

# 2021 Academic Symposium Transcript

Inamori Ethics Prize Academic Symposium and  
Cox International Law Center Conference:  
Human Rights and International Law

## **Judge Silvia Fernández de Gurmendi**

International Criminal Court judge; advocate for international justice, humanitarian law, and human rights; and recipient of the 2020 Inamori Ethics Prize, awarded in 2021

## **Shannon French**

Inamori Professor in Ethics and Director of the Inamori International Center for Ethics and Excellence

## **Michael Scharf**

Joseph C. Hostetler—BakerHostetler Professor of Law and Co-Dean of the CWRU School of Law

## **Jessica Wolfendale**

Professor of Philosophy, Marquette University

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**TRECASA:** Good afternoon and welcome. I'm Beth Trecasa. I'm the associate director of the Inamori International Center for Ethics and Excellence. It is my honor to address everyone here today as well as those of you who are watching us online. As many of you know, this event has been nearly two years in the making and represents the culmination of the Inamori Center's Conversations on Justice. Before we begin today's symposium, I'd like to ask you to join me in a moment of silence, a moment of sadness, to reflect on injustices everywhere—in our own neighborhoods in Northeast Ohio, across these United States, and across the world. So let us pause, recognize this momentary peace, before we must return to whatever injustices we are personally and professionally fighting. Thank you. It is my honor to introduce you to Provost Ben Vinson and to the Inamori Ethics Prize Academic Symposium and the beginning of the Cox Law Center Conference. Thank you.

**VINSON:** Beth, thank you so much for that. Good afternoon everyone, honored guests. I am Ben Vinson, the Provost and Executive Vice President of Case Western Reserve University. It is my pleasure to open the 2021 Inamori Ethics Prize Academic Symposium. Joining me on stage today

are Judge Silvia Fernández de Gurmendi, advocate for human rights and international law, and recipient of our 2020 Inamori Ethics Prize; Professor Shannon French, the Inamori Professor in Ethics and the director of the Inamori International Center for Ethics and Excellence; Professor Michael Scharf, co-dean of our law school and the Joseph C. Baker Hostetler Professor of Law; And finally, Professor Jessica Wolfendale, chair and professor of philosophy at Marquette University and an international scholar in military ethics. Everyone please join me in welcoming our panelists. *[applause]* We are here today because of the vision and generosity of Dr. Kazuo Inamori and the Inamori Foundation. Their endowment created both the Inamori International Center for Ethics and Excellence and the annual Inamori Ethics Prize. I would also like to recognize donors and community partners for their support, whether they are in the audience today or watching online. They include: the Callahan Foundation, especially the Vice Chair of our Board of Trustees, Tim Callahan and his wife, Nancy, who are dear and longtime friends and champions of this university; Meredith Cycle; the Marshall and Yuko Hung Foundation; Etan Corporation; Quality Electrodynamics Corporation (QED); Third Federal Foundation, and Underwriter's Laboratories (UL). We thank you, and all Inamori Center Advisory Board members, for helping us continue our tradition of honoring global ethical leadership. We are delighted to have a live audience with us today—this means a lot for us here at this institution—and we also want to offer a special welcome to everyone who is watching online via livestream. This includes students from several local high schools, and from Case Western Reserve's own Global Ethical Leaders Society, and a number of our SAGES classes. Thank you so much for being a part of today's events!

So we want to get into our conversation as quickly as we can, but first let me tell you a bit about our panelists. Beginning with our 2020 Ethics Prize Honoree, Judge Silvia Fernández de Gurmendi. Judge Fernández is a leading force for international justice and has twenty years of experience in the practice of international law, humanitarian law, and human rights. She played a central role in the creation of the International Criminal Court (the ICC) and has worked tirelessly to see that those who commit war crimes and crimes against humanity are held accountable. She was also the first woman to serve as President of the ICC and is a champion of gender parity in international law. Before joining the ICC, Judge Fernández was Director General for Human Rights at the Ministry of Foreign Affairs in Argentina. She also represented Argentina before other human rights bodies, and she

advised on issues related to the prevention of genocide and other atrocities. We are absolutely thrilled to have Judge Fernández with us today.

Now, joining Judge Fernández on our panel are our other two distinguished guests, Michael Scharf—Michael Scharf has been co-dean of Case Western Reserve University's School of Law since 2013; again, he is the Joseph C. Baker Hostetler Professor of Law and serves as managing director of the Nobel Peace Prize-nominated Public International Law and Policy Group. He has led transitional justice projects in Uganda, Côte d'Ivoire, Libya, Turkey, and maritime piracy projects in Kenya, Mauritius, and the Seychelles. In 2008, Scharf served as Special Assistant to the Prosecutor of the Cambodia Genocide tribunal. During the elder Bush and Clinton administrations, he served in the office of the legal advisor of the US Department of State. Scharf is the author of over one hundred scholarly articles and twenty books, four of which have won national book awards.

Professor Jessica Wolfendale—her primary research focuses on the ethics of political violence and the moral psychology of state-sponsored violence. She is the author of the books *War Crimes: Causes, Excuses, and Blame*, as well as *Torture and the Military Profession*. She has also published a number of articles and books on terrorism, the ethics of torture, security, military ethics, and war crimes. She is currently working on a new book project on the toleration of torture and terrorism in America. You can read more about our panelists on the Inamori Center website. Now, I look forward to hearing your conversation, and I hope all of you will take this opportunity to listen and to engage with our panelists. So let me turn it over now to Dr. Shannon French, the Inamori Professor of Ethics, who will moderate today's special panel presentation. Thank you. *[applause]*

**FRENCH:** In this world I have to remember to take off my mask so you all can hear me! Thank you all for being here and thank you, Provost Vinson for that lovely introduction. As you heard, the topic of today's conversation is human rights and international law, and this panel is both the academic symposium for the Inamori Ethics prize and also the opening event for the Cox International Law Center's annual conference, which will also continue all day tomorrow. And I should note that this year's conference is celebrating the thirtieth anniversary of the Cox International Law Center. I will be using my privilege as moderator to open with some questions of my own, but as I imagine you've noticed, there are some microphones—I feel like a flight attendant—there are microphones in the aisles on either side of you. I will ask some questions and get the conversation rolling but as I'm

doing that, as our speakers are speaking, please feel free to be formulating your own questions and then form orderly queues behind those mics and we will do our best to get to some of your questions in the time that we have. I say some, because this is my thirteenth academic symposium, and we have yet to get through every question that is available, but we will do our best. So to start us out, I'm going to open with you Dean Scharf, if I may. Michael, given your extensive experience with the struggle to hold accountable those who commit crimes against humanity, can you help put our conversation today in context? Why has Silvia's work been so important to Human Rights and why is an entity like the ICC necessary?

