought that this was a truly remarkable lecture and a remarkable debate. And it is a sort of platitude, a trope of such discussions to say that one could have gone on for a very long time. But I think we are probably in agreement that in this case it is true that we could have gone on for a very long time. And I hope that we will revisit these issues.

I am grateful for Philippe's insistence that we need to look at our own standards, our own double standards or hypocrisies. I will say though, however, having also as a journalist covered the Iraq war and Afghanistan that the Taliban did, of course, give cover to Al-Qaeda. And that Saddam did attack his neighbors, use chemical weapons. And Ukraine has done none of that.

Ukraine is genuinely a clearcut case of aggression. And so, while it is useful to look at our own behavior and I think that is particularly important as in the prosecution of a political, economic, military resolution to this dreadful conflict which as you say is deeply personal for so many of us. As we seek allies beyond the West, I think it's important that we were reminded today of some of the reasons why the global South hangs back. And that if we want to have their support, we should perhaps address these issues

more forthrightly in the way that we speak about the conflict, the invasion of Ukraine by Russia.

With that I'm going to shut up and let you all go out into the sunlight and the weekend. Thank you so much for joining us here in the room and online. Thank you for our supports from the Hague and the Dutch Embassy.

And to my colleagues who did all the work on this while I was happily, you know, traveling around Europe. That is Agnes Kablock (phonetic) who is not here. Lucy Sevy (phonetic), Natalie Britain, everybody else at the Center on the U.S. and Europe and at Brookings and the Tech Department and the Comms Department. Many of you sitting there, others are outside the room. Thank you for doing this. We couldn't have done it without you. Thank you all for coming. Thanks.

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