**SCHARF:** That's a great question to start out with. You know, despite the developments of the law of war, the genocide convention, and the human rights treaties, the last hundred years and even the last fifty years have been the bloodiest in the history of humankind. If you think back to the eve of World War II, right after Hitler assembled his generals and told them that they were going to invade Poland in 1939, and they were going to have total war and they were going to do things that had never been done before, including having mobile death squads. The German generals were squeamish about this, and they weren't sure that that was something they wanted to sign up for. And Hitler said to them: "Don't worry. Who after all remembers the fate of the Armenians?" And what he was talking about was the fact that during World War I, the first genocide in modern times was the Turks against the Armenians, and instead of holding anybody accountable, there was a Treaty of Lausanne that gave amnesty to all the responsible Turkish leaders. And that told Hitler that if we win the war, we too will get away with it. Even if we lose the war, because Turkey lost the war, we'll get away with it, and the German generals then marched happily on, and you know the rest is history. Well, after Nuremberg, there was some hope that there was going to be a permanent International Criminal Court to hold people responsible like they held the Nazis at that first international tribunal, but that was not to happen because of the Cold War, it was a golden age of impunity. The UN Human Rights repertoire said it was such a bad time that a person stood a better chance of being prosecuted for killing one person or ten people than for killing ten thousand or a hundred thousand. It was a time when we saw atrocities committed in Cambodia and Iraq, in Uganda, in Latin America, and throughout the world, and nobody even talked about prosecutions. Well that started to change in 1993 when genocide returned to Europe, and the International

Community created the Yugoslavia tribunal, followed a year later by the creation of the Rwanda tribunal. And after a slow start, where at first the NATO troops refused to arrest any war criminals even when they came by the checkpoints and they knew who they were, things started to change. They got with it. And now, every single indicted person from the Yugoslavia tribunal, and just about everyone from the Rwanda tribunal who survived has been brought to justice. Now some of them were acquitted, but many of them were convicted and that's also a sign of international justice—when there are fair trials and people can be acquitted. Now that led to the creation of the Special Court for Sierra Leone, and by the way, the Chief Prosecutor for the Special Court for Sierra Leone is in this room today: Jim Johnson—a little shout out! *[applause]*

It led to the creation of the Cambodia tribunal, the Special Tribunal for Lebanon, and ultimately the International Criminal Court. Judge Fernández was on the ground floor of the creation of the permanent International Criminal Court. She played a lead role in the negotiations. Then, she was elected as one of the first judges—she was elected president of the International Criminal Court, an incredibly powerful, important position. She had courageous decisions, including some great dissents, that I think in the future will become majority opinions, and now she is the president of the Assembly of State Parties. The ICC has been around now for twenty years—it's leaving its fledgling period, and it's entering its adolescence. It's maturing, if you think about some of your kids if you have any, or some of you are just in your twenties. That's the ICC, and it's got a long history ahead of it as well. It has prosecuted some major cases, but it has failed to get custody over some of the major indicted war criminals. So, for example, al-Bashir, who's wanted for genocide for the Darfur conflict, he's been hopscotching around—not just the Middle East, but Africa, and even China. And not one country that is party to the ICC—those countries that are party of the Assembly of State Parties—ever arrested him. Now, he's just fallen from power, he's under house arrest, maybe things will change, but he's still not at the Hague. And then you have Saif Gaddafi, the son of Muammar Gaddafi. He's still in Libya, hasn't been surrendered. And then you've got Joseph Kony, the head of the Lord's Resistance Army, who kidnapped sixty thousand children and turned them into sex slaves and child soldiers, and he's still on the loose. So, the ICC has incredible challenges ahead of it, but Judge Fernández is the political face of the ICC. Those challenges fall on, now, at her doorstep, and it's a huge, huge, job

for her to play. She has to convince the state parties to comply with the arrest warrants, which is not going to be easy, as the al-Bashir case shows. She has to convince them not to withdraw from the ICC—many of the countries in Africa have questioned whether the ICC is just focused on Africa unfairly, and have threatened to withdraw, and there is a very, very difficult dance going on right now, politically, that Judge Fernández will find herself in the middle of. And of course, she has to convince them to keep the financing flowing, which is always difficult, especially during a pandemic.

So, the question is: What is the importance of the ICC? Its importance is to stop the age of impunity and bring accountability, and some deterrence. And who has the most important role to play? I think, arguably, she is sitting right next to me.

**FRENCH:** *[laughter]* Well, you know, no pressure Silvia! Given what Professor Scharf just said, and what you spoke of last night in your wonderful remarks where you told us the three-act story of how we got to where we are now—can you help us understand why it is that some countries, including the United States, remain uncomfortable with the existence of the ICC and reluctant to affirm the jurisdiction of the ICC?

**FERNÁNDEZ:** Thank you, thank you very much, good afternoon to you all. It is really a great pleasure to be with this fantastic panel discussing these issues with you. Thank you for the pressure and let's start by trying to give a few answers to your specific question.

Why some countries are reluctant, including the United States, but not only. Let's start by recalling that, at this point in time, 123 states have joined the ICC, the Rome Statute: the founding treaty of the court. 123 states is not insignificant; it's almost two-thirds of the international community. For a relatively young and complex institution, this is quite an achievement. But that means that around seventy states remain outside the court. So, among these seventy, you have different reasons and even no reasons. I would say that you would have a category of states that are reluctant to join because they fear—and I would say this in very broad terms—they would fear an overreach of internationalism against national sovereignty, overreach, excess of internationalism, and a desire to keep certain decisions on who is going to be investigated and prosecuted to remain national decisions, without any kind of international intervention. In this regard, it is important to recall that the court is indeed a last resort institution. It's not intended and has not been

created to step in and start investigating and prosecuting in states. On the contrary, it's based on the idea that the best solution is national prosecutions and investigations. But it's also based on the idea that certain crimes cannot be left exclusively to the decisions of states because they are crimes that affect international society as a whole, and that is why when states do not wish, or are not able for whatever reasons, to investigate and prosecute, then it is for international institutions to step in. But some states are reluctant to this idea and prefer to keep these decisions for themselves, and some big countries with global responsibilities fear this excess of internationalism most. But then there are the other states that have other reasons, or no reasons, I would say. Some say: "What is for me here? Why should I join this institution?" Because it creates some obligations: you need to cooperate, you need to pay contributions, and actually the ratification and implementation nationally is burdensome, in a way. So they see "there is nothing here for me, we have other priorities." And then there are others that have specific, constitutional issues that they feel are too complicated to solve, and it's not their priority. Some have changed their constitutions in order to ratify the Rome Statute because, among other important provisions, the Rome Statute, the treaty, doesn't allow for immunities. So, some countries have tried, have modified their constitutions in order to be able to join. France, among others, has changed their constitutions, Colombia, in Latin America. Sometimes this is a very easy change, but it needs to go through the process. So you have different reasons there, and these reasons need to be addressed in various and different ways, but maybe we can come to that later. And I would say at the end that another reason is also that the concept of a permanent court has created overwhelming enthusiasm in the past, but then the institution has also grown into creating some dissatisfaction, disappointment in some quarters, saying, "Well, this court is too focused on Africa," or "This court is too slow," or "This court is too inefficient," so that also adds to some reluctance. So, that's why I say that we need to look into each one of these categories of arguments and address them in a different way in order to persuade more states to join.

**FRENCH:** I find that very helpful to be reminded that there isn't one answer to that question that, indeed, as you say, we may end up with seventy different reasons why they won't agree to it. I'd like to turn to you, Jessica, now, and we've heard several times now this talk of the end of the age of impunity. As your excellent scholarship shows, preventing war crimes and atrocities is a very complex endeavor with many layers to it. And so I

wonder if you could comment on what you see as the importance of legal accountability in that effort, such as what the ICC hopes to provide. How meaningful is it?

**WOLFENDALE:** Thank You. First of all, I would just like to say it's a real honor to be on a panel with Dean Scharf and Judge Fernández. And what I'm going to say really is, I'm not an expert in legal accountability, but what I think is very important in thinking about preventing war crimes is the way legal accountability is communicative. Right, so particularly at the global stage. So it communicates something about a condemnation of the crime that is being punished. And even the creation of, or the labeling of, a particular act as a crime is already itself a form of condemnation. And then if someone is specifically punished, that further emphasizes the idea that this crime is something which is taken seriously. And that is crucially important for a number of reasons. One, I think, it gives voice to the victims in a way which I think really needs to be centralized when thinking about how we deal with war crimes in prioritizing the victims first and foremost. What it can do, for example, is give voice to victims whose suffering has not so far been codified as a crime. And I think Judge Fernández has done amazing work on this in relation to sexual violence and conflict, which I believe wasn't actually a war crime until the Rome Statutes or even after that. So just by naming something as a crime itself, shows a measure of respect and recognition for the victims who have suffered that crime. And that's extremely important in and of itself even if the actual trials of the people accused of those crimes may or may not result in convictions. I'm less convinced that punishment at the international level acts as a deterrent because, often, it can be the case that, particularly with large-scale war crimes, those involved don't see what they are doing as a crime. So they're not going to be deterred by people who are punished for war crimes if they don't think that what they are doing is a crime. And, and so that's, I think, why punishment at the international level as communicative better captures what accountability at that level can do and can do specifically for victims. I think that there are limits to legal accountability, and some of them are just inherent to the nature of legal accountability. So these aren't intended to be criticisms so much as a recognition that legal accountability can really only do so much. So first of all, legal accountability—and we've seen this with the trials that the ICC has dealt with—is a matter primarily of individual accountability. So as an individual is held morally and legally responsible, in this case, for specific crimes, but in many of the crimes that we are concerned with on this panel such as genocide or institutionalized

torture, the responsibility for those crimes rests on hundreds, even thousands of individuals who are involved at different levels. And there's just no way that any system of legal accountability can adequately accommodate that idea of shared or collective responsibility. So that's just a limitation of the legal system, right? Again, it's not intended to be a criticism, instead it's to show that when you're thinking about accountability for war crimes, we have to think of legal accountability as only one kind. That, if there is to be true change, and, again, true acknowledgment of the harm of war crimes, we have to think of other mechanisms for accountability. So, this is where, for example, truth and reconciliation might play a role in that, right?

Another limitation, I think, is that the kind of responsibility that legal accountability is interested in is backward-looking. It's punishing someone for what they have done in the past, and that's completely appropriate. Again, this is not a criticism, it's just the nature of legal accountability in general. It's to do with the function of blame—someone is punished for something they've done in the past—they're blamed for it, they're held morally responsible for it. But there's nothing in that concept of responsibility that's essentially forward-looking, that talks about a duty, looking forward, to say, prevent or change the circumstances that might lead to further instances of that crime, and some philosophers have talked about the difference between sort of forward-looking and backward-looking responsibility in terms of whether or not blame is involved. So, you might, for example, think that a state or a society or citizens might bear forward-looking responsibility without being blameworthy, perhaps, because they have benefited from injustice or benefited, in some way, from war crimes, even unintentionally. So, that sense of bearing a kind of shared responsibility that's disconnected from blame, I think, is a very valuable idea in thinking about how societies might take steps—whether it's through, again, things like truth and reconciliation commissions, through change in political procedures, even just through speaking out about certain events—to address that idea: “well maybe there's some shared forward-looking responsibility here” to try and recognize and address the injustice of war crimes and to take steps to prevent it. So that's again just a limitation of the legal system in general in terms of how effective it can be, ultimately, in helping prevent war crimes.

I also think, too—and this occurred to me while listening to Dean Scharf talk—that the language we use in relation to accountability also shapes our moral understanding of what was done, and for, which we hold people—the actions for which we hold people accountable. So, thinking about genocide, so

Dean Scharf talked about the twentieth century as being one of the bloodiest centuries, and genocide, and the Armenian Genocide being one of the first genocides of the modern world. Now, that's true if we think only in terms of if we exclude, for example, the genocide of indigenous peoples through colonization, right? So the language that we use to talk about war crimes itself shapes our moral understanding of what counts as a war crime, and whose voices matter when we think about accountability? So, for example, if we reserve our thinking about war crimes, and I'm talking here beyond the scope of legal accountability, of course, two cases, the primary cases from the twentieth century, and we neglect to think, for example, of the extraordinary violence inflicted on indigenous peoples. That again, and I'm not saying this is an intentional effect, but it does have the effect of marginalizing certain kinds of voices and prioritizing others. So, and I think the law, again, the language we use in relation to legal accountability, more broadly, has that effect. Even in terms of the language we use to talk about what is a crime, and how much punishment certain crimes deserve. So people have often talked about, for example, that, in domestic society, not just on the international stage, degrees of punishment reflect attitudes about how seriously harm inflicted by harm—by an act—might be. And we've often seen cases where, for example, sexual violence is punished less severely than, I don't know, breaking and entering, right? And that tells us something about the relative value accorded to the victims of those crimes, and how seriously the harm against them is taken, and I think that also might be true at the international stage, right, that they could be and, again, here I'd defer to the experts on the International Criminal Court on this panel, but again, the kind of punishments that are given for different crimes are also communicative, along with the fact that something has been named a crime at all. I think I'll leave my comments there, and, again, I'm very grateful to be part of this discussion.

**FRENCH:** I think it's very vital that you remind us to take in the perspective of the victims and point out that the language that we use to describe and define some of these crimes allows some victims to feel seen and others to feel further marginalized. That's an incredibly important point, and actually Silvia, I'd like to connect that up to asking a question to you and then, Michael, if you'd like to weigh in after Silvia on this. So, when you spoke with us last October since you have been part of these conversations on justice now for two years, we talked about how the work of the ICC does depend on the idea that some notions of right and wrong are not culturally

dependent, or not merely culturally dependent, that there are such things that can be called “crimes against humanity,” again the language being so important here, and that that can be true wherever and, to Jessica’s point, whenever they occur. So, looking further back in history, we can say that was also a genocide, that was also a crime against humanity. From your experience, can you tell us more about why this concept of universal human rights is vital for global stability, and if you’d like to tie that to Jessica’s comments about the victims, feel free.

**FERNÁNDEZ:** Thank you, thank you very much. Wow, there is so much in this question. Really, because there are so many angles, but the concept that there are some common universal standards is essential to start the conversation. And actually yesterday, when we explained the process of creation of the international criminal court, I went into the details on how we identified and agreed on these common standards for the purpose of international criminal justice. Now I would like to go back to what Michael Scharf said. Michael mentioned that the Cold War had been the golden age for impunity. And I fully agree with that, but at the same time they were not lost years, because they were also years that were extremely fertile in the setting of standards. And a setting of standards that have now, if not unanimous, very broad support. And I’m talking in the humanitarian sphere, you have the Geneva Conventions, you have, in the human rights area, the International Covenants for Civil and Political Rights and Economic and Cultural Rights, you have the Genocide Convention, the Torture Convention. So all these conventions are extremely important in the setting of standards that the broad international community, to call it somehow, or international society, have agreed to.

Now the discrepancies start at the point when you want to enforce these standards. And that has been the huge problem and that’s why it is not incompatible to have a golden age for no standard setting while you have a golden age for impunity. The discussions start when you need to enforce them, and also that is what also undermines stability. And that’s why the tribunals and the International Criminal Court were created on the assumption that you need to enforce those standards because justice is a component, and an essential component, of sustainable peace. So you will not have stability if you continue having just impunity. So when you mention something to be a crime and you said, crimes against humanity, crimes against humanity. Yes, you are going into this fear of enforcement. This is not just about violation of human rights. We are talking about something that is so egregious, is such a gross violation, that deserves to be

punished and individuals deserve to be punished, so we go into enforcement. So that's why, what has been extremely important in the concept of accountability is that it has added this enforcement, this teeth to the setting, to these standards. So this, I think, continues to be crucial for the stability of the actual enforcement of all these norms and standards that we have identified. So I do believe that some of these standards are really universally agreed to. I don't think anybody, maybe very marginally, would say that crimes against humanity are good or that it is okay to torture. But actually, in practice, you may have circumstances where some things are going to be either denied or defended in light of the circumstances. That's why I think accountability continues to be the extra component that was required for stability. And I quote the secretary general when he said where international accountability for these crimes is indeed the greatest achievements of the last three decades for the rule of law.

**FRENCH:** Michael, please join this conversation

**SCHARF:** So let me begin with what you asked and tie it into what both of my colleagues have been talking about. And some background first, so in general human rights law there are some concepts like cultural relativism and the margin of appreciation doctrine. These were necessary because in order to get all the countries of the world to join in on a uniform set of standards for human rights, it had to be watered down, and there were compromises made. And so cultural relativism says that in interpreting these very general squishy words, you have to look at the history and the culture of each country. And the margin of appreciation doctrine says you have to be deferential to the way that countries' courts, organizations, executive branch, officials, interpret their own laws. Now those do not have any place in international criminal law. These crimes have now been codified in treaties and in the statutes of the international tribunals. There is now more precedent on these crimes, defining them in specific terms, than in any other area of international law. And there are rules like the Latin phrase "nolum crimine sine lege" which is basically the American version of the ex post facto prohibition that says you cannot prosecute people for crimes that were not defined at the time they committed them. Now that answers Professor Wolfendale's question about the indigenous people. These treaties, these body of laws, didn't exist when the United States was marching Manifest Destiny across the continent and committing what would be genocide today. But there was no Genocide Convention, there was no definition of a crime at that point and the same

with the Australian indigenous peoples. Horrible things, but we're often asked, well, why aren't they prosecuted by the ICC? And that's because international criminal law has this *ex post facto* prohibition; you can only move forward and not look back. And that also was a compromise because otherwise the countries in the world were not going to sign up to a treaty that would open up a thousand years of their actions. So they got a clean slate for everything that occurred before 2002; that was the essential compromise. But I think that you know answers to the question you are asking, and it addresses sort of some of what you were saying.

**WOLFENDALE:** That's a good point, but I guess my point wasn't so much about the existence of treaties because, of course, that's absolutely right, but just that when we talk about a concept like genocide, which is now used in a context outside of the strict application of international law, using that language is still valuable for capturing the moral depth of harm that was committed prior to the existence of these treaties. Even, if it doesn't mean that therefore there should be legal accountability in that case because that was the *ex post facto* rule (I know some Latin, but it's all like philosophy Latin, so not Latin). So that's right, but again, when we talk about this, and use these concepts, expanding them outside that street context, it is important to think about when we use that word to apply what was happening to indigenous people, we are we're not saying necessarily and therefore there should be legal accountability. What we're saying is that what was them what was done to them reaches the scale of the harm of the cases that are covered by the treaty. So that's still very important. And I think another factor and again this is what's talking about legal accountability, is just really being one relatively narrow form of accountability, although extremely important I should add, is that recognizing the way in which the harm of these previously unrecognized atrocities continues well into the twentieth century, as we've seen with the mass graves uncovered at the Canadian residential schools recently. And I think indigenous activists wouldn't try to make this point is that it's not as if this was an isolated crime that occurred three hundred years ago and then everything's been okay since. Like the ramifications are ongoing and some of the practices involved with aspects of genocide are still in some senses ongoing. And so that does raise a specter, and again, I'm not arguing that therefore the International Criminal Court should be involved, but it does raise the aspect of the thought: Well okay if there are aspects of this crime that's still ongoing maybe this does fall into the purview of at least

some kinds of legal accountability. But that's as much as I would be able to say about that in terms of details.

**FRENCH:** In these conversations to include the explanation and the detail that we got last night from you, Silvia, and then what you were adding to our understanding there, Michael, about the ex post facto as it were because I think there will be people who will want to dismiss the efforts, today, of the of international law because they will see them as having missed all these previous crimes. And it's helpful to say they weren't missed, this was not in any way being dismissive; it was, as you called it, a compromise that had to be made to move forward at all. I'm also reminded, I don't know the source, but our dean of the college, Dean Ward, used a phrase last night when we were discussing these same things where she said that "there is no new evil in the world." That she had heard that quote and that that point seems to ring through all of your comments as well that each of these past acts, no matter how far you go, does have follow-on harms and follow-on damage to people who are still alive today, and yet there are legal limits to how that can be carried out. I of course have more questions because I love talking about this, but I did want to remind you all that, if you want to ask questions, this is your cue, now is your time, it's your cue to queue, it's your opportunity to come to the microphone and form a small line. Don't be scared, and I will continue with my questions until questioners appear there. With that, I have a kind of a general thing I want to ask to all three of you, so you can think about who wants to jump in first. But certainly this has been on my mind and I know it's been on many people's minds that there have been so many cycles of bleak, discouraging news from around the world lately. This this includes everything from the pandemic, to climate disasters, to starvation in Yemen, to re-education camps for Uighurs, to the Rohingya massacres, slaughter and sexual violence in Tigre, and we, just this month, passed the grim milestone of twenty years since the attacks of 9/11 and the ragged ends of what were previously termed the forever wars that followed those attacks. So what I would like, and I'm almost pleading with the three of you here, is for me and for members of the audience who are looking for a bit of hope or optimism about the human race, can you please share any signs you've seen of positive moral progress improving the condition of humankind? All right, thank you! Give us some hope, Michael.

**SCHARF:** I'm a bit of an optimist. Often people know that my specialty is genocide, crimes against humanity, and I smile a lot—I'm a very upbeat

person, and they're like, "How can you do that?" And I am a bit of an optimist—I think that every single time there is a success story we're getting closer to, you know, resolving these problems—to a world where they're less. So I would say there's sort of a Kantian march forward but, if you graphed it, it wouldn't be a straight line. It'd be more like a bull market in the United States Stock Exchange so it kind of goes up and down, up and down, but there is positive forward movement, and it's also related to what Professor Wolfendale was saying about the commutative value of this exercise. So what you notice is that the ICC is now appearing more and more frequently in movies, and on TV shows—there is a current TV show dedicated to the ICC—its investigations are very public before they are even to the stage of confirmation of arrest warrants just when they launch an investigation.

**FRENCH:** It's not *Law and Order: ICC*, is it?

**SCHARF:** Yeah, ICC, that'd be the next one. But the investigations, every once in a while, the prosecutor will have a press conference when she or he finds out that there is a major crisis brewing and there's a concern that there's going to be a genocide. There's even organizations like the Genocide and Holocaust Museum in Washington that has this chart of genocide warnings, and it rates each country around the world with different colors as they're concerned that there might be a genocide problem—and this goes for crimes against humanity and war crimes as well. So, when the prosecutor says: "I am investigating," we have seen examples where things dampen down very quickly. There is concern, people are starting to learn, and I agree with Professor Wolfendale—the leaders, they don't really do a logical cost-benefit analysis. But, it is the generals, the colonels, the lieutenants, that—and this is what you teach—they do. They care very much about the laws of war. They're taught about the laws of war and they're very concerned that they might be prosecuted and so what we find is that international justice is patient and persistent. Think about in here, in Ohio, there was this guy named John Demjanjuk. He was this auto worker that was very well liked in Ohio, but it turned out that he was a concentration camp guard at one of the most notorious concentration camps, and when the information came out there was a very well-publicized extradition case and he went to Germany at age ninety-two; and there was a question: Why would you want to prosecute an old guy who spent the entire life redeeming himself, showing that he had been rehabilitated, showing that when he's not in a war he's a good guy, and the answer is because

international justice must be patient and persistent. You must never be able to get away with it. That's part of the story that's communicated. So, you think about, you know, Cambodia, it took thirty years after the Killing Fields for people to be prosecuted. Iraq: Saddam Hussein got away with it for twenty years before he fell from power and was prosecuted by a quasi-international court with judges from his own country, and I will return to the story that I began with Al-Bashir. He thought he was getting away with it, but he fell from power, he's in custody, there are negotiations right now. If he is surrendered to the ICC, I believe this will be the most important case of its young life. It will show that a president of a country that committed genocide and got away with it finally was surrendered and that international justice prevailed, but it took a long time. But, again, the story is international justice is persistent and patient, and that is what educates people. That is the message, I think, and that's a positive message.

**FRENCH:** It is a positive message, and I like those words: patient and persistent. We're going to hear now some more from Silvia and Jessica but, delightfully, we have lines, and so as soon as you have each commented on this point, I will go ahead and open the floor. So, please take it away, Silvia!

**FERNÁNDEZ:** Ok, then I will be very brief, because I see the line there, that is great we get to engage with you, but I just wanted to add to what Michael has said and also Jessica, also on a positive note, because I'm also an optimist. But indeed, we see huge, horrendous atrocities being committed around us. We see more crises than ever around us now, and you say: "What have we done, have we made any progress?" Well I do think that the difference from now and before is that, probably, now there is more hope for justice, for victims, than ever before. We have left these golden ages of impunity and we go into an age of accountability. That doesn't mean that everybody's accountable, of course not, but now there is a hope that there will be accountability, and there is an expectation that there will be accountability, even when, for whatever reasons, there is no tribunal to deal with the matter, like, for instance, the ICC, because it has no jurisdiction for certain cases or situations. Then, there is [that the] international community creates mechanisms to safeguard the evidence, collect the evidence, give it to national prosecutors, give it to anybody who will deal with this. So there is this expectation that certain acts, certain crimes, cannot go unpunished. So, if it is not now, it will be later, but there will be justice, so I think this is a huge step forward.

**FRENCH:** That is hopeful, and I will note that right here at Case Western we're doing some of that work, including things like the Yemen Project, is that correct? Actually gathering that evidence—

**SCHARF:** I mentioned Jim Johnson, the prosecutor from the Special Court for Sierra Leone. He is a professor at the Law School, and he has seventy-five law students working around the clock developing case files for some day, when the political winds are in the right direction, that there can be a prosecution for what are horrendous war crimes and crimes against humanity in Yemen. Right now, because Saudi Arabia is involved and because Saudi Arabia is very economically and politically powerful and has a lot of great friends, including the United States, nobody is trying to prosecute that. So, if you just looked at a snapshot, you would be very pessimistic. But if you met Jim Johnson and his students—they're preparing for the future day when the winds will change and their work will lead to the successful prosecution of these people.

**FRENCH:** Jessica?

**WOLFENDALE:** I'm going to start with a lot of pessimism—

**FRENCH:** *[laughter]*

**WOLFENDALE:** I wrote a paper recently about the erasure of torture in American history and the long history of the failure of successive American administrations to hold anyone accountable for torture. Not just the recent post-9/11 torture program, which, at least in relation to my students, most of my students have never heard of it, but also historically in relation to the use of torture, for example, by US forces in the Philippines at the turn of the early—the end of the nineteenth, turn of the twentieth century. Again, even though there was public knowledge there, nobody was held accountable at that time. So for me, researching that article was quite depressing. This ongoing pattern of the use of torture, then the failure of any kind of reasonable form of accountability, and then the kind of erasure of the torture from public and political consciousness, but here's the little bit of optimism. I've been watching *Ted Lasso*, which makes me feel optimistic, but that's bit of a different point. But, I think what we are seeing, at least in America, not so much in Australia unfortunately, is the beginnings of a reckoning with American history, and this is through conversations about Confederate monuments, the Black Lives Matter movement, the #MeToo movement, so, slowly, slowly, I think that marginalized voices have been a little bit more visible than they used to be.

Unfortunately, there's been quite a significant backlash against both of those movements and, I think the move to ban Critical Race Theory is just the latest example of this. But the existence of the backlash itself tells us, in a sense, about the greater visibility of these voices of previously marginalized groups, and so that is something to be slightly optimistic about; so, not quite the, glowing scale—we're making progress, but I think that is something to be hopeful about.

**FRENCH:** It is, it is. So, we are now entering what I like to think of as the lightning round. So, we are going to have to go fairly quickly, and so, I will warn our questioners that we will not have any “this is more of a comment” but, you need to come at us with a question and then we will pop it over to our panel. Let us start—Ben! Let's—go right ahead! *[laughter]* I just saw you there.

**VINSON:** I just was wondering: the pandemic has changed so much in our world. Has it really changed the work of the ICC in any way, and wonder if you could talk about that.

**FRENCH:** That seems to you, Silvia!

**FERNÁNDEZ:** Thank you, thank you for this. Actually we have been all praising how resilient the court has been during the pandemic, because they managed to continue with their proceedings. Of course, they changed very much and they had to adapt, and only a few people were allowed to be at the seat of the court, just those who were absolutely necessary to support the proceedings, which were mainly done through digital means. A lot of witness taken—that had already started even before the pandemic, lots of digital technology being used. But, they were very creative, very imaginative, and indeed, it has been praised and, during the last assembly, we really praised the court for managing to go forward to the extent that I also participated recently in a meeting with the Chief Justice of Jamaica, because they had asked for the support of the ICC to tell them their experience in this online virtual proceedings because they did extremely well, and also some Dutch tribunals also asked for the support of the ICC. So, of course, investigations have been very difficult, but everything continued. So, in that aspect, I really have to say that the court was extremely resilient, creative, and imaginative. So, good story, positive notes. *[laughter]*

**FRENCH:** It is! That followed on more smoothly than we might have—

**SCHARF:** Can I just add—

**FRENCH:** Yeah.

**SCHARF:** —even the International Criminal Court Moot Court Competition, which the ICC helps run, and which we are involved in, has been remote, and we had the argument in their courtroom, but they were able to do that, but in the preliminary rounds they used their technology to beam it in, and just as a little aside, our Law School was the runner-up in that competition. So that was a good year for us.

**FRENCH:** *[laughter]* That's fantastic! Ryan, over here! Oh, and introduce yourself quickly.

**RYAN ARVIZU:** Hi, my name is Ryan Arvizu. I am a graduate student here studying Military Ethics under Dr. French in the MA program. So, because I'm a student of philosophy, Professor Wolfendale, my question is more towards you and the war crimes that come out of active-duty military personnel. So you talk about, in your work, how these aren't failures, individual moral failures, but rather a military authoritarian culture that fails to establish that strong ethical base for its personnel. That does not justify war crimes, so I'm wondering, either through legal accountability or another method, how do we, especially as civilians, apply pressure to state-run militaries to change, and what do those changes look like in a practical manner? Thank you.

**WOLFENDALE:** Thank you for that question! So, my coauthor Matthew Talbot and I, in our book on war crimes, look into this question, and one of the things that we push back on is the common depiction of war crimes, and I think this is often how war crimes are commonly talked about even within military academies, as being failures of character. Individuals who are overcome by rage or loss of self-control, and that certainly does describe some kinds of war crimes, but it certainly doesn't capture, for example, institutionalized torture, or, in many cases, genocide, which is often a process of explicit policy authorization, normalization, justification. So then how do we citizens, for example, have civilians put pressure on military academies to address those kinds of war crimes? I think, first and foremost, this is very complex. I think accountability is a big part of that. So, I already mentioned my slight despair at looking at the lack of accountability, for example, in relation to the post-9/11 torture program; some of which falls in the military, but not all of course in that case. But I think it's also about the stories that are told about war crimes within military academies need

to own up to the fact that “good people” can commit war crimes and can think that war crimes are not crimes. They can think that something that is a war crime is, in fact, what’s required of them. That it’s maybe even consistent with military duty or virtue. Even that acknowledgment would go some way to actually sort of reckoning with how institutional structures and institutional stories about war crimes can themselves contribute to war crimes. So that’s what I mean. That’s something which as civilians it might be how to exert that pressure. I guess it’s about talking about it. It’s about having conversations. It’s about, putting that narrative out there, encouraging as much as we can, and military officials, in my view, or the ones I’ve interacted with, are actually very interested in this. So, again, there’s not necessarily resistance to this idea, but I think it goes against long-standing ways of approaching the question of war crimes in military training. So I think that just needs to be fundamentally altered. I thank you for your question.

**FRENCH:** Same experience; they’re not reluctant to have these conversations. You just have to, but I love the phrase that you use, the institutional stories about war crimes and that’s what we need to look at, that’s incredibly powerful. All right, over here, and please briefly say who you are.

**NATALIE EBERTS:** Hi, my name is Natalie Eberts. I’m a second-year law student here at our Law School, and my question is to the panel, and it’s about some of the topics that came up earlier such as forward-looking or prevention of crimes against humanity as well as a victim focus, and I’m wondering: Are there any efforts, or is there any potential to bring some of those to the court within the limits of it being a legal accountability institution and, perhaps, on that like, consulting with victims about how the prosecution goes forward, because I know sometimes there may be situations where victims have opinions about how that happens or whether it happens, as well as voluntary reconciliation process that victims may want to engage in. So those types of things—is there any space for that and, if not, where would be the space for those things? Thank you.

**FRENCH:** I think we, if one of you would like to volunteer to take that question. Do we have a—

**SCHARF:** I can start. So I think what you’re asking, Natalie, is if some of the incidents that predated the jurisdictional threshold of the court can still be addressed by the international community, or did we make some deal with the devil when we created the court to just ignore them, and I

think this is something that Professor Wolfendale was mentioning before and that is that the ICC is not the only accountability mechanism, and the world doesn't need and it isn't a one-size-fit-all kind of place. So there's all kinds of other accountability mechanisms. There's truth commissions, investigative commissions, ad hoc tribunals, domestic prosecutions, and I think that all those are still open for business for the prior, in a variety of ways, for the prior incidents, and there are victim groups that are coming together to try to bring that forward. I think there's someone in the audience, Professor Tim Webster, who's been doing a lot of writing about the crimes that Japan committed during World War II, especially in Korea, with the comfort women and everything. For years those were ignored, and then there are now victims groups that have come together that have coalesced, and now there are actual court cases where those are starting to be tried—this is seventy-five years later—so, you know, there is still hope for the past.

**FRENCH:** Yeah, I'd like to add a nice connection for us here with the Inamori Ethics Prize. Our 2014 Inamori Ethics Prize recipient, Dr. Denis Mukwege, who went on to win the 2018 Nobel Peace Prize, there was a story just yesterday that came out that he is currently calling for justice for victims and requesting an international tribunal to look into war crimes in the Democratic Republic of Congo. So, again, this work is ongoing and involving different mechanisms that exist as ways to respond. I think that we should probably keep going with questions. Although I know each of our panelists could say something about each of these questions, but let's get another one in the mix. Please go right ahead.

**HAMAD:** Hi, my name is Hamad. I'm a doctoral student at Emory University School of Law. First I just want to congratulate Professor Michael Scharf for celebrating the thirty-year anniversary. My question would be, perhaps, directed to Judge Silvia about the Al-Bashir case. At the beginning, Professor Michael Scharf just mentioned that he has been maneuvering over his arrest warrant with the assistance of some state parties. The question is—and have you seen that two months ago the Sudanese authorities passed a national bill to join the Rome Statute of the International Criminal Court. How would this affect the arrest warrant of Al-Bashir that was actually issued by the Security Council of the United Nations? Do you think that the job after joining the Rome Statute would affect the subject matter of this arrest warrant given that he was actually arrested or—the international community

wanted to arrest him because of genocide crimes, essentially for genocide, but do you think that after joining the International Criminal Court would be a possible extension for other crimes?

**FRENCH:** Judge Fernández?

**FERNÁNDEZ:** Thank you, thank you very much. Well, it was mentioned here that we are all looking and following the developments in Sudan, which are extremely important for the situation at the court. You know, the situation of Sudan, Darfur, was referred to the International Criminal Court by the Security Council in 2005, and the court, not the Security Council but the court itself, issued arrest warrants against several individuals in Sudan for alleged crimes committed in Darfur, including against the then-president, Al-Bashir, and as it was recalled by Michael at the beginning of this panel, this indeed was extremely controversial, extremely controversial because Al-Bashir at the time, being a president of Sudan in the exercise of his functions, and there was a huge discussion on whether he had or not immunity and also there were controversies and also Sudan at the time, and I go to your question on ratification: they considered that they were not obliged because they were not parties to the Rome Treaty. So, this is all arguably good legally, but the political developments in Sudan and when—if they take the decision to ratify, that would be an extremely positive signal in terms of willing[ness] to cooperate with the court. Of course, they will need to still make a decision with relation to Al-Bashir and what they do with that, but, a ratification of the Rome Statute would be an extremely positive signal for the entire situation, and I think the court has been of the view that Sudan was obliged to cooperate in all cases regardless of whether or not they ratified the Rome Statute because of the Security Council referral, but the ratification would add a willingness to cooperate that has not been really present before. So yeah, it would be a very positive development.

**SCHARF:** Just to add to that, the Security Council refers the case, but then when Al-Bashir goes to all these different countries and they don't arrest them and the president of the ICC, and the president of the Assembly of State Parties, the prosecutor begged the Security Council to take action—the Security Council is paralyzed by the veto. Now, this is a little commercial for day two of this conference, I see Jennifer Trahan sitting in front of us. She has a wonderful book that has won awards, and she's going to be speaking about it tomorrow, the Security Council's paralysis is the biggest obstacle to the success of international justice, and she has

recipes for circumventing that, and you have to come back tomorrow to hear more about that.

**FRENCH:** And a question over here please.

**KAMAREA VALENTINE:** Hi, my name is Kamarea Valentine and I'm a freshman here at Case Western, and I would like to congratulate Judge Fernández on her award, and my question is open to all the panelists. I just wanted to ask: How does the influence of white supremacy affect the lack of accountability in war crimes and genocide against BIPOC individuals by white communities and do we prioritize accountability of BIPOC states over predominantly white states because of their influence within the international community?

**FRENCH:** I'm so sorry but could you spell out—not everyone will know the acronym—

**VALENTINE:** Oh! yeah!

**FRENCH:** —and just for a moment, take off your mask because our mics are muffling you. I'm so sorry, it's not your fault!

**VALENTINE:** No, you're fine! BIPOC stands for Black, Indigenous, and People of Color.

**FRENCH:** And just restate the question with the mask down just so we can hear.

**VALENTINE:** So my question was: How does the influence of white supremacy affect the lack of accountability in war crimes and genocide against BIPOC individuals by white communities, and do we prioritize the accountability of BIPOC states over predominantly white states because of their influence within the international community?

**FRENCH:** White supremacy, right. Jessica, go right ahead.

**WOLFENDALE:** I think there are kind of two separate questions in your question, actually, so I'm going to talk a little about the first part: about the influence of white supremacy and lack of accountability, and again, specifically, mainly in the American context. So if you come tomorrow, *[laughter]* I will talk more about this, but I think if you look historically, specifically, I was focusing primarily on torture, but what I say would expand to other atrocities committed against BIPOC people historically, starting with colonization, when torture was used by white colonists and militia against indigenous peoples, but not against fellow white colonists.

You know, all the way through the institution of slavery, and then torture in the Philippines against Filipinos, and then you could talk about public lynching—it's a long, long, history of torture of people of color, indigenous people that's been tolerated within America but also forgotten. And I think that forgetting is an important part of maintaining white supremacy because the forgetting of it allows the illusion of American, sort of white moral citizenship as being essentially good and virtuous. So I think this long history of the use of torture and other forms of violence against BIPOC people is a way of both enforcing sort of white moral citizenship by very literally dehumanizing people who are non-white, but then the forgetting of that—the public and political forgetting of that is also an essential part in maintaining the illusion of white virtuous moral citizenship. So that's my take on the white supremacy and the lack of accountability for atrocities, but, in relation to the ICC cases, I will defer to my colleagues.

**FRENCH:** Did you want to comment on that at all, Silvia?

**FERNÁNDEZ:** I'm sorry but I don't, I didn't get that part of the question.

**FRENCH:** I think she was asking primarily whether there are issues around making sure that the victims, when the victims are in this category, that we are calling BIPOC, but the perpetrators are white, are there more complexities either politically or practically in making sure that justice is served?

**WOLFENDALE:** Basically, are those cases less likely to be prosecuted?

**FERNÁNDEZ:** Frankly, I don't think so. I think our cases are complex enough. But I don't think this adds, necessarily, a component to that, not at the court. And I would say, and I would like to use this opportunity, also, to talk very much about how much victim-centered the ICC is. The victims have for the first time—now it's being replicated in other systems—but at the ICC victims can have access to justice, they can ask for participation in the proceedings, they can provide information to the prosecutor, and they can participate in the judicial proceedings by giving their views and concerns. This is extremely important also to address these exams, some of the concerns you have expressed. They can participate in the proceedings, not only as witnesses of crimes that they may have seen or suffered, but really to express views and concerns in general. So that will also help the judges to understand the full context of the situation. So victims can participate in all phases, including at the investigative phase, and they can also seek reparations.

**FRENCH:** Yes, I just wanted to make one practical comment. The rhythm of the university—as some of you may have noticed, some people have moved on. We have just had a changeover to another class period, so some of the students in the audience have had to scurry off to their classes. They were not losing interest; they just want to pass. Yeah, they were not offended, they just want to pass their classes. Back to you, Jessica.

**WOLFENDALE:** I think in the ICC too if a state is not signed onto the ICC then it can't be subject to prosecution. So, for example, because America is not a member of the ICC, it also isn't going to affect them. The kinds of perpetrators who are able to be held accountable—

**FERNÁNDEZ:** Oh well, yeah, but that would not be because of the victims in particular—

**WOLFENDALE:** No, that's right, that's right.

**SCHARF:** Let me add one other thing. So if you looked at the first fifteen years of the ICC, every single situation before the ICC was an African situation and you could have said, "Well look, this is a bunch of white judges judging African people of black skin in their courtroom," and that looks really bad. But what we see today as the court has grown older and it has expanded its sites, we now have cases before the court pending and percolating up all over the world, so Afghanistan, the Ukraine, Israel, Guatemala, the Philippines. It's not just Africa anymore.

**FRENCH:** And the judges themselves are diverse.

**FERNÁNDEZI:** Well exactly, I wanted to say that. The judges aren't all white.

**SCHARF:** They are, they are. They are diverse. That's right.

**FRENCH:** Or all male!

**FERNÁNDEZI:** Or all male.

**SCHARF:** And in fact that's by the statute. There are actual distribution requirements.

**FERNÁNDEZ:** Indeed it is multicultural, and that is represented in the judiciary.

**FRENCH:** So no one's going to like to hear this but I think we only can take one more question, the rest of you are going to just throw daggers at me with your eyes! That would be you, sir.

**AHMED ALAIAT:** I promise it will be so quick. I am Ahmed Alaiat. I am a student at Case Western Reserve. My question is exactly about Libya, and we had two different incidents in 2011, when Libya was referred by the US council to the ICC, and the ICC requested surrounding some individuals, including Saif al-Islam, to the court. We have different incidents in 2019, sorry, which is when the “so-called” the commander Haftar launched an attack on Tripoli killed and dislocated many, many Libyans, and the impact is gonna be for a long [time]. So these two incidents and the first occasion, Libya is not a part of ICC, but ICC requested surrounding this individual, based on the referral from—

**FRENCH:** From the referral from the security council.

**ALAIAT:** Security council. And in the other incident no one talked about surrounding after or the demand to surrender him. So this is, the question and, I mean, whether we are facing, you know, a double standard or are we in a drop off of the ICC, despite the optimism that you mentioned? But I shared with you this question.

**SCHARF:** So when the security council referred the matter, it wasn't a referral of individuals. It was a referral of a situation, and it was open-ended. It was basically any war crimes, crimes against humanity that resulted from the Arab Spring conflict, which I would argue is still going on in Libya and therefore the jurisdiction still pertains, even to the incident of 2019 which could ultimately be investigated and prosecuted by the ICC without a new referral. Does that make sense?

**FERNÁNDEZ:** It makes a lot of sense, but it is something that would need to be looked at by the prosecutor of the ICC in the first place and then the judges. But yeah, that would be my understanding would be around this. But I would like to go back to what you have said, Michael. The issue is always about cooperation, and even when there have been referrals by the security council, there has been problems of when you, at the time of arresting individuals and making this more effective, then cooperation was not forthcoming. But in terms of the law, I think the situation may be clearer, yes.

**FRENCH:** Well, I thank you all for a wonderful discussion, and I am sorry that we couldn't get to everyone's questions. But back on that point of optimism, I am given hope by the fact that there is so much engagement around these vital issues and people wanting to be part of this conversation

moving forward. Can you all join me in thanking our incredible panel one more time! On behalf of President Kaler and Provost Vinson, I would like to thank you all here and online for joining us to attend today's Inamori Ethics Prize Academic Symposium as part of the Cox conference as well. We look forward to seeing you next year for the Inamori Ethics Prize events again. And I hope many of you will also join us tomorrow for the second day of the Cox Conference. Thank you again, and have a great rest of your day.